



Institute of  
Public Works  
Engineering  
Australia  
(NSW Division)

# IPWEA (NSW) ROADS & TRANSPORT DIRECTORATE

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26 June 2014

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Dear Sir / Madam,

## **Draft Work Health and Safety (Mines) Regulation 2014 Submission**

### **Introduction**

The Institute of Public Works Engineering Australia (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 Roads & Transport Directorate has been set up by IPWEA (NSW) in conjunction with Local Government NSW to provide support to its members working in local government across the state. It is supported financially by membership contributions from Local Councils in NSW.

### **Background**

The Roads & Transport Directorate has been set up to meet the demand from members of IPWEA (NSW) to act as a focus for research activities and to provide technical advice.

Its main purpose is to assist Local Government in NSW in the area of road infrastructure and transport related activities by:

- Assisting members in discharging their road management roles in the most effective manner consistent with current legal obligations and the most recent technical practices in the critical area of consistent and cost effective asset management and road safety;
- Assisting the IPWEA (NSW), Local Government NSW, individual Councils and members in lobbying for a higher priority to be placed on road infrastructure

provision and maintenance and for a more equitable share of resources and funding; and

- Providing for IPWEA members and Local Government a powerful technical and research resource on transport issues at regional, state and national level. The activities would be, as circumstances dictate, either proactive or reactive to achieve the optimum benefit for the region or state.

The Directorate commenced operation in October 2004 and has been involved in determining the needs of members and developing solutions to meet those needs. Over that period the Directorate has made submissions on a range of issues. Copies of some of these submissions<sup>1</sup> are available on the website at: [www.roadsdirectorate.org.au](http://www.roadsdirectorate.org.au).

### **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 2010<sup>2</sup> 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<sup>3</sup> 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 Directorate commissioned this report to update the 2010 Road Asset Benchmarking report on the condition on NSW roads and bridges at 30 June 2012,*

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<sup>1</sup> Copies of submissions are available at:

<http://www.ipwea.org/RoadsTransportDirectorate/AboutRD/Submissions/>

<sup>2</sup>2006, 2008, 2010 Asset Benchmarking Reports are available

at:<http://www.ipwea.org.au/RoadsTransportDirectorate/AboutRD/AssetBenchmarkingProject/>

<sup>3</sup> 2012 Road Asset Benchmarking Report is available at:

<http://higherlogicdownload.s3.amazonaws.com/IPWEA/c7e19de0-08d5-47b7-ac3f-c198b11cd969/UploadedImages/Asset%20Benchmarking%20Project/2012%20Road%20Management%20Report.pdf>

*update the shortfall in funding required to bring them to a satisfactory condition, provide specific recommendations about rectification of the problems identified and report on whether councils have made any improvement in management of road and bridge assets since the 2010 Road Asset Benchmarking Project survey.*


*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.*

*Councils may be facing a large and increasing risk exposure at present and in the future. These risks include:*

- the condition of roads and bridges infrastructure will decline,*
- potential increase in personal injury and legal claims,*
- road life cycle expenditure ‘savings’ will be passed onto road users through higher transportation operating costs,*
- funding will not be available to renew ageing road and bridge assets,*
- councils will not be able to provide services needed by communities in medium-long term.*

*Renewal expenditures are being transferred to the next generation.*

These outcomes are supported by a raft of other studies into the sustainability of Local Government which include:

	NSW ‘Allan’ Inquiry (2006) <sup>4</sup> :	\$6.3 billion backlog
	Australia-wide PWC (2006) <sup>5</sup> :	\$15.3 billion (high); \$14.5 billion (intermediate); \$12 billion (low)
	NSW TCorp (2012) <sup>6</sup> :	Total NSW backlog 7.2 billion as at 2012 (25.4% increase since 2009)
	NSW DLG Audit Report (2012) <sup>7</sup> :	Total backlog 7.2 billion

### **The Sustainability of Councils**

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.

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<sup>4</sup> Copy of *Independent Inquiry into the Financial Sustainability of NSW Local Government* available on LGNSW website: <http://www.lgnsw.org.au/files/imce-uploads/35/final-report-findings-and-recommendations.pdf>

<sup>5</sup> Copy of PWC Report *National Financial Sustainability Study of Local Government* on the ALGA website at: [http://alga.asn.au/site/misc/alga/downloads/pwc/PwC\\_Report.pdf](http://alga.asn.au/site/misc/alga/downloads/pwc/PwC_Report.pdf)

<sup>6</sup> Copy of TCorp report *Financial Sustainability of the New South Wales Local Government Sector* available at: <http://www.dlg.nsw.gov.au/dlg/dlghome/documents/information/TCorp%20Report%20-%20Financial%20Sustainability%20of%20the%20New%20South%20Wales%20Local%20Government%20Sector%20-%20April%202013.pdf>

<sup>7</sup> Copy of DLG *Local Government Infrastructure Audit Report* available at: <http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Local%20Government%20Infrastructure%20Audit%20Report%20-%20June%202013.pdf>

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.

### **Context of this Submission**

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.

## **Work Health and Safety**

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.

The WorkCover website includes advice on the carrying out of excavation work. This information references the 2013 Code of Practice covering excavation work.

