

An Unsustainable Future

The Prohibitive Costs of Securing Access to
Construction Material Resources in Victoria

– August 2009 –



CMMPA

A report prepared for the
Construction Material Processors Association
by Peter Day Consulting

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A competitive, vibrant extractive industry is essential for maintaining cost effective public infrastructure projects and housing affordability

Photos courtesy of Peri Australia Pty Ltd



This photo demonstrates what happens when the mix of elements in the metallurgical steel of a crushing chamber becomes unbalanced and leads to catastrophic failure. It is a similar situation when the mix of elements in the planning system is unbalanced. It also leads to catastrophic failure.

1. EXECUTIVE SUMMARY

Victoria's community is at risk of having to pay more for houses and roads due to a slow, costly, repetitive, uncertain extractive industry Work Authority approvals process combined with ever increasing regulatory burdens such as the new native vegetation and heritage requirements for new or extended quarry operations.

These risks have led to reduced investment in new quarry operations during a time of increasing demand. This has the potential to limit future supply, increase product costs, leading to increased costs of public infrastructure projects, decreased housing affordability and an increased environmental footprint of transport.

Government needs to recognise its stewardship role in the effective management of the State's valuable construction material resources and to ensure they are not sterilised for future generations use. It needs to provide a secure and realistic pathway for industry to access resources.

There is an opportunity for Government and industry to work together to develop an extractive industry framework which will deliver a sustainable and secure future for the industry; one that allows continuation of supply of cost effective construction materials to the community.

1.1 Introduction

Extractive industries provide the raw materials for building and construction, which is vital to the State's development. Victorian production in 2007/08 was valued at \$739 million with extractive industries directly employing more than 2,200 people.

Entry to the extractive industry in Victoria is restricted by a myriad of legislative measures enacted by three levels of government. The local government administers the planning permit system, the State government administers the industry-specific legislation (the *Extractive Industries Development Act 1995* or EID Act which will be merged with the *Mineral Resources (Sustainable Development) Act 1990* or MRSD Act from 1 January 2010¹) and other environmental law, while the Federal Government administers a second tier of environment and biodiversity conservation legislation. As a result there is no single regulating body that has particular responsibility for the industry and each government sector can look to the other when criticism is levelled at the overall impact of regulation.

It is not surprising that entry restrictions and controls are characterised by duplication, an escalating demand for information, and a real sense that the tiers of government are working in isolation. This is compounded by local councils which appear to be uncertain of their role and subsequently take a cautious approach - resulting in further duplication and application cost.

An illustration of this is where work plans are referred back to the 'referral authorities' in order to comply with the letter of the *Planning & Environment Act 1987* (P&E Act).

¹ The Victorian Government has passed legislation which will repeal the EID Act and bring the extractive industry regulations under the MRSD Act from 1 January 2010.

This report examines the costs of the principal entry mechanism to the industry, the Work Authority process under the EID Act. The detailed time and cost data for the analysis is taken from an intensive survey of nine (9) industry participants each of whom has, and in some cases are still, participating in the Work Authority process.

From the survey the report makes an assessment of the average time required to obtain a Work Authority, estimates the costs of the process, and draws conclusions about the impact of the Work Authority process on the industry. The report records the significant issues raised by survey participants and presents a range of actions that, if implemented, will streamline the entry arrangements for the industry and in turn improve its long term sustainability.

1.2 Summary of Findings

The survey by the Construction Materials Processing Association (CMPA) in 2008-09 of nine extractive industry companies has revealed a range of matters that bear directly on the competitiveness of the industry in Victoria. These are summarised here.

1.2.1 Costs of the approvals process

- The regulatory compliance cost of the Work Authority process is largely dependent on the complexity of the issues at the site and the time taken to gain a decision. Costs range from \$10,000 to \$1.25 million for a ‘planning permit’ approval, with higher costs ranging from \$1.9 to \$5.1 million for an ‘EES’ approval. This cost spread over the first five years production varies within a band \$0.38-\$1.79 per tonne or 3-12 per cent of the unit rate for hard rock extraction and \$0.20-\$0.62 per tonne or 2-5 per cent of the unit rate for sand and sand/soil.
- Costs associated with sand developments are significantly less than those associated with hard rock quarry developments due to the lower environmental risks and impacts of sand extraction.
- The case studies indicate that the capital costs associated with attending VCAT and the appeal process range from \$149,800 to \$558,251. Where the application is not successful the capital costs will have to be written down over a self assessed period.
- The opportunity cost associated with delays in the approvals process are the real costs borne by businesses. The average time for these case studies to grant a Work Authority of 3½ years represents lost production valued up to \$54.6 million for a hard rock operation or \$13.65 million for a sand operation.

This has not always been the case. The Natural Resources & Environment Committee of the Victorian Parliament draft report on its *Inquiry into Planning Issues for Extractive Industry* (August 1992) indicated that it would cost about \$60,000 (equivalent to \$95,000 in 2009 dollars) to develop a Work Plan for a reasonable sized operation. This report’s “non EES” case studies have an average cost of \$317,000 to develop a Work Plan (i.e. Pre Application Process Costs, Table 4). This is more than a **three times increase in costs** (accounting for inflation) over 17 years to get the same outcome. This is the cost of government bureaucracy.

1.2.2 Time frames associated with the approvals process

The case studies indicate the following approval process time frames:

- For 'standard' proposals, an average time of just over 2 years (25 months) from the initial screening (or site) meeting to the granting of a Work Authority.
- For more contentious projects involving appeal to VCAT, an average time of at least 46 months from the initial screening meeting to the granting of a Work Authority.
- A project that requires an EES could be expected to take on average 5¾ years.

The components of this time lag (excluding EES examples) are:

- On average it takes about 10 months from the initial screening meeting to lodgement of a draft Work Plan to the DPI.
- On average it takes about 6 months from lodgement of the draft Work Plan with the DPI until the draft Work Plan is endorsed.
- On average it takes about 8½ months for a decision to be made by the local council on an application for a planning permit.
- On average it takes 1½ months from the date of the final planning decision to DPI granting a Work Authority.

The case studies within this report represent some recent examples of the approvals process. Industry wide data indicates that they are not isolated occurrences. Even for relatively small sites in regional areas with few neighbours and minimal contentious issues, the approvals process could be expected to take about 2½ years, with larger sites with more complex issues taking longer.



This has not always been the case. In 1990, a significant new quarry operation in Melbourne's northern fringe in a Special Use Zone (Extractive) progressed through the new Work Authority process and was granted approval in just 11 months. It would be highly unlikely that this approval would be granted in the same time frame now.

1.2.3 General industry activity

Relevant statistics derived from the DPI's *Victoria's Minerals, Petroleum and Extractive Industries 2007/08 Statistical Review* (available at www.dpi.vic.gov.au) as at 30 June 2008 are:

- A total of 868 work authorities were granted under the former EID Act in Victoria.
- Total production from the 580 actual operating work authorities was about 54 million tonnes comprising hard rock (61 per cent of production, mostly crushed basalt, granite and hornfels) and soft rock (39 per cent of production, mostly sand and gravel). This mix of extraction type has remained relatively stable over the last 8 years while overall production has increased by 44 per cent.
- Of the 868 approved Work Authorities there were a further 153 at the 'proposal' stage and fourteen in the 'application' stage².



The average size of a Work Authority is 60 ha which is only 7% of the size of the average family run farm in the Wimmera³

² The 'proposal' stage application according to DPI is recorded when a screening meeting has been conducted by a DPI inspector with relevant parties. This is equivalent to the pre-application stage discussed in this report. The 'proposal' figures are derived from DPI statistics that are out of date as they include around 10% of withdrawn proposals. The 'application' stage refers to when a Work Authority application is lodged with all requirements to obtain an approved Work Authority, i.e. approved Work Plan, planning permit, rehabilitation bond, land owners consent, insurance and application fee.

³ Wimmera farm size derived from Victorian Year Book 2002. Work Authority size derived from DPI GeoVic data download.

Analysis of Work Authority activity⁴ data for the period 2000-1 to 2007-8 reveals that:

- Proposals have declined by 38 per cent over the period but have remained relatively stable since 2002-3;
- Applications have declined steadily and by 74 per cent over the period;
- The number of Work Authorities has increased by 22 per cent over the period but most of this increase occurred in a single year (2001-2 to 2002-3) when shallow extraction was included in the approval process; and
- The number of proposals that reach the application stage fell from 22 per cent in 2000-01 to 9 per cent in 2007-8. This has occurred despite increasing levels of demand as illustrated by increasing production levels.
- There is a deterioration of investment interest evident by the decreasing number of Work Authority applications when demand has been rising. Arguably the decreasing level of proposals that go on to the application stage is illustrative of a falling off of interest in investing in the industry once the sovereign risk is understood.
- Only one significant new quarry operation (rehabilitation bond greater than \$50,000) has been approved each year since 2004-5.

While demand is rising as evidenced by the rise in overall production, the decreasing number of Work Authorities would suggest the future of the industry is at risk. At a time of increasing demand when new quarries would be expected to be developed, very few significant operations are in fact being approved.

Of the 275 new Work Authorities granted between 2000-01 and 2007-08, only 18 (7%) were for significant operations with only 6 being hard rock operations. The lack of new quarries being developed or existing operations expanding will lead to a decrease in supply and competition in the market place.

Failure to develop new quarries will cause an increase in the cost of construction materials, leading to increased cost of building and infrastructure projects and a subsequent decrease in housing affordability. With 10 tonne/person/year of construction material used within Victoria, a future material supply shortage could be expected to give rise to price increases of 35 per cent and above. Such a price rise is a reasonable estimate given that there are existing examples of quarries without nearby competition that have ex bin prices in excess of 30 per cent above the industry average as quoted in Table 2.

A 35 per cent price increase would equate to an extra \$4.55/person/year (ex gate) or an extra \$240 million/year cost for Victoria. Such a significant price increase has never occurred in the industry.

Increased restriction of supply of stone due to increased regulatory burden is further demonstrated in the 2009 Cement Concrete & Aggregates Australia (CCAA) report, *The impact of the native vegetation framework on extractive resources in the Melbourne supply area*.

⁴ 'Activity' refers to the summation of all proposals, applications and granted Work Authorities.

This report concludes that the current Native Vegetation Framework effectively sterilises significant resources of sand and stone in the Melbourne area. With these regulatory restrictions, sand resources in the Melbourne area are expected to be exhausted by 2024 and the stone resources by 2030.

If quarries are forced to move further away from their market due to, say, urban encroachment limiting expansion of an existing site, increases in transport costs associated with longer haul distances from quarry to market will further increase the cost of product. In addition there is greater environmental impact (greenhouse gases, noise and air pollution) and social costs (road maintenance, road accidents) from transporting materials a longer distance.

Research by the CMPA in its submission to the EPA on the Protocol for Environmental Management in 2006 indicates that to increase cartage by say 50km for only half of Victoria's current production being moved by an average of 1 million truck movements per year, results in an extra 50 million kilometres being driven, discharging an extra 67,000 t CO₂-e into the atmosphere each year.

A recent report by Access Economics for CCAA⁵ estimated that an extra 50 km transport distance costs an extra \$8.89/tonne in direct transport, environmental and social costs. If only half of Victoria's current production had to be transported an extra 50 km, it would result in an increase of \$240 million/year in the cost of construction materials.

Potential cost increases of construction materials due to additional transport and shortage of supply could equal **\$480 million/year**.

The community and Government will pay the price for increased regulatory burden.

This failure needs Government action now. A streamlined approvals process needs to be implemented urgently.

1.2.4 Significant issues raised

The survey identified a range of issues and these are listed here; each was raised by more than one survey participant.

Changing Goal Posts

- Duplication and escalating information requirements;
- Increasing regulatory requirements;
- Duplication in roles of DPI and local councils;
- Inconsistent regulatory interpretation and advice.

Best Practice Regulation

- Unreasonable time in processing applications;
- Unacceptable costs of approvals process;

⁵ Economic contribution of the extractive industries in Victoria, 2006, Access Economics Pty Ltd for CCAA

- Lack of resolve by regulatory agencies;
- Lack of State stewardship of the resource;
- Lost opportunity in dollars and time.

Appeals Process

- Unstructured and inequitable approach to community consultation;
- Unaccountable political intervention;
- Need for appeal system for Environmental Effects Statement (EES) decisions;
- Unnecessarily complex and one-sided VCAT system.

Accountability

- Inadequate assessment of the costs of new regulations.

**1.2.5 Actions required**

The issues raised by the survey participants and from the subsequent detailed analysis has identified a range of actions that need to be taken by the Victorian Government to arrest the unsustainable environment in which the extractive industry is currently operating. The actions identified are consistent with the Government's red tape reduction policy and in line with best regulatory practice.

REQUIRED ACTIONS BY GOVERNMENTS

Changing Goal Posts

1. The Work Authority/Work Plan approval process should be centrally managed by the DPI. DPI should have the power to manage planning referral obligations to referral agencies to achieve an endorsed Work Plan, eliminating duplication of referrals. Council approval process should focus on offsite impacts with these aspects subsequently incorporated into the Work Plan.
2. Regulatory creep should not be accepted as the status quo and new regulations must only be introduced once an existing and equivalent cost requirement is eliminated.

Streamlined Approval Process

3. Introduce a refined Work Authority/Work Plan approval process with the following aspects:
 - a. A Code of Practice applicable to all quarries,
 - b. Simplified Work Plans,
 - c. A Work Authority containing generic conditions, rehabilitation bond, Code of Practice and Work Plan provided to Council with Planning Permit application,
 - d. Planning Permit application submitted to Council at the same time as DPI grants WA number,
 - e. Planning Permit conditions refer to only offsite impacts outside of the Work Authority boundary.

Best Practice Regulation

4. Regulatory bodies should make decisions based on evidence according to the triple bottom line of social-environmental-economic values without undue political pressure.
5. DPI and local government should streamline Work Authority/Work Plan approvals that recognise DPI's regulatory reach.
6. The administration of the MRSD Act should aim at achieving performance based outcomes that lower the costs and reduce the time of approvals for proponents.
7. Mandatory time frames for certain milestone decisions should be introduced and enforced, including Ministerial decisions.
8. New regulation should not be introduced unless appropriate resources are devoted to administer the regulation effectively.
9. The State Government should implement the recommendations of VCEC's environmental regulation inquiry concerning the mining and extractive industries (assuming they are as per the draft recommendations).
10. Referral agencies must be accountable. Regulators must be able to publicly defend their decisions.
11. DPI should focus on its role to improve approval outcomes.

- 12. The role of the independent Mining Warden should be expanded so that it has the power to expedite decisions and ensure time frames within the Work Authority/Work Plan approval process are met by potentially adjudicating in such matters with powers to make orders. Such a role for the Warden should be optional at the request of the proponent.**

Appeals Process

- 13. Objectors in the VCAT process should be required to substantiate their claims**
- 14. VCAT and Ministerial decisions should be based on relevant public information.**
- 15. VCAT should provide a low cost mechanism for all parties.**
- 16. VCAT should take account of all the material already provided by proponents and relevant pre-existing studies rather than require consultants to present at the hearing.**
- 17. An appeal mechanism for proponents should be introduced in the environmental effects statement process.**

Accountability

- 18. A cost : benefit analysis of new legislation should be conducted 5 years after implementation. If the legislation does not provide a net benefit, changes must be made to ensure this is achieved.**

2. INTRODUCTION

2.1 Current Situation

Extractive industries provide the raw materials for building and construction, which is vital to the State's development. A total of 580 quarries in Victoria reported production of 53.9 million tonnes in 2007/08, valued at \$739.4 million⁶. Extractive industries employ approximately 2,200 people⁷ within the state with an estimated flow on employment of additional 3 - 5 jobs for every 1 extractive industry job. The extractive industry is facing significant challenges that threaten its long term sustainability.

The Victorian Government's recent *Reducing the Regulatory Burden* initiative is a welcome focus on reducing red tape for business, but just how effective it will be for the Work Authority holder is questionable. For example, merging the MRSD Act and the EID Act into one Act, but retaining the provisions of the two Acts is a superficial reduction in the legislation relevant to the earth resources sector, but it does nothing to reduce the regulatory burden on the industry and its operators. In fact, several cost burdens relevant to the mining sector have been imposed on the quarrying sector. The recent Victoria Competition and Efficiency Commission (VCEC) draft report into environmental regulation in Victoria⁸ indicated that by streamlining mining and extractive industries regulations Victorian businesses would save \$3.8-3.9 million per year. How the Government responds to the Report's recommendations will demonstrate its actual commitment to reducing red tape.

Despite repeated attempts by governments of either persuasion at Federal or State levels to reduce red tape there has nevertheless been an avalanche of new regulatory imposts on the business sector generally and the extractive industry specifically over recent years. These increased regulatory burdens with their associated costs also come at a time of significant financial pressures when world markets are contracting due to the current recessionary pressures.

In order to ensure continued economic prosperity there should be an ongoing driver to reduce regulatory compliance costs. The State Government's program of sun-setting of regulations was originally designed to provide the opportunity to do this. It is not clear at all whether this has been effective or has become just another part of the process of developing new regulations. It is insufficient to merely estimate compliance costs in the form of administrative and processing costs – these are often the less significant costs. Regulation in the extractive industry can by its nature involve the need for significant capital investment to comply with safety and environmental requirements. These costs, and their associated opportunity costs, must also be calculated and assessed against the benefits before the proposed regulation is allowed to be implemented. Compliance costs are also barriers to entry to the industry.

⁶ Department of Primary Industries (2008) Victoria's Minerals, Petroleum & Extractive Industries 2007/2008 Statistical Review

⁷ WorkSafe Safety Statistics 2007/08

⁸ <http://www.vcec.vic.gov.au/CA256EAF001C7B21/0/B52950E42F750889CA257490001B4EB2?OpenDocument>

2.2 Survey Task

The extractive industry comprises several large business operators but many small operators. While entry and ongoing compliance costs can be disproportionately prohibitive for the small operators with reduced access to funds and limited internal specialist and professional capacity, they can represent unnecessary overhead costs for both large and small operators and have negative effects on business investment and expansion. The Construction Material Processors Association (CMPA) commissioned a survey of the regulatory processes and costs involved in making an application for a Work Authority under the former EID Act. All CMPA members as well as other industry participants were invited to participate.

The purpose of the survey was to:

- quantify the costs and time involved in undertaking a new application or variation to a Work Authority;
- establish a reference point for benchmarking industry costs in future; and
- clearly identify the costs of regulation on the industry for prospective new industry entrants.

The review will inform regulatory authorities about the costs associated with their demands and the associated impacts on the long-term sustainability of the industry. This information will also inform the Government relevant Ministers, and other authorities such as VCEC, the Federal Productivity Commission and Australian Competition and Consumer Commission.



Extractive industry is an important employer of skilled staff, especially in rural Victoria

2.3 Approach & Methodology of Survey

The project comprised a review of the processes involved in making an application for a Work Authority. Nine (9) extractive industry businesses volunteered to participate in this review. The invitation was extended to all industry participants, either CMPA members or not. The information collated from these businesses is vital in making an accurate assessment of the changing regulatory environment in the sector. The time and effort of each of these businesses is highly valued and greatly appreciated by the CMPA and a reflection on the significant impact the process has had on each business. It should be noted that the material presented is the proponents understanding of the events.

Each of these businesses made an application for a Work Authority or variation within the last eight years and most spent more than \$50,000 in application costs up to the issuing of the Work Authority⁹. The applications are a representation of:

- Rock and sand,
- Outer metropolitan and regional resources, and
- Approved, rejected or pending approvals after two years.

The data gathering process consisted of a request for data and detailed interviews with the nominated business contact.

It is acknowledged that the findings from the survey represent only the results of the participating businesses. Many other businesses made application for new or variations to existing Work Authorities over the last five years and their experience is reflected in the DPI industry wide data as presented in Table 12 and Section 6.2.3, *Are the case studies typical?*

2.3.1 Request for Data

Appendix 1 includes the formal request for data sent to participants. A set of nearly fifty questions sought information to support the review. Quite detailed cost and other information was requested, and as such participants were asked to provide data that can be verified. Where data could not be verified by for example, a copy of the original letter, facsimile or email, then duly authorised statements were accepted and these were to be acknowledged accordingly.

Verification of data

Data derived from the survey was verified by intensive review and analysis and further detailed discussion with participants.

Cost data - depreciation

It is very difficult to amortise the capital costs over a particular time frame, hence the report has considered the impact upon the first five year's sales.

⁹ This is to include costs associated with preparing the Work Plan, carrying out studies and attending any hearings. This is not to include site, plant or lost opportunity costs.

Work Authorities in Victoria do not have a regulator-set life - rather they last until the resource is fully exhausted (driven by market demand) or when they are relinquished by the Work Authority holder.

The Australian Taxation Office's, Australian Tax Handbook specifies that 'rights to quarry'¹⁰ are depreciating assets that can be depreciated over their effective life¹¹. The effective life of the quarry is the estimated period until the end of the life of the relevant quarry (or proposed quarry).

Where the right ends and a new right is granted, the new right is taken to be a continuation of the old quarry that the taxpayer held only if the new right relates to the same area as the old right. Otherwise it will be treated as a new right with an effective life equal to the remaining effective life of the quarry.

The taxpayer can recalculate the effective life of a quarry right¹², if the effective life that the taxpayer has been using is no longer accurate because of changes in circumstances.

The cost of obtaining this right is a depreciable item and as such cannot be expensed in the first year.

Capital expenditure associated with the 'right to quarry' which can not be placed against a depreciable asset can be referred to a 'black hole' contingency and depreciated over five years.



¹⁰ Rights to quarry include all costs associated with generating a new asset, i.e., an approved Work Authority

¹¹ s40-30(2)

¹² By using the method set out in ss40-95(10) and (11)

2.4 Outline of Case Studies

The following provides a brief introduction to the case studies used in this report. Full details of each case study are provided in Appendix 3.

Case study 1 involves an application to vary an existing Work Authority to extend the land area of the site an additional 17.1 ha, in order to extract between 20-30 million tonnes of hard rock resources. It is expected to produce a total of 5 million tonnes over the first 5 years.

Case study 2 involves a new Work Authority for a site which had previously been quarried. The proposal anticipates 700,000 tonnes of material being extracted in the first five years with an estimated total of 2.65 million tonnes of hard rock resources on the site.

Case study 3 involves a proposal for a new Work Authority. The total area of the site is 11ha, with 8ha earmarked for sand extraction. Approximately 1.5 million tonnes of product is estimated to be able to be extracted over the five year life of the operation.

Case study 4 involves a variation to a Work Authority with an extension of the extraction area by 324ha to a total of 562ha. The proposed extension will provide resource opportunities of 40-60 million tonnes of basalt over an expected period of 40-50 years or approximately 5 million tonnes over the first 5 years. The extension will access quality basalt for the production of crushed rock, concrete, asphalt and sealing aggregates.



Case study 5 involves an application to vary an existing Work Authority to enlarge the total area of the operation by 15ha to increase extraction to 450,000 tonnes over the first 5 years of hard rock with a total extractable resource of 6.5 million tonnes over its life.

Case study 6 involves a proposal for a new hard rock Work Authority. The proposal involves capturing substantial reserves of high quality basalt stone (approximately 16.5 million tonnes) with approximately 900,000 tonnes recovered over the first 5 years of operation.

Case study 7 involves an application for a new Work Authority for a small sand and soil operation of approximately 4.9 ha. This will involve extraction of approximately 50,000 tonnes of material over an anticipated life of the site of 5 years.

Case study 8 involves a proposal for a variation to a Work Authority to enlarge the area of the existing site to realise approximately 1million tonnes of product over the first 5 years with a total extractable resource of 40 million tonnes over its life.

Case study 9 involves a proposal to vary an existing Work Authority to enable extraction of sand and soil from another section of the 98 ha property as the existing site is almost exhausted. The variation will involve extraction of approximately 150,000 tonnes of product over the first 5 years.

2.4.1 Case Study Summary

As at the end of July 2009, of the nine case studies considered in this survey:

- 3 have been approved;
- 2 have been rejected;
- 1 is pending mediation with the proponent, council and VCAT;
- 1 holds a planning permit but has not been issued a Work Authority as it needs to reapply for work plan variation;
- 1 is pending a decision on the EES;
- 1 has yet to be submitted to DPI for endorsement

These applicants entered the system at various times, resulting in slightly different regulatory obligations and expectations being placed upon them.

2.5 A 'Decade' of Concerns

In undertaking this project, the CMPA is aware that these matters have been of concern to Members for many years. The CMPA has expressed concerns about the cost of the Work Plan process repeatedly over this time. As early as 2000, soon after the Association's establishment, the CMPA in providing advice to the DPI in its Competition Policy Review of the EID Act and Regulations, provided examples of the negative costs of the process. The following was provided to the Review at that time to illustrate the problems that have arisen in the area of the EID Act and planning processes. The illustration holds true almost a decade on.

A company owned and operated a limestone extraction quarry in a large regional council. The operation had a Planning Permit and an Extractive Industry Licence as required under the previous Act. The quarry is a relatively shallow operation with a maximum depth of 3 metres and generally a depth of 2 to 3 metres. Both the Extractive Industry Licence and the Planning Permit required a 20 metre buffer zone. Following implementation of the new Act in 1995, and the abandonment of specific buffer zone requirements, the company applied for a variation of its Work Plan to extract within 5 metres of the Work Authority boundary.

The variation was subsequently endorsed by the [DPI's predecessor] and submitted to the council for approval. The council rejected the variation because the land use controls in the council's Planning Scheme require that all extractive industries have a 20 metre buffer zone as a mandatory requirement. The [DPI's predecessor] made representations to the council on behalf of the company indicating their satisfaction with the safety and rehabilitation proposals of the variation to the work approval. The council abided by its initial decision.

The company was advised of its rights to apply to VCAT but after assessing the costs decided against taking any further action. This policy decision by council effectively sterilises available resources and brings into question the use of specialist skills within the [DPI's predecessor] to make practical resource extraction decisions.



The subsequent report of that Review used this example and drew the following conclusions¹³ :

It is clear that, notwithstanding the primacy of the planning approval process in extractive industry matters, a greater degree of assurance is needed by investing businesses (Work Authority holders) about all hurdles required to be scaled in proposing developments on existing sites. Close relations with each approving agency, municipal councils and Department of Natural Resources and Environment [DPI's predecessor], will enable a better integration of approvals where the issues of concern to each are similar. A clear delineation of the functions and policies of each, especially at the margin, is necessary and will assist in providing some degree of certainty in the process for industry participants.

Despite the clear expression of concerns enunciated in the Review report little or no response has been provided by the State Government leaving no other conclusion for the industry than the Review being a 'box-ticking' exercise.

In September 2005, CMPA hosted a Work Plan Forum to discuss issues associated with Work Plans. Issues were identified and strategies developed to address these, but only some have been implemented. At this Forum, consultants indicated they would not be working on extractive industry projects due to the uncertain process and difficulty in obtaining outcomes.

A further review¹⁴ of the legislation has recently been conducted but this also appears to be an exercise in uniformity of regulation and its regulators rather than a serious attempt at minimising unnecessary compliance costs on those businesses.

