CMPA VCAT PROJECT

REVIEW OF VCAT DECISIONS FOR THE EXTRACTIVE INDUSTRY

NOVEMBER 2017

CMPA

A REPORT PREPARED FOR THE
CONSTRUCTION MATERIAL PROCESSORS ASSOCIATION
BY NISKIN ENTERPRISES

Acknowledgements

This report could only be completed with the assistance from a great number of people. A special thank you to the quarry owners and operators who provided the detailed information. Your time and patience is greatly appreciated.

Disclaimer

This report was prepared by Niskin Enterprises on behalf of CMPA. The CMPA accepts no responsibility or liability for the accuracy of the published information. Persons acting on any opinion, advice or fact published in this report does so entirely at their own risk.

Copyright

TABLE OF CONTENTS

ACRONYMS/ABBREVIATIONS

Acronym	Description
DEDJTR	Department of Economic Development, Jobs, Transport and Resources
DELWP	Department of Environment, Land, Water and Planning
DPI	Department of Primary Industries
EMP	Environmental Management Plans
EPA	Environment Protection Authority
ERR	Earth Resources Regulation
MRSDA	Minerals Resources (Sustainable Development) Act 1990
PE Act	Planning and Environment Act 1987
SEPP	State Environment Protection Policies
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victorian Planning Provisions

EXECUTIVE SUMMARY

Key Findings

Of the 24 VCAT orders, 11 or 46 percent resulted in adverse outcomes or the quarry operator not proceeding due to the onerous conditions.

This resulted in significant duplication of the work plan in the Victorian Civil and Administrative Tribunal (VCAT) planning permit conditions and duplication of enforcement by Earth Resources Regulation (ERR) and responsible authorities.

From 2009 to 2013, 13 cases or 87% were granted permits and in 2 cases, permits were refused. From 2014 to 2017, 4 cases or 44% were approved and in 5 cases, permits were refused. Accordingly, the proportion of VCAT cases that have been refused a permit has increased over the past four years.

The issues in most VCAT cases appear to have been over-stated and unsubstantiated by the responsible authorities and objectors.

Earth Resources Regulation (ERR) does not represent and defend their endorsement of a quarry operator's work plan at VCAT. ERR should attend VCAT hearings and be accountable for their endorsement of the work plan.

The extractive industry has demonstrated over time across a broad range of sites that it can meet the Environment Protection Authority (EPA) Noise and Air Quality State Environment Protection Policies (SEPP). Government should consider excluding noise and dust impacts where the nearest dwelling is outside the recommended buffers so that a responsible authority could not refuse a permit or a resident object and appeal to VCAT.

In view of the inconsistent approach taken by VCAT in respect to planning permit conditions, there would appear to be a role for Department of Environment Land Water and Planning (DELWP) and Department of Economic Development, Jobs Transport and Resources (DEDJTR) to review the ERR's list of standard conditions in consultation with the extractive industry. This would provide guidance to responsible authorities and VCAT and ensure a consistent approach is applied to the extractive industry.

Reforms to the Planning and Environment Act 1987 (PE Act) and the Victorian Planning Provisions (VPP) that remove the right to object in cases where the quarry is compliant with the EPA recommended noise and air quality buffers and an agreed set of standard conditions would eliminate the millions of dollars spent by the extractive industry at VCAT as well as landholding costs and missed commercial opportunities incurred during the process that invariably takes about three years (these costs will be detailed in a further review).

Overview

The purpose of this study is to review VCAT decisions on the extractive industry applications for planning permits under the *Planning and Environment Act 1987* (*PE Act*) to use and develop land for extractive industry and for statutorily endorsed work plans under the *Mineral Resources (Sustainable Development) Act 1990*. (*MRSDA*)

The Construction Material Processors Association (CMPA) is concerned that there have been a number of adverse decisions in VCAT including decisions in the favour of the quarry operator that may have onerous conditions that could make the project commercially unviable.

The CMPA is also concerned that these adverse decisions are creating investment uncertainty for existing operators as well as for Greenfield quarries that will compromise the ability of the extractive industry to supply construction materials for critical major projects and future economic growth in Victoria.

VCAT Outcomes

37 VCAT cases from 2009-2017 involving 27 quarries were reviewed; with VCAT granting or varying planning permits in 17 cases and refusing to grant a planning permit in 5 cases and statutorily endorsing a work plan in 2 cases.

Type of Conditions

The typical conditions for a planning permit prior to use and develop land for the extractive industry or landfill include: endorsed work plans, non-alteration of site layout unless the responsible authority has consented, hours of operation, noise and dust management plans, landscaping and rehabilitation plans, removal of native vegetation, car parking and road works, compliance with SEPPS and expiry provisions.

Where appropriate and relevant to the specific circumstances of the subject land, VCAT has also included conditions in respect to: drainage and storm water management, groundwater, environmental management plans, native vegetation offsets, traffic management plans, road maintenance financial contributions and aboriginal heritage.

Alarmingly, new categories of conditions would appear to include: production limits, restrictions on truck movements, prohibition of retail sales, lighting and security restrictions, restrictions on traffic routes, complaints management and undertaking risk modelling.

Have conditions become more onerous?

In terms of new conditions, four quarries now have prescribed production limits and a further two quarries now have prescribed maximum daily truck movements. A further three quarries are prohibited from undertaking retail sales. Four quarries have lighting restrictions and one quarry is required to keep a complaint register.

Since 2014, several approvals have required acoustic reports and ongoing noise monitoring in addition to compliance with the standard EPA noise requirements.

In some cases, air quality reports and air emission management plans have been required as well as air and ground vibration testing to measure compliance with blasting regulations.

Notwithstanding this, some of these conditions such as keeping a complaint register have become standard conditions in work authorities.

The review has revealed several unique planning permit conditions:

- Moyne Shire is the only responsible authority to impose a royalty per tonne of extracted material to fund road maintenance.

- Rural City of Wangaratta is the only responsible authority to prescribe a limit on the number of blasts per annum (three times per year).

- Greater Shepparton is the only responsible authority to require abutting properties to be offered anthrax vaccinations for all dairy cattle and horse at cost to the proponent.

The review has found earlier VCAT Orders were more likely to provide general obligations in respect to a specific condition, whereas lately, the obligations have become far more prescriptive and are already covered in the work plan and repeated in the work authority.

In addition, the review has also found councils apply the same type of condition in an inconsistent manner despite the fact that the ERR already have standard conditions for a work authority. This is particularly evident with the landscape condition. The landscaping condition now requires detailed landscaping plans prepared by landscape architects, prescribed lists of native species, height and diameter requirements, and in some cases, security deposits/bonds and audits. Some VCAT orders have even required the number and type of trees, shrubs and ground covers by botanical and common names, the number of pots, size at maturity and planting densities.

Other notable inconsistencies include conditions relating to environmental management plans, blasting, traffic management reports and road maintenance contributions.

Two quarries have conditions requiring environmental management plans (EMP) with most being required conditions in recent years. Only one order required an audit of the EMP: Lang Lang Holdings Pty Ltd v Cardinia SC & Ors [2009]. Ironically, the audit requirement has been removed in recent years. The Lang Lang Holdings Pty Ltd v Cardinia SC & Ors [2009] was the only order to require the establishment of an environment review committee.

Five quarries have blasting restrictions. Each quarry has different time frames when blasting can be undertaken. Most do not permit blasting on Saturday other than in the Holcim (Aust) Pty Ltd v Indigo SC & Ors [2012] VCAT 640 order. Some allow for exceptions for unforeseen circumstances. The Burge v Wangaratta RCC [2013] VCAT 1508 order limits blasting to 3 times per year whereas the number of times blasting can occur at the other quarries is unlimited.

Only four of these quarries were subject to conditions in respect to providing prior notice to blasting. Notification ranged from no minimum time to at least 48 hours. Persons to be notified ranged from occupiers of adjoining land to residents within 1 km of the quarry.

Only 5 VCAT orders required traffic management reports. The approach taken is different in each case. Some are general and others prescriptive. CAB Investments Pty Ltd v Ballarat is the only order that requires three assessments and Aerolite Quarries Pty Ltd v Greater Geelong is the only order to require a suitably qualified traffic engineer.

Only two VCAT orders required road maintenance contributions. The formula is different in each case. The first case requires a fixed annual contribution of $2,500 or nil if the quarry can demonstrate it has extracted less than 10,000 m^3. The second case requires an undisclosed royalty per m^3 of material.

The review has also found significant duplication of the work plan in the VCAT planning permit conditions. This creates two regulators for the extractive industry; the responsible authority that administers and enforces the planning permit and the ERR who administers and enforces the work plan and work authority. The ERR should be the only regulator of the extractive industry. It has the legislative power to suspend or close a quarry if persistent non-compliance of the planning permit conditions/work authority is not rectified. Instead, VCAT should only decide whether the proposal is consistent with the requirements of the Victorian Planning Provisions (VPP) and not duplicate the matters set out in the work plan. However, it should be able to prescribe conditions directly relevant to the responsible authority such as road works and traffic management. Other than that, ERR should set out the conditions in the work authority.

Adverse VCAT Outcomes

There were 7 adverse VCAT orders from 2009 to 2017. The reasons included noise and amenity impacts on residents, inappropriate use in a Green Wedge zone, impacts on groundwater, visual amenity impacts on the UNESCO listed Mount Elephant, and floodplain stability.

Several of the adverse VCAT orders deserve further explanation. In particular, Hanson Construction Materials Pty Ltd v DEDJTR and E B Mawson & Sons Pty Ltd v DEDJTR. Both of these cases are similar in that the referral water authority objected to the work plan being statutorily endorsed on the grounds that the proposed extraction area posed an unacceptable risk of potential pit capture and avulsion occurring in a 1:100 year flood on the rivers where the quarries are located.

The VCAT hearings considered the risk modelling prepared by the quarry operator and the referral water authority. In the case of E B Mawson & Sons Pty Ltd v DEDJTR, the quarry operator was requested by the ERR to undertake an independent risk-based assessment. The quarry operator engaged GHD to undertake the risk based assessment in accordance with the ERR's risk assessment methodology. Given the outcomes from the risk assessment it is likely that ERR would have statutorily endorsed the work plans except for the objection of the referral water authority.

It is questionable whether VCAT has the expertise to deal with such complex issues, to fully understand the risk assessment undertaken by both sides and to make a qualified decision on which risk assessment is correct.

Notwithstanding that the quarry operator submitted a potential solution with the installation of levees, the VCAT members would not consider this solution as the referral water authority had not had time to assess this proposal. However, the quarry operator had undertaken the independent risk-based assessment with the full co-operation of the ERR and the referral water authority and every effort should have been focussed on finding an acceptable and agreed solution during this process.

Given that there are many quarries located on floodplains where the construction material is located, there is a need for Government to develop a solution, in consultation with the extractive industry, to pit capture and avulsion otherwise there will be no development or expansion of quarries located in floodplains. ERR should investigate how other jurisdictions in Australia and overseas deal with these issues and find feasible solutions.

VCAT approvals not proceeded with

The Holcim quarry near Chiltern was approved at VCAT but has not proceeded. Holcim planned to extract up to 400,000 tonnes of material per annum, varying from 20,000 to 40,000 tonnes per month. It is estimated that the quarry will provide almost 23 million tonnes of material, with the extraction period expected to take between 57-91 years, depending on the rate of extraction.

Like most VCAT orders, the conditions are designed around the average or peak production and are not flexible enough to allow a quarry to gradually establish itself on a small scale. Many conditions need to be implemented prior to the commencement of extraction and to the satisfaction of the responsible authority.

In the case of this quarry, Holcim has advised that the reserve is a valuable reserve and a major project in the area is needed in order to justify the establishment costs associated with implementing a range of conditions including the upgrades to two intersections near the quarry.

Three smaller quarries approved at VCAT also did not proceed. These quarries are located at Lang Lang, Genoa and Tatura.

Emerging Issues and Possible Reforms

It is clearly apparent from reading VCAT transcripts that objectors are invariably residents in close proximity to a quarry and that their main concerns are noise, dust, impacts on visual amenity and the local road network. These concerns are based on fear rather than fact in most cases. The quarry operator is required to undertake detailed studies using subject expert consultants to demonstrate compliance. Despite the consultant's reports showing compliance, the quarry operator's application for a planning permit is invariably refused by responsible authorities in response to their resident's fears.

In the cases where VCAT approved a planning permit, 7 out of the 17 proposals were mostly in farming zones and the nearest dwelling was outside the EPA recommended buffers in respect to noise and air quality. These were the major concerns of residents within about 1 km of a quarry. In contrast, for the adverse VCAT decisions, 2 out of the 7 proposals involved the nearest dwelling within the recommended buffer zone. Of course other issues were raised during VCAT hearings. However, this data analysis is provided to demonstrate that for many of the VCAT approvals, the nearest dwelling to the quarry was outside the recommended buffers.

Given that the extractive industry has demonstrated over time across a broad range of sites, large and small scale operations, that it can meet the EPA Noise and Air Quality SEPPs, it would seem appropriate for Government to consider excluding noise and dust impacts where the nearest dwelling is outside the recommended buffers for the purposes of the Clause 52.09-5 Decision Guidelines of the State Planning Framework. In this way, a responsible authority could not refuse a permit or a resident object and appeal to VCAT.

