

15 October 2020

Phil Burn
Director Planning Systems
Department of Environment, Land, Water and Planning
8 Nicholson Street
East Melbourne,
Victoria 3002

Via email: www.engage.vic.gov.au

Dear Mr Burn

**PROPOSED DRAFT BUFFER AREA OVERLAY – PLANNING FOR AMENITY, HEALTH AND SAFETY
BUFFERS**

The Construction Material Processors Association (CMPA) is dedicated to the representation and service of its Members in the Victorian Earth Resources industry. The CMPA represents a broad spectrum of businesses that extract and process hard rock, gravel, sand, clay, lime, and soil. CMPA members also operate recycling businesses.

CMPA members are typically small to medium sized family and private businesses, local government and utilities. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The extractives sector is a key pillar within the construction industry underpinning the growth and economic development of Victoria through supply of the construction materials.

In 2018/19, the sector supplied 63 million tonnes of construction materials to the market, at a value of approximately \$1 billion. Small to medium quarries account for approximately half of this production.

The CMPA supports the principle of responsible, balanced legislation that is in the best interests of the State of Victoria.

Thank you for the opportunity to comment on the draft Buffer Area Overlay (BAO) guidance and information.

The CMPA has a number of planning issues that exist for proposed and current quarries, for example, incompatible use:

- Residential development being approved on boundaries of proposed quarries in an attempt to prevent a new quarry being established.
- Encroachment of residential/industrial development into the buffer areas of established quarries.

“The purpose of the BAO is to identify areas where there is potential for off-site impacts on safety or human health from industry, warehouse or other uses. The BAO also ensures that use and development within buffer areas is compatible with potential off-site impacts.”

On reading the draft BAO guidance and information, the following questions (Table 1) were asked by CMPA to which DELWP responded.

Table 1.

Questions posed by CMPA	DELWP response
Is it mandatory for a Work Authority holder to apply for a BAO?	It is not mandatory to apply for a BAO. The BAO would be a tool to prevent encroachment for those who choose to pursue it.
At what stage in the Work Plan approvals process as per the Mineral Resources (Sustainable Development) Act 190 (MRSDA) may a BAO be applied for?	The BAO could be applied at any time to existing operations or approved future operations.
Has or will a policy impact statement be conducted?	A policy impact statement has not been conducted. If the draft BAO is approved it will form part of the Victoria Planning Provisions and can be tailored for a local area to respond to health and safety impacts. Each BAO will be assessed on its merit through the planning amendment process .
Much of what is required for a BAO is already in the work plan and a planning permit is required for an approved Work Plan does this mean a BAO is automatic?	The BAO is not automatic. However, information that is prepared for other approvals may be relevant and could be used to support the evidence required for the BAO to be applied.

The following Table 2. contains statements from DELWP to which a response by the submitter was required: strongly disagree; disagree; neither disagree nor agree; or agree. Concern is held by CMPA that the statements are an attempt by DELWP to lead the submitter into their (DELWP’s) preferred response and that other material in the submission may be simply ignored.

Table 2.


Statements by DELWP	CMPA response
The purpose statement in the draft overlay is clear.	Neither disagree nor agree
The ability to tailor the overlay schedule based on identified risks will enable good land use planning outcomes.	Disagree
It is clear why the scope of the draft overlay only covers human health and safety impacts.	Neither agree nor disagree
The overlay should be able to control use, as well as development, where justified.	Neither agree nor disagree
The draft Buffer Area Overlay would be a more effective tool than the Environmental Significance Overlay to manage encroachment within buffers.	Neither agree nor disagree
The guidance is clear about when the draft overlay can be used.	Neither agree nor disagree
The distinction between amenity impacts and human health impacts for the purposes of applying the draft overlay is clear.	Neither agree nor disagree
The guidance is clear about how to prepare a schedule to the draft overlay.	Strongly disagree
It is clear what information must be submitted with a proposal to apply the Buffer Area Overlay.	Strongly disagree
The information that must be submitted with a proposal to apply the draft overlay will ensure that it is applied appropriately.	Strongly disagree
The information that must be submitted with a proposal to apply the draft overlay is reasonable.	Strongly disagree

In summary, considering the above responses (including from DELWP), CMPA **is not supportive** of the Proposed Buffer Area Overlay as it is currently presented due to being:

- an extensively bureaucratic, complex, costly, and time-consuming approvals process for an approved BAO that does not recognise the already similar extensively bureaucratic, complex, costly, and time-consuming work authority approvals process undertaken as per the MRSDA.
- unattainable for the majority of quarries (generally small to medium) operating in Victoria and hence anti-competitive.
- Unnecessarily alarmist by requiring a “Statement of Risk” which does not inform the reader of the management strategies and legislative controls applicable for that site.
- Silent on how to use a BOA this when the agent of change is not the extractive industry
- a useful tool for landfill operators but, disappointingly, of limited use to quarries.

I would be happy to discuss our submission further at your invitation.

Yours sincerely

A handwritten signature in black ink that reads "EM Gibson". The letters are cursive and slightly slanted.

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