



**18<sup>th</sup> June 2019**

**Department of Environment, Land, Water and Planning  
PO Box 500  
East Melbourne VIC 8002**

[Submission made via online email]

[planning.systems@delwp.vic.gov.au](mailto:planning.systems@delwp.vic.gov.au)

**RE: Submission – Planning Reforms to Extractive Industry**

The Mornington Peninsula Shire thanks the Department for the opportunity to provide a submission to the proposed planning reforms to Extractive Industry as proposed by the Department (DELWP) and the Department of Jobs, Precincts and Regions (DJPR) in response to the Joint Ministerial Statement – Extractive Resources.

Council resolved to endorse and submit the attached submission at its Planning Services Committee Meeting of the 17<sup>th</sup> June 2019, having considered the proposed reforms as they impact the Mornington Peninsula Shire and in consideration of protecting the significant and unique environment and amenity of the Mornington Peninsula and its residents. The submission seeks to respond to the questions posed by the Review and highlight the implications to the Shire.

Should you wish to discuss the matters raised in this submission, please do not hesitate to contact myself on 5950 1396 or via email at [Rosa.Zouzoulas@mornpen.vic.gov.au](mailto:Rosa.Zouzoulas@mornpen.vic.gov.au).

Yours faithfully

A handwritten signature in black ink, appearing to read "Rosa", enclosed in a thin black rectangular box.

Rosa Zouzoulas,  
**Team Leader, Peninsula Wide**  
Attachment: Submission – Planning Reforms to Extractive Industry

**Contact the Mornington Peninsula Shire**

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## Background

In August 2018, the Minister for Planning and the then Minister for Resources released the Joint Ministerial Statement (JMS) – Extractive Resources to deliver a better approach for land use planning and regulation that will assist quarries to keep operating and new sites to develop alongside growing suburbs and communities.

Through the JMS, the Victorian Government has committed to changing planning rules to provide greater flexibility for the commencement of extractive industry operations and periods of inactivity. This prevents the premature expiry of planning permits and enables quarrying sites to respond to market conditions to quickly increase or decrease production.

The proposed reforms seek to implement this commitment. Councils and other agencies have been asked to provide feedback through a submission to the proposed changes by 21 June 2019. Details of the proposed reforms are provided below.

## Current regulation for extractive industries

Mornington Peninsula has a number of properties that currently undertake extractive industry use including:

410 Truemans Road FINGAL  
232,811m<sup>2</sup>  
Current quarry – sand only

60 Manna Street DROMANA  
679,862m<sup>2</sup> - granite

9-11 Pottery Road Somerville  
43,184m<sup>2</sup> - clay

Extractive industries are regulated by the *Mineral Resources (Sustainable Development) Act 1990* (MRSD Act) and the associated regulations, the [Mineral Resources \(Extractive Industries\) Regulations 2010](#) (the Regulations). These regulations are updated every 10 years and the key areas covered by these regulations include:

1. Work authorities
2. Works plans
3. Rehabilitation plans
4. Reporting requirements
5. Community engagement plans

The agency responsible for administering the MRSD Act is the Energy Resource Regulator (ERR). The ERR refer extractive industry applications under section 77TE of the Regulations.

In most cases a planning permit would also be required for use and works associated with an extractive industry.

## Workplans

There is a nexus between planning permits and Work Plans (as required by the MRSD Act). Planning permits will reference the content of the associated and approved Work Plan for the use. Currently planning permits and Work Plans are undertaken as separate items and a Work Plan is prepared prior to a planning permit application. However the Department is reviewing potentially running these items concurrently, however this is not the subject of this review of planning provisions.

Under the associated regulations for the MRSD Act a work plan identifies the following:

- a. Requires planning permit
- b. Approved work plan
- c. Rehabilitation Bond
- d. Public Liability Insurance
- e. Consent of land owner

Often operators require a variation to a Work Plan. It is important that any proposed variation is reviewed in context of what a planning permit allows.

There are 2 pathways for work plan variations Low Risk and High Risk.