Other reforms that should be considered include referring written objections to the relevant referral authority. For example, groundwater and surface water issues should be referred to the regional water authority for consideration and determination as to whether the objection has merit. Similarly, native vegetation issues should be referred to the DELWP. In this way, the expert bodies rather than VCAT are considering these issues.

In cases where the referral authority is an objector, a process needs to be established so the referral authority is required to be part of the solution; not just a barrier to investment. Referral authorities should be required to provide feasible alternative solutions to the issue or problem and the ERR should play a mediating role between the referral authority and the quarry operator.

These reforms would reduce the current number of applications to VCAT and also reduce the number of issues being addressed at VCAT cases to primarily visual impact on amenity.

Clause 52.09 of the Victorian Planning Provisions (VPP) embeds a notion that the extractive industry is in conflict with sensitive land uses such as residential zones unless a quarry can manage the multitude of on-site and off-site impacts prescribed in Clause 52.09. Yet, this review shows that the extractive industry can meet the noise and air SEPPs not just for quarries where the nearest dwelling is outside the buffer zone but also within the buffer zone. Clearly, technological advances, operational practices and regulatory limitations have played a large role in ensuring compliance.

Accordingly, there is a need to acknowledge these improvements in Clause 52-09 by providing exemptions to specific impacts provided the quarry meets a particular threshold: the nearest dwelling is outside the recommended buffer zone. The exemption would affectively act as an ‘as of right’ provision in respect to noise and dust impacts on the basis that the quarry can comply with the noise and air SEPPs. In addition, these issues have been addressed in the endorsed work plan and work authority; and should not be duplicated in the planning permit or VCAT order.

The review found significant variation within the same condition. This suggests that VCAT members are taking direction or being influenced from the responsible authority in terms of how a condition is being drafted. Some of these conditions such as the landscaping condition have become very prescriptive resulting in unnecessary micro-management of quarries.

There would appear a role for DELWP and DEDJTR to develop a list of standard conditions in consultation with the extractive industry to provide guidance to responsible authorities and VCAT, and to ensure a consistent approach is applied to the extractive industry. Ideally, standard conditions should be performance based, not prescriptive and supported by industry best practice guidelines to provide guidance to the extractive industry. VCAT and responsible authorities should not be permitted to deviate from the agreed standard condition unless approved by ERR.

In addition, DELWP and DEDJTR need to develop criterion for responsible authorities and VCAT when it is appropriate and justifiable to apply more onerous conditions such as acoustic reports and noise monitoring, air emission management plans and traffic management plans.

Similarly, DELWP and DEDJTR should also agree on the type of conditions that should not be included such as landscaping bonds and security deposits, royalty payments for road maintenance and employment restrictions.

The planning permit conditions are based on the proposed work plan and on the expected maximum production output of the quarry. Most of the conditions such as the establishment of bund walls, landscaping, road works and management plans for noise, dust and so forth must be implemented prior to commencement of extraction. In many cases, as evident in the Holcim quarry at Chiltern, the quarry is subject to the market demand for its materials and is unlikely to achieve maximum production output without contracts to supply major projects. As a result, quarries are unable to justify the establishment of a quarry on a small scale in view of the costs of the conditions that are designed for maximum production output.

The road works condition is a case in point where upgrades are based on the truck movements at maximum production output. An alternative approach that would facilitate the opening of a quarry is to provide trigger points for various conditions. For example, if the quarry exceeds the number of truck movements for the category of road at the quarry, the quarry operator would need to undertake the required upgrade. It could be argued that this would be difficult to enforce and that quarry operators would have insufficient time to make the upgrade following a major contract to supply material. However, most major contracts are entered into prior to commencement given that major project managers need to plan and secure material supplies well in advance to ensure the major project is completed within contracted deadlines. In addition, a quarry is required under its work authority to provide the ERR with an annual return with specific production data. In this way, ERR would be able to determine whether the trigger point for road works had been reached.

VCAT has extended its decision-making to the net community provisions in the VPP and has been inconsistent where some VCAT members have taken it into consideration and other VCAT members have considered it totally irrelevant as a planning consideration. It is precarious allowing VCAT members to make decisions on the net community benefit between conflicting land uses. It would seem more appropriate for VCAT to determine whether the proposal is acceptable on the proposed site as demonstrated in Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] rather than the approach taken in E B Mawson & Sons Pty Ltd v DEDJTR [2017] where VCAT considered alternative quarry sites in Southern Gippsland and Knox that were entirely impracticable for the Seymour market from a cost perspective.

The requirements for work plans, work authorities and planning permit conditions are highly interventionist in that they tell the extractive industry how, when and where a quarry can operate. There is little operational flexibility afforded to the quarry operator within the work plan, work authority and planning permit conditions without undertaking further assessments to gain approval for a variation to the work plan and an amendment to the planning permit.

The review visited several quarries and each quarry could not be seen due to the establishment of tree planted bund walls, could be barely heard just outside the bund walls adjacent to the crushing plant and minimal dust was visible inside the quarry and invisible outside the quarry. This is not surprising given the technological advances applied to noise and dust suppression across the different types of plant, machinery and trucks, the relevant regulatory obligations and the efforts of industry education and training. It is difficult to relate to the issues canvassed in the VCAT orders and to comprehend the significant costs incurred (legal and various subject expert witnesses) given the issues in most VCAT cases appear to be over-stated and unsubstantiated by responsible authorities and objectors.

However, the root cause appears to lie with ERR in not understanding the problems it is attempting to prevent with regulation. This is clearly evident in the inadequate and flawed problem analysis in the regulatory impact statement (RIS) for the Extractive Industry Development Regulations 2007. The problem analysis in the RIS stated that the potential environmental costs associated with extractive operations in any given year in Victoria have been estimated at between $50 million and $221 million. These costs were based on the environmental costs from a UK study and simply extrapolated to Victoria. However, the RIS did not disclose the methodology of the UK study; specifically contingent valuation that involved the survey of residents within 5 km of a sample of quarries to ascertain their willingness to pay a specific sum of money to avoid the costs of noise, dust, visual impact on amenity etc. associated with quarries.

A key weakness of contingent valuation is that it relies on surveying affected persons who may not be well-informed, are biased or have misconceptions of the problem and hence, their willingness to pay to avoid a specific problem could be considerably lower if they are presented with balanced information of the problem. Very few RISs have used contingent valuation due to these methodological limitations. Secondly, as demonstrated in the VCAT cases, it is invariably the residents within 1 km of a quarry that are directly affected rather than the 5 km survey used in the UK study.

The 2007 RIS also disclosed 20 complaints had been received across the State in regards to dust, noise, blasting and amenity issues. The ERR provided no information as to whether these complaints were justified. There was no insight as to how many were in breach of EPA noise and air quality SEPPs in terms of the recommended buffer zones and how many complaints were unjustified.

Instead of using the dubious and flawed UK study, ERR should have quantified the number of Victorian quarries that had breached the EPA noise and air quality Guidelines in respect to noise and air quality, the DELWP native vegetation framework and the other conditions in a work authority/planning permit. In addition, ERR should have also sampled from a range of quarries the noise and air quality monitoring data to ascertain whether these quarries were significantly below, or just meeting the EPA noise and air quality SEPPs. Ideally, the RIS should have also provided times series data on average noise and air quality to determine whether technological advances in noise attenuation and dust suppression techniques had reduced noise and dust emissions. The problem analysis could also draw upon the planning permit process and the VCAT cases to demonstrate whether the perception of objectors is supported by evidence of adverse health and environmental outcomes on residents near quarries.

Inadequate analysis of the problem invariably leads to over-regulation. There is a dire need for robust analysis of the multitude of issues that draws on operational evidence from quarries and other responsible authorities.

This research and analysis may well find the extractive industry is not just compliant with the various work authority and planning permit conditions, but is achieving superior outcomes. If this is the case, alternative regulatory approaches can be seriously considered such as ‘as of right’ use and development in specified circumstances (farming zone with prescribed buffers) and ‘deemed to comply provision’ (where equipment and processes meet prescribed outcomes).

1. INTRODUCTION

The purpose of this study is to review VCAT decisions on the extractive industry for the CMPA.

Specifically, VCAT decisions on extractive industry applications for planning permits under the *PE Act* to use and develop land for extractive industry and for statutorily endorsed work plans under the *MRSDA*.

The CMPA is concerned that there have been a number of adverse decisions in VCAT including decisions in the favour of the quarry operator that may have onerous conditions that can make the project commercially unviable.

The CMPA is concerned that these adverse decisions are creating investment uncertainty for existing operators as well as Greenfield quarries that will compromise the ability of the extractive industry to supply construction materials for critical major projects and future economic growth in Victoria.

The extractive industry underpins growth and development in Victoria through supply of the above materials to a buoyant construction industry. The sector supplied 47 million tonnes of essential construction materials in 2015/16 (~10 tonnes/person/annum in Victoria), with a value of approximately $786 million, excluding the escalating cost of road transport.

The study reviews applications to VCAT for the extractive industry including variations to Work Authorities and Greenfield sites under the Planning and Environment List made from 1 July 2009 to 30 June 2017 to:

1. Determine the number of applications to VCAT for the extractive industry per annum, if possible.

2. Determine, where possible, the number of and reason for withdrawals from VCAT for the Extractive Industry and the number that were resolved through mediation at VCAT.

3. Determine the number of decisions at VCAT for the extractive industry per annum.

4. Categorise the conditions set for each VCAT order in the quarry's favour to determine whether more onerous conditions have been set with increasing time.

5. Categorise the reasons for each adverse (to quarry) order. Determine if further information from the quarry may have led to an approval.

6. Determine the number of proposals that have been approved at VCAT but not proceeded with.

7. Determine, where possible, the number of hearings at which Earth Resources Regulation attended; whether it was voluntary and whether their input was productive to the case.

8. Determine VCAT Members, their experience relative to the Extractive Industry and the percentage of decisions made in favour of the Extractive Industry.

Methodology

The austlii.edu.au website was used to access VCAT Orders related to the extractive industry. 54 VCAT Orders (transcripts) were downloaded to enable the key questions to be analysed. A number of quarries were involved in multiple VCAT hearings. As a result, the VCAT orders have been based on a per quarry basis. The 54 VCAT orders included extractive, landfill and concrete batching plants. 37 VCAT orders were related to the extractive industry. 13 VCAT orders were in relation to landfill operations and 4 VCAT orders were in relation to concrete batching plants. The landfill and concrete batching plant VCAT orders are not considered in the body of the report. However, the outcomes of these VCAT cases are provided in Appendix B.

Each VCAT Order contains the determination of the order, the reasons for the order, and in the cases where an order is to grant a planning permit, the conditions attached to the planning permit. Each VCAT Order comprises about 30 pages.

In addition, a planning permit activity report (PPAR) was requested and received from the DELWP for the extractive industry over the 2009-2017 period.

Further information was sought from VCAT on the number of applications made by extractive industry that were withdrawn or mediated etc. Unfortunately, however, VCAT's legacy case management system only captures data through reference to specific legislation and does not capture proceedings by an industry flag. Under the current systems, VCAT would only be able to provide the number of applications lodged in the Planning and Environment List (PEL) - not those specifically in relation to the extractive industry.

The only way in which this data could be provided would be through a manual search of the files and VCAT does not have the resources or capability available to undertake a manual search of PEL files.

The review was undertaken by Martin Oakley, Director, Niskin Enterprises Pty Ltd; a consulting firm specializing in regulatory economics.

2. MAIN FINDINGS

2.1 NUMBER OF APPLICATIONS TO VCAT

As can be seen from Table 1 below, the extractive industry has been subject to 37 applications to VCAT from 2009-2017 representing an average of 4 applications per annum.

Table 1: Number of extractive industry applications to VCAT

Year	No. Applications
2009	5
2010	5
2011	6
2012	3
2013	4
2014	3
2015	2
2016	4
2017	5
Total:	**37**

Twenty-seven quarries were involved in 37 VCAT applications. Two applications were withdrawn during 2016 and 2017 and two applications in 2017 are still in progress at VCAT. As a result, 23 quarries proceeded to VCAT.

Table 2 shows that 5 of the 27 quarries involved in VCAT cases have accounted for 14 of the 37 VCAT applications.

Table 2: Multiple Extractive Industry Applications to VCAT

VCAT case	No. VCAT cases
Giles & Ors v Baw Baw	5
Holcim (Aust) Pty Ltd v Indigo	3
Hanson Construction Materials Pty Ltd v Cardinia SC	2
Ryleigh v Alpine SC	2
Central Quarries Pty Ltd/Mawsons v Mitchell SC	2
Total:	**14**

In the case of Giles & Ors v Baw Baw, the objector initiated 4 further VCAT hearings and an appeal to the Supreme Court to over-turn the first VCAT hearing that had approved the use and development of a quarry. While the objector failed at each subsequent hearing, the quarry operator has incurred significant legal costs.

