

Extractive Industry Proposals

VPP PRACTICE NOTE

APRIL 2006

The purpose of this VPP practice note is to provide guidance to applicants, operators and the community about extractive industry proposals. The practice note includes an overview of:

- the extractive industry approval process
- protecting existing extractive industry operations and
- protecting Victoria's stone resources & Extractive Industry Interest Areas (EIIA).

Extractive industry approval processes

What is extractive industry?

Clause 74 of the *Victoria Planning Provisions* (VPP) defines extractive industry as 'land used for the extraction or removal of stone from land for commercial use, or to use the stone for building construction, road or manufacturing works.' The definition includes the treatment of stone or the manufacture of bricks, tiles, pottery, or cement products on, or adjacent to, the land from which the stone is extracted. This definition is similar to that in the *Extractive Industries Development Act 1995* (EID Act) which regulates extractive industry activities throughout Victoria.

How does the extractive industry assessment process work?

There are separate processes that an extractive industry proponent must follow before commencing extraction operations:

1. Work plan and work authority process regulated under the EID Act.
2. Planning permit process regulated under the *Planning and Environment Act, 1987* (P&E Act).

The Minister administering the *Environment Effects Act 1978* may also require an **Environment Effects Statement** (EES) to be prepared for an extractive industry proposal. The requirement for an EES would depend on the size and potential environmental effects of the proposal (see Section 3.8.7 of *Using Victoria's Planning System*, Department of Sustainability and Environment).

EID Act process

The EID Act establishes a **two stage approval process** for extractive industry (see Figure 1).

Stage 1 – Work Plan

Under Section 17(1) of the EID Act a person who proposes to apply for a work authority to carry out an extractive industry must lodge a work plan with the Minerals and Petroleum Division of the Department of Primary Industries (DPI).

DPI requires that the work plan be submitted in draft form.

The **draft work plan** covers the detail of the on-site works associated with the extractive industry operations and the rehabilitation of the land. The draft work plan must be prepared in consultation with DPI. DPI and the Department of Sustainability and Environment (DSE) have a Memorandum of Understanding that ensures both departments have input into the development of the draft work plan. In assessing the draft work plan both departments ensure that relevant government policies and legislative requirements are addressed.

Prior to lodging a draft work plan DPI will arrange a site meeting of relevant officers from DPI, DSE, the responsible authority and other relevant government agencies. Following a site meeting the proponent will be advised of the issues that must be addressed in the draft work plan.

Typically the draft work plan and associated conditions will cover the following areas:

- description of proposal
- site location
- resource assessment
- site details (location of crushing plants, on-site offices and transport 'haulage' routes, sludge ponds, and geographical features like water courses, vegetation and topography)
- site infrastructure
- details of operation
- environmental, and occupational health and safety controls
- rehabilitation plan
- health and safety
- dust emission control
- noise emission control
- drainage and discharge control (including storm water management)
- erosion control
- noxious weeds and pests control
- removal or restoration of native vegetation
- progressive rehabilitation
- final rehabilitation
- ground water protection
- internal buffers
- internal screening
- internal roads
- fencing and security

Guidelines about the information to be provided in a work plan can be obtained from the DPI Customer Service Centre on phone: 136 186, or from the DPI Minerals and Petroleum website: www.dpi.vic.gov.au/minpet

Development of the draft work plan to an advanced stage prior to lodging the planning permit application ensures that amendments to planning permits are less likely later because of variations to the work plan.

What is 'endorsement' of a draft work plan?

DPI **endorses** a draft work plan when both DPI and DSE are satisfied that the plan has met appropriate standards for content and technical accuracy and is satisfactory for submission with a planning permit

application. DSE may still be involved in addressing issues that may arise during the planning permit application process.

The draft work plan development and endorsement process assists the planning process by ensuring that appropriate supporting information is included with the planning permit application.

What are work plan conditions?

