*Construction Material Processors Association Inc.*

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20 February 2006

Department of Sustainability & Environment
Ms Lisel Thomas
P O Box 500
**EAST MELBOURNE VIC 3002**

**RE: STREAMLINING THE PLANNING PERMIT PROCESS – CUTTING RED TAPE**

Dear Ms Thomas

On behalf of the members of the Construction Material Processors Association, I am pleased to present to you the following submission in relation to the review of the Planning Permit process.

Presently, the extractive industries application for Planning Permits is a process that is unnecessarily difficult and has seen applications plummet over the last six years. Our members have reported a wide range of difficulties and even consultants are refusing to take on extractive industry applications due to the degree of difficulty and cost associated with achieving a successful result for the client.

It is in this light that the following submission is made in the hope that this unworkable situation is addressed. Key considerations that need to be addressed include:

- Recognising the essential nature of the extractive industries to the prosperity of our community
- Reclassifying the extractive industries to a Section 1 use in the Rural Zone (subject to conditions)
- Recognising the Work Authority approval process thereby avoiding the duplication of referrals
- Linking the Planning Permits and Work Authorities
- Supporting the significance of our earth resources through exempting buffer zones from both land tax and sales tax valuations
- Addressing the insecurity of the Work Authority holder's commercial viability by engaging them in the planning permit process of any application on properties adjoining their boundary
- Develop mechanisms which remove and penalise frivolous objections being taken to VCAT

Please do not hesitate to contact me should you wish to discuss this submission in more detail. Email enquiries@cmpavic.asn.au or telephone on 03 9710 1800.

Yours sincerely

S. Andrew

pp Basil Natoli
Management Committee

Encl 1

Cc Jennifer Wolcott, Department of Primary Industries

# SUBMISSION TO THE

# DEPARTMENT OF SUSTAINABILITY & ENVIRONMENT

# STREAMLINING THE PLANNING PERMIT PROCESSES
## *CUTTING RED TAPE*

FEBRUARY 2006


| **Submitter's Details** | |
|---|---|
| Submitter's Name | Mr Basil Natoli |
| Organisation submitter is representing | Construction Material Processors Association (CMPA)<br>*See Appendix 1 – Who is the CMPA* |
| Submitter's Position | Management Committee Member |
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**1. Do you think there are any matters that currently require a planning permit but should not require a planning permit? List the relevant uses and developments.**

The CMPA has no suggestions for this point

**2. Are there any matters that currently require a permit but should not require a permit if certain criteria or standards are met? List the relevant developments and uses and the criteria or standards.**

The Victorian Planning Provisions require a Planning Permit for extractive industry operations[1]. This is in addition to the *Extractive Industries Development Act 1995* Work Authority and Work Plan and causes considerable frustration to those within the industry due to the substantial time involved and insecurity associated with the planning process.

The CMPA's proposition is that because an extractive industry requires a Planning Permit it becomes mainly an amenity argument with individuals who, perhaps understandably, do not want a quarry in the vicinity of their properties. Bearing in mind that extractive industry is a prohibited use in nearly all zones other than the Rural Zone, rural related zones and Industrial Zones and that, leaving aside the metropolitan supply area, a large number of quarries are situated in rural areas, the problems are very often with lifestyle rural residents. Our contention is that the process of exploitation of stone resources should not be driven and determined by these considerations. The resources can only be exploited where they are geologically located. Mineral resources have a much better opportunity for exportation and the Association contends that extractive industry should be treated in a similar manner (see Appendix 2 for further discussion on this point).

Comments in relation to Work Plans from a very disillusioned participant on this issue:

*"My experience with the process is that of frustration and our company made a decision not to undertake this type of work as the system inevitably reflected badly on our company reputation. Specifically Work Plans needing to be issued before Planning Permits and vice versa, Planning Permits needing to be issued before working plans. Overall it has been very confusing to the client and in most cases placed our company in a poor light beyond our control."*

**Considerations**

- That extractive industry should become a Section 1 use in the Rural Zone and in other zones where it is currently possible to obtain a permit, but subject to conditions including:
  - ➔ That a Work Authority under the *Extractive Industries Development Act 1995* is obtained and that the conditions of the Work Authority must be complied with; and
  - ➔ Take into account broad issues in relation to public buildings, public safety and public access.