2.2 NUMBER AND REASONS FOR WITHDRAWALS FROM VCAT

Data was unable to be sourced from VCAT (see page 14) and the PPAR yielded only one quarry. It is known that two quarries have withdrawn from the VCAT process; one was located at Wallan and the other at Camperdown. The proposal for Camperdown was withdrawn in 2016 and the proposal for Wallan was withdrawn in 2017. It is suspected that there have been many more applications to VCAT.

In regards to the quarry at Wallan, the quarry was objected to by a small number of neighbouring potential land developers on the basis that it would prevent the realisation of the Northern Growth Corridor Plan and that a Planning Permit application was premature given the slowly progressing Precinct Structure Plan. One of these land developers was a government water authority. The council chose to reject the quarry proposal based on long-term growth aspirations of the surrounding area. The applicant lodged an application for review. The Victorian Planning Authority, as an interested party (not a referral authority) initially provided a neutral 'Statement of Grounds' to VCAT in keeping with their long standing public position. Their position was suddenly revised prior to the hearing to one of total opposition. The quarry operator chose to withdraw from VCAT with the intent of pursuing the application in the Precinct Structure Plan process.

In regards to the quarry at Camperdown, the Friends of Mt Leura objected to the extension of the bluestone quarry on the grounds of its visual impact on the Mt Leura area. Following mediation between the two parties, the quarry operator reached agreement with the Friends of Mt Leura. As a result, the responsible authority has issued a planning permit and the quarry operator has withdrawn from VCAT.

2.3 NUMBER OF DECISIONS AT VCAT

23 quarries obtained 24 VCAT decisions (one quarry was approved and refused) Table 3 below shows the number of planning permits approved and refused at VCAT. Overall, 17 cases or 71% were granted permits. From 2009 to 2013, 13 cases or 87% were granted permits and in 2 cases, permits were refused. From 2014 to 2017, 4 cases or 44% were approved and in 5 cases, permits were refused. Accordingly, the proportion of VCAT cases that have been refused a permit has increased over the past four years.

Table 3: VCAT Outcomes

Year	No. Approved	No. Refused
2009	3	0
2010	1	1
2011	3	1
2012	2	0
2013	4	0
2014	2	1
2015	1	1
2016	1	1
2017	0	2
Total:	**17**	**7**

While 17 VCAT outcomes were approved 2 of these approvals (and potentially 2 other sites subject to confirmation) did not proceed. This reduced the number of effective VCAT approvals to 62% and 54% respectively.

Table 4 provides a breakdown of the reasons for the VCAT proceedings for the 17 VCAT approvals. As can been seen, Council refused a permit was the major reason for bringing proceedings to VCAT (6 cases) followed by objectors (5 cases).

Table 4: VCAT Approvals - Reason For Proceedings

Reason for VCAT Proceedings	**Number of VCAT Orders**
Council refused permit	6
Council failed to grant a permit within the prescribed time	1
Section 82 Objectors	5
Section 80 review of permit conditions	2
Section 149 declaration	2
Joint Objector & Applicant	1
Total:	**17**

Table 5 shows the four VCAT cases in which the planning officer recommended to Council to grant a planning permit but which the Council still decided to refuse to grant a permit.

Table 5: Planning Officer Recommended the Granting of a Permit

CAB Investments Pty Ltd v Ballarat CC [2009] VCAT 629
Central Quarries Pty Ltd v Mitchell SC [2011] VCAT 1753
Riley v South Gippsland SC [2013] VCAT 15
Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611

Councils refusing planning permits and objectors accounted for 11 of the VCAT proceedings. Many of these cases are based on unfounded concerns and unsubstantiated by these parties at VCAT hearings. CAB Investments Pty Ltd v Ballarat CC illustrates this point. On 26 March 2007, CAB Investments Pty Ltd applied for a planning permit. Following objections, on 16 April 2008, the application was amended and 11 of the objectors maintained their objection. On 13 August 2008, the Ballarat City Council resolved to refuse to grant a planning permit. This occurred despite an officer's report recommending the granting of a permit with conditions. VCAT made its order on 9 April 2009; just over 2 years from the date CAB Investments Pty Ltd had lodged its permit application with Council. The VCAT Order set aside the decision of the responsible authority and granted a permit for the use and development of Lot 2, Sago Hill Road, Bunkers Hill for an extractive industry subject to 24 conditions.

At VCAT, the Ballarat City Council did not provide any expert witnesses or any evidence to support its grounds of refusal:

- The proposal will adversely affect the residential amenity of the area;
- Noise and visual impact of the quarry;
- The unreasonable impact of traffic movement on the road network;
- Air pollution;

- Loss of native vegetation and habitat

VCAT noted little native vegetation and the presence of noxious weeds on the site, *"The land is heavily marked by the earlier period of gravel extraction. Little native vegetation remains, but many pines have established themselves in the disturbed area. Much of the upper level is covered by gorse, a noxious weed".* (Clause 9)

VCAT also noted, "*we accept, that the Farming Zone is a 'working' zone (as opposed, for example, to a Public Park and Recreation Zone) and some noise and visual intrusion associated with working farms must be expected".* (Clause 18)

"Purchasers of dwellings located in the Farming Zone must be prepared to accept that activities will occur in the zone that are as of right or for which a permit has been granted, if a permit is required". (Clause 19)

"We must consider this application according to the current zoning, not any other zoning which the residents or the Council might wish to see now or in the future". (Clause 20)

Table 6 shows VCAT approvals by land use with 14 or 82% of proposals mostly in farming zones

Table 6: VCAT Approvals by Land Use

Land-Use Zone	**Number**
Farming Zone	14
Green Wedge Zone	1
Urban Floodway Zone	1
Rural Conservation Zone	1
Total:	**17**

Table 7 shows the distance to the nearest dwelling for VCAT approved quarries. The EPA recommended buffers (recommended separation distances for industrial residual air emissions, no. 1518, 2013) between the nearest dwelling and a quarry is 250 m where blasting is not undertaken, 500 m with respirable crystalline silica and 500 m where blasting is undertaken. The nearest dwelling to 10 of the 17 VCAT approvals were outside the recommended buffers and are highlighted in bold in the right-hand column of Table 7. Some of the VCAT approvals involved amendments to existing planning permits and declarations under section 149 of the *PE Act.* However, the data is useful in demonstrating that for about 40 percent of the quarries involved in VCAT approvals the nearest dwelling was outside the recommended buffer zone.

Table 7: VCAT Approvals - Distance to Nearest Dwelling

VCAT Case	Distance to nearest dwelling
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors [2009] VCAT 1818	Estimated 300 m using Google maps
CAB Investments Pty Ltd v Ballarat CC [2009] VCAT 629	200m (no blasting at quarry)
Giles & Ors v Baw Baw SC [2009] VCAT 61	240m
Ryleigh v Alpine SC & Ors [2010] VCAT 1419	**Estimated 600 m using Google maps**
Central Quarries Pty Ltd v Mitchell SC [2011] VCAT 1753	270 m
Bremner & Ors v Golden Plains SC [2011] VCAT 1261	**750 m**
Palmer v Moyne SC [2011] VCAT 1939	**1000 m**
Wilanders Pty Ltd v Baw Baw SC [2012] VCAT 417	Estimated 300 m using Google maps
Holcim (Aust) Pty Ltd v Indigo SC & Ors [2012] VCAT 640	Estimated 300 m using Google maps
Whelans Quarries Pty Ltd v East Gippsland SC [2013] VCAT 713	Estimated 300 m using Google maps
Riley v South Gippsland SC [2013] VCAT 15	**Estimated 500 m using Google maps**
Hanson Construction Materials Pty Ltd v Wyndham CC (Red Dot) [2013] VCAT 158	**Estimated 1200 m using Google maps**
Burge v Wangaratta RCC [2013] VCAT 1508	Estimated 300 m using Google maps with
Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611	**500 m**
Turvey v East Gippsland SC [2014] VCAT 658	**1.5 km**
Hanson Construction Materials Pty Ltd v Cardinia SC (No 2) [2015] VCAT 471	Estimated 300 m using Google maps
Auswide Developments Pty Ltd v Greater Shepparton CC [2016] VCAT 1427	Estimated 150 m using Google maps

Table 8 shows the type of quarry and whether the quarry commenced operations. As can be seen, 4 quarries did not proceed.

Table 8: VCAT Approvals – Type of Quarry

VCAT Case	Work Plan	Green field	Variation (within WA)	Sand	Hard Rock	Operating
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors [2009] VCAT 1818						**No**
CAB Investments Pty Ltd v Ballarat CC [2009] VCAT 629				Gravel		Yes
Giles & Ors v Baw Baw SC [2009] VCAT 61						Yes
Ryleigh v Alpine SC & Ors [2010] VCAT 1419						Yes
Central Quarries Pty Ltd v Mitchell SC [2011] VCAT 1753						Yes
Bremner & Ors v Golden Plains SC [2011] VCAT 1261						Yes
Palmer v Moyne SC [2011] VCAT 1939					Limestone (no blasting)	Yes
Wilanders Pty Ltd v Baw Baw SC [2012] VCAT 417			(continuation of sand extraction)			Yes
Holcim (Aust) Pty Ltd v Indigo SC & Ors [2012] VCAT 640						**No**
Whelan's Quarries Pty Ltd v East Gippsland SC [2013] VCAT 713			(blasting)			Yes
Riley v South Gippsland SC [2013] VCAT 15	x		(small quarry)	Gravel		Yes
Hanson Construction Materials Pty Ltd v Wyndham CC (Red Dot) [2013] VCAT 158						Yes
Burge v Wangaratta RCC [2013] VCAT 1508			(expansion)			Yes
Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611						Yes
Turvey v East Gippsland SC [2014] VCAT 658						**No**
Hanson Construction Materials Pty Ltd v Cardinia SC (No 2) [2015] VCAT 471			(expansion)			Yes
Auswide Developments Pty Ltd v Greater Shepparton CC [2016] VCAT 1427	x	1Ha <2m depth				**No**

Table 9 provides a breakdown of the reasons for the VCAT proceedings for the 7 adverse VCAT orders. As can been seen, Council refused a permit and objectors were the major reasons for bringing proceedings to VCAT.

Table 9: Adverse VCAT Orders - Reason For Proceedings

Reason for VCAT Proceedings	Number of VCAT Orders
Council refused permit	3
Section 82 Objectors	2
Section 77TI refused to statutorily endorse a variation to an approved work plan	2
Total:	7

Table 10 shows adverse VCAT orders by land use with proposals in farming zones accounting for 4 out of the 7 adverse VCAT orders.

Table 10: Adverse VCAT Orders by Land Use

Land-Use Zone	Number
Farming Zone	4
Green Wedge Zone	1
Urban Floodway Zone	1
Rural Activity Zone	1
Total:	7

Table 11 shows the nearest dwelling to the proposed quarry for adverse VCAT orders. The nearest dwelling to 2 of the 7 adverse VCAT orders were within the recommended buffers and are highlighted in bold in the right-hand column of Table 11. The quarries where the nearest dwelling were outside the recommended buffer zones were refused planning permits for unique reasons discussed later in section 2.5 and were unrelated to noise and dust impacts.

Table 11: Adverse VCAT Orders - Distance to Nearest Dwelling

VCAT Case	Distance to nearest dwelling
Sarto & Ors v Corangamite SC [2010] VCAT 626	Estimated 600 m using Google maps
Beach & Ors v Colac Otway SC [2011] VCAT 2086	2 km
Gibson v Moyne SC [2014] VCAT 916	**50 m**
Hanson Construction Materials Pty Ltd v DEDJTR (Red Dot) [2015] VCAT 1375	Estimated 600m using Google maps
Hurst Earthmoving Pty Ltd v Towong SC [2016] VCAT 425	1.5 km
Hillview Quarries Pty Ltd v Mornington Peninsula SC [2017] VCAT 573	500 m (dense native vegetation buffer)
E B Mawson & Sons Pty Ltd v DEDJTR [2017] VCAT 466	**270 m**

Images 1 and 2 demonstrate that quarries and sensitive land uses such as residential zones are co-existing. In both cases, there are residences within the EPA recommended buffers.

Image 1: Boral Quarries, Epping

Image 2: Fulton Quarries, Tylden

Table 12 shows the type of quarry. As can be seen, despite the fact that each proponent had an endorsed work plan, VCAT decided to not grant a planning permit or to statutorily approve a work plan. This involved 3 green-field sites.

Table 12: Adverse VCAT Orders – Type of Quarry

VCAT Case	Work Plan	Green field	Variation within WA	Sand	Hard rock
Sarto & Ors v Corangamite SC [2010] VCAT 626					(scoria, no blasting)
Beach & Ors v Colac Otway SC [2011] VCAT 2086					
Gibson v Moyne SC [2014] VCAT 916			(lapsed planning permit)		(limestone, no blasting)
Hanson Construction Materials Pty Ltd v DEDJTR (Red Dot) [2015] VCAT 1375			(expansion)		
Hurst Earthmoving Pty Ltd v Towong SC [2016] VCAT 425					
Hillview Quarries Pty Ltd v Mornington Peninsula SC [2017] VCAT 573			lapsed planning permit		
E B Mawson & Sons Pty Ltd v DEDJTR [2017] VCAT 466			(expansion)		

2.4 CATEGORISATION OF VCAT ORDER CONDITIONS

Table 13 shows the number of conditions or the outcome of the 17 VCAT Orders in which the quarry operator was successful in having a permit granted for the use and development of an extractive industry. Most of these conditions are already covered in the work plan (other than road works and traffic issues) and subsequently reflected in the work authority.

