

23 April 2019

Linda Bibby  
Director Policy & Legislation, Resources, Rural and Regional Victoria  
Department of Jobs, Precincts and Regions  
1 Spring Street,  
Melbourne,  
Victoria 3000

Via: <https://engage.vic.gov.au/mineralindustries>

Dear Ms Bibby

#### **REGULATORY IMPACT STATEMENT FOR DRAFT MINERAL INDUSTRIES REGULATIONS**

The Construction Material Processors Association (CMPA) is dedicated to the representation and service of its Members in the Victorian Earth Resources industry. The CMPA represents a broad spectrum of businesses that extract and process hard rock, gravel, sand, clay, lime, and soil. CMPA members also operate recycling businesses.

CMPA members are typically small to medium sized family and private businesses, local government and utilities. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The extractives sector is a key pillar within the construction industry underpinning the growth and economic development of Victoria through supply of the construction materials.

In 2017/18, the sector supplied 58 million tonnes of construction materials to the market, at a value of approximately \$948 million. Small to medium quarries account for approximately half of this production.

The CMPA supports the principle of responsible, balanced legislation that is in the best interests of the State of Victoria.

Thank you for the opportunity to comment on the Regulatory Impact Statement (RIS) for the draft Minerals Industries Regulations (MIR). While not directly relevant to the lower risk and different end use extractive industries, we are keenly interested in the proposals to improve how the regulations operate for work plans. These work plan proposals may end up being accepted, and CMPA would be highly concerned if our comments were not taken into account were a similar approach/model that is meant to control the higher risk large coal mines (fires, heavy metals), gold mines (arsenic/cyanide/ mercury) were to be considered for the much lower risk extractives industries.

The CMPA has been involved in the development of the risk based work plans since 2014 and despite CMPA input, comments and suggestions; the work plan approval process has become more and more complex to the point of being almost unattainable. This is evidenced by the chart in Attachment 1 of number of hectares and work authorities approved versus year approved with the data available from GeoVic (<http://earthresources.vic.gov.au/earth-resources/maps-reports-and-data/geovic>) .

The CMPA has three major concerns with the RIS/MIR:

1. **Rehabilitation:** Of concern are the proposed changes including the review of rehabilitation plans for all licensees; the introduction of Ministerial guidelines on rehabilitation and the projected increase in rehabilitation costs of 20-30%. With regards to rehabilitation bonds, alone, this is equivalent to an increase of \$18 million - \$28 million on 2017/18 figures which could see an increase in the average construction material unit price from \$16/tonne to \$19 - \$21/tonne. The extractive industry has a good record of quarry rehabilitation over the past 20 years in comparison to mines where government has had to spend ~\$10 million on rehabilitation. Additionally, the MIR does not allow for innovative end land use.
2. **Risk based Work plan:** There are 3 documents being proposed for development of a work plan: Preparation of Work Plans and Work Plan Variations (already released and subject to a 6 month review); a Code of Practice for risk management and Ministerial guidelines for work plans. It is difficult to believe the RIS statement that the level of complexity created by these documents will lead to a reduction in cost to the proponent. Additionally, proportionality is glaringly absent with small to medium quarries subject to the same stringent work plan approval process as the Hazelwood coal mine.

The annual regulatory burden for the extractives sector appears to have been underestimated. Please see Attachment 2. CMPA paper “Financial impact of the introduction of risk based Work Plans on 8 December 2015”.

3. **Significant risk:** Significant risk in the RIS is defined as where new or changing work is assessed as medium or above. This is contrary to the current Preparation of Work Plans and Work Plan Variations guidelines and Statement of Operating Change which stipulate that a significant increase in risk is defined as where new or changing work is assessed as high or above.

Concern is held that the extractive industry may also be subject to restricted open competition which will lead to the detriment of the community through increased costs for construction materials used in major infrastructure Government projects.

*“Given that the proposed regulations impose a significant burden on stakeholders”* concern is also held that this significant burden will impact the much lower risk extractive industry if all of the proposed regulations are applied in remaking of the Mineral Resources (Sustainable Development) Extractive Industry Regulations 2010.

