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Regulation of Aggregates in Queensland: A Background Paper

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Regulation of Aggregates in Queensland: A Background Paper

The different branches of science combine to demonstrate that the universe in its entirety can be regarded as one gigantic process, a process of becoming, of attaining new levels of existence and organization, which can properly be called a genesis or an evolution. – Sir Julian Huxley¹

Background and Context

Given the recent policies on regulation of aggregate extraction that have come into effect in Queensland, this background paper seeks to provide basic information and an update regarding policy frameworks, permitting systems and environmental regulation as applied to the aggregate industry.²

What are aggregates and why the need for regulation?

The aggregate industry services the building, construction and infrastructure markets. Extractive resources include sand, gravel, quarry rock, certain types of clay and soil.³ Quarries are considered to be an essential source of building materials used for the construction of roads, railways, pipelines and other infrastructure, which in turn are vital to the maintenance and growth of our towns and cities.

It is widely believed that reliable and cost-effective supply to these markets is fundamental to the sustainable growth of Australian cities and regional centres.⁴ This growth is dependant upon the capacity of the industry to supply aggregates and concrete to local markets, which can be hampered by poor planning policies given that the location of aggregate material is fixed by geological conditions (and therefore subject to local planning decisions). It is generally necessary to source extractive resources close to markets because of the high-volume, low-value nature of the material.⁵ As such, from a development perspective, the identification of locations of suitable sand, gravel and rock for building materials and the protection of these areas from incompatible land usage is considered to be an essential feature of planning policies and frameworks.

¹ Pierre Teilhard De Chardin, *The Phenomenon of Man* (Harper, 1959) <http://archive.org/stream/ThePhenomenonOfMan/phenomenon-of-man-pierre-teilhard-de-chardin_djvu.txt> [Accessed November 5, 2014].

² Disclaimer: This paper provides background information only. It is not intended to be a comprehensive consideration of all issues in relation to the activity, nor does it constitute legal advice.

³ Department of Natural Resources and Mines (DNRM), *Land Use and Planning - Quarries and Extractive Resources* (2013) <<http://mines.industry.qld.gov.au/mining/land-use-planning.htm>> [Accessed October 9, 2014].

⁴ Ken Slattery, *Submission - Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments* (Cement Concrete and Aggregates Australia, 2010) <<http://59.167.233.142/industry/documents/Performance%20Benchmarking%20of%20Australian%20Business%20Regulations%20-%20Planning%20Zoning%20and%20Development%20Assessments%20Number%202.pdf>> [Accessed October 9, 2014].

⁵ Department of State Development, Infrastructure and Planning (DSDIP), *State Planning Policy* (July 2014) <<http://www.dsdip.qld.gov.au/resources/policy/state-planning/state-planning-policy-jul-2014.pdf>> [Accessed November 5, 2014].

Yet, the extraction of rock, sand, gravel and soil from the earth also has the potential to adversely affect the natural and social environment of a local area. Groundwater and surface waters can become affected by fine soil and rock particles and therefore require treatment. Operations may affect species and habitats, rendering the conservation of biodiversity a concern. In addition, communities may wish to preserve valuable geological or geomorphological diversity, archaeological features or cultural heritage items. The local landscape character may also be affected, particularly in open rural areas. Moreover, the social environment may be impacted by noise and vibration due to blasting operations or traffic congestion and transportation related air pollution, which may occur when aggregate is being moved from the site of extraction to the market place.⁶

Planning authorities must properly balance the need for new sites with the effects of extraction, based on a clear understanding of how negative effects should be controlled or alleviated. As such, the implementation of effective policies and planning frameworks is critical in balancing these competing interests. Planning policies and frameworks can be used to do achieve the following (among other things):

- establish buffer zones to identify key resource areas and protect them (and associated transport routes) from incompatible land use;
- streamline the planning process;
- ensure a steady supply of building materials for development purposes;
- protect human health and well-being;
- conserve biodiversity;
- ensure water quality is maintained;
- manage traffic flow;
- preserve cultural heritage; and
- provide for rehabilitation of the environment after closure of a quarry.

Given that extractive activities touch upon a wide variety of disciplines, including environmental law and management, biodiversity conservation research, economics, social science, engineering and mining, aggregate extraction policies are continually informed by each of these areas and policy-makers are tasked with finding the right balance. As a result, the regulation of aggregate extraction (and related policy) has continued to evolve, thereby attaining new levels of organization.

Aggregates in Queensland

Queensland is rich in aggregates, including sand, gravel, rock and soil. See Figure 1 below for a map of the state setting out major aggregate extraction sites in Queensland.

Given that a strong and cost-effective resources industry is considered crucial to Queensland's economic growth, the Queensland Government has recently implemented a new state policy that seeks to ensure economical access to raw materials in order to support expected growth in construction and infrastructure demand in the coming

⁶ Quarry Products Association, the British Marine Aggregate Producers Association, the British Geological Survey and Entec UK Ltd., *Planning4Minerals: A Guide on Aggregates* (2006)
<http://www.bgs.ac.uk/planning4minerals/assets/downloads/86210_P4M_A_Guide_On_Aggregates.pdf> [Accessed May 6, 2014].

years.⁷ The Queensland Government policy objective seeks “a balance between the supply of construction materials and the protection of social amenity and the environment.”⁸ It is hoped that this will be achieved by supporting local government in making planning and assessment decisions that protect important extractive resource deposits from encroachment by potentially incompatible land uses and, at the same time, ensuring that planning schemes give due consideration to the potential impacts of mining and resource development in their areas.⁹

⁷ Department of State Development, Infrastructure and Planning (DSDIP), *State Planning Policy – State Interest Guideline (Mining and Extractive Resources)* (July 2014) <<http://www.dsdip.qld.gov.au/resources/guideline/spp/spp-guideline-mining-extractive-resources.pdf>> [Accessed October 9, 2014].