Table 13: Number of Conditions /Outcome for each VCAT Order

VCAT Case	No. Conditions or Outcome
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors [2009] VCAT 1818	33
CAB Investments Pty Ltd v Ballarat CC [2009] VCAT 629	24
Giles & Ors v Baw Baw SC [2009] VCAT 61	60
Ryleigh v Alpine SC & Ors [2010] VCAT 1419	29
Central Quarries Pty Ltd v Mitchell SC [2011] VCAT 1753	25
Bremner & Ors v Golden Plains SC [2011] VCAT 1261	56
Palmer v Moyne SC [2011] VCAT 1939	26
Wilanders Pty Ltd v Baw Baw SC [2012] VCAT 417	1
Holcim (Aust) Pty Ltd v Indigo SC & Ors [2012] VCAT 640	51
Whelan's Quarries Pty Ltd v East Gippsland SC [2013] VCAT 713	Permit amended to allow blasting
Riley v South Gippsland SC [2013] VCAT 15	20
Hanson Construction Materials Pty Ltd v Wyndham CC (Red Dot) [2013] VCAT 158	Ruled against Council's satisfaction fee
Burge v Wangaratta RCC [2013] VCAT 1508	18
Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611	48
Turvey v East Gippsland SC [2014] VCAT 658	4
Hanson Construction Materials Pty Ltd v Cardinia SC (No 2) [2015] VCAT 471	Removed 11 conditions
Auswide Developments Pty Ltd v Greater Shepparton CC [2016] VCAT 1427	49

2.4.1 TYPE OF CONDITIONS

The typical conditions for a planning permit prior to use and develop land for the extractive industry include:

- endorsed work plans;
- non-alteration of the layout of the site unless the responsible authority has provided consent;
- hours of operation;
- amenity;
- noise and dust management plans;
- landscaping and rehabilitation plans;
- native vegetation removal;
- car parking and road works;

- compliance with EPA SEPPs; and,
- expiry of permit

Where appropriate and relevant to the specific circumstances of the subject land, VCAT has also included conditions in respect to:

- drainage and storm water management;
- groundwater;
- environmental management plans,;
- native vegetation offsets;
- traffic management plans; and,
- Aboriginal heritage.

Newer categories of conditions would appear to include:

- Production limits;
- Restrictions on truck movements;
- Restrictions on truck routes;
- Prohibition of retail sales;
- Lighting and security restrictions;
- Complaints register; and,
- Risk modelling

A list of the conditions for each approved VCAT order is provided in the appendices.

2.4.2 HAVE CONDITIONS BECOME MORE ONEROUS?

In terms of new conditions, four quarries now have prescribed production limits and a further two quarries now have prescribed maximum daily truck movements. A further three quarries are prohibited from undertaking retail sales. Four quarries have lighting restrictions and one quarry is required to keep a complaint register.

Since 2014, several approvals have required acoustic reports and ongoing noise monitoring in addition to compliance with the standard EPA noise requirements. In some cases, air quality reports and air emission management plans have been required as well as air and ground vibration testing to measure compliance with blasting regulations.

Notwithstanding this, some of these conditions such as keeping a complaint register have become standard conditions in planning permits and work authorities.

The review has revealed several unique VCAT planning permit conditions:

- Moyne Shire is the only responsible authority to impose a royalty per tonne of extracted material to fund road maintenance.

- Rural City of Wangaratta is the only responsible authority to prescribe a limit on the number of blasts per annum (three times per year).

- Greater Shepparton is the only responsible authority to require abutting properties to be offered anthrax vaccinations for all dairy cattle and horse at no cost to their owners.

It should be noted that it is common for local councils to impose a condition requiring financial contributions for road upgrades and maintenance.

The review has found earlier VCAT Orders were more likely to provide general obligations in respect to a specific condition, whereas lately, the obligations have become far more prescriptive. In addition, the review has also found councils apply the same type of condition in an inconsistent manner. This is particularly evident with the landscape condition, environmental management plans, blasting, traffic management reports and road maintenance contributions. These inconsistencies add significant costs as the legal advice provided to quarry operators is to always consider the latest conditions made by a responsible authority.

2.4.3 COMPARATIVE REVIEW OF CONDITIONS

This section analyses the different approaches taken by VCAT in the design and drafting for the following conditions:

- Production limits
- Truck movement restrictions
- Retail sales prohibition
- Noise, Acoustic Reports and Noise Monitoring
- Blasting Restrictions
- Prior Notice to Blasting
- Air/Ground Vibration Tests
- Air Emissions Management Plan
- Landscaping
- Environmental Management Plans
- Traffic Management Reports
- Road Maintenance Contributions

Production Limits

Ryleigh v Alpine SC & Ors [2010] VCAT 1419 – Each stage must be limited to an excavation area of 1.5ha and the total area of extraction must be no greater than 4.98ha.

Bremner & Ors v Golden Plains SC [2011] VCAT 1261 – Output must not exceed 150,000 tonnes per annum unless an assessment of impacts has been undertaken in accordance with the EPA Protocol for Environmental management for Mining and Extractive Industries (PEM).

Riley v South Gippsland SC [2013] VCAT 15 – The permit applicant/quarry operator must ensure that the total volume of extraction from the quarry does not exceed a maximum of 20,000 m^3 in any single financial year without the further written consent of the responsible authority. The operator, on reasonable request from the responsible authority, must provide the responsible authority with any relevant information required to verify the level of the volume of extraction of material in any particular financial year. (Condition 7)

Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611 – Output must not exceed 500,000 tonnes per annum, unless an assessment of impacts has been undertaken in accordance with the Protocol for Environmental management for Mining and Extractive Industries (PEM). (Condition 5)

Truck Movement Restrictions

Burge v Wangaratta RCC [2013] VCAT 1508 – Except with the further consent of the responsible authority the maximum number of truck movements to and from the subject land must not exceed 20 movements on any day. (Condition 6)

Auswide Developments Pty Ltd v Greater Shepparton CC [2016] VCAT 1427- The number of trucks accessing the site is limited to 40 movements per day unless otherwise agreed to in writing by the responsible authority. (Condition 11)

Retail Sales Prohibition

Three quarries are prohibited from undertaking retail sales at their sites. In the case of Auswide Developments Pty Ltd v Greater Shepparton CC, the wording of the condition appears incorrect as it suggests that the extracted sand can only be used for the private use of the quarry.

Ryleigh v Alpine SC & Ors [2010] VCAT 1419 – No direct sales of any goods/materials from the subject site are permitted. (Condition 19)

Riley v South Gippsland SC [2013] VCAT 15 – No direct sales of goods or other materials may be made to the public from the site. (Condition 11)

Auswide Developments Pty Ltd v Greater Shepparton CC [2016] VCAT 1427 – All sand extracted from the site must be used for private use only. No retail sales are to occur from the subject land (Condition 38)

Noise, Acoustic Reports & Noise Monitoring

It is common for VCAT to include a condition for a quarry operator to comply with a noise limit of 45db(A) in accordance with the EPA Interim Guidelines for Control of Noise in Country Victoria N3/89 (superseded by Noise from Industry in Regional Victoria guideline (EPA publication 1411) in October, 2011) when measured outside the nearest dwellings.

However, a number of quarries have had additional noise conditions in the form of acoustic reports and ongoing noise monitoring as shown below.

Central Quarries Pty Ltd v Mitchell SC [2011] VCAT 1753- Within 6 months of the excavation works commencing an acoustic report prepared by an independent qualified acoustic engineer must be prepared which assesses noise emissions from the site. If noise limits are above the current noise regulations, the report must recommend strategies to reduce noise levels appropriately which the operator must implement, to the satisfaction of the responsible authority. The effectiveness of these strategies must be further tested, to the satisfaction of the responsible authority. (Condition 10)

Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611 – Prior to the use and development commencing, an Acoustic Report must be prepared by a suitably qualified acoustic consultant and submitted to the responsible authority for approval. The Acoustic report must address:

a) the potential for noise during construction of the initial works (including landscaping and the creation of bund walls) and throughout the life of the quarry;
b) any necessary measures for the management and operation of the permitted use to ensure compliance with relevant noise regulations including:
    i) all mobile equipment operating at the site must be fitted with the 'new generation' broadband reverse alarms, which vary their noise output according to the ambient noise level, which reversing alarms must be selected for the lowest noise level consistent with safe operation;
    ii) product stockpiles and travel routes within the site must be configured so as to minimise any need for sales trucks to reverse;
    iii) the permit holder must ensure that any rock drill used on site is acoustically shielded to ensure noise emissions from the site do not exceed the NIRV Recommended Maximum Noise Level of 46 dB(A);
    iv) the permit holder must establish a community liaison protocol to the satisfaction of the responsible authority to manage early identification of any emerging noise issues and the implementation of remedial measures as required in order to comply with the NIRV Recommended Maximum Noise Level of 46dB(A) as the quarry development progresses and new stages commence; and,
c) the construction of noise control works (bunds) and any measures to address disruption to sensitive receptors from noise associated with their construction.

When approved, the Acoustic Report will be endorsed to identify it as the Acoustic Report under this condition. The use and development must at all time be undertaken to the satisfaction of the responsible authority where the responsible authority will take account of the Acoustic Report in determining what it will be satisfied with. (Condition 12)

Giles & Ors v Baw Baw SC [2009] VCAT 61 – Within 12 months of the commencement of operation under each of stages 1, 2 3 & 4 under this permit, noise tests are to be carried out (subject to the owner's consent which must be sought) at the dwellings at 565 Neerim North Road, 140 Pearce Road and 140 Palmer Road or at appropriate derived points to test the worst case scenario predictions of Table 2: Noise prediction modelling results in the following three Watson Moss Growcott Acoustics Pty Ltd reports. For each of the scenarios in the table relevant to that stage and a report on noise registered is to be provided to the responsible authority, the Department of Primary Industries and the Environment Protection Authority. Any recommended modifications to the operations necessary to achieve compliance with EPA N3/89 Guidelines must be carried out to the satisfaction of the responsible authority. (Conditions 12-13)

Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611 – Prior to the commencement of works and approved use, the permit holder must submit a noise monitoring plan prepared by a suitably qualified acoustic consultant to the responsible authority for its approval. The document must detail the noise monitoring to be undertaken in accordance with NIRV and SEPP at the following times and measures to address non-compliance issues:

i) on commencement of the use;
ii) 12 months after commencement of the use; and
iii) prior to the commencement of the use of a rock drill in each stage in order to confirm compliance with the NIRV Recommended Maximum Noise Level of 46 dB(A) and to identify any necessary noise control priorities.

Within 4 weeks of each round of noise monitoring being completed a summary of the noise monitoring results and any action taken to mitigate impacts must be submitted to the responsible authority. (Condition 13)

Blasting Restrictions

Five quarries have blasting restrictions. Each quarry has different time frames when blasting can be undertaken. Most do not permit blasting on Saturday other than in the Holcim (Aust) Pty Ltd v Indigo SC & Ors [2012] VCAT 640 order. Some allow for exceptions for unforeseen circumstances. The Burge v Wangaratta RCC [2013] VCAT 1508 order limits blasting to 3 times per year.

The following is the conditions on blasting restrictions for the six quarries.

Giles & Ors v Baw Baw SC [2009] VCAT 61 - Blasting must only be undertaken between the following times: 10.00am – 3.00pm Monday to Friday (not including public holidays) (Condition 7)

Bremner & Ors v Golden Plains SC [2011] VCAT 1261 -Unless with the prior written consent of the Responsible Authority, blasting may only be undertaken between the following times: (a) 10:00am – 4:00pm Monday to Friday (Not including public holidays)

An exception will be allowed when, for unforeseen circumstances, explosives must be detonated prior to blasting finishing on the nominated day. (Condition 7)

Holcim (Aust) Pty Ltd v Indigo SC & Ors [2012] VCAT 640 - The use and development hereby permitted must at all times comply with the Department of Primary Industries – Environmental Guidelines – Ground Vibration and Air blast Limits for Blasting in Mines and Quarries, as may be amended from time to time. (Condition 13)

Blasting 9am-5pm Monday to Friday 9am-1pm Saturday (public holidays excluded) (Condition 5)

Burge v Wangaratta RCC [2013] VCAT 1508 - Blasting must not be undertaken more than 3 times per year and no more than 2 times on these days. (Condition 12)

Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611 - Except with the written consent of the Responsible Authority, blasting must only occur between the following hours: Monday to Friday 8:00am to 5:00pm
Saturday, Sunday & Public Holidays No Blasting (Condition 28)

Prior Notice to Blasting

Of the five quarries with blasting restrictions in the previous section, only four of these quarries were subject to conditions in respect to providing prior notice to blasting. As can be seen by the conditions set out below there is an inconsistent approach taken with the notification process. Notification ranged from no minimum time to at least 48 hours. Persons to be notified ranged from occupiers of adjoining land to residents within 1 km of the quarry.

