Construction Material Processors Association Inc.

CMPA

P O Box 396, Kilmore, Victoria
Australia, 3764

Inc. No. A0039304E ABN 85 154 053 129

☎ 1300 267 222
🖷 (03) 5782 2021
enquiries@cmpavic.asn.au

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Ms Kirrily Noonan
Earth Resources Policy Unit
Energy Sector Development Division
Department of Primary Industries
Via email to: MRSDA.review@dpi.vic.gov.au

Re: MRSDA REVIEW

Dear Kirrily

The Construction Material Processors Association (CMPA) welcomes the opportunity to provide input into the review of the *Mineral Resources (Sustainable Development) Act 1990* (MRSDA).

Organisation Overview

The Construction Material Processors Association (CMPA) membership represents a significant part of the extractive industry activity in Victoria.

Recommendations

The key points of this submission are:

Approval Process

- The high sovereign risk that arises due to the slow, costly, uncertain approvals process that is creating disharmony in the system needs to be addressed.
- A refined Work Plan/Work Authority approval process is introduced with the following aspects:
  - Introduce a Code of Practice applicable to all quarries
  - Simplify Work Plans
  - DPI to provide greater support for local Councils
  - Planning Permit conditions refer to only offsite impacts outside of the Work Authority boundary
  - The information demands of regulators should be centrally coordinated and Work Plans should be referred to referral authorities only once
- The viability of an independent 'Resources Industry Warden' that has the power to enforce decisions and ensure timeframes are met by the regulators should be investigated.

Government Stewardship

- The Department of Primary Industries (DPI) must act as a steward of the stone resource for the benefit of future generations.

The key features of the current EIDA that must be retained are:

- Ongoing private ownership of stone,
- Continuation of extractive industry specific regulations,
- Work Authority granted for life of resource, and
- Continued Planning Permit exemptions for native vegetation removal and EPA Works Approval.
- Ancillary works to be included as of right within the Work Authority area

Sections of the MRSDA that must not be applied to the extractive industry are:

- Section 15(6) requirements of a fit and proper person,
- Statement of Economic Significance of the value of quarrying compared to the value of agriculture on private land,
- The "100 metre rule", and
- Offsite landowner compensation.

Community Consultation

- The additional costs and regulatory burden of Community Engagement Plans on Work Authority holders should not placed on the sector.

Rehabilitation Bond

- A simplified rehabilitation bond system must be introduced.

Royalties

- Parity of royalties across resource sectors with the option of an early discounted payment must be introduced.

Future Review of Legislation

- The MRSDA must be reviewed in five years.

Under resourced agencies

- Government agencies must be adequately resourced to perform their required duties.
- The option of accredited experts to conduct regulatory functions must be investigated.
- The Earth Resources Division should be restructured to ensure the delivery of efficient administrative processes.

The CMPA looks forward to discussing our submission with you in more detail and await your advice on a suitable meeting date.

Yours sincerely

Roger Buckley
Executive Director
M: 0434 692618
E: roger.buckley@cmpavic.asn.au

Approval Process

Streamlining the Work Authority and Work Plan approvals process by reducing costs and time of approvals has the potential to make the greatest reduction in regulatory burden on the extractive industry.

Recent amendments

The new extractive industry requirements that came into effect on 1 July 2009 will have limited impact on reducing regulatory burden for Work Authority holders. Whilst it is welcome that sites less than 1ha and less 2m deep will not need a Work Authority these sites will still need a planning permit with Council managing the ongoing regulatory obligations. This will affect only about 7 current operating Work Authorities and the advantages are negligible.

The CMPA welcomes the introduction of the requirement of sites less than 5ha and 5m deep to operate according to the Code of Practice if there is no clearing of native vegetation or blasting **only** if this reduces the regulatory burden for Work Authority holders. These sites will still require a planning permit and the other requirements for a Work Authority. Local Councils may well still need the detail of the activity proposed for a site (i.e. a Work Plan) to approve the planning permit application.

The CMPA welcomes the removal of the requirement for a Planning Permit where an Environment Effects Statement is required. This refinement should not be used to encourage more assessments of proposals through an Environment Effects Statement. The approval process should be appropriate to the impacts of the proposal.

CMPA report on approvals process

The CMPA report *An Unsustainable Future: The Prohibitive Costs of Securing Extractive Industry Access in Victoria, 2009* is being finalised and will be forwarded shortly to DPI. This report highlights issues in the current planning approval process identified from ten case studies and makes recommendations to address these issues, some of which relate directly to the administration of the MRSDA by the DPI. Appendix 1 of this submission is derived from the *An Unsustainable Future: The Prohibitive Costs of Securing Extractive Industry Access in Victoria, 2009* report and sumarises the current convoluted extractive industry approval process.