⁸ Department of Natural Resources and Mines (DNRM), *Quarrying in Queensland* (2013) <<http://mines.industry.qld.gov.au/mining/quarrying.htm>> [Accessed October 9, 2014].

⁹ DSDIP, above note 7.

Major operating extractive materials sites

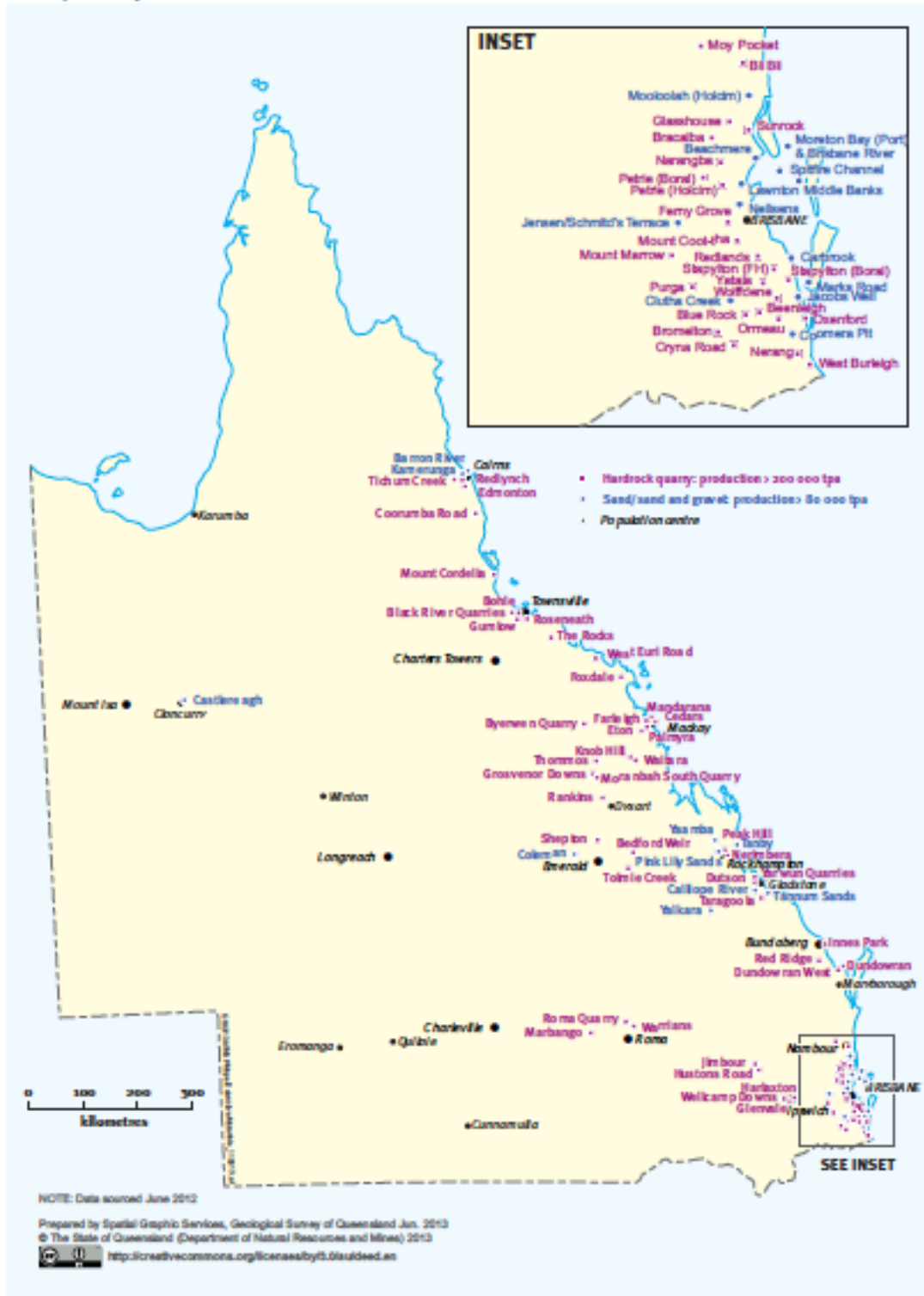


Figure 1: Major aggregate extraction sites in Queensland (Source: Department of Natural Resources and Mines)

Overview of Planning Policies and Regulatory Framework

State Planning Policy (SPP)

In order to achieve a balance between the supply of construction materials and the protection of social amenity and the environment, the Queensland Government established a new approach to state planning policies embodied within a single state planning policy. The **State Planning Policy (SPP)**,¹⁰ which came into effect on December 2, 2013, is intended to simplify and clarify state interests and replace the multiple policies previously in existence.¹¹ Implemented as part of the legal reforms that saw the introduction of the *Sustainable Planning Act 2009* (Qld), the SPP replaces the previous State Planning Policy 2/07: Protection of Extractive Resources.

