

Having your say on mining and quarries: Fact sheet 2

Mine/quarry proposals and the EES process

Introduction

Environmental impact assessment is a process for assessing the impacts on the environment likely to result from development proposals. A key aspect of the Victorian process is preparation of an environment effects statement (EES) by the **proponent** (the project proposer). The EES process aims to identify and mitigate the impacts of proposals that could have a 'significant effect' on the environment. Such proposals might include projects like mines, quarries, roads, boat ramps, prisons, hazardous waste storage facilities, pipelines or power stations.

The various stages of the EES process are regulated by the *Environment Effects Act 1978* (the EE Act). The legal framework is administered by the Minister for Planning and the Department of Environment, Land, Water and Planning (DELWP). Most of the details about the EES process are set out in the **Ministerial Guidelines for Assessment of Environmental Effects under the Environment Effects Act 1978** (the Ministerial Guidelines). The Act and the Ministerial Guidelines can be found at www.planning.vic.gov.au/environmental-assessment/what-is-the-ees-process-in-victoria.

This fact sheet is part of a set developed to help communities who may be affected by major new mining and quarrying proposals in Victoria, to participate effectively in the EES process. It focuses particularly on how the EES process works when the proposed project is a mine or quarry. It may be helpful first to read the broad overview of the EES process and the steps involved (see **Fact Sheet 1 An overview of environmental impact assessment under the Environment Effects Act 1978**).

There are different approval processes for mineral exploration/mining, compared to extractive industries (quarrying). **Mineral exploration and mining** includes gold, coal, and mineral sands activities. Quarries are **extractive industries** that extract **stone** from land, where the primary purpose is the sale or commercial use of the stone or its use in construction, building, road or manufacturing works (including brick, tile, pottery or cement manufacture on or adjacent to the quarry land). **'Stone'** includes granite, gravel, sand, soil, building stone and clay (but does not include fine clay, kaolin or salt, which are minerals).

Public input on mining/quarry proposals before the EES process

Although the focus of this fact sheet is on how community members can participate in the EES process itself, it should be noted that there may be some limited opportunity for public engagement before the proposal may be referred to the Minister for Planning for assessment as to whether it should be subject to the EES process.

Before a proposed mining project is referred to the EES process, the proponent may have applied to the Minister for Resources for a mining licence. Any person may object to an exploration or mining licence being granted. For more detail, see 'Mining/quarrying approval prior to any EES process' below.

An exploration or mining **licensee** has a duty to consult with the community throughout the life of that licence. This means that they must share information with community members about any activities under the licence that may affect the community, and give them a reasonable opportunity to express their views about those activities. The licensee must also prepare a **community engagement plan**, and lodge it with the Department of Economic Development, Jobs, Training and Resources (DEDJTR).

Similarly, if a quarry proponent seeks an extractive industry work authority, they must prepare a work plan. A **community engagement plan** is a required element of the plan.

So if a mine or quarry is not subject to an EES process, there is some scope for community engagement through the planning system, under which the proponent will apply for a planning permit from the local council.

For more detail about community engagement, see earthresources.vic.gov.au/earth-resources-regulation/licensing-and-approvals/minerals/guidelines-and-codes-of-practice/community-engagement-guidelines-for-mining-and-mineral-exploration.

Mining/quarrying approval prior to any EES process

The primary legislation regulating mines and quarries in Victoria is the *Mineral Resources (Sustainable Development) Act 1990* (Vic) (MRSD Act), together with the *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2013* (Vic), the *Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2010* (Vic), and other associated regulations.

The MRSD Act's purpose is to encourage economically viable mining and extractive industries that make the best use of mineral resources in a way that is compatible with Victoria's economic, social and environmental objectives. The Act addresses exploration and development activities, licensing and approvals, and other issues including royalties, compensation and rehabilitation.

Mining

A mining proponent must apply to the Minister for Resources for various **licences**. An **exploration licence** allows the holder to explore for minerals, whereas a **mining licence** allows exploration and mining for minerals on that land. **Prospecting licences** provide for exploration and mining on areas of land less than five hectares, and **retention licences** are an intermediate step between exploration and mining licences, allowing the licence holder to retain the right to explore and mine land that is not yet economically viable to mine.

The licensing process is administered by **Earth Resources Regulation (ERR)** in the **Department of Economic Development, Jobs, Transport and Resources (DEDJTR)**. Any person may object to a licence being granted. Objections must be made in writing, set out the reasons and be made within **21 days** after the last date on which the application was advertised. If a licence is granted, communities cannot appeal or seek review of that decision.

When deciding whether to grant a licence, the Minister must consider whether the applicant is 'fit and proper' to hold the licence, intends to comply with the MRSD Act, genuinely intends to do work, has an appropriate work program, and is likely to be able to finance the proposed work and rehabilitation.