As the Resources Division continues on its current path it will decimate small to medium quarry operators. Some have left and some are already planning their exit strategies. For this reason (including specific comments below) CMPA does not support the proposed Mineral Resources

(Sustainable Development) (Mineral Industries) Regulations 2019 and accompanying Regulatory Impact Statement.

I would be happy to discuss our submission further at your invitation. Please see the specific comments below.

Yours sincerely

A handwritten signature in black ink that reads "EM Gibson". The letters are cursive and slightly slanted.

Dr Elizabeth Gibson  
General Manager

## Specific comments

### Regulatory Impact Statement

Page number	RIS	Comment
p.2 1.3 3 <sup>rd</sup> para	<i>"...there is increasing interest in Victoria's earth resources and considerable efforts have been made by the Victorian Government to reduce red tape and reform the regulatory process to facilitate growth in the sector."</i>	Reduction of red tape and reform of the regulatory process has yet to result in growth of the earth resources sector.
p.3 Table 5	<i>"New applications, renewals and renewals pending"</i>	Lists for each tenement type as aggregated data. Of interest would be the length of time in total for the approval process.
p.7 1 <sup>st</sup> dot point	<i>"mineral and stone resources are developed in ways that minimise adverse impacts on the environment and the community;"</i>	Extraction of stone resources is a lower risk activity and has a different end use to mines. There should be a separate Extractive Industries Act.
p.8, 5 <sup>th</sup> para:	<i>"In addition to the regulations, there are two other forms of subordinate instrument made under the Act – Ministerial guidelines and codes of practice. The department also publishes a considerable amount of (non-statutory) guidance material."</i>	Care should be taken that the guidance supplied is relevant, up-to-date and regularly reviewed.
p.9, 3 <sup>rd</sup> para	<i>"ERR has an annual recurrent budget of approximately \$7 million."</i>	<b>"The minerals and extractive industries fund ERR through cost recovery."</b> Should be added for clarification.
p.9, 1.6 2 <sup>nd</sup> para	<i>"ACIL Allen found that the per annum regulatory burden imposed by the minerals and extractive regulations was \$63.8M on the minerals sector and \$10.3 million on the extractives sector."</i>	The annual regulatory burden for the extractives sector appears to have been underestimated. Please see Attachment 2. CMPA paper "Financial impact of the introduction of risk based Work Plans on 8 December 2015".
p.12, 2.3 3 <sup>rd</sup> para	<i>"The Hazelwood Mine Fire Inquiry, the Commissioner for Better Regulation and the Latrobe Valley Rehabilitation Commissioner have all made findings that the Act and its supporting Regulations do not adequately require or encourage adequate rehabilitation planning, nor regulate or enforce a licensee's obligation to rehabilitate."</i>	The current MIR specifies the need for progressive rehabilitation in <b>5.1 (b)</b> . Note that the Government has had to spend ~\$10 million cleaning up mines over the past 20 years whilst for the extractive industries this has been negligible.
p.12	<i>"Section 42(1)(a), Mineral Resources (Sustainable Development) Act 1990. Section 40(2) exempts small low risk mines and prospecting licences engaged in mining activities defined as low risk,"</i>	As per the "Preparation of Work Plans and Work Plan Variations" guideline the RIS should be read as <b>"...defined as low or medium risk"</b>