Specifically, the new SPP defines the Queensland Government's policies about matters of state interest in land use planning and development, and local governments are expected to adapt their land use planning and development schemes accordingly. The SPP is implemented through the **State Planning Policy – State Interest Guideline (SPP Guidelines)**, which describes the state interest policy elements and information on achieving those state interests.¹²

The purpose of the SPP is to set out the State Government's interest in development-related economic, social, or environmental issues that can be implemented through planning schemes and development assessment. The SPP identifies how state interests in planning and development must be dealt with in planning schemes, council development assessment processes and designation of land for community infrastructure. The SPP is a key component of Queensland's land use planning system, which seeks to enable development, protect the natural environment and allow communities to grow and prosper.¹³

In setting out the state's interest in relation to land use planning and development decisions, the SPP ensures that extractive resources as well as other state interests (e.g. agriculture, economic growth, tourism, environment and heritage) are considered and integrated into regional plans, local government planning schemes and development assessment.¹⁴ By expressing the state's interests in a comprehensive manner, it is expected that local governments will be better able to reflect and balance state interests in their local planning schemes, thereby ensuring the approval of development in suitable locations without undue delays. It also assists developers in preparing development applications.

Mapping has been utilized for both the making of local government plans and development assessment purposes, to assist in spatially representing policies or requirements outlined in the SPP. The **SPP Interactive Mapping System** contains both statutory and guidance (non-statutory) mapping that is updated occasionally to ensure that the most recent information is available.

¹⁰ DSDIP, above note 5.

¹¹ Department of State Development, Infrastructure and Planning (DSDIP), *State Planning Policy Fact Sheet* (2014) <<http://www.dsdip.qld.gov.au/resources/factsheet/spp/overview-of-the-spp.pdf>> [Accessed May 14, 2014].

¹² DSDIP, above note 7.

¹³ Department of State Development, Infrastructure and Planning (DSDIP), *State Planning Policy* (2014) <<http://www.dsdip.qld.gov.au/about-planning/state-planning-policy.html>> [Accessed October 9, 2014].

¹⁴ Ibid.

As it can vary in certain circumstances, it is necessary to read the relevant state interest to determine the context, ensure correct interpretation of the mapping and understand the individual mapping layers that may apply. The mapping data provides a trigger for local governments to investigate and consider the relevant state interest and does not automatically preclude development.¹⁵

Key Resource Areas (KRAs)

The SPP aims to protect potential future extractive industry development¹⁶ within a resource/processing area from incompatible development through local government planning schemes and the assessment of development within **Key Resource Areas (KRAs)**. The SPP identifies a number of KRAs across Queensland where extractive industry development is appropriate in principle, i.e. locations that are identified as containing important extractive resources of state or regional significance worthy of protection for future use. Some of these KRAs encompass existing extractive industry operations.¹⁷

In its analysis of resource protection mechanisms utilized across Australia, Cement Concrete and Aggregates Australia (CCAA) found Queensland's Key Resource Area system to be the best model.¹⁸ KRAs are part of a broader policy framework that seeks to maintain the availability of major extractive industries and their transport routes over a long-term period.

A Key Resource Area is made up of four components:

1. **Resource/processing area** – the location of the extractive resource and any operational areas associated with the extraction and processing of the resource.
2. **Separation area** – the area surrounding the resource/processing area that is required in order to maintain separation from people who may be affected by residual impacts such as noise, dust and ground vibrations of existing or future extractive operations and to provide a buffer between extractive operations and incompatible uses.¹⁹
3. **Transport route** – the route used to transport extracted resources to market (a road or a rail link from the boundary of the resource/processing area to a major road or railway).

¹⁵ Ibid.

¹⁶ These KRAs do not include mining or resource developments (e.g. coal, minerals, petroleum, gas, coal seam gas) that are regulated by the *Mineral Resources Act 1989* and *Petroleum and Gas (Production and Safety) Act 2004* and are not part of the land use planning system. See below note 17.

¹⁷ Department of Natural Resources and Mines (DNRM), *What Are KRAs?* (2013) <<http://mines.industry.qld.gov.au/mining/837.htm>> [Accessed May 14, 2014].

¹⁸ Slattery, above note 4.

¹⁹ The minimum distance is 200 metres for resources that do not require blasting or crushing to extract (e.g. sand, gravel and clay) and 1,000 metres for hard rock resources as blasting and crushing of material is required. In some cases, the separation area may be less than the minimum distances to reflect local features such as topography or existing development commitments.

4. **Transport route separation area** – the area surrounding the transport route needed to maintain separation of people from undesirable levels of noise, dust and ground vibration produced as residual impacts from the transportation of extractive material (measured 100 metres from the centre line of the indicated transport route for a KRA).²⁰

KRAs are designated for inclusion in the SPP based on the following:

- a) An assessment of available geological information such as previous mapping, drilling and data obtained from industry and other state government agencies.
- b) A determination of the resource's state significance through the criteria outlined in the SPP Guidelines with regards to size, production capability, supply to market areas, scarcity of the commodity and specialized need such as major infrastructure projects.²¹
- c) Consultation with planning, environmental and resource professionals as well as state agencies, local government and the local community to take into account the social, cultural and environmental values within the KRA and surrounding areas.²²

Development Assessment Guideline

The **Development Assessment Guideline** assists local governments in appropriately reflecting the SPP state interest with respect to mining and extractive resources in local planning instruments and, where the state interest has not been appropriately reflected, through development assessment. The guideline is also to be used to ensure decisions around the designation of land for community infrastructure appropriately reflect the state's interest in mining and extractive resources.²³ The guideline recommends that local governments identify key resource areas (KRAs) and protect them by providing for appropriate separation distances or other mitigation measures between the resource/processing area of the KRA and nearby sensitive areas order to minimise land use conflicts.

Development assessments should consider whether the development ensures that:

- a) the undertaking of existing or future extractive industry is not significantly impeded within a resource/processing area for a KRA;
- b) sensitive land uses are avoided within the separation area of the KRA;
- c) the number of residents adversely affected by noise, dust and vibration generated by the haulage of extractive materials along the transport route separation area does not increase; and

²⁰ DNRM, above note 17.

