

Mining Competence Board  
c/- NSW Department of Industry  
PO Box 344  
Hunter Region Mail Centre NSW 2310

Submission Response to the  
**DISCUSSION PAPER**  
Maintenance of competence scheme  
for practising certificates  
Work Health and Safety (Mines) Regulation  
2014

Submitted by

John Roydhouse

Chief Executive Officer

Institute of Public Works Engineering Australasia (NSW Division).

January 2016

## INTRODUCTION

The Institute of Public Works Engineering Australasia (IPWEA) is a not for profit, membership based, professional organisation representing engineers and others involved in the provision of public works and services predominantly in the local government sphere. The Institute conducts a National office and Divisions across all states and New Zealand.

This submission is authored by the NSW Division.

IPWEA NSW is established to be a charity with the purpose of advancing the public works sector in Australia, particularly in NSW by:

- conducting and publishing research into improvements to the processes used in the industry
- working with government at all levels to ensure that the interests of the public works industry are represented in regard to the public decision-making process, and
- providing a forum for all people engaged in the public works to discuss best practice and enhancing the future of the industry

IPWEA NSW seeks through its mission to *enhance the quality of life of NSW Communities through excellence in public works and services.*

Infrastructure provided by all levels of Governments plays a critical and fundamental role in ensuring economic activity is supported and growth can occur. Delaying infrastructure improvements (or even basic maintenance) impacts on economic sustainability (often seen as confidence in a location), transport (movement of people and freight) public health and safety and impacts on the cost of living for our communities (electricity, water, sewerage, transport, etc).

Engineers, as part of a broader team, play key roles in infrastructure development, design, construction, operation and maintenance. These engineering roles underpin nearly every aspect of life nowadays (as the disciplines in engineering are broad and cover a very wide range of industries)

Engineers develop an understanding of systems, public risk, safety and performance requirements, and optimising delivery to meet service requirements. Without the safeguards inherent in an engineered solution, infrastructure performance would be haphazard, dangerous and much more costly.

To maintain the community's lifestyle and sustain our standard of living, sufficient engineering skills need to be brought to bear - sufficient engineering knowledge is required to be part of decision making processes, so at least, the results of decision-making are understood and the ramifications planned for.

## LOCAL GOVERNMENT QUARRIES

Local Government provides a broad range of services to the community with quarry operations being almost exclusively a small exercise within local governments operations to keep costs low in largely rural areas. These quarry operations typically are operated in campaign mode for brief periods of time to service the needs of nearby road projects. Such operations may run for a one off day, through to typically a couple of months at most. A rare council will have a quarry running as a commercial operation which operates all year round. This submission is focussed on the practicalities of the proposal to the operation of the small campaign based quarries operated by Councils.

## BACKGROUND

In June 2014, the NSW Roads and Transport Directorate and IPWEA NSW submitted a detailed report highlighting challenges facing the local government sector through additional compliance.

In summary; this submission stated “local government is adequately covered by the Work Health and Safety Act for the operation of its gravel pits and application of the Work Health and Safety (Mines) Regulation (2014) is an unnecessary additional burden”.

### Infrastructure Funding Background for NSW Local Roads

In NSW, Local Governments are “Road Authorities” under the Roads Act, 1993. Local Government has responsibility for 85 percent of the road network and this portion of the road network accounts for over 50 percent of road accidents.

In 2005, 2008 and 2012 the Roads & Transport Directorate commissioned a Road Asset Benchmarking Project to provide a snapshot of the current reported condition of Regional and Local Roads in NSW, an estimate of the shortfall in funding necessary to bring them to a satisfactory condition and specific recommendations about rectification of the problems identified.

In May 2013 the Roads & Transport Directorate released a further set of reports containing the results of the 2012 Road Asset Benchmarking Project.

The conclusions of the 2012 report are summarised as follows:

*This 2012 Road Management Report estimates the length of regional and local roads at 160,417 km, comprising 80,629 km of sealed roads and 79,789 km of unsealed roads. The replacement value at 30 June 2012 is estimated at \$61.8 billion.*

*The Australian Local Government Association estimated maintenance and renewal expenditure for local roads in Australia for the period 2010 – 2024 and indicated a shortfall of \$17,664 million over the 15 years equivalent to an increase of 39% over estimated available funding levels for the period.*

*The road funding gap for all 152 NSW councils is estimated at \$567 million per annum based on the data from the 146 responding councils extrapolated to 152 councils. Funding at this level will require a 66% increase on 2011/12 road expenditures if asset management principles are not applied to managing the gap.*

*In order for councils to remain sustainable into the future it is necessary for them to maintain efficiencies developed through 35 years of Rate Pegging and to avoid incurring any unnecessary costs either direct or indirect.*



*In addition to these facts, Local Government New South Wales (LGNSW) evaluations confirm that cost shifting to Local Government has increased costs for councils by in excess of \$520million per annum.*

*The IPWEA data provided above deals only with roads and bridges a similar situation exists in relation to other asset classes, particularly buildings, drainage and recreation facilities.*