- That in metropolitan areas that do not use 'Rural Zoning', the 'Special Extractive Zoning' is re-created and strategic extractive industry should become a Section 1 use in that Zone subject to the previously mentioned conditions

- That a linkage is created between Planning Permits and Work Authorities

**3. Do you think there are any instances where the requirement to advertise an application is unnecessary? If so, in what circumstances?**

The CMPA does not believe that this poses an issue to our members

[1] State Planning Policy Framework, Clause 17

**4. Do you think there are any instances where the requirement to advertise an application is excessive and should be reduced? (For example, instances where advertising should not extend beyond advertising to adjoining properties.) If so, what type of application does this apply to? How do you think these requirements could be reduced?**

The CMPA's members reported that generally given, they have little issue with the current process of notification (that being notification of abutting land holders, placing a sign on the land concerned and giving notice in newspapers generally circulating in the area in which the land is situated).

Our members are concerned however that the later method (giving notice in newspapers generally circulating in the area in which the land is situated) is too frequently being interpreted as a State-wide or national newspaper. This creates an additional financial burden for applicants and is, generally an ineffective means of informing local parties who may be affected.

**Consideration**

- That notification processes and planning guidelines more readily encourage responsible authorities to limit advertising to local newspapers generally circulating in the area in which the land is situated.

**5. Do you think there are any steps in the planning permit process that are too complicated or unnecessary? If so, how do you think these steps could be simplified and what steps could be removed?**

The CMPA's members have reported that many of the decisions being made by many different local municipal councils in relation to Planning Permit applications for the extractive industry are leaving no other avenue than to go to the Victorian Civil Appeals Tribunal (VCAT). One member (see Appendix 3) recently had an application refused after two and a half years of work based on the following grounds:

~ Amenity (in particular dust, heavy vehicle traffic, noise and visual appearance),
~ That the proposal is not consistent with the State Planning Policy Framework, Local Planning Policy Framework (including Municipal Strategic Statement)
~ That the proposal does not meet the purpose of the Rural Zone
~ That the proposal is contrary to the objective of planning in Victoria (Planning & Environment Act 1987, clause 4 (1)(d))
~ That the proposal will place too great an impact on existing flora, and an unacceptable risk to surrounding waterways and a nationally endangered fauna species

This application will now be taken to VCAT, however to refuse an objection on these grounds would suggest that any application involving ongoing human activity that creates employment would need to be similarly rejected. The Planning Permit process in this instance has facilitated the municipal council being able to take the politically correct course of action, rather than supporting the longer term resource needs of the area and the State.

Secondly, due to the very low number of applications throughout Victorian, there are limited skills in local municipal councils to be able to handle such Planing Permit applications with this being reflected through inappropriate and miss guided decisions. Appendix 4 details an example of this issue.

Thirdly, there is a potential conflict of interest with many rural councils operating extractive industry sites that may be in direct competition with an applicant's Planning Permit application. It is essential that this concern is addressed.

Finally, the essential service that the extractive industry is providing to communities, more often than not, has coverage across multiple local municipal councils. As such, allowing one council to make the decision concerning the Planning Permit application does not seem logical. This responsibility needs to be more carefully considered as a decision can and often does affect more than one council. This is particularly important when considering operations that feed metropolitan or regional centres however are located in outlining municipal councils.

This approach is not sustainable and is causing a clear downturn in applications as demonstrated in a later chart. Industry is questioning if it would not be appropriate to have all applicants go directly to VCAT rather than the responsible authorities.

Members are also concerned that frivolous objections are being raised by persons through the Planning Permit system are resulted in inappropriate rejections by local municipal councils. This, and the right of failed objectors to bring previously overturned complaints to VCAT, is resulting in applications to the VCAT system that inappropriately adsorb the Tribunal's time and costs the applicant large amounts of money due to the need to engage third parties in representing them.

**Consideration**

- That a municipal council who refuses a Planning Permit application which is subsequently taken to VCAT needs to be able to clearly defend their decision.

- That decisions which are taken to VCAT need to be managed in such a manner that it prevents frivolous or unjust complaints and does not waste the time or money of the state or the applicant. If a refusal is found to be frivolous or found in favour of the applicant, the parties who raised the issue should pay a proportion of the costs of the challenge incurred by the applicant. If this were to occur, it would ensure that persons would more carefully consider the actions that they take, and encourage an objector to clearly research and established their position.

- That the extractive industries are managed by the State as it benefits the whole community, not just the municipal council in which they reside.

**WORK AUTHORITY, THEIR ATTACHED WORK PLANS AND REHABILITATION PLANS**

The concept of Work Authorities, and their attached Work Plans and Rehabilitation Plans are integral to the extractive industry and have ensured that best practice occurs. This system has increased the standard of the extractive industry sector in the public arena and ensured that the impact of the proposed works on the amenity of the surrounding community is managed effectively.

The cost of the development these documents is inhibiting interested parties from entering or remaining in the industry. It is essential that businesses have clear direction to ensure that these documents can be submitted correctly once.

**Considerations**

- The "Guideline for Work Plans" and "Triggers for Work Plan Variation" are developed by the DPI and recognised by the planning process.