²¹ DSDIP, above note 7.

²² Department of Natural Resources and Mines (DNRM), *KRA Selection Process* (2013) <<http://mines.industry.qld.gov.au/mining/838.htm>> [Accessed May 14, 2014].

²³ Department of State Development, Infrastructure and Planning (DSDIP), *Draft State Planning Policy Guideline: Mining and Extractive Resources* (April 2013) <<http://www.dsdip.qld.gov.au/resources/policy/state-planning/draft-spp-guideline-mining-and-extractive-resources.pdf>> [Accessed July 16, 2014].

- d) for development adjacent to the transport route, the safe and efficient use of this route by vehicles transporting extractive resources is not adversely affected.²⁴

As such, the designation of a site as a KRA ensures that development applications within the area are assessed for possible adverse impact on the access to these state significant resources, but does not restrict all development.²⁵

Sustainable Planning Act 2009

The extraction of aggregate materials (sand, gravel, quarry rock and fill) is excluded from the *Mineral Resources Act 1989* (MRA).²⁶ Instead, extractive resources are regulated under the **Sustainable Planning Act 2009 (SPA)**, the same legislation that applies to most land development and use. The SPA replaces the *Integrated Planning Act 1997* and is the overarching legislation administered by local government bodies through development and planning regulation. It is designed to ensure that applications are thoroughly assessed for benefits and impacts before any development is granted approval.²⁷

Section 3 of the SPA sets out the purpose of the Act to be the achievement of “ecological sustainability” which is defined as a balance that integrates (a) protection of ecological processes and natural systems at local, regional, State and wider levels; and (b) economic development; and (c) maintenance of the cultural, economic, physical and social wellbeing of people and communities.²⁸ Ecological sustainability is meant to be achieved by:

- a) managing the process by which development takes place, including ensuring the process is accountable, effective and efficient and delivers sustainable outcomes; and
- b) managing the effects of development on the environment, including managing the use of premises; and
- c) continuing the coordination and integration of planning at the local, regional and State levels.²⁹

²⁴ Ibid.

²⁵ For example, a KRA designation does not apply additional development assessment requirements to activities such as a dwelling house or extensions to a house (e.g. a granny flat) as long as the development is consistent with the local government planning schemes. However, development that increases residential densities or the number of lots that have a residential component within the separation area (including the transport route separation area) is not supported by the SPP. See Department of Natural Resources and Mines (DNRM), *Development in a KRA* (2013) <<http://mines.industry.qld.gov.au/mining/839.htm>> [Accessed May 15, 2014].

²⁶ “Mineral” is rigorously defined by the MRA. A quarry, or extractive industry site, is the site at which rock for construction purposes is extracted from the earth. The key basis for distinguishing between a mine and a quarry is the material that is produced from the site. Because the definition of “mineral” in the MRA excludes most materials used for construction purposes, such as construction sand, gravel, and quarry rock, quarry sites are approved and administered mainly by local government, under separate legislation (the SPA). There are aspects of these operations that may still be subject to regulation by state government agencies, such as the Department of Environment and Heritage Protection (DEHP). The only instances where extraction of these materials is administered under the *Mineral Resources Act* (and therefore by DNRM) are when the material is explicitly defined in the MRA to be a mineral (for example, silica sand and limestone used for their chemical properties, rock mined in block or slab form for building or monumental purposes, foundry sand), when the material is used only on the mine site or in the rare circumstance where an approval issued under previous mining legislation exists. In some cases, a quarrying industry may be established in an area covered by a mining tenure. This occurs when the material being extracted is similar to, or associated with, the mineral being mined (e.g. silica sand, which may be used as either concrete sand, a construction material, or foundry sand, a mineral). Where this occurs, the extraction activity must be authorised separately from the mining tenure. See below note 27.

²⁷ Department of State Development, Infrastructure and Planning, (DSDIP), *Guide to the Sustainable Planning Act* (2014) <<http://www.dip.qld.gov.au/guide-to-the-sustainable-planning-act/>> [Accessed May 14, 2014].

²⁸ *Sustainable Planning Act 2009* (Qld) ss. 3 and 8.

²⁹ Ibid s. 3.

Under the SPA, all relevant statutory instruments, including planning schemes and environmental and other legislation, are considered during the development assessment process which is managed by an 'assessment manager' (usually the local government).

The SPA utilizes strategic land-use plans, flexibility, community engagement and streamlined amendment processes for local governments to shift the focus onto sustainable planning outcomes rather than the planning process.³⁰

The SPA was amended by the ***Sustainable Planning and Other Legislation Amendment Act (No. 2) 2012 (SPOLAA (No. 2) 2012)***, which is the result of the first regular review of the SPA, in extensive consultation with local government, the property and construction industry and the environmental sector. The amendment aims to clarify, simplify or improve operational arrangements for the planning and development framework in order to provide for efficiency and certainty within the planning and development system.³¹

The *SPOLAA (No. 2) 2012* amendment also gives effect to the **State Assessment and Referral Agency (SARA)**, launched by the Queensland Government on July 1, 2013 (as discussed below).