## **Excavation work**

Excavation work can be dangerous and precautions must be taken when excavating a trench, tunnel or shaft.

Before excavation work is carried out the person with management or control of the workplace must:

- take reasonable steps to obtain information about any underground essential services including the location and depth of the pipes, cables or other plant
- provide information on the underground services to any person engaged to carry out the excavation work and have regard to this information
- ensure the information about underground services is available for inspection
- ensure the information about the underground services is kept until the excavation work is completed or for at least two years after a notifiable incident.

### **Management of risks**

A PCBU has a primary duty of care to manage risks including the following:

- a person falling into an excavation
- a person being trapped by a collapse
- a person being struck by falling objects
- a person exposed to airborne contaminants.

Trenches at least 1.5 metres deep must be secured to prevent unauthorised access or inadvertent entry and to minimise trench collapse by shoring, benching and / or battering.

Work done in or near a shaft or trench with an excavated depth greater than 1.5 metres or in tunnels, is classified as high risk construction work and a safe work method statement must be prepared.

The draft code of practice *Excavation work* provides more information.

In short, 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.

### **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.

### **Emergency Management**

The draft Regulation requires that all mine operators prepare emergency plans for each mine. This requirement is in addition to the Local Emergency Management Plan developed by councils under the State Emergency and Rescue Management Act 1989. Given the scale of these local operations, this is an unreasonable expectation.

Clause 92 of the draft Regulation also requires that each emergency plan be tested every 12 months. In the case of council gravel pits the scale of operations cannot justify the allocation of resources necessary to test emergency management plans for each of the 800 or so gravel pits across NSW.

### **Privatisation of Gravel Production**

Assuming that the full provisions of this legislation are applied to Local Government one of the unintended consequences may be the privatisation of local gravel production.

Because of the substantial additional costs of compliance councils may simply cease winning gravel from local sources and procure gravel from centralised commercialised sources. This would lead to significant cost increases based on increased transport costs alone.

### **Exemption Under Work Health and Safety (Mines) Act 2013**

Clause 11 of the Work Health and Safety (Mines) Act 2013 states:

#### **11 Activities to which Act does not apply**

This Act does not apply to the following:

- (a) an activity carried out in relation to the extraction of minerals on private land for the private and non-commercial use of the owner of the land,
- (b) fossicking,
- (c) any activity where the extraction of minerals is incidental to the activity,  
**Example.** Civil works such as tunnelling to create a road.
- (d) any activity with respect to a railway or railway operations to which the *Rail Safety National Law (NSW)* applies,
- (e) any activity with respect to a public road (within the meaning of the *Roads Act 1993*),

- (f) any activity with respect to electricity infrastructure that is owned by a network operator or retail supplier (within the meaning of the *Electricity Supply Act 1995*).

Clause 11(e) suggests that the operation of Council gravel pits as outlined above is exempt from the operation of the Work Health and Safety (Mines) Act 2013 and consequently the application of the Work Health and Safety (Mines) Regulation (2014) does not apply. This interpretation is clearly not shared by a considerable number of councils across NSW that are making submissions or by a number of inspectors from the Mine Safety Section of NSW Trade and Investment that have issued notices under the provisions of that Act.

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.

Clarification of the application of Clause 11 of the Work Health and Safety (Mines) Act 2013 is clearly a priority.

### **Conclusions**

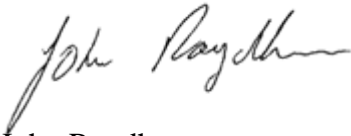
To summarise the points contained in this submission, IPWEA (NSW) through its Roads & Transport Directorate draws attention to the following issues:

1. Data from the 152 councils in NSW suggests that in excess of 100 operate gravel pits for some period of the year. The number of pits operated by these councils varies from four to a maximum of 20 suggesting that the number of local gravel pits in NSW is of the order of 800 separate sites.
2. Councils are adequately covered by the Work Health and Safety Act for the operation of their gravel pits and application of the Work Health and Safety (Mines) Regulation (2014) is an unnecessary additional burden.
3. Clause 92 of the draft Regulation requires that emergency plans be tested every 12 months. In the case of council gravel pits the scale of operations cannot justify the allocation of resources necessary to test emergency management plans for each of the 800 or so gravel pits across NSW.
4. Clause 11(e) of the Work Health and Safety (Mines) Act 2013 provides for activities with respect to Public Roads to be exempt. If this is the intention then, clarification of the application of Clause 11 of the Work Health and Safety (Mines) Act 2013 needs to be provided to Councils and inspectors from the Mine Safety Section of NSW Trade and Investment as a priority.
5. Should the interpretation of the legislation outlined in Point 4. above be incorrect, the Roads & Transport Directorate requests that discussions be held with a view to

developing parameters to define the scope of Council gravel pits that could be exempted from the requirements of the Act and Regulations.

IPWEA (NSW) and the Roads & Transport Directorate appreciate this opportunity to respond to the Draft Work Health and Safety (Mines) Regulation 2014 Discussion Paper, and would value any opportunity to provide additional details arising from the above submission.

For further information in relation to the submission please do not hesitate to contact the undersigned on:



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