



# LAND AND BIODIVERSITY AT A TIME OF CLIMATE CHANGE - GREEN PAPER

## SUBMISSION

Minerals Council of Australia, Victorian Division

---

30 JUNE 2008

Minerals Council of Australia  
Level 8, 10-16 Queen Street  
Melbourne, Vic, 3000

Telephone (03) 8614 1851  
Facsimile (03) 9629 8603  
Internet [www.minerals.org.au](http://www.minerals.org.au)

ACN 008 455 141

## TABLE OF CONTENTS

---

<b>1. THIS SUBMISSION .....</b>	<b>3</b>
<b>2. THE MINERALS COUNCIL OF AUSTRALIA.....</b>	<b>3</b>
2.1 Introduction to the industry .....	3
2.2 Commitment to Sustainable Development .....	4
2.3 Responding to Climate Change .....	5
<b>3. CRITICAL ISSUES FOR THE INDUSTRY'S FUTURE .....</b>	<b>6</b>
3.1 Water Quantity and Quality.....	6
3.2 Access to and use of land.....	6
3.3 Public land management .....	8
3.4 Integrated Strategic Planning and Project approvals .....	9
3.5 Environmental Offsets.....	10
<b>4. SPECIFIC COMMENTS ON THE GREEN PAPER .....</b>	<b>11</b>
4.1 SECTION 1 .....	11
4.1.1 <i>The Case for Change</i> .....	11
4.1.2 <i>Responsibilities of Government</i> .....	12
4.2 SECTION 2 .....	13
4.2.1 <i>Vision</i> .....	13
4.2.2 <i>Agenda</i> .....	13
s.26 <i>Grant of licence (MRSDA 1990)</i> .....	13
4.2.3 <i>Tools</i> .....	15
4.3 SECTION 3 .....	16
4.3.1 <i>Partnerships</i> .....	16
4.3.2 <i>Delivering Outcomes</i> .....	16
<b>5. CONCLUSIONS .....</b>	<b>17</b>

## 1. THIS SUBMISSION

---

This submission provides some background to the minerals industry and outlines the high-level policy principles under which the industry operates. It then identifies some critical issues facing both the Victorian Government and the minerals industry with regards land-use management, water and project approvals and makes recommendations for consideration by the Victorian Government. The final section of the submission addresses specific themes raised in the Green Paper and sets out principles in a triple bottom line context that the MCA believes must be considered in developing policy positions for inclusion in the White Paper to be developed following consultation on this Green Paper. This submission does not seek to assess all items in the Scope of the Green Paper, particularly existing land and biodiversity quality, but focuses on the role of Government and partners in developing policy to respond to the decline of Victoria's land and aquatic systems and the biodiversity that supports them.

The MCA is concerned that the Victorian Government currently has a number of reviews underway or recently completed that have been developed in apparent isolation from each other. Our concern is further heightened by the apparent lack of public Government support for this process. A White Paper process is a once in a generation opportunity to set policies and strategies for the next 20-50 years. It is unfathomable that this process has received such little senior Government attention.

There is substantial overlap and potential for conflict between this Process and other initiatives, such as the Future Farming initiative, the review of the Planning and Environment Act, Regional Catchment Strategies, the newly branded Natural Heritage Trust with implications for bilateral programs, water market reform, and the review of the EPBC Act (C'with) to name just a few.

The MCA's experience is that when government departments and agencies undertake a review there is often little consideration of other reviews underway. A White Paper process, especially given the broad and all encompassing topic of Land and Biodiversity at a time of Climate Change must take precedence over any sector specific initiatives or else there is danger that a sector or legislation is encouraged to develop in a way that is ultimately incompatible with the outcomes of this Process.

The MCA strongly encourages the Victorian Government to take stock of all reviews and initiatives currently underway and that are related to the terms of reference of this Green/White Paper process to ensure this Process can deliver consistent and whole of government outcomes.

The MCA actively participates as a member of the Stakeholder Reference Group established under this White Paper process and looks forward to continuing this role throughout the White Paper process. We are pleased to make the following submission on the Land and Biodiversity at a time of Climate Change - Green Paper.

## 2. THE MINERALS COUNCIL OF AUSTRALIA

---

### 2.1 Introduction to the industry

The Minerals Council of Australia (MCA) is the peak industry association that represents the corporate minerals companies in Australia. The members of the MCA are engaged in mineral processing, mining, exploration, or the provision of services to the industry and account for more than 85 percent of mineral industry output in Australia. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations.

The Victorian Division of the MCA represents the interests of members operating, exploring and providing services to the industry in Victoria, however policy positions of the Victorian industry are one and the same as the entire Australian minerals industry. The MCA operates on a platform of national consistency and therefore considers that minerals operations in all jurisdiction should be subject to the same policies and legislative frameworks across the country.

The minerals sector accounts, directly and indirectly, for around 8.0 per cent of the Australian economy. In 2006-07, the sector generated exports of \$91 billion, representing approximately 50 per cent of Australia's total merchandise exports and over 40 per cent of total exports of goods and services.

Victoria's minerals and petroleum sector accounts for about 2% of the Gross State Product (GSP)<sup>1</sup> and is increasing. Investment in the Victorian minerals sector is at a record high and increasing. The investments are in the brown coal, gold, base metals and mineral sands sectors. In addition, private industry expenditure on exploration is at a record high of \$87.8 million for the 12 months to March 2008.

The Victorian Government initiative *'Moving Forward: Making Provincial Victoria the Best Place to Live, Work and Invest'*<sup>2</sup> acknowledges the current surge in the resources sector and identifies the opportunities and possible impacts on regional communities. These include:

- diversification of regional community industry bases leading to wider employment options and
- high demands on existing infrastructure, construction capacity and labour supply.

Victoria is currently enjoying a modern day mining boom. Over \$A2 billion worth of new projects came on stream in 2007 while the state's resources industry turned over more than \$A4 billion. Corresponding strong exploration activity is also a feature of the industry in Victoria.