The following is the conditions on prior notice to blasting for the four quarries.

Giles & Ors v Baw Baw SC [2009] VCAT 61 - The quarry operator must use its best endeavours to the satisfaction of the responsible authority to give notification of any proposed explosives blast to all occupiers of adjoining land and to any other nearby occupiers who have requested notification. This notification must be given at least 24 hours before each scheduled blast. (Condition 17)

Bremner & Ors v Golden Plains SC [2011] VCAT 1261 -Prior to any explosives blasting on the subject site the quarry operator must give written notice to all occupiers of directly adjoining land to the satisfaction of the Responsible Authority. This notification must be given at least 48 hours before each scheduled blast. The written notice must contain direct contact details for the responsible site manager. An exception will be made when, for unforeseen circumstances, explosives must be detonated prior to blasting finishing on the nominated day. (Condition 13)

Burge v Wangaratta RCC [2013] VCAT 1508 - Notification must be given to all residents within a 1km radius of the Quarry prior to blasting. (Condition 13)

Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611 - Prior to any blasting on the subject site the quarry operator must give written notice to the satisfaction of the Responsible Authority to all occupiers of directly adjoining land. This notification must be given at least 48 hours before each scheduled blast. The written notice must contain direct contact details for the responsible site manager. An exception will be made when, for unforeseen circumstances, explosives must be detonated prior to the nominated end of blasting on a nominated day for which blasting notice has been given. (Condition 35)

Air/Ground Vibration Tests

Three quarries were required to undertake air and ground vibration tests and the conditions are similar.

The following are the conditions on air and ground vibration tests for the three quarries.

Giles & Ors v Baw Baw SC [2009] VCAT 61 - Initial air and ground vibration monitoring must be undertaken of five initial blasts close to the nearest dwelling at the quarry boundary. The measured vibration level at the nearest dwelling must be reported to the responsible authority.

Bremner & Ors v Golden Plains SC [2011] VCAT 1261 - Within twelve (12) months of the commencement of the quarrying activities approved under this permit, ground and air vibration tests are to be carried out at locations approved by the Responsible Authority. Testing locations must correspond with setback distances to the closest adjoining sensitive uses. Testing must not be undertaken on adjoining private land without the consent of the relevant land owner. Following testing a report must be prepared and submitted to the Responsible Authority for review. Any recommended or required modifications must be carried out to the satisfaction of the Responsible Authority. (Condition 14)

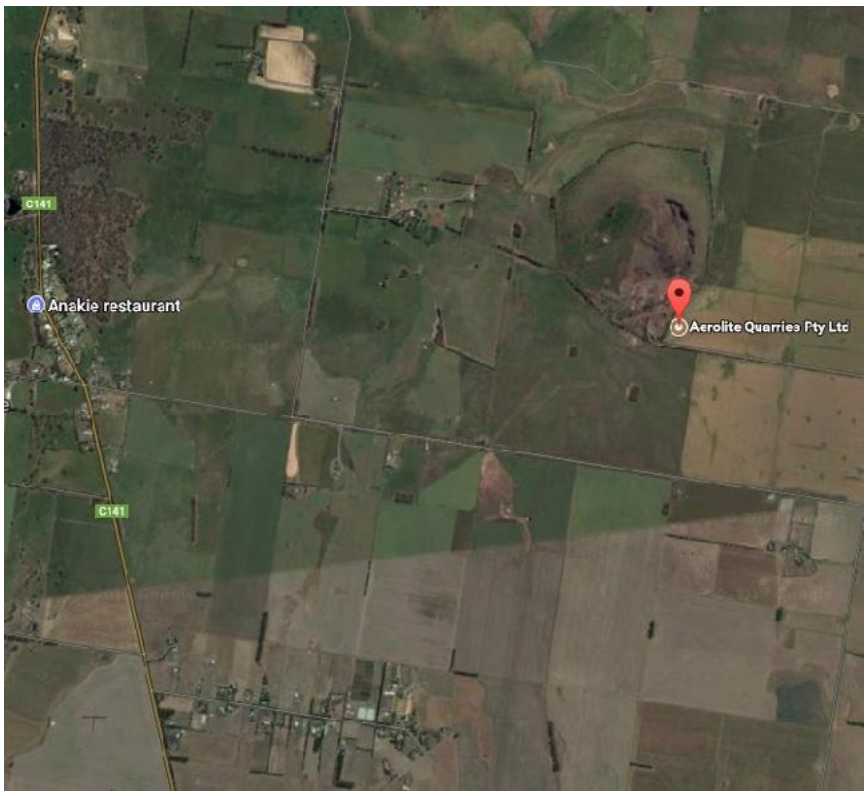
Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611 - Condition 36 is identical to the condition in Bremner & Ors v Golden Plains SC.

Air Emissions Management Plan

Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611 - Prior to the use and development commencing, an Air Emissions Management Plan (AEMP) must be prepared by a suitably qualified person and submitted to the responsible authority for approval. The AEMP must detail, but not be limited to:

a) a risk management strategy addressing measures to reduce air emissions to acceptable levels at nearby sensitive locations (meaning residences, schools, kindergartens, aged care facilities, hospitals, child care centres and recreational areas) and to address the potential for nuisance dust off-site. (Condition 14)

As can be seen below, Aerolite Quarries is located in the right top corner of the image and is about 3 kms from Anakie, the closest town. There are several residences along Brownes Road to the south of the quarry and the closest residence is about 500 m from the quarry.



Landscaping

While landscaping is a condition common to most of the planning permits, the requirements have become more prescriptive and costly to implement since 2009.

The landscaping condition has gone from a general requirement to plant and maintain native species at specific locations to detailed landscaping plans prepared by landscape architects, prescribed lists of native species, height requirements, security deposits/bonds and audits.

Of the 11 VCAT cases discussed below, 7 of these VCAT orders have imposed onerous landscaping conditions relative to the 2009 baseline.

In the case of Giles v Baw Baw 2009, the landscaping condition refers to the locations at the quarry site that need to be vegetated with native species predominately from the local area. Bremner V Golden Plains has a similar condition. Lang Lang Holdings v Cardinia 2009 had no specific landscaping conditions other than a general condition that the buffer planting had to be established prior to sand extraction to the satisfaction of the Responsible Authority. CAB Investments v Ballarat had no specific landscaping condition.

The following cases demonstrate the prescriptive nature of the landscaping condition and the inconsistent approach taken by VCAT and responsible authorities.

Palmer v Moyne SC [2011] VCAT 1939 -requires a landscape plan to be submitted and approved by the Responsible Authority and for the landscaping to be completed six months prior to the commencement of any quarrying.

Central Quarries Pty Ltd v Mitchell SC [2011] VCAT 1753- a similar condition is required to prepare a landscape plan to be submitted for approval. The landscape plan must show, inter alia, planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant. All species, densities and locations must be to the satisfaction of the Responsible Authority. An additional condition requires the vegetation planting must be completed within 12 months of the start of works under the permit.

Holcim (Aust) Pty Ltd v Indigo SC & Ors [2012] VCAT 640 - a landscape plan must be prepared to the satisfaction of the Responsible Authority. The landscape plan must be generally in accordance with the Landscape and Visual Impact Assessment. Within 6 months of the fixed plant construction stage (an in any event within 3 years of the commencement of development) the permit holder must engage a suitably qualified person to prepare an audit report to the satisfaction of the Responsible Authority. The audit report must assess compliance with the landscape and rehabilitation plan, make recommendations for continual improvement and if it finds any areas of non-compliance, make recommendations to ensure compliance with that plan.

Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611 – Prior to commencement of works, a Landscape plan for the entire site must be prepared by a suitably qualified registered landscape architect and submitted to the responsible authority for approval. When approved, the landscape plan will be endorsed and will then form part of the endorsed plans of this permit. The Landscape Plan must include the following elements:

a) details of existing conditions and vegetation (including windrows and road plantings) and details of this existing vegetation to be retained and/or removed as part of the bunding works;
b) a rural character to the external road edge landscapes and visual layers to the landscape with multiple lines and returns within the planting system to imitate existing rural landscape forms;
c) a landscape buffer system based around a combination of tall windrow plantations (sugar Gums or mixed species plantations) along perimeter fence lines
d) dense screen planting and screen mounding within the site;
e) planting to address the mitigation of views to the site generally in accordance with the recommendations of the Landscape and visual Impact Assessment prepared by Tract Consultants (Nov 2014);
f) use of suitable stockpiled soil in the mix of the material for the bunds to encourage the establishment of planting on the bunds;
g) the location of bunds inside the site boundary to retain the appearance of an agricultural property particularly along Brownes Road generally in accordance with the recommendations of the Landscape and visual Impact Assessment prepared by Tract Consultants (Nov 2014);

h) species and planting densities of the vegetated bund (avoiding species listed in the 'Garden Plants Going Bush…. Pest Plants/Environmental Weeds' Version 8, City of Greater Geelong which must not be used); and,
i) an effective irrigation and watering regime during the establishment phase and for the ongoing maintenance.

The approved landscape Plan must be implemented to the satisfaction of the responsible authority.

Auswide Developments Pty Ltd v Greater Shepparton CC [2016] VCAT 1427

Before the development starts a landscape plan must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must show how the two existing large trees adjacent to the extraction area are to be protected, in accordance with an independent arborist report to provide guidance on appropriate protection. The plan must show the landscape buffers as required in Condition 21 to contain a mix of the following:

Trees 8 m or more
Acacia implexa Lightwood
Allocasuarina luehmannii Buloke
Banksia marginata Silver Banksia
Callitris glaucophylla White Cypress Pine
Eucalyptus melliodora Yellow Box
Exocarpos cupressiformis Cherry Ballart
Shrubs 1-8 m
Acacia brachybotrya Grey Mulga
Acacia acinacea s.l. Gold-dust Wattle
Acacia calamifolia Wallowa
Acacia montana Mallee Wattle
Acacia pycnantha Golden Wattle
Bursaria spinosa Sweet Bursaria
Calytrix tetragona Common Fringe-myrtle
Dodonaea viscosa subsp. cuneata Wedge-leaf Hop Bush
Eremophila longifolia Berrigan
Eutaxia microphylla var. microphylla Common Eutaxia
Exocarpos strictus Pale fruit Ballart
Hibbertia riparia Erect Guinea-flower
Pittosporum angustifolium Weeping Pittosporum
Pultenaea tenuifolia Slender Bush-pea
Ground Covers
Aristida jerichoensis Jericho Wire-grass
Austrostipa densiflora Dense Spear-grass
Carex gaudichaudii Tufted Sedge
Chloris truncata Windmill Grass
Clematis microphylla Small-leaf Clematis
Dianella revoluta s.l. Black-anther Flax-lily
Enteropogon acicularis Spider Grass
Glycine clandestina Twining Glycine

Lomandra effusa Scented Mat-rush
Maireana enchylaenoides Wingless Bluebush
Panicum effusum Hairy Panic

Before the use starts or by such a later date as is approved by the Responsible Authority in writing, landscaping works shown on the endorsed plan must be carried out and completed to the satisfaction of the Responsible Authority.

The landscape works must be maintained for the duration of the permit or a minimum of 12 months, whichever is the longer, to the satisfaction of the Responsible Authority.

Environmental Management Plans

Two quarries have conditions requiring environmental management plans (EMP) with most being required conditions in recent years. Only one order required an audit of the EMP: Lang Lang Holdings Pty Ltd v Cardinia SC & Ors [2009]. Ironically, the audit requirement has been removed in recent years. The Lang Lang Holdings Pty Ltd v Cardinia SC & Ors [2009] was the only order to require the establishment of an environment review committee.

The following are the conditions on EMPs for the five quarries.

Lang Lang Holdings Pty Ltd v Cardinia SC & Ors [2009] VCAT 1818 - Prior to the commencement of any works on the land an Environmental Management Plan covering all aspects of site establishment, extraction operations, rehabilitation and monitoring must be submitted to and approved by the Responsible Authority. The Environment Management Program shall be generally in accordance with the detailed environmental and operational reports submitted with the application and include any additional requirements of the responsible authority. The use and development of the land must be at all times in accordance with the Environment Management Plan, and as required by the responsible authority, an audit of the Environment Management Plan must be undertaken by an independent auditor to the satisfaction of the responsible authority. (Condition 16)

Prior to the commencement of any works on the land an Environmental Review Committee must be established involving the Department of Natural Resources and Environment, the Environment Protection Authority, Melbourne Water, South Rural Water, the responsible authority, representatives of the operator and the local community. In addition, the committee may include a representative from the National Trust

The role of the Environmental Review Committee is to:
(a) Review the effectiveness of the Environmental Management
Plan for the site;
(b) Provide timely feedback on any environmental problems associated with the extraction operation. (Condition 17)

Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611 - Unless otherwise approved in writing by the Responsible Authority, prior to the use and development commencing, an Environmental Management Plan (EMP) must be prepared by a suitably qualified person and submitted to the Responsible Authority for approval. The EMP must be to the satisfaction of the Responsible Authority. The EMP must provide for, but not be limited to:
a) Water balance calculations including water sources, storage, internal drainage lines and sediment repositories;
b) Measures to be undertaken to control sediment-laden water being discharged from the site;
c) Emergency response procedures to be implemented and other measures required to control the discharge of sediment-laden water in flood events;
d) Management of grey water and sewage generated on site; and
e) Management of storage of fuels and other materials to prevent interaction with surface waters.