State Assessment and Referral Agency (SARA)

The *Sustainable Planning Act 2009 (SPA)* was amended in 2012 to give effect to the **State Assessment and Referral Agency (SARA)**. SARA was implemented to reform and simplify the development assessment framework and to deliver a coordinated, whole-of-government approach to the state's assessment of development applications lodged under the SPA.³² Key components of SARA are as follows:

- **SARA** - The Department of State Development Infrastructure and Planning (DSDIP) is the State Assessment and Referral Agency (SARA), the single lodgement point and assessment manager for all development applications where the state has jurisdiction.
- **Referrals** - DSDIP is the single lodgement point and assessment manager or referral agency for all development applications where the state has an interest.
- **MyDAS** is the online preparation and lodgement system for development applications.
- The **SARA mapping online system** provides Geographic Information Systems mapping to support development application preparation.
- **State Development Assessment Provisions (SDAP)** is a document providing all state criteria for assessment in one document.
- **SARA Integrated Development Assessment System forms** are required to submit a development application.³³

³⁰ Ibid.

³¹ DSDIP, above note 27.

³² Department of State Development, Infrastructure and Planning (DSDIP), *Development Applications* (2014) <<http://www.dsdiip.qld.gov.au/development-applications>> [Accessed May 14, 2014].

³³ Ibid.

Queensland Government's planning reform included the introduction of the Department of State Development, Infrastructure and Planning (DSDIP) as the State Assessment and Referral Agency (SARA). The chief executive of DSDIP became either the assessment manager or referral agency for all development applications where there is a state interest. Having a single agency lodgement and assessment point for development applications where the state has jurisdiction and a final decision maker (which might ensure that no "unreasonable" requirements are imposed on applicants) are some of the perceived benefits of SARA. If the State does not have jurisdiction, then the development application is decided by the local government and the DSDIP/SARA acts as referral agency with DEHP providing technical assistance regarding environmental matters.³⁴

The **Department of Environment and Heritage Protection (DEHP)** provides technical advice to SARA as the central assessment or referral authority and issues environmental licenses and permits. While DSDIP is responsible for a number of referral agency triggers as a result of SARA provisions, there are still a number of other entities that exist outside of SARA that hold jurisdiction over their own referral agency triggers. **Schedule 7** of the **Sustainable Planning Regulation 2009** sets out all referral agencies and their jurisdiction.³⁵

DSDIP has indicated that it intends to continue to work with other state agencies, the industry and local governments to enhance and improve SARA operations. In addition, it is expected that future regulatory amendments will continue to assist SARA in streamlining the development assessment process.

The **State Development Assessment Provisions (SDAP)**, a statutory instrument under the SPA prescribed by the Sustainable Planning Regulation 2009, set out the matters of interest to the state for development assessment, where the chief executive administering the SPA, being the Director-General of DSDIP, is responsible for assessing or deciding development applications. Extractive resource development is generally assessed under the **Integrated Development Assessment System (IDAS)** in accordance with the *Sustainable Planning Act 2009*.³⁶

Overview of Permitting System and Environmental Regulation

The above regulatory framework gives rise to a permitting system under a co-regulation arrangement, with approval occurring at both the local and state level in Queensland. Local government applications comprise the majority of extractive industry applications. In determining applications, local governments are guided by policies and guidelines set out by the state.

The Department of Environment and Heritage Protection (DEHP) and the Department of State Development, Infrastructure and Planning (DSDIP) have provided a considerable amount of detail regarding the development application process on their websites.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

Development applications under the **Sustainable Planning Act 2009 (SPA)** are assessed under the **Integrated Development Assessment System (IDAS)** process. It is important to note that the SPA does not apply to certain developments, including development in state development areas under the **Economic Development Act 2012** and projects declared to be of state significance.³⁷

