

South Australian Productivity Commission

Inquiry into reform of South Australia's regulatory framework

Response to Issues Paper

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1. Introduction

Groundwork Plus (SA) Pty Ltd (Groundwork Plus) is a consultancy business that supports the delivery of resource approvals and infrastructure projects throughout Australia with key offices established within Queensland and South Australia. Experience within the resource sector has been primarily focused upon the extractive quarry industry, of which resource supply forms a critical component in the establishment and maintenance of the States infrastructure. With experience spanning more than 40 years, the business has supported more than 500 clients within a range of technical services throughout the life cycle of their sites, including.

- Resource Identification, Analysis, Determination and Planning
 - Geology
 - Geotechnical
- Planning & Development Approvals (relating to quarries and concrete batching plants mainly)
 - Land Use Planning
- Operations Management
- Environmental Impact Assessment
 - Onsite Monitoring
 - GPlus Live Environmental Monitoring and Compliance Database
 - Environmental Management
 - Regulatory Approval Development and monitoring of compliance against approvals
- Laboratory Analysis
 - Petrography
 - Materials Testing (NATA accredited)
- Survey
 - Unmanned Aerial Survey (UAV)
 - Land based Survey
 - Bathymetric Survey

Through the delivery of these services, a large part of the business model is focused on assisting our clients to navigate the various regulatory frameworks that apply to a particular activity or operation to ensure that appropriate approvals and management measures are implemented. Often this process can become more complicated than originally anticipated and result in additional time and cost to resolve legislative approval processes. As a consultancy service, Groundwork Plus has gained extensive exposure of quarry operations and associated regulatory burden throughout the State, of which the lessons learnt, and outcomes achieved are highly relevant to some aspects of the South Australian Productivity Commission (SAPC) *Inquiry into reform of South Australia's regulatory framework*.

Groundwork Plus appreciates the opportunity to provide this summary document that highlights some of the issues surrounding the extractives 'quarry' sector from a regulatory perspective, with particular focus on the information requests outlined within Section 5 Administration and enforcement of regulation of the SAPC Issues Paper. Information provided within this document has been tailored to be informative of the key issues encountered within projects across the State, however commercial details relating to timing and costs incurred by our clients have not been provided due to confidentiality and commercial reasons.

2. Administration and Enforcement of Regulation

2.1 Regulator Structure

The extractive industry within South Australia is primarily regulated through the provisions of the *Mining Act 1971* and the *Mining Regulations 2020*, however, the nature of the activities undertaken with a quarry often overlaps with the provisions of other legislative requirements particularly within the

- *Environment Protection and Biodiversity Conservation Act 1999*,
- *Environment Protection Act 1993*,
- *Landscape South Australia Act 2019*,
- *Planning Development and Infrastructure Act 2016*,
- *Aboriginal Heritage Act 1988*,
- *Native Title (South Australia) Act 1994*,
- *Heritage Places Act 1993*,
- *National Parks and Wildlife Act 1972*,
- *Native Vegetation Act 1991* and
- *Road Traffic Act 1961*

Within the extractive industry there is often confusion regarding the hierarchy of legislation as it may apply to a quarry site, and while the Department for Energy and Mining (DEM) administer the *Mining Act 1971* and *Mining Regulations 2020* as a lead regulator, it is not clear what the provisions of a lead regulator entail and how this is applied to inform consistent and timely decision making for the assessment and regulation of the mining and extractive sector. With such diverse legislative applications, there is often overlap of legislative requirements for a site that can cause confusion and difficulty to navigate with so many regulators to report to.

From an industry perspective, a leading practice regulator framework would consist of a key regulator with delegated powers from relevant legislation, enabling the key regulator to make the final decision on all regulatory aspects as they relate to a site, providing a centralised regulatory framework to support the industry and reduce regulatory burden.

To assist with the review of the regulatory framework associated with the extractive industry, the Commission may benefit from engaging with the Environment Protection Authority (EPA), Department for Environment and Water (DEW), Department for Infrastructure and Transport (DIT), Department of Premier and Cabinet Aboriginal Affairs and Reconciliation, and DEM as the key regulators that apply to the extractive industry.

