



6 November 2020

Operational Rehabilitation Reforms
NSW Resource Regulator – Regulatory Programs
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Via email: rr.feedback@planning.nsw.gov.au

Dear Sir/Madam,

Re: Proposed amendment of *Mining Regulations 2016*

Boral Limited (Boral) is an international building and construction materials group, headquartered in North Sydney, Australia. Boral is the country's largest construction materials and building products supplier with operations in all states and territories, supplying concrete, quarry products, asphalt, and cement to build infrastructure, residential construction, and commercial buildings.

The Boral Land & Property Group has prepared this submission on behalf of Boral Limited and its subsidiary companies in response to the exhibition of the draft amendments to the *Mining Regulations 2016* and the associated package of documents aimed at achieving operational rehabilitation reforms.

In general Boral supports the underlying intent of proposed reforms and the likely improvements to the regulation (and therefore the management and outcomes) of mine rehabilitation through consistency of lease conditions supported through the development and implementation of standardised management and reporting frameworks combined with the increased frequency of review periods.

Notwithstanding the above, Boral would like to raise two matters for further consideration by the Resource Regulator prior to the making of the amended Regulation:

- The need for flexibility in the administration of transitional provisions; and
- The need to ensure clarity and certainty in the administration of the management obligations where there potential overlap with a Development Consent.

Background and context

Boral Cement (Boral) owns and operates Marulan South Limestone (MSL). MSL is one of the oldest and continuously operating limestone mines in NSW having commenced operations approximately 140 years ago.

Due to the age of the mine, Boral's operations are protected under a "continuing use right" conveyed by historical mining leases issued prior to the commencement of the *Environmental Planning and Assessment Act 1979*. Under these existing arrangements there is no final landform plan.

The continued and expanded operation of the mine is currently the subject of a State Significant Development (SSD), Development Application (DA). The DA has been actively under assessment since March 2019 and is due to conclude in the coming months.

As the DA covers both the existing and the proposed operation, the forthcoming conditions of consent (if approved) would modernise the regulation and management of the mine. This would include the preparation and approval of long-term landform management plan that would

address final/end use. Consistent with that set out in the submitted Environmental Impact Statement (EIS).

At present it is anticipated that the DA will resolve favourably by December 2020. Following this a new mining lease application will be lodged. Previous discussions with the Department of Resources and Geosciences indicates that this process may likely be subject of a Right to Negotiate process under the *Native Title Act 1993*. These combined processes are likely to take between 12 to 18 months to complete.

The need for flexibility

The draft Regulation sets out transitional arrangements in Schedule 1, clause 31A as follows:

- (2) *The standard conditions apply –*
 - (a) *to a mining lease in relation to a large mine that is in force immediately before the relevant date for large mines—on and from that relevant date, and*
 - (b) *to a mining lease in relation to a small mine that is in force immediately before the relevant date for small mines—on and from that relevant date, and*
 - (c) *to a mining lease granted on or after the relevant date for the mine—on and from the date on which the lease is granted.*
- (3) *For the purposes of subclause (2) –*
 - (a) *the relevant date for large mines—is the date that is 12 months after the date on which the amending Regulation commences, and*
 - (b) *the relevant date for small mines—is the date that is 24 months after the date on which the amending Regulation commences*

A drafting note included in the exhibition documents indicates that subclause (3) will be omitted when the Regulation is made, and dates will be inserted into subclause (2) in its place.

As drafted the transitional provisions provide no flexibility for either the Resource Regulator or operators. The rigid nature of the Regulation deprives both the Regulator and Operators from an ability to respond to unique circumstances or instances where greater flexibility would allow for better and practical outcomes.

In the context of Boral's circumstances, the transitional provisions as drafted are likely to require Boral to prepare two long term management strategies within quick succession. Boral is of the view this is neither reasonable or practical given that the forthcoming DA and subsequent mining lease will impose a significant burden on MSL to prepare and implement a range of management documents.

In this regard, Boral requests that the Resource Regulator amend the transitional arrangements to include a provision allowing for flexibility. Specifically, that clause 31A (2) be amended to include the following additional provision:

- (d) *unless the Minister has granted an exemption or extension of time.*

It is considered necessary that the Resource Regulator permit for the consideration of exceptional circumstances by including provisions that allow mining leases the ability to seek an extension or exemption from the standard conditions contained in schedule 8A to avoid the need for multiple landform plans to be developed in short succession.

Building flexibility into Regulatory frameworks supports the achievement of the desired outcomes without compromising operations or compliance, while also accommodating the specific circumstances faced by regulated entities.

The need to avoid duplication

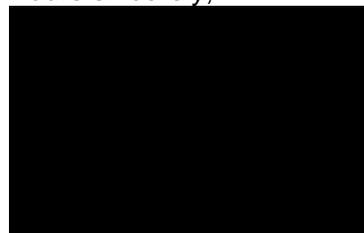
Boral acknowledges that the Resource Regulator has both acknowledged and attempted to overcome the potential for duplication across Development Consents and Mining Leases, particularly in relation to the need for and monitoring related to a final landform plan.

On commencement of the Regulation, it is considered necessary that clear guidelines or policy directions are made available that clearly delineate the roles and responsibilities of the Resource Regulator and the Department of Planning, Industry and Environment in the administration and regulation of compliance to avoid any confusion for proponents/operators.

Boral would welcome the opportunity to discuss in more detail their concerns relating to the above matters.

If you have any questions, or would like to discuss this matter in more detail, please feel free to contact the undersigned on **0401 894 110** or **rachael.snape@boral.com.au**

Yours sincerely,

A large black rectangular redaction box covering the signature area.


Planning & Development Manager (NSW & ACT)
Boral Land & Property Group