*The Roads & Transport Directorate has received a significant number of submissions from its members expressing concern at the prospect of Council having to develop another compliance system which will significantly increase costs while providing no benefit to the safety of employees or the delivery of services to the community.*

*This submission is based on the information provided by member councils combined with an assessment of the likely impacts, particularly for regional councils, of the indicated changes.*

#### *Council Gravel Pits*

*The first main roads in New South Wales were constructed by Governor Lachlan Macquarie in the early 1800's, and were financed by toll booths. Initial local authorities from this time were essentially Roads Authorities whose main task was the provision of road infrastructure.*

*The 1906 and 1919 Local Government Acts provided for the construction and management of roads across NSW. In fact, since 1907, roads in NSW have been under the care of local government.*

*The 1993 Local Government Act empowers Councils to carry out any undertaking which is not prohibited by other legislation.*

*This provision of road infrastructure since the 1850s has involved the winning of local gravel from sources as close as possible to the roadside. This has been a necessity to minimise transport costs and to keep the cost of road construction materials as low as possible.*

*Initial current data from councils suggests that in excess of 100 of the existing 152 councils in NSW operate gravel pits for some period of the year. Councils have reported varying numbers of gravel pit within each of their areas ranging from four to a maximum of around 20. This suggests that the number of local gravel pits in NSW is likely to be of the order of 800 separate sites. The majority of these gravel pits are operated for only short periods of the year and the total production is relatively modest. Gravel from these sources is not produced for sale and is being won for the sole purpose of road construction. Anecdotal evidence suggests that it is not uncommon for councils to win gravel from properties adjoining road reserves by stripping topsoil and removing gravel to a shallow depth. At the request of the property owner, some of these excavations are reshaped to form farm dams – a win-win for both parties.*

*All councils in NSW are bound by Work Health and Safety legislation and are required to have complying Work Health and Safety Plans in place. These Plans are required to cover all the activities of Council including excavation for the winning of gravel and will include applicable Safe Work Method Statements (SWMS) covering the operation of gravel pits.*

#### **IMPACT OF THE LEGISLATION**

Despite all of the above existing requirements councils (as a mine holder) will be required under the proposed Regulations to:

- Appoint a Mine Operator
- Develop a specific Mines WH&S Management Plan for each site
- Submit quarterly reporting

on the same basis as a major commercial coal or minerals mine operator. This represents the introduction of what can only be described as 'Red Tape' for all councils operating gravel pits in NSW.

Councils operating local gravel pits would welcome any assistance that might be available from Inspectors from the Mine Safety Section of NSW Trade and Investment in improving existing WHS Plans but see no value in duplication existing WHS systems that have been implemented.

## IPART REVIEW OR REPORTING AND COMPLIANCE BURDENS ON LOCAL GOVERNMENT

The recent IPART Draft Report<sup>1</sup>, 18<sup>th</sup> January 2016, reviews the issue on behalf of Local Government in NSW. The report states:

### 2. Gravel pits subject to mine safety regulation

The Work Health and Safety (Mines) Act 2013 and the Work Health and Safety (Mines) Regulation 2014 (the WHS (Mines) laws), which commenced on 1 February 2015 apply to all mining operations in NSW, including council-operated small-scale gravel pits. They require the operator of each site to appoint a Mine Operator and suitably qualified Quarry Manager, have a WHS safety management system and report quarterly on work, health and safety for each quarter.

Stakeholders' description of burden and proposed solutions

Stakeholders submitted that there are an estimated 800 quarries operated by about 100 councils across NSW to supply gravel for road maintenance and renewal. In regional and remote areas many councils operate non-commercial, low output, low-cost, infrequently used gravel pits for road building. In relation to these small-scale gravel pits, affected councils contend that:

- the obligations are unnecessary, onerous, costly and disproportionate
- *general workplace safety laws applying to all council activities provide adequate safeguards to these low-risk activities, and*
- *clarification of whether council-operated quarries are exempt under s 11(c) of the Work Health and Safety (Mines) Act 2013 is a priority, or alternatively, quarries with low output used only for council civil projects (e.g. 5,000 tonnes per annum) should be exempt.*

### IPART analysis

- The Department of Industry, Division of Resources & Energy, Mine Safety advises that the WHS (Mines) laws:
  - are based on national model WHS mining regulations which provide for harmonised laws across Australia
  - replace laws that also covered council quarries, and retain obligations for safety management plans, qualified managers and quarterly reporting of workplace injuries
  - fit within the overall work health and safety framework and impose additional requirements to deal with mining-specific risks
  - introduce more flexibility, e.g., in how the safety management system is documented, less frequent reporting for work health and safety (e.g., annually), permitting one person to perform the role of quarry manager for a group of mines, and
  - have supporting codes of practice and guidelines which are not mandatory but were developed to assist understanding of obligations under the WHS (Mines) laws.

