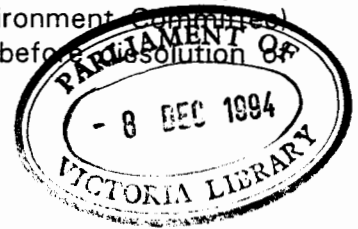


**MINISTERIAL RESPONSE TO ENVIRONMENT AND NATURAL RESOURCES  
COMMITTEE INQUIRY INTO PLANNING ISSUES FOR EXTRACTIVE INDUSTRIES**

The Environment and Natural Resources Committee tabled its report on Planning Issues For Extractive Industries in Parliament on 25 May 1994.

The Terms of Reference for the Inquiry were an extension of the terms of reference given to the Committee's predecessor (the Natural Resources and Environment Committee) which released a preliminary report and draft recommendations before the Committee in Parliament in August 1992.



The **Terms of Reference** for this Inquiry were:

1. *To establish options for ensuring the adequate protection of stone resources in the Melbourne metropolitan area.*
2. *From information provided to the Committee on the distribution of stone resources by type and quality throughout the region and from the projected growth in demand consider:*
  - (a) *the economic, social, environmental and other constraints likely to affect the development of new extractive industry options over the next 25 years, the next 50 years;*
  - (b) *the adequacy and appropriateness of buffer zones and other methods for protecting proven reserves and the implications on landowners of long-term zoning and sterilisation of their land for other uses; and*
  - (c) *options to ensure protection of areas in which stone resources are only predicted or inferred on the basis of geological information and for which no demand can be immediately identified.*
3. *Utilising the information collected and work already completed by the previous Committee make recommendations which consider the previous Committee's interim report and comments made thereon together with the Supplementary Report of the Whittlesea Planning Scheme Amendment L50 Panel prepared by Marshall Baillieu.*
4. *Consider the adequacy of the Extractive Industries Act 1966 for the development and effective regulation of the industry.*
5. *Identify options and recommend a preferred course of action including legislative changes necessary to give effect to the recommendations.*

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The Committee received 52 written submissions and heard evidence from 43 witnesses during seven public hearings.

The Committee's report is comprehensive and detailed and I thank all members for their consideration of the complex and difficult issues associated with extractive industries.

The Committee made 36 recommendations as a result of its inquiry. Officers of my Department have met with industry, other government departments and local government representatives to discuss the implementation of the recommendations. The Government agrees to many of the recommendations as they stand. In some cases an ENRC recommendation is accepted in principle but a different implementation is proposed.

The Government strongly endorses the concept that the industry should be given certainty concerning its operations while at the same time recognising the need to protect other natural resources and the environment. The Government accepts proposals for a new legislative regime which will utilise planning permits as the primary mechanism for regulating extractive industry, with the aim of streamlining approvals processes.

The Government proposes to establish a working group with a membership drawn from relevant agencies to prepare detailed implementation plans.

The ENRC recommendations and the Government's response is as follows:

#### **EXTRACTIVE INDUSTRY INTEREST AREAS**

1. *Extractive Industry Interest Areas should be the basis for long-term protection of stone resources.*

Agreed.

2. *Long-term planning protection should not be postponed until better geological knowledge is obtained, but the level of planning protection should be appropriate to the level of knowledge of the resource and its scarcity.*

Agreed.

3. *There should be continuing refinement of Extractive Industry Interest Areas with improved geological information and feedback from companies and local government.*

Agreed.

#### **PROTECTING STONE RESOURCES FOR THE FUTURE**

4. *A State Extractive Industry Policy should be included in the State Section of all planning schemes. This will establish the importance of stone resources, make reference to Extractive Industry Interest Areas, and provide that local planning authorities must take account of Extractive Industry Interest Areas when developing local strategy plans.*

Agreed.

5. *The Department of Energy and Minerals should be a referral authority for permit applications which may impact upon the availability of stone resources (for example, subdivisions of greater than 3 hectares) within all Extractive Industry Interest Areas. A statement to this effect should be included in the State Extractive Industry Policy.*

The Government agrees with the intent of this recommendation but believes that it is more appropriate for the Department of Energy and Minerals to be *notified* of permit applications which may impact on the availability of stone resources, rather than be a *referral* authority for this purpose. The Department of Conservation and Natural Resources should be notified of applications on Crown land.

6. *Extractive Industry Interest Areas should be identified in the local section of planning schemes by reference to a document (which sets out the location of the Extractive Industry Interest Areas) in a policy clause.*

Agreed. The Government proposes a new concept of 'identifier' overlay on planning scheme maps.