The DPI may endorse the **draft work plan** subject to **conditions**. The conditions are finalised when the work plan is approved and must be observed by the proponent when carrying out the work plan. Site specific extractive industry work plan conditions can be changed as a result of input from the responsible authority or the Victorian Civil and Administrative Tribunal (VCAT).

The extractive industry operator must submit a copy of the **endorsed work plan** and **draft work plan conditions** to the responsible authority for consideration with the planning permit application.

An **endorsed work plan** should not be confused with an **approved work plan**. A work plan is only approved by DPI once the proponent has obtained all the necessary planning approvals.

Stage 2 – Work Authority

Under Section 19 of the EID Act a person who proposes to carry out an extractive industry must apply to the Minister administering the EID Act for a **work authority**. The Minister or a delegate may issue a work authority under section 19 of the EID Act. The Minister or delegate must only grant the work authority if they are satisfied that the proponent has:

- a work plan approved under section 17 of the EID Act
- entered into a rehabilitation bond under section 33 of the EID Act
- complied with any relevant planning scheme and obtained the necessary planning approvals
- obtained all necessary consents and other authorities required
- obtained the consent of the owner of the land in the case where the applicant is not the owner of the land.

Under Section 20 of the EID Act the Minister may impose **conditions** on the grant of the work authority.

Are extractive industry operators required to rehabilitate the land?

Section 31 of the EID Act requires all land affected by extractive industry to be rehabilitated in accordance with the rehabilitation plan approved by DPI, the conditions of the work authority and the requirements of the relevant planning scheme and any planning permit.

Section 33 of the EID Act requires a work authority applicant to enter into a rehabilitation bond for an amount determined by the Minister. Bonds provide a guarantee that the land affected by an extractive industry will be adequately rehabilitated. The Minister may use the bond to fund necessary rehabilitation works not satisfactorily completed by the work authority holder.

Section 33(4)(b) of the EID Act requires the Minister to consult with local government on determining the bond amount if the work authority is on private land. Section 35(2) of the EID Act also requires the Minister to consult with local government before a bond or bonds can be returned to the work authority holder on private land.

Planning process

When should a proponent lodge an application for a planning permit?

The proponent should only lodge an application for a planning permit once the draft work plan has been endorsed and draft work plan conditions are issued by DPI.

What information should accompany a planning permit application?

Before applying for a planning permit the proponent should discuss the proposal with the responsible authority (normally the local council), to determine if a planning permit is required and to ensure that all the requirements of the planning scheme are addressed in the application.

In addition to the general requirements for submitting a planning permit application, an application for extractive industry should include, as appropriate:

- a copy of the **endorsed work plan**
- a copy of the **draft work plan conditions**
- a location plan showing the full site area, abutting and nearest intersecting roads, any significant features in proximity to the site and all weather access

- a site and context plan showing the site shape, dimensions and size, orientation and slope, natural and physical features of the site including waterways, drainage lines, areas subject to flooding, wetlands and wildlife corridors, boundaries and easements, significant views to the site from major roads, existing land uses and the siting and use of existing buildings on adjacent and nearby properties and any other notable features or characteristics of the site
- a development plan and description of the specific operation including proposed buildings and works, landscaping, waste management, access and proposed dams and hours of operation
- the location, type and significance of any native vegetation to be removed and whether the proposal is consistent with *Victoria's Native Vegetation Management – A Framework for Action – August 2002*
- a description of any landscape, botanical, zoological or geological features on the site and surrounding area and their potential significance
- details of any archaeological or heritage features on the site and potential significance and a copy of any Aboriginal heritage assessment, if required.
- proposed method of processing and any products or chemicals that will be used
- details of the proposed rehabilitation.

Most of the above information will be included in a draft work plan endorsed by DPI.

Is a permit required for the removal of native vegetation?

Under Clause 52.17 of the VPP a planning permit is required to remove, destroy or lop native vegetation. However, this requirement does not apply to the removal, destruction or lopping of native vegetation necessary for carrying on an extractive industry, including an extractive industry authorised by a work authority under the *Extractive Industries Development Act 1995*. This exemption does not apply to an extractive industry exempted under Section 5 of the *Extractive Industries Development Act 1995*.