The Victorian minerals industry is often separated into the coal sector and the metalliferous sector. The metalliferous sector is dominated by four operating gold mines and a mineral sands mining operation. The major mines are Bendigo Gold Mine, Ballarat Gold Mine, Fosterville Gold Mine, Stawell Gold Mine and Douglas Mineral Sands. There are additional exploration and smaller scale gold operations, including at Walhalla, Costerfield, Donald, Benambra, Maldon and Alexandra.

The coal sector consists of the three Latrobe Valley coal mines (Loy Yang, Hazelwood and Yallourn), which collectively constitute the largest brown coal mining operation in the southern hemisphere, and second only to the large brown coal mines in Germany. The three Victorian mines power 5 coal-fired power stations. In addition, the Anglesea mine to the west of Melbourne supplies brown coal to Alcoa's Anglesea Power Station.

As with elsewhere, further investment in the minerals industry in Victoria, is influenced by the identification of viable mineral resources, access to the land occupied by those mineral resources, financial resources, the support of the community, and the availability of a skilled workforce. Consequently, exclusion from particular land types can have a significant impact on the minerals industry and surrounding communities.

## 2.2 Commitment to Sustainable Development

The minerals industry's commitment to continuous improvement in minimising and remediating its environmental impact is a fundamental plank of the industry's broader commitment to sustainable development. This is demonstrated by the MCA's requirement that member companies are signatories to *Enduring Value – the Australian Minerals Industry's Framework for Sustainable Development*<sup>3</sup>. In addition, the MCA advocates the shared responsibility of all participants in the value chain or life cycle of a product in mitigating any negative environmental and/or social impacts and in optimising societal values, consistent with the MCA's position on sustainable development.

The philosophy of *Enduring Value* is consistent with the Council of Australian Government's (COAG) regulatory principles. Signature to *Enduring Value* is a condition of membership to the Minerals Council of Australia. However all exploration, mining and minerals processing companies and contractors are eligible to become signatories to *Enduring Value*, provided that they commit to meeting the *Enduring Value* obligations.

*Enduring Value* provides a program of continuous improvement and encourages companies to achieve sustainable development performance outcomes beyond the minimum standard set by regulation. The overall strategic objective is for continuous improvement in financial, social and environmental performance in exploration and mining projects that is attuned to community expectations and, hopefully in the future, recognised and reflected in statutory approval processes that are nationally consistent and efficient.

The Australian minerals industry is focused beyond immediate impact on local communities to contributing to

---

<sup>1</sup> ABS Catalogue No. 5220.0, Australian National Accounts, 2005/06.

<sup>2</sup> Moving Forward: Making Provincial Victoria the Best Place to Live, Work and Invest, Victorian Government Regional Development Victoria, November 2005

<sup>3</sup> Enduring Value, The Australian Minerals Industry Framework for Sustainable Development, Minerals Council of Australia, June 2005.

building sustainable regional communities – centered around employment opportunities and local enterprise development.

To this end, the minerals industry recognises:

- that corporate social responsibility is not an adjunct to our business, it is our business - our core function is to convert natural endowment to societal capital, and that can only be achieved sustainably when there are real mutually beneficial considerations of the environment, our host communities, and the rights and interests of Indigenous peoples; and
- that the intergenerational benefits to communities and the nation as a whole of natural resource development should extend beyond the life of mine.

In this, the industry has:

- positioned itself as the largest private sector employer of Indigenous Australians, with 8% of current employees identifying as indigenous – this figure is as high as 20% at some sites and the industry has targets for employment levels comparable to the surrounding community within which it operates; and
- shifted to a new paradigm of community engagement – from a tradition of deciding, announcing and defending to engaging, listening and learning.

While the MCA is not placed to discuss the quality of Victoria's land and aquatic ecosystems and the biodiversity that supports them, the industry does employ the largest number of environmental specialists of any business sector and these persons have detailed knowledge of land use practices and biodiversity in the regions within which mining operations are located.

### **2.3 Responding to Climate Change**

Climate change is one of the most compelling challenges confronting the global community. An effective response must not only be genuinely global in scale, but also sustainable over the long term; and Australia must be an integral part of that effort. The Australian minerals industry also must be part of the global solution given that fossil fuels will continue to be the world's primary energy source for many years to come. The scale of the challenge for all Australians should not be underestimated. Our geography, resource endowment and robust economic and population growth outlook will mean that the abatement of greenhouse gas emissions will be more expensive for Australia than for most other developed nations.

The minerals sector's response to climate change is founded in three key propositions:

- First, the minerals sector accepts that the precautionary principle underpins the need for action now to seek to prevent dangerous climate change.
- Second, managing climate change will require a global solution that is environmentally effective, economically efficient and socially acceptable, and will comprise a suite of complementary measures capable of being sustained over the long-term.
- Third, the Australian minerals industry is, and must be, part of the global solution given that fossil fuels will continue to be the world's primary energy source.

The minerals industry has continued to improve and transition from managing the present environmental impact through rehabilitation and reclamation to environmental stewardship addressing longer-term considerations for maintenance of sustainable ecosystems beyond life of mine.

Key aspects of this improved performance include that the industry has:

- been recognised in the 2006 Commonwealth State of the Environment Report as often exceeding the standard set by public sector groups when addressing environmental issues;
- improved water management and use, such that the minerals sector is responsible for only 2.4 per cent of Australia's net water consumption with the value added per mega litre (ML) of water amongst the highest of all industry sectors. For example, coal mining generates \$86,000 for every ML used, compared with \$162 per ML for rice production;
- shifted from a focus on the direct impacts of its activities to a 'materials stewardship' approach in taking a shared responsibility for mineral products along the supply chain;
- demonstrated a commitment to enhancing the environment and biodiversity, not just in the immediate proximity of its operations, but through offset programs elsewhere, in enhancing regional biodiversity beyond the mining lease;
- moved from a compliance mentality in emissions management for community and environmental health to

- engaging in continuous improvement and operating in a manner attuned to community expectations of risk management; and
- moved beyond the narrower considerations of financial performance in attracting capital and insurance protection towards managing a greater range of contingent liabilities [e.g. workforce safety and health, emissions vis a vis community health and environmental impact, contaminated sites, radiation (radio-active materials), groundwater contamination, etc] in financial spreadsheets.

