23 October 2023

Laura Helm
Director, Regulatory Practice Reform
ERR
Resources Victoria
DEECA

Email: laura.helm@ecodev.vic.gov.au

Dear Laura

DRAFT CODE OF PRACTICE FOR COMMON RISK MANAGEMENT TECHNIQUES FOR QUARRIES

CMPA is the premier representative body for the Victorian extractive resources industry. It represents a broad spectrum of those involved in construction material processing businesses and has a membership base consisting of over 200 quarries across the industry. Together, these members employ approximately 2000 Victorians which underpins the construction industry of almost 240,000 employees (https://liveinmelbourne.vic.gov.au/connect/victorian-industries/transport-defence-and-construction).

CMPA members are typically small to medium sized family and private businesses, public companies, local government, and utility providers. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The extractives sector is a key pillar within the construction industry underpinning the growth and economic development of Victoria through supply of the construction materials.

In 2021/22, the sector supplied approximately 70 million tonnes of construction materials (25% of total freight movement in Victoria) to the market, at a value of approximately $1.2 billion directly supporting Victoria's $80 billion Big Build (https://bigbuild.vic.gov.au/about) and the estimated 1.6 million new homes required by 2050 (https://earthresources.vic.gov.au/geology-exploration/industry-investment/joint-ministerial-statement-on-extractive-resources). Small to medium quarries account for over half of this production and is submitted to be a vital industry supporting the ongoing economic prosperity of Victorians.

The CMPA supports the principle of responsible, balanced legislation that is in the best interests of the State of Victoria and Australia including the protection of resources that enable extraction of construction materials that is cost efficient to market and to the Victorian taxpayer who is ultimately the end consumer and beneficiary of that resource.

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Inc. No. A0039304E | ABN 85 154 053 129

Submission

That:

- The Code of Practice (in sections 1 and 2) demonstrates a lack of understanding of risk assessment. The Code is non-compliant with AS NZS ISO 31000:2018 (Standard):
    - The use of the nonsense term inherent risk should be removed - which is not mentioned in the Mineral Resources (Sustainable Development) Act 1990 (MRSDA) nor is the Standard (see attached paper: The nonsense of inherent risk);
    - The use of one risk matrix for all earth resources no matter the scale or the level of risk (see attached extract: Extracted from: A Critical Incident Field Guide: integrating risk, business continuity, emergency and crisis management; Volume 1 concepts 2022 Dr Carl A. Gibson, Dr Kate Gibson').
- The extractive industry was one of the first industries regulated in Victoria and since 1966 has taken into account those quarrying hazards which require specific and well understood (by the industry but less so by consultants) control measures.
- Where the risk management plan is adopted in accordance with the Code and approved, it is entirely under the EPA Act. It is unclear whether EPA or ERR regulate a site for any non-compliance around the risk mitigations measures.
- There is little referral to agencies outside of EPA, such as water authorities. If the intent is to streamline risk assessment and reduce the requirement for referral, it is recommended that the scope is beyond that of the EPA?
- The Code of Practice must remain in the bounds of the MRSDA: definitions, terminology, standards and controls.
- It is not helpful nor fair to be alarmist about the extractive industries in the second sentence of the Code (p. 1).
- Include where the extractive industry has met its obligations and managed its risks historically, if ERR feels this is inaccurate then provide examples.
- The standard risk control measures must be assessed for being feasible, effective, reasonably practicable and capable of withstanding legal scrutiny.
- The Code specifies controls (105 Standard Risk Control Measures), performance standards and performance indicators, however, no numerical value is assigned ("so that the value cannot be polluted up to"). This appears to be contrary to the intent of the Code.
- The Code must be accepted by relevant statutory authorities.
- The Code must stand up in the Victorian Administrative Appeals Tribunal/Planning Panel Hearings.

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- Although this document is useful in parts, it would be beneficial to understand how applications would be assessed if the Code was not applied to a site.
- The Code is independent of the size of the operation (small: medium: large) and so penalises smaller operations in terms of costs.
- The Code needs to be written with the end user in mind: quarry manager/owner.

