

8 December 2017

Ms Alison Frame
Deputy Secretary
Planning Policy, Strategy and Governance
C/- Regulation.Review@planning.nsw.gov.au

Dear Ms Frame

Cement Concrete & Aggregates Australia (CCAA) is pleased to provide initial comments in relation to the *Environmental Planning & Assessment Regulation 2000* "the Regulation". CCAA is grateful for the short extension to allow us time to adequately consult with our members.

1. Introduction

The Department of Planning and Environment (DPE) is seeking initial ideas, comments and feedback on the operation of the Regulation. The Discussion Paper indicates that a draft Regulation will be on public display early in 2018.

CCAA members are grateful for the opportunity to comment on this important Regulation at this formative stage. In formulating this submission, we have read the Discussion Paper, the current Regulation and relied upon the experience of our members in its current implementation.

CCAA members note that this Discussion Paper has been published at a time when the *Environmental Planning & Assessment Act 1979* is being amended and while the EIA Improvement Project is proposing a new framework for both assessments and post-approval conditioning and reporting. CCAA has been integrally involved in these projects and this submission should be read in conjunction with our previous comments in relation to these projects as far as possible.

Likewise, it is difficult to make a meaningful submission when there is still so much of the system which is in a state of change. CCAA would like to remain engaged in the reform process going forward, as we may need to provide additional detail as the progress of the aforementioned projects becomes clearer.

2. About CCAA

CCAA is the peak body for the heavy construction materials industry, with our members operating hard rock quarries, sand and gravel extraction sites, cement production and distribution facilities and concrete batching plants throughout Australia, including New South Wales.

CCAA members account for approximately 90% of the \$7 billion in revenues generated by the heavy construction materials industry, which employs 18,000 Australians and a further 80,000 indirectly.

Heavy construction materials play a vital role in delivering the infrastructure required to support the State's population and economic growth. Approximately, 40 million tonnes of construction materials are extracted in NSW each year for use in premixed concrete and other construction requirements, such as road base, rail ballast and for drainage and water infrastructure. Without these materials we would not have our roads, railways, bridges, airports, homes or hospitals.

It is absolutely vital that the heavy construction materials industry has a streamlined, effective, proportionate and sensible assessment and environmental regulatory framework.

Whilst CCAAs membership is diverse, with big and small operators, our submission is largely based on the bigger extractive operations, because the State and Regional Development State Environmental Planning Policy (SEPP) defines a State Significant Development (SSD) quarry as one where extraction exceeds 500,000T per annum or has a total in ground resource of 5 million Tonnes.

3. Environmental Planning and Assessment Regulation Changes

3.1 Clear Guidance on Transitional arrangements for Part 3A developments

CCAA notes that the transitional arrangements for Part 3A developments were not part of the Environmental Planning and Assessment Bill that recently passed in the parliament. Instead, CCAA is aware these transitional arrangements are going to be dealt with by a further regulation – the *Environmental Planning and Assessment (Savings and Transitional) Regulation*. As CCAA does have several quarries that were granted approval under the original Part 3A, we seek inclusion in any discussion involving this subsequent Regulation. We also feel that a simple guidance piece is required, to provide greater certainty regarding the transitional timeframes and assessment process for all types of developments as we transition from Part 3A.

CCAA also feels it is important, if the Regulation is going to keep its transitional provisions under Part 1A, that any modifications that arise connected to a Part 3A development should have at least 2 years to do so in order for a smooth transition.

3.2 Prescribed Policy Guidance Documents for State Significant Development

CCAA was intrigued to read a proposal in the Discussion Paper (2.1) [page 16] that DPE was considering a regulatory requirement for proponents to comply with key guidelines at an early stage, rather than just ensuring compliance with the SEARs. CCAA objects to this proposal on several grounds. Firstly, the administrative burden on a proponent would be immense, secondly it shifts the responsibility from the consent authority to the proponent, thirdly it dilutes the importance of the SEARs whilst simultaneously elevating the importance of guidelines, which is a substantial departure of the EIA system, fourthly the terminology for DPEs guidance material is not always consistent, given it is written as broad guidance and lastly it is unfair, given the sheer amount of Guidelines involved, for a proponent to properly or accurately comply with this request.

CCAA is seeking a guarantee from DPE that it will not advance this proposal. Alternatively, CCAA is proposing an amendment to the Regulation, that specifies that an EIS is not compromised if there is

an anomaly with DPEs guidance material. CCAA members feel this is an important level of flexibility in a merit based assessment system.

3.3 *Content of an Environmental Impact Statement*

Schedule 2(7) of the current Regulation sets out the content requirements of an Environmental Impact Statement (EIS). For some time, CCAA has been concerned with the broadness of the wording in 7(1)(c), which deals with feasible alternatives.

CCAA would like clarification, and if possible an amendment to this clause to narrow the interpretation, to ensure this assessment is site specific, rather than applying to alternative locations outside of the development footprint.

Construction materials are a geologically defined resource. With the scarcity of these resources in close proximity to markets, particularly in Sydney, it is often not feasible for an operation to be relocated. There are valid commercial or operational reasons why a proponent has chosen the development site. Opening up a discussion on alternative sites simply opens the project up to a NIMBY response, which is counterproductive and can result in unnecessary angst from the community surrounding an alternative site.

CCAA does not consider this to be a valid line of inquiry and contends this clause should be limited to alternatives within the project or site itself. Rather than focus on theoretical alternative locations, the focus of the assessment should be on justifying why the site selected is appropriate for the activity.

CCAA considers the intent of Clause 7(1)(c) is to deal with the site itself, but believes more specific language could be used to ensure the right interpretation is forthcoming.

3.4 *Timeframes*

Industry appreciates that DPE has made great progress in terms of setting and reporting against timeframes for key stages within the EIA process. However, there are changes to the EIA process, for example scoping and the new Independent Planning Commission (IPC), which will not be captured by these timeframes, but do have the ability to delay the EIA. CCAA encourages DPE to consider enshrining timeframes for these new aspects of the EIA in Regulation to provide certainty for industry and to ensure these new components of the EIA are actually used to streamline the EIA system and do not become elements which further delay progress of an EIA.

3.5 *Fees*

The Discussion Paper (Part 4) [pages 22/23] opens up discussion about whether the existing fee regime remains appropriate.

It is CCAAs view that through the EIA improvement project, DPE is driving a streamlining of the EIS and EIA. Proponents are being asked to undertake additional community consultation, scoping and

producing a more concise EIS, making for a more efficient decision making environment for DPE. With these efficiencies in mind, CCAA considers it appropriate for a 1 cent per Tonne reduction to the maximum assessment fee outlined in Regulation 245F and 256H. This recommendation would result in a reduced assessment fee for a 1 million tonne per year site from \$65,660 to \$55,650.

4. Conclusion

CCAA thanks DPE for seeking the views of stakeholders at this early stage. It is very important for the heavy construction materials industry to have a streamlined, proportionate, cost effective and sensible regulatory framework in which it operates. CCAA will continue to monitor the developments to SSD policy and wishes to remain engaged with DPE as these issues progress.

We would appreciate if CCAA is kept abreast of future engagement opportunities and would be happy to discuss our comments in more detail.

Yours sincerely



Monique Andrew
State Director NSW
CEMENT CONCRETE & AGGREGATES AUSTRALIA