The *An Unsustainable Future: The Prohibitive Costs of Securing Extractive Industry Access in Victoria, 2009* report highlights the following issues relevant to the MRSDA:

- **Unacceptable time** - It takes on average 2.5 years for a relatively simple, new Work Authority to be granted, with more complex applications taking at least 6 years and costing over $5 million with no certainty of outcome.
- **Unacceptable costs restricts new entrants** - The costs of the approval process spread over the first five years production vary up to $1.79 per tonne for hard rock and up to $0.62 per tonne for sand operations.
- **The goal posts keep changing** - Work Plans are referred to agencies several times with duplication and escalating information requirements each time they are consulted, especially if there is an appeal to VCAT.
- **The regulatory burden keeps on growing** - Increasing regulation is required to gain approvals, e.g. Native Vegetation Framework, Cultural Heritage Management and Community Engagement Plans.
- **Duplication in roles** - DPI and local councils duplicate requirements and conditions. This must be stopped.
- **Consistent lack of consistency** - Inconsistent interpretation of the legislation by the referral authorities.

Multiple referrals of Work Plan

A key aspect to reduce regulatory burden on Work Authority holders is to ensure that the Work Plan approval process will not need multiple resubmissions to referral authorities and waste time and cost money in the future. The Work Plan process should be centrally coordinated with a single referral to other agencies with enforceable time limits in place to ensure a decision is made within a reasonable timeframe. DPI should introduce such a system

under the review of the MRSDA. See Appendix 1 for an extract from the CMPA report *An Unsustainable Future* for illustration of the current chaotic process of multiple referrals.

It is a regular situation for a Work Plan to be referred several times to various agencies such as the water management authorities and the Department of Sustainability & Environment (DSE), with different personnel requiring additional and different issues to be addressed each time. This provides no certainty of process, time or costs for the operator. Councils contribute to this issue by not participating in the approval process regularly enough to have in house expertise to adequately assess the Work Plans. Councils need a greater understanding of the regulatory role of DPI so that Planning Permit conditions consider only offsite impacts. There needs to be a clear definition of function and authority of referral agencies in assessing proposals.

To assist local government in its role as the responsible planning authority, the CMPA supports improved consultation between DPI and local Councils so that DPI's role as a regulator and its key instruments of Work Authority conditions and the Rehabilitation Bond are understood by all stakeholders. This would assist in Council gaining a proper understanding of DPI's regulatory reach.

Simplified Work Plans

Many Work Plans that are currently submitted are overly complex. The introduction of a Code of Practice applicable to all quarries that sets out performance based criteria that operations have to comply would simplify the situation. This provides for an outcome based assessment process. A shorter Work Plan that provides site specific information that is not adequately covered by the Code of Practice would only then be required. They may include the location of assets and infrastructure within the Work Authority. Existing benefits of the Work Plan process of exemptions from Planning Permits and approvals would be retained.

Implications of the slow, costly and uncertain approvals process

There has been a deterioration of investment interest evident by the decreasing number of work authority applications in Victoria while demand has been rising. Arguably the decreasing level of proposals that go on to the application stage is illustrative of a growing falling off of interest in investing in the industry once the sovereign risk is understood.

At a time of increasing demand when new quarries would be expected to be developed, very few significant operations are in fact being approved. Of the 275 new Work Authorities granted between 2000-01 and 2007-08, only 18 (7%) were for significant operations (those with a rehabilitation bond greater than $50,000) of which only 6 were for a significant hard rock quarry. Perceived high sovereign risk is limiting investment in the industry.

The CMPA supports the importance of environmental regulation and the community's expectation of industry to be environmentally sustainable. The CMPA report, *An Unsustainable Future: The Prohibitive Costs of Securing Extractive Industry Access in Victoria, 2009,* provides an overview of the cumulative impact and the increasingly costly and restrictive nature of some regulatory tools. The capacity for companies to continue to absorb these additional and escalating costs in their efforts to establish a new quarry, or extend the life of an existing operation to supply a cost effective product is limited and in numerous instances these costs have been the tipping point to withdrawal from the industry and Victoria.

The lack of new quarries being developed or existing operations expanding will lead to a decrease in both supply and competition in the market place. This will cause an increase in the cost of construction materials, leading to an increase in building and infrastructure projects. With 10 tonne/person/year of construction material used within Victoria, a future material supply shortage could cause a price increases of 35 per cent and above. This would equate to an extra $4.55/person/year or an extra $240 million/year cost for Victoria. Such a significant price increase has never occurred in the industry. The community and Government will pay the price for increased regulatory burden. **This market failure needs Government action now. The MRSDA needs to implement an improved approvals process as a matter of urgency.**

The high sovereign risk that arises due to the slow, costly, uncertain approvals process is creating disharmony in the system. This has lead to reduced investment in new quarry operations during a time of increasing demand which has the potential to limit future supply and increase product cost. This will lead to the increased cost of infrastructure projects. The community will pay the price for increased regulatory burden.