p.13 Figure 2		What is meant by “certification” prior to “Mine closed; bond return; relinquishment”?
p.23, 2 <sup>nd</sup> para	<i>“Since these regulations came in to force in 2016, industry has expressed concerns that they are too prescriptive and do not enable proportionate approaches to risk management.”</i>	CMPA has expressed these concerns on many occasions; an example being the “Preparation of Work Plans and Work Plan Variations: Guideline for Extractive Industry Projects” December 2018 where in a public forum it was stated by Government that the Guidelines are disproportionate with respect to small to medium quarries.
p.23 para 4	<i>“Getting the Groundwork Right recommended several operational policy changes to address these concerns including the development of standard risk management plans.”</i>	Draft standard risk management plans (August 2018) were developed for small to medium quarries but later withdrawn due to industry feedback that they did not resolve the issue of disproportionality (same cost, time and complexity as for large projects including coal mines).
p.23 2 <sup>nd</sup> dot point	<i>“the release of guidelines on risk assessment and work plan preparation.”</i>	“Preparation of Work Plans and Work Plan Variations: Guideline for Extractive Industry Projects” December 2018 release did not resolve the issue of disproportionality.
p.23 5 <sup>th</sup> dot point	<i>“supporting the changes through the development of Ministerial guidelines for risk assessment.”</i>	The introduction of Ministerial guidelines for risk assessment will not resolve issues of disproportionality; will increase complexity and uncertainty due to the Guidelines for “Preparation of Work Plans and Work Plan Variations” having been introduced.
p.23 last para	<i>: “Under this option, regulated parties would be given the choice to apply elements of the risk management approach contained within a Code of Practice for risk management, which would be issued by the Minister under Part 8A of the Act.”</i>	The Code of Practice, like the Ministerial Guidelines will also contribute towards the complexity and uncertainty of the work plan approvals process.
p.24 2 <sup>nd</sup> para	<i>“In so far as the Code of practice covers relevant hazards, adoption of a suite of suitable measures will provide flexibility for operators in meeting performance standards.”</i>	Native Vegetation and Aboriginal Heritage do not have uniform performance standards and are developed on a site by site basis.
p.24 5 <sup>th</sup> para	<i>“...the proposed Code of Practice, and supporting Ministerial Guidelines for risk assessment, would need to be developed in consultation with the sector.”</i>	The CMPA does not support the additional legislative instruments, however, if it was insisted that they were developed CMPA would welcome having input on their development.
p.25 C.2	<i>“Proposed Amendments”</i>	The proposed amendments on p.25 should apply to the minerals industry