- That the Work Plan becomes a more generic document offering proponents greater flexibility in their daily business operations, whilst ensuring that the principles of the operation are appropriate for the resource.

**BUFFER ZONES**

New Victorian Planning Provisions require that extractive industries must own or control defined buffer areas which are appropriate to the nature of the proposed operations. For existing operations and where extensions are requested the DPI requires the operator to demonstrate that the impacts on sensitive land uses will not increase above current levels and must comply with the performance standards for new sites.

Buffer zones effectively sterilise the land because the operator is unable to use it for any wealth generating purpose. This has significant economic and financial implications. The ENRC review of 1994 identified sterilisation caused by urban spread as a major issue that would affect the future development of the industry.

**Considerations**

- Legislation should require any proposals affecting or within a Work Authority operations buffer zone to firstly gain approval from the Work Authority operator. This is vitally important as such proposals have the potential to severally hamper operations, or in the case of older operations nearing the end of their economic life could assist in their rehabilitation or end use.

- Buffer zones should be identified in such a manner that they become exempt from both land rates and sales tax valuations as they are assisting the greater community.

**6. Do you think there are any instances where requirements for information (either within the planning scheme or by responsible authorities) are unnecessary or excessive? If so, how do you think these requirements could be reduced or removed?**

The extractive industries approval process requires substantial consultation with all affected persons and referral authorities during the development of the Work Plan. This document is required to be approved by the Department of Primary Industries before a Planning Permit application is made.

In many cases, the Planning Permit application is referred to these same affected persons and referral authorities, duplicating the process. An illustration of this is the consultation for the native vegetation issue. The Work Plan is required to go back and forth between the DPI and DSE until a resolution is reach, and then this is sometimes repeated during the Planning Permit application.

**Consideration**

- The importance of the Work Authority and its supporting materials need to be clearly articulated in order to eliminate unnecessary duplication

**7. Do you think there are any aspects of the planning scheme amendment process that could be simplified or removed? If so, what would you change about the amendment process?**

The CMPA has limited experience in this area and accordingly is unable to comment at this time

**8. Are you aware of any recent examples where the planning process has been made more complex? If so, can you explain what occurred and why the change introduced further complexity?**

Examples where the planning process has caused difficulties for CMPA members include the following:

**Illustration 1**
Appendix 3 provides a detailed timeline of the experience of one CMPA member with an application for a Work Authority. The site was first surveyed on 6 November 2003 and despite significant actions since then and necessary procedures being followed formal notification of refusal to grant a Planning Permit has just been advised (7 February 2006).

While not detailed, the very substantial costs in consultant's fees, application process time and effort etc make such initiatives by an individual futile and a complete disincentive to investment. It would also be important to note that the cost of defending this outcome has added approximately $1/metre to the life of the resource and it is questionable if this additional burden has given any benefit of any value to the community.

**Illustration 2**
One member proposed a sand quarry situated on farming land not far from a provincial centre in the Wimmera. This was essentially an extension of an existing operation, the new pit being directly opposite on the other side of a little used rural road. There were few alternative sites around the provincial centre because of Aboriginal heritage considerations.

After the Council issued a notice of decision to grant the permit subject to a considerable number of conditions, a single objector who owned a lifestyle block half a kilometre distant from the site took the matter to VCAT and appeared in person. The grounds of objection included noise and visual amenity but centred on danger to the health of the objector and his family from silica. Expert evidence had to be obtained to establish that silica is a workplace and not an environmental issue and in any event the proposed operation would not generate silica particles of the fineness required to cause health problems. The land was in the Rural Zone and ploughing and cultivation in relation to cropping (in which the objector himself engaged from time to time on his own property) similarly generate dust.

A permit was granted but the applicant incurred considerable cost and was delayed for months.

**Illustration 3**
A member proposed a basalt quarry not far from a former quarry in an area zoned Rural. There is no similar quarry the area and for road making and similar purposes it has been necessary since the closure of the former quarry to cart stone considerable distances at significant cost.

The proposed quarry project was commenced almost 3 years ago and involved negotiation of a lease with the farmer who owned the proposed site, development of the work plan and the work authority process with the Department of Primary Industries, consultation and site meetings with the Council, local water authority, the EPA and VicRoads and a consultants report on the effect of blasting. As a result of this long process of consultation, the permit applicant agreed to a considerable number of conditions.

There were three objectors, the principal one being the owner of a lifestyle one acre lot half a kilometre distant from the site who has had their property on the market for approximately 3 years. The other objectors include a farming family whose property is on the other side of the road to the site and whose house is some 800 metres distant. A member of this family had prior discussions with the permit applicant with a view to the quarry being established on their land. The third objectors were a couple whose house on a hobby farm is approximately 1 kilometre from the site and completely shielded from any view of it by an intervening hill.

