

29 September 2009

Modernising Victoria's Planning Act  
Department of Planning & Community Development  
via email - [PEActreview@dpcd.vic.gov.au](mailto:PEActreview@dpcd.vic.gov.au)

— Dear Sir/Madam

## **RE: MODERNISING VICTORIA'S PLANNING ACT – RESPONSE PAPERS**

Members of the Construction Material Processors Association (CMPA) appreciate the opportunity to provide comment on the five response papers that provide detail on the proposed changes to the *Planning and Environment Act 1987* (P&E Act).

The CMPA represents a broad spectrum of independent operators involved in construction material processing businesses engaged in the extracting processing or otherwise working in hard rock, gravel, sand, masonry, clay, lime, soil, or recycling. Many of these businesses operate under the *Extractive Industries Development Act 1995* (soon to be merged within the *Mineral Resources (Sustainable Development) Act 1990*) and have additional responsibilities under the P&E Act.

Our Members are particularly concerned about the complexity, cost and time required for a planning permit to be processed. Their experience in applications is showing increasing costs in dollars and time, particularly if applications end in VCAT.

We understand that there is currently a review of the operation of VCAT and we have made a separate submission to VCAT on this matter specifically.

The CMPA does urge the development of all guidance material that will be developed with the changes to the legislation to be available in simple, easy to understand, unambiguous language so that the planning professional as well as the proponents can understand the requirements without confusion.

Over the following pages, we have made comments in relation to specific sections of the response papers.

If there is any further information we can assist you with, please do not hesitate to contact me.

Yours sincerely



Roger Buckley  
Executive Director

**Modernising Victoria's Planning Act  
Planning and Environment Act 1987  
Comments in relation to the response papers  
By the Construction Material Processors Association**

**September 2009**

**Response Paper 1 – Objectives of Planning**

CMPA supports the concept of the objectives of planning to balance the environmental, social and economic considerations in making decisions on land use.

Stone resources close to market are of vital economic importance to the provision of low cost public infrastructure and competitive housing affordability. To ensure strategic planning of the use and availability of these resources so they are not sterilised by incompatible land uses in the future, government needs to embrace the role of stewardship of the resource. Such a role will also contribute to ensuring continuing diversity of supply which assists in maintaining a competitive market place. To facilitate government stewardship of the valuable stone resource, it is suggested that objective (h) be changed to:

“to protect natural and man-made resources, infrastructure, utilities and other assets and enable the orderly **development of natural resources and** provision and coordination of infrastructure, utilities and other facilities for the benefit of the community”..

The overall aim of any review of legislation should be to decrease the complexity of the process. A less complex process allows easier and cheaper access by the public, decreasing costs to the proponent and decreasing administrative burden on the government planning bodies. The Department of Planning & Community Development (DPCD) should ensure that any future planning process is less complex than the current situation to achieve these aims.

**Response Paper 2 – The Amendment Process**

*Technical amendment*

The CMPA suggests that only properly accredited and skilled people be authorised by the Minister to prepare a technical amendment. This role should not be available to just anybody as vexatious objectors may even use this route to further frustrate proposals, further increasing Victoria's sovereign risk. It should also be clearly stated on what grounds the Minister may withdraw any such authorisation.

*Standard amendment*

The flow chart of the proposed process on page 5 indicates that a 'panel' is a required part of the process. If it is possible for the Council to make recommendations without the establishment of a panel, the 'panel' box should be off to the side with a straight line from "exhibit" to "council recommends".

Guidelines for the basis of the Minister's decision on an amendment should be publicly available and outline how the decision is based on defensible facts that balance the environmental, social and economic considerations. The inability to challenge amendment decisions is also an issue and there should be a means by which this can occur.

The CMPA supports the introduction of statutory time frames in an effort to reduce the time of the approval process. However, there should also be some reward or benefit provided to organisations that perform better than the stated benchmark as well as encouragement provided to the lower performing organisations.

## CMPA Submission on Modernising Victoria's Planning Act Response Papers

There should also be consequences for not meeting specified timeframes for specific proposals such as "approval assumed if no response received within xx days".

### Response Paper 3 – The Permit Process

#### *Code Assess Track*

CMPA strongly supports efforts to provide a "fast track" planning permit approval process for simple proposals through the *Code Assess Track*. It is suggested that the *Code of Practice for Small Quarries* currently being finalised by the Earth Resources Division of the Department of Primary Industries (DPI) could be such a code that could be used to assess simple quarry proposals. DPI are proposing that the Code be used for quarries that are less than 5 hectares in area, less than 5m deep and have no native vegetation or blasting issues. The Code sets out specified performance standards or assessment criteria and could be easily incorporated into local planning schemes.

#### *Merit Assess Track*

Efforts to make the planning permit system more transparent and streamlined are to be applauded, however significant issues in the proposed *Merit Assess Track* will still occur, similar to the current planning permit application process for quarrying proposals.

The CMPA is finalising its report *An Unsustainable Future: The Prohibitive Costs of Securing Extractive Industry Access in Victoria*. This report highlights the high sovereign risk in Victoria due to the slow, costly, repetitive, uncertain approvals process with ever increasing regulatory burdens from the new native vegetation and heritage requirements for new or extended quarry operations. This is leading to the reduced investment in new quarry operations during a time of increasing demand. This has the potential to limit future supply and increase product cost which will lead to the increased cost of public infrastructure projects, decreased housing affordability and increased environmental footprint of transport to the market. It is estimated that these costs will equal \$480 million/year.

The community will pay the price for increased regulatory burden.

This market failure requires Government action now.

Government also needs to recognise its stewardship role of the valuable construction material resources to ensure they are not sterilised by alternative values in the future.