The CMPA suggests that a refined Work Plan/Work Authority approval process would help to reduce costs and should cover the following aspects:

- Introduce a Code of Practice that is applicable to all quarries, not just those less than 5ha and 5m deep. The Code must be developed in true consultation with industry. The Code will identify performance based criteria that operations have to comply with.
- Simplified Work Plans that provide site specific information that are not adequately covered by the Code of Practice.
- The Work Authority with generic conditions, the rehabilitation bond requirements, Code of Practice and Work Plan is provided to the local Council to support the proponents Planning Permit application.
- Any conditions that Council may place on the Planning Permit must relate to only offsite impacts outside of the Work Authority boundary, with the Work Plan and Code of Practice dealing with issues within the Work Authority.

The *An Unsustainable Future: The Prohibitive Costs of Securing Extractive Industry Access in Victoria, 2009* report suggests various other actions to address issues, including:

- Regulatory bodies should make decisions based on evidence according to the triple bottom line of social-environmental-economic values without undue political pressure.
- DPI and local government should streamline Work Authority/Work Plan approvals that recognise DPI's regulatory reach.
- The administration of the MRSDA should aim at performance based outcomes that lower the costs and reduce the time of approvals to proponents.
- New regulation should not be introduced unless appropriate resources are devoted to administer the regulation effectively.
- The State Government should implement the recommendations of VCEC's environmental regulation inquiry concerning the mining and extractive industries (assuming they are as per the draft recommendations).
- Referral agencies must be accountable. Regulators must be able to publicly defend their decisions.
- DPI should be focused on its role to improve approval outcomes.

Government Stewardship

The CMPA suggests that the purpose of the MRSDA should be:

- to encourage economically viable mining and extractive industries which make the best use of resources in a way that is compatible with the economic, social and environmental objectives of the State.

This purpose implies DPI has a role as steward of the stone resource. As a steward, the Government has a role in identifying strategic stone resources through targeted geological mapping and drilling initiatives and to ensure high level planning protection of these resources. One mechanism to achieve this is to further refine Extractive Industry Interest Areas with better defined, defendable stone resources that have a greater level of planning protection than currently exists. This would also assist in the regional identification of future supply scenarios so that areas where

supply short falls and high prices will occur can be identified early and consideration to this aspect applied in the approval process.

One council with a local perspective and interests should not have the responsibility for making a decision on a potentially regional or statewide significant resource. Stewardship ensures that the economic objectives of the State as a whole are achieved which may over ride the requirements of a local council.

Stewardship also implies that DPI has a central role in managing the Work Authority approval/Work Plan variation process to Best Practice standards. As outlined in this submission, the current process could be significantly improved.

The Key Features of the EIDA to be Retained

There are several key features of the current EIDA that must be retained under the future MRSDA. These include, but and not limited to:

- **Ongoing private ownership of stone -** The CMPA strongly supports the landowner retaining ownership of stone on their land. There would be significant compensation issues for Government if a decision was made to change ownership of stone to the Crown.
- **Extractive industry specific regulations** - After the initial merger of the EIDA & MRSDA, it would make it easier for the Work Authority holder to understand their obligations and help differentiate the needs of the two sectors by having separate Regulations for the extractive industry.
- **Work Authority granted for life of resource** – The CMPA strongly supports the continuation of this aspect as it provides security of tenure to enable investment in capital to establish an efficient operation.
- **Exemptions from Planning Permits and approvals** - the exemption from obtaining a separate planning permit to remove native vegetation and the exemption from gaining approvals under the *Environment Protection Act 1970* for on-site disposal of waste to land under the DPI Work Plan approval process should be retained to assist streamlining the approvals process.
- **Ancillary works to be included within the Work Authority area –** the definition of Extractive Industry in s3 of the EIDA should remain the same (…and include - the treatment of stone or the manufacture of bricks, tiles, pottery or cement products on or adjacent to land from which the stone is extracted) so as to allow for ancillary works such as cement blending plants to be built within the Work Authority area.

Sections of the MRSDA that must not apply to the extractive industry

(but not necessarily limited to)**:**

- The **"fit and proper person"** requirements of Section 15(6) of the MRSDA should not apply to Work Authority holders - Work Authorities are not a licence but are rather consent to start work from the Minister according to set conditions. Licences are only granted for the search and extraction of commodities owned by the Crown (such as minerals), and consequently this section should not apply to the extractives industry. In addition, property rights to the resource assigned by a grant of a licence are often used to raise finance on the stock exchange. Section 15(6) provides some degree of surety that reputable people are involved in this activity. This speculative finance raising issues does not commonly occur in the extractive industry.
- A **Statement of Economic Significance** of the value of quarrying compared to the value of agriculture should not be required - A mining licence holder who proposes to carry out work on agricultural land not owned by the licensee must prepare a statement of economic significance of the work to prove that the proposed mining is of greater value than the agricultural value of the land. This should not be applicable to quarrying as the land owner owns the stone. It should be the owners choice as to how they wish to use their land, not a matter for Government to decide.