---

<sup>1</sup> [http://www.ipart.nsw.gov.au/files/sharedassets/website/shared\\_files/investigation\\_-\\_section\\_9\\_-\\_legislative\\_requirements\\_-\\_local\\_government\\_regulatory\\_burdens/draft\\_report\\_-\\_review\\_of\\_reporting\\_and\\_compliance\\_burdens\\_on\\_local\\_government\\_-\\_january\\_2016.pdf](http://www.ipart.nsw.gov.au/files/sharedassets/website/shared_files/investigation_-_section_9_-_legislative_requirements_-_local_government_regulatory_burdens/draft_report_-_review_of_reporting_and_compliance_burdens_on_local_government_-_january_2016.pdf)



- Although some requirements in the new WHS (Mines) laws appear to be more prescriptive than the provisions they replaced, and excessive for small-scale gravel pits, the flexibility noted should mitigate the perceived burden somewhat.
- In these circumstances, further guidance, as foreshadowed by the Mine Safety Unit, would assist councils in managing their risks and efficiently complying with their obligations as quarry operators.

### **IPART Conclusion**

IPART supports the Department of Industry, Division of Resources & Energy, Mine Safety proposal to develop relevant guidance for councils with small-scale gravel pits to meet their obligations under the Work Health and Safety (Mines) Act 2013.

IPWEA NSW would support the recent IPART recommendation to work with local government to develop specific guidelines for council gravel pits.

### **Detailed Response to Discussion Points**

The engineering staff at Councils responsible for quarries are traditionally the nominated Quarry Managers. These engineers; who hold recognise tertiary and vocational qualifications, are also responsible for the broad expanse of Council engineering operations and would typically spend between 1% and 5% of their working time across a year managing the quarries under their control. In terms of operating hours in the year it is estimated most council's quarries are only operating at a maximum of 10-15% of the year - that is collectively all quarries for the Council's not each individual quarry under a Council's control. The style of operations of these quarries is low risk compared to commercial operations where they largely consist of a pit where gravels are won by a dozer and material is loaded using an excavator. Most Council quarries don't utilise explosives, and crushing plants don't exist (they would occasionally hire in a contractor with a mobile plant for a short campaign of a few weeks or less). Established contractors being utilised for such higher risk activities. The proposed model of MOC is going to require the Quarry Manager to undertake training on average of 1.5% of their time per year, with this training in quite a few years to actually exceed their hours spent managing the quarries under their control.

Because of the narrow scope of works undertaken in Council quarries, the availability of training that remains focussed on operations undertaken by Council would be limited and unlikely to enable Council Quarry Managers to achieve their target training hours unless they attend training that isn't relevant to them. Local Government has significant demands already placed upon their training budgets and they would struggle to justify the wastage of such training expenditure to the elected Councillors.

Considering these facts there should be a new category of Quarry Manager defined for Local Government which is based on size of operations with an additional catch to exclude high risk quarry operations if they exist at a Council, with a significantly reduced CPD requirement for maintaining competence.

This would satisfy and support the IPART Recommendation to develop guidelines for Local Government Gravel Pits.

### **Detailed Discussion Point Responses:**

1. IPWEA NSW believes the model is not appropriate for the majority of Local Government employees who are required to maintain competence under the scheme.
2. IPWEA would support the focus on mine operations but seek recognition, definition and special guidelines for local government gravel pits
3. IPWEA NSW would seek a further review of training requirements incorporated into new guidelines. For instance



- a. In terms of practical access for Local Government employees who are not primarily focussed on quarry/mine activities the maximum claimable hours, especially for informal learning are too restrictive – access to formal relevant learning is difficult for local government and unlikely to facilitate achievement of the minimum hours required to demonstrate maintenance of compliance in the long term.
  - b. For employees in local government it would be more feasible, but largely still not practical, to achieve the target learning hours if no restriction was placed upon informal learning.
4. The minimum hours for the 5 year period and each year are largely not practical for Local Government except where large significant operations in quarrying are being undertaken.
  5. For local government employees the scheme is not reasonable or practical when you consider that they work in a mine environment in a part time manner.
  6. It is expected that problems will occur regarding the maintenance of the logbooks and keeping evidence for elements of the learning. Most local government organisations are dispensing with paper documents moving to electronic applications including mobile devices. Retention of necessary evidence will require additional and potentially incompatible systems for local government at a time when the sector is seeking to streamline and reduce regulatory burden.

## CONCLUSION

IPWEA believes Government support and funding is required to assist in the areas addressed by this submission. Public safety is a core function of local government and the proposed regulations do need to be resourced above the current levels with no additional funding or compliance exemptions arrangements available.

Lack of funding, relevant training and addition compliance costs to meet the proposed regulation is acknowledged as a key challenge for local government quarry operators.

IPWEA NSW would support the recent IPART recommendation to work with local government to develop specific guidelines for council gravel pits.

IPWEA NSW would welcome the opportunity to continue to work with the Department to achieve appropriate guidelines in accordance with the recent IPART recommendation.

Contact

Warren Sharpe OAM  
President

John Roydhouse  
Chief Executive Officer

IPWEA (NSW Division)  
Level 12, 447 Kent Street Sydney NSW 2000  
Tel 02 8267 3001  
Email [John.roydhouse@ipwea.org](mailto:John.roydhouse@ipwea.org)

11

○

○