¹³ National Competition Policy Review of the Extractive Industries Development Act and Regulations, for the Department of Natural Resources and Environment, 17 October 2000.

¹⁴ Review of the efficient regulation of Victoria's extractive industries, Final Report, March 2008.

3. THE WORK AUTHORITY & VARIATION PROCESS

3.1 The Application Process

The EID Act requires that a person cannot undertake extractive operations without an approved Work Authority. Appendix 2 lists the steps involved in securing approval of a Work Authority. In essence the Work Authority; while it contains its own regulatory requirements including a Work Plan endorsed by the DPI, rehabilitation plan and payment of a rehabilitation bond; can only be approved once associated planning requirements are complied with. Planning requirements consist of a Planning Permit or in some instances an Environmental Effects Statement (EES).

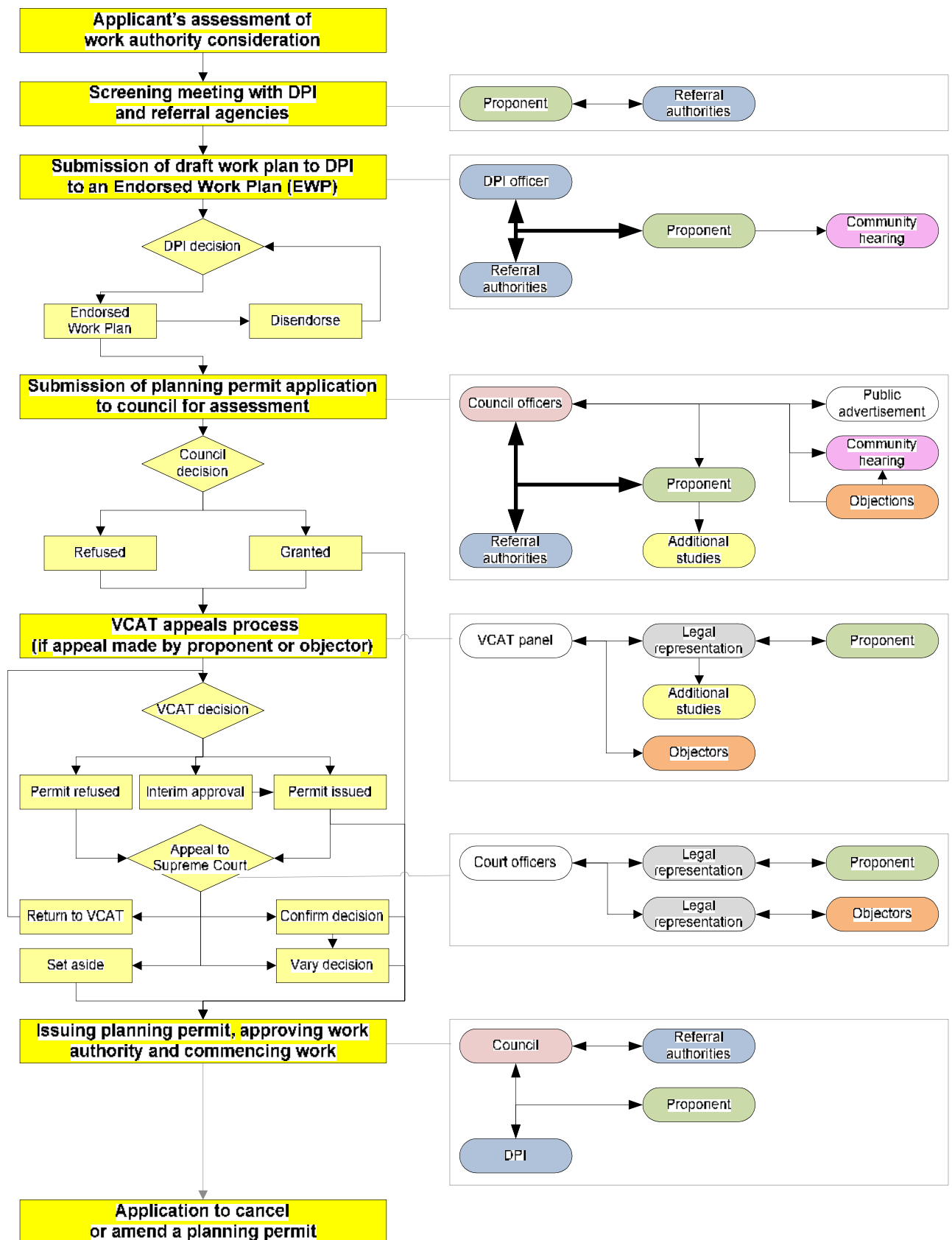
In summary, applying for a Work Authority is a three phase sequential process:

- **Pre-application process:** This is an information gathering, data collection and analysis stage. At the successful completion of this stage the application will be endorsed by the DPI. This involves three separate steps including the preparation of a draft Work Plan, including a rehabilitation plan.
- **Planning process:** This involves making application under the *Planning and Environment Act 1987* (P&E Act) for a Planning Permit to the council. This has several separate steps, dependent on whether the council decision is appealed. Community consultation is a compulsory part of the process.
- **Final application process:** This is the culmination of the first two stages and involves application to DPI of the Work Plan and rehabilitation plan. This involves only 2 steps and is usually completed relatively quickly.

The EID Act allows a Work Authority holder to apply for a variation of an approved Work Plan and Work Authority.

The following summary of the current Work Authority approval process is what happens in reality.

Figure 1 provides a summary of the approvals process. It highlights duplication and complexity in the process and the lack of stewardship of the state's extractive resources which are for the benefit of the whole community. A more complete representation of the process is provided in Appendix 4. Time frames quotes are derived from the case studies described in the report. The number of individuals or parties involved in the process (or inputs) may be as many as 117, dependent on the complexity and contentious nature of the proposal. Whilst it is important to receive input into the proposal from key stakeholders, any process that requires over 117 inputs is too difficult and complex and liable for unnecessary duplication.

Figure 1 Summary of 'real' Work Authority approval process

See Appendix 4 for further details

Pre Application Process

3.2 Applicants personal assessment of Work Authority consideration –

Average time 10 months with range from 2 – 24 months (derived from 6 CMPA member's experience for significant sites)

- i. Determine the market need and conduct a commercial assessment of the proposal. This would include a projected cost of application process, market economic impact and capital cost of project.
- ii. Carry out practical assessment of the impact of the proposed Work Authority application taking into account flora and fauna, access, visual, surrounding buffers and neighbours.
- iii. Undertake an initial planning assessment to confirm if area is a permit use for extractive operations or establish if it is practical to consider re-zoning options.
- iv. Conduct a resource assessment to confirm quality and reserves.
- v. Prepare a concept development plan.

3.3 Screening Meeting with DPI and Referral Authorities through to Creation of Draft Work Plan (DWP) –

Average time 10 months with range from 4 – 16 months

- i. Contact DPI and organise a screening meeting on site (also known as initial site meeting) with referral authorities as per Table 1. Bring a copy of a location map to the screening meeting (e.g. land title) and check:
 - the land and land title document for infrastructure such as easements, high pressure gas pipelines, oil pipelines, underground or overhead power lines, or telephone cables and consult the appropriate authorities; and
 - for overlap with Mining and Exploration Licences and consult the appropriate licensees [NB. a Mining Licensee can refuse consent to an extractive industry proposal (Section 26 of the *Extractive Industries Development Act 1995*)
- ii. Concerns and requests of the referral bodies that have attended the meeting or sent direction as a result of the meeting will need to be addressed by applicant in the development of their DWP. The relevant referral agencies will vary from site to site dependent on the issues at each site.
- iii. DPI records this meeting noting who attended and issues a Work Authority number which is provided to the applicant.

Note: The date of the screening meeting should be generally acknowledged as the start of the application and approval process for the project so there is a common understanding by all parties.

Note: Referral agencies attending the screening meeting should receive the generic proposed work plan or work authority conditions so they better understand the role of DPI and other regulatory bodies.

Table 1: Screening meeting referral authorities

AGENCY	POSITION	AREA OF EXPERTISE
PRIVATE AND CROWN LAND - COMPULSORY PERSONS/AUTHORITIES:		
Earth Resources Division, Department of Primary Industries (DPI)	Manager, Minerals and Extractive Operations (applicable to region)	Technical, Design
Earth Resources Division, Department of Primary Industries (DPI)	Environmental Officer (applicable to region)	Environmental Management, Rehabilitation
Resources & Regional Services, Department of Sustainability & Environment (DSE)	Senior Land Use Planning Officer (applicable to region)	Environmental Impact
Council	Planning Officer GM Infrastructure GM – Environment & Planning Senior Environmental Officer Environment Officer	Planning, Amenity, Access, Offsite impacts, Traffic, Land Capability
Aboriginal Affairs Victoria (AAV)		Aboriginal heritage/archaeological values
Department of Environment, Water, Heritage and the Arts (Commonwealth)	Environment Officer	Determination whether the proposal is a controlled action under the <i>Environment Protection and Biodiversity Conservation Act 1999</i>
WorkSafe	Field Officer	OH&S
CROWN LAND ONLY - OPTIONAL PERSONS/AUTHORITIES:		
Resources & Regional Services, DSE. OR Forest Service (FS), DPI, OR Parks Victoria	Land Manager or Local Officer	Rehabilitation, Environmental Impact, Land Management, Tenure Arrangements, Native Title Forests: Land Management National Parks: Land Management
PRIVATE AND CROWN LAND - OPTIONAL PERSONS/AUTHORITIES:		
Resources & Regional Services, DSE	Native Vegetation Officer	Flora, Fauna, Ecosystems
Future Farming, DPI	Project Officer	Agriculture, Erosion, Salinity, Water Quality
Surface, Ground and Catchment Water Management Authorities	Water systems health	Surface and ground water
Heritage Victoria		Historical
Environment Protection Authority (EPA)		Noise, Dust, Pollution, Discharges, Landfill
Relevant Infrastructure Authorities, e.g. gas, power lines, VicRoads.		
	Landowner	

3.4 Submission of Draft Work Plan (DWP) to DPI through to endorsement of Work Plan –

Average time 6 months with range from 2 – 14 months

- i. Applicant to commission heritage review of the applicable Work Authority area under consideration. If no sensitive issues are identified, no further action required. Where a sensitive area is identified, arrangement for a cultural heritage management plan (CHMP) must be organised and developed.

Note: The consultant carrying out the report must register cultural artifacts.

Note: The impact of CHMPs is only now impacting on the approvals process with escalating cost and time.

- ii. At first screening meeting DSE may request consultant to be engaged following their inspection of the site to conduct a full flora and fauna assessment.
 - If no sensitive issues are identified, no further action required.
 - In relation to rare and threatened species, there are no guidelines about the resolution of studies; it is left to the consultant to establish adequacy. Where rare or threatened significant animal species are identified within the site, a very high conservation significance rating is triggered.
 - Native vegetation would involve identifying the area where the Work Authority activity is going to be undertaken and:
 - avoiding areas where significant issues are identified (e.g. Western basalt plains and forest areas are all rated Very High, encapsulating large tracts of Victoria's private and public lands); or
 - if unable to avoid identified areas: minimising impact; and providing offsets for loss, either on or off site.

Note: For each Habitat Hectare lost, an approximate rule of thumb is that 5 hectares will be required to be permanently offset through caveats and future management and upkeep.

Note: The impact of the native vegetation framework is only now impacting on the approvals process with escalating cost and time.

- iii. Applicant is to commission a surface water and groundwater study, to establish whether there are issues within the DWP area. If no sensitive issues are identified, no further action is required. Where an issue is identified, develop a surface water and groundwater management plan that addresses these issues.
- iv. Concurrently with the above three points, complete the DWP also taking into account:
 - Access and traffic management into and around site
 - Visual impact of the operation

- Noise impact
- Dust impact
- Blasting impact (if applicable)
- Geotechnical issues, slope stability and slimes dams
- Water storage facilities

Note: Where recommended EPA buffer distances are not being met, consultants would be engaged to underpin the Work Plan development.

- v. Included in the DWP is a separate rehabilitation plan. This must take into account end use of the site.

3.4.1 Endorsement of DWP

- i. Proponent must present the completed DWP to DPI for registering and assessment. Preferably a meeting should be organised with DPI to explain the DWP.
- ii. The DPI reviews and edits the DWP and writes back with requirements for further information.
- iii. Proponent returns DWP to DPI with further information or changes as required, this process may be repeated a number of times until the DPI is satisfied.
- iv. Once the DPI ensures the DWP addresses the issues raised at the initial screening meeting and meets the requirements specified in Schedule 1 of the Extractive Industries Development Regulations 2007, DPI may require further copies of the DWP and refer it where applicable, to:
 - DSE
 - Applicable surface, ground and catchment water authorities
 - EPA
 - Work Safe Victoria
 - VicRoads (where applicable)
 - DPI Agriculture

Note: The proponent is required to consult directly with AAV to ensure that any required CHMP is developed.

Note: One obvious exclusion from this list is local council, even though they were involved with the original screening meeting (as with all the other parties above except for Work Safe).

- v. Responses from the above referral agencies are received by the DPI, the DPI then relays the requests for further information or amendments back to the applicant, note DPI may filter some of the requests before sending to the applicant.
- vi. Proponent returns DWP to DPI with further information or changes as requested, this process may be repeated a number of times until the DPI are satisfied.
- vii. If all changes are accepted and satisfy the agencies' requirements, the DPI endorses the DWP to an endorsed Work Plan (EWP).

Note: With the AAV, DPI may require you to have the Cultural Heritage Management Plan in place prior to endorsement of the DWP; and With the DSE's Net Gain Provisions, DPI may require you to have the offsets for native vegetation agreed to or arranged to the satisfaction of the DSE before endorsement of the DWP.

Note: The CHMP and the security of the Net Gain should not be required until the Planning Permit is issued as the application maybe rejected.

Note: One case study identified that the Work Plan endorsement process was not adequately recognised by the planning process. DPI endorsed a Work Plan when there was a Planning Permit application for a dwelling within the buffer distance, but did not take the implications of this application into account. DPI subsequently dis-endorsed the previously EWP and required the proponent to resubmit his DWP for re-endorsement addressing the required changes.



Planning Process

3.5 Submission of Planning Permit Application to council through to approval/rejection by Council –

Average time 9 months with range from 1 – 15 months (approved) or; Average time 7 months with range from 5 – 9 months (rejected)

3.5.1 Simple Site

The applicant is to apply and submit a planning permit application with 3 copies of the EWP to council.

3.5.2 Complex Site

- i. Applicant may have to engage a planning consultant to prepare a submission which would include the EWP
- ii. The planning consultant may consider it necessary for specialist reports to be sought supporting the planning application where it is felt that specific issues are deficient, this could include:
 - Traffic and access routes and potential impacts
 - Visual impact assessments and landscape planning
 - Noise emissions
 - Dust emissions
 - Property impact valuation on adjoining land
 - Other off-site issues specific to the site e.g. flood plain issues
- iii. Planning consultant puts together all of the above with the EWP and presents to council

Note: A decision by Government is made as to whether an EES or Planning Permit approval process is followed.

3.5.3 Councils

- i. Council planning officers, on receiving planning permit with the attached EWP assesses the advertising which will be required e.g. adjoining land owners, local papers etc.
- Note: Council should receive the generic proposed work plan or work authority conditions with the planning permit application so that council understands the role of DPI and other regulatory bodies.*
- ii. Objections received by council as a result of applying for the planning permit are supplied to the proponent and meetings are coordinated and arranged between all parties (public meetings) to assist in addressing and or developing outcomes which are acceptable. This may involve numerous meetings both on site and at other venues.
 - iii. Council then sends a copy of the Planning Permit Application with the EWP to all previous referral agencies including the DPI who just sent it to them for their comment.

Note: The EWP fails as officers from council are often dealing with different people within the agency to those that had previously dealt with the proposal under DPI's EWP process. This creates disharmony and differences of opinion within agencies that further delays the process and increases proponent costs.

- iv. Council will internally assess perceived issues against their checklist.
- v. Council planning officers may then request further information from the applicant. Council planning officers may also request further information from referral agencies; this will go back to council for re-directing to the applicant.
- vi. Applicant must decide if required changes or information requests are to be met, if sent back to council, council planning officers will go over and re-send to agencies for their comment.

Note: The Council/agency/proponent referral process will go on for many months and sometimes over one year until all referral agencies are satisfied, or applicant refuses to give any further information or undertake changes to their EWP.

- vii. Council planning officers have to make an assessment and in the end may recommend to refuse to issue a permit or may issue a permit with conditions that require these requests to be met.
- viii. Council planning officers produce a report: 'yes it can be granted with these conditions' or 'it is refused based on these reasons'.
- ix. This report then goes to councillors for a full council meeting or to a planning committee for a decision.
- x. Note: At this point a decision is made to refuse or approve (this may not agree with the council officers' recommendations).
- xi. Councillors may also decide to refuse even though all conditions of the referral bodies are met by the applicant.

Note: Proponents/land owners concepts of rehabilitation are often compromised because referral agencies have their views of what the required outcomes should be.

3.5.4 Releasing of Planning Permit Application outcome

Council determines whether or not to grant a planning permit, then notifies the objectors (if any) and the applicant of the determination and either can appeal the decision.

3.5.4.1 If no appeals

Refer to section 3.7 Issuing planning permit, approving Work Authority and commencing work.

3.6 VCAT Appeals process from VCAT Application date to right to commence work –

Average time 18 months with range from 9 to at least 39 months

- i. Appeal options:
 - The applicant may appeal against its conditions or council's refusal or failure to grant a permit
 - Objector may appeal against the council's decision to grant a permit
 - The objector can become a party to the process if the applicant is appealing against council's decision.
- ii. Appeal party makes application for review of council decision to VCAT
- iii. Once application is lodged there may be direction and other preliminary hearings which may require applicant and other parties to do various things to prepare case for hearing

- e.g. parties may be asked to provide statements of grounds. For example the applicant in Case Study 2 of Appendix 3 was required to amend the application and take other steps to clarify the issues
- iv. Applicant now waits for VCAT to set a hearing date.
 - v. Applicant will normally arrange legal representation (as the amount of investment in the application to date and the likely complexity of the issues to be dealt with make representation necessary for this industry sector)
 - vi. The legal representative will then seek to identify the issues which have arisen from objections and the issues which historically have arisen in these applications, and will then assess the EWP in terms of these issues
 - vii. The legal representative will begin preparation of the case and will engage an appropriate qualified expert with established credibility at VCAT, in relation to each of the issues which have already arisen, or are considered potentially likely to arise.
 - viii. The legal representative instructs each expert to prepare an expert report. The expert reports are filed with VCAT and copies provided to each of the parties.
 - ix. VCAT sets an appropriate number of days for the hearing. Note: this arises by reason of information which the parties are required to give VCAT in advance as to the number of witnesses the party is proposing to call and the time established by the party which will be required for the party's case
 - x. At the conclusion the tribunal will determine either
 - The permit will be issued and on what conditions. Note: Conditions may include requirements of secondary consent given by other authorities, for example Case Study 6 of Appendix 3 where in excess of five months was lost while this process alone was undertaken; or
 - Refuse to grant the permit totally; or
 - Give an interim approval subject to various matters being dealt with before the permit's final approval is granted.
 - xi. Any party can appeal the VCAT decision to the Supreme Court, or in some circumstances to the Court of Appeal, but only on a point of law and not on the merits (see Case Study 2 of Appendix 3 where the applicant appealed on the basis of a lack of procedural fairness)
 - xii. The appeal process requires legal representation and considerable preparation. The applicant must first make application to the court for leave to appeal, which will not be granted unless a prima facie case is made out on the point of law. Application for leave involves a hearing which might take half a day
 - xiii. If leave is granted, there is further preparation before a full hearing by the court, which may run into days
 - xiv. The court may confirm, vary or set aside VCAT's decision, or make any order which VCAT could have made. Alternatively the court can send the matter back to VCAT for a further hearing. (See Case Study 2 of Appendix 3)

Final Application Process

3.7 Issuing planning permit, approving Work Authority and commencing work –

Time ranges from 3 days to 6 months

3.7.1 Issuing planning permit

- i. VCAT directs that a permit be refused, or issued with conditions, which may differ from any conditions which were before VCAT during the hearing, and very frequently are considerably expanded to provide comfort to the parties opposing the grant of the permit.
- ii. If directed to issue a permit, Council issues the permit and sends a copy to the proponent and DPI.

Note: In one of the case studies, VCAT in the permit conditions directed that a number of changes be made to what was described as ‘the approved work plan and work plan conditions approved by the responsible authority which will form part of this permit.’ There was uncertainty as to the interpretation of some of the conditions and how they were to be integrated into the Work Plan, and this led to a process of consultation and negotiation involving DPI and the Council. This raises questions as to who approves Work Authorities and illustrates the lack of clear definition of roles.

- iii. If the planning permit includes conditions requiring secondary consents of referral authorities it may be necessary to re-submit the EWP to those authorities and obtain approval of amendments.

Note: Planning permit conditions must be practical, workable and have a clear and justifiable purpose. Too often in the interest of satisfying those opposing the permit they are almost impossible of practical fulfilment, or they add a layer of expensive compliance to address an issue which on a practical level is not really an issue at all.

The difficulties of aligning an EWP to the conditions of the planning permit when issued threatens to create a further and unregulated process on top of the planning permit process.

Every time a DWP or EWP is altered the proponent incurs considerable expense and loss of time. In terms of expense, apart from consultants costs, a proponent may have to produce in excess of 10 copies of the full Work Plan each time, at a cost of up to \$4,000.00.

3.7.2 Approved Work Authority

Note: Once a planning permit has been issued the time frames for issuing a Work Authority application is relatively speedy in most cases and has not been recorded here.

- i. The DPI sends a letter to the proponent with the approved work plan including requests for:
 - A copy of the issued permit
 - A copy of the EWP with changes as required to incorporate issued planning permit
 - A rehabilitation bond
 - Land owner's consent
 - Current Public Liability insurance over the Work Authority area
- ii. Payment of application fees.
Once the DPI is satisfied that all of the above requirements have been addressed they will issue a Work Authority to the proponent. This whole process could be done in parallel.
- iii. The proponent is then issued a Work Authority by the DPI which will allow him to commence works

3.7.3 Commencing work

- i. The proponent may be required/directed to undertake further works (including placement of capital equipment for monitoring and recording).
- ii. The proponent may be required to provide reports and studies to be placed before specific referral agencies for their approvals before works can be undertaken on the site, depending on the conditions of the issued Planning Permit.

Note: These requirements may be noted on the issues planning permit but is not always the case.



3.7.4 Further Applications

Having got to the point where the planning permit has been issued, any required secondary consents of authorities have been obtained, any changes to the endorsed Work Plan consequential to planning permit conditions have been approved by DPI, the Work Authority has been issued and the proponent has commenced work, the proponent may still not be free of the process. An application can be made to cancel or amend a planning permit in a number of circumstances including where there has been:

- a material misstatement or concealment of fact in relation to the application;
- a mistake in granting a permit;
- a substantial failure to comply with permit conditions; or
- a material change in circumstances.

An application of this sort can be brought by the council, a referral authority or any objector or other person who would have been entitled to be an objector.

Note: While it would be expected that there would be a mechanism to redress performance failures down the track in complying with permit conditions, it would appear that in one of the case studies an application of this sort is being used by an objector to continue the argument, rather like a de facto appeal, after the Tribunal has decided in favour of the proponent and directed that a permit be issued. Shortly after the issuing of the Work Authority and the commencement of work by the proponent, an objector has made application to VCAT to revoke the permit on the grounds that there has been a material misstatement or concealment of fact, a substantial failure to comply with the permit conditions and a material mistake in relation to the grant of the permit. The objector alleges an inability to obtain licences required by law, that a report provided failed to comply with the requirements of the permit conditions, and that there are uncertainties in the permit conditions.

Use of the system in this way places a proponent in the position where the process of obtaining the required approvals to establish and operate a quarry has no finite end, either in time or cost.

3.8 Environmental Effects Statement (EES)

The *Environment Effects Act 1978* provides for assessment of proposed projects that are considered to have a significant effect on the environment. The Minister administering the Act might typically require a proponent to prepare an EES when:

- There is a likelihood of regionally or State significant adverse effects on the environment;
- There is a need for integrated assessment of potential environmental effects (including economic and social effects) of a project and relevant alternatives; and
- Normal statutory process would not provide a sufficiently comprehensive, integrated and transparent assessment¹⁵.

¹⁵ DSE 2006, Ministerial Guidelines for Assessment of Environmental Effects under the EES Act, p 2.

Irrespective of what is required by the State, approval may still be required from the Commonwealth Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). In such cases, the two processes can be combined or run parallel to each other.

The EES process is extensive, and can be quite protracted and costly (in terms of obtaining the necessary consultants reports and lost opportunity costs).



The EES process is used to assess the larger, more contentious projects

4. SURVEY RESULTS

4.1 Costs of the Process

4.1.1 Pre-application & Planning Costs

Table 2 shows the volumes of material sold for the 2007-08 year, the dollar value of those sales and calculates an average unit rate per tonne for each of the material types. Note that production from Work Authorities does not include production from recycled concrete or paddock rock and it is estimated that an extra 15% could be added to the annual rates.

Table 2 2007-08 Sales volumes and value, and unit rate

Rock Type	Sales - tonnes	Sales - value (\$A)	Average Unit Rate
Hard Rock	33,194,068	\$478,986,225	\$14.43
Soft Rock*	20,714,997	\$260,407,346	\$12.57
Total	53,909,065	\$739,393,571	\$13.72

Source: DPI 2007-08 Statistical Review

(*) This includes clay, limestone, sand, shale, gravel and tuff.

Table 3 provides a summation of the costs involved in the process from the survey of the nine case studies who have recently undertaken the process of applying for a new Work Authority or an extension of an existing one. As noted earlier several of the case studies are still in the application process.

Table 4 summarises these costs and shows for each case study the estimated tonnage in the first five years of proposed or actual production and the total costs of the application process. From this a financial impact is derived as a compliance cost rate per tonne and this cost is shown as a percentage of the unit rate derived from Table 2.



Table 3 Summary of costs of case studies

No.	New or Variation	Material Type	Pre-Application Process Cost (\$)	Planning Permit or EES Process Cost (\$)	Management costs (\$)	Financing costs (\$)	Total Costs (\$)	Work Authority Approved	Approved or Rejected
1	Variation	Hard rock	Included in Planning Permit process	\$3,500,000	\$525,000	\$1,112,033	\$5,137,033	Not submitted	Rejected via EES
2	New	Hard rock	\$510,687 ¹⁶	\$532,498	\$55,317	\$152,835	\$1,289,337	Pending VCAT mediation	
3	Variation	Sand	\$327,000 ¹⁷	\$159,000	\$38,880	\$145,015	\$669,895	Not submitted	Rejected at VCAT
4	Variation	Hard Rock	Included in Planning Permit process	\$1,400,000	\$98,000	\$406,134	\$1,904,134	Pending EES ruling	
5	Variation	Hard rock	\$157,000	\$185,000	\$17,100	\$96,450	\$445,550	10-08-07	Approved
6	New	Hard Rock	\$442,000	\$179,000	\$62,100	\$188,700	\$871,800	20-07-09	Approved
7	New	Sand / soil	\$8,200	\$1,000	\$1,000	Nil	\$10,200	28-03-08	Approved
8	Variation	Hard rock	\$703,976 ¹⁸	\$92,603	\$79,658	\$242,088	\$1,118,325	01-06-07	Approved
9	Variation	Sand	\$69,600 ¹⁹	Not at this stage	\$3,500	\$20,196	\$93,296	Pending	

¹⁶ This includes offsets for habitat hectares of \$490,000

¹⁷ This includes land holding costs of \$200,000.