### **3. CRITICAL ISSUES FOR THE INDUSTRY'S FUTURE**

---

A number of issues are critical to continued exploration and development of minerals.

- Access to land; resource utilisation on public land should recognise that mineral exploration and mining are legitimate short-term land uses that whilst small at present have the potential to grow. Mineral exploration and mining comfortably sits with a long-term perspective to multiple and sequential land use management regimes.
- Water is clearly a key issue; our position is that the National Water Initiative should be implemented immediately, which includes environmental flows and effective water trading.
- Public land management; The resources available for the management of Victoria's public land recognised as a critical issue, we believe that the State does not adequately manage the public land it currently has responsibility for and do not accept the premise that changing land categories has no impact on the public resources available.
- Strategic land-use planning for existing and future generations and efficient and effective project approval processes.
- The use of environmental offsets in achieving positive outcomes.

These issues are discussed in detail.

#### **3.1 Access to and use of land**

The entire Australian minerals industry disturbs less than 0.01% of Australia's land mass and in 2006-07 the industry spent about \$184 million on the rehabilitation of disturbed lands.

An ongoing constraint to the minerals sector's expansion is the shrinking national minerals inventory. While exploration spending has grown in recent years, Australia continues to fall behind other nations in identifying new base metal and gold resources. Access to land to explore for minerals is critical. Geoscience Victoria has mapped a large part of Victoria with modern geological appraisals, and in some areas this mapping largely denotes where minerals might be found. Exploration companies use this information to then explore these areas and sink drill holes to determine the exact location, grade, quantity and quality of any mineral resource. Unfortunately, exploration is a risky business and very few projects locate a resource significant enough to establish a mining operation. Most exploration is undertaken over a short period with low impact techniques. It is not until a target resource body is identified that drilling commences.

Exploration for minerals using state of the art techniques can be undertaken in ecologically sensitive areas with minimal impact. The impact of any subsequent minerals development would depend on the mining and rehabilitation technologies to be employed and the environmental values in the area. In most cases it should be possible to protect significant environmental values, yet allow development to proceed. Therefore policy and regulatory arrangements should not embody the presumption of incompatibility.

Mineral deposits found through exploration are important to the State, as the minerals are the property of the Crown. Ownership of the minerals transfer to the mining company upon extraction and royalties are paid and redistributed by government's to provide for public services. Therefore, an absolute restriction on access to land is not in the public interest. Increases in National Park and other exempt Crown land is counter to a modern land management regime that addresses the three pillars of sustainable development by effectively assessing the risks of all possible land uses on a case by case manner. The general presumption that conservation objectives and modern mineral resource development are incompatible is completely unacceptable as is not borne out by evidence.

The MCA recognises that land can be used for different purposes at the same time (multiple) and for different purposes after a land use has finished (sequential). Multiple and sequential land use is fundamental to achieving simultaneously the State's economic and conservation objectives and consistent with the principles of sustainable development as operationalised for the Australian minerals industry in *Enduring Value*.

Access to land and its responsible management is critical to the mining industry. Whilst the total area of land disturbed is relatively small, the nature of the mining activities can result in significant longterm impacts. Accordingly, Australian minerals companies have adopted the following vision to deliver sustainable land use outcomes:

*Australian mining companies will be recognised as responsible stewards of the land by delivering long-term balanced economic, social and environmental outcomes<sup>4</sup>.*

The MCA advocates the application of the following principles to achieve this vision:

#### Land use planning and access

- Land use planning should facilitate compatible land uses to maximise economic, social, cultural and conservation values for the benefit of current and future generations
- Land use planning should be holistic with integrated consideration of cultural, environmental and economic values
- Mining, conservation and other land uses can be complimentary as sequential or neighbouring activities
- The rights and knowledge of traditional owners and community stakeholders should be considered in integrated land use planning processes
- Planning decisions that impact access and use arrangements should be ethical and transparent, and consider the social, environmental and cultural implications of developing or sterilising mineral resources

#### Land management

- Mining activities should minimise disturbance, and provide for ongoing progressive rehabilitation, directed at achieving an agreed final land use
- Non-operational land should be managed responsibly considering adjacent and future land uses

#### Future landuse

- Mining planning activities will pro-actively engage stakeholders on an ongoing basis and consider changing circumstances, including stakeholder expectations and requirements
- Closure standards should be developed to reflect stakeholder expectations for the post-closure land use

MCA advocates that there should be no new National or State Parks in Victoria that exclude exploration or mining.

## **3.2 Water Quantity and Quality**

The MCA supports the recommendation that adequate resources be directed at further understanding of the States ecosystems, wetlands, hydrology, coastal areas and the Murray River as a system. Detailed environmental water accounting systems should be developed throughout the State. Furthermore, the National Water Initiative (NWI) should be implemented immediately.

There has been significant underinvestment in new water capacity. Although the minerals sector accounts for only 2.4 per cent of national water consumption, access to a reliable water supply is an essential input to all mining operations. Reflecting the criticality of this resource, the minerals sector uses water carefully, often recycling water up to 7 times, with its value added per mega litre (ML) of water amongst the highest of all industry sectors. According to official data, coal mining generates \$86,000 for every ML used, compared with \$162 per ML for rice production and \$3,870 per ML for vegetable production<sup>5</sup>.

On current projections there will be a significant gap between demand and supply of water over the near and medium term. Both current and future minerals projects are potentially at risk as a result.