When approved, the EMP will be endorsed and will then form part of this permit. The use and development must be undertaken in accordance with the approved EMP to the satisfaction of the Responsible Authority. (Condition 8)

Traffic Management Reports

Only 5 VCAT orders required traffic management reports. The approach taken is different in each case. Some are general and others prescriptive. CAB Investments Pty Ltd v Ballarat is the only order that requires three assessments and Aerolite Quarries Pty Ltd v Greater Geelong is the only order to require a suitably qualified traffic engineer.

CAB Investments Pty Ltd v Ballarat CC [2009] VCAT 629 - Before the use starts, a traffic management report prepared by a suitably qualified and experienced engineer, including a condition report on the pavement and seal of Sago Hill Road between Ballarat – Carngham Road and Greenhalgh's Road, must be submitted to and approved by the Responsible Authority, and a similar assessment must be undertaken 12 months and 24 months after extraction operations commence, all to the satisfaction of the Responsible Authority. (Condition 23)

Bremner & Ors v Golden Plains SC [2011] VCAT 1261 - Before the use starts, a traffic management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. Traffic and parking operations on and adjacent to the site must conform to the endorsed plan. Three copies of the plan must be submitted. The plan must include:

(a) Engineering designed drawings for the proposed layout of the access to the site which is suitable for fully loaded B Double trucks. (Condition 28)

Holcim (Aust) Pty Ltd v Indigo SC & Ors [2012] VCAT 640 -Prior to the commencement of the use of the site, a traffic management plan must be prepared to the satisfaction of the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit.

The traffic management plan must include the following:
a) a requirement that any water trucks avoid the use of Racecourse Road during the times that the school buses are likely to be using that road;
b) measures to inform drivers of trucks associated with the quarry of the route and times of the school buses travelling along the Black Dog Creek Road and travelling along the Chiltern-Beechworth Road between Black Dog Creek Road and the Hume Highway;
c) measures to reduce as far as practicable any risks to the safety of the school bus from trucks associated with the quarry;
d) a requirement that truck access (except for water truck) to and from the site must be generally restricted to the main road network, except for the section of Black Dog Creek Road between the Beechworth- Chiltern Road and the point of access to the land;
e) a requirement that truck access on Black Dog Creek Road east of the access to the development must be for local deliveries only; and
f) truck loading and covering techniques so as to ensure that extracted material is not spilled on public roads. (Condition 35)

Riley v South Gippsland SC [2013] VCAT 15 - The Permit applicant/Quarry operator must develop an Operations Manual/Traffic Management Plan for the site including the following information:
(i) Trucks to only use Old Thorpedale Rd route to access the Mirboo
North Township.
(ii) Truckload to be covered before exiting the site.
(iii) Truck drivers to observe speed limits at all times
(iv)Trucks to minimize dust clouds in unsealed road sections by minimising speeds in areas close to residences.
(v) Days and Hours of operation excluding designated School Bus operation times.
(vi)Driver awareness program in respect to relevant permit conditions. (Condition 8)

Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611 -Traffic Impact Assessment- Within one month of the commencement of the permitted use, the permit holder must commission an independent traffic and road impact assessment prepared by a suitably qualified traffic engineer. The traffic and road impact assessment must document the condition of roads that form the designated truck route.

Within 12 months of the commencement of the permitted use, the permit holder must commission an independent traffic and road impact assessment prepared by a suitably qualified traffic engineer. The traffic and road impact assessment must document:
a) the number of truck movements associated with the use;
b) identification of any unreasonable impacts caused by the permitted use on the safety or operation of the quarry traffic route.
c) make recommendations for any maintenance works required to address any unreasonable impacts caused by the permitted use on the safety or operation of the quarry traffic route; and
d) a regime of ongoing traffic and road reviews;

all to the satisfaction of the Responsible Authority.

Any necessary mitigation works recommended in the traffic and road impact assessment must be undertaken at the cost to the permit holder, to the satisfaction of the Responsible Authority. (Conditions 31-33)

Road Maintenance Contributions

Only two VCAT orders required road maintenance contributions. The formula is different in each case. The first case requires a fixed annual contribution of $2,500 or nil if the quarry can demonstrate it has extracted less than 10,000 m^2. The second case requires an undisclosed royalty per m^3 of material.

Riley v South Gippsland SC [2013] VCAT 15 - Subject to 17(b), after the commencement of the use, the owner/quarry operator must provide to the Responsible Authority an annual road maintenance contribution. The contribution is due on 31 March of each year. Unless otherwise agreed between the owner/quarry operator and the Responsible Authority, the annual contribution at the date of this permit is $2,500, with the amount of the contribution to be annually adjusted on 31 December by the percentage change in the Price Indexes of Outputs of the Construction Industry published by the Australian Bureau of Statistics.

b. If the owner/quarry operator is able to demonstrate, to the satisfaction of the Responsible Authority, that less than 10,000m2 of stone has been extracted from the Site in a calendar year, then there is no requirement for an annual road maintenance contribution to be provided to the Responsible Authority in that year which immediately follows the calendar year in which extraction was less than 10,000m2. (Condition 19)

Palmer v Moyne SC [2011] VCAT 1939- The applicant must enter into an agreement with Moyne Shire Council to pay a royalty per cubic metre of material leaving the quarry, which will contribute towards the maintenance of Crags Rd. (Condition 2c)

2.5 CATEGORISATION OF ADVERSE VCAT ORDERS

Table 14: Key Reasons for Adverse Outcomes

VCAT Order	Reasons
Sarto & Ors v Corangamite SC [2010] VCAT 626	1. The significance of Mount Elephant. 2.The Economic benefit to the community. 3.The Visual Impact upon Mount Elephant. 4.The Impact of the Interpretative Integrity of Mount Elephant.
Beach & Ors v Colac Otway SC [2011] VCAT 2086	1. Impact on groundwater/surface water. 2. Impact on native flora & fauna. 3. Truck noise.
Gibson v Moyne SC [2014] VCAT 916	1. Impact of dust and noise on residential dwelling close to the quarry (50 m). Impact on groundwater and surface water.
Hanson Construction Materials Pty Ltd v DEDJTR (Red Dot) [2015] VCAT 1375	1. Impact of works on flooding and floodplain stability. 2. Protection of water quality – for surface water and groundwater. 3. Protection of life, property and community infrastructure from flood hazard. 4. Maintenance of ecosystem health and biodiversity.
Hurst Earthmoving Pty Ltd v Towong SC [2016] VCAT 425	1. Impact on Amenity (adjacent properties in Rural Living Zone). 2. Impact of heavy vehicle trucks on local road.3. Narrowness of local road.
Hillview Quarries Pty Ltd v Mornington Peninsula SC [2017] VCAT 573	Permit expired due to the use of the land for extractive industry did not start within two years after the issue of the permit or because, once started, it was then discontinued for a period of more than two years.
E B Mawson & Sons Pty Ltd v DEDJTR [2017] VCAT 466	Risk of pit capture and an avulsion event. Impact on infrastructure from pit capture or avulsion event.

Several of the adverse VCAT orders deserve further explanation. In particular, Hanson Construction Materials Pty Ltd v DEDJTR and E B Mawson & Sons Pty Ltd v DEDJTR. Both of these cases are similar in that the referral water authority objected to the work plan being statutorily endorsed on the grounds that the proposed extraction area posed an unacceptable risk of potential pit capture and avulsion occurring in a 1:100 year flood on the rivers where the quarries are located.

The VCAT hearings considered the risk modelling prepared by the quarry operator and the referral water authority. In the case of E B Mawson & Sons Pty Ltd v DEDJTR, the quarry operator was requested by the ERR to undertake an independent risk-based assessment. The quarry operator engaged GHD to undertake the risk based assessment in accordance with the ERR's risk assessment methodology. Given the outcomes from the risk assessment it is likely that ERR would have statutorily endorsed the work plans except for the objection of the referral water authority.

It is questionable whether VCAT has the expertise to deal with such complex issues, to fully understand the risk assessment undertaken by both sides and to make a qualified decision on which risk assessment is correct.

Notwithstanding that the quarry operator submitted a potential solution with the installation of levees, the VCAT members would not consider this solution as the referral water authority had not had time to assess this proposal. However, the quarry operator had undertaken the independent risk-based assessment with the full co-operation of the ERR and the referral water authority and every effort should have been focussed on finding an acceptable and agreed solution during this process.

Given that there are many quarries located on floodplains where the construction material is located, there is a need for Government to develop a solution, in consultation with the extractive industry, to pit capture and avulsion otherwise there will be no development or expansion of quarries located in floodplains.

The Sarto & Ors v Corangamite SC [2010] VCAT 626 case is unique in that VCAT found the proposed quarry at the base of the UNESCO listed Mount Elephant near Derrinullum would impose a visual amenity impact that would affect the potential development of eco-tourism. VCAT gave recognition to the Council's Municipal Strategic Statement's emphasis on protecting and enhancing areas of natural and cultural heritage and encouraging quality tourism development. Notwithstanding the presence of the Council rubbish tip at the base of Mount Elephant, VCAT decided in favour of potential eco-tourism.

2.6 NUMBER OF VCAT APPROVED PROPOSALS NOT PROCEEDED

Holcim (Aust) Pty Ltd v Indigo SC & Ors [2012] VCAT 640

The proposal is to establish a quarry for the extraction of hornfels and the creation of various sealing and asphalt aggregate products for road works. The work authority area comprises 115 hectares and provides for an extraction area of about 14.2 hectares and processing facilities covering about 15.6 hectares.

Up to 400,000 tonnes of material will be extracted per annum, varying from 20,000 to 40,000 tonnes per month. It is estimated that the quarry will provide almost 23 million tonnes of material, with the extraction period expected to take between 57-91 years, depending on the rate of extraction.

Like most VCAT orders, the conditions are designed around the average or peak production and are not flexible enough to allow a quarry to gradually establish itself. Many conditions need to be implemented prior to the commencement of extraction and to the satisfaction of the responsible authority.

In the case of this quarry, this high value resource requires a major project in the area or change to current market conditions to justify the establishment costs associated with implementing a range of conditions including the upgrades to two intersections near the quarry.

Lang Lang Holdings Pty Ltd v Cardinia SC & Ors [2009] VCAT 1818

Hansons Quarries operates a sand quarry opposite the proposed sand quarry at Lang Lang. According to advice received by Hansons' local management, Lang Lang Holdings' sand quarry has not proceeded. The VCAT order does not provide any information about the proposed scale of production. However, the VCAT order imposes several conditions requiring road upgrades at two nearby intersections. The cost of the road works may have had an impact on the commercial viability of the quarry. However, it has not been possible at this stage to contact the owners to verify the reasons for not proceeding with the quarry.

Turvey v East Gippsland SC [2014] VCAT 658

Whelan Quarries proposed to develop a stone extraction quarry on 3.4 hectares over three stages of development at Genoa. Whelan Quarries was unsuccessful in winning civil works in Mallacoota. It is unclear whether the protracted planning permit process and the VCAT appeal had any bearing on Whelan Quarries not being able to supply the civil works in the required time.

Auswide Developments Pty Ltd v Greater Shepparton CC [2016] VCAT 1427

Auswide Developments Pty Ltd proposed to develop a small sand quarry on 1 hectare at Tatura. According to Marshall Day Acoustics, the quarry has not proceeded due to the proponent not obtaining a contract with a cement-mixing company.

2.7 ATTENDANCE OF EARTH RESOURCES REGULATION AT VCAT

As can be seen from the Table below, ERR attended 7 out of the 43 VCAT cases from 2009 to 2017. Attendance was determined from the persons listed in the appearances section of each VCAT Order.

Table 15: ERR Attendance at VCAT hearings

1.	Giles & Ors v Baw Baw SC [2009] VCAT 61
2.	Sarto & Ors v Corangamite SC [2010] VCAT 626
3.	Country Endeavours Pty Ltd v Baw Baw SC [2011] VCAT 147
4.	Whelan's Quarries Pty Ltd v East Gippsland SC [2013] VCAT 713
5.	Hanson Construction Materials Pty Ltd v DEDJTR (Red Dot) [2015] VCAT 1375
6.	Sandow v Macedon Ranges SC [2017] VCAT 501
7.	E B Mawson & Sons Pty Ltd v DEDJTR [2017] VCAT 466

ERR was previously based within the Department of Primary Industries (DPI) and is now located within the DEDJTR.

It is not clear whether ERR attended the VCAT hearings in a voluntary capacity other than the following cases where it's Department was a party to the proceedings.

In Country Endeavours Pty Ltd v Baw Baw SC [2011] VCAT 147, DPI was joined as a respondent with the permit applicant, Casacir Pty Ltd.

In the Hanson Construction Materials Pty Ltd v DEDJTR (Red Dot) [2015] VCAT 1375 and E B Mawson & Sons Pty Ltd v DEDJTR [2017] VCAT 466, the DEDJTR was the relevant authority to the proceedings.

