

# Earth Resources Regulation

## Statement of Operating Change (Extractives)

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### Message from Anthony Hurst

#### Executive Director, Earth Resources Regulation

#### Earth Resources Regulation is open for business

##### — We will implement, monitor and improve

Earth Resources Regulation is progressively implementing changes to improve the way we regulate earth resources projects. With the release of our first statement in May 2018, we committed to the adoption of an outcomes-based approach to regulation. This statement focuses on how we are streamlining regulatory approvals for the extractives industry.

The Victorian Government is committed to continuous improvement in the regulation of the earth resources sector. The Government has allocated \$12.7 million to implement a range of actions, following the Commissioner for Better Regulation's report, *Getting the Groundwork Right: Better regulation of mines and quarries*. An implementation plan, released in May 2018, documents the sequenced approach to regulatory improvement that we are delivering.

We welcome and value your feedback. You can contact us via: [ERRFeedback@ecodev.vic.gov.au](mailto:ERRFeedback@ecodev.vic.gov.au).

## Part A — Introduction

### Assessment of changes to work plans

This statement delivers on the commitment in our Implementation Plan to simplify and streamline work plan variation approval processes.

Our first statement set out the principles that we will follow and what you can expect from us, as a modern, proportionate and robust regulator for the earth resources sector. It also provided initial guidance about the transition to modern work plans and the option to consolidate work plans.

This statement introduces and explains a simplified approval pathway for variation to work plans, including:

- when a work plan variation is triggered
- how significant increase in risk is determined.

Our intention is to establish a clear and mutual understanding about the arrangements for varying work plans for existing quarries.

We have already commenced working with industry to implement the simplified approval pathway for work plan variations. For circumstances where a work plan requires changes, but does not reach the threshold required for a variation, we have developed an administrative process for you to notify us of updates to your work plan. This notification pathway is open now.

As outlined below, one of the triggers for a variation is risk — specifically, where new or changed works result in a significant increase in risk. This statement clarifies how we define that threshold.

New or changed works will have a ‘significant increase in risk’ where the residual risk — assessed under our risk matrix — is assessed to be at a level above low, after factoring in:

- the adequacy of existing controls, and
- where required, the proposed application of any additional controls listed in guidance material published by ERR

We are developing example controls now as part of guidance material on work plan and variation applications. Until the guidance material is finalised, ‘significant increase in risk’ (for the purpose of determining whether a work plan variation is required), will be defined only with reference to the application of existing controls included in your current approved work plan (and any subsequent approved variations). We will consult closely with industry on the roll-out of this approach, as discussed below.

## Work plans, variations and planning permits

If a planning permit is required for work under a new work plan or new or changed work, you will need to obtain a planning permit for the work from the relevant local council. In either case, the planning permit may be granted with or without conditions.

A new planning permit will be required if any new or changed work is inconsistent with conditions on an existing permit, regardless of whether the new or changed work triggers a work plan variation. If a local council requires a new planning permit for new or changed work, the council may not add, remove or vary conditions on the existing permit, if those conditions do not relate to new or changed work. In other words, a local council may not reopen the rights under an existing planning permit.

Work has commenced to improve the intersection between the earth resources and planning regulatory environments. In addition to the joint ministerial statement on extractives industries, a planning practice note will be released by 31 December 2018, which will improve guidance to local councils on the use of published example controls to improve consistency and timeliness of decisions.

## Rolling out the new approvals model

We are implementing the new approvals model now. This means that new work plan approvals and variations will run through the new model outlined in this statement, including the new risk matrix. We will monitor outcomes over the coming months and progressively evaluate performance of the new model from December 2018. This evaluation will be conducted in partnership with industry, with the results used to inform, refine and extend the model from early 2019.

Specifically, the circumstances where a work plan variation is not required will be *extended* to include situations where the application of Earth Resources Regulation's example controls (in addition to existing controls) results in a low residual risk. The evaluation of the new model will inform where we place the final thresholds for 'significant increase in risk' and the likelihood and consequence parameters for the risk matrix. This ensures a responsible, consultative and transparent transition to the new model.

Performance indicators we will use in the evaluation include the:

- number and type of changes that do not trigger a variation
- number and type of work plans that mostly use published example controls
- time taken for statutory endorsement
- time take before application is formally submitted (eg, when we request further information before submission)
- the cost to industry of gaining an approval (including administration, compliance, and time)
- agreed baseline measure of time and cost of gaining approval prior to the new implementation arrangements.

We are also preparing guidelines to provide a clear structure for operators to prepare the documentation necessary to vary a work plan. The new guidance will include the new risk matrix and example controls for lower complexity hazards. The guidance will be released for industry feedback in October 2018, and will be finalised in early 2019 (after initial implementation has been evaluated, and the further improvements are delivered). This forms part of a broader package of targeted information and supporting tools to guide you through the regulatory process.