Development Application Process

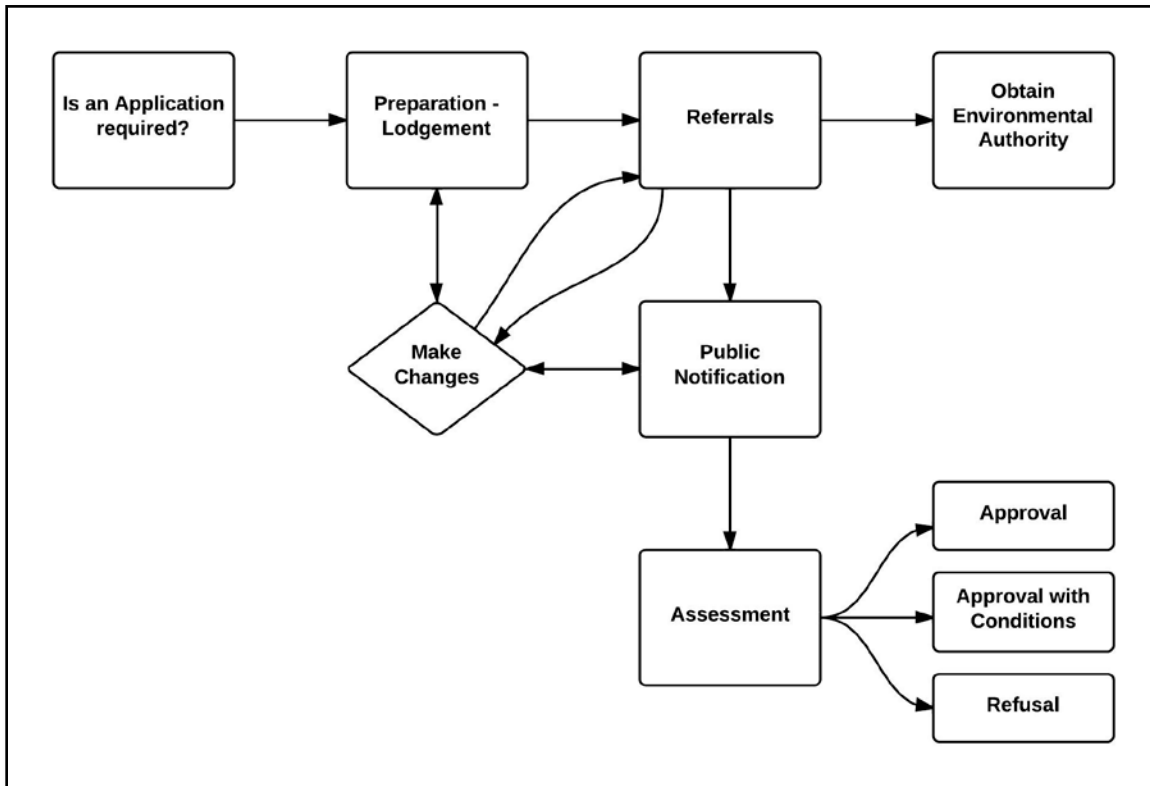


Figure 2: Basic

Overview of Steps in a Development Application

Approval Requirements

The approvals process is commenced by identifying whether a development approval is required. Planning instruments, including **Schedule 3 of the Sustainable Planning Regulation 2009**, the Land Use Plan for Strategic Port Land and the local government planning scheme, are reviewed to determine if a proposed development requires approval.³⁸ If approval is required, it must be determined whether the local government authority or the state has jurisdiction.³⁹

³⁷ Department of Environment and Heritage Protection (DEHP), *Development Application Process* (2014) <<http://ehp.qld.gov.au/management/planning-guidelines/legislation/integrated-planning-act/index.html>> [Accessed May 11, 2014].

³⁸ Approval is not required for some aspects of building work assessed against the provisions of the *Building Act 1975* or the *Fire and Rescue Service Act 1990* or for development applications assessed by government-owned corporations such as Energex, Ergon, ports corporations and airports.

³⁹ DEHP, above note 37.

The IDAS forms approved under the SPA must be used when making all development applications. The IDAS Checklists contain specific information that needs to be included with the application to assist in determining the appropriate assessment manager.⁴⁰ For all development applications, applicants must complete IDAS Form 1 together with any other forms relevant to the application, provide any mandatory supporting information identified on the forms and lodge the application with the relevant assessment manager (generally the local government, although the state can be the assessment manager in some instances). The owner's consent and evidence of resource entitlement if the development includes a state resource must also be provided (where required by the SPA).⁴¹

Commencement of Local Applications

Applications can be lodged online using the Smart eDA portal if the council is a Smart eDA participant and the assessment manager is a local government. Smart eDA advises which forms are required and also provides access to maps to help determine whether the application complies with state and regional plans. If the local government is not a Smart EDA participant, then hardcopies of the IDAS forms can be lodged directly with the relevant council in person or by post.⁴²

Commencement of State Applications

The **State Assessment and Referral Agency (SARA)** is the first and only point of contact for development applications where the state has jurisdiction under the SPA. DSDIP is the State Assessment and Referral Agency (SARA) for all development applications where there is a state interest, with the Chief Executive of DSDIP acting as either the assessment manager or referral agency.⁴³

Where the assessment manager is the State, development applications must be completed using the IDAS forms available through the **MyDAS** portal or by obtaining copies on the DSDIP website. MyDAS is an online system that allows an applicant to prepare and lodge or refer applications to the DSDI, and it is not used to lodge applications to the local government.⁴⁴

The **State Development Assessment Provisions (SDAP)** sets out matters of interest to the state that the Chief Executive may have regard to when assessing applications and is effective state-wide where the Chief Executive is the assessment manager or a referral agency. If there are any matters of interest to the state relevant to the proposed development, applicants are required to provide an assessment against the applicable state code(s) in the SDAP. These can be determined by reference to Part B of the SDAP or by consulting a link to the relevant module through MyDAS.⁴⁵

⁴⁰ Department of State Development, Infrastructure and Planning (DSDIP), *SPA IDAS Forms* (2014) <<http://www.dsdip.qld.gov.au/forms-templates/sara-idas-forms.html>> [Accessed May 11, 2014].

⁴¹ DEHP, above note 37.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Department of State Development, Infrastructure and Planning (DSDIP), *State Development Assessment Provisions (SDAP)* (2014) <<http://www.dip.qld.gov.au/development-applications/sdap.html>> [Accessed May 14, 2014].

Referrals (State and Local Applications)

After the application has been lodged with the assessment manager, an acknowledgement notice may be issued advising the applicant to forward the application to other state or local government authorities, known as referral agencies, of which there are two types. Concurrence agencies can direct the assessment manager to refuse the application or impose conditions upon approval, while advice agencies can only provide advice to the assessment manager that can be used to impose restrictions on any development approval or request modifications to the application. The application (together with any applicable fees) must be forwarded to the referral agencies within 20 business days of receiving the acknowledgement notice.⁴⁶

Where there are environmental implications, the Department of Environment and Heritage Protection (DEHP) provides technical advice to SARA. If the applicant is conducting a prescribed Environmentally Relevant Activity (ERA) that will also require a development approval (concurrence activity), the application for a development approval must include IDAS Form 8, which includes the application requirements for an environmental authority.⁴⁷ DEHP issues three main types of licences and permits, which are discussed below under “Environmental Licenses and Permits.”