The report examines nine case studies and identified the following key issues relevant to the planning process:

#### *Changing Goal Posts*

- Duplication and escalating information requirements from referral agencies;
- Increasing regulatory requirements such as native vegetation and cultural heritage;
- Duplication in roles of DPI and local councils with councils not fully understanding the Work Plan process;
- Inconsistent regulatory interpretation and advice when various parties from the same referral authority comment on the proposal at different times.

#### *Best Practice Regulation*

- Unreasonable time in processing applications, with 'standard' planning permit proposals taking just over 2 years and more contentious projects taking almost 4 years;

## **CMPA Submission on Modernising Victoria's Planning Act Response Papers**

- Unacceptable costs of planning permit approvals processes, ranging from \$10,000 to \$1.25 million;
- Lack of resolve by regulatory agencies on their assessment of the proposal when open to challenge by VCAT or other review;
- Lack of State stewardship of the resource with Councils often making decisions with a local perspective on a regional or statewide strategic resource;
- Lost opportunity in dollars and time. The average time for the nine case studies to grant a Work Authority of 3½ years represents lost production valued up to \$54.6 million for a hard rock operation or \$13.65 million for a sand operation.

CMPA suggests the following actions are taken by Government to address the issues identified:

### *Changing Goal Posts – Actions*

1. The information demands of regulators should be centrally coordinated and Work Plans should be referred to referral authorities only once.
2. Regulatory creep should not be accepted as the status quo and new regulations must only be introduced once an existing and equivalent cost requirement is eliminated

### *Best Practice Regulation – Actions*

3. Regulatory bodies should make decisions based on evidence according to the triple bottom line of social-environmental-economic values without undue political pressure.
4. DPI and local government should streamline Work Authority/Work Plan approvals that recognise DPI's regulatory reach.
5. The administration of the MRSDA should aim at performance based outcomes that lower the costs and reduce the time of approvals to proponents.
6. Mandatory time frames for certain milestone decisions should be introduced and enforced, including Ministerial decisions.
7. New regulation should not be introduced unless appropriate resources are devoted to administer the regulation effectively.
8. 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).
9. Referral agencies must be accountable. Regulators must be able to publicly defend their decisions.
10. DPI should be focused on its role to improve approval outcomes.
11. Expand the role of the existing independent Mining Warden so that they have the power to expedite decisions and ensure timeframes within the approval process are met.
12. Introduce a refined Work Plan/Work Authority approval process with the following aspects:
  - a. A Code of Practice applicable to all quarries
  - b. Simplified Work Plans
  - c. DPI to provide Work Authority with generic conditions, rehabilitation bond, Code of Practice and Work Plan to local Councils
  - d. Planning Permit conditions refer to only offsite impacts outside of the Work Authority boundary

A complete copy of the report will be provided to DPCD shortly when it is completed.

## **CMPA Submission on Modernising Victoria's Planning Act Response Papers**

### *Quality of applications*

It could be argued that the security of obtaining an outcome through improved processes needs to be obtained before proponents will invest large sums of money in providing quality, in depth planning permit applications.

### *Permit Conditions*

It is noted that the Minister may direct responsible authorities and referral agencies to use standard conditions for specific matters. It is suggested that standard planning permit conditions be developed for quarrying proposals in consultation with DPI and industry. These permit conditions should focus on offsite impacts outside of the Work Authority boundary. This concept should also help to limit planning permit conditions being included that are not supported by Government policy.

### *Community involvement*

The CMPA recognises the important and valued role the community plays in Victoria's planning process. It does not support expanding the requirements for community involvement in the planning process beyond the current provisions as there is little evidence in the quarrying sector that formal community consultation will in fact reduce costs to the operator.

### *Planning Permit Amendments*

The concept of the responsible authority being able to amend a planning permit that has been directed to be issued by VCAT is supported as it helps to streamline the process if the responsible authority undertakes the amendment in a time efficient manner that is proportional to the scale and complexity of the amendment.

## **Response Paper 4 – State Significant Major Development**

CMPA notes the new criteria for the state significant major developments and how the proposed new process will not affect assessment and approval processes for specific types of development such as mining which are already provided with an approval process under other legislation. The CMPA strongly suggests that as extractive industry will be covered under the umbrella of the same legislation as mining from the 1st January 2010, then extractive industry proposals should also not be covered by the proposed state significant major developments process. This undertaking should be outlined in the legislation.

## **Response Paper 5 – Other Modernisation Initiatives**

The CMPA supports the concept of annual reporting of planning activities by the Minister, DPCD, planning authorities, responsible authorities and referral authorities. This reporting should use consistent milestone stages and target times for the same processes across the industry. As an example, for extractive industry proposals under the current process, the following milestone stages are proposed:

1. Initial onsite screening meeting with proponent, DPI and referral authorities (start of process)
2. Submission of Draft Work Plan to DPI
3. Endorsement of Draft Work Plan
4. Submission of planning permit application to council
5. Approval/rejection by council
6. VCAT appeal application (if applicable)
7. VCAT decision (if applicable)

## **CMPA Submission on Modernising Victoria's Planning Act Response Papers**

8. Issuing planning permit
9. Work Authority granted

Efficient administration of approvals should be rewarded with inefficient administration encouraged to perform better. Performance reporting should be used to identify planning bottlenecks and help reduce overall planning approval time frames. This should be managed so the desired outcomes are achieved, rather than just another government report disappearing into the bureaucracy.

The CMPA also supports the implementation of e-Planning initiatives. The ability to submit forms and information electronically and transfer these to referral authorities will help to reduce costs for the proponent.

The CMPA also supports the proposed changes to Section 173 agreements. The current requirement for the Minister to be involved in the process is too cumbersome and time consuming. Removing this obligation when the Minister is not a party to the agreement should reduce red tape. The ability to review to VCAT when disputes occur should also help to reduce blockages in the process.