Specific Comments

Page number	Draft Code of Practice	CMPA Comments
8 1st Para 2nd sentence	*"Quarrying activities have the potential to present risks for public safety, land, property, infrastructure and the environment unless the risks are carefully identified and mitigated by adopting proven safeguards – as outlined in this proposed Code."*	This sentence implies that there are no controls currently in place in quarries which is obviously untrue with the extractive industries being one of the most heavily regulated industries in Victoria.
8 2nd Para last sentence	*"… serve as "determining authority", their response must be included into any approval granted. This may include the imposition of conditions or sometimes outright rejection of the application."*	If conditions imposed are impracticable e.g., conflicting conditions, or outright rejection, then what are the avenues available to the proponent.
8 4th Para 2nd sentence	*"The use of the Code is not mandatory; rather the Code is designed as an optional resource intended to facilitate a more expedited assessment of the applications."*	Whilst the Code is not mandatory, the Standard Risk Control Measures will become by default mandatory once there have been VCAT and Planning hearings. What is the definition of "expediated assessment" in terms of time? How will it be monitored in comparison to the current process?
8 6th para	*"The Code describes 'Standard Risk Control Measures' (SRCMs) that may be adopted by Authority holders and Applicants in the preparation of Work Plan or Work Plan Variation."*	It is suggested that there be one ERR source of SRCMs and these are reviewed by referral agencies to ensure that they are best practice. For example: • Code of Practice for Small Quarries lists Requirements (R1-46) - these could be considered SRCMs

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	"The SRCMs in the Code are acceptable to ERR and relevant Co-regulatory Partners as controls which have proven evidence of managing the identified risks."	• The Guidelines for Workplans has numerous examples of controls. • EPA Pub 1823.1 Mining and Quarrying has numerous examples of controls. Introducing additional SCRMs in this code could lead to confusion about the status of quarrying environmental controls listed in other ERR and EPA documents. Suggest that a review of best practice information from EPA, DEECA and other agencies is conducted to ensure that there are no conflicts with controls suggested by in the SRCMs.
8, 9	*Section 1.1, 1.2*	The content of this code could easily be included in updated versions of Code of Practice for Small Quarries and the Guidelines for Workplans. Given the duplication of content in this code, this could lead to confusion in industry about how to apply this code and other ERR workplan related documents. For example: • The controls listed in the Code of Practice for Small Quarries could be upgraded to be SRCMs. The facilitated assessment could also be discussed, noting this deals with quarries with low to medium residual risk. The small quarry code could be renamed 'Guideline for preparation of work plan and workplan variations - low to medium residual risk activities' The Guideline for Work plans could be revised and discuss quarry workplans with high residual risks. 'Guideline for preparation of work plan and workplan

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		variations - high residual risk activities'
9 1st para 1st sentence	*"The main objective of the Code is to establish a consistent set of mitigations for inherent low and medium risks associated with quarry activities."*	"*Inherent Risk*" is a meaningless term in that it refers to the circumstances of a risk assessment conducted with no controls in place (unless inherent risk is otherwise defined, see attached).
9 3rd para 2nd sentence	*"The Code does not address risk aspects that necessitate secondary consent from Co-regulatory Partners."*	Clear example of Co-regulatory partners would be useful.
9 4th para 1st sentence	*"It is important to note that application of the SRCMs does not necessarily equal compliance with the obligations of the Environment Protection Act 2017, in particular the General Environmental Duty (GED)."*	What is the point of adopting the Code of Practice if it does not align with the legislation?
p.10 1st para	*"The code is intended to facilitate the assessment of quarry applications by providing applicants with a tool to mitigate common quarry risks…"*	The intent is unclear: it appears that there is potential conflict through supplying applicants with mitigation measures for risks that will be judged during an assessment process.
10 1st para last sentence	*"Where applications include risks which are not considered within this Code, these risks will still need to be mitigated, under the terms deemed necessary by the assessments team."*	It is assumed that these risks have been found to be still high or very high after the SRCMs have been put in place.
10 3rd dash point	*"…conditions are included as a 'suggested' response to a specific risk only, with the final approval of the wording of and mitigations required by of condition to be reviewed and approved by the Senior Assessment Officer and Director at the final approval stage within the following "workplan guideline" stage."*	It was thought that the intent of the Code of Practice was to state that it would be complied with. What is being asked of the proponent and Senior Assessment Officer here will not lead to an expediated assessment process.
10 5th dash point	*"Establish the operational and environmental objectives to be achieved in the management of a broad array of risk aspects associated with extractive industry operations in Victoria."*	These operational and environmental objectives already exist within the extractive industries.
10 7th dash point	*"Provide an opportunity to inform community members, and*	Acceptable to whom? Currently for community members and associated