However, a planning permit may still be required to remove, destroy or lop native vegetation under another provision such as an Environmental Significance Overlay, Vegetation Protection Overlay or Significant Landscape Overlay.

DPI's draft work plan endorsement process ensures that relevant government agencies have considered native vegetation removal and the appropriateness of any protection, restoration or offset requirements prior to a planning permit application being lodged with the responsible authority.

Who are the appropriate referral authorities for an extractive industry planning permit application?

Clause 66 of the VPP sets out the authorities, including DPI, that the planning permit application must be referred to under section 55 of the P & E Act. Local schedules to zones and overlays may also trigger referral to other agencies such as DSE, Catchment Management Authorities, VicRoads, Heritage Victoria, the water authorities or the EPA.

The responsible authority must ensure that planning permit application referrals to DPI for extractive industry are accompanied by a full copy of the endorsed work plan and draft work plan conditions. DPI will notify the responsible authority within 28 days if it requires any further information and whether or not it objects to the planning permit application. DPI will provide the responsible authority with any conditions it requires to be included on the planning permit.

Who should be notified of a planning permit application for extractive industry?

Section 52 of the P&E Act sets out the requirements for giving notice of a planning permit application. It includes a requirement that notice of a planning permit application be given to the owners and occupiers of adjoining land and to any other persons unless the responsible authority is satisfied that the grant of a permit would not cause material detriment to any person.

In considering the question of material detriment the responsible authority should be aware that the possible impacts from extractive industries such as dust and noise, ground vibration and transport may impact on properties some distance away from a proposed extractive industry site.

Responsible authorities should be aware that the **EID Act does not provide for a public notification process when work plans are approved or varied.**

The provisions of the EID Act are framed on the assumption that formal notice of the application will be undertaken in accordance with s. 52 of the P&E Act.

Proponents are encouraged to contact adjoining landowners and occupiers and broader consultation may be necessary for larger extractive industry applications. The proponent is encouraged to develop an effective consultation program that is appropriate to the location and the scope of the proposal.

What matters should the responsible authority consider when assessing a planning permit application for extractive industry?

Clause 52.09 of the VPP contains provisions relating to extractive industry and Extractive Industry Interest Areas (EIIA). The provisions ensure that use and development of land for extractive industry does not adversely affect the environment or amenity of the area, that excavation areas can be appropriately rehabilitated and that sand and stone resources are protected from inappropriate development.

The provisions apply to:

- the use and development of land for extractive industry
- the use and development of land within a designated EIIA and
- the use and development of land within 500 metres of an extractive industry.

Clause 52.09 also sets out specific requirements that a responsible authority must consider before deciding on an application. The responsible authority should also consider the wider implications of an extractive industry on the local area, as well as the site, when assessing the planning permit application. In particular, consideration should be given to:

- the State, regional and local benefit of the proposal
- any environmental issues (ie native flora and fauna protection, protection of waterways and rehabilitation objectives)
- any heritage conservation issues
- the likelihood of dust and noise emissions
- the proposed hours of operation
- any traffic impacts such as accessibility, car parking, road degradation and maintenance, road pollution, road safety or disturbance to residents
- the availability of services such as water, power, flood and fire protection
- the general amenity (landscape and visual)

- buffer requirements set out in Clause 17.09 of the State Planning Policy Framework (SPPF), including ensuring that the buffer area to a new extractive industry is owned or controlled by the proponent
- boundary setbacks.

Some of the above matters will already be addressed or resolved in the endorsed work plan.

What happens after the responsible authority makes its decision on the planning permit application?

If there are no objections to the planning permit application, the responsible authority may issue a permit.