The Australian minerals industry has a strong reputation as both an efficient and innovative manager of water, and is a strong supporter of national water reform processes to maintain Australia's economic prosperity and environmental quality. Water availability and security is a key issue for the minerals industry, and climate change

---

<sup>4</sup> MCA land use policy

<sup>5</sup> ACIL Tasman, Water Reform and Industry, Report prepared for the Department of Industry, Tourism and Resources, April 2007

brings further elements of risk that can be partly mitigated through the implementation of the NWI.

An expanding minerals industry needs a stable, predictable regulatory environment so that it can make long-range development plans with confidence. The establishment of well-structured water markets are critical if the future requirements of the expanding minerals sector are to be met. It is therefore essential that adequate resourcing be provided to fully implement the NWI. The National Water Commission should continue to drive water reform to ensure allocation of water to users and the environment based on sound science allowing for security of supply and trading to be established in an equitable market whilst pricing for the true cost of water and differential quality.

The minerals industry welcomes the recognition by governments in the NWI that the minerals industry's use of water involves unique factors for each project, which can include (but is not limited to) isolation, relatively short project duration, water quality issues, as well as the obligation to remediate or offset impacts.

While water remains an essential input for minerals processing, water also represents a community resource that should not be completely 'owned' by any one user, but rather a resource that can fulfill a variety of roles as it moves through its value cycle.

Water reform has been hampered by the difficult process of establishing the nature and extent of existing property rights, establishing the legal and market processes for trading those rights, and of ensuring demands for non-commercial uses (such as ensuring ecological flows and cultural entitlements) are accounted for.

The MCA further advocates for environmental flows being given priority to ensure ecosystem integrity is maintained and that these flows are allocated outside of a market arrangement. Water entitlements for cultural heritage values must be recognised as distinct and separate to environmental flows, and where appropriate, can be traded in the market. The price of water should be set irrespective of its end-use, and should also include an externality component to promote resource stewardship. Importantly, pricing arrangements should also reflect water source and quality.

### **3.3 Public land management**

The MCA has regularly stated that the Victorian Government has not adequately managed its Crown land. Land management is routinely undertaken at the regional and district level and not adequately resourced. For too long, the regions have been left to manage as best they can with the limited resources they have. As a result there is inconsistent management of Crown land restricted to small pockets of land, often without regard for adjacent lands and delivering widely varying quality outcomes. Regional offices have in effect become independent from the Crown land managing agency. The MCA appreciates that the Crown land manager has been chronically under resourced; it is imperative that this is immediately rectified to ensure all of Victorian Crown land is managed effectively and consistent with best practice land management principles that are resourced by the Government and delivered locally.

The MCA encourages adequate government resources for ongoing land management with a focus on current and future public land management needs across the State. In particular, the improved knowledge of public landscapes and the public resources that lay within. From this, the State may be able to adequately manage the public land it currently has responsibility for as well as a better understanding and acceptance that changing land categories can and do have a significant impact on the public resources available for utilisation for the benefit of the State.

The importance of assistance for local communities or individuals (including private enterprises) to improve the management of land and biodiversity can not be stressed more highly. The type and amount of assistance needs to be assessed in the context of both short, medium and long term consequences, including the restriction of access to land and the ability to appropriately utilize the resources of the State in a sustainable way, the creation of employment opportunities and regional development.

Placing land into reserves and parks effectively removes the private resources available for land management and these must be accounted for. Therefore, great care is required if more land is to be placed into reserves and parks. The minerals industry's continues to have concerns regarding reduced access to Crown land for exploration and mining, the growth in restricted and exempt Crown land, options for Multiple and Sequential land use management regimes, and concerns for the rights of existing licence holders.

Further to the recent work of Victorian Environment Assessment Council (VEAC) in proposing a range of mechanisms to increase the capacity of Indigenous Traditional Owners to be involved in public land-use planning and management, the MCA applauds this consideration in the Green Paper. We agree that an increased involvement benefits both land managers and Indigenous people and will lead to incorporation of traditional Indigenous cultural values and practices. We are encouraged that Victoria is to take steps to enable direct participation in land management by Indigenous communities, including co-management provisions for some specific parks and reserves, and stress the need for adequate resources, administrative support, training and social infrastructure to be made available to enable this.

### 3.4 Integrated Strategic Planning and Project approvals

All minerals are the property of the Crown until extracted under the terms of a mining licence. At the same time the land over these minerals can be managed under a range of land management regimes, including freehold and various forms of Crown land. Further, the geology of a mineral deposit dictates where the minerals exist and these cannot be relocated or shifted to more convenient locations to accommodate conflicting land uses.

When mining companies are granted a mining licence (as opposed to an Exploration Licence) to access minerals there is invariably a conflict between competing land uses, as access to land is required to access the minerals below. This is the case when the minerals are large tabular deposits near to the surface where open pit mining methods are applicable as well as deep deposits located close to and even under regional centres.

Generally exploration and mining can be seen as a short-term land use as following rehabilitation of the mine site the land can be returned to other productive or community uses. In sharp contrast, land development for housing estates can generally be relocated to accommodate other conflicting land uses. Once land is developed for residential housing it is socially very difficult for any mining company, or politically for any government for that matter, to relocate the population to enable access to minerals that may exist below. Whilst this has occurred in the past on a rare occasion, it is unlikely to occur in the future. In any case, housing developments tend to be long-term land uses.

It is critical that in developing long-term strategies for the State, the government must recognise the long-term economic benefits of 'protecting' mineral deposits for future development. Particularly, where mineral deposits are of State significance and their long-term development likely to impact on the economic and societal well being of all Victorians there is a broader community interest to be considered.

Having said that, the minerals industry is very conscious of the need to reach a balance in the economic, environmental and societal impacts when considering new projects. However, as custodians of the mineral resources it falls on of the State Government to 'protect' the State's long-term interests and avoid conflicting land uses before they are permitted to develop.

