1. INTRODUCTION

The heavy construction materials industry is a vital component of the building and construction sector. These construction materials are used to build the infrastructure, which is the foundation of our modern economy. To ensure these construction materials remain readily available, accessible and affordable, the industry needs a balanced regulatory system, which is not unnecessarily burdensome.

The current planning and approvals system in New South Wales (NSW) is slow, cumbersome and costly. Moreover, the operational conditions placed on quarries are onerous and laden with duplication. Red and green tape is choking the industry.

In this policy proposal, CCAA identifies reforms that will not detrimentally impact environmental or safety outcomes but will streamline the regulatory framework in which we operate.

By enacting these reforms, the NSW Department of Planning and Environment (DPE) will send a positive signal to the heavy construction materials industry, which will not only have flow-down benefits to the building and construction industry but will also increase investment and employment opportunities in NSW.
Cement Concrete & Aggregates Australia (CCAA) is the peak national body representing the heavy construction materials industry.

Heavy construction materials is the collective term used to describe the extracted materials, which are used directly in the building and construction industry and in the manufacturing process for cement, concrete and other building materials such as bricks, pavers and mortar.

In NSW, approximately 30 million tonnes are extracted each year worth about $400 million. Together with the 7 million cubic metres of concrete¹, they are a significant element of the State’s construction sector, which is responsible for employing 8.5% of the State’s total workforce².

The demand for heavy construction materials is inexplicably linked to building and construction activity. In NSW, private sector infrastructure related construction growth has doubled to $24 billion since 2007-08³.

In addition, the current NSW Government has announced $61 billion worth of public infrastructure across the forward estimates, including hospitals, schools, roads, bridges and new upgraded rail projects⁴.

These projects are designed to build the modern economy of the future, whilst ensuring social infrastructure can accommodate an increasing population, forecast to increase by 100,000 people per year to 2031⁵.

1. ABS 8301 Production of Selected Construction Materials, March 2014.
2. NSW Minerals Industry Profile 2013, NSW Trade and Investment.
3. Invest in NSW, Infrastructure and Construction, NSW Trade & Investment.
5. Your Future NSW to 2031, Department of Planning and Environment.
CCAA members acknowledge the need for extractive operations to continue to meet community expectations. This ‘social licence’ to operate is key to harmonious relations with neighbouring property owners, local communities and regulators.

CCAA believes the regulatory system overseeing the industry must be balanced, consistent, accountable, proportionate and timely.

Recently, the Productivity Commission highlighted the importance of achieving this regulatory balance in terms of its impact on infrastructure pricing, stating:

*Much of the regulation (of quarries) is excessively stringent and inflexible, and…appears to involve onerous requirements and inconsistency, duplication and significant cost and delay… Without coordination of planning and other regulations affecting quarrying, it is possible that the cumulative burden of regulation could place the production of a key input for infrastructure projects at risk. This would have a significant impact on the costs of construction.*

The Productivity Commission calls on State Governments to review the cumulative burden of regulation affecting quarrying and whether additional measures to address supply issues are warranted.

In light of the Productivity Commission’s findings, CCAA reviewed the Planning and Approvals Regulatory system in NSW. Of the last 14 relevant approvals granted between 1 January 2013 and 18 August 2014, we found that the average approvals process for State Significant Development (SSD) applications is five years and on average costing $1m. Minor modifications are taking two years and experiencing comparable costs.

The DPE SSD Flow Chart is attached as Appendix 1.

The following reforms will remove duplication, red and green tape and will enhance the planning and approvals system in NSW. This will ultimately lead to improved investment opportunities for the sector and lead to more efficient supply of vital materials used in the construction and infrastructure markets.

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This section is divided into the following five sections:

- Strategic Planning
- Reforming the Current System
- Red & Green Tape Reform
- Guidance Material
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 “Extractive SEPP”

4.1 Strategic Planning

Most Australian States have recognised the importance of protecting heavy construction materials to ensure they remain accessible to meet the future demand of the building and infrastructure industry in their jurisdiction. As a result, they have either taken action already or are currently taking action to protect state significant construction materials from sterilisation or unnecessary urban encroachment.

In Queensland, Key Resource Areas (KRAs) have been protected and built into State and Local planning systems for some time.

In Victoria, the Economic Development and Infrastructure Committee (EDIC) recommended:

As part of the development of an integrated statewide strategic land use framework, that the Victorian Government ensures studies are undertaken to determine areas of high prospectivity for extractives and future extractives needs in metropolitan Melbourne and regional Victoria.

Work is currently underway to implement this commitment at a strategic planning level.

In South Australia, the Department of State Development has joined with the Department of Planning, Transport and Infrastructure to produce the Resources Area Management and Planning Report (RAMP), which again encourages action to protect future heavy construction materials from other incompatible land uses.

In New South Wales, CCAA is aware of the Statewide Mineral Resource Audit but would like to see this mapping extended to future state significant construction materials.

As far as the Ministerial Directions pursuant to Section 117 of the Environmental Planning & Assessment Act 1979 is concerned, CCAA believes an opportunity exists to extend the policy intent by being proactive rather than reactive.