Public Notification (State and Local Applications)

Public notification ensures that the community and relevant stakeholders are given an opportunity to make submissions about development applications. Submissions about objections may be made regarding the assessment manager’s decision and must be taken into account before an application is decided. Final decisions of the local council may be appealed to the Planning and Environment Court (Qld).⁴⁸

Notification is necessary for developments that require impact assessment or a preliminary approval that affects a planning scheme. Most planning schemes define quarry developments as 'impact assessable,' thus providing for a formal objection period during the development assessment process during which submissions by interested parties may be lodged with the assessment manager. Submissions can include concerns related to the environment (e.g. vegetation, biodiversity, water and air quality), social impacts (e.g. traffic, noise and visual amenity) or any other planning issue.⁴⁹

Legislative requirements for public notification require notices to be published in local newspapers that are relevant to the application in terms of distribution and target audience. In addition, notices must be placed on the subject land and notice must be given to the owners of all land adjoining the subject land.⁵⁰

⁴⁶ DEHP, above note 37.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

Assessment (State and Local Applications)

The assessment manager must assess the development application against any applicable codes (such as any codes in the local government's planning scheme) or against any relevant state planning instruments (such as the SDAP), taking into account any submissions received during the public notification period. After it has been assessed, the application must be approved (in whole, in part or with conditions) or refused.⁵¹

Conditions may include payment of financial assurance as security to the Queensland Government where an activity will result in significantly disturbed land. This is intended to cover any expenses incurred in the prevention or minimization of environmental harm or rehabilitation of the environment, should the operator fail to meet its environmental obligations. The financial security is returned at the end of the project, upon successful rehabilitation and compliance with closure conditions. Failure by the quarry operator to comply with the conditions set in the development approval could be grounds for prosecution.⁵²

Changes to the Application

Changes can be made to the development application after it has been lodged (e.g. in response to public submissions or advice received from a concurrence or advice agency). Permissible changes are set out in Section 367 of the SPA sets out the permissible changes, while minor changes are defined in Section 350 of the SPA. If the change is minor, the IDAS process does not cease and the notification stage (if applicable) is not repeated.⁵³

If the change relates to matters raised in a public notice submission or information request, the IDAS process does not cease but re-notification may be required. For all other changes, the IDAS process and timeframes recommence in line with the new acknowledgement notice.⁵⁴

Environmental Licenses and Permits

The Department of Environment and Heritage Protection (DEHP) provides technical advice to SARA as the central assessment or referral authority. DEHP issues three main types of licences and permits. The first type of license is granted for activity that falls under the SPA, requiring a development approval. Such activities include engaging in a concurrence environmentally relevant activity (prescribed ERAs); conducting tidal works or development in a coastal management district; development involving contaminated land or land where a notifiable activity has or is to occur; engaging in certain agricultural or animal husbandry activities in a wild river area; altering a heritage place; and conducting high impact earthworks in a Great Barrier Reef wetland protection area.⁵⁵

The second type of license is granted for environmentally relevant activity (ERA) that falls under the *Environmental Protection Act 1994*, requiring an environmental authority. ERAs are split into two main categories, namely

⁵¹ Ibid.
⁵² Department of Environment and Heritage Protection (DEHP), *Environmental Licences and Permits* (2014) <<http://www.ehp.qld.gov.au/licences-permits/>> [Accessed May 14, 2014].
⁵³ DEHP, above note 37.
⁵⁴ Ibid.
⁵⁵ DEHP, above note 52.

prescribed activities and resource activities.⁵⁶

Prescribed activities are defined in Schedule 2 of the Environmental Protection Regulation 2008, and include extractive resources. Part 4 to Schedule 2 provides that extractive and screening activities consist of dredging a total of 1000t or more of material from the bed of naturally occurring surface waters in a year or extracting, other than by dredging, a total of 5000t or more of material in a year from an area.⁵⁷ Clause 16 of Part 4 defines material as including clay, gravel, loam, rock, sand and other substances found in the earth.⁵⁸

Resource activities are those activities that involve a geothermal activity, a greenhouse gas storage activity, a mining activity or a petroleum activity. ERAs can include industrial activities, mining activities or other resource activities with the potential to release contaminants into the environment. They may also include chemical manufacturing, waste treatment, coal mining, mineral mining or extraction and petroleum and gas activities.⁵⁹

The third type of license granted by DEHP is for activity that falls under other legislation and includes collection authorities for collecting native biological resources from State Lands or Queensland waters for biodiscovery purposes and licences for taking or using native wildlife or protected native plants for commercial, recreational or other purposes.⁶⁰

To conduct a prescribed ERA, an environmental authority must be obtained by a registered suitable operator. An application to become an operator can be made before or simultaneously with an environmental authority application. In addition, if the proposed activity is also listed as a concurrence activity in Schedule 2, a development approval will also be required if there is a material change of use. Furthermore, a temporary emissions license may be granted to temporarily allow a release of contaminants into the environment in response to an event that was not foreseen when particular conditions were imposed on an environmental authority.⁶¹

The assessment manager (usually the local government) refers environmental impact concerns to the appropriate regulating agency. The agency will then either approve the quarry development if satisfied that impacts will be managed correctly, approve the development subject to conditions designed to address environmental issues or refuse the development altogether.⁶²

⁵⁶ Ibid.

⁵⁷ Part 4 of Schedule 2 of the Environmental Protection Regulation 2008 states that extractive and screening activities do not include:

- a) extracting material under an environmental authority for a resource activity; or
- b) extracting material from a road reserve, other than in a wild river area, if— (i) the material is to be used for constructing or maintaining a road; and (ii) the surface area from which the material is extracted is less than 10000m²; or
- c) extracting material from a place for constructing a road or railway at the place; or
- d) extracting material from a place, other than by dredging, for constructing the foundations of a building at the place; or
- e) extracting material for reshaping land if—(i) reshaping the land does not involve blasting; and (ii) the material is not removed from the site from which it is extracted; or
- f) screening material on the site from which it has been extracted in the course of carrying out an activity mentioned in paragraphs (a) to (e).

