

Earth Resources Regulation Statement of Operating Change (Minerals)

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 and our statement for extractives in July 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 minerals 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.

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 under an existing approved licence, 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 minerals authority holders. This includes work plans under mining, exploration, prospecting and retention licences. The equivalent statement for extractives was released in July 2018.

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 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 new or changed work is outside the scope of an existing planning permit, you will need to obtain a new or amended planning permit for the work from the relevant local council.

A new or amended 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 an amended 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. A planning practice note will be released by 31 December 2018, which will improve guidance to local councils 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. From October 2018, we will provide new guidance material that will streamline work plan and work plan variation applications and assessments. 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. The circumstances where a work plan variation is not required will be *extended* to include situations where the application of Earth Resources Regulation's published example controls (in addition to existing controls) results in a low residual risk. This includes changes to work under area work plans. 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 provides 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.

Guidance will 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 conditions under your licence.

(a) Hazard and risk trigger

This trigger applies when:

- undertaking new or changed work, which will
- result in a new or changed exploration or mining hazard, which will
- significantly increase the risks posed to any member of the public, the environment, land, property or infrastructure.

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

(b) Community engagement trigger

This trigger applies when the new or changed work requires an alteration of the community engagement plan. There is no change to how we will assess this trigger to a variation application.

(c) Rehabilitation trigger

This trigger applies when the new or changed work requires an alteration of the rehabilitation plan. There is no change to how we will assess this trigger to a variation application.

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 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 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 measuring medium or high will trigger a variation. A variation will not be required where the risk is measured as low.

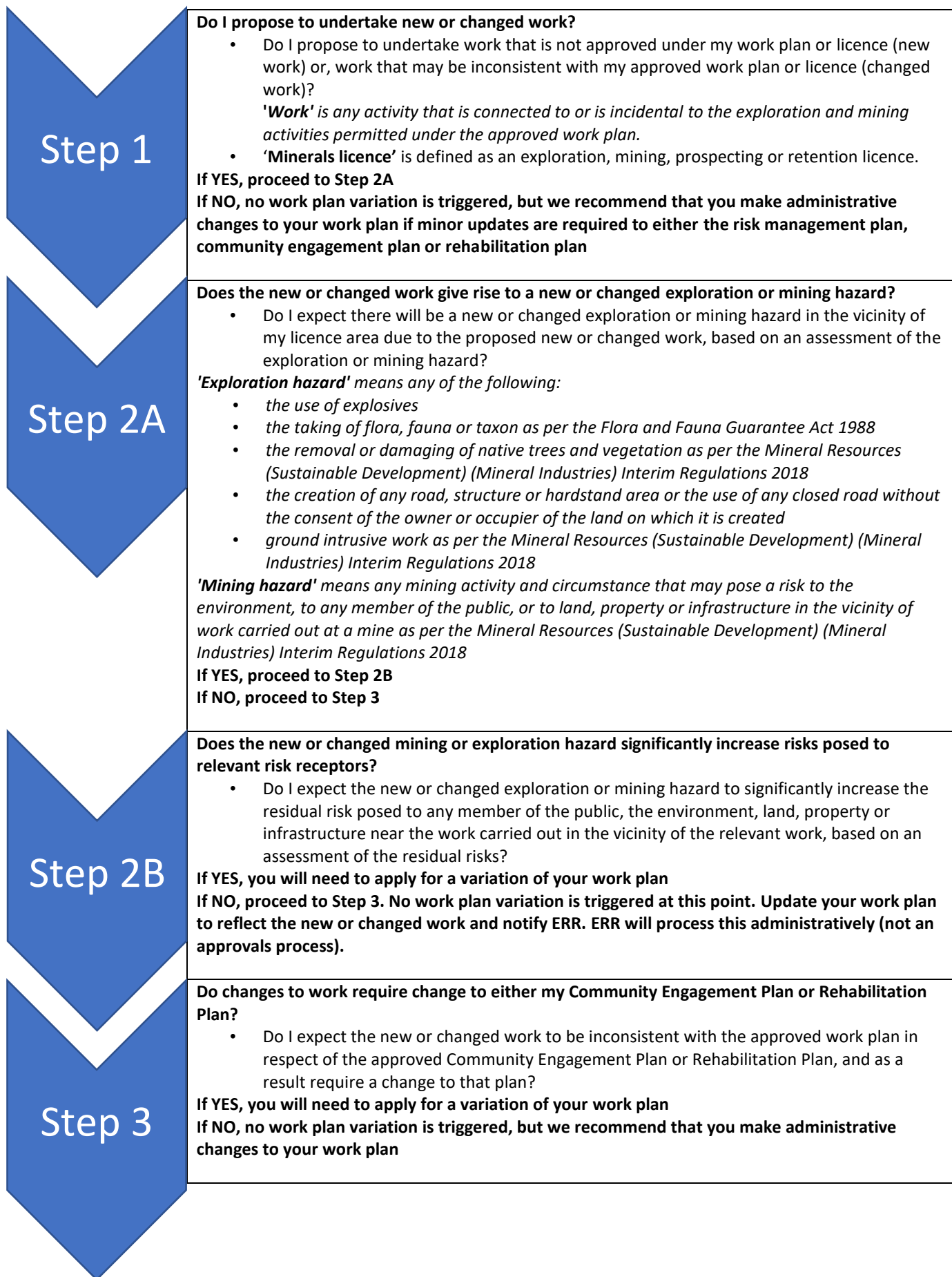
Until Earth Resources Regulation's guidance is published, low residual risk (for the purposes of determining whether a work plan variation is required) will be assessed with reference to the application of existing controls only. Once Earth Resources Regulation's guidance material and example controls 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 — Minerals 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 mine owner relocated a haul road within the work plan 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 mine 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 an open pit mining operation

There are circumstances where increasing the depth of a mine operation 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 Plan (CHMP) is a supplementary document to the work plan. If a discovery is made within the area of an approved workplan, this may require an adjustment to the CHMP. Adjusting the CHMP 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 processing plant

A processing 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 mine 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 mining licensee proposes to relocate a haul road within the approved work plan area of the mine.

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

- The haul road travels across the northern portion of the work plan area
- 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 plan area (to provide access to additional reserves to the north)
- 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 mining 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 mining licensee proposes to relocate a haul road within the approved work plan area of the mine.

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

- The haul road travels across the northern portion of the work plan area
- 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 plan area (to provide access to additional reserves to the north)
- There **is** a 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 mining 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

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

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

Existing conditions				
Hazard	Risk	Existing controls	Residual risk	Change
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
New conditions				
Hazard	Risk	Existing controls	Residual risk	Change
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	–
Overall				Significant increase in risk

Appendix 3 — Example of risk assessment for introduction of blasting

Work plan variation is always required

Introducing blasting into a mine will always trigger a work plan variation.

Existing conditions:

- The mine is excavating coal from an open pit
- The mine encounters inter-seam horizons and uses a separate dredger and conveyor system to excavate the waste rock
- The waste rock is conveyed to a stacker and placed on the overburden dump
- The nearest sensitive location is less than 500m away.

Changed conditions:

- The mine will introduce blasting to assist in breaking indurated inter-seam horizons.

There is a change to risk as the introduction of the blasting activity will result in a new or changed mining 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

Existing conditions				
Hazard	Likelihood	Consequence (receptor)	Risk	Change
Air pressure	Not applicable	Not applicable	–	–
Ground vibrations	Not applicable	Not applicable	–	–
Fly rock	Not applicable	Not applicable	–	–
New conditions				
Hazard	Risk	Existing controls	Residual risk	Change
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)
Overall				Significant increase in risk

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