The Minister must also consider any objections received, and should have regard to the principles of sustainable development set out in section 2A of the MRSD Act. The principles include:

- intergenerational equity;
- the protection of biodiversity;
- recognition of the need for a competitive economy that can enhance the capacity for environment protection;
- the integration of short- and long-term economic, social and environmental impacts in decision-making;
- the precautionary principle; and
- community involvement and positive community outcomes.

You can refer to these principles in your objection, together with any other impacts that you believe the mine will have both on you personally and on your community more broadly.

Note that certain land, such as national parks, is generally not available for exploration or mining (s 6), and that coal seam gas exploration/mining and fracking are unlawful in Victoria.

If a licence is granted, communities cannot appeal or seek review of that decision.

The holder of an exploration or mining licence (**the licensee**) is bound by any conditions set by the Minister of Resources, and has a duty to consult with the community throughout the life of that licence (s 39A). This means that they must share information with community members about any activities under the licence that may affect the community, and give them a reasonable opportunity to express their views about those activities.

The licensee must also prepare a **community engagement plan**. For more detail, see 'Public input on mining/quarry proposals before the EES process' above and earthresources.vic.gov.au/earth-resources-regulation/licensing-and-approvals/minerals/guidelines-and-codes-of-practice/community-engagement-guidelines-for-mining-and-mineral-exploration.

To carry out any mining, a mining licensee must also have an approved **work plan** (see 'How is a mine/quarry project linked to the EES process?' below).

Quarries

As with mining, certain land, such as national parks, is generally not available for quarrying (s 6AA). For potential project sites, an extractive industry proponent does not require a licence, but they must get **consent** if they propose to search for stone on land they do not own (s 8AA).

Before they engage in any quarrying, the proponent must then apply for an **extractive industry work authority**. A key requirement of this application is approval of a **work plan** (see 'How is a mine/quarry project linked to the EES process?' below).

For further information, see earthresources.vic.gov.au/earth-resources-regulation/licensing-and-approvals/sand-stone-and-clay.

Assessment of mine and quarry proposals under the *Environment Effects Act 1978*

As with other projects that may have a significant effect on the environment, mining or quarrying projects may be referred to the Minister for Planning for assessment as to whether they should be subject to the EES process, before statutory approval under the MRSD Act is given. See **Fact Sheet 1 *An overview of environmental impact assessment under the EE Act***.

Where mining is proposed, the proponent is likely to already have a retention or mining licence. The Minister for Resources and the Secretary of DEDJTR will be the key statutory decision-makers for any subsequent application for a mining licence and for approval of a work plan. At this stage, the Resources Minister or the proponent may consider the project against the referral criteria and decide to refer it to the Planning Minister. Any necessary approval decisions will then be put on hold, while the EES process takes its course. The proposed work plan will be examined as part of the EES process.

In relation to quarries, because the approval process is different, it is possible that the proponent may not have yet significantly engaged with any statutory applications before referral for a potential EES, especially if they already own the proposed quarry site. Again, the required work plan proposed will form a part of the EES considerations, and approval for an extractive industry work authority will not be finally considered until after the EES process has concluded (see **Fact Sheet 4 *Getting your voice heard in the EES process***).

Note that the MRSD Act overrides any requirement to apply for a planning permit for a mine or a quarry under the *Planning and Environment Act 1987*. These exemptions have been made on the basis that such matters will be dealt with through the mining/extractive industry work plan approval processes.

Work plans and the EES process

The decision whether to approve a work plan for a mining or extractive industry project is deferred if the proposed project is subject to an EES. This is because, where an EES is required, the EES process culminating in the Minister's assessment is intended to explore fully all the relevant issues and inform the decision whether to approve the work plan.

For example, a mining work plan must set out the location and detail of the mining activity that will be undertaken, including a description of any significant community facilities that may be affected by the proposed works. It must also include a community engagement plan, a plan for rehabilitation of the mine, and a plan for managing the environmental impacts and reporting on the environmental outcomes to the local community.

Proposed quarrying work plans must also identify the risks that the activities may pose to the environment, any member of the public, or land, property or infrastructure in the vicinity. Plans must specify what the proponent will do to eliminate or minimise those risks, including a rehabilitation plan. Extractive industry work plans must also include a community engagement plan.

For both mine and quarry applications, DEDJTR will only grant ultimate authority to proceed with the work if the proponent has complied with other specific requirements, including providing a rehabilitation bond and obtaining public liability insurance.

Next steps

If the proposed project is subject to an EES, those matters that the Minister for Planning believes should be investigated and documented will be identified at the **scoping** stage of the EES process, and are likely to include issues relevant to subsequent work plan consideration.

Scoping is also the point at which all the other consents and authorities required under other legislation are either set in process or flagged for ultimate decision after the EES has been released, publicly reviewed, and assessed by the Minister (see **Fact Sheet 1 *An overview of environmental impact assessment under the EE Act***).