The MCA is however increasingly concerned with the inadequate resourcing and the often duplication of decision making within departments, agencies and municipalities with some regulatory responsibility for the minerals sector. Furthermore, amendments to policy and legislation are invariably not matched by additional funding for the relevant departments to implement the changes.

In particular, the MCA notes

- a lack of clarity in the roles, responsibilities and commitments of government agencies
  - contributing to delays
  - absence of a "whole of government" approach to assessment and approval of project applications
  - duplication of reporting and auditing requirements in legislation, and by government agencies
  - separation of environmental and safety responsibilities within governments has resulted in delays as multiple agencies need to assess mine management plans;
  - lack of deferral authority in Victoria of the Commonwealth's powers under the EPBC Act, resulting in duplication
  - inconsistent regulatory practice resulting in inefficient and ineffective determinations
- under resourcing of key decision making agencies
  - contributing to delays
  - shortage of available professionals with planning skills,
  - low staff numbers and levels of competence (senior and experienced decision makers within key

- agencies are being replaced by relatively junior and inexperienced staff)
- difficulty in recruiting and retaining key personnel due to salary differential with private sector
- inability to keep up with applications arising from the unprecedented growth in the resources sector
- environmental assessment
  - agencies reacting cautiously due to increased community concern for the environment
  - lack of land-use planning that incorporates environmental considerations
  - water discharge – timeframe for securing licences
  - native vegetation regulation
- Increasing volume and complexity of legislation and cost of compliance
  - lack of policies and guidelines to assist industry meet governments' expectations
  - lack of predictability for industry in the approval process within and between jurisdictions
  - lack of implementation and monitoring strategies, to ensure agreed reforms are applied as intended;

Invariably the capability of departments to be able to fully appreciate and address competing land use issues that arise and make planning decisions is limited and this results in significant delays in decision making and subsequent approvals process. The Victorian Government should review in-house capability and funding arrangements for those agencies to ensure that under resourcing does not continue to be a capacity constraint to State growth.

COAG has identified development approvals as one of the 'hot spots' for regulatory reform. The MCA recommends an urgent and sustained commitment (and resources where necessary) to a comprehensive regulatory reform process under the COAG umbrella, particularly focused on improving red tape reduction and duplication associated with project approval processes.

A glaring example of the potential duplication is the approvals processes relevant to the Environment Protection and Biodiversity Conservation Act 1999. While bilateral agreements between Federal and State governments can avoid this duplication, only a handful of these agreements have been developed for the assessment function. The MCA's concerns have been reinforced by the Productivity Commission, which said recently that: "Governments should give high priority to completing all assessment and approvals bilateral agreements." Victoria is one of the few states that does not have an assessment bilateral arrangement with the Commonwealth. No states have an approval bilateral which is an indictment on all parties.

### 3.5 Environmental Offsets

At the Ministerial Council Minerals and Petroleum Resources' Standing Committee of Officials (SCO) meeting of 17 June 2005, environmental offsets were recognised as an emerging mechanism in resolving impasses between increasing environmental requirements which conflict with the ongoing winning of mineral, petroleum and extractive resources. At the SCO meeting of 28 July 2006 it was agreed that a working group of SCO member representatives be established for a short term to address environmental offsets and develop principles or guidance for the application of environmental offsets in mineral and petroleum developments. In early 2007, the MCA drafted a position paper on environmental offsetting. The position has not been finalized pending the work of the Working Party under the MCMPR SCO committee, which is developing a draft set of principles that it sees as a basis for consideration of environmental offsets in the resources sector. The draft of the paper identifies nineteen principles for consideration in design, implementation and enforcement. The paper provides a synopsis of current legislative frameworks in this area, primarily from Australian jurisdictions but also with international references.

The set of MCMPR principles for environmental offsets proposed are:

#### Offset Context

1. Biodiversity and social issues should be integrated into operational planning and decision-making processes.
2. Offsets must fit in within the context of sustainable development and be consistent with local, regional and national plans.

#### Offset requirements

3. Offsets should only be considered after all other reasonable attempts to avoid and mitigate adverse impacts have been exhausted.
4. Offsets should never be used to compensate for poor environmental management practices or performance, or justify access to iconic or critical asset areas.

5. Environmental offsets must meet all statutory requirements including planning and other regulatory approvals.
6. Where a project operates under multiple jurisdictions there needs to be good co-ordination to avoid duplication of offset package development.

#### Offset design

7. Offsets should go beyond the 'no net loss' paradigm and have a positive net biodiversity/community gain as much as possible.
8. Environmental offsets must be clearly defined, transparent, measurable and auditable.
9. Environmental offsets should ideally be "like for like or better".
10. Offsets should be located within the same area as that impacted wherever possible and practical.
11. Offsets should be based on outcomes not expenditure.
12. Design and evaluation of offsets should be scientifically based.
13. The compensatory area(s) should be of equivalent value or better than the original habitat impacted by the project.
14. Offsets should be cost effective and in proportion to the significance of the adverse environmental impact being addressed.

#### Community benefits and consultation

15. The determination of acceptable offsets requires consultation with stakeholders.
16. Benefits from offsets should be public benefits.

#### Offset implementation

17. Offsets should result in sustainable or long-term environmental or social benefit.
18. There is need for appropriate stewardship in implementing and monitoring offsets that can accommodate adaptive management.

#### Offset enforceability

19. They should be enforceable through the development of consent conditions, licence conditions, contract or other form of covenant.

The MCA supports the work of the MCMPR and hopes that in the longer term the principles identified, would be considered with other sector considerations as policy positions under the EPBC Act and State environmental agencies. Such a consolidated position across sectors and jurisdictions would greatly enhance the uniformity of application of offsets and consistency of approach by regulators and proponents.

## **4. SPECIFIC COMMENTS ON THE GREEN PAPER**

---

The MCA wishes to comment only on specific sections of the Green paper, and these are detailed below and under the same Section and sub-headings as in the Paper.