7. *The Minister for Energy and Minerals (as prescribed authority) should receive notice of preparation of amendments when they fall within Extractive Industry Interest Areas.*

The Government is currently reviewing the concept of 'prescribed authorities' as set out in the *Planning and Environment Act 1987*. The Government therefore proposes that the current situation, where the Minister for Energy and Minerals is a prescribed authority for *all* planning scheme amendments, be retained until the wider issues are resolved. The Ministers for Conservation and Environment and Natural Resources (as prescribed authority) should receive notice of preparation of amendments affecting Crown land.

8. *Regional strategic planning should take account of Extractive Industry Interest Areas. There should be enhanced links between the Department of Planning and Development, and the Department of Energy and Minerals for all regional strategic planning considerations.*

Agreed. The Department of Conservation and Natural Resources should be involved in regional planning considerations affecting Crown land.

9. *Geographical Information Systems, including data sets showing the location of hard rock resources, should be more fully utilised by urban and regional planners.*

Agreed.

## **PROTECTING PROVEN RESERVES**

10. *Internal buffers - that is, buffers within the boundaries of a quarry activity - should be adopted to protect future quarries from encroachment by sensitive land uses. Such buffers will be owned and controlled by the quarry company.*

Agreed.

11. *Performance standards - to be met at the quarry boundaries for noise, dust, ground vibration, air blast, and fly rock - are the key factors that will determine the internal buffer widths of future quarries, including current applications. Considering all the evidence and the indicative distances, the Committee believes it is prudent to have a minimum internal buffer of 200 metres. These performance standards should be included in the State Extractive Industry Policy.*

The Government agrees with the concept of performance standards. Such standards will be applied on a site specific basis to determine the width of internal buffers for future quarries necessary to protect amenity in adjoining areas. The Government does not agree that there should be a minimum internal buffer of 200 metres. To require a minimum 200 metres buffer would impose an unnecessary burden on operators and is contrary to the concept of performance standards.

Part of Recommendation 11 is that current applications should contain internal buffers determined by performance standards. It is the Government's view that it would be unreasonable to rigidly impose performance based internal buffers on applications that were made before this concept was proposed. However the Government is considering a requirement that all quarries meet the performance standards at their boundaries within a certain number of years. In the meantime, adequate buffers need to be maintained around such sites to protect amenity in adjoining areas.

12. *Australian standards and guidelines for the control of environmental dust should be adopted.*

The Government will establish a working group to develop a protocol for determining performance standards for all parameters, including dust, at the boundaries of individual extractive industry sites.

13. *Future putrescible landfill sites must include an internal buffer with a minimum width of 200 metres.*

Disagree. It is the Government's view that the internal buffer widths required in the future should be determined by performance standards related to the quarry operation. However where putrescible landfilling is among the end use options specified in the approved Work Plan for a site, a minimum 200 metre buffer must be established in accordance with the provisions of the State environment protection policy (Siting and Management of Landfills Receiving Municipal Wastes). Failure to maintain this minimum buffer distance would preclude this end use.

14. *In order to protect existing quarries or holding titles from encroachment, quarry companies and the Department of Energy and Minerals should be made aware of adverse permit applications and have the right to object by:*
  - (a) *the Planning and Environment Act 1987 (or all planning schemes) to require notification to the quarry company of all permit applications adjacent to an extractive industry site; and*
  - (b) *the Department of Energy and Minerals to be a referral authority for all permit applications within 500 metres of an extractive industry site.*

The Government's view is that the intent of this recommendation is appropriately achieved by the Department of Energy and Minerals being notified of certain types of permit application within 500 metres of an extractive industry site (rather than being a referral authority).

15. *To protect existing quarries or holding titles from encroachment, the Department of Energy and Minerals should be made aware of adverse planning scheme amendments by retaining its prescribed authority status in the case of amendments within 500 metres of an extractive industry site.*

Agreed. The Government proposes that the Minister of Energy and Minerals retains full prescribed authority status until the current review of all issues related to prescribed authorities is completed.

16. *In the interests of good industry practice, existing quarries should undertake to meet the performance standards over time wherever possible. As well, both existing and future quarries should initiate community review committees to foster a good working relationship with the neighbouring community.*

Agreed.

17. *Public awareness of extractive industry sites should be enhanced by:*
- (a) rezoning of all existing and future approved extractive industry sites to Extractive Industry Zone by non-notifiable planning scheme amendment; and*
  - (b) considering methods for including extractive industry in Section 32 Statements as required by the Sale of Land Act 1962.*

The Government fully endorses the intent of this Recommendation - that all approved existing and future extractive industry sites should be readily apparent to the public. The Government proposes a new concept of an 'identifier' on planning scheme maps which will provide evidence of the quarry location to prospective land buyers. The extra administrative cost of a Section 32 statement would then not be justified. Nevertheless, the Department of Energy and Minerals may in the future provide such an identification service on a commercial cost recovery basis.