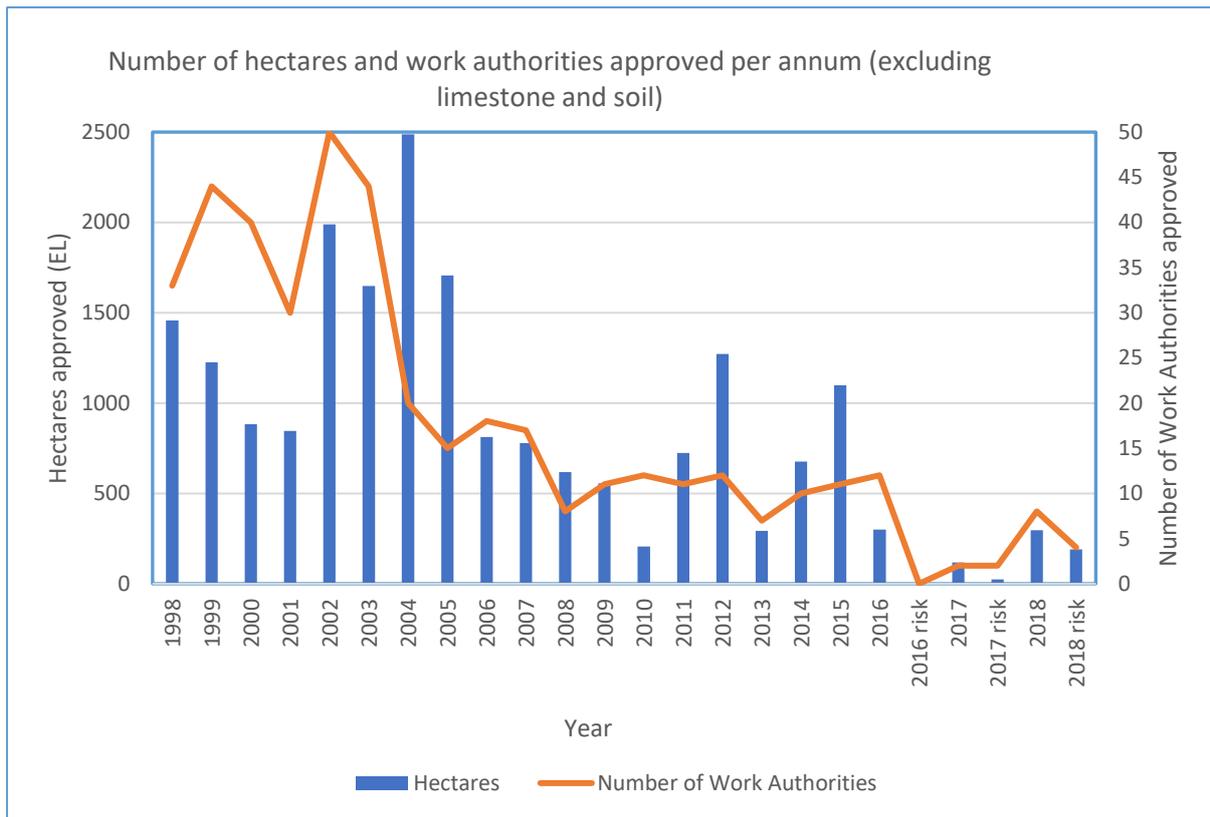
	<p><i>“supported by supplementary Ministerial guidelines”.</i></p>	<p>only. They have been proposed due to the Hazelwood Mine Fire Inquiry. Unlike mines, for quarries:</p> <ul style="list-style-type: none"> <li>• the resource does not catch fire (unlike coal mines);</li> <li>• toxic chemicals are not used during processing;</li> <li>• The extractive industry has a good record of quarry rehabilitation over the past 20 years in comparison to mines where government has had to spend ~\$10 million on rehabilitation.</li> </ul> <p>Hence, rehabilitation for quarries does not need to be supported by supplementary Ministerial guidelines.</p>
<p>p.39 dot points</p>	<p>Proposed work plan amendments</p> <ul style="list-style-type: none"> <li>• <i>clarifying that the risk management plan should express performance standards;</i></li> <li>• <i>allowing parties to meet obligations to manage risks by incorporating performance standards contained in a Code of Practice; and</i></li> <li>• <i>supporting the changes through the development of Ministerial guidelines for the minerals sector (consistent with the work already undertaken for the extractives sector)."</i></li> </ul> <p>For the effectiveness criteria assessment <i>“As the development of a code of practice requires public consultation, the performance standards that it establishes are more likely to reflect community concerns.”</i></p> <p>For the cost to industry criteria assessment <i>“...the department estimates that streamlined and simplified processes enabled through the proposed regulations are likely to achieve a 10-15% reduction in costs</i></p>	<p>The dot points are the proposed amendments for the Minerals Regulations.</p> <p>The multi criteria analysis contradicts itself:</p> <p>More stringent and additional performance standards are the likely result.</p> <p>If more stringent and additional performance standards are the outcome, then the proposed cost savings are unlikely to be achieved and are more likely to increase.</p>

	<p><i>associated with preparing work plans for the sector.”</i></p> <p>For the cost to government criteria assessment <i>“This is likely to result in fewer iterations of work plans to be considered by the Government prior to approval, as decision makers have greater clarity.”</i></p>	<p>The addition of a Code of Practice and Ministerial guidelines is more than likely to reduce clarity and not reduce the number of iterations for a work plan. More focus should be made on recruiting qualified and experienced assessment staff in Earth Resources Regulation.</p>
<p>p.43</p>	<p>Proposed rehabilitation requirements For the effectiveness criteria assessment <i>“The improved information requirements will lead to more effective regulation of rehabilitation works and rehabilitation bonds that better reflect the true cost of rehabilitation, ensuring the State (and community) are protected from rehabilitation costs that rest with the operator.”</i></p> <p>For the cost to industry criteria assessment <i>“However, the costs that industry will face under this system are proportionate to their regulatory obligations under the Act.”</i></p> <p><i>“This cost will only impact new or varied rehabilitation plans.”</i></p> <p><i>“...the department estimates that the net increase in costs to industry of implementation of and compliance with rehabilitation plan requirement clarifications is likely to be in the order of 20-30%.”</i></p> <p>For the cost to government criteria assessment <i>“Administrative costs to government may increase under the proposed amendments compared to the base case and status quo option with the requirement to assess rehabilitation plans as they are varied to include the clarified information requirements. Administrative costs may also increase in the short-term as ERR adjusts to</i></p>	<p>This is not strictly correct. p.52 states that all rehabilitation plans will be reviewed in the first 5 years. This will be an unnecessary burden on the extractive industry if introduced.</p> <p>This will lead to small to medium quarry operators departing from the industry due to the additional expense not being proportionate.</p> <p>More focus should be made on recruiting qualified and experienced assessment staff in Earth Resources Regulation in order to reduce costs for the long term. The proposed rehabilitation requirements are not necessary if there is an equitable, effective and efficient audit program conducted by qualified and experienced officers in ERR.</p>