Under the provisions of the *Aboriginal Heritage Act 2006* (Vic), a **Cultural Heritage Management Plan** (CHMP) must be prepared (see **Fact Sheet 1 *An overview of environmental impact assessment under the EE Act***). If the proposed mine or quarry is determined to involve a proposed **controlled action**, it will also need to be assessed, and may not proceed until it has been approved, under the federal *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). For detail on how this relates to the EES process, see **Fact Sheet 4 *The EPBC Act and the EES process***.

Projects may also require approval under the federal *Native Title Act 1993*, and need water licences if the proponent plans to take and use water (including groundwater) in the course of their activities. Other potentially relevant Victorian laws include: *Flora and Fauna Guarantee Act 1988*, *Wildlife Act 1975*, *Water Act 1989*, *Environment Protection Act 1970*, *Dangerous Goods Act 1985*, *Radiation Act 2005*, *Occupational Health and Safety Act 2004*, *Coastal Management Act 1995*, and *Road Management Act 2004*.

Unlike other developments with the potential to cause pollution, mines and quarries in Victoria are not defined as 'scheduled premises' under the *Environment Protection Act 1970* and it is not necessary for works approvals or licences to be obtained from the Environment Protection Authority (EPA) for on-site waste disposal. However, some aspects of the proposal, such as off-site discharges, may still require EPA works approval or licensing.

In all cases, standards set by the EPA under State Environment Protection Policies (SEPPs) are also applicable. The EPA's *Protocol for Environmental Management SEPP (Air Quality Management) – Mining and Extractive Industries (2007)*¹ translates the SEPP standards into conditions legally required for approval of mining licence and extractive industry work authority applications. Depending on the size and location of the proposed project, applicants may need to conduct air quality assessment to ensure that the mine or quarry's off-site emissions do not adversely impact on the environment.

The MRSD Act overrides any requirement to apply for a planning permit under the *Planning and Environment Act 1987* where an EES has been required – although the proposal may still require an amendment to the relevant planning scheme. Local and State planning schemes may also still be relevant to the EES process to the extent that they assist in examination of relevant issues such as heritage, land use and social impact. As with the EPA exemptions, the planning exemptions have been made on the basis that such matters will be dealt with through the mining/extractive industry work plan approval processes.

After the EES has been completed, it is exhibited for public review.

Final decision

The work plan for a proposed mine project is ultimately approved or refused by the Secretary of DEDJTR. For quarry proposals, the Minister for Resources decides whether to grant a work authority. Approval may be subject to specific conditions. The Minister for Resources or the Secretary must consider the assessment of the Minister for Planning, but although this provides recommendations and is authoritative advice, it is not binding.

For more on this process and how you might further engage, see **Fact Sheet 4 *Getting your voice heard in the EES process***.

Further information

earthresources.vic.gov.au/earth-resources-regulation

earthresources.vic.gov.au/earth-resources-regulation/information-for-community-and-landholders/mining-and-extractives

earthresources.vic.gov.au/earth-resources-regulation/licensing-and-approvals/sand-stone-and-clay

earthresources.vic.gov.au/earth-resources-regulation/licensing-and-approvals/minerals/guidelines-and-codes-of-practice

envirojustice.org.au/major-reports/reforming-mining-law-in-victoria

¹ <http://www.epa.vic.gov.au/our-work/publications/publication/2007/december/1191>.

Fact sheets in this series

Download all fact sheets from our website: www.cels.org.au/kits-and-fact-sheets/#having-your-say.

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About the Community Environmental Legal Service (CELS)

Providing legal help to Victorians as part of the Community Environmental Legal Service (CELS) program is one of the many ways Environmental Justice Australia pursues access to justice.

The CELS program provides legal help for Victorians through the publication of kits, fact sheets and videos which provide accessible and practical environmental law information to the Victorian community. Through the CELS program we also conduct legal workshops in Victoria, run by one of our expert environmental lawyers to suit the needs of community groups or groups of individuals concerned about or impacted by environmental issues.

Environmental Justice Australia believes that all Australians have a right to clean air, clean water, and intact ecosystems. It's also crucial that our communities have a real say over what happens to our environment, and that means participating in decision-making processes. We're working to pursue environmental justice for communities affected by environmental harm by supporting their right to information, their right to participate in the legal and legislative process, and their right to participate in decision-making about their communities and the places where they live.

If you have a query about anything in this Fact Sheet, or would like the Community Environmental Legal Service to assist you to protect the environment, please call us: **8341 3100 (metropolitan)** or **1300 336 842 (regional)**

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The education program will better equip local community members to participate in public consultation processes and engage with project proponents and other stakeholders.

DISCLAIMER

This fact sheet is intended to provide information only and is not a substitute for legal advice specific to your circumstances.

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