### **4.1 SECTION 1**

#### *4.1.1 The Case for Change*

The MCA fully supports the case for change detailed in Chapter 1 of this section and well understands the importance of the health of our land and aquatic ecosystems. Unfortunately, both public and private management of land and resources has been inconsistent over time and decisions often being made at the regional level without regard for the impacts on surrounding regions and the State.

The MCA believes that there has been both a policy and market failure in managing the land. Both go hand in hand, but it is essential that robust policy is developed to set up a framework for market-based instruments. We agree that it is important to recognise that the issues we face today are a culmination of the policies and practices of the past and that some of these policies and practices have resulted in both positive and negative outcomes. We are encouraged by the Green paper's acknowledgement that Victoria's economy has traditionally been founded on agriculture, mining and forestry and that these industries provide significant voluntary contributions to improving land and biodiversity. The MCA does however, question the extent to which private investment, whether through environmental contributions or managed investment schemes will increasingly become a major driver for land use change. This will be addressed later in the submission.

The minerals sector has contributed greatly to improved land health and biodiversity outcomes in recent years. As discussed in Section 2, the MCA members operate on a three-pillar sustainable development platform of social, environment and economic management that underpins their social licence to operate – *Enduring Value*. Furthermore, the MCA was influential in developing legislation regulating the Victorian minerals industry – the Mineral Resources (Sustainable Development) Act 1990 – to be the first and only Australian legislation that enshrines the principles of sustainable development in law. The MCA believes that this legislative outcome will benefit all and assist smaller operators and those that have not yet reached maturity in their understanding of sustainable development by providing with a regulatory framework under which they can operate in harmony with the principles of sustainable development.

The MCA believes that any user of land, whether public or private has a duty of care to ensure that land is used and managed in a harmony with the principles of sustainable development, and if the land is being used on a short or medium timeframe, that it be rehabilitated to a state equivalent or better than that which it was first disturbed. Consequently, MCA would support the inclusion of sustainable development provisions into all legislation related to land use.

**Principles of sustainable development (MRSDA 1990)**

- (1) It is the intention of Parliament that in the administration of this Act regard should be given to the principles of sustainable development.
- (2) For the purposes of this Act, the principles of sustainable development are—
  - (a) community wellbeing and welfare should be enhanced by following a path of economic development that safeguards the welfare of future generations;
  - (b) there should be equity within and between generations;
  - (c) biological diversity should be protected and ecological integrity maintained;
  - (d) there should be recognition of the need to develop a strong, growing, diversified and internationally competitive economy that can enhance the capacity for environment protection;
  - (e) measures to be adopted should be cost effective and flexible, not disproportionate to the issues being addressed, including improved valuation, pricing and incentive mechanisms;
  - (f) both long and short term economic, environmental, social and equity considerations should be effectively integrated into decision-making;
  - (g) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation and decision-making should be guided by -
    - (i) a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable; and
    - (ii) an assessment of the risk-weighted consequences of various options;
  - (h) development should make a positive contribution to regional development and respect the aspirations of the community and of Indigenous peoples;
  - (i) decisions and actions should provide for community involvement in issues that affect them.

The MCA agrees with the position of the Green Paper that “Government’s main objective for land and biodiversity management is to maximise the value of the services the land produces to ensure its long term health.”

The MCA, however, is very disappointed that the Green Paper fails to acknowledge the role of Government in managing land and biodiversity. The paper solely focuses on partnerships with external stakeholders, without touching on the government’s responsibility as Crown land manager. The Paper assumes that Government is simply there to legislate and fails to acknowledge the critical role it must take in not only setting policy, but also practicing what it preaches. This is a significant short-coming of the Green paper and the MCA highly recommends that the Victorian Government review its existing policies and programs related to land use and biodiversity, including an assessment of where there are conflicting government policies; inconsistent application; duplication of objectives between Government agencies and perverse outcomes.

Partnerships are critical and the minerals sector endorses the support for a stronger partnership between government, industry and researchers to develop policy to respond to land and biodiversity declines. As such a task is beyond the resources of individual sectors of the economy, so a joint effort is needed to undertake research and develop sustainable solutions. However this does not absolve the Government of its responsibilities.

The paper places a disproportionate emphasis on market failure on private land and how Government will correct this. Market failure can not be the reason why Government has failed in its duty of care in managing public land – one-third of the State. The MCA recognises that the Crown land managers have been chronically under funded and continually asked to implement additional policies with no commensurate increase in resources, there is however no excuse for the Green Paper failing to address one of the principle roles of Government.

## 4.2 SECTION 2

### 4.2.1 *Vision*

The MCA supports the vision for Victoria's land and biodiversity and the four key outcomes described. It is a balanced and realistic vision and one that can result in real achievements.

The Green Paper comprehensively covers all of the possible approaches to land and biodiversity management. This is welcome, as a broad range of tools that are complimentary and flexible, are essential to ensure least-cost practical outcomes.

The Guiding Principles to guide future management and investment decision are comprehensive. The Ecological, Investment and Natural Resource Management Principles are well founded, practical and consistent with those across Australia. As outlined in Section 2, the Australian minerals industry has very similar principles.

### 4.2.2 *Agenda*

The agenda for land and biodiversity management is all encompassing except for one critical element - what the Victorian Government plans to do to deliver on its responsibilities. The focus is once again outward looking with no self-reflection.

#### 4.2.2.1 Working with the private sector to encourage investment in our natural assets

The Green Paper places too heavy a reliance on the private sector providing all of the solutions to manage land and biodiversity. The extent to which private investment, whether through environmental contributions or managed investment schemes will increasingly become a major driver for land use change is uncertain. Philanthropy by its nature is ad hoc, intermittent and often provided as a once off contribution. The MCA cautions the Government's over reliance on this. The Paper presumes that private sector investment in public land management is the key. It is silent on how this could possibly be a sensible business decision when the Crown owns the land. If this could be achieved in a way that enabled a private investor to receive an environmental offset from a previous or future land use, it may be an attractive proposition. The MCA seeks far more detail on this type of incentive.