	<i>assessment of plans against their ability to achieve rehabilitation ‘outcomes’.</i>	
p.50	<p>Preferred options</p> <ul style="list-style-type: none"> <li>• <i>“enabling parties to meet obligations to manage risks by incorporating performance standards contained in a Code of Practice;”</i></li> <li>• <i>“Requiring rehabilitation plans to: <ul style="list-style-type: none"> <li>○ <i>identify a post-mining land use and construct a rehabilitation plan that achieves a safe, stable and sustainable final land form, to support that future use”;</i></li> <li>○ <i>include rehabilitation objectives which will collectively measure whether a safe, stable and sustainable landform has been achieved;</i></li> <li>○ <i>include completion criteria i.e. standards that will be used to measure whether rehabilitation is complete; and</i></li> <li>○ <i>include progressive rehabilitation milestones that commit to achieving a series of significant rehabilitation steps in the course of doing work under the licence.”</i></li> </ul> </i></li> </ul>	<p>Native Vegetation and Aboriginal Heritage do not have uniform performance standards and are developed on a site by site basis.</p> <p>Identifying a post-mining land use in the work plan application may have the impact of stifling innovation in the end use landform due to the length of time of its operation.</p> <p>A rehabilitation plan may become obsolete once the rock is quarried: not homogenous throughout the site.</p>
p.51 Table 37	<p>Competition questions</p> <p><i>“Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet? No</i></p> <p><i>The same requirements will be imposed on new entrants compared with incumbents.”</i></p>	<p>The costs for existing operators will remain lower (i.e. an unfair competitive advantage) until all licensees have reviewed their work plans after 5 years so the assessment should be “Yes”.</p>

	<p><i>“Is the ability or incentive to innovate or develop new products or services likely to be affected by the proposed measure?”</i></p> <p><i>No</i></p> <p><i>The regulations do not impose restrictions on the ability to innovate.”</i></p>	<p>The assessment should be “Yes” due to the requirement to state the end use landform at the commencement of a project which stifles innovation.</p>
p.51 last para	<p><i>“The review commented that “given the risks and large-scale capital investment associated with discovery and development of mineral deposits, restricting open competition is considered entirely justified in relation to the primary objectives of the Act,...”</i></p>	<p>Concern is held that the extractive industry may also be subject to restricted open competition which will lead to an increase in costs to the community through increased costs for construction materials used in major infrastructure Government projects etc.</p>
p.53 2 <sup>nd</sup> para	<p><i>“The jurisdictional analysis shows that the proposed Victorian regulatory changes are not more burdensome compared to other Australian jurisdictions.”</i></p>	<p>Just because the regulatory changes “are not more burdensome” does not necessitate being legislated up to that level of burden. Victoria is fortunate that it currently has a robust small to medium quarry industry allowing for competitive pricing and choice of supply to the benefit of all Victorians.</p>
p.57	<p>Evaluation: <i>“Given that the proposed regulations impose a significant burden on stakeholders, it is proposed to conduct a mid-term review of the regulations”</i></p>	<p>Concern is held that this significant burden will impact the much lower risk extractive industry if all of the proposed regulations are applied in remaking of the Mineral Resources (Sustainable Development) Extractive Industry Regulations 2010.</p>

**Attachment 1.**



Note that (year) “risk” identifies work authorities approved under the risk based work plan process.