Whilst a centralised regulatory framework would provide leading practice and an efficient and modernised framework for regulation within the State, it would require a regulatory model that can align the various legislative objectives relating to each of the pieces of legislation. This would require a very thorough review of key pieces of legislation and associated regulations and policies to support the modernisation of the regulatory framework.

Various pieces of legislation consider certain environmental and or social values, however, our experience suggests that the key regulatory frameworks that support a more balanced assessment of economic, environmental, and social objectives are provided through the application of the *Planning Development and Infrastructure Act 2016* and the *Mining Act 1971*.

2.2 Regulator Practice

Within the extractive sector, it is quite common for sites to report to multiple regulators throughout the operations of the site. Due to the nature of the extractive industry, operations within a site may span over a significant portion of time often over 100 years or more depending upon market demand. Many extractive operations have previously been approved and established prior to environmental legislation being established during the 1990's. As such, many instances of poor regulation arise through the gaps that may become evident through the review of historical approval and licencing documentation in comparison to the newer pieces of environmental legislation and policies that have evolved after the commencement of the operations.

2.2.1 Quarries and Water Planning

A key example of this pertinent to the extractive industry relates to the application of Water Allocation Plans (WAP) under the *Landscape South Australia Act 2019* (formerly the *Natural Resources Management Act 2004*). Whilst the WAP provides for the undertaking of a water balance assessment for a prescribed water resource and recognition of existing users at the time of the waters becoming prescribed, it relies on existing users nominating an allocation to support their ongoing use. In the context of an extractive industry, it is unclear if quarries by their nature were considered within the water balance assessment for prescribed water resource areas. Notwithstanding, quarries by their nature will trap surface water derived as direct rainfall or from the surrounding landform as overland flow, which by the definition of the WAP constitutes taking of water. Until recently, this aspect of the *Landscape Act 2019* has not been actively regulated within the extractive industry, and there are many quarry sites located within prescribed water resources areas that have been overlooked as an existing user requiring a water licence. In many instances, there may be little benefit to the site from the collection of water as evaporation may exceed the inflows, or the inflows occur during periods when water is not required. The process to retrospectively require the extractive industry to require water licences is also problematic as this can add a significant financial cost to sites and some may also struggle to obtain a water licence as the WAP water allocations may already be accounted for. Additionally, the footprint of many quarries within a prescribed water resource area would have been significantly established at the time of the waters being prescribed, however for reasons unknown they were not factored into water budgeting of the WAP and there is limited ability to have this recognised within the Act and the WAP without requiring special consent from the Minister.

2.2.2 Co-regulation and the Lead Regulator

There have been mixed experiences within the extractive industry on how well regulators work together. DEM as the lead regulator for the extractive industry provides the most consistent approach toward the regulation of the industry which works well for most aspects of the operations, however, when there are environmental issues that overlap with other pieces of legislation the regulation of the site becomes more ambiguous and confusing for an operator as they can be reporting to two or more different regulators on the same environmental aspect. To assist with this, it is understood that the EPA and DEM have established a Memorandum of Understanding (MOU) for the co regulation of a site, however, there have been instances where this co regulation has still resulted in inconsistencies and ambiguous regulation of a site. One (1) example that is very pertinent to quarries that produce over 100,000 tonnes per annum as this requires a Licence under the *Environment Protection Act 1993* as well as an approved Mine Operations Plan (MOP) or a Program for Environment Protection and Rehabilitation (PEPR) under the *Mining Act 1971*. Often the EPA will review and recognise the MOP or PEPR as an appropriate environmental management plan for a site, however they may request additional information such as a Dust Management Plan beyond what has already been approved under the *Mining Act 1971*. Additionally, the administration of and *Environment Protection Act 1993* may also result in enforcement notices being issued which require actions or alterations to the site that are not consistent with the provisions of the previously approved MOP or PEPR.