### Low Risk Variation

If a variation to a Work Plan is deemed low impact / low risk (change results in low to medium risk and no amendment to the planning permit is required), it will only be assessed by ERR as they are the determining authority and they will refer to Council for comment only. However Council may object to the variation (at ERR's consideration) if it believes the proposed variation would result in an amendment or transformation to the planning permit.

### High Risk Variation

If the proposed variation to the Work Plan results in high or very high residual risk it will require an amendment to a planning permit and ERR will advise the operator of such.

It is important to note that a Work Plan does not have an expiry. It is valid for the life of the extraction – and only finalises 'after rehabilitation' - whenever that occurs. This means that a planning permit is the only means of regulating the timeframe for use and works in regard to the extractive industry.

## **Proposed reforms to planning provisions**

The Department is considering implementing a number of specific changes to current planning provisions in regard to extractive industries.

### Permit expiry due to failure to start the use within the specified time

Under section 68 of the Planning and Environment Act 1987 (the Act), a permit for the use and development of land for extractive industry expires if:

- the development does not start within the time specified in the permit; or

- the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit.

The Department proposes to amend Clause 52.09 of the Victoria Planning Provisions (VPP) to require that a permit to use and develop land for an extractive industry must include a condition that allows for a period of **not less than five years** for the use and development to commence before the permit expires under section 68 of the Act.

The intent of this change is to meet the specific needs of extractive industries where operators may have long lead times for starting operations subject to demand, however need to be able to respond to that same demand in relatively tight timeframes that the planning application process may not facilitate.

*Risk to Council:*

It is considered the biggest risk to Council is mainly in regard to community and the surrounding receiving environment. Given the long lead times between the issue of a planning permit and commencement of the use/works, any consultation and therefore awareness by the community as to the use will diminish. This has implication for Council in managing community expectations and potentially complaints for what may be a current and valid planning permit. E.g. an extractive industry use may have a planning permit which also requires extensive native vegetation removal. If all the required referrals and inputs have been undertaken and the permit is issued, the native vegetation in question may be deemed as lost. Although the scope of works would form part of consultation by the proponent (as required by the Work Plan) during the early stages of the proposal (prior to the planning permit application) AND notification during the planning application process would occur, if the vegetation is not removed for up to 5 years, the surrounding community would be less aware of earlier consultation and therefore have limited context for the removal once it does take place.

## Permit expiry due to discontinuance of the use

Under section 68 of the Act, a permit for the use of land for extractive industry expires if the use is discontinued for a period of two years. It is proposed to amend section 68 to enable extractive industry operations to stop for a longer period before the permit expires.

Three options have been identified to implement this change:

1. Fixed time - Increase the length of time the extractive industry use can stop for without the permit expiring (for example, from two to ten years).
2. Permit specifies time - Enable the permit to specify a longer period. The period specified in the Act could be the existing 2 years or also be changed to a longer period. This would allow for the responsible authority to consider a longer expiry time on a case by case basis
3. In perpetuity - Exempt extractive industry permits from the 2-year expiry provision. This would allow the use to stop for any length of time without the permit expiring.

*Risk to Council:*

Any consideration of an 'in perpetuity' timeframe would present significant issues to Council as it will not provide any certainty as to when a site would be rehabilitated and longer term use. In this scenario it might be that an extractive industry use could never rehabilitate a site as long as there was some production value available.

Council also need to consider the 'good neighbour principle'. How would Council be able to regulate the use going forward if the operator proved to be non-compliant in regard to the planning permit. If a land use is being applied for through the planning permit process and there is a record of compliance issues, Council would be reluctant to issue further permits for the same use. Again 'in perpetuity' would remove Councils power in this regard.

## Change to the land use term and definition

It is also proposed to modify the land use term and definition of 'stone extraction' to clarify its operation and better align it with the term used in the Mineral Resources (Sustainable Development) Act 1990 (MRSD Act) by:

- changing the land use term 'stone extraction' to 'extractive industry' to align with the term used in the MRSD Act ('extractive industry' was the land use term prior to Amendment VC77)
- reinstating the pre-Amendment VC77 land use definition for extractive industry: 'Land used for the extraction or removal of stone from land for commercial use, or to use the stone for building, construction, road or manufacturing works. It includes the treatment of stone or the manufacture of bricks, tiles, pottery, or cement products on, or adjacent to, the land from which the stone is extracted or removed'.