The Council was very keen for the quarry to be established and all of the other authorities were satisfied with the outcome of the process of consultation.

The objectors took the matter to VCAT on grounds of possible impacts of blasting (to take place 2 or 3 times a year) noise and dust emissions and inadequacy of the road system, but it is understood that the appeal was largely driven by the objector whose house was on the market and who at meetings with the permit applicant and the Council had been principally concerned with the impact of the quarry on the landowner's proposed sale.

The permit applicant felt obliged to engage full legal representation and expert evidence as to blasting. The appeal has delayed the project many months, which apart from the costs involved in the appeal, has caused the permit applicant hardship. The Tribunal has issued a decision to grant the permit but subject to a large number of conditions which are yet to be finalised and will not be finalised until the end of February. The conditions include obtaining an acoustic engineer's assessment of the noise likely to be generated (apart from blasting) in relation to EPA guidelines for rural areas. The EPA has confirmed to the permit applicant that the guidelines impose no applicable noise level standards. In its submission to VCAT, Council made the point that extractive industry is a permitted use in the Rural Zone and that activities in the Rural Zone necessarily generate noise and other emissions.

It must be appreciated that the financial burden and conditions that are being placed upon this Work Authority have left the source with on ongoing liability which will be passed onto the community and weakened the firm's financial position for no logical reason.

**Illustration 4**

As part of the standard development of the Work Plan, a member consulted with the local Aboriginal peoples at a site meeting. During these discussions it was indicated that there was no need for an archaeological heritage survey. Even so the local Shire required that an archaeological heritage survey was undertaken. As anticipated, nothing was found.

This added considerable, unnecessary cost onto the application for the applicant. Parties creating the need for additional obligations that do not achieve a reasonable outcome may need to hold some of the financial obligations. This would ensure that only appropriate obligations are placed upon the applicant.

**Illustration 5**

The CMPA's members have reported on a number of occasions the very significant delays and costs associated with Native Vegetation Assessments and Archaeological Assessments. These assessments are known to add between $10,000 to in excess of $100,000 per extractive industry application and can result in very significant ongoing costs to the development and operation of the extractive industry sites.

We hold serious concerns in relation to the objectivity of consultants involved in these assessments. Additionally, we hold grave concerns regarding the Native Vegetation Guidelines and the lack of any consultation with affected parties in their preparation.

There has to be a process for balancing the value of the extractive resources, which are mostly non-renewable and fixed to specific geological locations, against the value of a renewable vegetation resource.

**9. Are you aware of any good examples where the planning process has been made more simple? If so, can you explain what was achieved and why the initiative has been successful?**

The CMPA is not aware of any good examples where the planning process has been made more effective.

**10. Please include any other comments that you may wish to make that are not covered by the above questions.**

It is important to note that the CMPA has never had such a large response from an enquiry in such a short period of time as experienced in the development of this submission. Points ranged from:

***1. Compliance Burden***

The compliance burden of regulation is often a fixed cost; small businesses disproportionately feel its effects. They can access fewer resources to interpret and implement compliance requirements and to keep pace with the cumulative burden of regulation and the ever-changing regulatory environment. (Inevitably the result of this is that applicants are drawn to the use of third parties that impact profoundly upon their future financial abilities to actually undertake the project at hand)

This review must be cognisant of the Government's small business policy and ensure that any new controls do not impose a net increase in costs on the industry. The CMPA considers that the existing legislative measure inappropriately applies a 'one size fits all' approach to the industry that is characterised by three or four large operators and the balance (>600) small to medium operators.

***2. Environmental Effects Process***

Members commented that meeting the existing requirements is unsustainable. The need for an Environmental Effects Statement (EES) upon members has not been an issue in the past, however if they were drawn into the EES process during an application, there would be no new applications possible to be applied for due to their inability to fund such a requirement. This is deeply concerning members and indicates that the present system is unsustainable.

The application of the EES process should be based on sound scientific and measurable issues, not emotive, irrational and political based arguments. Where the findings of an EES demonstrate that there is no substance to irrational claims, it needs to be clearly articulated by the Panel and the proponents of these arguments held publicly and financially accountable.

***3. Efficient Use of the Essential Stone Resources***

The extractive industries provide essential construction materials that are vital for the continued development and maintenance of our community, domestic and business infrastructure. The importance of properly constructed and maintained road infrastructure to the safety of our citizens and to our economic prosperity cannot be over emphasized.