If there are objections, the responsible authority can only issue a Notice of Decision to Grant a Permit and the objector may apply for a review of this decision by VCAT. If a permit application is refused, the applicant can apply for a review of this decision. If a permit is granted subject to conditions, the applicant can apply for a review of the conditions. In cases where a review of the decision or conditions is sought, VCAT will make the final decision on the application and conditions. If VCAT directs that the planning permit application should be refused the Minister cannot grant the work authority.

What conditions can be included on a planning permit?

The permit must include all conditions required by DPI and must not include conditions which contradict the work plan conditions.

Extractive industries can typically operate over many years including periods of no activity depending on the market demand for the stone resource. Under Clause 52.09-1 of the VPP a planning permit for extractive industry must not include a condition which requires the use to cease by a specified date, unless either:

- the subject land is situated in or adjoins land which is being developed or is proposed to be developed for urban purposes, or
- such condition is suggested by the applicant.

However, a planning permit for extractive industry will expire if the use is discontinued for a period of 2 years.

Can an extractive industry operation commence immediately after a planning permit is issued?

Following the granting of a planning permit, the work plan may need to be amended to address any issues

that may arise out of the planning permit process to ensure that both approvals are consistent. Work must not take place until the work plan is approved, a work authority is granted and an extractive industry manager has been appointed.

Can extractive industry operations change in the future?

Many extractive industry operations will require work plan variations and planning permit amendments during the life of the extractive industry.

Section 18 of the EID Act allows the holder of a work authority to apply to DPI for a **variation** of an approved work plan. Changes to extractive industry operations may trigger a new planning permit or amendment to an existing permit.

If approached by the proponent or DPI the responsible authority must advise if the proposed variation to the work plan:

- requires a new planning permit or amendment to the existing permit
- can occur under the existing permit
- can occur without a permit under the planning scheme.

Do all planning permit applications for extractive industry require a work authority under the EID Act?

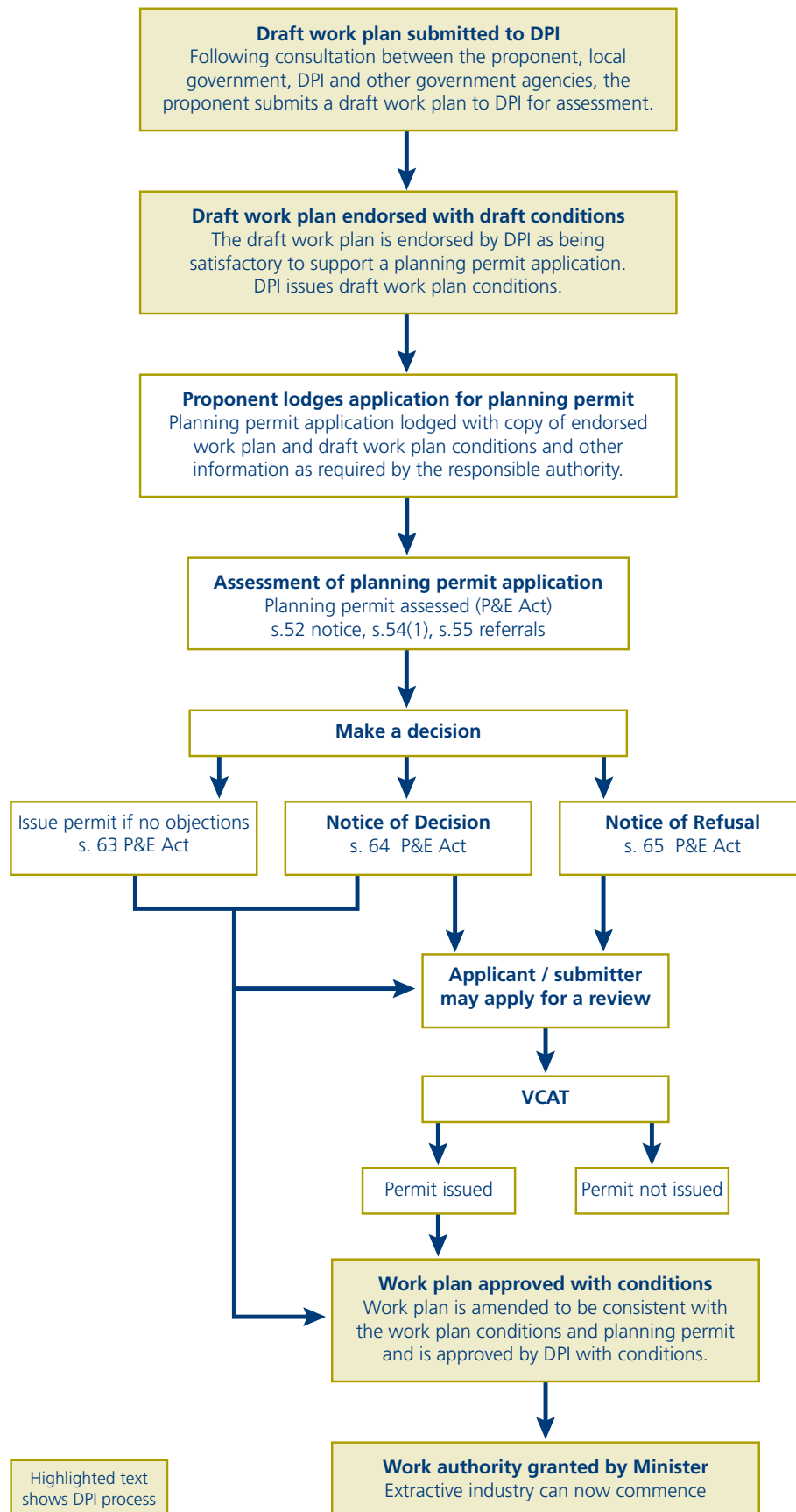
Not all planning permit applications require a work authority under the EID Act. Section 5(1) of the EID Act allows for exemptions to any extractive industry listed and defined in the Government Gazette (G 37 19 September 1996 2471) by the Minister.