Following a significant rainfall event in 2016, there have been several extractive operations that were issued with an Environment Improvement Notice under the *Environment Protection Act 1993* in response to the significant sediment discharges that occurred. Whilst it is understood that the EPA was required to respond to the environmental incidents that occurred during the storm, the sites were also required to adhere to the Objective or Outcomes and Measurement Criteria contained within their respective MOP and PEPR's. Subsequently, operators were required to undertake corrective actions and develop an Environment Improvement Plan (EIP) for each of their sites, however the actions and strategies identified within their plans may not have been adequately covered within the existing MOP or PEPR documents. Although the EPA and DEM were able to work collaboratively together in response to the EIP implementation and associated update of the MOP and PEPR documents, this example highlights the duplication of regulation that can occur within a site, of which there is no clear legislative framework to guide the resolution co regulatory requirements, instead the EPA and DEM are required to rely upon a MOU of which is not clearly defined or communicated to the industry to clarify the roles, responsibilities and relationship of the lead regulator with other government agencies.

2.2.3 Environment Protection and Biodiversity Conservation Act 1999 and Native Vegetation Act 1991 (SA)

The application of the Environment Protection and Biodiversity Act 1999 (EPBC Act) is the most common piece of Commonwealth legislation that is encountered within the infrastructure and extractive industry in relation to the management and protection of Matters of National Environmental Significance (MNES). Although the EPBC Act, associated regulations and significant impact guidelines provides a well-structured framework for determining and assessing a significant impact on a MNES, there is some overlap and duplication with the South Australian *Vegetation Act 1991* particularly as an impact on a MNES will often be attributed with an impact upon native vegetation. This often results in a duplicated assessment process where a significant impact of a MNES will be referred to the Commonwealth for assessment while the impact to the native vegetation will be referred to South Australian DEW. While Bilateral agreements have been established to enable the States to assess the impacts upon MNES, the approval process is still duplicated. Additionally, if approved the impact for each piece of legislation required an offset to be established, however the offset framework for each piece of legislation are not consistent and often require duplicate offset requirements to be achieved for what can be viewed as the same impact activity.

2.3 Improving Regulator Performance

There are various annual reports published by South Australian Government Agencies reporting on their respective performance and regulatory responsibilities, however it is not clear how this information is used to review and improve regulator performance. Additionally, whilst the annual reports provide a framework for defining performance objectives and targets, regulatory Key Performance Indicators (KPI's) are not typically defined within the reports.

Within the extractive industry DEM have been actively reporting and publishing an annual South Australia mineral resources regulatory report for several years, providing an overview of regulatory performance information applied by DEM each year. Within the DEM report, a number of KPI's and performance targets predominantly regarding assessment timeframes and regulatory inspections are measured each year which appears to be more comprehensive than other publicly available annual reports. Whilst the KPI's are being actively measured and reported, it is not clear how the KPI's are used to review and improve agency performance within the annual report. Through engagement with DEM it is understood that the KPI's are actively reviewed internally to help improve performance, however the details of the reviews and improvements are not necessarily available at the time of the annual report being published. Additionally, it is not clearly understood by the industry how the KPI's were established and what formed the basis for setting the assessment timeframes.

It is difficult to ascertain the adequacy of the regulator review systems due to the limited amount of information that is publicly available. Whilst some reporting is available such as annual reports, the level of information provided within these documents is not described to the extent to inform the adequacy of a regulatory review structure applied within the agency.

To help improve the process for measuring and reviewing regulatory performance, it may be beneficial for annual reports to be adjusted to reflect a stronger focus on the regulatory aspects of the agency's role such as assessments, licencing, permitting and enforcement etc. As most regulatory aspects are process driven, KPI's could be assigned based upon target timeframes to resolve the regulatory process to enable the industry to have greater certainty to resolve a regulatory matter and also enable the agency to set benchmarks to measure performance against.

Establishing a clear and structured regulatory review framework that is consistent across all government agencies and publicly available will go a long way to support a strong culture of continuous improvement through performance management, while also increasing transparency and agency accountability.