To achieve optimal planning outcomes, the extractive industry must be recognised and protected in the Strategic Regional Land Use Policy and the 10 Regional Growth Plans.

Recommendation:

1) CCAA encourages DPE to review strategic planning documentation and take corrective policy action to ensure that future heavy construction materials are protected to ensure they remain accessible and affordable for the building, construction and infrastructure sectors in NSW.

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4.2 Reforming the Current System

The current planning and approvals system for quarries meeting State Significant Development (SSD) requirements is complex, time-consuming, arduous and uncertain for the industry. To achieve our planning principles, CCAA has a number of policy suggestions, which if enacted will ensure more timely, consistent and proportionate approvals and will unlock investment in the sector.

Recommendations:

1) Government Agencies to confine Public Exhibition comments to DGRs

If a preliminary Environmental Assessment (EA) is presented to Government agencies such as the Environmental Protection Authority (EPA), NSW Office for Water (NOW), Office of Environment and Heritage (OEH), Roads and Maritime Services (RMS) etcetera, at a Planning Focus Meeting, Agencies must list their major issues and ensure they are included in the subsequent Director General’s Requirements (DGRs). Once an applicant’s finalised EA is on public exhibition, Agencies must confine their comments to issues raised at the Planning Focus Meeting, or contained in the DGRs. Additional issues should not be raised.

2) DGRs must Address Major Environmental Issues

DGRs need to be focused on the major issues for the particular site. The industry experience is that the DGRs have subtly crept to a position where most environmental issues are included in the DGRs, whether they are relevant or not. This ‘scatter gun’ approach is costly to industry, as it requires the applicant to obtain an independent expert consultant to address all of these issues, even if they are of minor or no consequence.

3) Public Exhibition requires Strengthening

CCAA believes the public exhibition period is open to abuse. Examples of respondents not providing their name and address, having little or no connexion with the development or signing a ‘campaign’ letter, with little veracity is undermining the engagement process.

CCAA members are comfortable providing a response to legitimate concerns but wish to ignore vexatious or irrelevant commentary from respondents with little or no connexion to the development.

4) Deemed Approval Period

As previously mentioned, Government Agencies should confine their comments to specific issues raised in the Planning Focus Meeting or the DGRs, new issues should not be raised following public consultation. Any negotiation between the applicant and the Agency at this late stage should be limited to a statutory timeframe. CCAA recommends 30 days. Should agreement not be reached, applicants should gain access to a ‘deemed approval’ mechanism through DPE.

CCAA members report widespread frustration at the constant delays in dealing with Agencies at this final stage of the process, notwithstanding the earlier Planning Focus Meeting and the Presentation of a Preliminary EA before the DGRs are issued. CCAA has noted the strict timelines imposed on the new Gateway process for mining and coal seam gas as precedent for stricter timelines.

5) Statutory Timeframe for Decision

CCAA would like DPE to consider a 90 day statutory timeframe for the final decision, noting that some decisions can take DPE more than a year to finalise. As DPE is involved in the application from its inception, CCAA does not consider it unreasonable to invoke a statutory timeframe.

6) Ministerial Decision Making

Currently the Minister for Planning (or their delegate at DPE) loses the discretion to make a decision, should the local Council oppose the development or 25 people object during the Public Exhibition stage of the SSD process. In this instance the Planning Assessment Commission (PAC) automatically becomes the approving authority. CCAA strongly argues that the Minister should retain the discretion to make SSD decisions at all times based on the traditions of the Westminster system and the fact that 25 respondents is an arbitrary number, which as discussed previously, is open to abuse.

7) Community Consultative Committees only in Extreme Circumstances

A Community Consultative Committee (CCC) should only be established in extreme circumstances. Currently, CCAA has noted examples of a CCC being established as a condition of approval, when the EA has had only two objections lodged by local residents. In our experience a CCC, once established, is rarely revoked and is an added administrative burden, which should only be established if a genuine need exists.
8) Revision of Strategies, Plans and Programs

Schedule 5 of the project approval notice requires an annual review of all strategies, plans and programs. This is an onerous requirement, which must be abolished. CCAA members believe the more appropriate time to review these second-tier documents is following the results of the Independent Environmental Audit, which CCAA argues below should be extended to every five years.

9) Director General Approval of Independent Experts

Throughout the entire Project Approval notice, DPE instructs the applicant to seek prior approval of the Director General before any independent expert is engaged. CCAA members report that the Director General has, at times, refused to let the applicant engage the expert they desire. Not only is this an administrative burden but CCAA believes this is completely unnecessary and an illegitimate action for a Director General to request.

4.3 Red & Green Tape Reform

Easing administrative burdens will increase productivity and lead to better environmental and safety outcomes as management takes a more visible presence within the operations of the business. CCAA believes there is huge potential to reduce the burden on CCAA members without compromising performance.