## Part B — Triggers for a work plan variation

### Is a work plan variation required?

There are different circumstances which will require you to apply for a work plan variation. These 'triggers' arise when there is a change in work that is not consistent with your work plan, or new work not approved under your work plan, or work authority.

(a) Hazard and risk trigger

This trigger applies when:

- undertaking new or changed work, which will
- result in a new or changed quarrying hazard, which will
- significantly increase the risks posed to public safety, the environment, land, property or infrastructure.

This statement is focused on process changes associated with changes in hazards or risks.

(b) Community engagement trigger

A work plan variation is triggered when proposed new or changed work requires an alteration of the community engagement plan. However, a work plan variation is not triggered if the licensee proposes to change a community engagement plan where there is no proposed change to work.

(c) Rehabilitation trigger

A work plan variation is triggered when proposed new or changed work requires an alteration of the rehabilitation plan. However, a work plan variation is not triggered if the licensee proposes to change a rehabilitation plan where there is no proposed change to work.

**Figure 1** below provides greater guidance on how different triggers may apply.

Amendments to other documents prepared as part of your existing approvals (eg, cultural and heritage management plans) that do not result in a change in work as described in your work plan will not trigger a change to your work plan.

As confirmed in our first statement, you are not required to undertake a risk assessment across the entire site, only in relation to the risk that arises from the new or changed work. If your work plan is a pre-8 December 2015 plan, you may wish to voluntarily modernise your work plan.

See **Appendices 1, 2 & 3** below, for examples of risk assessment for certain changes to work.

We are preparing a risk matrix tool that you may use to assess the risk associated with your proposed work change. You should use the risk matrix to assist you to identify the attribution and estimation of the level of risk.

We consider there to be a significant increase in risk when the residual risk, as assessed using our matrix, is above low. This means, any risk from proposed new or changed work, measuring medium or high will trigger a variation. A variation will not be required where the residual risk is measured as low.

Until Earth Resources Regulation's example controls are developed, low residual risk (for the purposes of determining whether a work plan variation is required) will be assessed with reference

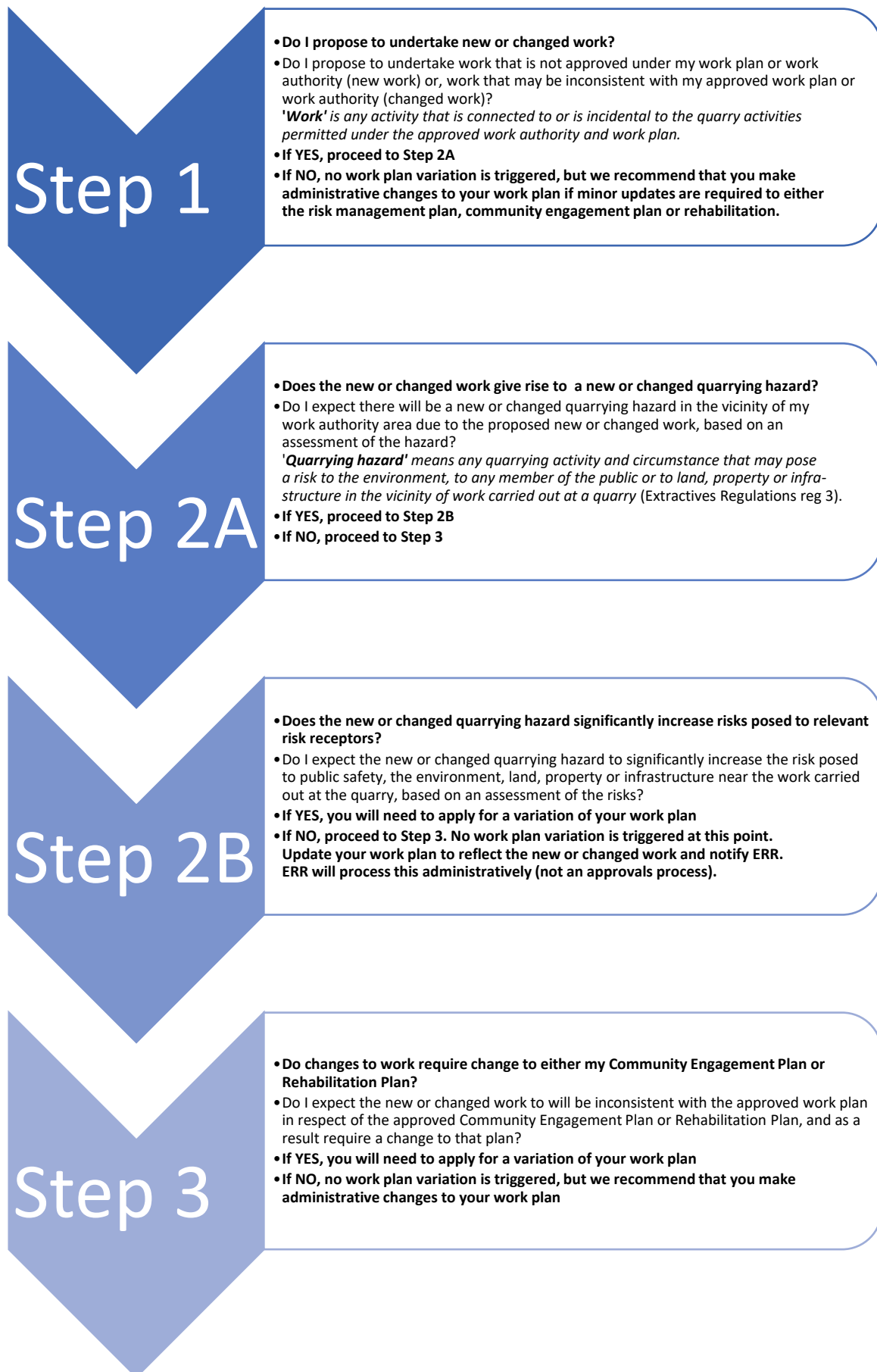
to the application of existing controls to the new or changed work only. Once Earth Resources Regulation's published example controls are in place, the notification pathway will be expanded.