When using the estimated resident population figures (June 2005) from the Australian Bureau of Statistics, of 5.022 million people[2] and the DPI production data in 2004 of 38.83 million tonnes[3], it is established that just under 8 tonnes of material was used by each Victorian in 2003/04. This demand has to be provided from mostly non-renewable sources that are only found in specific geological locations. Construction material products processed from these sources are mostly of low value, very heavy and have to be transported to their point of use in large trucks. Contrary to popular opinion, the main amenity and environmental impact resulting from our industry is the transport of these materials.

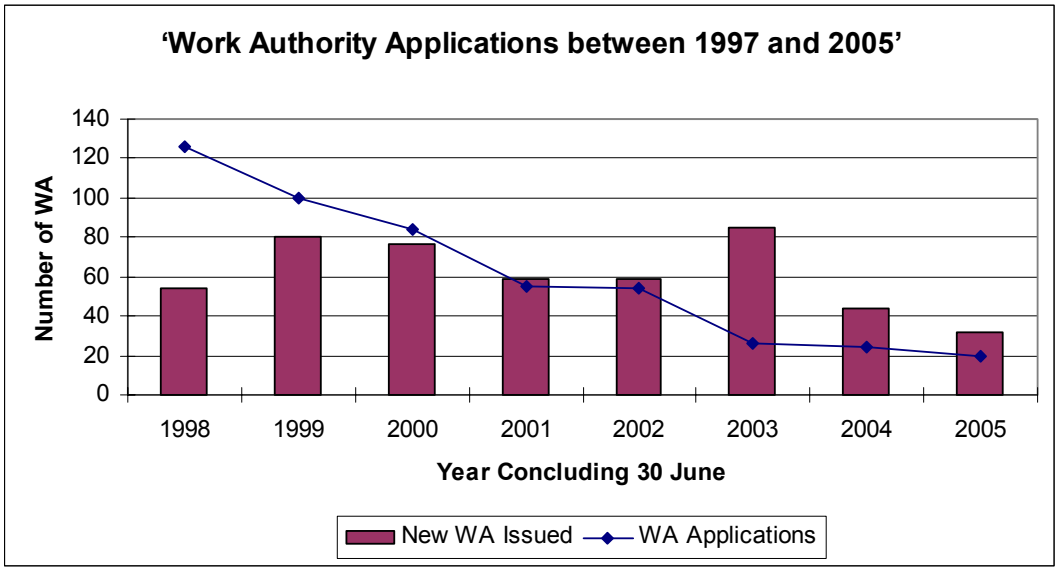
Ensuring that the best and closest resources are protected and made available will have the greatest effect on reducing the real environmental and amenity impacts to the community. The result of not doing this is now becoming evident in the Sydney Region where construction materials will soon be transported over 150 kilometres to the market. The economic and environmental cost of this increased transport in the Sydney region will be very significant.

[2] See http://www.abs.gov.au-Publication3101.0

[3] 2005 Statistics not yet published. See Victoria's mineral, petroleum and extractive industry 2003/04 statistical return

### *4. Deteriorating Work Authority Approvals*

Notwithstanding increases in production, the spiralling regulatory costs of entry to the industry and ongoing compliance costs combined with marginal returns appears to be the primary reason for the plummeting industry entrants as illustrated by applications for a Work Authority depicted in the following chart.




A comment by a CMPA member reflecting the views of many members on the costs of compliance associated with increasing regulatory demands.

*"It is as though we are being deliberately forced out of our livelihoods by the ever increasing number of hurdles that we have to jump, most of which have absolutely no relevance once we begin the process of serving our communities. At this present rate, there will be not one family business remaining inside the next 15 years."*

**Consideration**

- That the extractive industries be referred to as essential services in planning documentation in order to protect the industry as a whole
- A relatively simple means to alleviate costs of the system for all users is to ensure easy access to previously prepared assessments so that information can be utilised rather than repeatedly researched.

**Appendicis**

## APPENDIX 1 – WHO IS THE CMPA

### Brief Outline of the Extractive Industry

A key component of the construction, building and in many cases manufacturing industries is the supply of competitively priced rock, stone, sand, clay and gravel products which are essential for the production of concrete, cement, bricks, tiles, asphalt, crushed rock products and a host of other applications. Stone is primarily used for construction of roads and buildings but it also has other uses in engineering and manufacturing.

While Victoria has an abundance of good quality extractive resources, unlike metallic minerals and ores, stone resources are low in value and therefore to be viable extraction needs to occur close to market sources. During the 2003-2004 financial year, the Victorian industry produced around 24 million tonnes of hard rock and stone products, 13.5 million tonnes of sand and gravel product, and 1.5 million tonnes of clay products. It had an annual turnover valued at $446 million from 848 work authorities or quarry establishments.

