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30th April 2010

Ms Caroline Williams
Executive Officer
Environment & Natural Resources Committee
Parliament House
Via email to enrc@parliament.vic.gov.au.

Dear Ms Williams

INQUIRY INTO THE ENVIRONMENTAL EFFECTS STATEMENT PROCESS IN VICTORIA

Members of the Construction Material Processors Association (CMPA) appreciate the opportunity to provide a submission to the Environment & Natural Resources Committee's Inquiry into the Environmental Effects Statement process in Victoria.

The CMPA represents a broad spectrum of independent operators involved in construction material processing businesses engaged in the extracting and processing of hard rock, gravel, sand, masonry, clay, lime, soil, or concrete recycling. The CMPA has over 200 members covering about half of the State's extractive industry workers. Many of these businesses operate under the *Mineral Resources (Sustainable Development) Act 1990* and have additional responsibilities under the *Planning & Environment Act 1987* as well as proposals potentially undergoing an Environment Effects Statement (EES) process.

This industry is in danger of being buried under a mountain of red tape.

Late last year the CMPA completed the report *An Unsustainable Future. The Prohibitive Costs of Securing Access to Construction Material Resources in Victoria*. A copy of this report is attached for your consideration.

This report highlights our Members concerns about the planning and environmental approvals process in general, and the EES process in particular. EES process issues include:

- Complexity, cost and time required for an EES to be completed,
- Unaccountable political intervention,
- Lack of appeal process,
- Inconsistent regulatory interpretation and advice,
- Duplication and escalating information requirements,
- Under resourced agencies, and
- Increasing regulatory requirements.

The report also provides recommendations relevant to the EES process. These are:

1. Regulatory bodies should make decisions based on evidence according to the triple bottom line of social-environmental-economic values without undue political pressure.

2. Mandatory time frames for certain milestone decisions should be introduced and enforced, including Ministerial decisions.

3. An appeal mechanism for proponents should be introduced in the EES process.

4. The EES process should better streamline and synchronise the EPA Works Approval and MRSDA requirements with the EES documentation adopted as the basis for any further approvals.

5. Industry experts are available to advice government during the EES process.

6. Senior government officials (at least Director level) are required to attend Technical Reference Group meetings which will only consider items included in the original EES scope.

The following pages discuss these specific issues in more detail.

— A copy of an article on the issue of red tape in the quarrying sector published in the national distributed *Contractor* magazine is also attached. *Contractor* has a monthly circulation of 7700 copies with a monthly readership of 30,000, mostly in Victoria, New South Wales and Queensland.

Many of these issues are common across the extractive industry in Victoria and are reiterated in the submission by Cement Concrete & Aggregates Australia.

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

Yours sincerely

Roger Buckley
Executive Director
Construction Material Processors Association

INQUIRY INTO THE ENVIRONMENTAL EFFECTS STATEMENT PROCESS IN VICTORIA

Submission by the Construction Material Processors Association

April 2010

Extractive industries provide the raw materials for building and construction, which is vital to the State's development. Victorian production in 2007/08 was valued at $739 million with extractive industries directly employing more than 2,200 people. Victoria currently needs a significant 10 tonnes of stone per person per year to meet construction requirements. An accessible, continuing stone resource base is required for the sustainable future of the industry and the ongoing economic health of Victoria.

A streamlined EES process will reduce red tape. A continuation of the current significant regulatory burden on the industry will lead to reduced investment in new quarry operations during a time of increasing demand. This has the potential to limit future supply, increase product costs, leading to increased costs of public infrastructure projects, decreased housing affordability and an increased environmental footprint of transport.

Entry to the extractive industry in Victoria is restricted by a myriad of legislative measures enacted by three levels of government. The local government administers the planning permit system, the State government administers the industry-specific legislation (the *Mineral Resources (Sustainable Development) Act 1990*) (MRSDA), the Environmental Effects Statement (EES) process and other environmental law, while the Federal Government administers a second tier of environment and biodiversity conservation legislation. As a result there is no single regulating body that has particular responsibility for the industry and each government sector can look to the other when criticism is leveled at the overall impact of regulation.

Late last year the CMPA completed the report *An Unsustainable Future. The Prohibitive Costs of Securing Access to Construction Material Resources in Victoria*. This report is based on a total of nine case studies, including two quarrying proposals that were subject to the EES process. For the first time the report documents the time and costs to obtain a new quarrying Work Authority or an extension to an existing Work Authority. A copy of this report is attached for your consideration. Case Studies 1 and 4 document proposals subject to the EES process.

This report highlights our Members concerns about the planning and environmental approvals process in general, and the EES process in particular. EES process issues include the following:

1. Unacceptable cost and time of the EES process

The case studies within the report indicate a cost to complete an EES process of $1.9 to $5.1 million taking between 5 and 6½ years. This financial cost of compliance spread over the first five years of production equates to $0.38 to $1.03 per tonne. This is an extra 3-7 per cent of the unit rate. Such an additional burden has to be borne by new entrants in a highly competitive market where the award of contracts can be determined by price differentials of as little as $0.10 per tonne.