¹⁸ Includes purchase of land for native vegetation offsets.

¹⁹ This is an unfinished stage as at July 2009 Draft Work Plan yet to be submitted to DPI due to delay in completing CHMP.

Table 4 Tonnage and costs of Work Authority process

Case Study	Material	First Five Year Tonnage	Total Application Costs	Financial Impact (\$/t)	As a % of Unit Rate
1	Hard rock	5,000,000	\$5,137,033	\$1.03	7%
2*	Hard rock	700,000	\$1,251,337	\$1.79	12%
3	Sand	1,500,000	\$669,895	\$0.45	4%
4*	Hard rock	5,000,000	\$1,904,134	\$0.38	3%
5	Hard rock	450,000	\$445,550	\$0.99	7%
6	Hard rock	900,000	\$871,800	\$0.97	7%
7	Sand/soil	50,000	\$10,200	\$0.20	2%
8	Hard rock	1,000,000	\$1,118,325	\$1.12	8%**
9*	Sand	150,000	\$93,296	\$0.62	5%

* ongoing project, Work Authority yet to be granted, so costs and time are minimum values

** Work Authority variation did not fully address issue of access to rock, additional Work Plan variation ongoing

From Table 4 it can be seen that the costs of compliance with the Work Authority process are within a band of \$0.38-\$1.79 per tonne or 3-12 per cent of the unit rate for hard rock extraction and \$0.20-\$0.62 per tonne or 2-5 per cent of the unit rate for sand and sand/soil. Note that the upper range may increase as the approval process has not been completed yet for several cases.

The data shows that costs associated with the soft rock developments are a half to one third of the costs associated with hard rock quarry developments. This reflects the potential environmental risks and impacts in hard rock extraction are significantly greater than for sand extraction due to the material and techniques and processes involved in extraction.

There is an additional penalty for regional operators who do not have the scale economies to soften the impact of regulatory costs.

4.1.2 Costs of Appeals to VCAT

Section 77 of the *Planning and Environment Act 1987* provides that an applicant for a permit that is refused may appeal to VCAT. An appeal is subject to a fee prescribed by the Tribunal. In cases where the value of the project is greater than \$5m the fee is \$1,169. Where the value of the project is less than \$5 million the fee is \$291.70.

Most appeals lodged proceed directly to a hearing. In some circumstances the tribunal may direct, or a party may request, that a directions hearing be held prior to the final hearing. Usually a hearing date of an appeal for review under the Act will be set three to four months after the appeal is lodged. For extractive industry projects, the tribunal usually decides to inspect the property concerned before giving a decision.

While a submission may be made orally they are almost always in writing. Submissions are supported by locality plans, photographs of the site and the surrounding area, and the location of the objectors' properties or plans. Parties to an appeal may appear in person or be represented by another person such as a planning consultant or a lawyer. Extractive industry project proponents would generally be represented by legal counsel.

During a hearing a party may call expert and/or other witnesses to give supporting evidence. Witnesses may be cross-examined by other parties or questioned by the sitting member. A written report containing evidence of an expert witness must be circulated to the other parties and given to VCAT 10 business days before the hearing. Typically for appeals in relation to extractive industries the proponent will call a range of expert witnesses who have been engaged by the proponent to undertake the required investigations. Depending on the nature of the matter, hearings are conducted over several days and the expert witnesses are required for each sitting.

The four case studies used in this study that were subject to the VCAT system were each represented by two legal counsel and 7-8 expert witnesses. The case studies indicate that costs associated with attending VCAT and the appeal process range from \$149,800 to \$558,251.

4.2 Time Frames Associated with the Process

Table 5 provides a summary of the time lines of the survey of nine companies that have recently undertaken the process of applying for a new Work Authority or a variation to an existing Work Authority. Several of the companies are still in the application process. The names of the companies, localities and councils have not been included for privacy reasons.

Tables 6 and 7 summarises the time lines (in months) involved in the pre-application process for each of the case studies from its starting of the process (initial screening meeting on site with the proponent and the DPI inspector and referral authorities, as per Table 1) until the draft Work Plan (DWP) is submitted to the DPI and when it is endorsed. Where the pre-application process has not been completed the Table shows total months from the pre-application start until July 2009 (with a note of 'at least' to indicate that this process is ongoing and the time frame quoted is a minimum). It is noted that a timely approval process is assisted by a proponent who effectively manages their own time and input into the application process.



Table 5 Summary of Time Frames of Case Studies

Summary				Pre-Application Process			Planning Permit or EES Process			Outcome/current status (1 July 2009)
No.	New or Variation	Material Type	Region	Screening meeting	Work Plan to DPI	Work Plan endorsed	Application Made	Initial Decision	VCAT Hearing	Check dates
1	Variation	Hard rock	Outer metro	Stakeholder Reference Group Dec 2001	Jan 2007	March 2007	June 2007	Rejected Nov 2007	No	Extension to Work Authority rejected because Minister stopped EES process June 08
2	New	Hard rock	Regional	Nov 2003	Aug 2004	Jul 2005	Jul 2005	Rejected Feb 2006	Yes	Pending VCAT mediation
3	Variation	Sand	Outer metro	Jan 2004	April 2005	June 2005	Oct 2005	Rejected July 2006	Yes	Rejected at VCAT May 2007
4	Variation	Hard Rock	Outer metro	July 2004	Dec 2005	May 2006	March 2008	Decision pending	No	Pending Minister's decision concerning EES outcome July 2009
5	Variation	Hard rock	Regional	Aug 2005	Oct 2005	Feb 2006	Feb 2006	Granted Oct 2006	Yes	WA Approved Aug 2007
6	New	Hard Rock	Regional	June 2005	Oct 2006	Dec 2007	Jan 2007	Granted Nov 2008	Yes	WA Approved July 2009
7	New	Sand / soil	Outer metro	Dec 2005	Jul 2006	Oct 2006	Nov 2006	Granted Feb 2008	No	WA Approved March 2008
8	Variation	Hard rock	Regional	Mar 2006	Nov 2006	Feb 2007	March 2007	Granted April 2007	No	WA Approved ²⁰ June 2007
9	Variation	Sand	Outer metro	Sep 2006	Pending	Awaiting proponent's work plan submission				

Pending = the stage has not been reached as yet

²⁰ A new Work Plan variation is being considered to obtain additional rock.

Table 6 Time Frame for Pre-application Process (Planning Permit case studies)
(from initial screening meeting to endorsement of Work Plan)

Case Study	DPI Screening meeting	Draft Work Plan (DWP) Submitted to DPI	DPI Endorsed Work Plan	Total Months		
				Screening meeting to DWP Submitted	Submitted DWP to Endorsed Work Plan	Screening to endorsed Work Plan
2	Nov-03	Aug-04	Jul-05	9	11	20
3	Jan-04	Apr-05	Jun-05	14	2	17
5	Jun-05	Oct-05	Feb-06	4	4	8
6	Jun-05	Oct-06	Dec-07*	16	14	30
7	Dec-05	Jul-06	Oct-06	7	3	10
8	Mar-06	Nov-06	Feb-07	8	3	11
9	Sep-06	Pending	Pending	NA	NA	at least 34
Average (months)				9.7	6.2	18.6

*Date second Endorsed Work Plan submitted to Council – see Appendix 3 for more detail

Table 6 shows that for sites progressing through the Planning Permit process, it takes on average **six months** from lodgement of the draft Work Plan with the DPI until the draft Work Plan is endorsed. The Table also shows it takes about **1½ years** (18.4 months) from the screening meeting to endorsement of a draft Work Plan by the DPI.

Table 7 Time Frame for Pre-application Process (EES case studies)
(from initial screening meeting to endorsement of Work Plan)

Case Study	DPI Screening meeting	Draft Work Plan (DWP) Submitted to DPI	DPI Endorsed Work Plan	Total Months		
				Screening meeting to DWP Submitted	Submitted DWP to Endorsed Work Plan	Screening to endorsed Work Plan
1	Dec-01	Jan-07	Mar-07	61	2	63
4	Jul-04	Dec-05	May-06	17	5	22
Average (months)				39	3.5	42.5

Table 7 indicates these time frames are different for a project subject to an EES, with **3½ months** from draft to endorsed Work Plan and about **3½ years** from initial meeting to endorsed Work Plan.

Table 8 summarises the timelines (in months) involved in the planning process for each of the case studies from when the application for a planning permit is submitted and stamped (accepted) by council until a decision is given by the council. As of July 2009, this process had not commenced for some case studies.

Table 8 Time Frame for Planning Process
(from Planning Permit application to decision by the local council)

Case Study	Endorsed Work Plan	Planning Permit Application stamped	Months EWP to PP Application stamped	Month of PP Decision	Months PP application to decision	Decision
1	Mar 07	Jun-07	3	Nov-07	5	Rejected
2	Jul 05	Jul-05	0	Feb-06	7	Rejected
3	Jun 05	Oct-05	4	Jul-06	9	Rejected
4	May 06	NA	NA	NA	NA	NA
5	Feb 06	Feb-06	0	Oct-06	8	Granted, Appealed
6	Dec 07*	Dec 07*	0	Jun-08	12	Granted, Appealed
7	Oct 06	Nov-06	1	Feb-08	15	Granted
8	Feb 07	Mar-07	1	Apr-07	1	Granted
9	ongoing	NA		NA	NA	NA
Average (months)			1.3		8	

Note: PP = Planning Permit EWP = Endorsed Work Plan, *Date second Endorsed Work Plan submitted to Council which reactivated Planning Permit application that proponent had previously submitted in January 2007

Table 8 shows on average it takes about **8 months** for a decision to be made by the council on an application for a planning permit. Council takes longer to grant a Planning Permits (9 months) than it does to reject an application (7 months).

Tables 9 summarises the timelines (in months) involved in obtaining a Work Authority decision from the pre-application process (screening meeting) until the final decision on a Work Authority application is given for case studies progressing through the Planning Permit process. For some case studies, as of July 2009 the process has not been completed and the date is recorded as ongoing.

Table 9 Time Frame for Pre-application start until Work Authority decision (Planning Permit case studies)

Case Study	Screening Meeting	Work Authority Decision or ongoing	Total months
2	Nov-03	<i>ongoing</i>	at least 68
3	Jan-04	May-07	40
5	Jun-05	Aug-07	26
6	Jun-05	July 09	49
7	Dec-05	March-08	27
8	Mar-06	Jun-07*	15
9	Sep-06	<i>ongoing</i>	at least 34
Average (months)			at least 37

*Note: This application did not address the issue of the need for increased stone resources and has required the proponent to undertake the process of applying for a Work Plan variation again to address fauna issues.

Table 8 shows for projects progressing through the Planning Permit process, it takes on average at least just over **3 years** (37 months) for a Work Authority application to reach a final decision from the screening meeting of the pre-application stage.

The length of the approval process clearly increases where the matters are complex or where there are extraneous circumstances.

Table 10 shows the time for the process for projects progressing through the Planning Permit process and identifying the impact of an appeal to VCAT.

Where an appeal to VCAT is involved the average time for the process to be completed is at least **4 years** (47 months). When the process is straightforward and does not involve appeals the average time is a little over **2 years** (25 months).

Table 11 shows the time taken for projects subject to an EES. The case studies described indicate an EES takes at least **6 years** from the initial meeting to a final decision.

Table 10 Details of Time frame from screening meeting until final grant of Work Authority (WA) – Planning Permits

Case Study	Screening Meeting	VCAT application	Final planning decision or ongoing	Total months VCAT application to decision	Total months screening meeting to final planning decision	Grant of WA	Total months final planning decision to grant WA
2	Nov - 03	Apr 06	Rejected Dec 07, proponent appealing, ongoing	At least 39	at least 68	ongoing	NA
3	Jan - 04	Jul 06	Rejected May 07, no appeal	10	39	NA	NA
5	Jun - 05	Nov 06	Aug 07	9	26	Aug 07	3 days
6	Jun - 05	Jul 08	Jan 09	6	43	July 09	6
Average months VCAT appeal				at least 16	At least 44		3
7	Dec - 05	NA	Feb 08	NA	26	March 08	1
8	Mar - 06	NA	Apr 07	NA	13	June 07	2
9	Sep - 06	NA	ongoing		At least 33		NA
Average months No appeal					At least 24		1.5

Table 11 Details of Time frame from screening meeting until final grant of Work Authority (WA) – EES

Case Study	Screening Meeting	EES application	Final planning decision or ongoing	Total months EES application to final planning decision	Total months screening meeting to final planning decision	Grant of WA	Total months final planning decision to grant WA
1	Dec- 01	Apr 04	Minister rejected June 08	50	78	NA	NA
4	Jul - 04	July 04	Ongoing, awaiting Minister's decision	At least 60	at least 60	ongoing	NA
Average months EES				at least 55	at least 69		NA

Table 12 benchmarks the various types of case studies against industry wide data from the DPI (see Section 6.2.3). Table 12 shows that for cases that are not appealed to VCAT, it takes about **2 years** to obtain a Work Authority. An appeal to VCAT could be expected to double the time of this process, so that it would take about **4 years** to obtain a Work Authority (if VCAT hands down a favourable decision). Industry wide data indicates an average time of about **2 ½ years** to obtain a Work Authority.

Table 12 Summary of the average time frames for the approval process (months)

	Pre Application Process		Planning Process				Formal Application	Sub total	Total elapsed time
	Screening meeting to DWP	DWP to EWP	EWP to PP App.	PP App. to PP decision	PP decision to VCAT App.	VCAT App. to final planning decision	Final planning decision to grant WA		
Industry wide data	10*	5.9^	14.7^					14.7^	31
EES Case Studies	39	3.5	NA	NA	NA	NA	NA	NA	At least 69
Planning Permit – no appeal	7.5	3	1	8	NA	NA	1.5	10.5	25
Planning Permit – appeal to VCAT	10.8	7.8	1	9	1	At least 16	3	At least 30	At least 46

**Derived from CMPA member's experience. Reasonable estimate based on Planning Permit proposals*

^ derived from DPI figures, refer Section 6.2.3

App. = Application

DWP = Draft Work Plan

EWP = Endorsed Work Plan

PP = Planning Permit

WA = Work Authority

4.3 Significant Issues Raised in the Survey

In addition to identifying the time frames and the range of costs associated with the Work Authority application process, survey participants were also asked to discuss the most outstanding issues raised during their experiences with the process. Following is a summary of the main issues raised by each of the Case Study respondents.

4.3.1 Changing Goal Posts

CHANGING GOAL POSTS – ACTIONS

1. **The Work Authority/Work Plan approval process should be centrally managed by the DPI. DPI should have the power to manage planning referral obligations to referral agencies to achieve an endorsed Work Plan, eliminating duplication of referrals. Council approval process should focus on offsite impacts with these aspects subsequently incorporated into the Work Plan.**
2. **Regulatory creep should not be accepted as the status quo and new regulations must only be introduced once an existing and equivalent cost requirement is eliminated**

4.3.1.1 Duplication and escalating information requirements

The area most often cited by participants of the survey as a cause of additional costs to the industry, is the duplication involved in satisfying the requirements of the referral authorities. These costs can be very significant, including the costs of lost time and the additional costs of consultancy fees for additional studies and the appeals process. Most aggravating is where referral authorities escalate their information requirements each time they are consulted.

Escalation occurs where referral authorities increase their information requirements each time they are consulted. This can even occur within one organisation. The DPI is a case in point where a local DPI inspector provides advice about information requirements. This advice is acted upon by the proponent only to be changed later, either for more information or less.

This process has the potential for considerable overlap and duplication especially with the requirements of the DPI and council. This can occur when councils refer a Work Plan to referral bodies under the P&E Act, even when these bodies have recently already agreed to the proposal. Often the referral bodies require additional information when their advice is sought by the council. This frustrates the process and unreasonably adds to the costs of compliance.

The process would be substantially improved if referral bodies were not slavishly consulted where it is apparent that they had already endorsed the proposal. This should be limited to occur where the referral body has seen and endorsed the proposal within a recent period, say 12 months and there had been no material change in the proposal. The DPI should centrally manage the planning referral obligations to referral agencies up to endorsement of the Work Plan, eliminating the potential duplication of referrals. Council should accept this endorsed Work Plan and focus on offsite impacts and liaise with stakeholders as required in the P&E Act, without re-referral, to ensure Councillors are provided with adequate information to make an appropriate decision on the permit application.

To ensure administrative best practice, DPI should have robust systems that track the transfer and acceptance of documents between branches, offices and comments from other agencies.

4.3.1.2 Increasing regulatory requirements

In the development of new regulatory controls in the community the associated costs of compliance are generally not well quantified. Over the last twenty years or so for example, significant environmental and ecological regulation has been introduced at Federal and State levels that has imposed substantial compliance costs for the industry. The Federal *Environment Protection and Biodiversity Conservation Act* 1999, and the State *Flora and Fauna Guarantee Act* 1988 and Native Vegetation Management Framework are examples of these new controls.

The Native Vegetation Framework

Victoria's Native Vegetation Management – A Framework for Action (the Framework) 'establishes the strategic direction for the protection, enhancement and revegetation of native vegetation across the State'. Under Planning Scheme Amendment 52.17, extractive industry was initially exempt from the application of Native Vegetation Regulations under Planning Schemes and hence the Framework. Following establishment of a Memorandum of Understanding (MOU) in 2007 between DPI and the Department of Sustainability and Environment (DSE) that exemption was circumvented and the Framework is now part of the Work Authority and Work Plan approvals process under the EID Act.

The Framework adopts a principle that there should be a net gain in the extent/quality of native vegetation throughout the State, whereby there is:

*A reversal, across the whole landscape, of the long-term decline in the extent and quality of native vegetation, leading to a Net Gain*²¹

One of the key measures adopted by the Framework is the process of offsetting. Table 13 provides a summary of required Habitat Hectare offsets.

Table 13 Net Gain Habitat Hectare (HH)* Targets

Conservation Significance	Area of Loss Identified (HH)	Provision for Net Gain (HH)	Bioregion
Low	1	1	Same or Adjoining
Medium	1	1	Same or Adjoining
High	1	1.5	Same
Very High	1	2	Same

** Note: Habitat Hectare (HH) equals a measure that combines the aspects of quality and quantity of native vegetation (field assessment formula)*

²¹ <http://www.dse.vic.gov.au/DSE/nrenlwm.nsf/LinkView/99ADB544789FE7D4CA2571270014671E49A37B2E66E4FD5E4A256DEA00250A3B>

The experience of the extractive industry is that offsetting is increasingly being applied by regulators requiring proponents to purchase land (referred to as an offset site) to mitigate perceived impacts.

Potential offset sites require a habitat hectare assessment to determine if they can generate the required habitat hectares. The potential gains allocated to areas of retained native vegetation can be calculated using the DSE gain calculator. **As a rule of thumb for compensating like with like, for every one hectare removed 5 hectares must be provided and secured in perpetuity.**

This study has not attempted to specifically quantify these costs but it is important to note that in addition to those costs already identified, additional costs such as the capital costs of land purchased to cover offsets and the cost of conducting the study on the proposed offset also are increasingly being incurred in complying with new and existing regulation.

In its recent draft report on native vegetation the VCEC estimated the average cost of purchasing 'habitat hectares' is \$100,000 per habitat hectare. The VCEC also noted: *Overwhelmingly, however, participants considered that the rules for calculating offsets impose excessive administrative and compliance costs, and time delays on Victorian businesses*²².

The VCEC subsequently recommended²³:

That the Victorian Government, to increase flexibility in the rules for determining offsets, simplify the rules by:

- *enabling offsets to be provided in any bio-region*
- *limiting the capacity for councils to impose additional conditions on offsets when the Department of Sustainability and Environment has already specified the offsets to be provided*
- *increasing flexibility for landholders by permitting offsets on public land, subject to appropriate transparency arrangements*
- *clarifying the offset rules relating to the rehabilitation of mines and quarries.*

Cultural heritage

Another area where regulatory creep has developed is in response to cultural heritage considerations. Although compliance with regulatory controls in this area has been required for many years by virtue of the Federal *Aboriginal and Torres Strait Islander Heritage Protection Act 1964*, and the State *Aboriginal Relics Preservation Act 1972*, new, more stringent State legislation, the *Aboriginal Heritage Act 2006* (AH Act) came into effect on 28 May 2007.

The AH Act changed requirements for permits or consents, and management of Aboriginal cultural heritage. Under the Act, the State has sole responsibility for

²² Victorian Competition and Efficiency Commission, *A Sustainable Future for Victoria, Getting Environmental Regulation Right*, Draft Final Report, March 2009, pages 148-155.
[http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/EnvironmentInquiryDraftReport-FullReportVer2/\\$File/Environment%20Inquiry%20Draft%20Report%20-%20Full%20Report%20Ver2.pdf](http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/EnvironmentInquiryDraftReport-FullReportVer2/$File/Environment%20Inquiry%20Draft%20Report%20-%20Full%20Report%20Ver2.pdf)

²³ Ibid page 165.

its Aboriginal cultural heritage, whereas previously it was a combination of State and Federal legislation. The ultimate responsibility for issuing permission to disturb Aboriginal archaeological sites is the Minister for Aboriginal Affairs. Controls are no longer based on a Memorandum of Understanding and/or an archaeological report, but now through a 'Cultural Heritage Management Plan' (CHMP) required by the AH Act.

These requirements are far more demanding, time-consuming to obtain, and difficult to predict the result of. The regulatory apparatus is still relatively young and therefore both regulators and regulated parties are unsure of the potential depth and scope of the regulatory requirements. This study has already indicated that the new requirements have added considerable costs for land use proponents (refer Case Study No. 9) where costs of compliance for the same site altered from \$5,600 under the former legislation and \$40,000 under the AH Act within only two years.

A recent initial site study involving a sand deposit has cost \$18,000 and there is a further example of a partially complete CHMP costing \$80,000 to date. Examples of high cost CHMPs are not limited to the extractive industry proposals. A CHMP for a recent simple mining proposal covering 26ha was quoted at \$76,000, with verbal indications that the price could double. It cannot be known how these regulatory controls will develop in the near future. Experience can only assure us that controls will be more stringent and costly rather than less so – the *raison d'être* for regulators.

Other examples of regulatory creep

Further, more subtle increases in regulation emerge. For example, one case study had a condition on their Planning Permit that required the proponent to establish a community consultation management plan that required annual reporting of progress on compliance with Permit conditions.

All these additional regulatory burdens impact on the cost of production and therefore on the unit cost per tonne of product. In addition, these costs create a barrier to entry for new entrants and as a result they centralise production in established firms. They also apply particular pressures on small operations that do not have the scale economies to effectively cope with them.



4.3.1.3 Duplication of roles of DPI and of local councils

Councils appear to be unsure of their role in the Work Authority process and because of this uncertainty take an overly conservative approach. This is often evidenced when councils refer work plans back to the referral authorities in order to comply with the E&P Act. This is inconsistent with the Act (s 45) which states:

A responsible authority must give a copy of an application to every person or body that the planning scheme specifies as a referral authority for applications of that kind without delay unless the applicant satisfies the responsible authority that the referral authority has –

- (a) Considered the proposal for which the application is made within the past three months; and*
- (b) Stated in writing that it does not object to the granting of the permit for the proposal.*

One case study shows that a council when approving a planning permit attached the same conditions as were applied by the council for the last planning permit associated with a Work Authority it had considered. This was for a completely different site which involved a more complex application involving significantly greater social and environmental implications. This showed a complete lack of understanding of the subject matter and no conception of the unreasonable impacts associated with the conditions.

The overall experience of many of the case study participants is that the Council officers lack the skill set of extractive industry specific issues to properly manage a fluent planning approval process. CMPA supports the recent DPI initiative to provide generic draft Work Authority conditions to Council early in the approval process to assist Council's understanding of DPI's regulatory reach.

In some instance, Councils are approving quarries that may be in competition to them in the market place.. There are currently 97 (11 per cent) granted Work Authorities owned by local Councils so Councils having a conflict of interest could be a significant issues in some regions.

4.3.1.4 Inconsistent regulatory interpretation and advice

This is a feature not only where legislation changes and the regulators are not updated with the new requirements but it also occurs when different bodies and inspectors within the same organisation, consider the same matter. This leads to an inconsistent provision of information to the industry which adds to compliance confusion and the total costs of compliance.

A consistent lack of consistency is a common theme when dealing with the variety of agencies across the state.

Authoritative advice is also required from the EES Technical Reference Group (TRG). The TRG is a key instrument in ensuring early and authoritative advice is provided to the proponent. Senior members of government agencies, supported by technical experts, should attend TRG meetings to ensure consistent, appropriate advice is actually provided. This should avoid last minute policy reversals by government agencies and continually shifting objectives that could potentially significantly impact on the project.

4.3.2 Streamlined Approval Process & Best Practice Regulation

STREAMLINED APPROVAL PROCESS – ACTIONS

3. Introduce a refined Work Authority/Work Plan approval process with the following aspects:
 - a. A Code of Practice applicable to all quarries,
 - b. Simplified Work Plans,
 - c. A Work Authority containing generic conditions, rehabilitation bond, Code of Practice and Work Plan provided to Council with Planning Permit application,
 - d. Planning Permit application submitted to Council at the same time as DPI grants WA number,
 - e. Planning Permit conditions refer to only offsite impacts outside of the Work Authority boundary.

BEST PRACTICE REGULATION – ACTIONS

4. Regulatory bodies should make decisions based on evidence according to the triple bottom line of social-environmental-economic values without undue political pressure.
5. DPI and local government should streamline Work Authority/Work Plan approvals that recognise DPI's regulatory reach.
6. The administration of the MRSD Act should aim at achieving performance based outcomes that lower the costs and reduce the time of approvals for proponents.
7. Mandatory time frames for certain milestone decisions should be introduced and enforced, including Ministerial decisions.
8. New regulation should not be introduced unless appropriate resources are devoted to administer the regulation effectively.
9. The State Government should implement the recommendations of VCEC's environmental regulation inquiry concerning the mining and extractive industries (assuming they are as per the draft recommendations).
10. Referral agencies must be accountable. Regulators must be able to publicly defend their decisions.
11. DPI should focus on its role to improve approval outcomes.
12. The role of the independent Mining Warden should be expanded so that it has the power to expedite decisions and ensure time frames within the Work Authority/Work Plan approval process are met by potentially adjudicating in such matters with powers to make orders. Such a role for the Warden should be optional at the request of the proponent.