## **ADMINISTRATIVE FRAMEWORK**

18. *There should be a retention of the dual system of both planning and licence approval, but with a simplified operational Extractive Industry Licence.*

The Government agrees with the concept of a simplified 'operational' approval for extractive industry but proposes that it be a 'work authority' which is issued after planning approval is obtained. The new approvals process which the Government will introduce is described further below.

19. *The Extractive Industries Act 1966 should be retired. Legislative change in relation to the operational Extractive Industry Licence should be achieved by amendment to the Mineral Resources Development Act 1990 to include a section referring specifically to extractive industry. The new administrative framework for extractive industry should incorporate the following principles:*

19.1 *Stone should remain the property of the landowner.*

19.2 *Extractive industry should remain within the planning system.*

Agreed that changes to the legislation are required although the optimal method of achieving this is yet to be determined. The Government agrees with principles 19.1 and 19.2 but emphasises that the principle that extractive industry remains within the planning system should be considered as one part of a package of proposed changes to the approvals process.

19.3 *The Extractive Industry Licence should be an operational licence only. The Extractive Industry Licence should not confer the right to extract stone from the ground as planning approval gives this.*

Agreed, although the Government takes the principle further and proposes replacement of the operational licence with an 'authority to commence work', similar to that provided for under the *Mineral Resources Development Act 1990*.

19.4 *All extractive industry should be required to obtain the operational Extractive Industry Licence. This would include:*

- (a) *extraction on private land*
- (b) *extraction on Crown land*
- (c) *extraction by local government and other government and semi-government agencies*
- (d) *shallow extraction*
- (e) *extraction ostensibly for another purpose - such as a farm dam or road excavation - from which stone is sold*
- (f) *extraction in Reserved forest*

Agreed in principle that all extraction should be subject to a standard approval. The eventual framework to achieve this will however take into account the particular requirements of local government and government agencies. In consideration of the current restructuring of councils to be completed in 1995, a working group of local government groups and government agencies will be set up in early 1995 to develop an appropriate strategy in response to this recommendation.

19.5 *A separate Extractive Industry Lease for Crown land is not required.*

Agreed. The provisions of the Mineral Resources Development Act in relation to exclusion areas and restricted areas will apply. For unrestricted Crown land, recognising the extensive nature of extractive operations, a commercial lease for the relevant area will be required from the relevant Government landlord reflecting the values of the area; such a lease will not be unreasonably withheld.

*19.6 The Crown should offer a commercial settlement for the rights to the stone beneath a limited depth land title.*

The Government has decided that, on balance, the present system of royalty payment on production is more equitable and less onerous to industry than a one-off commercial settlement for the stone below limited depth land titles.

*19.7 The operational Extractive Industry Licence should continue to be site-specific as it is intended to control the safety, amenity and environmental aspects of a particular operation.*

The Government proposes that an 'authority to commence work' will follow planning permit approval. Both are specific to the site.

*19.8 The boundaries of the operational Extractive Industry Licence should coincide with the area for planning approval, or the boundaries of an Extractive Industry Zone (wherever possible).*

As above.

*19.9 Assessment of the operational licence application should be undertaken by officers of the Department of Energy and Minerals to arrive at an approved Work Plan and draft licence conditions which should then be considered concurrently with the planning application.*

The Government proposes that the Department of Energy and Minerals will be closely involved in the planning permit approval process for extractive industry. The Department will be a referral authority for all extractive industry planning permit applications. As such, the Department will approve the Work Plan and set conditions which will be attached to the planning permit. The Department of Conservation and Natural Resources will be consulted on all permits and their conditions, for Crown land.

Once a planning permit is granted, which might be after an appeal process through the AAT, the Department will issue an 'authority to commence work'. Maintenance of this authority will be by adherence to the Work Plan and any attached conditions. The Department will regularly review the Work Plan.

*20. The Extractive Industries Board should be abolished.*

Agreed. The Government proposes to set up a new consultative body to consider broader policy and strategic issues for extractive industry.

*21. Environment Effects Statements or environment reports should be prepared more often for extractive industry proposals, but they should be of a scope and scale appropriate to the proposal.*

Agreed.

22. *The Department of Planning should develop appropriate guidelines for extractive industry Environment Effects Statements in consultation with extractive industry and community groups. Such guidelines need to be developed as a matter of urgency.*

Agreed. A working group will be set up of Department of Energy and Minerals, Department of Conservation and Natural Resources, and Department of Planning and Development officers to develop guidelines for preparing EESs for extractive industry projects, in the same manner as the recently completed guidelines for mining projects.