- The **"100 metre rule"** prohibiting activity within 100m of a dwelling should not be applicable to the extractive industry - The "100-metre rule" of the MRSDA requires the consent of a landowner to work within 100 metres of a dwelling, and also applies to work within 100 metres of Aboriginal and archaeological sites. This should not apply to quarries in any circumstances. There are enough existing controls and scientific evidence on impacts such as noise, dust and blasting limits at the nearest sensitive location (dwelling) to make this requirement for quarrying redundant. The Cultural Heritage Management Plan adequately deals with heritage issues around Aboriginal and archaeological sites.
- **Offsite landowner compensation** should not be applicable to the extractive industry – The land use of the quarry site and its offsite impacts are thoroughly assessed through the planning approval process, including opportunity for public input and even appeal through to the Victorian Civil and Administrative Tribunal (VCAT). Additional compensation is not warranted in this instance. This perspective is consistent with the *Land Acquisition and Compensation Act 1986*.

The CMPA has concerns in the following areas:

Community Consultation

The CMPA would like to place on record its disappointment at the complete disregard of industry concerns expressed during the consultation with the industry prior to the introduction of a mandatory requirement for inclusion of Community Engagement Plans in applications for Work Authorities and variations of Work Authorities from 1 January 2010. This disregard only reinforces industry skepticism as to the merits of the process of consultation. Not one CMPA member supports the introduction of mandatory Community Engagement Plans and sees this additional legislative obligation as a significant additional cost to conducting their business. If it was such good commercial sense to conduct such formalised community engagement, quarry businesses would already be embracing the practice.

There is little evidence in the quarrying sector that formal community consultation through Environment Review Committees or Stakeholder Reference Groups will reduce costs to the operator. There are several examples within the extractive industry of this formalised community interaction costing significant amounts of money and additional expenditure on a variety of issues without providing the certainty of ongoing operation. It is the extractive industry's experience that vexatious objectors will go to extreme lengths, including secondary boycotts, to inflict additional costs on the operator in an effort to close the quarry site.

The CMPA has previously indicated to DPI their deep concern at the potential cost of developing and maintaining Community Engagement Plans. Formalised community consultation obligations beyond that currently enshrined in the planning process will result in significant additional financial imposts to operators. This will severely jeopardise many operators sustainable viability, as it will impact most adversely on operators who are unable to amortize such costs over their limited tonnage outputs.

Estimations conducted by the CMPA utilising the existing 'Community Engagement Guidelines for Mining & Mineral Exploration in Victoria' present an imposition of $40,000 (small site) to $130,000 (large site) prior to a site being granted a Work Authority, and between $8,000 (small site) and $28,000 (large site) per annum to maintain ongoing consultations. For a moderate sized operation producing 175,000 tonnes per year, this equates to an **EXTRA** $52,000 in gaining approvals and an **EXTRA** $17,000 per annum for ongoing consultations in addition to current community consultation requirements under the planning permit approval process.

Such additional regulatory burden and cost should be balanced with an equivalent reduction in cost and regulatory burden. This could be achieved through a reduction in the time to approve a Work Plan and/or Work Authority application.

Several experienced industry consultants also share the CMPA's concern regarding community consultation and believe Community Engagement Plans are not necessary for either the Work Authority holder or the community.

Rehabilitation Bond

To further encourage progressive rehabilitation of sites, it is suggested that the rehabilitation bond be reduced by a standard percentage if the operator has completed appropriate rehabilitation works supported by documented evidence during the previous year.

The CMPA notes that s79 of the MRSDA includes the additional phrase that the Rehabilitation Plan must take into account "any potential long term degradation of the environment" compared to the analogous section of the EIDA (s32). CMPA is concerned what this may mean that for extractive industries. Has the obligation of the rehabilitation bond been extended until it has been assessed that there is "no potential for long term degradation of the environment"? How is it intended that this be defined and implemented? How will disagreements between the operator and DPI be resolved?

If the intention is to administer the return of the rehabilitation bond in a similar way for the extractives sector in the future as it has been in the past, this clause should be deleted from the future MRSDA to reduce confusion and uncertainty.

The option of alternative forms of bonds apart from bank guarantees should be considered. A major problem of the current bond system is that it is not an expense as such but a liability on a firm's balance sheet, tying up working capital and escalating the borrowing burden being placed upon those businesses. With capital sterilised in the bond, this leaves the operator having to double the working capital required to carry out their ongoing rehabilitation program.