In terms of whether ERR made a useful contribution at these VCAT hearings, ERR representatives are rarely cited in the VCAT Order transcripts.

However, it should be noted in both the Hanson Construction Materials Pty Ltd v DEDJTR (Red Dot) [2015] VCAT 1375 and E B Mawson & Sons Pty Ltd v DEDJTR [2017] VCAT 466, ERR's advice to the Head of DEDJTR was to statutorily endorse the work plan in the absence of any objection from a determining referral authority.

Aerolite Quarries advised that it requested the ERR to attend its VCAT hearing but the ERR chose not to attend the hearing.

Given the interrelationship between work plans and planning permits, the low level of ERR attendance is hard to defend. Attendance at VCAT hearings would enable ERR to identify emerging issues, inconsistencies between responsible authorities in respect to planning permit conditions and policy implications of VCAT decisions and conditions for the viability of the extractive industry.

2.8 VCAT MEMBERS

Most VCAT members are either lawyers or town planners. It is unlikely that VCAT members have any direct experience with the extractive industry; none of the VCAT members have made passing reference to their personal experience in the extractive industry. To be fair, most judges are unlikely to have direct experience with the extractive industry.

The role of VCAT members is to consider each proposal based on Clause 52.09 decision guidelines for the extractive industry and the Section 65 decision criteria. VCAT members seek to ensure the proposal meets the various requirements of the VPP, and in particular, the permit applicant can manage the on-site and off-site impacts in regards to sensitive land uses.

VCAT has approved 71 percent of the planning permits for quarries, and in so doing, has mostly set aside the responsible authorities decision to refuse a permit. Table 16 shows the VCAT members for approved VCAT orders.

Table 16: VCAT Members – Approved VCAT Orders

VCAT Case	**VCAT Members**
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors [2009] VCAT 1818	Jeanette G Rickards & Christina Fong
CAB Investments Pty Ltd v Ballarat CC [2009] VCAT 629	Gerard Sharkey & Alan K Chuck
Giles & Ors v Baw Baw SC [2009] VCAT 61	Tonia Komesaroff & Sylvia Mainwaring
Ryleigh v Alpine SC & Ors [2010] VCAT 1419	Russell Byard
Central Quarries Pty Ltd v Mitchell SC [2011] VCAT 1753	S. R. Cimino & G Sharpley
Bremner & Ors v Golden Plains SC [2011] VCAT 1261	J A Bennett & Nicholas Hadjigeorgiou
Palmer v Moyne SC [2011] VCAT 1939	Anthony Liston
Wilanders Pty Ltd v Baw Baw SC [2012] VCAT 417	G Rundell
Holcim (Aust) Pty Ltd v Indigo SC & Ors [2012] VCAT 640	S. R. Cimino & G Sharpley
Whelan's Quarries Pty Ltd v East Gippsland SC [2013] VCAT 713	Russell Byard
Riley v South Gippsland SC [2013] VCAT 15	N. Hadjigeorgiou
Hanson Construction Materials Pty Ltd v Wyndham CC (Red Dot) [2013] VCAT 158	Helen Gibson
Burge v Wangaratta RCC [2013] VCAT 1508	Anthony Liston
Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611	Russell Byard & Nick Hadjigeorgiou
Turvey v East Gippsland SC [2014] VCAT 658	Nicholas Hadjigeorgiou
Hanson Construction Materials Pty Ltd v Cardinia SC (No 2) [2015] VCAT 471	Russell Byard
Auswide Developments Pty Ltd v Greater Shepparton CC [2016] VCAT 1427	Christopher Harty & Greg Sharpley

Table 17 shows the VCAT members for adverse VCAT orders.

Table 17: VCAT Members – Adverse VCAT Orders

VCAT Case	VCAT Members
Sarto & Ors v Corangamite SC [2010] VCAT 626	Rachel Naylor & Ian Potts
Beach & Ors v Colac Otway SC [2011] VCAT 2086	Margaret Baird & Ian Potts
Gibson v Moyne SC [2014] VCAT 916	Ian Potts & Catherine Wilson
Hanson Construction Materials Pty Ltd v DEDJTR (Red Dot) [2015] VCAT 1375	Helen Gibson & Ian Potts
Hurst Earthmoving Pty Ltd v Towong SC [2016] VCAT 425	G Rundell & G Sharpley
Hillview Quarries Pty Ltd v Mornington Peninsula SC [2017] VCAT 573	Judith Perlstein
E B Mawson & Sons Pty Ltd v DEDJTR [2017] VCAT 466	Helen Gibson & Ian Potts

While VCAT has approved 71 percent of planning permits, the review has found significant variation in the conditions issued by VCAT despite the fact that the ERR already have standard conditions for a work authority. This suggests that the VCAT members are taking direction from the responsible authority in terms of the elements of the condition. Some of these conditions such as the landscaping condition have become very prescriptive resulting in unnecessary micro-management of quarries.

There would appear a role for DELWP and DEDJTR to review the ERR's list of standard conditions in consultation with the extractive industry. This would provide guidance to responsible authorities and VCAT and ensure a consistent approach is applied to the extractive industry. Ideally, standard conditions should be performance based and not input-based and prescriptive as well as supported by industry best practice to provide guidance to the extractive industry. Any deviation from the agreed standard condition would need to be justified in writing by the responsible authority and/or VCAT.

In addition, DELWP and DEDJTR need to develop criterion for responsible authorities and VCAT when it is appropriate and justifiable to apply more onerous conditions such as acoustic reports and noise monitoring, air emission management plans and traffic management plans.

Similarly, DELWP and DEDJTR should also agree on the type of conditions that should not be included such as landscaping bonds and security deposits and royalty payments for road maintenance.

The planning permit conditions are based on the proposed work plan and on the expected maximum production output of the quarry. Most of the conditions such as the establishment of bund walls, landscaping, road works and management plans for noise, dust and so forth must be implemented prior to commencement of extraction. In many cases, as evident in the Holcim quarry at Chiltern, the quarry is subject to the market demand for its materials and is unlikely to achieve maximum production output without contracts to supply major projects. As a result, quarries are unable to justify the establishment of the quarry on a small scale in view of the costs of the conditions that are designed for maximum production output.

The road works condition is a case in point where upgrades are based on the truck movements at maximum production output. An alternative approach that would facilitate the opening of a quarry is to provide trigger points for various conditions. For example, if the quarry exceeds the number of truck movements for the category of road at the quarry, the quarry operator would need to undertake the required upgrade. It could be argued that this would be difficult to enforce and that quarry operators would have insufficient time to make the upgrade following a major contract to supply material. However, most major contracts are entered into prior to commencement given that major project managers need to plan and secure material supplies well in advance to ensure the major project is completed within contracted deadlines.

Another matter of concern is the inconsistent approach taken by VCAT in respect to the consideration of alternative supply sources of extractive materials. VCAT has extended its decision-making to the net community provisions in the VPP and has been inconsistent where some VCAT members have taken it into consideration and other VCAT members have considered it totally irrelevant as a planning consideration. The following three VCAT cases demonstrate the inconsistent approach.

In E B Mawson & Sons Pty Ltd v DEDJTR [2017] VCAT 466, VCAT traded-off the economic development of the Seymour quarry on the grounds that South Gippsland and Knox are the critical locations for sand and gravel resources.

"92 We draw the inference from this commentary however, that the latter sand and gravel resource, which is extracted from the applicant's quarry, is not the principle driver of Mitchell's designation as a 'key resource location'. This view is supported by the fact that South Gippsland and Knox are identified as the predominant critical locations for sand and gravel resource and that projections of demand to 2050 indicate that there will more than sufficient supply from identified reserves across Victoria.

93 Thus in the ledger of balancing economic development it is apparent that many other locations / regions are capable of providing the same gravel and sand resources as this site. While we accept that locally the resource maybe of importance for supply as well as employment, this is not a resource with such a high economic imperative for development that this overrides the consequences of a pit capture or avulsion."

This is an ill-informed and misguided argument as it is uneconomic and inefficient to transport sand and gravel from South Gippsland and Knox to the Seymour market. Moreover, there are no sand quarries in Knox and the gravel extracted at Seymour is unique in that it is used for low shrinkage concrete for high-rise buildings. There are not many quarries that can provide this type of material in Victoria.

In addition, it is quicker and cheaper to transport sand and gravel from Seymour to northern Melbourne than from quarries located on the fringes of south-eastern Melbourne. This demonstrates the lack of knowledge and expertise of VCAT members and the generalization of quarries by VCAT members without any regard to the quality of the material and the different end-uses.

There have been other VCAT cases that have entertained alternative sites. In Sarto & Ors v Corangamite SC [2010] VCAT 626, VCAT acknowledged other quarries in the region and the additional cost of transporting materials from these quarries. Notwithstanding this, VCAT determined the economic benefits of the proposed quarry at Mt Elephant were less than the potential benefits of potential eco-tourism.

"Mr McLaughlan (DPI) acknowledged that there are some other quarries in the broader area that already provide scoria including Skipton, Mount Shadwell, Mortlake, Clifford Exa in Terang, and Mount Leura in Camperdown. Mr Fadgyas submitted the other quarries are at least 60 kilometres away and every kilometre adds to the cost of the material, hence this proposal "will create a hole to fill a market". (Clause 27)

The submissions of the parties demonstrate that there are other resources of scoria available in the broader area. Whilst we acknowledge that distance does add to the cost of the material, we are not persuaded that the economic benefits associated with the quarry outweigh the benefits to be achieved in the future through the creation of further eco-tourism opportunities utilizing Mount Elephant. Nor are we persuaded that the economic benefits outlined by Mr Fadgyas overcome the clear scientific, educational and cultural values that are recognised for this volcano. (Clause 28)"

However, in Aerolite Quarries Pty Ltd v Greater Geelong CC [2014] VCAT 1611, VCAT took a contrary view, that the argument of alternative sites has been recognised as irrelevant as a planning consideration. Instead, the focus is on whether the proposal for the site is acceptable.

"The other argument raised was as to whether there are alternative sites off the land. It was suggested that, from a net community benefit point of view and more generally, there are plenty of other sites and deposits of basalt that can serve whatever need the community has for such products. (Clause 136)

This argument has long since, indeed for decades, been recognised as irrelevant as a planning consideration. The question is always whether the proposal for this site is acceptable, irrespective of whether there are other sites, even other preferable sites, that may exist yet not be available to the proponent. (Clause 137)"

It is also apparent that the net community provision in the VPP is more likely to disadvantage smaller quarries. A case in point is Sarto & Ors v Corangamite SC [2010]. In this case, VCAT viewed the benefits of the quarry's production would not outweigh the costs of the impacts on the landscape and the potential development of eco-tourism.

In contrast, VCAT has approved quarries with state significant resources provided the benefits outweigh the costs of other impacts, and these impacts can be appropriately managed. The Holcim quarry adjacent to the Chiltern-Mount Pilot National Park is a case in point.

"In making an overall assessment of the proposal, it is relevant to consider the nature of the resource in question, in terms of its qualities, quantities, availability and location. In Clayton Sands v Kingston CC13, the tribunal found that in assessing the need for the resource, the volume of the resource to be extracted (sand) was on a small site, not significant in terms of quantity (estimated at about 600,000 cubic metres) with a limited extraction period of 4-6 years. The Tribunal concluded:
……. the contribution to Melbourne's construction and horticultural industries will be of limited tonnage and duration. (Clause 37)

The circumstances in this case are quite different. The resource is of high quality and quantities. It is highly accessible to this part of regional Victoria. It will contribute to infrastructure provision and development for many decades. It is an important resource to the region. The value and strategic importance of the resource is directly relevant to the assessment of the merits of the proposal. (Clause 38)"

It is precarious allowing VCAT members to make decisions on the net community benefit between conflicting land uses. It would seem more appropriate for VCAT to determine whether the proposal is acceptable on the proposed site as demonstrated in Aerolite Quarries Pty Ltd v Greater Geelong CC [2014].

The requirements for work plans, work authorities and planning permit conditions are highly interventionist in that they tell the extractive industry how, when and where a quarry can operate. There is little operational flexibility afforded to the quarry operator within the work plan and planning permit conditions without undertaking further assessments to gain approval for a variation to the work plan and an amendment to the planning permit.

The review visited several quarries and each quarry could not be seen due to the establishment of tree planted bund walls, could be barely heard just outside the bund walls adjacent to the crushing plant and minimal dust was visible inside the quarry and invisible outside the quarry. This is not surprising given the technological advances applied to noise and dust suppression across the different types of plant, machinery and trucks. It is difficult to relate to the issues canvassed in the VCAT orders and to comprehend the huge costs incurred (legal and various subject expert witnesses) given the issues in most VCAT cases appear to be over-stated and unsubstantiated by responsible authorities and objectors.

