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South Australian Productivity Commission
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ePlanningSA Pty Ltd submission on the Issues Paper - Review into the Institutional Arrangements to Manage Regulatory Burden – Extractives Supply Chain

On behalf of my clients in the South Australian extractive industry I wish to thank the SAPC for the opportunity to speak to the Commissioners about industry concerns and I make this submission in support of the need to reduce the cost of regulation and the serious impact recent regulatory changes have had upon the economic viability of many small to medium sized extractive industry operators.

I provide the following comments and case examples in the hope that they may assist your understanding of the regulatory processes which many of our industry operators currently have to try and contend with.

2.5 Social License

Emerging research suggests that simply meeting the licensing obligations required by the state to establish and operate a mine is insufficient to meet contemporary expectations by some stakeholders for social license.

We respect the sentiment however some stakeholder's 'contemporary expectations' are unrealistic and seek to advance a right to not change anything and prevent development at any cost. Industry doesn't want a blanket right to do as it wants but it does want a more balanced regulatory approval process that enables the establishment and development of a mine in a timely and cost effective manner. Such mine developments often provide local employment opportunities, support local businesses, reduce local construction costs and promote regional/community development projects.

Frequently when tenement holders of existing mines/quarries are asked to provide a new/updated PEPR or MOP for an existing operation (which in many cases has been operating for decades) they are told they must 'consult' with the local community. It has been my experience, and that of others, that this often provides a focus for people to find issue with the mine who previously were oblivious to its operation and had no issues or concerns with it (i.e. Penrice Soda Holdings suffered at DEM's insistence, a long and costly public consultation process for its Angaston quarry operation and has struggled to survive since 2014 before going into voluntary receivership last year and being sold to Adelaide Brighton earlier this year). However, we agree that community consultation is justified in cases where there has been a significant change in the mining operation which could have an impact upon the local neighbourhood/community.

The following examples are typical and exemplify the complexity and difficulties encountered by extractive industry operators:

Example 1.

Sandyridge Holdings Pty Ltd
Butchers Sand Pit (and non-putrescible landfill)
Private Mine 310 – gazetted 8 July 1976
EML 5990 – granted 15 August 1997

July 2016 – Site owners/operator (A & J Verhoeven) requested by DSD (now DEM) to submit a new MOP/PEPR for quarry operation by 14 October 2016.

The issue: Operator has product stockpiles located outside the boundary of their small EML 5990 (but still within their property boundary) it was suggested they should peg a Mineral Claim (MC) over a larger area to accommodate the stockpiles and enable expansion of the quarry within a new larger EML. Existing EML 5990 to be surrendered upon granting of a new larger EML.

ePlanningSA appointed to prepare MOP/PEPR:

***30 March 2017 - MC application lodged with DSD on behalf of A & J Verhoeven**
***6 July 2017 - MC 4419 granted** 12 January 2018 - Sale of land and business to Sandyridge Holdings Pty Ltd (whilst preparing MLP)
***9 Feb. 2018 – MC 4419 surrendered** (due to change of ownership = can't transfer MC's)
12 Feb. 2018 – EML 5990 Transferred to Sandyridge Holdings P/L
14 Feb. 2018 – New (2nd) MC pegged on behalf of Sandyridge
16 Feb. 2018 – EPA Licence transfer to Sandyridge Holdings P/L & issue of new Licence No. 50546
***21 Feb. 2018 - New (2nd) MC application lodged**
28 March 2018 – Process Change application lodged with EPA (to amend existing EPA Licence as Sandyridge wish to receive asbestos demolition waste in addition to existing non-putrescible waste).
30 March 2018 – Following EPA contact with 3 neighbours, proposed asbestos disposal makes front page story in local Border Watch newspaper.
15 May 2018 – DC of Mt Gambier letter confirms 1984 DA doesn't preclude receipt of asbestos waste
***31 August 2018 – New MC 4464 granted**
17 June 2019 – EPA directs Sandyridge to apply for environmental authorisation on basis that 'ancillary activities' i.e. historical sorting, segregation and recycling of waste (non-putrescible) are unauthorised.
***27 August 2019 – Mining Proposal and Mining Lease application lodged with DEM**
***18 Sept. 2019 – Mining Proposal rejected** on grounds it doesn't meet Mining Act requirements
1 Oct. 2019 – New EPA licence application submitted (as requested by EPA) for authorisation of 'ancillary activities'.
28 January 2020 – Sandyridge engages Tonkin consultants to manage EPA issue – Sandyridge advise EPA & Council that they will not proceed with Process Change application to receive asbestos.
31 January 2020 – 3rd MC pegged
***10 Feb. 2020 – 3rd MC application lodged with DEM**

Re EPA issue

Latest advice is EPA require Council to provide new development approval before they will issue a new licence. Sandyridge met with Council in April 2020. Council refused to give development approval. Council said it wants the landfill operation closed. Sandyridge has asked Council to make a purchase offer.