The current practice of only accepting a bank guarantee often places unnecessary financial burden on the operator. There should be the option to retain other financial instruments that also provide the security Government requires.

The existing bond assessment process continually assumes a business's economic failure and does not take into account the identified value of resource in the ground and the companies financial position.

Royalties

The royalty for most minerals is 2.75% of value of production, except for gold (no royalty) and coal (rate based on energy value). The extractives industry pays royalty for stone extracted from Crown land (at surface or at depth greater than 15m). The extractive industry currently pays $0.87/tonne of stone extracted from Crown land, which equates to about 6.3% of the value of production. There should be parity with minerals so that the royalty rate is consistent at 2.75% or $0.38/tonne.

The option of buying out the future royalties for a Work Authority at a discounted rate at the beginning of operation should also be considered.

Improved administrative practices in calculating, monitoring and auditing the royalties' payable on stone extracted below 15.2m depth should also be considered.

Future review of legislation

DPI should commit to a review of the MRSDA after five years of operation. As the quarrying sector has not worked under this legislation previously, five years is a reasonable period for specific issues to surface and solutions proposed through a formal review process.

Under resourced agencies

Regardless of the regulatory system and model in place, it needs to be operated by government agencies that are adequately resourced with appropriate numbers of competent and professional staff trained to support the

implementation of Government policy in an appropriately structured organisation. Irrespective of the commitment of Government staff, delayed or poor decisions are often made due to this lack of resources.

Competent staff is the key to the realistic administration of the legislation and a balanced approvals process. The best legislative/approvals process framework can be in place, but without competent government staff to make key decisions, the full benefit of the process can not be realised. The Earth Resources Division should be structured to ensure it is focused on its role to improve the approval outcomes.

Government needs to implement policies that encourage retention of competent staff to address this issue. A wider use of accredited experts, such as the EPA use for environmental auditing, may need to be investigated to ensure appropriate resourcing and timely delivery of regulatory approvals. The Auditor General for Western Australia has suggested similar actions in addressing staff pressures in Western Australia agencies involved in approving resource projects (see www.audit.wa.gov.au/reports/report2008_05.pdf).

APPENDIX 1 – EXTRACT FROM CMPA REPORT
AN UNSUSTAINABLE FUTURE:
THE PROHIBITIVE COSTS OF SECURING EXTRACTIVE INDUSTRY ACCESS IN VICTORIA

The following summary of the current extractive industry approval process has been extrapolated from Appendix 3 of the CMPA report, *An Unsustainable Future: The Prohibitive Costs of Securing Extractive Industry Access in Victoria* and highlights duplication and complexity in the approvals process and lack of stewardship of the state's extractive resources which are for the benefit of the whole community. Time frames quotes are derived from the ten case studies described in the report.

Section 3 - Development and approval process required for a Work Plan and the issuing of a Work Authority

3.1 Applicants personal assessment of Work Authority consideration – Average time 10 months with range from 10 – 36 months

1. Determine the market need and conduct a commercial assessment of the proposal. This would include a projected cost of application process, market economic impact and capital cost of project.
2. Carry out practical assessment of the impact of the proposed Work Authority application taking into account flora and fauna, access, visual, surrounding buffers and neighbors.
3. Undertake an initial planning assessment to confirm if area is a permit use for extractive operations or establish if it is practical to consider re-zoning options.
4. Conduct a resource assessment to confirm quality and reserves.
5. Prepare a concept development plan.

3.2 Screening Meeting with DPI and Referral Authorities through to Creation of Draft Work Plan (DWP) - Average time 17 months with range from 4 – 61 months

1. Contact DPI and organize a screening meeting on site with referral authorities as per Table 1. Bring a copy of a location map to the screening meeting (eg. land title) and check:
   i. the land and land title document for infrastructure such as easements, high pressure gas pipelines, oil pipelines, underground or overhead power lines, or telephone cables and consult the appropriate authorities; and
   ii. for overlap with Mining and Exploration Licences and consult the appropriate licensees [NB. a Mining Licensee can refuse consent to an extractive industry proposal (Section 26 of the *Extractive Industries Development Act 1995*)
2. Concerns and requests of the referral bodies that have attended the meeting or sent direction as a result of the meeting will need to be addressed by applicant in the development of their DWP.
3. DPI records this meeting noting who attended and issues a Work Authority number which is provided to the applicant.

   Note: This should be generally acknowledged as the application date for the referral so there is a common understanding by all parties.