4.3.2.1 Unreasonable time in processing applications

The time frames involved in seeking approval to undertake extractive operations are unreasonable. Certainty of process and time frames are important aspects of any approvals system, especially for companies that need to raise finance. The Work Authority and planning permit process should be streamlined, with the regulatory demands more precise and less subject to interpretation. In addition to the inordinate length of time in the Work Authority process from initial consultation meeting as documented elsewhere in this Paper, one case study revealed the length of time involved in preliminary investigations. In this case an application for variation to the Work Authority was first considered in March 2001, however as the extension of land was on Crown Land a search for stone was required and the decision on this matter was not reached until March 2005 when drilling recommenced.

Similarly, the EES process should have some assurance that the application process will be dealt with expeditiously and within a pre-determined time frame. One case study's application for a variation to a Work Authority involved a Minister setting up an inquiry under the EES Act but has not acted on its report after seven months.

The essence of this issue was captured by one proponent that is aware of the product demands in other States and concluded that *'the process appears to be anti-development due to its complexity, delays and cost'*.

The concept of statutory time frames for agencies to make specific decisions throughout the approvals process should result in a more expedient and cost effective process. This is applied in some areas of environmental regulation, but there is often no consequence for government agencies if a decision is not made within the specified time frame. Government should consider options to ensure statutory time frames are enforceable.

The importance of approval agencies setting time frames with overall coordination and streamlining of processes is highlighted in the Auditor General for Western Australia's October 2008 report *Improving Resource Project Approvals* (accessible from www.audit.wa.gov.au/reports/report2008_05.pdf).

The costs to companies arise in the time taken to comply with the process and the implications for project financing and loss of production revenue. . The complexity of the various approvals required for the range of possible projects is highly variable; hence it is difficult to make a general statement on how long the approval process should take. However, a period of eight weeks for a decision by Government (DPI and referral agencies), VCAT and/or Ministers to progress to the next stage in the approvals process is a reasonable aspirational target.

There can be no doubt that were economic development a higher priority, decision-making for investments such as new Work Authorities or variations would be given higher status by Government. This would give real substance to the State's economic development and red tape reduction policies. Supporting this observation is the fact that of the 9 survey participants only 3 have had their work authorities approved.

The costs and delays associated with the process acts as a disincentive to market entry and also a disincentive for investment in new developments by existing small extractive industry operators.

It is apparently not only the CMPA that has these concerns; the following quotation from the VCEC in a release of its 2009 annual report, *The Victorian Regulatory System* states that:

Most businesses have little certainty about how long it will take to have a licence or permit processed, and there are often no clear incentives for regulators to reduce processing times:

- *18 per cent of activities involve a legal obligation for regulators to process applications within a certain time*
- *regulators had a ‘target’ time for processing 25 per cent of activities*
- *regulators reported the actual average time taken for 16 per cent of activities, and*
- *regulators advised businesses of the expected processing time for 39 per cent of activities*

Source: Media Release, The Victorian Regulatory System, Victorian Competition & Efficiency Commission, May 2009

These concerns are echoed by the recent draft report by the VCEC on environmental regulation referred to earlier where it recommends²⁴:

That the Department of Primary Industries (DPI) commit to:

- *establish and publish target time frames for approvals under mining and extractives legislation*
- *measure and publish information on the time taken by the DPI and referral authorities to process approvals required under mining and extractives legislation*
- *provide an explanation on its website of the reasons for any substantial delays in granting approvals by the DPI or any referral agencies*
- *regularly review and report on time frames for approval with a view to finding areas for future improvements.*

Reporting by the DPI on the timeliness of approval process should be reviewed periodically by an independent agency such as the Victorian Auditor General.

CMPA welcomes the current level of public reporting by DPI, but clearly more could be done.

The viability of an expanded role for the existing Victorian Mining Warden should be investigated. The Victorian Mining Warden, appointed under the Mineral Resources (Sustainable Development) Act 1990 by the Governor-in-Council provides reports and recommendations directly to the Minister for Energy and Resources, and is independent in carrying out the defined functions of the role. extractive industries should be included within the jurisdiction of section 97 of the MRSD Act to enable the Warden to exercise wide-ranging powers in ensuring

²⁴ Ibid , page 262

timely and practical resolution of referrals relating to extractive industry operations and the Work Authority approval process with the power to investigate, negotiate, mediate and arbitrate and where appropriate, make recommendations to the Minister. This may require a wider jurisdiction for the Warden than is the current situation. It may also be desirable to include the power to adjudicate those disputes and where appropriate impose deemed approvals and time limits by order for the completion of administrative steps. An appeal process may also be helpful in these matters.

Such a role for the Warden should be optional at the request of the proponent and should assist the speedy processing and associated reduced costs of appeal matters due to acquired specialist industry knowledge.

Simplification of the Work Plans submitted by proponents would also help to reduce time and financial costs of the approvals process. Many Work Plans that are currently submitted are overly complex. The introduction of a Code of Practice applicable to all quarries that sets out performance based criteria that operations have to comply would simplify the situation. This provides for an outcome based assessment process. A shorter Work Plan that provides site specific information that is not adequately covered by the Code of Practice would only then be required. They may include the location of extractive areas, assets and infrastructure within the Work Authority. Existing benefits of the Work Plan process of not requiring a planning permit for removal of native vegetation or separate approval under the *Environment Protection Act 1970* for on-site disposal of quarry waste to land would be retained.



A refined Work Plan/Work Authority approval process would help to reduce costs and should cover the following aspects:

- Introduce a Code of Practice that is applicable to all quarries, not just those less than 5ha and 5m deep. The Code must be developed in true consultation with industry. The Code will identify performance based criteria that operations have to comply with.
- Simplified Work Plans that provide site specific information that are not adequately covered by the Code of Practice.
- The Work Authority with generic conditions, the rehabilitation bond requirements, Code of Practice and Work Plan is provided to the local Council to support the proponents Planning Permit application.
- The proponent should submit a Planning Permit application to Council as soon as the DPI provides a Work Authority number to the proposal, with supporting material such as an endorsed Work Plan provided to Council at a later date. This gives some degree of priority in the “first come first served” planning system.
- Any conditions that Council may place on the Planning Permit must relate to only offsite impacts outside of the Work Authority boundary, with the Work Plan and Code of Practice dealing with issues within the Work Authority.

4.3.2.2 Lack of resolve by regulatory agencies

There is a need for each regulatory agency including referral agencies involved in the process to be committed to and not resile from their initial assessments when open to challenge through the VCAT or other review process. Several case studies revealed a lack of resolve in this area even when the applications were reviewed by them on more than one occasion. For example, one application for a variation to a Work Authority involved the application being referred to several referral authorities in the usual way: the DPI referred the matter to DSE when the process of obtaining endorsement of the Work Plan was commenced, and also to the local water authority amongst others. No indication was given to the applicant that there were any outstanding issues with any of those authorities.

When the Work Plan was endorsed by DPI and the applicant proceeded with an application for a planning permit, DSE and the local water authority were again referral authorities under the statutory process. Again, neither referral agency raised any concerns.

After the permit application was refused by the council, and the matter went to VCAT, the council referred the matter again to both DSE and the local water authority. At this stage both DSE and the local water authority raised concerns about the application with the ultimate result that VCAT supported the council decision.

VCAT should also liaise closely with referral agencies to ensure that conditions VCAT propose to place on its decision are practical, beneficial and workable prior to making a decision public.

Until recently DPI has not routinely attended VCAT hearings either when the appeal was from an objector or the proponent. In either case but particularly where the planning permit has been refused, these matters have only reached the appeal stage after DPI has given its endorsement of the Work Authority application.

That is, DPI has assessed the matter against its quite substantial criteria and considered it acceptable. Endorsement by DPI should involve a level of 'buy-in', a level of 'ownership' by the industry regulator.

This is particularly the case when the Work Authority application cannot receive final approval by DPI until the planning process has been satisfied. Any challenge should therefore be of interest to DPI.

4.3.2.3 Lack of State stewardship of the resource

Appropriate 'buy-in' will eliminate the evidence of a lack of 'stewardship' by DPI. For example, it would not allow DPI, acting as a referral agency not to object to a development application to erect a residential dwelling on the perimeter of a buffer zone to an endorsed Work Plan site. In one of the case studies, issue of the planning permit for a residence curtailed the proposed Work Plan of the site and required the endorsed Work Plan application to be amended and the application process to be re-commenced. Similarly, appropriate 'buy-in' would facilitate an application for a Work Authority over a site that had been an operating quarry for many years until the 1980's. However, in that case study the responsible planning authority was captured by the views of a minority of residents. It was only by intervention of the Supreme Court that natural justice was allowed to prevail.

As a steward, the Government also has a role in identifying strategic stone resources through targeted geological mapping and drilling initiatives and to ensure high level planning protection of these resources. One mechanism to achieve this is to further refine Extractive Industry Interest Areas with better defined, defensible stone resources that have a greater level of planning protection than currently exists. This would also assist in the regional identification of future supply scenarios so that areas where supply short falls and high prices will occur can be identified early and consideration to this aspect applied in the approval process.

One council with a local perspective and interests should not have the responsibility for making a decision on a potentially regional or statewide significant resource. Stewardship ensures that the economic objectives of the State as a whole are achieved which may over ride the requirements of a local council.

Stewardship also implies that DPI has a central role in managing the Work Authority approval/Work Plan variation process to Best Practice standards. As outlined in this report, the current process could be significantly improved.

Government needs to ensure that resources are appropriately focused if it is to achieve its stewardship role of improved approval outcomes.

There needs to be clear separation of operating regulation and project facilitation roles.

Just as the 2006 Pope Inquiry into the *Regulation of OH&S In Victoria's Earth Resource Industries* identified 'the credibility of its (DPI) role in occupational health and safety is seen as fundamentally compromised and conflicted because of its location within an industry-based government department with a range of diverse and often conflicting roles and responsibilities', a similar argument to OH&S could be presented regarding the role of DPI in the approval process and in protecting strategic resources.

4.3.2.4 Lost opportunity

The opportunity costs associated with the delays in the approval process are the real costs borne by businesses. Delays in production and financing costs over many years are real costs to a company in addition to the actual dollars expended in obtaining approvals. The average time for these case studies to grant a Work Authority of 3½ years represents lost production ranging up to \$54.6 million for a hard rock operation (1.2 million tonne per year at \$13/tonne) or \$13.65 million for a sand operation (300,000 tonnes per year at \$13/tonne).

4.3.3 Appeals Process

APPEALS PROCESS - ACTIONS

- 13. Objectors in the VCAT process should be required to substantiate their claims**
- 14. VCAT and Ministerial decisions should be based on relevant public information.**
- 15. VCAT should provide a low cost mechanism for all parties.**
- 16. VCAT should take account of all the material already provided by proponents rather than require consultants to present at the hearing.**
- 17. An appeal mechanism for proponents should be introduced in the environmental effects statement process.**

4.3.3.1 Unstructured and inequitable approach to community consultation

Consultation with affected parties is an important part of effective decision-making. The concerns of the extractive industry with community consultation and how it is obtained has two separate elements: First, the system of inviting community response to proposed extractive industries in the planning process should be more equitably arranged. There should be greater onus placed on objectors to present reasonable claims. At present, scurrilous objectors with little or no claim can delay the process and impose unnecessary costs. At present the objector is not required to substantiate the claim and the process for objectors is almost cost free. This gives rise to the opportunity for unreasonable and potentially vexatious objections.



The second element of this problem is in engagement of the community where an EES process or similar is required. The experience of most case studies when this process was required was that it involved unreasonable community demands. One case study proponent had established a consultative panel for the entire EES process but soon found some of the panel's demands were almost fanciful. For example, a request was made for a study to be undertaken of the stress levels of animals in the local area of the proposed extractive operation. **Irrespective of the reasonableness of the demand the proponent feels almost obliged to bow to the demand in order to obtain overall approval for the venture.** The objector should be required to substantiate their claim. This would overcome the current arrangements where scurrilous objectors with little or no claim can delay the process and impose unnecessary costs on proponents.

Another case study revealed that a principal objector in a hearing was an agent of a competitor (Case Study 3). In a further case, an objector had been supplied with information by a competitor that was used to unreasonably discredit the proposal.

4.3.3.2 Unaccountable political intervention

The processes to consider applications especially in the planning process should be free of political intervention. The following example illustrates unreasonable intervention. Despite council officials in a planning permit application indicating verbally that all their requirements had been met the ultimate decision following the Council meeting was a rejection of the application. No substantiation of the reversal of the recommendation was provided to the applicant.

Similarly the process involved in the preparation of an EES is also subject to political intervention. One case study's application for a variation to a Work Authority involved the EES process being stopped by the Minister for Planning. Another case study involved a Minister setting up a panel inquiry under the EES Act but the Minister has not presented his assessment report **after seven months**.

Because these ‘interventions’ have occurred effectively outside the administrative process, the impacts of both of these examples of intervention have not been assessed. Undue political pressure and political decisions made without due consideration of the facts of the situation or the right to appeal increase the perceived sovereign risk of trying to develop extractive industry operations. The decisions of Minister’s should be evidence- based and be able to stand up in a court of law.

4.3.3.3 Need for appeal system for Environmental Effects Statement (EES) decisions

Preparation of an environmental effects statement involves substantial costs. For the larger projects costs can be in the millions of dollars. Notwithstanding this, the EES process, being a decision process, does not itself involve an appeal mechanism. Therefore, the proponent cannot appeal against the decision concerning the EES. A proponent’s planning permit application outcome can be appealed to VCAT and when there are natural justice issues it can be appealed to the Supreme Court.

Given the extensive information demands of the EES system and the associated investment by the proponent and as the decision rests entirely with one person, the Minister, there is a strong argument for an appeal mechanism to be available to proponents. Appeals and subsequent resolutions should be based on transparent decision criteria. While an appeal system would entail additional costs, it would ensure that these projects are decided on their individual merits and not influenced so much by populist opinion.

4.3.3.4 Unnecessarily complex and one-sided VCAT system

The case studies have raised two separate issues of concern about the VCAT system in addition to the significant costs associated with appeals to VCAT for applicants. These concerns are the unnecessarily complex approach to hearings and the apparent one-sided demands on extractive industry proponents in contrast to objectors.

The process is unnecessarily complex even though there are common themes applying in each case. For example, for extractive industry matters the issues raised almost always cover the same topics and experts are required in the following disciplines - environment, aboriginal heritage, mining, blasting, noise, and planning and traffic management. In addition, given the presence of these expert witnesses significant time is devoted to questions on matters that are either subject to detailed standards prescribed by regulators (eg EPA) that are publicly available and or are subject to detailed reports that are available to the hearing. Given the availability of this information the need for it to be forensically debated in the hearing is unclear.

A review of four case studies that went to appeal shows that it is usual for a proponent to engage two legal representatives and 7-8 expert witnesses to attend the hearings. In fact, given the size of the industry in Victoria, the expert witnesses are often the same people in each case.

The common issues being considered at hearings lends itself to the process being simplified either by administrative means or by appointing an expert industry representative as a key advisor to the Tribunal. This may assist in providing for consistent advice for matters and reducing costs for applicants.

The second issue of concern to survey participants with the VCAT system is that an extractive industry applicant is required to go to the considerable expense of providing an expert report on every conceivable issue to secure a case while objectors are not required to substantiate any of their claims. The onus is always on the extractive industry representative to provide substantiation irrespective of whether it is an appellant or not.

This is illustrated in one case study where despite providing expert witnesses and reports addressing a range of issues the applicant was criticised by VCAT in its decision for failing to produce an expert acoustic report claimed to be required by an objector. The applicant had produced evidence in a report relating to blasting noise and vibration and relied on accepted standards relating to noise as the distance of the proposal to the nearest residences was greater than the recommended minimum buffer distance. The proposed buffer zone had been endorsed by DPI. The objector produced no evidence relating to noise.

The proponent should also not have to provide new consultancy reports if relevant pre-existing reports already exist. For example, consultancy reports on blasting, ground vibration and air blast impacts are generally non site specific within relatively short distances of less than 500m and should not be required to be repeated at each location.

In such a situation where the distance to the nearest sensitive site is greater than the required buffer, the onus should not be on the operator to reprove that they can meet the required standard.

If the standard cannot be met during operations, DPI as the regulator has the power to enforce that they do meet the standards or risk the site being closed.

Submissions by objectors should be contained to only address relevant matters and further, there should be a system within VCAT that does not allow an objection to be considered if it does not address issues relevant to the matter under consideration.

An example of such an irrelevant issue is an objection to a quarry based on the commercial viability of the operation. This issue is not a planning concern and should not be considered by VCAT as it is a commercial matter for the operator. The operator's long term viability should be determined in the market place where they operate. It is not an issue that should be resolved by Government in the approvals process.

In a worst case scenario were an operator has to prematurely close a quarry due to adverse market forces, there is security in place through the DPI rehabilitation bond system to ensure the appropriate rehabilitation of the site occurs in the public interest.

4.3.4 Accountability

ACCOUNTABILITY – ACTIONS

18. A cost : benefit analysis of new legislation should be conducted 5 years after implementation. If the legislation does not provide a net benefit, changes must be made to ensure this is achieved.

4.3.4.1 Inadequate assessment of the costs of new regulations

The State Government has a process of regulatory impact assessment and business impact assessment that requires government agencies developing new regulatory and legislative controls to accurately assess the costs of the proposed controls on industry, the community and in administration and enforcement. These processes have been in operation for many years – the regulatory impact statement (RIS) process commenced with amendments to the *Subordinate Legislation Act 1978* in the mid 1980's.

While the quality and rigour of RIS's must be independently assessed by the Office of Regulation Reform, there is no apparent validation of the estimated costs contained in a RIS with actual costs of compliance following introduction of the controls.

For example, costs associated with the development of Cultural Heritage Management Plans (CHMP) have risen compared to initial estimates. The Aboriginal Heritage Regulations 2007 Regulatory Impact Statement indicated that the weighted average cost of preparing a CHMP would be \$20,462, with complex assessments ranging up to \$100,000. The case studies in this report show that even an average development has already incurred costs of \$41,600 and the process has not yet been finalised. This is a doubling of expected costs in just two years.

Similarly, the Proposed Mineral Resources Development (Amendment) Regulations 2007 Regulatory Impact Statement prepared by DPI in October 2007 stated that 'Costs ranging from \$55 to \$3,000 will be incurred by individual mining operators as a result of preparing community engagement plans in accordance with the proposed regulations'



Ongoing costs of community engagement were expected to vary according to the size of the operation and size and complexity of the nearby community, but estimates ranging from \$165 over 5 years for a small mine, to \$108,643 over 5 years for a large mine were proposed.

If consultants charges for preparing a community engagement plan increase similarly to cultural heritage consultants, industry could expect a doubling in costs compared to these RIS estimates in the short term.

The Government needs to regularly and independently review the costs of new regulation, especially the Native Vegetation Framework and Cultural Heritage Management Plans after 5 years of implementation to assess that the benefits initially expected have in fact materialised and that they outweigh associated costs.

The estimated costs contained in RIS' that have been prepared for regulations impacting on the extractive industry are only a relatively small proportion of the total costs of compliance that are incurred. There needs to be assessment on whether the benefits of a new regulatory measure outweigh the actual costs.

5. IMPACT OF THE WORK AUTHORITY PROCESS ON THE INDUSTRY

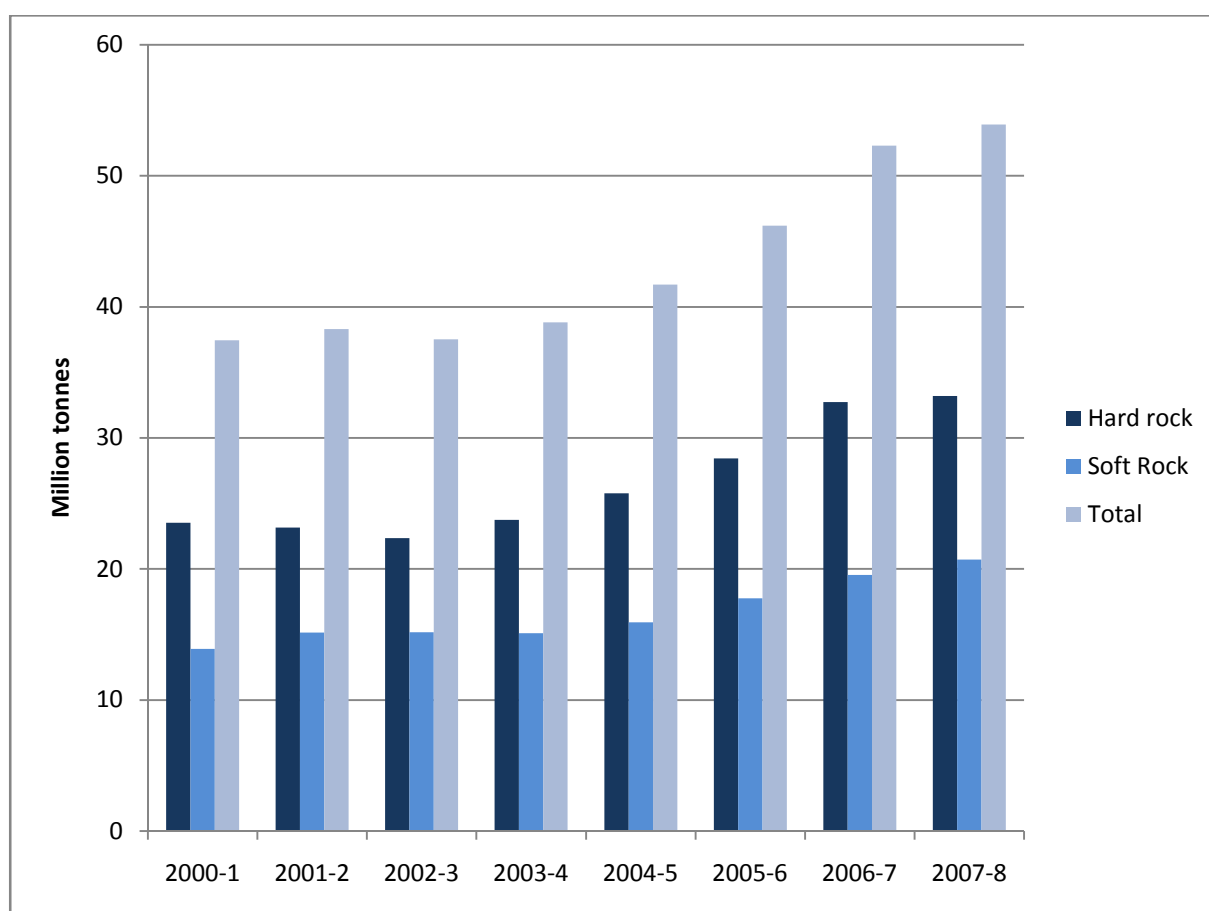
5.1 Extractive Industry Production

Extractive industries provide the raw materials for building and construction, vital to the State's development. The industry operates quarries that produce a range of hard rock, clay, sand and gravel products.

As at 30 June 2008 according to the statistics compiled by the DPI²⁵ there were 868 work authorities granted under the EID Act in Victoria. Total production from the 580 actual, operating work authorities was approximately 54 million tonnes in that year (2007-08). The extraction is divided into hard rock (mostly crushed basalt, granite and hornfels) and soft rock (mostly sand and gravel).

For the year ended 30 June 2008, 33 million tonnes (61 per cent of the total extraction) of hard rock had been sold with 20 million tonnes of soft rock being sold (39 per cent of the total). This mix of extraction type has remained relatively static over the last 8 years as seen in Figure 2 while overall production has increased by 44 per cent for the period.

Figure 2 Extractive industries production (million tonnes) 2000-1 to 2007-8



²⁵ Department of Primary Industries (2008) Victoria's Minerals, Petroleum & Extractive Industries 2007/2008 Statistical Review, <http://www.dpi.vic.gov.au>

5.2 Growth in Work Authorities

In addition to the 868 approved Work Authorities as at 30 June 2008 there were a further 153 at the 'proposal' stage and 14²⁶ in the 'application' stage. The 'proposal' stage application according to the DPI is recorded when a screening meeting has been conducted by a DPI inspector with relevant parties.

This is equivalent to the commencement or pre-application stage as discussed in this report. The 'application' stage refers to when a Work Authority application is lodged with all requirements to obtain an approved Work Plan. This is taken to be the stage when the DPI endorses the Work Plan prior to it being submitted into the planning permit process.

Table 14 shows data for proposals, applications and work authorities granted for the period from 2000-1 to 2007-8. As a simple illustration of overall activity the Table shows 'total activity' – a summation of each of the proposal, application and grant. The data is also illustrated in graphical form in Figure 3.

Table 14 Work Authorities active and in application stages 2000-1 to 2007-8

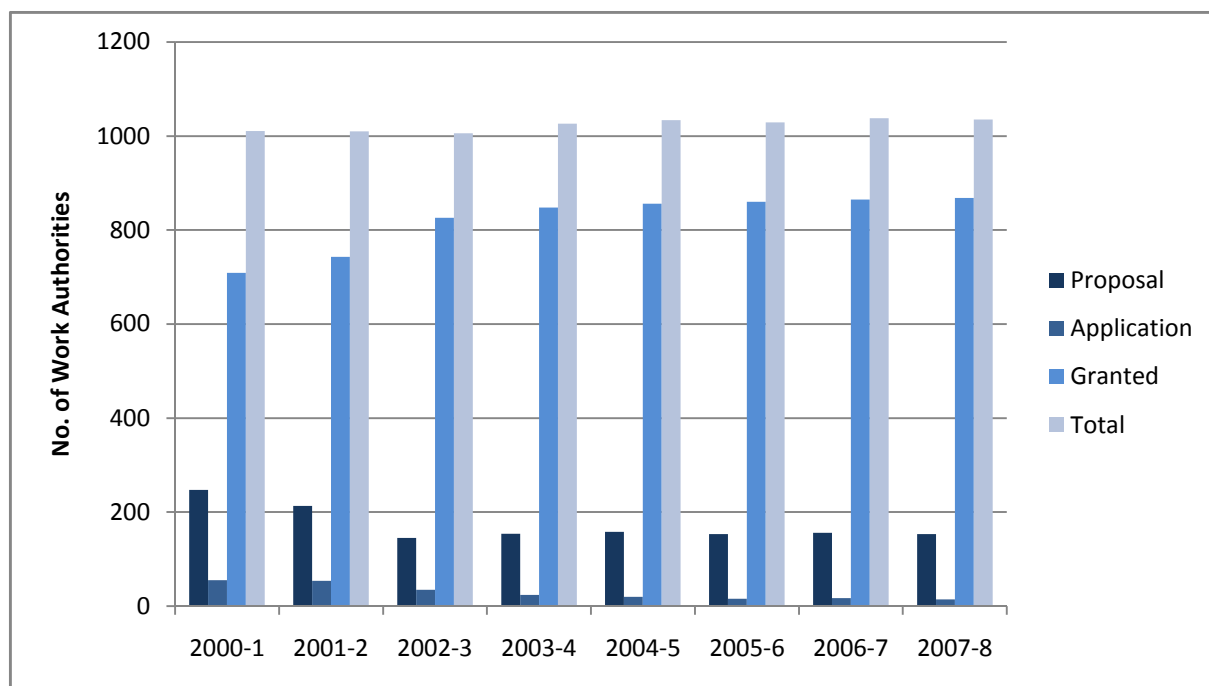
Work Authority Activity	2000-1	2001-2	2002-3	2003-4	2004-5	2005-6	2006-7	2007-8
Proposal	247	213	145	154	158	153	156	153
Application	55	54	35	24	20	16	17	14
Granted	709	743	826	848	856	860	865	868
Increase in number granted		34	83	22	8	4	5	3
Total activities	1011	1010	1006	1026	1034	1029	1038	1035
<i>Applications as a % of proposals</i>	22.3%	25.4%	24.1%	15.6%	12.7%	10.5%	10.9%	9.2%

NB. This data does not include Work Authorities that are cancelled.