⁵⁸ DEHP, above note 52.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Department of Environment and Heritage Planning (DEHP), *Environmentally relevant activities – Prescribed* (2014) <<http://www.ehp.qld.gov.au/licences-permits/business-industry/index.html>> [Accessed May 14, 2014].

⁶² DEHP, above note 52.

Discussion and Conclusion

It is generally not disputed that extractive industries contribute to the region's economy, local employment, housing affordability and development sector.⁶³ In order to support regional growth, Queensland has undergone significant reform both on a state policy level and in relation to licensing and permitting processes over the past two to three years. Shortly before many of these reforms went into effect, a study⁶⁴ undertaken in 2012 in which constraints to the supply of extractive material were assessed as part of Queensland's flood and cyclone damaged road reconstruction program indicated that "costs, difficulties and time required for quarry approvals and licensing" were a "universal industry complaint."⁶⁵ The report cited the evolution of a "myriad (of) planning and green and red tape constraints" over the last decade as a major contributor to these perceived constraints.⁶⁶

Furthermore, concern was raised over what was perceived as "a growing technical disconnect between government and extractive industry in Queensland over the past decade largely brought about by State government priorities focussing on higher level planning and coal mining rather than extractive resource identification and ease of operations for the quarrying sector."⁶⁷ Aside from issues of planning priority, at the time of this report, only 20% of target quarries were actually located within Key Resource Areas,⁶⁸ raising important concerns about the implementation of existing legislation and policy. This has been compounded by local council decisions that have rejected extractive industry applications that were consistent with planning schemes, resulting in costly appeals.⁶⁹

Post-2012 reforms have introduced greater efficiency by creating a lead agency for assessment and by linking permitting to regional interests and planning policies. However, the overall effectiveness of the new State Planning Policy and the *SPOLAA (No. 2) 2012* amendment remains to be seen. Some preliminary comments have been made regarding the streamlining of the electronic lodgement process, as the existing Smart eDA service will require an overhaul to provide for integration with the MyDAS system and a more stable platform for electronic lodgement, now that SARA has been implemented. A streamlining of the IDAS forms has also been recommended to prevent duplication issues.⁷⁰

⁶³ Draft Sunshine Coast Planning Scheme, Review of Submissions, *Local Area Key Issues Paper No. 11: Extractive industry - Yandina Creek and Browns Creek Road*, at 5

<http://www.sunshinecoast.qld.gov.au/addfiles/documents/planning/sc_planning_scheme/11.%20Key%20Issues%20Paper%20No.%2011%20-%20Extractive%20industry.pdf> [Accessed October 21, 2014].

⁶⁴ Ecoroc Pty. Ltd., *Assessment of Constraints to Supply of Extractive Materials in Critical Demand Areas – Queensland Flood and Cyclone Damaged Road Reconstruction Program* (2012)

<<http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFjAA&url=http%3A%2F%2Fwww.tmr.qld.gov.au%2F~%2Fmedia%2F3197796BCA514817BBDA50EFB8734550.ashx&ei=BpFZVN3eDYvr8AXz54GgCw&usg=AFQjCNHgIOrwM-Z-qKXvUlyPi78OTqsHfg&bvm=bv.78677474,d.dGc>> [Accessed November 4, 2014].

⁶⁵ Dugald Gray, *After the Rains – Repaving Paradise: Opportunities, Constraints and Challenges for the Quarrying Sector in Re-building Queensland's Flood-damaged Road Infrastructure* (IQA-CCAA Construction Materials Industry Conference, 2012) 16

<http://www.lync.com.au/clients/ice/cmhc/2012/pdf/C1A_Dugald_Gray.pdf> [Accessed October 21, 2014].

⁶⁶ Ibid.

⁶⁷ Ibid 10.

⁶⁸ Ibid 14.

⁶⁹ Sunshine Coast, above note 63.

⁷⁰ Department of State Development, Infrastructure and Planning (DSDIP), *eDA System* (2014) <<http://www.dsdip.qld.gov.au/development-applications/development-assessment-online-smart-eda.html>> [Accessed November 4, 2014].

It has also been suggested that concurrent agency processes may be improved to reflect extractive state interests and a mechanism for balancing various competing state interests. State agencies have been granted either a concurrence or referral agency role, designed to ensure that certain state interests are appropriately protected through the development assessment process, but some have argued that the state's interest in the extractive industry is not adequately represented.⁷¹

Furthermore, there has been a problem with lack of uniformity in the conditions attached to development approvals as the process of determining conditions varies among the individuals responsible for review and approval of the development authority. Local councils have also exhibited difficulty in considering development applications and there has been some debate about the merits of removing the decision-making authority from them and placing it instead in the hands of a state agency that may be better equipped to determine such applications.⁷²

It also remains to be seen whether the new framework appropriately addresses competing interests such as agricultural land, vegetation management, fauna conservation and biodiversity, and how this will impact the future development of Key Resource Areas.⁷³ It is anticipated that policy and regulation relating to aggregate extraction will continue to evolve as the Queensland Government attempts to resolve these issues and find the right balance that appropriately addresses various competing interests.

⁷¹ Cement Concrete and Aggregates Australia (CCA), *Reducing Regulatory Burdens for Queensland's Extractive and Quarrying Industry* (2012) <<http://www.parliament.qld.gov.au/documents/tableOffice/CommSubs/2012/QldARIndustries/011.pdf>> [Accessed November 4, 2014].

⁷² Ibid.

⁷³ Slattery, above note 4.