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	associated interest groups, on what are considered acceptable risk mitigations and controls for a broad array of quarry operational and environmental risk aspects."	interest groups, the only acceptable risk mitigations and controls are those that make the extractive industry financially unviable.
11 2nd para 1st sentence	*"The Code does not apply to activities which are considered to have an inherent 'very high" risks or residual "high" risks. Site-specific risk mitigations to eliminate or minimise those risks as far as reasonably practicable."*	A risk assessment conducted with no controls in place is meaningless and will lead to very high risks every time unless there is an otherwise definition of inherent risk.
12 3rd dash point	*"Provide a clear and succinct set of SRCMs that are considered to be acceptable by ERR and its Co-regulatory Partners, …"*	The SRCMs are open ended **and not** clear and succinct. There is no certainty for the community nor for industry. The SCRMs must be reasonably practicable and not "*deemed acceptable*".
12 section 2.1 2nd sentence	*"The Code presents mitigation measures for the following risk aspects:"*	These are hazards and not risks: A hazard is anything that could cause harm. Risk is a combination of two things – the chance that the hazard will cause harm (likelihood) and how serious that harm could be (consequence).
13 1st para 2nd sentence	*"In some instances, an Authority holder or Applicant may need to engage Technical Specialists to support them with assessment of residual risk ratings and evaluate the likely effectiveness of applying the SRCMs as mitigation measures."*	Who decides (and when) that a technical specialist is required? It was believed that the intent of the Code of Practice was to remove the need for Technical Specialists due to SRCMs having been set by the experts in Government.
14 Figure 2.2		Inherent risk rating assignment is incorrect in Figure 2.2. Where there are no controls in place the risk rating will always be Very High as discussed previously. Which leads to the Code of Practice unable to be adopted.
14 1st para 2nd sentence	"This *includes instances where the risk initiating event has a 'critical' consequence (as per the risk matrix in the ERR Work Plan Guideline, reproduced in Figure 2.1), whereby application of risk control measures cannot result in a medium or lower residual risk."*	What is the meaning of a "risk initiating event"? Who decides if the risk is critical? The sentence lacks clarity, is highly ambiguous and needs to be rewritten.

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15 1st para	*"expediated assessment"*	The purpose to expediate assessment and endorsement is much lauded. How will this be measured? Is there a statutory timeframe? At the very least ERR assessment team must be experienced and qualified. Co-regulatory partners and ERR must be provided with training
16 Table 2.1	*"Assess Inherent Risks"*	Why is this step necessary? Inherent risk means that there are no controls in place, so the risk is always very high.
16 Table 2.1	*"Assess Residual Risks"*	Who decides if there is significant departure from ERR and Co-Regulators expectations post the site meeting?
16 Table 2.1 last dash point	*"ERR will apply a precautionary approach and may seek technical review and advice from Co-regulatory Partners where there is a lack of scientific, or technical certainty regarding the application of site-specific controls in mitigating risks so far as reasonably practicable."*	This suggests that every site specific control would require technical review and advice.
17 Table 2.1	*"Prepare Risk Management Plan"* *"The Risk Register must document the assessed inherent risk and the residual risk upon application of the SRCMs, or site-specific controls, as appropriate."*	The documentation of inherent risk in the Risk Register is a needless step as explained previously.
17 1st para	*"Through implementation of its Risk Management Plan, it is an expectation that an Authority holder will* ***continuously monitor and review*** *the effectiveness of its Risk Management Plan, and its associated controls, …"*	How will this be assessed/audited when the SRCMS are numerous (105) and ambiguous especially for a small quarry >5 HA 30,000 tonnes per annum @ $20 per tonne annual revenue, (not profit) equates to $600,000 per annum.
19 Table 3.1 last row	*"Odours from poorly managed waste storage areas on site."*	Is this applicable to quarry sites?
27	*"BIO06 -Topsoil management"* *"– Avoid long-term stockpiling of topsoil and overburden by rehabilitating worked out area as soon as possible."*	Not always possible, noting that opportunities to rehabilitate land may only occur when the quarry is decommissioned / rehabilitated, which could be decades later. Suggest 'Avoid long-term stockpiling and overburden *where possible*'