**As at 5 May 2020 - no response from DEM re 3rd MC application lodged 10 Feb 2020.
It is now more than 3 years since a Mineral Claim application was first lodged.

Example 2.

Gambier Earth Movers Pty Ltd
Berkin's Limestone Quarry
EML 6396 – granted 13 December 2011

***23 Oct. 2014 – Mineral Claim application lodged with DSD** (now DEM) involved over-pegging existing EML 6396 (2.5ha) plus adjacent 7.99ha (total 10.49ha) to enable quarry extension and required access to more of the available resource.

13 Feb 2015 – DSD request a waiver from the holder of a Petroleum Exploration Licence over the MC area + new copy of Certif. of Title (< 3mths old).
18 March 2015 – emailed DSD signed waiver from PEL holder + new copy of Cert. of Title
7 April 2015 – DSD Mineral Tenements find our MC application unclear 5 months after lodgement.
1 May 2015 – Forwarded draft of further information to DSD
8 May " - DSD responded requesting further changes to additional draft agreement docs.
11 May " - submitted updated agreement info to DSD
14 May " - GEM advises its experiencing high demand for quarry materials it can't supply due to lengthy DEM approval process.
20 May " - submitted further revised landowner agreement info to DSD
***26 May 2015 - MC 4382 granted**
*27 May " - Change of DSD Mining Assessment Officer
27 May " - commenced Mining Proposal/PEPR for MC 4382
July 2015 - DSD advise a Native Vegetation Clearance Report is required
August 2015 - GEM seek engagement of a 'DEWNR approved' vegetation consultant to prepare a native vegetation clearance report.
***10 Mar 2016 – Mining Proposal & Mining Lease Application submitted to DSD** (complete with native vegetation clearance report, used 36page short-form Mining Proposal proforma)
11 May 2016 - DSD advise statutory public consultation stage of Mining Lease Application completed. No public submissions received however;

- DSD want GEM to engage a suitably qualified 3rd party to survey wombat populations within MC 4382 and a plan showing wombat burrow locations in relation to proposed mining and potential impacts.
- DEWNR (DEW) reviewed native vegetation consultant's SEB payment figure and increased it
- Local council want GEM to commit to maintaining existing road to quarry despite no change in truck volumes.

3 June 2016 – GEM seeks quote for wombat survey and contacts native vegetation consultant to investigate increased SEB payment figure.
6 June 2016 – GEM writes to DEM saying wombat survey not necessary and puts case for a decrease of SEB payment for native vegetation clearance.
8 June 2016 – DEM agreed no wombat survey required and reduced SEB payment figure.
17 June " – submitted Response to Consultation for Mining Lease Application over MC 4382
27 June " – DSD Mineral Tenements request yet another land owner agreement and waiver of Notice of Entry as landowner sold/transferred property to his son. (I'd discussed potential change of ownership with Mineral Tenements back in March they said change was 'all in the family' no problem!
6 July 2016 – Following much debate and argument GEM provided DSD with a new signed landowner agreement and another Notice of Entry waiver.
21 July 2016 – DSD sends proposed mining lease conditions to GEM
22 July " – GEM submits signed acceptance of proposed mining lease conditions to DSD
25 July " – Draft PEPR forwarded to GEM for comment - await DSD issue of EML to lodge PEPR.
***3 Aug. 2016 - Extractive Mineral Lease 6461 granted**

Example 2 (cont.)

***20 Sept. 2016 – PEPR submitted to DSD**

23 Sept 2016 – DSD requests further information for PEPR

23 " " – GEM writes to DSD advising company is being financially disadvantaged by lack of ability to supply sought after materials from the site. Further delays caused by issues with the SEB calculations (for native vegetation clearance) not helpful.

10 Oct 2016 – after lengthy delay our native vegetation consultant obtained a response from DEWNR re SEB calculations (area of bracken not to be disturbed by mining deleted from SEB calculation).