The data in Table 14 show:

- Proposals have declined by 38 per cent over the period but have remained relatively stable since 2002-3;
- Applications have declined rapidly and by 74 per cent over the period;
- The number of Work Authorities has increased by 22 per cent over the period but most of this increase occurred in a single year (2001-2 to 2002-3); and;
- Total Work Authority activity has remained approximately the same over the period, given the uncertainty in the 'proposal' figures.
- Note that only 580 Work Authorities produced material in 2007-08, leaving 35 per cent with no activity.

²⁶ These figures are derived from DPI statistics that are out of date as they include around 10% of withdrawn proposals

Figure 3 Stages of Work Authorities 2000-1 to 2007-8

5.2.1 Proposals for Work Authorities vs. applications

Proposals are the initial indicator of interest. The proponent seeks information about the resource and the regulatory requirements. This stage requires the proponent to commit resources and time in developing the draft Work Plan to the next stage, the application stage. Figure 4 illustrates the number of proposals and subsequent applications over the report period.

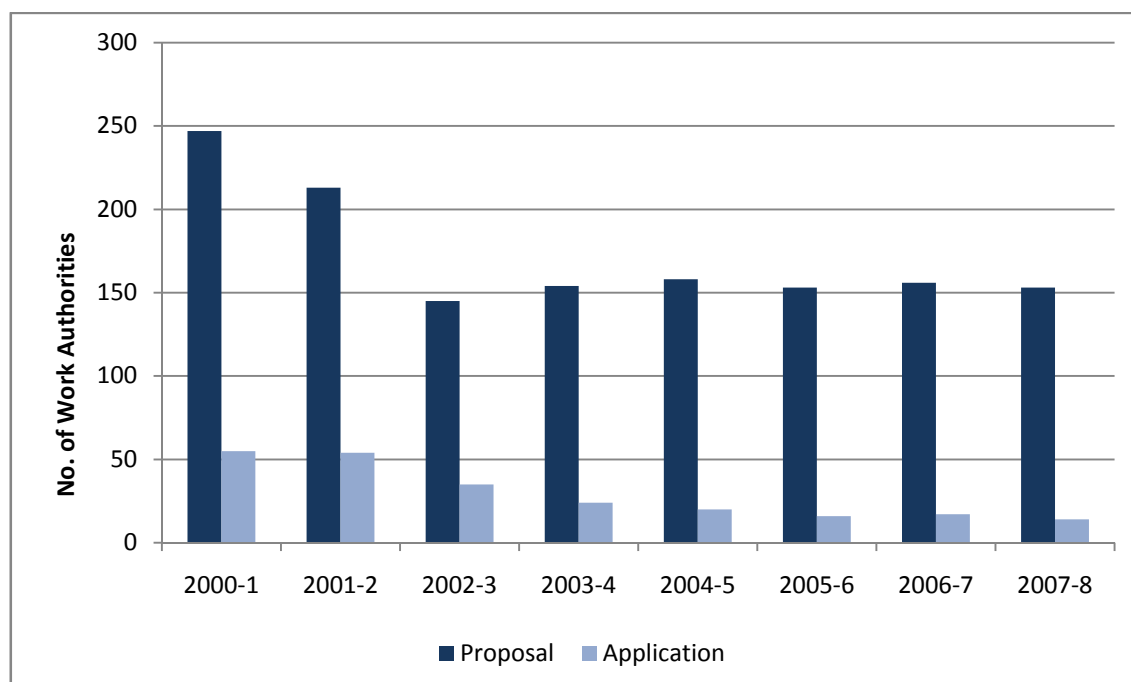
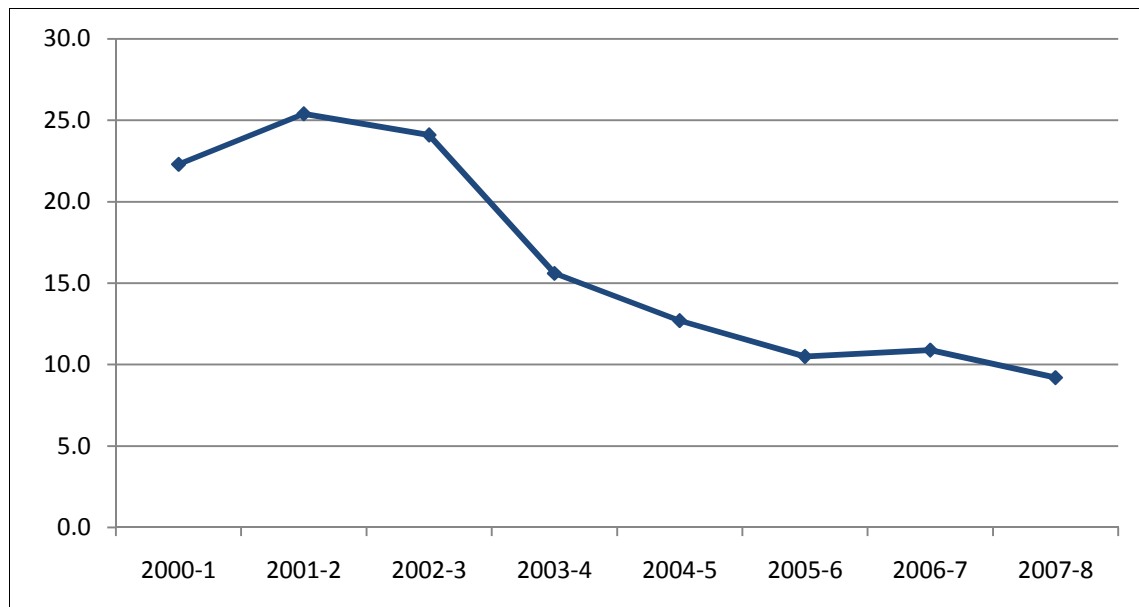
Figure 4 Proposals and applications 2000-1 to 2007-8

Figure 5 shows applications as a proportion of all proposals for each of the report years. This shows a decline in the number of proposals that reach the applications stage from 2000-01 when it was 22.3 per cent to 9.2 per cent in 2007-8. This has occurred despite increasing levels of demand as illustrated by increasing production levels.

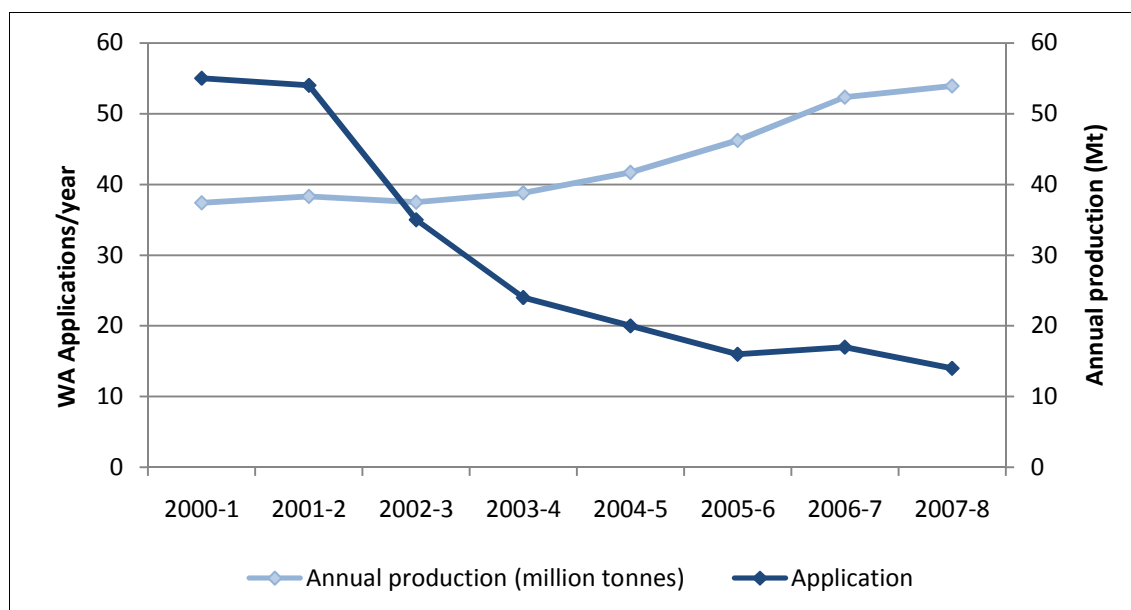
Figure 5 Percentage of proposals that reach application stage 2000-1 to 2007-8



The deterioration of interest in applications shown in Figure 5 is also illustrated by Figure 6 which shows the differential in decreasing interest (as indicated by the number of Work Authority applications) with increasing total production. This is most stark since 2002-3.

It can be argued that the decreasing level of proposals that go on to the application stage is illustrative of a growing falling off of interest in investing in the industry once the demands of the regulatory requirements are known.

Figure 6 Work Authority applications relative to annual production (million tonnes) 2000-1 to 2007-8

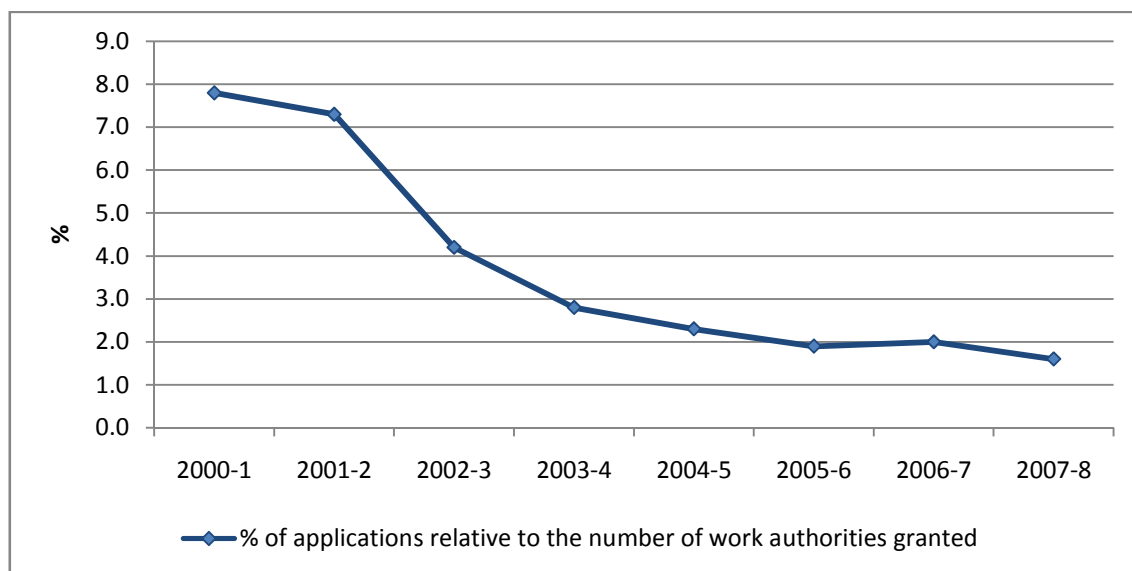


5.2.2 Work Authorities granted

The number of proposals that have reached the application stage and how they then proceed to increase the overall number of work authorities granted is an important indicator of growth in the industry. To some extent the application stage can reflect partial completion of the Work Authority process under the EID Act as the next stage involves seeking planning permit under the P&E Act.

To obtain an understanding of this part of the process Figure 7 shows the percentage of applications relative to the total number of work authorities granted for each of the years from 2000-01 to 2007-08. In 2000-01 the number of applications was almost 8 per cent of the number of work authorities granted. Since that time there has been a marked decline in the rate of applications to approximately 1.5 per cent in 2007-8. Again, as discussed previously this is at a time of increased production by the industry.

Figure 7 Percentage of applications relative to the number of Work Authorities 2000-1 to 2001-2



The number of work authorities granted (that is, those in existence) over the report period has increased by 22 per cent but as referred to earlier the largest proportion of the increase occurred in one year (to 2002-03) when an additional 83 were granted. Since then, that is over the last 5 years, the number of work authorities has increased by only 42 (an increase of 5.1 per cent of the total).

From the data there does not appear to be any relationship between the number of applications and the number of work authorities granted. This is counter-intuitive, as it would be expected that unless all applications do not achieve a planning permit, the total number of work authorities would increase in line with applications.

The decline in the graph reflects the number of exits from the industry and applications that do not lead to a Work Authority (at least in the time period considered).

The total number of applications over the report period was 225 while the number of work authorities granted increased by 159. That is, 68 per cent of all applications appear to have resulted in an increase in the number of work authorities granted.

Since the hump in 2002-3, the number of applications was 126 while the number of work authorities granted had increased by only 42. That is, only 33 per cent of all applications during this time appear to have resulted in an increase of the number of work authorities granted.

The declining rate of Work Authority applications has come at a time when production increased by 44 per cent for the 5 year period. Figure 8 provides a graphic illustration of this trend.

Figure 8 Work Authorities granted relative to production (0,000's tonnes)

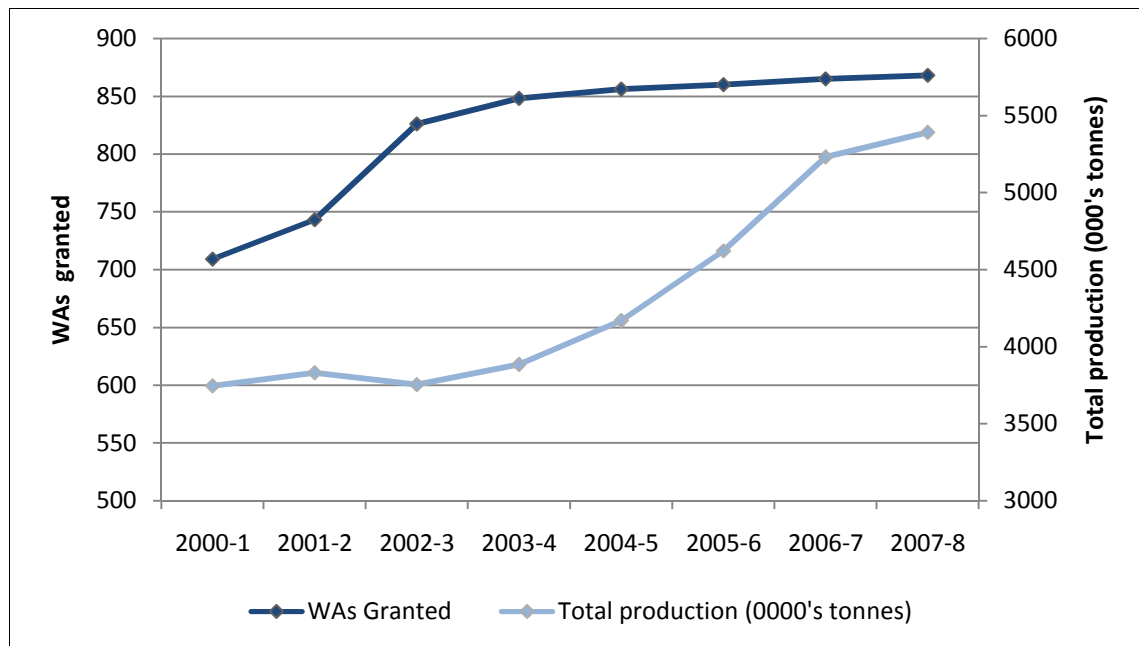


Table 15 New & Significant Work Authorities (2000-1 to 2007-8) by product type

Year	Hard Rock	Lime - stone	Sand Gravel	Sedimentary Tuff Scoria	Clay	Soil	Dimension Stone	Total
2000-1	5 (0)	4 (0)	26 (2)	3 (0)	1 (0)	1 (0)	0 (0)	40 (2)
2001-2	8 (2)	7 (1)	20 (1)	26 (0)	3 (0)	0 (0)	2 (0)	66 (4)
2002-3	8 (0)	7 (1)	29 (2)	8 (1)	0 (0)	2 (0)	1 (0)	55 (4)
2003-4	3 (2)	5 (0)	16 (2)	5 (0)	1 (0)	1 (0)	0 (0)	31 (4)
2004-5	1 (1)	12 (0)	7 (0)	4 (0)	3 (0)	1 (0)	0 (0)	28 (1)
2005-6	3 (1)	1 (0)	13 (0)	5 (0)	0 (0)	0 (0)	0 (0)	22 (1)
2006-7	4 (0)	3 (0)	11 (0)	2 (1)	1 (0)	0 (0)	0 (0)	21 (1)
2007-8	0 (0)	0 (0)	10 (1)	1 (0)	1 (0)	0 (0)	0 (0)	12 (1)
Total	32 (6)	39 (2)	132 (8)	54 (2)	10 (0)	5 (0)	3 (0)	275 (18)

(Bracketed data represents the number of significant work authorities defined as those requiring a rehabilitation bond of in excess of \$50,000)

Table 15 shows the number of new work authorities for each year for the different product types and of those, the number of significantly-sized extractive operations (those with a rehabilitation bond greater than \$50,000). While an initially impressive 275 Work Authorities were granted from 1 July 2000 to 30 June 2008, only 18 (7%) were for significant operations with only 6 of the 275 (2.2 per cent) new approved Work Authorities being for a significant hard rock quarry.

5.2.3 Are the case studies typical?

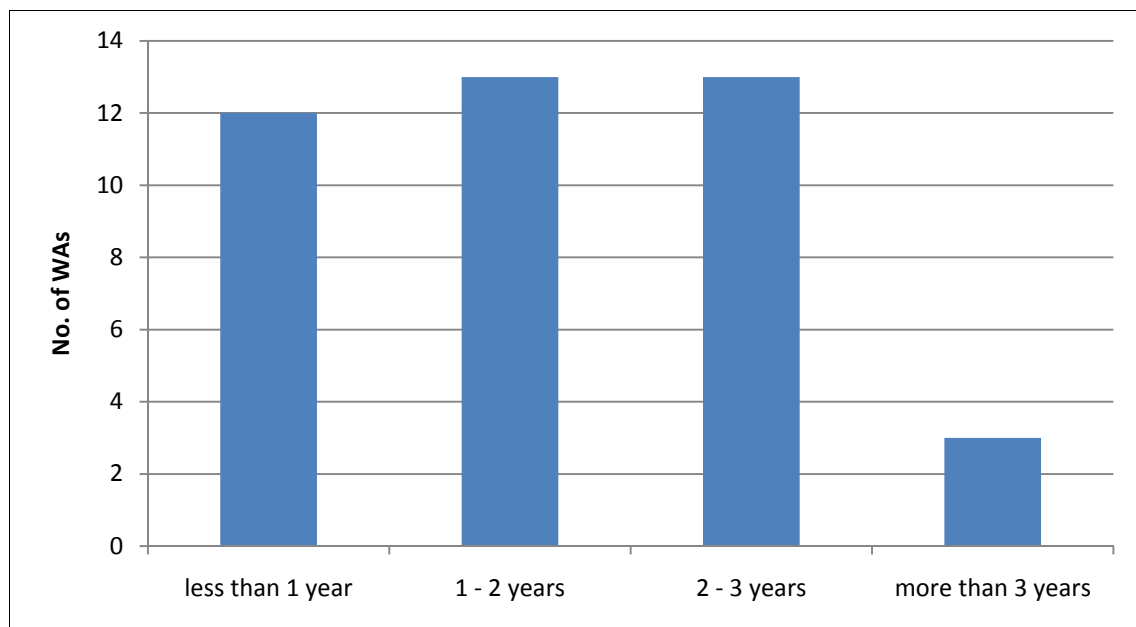
A comparison was made between the general Work Authority grant process and the case studies presented in this report. A sample was drawn from the publicly available DPI Work Plan Endorsement and Approval Report, dated 28 July 2009, together with information from the DPI online mapping tool, GeoVic. This information outlined the approvals time for 41 Work Authorities from the first submission of the draft work plan to DPI to the grant of the Work Authority.

This sample indicated an average time of 21 months, with a minimum of 6 and a maximum of 73 months. The variability of the approval times is represented in Figure 9. If the average time from the case studies of the first screening meeting to the first submission of the draft work plan to DPI of 10 months is added, it gives an industry average for the approvals process of about 31 months. This compares to the average of 37 months for the case study examples.

It should be noted that within the industry wide sample of 41 work authorities, there was only three significant operations (rehabilitation bond greater than \$50,000), taking 18, 26 and 33 months each for the period from submitting the draft Work Plan to grant of work Authority.

If the average time from the case studies of the first screening meeting to the first submission of the draft work plan to DPI of 10 months is added, this gives an average of 36 months for the approvals process for the significant operations.

Figure 9 Time taken from submission of draft work plan to DPI to grant of Work Authority – Victoria wide data



The case studies within this report may represent some of the more complex examples of the approvals process in recent years; however, the industry wide data indicates that they are not isolated occurrences. Even for relatively small sites in regional areas with few neighbours and minimal contentious issues, the approvals process could be expected to take 2-3 years, with larger sites with more contentious issues taking longer.

APPENDIX 1: Questionnaire

The next two pages will be covered at the interview and it would be of assistance if they were sent through before the interview.

A	Application for Work Authority (Section B applies as well for site requiring an Environmental Effects Statement Strike out any below which did not apply due to the EES process)		
1.	Brief Description of Application		
	Purpose:	Greenfield or Variation	
	Work Authority number:	Work Authority	
	Material type:		
	Nearest town:		
	Estimated tonnage over the first 5 years production: (Allows comparison of application costs to be released)		
2	Pre-Application Process	Date	Estimated costs
	Were the following areas considered prior to the application?		
	- Aboriginal heritage		
	- Community engagement		
	- Geological testing		
	- Government authorities (i.e. DPI, council)		
	- Landowner's consent/authority		
	- Market demand		
	- Native fauna (animals, fish etc)		
	- Native vegetation		
	- Noise and dust impact		
	- Rehabilitation plan		
	- Traffic impact		
	- Water management		
	- Draft Work Plan		
3	Application Process	Date	Estimated costs
	Site visit with DPI and other referral agencies		
	First draft of Work Authority to DPI		
	- Acknowledgment from DPI		
	- Request for additional information from DPI		
	- Response provided to DPI (Note multiple occurrences)		
	Referrals by DPI		
	- DSE		
	- EPA		
	- DPI - Catchment and Agriculture Services		
	- Heritage (AAV and local tribe)		
	- WorkSafe		

	<ul style="list-style-type: none"> - Other including duplications and additional (<i>please specify</i>) 		
	Work Authority endorsed by DPI		
	Planning Permit application <ul style="list-style-type: none"> - Acknowledgement from council - Request for additional information - Response provided (<i>note multiple occurrences</i>) - Specify any duplicate or unforeseen referrals 		
	Objections to Planning Permit <ul style="list-style-type: none"> - Number of objections - Mediation meeting with objectors held: <i>Yes or No</i> 		
	Decision by council <ul style="list-style-type: none"> - Determination: <i>Permit granted or Permit rejected</i> - Number of conditions 		
	Appeal (if any) to VCAT <ul style="list-style-type: none"> - Who took to VCAT: <i>Proponent or Objector</i> - Determination: <i>Permit granted or Permit rejected</i> - Number of conditions 		
	Work Authority application presented to DPI for approval <ul style="list-style-type: none"> - Work Authority application approved by DPI 		
B	Other Legislated Applications Required in Association with Application for Work Authority		
4	EES process	Date	Estimated costs
	Referral to Minister <ul style="list-style-type: none"> - When was the application identified as requiring an EES? - Who initiated this? <i>Proponent or Government or Other</i> 		NA
	Directions hearing		NA
	Public exhibition and inquiry <ul style="list-style-type: none"> - Number of responses - Inquiry type: <i>Desktop or Conference or Hearing</i> 		NA
	Ministers Determination <ul style="list-style-type: none"> - Result: <i>Acceptable effects or Unacceptable effects or Requires major modification</i> 		NA
	Applicant's attitude to result <ul style="list-style-type: none"> - Appeal considered, other exit strategies - Impact of decision (e.g. cost, discontinuation of expansion) 		NA
	Total cost of EES	NA	

APPENDIX 2: Idealised Work Authority Application Process

The processes involved in obtaining a Work Authority under the EID Act can be summarised as involving:

- **Pre-application:** This is an information gathering, data collection and analysis stage. At the successful completion of this stage the application will be endorsed by the DPI.
- **Planning process:** This involves making application under the *Planning and Environment Act 1987* (P&E Act) for a Planning Permit to the council.
- **Final application process:** This is the culmination of the first two stages and involves application to DPI of the Work Plan and rehabilitation plan.

This process is applicable to either a new application or a variation to a Work Authority.

Large projects may be required to undertake an EES under the *Environment Effects Act 1978*.

The general, idealised approval process for extractive industry is summarised in Figure 10 and outlined in the DSE *Extractive Industry Proposals VPP Practice Note* April 2006 (available from [http://www.dse.vic.gov.au/CA256F310024B628/0/AFA9B16FB7AE02A1CA25715A0029D0C8/\\$File/Extractive+industry+proposals.pdf](http://www.dse.vic.gov.au/CA256F310024B628/0/AFA9B16FB7AE02A1CA25715A0029D0C8/$File/Extractive+industry+proposals.pdf)).

The reality of the Work Authority application process is more realistically represented in Chapter 3.

Stage 1: Pre Application Process

Step 1:

The proponent advises the DPI of the intention to apply for a Work Authority for an extractive industry site. This involves a discussion between the proponent and the DPI inspector about the proposed project.

Step 2:

DPI advises the proponent that a draft Work Plan is required and must be developed following consultation with the various relevant agencies. The DPI determines the appropriate government contacts across all relevant government agencies.

This includes the referral authorities who are required to be consulted under the P&E Act.