Table 1: Screening meeting referral authorities

AGENCY	POSITION	AREA OF EXPERTISE
PRIVATE AND CROWN LAND - COMPULSORY PERSONS/AUTHORITIES:		
Earth Resources Division, Department of Primary Industries	Manager, Minerals and Extractive Operations (applicable to region)	OH&S, Technical, Design
Earth Resources Division, Department of Primary Industries	Environmental Officer (applicable to region)	Environmental Management, Rehabilitation
Resources & Regional Services Department of Sustainability & Environment.	Senior Land Use Planning Officer (applicable to region)	Environmental Impact
Council	Planning Officer GM Infrastructure GM – Environment & Planning Senior Environmental Officer Environment Officer	Planning, Amenity, Access, Offsite impacts, Traffic, Land Capability
Aboriginal Affairs Victoria (AAV)		Aboriginal heritage/archaeological values
Department of Environment, Water, Heritage and the Arts (Commonwealth)	Environment Officer	Determination whether the proposal is a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999*
CROWN LAND ONLY - OPTIONAL PERSONS/AUTHORITIES:		
Resources & Regional Services Department of Sustainability & Environment. **OR** Forest Service (FS), Department of Primary Industries, **OR** Parks Victoria	Land Manager or Local Officer	Rehabilitation, Environmental Impact, Land Management, Tenure Arrangements, Native Title Forests: Land Management National Parks: Land Management
PRIVATE AND CROWN LAND - OPTIONAL PERSONS/AUTHORITIES:		
Resources & Regional Services Department of Sustainability & Environment	Native Vegetation Officer	Flora, Fauna, Ecosystems
Future Farming Primary Industries	Project Officer	Agriculture, Erosion, Salinity, Water Quality
Surface, Ground and Catchment Water Management Authorities	Water systems health	Surface and ground water
Heritage Victoria		Historical
Environment Protection Authority (EPA)		Noise, Dust, Pollution, Discharges, Landfill
Relevant Infrastructure Authorities, e.g. gas, power lines, VicRoads.		
	Landowner	

3.3 Submission of Draft Work Plan (DWP) to DPI through to endorsement of Work Plan - Average time 5.5 months with range from 2 – 14 months

1. Applicant to commission heritage review of the applicable Work Authority area under consideration. If no sensitive issues are identified, no further action required. Where a sensitive area is identified, arrangement for a cultural heritage management plan (CHMP) must be organized and developed.

   Note: The consultant carrying out the report must register cultural artifacts.

   Note: The impact of CHMPs is only now impacting on the approvals process with escalating cost and time.

2. At first screening meeting DSE may request consultant to be engaged following their inspection of the site to conduct a full flora and fauna assessment.

   i. If no sensitive issues are identified, no further action required.

   ii. In relation to rare and threatened species, there are no guidelines about the resolution of studies; it is left to the consultant to establish adequacy. Where rare or threatened significant animal species are identified within the site, a very high conservation significance rating is triggered.

   iii. Native vegetation would involve identifying the area where the Work Authority activity is going to be undertaken and:

   - avoiding areas where significant issues are identified (e.g. Western basalt plains and forest areas are all rated Very High, encapsulating large tracts of Victoria's private and public lands); or
   - if unable to avoid identified areas:

     minimising impact; and

     providing offsets for loss, either on or off site.

   Note: For each Habitat Hectare lost, an approximate rule of thumb is that 5 hectares will be required to be permanently offset through caveats and future management and upkeep.

   Note: The impact of the native vegetation framework is only now impacting on the approvals process with escalating cost and time.

3. Applicant is to commission a surface water and groundwater study, to establish whether there are issues within the DWP area. If no sensitive issues are identified, no further action is required. Where an issue is identified, develop a surface water and groundwater management plan that addresses these issues.

4. Concurrently with the above three points, complete the DWP also taking into account:

   i. Access and traffic management into and around site

   ii. Visual impact of the operation

   iii. Noise impact

   iv. Dust impact

   v. Blasting impact (if applicable)

   vi. Geotechnical issues, slope stability and slimes dams

   vii. Water storage facilities

Note: Where recommended EPA buffer distances are not being met, consultants would be engaged to underpin the Work Plan development.

5. Included in the DWP is a separate rehabilitation plan. This must take into account end use of the site.

3.3.1 Endorsement of DWP

1. Proponent must present the completed DWP to DPI for registering and assessment. Preferably a meeting should be organized with DPI to explain the DWP.
2. The DPI reviews the DWP and writes back with requirements for further information.
3. Proponent returns DWP to DPI with further information or changes as required, this process may be repeated a number of times until the DPI is satisfied.
4. Once the DPI is satisfied that the DWP meets their requirements, they may require further copies of the DWP and refer it to:
    i. DSE
    ii. Applicable surface, ground and catchment water authorities
    iii. EPA
    iv. Work Safe Victoria
    v. AAV
    vi. VicRoads (where applicable)
    vii. DPI Agriculture

    Note: One obvious exclusion from this list is local council, even though they were involved with the original site meeting (as with all the other parties above except for Work Safe).
5. Responses from the above referral agencies are received by the DPI, the DPI then relays the requests for further information or amendments back to the applicant, note DPI may filter some of the requests before sending to the applicant.
6. Proponent returns DWP to DPI with further information or changes as requested, this process ay be repeated a number of times until the DPI is satisfied.
7. If all changes are accepted and satisfy the agencies' requirements, the DPI endorses the DWP to an endorsed Work Plan (EWP).

