

SUBMISSION TO THE ECONOMIC DEVELOPMENT & INFRASTRUCTURE COMMITTEE

Inquiry into Greenfields Mineral Exploration and Project Developments in Victoria

Overview

Local Government plays a statutory role in land use planning under the *Planning and Environment Act 1987*. As a planning authority, councils establish planning schemes for their municipal districts. A council's planning scheme must apply the zoning and overlay controls in the Victoria Planning Provisions to guide the use and development of land. Councils' Planning Schemes must be approved by the Minister for Planning.

The use and development of land for mineral/stone extractive industries (extractive industries) is directly impacted by planning schemes where a proposed extractive industry either requires a planning permit or is a prohibited use.

Local Government is also a provider of infrastructure – the local road network including bridges – which enables and supports extractive industries, and which can be impacted by this use.

Issues

Land Use Planning

The *Planning and Environment Act 1987* (the 'PE Act') provides that, amongst other things, council planning schemes are developed in consultation with local communities.

The legislative framework for extractive industries is provided through the *Mineral Resources (Sustainable Development) Act 1990* (the 'MR Act'). The legislative framework provides that:

- No planning approval is required for mineral exploration; and
- The Minister for Planning may amend a council's planning scheme without statutory consultation where it contains prohibitions on extractive industries.

While the economic benefits of extractive industries are acknowledged, it is important that councils and communities, who may be impacted by any prospective extractive industry, are adequately consulted as part of the administration of the MR Act.

Exploration licences

Councils have raised their concerns with the MAV about the limited notification and lack of direct consultation prior to decisions on the issuing of exploration licences. Councils are generally the first to be contacted by the community and hold significant useful local knowledge.

Despite the vast majority of exploration licences not progressing to commercial production, the difference between the issuing of an exploration licence and the subsequent requirement for a planning permit remains unclear to the community and creates anxiety that there will not be an opportunity for community input into decisions on extractive industries. Communication with the community about what each process constitutes, the matters relevant to the decision and data about the proportion of exploration licences that result in an extractive industry would go some way to alleviate community concerns.

Planning permits for mining or extractive industry

Councils have identified concerns about not being involved in the earlier stages in the development of work plans for extractive industry. If all relevant information requirements can be provided at this stage then there is less consequential delay at the planning permit stage as councils request further technical information.

The amount of technical expertise required to assess planning applications for extractive industries is a challenge, particularly for smaller councils.

Ensuring buffer zones around extractive industries are maintained and enforced can be a problem for councils, particularly when the buffer is on land that is not in the ownership of the operator. This is an issue for the expansion of operations where other land uses, that may be as-of-right, gradually encroach into the buffer area.

Recommendation 1

It is recommended that the MR Act be amended to provide for councils to be notified prior to the advertisement of applications for exploration licences to ensure councils are fully aware of the proposal and enable them to provide relevant local information to facilitate decision making.

Recommendation 2

It is recommended that the MR Act be amended to provide for a statutory consultation mechanism with local government in a manner which protects commercial in confidence issues, prior to any Ministerial amendment to a council planning scheme to allow the input of local knowledge and views.

Recommendation 3

It is recommended that the Department of Primary Industries (DPI) develop a package of information which clearly outlines the differences between the exploration licence process under the MR Act and the mining and extractive industry process under the PE Act. The package should provide clarity on what each process constitutes, the matters considered and information about the proportion of exploration licences that proceed to an extractive industry.

Recommendation 4

It is recommended that the DPI amend their procedures so that councils can be involved in the assessment of draft work plans to avoid delays and ensure all matters are resolved prior to commencing the planning permit process.

Recommendation 5

It is recommended that the Department of Planning and Community Development (DPCD) establish a technical assistance program to provide councils with expert support to properly assess applications for planning permits for extractive industries.

Recommendation 6

It is recommended that relevant legislation and regulations be amended to ensure that buffer distances surrounding extractive industries are assured and are within the applicant's ownership or direct control.

Recommendation 7

It is recommended that the State Government, including regulatory and infrastructure bodies, should undertake a program to identify significant mineral resource deposits are likely to be found to enable planning schemes to be amended to protect these resources for future industry expansion.

Infrastructure – Forward Planning and Resourcing

As a provider of infrastructure, it is important for local government to be an integral part of the process for the approval and establishment of extractive industries. This will enable councils to review the standard and conditions of existing infrastructure to determine if these are at the appropriate levels for extractive industries, and what contribution the industry may need to make towards any upgrade or repair.

In cases where the standard and condition of the infrastructure is below what will be required, or where the use will affect traffic safety, the council will be able to review its works program with a view to bringing forward capital investment where this feasible, or to make such works a condition of approval.

It must be noted that in addition to the initial capital investment to bring infrastructure to standard, councils will face an increase in recurrent expenditure to maintain the upgraded infrastructure at the appropriate level.

As councils often do not have the available resources to redirect to infrastructure upgrades at short notice, if at all, it is likely that additional stresses will be placed on road and bridge networks, further hastening their deterioration.

Local government is also restricted in its capacity to raise rate revenue from extractive industries as the *Local Government Act 1989* (the 'LG Act') specifically provides that land used exclusively for mining purposes is not rateable land.

Recommendation 8

It is recommended that the MR Act be amended to provide a statutory consultation process with councils at an appropriate time to enable the Minister and Department to properly inform themselves as to the prospective infrastructure needs before a license or approval is granted, and that insofar as is possible the costs of these improvements are a condition on permit.

Recommendation 9

It is recommended that financial support be provided by the State Government to councils to enable them to properly upgrade and maintain infrastructure (road network including bridges) vital to the success of extractive industries.

Recommendation 10

It is recommended that this financial support take the form of capital and recurrent grants allocated to *all the councils* affected by any extractive industry to enable the entirety of the road network used for the distribution of extracted material.

Recommendation 11

It is recommended that, if State Government financial support is not forthcoming, the LG Act be amended to allow councils to rate land used for mining purposes, bearing in mind that this would only go some way to addressing the infrastructure needs of the municipal district within which the extractive industry is located and not the network wide needs across multiple councils.

Compensation

The MR Act only provides for compensation to be paid to owners and occupiers of private land where the extractive industry is located. Further compensation will only be paid under specific limited circumstances:

- deprivation of possession of the whole or any part of the surface of the land; and
- damage to the surface of the land; and
- damage to any improvements on the land; and
- severance of the land from other land of the owner or occupier; and
- loss of amenity, including recreation and conservation values; and
- loss of opportunity to make any planned improvement on the land; and
- any decrease in the market value of the owner or occupier's interest in the land; and
- loss of opportunity to use tailings.

However, it is not only owners and occupiers who may be adversely affected by an extractive industry. As a provider of infrastructure, local government may be adversely affected but is unable to raise commensurate revenue from extractive industries to cover the cost of damage to the road network and bridges.

Further, local communities may also be adversely affected through such matters as (but not limited to):

- reductions in property value;
- involuntary changes to employment leading to the loss of or significant reductions in livelihood;
- environmental factors (dust, noise pollution) impacting on health and wellbeing; or the forced relocation from the existing family residence or business.

Consequently, there are sound grounds for extending the coverage of persons who may seek compensation where the damage can be proved as being caused as a consequence of the extractive industry, and where it was not possible to for those persons to mitigate the damage.

Recommendation 12

That the MR Act be amended to extend the coverage of persons able to seek compensation to those who can prove a causal link between the damage they have suffered and the operation of the extractive industry.