

10 May 2022  
Ms Karen Caple  
Executive Director  
Resource & Environmental Compliance  
Department of Mines, Industry Regulation and Safety  
100 Plain Street  
East Perth WA 6004

Via email: [karen.caple@dmirs.wa.gov.au](mailto:karen.caple@dmirs.wa.gov.au)

**SUBJECT: SUGGESTED IMPROVEMENTS TO ENVIRONMENTAL APPROVALS UNDER THE MINING ACT**

Dear Karen

As requested during the DMIRS *Assessment Procedures for Mining Environmental Applications Workshop* on 10 February 2022, Cement Concrete & Aggregates Australia (CCAA) welcomes the opportunity to provide comments to the Resource & Environmental Compliance Branch on suggested improvements to environmental approvals under the *Mining Act*.

CCAA is the peak industry body for the heavy construction materials industry in Australia including the cement, pre-mixed concrete and extractive industries. Our members operate cement distribution facilities, concrete batching plants, hard rock quarries and sand and gravel extraction operations throughout Western Australia. For your information, a list of CCAA members in Western Australia is provided in Appendix 1.

CCAA supports an improved, streamlined environmental approvals process that reduces unnecessary red tape for industry and delivers improved, more efficient bureaucratic processes for Government at this time when recruiting skilled personnel to resource this area is increasingly difficult. Industry maintains that there should be no net reduction in environmental outcomes as part of these improvements.

CCAA makes the following recommendations:

**Mine Closure Plans**

- CCAA **recommends** that where possible the requirements by the Department of Water & Environmental Regulation, Clearing Assessments, and EPA assessments on the timing and content of updated MCPs are aligned. This will result in real streamlining of administrative processes and a reduction in red tape and costs for industry. I have some concerns with this. This could be achieved by referencing the other approvals in the Mine Closure Plan; such as compliance with the issued Clearing Permit or DWER Licence issued under Part (V) of the Environmental Protection Act.

**Environmental Applications Administrative Procedures**

- The August 2021 Administrative Procedures [document](#) clearly sets out the administrative procedures and Departmental expectations required for environmental applications. There are many positive aspects to the system, but our members still report the following issues are a source of frustration:

- The inconsistent risk tables in the *Mining Proposal Guidance* and the *Mine Closure Plan Guidance*. The slightly different formats mean proponents cannot use the Mining Proposal table in the Mine Closure Plan without re-arrangement, potentially leading to confusion, time delays and errors in reworking data. Consistent terminology is the key to clarity, with a number of terms being used for similar items, such as objectives, outcomes, completion criteria, targets and others, which all essentially mean the same thing. Consolidation, reduction and consistency in these terms is required.
- The reporting of rehabilitation areas from the Mining Rehabilitation Fund (MRF) and the Annual Environmental Report (AER) tables are reversed, potentially leading to confusion and reporting errors.
- There is repetition within the reporting such as the production is reported in both the Form 5 and within the AER. The various areas of reporting active areas and rehabilitation are also reported in both the AER and the MRF.
- The AER reporting could be used to generate the MRF. The MRF would simply use the data from the AER and generate the invoice requirements. Data from Form 5's could also autofill into the AER reporting.
- That would save large amounts of DMIRS and company checking and reporting.
- CCAA **recommends** that these format and reporting issues are resolved in the relevant documents.

### Dispute Resolution

- CCAA **recommends** that in the interest of a fair, independent and transparent decision-making process that delivers natural justice, the option of a low cost, timely dispute resolution process through mediation and other similar processes is established for environmental approvals. Such a process is leading regulatory practice as outlined in the recent Productivity Commission Report<sup>1</sup>.
- CCAA recognises that as outlined in the DMIRS/DWER Administrative Agreement Jan 2021, unresolved issues maybe referred to the Director General, DWER and the Director General, DMIRS. An independent process may still be required to resolve complex issues.