    Note:

    i. With the AAV, DPI may require you to have the cultural heritage management plan in place prior to endorsement of the DWP; and

    ii. With the DSE's Net Gain Provisions, DPI may require you to have the offsets for native vegetation agreed to or arranged to the satisfaction of the DSE before endorsement of the DWP.

Note: The CHMP and the security of the Net Gain should not be required until the Planning Permit is issued.

Note: One case study identified that the Work Plan endorsement process was not adequately recognised by the Council's planning process. The Council decision left the DPI powerless with the only option to dis-endorse a previously EWP to have the proponent resubmit his DWP for re-endorsement addressing the required changes.

3.4 Submission of Planning Approval Application to council through to approval/rejection - Average time 10 months with range from 1 – 19 months (approved) or 7 months with range from 5 – 9 months (rejected)

3.4.1 Simple Site

1. The applicant is to apply and submit a planning permit application with 3 copies of the EWP to council

3.4.2 Complex Site

1. Applicant may have to engage a planning consultant to prepare a submission which would include the EWP
2. The planning consultant may consider it necessary for specialist reports to be sought supporting the planning application where it is felt that specific issues are deficient, this could include:
    i. Traffic and access routes and potential impacts
    ii. Visual impact assessments and landscape planning
    iii. Noise emissions
    iv. Dust emissions
    v. Property impact valuation on adjoining land
    vi. Other off-site issues specific to the site e.g. flood plain issues
3. Planning consultant puts together all of the above with the EWP and presents to council

    Note: A decision by Government is made as to whether an EES or Planning Permit approval process is followed.

3.4.3 Councils

1. Council planning officers, on receiving planning permit with the attached EWP assesses the advertising which will be required e.g. adjoining land owners, local papers etc.

    Note: Within the last three months the DPI has also started supplying the generic list of Work Authority conditions.
2. Objections received by council as a result of applying for the planning permit are supplied to the proponent and meetings are coordinated and arranged between all parties (public meetings) to assist in addressing and or developing outcomes which are acceptable. This may involve numerous meetings both on site and at other venues.
3. Council then sends a copy of the Planning Permit Application with the EWP to all previous referral agencies including the DPI who just sent it to them for their comment.

    Note: This is where the EWP fails as officers from council are often dealing with different people within the agency to those that had previously dealt with the proposal under DPI's EWP process. This creates disharmony and differences of opinion within agencies that further delays the process and increases proponent costs.
4. Council will internally assess perceived issues against their checklist.
5. Council planning officers may then request further information from the applicant. Council planning officers may also request further information from referral agencies; this will go back to council for re-directing to the applicant.

6. Applicant must decide if required changes or information requests are to be met, if sent back to council, council planning officers will go over and re-send to agencies for their comment.

   Note: This process will go on for many months and sometimes over one year until all referral agencies are satisfied, or applicant refuses to give any further information or undertake changes to their EWP.

7. Council planning officers have to make an assessment and in the end may recommend to refuse to issue a permit or may issue a permit with conditions that require these requests to be met.
8. Council planning officers produce a report: "yes it can be granted with these conditions" or "it is refused based on these reasons".
9. This report then goes to councilors for a full council meeting or to a planning committee for a decision.

   Note: At this point a decision is made to refuse or approve (this may not agree with the council officers' recommendations).

10. Councilors may also decide to refuse even though all conditions of the referral bodies are met by the applicant.

    Note: Proponents/land owners concepts of rehabilitation are often compromised because referral agencies have their views of what the required outcomes should be.

3.4.4 Releasing of Planning Permit Application outcome

1. Council determines whether or not to grant a planning permit, then notifies the objectors (if any) and the applicant of the determination and either can appeal the decision

3.4.4.1 If no appeals

1. Refer to section 3.6.1 Issuing planning permit, approving Work Authority and commencing work.

3.5 VCAT Appeals process up to right to commence work - Average time 17 months with range from 10 to at least 36 months

1. Appeal options:
   i. The applicant may appeal against its conditions or council's refusal or failure to grant a permit
   ii. Objector may appeal against the council's decision to grant a permit
   iii. The objector can become a party to the process if the applicant is appealing against council's decision.
2. Appeal party makes application for review of council decision to VCAT
3. Once application is lodged there may be direction and other preliminary hearings which may require applicant and other parties to do various things to prepare case for hearing e.g. parties may be asked to provide statements of grounds. For example the applicant in Case Study 2 of Appendix 3 was required to amend the application and take other steps to clarify the issues
4. Applicant now waits for VCAT to set a hearing date.
5. Applicant will normally arrange legal representation (as the amount of investment in the application to date and the likely complexity of the issues to be dealt with make representation necessary for this industry sector)