The Minerals industry is more than prepared to sustainably manage the land under its custodianship. It does this through regulation requirements and as part of its social licence to operate. Rehabilitation plans (and bonds) are a statutory requirement for all mineral operations. This bond is held by the government against the operator to ensure that the site will be rehabilitated after the minerals operation. This is a significant investment in our natural assets as the mineral operation is typically rehabilitated – at the mineral company's cost – to a state that is more productive as either parkland for use by the community or revegetated and handed to the Crown for ecological connectivity.

#### **s.26 Grant of licence (MRSDA 1990)**

- (1) The Minister may grant a licence over an area that is smaller than the area in respect of which the application is made.
- (2) The Minister may impose conditions to which a licence is subject, including but not limited to conditions about—
  - (a) rehabilitation of the land;
  - (b) protection of the environment;
  - (c) protection of groundwater;
  - (d) providing and implementing environmental offsets on the land or any other land;

- |   |
|---|
| (e) expenditure;  |
| (f) reporting the discovery of minerals;  |
| (g) entering into a rehabilitation bond;  |
| (h) payment of fees;  |
| (ha) payment of an environmental levy;  |
| (i) payment of royalties, other than royalties in respect of lignite;                                       |
| (j) access to and use of the land by the holder of another licence that is limited to a particular stratum; |
| (k) protection of community facilities.   |

While voluntary actions are important, and philanthropy has its place, the Government must provide a policy and regulatory framework to manage land and biodiversity. The MCA advocates that a minimum duty of care based on sustainable development principles be enshrined in regulation for specific land users, similar to that which the minerals industry operates under (as in the table above).

Government must also support innovation and enable the establishment of market-based instruments (MBIs). The MBIs recently established have not had a significant impact on land and biodiversity outcomes. While these MBIs are in their infancy, uncertainty around their application by both proponents and by Government Agencies has led to a reluctance to use them. It is imperative that those Government agencies administering market-based tools have a clear understanding of how the market works and how the MBIs may be used across various sectors. There is no point developing an MBI when its application is not understood.

#### 4.2.2.2 Building Ecological connectivity

The MCA supports the need to improve the protection of specific tracts of land, including the need for continuous land connections between habitats, while balancing the social, environmental and economic needs of the region, including short-term and low impact alternate land uses.

The minerals industry is excluded from a suite of land types under the MRSDA 1990, in particular land that is a reference area under the Reference Areas Act 1978, land that is a national park, wilderness park or State park under the National Parks Act 1975. In Victoria, mineral exploration and mining is allowable in State forests.

In Victoria 32% of the State is Crown land and there are three primary categories of Crown land related to exploration and mining tenements. The current relative size of the categories was:

Exempt Crown land	42% of Crown land
Restricted Crown land	12%
Unrestricted Crown Land	46%

Exempt Crown land includes National Parks, State Parks and Wilderness Areas. Restricted Crown land includes Nature Conservation Reserves, Flora and Fauna Reserves, Regional Parks and the new category of Forest Park.

While minerals companies agree, in principle, that there are some areas where mining development is inconsistent with the protection of ecological, cultural and landscape values, they have reservations over whether such areas always coincide with the boundaries established by specific areas. Increases in National Park and other exempt Crown land is counter to a modern land management regime that addresses the three pillars of sustainable development by effectively assessing the risks of all possible land uses on a case by case manner. The general presumption that conservation objectives and modern mineral resource development are incompatible is completely unacceptable as is not borne out by evidence. However, having said that, the MCA does not seek access to existing Parks, we simply request that there be no new exclusions.

Furthermore, any policy position on building ecological connectivity must be founded on sound science and not simply by joining to areas of ecological value that bare no ecological relationship to each but would simply be connected due to their proximity.

#### 4.2.2.3 Working towards a net gain in native vegetation

The MCA has continually supported the principles of net-gain as described in the Native Vegetation Management Framework (2002) and the objective measurement of this through habitat hectares. The MCA agrees with the three-step approach to native vegetation management of avoid – minimize - offset. In many situations the minerals industry reaches the third step, therefore most of our discussion focuses on offsets.

Almost six years on, the MCA believes the Framework has been limited in its use. Due to conflicting advice from within the Department of Sustainability and Environment (DSE) on how to implement the Framework. The Framework appears to have been administered by officials with little understanding of its intent and decisions have been made at the regional level with no consultation with the Department head office to ensure consistency of application. In addition, there are still limitations on EVC Mapping. Certain regions of Victoria have a number of mosaic communities of flora and when a comparison between EVC mapping and what is actually found on the ground is made there can be very little correlation. Without EVC mapping to a sufficiently sensitive scale, it is difficult to calculate the habitat hectares. We have been advised that much of the state's EVC mapping was not actually mapping but modelling using some aerial photography and satellite imagery. This makes it very subjective and counter to what is intended to be an objective measure. We have also received conflicting advice on determinations and calculations for large old trees. Significant subjectivity exists across the regions and it is imperative that training of government officials removes any inconsistency and personal bias.

The implementation of the Framework needs to be flexible enough to enable revegetation when it might not be possible to re-establish the same EVC as that which was removed prior to mining as possible soil and landscape limitations may arise from the mining activity. The Framework must allow for a land capability assessment and changes to EVC's agreed based on landscape, soil type and hydrology. There needs to be flexibility in the approach to scoring vegetation quality and not just left to prescription.

We note that the implementation of the Framework is being reviewed as part of the White Paper process and the MCA would welcome involvement in further discussion on the objectives of the Framework and the ways to achieve net gain in native vegetation before any new policy position is taken.

#### 4.2.3 Tools

##### 4.2.3.1 Prioritisation and risk assessment

The MCA welcomes the development of an asset-based framework to help establish consistent goals for land and biodiversity management. This framework should further lead to the development of a State-wide priority assets register (as part of a National register) to guide investment. Discussion on which assets are to be prioritised should be held across the community as people place different values on different assets. A thorough debate leading to a greater agreement about how values are defined is required to ensure that trade-offs are well understood.