### Interdepartmental advice

- CCAA **recommends** that advice from other Government departments should be made available 'word for word' to the proponents as part of the proposals assessment. This will help limit Freedom of Information requests to DMIRS and demonstrate a fair, transparent and open assessment process.

### Legal Perspective vs Practicality

- A rational interpretation of the *Forrest* decision should improve the approval process. CCAA members are increasingly experiencing strict interpretations of what officers think the implications of the *Forrest* decision are. That results in unnecessary delays. For example, it is understood that the *Forrest* decision related to the submission of documentation many months late. It was not a minor non-use of a certain term in a Mining Proposal or Mine Closure Plan. Officers appear reluctant to make a decision, so they, at times, endlessly refer

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<sup>1</sup> Productivity Commission 2020, *Resources Sector Regulation*, Study Report, Canberra

documentation to other Government Departments or insist on the proponent doing so and at times are rejecting proposals for the most pedantic reasons.

- In *Onslow Resources Ltd v Minister for Mines and Petroleum* [2021] WASCA 151, the WA Court of Appeal applied the *Forrest* approach.

CCAA understands that this decision provides additional legal reasons for tenement applicants to complying with the requirements of the *Mining Act 1978*. But at the same time, a practical application of the guidelines needs to be recognised by DMIRS management so that assessment officers are supported to approve proposals in a timely manner.

### Managing Environmental Outcomes

- CCAA **recommends** that a deeming provision is included for referrals to other Government departments. This implies that if the referral agency does not make a decision on the application within the recognised timeframe, then the referral agency is deemed to have approved the application.
- The Productivity Commission recognises this as Leading Practice 6.4<sup>2</sup> and a key lever to reduce approval delays.
- This would require an update to the DMIRS/DWER Administrative Agreement Jan 2021.

### Outcomes based conditions

- CCAA **recommends** that Outcomes-Based Approval Conditions are included in the environmental assessment process. The key point being the achievement of the end point, and not extensive documentation on how a miner is going to get to the point.
- The Productivity Commission recognises this as Leading Practice 6.7<sup>3</sup> and enables companies to choose least-cost ways of achieving defined environmental outcomes.

Western Australia's regulatory environment needs to be internationally competitive to continue to attract capital to invest into the state to ensure a sustainable and competitive heavy construction materials industry. This in turn facilitates Western Australia's productivity, housing affordability and lower infrastructure costs.

There is no more important time than now for the construction sector, supported by an efficient heavy construction materials supply chain, to provide the engine to build Western Australia's post COVID economy and create jobs.

Please do not hesitate to contact me to discuss any of these issues in more detail.

Yours sincerely



**ROGER BUCKLEY** State Director Western Australia

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<sup>2</sup> Productivity Commission 2020, *Resources Sector Regulation*, Study Report, Canberra






<sup>3</sup> Productivity Commission 2020, *Resources Sector Regulation*, Study Report, Canberra

**APPENDIX 1**

**CEMENT CONCRETE & AGGREGATES AUSTRALIA**

**MEMBERSHIP**

**FOUNDATION MEMBERS**

 <p><b>ADBRI</b> Adbri Limited</p>	 <p><b>Boral Australia</b></p>	 <p><b>Cement Australia Pty Ltd</b></p>
 <p><b>Hanson</b> HEIDELBERGCEMENTGroup Hanson Australia Pty Ltd</p>		 <p><b>Holcim</b> Holcim (Australia) Pty Ltd</p>

**WESTERN AUSTRALIA**

**ORDINARY MEMBERS**

<p>B&amp;J Catalano Pty Ltd Flyash Australia Pty Ltd Fulton Hogan Industries Lime Industries Pty Ltd</p>	<p>Pilatti Bros Transport Ransberg Pty Ltd T/a WA Premix and WA Bluemetal Urban Resources Pty Ltd</p>	
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**ASSOCIATE MEMBERS**

<p>Concrete Colour Systems Concrete Waterproofing Manufacturing Pty Ltd T/a Xypex Australia</p>	<p>GCP Applied Technologies Sika Australia Pty Ltd Westrac</p>	
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