Earth Resources Regulation can help you with the assessment of triggers and your circumstances. We are available to engage early with you when you are considering whether you need to apply for a variation.

During the new approvals implementation, you will need to contact us to work through the self-assessment steps. If your guided self-assessment results in your new or changed work not triggering a variation, then you will update your work plan and notify us once complete. You will not be required to submit a work plan variation.

Our focus is on building a common understanding of the workability of the new approvals model. In circumstances where an operator does not contact us or notify us of a change in work, and that change significantly increases the risk on-site (as defined in this statement), this will result in compliance activity, including the activation of mechanisms such as a notice to cease the 'new or changed' work and the preparation of a work plan variation will be required prior to re-commencement.

Figure 1 — Quarry work plan variation self-assessment tool



## Appendix 1 — Overview of examples

### Examples where no variation to a work plan is triggered

(a) Relocation of a haul road

A quarry owner relocated a haul road within the work authority area. There was no change to risk as the relocated haul road did not result in a significant increase in risk. The owner of this quarry notified Earth Resources Regulation of the change and updated its work plan to note the new location of the haul road. Where a haul road is moved further away from receptors, this relocation would act as a mitigation measure to reduce risk.

(b) Increase in depth of a hard rock quarry

There are circumstances where increasing the depth of a hard rock quarry will not result in a significant increase in risk. Where the batters retain a designated slope and no ground water is intercepted, it is unlikely a variation would be triggered.

(c) Change to a cultural heritage management plan

The Cultural Heritage Management (CHM) plan is a supplementary document to the work plan. If a discovery is made within the area of an approved work authority, this may require an adjustment to the CHM plan. Adjusting the CHM plan will not of itself trigger a work plan variation — though if a change to work is required, this may require a variation (subject to hazard and risk assessment).

(d) Relocation of a crushing plant

A crushing plant may be located on the boundary of the work plan area. A proponent may wish to relocate the plant to the centre of the quarry where it is further away from receptors as a mitigation measure to control dust, noise and vibrations. This action would not trigger a work plan variation.

## Appendix 2 — Example of risk assessment for relocating a haul road

### Scenario A — No work plan variation required

A quarry owner will relocate a haul road within the approved work authority area of the quarry.

Existing conditions — **same** as Scenario B (below):

- The haul road travels across the northern portion of the work authority
- There are no adverse geological structures in the vicinity of the haul road
- The nearest sensitive location is more than 500m away

Changed conditions — **different** to Scenario B (below):

- The haul road will be relocated to the **western** portion of the work authority (to provide access to the resource in the northern portion for extraction)
- There is **no** geological fault in the vicinity of the new haul road
- The nearest sensitive location is now **400m** away

There is no significant change to risk as the relocated haul road will not result in a new or changed quarrying hazard that poses a significant increase of risk to the environment, any member of the public or to land, property or infrastructure in the vicinity of the relocated haul road.

See **Table A** below, for a detailed approach to risk assessment for this change in work.

### Scenario B — Work plan variation required

A quarry owner will relocate a haul road within the approved work authority area of the quarry.

Existing conditions — **same** as Scenario A (above):

- The haul road travels across the northern portion of the work authority
- There are no adverse geological structures in the vicinity of the haul road
- The nearest sensitive location is more than 500m away.