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31	*"SW09 - Contaminated water holding tanks or ponds"*	Suggest this should read turbid/sediment laden water tanks or ponds. Contaminated water could also refer to hydrocarbon impacted water or sewage.
31	"SW010 - Retention feature design"	1 in 100 year seems overly onerous - what is the basis?
32 sect. 7.2	*"Hazards to groundwater considered within this Code relate to losses of containment of liquids that have the potential to impact groundwater."*	Would risk to water supply and ground stability resulting from subsidence be more relevant to a quarry site?
37	*"BV04 – Blast timing"*	Suggest delete BV04 – it is better to comply with threatened species controls identified in state or commonwealth project approvals. For example, there could be threatened species present nearby that are not impacted by blasting.
39	*"H01 – Exclusion zones"*	Suggest this be deleted. Instead that a cultural heritage advisor be consulted prior to disturbance of undisturbed areas to advise if a CHMP is required. If a CHMP is required all controls are to be implemented.
39	*"H02 – Heritage due diligence"*	Superseded if H01 is replaced as suggested above.
39	*"H05 – Excavation monitoring"*	Suggest that this be deleted - this would be defined in the CHMP.
44	*"FS12 – Designated refueling and equipment service areas"* *"Refueling/servicing of equipment must be carried out in cleared and designated areas."*	Suggest that some words be added to explain controls for mobile refueling - which would occur on the worksite. For refueling in designated areas suggest that reference is made to AS 1940 Flammable Liquids Storage and Handling
49	*"WO13 - Stockpile location, geometry and stabilisation (see also SW04)* *WO14 – Weed and pest control"*	These stockpile and biosecurity SCRMs seem misplaced under rubbish SCRMs.
53	*"HS01 - Hazardous materials storage and handling requirements"*	EPA Pub 1698 page 22 appears to have a different bunding capacity requirement: 100% of the largest container plus 10% of the second largest tank plus 10% for rainfall freeboard. For drums,

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		25% of the total volume, plus 10% freeboard. Note HS01 appears to imply that the sump is 125% of the volume stored.
81	*"B4 Reference documents by risk" aspect*	A useful inclusion.

Recommendations

- That the Standards Australia Technical Committee OB 007 Risk Management review the Draft Code of Practice for the application of ISO 31000: Risk Management.

- That the Draft Code of Practice be tested with case studies (including an estimation of additional costs for the application, implementation, and monitoring): hard rock quarry (small, medium and large) and sand quarry (small, medium and large).

Conclusion

The intent to find a mechanism to expediate the extractive industries approval process is laudable. However, the issue remains that it is impossible to neatly encompass the extractive industries activities into a concise risk assessment to meet ERR, agencies and communities continually expanding requirements and expectations.

Please contact me on 0434 692 618 or via email at elizabeth.gibson@cmpavic.asn.au in respect of any matter.

Yours sincerely

EMGibson

Dr Elizabeth Gibson

General Manager

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About the CMPA

The CMPA Rules contain the following purposes of the Association which are to:

(i) conduct its affairs with honesty and integrity;

(ii) demonstrate its commitment to the:

- viability of the Industry;
- protection of the environment;
- community in which it exists;

(iii) vigorously pursue with government and others issues of widespread concern to members;

(iv) demonstrate leadership and a sense of direction for the Industry;

(v) act as a resource and provide support to its members through the delivery of cost savings and assistance in complying with legal obligations;

(vi) foster unity and cooperation between members and others;

(vii) promote continuous improvement through education, training and other activities.

As per purpose (vii) through the development of Guidelines, Checklists and Reference Manuals such as:

Guidelines	**Checklists**	**Reference Manuals**	**Community publications and video clips**
Workplace and Environmental Noise Management	Excavator	Work Safely	Quarries Building Communities https://cmpavic.asn.au/community/
Dust Management including separate Respirable Crystalline Silica Dust Management	Front End Loader	Conduct Laboratory-based tests	
Blast Management	Mobile Plant	Conduct Screening	
Fire Response and readiness	On Road Tip Truck	Service & Maintain Crushers	
Slimes Management	Watercart	Conduct Crushing	
Traffic Management	Haul Truck	Collect Routine Site Samples	
Working Safely with Geotechnical Risk in Quarries	Pick up and delivery	Combined Crushing & Screening	

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Pest Animals and Weed Management			

The Guidelines are made available **free to the community** on https://cmpavic.asn.au/publications/support-sheets/

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