***11 Oct 2016 – Updated PEPR submitted to DSD** (version 2) included revised native vegetation report)

17 Oct 2016 – DSD request further information and changes to PEPR document

***21 Oct 2016 – Further updated PEPR submitted to DSD (version 2A)**

21 Oct 2016 – DSD requests addition of the Native Vegetation Management Plan spreadsheet

***24 Oct " – Revised PEPR submitted to DSD (3rd revision)**

***26 Oct 2016 – PEPR for EML 6461 approved**

Approval of the new EML took almost exactly 2 years from when GEM first submitted an application. Whilst awaiting approval to simply extend their quarry it cost the company more than $300,000.00 in lost income as result of not being able to supply materials from the site to significant local projects.

There should be a better understanding of the fact that 'time is money'.

There are many more examples of lengthy approval processes I could provide. However, I wish to include comment on the difficulties experienced by other extractive industry operators in obtaining approvals through the current regulatory process.

Having prepared a Mineral Claim application, Mining Proposal, MOP or PEPR and submitting it for departmental review and approval it can sometimes be months before any response is received. Following a review there are often changes sought by the delegated Assessment Officer. It becomes even more protracted when there is a change of Assessment Officer halfway through the assessment process or after satisfying all of the required changes the document is sent for review by another member of staff who may have a different point of view and require more changes and additions. Why can't there be just a single review with comprehensive comments returned to the applicant? Once the document is amended it can be re-submitted and providing it has fulfilled all of the review comments it can be peer reviewed if necessary then approved. In many cases we find ourselves producing 5 or 6 versions of a MOP or PEPR to accommodate what often seems like an endless stream of requests for 'further information' and revisions resulting in lengthy delays and increased costs for the applicant.

Another area of concern to some in the extractive industry is the change in definition of 'dimension stone'. Prior to 2011 dimension stone was defined as an extractive mineral. Changes to both the *Mining Act 1971* and Part 1 of the Mining Regulations in 2011 saw dimension stone excluded from the definition of extractive minerals and re-defined as "minerals mined for prescribed purposes" category (d) any purposes connected with the production of dimension stone.

The *Mining Act 1971* defines "extractive minerals as sand, gravel, stone, shell, shale or clay but does not include any such minerals that are mined for a prescribed purpose".

Part 1 of the Mining Regulations 2011 defines minerals mined for prescribed purposes that are excluded from the definition of extractive minerals:

(a) chemical (?), cement, lime and glass manufacture

(b) metallurgical flux, refractories and industrial fillers
(c) foundries, fertiliser, agricultural, jewellery and crafted ornamental uses
(d) any purposes connected with the production of dimension stone
The Mining Regulations 2011 further define dimension stone as:

"stone that is quarried in regular blocks and cut, trimmed and finished to specific dimensions and shapes and include cut stone, ashlars, monumental stone, roofing slate and flagging stone".

Minerals used for prescribed purposes are subject to the 'applicable mineral royalty rate'.

The applicable royalty rate is 3.5% of the value of the mineral.

A dimension stone client provided the following real case example of how this impacts his business:

Quarry A will produce approximately 3-400m3 of granite dimension stone in the first half of this year. The cost of production, including development, equipment running and maintenance, is ~$280,000 (or $700/m3). Ex-quarry value of the stone is the same, ~$280,000 (at best). DEM expects them to pay a royalty of 3.5% on the ex-quarry value of the stone which amounts to $9,800 (or $24.50/m3). Net effect, they incur a loss of $9,800.00 for the first half of the year.

Quarry A is currently supplying granite pavers to a State government construction project. This dimension stone product is frequently used for kerbing, footpaths and paving in public areas. Waste rock from this granite deposit is also sold as an extractive material for construction purposes.

In SA there are a number of quarries that crush granite as an extractive material for construction purposes. Further inconsistency occurs with limestone quarries producing sawn/cut blocks. These quarry products are defined as extractive minerals and attract a royalty rate of just 55c/tonne.

My client argues that granite should be regarded the same as limestone, as an extractive mineral. The increased royalty rate resulting from the departments change in the definition of dimension stone is having a devastating economic effect on the dimension stone industry in SA and if the legislation cannot be changed then this industry can see no reason to continue operating in this state.

In conclusion I ask that the Productivity Commission consider the necessity for a full and comprehensive review of the current regulatory processes within the Department for Energy and Mining. I would also like to suggest that representatives of the extractive industry, both large and small operators, be made a part of the review process.

Yours sincerely,

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