When using the estimated resident population figures (June 2004) from the Australian Bureau of Statistics, of 4.97 million people[4] and the DPI production data in 2004 of 38.83 million tonnes[5], it is established that just under 8 tonnes of material was used by each Victorian in 2003/04. This demand has to be provided from mostly non-renewable sources that are only found in specific geological locations. Construction material products processed from these sources are mostly of low value, very heavy and have to be transported to their point of use in large trucks. Contrary to popular opinion, the main amenity and environmental impact resulting from our industry is the transport of these materials.

The industry is characterised by relatively few large operators (3) and many medium and small operations. Adopting the Australian Bureau of Statistics definition of a small business as one that employs fewer than 25 people, it is likely that small businesses in the quarry industry in Victoria represent in excess of 85% of all quarry businesses. Many small-scale quarry operations have developed in rural and regional areas to satisfy local demand.

### Role and Purpose of the CMPA

The CMPA is an industry association, and will:

1. Conduct its affairs with honesty and integrity;
2. Demonstrate its commitment to the:
    a. Viability of the industry
    b. Protection of the environment
    c. Community in which it exists;
3. Vigorously pursue with the government and others issues of widespread concern to members;
4. Demonstrate leadership and a sense of direction for the industry;
5. Act as a resource and provide support to members through the delivery of cost savings and assistance in complying with legal obligations;
6. Foster unity and cooperation between members and others;
7. Promote continuous improvement through education, training, and other activities

The CMPA represents a broad spectrum of those involved in construction material processing businesses engaged in extraction processing or otherwise working in hard rock, gravel, sand, masonry, clay, lime, soil, gypsum or recycling, industry consultants, industry suppliers and any industry worker.

[4] See http://www.abs.gov.au-Publication3101.0

[5] 2005 Statistics not yet published. See Victoria's mineral, petroleum and extractive industry 2003/04 statistical return

## APPENDIX 2 – THE PLANNING PROCESS AND THE EXTRACTIVE INDUSTRY –A COMMENTARY

Section 19(2) of the Act specifies the conditions which must be satisfied before the Minister may grant a Work Authority. These include the requirement that the applicant has complied with any relevant planning scheme and obtained any necessary Planning Permit under that scheme. This in itself appears to be a misconception in that Planning Permits are not personal and it is not necessarily the applicant who has or must comply with the scheme or obtain a Planning Permit. All that can be relevant is that the proposed use is in accordance with the applicable planning scheme, which may mean several things, e.g. the use is justified as an existing use predating any necessity to obtain a permit, there is a Planning Permit already in place obtained by either the land owner or some previous operator of a quarry on the site, or that someone, whether it be the applicant for the Work Authority or the land owner has applied for and obtained a Planning Permit in conjunction with the application for a Work Authority.

Following the commencement of the Act, the Department indicated that under the new legislative framework the Planning Permit process would be the main approval process to establish an extractive industry operation.

Historically, planning schemes evolved individually with their own zonings, but for some years now the zonings have been standardised. All schemes include a State Planning Policy Framework and a Local Planning Policy Framework. The zoning categories are standard. In each zone Section 1 lists uses which are as of right, i.e. no Planning Permit is required, although very often conditions are specified which must be complied with. Section 2 lists uses which require a Planning Permit and conditions may also be specified.

Section 3 lists uses which are prohibited in the zone and in respect of which a Planning Permit cannot validly be issued. Under many zonings any use which is not actually specified in either Section 1 (i.e. a use not requiring a permit) or Section 3 (i.e. a prohibited use) can be the subject of a permit as a Section 2 use.

Extractive industry is a Section 2 use in the Rural Zone and in other zones including the Rural Living and Industrial Zones and therefore requires a Planning Permit. Extractive industry is a prohibited use in the Residential 1, Mixed Use, Township, Business and other zones. Extractive industry is not a Section 1 use in any zone.

The position therefore is that the establishment of a quarry has become a Planning Permit issue, subject to compliance with the statutory provisions as to approval of Work Plans, rehabilitation bonds etc. The trouble with this is that no-one wants to live near a quarry, but unlike other similarly unpopular uses, e.g. broiler farms, quarries can only be located where the resource is, and this is usually not a matter of choice for the quarry operator. It is true that this is to some extent recognised in the State Planning Policy Framework and sometimes in Local Planning Policy Frameworks, e.g. clause 17.09 of the State Planning Policy Framework deals with extractive industry and articulates the objective as identifying and protecting stone resources accessible to major markets and providing a consistent planning approval process for extraction in accordance with acceptable environmental standards. The implementation provisions which follow provide that planning schemes must not prohibit extractive industry in non-urban zones unless the activity is prohibited by statute. General principles are enunciated for establishment of buffer zones between new and existing extractive industries on the one hand and sensitive land uses on the other. The concept of extractive industry interest areas is endorsed, but it is understood that the development of this concept has been largely confined to the Melbourne supply area with some definition of areas around mainly the large provincial cities. Obviously there are quarries scattered throughout Victoria and it, does not seem practical to think in terms of surveying and identifying resources over the whole of the State.