### *Risk to Council:*

The proposed change to the definition is effectively changing it back to the pre-2013 (pre Amendment VC77) change, and aligns to the same definition as the MRSD Act. There has also been some VCAT advice to support the change back to this definition due to the lack of certainty that the current definition as facilitated.

It is considered this is not a risk to council as it gives more certainty as to the type of extractive uses that would fall under this definition and can therefore be used in a permit pre-amble giving the pre-amble less ambiguity.

## Change to Clause 66 referral and notice provisions

The provisions in this clause set out the types of applications which must be referred under Section 55 of the Act or for which notice must be given under Section 52(1)(c) of the Act.

Referrals are currently identified to be in accordance with section 52(1)(c) of the Act to the Secretary of the Department administering the *Mineral Resources (Sustainable Development) Act 1990*.

Changes are identified to Clause 66 to make sure that Councils are not-referring again where referrals have already been undertaken by the ERR where the MRSD Act identifies the necessary referrals. The proposed amendment to Clause 66 would remove the requirement for referral where:

'the application is for the use or development of land for extractive industry or mining and a copy of a work plan or variation to an approved work plan accompanying the application was given to the referral authority (other than the Roads Corporation) under section 77TE of the *Mineral Resources (Sustainable Development) Act 1990*'.

## *Risk to Council:*

It is considered there is limited risk by this proposed amendment to Council, but it would reinforce the need for planning officers at Council to check with ERR and the applicant as to referrals that have already been undertaken to avoid duplication and compliance with the provision. This change would not preclude planning officers from making referrals to other agencies that they deem relevant outside of those already referred to by the ERR.

## Other matters for consideration in a submission

DELWP has recently developed draft criteria to identify strategic agricultural land – currently out for exhibition. DELWP has identified much of the Mornington Peninsula's Green Wedge as potentially 'significant' agricultural land. Consideration needs to be given as to how the nexus between extractive industry activity identified as necessary for 'State significance' interacts with 'strategic' agricultural land identified for 'State significance'. It is unclear if State agencies are aligned in their approach. Which use if each are proposed on a Green Wedge parcel is deemed the most 'significant'?

## Recommended Submission

1. **Permit expiry due to failure to start the use within the specified time**  
Council would not support the five-year minimum commencement period for extractive industry permits due to the unreasonable timeframes associated between community engagement in proposing the use, and potential start of use/works and the uncertainty this facilitates in community expectations around land use.

2. **Permit expiry due to discontinuance of the use**  
Council would not support the proposal to amend the Act to enable extractive industry operations to conduct the use 'in perpetuity' - that is with no expiry date apart from reaching 'rehabilitation phase' as part of the operators Works Plan.

Council would support 'permit specifies time' – to enable the permit to specify a longer period. The period specified in the Act should remain as the existing 2 years OR also be able to be changed to a longer period subject to agreement with the Responsible Authority. This would allow for Council to consider a longer expiry time on a case by case basis.

3. **Change to the land use term and definition**  
Council would support the change of definition from 'stone extraction' back to the pre 2013 definition of 'extractive industry' as it gives more certainty as to the type of extractive uses that would fall under this definition and can therefore be used in a permit pre-amble giving the pre-amble less ambiguity.
4. **Change to Clause 66 referral and notice provisions**  
Council would support the change to Clause 66 in precluding need for referral to referral agencies already undertaken by the Department administering the *Mineral Resources (Sustainable Development) Act 1990*, as this would not preclude planning officers from making referrals to other agencies that they deem relevant outside of those already referred to by the ERR and avoid duplication of referrals.

5. Other matters for consideration in a submission

Council raise concerns with DELWP as part of its submission as to the recently developed draft criteria prepared by DELWP to identify strategic agricultural land, and how the nexus between extractive industry activity interacts with 'strategic' agricultural land given both uses are of 'State significance'.