Recommendations:

1) Abolish Management Plans

CCAA believes Management Plans are burdensome, do not improve environmental outcomes and should be abolished forthwith. An applicant’s approval should be based on the publicly exhibited EA, which is generally written to cover operational strategies, compliance mechanisms and reporting obligations. Additionally, an applicant’s Statement of Commitments could be used if DPE requires further protection.
2) Independent Environmental Audit

Schedule 5 of the DPE issued project approval notice contains a condition for an Independent Environmental Audit. Generally, DPE request this Audit to be undertaken every 2/3 years (although CCAA has noted a recent example of it being requested 1 month after DPE issued approval). This Independent Environment Audit requires a consultant to be engaged and is an additional and unnecessary expense noting that applicants are required to complete an Annual Review. As a Red/Green Tape reduction initiative, CCAA recommends the Independent Environmental Audits should be required in no less than 5 year intervals unless there is a significant environmental shortcoming. Taking a whole of government approach to this issue, DPE might find a link to the EPA’s new Risk Based Licensing system as an appropriate compliance mechanism and CCAA would be willing to discuss these opportunities.

3) DPE - One-Stop-Shop

CCAA is supportive of a ‘one-stop-shop’ approach. Currently this is vested with DPE, although CCAA notes the potential for greater involvement of NSW Trade and Investment (NSWTI). Notwithstanding the fact that DPE coordinates the process, engages the Government agencies and is the main contact point for the applicant, it has no delegated power to issue the follow up licences, required after the SSD approval. Instead, DPE instructs applicants take the approval notification to each individual agency to commence the additional licensing process. CCAA is of the view that once approval is granted, the issuing of a subsequent licence should be an administrative formality and would either like to see DPE granted delegated authority to issue the required licences or tie the licence in with the DPE approval notification. This ‘one-stop-shop’ approach would ease the administrative burden on applicants. These licences have additional reporting obligations, which in many cases duplicates the information sought by DPE.
4.4 Guidance Material

Guidance material can be useful to applicants as it provides greater clarity on the expectations of DPE. This improves certainty for applicants and is also useful for the general public in that it provides context to the local development and ensures they can engage meaningfully.

Recommendations:

1) Produce Guidance Material for Public Exhibition

CCAA is advised each applicant must devise an appropriate community engagement strategy to support the public exhibition stage of the SSD process. Given the importance of the process and the very different public submissions, CCAA is of the view that guidance material to better structure this stage in the process would be helpful to applicants and the local community.

2) Extractive Industries – Quarries EIS Guideline Update

The Extractive Industries – Quarries EIS Guideline is dated September 1996 and is well past due for revision. Updating this Guideline would be welcomed by the industry.

4.5 Extractive SEPP

The Extractive SEPP is an important document in the process. Having to share a SEPP with two very different industries is always going to lead to complications. To ensure CCAA members are not disadvantaged, we are seeking a review of the SEPP to correct any anomalies. For example, CCAA is concerned by the extractive industry being excluded from Clause 11(4) of the SEPP.

Moreover, there is widespread conjecture and confusion as to whether the new Clauses 12AA and 12AB of the SEPP apply to the extractive industry. CCAA believes the extractive industry should gain access to these provisions based on the economic and social significance of the role construction materials play in the economy. CCAA is keen to discuss this possibility with DPE and NSWTI.

Recommendation:

1) In conjunction with CCAA, DPE review the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 to correct anomalies.

5. CONCLUSION

Heavy construction materials are an essential component of building the infrastructure a modern economy requires. To ensure these materials can meet the ever-increasing building and infrastructure demand, strategic planning needs to map and protect these geologically fixed materials from sterilisation and encroachment from incompatible land uses.

Moreover, DPE needs to implement a planning and approvals system which is balanced, consistent, accountable, proportionate and timely. By implementing the policy suggestions contained in this proposal, DPE will provide a system, which will increase certainty and confidence within the extractive sector. This in turn, will lead to greater investment, more job opportunities and sustainable extractive practices to ensure that CCAA members will be able to meet the demand for their construction materials in an environmentally and socially responsible way.
Applicant requests Director-General’s Requirements

DGRs are not issued & is not SSD proposal

No

State Significant Development?

Yes

Department prepares and issues Director-General’s Requirements in consultation with council & agencies and places them on the Department’s website within 5 days of issue

Applicant consults with Council, Agencies and the community and prepares EIS

Applicant lodges DA & EIS

Minimum DA requirements met?

No

Yes

Minimum 30 days, extended for school holidays and Christmas/New Year period

Minimum 28 days to issue DGRs (Agencies are given 14 days to provide their recommended requirements)

Deemed refusal period (90 days) starts (unless it is a Crown DA or requires concurrent rezoning).

14 days to reject the DA.

25 days to stop the clock for deemed refusal period.

Submissions forwarded and made available on Department’s website within 10 days of close of exhibition.

Response to submissions placed on Department’s website when received.

Response to submissions placed on Department’s website when received.

The DG’s assessment report is placed on the Department’s website once it is forwarded to the Minister or the PAC. If an officer of the Department determines the DA under delegation, the report is placed on the website once the DA is determined.

Notices issued within 14 days of determination.

For complex developments, the Department may hold a Planning Focus Meeting with Council and Agencies before issuing DGR’s.