Whilst it is recognised that the proponent has a key responsibility to conduct their activities in a time efficient manner, government agencies also need to focus on ensuring an outcome is achieved within a reasonable time frame.

The opportunity costs associated with the delays in the EES process are the real costs borne by business. If the time taken to complete the process was reduced from say six years to say three years, this would allow production over that "saved" three year period, equating to about $43 million for each typical hard rock quarry proposal.

One of the case studies in the report also highlights the significant time that can elapse after the Minister for Environment's assessment is released to allow for the extractive industry Work Plan to be reworked so that it is consistent with the Minister's assessment. A simplified Work Plan together with a Code of Practice applicable to all quarries that sets out performance based criteria that operations have to comply with would simplify the situation and allow for a quicker, easier implementation of the Minister's assessment.

2. Unaccountable political intervention

The processes to consider applications in the EES process should be free of political intervention. One case study's application for a variation to a Work Authority involved the EES process being stopped by the Minister for Planning without the proposal even being considered by a panel. Another case study involved a Minister setting up a panel inquiry under the EES Act with the Minister taking the unreasonably long time of ten months to release his assessment of the proposal. This compares to an average time for the Minister to make his assessment on projects over the last four years of 2.7 months.

Undue political pressure and political decisions made without due consideration of the facts of the situation or the right to appeal increase the perceived sovereign risk of trying to develop extractive industry operations in Victoria. The decisions of Minister's should be evidence- based and be able to stand up in a court of law. Ministers should be accountable for their decisions.

There also seems to be an increasing push within government for all extractive industry applications to enter the EES process – this is simply not necessary and wastes limited financial resources and impacts unreasonably on small extractive industry businesses. If all extractive industry applications were required to enter the EES process, it would remove the ability of independent operators to enter the market and hence reduce competition in the future market place.

3. Lack of appeal process

Notwithstanding that most assessments by the EES Minister are followed by decision makers, the EES process, being a decision-advisory process, does not itself involve an appeal mechanism. Therefore, the proponent cannot appeal against the decision concerning the EES. Where an EES is not required the proponent has the avenue to appeal to VCAT. No similar appeal mechanism is available through the EES process. If such an appeal process was available, it may drive more accountable Ministerial decisions.

4. Inconsistent regulatory interpretation and advice

Authoritative advice is required from the EES Technical Reference Group (TRG). The TRG is a key instrument in ensuring early and authoritative advice is provided to the proponent. Senior members of government agencies, supported by technical experts, should attend TRG meetings to ensure consistent, appropriate advice is actually provided. This should avoid last minute policy reversals by government agencies and continually shifting objectives that could potentially significantly impact on the project.

5. Duplication and escalating information requirements

During the EES process, studies and data can be collected multiple times due to the subjective nature of much of the information and often changing policy position by government agencies in the TRG. There is also considerable duplication in the technical information requirements of the EES, the EPA Works Approval and MRSDA processes. Neither is streamlined, synchronized or compatible. There is a great opportunity for the EES process to bring these requirements under the one approvals umbrella.

6. Under resourced agencies

Regardless of the regulatory system and model in place, the EES process 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 cannot be realised.

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

An industry expert within the Department of Planning & Community Development for each industry that consistently refers projects for EES consideration, such as the resources industry, could also be considered. They would be able to provide better advice to DPCD and industry on whether an EES is required and better target impact assessment efforts. This should also help to provide a more consistent approach to regulation.

7. Increasing regulatory requirements

Over the last twenty years or so, significant environmental regulation has been introduced at Federal and State levels that have imposed substantial compliance costs for the industry. The Federal *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), and the State *Flora and Fauna Guarantee Act 1988,* the Native Vegetation Management Framework and development of Cultural Heritage Management Plans are examples of these new controls. However, the CMPA welcomes the signing of the bilateral agreement between Victoria and the Commonwealth to ensure the Victorian EES process covers the assessment and approving requirements under the EPBC Act as a step forward in reducing duplication of approvals.

CMPA notes that offsetting requirements for native vegetation has the potential to sterilise the State's landholdings and can significantly limit access to stone resources. In one of the CMPA's report case study's, 8 million tonnes of stone was sterilised to meet native vegetation offset requirements of 40ha at a cost of $100 million of lost productive output. The value of the stone resource needs to be better considered in developing appropriate environmental outcomes.

RECOMMENDATIONS

The CMPA makes the following recommendations to ensure an improved EES process:

1. Regulatory bodies should make decisions based on evidence according to the triple bottom line of social-environmental-economic values without undue political pressure.

2. Mandatory time frames for certain milestone decisions should be introduced and enforced, including Ministerial decisions.

3. An appeal mechanism for proponents should be introduced in the EES process.

4. The EES process should better streamline and synchronise the EPA Works Approval and MRSDA requirements with the EES documentation adopted as the basis for any further approvals.

5. Industry experts are available to advice government during the EES process.

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