## Attachment 2.

Dear CMPA Members,

### RE: Financial impact of the introduction of risk based Work Plans on 8 December 2015

The CMPA, as a member based association, is continually working towards fair and just outcomes for the industry; and to maintain a healthy, diverse and compliant sector.

The CMPA has always believed that the introduction of the risk based regulation i.e. risk based Work Plan required a Regulatory Impact Statement (RIS), however, this was discounted by the Government. CMPA further believes that this regulatory change has triggered an unplanned financial impact upon the industry, will compound as it inhibits future access, and will impact upon the State's proposed infrastructure programs.

The CMPA is in no doubt that the impact on our sector (given there are in excess of 1,400 Work Authorities (WA) registered with ~580 putting in returns) will be well beyond the Government's figure of less than \$2 million (stated at the Public Accounts and Estimates Committee 2017) and believes that a RIS must be urgently undertaken by the Government to fully understand the impact of this regulation on the industry and the Victorian economy.

To understand the magnitude of this transition, if ERR were able to approve 10 WAs per month, this would take more than 10 years to fully implement without taking on board new WA and variations.

Below are the primary cost impacts for the industry resulting from the introduced legislation, RBWP guidelines and RRAMs platform on the current WP process:

Primary financial impact issue	Year 1	Year 2
Containment of all documentation on ERR's website	\$2.2 million	\$1.5 million
Necessity for engagement of third parties	\$16.2 million	\$12 million
Duplication of documentation storage	\$4.9 million	\$1.2 million
Requirement of varying reports for the same purpose	\$2.9 million	n/a
Delays in WP/WP variation approval process	\$7.5 million	\$7.5 million
Potential contraction of existing extractive limit	\$1.1 million	n/a
Existing WA may be lost during "transitioning"	\$4.0 million	n/a
Expanded opportunities for objectors to discredit	\$1.4 million	\$1.4 million
Increased documentation attached to planning permit	\$3.9 million	n/a
Loss of ease of use of the WA to the operator	\$3.8 million	\$0.3 million
<b>Total</b>	<b>\$47.9 million</b>	<b>\$23.9 million</b>

Please contact the Secretariat for further information on this matter and feel free to pass this correspondence onto any interested party such as your local Member of Parliament.

Yours Sincerely



Dr Elizabeth Gibson, General Manager

## **Further Information**

### **Containment of all documentation on ERR's website:**

Issues of Members connectivity; software and hardware purchases; training; upkeep and auditing. Time penalties incurred through attempting to access and platform stability.

Cost modelling: Only for the 580 WA that put in returns each year. To ensure a reasonable assessment is given the assumption is to use only 270 WAs. Set up \$8K x 270 WAs or more for entry and then ongoing use \$2.5K x 580.

Financial impact: \$2.2 million Year 1; \$1.5 million Year 2

### **Necessity for engagement of third parties**

The legislation change requires additional documentation to be attached to the WP, e.g. previously a third party report to measure fly rock, air blast and ground vibration was not embedded into full risk management protocol as required under the introduced legislation.

Cost modelling: Assuming only activate 5 management plans to be provided out of a total of 15. To ensure a reasonable assessment is given the assumption is to use only 270 WAs. 5 reports x 270 WA x \$12K additionally required monitoring: 8 audits per annum @\$4K x 270 WA; and document upkeep 1400 WA x 1 x \$2.5K for continuous improvement.

Financial impact: \$16.2 million Year 1; \$12 million Year 2

Note: excludes Native Vegetation which can assess at more than \$200k/Ha and excluding Aboriginal Heritage Cultural Heritage Management Plan \$10K/Ha.

### **Duplication of documentation storage:**

Technically 1,400 copy of plans stamped and endorsed have to be transitioned and altered to attain standard required for a RBWP.