These exemptions apply to the excavation/extraction of stone resources with a primary purpose that includes:

- any extraction or removal of stone during road construction activities by VicRoads and/or its agents within an existing or proposed road reservation or adjacent to any road works projects
- extraction or removal of stone from any land with a depth of up to 2 metres below the natural surface if the total of the area or areas of the surface of the land broken up by the extraction or removal does not exceed 2000 square metres
- extraction or removal of stone where the excavation constitutes works for the purpose of establishing a port facility, railway or tunnel.

A full list of exemptions can be obtained from DPI.

Figure 1: Approvals process for extractive industry



Protecting existing extractive industries

Extractive industry operations can generate ground and air vibration, dust, noise, and changes to the topography and landscape. In order to both safeguard extractive industry operations as well as the amenity, health, safety and environment of surrounding land it is necessary to ensure an appropriate separation distance, or buffer, is maintained between extractive industry operations and sensitive uses on adjoining land.

New extractive industries are required to own or control a clearly defined buffer area which is appropriate to the nature of the proposed operations. However, many extractive industries commenced operation prior to this requirement coming into effect. Clause 17.09-2 of the VPP requires that provision for buffer areas between these existing extractive industries and sensitive land uses should be determined on the following principles:

- The buffer areas are determined so that appropriate limits on effects can be met at the sensitive locations using practical and readily available technology.
- The required buffers are taken into consideration if a change of land use in the vicinity of the extractive industry is proposed.
- Land within the buffer areas may be used for purposes that are not adversely affected by the extractive industry.

What notice should the responsible authority give of a proposed new sensitive use near an extractive industry?

Clause 52.09-4 of the VPP requires that notice of a planning permit application to use or subdivide land or construct a building for Accommodation, Child care centre, Education centre or Hospital within 500 metres of an existing or proposed Work Authority be given to the Secretary of the Department administering the EID Act.

DPI will provide the responsible authority with relevant information about the nature of the existing operations and size of the buffer area owned or controlled by the existing extractive industry. DPI will also provide advice on whether or not the new sensitive use is required to incorporate an additional buffer distance, determined using the above principles.

