



# Department of Economic Development, Jobs, Transport & Resources

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Ms Jenny Moles  
Senior Panel Member  
Planning Panels Victorian  
Department of Environment, Land, Water and Planning  
Melbourne Victoria 3000  
GPO Box 2392 Melbourne, Victoria 3001

Dear Ms Moles,

I refer to your correspondence (dated the 8 November 2017) seeking further written advice from the Earth Resources Branch of DEDJTR.

In reference to each item requested, please find attached the following response for your information and consideration:

- (1) A copy of the email (Item 10) from Mr Daniel Fyffe of Hanson Pty Ltd relating to the agreement to release confidential information (see attached) and;
- (2) In respect of Item 9 the following legal assessment relating to the status of the Work Authority (WA) and Work Plan is provided below:
  - (i) **Work Authority - Period of WA**  
Section 77L of the Mineral Resources (Sustainable Development) Act 1990 (MRSDA) (inserted in 2009) provides that the period of an extractive industry WA "...remains in force for the period for which the carrying out of an extractive industry is permitted on the land under the relevant planning scheme or a planning permit unless-
    - (a) the WA is sooner cancelled; or
    - (b) [if Crown land]; or
    - (c) if it is varied under s77M.

Sub-sections (a), (b) and (c) are not applicable in this case. Therefore consideration is to be given to the words 'for the period for which the carrying out of an extractive industry is permitted on the land under the relevant planning scheme or a planning permit'.

- (ii) **Applicable planning scheme**  
As the current zoning includes Special Use Zone Schedule 2 (Earth and Energy Resources Industry), the relevant planning scheme continues to permit the carrying out of an extractive industry. It is noted this situation will change if the current rezoning proposal is approved. If that occurs, the WA will no longer have any force (although it is noted that s81 of the MRSDA will apply, requiring the former authority holder to complete its rehabilitation obligations, prior to being able to get its bond returned).
- (iii) **Planning permits 1989 – permit 4731**  
Planning permit 4731 was issued in relation to this site in 1989, enabling the land to be used for the purposes of extraction and 'treatment' of sand. The permit includes the following:  
In accordance with the provisions of Section 67 and 68 of the Planning and Environment Act 1987, unless the use or development hereby permitted is commenced within two years ... and is completed within two years of the commencement, or any extension of these periods which the Responsible Authority may ...make, this permit shall lapse.
- (iv) The status of permit 4731 is not clear to the Department of Economic Development, Jobs, Transport and Resources (the Department). Monash Council has been contacted about the current status of this permit. The file relating to the permit is stored off site and will be delivered to Monash Council on 20/11/17. If the status is required by the Planning Panel, it is understood the file needs to be manually examined to determine that status.
- (v) Permit 4731 was issued for the extraction and 'treatment' of sand. It is accepted that there has been no extractive work at this site since the early 1990s. However, the permit enabled the processing of sand, as a type of 'treatment', by the WA holder. It is not clear, but appears, that such activities ceased in about 2001/2.
- (vi) As condition 3 of permit 4731 imported the conditions of Extractive Industry licences 44.2 and 1322 (which were the precursor instruments to WA389), it therefore includes the rehabilitation requirements of those licences. Rehabilitation requirements also exist pursuant to the Work Plan associated with WA389, which was approved in 2001. The Work Plan includes site specific rehabilitation conditions that require compliance with the Reclamation Management Plan, which was approved in 1998.
- (vii) The Reclamation Management Plan refers in turn to the s173 agreement between the landowner and Council. Due to disagreements over time between landowners and the WA389 holder as to the details of rehabilitation requirements (which appear to have been exacerbated as different landowners over decades have different end uses in mind for the site) it is not clear whether there has been a two year period during which no rehabilitation works have been undertaken.

(viii) **2015 – permits 43336 and 43337**

Monash Council issued two permits on 1 June 2015, permitting:

- backfilling and site rehabilitation of the former quarry, and
- the use and development of the land for stockpiling of earth, treatment of existing on-site slimes, sediments and uncontrolled fill material and associated earthworks to facilitate the backfilling of the former quarry.

The purpose of the permitted works is to rehabilitate the land to enable future use for residential development. The Department is not aware if the use and development permitted by these permits has commenced, and if so, the status of those works (Council did not consult the Department in relation to the approval processes for these permits, and the Department did not know that these permits existed until the current Planning Panel matter).

(ix) **Status of permits pursuant to the Planning and Environment Act 1987**

Section 68(2) of the Planning and Environment Act provides that A permit for the use of land expires if—

- (a) the use does not start within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
- (b) the use is discontinued for a period of two years.

(x) In the absence of evidence as to whether permit 4731 continues to exist, it is not possible for the Department to confirm whether WA389 lapsed in relation to the terms of that permit, which may have occurred if rehabilitation activities that may have been required under that permit did not occur for at least two years. The 2015 permits have not been related to WA389, so have no bearing on the status of WA389. The 2015 permits are not linked to permit 4731, as they enable different uses.

(xi) Section 77L of the MRSDA will be triggered if the proposed rezoning occurs, as that will remove Earth and Energy Resources as a permitted use for the site. The effect will be that WA389 lapses at that time.

(xii) In the event that the WA can be demonstrated to have lapsed, or may do so if the proposed planning scheme amendment is approved, it is noted that s81 of the MRSDA imposes an obligation on former authority holders to rehabilitate the land which was subject to a WA 'as expeditiously as possible'.

I trust that the above information and supporting documentation addresses your request.

Yours sincerely



**Erica Paddle**  
**Acting Director Statutory Authorisation and Technical Services**  
**Earth Resources Regulation Branch**

21 / 11 / 2017