##### 4.2.3.2 Community expectations and the responsibilities of land managers

It should now be clear that the MCA believes that any land-user has a basic duty of care based on sustainable development principles. It is in the interests of all land users to reach a level of performance above the minimum standard expected by the community and for poor performers to have their shortcomings brought to their attention and encouraged to adopt good practice.

Enshrining minimum expectations in legalisation is likely be the first step to change behaviours. This should be risk-based not prescriptive. The MCA supports the suggested approach in the Green Paper:

- Clarify rights and responsibilities for landholders in natural resource management and biodiversity conservation.
- Base Government investment decisions on private land on an expectation that investment will be for actions taken over and above core requirements of good management practice
- Encourage government agencies to meet community expectations around good management practice.

##### 4.2.3.3 Improving consistency in planning processes

It should also be clear that the MCA believes planning processes and project approval processes in general are severe capacity constraints to investment in the State. The MCA's position is detailed in part 3.2 of this submission.

#### 4.2.3.4 Towards best practice legislation and regulation

The MCA notes the likelihood of a new regulatory framework resulting from this Review. Legislation, regulations and codes should set the minimum standards for any entity seeking to access, use and develop the land and the resources that lie on or beneath it. Individual sectors can contribute to positive outcomes to reverse the decline in land and biodiversity.

A focus of government regulation should be the provision of appropriate support for voluntary and co-regulatory industry initiatives. For this reason, the Australian minerals industry has for many years been a leader – both here and internationally – in developing self and co-regulatory processes.

The MCA strongly advocates for minimum effective regulation that is outcomes based and not prescriptive – specifically, that the development of good regulatory process should be informed by the following principles:

- regulation should only be adopted in cases of demonstrated market failure, and there should generally be
- an assumption that the open and transparent operation of markets will lead to efficient outcomes regulatory approaches should not be used unless a clear case for action exists, including an evaluation of why existing measures are not sufficient to deal with the issue;
- regulation should only be adopted after a range of policy options (including self-regulatory and co-regulatory approaches) have been assessed and found wanting;
- the regulation represents the greatest net benefit to the community;
- the regulation developed is the most efficient means of achieving the desired outcome at least cost to industry;
- effective guidance is provided for both regulators and stakeholders to ensure that the regulations are correctly implemented and monitored;
- mechanisms such as sunset clauses or periodic reviews are built into the legislation to ensure that the regulations remain relevant over time; and
- there is effective consultation with stakeholders at key stages of the development and implementation of the regulation.

### 4.3 SECTION 3

#### 4.3.1 Partnerships

This section outlines which partners are critical to managing land and biodiversity – landcare and volunteer organisations, Australian Government, Local Government, Indigenous Communities and Non-government partners. Once again the State Government as a partner is absent.

The MCA's comment on this section is limited to strongly requesting that the Victorian Government acknowledge the role of Government in managing land and biodiversity. The paper solely focuses on partnerships with external stakeholders, without touching on the government's responsibility as Crown land manager. This is a significant short-coming of the Green paper and the MCA highly recommends that the Victorian Government review its existing policies and programs related to land use and biodiversity, including an assessment of where there are conflicting government policies; inconsistent application; duplication of objectives between Government agencies; what has succeeded and failed, and any unintended consequences of policy decisions.

#### 4.3.2 Delivering Outcomes

The MCA agrees that current land management practices will deliver the vision for the management of Victoria's land and biodiversity at a time of climate change. We note the preference for an Integrated Catchment Management model but believe that further discussion is needed on how this might be used as the vehicle to deliver the policy objectives of the Green Paper/White Paper. It is important that any vehicle tasked with delivering the vision is not simply restricted to catchment boundaries. A robust and authoritative whole of

government body would be needed to manage the various catchment authorities to ensure a consistent and transparent approach to managing.

## 5. CONCLUSIONS

---

The MCA believes that substantial policy discussion is still required.

There is significant concern with the rapid increase in ad-hoc policy development that purports to be whole of government policy but clearly is in conflict with existing and related policies.

The MCA strongly encourages the Victorian Government to take stock of all reviews and initiatives currently underway and that are related to the terms of reference of this Green/White Paper process to ensure this Process can deliver consistent and legitimate whole of government outcomes.

The MCA, is very disappointed that the Green Paper fails to acknowledge the role of the Victorian Government in managing land and biodiversity.

The MCA encourages adequate government resources for ongoing land management with a focus on current and future public land management needs across the State. In particular, the improved knowledge of public landscapes and the public resources that lay within.

It is critical that in developing long-term strategies for the State, the government must recognise the long-term economic benefits of 'protecting' mineral deposits for future development. Particularly, where mineral deposits are of State significance and their long-term development is likely to impact on the economic and societal well being of all Victorians there is a broader community interest to be considered.

MCA strongly maintains that multiple and sequential land use is fundamental to achieving simultaneously the State's economic and conservation objectives and is consistent with the principles of sustainable development.

The general presumption that conservation objectives and mineral resource development are incompatible in land use planning is completely unacceptable.

The MCA advocates that there be no extension to the Parks and Reservoirs that expressly exclude exploration and mining.

The MCA believes that any user of land, whether public or private has a duty of care to ensure that land is used and managed in a sustainable way, and if the land is being used on a short or medium timeframe, that it be rehabilitated to a state equivalent or better than that which it was first disturbed. If this can not be achieved then offsets are required.

As with any investment by the Crown on private land, any private investment on public land should be on an expectation that investment will be for actions taken over and above core requirements of good management practice by the land manager.

Any policy position on building ecological connectivity must be founded on sound science and not simply be joining to areas of ecological value that bare no ecological relationship to each but would simply be connected due to their proximity.

The MCA strongly advocates for minimum effective regulation that is outcomes based and not prescriptive.