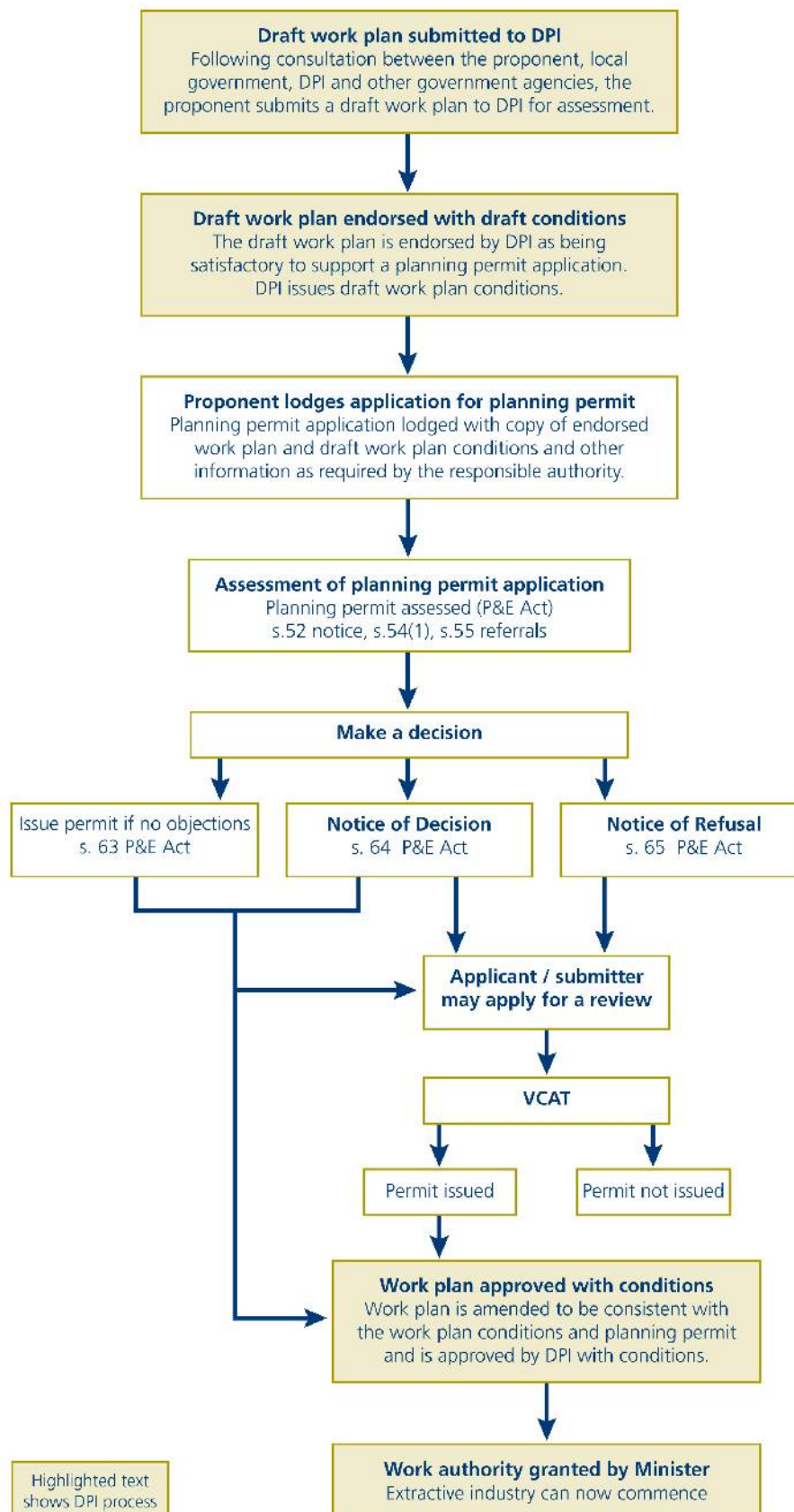
Step 3:

The proponent arranges the consultations and an on-screening meeting with relevant agencies. The DPI advises the proponent about key issues and time frames, including, for example, to what extent the Native Vegetation Framework applies to the proposal and whether a Cultural Heritage Management Plan (CHMP), are required.

This step involves the proponent undertaking various surveys/studies and gathering information required for the purpose of seeking necessary approvals from relevant agencies.

DPI also provides a preliminary assessment of the rehabilitation bond required under the EID Act.

Figure 10 Idealised approvals process for extractive industry
 (copied from DSE *Extractive Industry Proposals VPP Practice Note* April 2006)



Step 4:

This step involves finalisation of the draft Work Plan, including the rehabilitation plan and obtaining the necessary consents from relevant agencies.

Step 5:

This step involves DPI endorsing the Work Plan and the proponent subsequently applies to the council for a Planning Permit.

Stage 2: The Planning Process**Step 6:**

The proponent seeks advice from the council whether the proposal requires a Planning Permit under the P&E Act. If required, an application for a Planning Permit must contain:

- A copy of the DPI endorsed Work Plan (see Step 5);
- A copy of the endorsed Work Plan conditions;
- A location plan, a site and context plan, a development plan (effectively, the Work Plan); and
- A description of the proposed operation and its compliance with the Native Vegetation Management Framework; a description of any landscape, botanical, zoological or geological features and their significance; details of archaeological or heritage features; a copy of any CHMP; the proposed method for processing any products or chemicals; and details of the proposed rehabilitation.

Step 7:

The council or the proponent provides a notice, usually in the local press, of the Planning Permit application. At this point, submissions are called for from the local community in relation to the proposal.

Step 8:

The council provides a copy of the application to referral authorities. This process can be short-circuited if the proponent can demonstrate that the referral authorities have already been provided with the relevant information.

The council may seek additional information from the proponent at this step.

Step 9:

The council assesses the permit application in accordance with the requirements and decision guidelines of the Victorian Planning Provisions.

Step 10:

The council either grants the Planning Permit with or without conditions or refuses to grant the permit.

Step 11:

The council advises referral authorities of its decision to grant or refuse the application for a permit.

Step 12:

The council's decision can be contested through VCAT by either the proponent or objectors.

Stage 3: Final application process

Step 13:

This step is the culmination of the previous step, where the proponent submits the endorsed Work Plan and rehabilitation plan to DPI for approval.

The EID Act requires that within 1 month of the Work Plan being lodged, the DPI Department Head must make a decision to approve the Work Plan with or without conditions, or not approve it. The DPI Department Head may, however, require changes to the Work Plan or the rehabilitation plan.

Where the Department Head is satisfied with the application it is submitted to the Minister for approval of the Work Authority.

Step 14:

The Minister must grant the Work Authority after he/she is satisfied that the applicant has complied with all requirements of the EID Act. The Minister may impose conditions on a Work Authority.

Environmental Effects Statement (EES)

The *Environment Effects Act 1978* provides for assessment of proposed projects that are considered to have a significant effect on the environment. The Minister administering the Act might typically require a proponent to prepare an EES when:

- There is a likelihood of regionally or State significant adverse effects on the environment;
- There is a need for integrated assessment of potential environmental effects (including economic and social effects) of a project and relevant alternatives; and
- Normal statutory process would not provide a sufficiently comprehensive, integrated and transparent assessment²⁷.

Irrespective of what is required by the State, approval may still be required from the Commonwealth Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). In such cases, the two processes can be combined or run parallel to each other.

The EES process is extensive, and can be quite protracted and costly (in terms of obtaining the necessary consultants reports and lost opportunity costs). Added to this, until very recently, proponents can be asked for additional environmental surveys in the Planning Permit process, even though the issues have already been addressed in the EES.

²⁷ Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978, DSE 2006, p 2

APPENDIX 3: Detailed Case Studies

Case Study 1

1. Brief History & Description

This Case Study involves a variation to a Work Authority to expand the area of the approved site. Quarrying activities have occurred at the site since 1956 and under ownership of the company since 1976. In the mid 1980s the company acquired the neighbouring site, combining the two operations. During 1995 – 1999, a proposal was considered to extend the area of the quarry to the south and east of the current operating site. The proposed extension encapsulated an extraction area of an additional 17.1 hectares, which contained between 20-30 million tonnes of exploitable resources of stone with total production for the first 5 years estimated at 5 million tonnes.

In February 1997, the Minister for Planning determined that the quarry extension proposal did not require an EES.

To facilitate this extension a variation to the company's existing Work Authority was sought from the DPI, and following endorsement of the work plan an application was made to the council for amendment of the Planning Scheme. The Planning Scheme Amendment went on public exhibition from 22 April to 24 June 1999. During this period 1300 public submissions were received by the Shire of Yarra Ranges. An application for a Works Approval was also submitted to the Environment Protection Authority (EPA) in 1999.

The application for amendment of the Planning scheme was rejected by council in December 1999. A criticism of the application was a lack of public consultation. The council abandoned the amendment on the basis that the local community strongly opposed the expansion of the quarry due to the potential impacts on:

- Health of residents and school children from dust
- Flora and fauna
- Water quality and flow of a nearby creek
- Amenity due to noise
- Amenity due to adverse visual impact
- Amenity due to nuisance and damage to properties from blasting
- Amenity due to adverse impacts of heavy traffic.

NONE OF THESE ISSUES WERE SUBSTANTIATED WITH EVIDENCE.

2. Pre-application Process

In 2001 the company reignited consideration of the matter and engaged a consultant to co-ordinate development of a draft Work Plan. In view of the earlier experience the company was determined to develop a comprehensive public consultation process and received advice from the DPI about organisations that should be represented on a Stakeholder Reference Group (SRG). The council was also consulted and it strongly recommended an independent chair. The company established a SRG in 2001 to try and develop a positive working relationship with the community following the 1999 application.

The SRG comprised representatives from the council, DPI, EPA, DSE, Department of Human Services (DHS) and the community.

Aside from the company representative there were **no industry, economic development or customer (of the extractive industry) bodies represented**. As such the SRG was overwhelmingly regulators and local community representatives with a vested interest against the quarry development. An independent chair was engaged from 2001.

Despite the extensive community consultation, approval for the proposal was not granted.

The SRG met every 2-3 months. The consultation phase of the process was considered by DPI and the council as being very comprehensive going beyond generally accepted levels of information provision and interaction. But again, it comprised largely regulators and community bodies and had no balancing representation and was effectively uncontrolled.

Technical studies

Each of the many requests by the SRG for additional information (most requiring separate studies) was accommodated by the company. **In total, 16 technical studies were conducted to comply with these and the regulator's requirements. Some studies were considered by the company and indeed, some government officials, of dubious value.** One study arising from the SRG was undertaken because one member had heard anecdotally that neighbours of the quarry had higher rates of asthma than in other parts of the State. As a result of this unsubstantiated allegation the company conducted a health study of neighbouring residents at a cost of \$35,000. The study found no evidence to support the allegation.

A discussion of the primary technical studies follows.

Aboriginal heritage

Following advice from the DPI the company requested Aboriginal Affairs Victoria (AAV) to undertake an initial site inspection. Following this formal advice from the AAV was received by the company advising that a heritage study must be undertaken. An archaeological heritage consultant was appointed but their investigations found no items of interest. The cost of the preparation of the report was approximately \$20,000.

Aquatic, flora and fauna and native vegetation investigations

The company engaged a consultant to prepare a flora and fauna report. Additional consultants were also retained to prepare a native vegetation report of the site. Consultants were also retained to undertake an aquatic study – a net gain offsets report.

In total these studies cost the applicant approximately \$780,000.

Traffic impact

In order to commence considerations of the regulatory requirements associated with assessing any traffic impact of the proposed extractive operation, the applicant initiated a meeting with representatives of the Department of Planning & Community Development (DPCD) and the council. Subsequently, a consultant was commissioned to design the quarry road and report on associated traffic impact.

Application for variation of the Work Authority

A draft Work Plan was (re) submitted to DPI in January 2007 and was endorsed on 21 March 2007.

In view of the earlier experience and the attitude of the SRG the scope of application was reduced and covered a smaller portion of land. Tonnage output per annum did not change (still approx 1m tonne). The size of the extension however had been halved, the company proposed to permanently preserve areas of the southern and eastern forests, and the buffer distances from the creek had been increased.

The proposed extension will increase the extraction area of the existing Work Authority by 7.9 hectares (4.3 hectares of remnant vegetation and 3.6 hectares of cleared land). The proposed extension area contains an estimated twelve million tonnes of valuable reserves of stone and would extend the working life of the quarry by approximately 12 years. Over the first five years approximately 5 million tonnes of material is expected to be extracted.

The stone and gravel quarry currently occupies an area of 57.5 hectares encompassing a plant/extraction area (47.6 ha) and a stockpile area (9.9 ha). The site is a major centre for the company's operations, supporting quarrying, concrete, asphalt and administrative activities.

The total stone reserves within the current approved quarry site are in excess of 10 million tonnes (in December 2003), which gives the quarry a life in excess of 10 years.

3. Planning/EES Process

On 20th April 2004, the Minister for Planning determined that the proposed quarry extension required an EES. Assessment Guidelines for this EES were issued by DSE in September 2004.

The proponent prepared a draft EES in accordance with the Assessment Guidelines.

The draft EES Assessment Guidelines were reviewed by the SRG and publicly exhibited from 7 June to 2 August 2004. DSE hosted a scoping workshop (widely advertised in local and state-wide papers) on June 22. Ninety people attended.

Assessment Guidelines for this EES were issued in September 2004. The proponent prepared a draft EES in accordance with the Assessment Guidelines.

The company lodged a Planning Scheme amendment and works approval in June 2007.

The council claimed to review the draft EES documents and then called a special meeting on November 13, 2007. At no stage during its review of the EES documents did council representatives ask to speak with any of the EES technical consultants who prepared the reports. The offer was made on several occasions that these people could be made available.

Prior to the special meeting, council officers advised the company that it (the company) had met all the council's requirements when the EES was established, and that they would make a positive recommendation to the council that the Planning Scheme amendment should be put on public exhibition. One week before the special meeting, the company was advised by the council officers that they would not be giving a positive recommendation and could not explain why their position had changed.

The EES contained all information that was relevant to the project. Despite this, the company was required to prepare a separate Works Approval for the EPA. This was at a considerable cost to the company and represented an unnecessary duplication of information already provided to other regulators. The EPA was not happy to accept similar studies instead of a specially prepared report.

The council rejected the application for the Planning Scheme Amendment at the November 13 meeting in a unanimous decision. The company then wrote to the Planning Minister and requested that he take responsibility for the planning amendment on the basis that the company had not been given fair and due process as it believed it had met all the requirements of both State and local governments.

The Minister considered the company's request for 6 months and finally gave a decision that he would not intervene in the process. This prevented the EES process from going further and the application effectively stopped.

The Minister did not assess the proposal or put it on public exhibition. He provided a media release on 5 June 2008.

As the State election was due to be held in November 2007 the proposal was delayed until 2008. This involved further costs for the company of \$150,000 to \$200,000.

Because the council could not consider the application in December or January due to holiday breaks etc, the company was then required to update some of the technical data in the EES studies to ensure that it was the most recently available. This included updates to the economic, air modelling, groundwater, hydrology and water quality, landscape and visual reports.

On 5 June 2008, the Minister for Planning decided not to intervene in the matter.

The updated EES with the application for rezoning and amendment to the Planning Scheme was subsequently considered and rejected by the council on June 18, 2008. The cost of the EES study was \$3.5m (excluding internal costs).

No formal documentation was provided to the company following the council meeting, but the meeting minutes included the council officer's reasons for recommending that the application not be exhibited. These included:

- The removal of 5 hectares of vegetation;
- Potential draw down effect on groundwater;
- Loss of vegetation for the Powerful owl; and
- Close proximity to sensitive uses.

Each of these issues were addressed and mitigated in the EES documents but this was not considered by the council. In view of council's decision that the planning scheme amendment required to facilitate the proposal will not proceed, the Minister for Planning has advised that there is no practical purpose in exhibiting the draft EES.

4. Total Costs

Total costs associated with this application are as follows:

Pre-application process (including consultation process)*	\$3,500,000
Planning process*	
EES*	
Management costs (15%)	\$525,000
Sub total	\$4,025,000
Financing costs	\$1,112,033
Total costs	\$5,137,033

** As all these processes were managed concurrently and had significant overlap they cannot be differentiated.*

5. Current Status

This application closed as the Minister for Planning will not exhibit the EES, effectively removing the ability to obtain a Work Authority variation.

6. Main Issues

The main issues raised in this case study were:

- Despite council officials indicating that all their requirements had been met the ultimate decision appeared to involve political intervention. Notwithstanding that most assessments by the EES Minister are followed by decision makers, the EES process, being a decision-advisory process, does not itself involve an appeal mechanism. Therefore, the proponent cannot appeal against the decision concerning the EES. Where an EES is not required the proponent can appeal to VCAT.
- There is considerable duplication in the technical information requirements of the EES, the EPA Works Approval and EID Act processes. Neither is streamlined, synchronized or compatible.

Case Study 2

1. Brief History & Description

This application involved a new Work Authority for a site which had previously been quarried to some extent, and in respect of which an extractive industry licence had existed until the 1980's. The proposal anticipates total extraction over the first 5 years of approximately 700,000 tonnes of potentially high grade basalt. The proponent estimates the site contains approximately 2.65 million tonnes of extractive material.

2. Pre-application Process

The preliminary work of this project commenced in November 2003 with the applicant engaging a consultant in site surveying and the preparation of site plans. The DPI's Work Authority guidelines indicated that, in addition to the specific requirements of the Work Authority and Work Plan, there were several other requirements and areas of potential interest that would need to be investigated including:

- A Planning Permit
- Investigating the relevance of Aboriginal heritage on the site
- Investigate any material traffic impacts
- Investigating native vegetation and flora and fauna matters
- Investigating aquatic impacts
- Identifying the need for landscaping
- Carrying out rock testing

The applicant commenced the development of the Work Plan in concert with the Planning Permit application, aboriginal heritage studies and traffic impact.

DPI Work Plan and Work Authority

Following the site plan preparation and associated work, a draft Work Plan was initially submitted to the DPI on 6 August 2004. On 8 November 2004 the DPI provided a list of alterations it required.

These were accommodated in a revised Work Plan submitted on 27 December 2004. Following a request from the DPI, a copy of the revised Work Plan was again provided on 2 March 2005 as the original had not been received by DPI. Further copies were requested on 8 March 2005.

On 9 May 2005 the DPI requested a minor alteration to the draft Work Plan. A revised draft Work Plan was submitted on 3 June 2005 and additional copies were provided on 21 June 2005. The DPI endorsed the Work Plan on 26 July 2005.

This sequence of events illustrates the challenges facing applicants.

Technical Studies

Studies undertaken as part of the development of the draft Work Plan are discussed below:

Aboriginal heritage

Following advice from the DPI, the applicant requested AAV to undertake an initial site inspection. This was conducted on 16 March 2004.

Formal advice from the AAV was received on 26 April 2004 advising that a heritage study must be undertaken. An archaeological heritage consultant was appointed in July 2004 and its report in August found no items of interest. The cost of the study was approximately \$6,000.

No CHMP was required as this part of the application process had been completed prior to this new legislative requirement.

Aquatic, flora and fauna & native vegetation investigations

The applicant engaged a consultant to prepare a flora and fauna report. The first draft of this report was provided on 24 April 2006 and a final report provided on 4 August 2006.

Additional consultants were retained to prepare a native vegetation report of the site. Two rare plants were uncovered.

Consultants were also retained to undertake an aquatic study and a net gain offsets report. In all 4.9 Habitat Hectares were required to be offset for the application that was sourced within the property held by the landowner. It must be appreciated that were this to have been sourced by Bush Broker program or other means in excess of \$100,000 per hectare²⁸ would be required to address this issue. That is, based on a ratio of 5 hectares for each Habitat Hectare, for this proposal a total of \$490,000 would be required in offsets.

In total these technical studies cost approximately \$68,000.

Environmental Impact

Consultants were engaged to undertake landscaping studies. The cost of these services was \$35,000.

Traffic Impact

In order to commence considerations of the regulatory requirements associated with assessing any traffic impact of the proposed extractive operation, the applicant initiated a meeting with representatives of the Department of Planning and Community Development and the council on 30 December 2003.

Subsequently, in March 2005 a consultant was commissioned to design the quarry road and report on associated traffic impact. The preliminary report was submitted to the council on 18 May 2005.

On 30 August 2005 the consultants were requested to provide details in the report as requested by Vic Roads. A further 'Road Design and Traffic Impact Report' was furnished by the consultant and submitted to the council and a road design report to Vic Roads (for approval) on 18 October 2005.

²⁸ The figure of \$100,000 per hectares is taken from a report, by the Victorian Competition and Efficiency Commission, A Sustainable Future for Victoria, Getting Environmental Regulation Right, Draft Final Report, March 2009, page 155
[http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/EnvironmentInquiryDraftReport-FullReportVer2/\\$File/Environment%20Inquiry%20Draft%20Report%20-%20Full%20Report%20Ver2.pdf](http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/EnvironmentInquiryDraftReport-FullReportVer2/$File/Environment%20Inquiry%20Draft%20Report%20-%20Full%20Report%20Ver2.pdf)

On 13 March 2006, the applicant wrote to Vic Roads requesting approval of the proposed intersection and road design. A further letter seeking urgent attention to the matter was sent on 26 July 2006. On 8 August 2006 Vic Roads advised it had approved the intersection and road design. This consultant's fee for the preparation of the design and traffic impact assessment was approximately \$5,500.

Power was to be generated on the site. A four lane intersection roadway was to be built at the front of the site at an approximate cost of \$150,000.

3. Planning Process

Following endorsement of the Work Plan, an application for a Planning Permit was submitted to the council on 28 July 2005. On 5 August 2005, the council provided the applicant with details of the public notification process for Planning Permit applications and a notice of the application was displayed in the local newspaper on 23 August 2005. Subsequently, on 25 August Vic Roads sought additional information concerning the traffic impact of the application. A road design report was submitted to Vic Roads on 18 October 2005.

Following council's request of the 22 December 2005, a copy of the archaeological heritage report was provided on 29 December 2005.

In response to objections received from the public display of the application for a Planning Permit, a response report prepared by a consultant for the company was furnished to the council on 2 January 2006.

On 24 January 2006 the application for a Planning Permit was considered by the council and on 1 February 2006 advice was received from the council of its refusal to grant the application.

Appeal to VCAT and Supreme Court

The applicant engaged legal advisors to consider the potential merits of an appeal of the council's decision to VCAT. Subsequently, on 3 April 2006 the applicant lodged an appeal with VCAT against the council's decision. Following a site investigation, hearings were held on 23-27 July and 20 August 2007. VCAT on 14 December 2007 confirmed the council's decision to not issue a permit. The DPI did not attend the VCAT hearing.

Following VCAT's decision the council, in a media release of 14 December 2007, 'Council and community wins at VCAT', expressed its satisfaction with the result after a '*long and committed fight by local residents*'.

However, the applicant's solicitors subsequently raised a point of law in relation to an error in '*natural justice*' by VCAT and took this matter to the Supreme Court. The **Supreme Court reviewed the case and on 5 September 2008, confirmed the error and found in favour of the applicant, requiring that the matter be heard again by VCAT.** The Supreme Court decision exempted the council from any cost claim by the applicant as the error of law was made by VCAT and not by council. The Council has called for a mediation meeting with VCAT in August 2009.

4. Total Costs

Total costs associated with this application are as follows:

Pre application		
Aboriginal heritage (site investigation)	\$9,701	
Work Plan	\$10,986	
Habitat hectare offsets**	\$490,000	
Sub Total		\$510,687
Planning process		
Geological assessment	\$1,865	
Planning consultants	\$6,640	
Traffic impact	\$2,140	
Sub Total		\$10,644
VCAT Process		
Aquatic report	\$11,056	
Flora and fauna	\$41,434	
Geological assessment	\$4,460	
Legal	\$162,074	
Noise	\$6,138	
Native vegetation	\$12,773	
Planning consultants	\$22,438	
Traffic Impact	\$3,391	
Visual amenity	\$34,836	
Water management	\$22,627	
Sub Total		\$321,227
Post VCAT*		
Flora & Fauna	\$4,348	
Native Vegetation	\$2,857	
Legal	\$178,083	
Planning consultants	\$51,736	
Sub total		\$237,024
Management costs (8%)		\$47,167**
Sub Total (to date)		\$1,126,749
Financing costs (5% over 5 years)		\$162,891**
Grand Total (to date)		\$1,289,640

* This task is not yet complete

** The costs of habitat hectare offsets have not been included in the management costs or financing costs.

5. Current Status

This application is pending settlement following a mediation meeting called by the council with VCAT to be held in August 2009.

6. Main Issues

The main issues raised in this case study were:

i. Duplication in roles of DPI and local council

There is a lack of demarcation between the pre application process of obtaining endorsement of the Work Plan and the planning permit process. When the Extractive Industry Development Act was introduced, what had been effectively a single licensing system was divided into two processes. The explanatory material published at the time envisaged a division of responsibilities and listed the separate issues to be dealt with by each process. There is now an overlap between the two processes which has resulted in no clear rules and a lack of discipline on the part of the agencies involved.

ii. Lack of resolve by regulatory agencies

In this case study the matter was referred to some authorities on up to three occasions. The DPI referred the matter to DSE when the process of obtaining endorsement of the Work Plan was commenced, and also to the local water authority amongst others. No indication was given to the applicant that there were any outstanding issues with any of those authorities. When the Work Plan was endorsed by DPI and the applicant proceeded with an application for a planning permit, DSE and the local water authority were again referral authorities under the statutory process. DSE's response was described in the council planning report as no objection and no conditions.

All referral authorities were recorded in the council report as 'no objection' although in some cases this was followed by 'subject to conditions' (none of these conditions were considered to be of sufficient significance to warrant mention or discussion in the report).

After the permit application was refused by the council, and the matter went to VCAT, during the lengthy process prior to hearing and when the appeal process was well advanced, the council's legal advisors referred the matter again to both DSE and the local water authority. DSE responded at considerable length raising a number of serious issues. The local water authority also responded raising issues.

During the appeal hearing at VCAT the applicant was heavily criticised in relation to the adequacy of the dam design and this was a key element in the VCAT decision. DPI was not present to support the Work Plan it had considered appropriate to endorse.

iii. Unreasonable time in processing application

The process of obtaining DPI endorsement of the Work Plan took approximately one year during which the applicant amended the Work Plan and plans as required by DPI, including reducing the size of the proposed dam as directed by DPI.

The whole process involving endorsement of the work plan and obtaining a planning permit is lengthy and very expensive. If any authorities have problems with the application these should be identified at an early stage, so that the applicant has an opportunity to assess the viability of continuing, rather than being ambushed many thousands of dollars later when well down the track.

iv. Unnecessarily complex and one-sided VCAT system

The Tribunal appeared to have virtually no interest in the separate roles of the two approval processes, or in the manner in which those processes are intended to coexist, and seemed to ignore as irrelevant the process of endorsement of the Work Plan that had occurred.

The applicant became a victim of these duplications and inconsistencies, constantly playing catch up and seeking to address the issues that inconsistently and changeably emerged during the whole process. The requirements of DPI in relation to the dam design were met with the results mentioned above. During the preliminary process leading up to the VCAT hearing, the emphasis of the council and the objectors was on vegetation issues influenced to a considerable extent by the emergence of issues raised by DSE despite their earlier absence of objections.