Changed conditions — **different** to Scenario A (above):

- The haul road will be relocated to the **southern** portion of the work authority (to provide access to the resource in the northern portion for extraction)
- There **is** no geological fault in the vicinity of the new haul road
- The nearest sensitive location is now **250m** away.

There is a change to risk as the relocated haul road will result in a new or changed quarrying hazard that poses a significant increase of risk to the environment, any member of the public or to land, property or infrastructure in the vicinity of the relocated haul road.

See **Table B** below, for a detailed approach to risk assessment for this change in work.



**Table A — Risk assessment for relocating a haul road: No variation required**

| <b>Existing conditions</b> |             |  |                      |  |
|----------------------------|-------------|--|----------------------|--|
| <b>Hazard</b>              | <b>Risk</b> | <b>Existing controls</b>               | <b>Residual risk</b> | <b>Change</b>                          |
| Slope stability            | Low         | Batter design                          | Low                  | –                                      |
| Noise                      | Low         | Noise attenuation barriers             | Low                  | –                                      |
| Dust                       | Low         | Dust suppressant used on exposed areas | Low                  | –                                      |
| <b>New conditions</b>      |             |  |                      |  |
| <b>Hazard</b>              | <b>Risk</b> | <b>Existing controls</b>               | <b>Residual risk</b> | <b>Change</b>                          |
| Slope stability            | Low         | Batter design                          | Low                  | –                                      |
| Noise                      | Low         | Noise attenuation barriers             | Low                  | –                                      |
| Dust                       | Low         | Dust suppressant used on exposed areas | Low                  | –                                      |
| <b>Overall</b>             |             |  |                      | <b>No significant increase in risk</b> |

**Table B — Risk assessment for relocating a haul road: Variation is required**

| <b>Existing conditions</b> |             |  |                      |   |
|----------------------------|-------------|--|----------------------|---|
| <b>Hazard</b>              | <b>Risk</b> | <b>Existing controls</b>               | <b>Residual risk</b> | <b>Change</b>                               |
| Slope stability            | Medium      | Batter design                          | Medium               | N/A   |
| Noise                      | Low         | Noise attenuation barriers             | Low                  | N/A   |
| Dust                       | Low         | Dust suppressant used on exposed areas | Low                  | N/A   |
| <b>New conditions</b>      |             |  |                      |   |
| <b>Hazard</b>              | <b>Risk</b> | <b>Existing controls</b>               | <b>Residual risk</b> | <b>Change</b>                               |
| Slope stability            | Medium      | Batter design                          | Medium               | Significant increase (residual risk > low)  |
| Noise                      | Significant | Noise attenuation barriers             | Medium               | Significant increase (residual risk > low ) |
| Dust                       | Medium      | Dust suppressant used on exposed areas | Low                  | –   |
| <b>Overall</b>             |             |  |                      | <b>Significant increase in risk</b>         |

## Appendix 3 — Example of risk assessment for introduction of blasting

### Work plan variation is always required

Introducing blasting into a work authority area will always trigger a work plan variation.

Existing conditions:

- The quarry is excavating gravel near surface
- The quarry is encountering hard rock at depth and uses rock breakers/rock hammers to excavate the stone
- Oversize rock is put through the crusher
- The nearest sensitive location is less than 500m away.

Changed conditions:

- The quarry will introduce blasting to excavate hard rock at depth.

There is a change to risk as the introduction of the blasting activity will result in a new or changed quarrying hazard that poses a significant increase of risk to the environment, any member of the public or to land, property or infrastructure in the vicinity of the blasting.

See **Table C** below, for a detailed approach to risk assessment for this change in work.

**Table C — Risk assessment for introduction of blasting**

| <b>Existing conditions</b> |                   |                               |                      |  |
|----------------------------|-------------------|-------------------------------|----------------------|--|
| <b>Hazard</b>              | <b>Likelihood</b> | <b>Consequence (receptor)</b> | <b>Risk</b>          | <b>Change</b>                              |
| Air pressure               | Not applicable    | Not applicable                | –                    | –  |
| Ground vibrations          | Not applicable    | Not applicable                | –                    | –  |
| Fly rock                   | Not applicable    | Not applicable                | –                    | –  |
| <b>New conditions</b>      |                   |                               |                      |  |
| <b>Hazard</b>              | <b>Risk</b>       | <b>Existing controls</b>      | <b>Residual risk</b> | <b>Change</b>                              |
| Air pressure               | Medium            | Nil                           | Medium               | Significant increase (residual risk > low) |
| Ground vibrations          | Medium            | Nil                           | Medium               | Significant increase (residual risk > low) |
| Fly rock                   | Significant       | Nil                           | Significant          | Significant increase (residual risk > low) |
| <b>Overall</b>             |                   |                               |                      | <b>Significant increase in risk</b>        |

## Disclaimer

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