Cost modelling: Would apply to all 1400 WAs with the additional requirement of ongoing maintenance of the documentation. 1400 WAs x \$3.5K and ongoing maintenance of \$3.5K/4 x 1400 WAs

Financial impact: \$4.9 million Year 1; \$1.2 million Year 2

### **Requirement of varying reports for the same purpose**

May not be limited to blasting let alone regulators different needs E.g. Blast Management Plan for Council, ERR and WorkSafe all have different requirements. In addition to third party reports required for the RBWP; these reports are also required by Council but they vary despite being for the same purpose.

Cost modelling: Minimum of 1 document for 180 WA sites x 2 additional reports x \$8K

Financial impact: \$2.9 million Year 1.

### **Delays in WP/WP variation approval process**

Numerous CMPA Members and non-members have experienced lengthy delays in applications for WPs and WP variations with examples of delays in the excess of 2 years. These delays are impacting on the businesses being able to access resource, meet market needs and to purchase plant and

equipment. The site may be exposed to greater risk as working areas become restricted. Members are also finding difficulty in accessing the appropriate ERR officer to assist them through the process or even obtain competent direction as result of ERR's transition to RBWPs.

Cost modelling: Premature closure of site; loss of market opportunity; lack of raw material access; increased cost of materials handling (double handling). 50 WAs with delays of 12 months. \$.7-\$2.5/per tonne loss of opportunity average to \$1.5/tonne for 100K tonnes  
Financial impact: \$7.5 million Year 1; \$7.5 million Year 2

#### **Potential contraction of existing extractive limit**

An example of the projected impact of this adjustment will be where a current WA will be required to decrease their extractive limits within the WA boundary to meet the geological risk assessment. This will be particularly pertinent to WAs whose extractive areas are contained through area and proximity to sensitive receptors. It would not be unreasonable to see a WA losing 30% of its available resource making it commercially unviable to hold on to the asset or continue to operate. This could also be applied to any other of the hazards (e.g. noise, dust).

Cost modelling: 50-80 WAs affected. A reasonable price for a current WA ~\$36K (upwards). \$36K x 30 WAs  
Financial impact: \$1.1 million Year 1

Result in application much larger in size to ensure they are seen to be able to identify risk.

#### **Existing WA may be lost during "transitioning":**

The requirement by ERR for confirmation by the Shire/Council that a proposed transition to a RBWP does not require a Planning Permit amendment or a new Planning Permit could lead to the loss of both approvals (Permit and WA). Regardless of the outcome an application fee will be required ranging from \$1.6K - \$11K.

Cost modelling: 80-100 WAs affected. A reasonable price for a current WA ~\$20K x 90 WA  
Financial impact: \$4.0 million Year 1

#### **Expanded opportunities for objectors to discredit**

There is a higher degree that the process will fail as recently seen in VCAT. There is no evidence that RBWP will increase the chance of success. This would therefore mean that there is a higher chance that the application will be rejected as the higher degree of information is provided e.g. Seymour Quarry case. More applications in the future as there is limited supply to markets.

Cost modelling: 8 VCAT cases and lawyer fees \$180K x 8.  
Financial impact: \$1.4 million Year 1; \$1.4 million Year 2

#### **Increased documentation attached to planning permit**

Understanding of how the Planning Permit and the attached documents are managed. It is most likely that they will become public with no change able to be made without application for a new planning permit. Most of the management plans are live documents and industry will be locked into applying for new planning permit every time a change is required. Providing an expert report that is able to comply is totally different to the management plans.

Cost modelling: Management plans continually adjusted 60 WAs x \$65K

Financial impact: \$3.9 million Year 1

**Loss of ease of use of the WA to the operator**

Dual systems will have to be run: language based documentation for use by their managers and employees; a general document for Councillors and Council Officers and community which more closely represents the reality. Or devise a mechanism for providing the current reports into a format that will be able to be used. Some may choose to do nothing and run with the entered documentation in RRAMs but whether the outcome is currently to the same standard can only be assumed as improbable. Currently, some WA holders already run a second document for the planning process.

Cost modelling: 150 WAs x \$25K + 10 variations/new WA/annum

Financial impact: \$3.8 million Year 1; \$0.3 million Year 2