The problem is that despite these reassuring declarations of principle, applications for Planning Permits with respect to quarries more often than not degenerate into *not in my backyard* amenity arguments and what is more, get decided on that basis. It is very cheap to object to a Planning Permit application and even an application for review to VCAT can be no more expensive than a tram or train fare to King Street if objectors decide to appear without representation, which the system warmly accommodates. The permit applicant on the other hand has normally invested significant time and money in securing the site and developing over a period of time the Work Plan to the point of Departmental approval. However reasonable the proposal is, the permit applicant will normally have too much at stake to do anything other than mount a full blown case with legal representation and various consultants engaged. The permit applicant still runs the risk of encountering an objector sympathetic Tribunal member and either losing entirely or being subjected to a large number of restrictive and expensive conditions.

Contrast this position with respect to mining, which is a Section 1 use in nearly all zones. Effectively no Planning Permit is required if an environment effects statement has been prepared and a Work Authority granted by the minister under the Mineral Resources Development Act. In addition, a Planning Permit may be issued even if the proposed activity is a Section 3 prohibited use. A distinction from extractive industry is often made on the basis that minerals are owned by the Crown, being reserved from alienation under Crown grants, whereas extractive industry relates to stone and other materials which are the property of the land owner. This does not seem to justify different treatment, as apart from any other consideration, a lot of stone is quarried on Crown land or beneath depth limitations applying to privately owned land. Is there any reason why minerals are more important to the community than extractive industry materials and that mining of them should be largely excluded from the planning process?

The CMPA's proposition is that because an extractive industry requires a Planning Permit it becomes mainly an amenity argument with individuals who, perhaps understandably, do not want a quarry in the vicinity of their properties. Bearing in mind that extractive industry is a prohibited use in nearly all zones other than the Rural Zone, rural related zones and the Industrial Zone and that, leaving aside the metropolitan supply area, a large number of quarries are situated in rural areas, the problems are very often with lifestyle rural residents. Our contention is that the process of exploitation of stone resources should not be driven and determined by these considerations. The resources can only be exploited where they are. Mineral resources have a much better opportunity for exportation and we would contend that extractive industry should be treated in a similar manner.

The CMPA suggests that extractive industry should become a Section 1 use in the Rural Zone and in other zones where it is currently possible to obtain a permit, but subject to conditions. This leaves the protection given by the planning schemes in all other zones. It is acknowledged there are difficulties in specifying conditions which provide appropriate environmental protection and which at the same time are sufficiently flexible to cover differing circumstances. One possibility is that the only planning scheme condition should be that a Work Authority under the Act is obtained and that the conditions of the Work Authority must be complied with. This would involve placing greater responsibility on the Department in terms of specifying buffer distances and environmental measures etc., but work authorities already deal with these issues and there is a degree of overlap at present. It could also be necessary for the Act to require the Minister to consult such authorities as the applicable water authority and the EPA before deciding to grant a Work Authority. This would address catchment and pollution issues. We appreciate that this all goes against the flow, which is to push all this into the planning process, and presumably to largely remove the Department from the public firing line. However, we contend that the process should essentially be a Departmental administrative process rather than these matters being thrown into the maelstrom of a public planning process driven almost entirely by amenity considerations and the whim of individuals. At least on a Departmental basis there would be opportunity for a more ordered approach in relation to situation of resources and local and regional need.

It is also to be noted that the above represents basically a planning issue, rather than an issue involving the provisions of the Act or replacement legislation, and involves the numerous planning schemes in Victoria. However, there is provision in the Act for amendment of planning schemes in a manner which short cuts the normal amendment process.

## APPENDIX 3 HISTORY OF THE APPLICATION FOR WORK AUTHORITY

*The following is a transcript of events supplied by a member and is to be considered as such*