The responsible authority should also ensure that extractive industry operators are notified of planning permit applications for the types of use and development described above. Buffers to existing extractive industry can be up to 500 metres and may not necessarily be located adjacent to the subject land.

New sensitive uses can cause material detriment to existing extractive industry by impacting on the way they operate under the approved work plan. Hence it is necessary for the responsible authority to look beyond the immediate adjoining properties when determining which properties should be notified.

Protecting Victoria's stone (sand, clay, rock and gravel) resources

Sand, clay and stone from Victoria's extractive industries are used for building roads, factories and houses. Extractive industries have been and will continue to be pivotal to Victoria's future prosperity and so it is necessary to identify and protect stone resources for future extraction.

By nature, stone deposits are fixed in location and are generally worked where they occur. However, in many instances urban areas have been allowed to expand close to operating extractive industries or over land with potential for further stone resource development. As a result, many quality stone resources close to potential markets in the Melbourne metropolitan area are no longer available for extraction. This is particularly important in view of the high weighting of transport costs of extractive industry products and the price paid by the consumer. Given the importance of stone resources to the Victorian community there is a need to ensure a continuous supply of construction material to the greater Melbourne area into the future.

The Metropolitan Strategy, *Melbourne 2030*, recognises that natural resources such as sand and stone deposits are important assets for the region's future development and identifies maintaining access to productive natural resources as one of the policies for ensuring Melbourne's and the surrounding region's prosperity.

Melbourne 2030 requires the protection of strategic resources from displacement and encroachment by incompatible land uses and includes an initiative to identify and safeguard strategic deposits of sand and stone for exploitation, including the provision of buffer areas.

Clause 17.09 of the State Planning Policy Framework (SPPF) in the VPP also provides for the long term protection of stone resources (sand, clay, rock and gravel). The SPPF objective for extractive industry is:

'To identify and protect stone resources accessible to major markets and to provide a consistent planning approval process for extraction in accordance with acceptable environmental standards.'

The SPPF requires the long term protection of stone resources in Victoria to be generally in accordance with provisions and recommendations expressed in *Extractive Industry Interest Area, Melbourne Supply Area – Extractive Industry Interest Area Review, Geological Survey of Victoria, Technical Record 2003/2* (Department of Primary Industries 2003) for stone resources in the Melbourne Supply Area and the *Technical Record 1996/1* for the remainder of Victoria. **Extractive Industry Interest Areas (EIAs)** have also been defined for the Ballarat, Bendigo, Geelong and Latrobe Supply Areas.

What are Extractive Industry Interest Areas?

EIAs are applied to land that has been identified as likely to contain stone resources of sufficient quantity and quality to support commercial extractive industry operations and where limited environmental and social constraints apply. Stone resources within an EIA are identified at a regional scale and the boundaries will be refined from time to time in response to planning scheme changes, new geological information and changes in social and/or environmental values.

EIAs do not imply that a quarry can be established 'as-of-right' in these areas, nor do they preclude extractive industry from being established outside EIAs. EIAs should not be regarded as totally inclusive of all attainable stone resources in Victoria.

Information on the EIAs can be obtained by either ringing the DPI Customer Service Centre on phone: **136 186**, or from the DPI Minerals and Petroleum website: www.dpi.vic.gov.au/minpet

What notice should the planning authority give DPI of a proposed new sensitive use in an EIA?

Clause 52.09-4 of the VPP requires that notice of a planning permit application to use or subdivide land or construct a building for Accommodation, Child care centre, Education centre or Hospital within an EIA must be given to the Secretary of the Department administering the EID Act.

VPP Practice Notes provide practical advice on the application of the provisions available in the Victoria Planning Provisions.

For copies of other practice notes in the series visit: www.dse.vic.gov.au/planning

Department of Sustainability and Environment
Planning Information Centre
e-mail: planning.info@dse.vic.gov.au
Tel: (03) 9637 8151

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