6. The legal representative will then seek to identify the issues which have arisen from objections and the issues which historically have arisen in these applications, and will then asses the EWP in terms of these issues
7. The legal representative will begin preparation of the case and will engage an appropriate qualified expert with established creditability at VCAT, in relation to each of the issues which has already arisen, or is considered potentially likely to arise.
8. The legal representative instructs each expert to prepare an expert report. The expert reports are filed with VCAT and copies provided to each of the parties.
9. VCAT sets an appropriate number of days for the hearing. Note: this arises by reason of information which the parties are required to give VCAT in advance as to the number of witnesses the party is proposing to call and the time established by the party which will be required for the party's case
10. At the conclusion the tribunal will determine either
    i. The permit will be issued and on what conditions. Note: Conditions may include requirements of secondary consent given by other authorities, for example Case Study 6 of Appendix 3 where in excess of five months was lost while this process alone was undertaken; or
    ii. Refuse to grant the permit totally; or
    iii. Give an interim approval subject to various matters being dealt with before the permit's final approval is granted.
11. Any party can appeal the VCAT decision to the Supreme Court, or in some circumstances to the Court of Appeal, but only on a point of law and not on the merits (see Case Study 2 of Appendix 3 where the applicant appealed on the basis of a lack of procedural fairness)
12. The appeal process requires legal representation and considerable preparation. The applicant must first make application to the court for leave to appeal, which will not be granted unless a prima facie case is made out on the point of law. Application for leave involves a hearing which might take half a day
13. If leave is granted, there is further preparation before a full hearing by the court, which may run into days
14. The court may confirm, vary or set aside VCAT's decision, or make any order which VCAT could have made. Alternatively the court can send the matter back to VCAT for a further hearing. (See Case Study 2 of Appendix 3)

3.6 Issuing planning permit, approving Work Authority and commencing work – Time ranges from 3 days to 6 months

3.6.1 Issuing planning permit

1. VCAT directs that a permit be refused, or issued with conditions, which may differ from any conditions which were before VCAT during the hearing, and very frequently are considerably expanded to provide comfort to the parties opposing the grant of the permit.
2. If directed to issue a permit, Council issues the permit and sends a copy to the proponent and DPI.

   Note: In one of the case studies, VCAT in the permit conditions directed that a number of changes be made to what was described as "the approved work plan and work plan conditions approved by the responsible authority which will form part of this permit." There was uncertainty as to the interpretation of some of the conditions and how they were to be integrated into the Work Plan, and this led to a process of consultation and negotiation involving DPI and the Council. This raises questions as to who approves Work Authorities and illustrates

the lack of clear definition of roles.

3. If the planning permit includes conditions requiring secondary consents of referral authorities it may be necessary to re-submit the EWP to those authorities and obtain approval of amendments.

Note:

i. planning permit conditions must be practical, workable and have a clear and justifiable purpose. Too often in the interest of satisfying those opposing the permit they are almost impossible of practical fulfillment, or they add a layer of expensive compliance to address an issue which on a practical level is not really an issue at all.

ii. the difficulties of aligning an EWP to the conditions of the planning permit when issued threatens to create a further and unregulated process on top of the planning permit process.

iii. every time a DWP or EWP is altered the proponent incurs considerable expense and loss of time. In terms of expense, apart from consultants costs, a proponent may have to produce in excess of 10 copies of the full Work Plan each time, at a cost of up to $4,000.00.

3.6.2 Approved WA

1. The DPI sends a letter to the proponent with the approved work plan including requests for:
    i. A copy of the issued permit
    ii. A copy of the EWP with changes as required to incorporate issued planning permit
    iii. A rehabilitation bond
    iv. Land owner's consent
    v. Current Public Liability insurance over the WA area
    vi. Payment of application fees.
2. Once the DPI is satisfied that all of the above requirements have been addressed they will issue a WA to the proponent. This whole process could be done in parallel.
3. The proponent is then issued a WA by the DPI which will allow him to commence works

3.6.3 Commencing work

1. The proponent may be required/directed to undertake further works (including placement of capital equipment for monitoring and recording).
2. The proponent may be required to provide reports and studies to be placed before specific referral agencies for their approvals before works can be undertaken on the site, depending on the conditions of the issued Planning Permit.

Note: These requirements may be noted on the issues planning permit but is not always the case.