The applicant amended its application to provide an alternate access to avoid tree removal. Considerable expense was incurred in reports relating to native vegetation issues and obtaining offsets. When shortly prior to the hearing it appeared that the applicant had satisfactorily addressed these issues, the attention of the council and the objectors shifted to possible water run off and aquatic environment issues by reason of the dam design. The applicant made changes to the plans in the course of the hearing to accommodate the shifting goal posts and was heavily criticised by VCAT for this.

The VCAT system is such that it appears that it counts against an applicant if it does not go to the considerable expense of providing an expert report on every conceivable issue, however nominally the issue is brought forward in the appeal by other parties. Despite the provision of a number of expert witnesses and reports addressing numerous issues the applicant was criticised by VCAT in its decision for failing to produce an expert acoustic report. The applicant had produced a report relating to blasting noise and vibration and relied otherwise on the distance to the nearest houses. The council and objectors produced no evidence relating to noise.

If an applicant is obliged to go through a lengthy process with DPI, normally over a period of months, to obtain endorsement of the Work Plan, it is reasonable to assume that this has some purpose. However it is difficult to identify what that purpose is if VCAT completely disregards it and starts again.

Case Study 3

1. Brief History & Description

This Case Study involved an application for a new Work Authority. The site involved has been given 'permitted use' status for sand extraction by the council.

The total area of the proposed site is 11ha, with 8ha earmarked for sand extraction. It is anticipated that the proposal would allow up to 1 million cubic metres of coarse and fine sands to be extracted, processed and made available for use in Melbourne's construction and horticultural industries. Relative to other sand quarries, the site is in close proximity to the Melbourne market.

Approximately 150,000 tonnes of product are expected to be recovered in the first year of operation escalating to a total of 1.5 million tonnes over the 5 year life of the operation for an average annual extraction of 300,000 tonnes.

2. Pre-application Process

The initial screening meeting was held on 29 January 2004 and a consultant was engaged to manage and co-ordinate the application process. A number of specialist sub-consultants were also engaged to complete studies of the site including:

- Land use planning;
- Groundwater;
- Surface water and water supply;
- Biodiversity and habitat;
- Air quality and health;
- Visual and landscape character;
- Roads, Traffic and Transport;
- Cultural heritage;
- Social impacts;
- Economic impacts;
- Rehabilitation;
- Noise.

These consultancies occurred at various points of the application, and in some instances were further built up as the application progressed.

Only minor investigations were made into native vegetation and aboriginal heritage as the site had previously been a flower farm.

An application for variation and endorsement of an amended draft Work Plan was submitted to DPI on 24 April 2005. The Work Plan was endorsed by DPI on 29 June 2005 subject to general conditions after it had been resubmitted with additional details on 17th June 2005.

Pre-application Costs

The costs to this point were as follows:

Consultants general coordination	\$40,000
Accounting	\$7,000
Environmental investigations	\$32,000
Application coordination	\$18,000
Dust	\$3,000
Traffic management	\$4,000
Noise	\$3,000
Aboriginal heritage studies	\$4,000
Legal	\$14,000
Water permit	\$2,000
Total	\$127,000

3. Planning Process

An application for a Planning Permit was submitted to the council on 30 September 2005 [Note however that the Council recorded on its site as being received on 4 October 2005].

There was considerable interaction with the council at this point, and a number of additional studies were conducted.

As a result of the consultation process by the Council ten objections to the application were received. Of concern as to the integrity of the process, one of the most strident objectors was a competitor to the proponent.

In announcing its decision on the application on 5 July 2006 the council stated that, **in principle, it did not oppose the site being used for an extractive industry, particularly as the zoning of the land specifically provides for this type of land use and development, but had refused the application** on the grounds that:

- *The buffer distances to sensitive uses were inadequate; and*
- *The extent of post closure rehabilitation, including the suggestion that the site can be used for landfill, notwithstanding that the DPI had endorsed the draft Work Plan.*

Note that the approved end use of the site in the endorsed work plan was a water filled excavation. A land fill was an option subject to EPA approval.

The company appealed the decision to VCAT on 19 July 2006. Hearings commenced on 25 October 2006, and continued between 8 and 14 February 2007. Incredibly again, one of the most strident 'respondents' allowed to participate in the hearings was the same competitor to the proponent.

On 10 May 2007, VCAT handed down its decision to affirm the council's decision. The Judgement states that the key issues for the decision were the amenity impacts, and what constitutes an appropriate and reasonable rehabilitation. With respect to the rehabilitation, the judgement states that:

- *The criteria to be assessed under the EID Act is not, in our opinion, as detailed or as far reaching as the criteria to be considered under the provisions of the Planning Scheme.*

Also, the judgement suggests that there is a need for a:

- *'Co-ordinated approach between the relevant authority (DPI) and the council, but we see no reason why there cannot be integration or crossover in the integrating of conditions'. Also, 'a more active role in the planning process by the DPI (and where relevant, the EPA) would assist all parties and perhaps reduce the confusion'.*

The VCAT decision makes an unusual assessment about the need for the proposal and its size. The decision states:

Whilst the submissions and evidence referred to up to one million cubic metres, due to the small size of the site (in comparison to other extractions in the surrounds that are underway or have been completed) and the necessity to incorporate buffer distances around the extraction, the more likely level of extraction is 600,000 cubic metres. The submissions and evidence presented also suggest that this extraction will take place over a period of 4-6 years, which in our opinion is not a very long period of time and demonstrates that the contribution to Melbourne's construction and horticultural industries will be of limited tonnage and duration.

It therefore remains for us, in balancing conflicting planning policy objectives to consider the value of the resource to the State's economy against the issues that could arise from the exploitation of the resource.

For reasons set out later in this decision, this was one of the matters that we found to be lacking in the applicant's case. While we acknowledge that the site represents a (small) exploitable resource, the degree of management required to address the operational and the very likely post operational environmental issues and rehabilitation use, in our opinion, outweighs the economic benefit to be gained from the extraction of sand.

The DPI did not attend the VCAT hearings. The proponent did not challenge the decision fearing such an action may prejudice a further application for variation.

Land holding costs

In order to secure tenure the proponent took out a lease over the land with the land owner prior to the application for variation. This was not redeemable on failure of the application.

4. Total Costs

Total costs associated with this application are as follows:

Pre application		
Sub Total		\$127,000
Land holding costs		\$200,000*
Planning process		\$9,200
VCAT process		
Town Planning consultants	\$10,800	\$149,800
Geotechnical assessment	\$4,500	
Legal	\$67,000	
Environmental specialist	\$31,500	
Engineering	\$18,900	
Landscaping	\$3,600	
Work Plan	\$4,500	
Traffic management	\$3,600	
Valuation	\$5,400	
Sub total		\$486,000
Management costs (8%)		\$38,880
Sub Total (to date)		\$524,880
Financing costs (5% over 5 years)		\$145,015
Grand Total (to date)		\$669,895

**The lease arrangement involved a \$200,000 option to purchase.*

5. Current Status

This case study is closed as it was rejected by VCAT. The non-refundable deposit of \$200,000 was part of a proposed land purchase agreement including a purchase price of \$7m subject to the relevant approvals being obtained. Following the rejection of the appeal by VCAT the proponent sought to commence the process again but was told by the landowner that the purchase price had been increased to \$10m. Given the cost of the process to date and the lack of any assurance of success the proposal ceased.

6. Main Issues

The main issues raised in this case study were:

i. Unstructured and inequitable approach to community consultations

Although the proponent carried out all required tasks, there appeared to be little possibility of appeasing local residents and in turn the local council. Much of the focus was on noise and dust impacts, however even once investigated and addressed by the proponent, concern were still held.

The sector has vastly improved in its ability to manage itself in a sustainable manner, however community holds to the view that the industry will do things the wrong way. Submissions by objectors should be contained to only address relevant matters and there should be a system within VCAT that does not allow an objection to be considered if it does not address relevant matters such as in this case where an objection to a quarry was based on the commercial viability of the operation.

ii. Unnecessarily complex and one-sided VCAT system

VCAT was initially seen as a cost effective means of addressing objections. Due to the necessity of the proponent to have a highly skilled legal team and wide variety of experts, the costs went far beyond initial estimations.

It is unusual that VCAT chose to consider market demand and supply issues when assessing the appeal, especially when apparently it had not specifically been provided with evidence from expert witnesses to support its position. Commercial viability should be left to the marketplace rather than be subject to extraneous intervention. Government reports including the Environment and Natural Resources Committee of the Victorian Parliament, report on May 1994, *Planning Issues for Extractive Industries*, and *Melbourne Supply Area – Extractive Industry Area: Interim Review*, Geological Survey of Victoria, Technical Report 2003-02, have identified that the Melbourne Supply Area is running out of sand resources. Given this scenario, it is puzzling that VCAT should make its decision partly on commercial viability grounds.

Sourcing product in close proximity to the market also allows for lower costs due to savings in cartage as well as reducing carbon emissions.

In the worst case scenario where the operator has to prematurely close the quarry due to market forces, there are systems in place through the DPI rehabilitation bond system to ensure that appropriate rehabilitation of a site should occur in the event of a quarry ceasing operation.

Case Study 4

1. Brief History & Description

This Case Study involved an application for variation to a Work Authority to extend the area of the existing approved extraction area. The basalt quarry has been in operation since the early 1970's and comprises 246ha. The quarry contributes approximately 11 per cent of Victorian output of basalt aggregate (2003). The Stage 2 project proposes to extend the extraction area by 324ha to a total of 562ha. It was initially intended that the proposal be for a larger site of 602ha but following advice from flora and fauna specialist the size of the site was reduced by 40ha as an offset to any flora and fauna concerns. This offset resulted in a loss of 8 million tonnes of product at an average of \$13/tonne is equivalent to \$104m worth of lost potential production to the proponent.

There were no local community objections to the proposal but there was an objection from Parks Victoria concerning the presence in the area of orange bellied parrots (an endangered bird species) and grasslands. This area of land is not subject to any RAMSAR declaration.

The proposed extension will provide resource opportunities of 40-60 million tonnes of basalt over an expected period of 40-50 years based on current production rates of between 0.9 – 1.2 million tonnes per annum at the Stage 1 quarry or approximately 5 million tonnes over the first 5 years. The extension will access quality basalt for the production of crushed rock, concrete, asphalt and sealing aggregates.

The existing quarry operations (referred to as Stage 1) were approved in 2004 and the then Minister for Planning determined that the works would raise no significant environmental issues and therefore would not require the preparation of an EES. A Work Plan was developed and a Planning Permit was issued by the council on 11 November 2004. The Work Authority was amended to include the Stage 1 extension. At the time of approval, Stage 1 works provided an additional resource supply of around 5 years. The current operation has a Discharge Licence under the *Environment Protection Act 1979* (EP Act) for disposal of groundwater and surface water collected during extraction.

The 2004 approval for Stage 1 extension allowed the quarry to continue while an EES was prepared for the proposed Stage 2 extension. This was the fourth environmental investigation to be carried out over this area and none of the previous investigations identified any environmental issues.

2. Pre-application Process

A specialist consulting firm was engaged early in 2004 to prepare the EES including a Work Plan for the Stage 2 proposal. A screening meeting was undertaken in 2004. In addition, many other technical consultants were engaged to provide advice and assessment on a range of matters including:

- Air quality and health;
- Biodiversity and habitat;
- Blasting;
- Cultural heritage;
- Economic impacts;
- Fauna and flora issues including investigations, findings and mitigation measures;

- Geological investigation of the overall proposed quarry extension area;
- Land use planning;
- Noise;
- Rehabilitation plan;
- Roads, traffic and transport;
- Salt marsh management plan;
- Social impacts;
- Surface and groundwater issues including investigations, findings and mitigation measures, and water levels in the quarry resulting from bay dredging; and
- Visual and landscape character.

3. EES process

In July 2004, the former Minister for Planning determined that the proposed Stage 2 required an EES under the *Environment Effects Act 1978*.

On 1 July 2004 and as a result of the applicant's enquiries, the former Commonwealth Minister for the Environment and Heritage determined that the project is a 'controlled action' under the EPBC Act. On 21 January 2005 the Department of the Environment and Heritage, advised that the Victorian EES process was accredited as the method of assessment under the EPBC Act.

Draft Assessment Guidelines for the extension were produced by the DSE in December 2004 and formed the basis upon which specialist investigations and studies were conducted by the proponent and the EES. These Guidelines were finalised in March 2005.

Technical Reference Group

The Minister for Planning established a Technical Reference Group (TRG) to provide legislative and policy advice in the preparation of the technical investigations. The TRG comprised representatives from a number of stakeholder and government agencies including:

- Council;
- DPI;
- DSE;
- EPA;
- Parks Victoria;
- Water authority; and
- Former Department of Environment and Heritage.

Representatives on the TRG covered a much wider range than typical referral authorities as a result of public advertisements and DSE invitations. It did not however have any community representatives.

The TRG met fifteen times throughout the development of the EES including a site visit to the quarry. The first meeting was held on 29 July 2004 and the last meeting was held in February 2007. Some of these meetings were on specific issues.

A challenge for the applicant was that meetings resulted in continually shifting objectives and the inability to contain issues. As a result of this movement studies were conducted at great cost but minimal result.

EPA Works Approval

On 24 May 2005, the EPA advised that a Works Approval under the *Environmental Protection Act* was not required for the extension as the volume and quality of water discharged from the site would not change from existing operations.

DPI Work Plan Endorsement

A Work Plan was submitted to the DPI on 14 December 2005 and subsequently endorsed on 5 May 2006. During this time, the Work Plan was sent to all referral agencies, including those who participated in the TRG.

EES Exhibition and Decision Process

An EES was prepared and endorsed for a 6 week public exhibition from 17 March 2008.

On 16 June 2008 the Minister for Planning and Community Development appointed an Inquiry under the EES Act to conduct a hearing into the EES. A site visit was held on 8 September 2008, with the hearing occurring from September 9 to 11, 2008. The EPA and AAV were required to provide written advice about the issues raised in the DPI submission.

4. Total Costs

Total costs associated with this application are as follows:

<i>Pre application*</i>	
<i>Planning process (including EES*)</i>	
Sub total	\$1,400,000
Management costs (7%)	\$98,0000
Sub Total (to date)	\$1,498,000
Financing costs (5% over 5 years)	\$406,134
Grand Total (to date)	\$1,904,134

** As these processes were managed concurrently and had significant overlap individual costs for the segments cannot be differentiated.*

This application has not been concluded and costs could increase further.

5. Current Status

The Inquiry set up by the Minister was required to complete its report within eight weeks of its last hearing date. That is, the report should have been handed down on 6 November 2008 or thereabouts. As at July 2009 when the dates in this report were finalised, no report of the Inquiry or Minister's response has been made available. That is, no clear direction has been given to the proponent since the Inquiry commenced in June 2008²⁹.

²⁹ On 18th September 2009, after the date of this report, the Minister for Planning released his assessment on the proposal.

6. Main Issues

The main issues raised in this case study were:

i. Duplication and escalating information requirements

Studies and data were collected multiple times due to the subjective nature of much of the information.

ii. Unreasonable time in processing applications

There is no concentration by government to ensure an outcome is achieved within a reasonable time frame.

iii. Increasing regulatory requirements

Offsetting requirements for native vegetation sterilise the State's landholdings and significantly limit access to resources. In this case, 8 million tonnes were sterilised to meet offset requirements of 40ha at a cost of \$100m of productive output.

Time was wasted in dealing with matters not necessarily related to the application resulting in a substantially higher cost.

iv. Unaccountable political intervention

There seems to be an opinion within government that wants all extractive applications to enter the EES process – this is simply not necessary and wastes limited financial resources and impacts unreasonably on small extractive industry businesses.

Case Study 5

1. Brief History & Description

This Case Study involved an application for a variation to an existing Work Authority to enlarge the total area of the operation. It was anticipated that this would increase extraction to a total of 450,000 tonnes over the first 5 years.

Approximately 3.69 million tonnes of rhyodacite and approximately 2.86 million tonnes of sandstone and conglomerate are contained on the land. This resource is suitable for processing into a range of products for construction including concrete and road surface aggregates, pavement base materials, and beaching and armour rock for erosion protection works.

The quarry is to be worked in three stages and market demands will dictate the staging and timing of extraction.

Customers of the existing quarry include Vic Roads and the water authorities. High quality sources of road surfacing and road base materials are scarce in the region. It was submitted that reliance upon existing sources results in increased transport costs.

The property is 40.79ha and the variation anticipates that extraction would be undertaken from an area of 15.3ha. A 20m buffer is to be provided between the extraction area and the northern boundary, a 30m buffer is to be provided to the eastern boundary (objector's property), a 50m buffer is to be provided along the western boundary and a 180m buffer to the southern boundary (objector's property Lot 2).

The neighbour has been difficult to work with throughout the life of the Work Authority with two previous VCAT hearings being conducted in 2000 and 2003 at an approximate cost of \$170,000 in total.

2. Pre-application Process

This company has been operating since 1980. In 2005, the company wished to extend its extractive operations onto its adjacent landholdings. This required a variation of the existing Work Authority, an amendment to the planning scheme (council), and a works approval (EPA). The material sought for extraction was rhyodacite, sandstone and gravel.

The preliminary work of this project commenced in June 2005 with the applicant engaging consultants in:

- Site surveying and preparation of site and rehabilitation plans;
- Investigating the occurrence of Aboriginal heritage on the site;
- A community engagement process and whether there was likely to be any material traffic impacts from extractive operations;
- Investigating native vegetation, flora and fauna, aquatic impacts, need for landscaping, and rock testing.

DPI Work Plan and Work Authority

Following the site plan preparation and associated work a draft Work Plan was initially submitted to the DPI on 6 October 2005. The DPI referred the application to the following regulating agencies for consideration:

- DSE;
- EPA; and
- DPI – Catchment and Agriculture Services.

A consultation meeting was conducted in approximately August 2006.

No CHMP was required nor a native vegetation investigation.

Following responses by these regulating agencies the DSE advised that due to the fact that the site was only seeking a variation (previously assessed), there was no requirement for additional native vegetation investigations and only a site visit (walk-over) for aboriginal heritage was required. No CHMP was required as this requirement had not been introduced at this stage. . Subsequently the DPI endorsed the draft Work Plan on 9 February 2006.

3. Planning Process

Following endorsement of the Work Plan, an application for a Planning Permit was submitted to the council in February 2006. The council published a notice of the application in the local newspaper.

One objection was lodged against the proposal and a mediation meeting with the objector and proponent was subsequently held.

As a result of this single objection the council was not supportive of the development and in October 2006 granted the application for a Planning Permit but subject to several stringent conditions. The conditions were the same as were applied by the council for the last planning permit associated with a Work Authority it had considered - for a site near a ski resort - an entirely different and more complex application involving significantly greater social and environmental implications. The conditions required on site road development and rehabilitation of public land.

Costs associated with these conditions were as follows:

- | | |
|------------------------------|------------------|
| – Road development on site | \$128,000 |
| – Public land rehabilitation | \$15,000 |
| – Total | \$143,000 |

The objector subsequently appealed the decision to VCAT on 9 November 2006. Following a site visit, hearings were held on 10, 11, and 12 April 2007. DPI did not attend the hearings.

On 7 August 2007 VCAT issued its Order for the application for a permit to be granted.

Subsequently, the application for variation to the Work Authority was approved by the DPI on 10 August 2007.

This process resulted in the rehabilitation bond increasing by \$100,000.

4. Total Costs

Total costs associated with this application are as follows:

Costs of the pre-application process		
Dust & noise	\$10,000	\$157,000
Geological testing	\$50,000	
Legal	\$5,000	
Planning	\$70,000	
Traffic impact	\$7,000	
Blasting	\$15,000	
Costs of planning process		\$6,500
Cost of VCAT process		
Dust & noise	\$4,500	\$178,500
Geological testing	\$9,000	
Legal	\$120,000	
Planning	\$27,000	
Traffic impact	\$9,000	
Blasting	\$9,000	
Sub Total		\$342,000
<i>Management costs (5%)</i>		\$17,100
Total		\$349,100
Financing costs (5% over 5 years)		\$96,450
Grand Total		\$445,550

5. Current Status

This case study is completed and Work Authority granted.

6. Main Issues

The main issues raised in this case study were:

i. Duplication in roles of DPI and local council

Duplication of information and cross over between responsible authorities was a major issue and substantially increased the costs and delays in the application.

Work Plans are scrutinised by the DPI and various authorities prior to endorsement and allowing a plan to move onto the Planning Permit stage. The council is given a further opportunity to scrutinise the Work Plan. A streamlined approach would see the council adopting the endorsed Work Plan and concentrating on planning issues.

ii. Unnecessarily complex and one-sided VCAT system

At VCAT the company was required to be represented by eight separate mining, blasting, noise, planning, and traffic consultants with most discussions being of a non-specific nature. This process imposes unnecessary costs. VCAT requires the presentation of issues repetitiously across cases, wasting valuable time and money. There is no value in re-arguing issues that can have standards applied across the board.

iii. Unreasonable time and cost in processing applications

There is no accountability for the 'down time' lost due to the convoluted process. The company lost over 12 month's production time during the process. The true cost of this will take years to recover.

iv. Unstructured and inequitable approach to community consultation

There should be greater onus placed upon the objectors. At present scurrilous objectors with little or no claim can delay the process and impose unnecessary costs. The objector is not required to substantiate the claim and the process for objectors is almost cost free. This gives rise to unreasonable and potentially vexatious objections. One such objector cost the company hundreds of thousands of dollars during this process.

During the consultation process an objector requested a study be undertaken on the stress levels of livestock. This is an example of a frivolous objector request.

Case Study 6

1. Brief History & Description

This Case Study involves an application for a new hard rock Work Authority. The material proposed for extraction is basalt. The proposal involves re-opening of a former quarry site that ceased operating in 1995 and which was subsequently rehabilitated. The proposal involves capturing substantial resources of high quality basalt stone (approximately 16.5 million tonnes) underlying the surface and previous rehabilitation works. The resources of the site are anticipated to be capable of producing a range of products including asphalt aggregates and commercial crushed rock and aggregates. The market would be the development industry generally, including road construction and potential customers would be both private and government.

It is anticipated that the project would extract 100,000 tonnes of spall, crushed rock and aggregate in the first year of operations and this would be increased to 250,000 tonnes per annum thereafter. It is anticipated that 900,000 tonnes will be recovered over the first 5 years of operation. Initially quarried rock would be trucked to one of the proponent's other quarries for further processing but after Stage One (within 18 months) a crushing plant would be established within the quarry. Without the project proceeding and in the absence of other local supplies, rock would have to be trucked from farther afield increasing transport costs and hence development costs as well as associated greenhouse gas emissions.

2. Pre-application Process

This process commenced in June 2005 with discussions held by the proponent with DPI and advice being received. A consultant was engaged to coordinate the development of the Work Plan. The following studies were then undertaken:

- The management of fauna and flora issues;
- The management of surface and groundwater;
- A detailed geological investigation of the overall proposed quarry extension area was also undertaken;
- Effects of blasting including vibration levels, complaint handling procedure, effective control of blasts including vibration monitoring, fly rock control and effects on domestic and wild fauna.

Community consultation meetings were held in July 2005, August 2006, and twice following the planning permit application. Subsequently on 27 October 2006 a draft Work Plan was submitted to DPI. The Work Plan was initially endorsed by DPI on 23 January 2007.

Separate to the development of the draft Work Plan, a Planning Permit application for a residential dwelling on the adjacent property to the quarry within the EPA buffer distance was received by Council on 10 October 2006. Council advised DPI on 19 October 2006, prior to the submission of the draft Work Plan, of the Planning Permit application. DPI did not object to this Planning Permit application for a dwelling as the "WA was an application only and as such, DPI was not in a position to comment". The applicant appealed to VCAT on Council's failure to determine the Planning Permit application in a timely manner as Council wanted to defer a decision until details of the quarry proposal had been finalised. The VCAT ruling on 10 April 2007 directed the Council to issue the Planning Permit for the dwelling which Council achieved on 12 April 2007.

DPI knew when they endorsed the Work Plan in January 2007 that there was a Planning Permit application for a dwelling within the buffer distance, but did not take the implications of this proposal into account when endorsing the Work Plan. DPI subsequently dis-endorsed the Work Plan on 20 August 2007 and required the proponent to resubmit a further draft Work Plan with changes to the proposed activity and site that would allow the quarry to be worked in an acceptable manner given the location of the dwelling.

A revised draft Work Plan was re-submitted to DPI on 1 October 2007 and was endorsed on 19 December 2007.

3. Planning Process

An application for Planning Permit was lodged with the council on 8 January 2007 with the endorsed Work Plan and associated documents following on 23 January 2007. The application was referred to various bodies for comment. As indicated above however, a dwelling was approved on an adjoining property within the EPA recommended attenuation buffer to the quarry property and the DPI decided that the Work Plan should be reviewed according – this effectively suspended the planning process.

A revised Work Plan was subsequently prepared, submitted to DPI and received endorsement on 19 December 2007 and the planning process then recommenced with the application being again referred to authorities. These bodies included:

- DPI;
- DSE - Catchment and Land Protection;
- AAV;
- Vic Roads;
- Catchment Management Authorities;
- EPA;
- CFA;
- Australian Geological Society.

No substantive comments or objections were again received.

The application was placed on public advertising for a period of three weeks with notices sent to owners/occupiers of land in a wide radius around the application land. Copies of the application were lodged locally so as to be available for viewing locally and notices were arranged for community notice boards in areas along the proposed quarry truck routes.

A total of fifteen individual submissions were received (two being from the one household) and a petition with 67 signatories. Of the fifteen individual objections, four are associated with properties that abut the application land. Also, one objector was located 30km away from the site. The grounds of objection included issues around amenity, buffer distances, traffic, dust, blasting and fumes.

Subsequently, on 11 June 2008 the council granted the Planning Permit subject to a range of conditions. These included that the proponent conduct annual community meetings to report on the operations of the site, dust suppression measures and other matters. Several parties, primarily owners of residences on adjoining properties, appealed the decision to VCAT on 3 July 2008. Hearings were held over 10 days in December 2008.

In response to recent criticism by VCAT at the non attendance of the DPI at its hearings, a representative from DPI attended each of the hearings and was able to assist VCAT in their understanding of DPI's regulatory role and interactions with other statutory authorities. The applicant acknowledged the useful contribution made by DPI at the hearing.

A decision was bought down on 19 January 2009 confirming the Planning Permit subject to a range of more stringent permit conditions '*to ensure the amenity of the neighbours and environment is protected*'.

These conditions involved upgrading of access roads. Costs associated with these requirements involved road upgrading of \$60,000.

4. Total Costs

Total costs associated with this application are as follows:

Costs of the pre-application process		
Flora and fauna	\$10,000	\$442,000
Groundwater	\$80,000	
Geological investigations	\$120,000	
Blasting	\$15,000	
Planning	\$180,000	
Aboriginal heritage	not applicable	
Noise	\$25,000	
Dust	\$12,000	
Costs of the planning process*		\$4,900
Cost of the VCAT process		
Groundwater	\$9,000	\$174,100
Geological investigations	\$7,200	
Legal	\$130,000	
Blasting	\$1,800	
Planning	\$18,000	
Noise	\$4,500	
Traffic management	\$1,800	
Dust	\$1,800	
Sub Total		\$621,000
<i>Management costs (10%)</i>	\$62,100	\$683,100
<i>Financing costs (5% over 5 years)</i>		\$188,700
Total		\$871,800

**This process has not been completed, and costs are expected to increase*

5. Current Status

There have been several meetings with the DPI and local council commencing immediately after the VCAT determination on 19 January 2009.