### **INTEGRATED APPROVALS AND SINGLE ADJUDICATION**

23. *The planning system should provide greater certainty to extractive industry according to the following principles:*

- (a) an extractive industry proposal is guaranteed a hearing*
- (b) an extractive industry proposal can, if required, be heard in an independent forum*
- (c) there should be integrated approvals*
- (d) there should be no undue delay in the approval process*
- (e) there should be a single adjudication*
- (f) planning approval should be for the life of the quarry*

Agreed.

24. *Extractive industry should be a permit required use (consent use) in all planning zones except urban zones and areas excluded by other legislation (National Parks, State Parks, Flora and Fauna Reserves).*

Agreed. However, the Government will ensure that extra considerations related to environmental and social values will be required to be taken into account when a planning permit application for extractive industry occurs within a non-urban zone which currently prohibits extractive industry.

25. *Planning approval should be for the life of the quarry. That is, a planning permit should not be limited to a term, although the conditions attached to a permit may be reviewed.*

Agreed. Conditions that require to be reviewed will be attached to the 'authority to commence work'.

26. *Irrespective of the enabling legislation, the status of extractive industry should be made clear in all planning schemes.*

Agreed.

27. *A single adjudication process should be used for extractive industry proposals which adjudicate on all matters relating to the proposal.*

Agreed.



28. *The Minister for Planning should determine the single adjudication process appropriate for extractive industry proposals after consultation with local government, extractive industry and community groups.*

The Government's proposed new approvals process for extractive industry, whereby extractive industry is not prohibited in non-urban zones, and extractive industry approval is tied to the planning permit, ensures a single adjudication (in the AAT) because planning scheme amendments will no longer be necessary. In the case where an EES is required, the Government proposes that the Minister for Planning will 'call in' the planning permit application so that an independent panel can consider and make a recommendation to that Minister, on both the EES and the planning permit in a single adjudication.

29. *All extractive industry sites, once granted, should be re-zoned to Extractive Industry Zones in which extractive industry is as-of-right.*

Disagree. The end result of this recommendation will be equally as well achieved by the grant of a planning permit for the life of the quarry.

30. *The Minister for Energy and Minerals should be authorised by the Minister for Planning to undertake the non-notifiable amendment of sites to Extractive Industry Zones as his Department has a closer knowledge of the appropriate performance standards to be applied to the operations.*

Disagree, as the rezoning is unnecessary under the Government's proposals.

#### **END-USE**

31. *The proposed end-use, or options for end-use, must be stated in the initial planning approval for an extractive industry site. This should be achieved by:*

- (a) *The proposed end-use must be specified as a condition of planning permit approval. Any change proposed in the future will be adjudicated by the Administrative Appeals Tribunal; or*

Disagree.

- (b) *The planning authority should set options for future end-use at the time of granting approval. The controls attached to the Extractive Industry Zone will also specify other types of land use that are prohibited, require a permit, or are as-of-right for that piece of land. Any change proposed in the future will require planning scheme amendment.*

Agree to the principle of (b) above, that the end use can only be specified in terms of options because of the potential long life of a quarry operation. End use options will be specified in the approved Work Plan.

32. *The rehabilitation plan for the site - either post-extraction or post-landfill - must be included with the initial planning application.*

The Government's view is that an extractive industry application must contain a rehabilitation proposal that is currently achievable - that is, no further planning approvals are required. This ensures a safe and environmentally sound rehabilitation will be achievable irrespective of the end use options. A rehabilitation plan will be required as part of the Work Plan.

33. *The operational Extractive Industry Licence and the planning approval should allow concurrent land fill and extraction.*

Agree in principle where an 'authority to commence work' replaces the Licence.

34. *The present system of bonds should continue, be appropriate to the operation, and be reviewed regularly against the actual performance of the operators. The bond should be sufficient to return the site to commensurate or deemed-equivalent environmental conditions that prevailed before extraction.*

Disagree. The Government's view is that the bond should be sufficient to return the site to a safe and environmentally sound state. This recommendation by ENRC implies backfilling which is impractical.

35. *The State Government should introduce a levy per tonne on extractive industries, to be paid to a fund (a Community Facilities Levy) administered by the State and, in consultation with extractive industry and the community, disbursed to turn past, existing and future quarries into appropriate community facilities.*

Disagree. It is the Government's view that compensation for the adverse effects caused by extractive industry should be paid directly to those affected. A community facilities levy is in reality a production tax which bears no relation to the performance of the individual quarry operators or the quarry company's intentions for the site after extraction - as a storage depot for instance.

The Government will further assess the opportunities for compensation currently available.

## **TRUCK MOVEMENTS**

36. *Consideration should be given to implementing a special review of truck movement levies. The Government should investigate this matter by establishing a truck movement levy review.*

This issue will be referred to the Minister for Roads and Ports for his consideration.

S J PLOWMAN MP  
Minister for Energy and Minerals

1 December 1994