The following is the history to date:

| | |
|---|---|
| 6/11/03 | Site surveyed and existing condition plans prepared |
| 30/12/03 | Requested Aboriginal Affairs Victoria (AAV) for initial site inspection |
| | |
| 16/3/04 | AAV site visit |
| 26/4/04 | Form an AAV response |
| 31/5/04 | Requests to consultant for Heritage Study |
| 14/7/04 | Archaeological Heritage Consultant appointed |
| 6/8/04 | Draft of Work Plan submitted to DPI |
| | |
| 9/8/04 | Archaeological Survey completed – no items of interest found |
| 11/8/04 | Response from DPI received with an extensive list of required alterations |
| 17/9/04 | Revised Work Plan submitted to DPI |
| 8/11/04 | Response from DPI received with a list of further required alterations |
| 27/12/04 | Revised Work Plan submitted to DPI |
| | |
| 1/3/05 | Quarry road intersection design commenced |
| 2/3/05 | Resubmission of information submitted on 27/12/04 (December document apparently went astray) |
| 8/3/05 | Extra copies of Work Plan submitted to the DPI |
| 9/5/05 | Response from DPI received with a request for one further minor change |
| 7/6/05 | Revised Work Plan Submitted to DPI |
| | |
| 21/6/05 | Extra copies of Work Plan submitted to DPI |
| 18/7/05 | A further extra copy of Work Plan submitted to DPI |
| 26/4/05 | Draft Work Plan endorsed by DPI |
| 28/7/05 | Planning Permit application submitted to Shire |
| 1/8/05 | Shire acknowledges receipt of Planning Permit application |
| | |
| 5/8/05 | Shire provides details of Public Notification of the application |
| 23/8/05 | Notice of application for Planning Permit in local paper |
| 25/8/05 | VicRoads require further information relating to the Planning Permit application |
| 30/8/05 | Consultant requested to undertake Traffic Impact Assessment as required by Vic Roads |
| 18/10/05 | Road Design and Traffic Impact Report submitted to the Shire |
| | |
| 18/10/05 | Road Design submitted to VicRoads for approval |
| 22/12/05 | Shire requests a copy of the Archaeological Report |
| 29/12/05 | Copy of the Archaeological Report submitted to Shire |
| 2/1/06 | Report prepared in response to objection to the Planning Permit and submitted to the Shire |
| 24/1/06 | Application for Planning Permit considered by the Shire Planning Committee |
| | |
| 1/2/06 | Formal notification received of Shire refusal to grant a Planning Permit |
| 7/2/06 | Letter sent to lawyer and town planner regarding the lodgement of appeal against the Planning Permit refusal |

There was also a site meeting between the proponent, his representative and a representative of the Shire Planning Department in early 2004

## APPENDIX 4 HISTORY OF AN APPLICATION FOR A TEMPORARY PERMIT

*The following is a transcript of events supplied by a member and is to be considered as such*

Town Planning decisions can and should be made with no "agenda" in mind from the local authorities' point of view. The following short report demonstrates the prejudice the Planning Department of a local council to a reasonable request. The outcome was economic and practical traffic management problems that were totally unnecessary.

The facts of the situation are that the company in question holds two Work Authorities in outer Melbourne. They are joined by an internal boundary and each has access to a road frontage.

The first Work Authority that has been quarried has the egress / entrance that would be the normal egress / entrance for both operations. As development began to the north of our operations we were requested by contractors doing infrastructure work for the developments to have a temporary access to the northern road frontage.

The contractors request was reasonable as they wanted to dispose of excavated materials (rock for recycling) and backload with quarry product required in the work.

The decision by council not to grant a temporary permit to facilitate the temporary access adjacent to the work resulted in a road trip of an additional 12km for heavy vehicles (loaded both ways), through the township past schools, shops and on to a major road, then through intersections involving a national highway!

Clearly sensible traffic and environmental management outweighed the planners' ambitions concerning the area.

Some point form additional information is useful here:

- The landowner had an exiting access to the area concerned.
- There were no apparent amenity issues. The access had been used to facilitate a freeway construction adjacent to the site and thousands of tonnes of material had been transported over a two year period. (the contractor concerned had construction control over the access road system during the period)
- The proposed access was fully formed and "in readiness" for emergencies.
- The Director of Planning for the council had indicated he would not support access to the northern road in answering our intentions to request formal use of the northern access.
- The planning staff had discretion on whether or not to grant a temporary permit when the temporary access set of circumstances arose.
- Planning staff have to discretion if the request is a minor variation to the overall permit conditions, but can refuse to act if they seek an opinion (legal in this case) that it is a major variation.
- The Council Infrastructure officers we believe were supportive of the proposition, especially in relation to road asset wear and tear by not granting the temporary permit.
- Council had an application from another proponent next to our proposed northern access that the planning department seemed not to support. This led us to believe our issues were not judged on merit.

To summarise the member concerned believes that in this case the planning departments' subjective view of the proposal was prejudiced and a sensible application of officers' discretion were thwarted. Planning should be based on the reasonable use of the powers granted rather than a tool to be used to strangle the sensible use of the communities' resources.

The real sticking point to this is that the developers' (Urban Land Authority) major contractor was granted construction access to the same road area. In both informal and formal requests about the status of this access (i.e. Was it included in the permit?) no answer was ever given.