Since that time the DPI in collaboration with the council has been considering the appropriate wording to be included in the Work Plan that would deal with the issues contained in the VCAT determination. The Work Authority was finally granted in July 2009.

The Council has approved the planning permit and the DPI has set a rehabilitation bond at \$65,000 for the first stage of development³⁰.

6. Main Issues

The main issues raised in this case study were:

i. Lack of resolve by regulatory agencies

Notwithstanding that the DPI had received the draft Work Plan for the site in October 2006, subsequently in its capacity as a referral agency it received an application to consider a development application for erection of a residential dwelling on the perimeter of a buffer zone to the proposed quarry site. DPI did not defend the proposed quarry development even though erection of the residence impacted on the draft Work Plan of the site. The development application was subsequently approved in April 2007. As the adjoining property was within the EPA recommended attenuation buffer to the quarry property, the DPI decided in August 2007 that the Work Plan should be reviewed—effectively suspending the planning process which had begun on 8 January 2007 when the council stamped (accepted) the Planning Permit.

DPI subsequently required the Work Plan application to be amended and the application process to be re-commenced.

This unfortunate sequence of events illustrates the lack of ‘buy-in’ by DPI to its own approval process. Best practice regulatory administration would not support a proposal on the one hand and subsequently undermine it on the other.

ii. Unreasonable time in processing applications

In addition to the delays and associated costs of the need to revise the Work Plan due to the development application for a residence on the buffer zone, additional delays and costs were experienced. This involved the planning process having to be re-commenced with associated duplication and delays with the (marginally) revised application being referred back to the referral authorities. Additional costs are incurred and more time wasted in printing numerous times the increasingly complex and thick Work Plan and associated maps for each round of referrals/approvals. This could be more easily accommodated by electronic transfer of files rather than hard copy.

While errors are expected from time to time, when they occur it is expected that unnecessary duplication will be circumvented and the process fast-tracked and given highest priority.

Further delays caused in matching Planning Permit conditions with those on the Work Authority are causing considerable frustration. This situation is due to the planning consent conditions giving Council approval of changes to the endorsed Work Plan rather than DPI having direct authority to approve.

³⁰ In September 2009, after the date of this report, the key objector made an application to VCAT that the Planning Permit has not implemented the VCAT decision appropriately. The matter is ongoing.

Case Study 7

1. Brief History & Description

This case study involves an application for a new Work Authority for a small sand and soil operation of approximately 4.9 ha. The Work Authority is a new site and has been operating since March 2008.

It is estimated that this new Work Authority will involve extraction of approximately 10,000 tonnes of sand and soil per annum depending on demand. The anticipated life for extraction of product is 5 years. It is estimated the site will deliver 50,000 tonnes of material.

2. Pre-application Process

An initial screening meeting was held on-site with the DPI on 12 December 2005.

The draft Work Plan was submitted to the DPI on 14 July 2006 and received endorsement on 6 October 2006. The company prepared the application for this Work Plan and only engaged a draftsman to complete drawings costing \$1,000.

The CHMP report was completed in October 2007 and the cost was approximately \$7,000. This followed an onsite meeting with representatives from the DPI, council, DSE, AAV, the local Aboriginal representative, the company and the landowner.

The DSE advised that there were no major native vegetation issues to be dealt with. Application fees to DPI were less than \$200. Other costs were minimal.

3. Planning Process

The application for Planning Permit was accepted (stamped) by council on 8 November 2006. The council was supportive of the application that subsequently received approval on 28 February 2008. Issues during this period arose mainly due to changes in the cultural heritage legislation and subsequent changes to the initial cultural heritage requirements as outlined at the initial screening meeting. Application fees to council and associated internal costs were approximately \$500.

A formal application for Work Authority was granted by the DPI on 28 March 2008. Associated costs are estimated at \$500.

4. Total Costs

Total costs associated with the application are as follows:

Pre-application process	
Heritage consultancy	\$7,000
Work plan drawings	\$1,000
DPI Application fees	\$200
Sub total	\$8,200
Planning Process	\$1,000
Management costs (5%)	\$1,000
Financing costs (5%)	\$0
Total costs	\$10,200

5. Current Status

This case study is completed and the Work Authority granted.

6. Main Issues

There were no significant concerns arising from this process as it was undertaken relatively quickly and at comparatively low cost. In large part this was due to the positive attitude of the council to the overall development.

Case Study 8

1. Brief History & Description

This Case Study involved an application for a variation to a Work Authority to extend the area of the existing site. The material proposed for extraction is hard rock. It is estimated that the extension would realise approximately 1 million tonnes of product to be extracted over the first 5 years with a total resource of 40 million tonnes.

The Work Authority variation was first considered in March 2001, however as the extension of land was on Crown Land a permit to search for stone was required. The proponent applied for search permit in May 2002. A decision on this matter was not reached until March 2005 (that is, after 4 years) when drilling recommenced.

During this time, DPI required an updated Work Plan for the existing Work Authority which was subsequently approved.

2. Pre-application Process

This process commenced with a site consultation meeting held on 10 March 2006 with the DPI inspector, local council representatives, several DSE divisions, and local cultural heritage representatives.

This application faced considerable challenges in relation to native vegetation with substantial offsets needing to be agreed upon and sourced. The site was assessed as requiring offsets for 18 Habitat Hectares which were offset with a combination of works-in-kind and land purchased by the proponent. The costs associated with purchasing land was \$300,000.

Following advice from the DPI, a consultant was engaged to co-ordinate the application process. Also, the following studies were commenced:

- Aboriginal heritage (not a CHMP as this was not a requirement at this time);
- Native flora and fauna;
- Geological testing;
- Water management.

An application for endorsement of a draft Work Plan variation was submitted to DPI on 1 November 2006. The Work Plan variation was endorsed by DPI on 19 February 2007 subject to general conditions.

3. Planning Process

An application for a Planning Permit was submitted to the council on 15 March 2007. The application was not subject to public notice and no objections were lodged. The application was subsequently granted in April 2007.

The Work Plan variation was approved by the DPI on 1 June 2007. This variation has only allowed for additional stockpiling areas within the extended Work Authority boundary. This option was pursued due to the site's desperate need for stockpiling areas.

The proponent has made a further application for a Work Plan variation on 30 January 2009, however the proponent has to firstly address outstanding aboriginal heritage issues and native vegetation issues raised on referral of the draft Work Plan. Geotechnical issues in relation to potential impacts on a VicRoads road also need to be considered.

The rehabilitation bond has not changed as a result of this variation.

4. Total Costs

Total costs associated with this application are as follows:

Costs of the pre-application process		
Aboriginal heritage site investigation*	\$7,000	\$703,976
Exploratory drilling	\$102,000	
Flora and fauna investigations	\$23,000	
Land surveying	\$35,000	
Rehabilitation plan of existing DSE site (native vegetation offset)	\$110,000	
Geological investigations	\$7,000	
Preparation and co-ordination of draft Work Plan	\$119,976	
Purchase of land for native vegetation offsets	\$300,000	
Costs of the planning process		\$92,603
<i>Project management</i>	\$92,603	
Sub Total		\$796,579
<i>Management costs (10%)</i>	\$79,658	\$876,237
<i>Financing costs (5% over 5 years)</i>		\$242,088
TOTAL		\$1,118,325

* The investigation found quartz chips on the site. Advice from the AAV suggested this would therefore require a CHMP. Subsequently, on further investigation it was found that similar quartz chips were found in a nearby quarry that had used logging roads in the proposed quarry area. It is therefore presumed that the chips were from the nearby quarry rather than artefacts. This matter has not been finalized with AAV as yet.

5. Current Status

This Work Authority variation and current Work Plan only provides for first right of access to the additional resources and provides for additional overburden storage areas. A further Work Plan variation application has commenced in 2009 to seek extraction rights over these resources. The need for the variation arose because a required study for the initial application (on the impact of the proposal on a particular frog species) had not been completed in time due to the urgency of obtaining access to overburden storage.

6. Main Issues

The main issues raised in this case study were:

i. Increasing regulatory requirements

Native vegetation removal issues were not addressed as part of the earlier application for variation to the Work Authority process as this issue is assessed and approved under a Work Plan. New requirements have now been required to investigate the impact of the proposed change to the Work Plan on any local frog species. There appears to be no clear definition of the extent of these regulatory requirements and the ambiguous nature of native vegetation requirements in logging areas creates further uncertainty.

ii. Unreasonable time in processing applications

Prior to commencing the Work Authority process the resource level had to be assessed and proved. This required access for drilling purposes. As the extension of land was on Crown Land a search for stone under the former EID Act was required. Another search permit over the same land was in effect although for a different product. A decision on this matter was not reached until approximately 2004 when drilling recommenced approximately 4 years later. This extraordinary delay stalled further development and lost income generating opportunity.

Case Study 9

1. Brief History & Description

This proposal is a variation to an existing Work Authority to expand the area of the approved site from 5 to 98 ha, although the area of extraction at this stage will only be about 20ha (50 acres). This will enable the company to extract sand and soil from another section of its property as the existing Work Authority site is almost exhausted.

It is estimated that the variation will involve extraction of approximately 20,000 tonnes of sand and 10,000 tonnes of soil per annum or 150,000 tonnes in total over the first 5 years.

The company has been extracting sand from this site since 2001, and the original Work Authority was held by the landowner. The process for the variation started in 2006, but was interrupted and held in abeyance when the landowner decided to sell the property.

The decision to sell the property was a direct result of a heated meeting on site with the council, DPI, DSE, AAV, local Aboriginal representative, the company, and the landowner to discuss the variation to the Work Plan. The landowner had a history of frustration with the council.

The DSE advised that there were no major native vegetation matters to deal with.

2. Pre-application Process

An extractive industry consultant was engaged in September 2006 to commence research and preparing required documentation for the application for variation. The cost to date for these services is approximately \$15,000.

As part of proving the site, drilling for sand was undertaken.

A screening meeting between the DPI, DSE, AAV, local Aboriginal representative, council, the company and the landowner was held on September 2006 and numerous other meetings were held with the council.

The application is about to be submitted to DPI following recent finalisation of the Cultural Heritage Management Plan (CHMP).

Aboriginal Heritage

As indicated a CHMP was prepared for the site pursuant to Section 42(1) of the *Aboriginal Heritage Act 2006*. This is a new legislative measure that requires the preparation of such a plan for an area involving:

- i. An assessment of the area to determine the nature of any Aboriginal cultural heritage present in the area; and
- ii. A written report setting out—
 - a. The results of the assessment; and
 - b. Recommendations for measures to be taken before, during and after an activity to manage and protect the Aboriginal cultural heritage identified in the assessment.

Section 42(2) provides that the written report is the CHMP.

Heritage consultants were engaged on 17 November 2008 to prepare the CHMP. This requires on-site inspection including digging for the presence of artefacts. This is done in the presence of representatives of the local indigenous community, arranged by the consultant. The indigenous community is engaged by Aboriginal Affairs Victoria (AAV) and is paid fees for its advice. These rates are set by the Department of Sustainability and Environment (DSE) under the *Aboriginal Heritage Regulations*. It is ironic that the CHMP process was the only way the proponent could obtain soil samples in order to prove up the resource as the council had refused to issue a permit for this purpose. That is, digging for aboriginal relics was acceptable but digging for commercial purposes was not.

The site visit and investigation lasted 4 days. A further site visit was conducted in January 2009 at additional cost to the company. The final CHMP report cost \$36,000.

Total pre-application costs to date

Comprehensive survey of property (feature survey etc)	\$10,000
Extractive industry consultant	\$15,000
Work Plan drawings	\$1,000
Site drilling	\$2,000
Initial Aboriginal heritage survey	\$5,600
CHMP consultancy	\$36,000
Community engagement costs	\$0
Costs to improve roads (to upgrade to an all-weather road)*	\$80,000
TOTAL (to date)	\$69,600

* These costs have not been incurred as yet and therefore have not been included in the total.

3. Planning Process

An application for a permit and other documentation has not been submitted to the council at this stage as the DPI process has not been completed.

Meetings with council planners and the complaints officer have taken place on numerous occasions. The objections were from neighbours primarily regarding dust and traffic. Complaints are ongoing because residents do not want traffic along the main gravel road providing access into and out of the site. The sandpit existed before the complainant commenced their tourism based business.

4. Total Costs

Total costs associated with this application are shown in the following Table. Management costs represent the time and resources devoted by the company in preparing the application including attending meetings and negotiating with all associated parties. As all costs associated with applications for variations and new applications are funded by borrowings financing costs at 5 per cent depreciated over 5 years are also included.

Pre-application process (to date)	\$69,600
Planning process*	\$0*
Management costs (5%)	\$3,500
Total	\$73,100*
Financing costs (5% over 5 years)	\$20,196**
Grand total	\$93,296*

* No costs have been incurred as the pre-application stage is not complete

**These are incomplete as the total costs for the application are not known

5. Current Status

This application for a Work Authority variation is presently a work in progress. The CHMP was approved in July 2009 and the company is currently preparing a draft Work Plan for submission to DPI.

6. Main Issues

The main issues raised in this case study were:

i. Increasing regulatory requirements

Almost the same search for Aboriginal heritage artefacts conducted in March 2007 resulted in substantially different cost demands being placed on the company due, it is understood, to changes in the regulations. Also, apparently an error was made in that the original survey was not registered and signed off by AAV as it should have been. This has proved costly for the company.

The earlier search involved very similar work as what was done in 17 November 2008 and cost \$5,600. The most recent search cost \$36,000. The original survey was not registered and signed off by AAV as it should have been. This has proved a costly error, but no one wants to take responsibility for this. The company was caught in the middle of changed and increased legislative requirements.

ii. Inconsistent regulatory interpretation and advice

The CHMP was initially rejected by the AAV as it was not considered comprehensive enough and required additional information to be supplied. These requirements were not made clear at the outset as the CHMP process was in its infancy and the AAV was still formulating its required standards. This further delayed the process.

iii. Unstructured and inequitable approach to community consultation

The council's complaint system allows unreasonable complaints to cause delays and impose additional costs to the process. Complaints against the extension application are ongoing because residents do not want the existing transport route used in the future. The main complainant opened a bed and breakfast (B&B) business on the main gravel access road to the company's sandpit. The veracity of this complaint is questionable given the sandpit existed before the complainant commenced business. Presumably the council allowed the B&B business to be opened in the knowledge that the company's original sandpit existed.

APPENDIX 4: Work Authority (New/Variation) Application & Approval Process

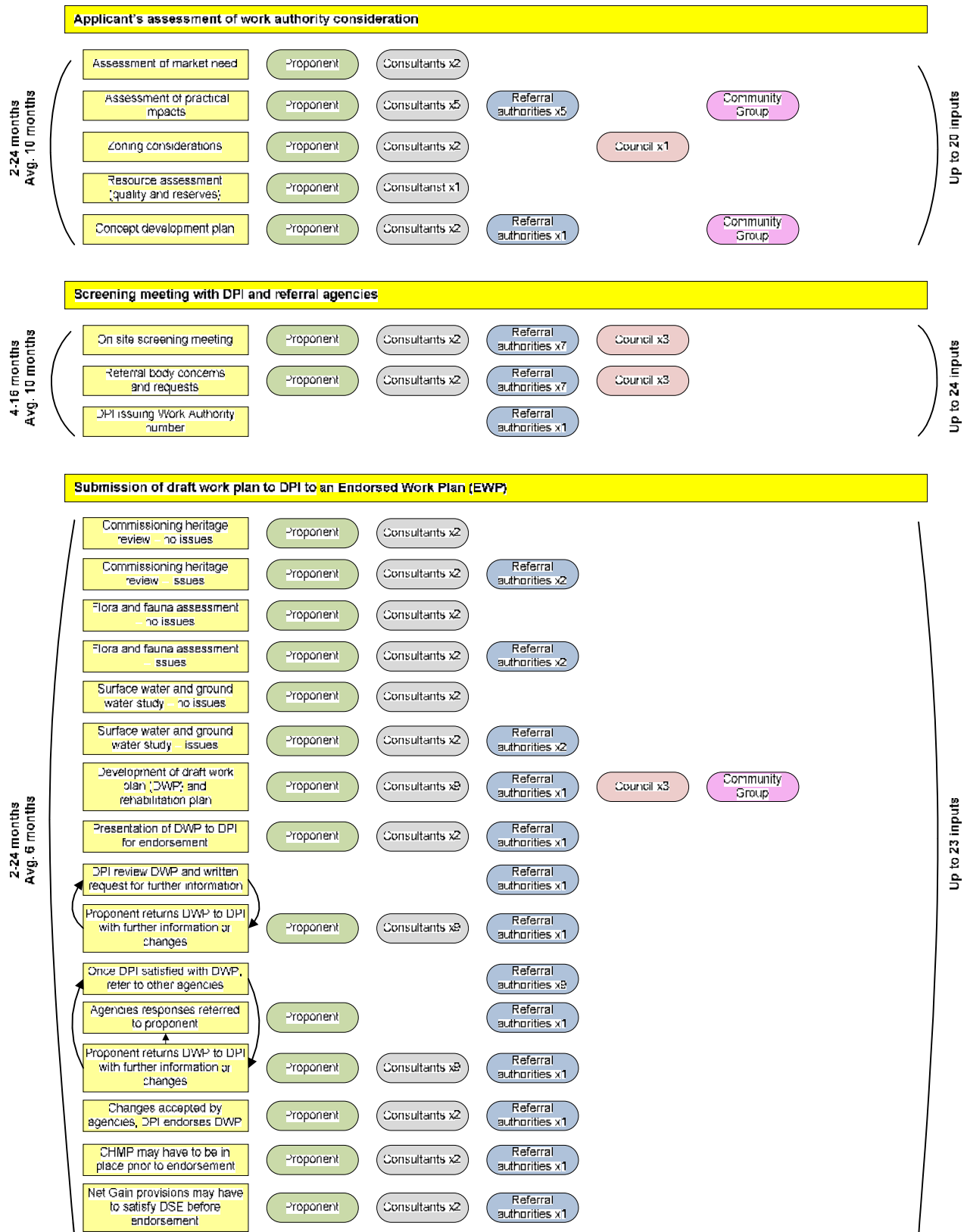


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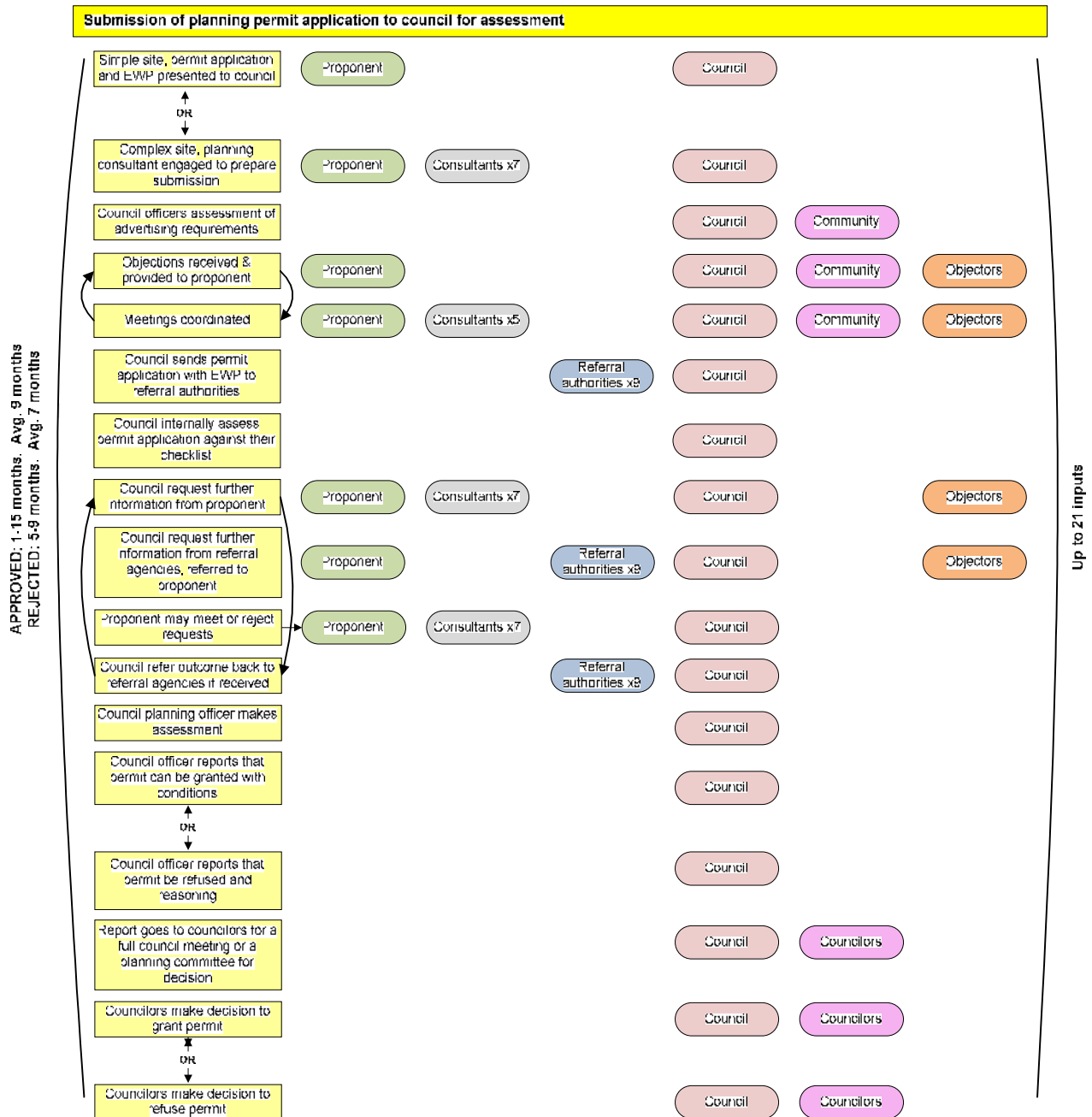
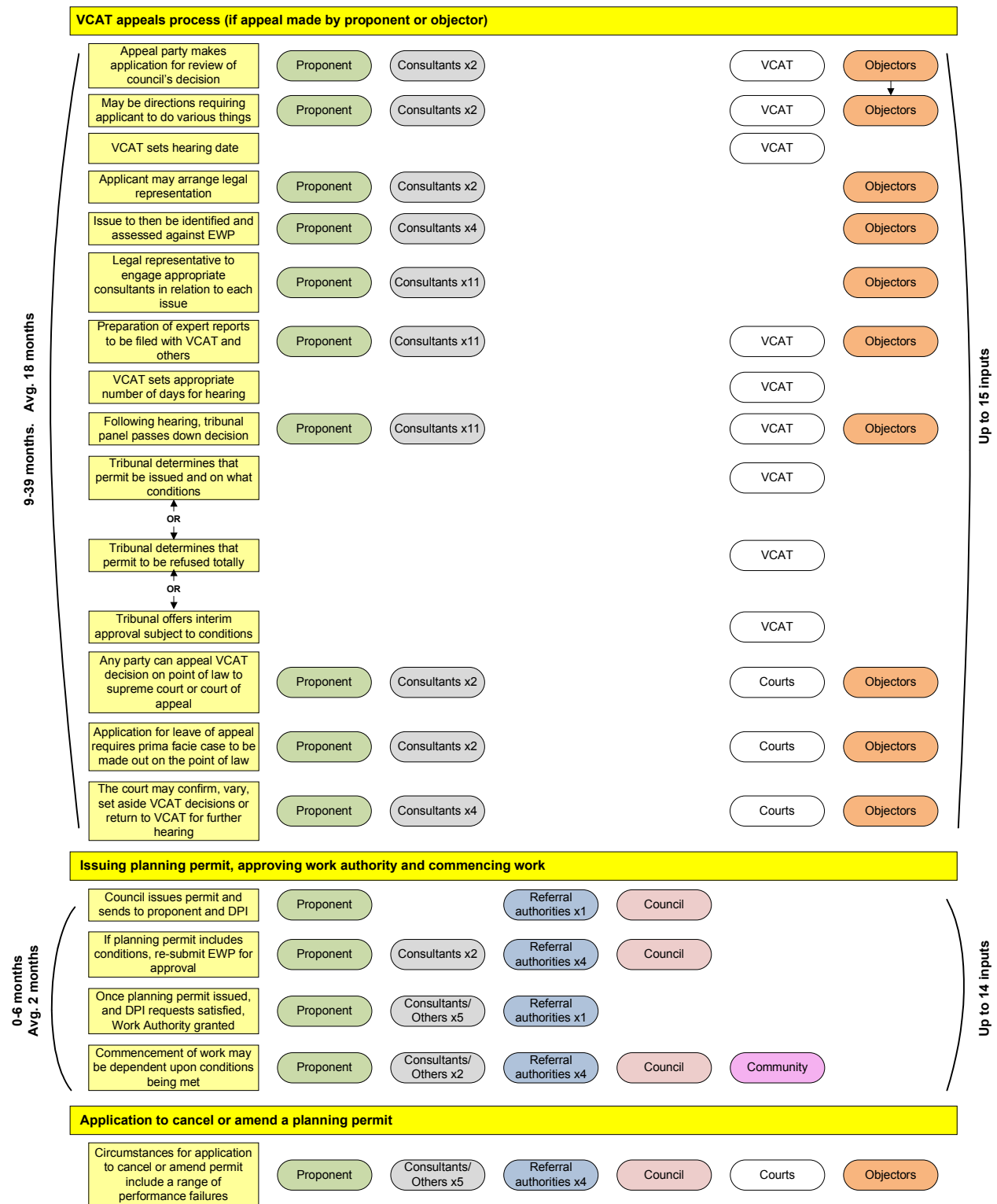


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Note:

1. Inputs are defined as an individual or a party partaking in the process
2. The number of inputs will be dependant upon the complexity of application and level of objection
3. Assessed numbers in each input above may be greater or less depending on the complexity of the application
4. This diagram is based on section 3 of the report

APPENDIX 5: Abbreviations

AAV	Aboriginal Affairs Victoria
AH Act	<i>Aboriginal Heritage Act 2006</i>
CCAA	Cement Concrete & Aggregates Australia
CMPA	Construction Material Processors Association
CHMP	Cultural Heritage Management Plan
DPI	Department of Primary Industries – Earth Resources Division
DSE.....	Department of Sustainability & Environment
EES	Environmental Effects Statement
EID Act	<i>Extractive Industries Development Act 1995</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
MRSD Act.....	<i>Mineral Resources (Sustainable Development) Act 1990</i>
P&E Act	<i>Planning & Environment Act 1987</i>
VCAT	Victorian Civil and Administrative Tribunal



Construction Material Processors Association