However, the root cause appears to lie with ERR in not understanding the problems it is attempting to prevent with regulation. This is clearly evident in the inadequate and flawed problem analysis in the regulatory impact statement (RIS) for the Extractive Industry Development Regulations 2007. The problem analysis in the RIS stated that the potential environmental costs associated with extractive operations in any given year in Victoria have been estimated at between $50 million and $221 million. These costs were based on the environmental costs from a UK study and simply extrapolated to Victoria. However, the RIS did not disclose the methodology of the UK study; specifically contingent valuation that involved the survey of residents within 5 km of a sample of quarries to ascertain their willingness to pay a specific sum of money to avoid the costs of noise, dust, visual impact on amenity etc. associated with quarries.

A key weakness of contingent valuation is that it relies on surveying affected persons who may not be well-informed, are biased or have misconceptions of the problem and hence their willingness to pay to avoid a specific problem could be considerably lower if they are presented with balanced information of the problem. Very few RISs have used contingent valuation due to these methodological limitations. Secondly, as demonstrated in the VCAT cases, it is invariably the residents within 1 km of a quarry that are directly affected rather than the 5km survey used in the UK study.

The RIS also disclosed 20 complaints had been received across the State in regards to dust, noise, blasting and amenity issues. The ERR provided no information as to whether these complaints were justified. There was no insight as to how many were in breach of EPA Guidelines and how many complaints were unjustified.

Instead of using the dubious and flawed UK study, the ERR should have quantified the number of Victorian quarries that had breached the EPA noise and air quality SEPPs in respect to noise and air quality, the DELWP native vegetation framework and the other conditions in a work authority/planning permit. In addition, the ERR should have also sampled from a range of quarries the noise and air quality monitoring data to ascertain whether these quarries were significantly below, or just meeting the EPA Guidelines. Ideally, the RIS should have also provided times series data on average noise and air quality to determine whether technological advances in noise attenuation and dust suppression techniques had reduced noise and dust. The problem analysis could also draw upon the planning permit process and the VCAT cases to demonstrate whether the perception of objectors is supported by evidence of adverse health and environmental outcomes on residents near quarries.

Inadequate analysis of the problem invariably leads to over-regulation. There is a dire need for robust analysis of the multitude of issues that draws on operational evidence from quarries and other responsible authorities.

This research and analysis may well find the extractive industry is not just compliant with the various work authority and planning permit conditions, but is achieving superior outcomes. If this is the case, alternative regulatory approaches can be seriously considered such as ‘as of right’ use and development in specified circumstances (farming zone with prescribed buffers) and ‘deemed to comply provision’ (where equipment and processes meet prescribed outcomes).

Appendices A: Conditions for each Approved VCAT Order

Appendix 1: Plans & Road Work Conditions

VCAT Order	Endorsed Plans	Layout not altered	Hours of Operation	Amenity	Car Parking	Road Works	Road Maintenance Contribution	Traffic Management Plan
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors 2009	☒	☒	☒	☒		☒		
CAB Investments Pty Ltd v Ballarat CC 2009	☒	☒	☒		☒	☒		☒
Giles & Ors v Baw Baw SC 2009	☒	☒	☒					
Ryleigh v Alpine SC & Ors 2010	☒	☒	☒	☒		☒		
Central Quarries Pty Ltd v Mitchell SC 2011	☒	☒	☒	☒	☒			
Bremner & Ors v Golden Plains SC 2011	☒	☒	☒	☒	☒	☒		☒
Palmer v Moyne SC 2011	☒		☒			☒	☒	
Holcim (Aust) Pty Ltd v Indigo SC & Ors 2012	☒	☒	☒	☒	☒	☒		☒
Riley v South Gippsland SC 2013	☒	☒	☒	☒	☒	☒	☒	☒
Burge v Wangaratta RCC 2013	☒	☒	☒	☒		☒		
Aerolite Quarries Pty Ltd v Greater Geelong CC 2014	☒		☒		☒	☒		☒
Auswide Developments Pty Ltd v Greater Shepparton CC 2016	☒	☒	☒			☒		

Appendix 2: Noise Conditions

VCAT Order	Noise	Acoustic Enclosures	Sound Level Restrictions	Acoustic Report	Noise Monitoring	Blasting Restrictions	Prior Notice Blasting	Air/Ground Vibration Tests
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors 2009	✓	✓	✓					
CAB Investments Pty Ltd v Ballarat CC 2009	✓							
Giles & Ors v Baw Baw SC 2009	✓				✓	✓	✓	✓
Ryleigh v Alpine SC & Ors 2010	✓		✓					
Central Quarries Pty Ltd v Mitchell SC 2011	✓	✓	✓	✓				
Bremner & Ors v Golden Plains SC 2011	✓	✓	✓			✓	✓	✓
Palmer v Moyne SC 2011	✓							
Holcim (Aust) Pty Ltd v Indigo SC & Ors 2012	✓					✓		
Riley v South Gippsland SC 2013	✓							
Burge v Wangaratta RCC 2013						✓	✓	
Aerolite Quarries Pty Ltd v Greater Geelong CC 2014	✓	✓	✓	✓	✓	✓	✓	✓
Auswide Developments Pty Ltd v Greater Shepparton CC 2016	✓							

Appendix 3: Dust and Construction Conditions

VCAT Order	Dust Management Plan	Dust Restrictions	Air Quality Report	Air Emissions Management Plan	Truck Cover	Building Materials	Engineering	Construction
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors 2009					✓			
CAB Investments Pty Ltd v Ballarat CC 2009		✓			✓			
Giles & Ors v Baw Baw SC 2009	✓					✓	✓	✓
Ryleigh v Alpine SC & Ors 2010	✓				✓			
Central Quarries Pty Ltd v Mitchell SC 2011	✓							
Bremner & Ors v Golden Plains SC 2011	✓							✓
Palmer v Moyne SC 2011								
Holcim (Aust) Pty Ltd v Indigo SC & Ors 2012	✓							
Riley v South Gippsland SC 2013	✓				✓			
Burge v Wangaratta RCC 2013								
Aerolite Quarries Pty Ltd v Greater Geelong CC 2014			✓	✓	✓			
Auswide Developments Pty Ltd v Greater Shepparton CC 2016	✓				✓			✓

Appendix 4: Landscaping and Rehabilitation Conditions

VCAT Order	Landscaping Plan	Landscaping Bond	Buffer Planting/ Bunds	Pest Management Plan	Erosion Control	Fencing	Rehab Plan	Rehab Annual Audit
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors 2009			□				□	
CAB Investments Pty Ltd v Ballarat CC 2009						□	□	□
Giles & Ors v Baw Baw SC 2009	□				□	□	□	
Ryleigh v Alpine SC & Ors 2010			□				□	
Central Quarries Pty Ltd v Mitchell SC 2011	□				□		□	
Bremner & Ors v Golden Plains SC 2011	□							
Palmer v Moyne SC 2011	□							
Holcim (Aust) Pty Ltd v Indigo SC & Ors 2012	□		□		□		□	□
Riley v South Gippsland SC 2013								
Burge v Wangaratta RCC 2013								
Aerolite Quarries Pty Ltd v Greater Geelong CC 2014	□			□			□	
Auswide Developments Pty Ltd v Greater Shepparton CC 2016	□		□				□	

Appendix 5: Environmental Conditions

VCAT Order	Environment Management Plan	EMP Audit	Environment Review Committee	EPA	Environment Health	Aboriginal Heritage	Heritage	Anthrax Vaccine
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors 2009	▯	▯	▯			▯		
CAB Investments Pty Ltd v Ballarat CC 2009								
Giles & Ors v Baw Baw SC 2009				▯	▯			
Ryleigh v Alpine SC & Ors 2010								
Central Quarries Pty Ltd v Mitchell SC 2011								
Bremner & Ors v Golden Plains SC 2011								
Palmer v Moyne SC 2011				▯		▯		
Holcim (Aust) Pty Ltd v Indigo SC & Ors 2012				▯		▯		
Riley v South Gippsland SC 2013				▯			▯	
Burge v Wangaratta RCC 2013								
Aerolite Quarries Pty Ltd v Greater Geelong CC 2014	▯							
Auswide Developments Pty Ltd v Greater Shepparton CC 2016				▯		▯		▯

Appendix 6: Water Conditions

VCAT Order	Ground Water	Water Supply	Water Diversion	Drainage Management Plan	Water Management Plan	Stream Management	Hydro Geological Assessment	Levees
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors 2009						□		□
CAB Investments Pty Ltd v Ballarat CC 2009	□							
Giles & Ors v Baw Baw SC 2009							□	
Ryleigh v Alpine SC & Ors 2010								
Central Quarries Pty Ltd v Mitchell SC 2011								
Bremner & Ors v Golden Plains SC 2011	□							
Palmer v Moyne SC 2011								
Holcim (Aust) Pty Ltd v Indigo SC & Ors 2012		□	□	□				
Riley v South Gippsland SC 2013	□							
Burge v Wangaratta RCC 2013				□				
Aerolite Quarries Pty Ltd v Greater Geelong CC 2014	□							
Auswide Developments Pty Ltd v Greater Shepparton CC 2016								

Appendix 7: Economic Conditions

VCAT Order	Production Limits	Truck Movement Restrictions	Retail Sales Prohibition
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors 2009			
CAB Investments Pty Ltd v Ballarat CC 2009			
Giles & Ors v Baw Baw SC 2009			
Ryleigh v Alpine SC & Ors 2010	□		□
Central Quarries Pty Ltd v Mitchell SC 2011			
Bremner & Ors v Golden Plains SC 2011	□		
Palmer v Moyne SC 2011			
Holcim (Aust) Pty Ltd v Indigo SC & Ors 2012			
Riley v South Gippsland SC 2013	□		□
Burge v Wangaratta RCC 2013		□	
Aerolite Quarries Pty Ltd v Greater Geelong CC 2014	□		
Auswide Developments Pty Ltd v Greater Shepparton CC 2016		□	□

Appendix 8: Miscellaneous Conditions

VCAT Order	DPI	Utilities	Soil Test	Lighting Restrictions	Security/ Complaint	Permit Expiry	Permit Expiry if Operations Discontinue
Lang Lang Holdings Pty Ltd v Cardinia SC & Ors 2009						▯	
CAB Investments Pty Ltd v Ballarat CC 2009							
Giles & Ors v Baw Baw SC 2009		▯					
Ryleigh v Alpine SC & Ors 2010	▯	▯				▯	
Central Quarries Pty Ltd v Mitchell SC 2011						▯	
Bremner & Ors v Golden Plains SC 2011	▯	▯		▯		▯	
Palmer v Moyne SC 2011		▯				▯	
Holcim (Aust) Pty Ltd v Indigo SC & Ors 2012						▯	
Riley v South Gippsland SC 2013	▯	▯					
Burge v Wangaratta RCC 2013						▯	▯
Aerolite Quarries Pty Ltd v Greater Geelong CC 2014	▯	▯			▯	▯	
Auswide Developments Pty Ltd v Greater Shepparton CC 2016			▯			▯	

Appendices B: Landfill & Concrete Batching VCAT Orders

VCAT Outcomes for Landfill

Year	No. Approved	No. Refused
2009	0	2
2010	2	1
2011	1	1
2012	2	0
2013	1	0
2014	0	0
2015	2	1
2016	3	1
2017	0	0
Total	**11**	**6**

Eleven landfill operators were involved in 13 VCAT orders and one concrete batching operator, Aurora Construction Materials, was involved in 4 VCAT orders (3 of these VCAT orders involved one site). The Barro Group and Grosvenor Lodge were each involved in 2 VCAT orders. Both were initially refused a planning permit in 2010 and 2011.

The Barro Group appealed the VCAT decision at the Supreme Court. The Supreme Court overturned the VCAT decision in respect to its interpretation of Victoria's Towards Zero Waste Strategy 2005. The Barro Group returned to VCAT in 2013 and was granted a new planning permit. Interestingly, the VCAT 2013 hearing did not support the other reasons articulated at the VCAT 2011 hearing:

- Landfills must not be located below the regional water table.
- A 200 m buffer distance is required between a sensitive use and the nearest landfill cell
- A solid inert landfill should be located at least 100 m from surface waters

In the second case, Grosvenor Lodge reduced the footprint of the site and was later granted a planning permit in 2012.

Landfill & Concrete Batching VCAT Orders

No	VCAT Order
1.	Love v Whittlesea SC [2009] VCAT 1343
2.	Thomas & Ors v Whittlesea CC [2009] VCAT 825
3.	Better Beveridge Group v Mitchell SC [2010] VCAT 585
4.	Grosvenor Lodge Pty Ltd v Mornington Peninsula SC & Ors [2010] VCAT 1006
5.	Symon Bros. Construction (Vic) Pty Ltd v Whittlesea CC [2010] VCAT 734
6.	Delta Group v Kingston CC [2011] VCAT 1641
7.	Barro Group Pty Ltd v Brimbank CC [2011] VCAT 1099
8.	Transpacific Waste Management Pty Ltd v Kingston CC & Ors [2012] VCAT 693
9.	Grosvenor Lodge Pty Ltd v Mornington Peninsula SC & Ors [2012] VCAT 1193
10.	Barro Group Pty Ltd v Brimbank CC & Ors [2013] VCAT 372
11.	Akers v Hume CC [2015] VCAT 842
12.	Froggi Group Pty Ltd v Kingston CC [2015] VCAT 1252
13.	Aurora Construction Materials Pty Ltd v Melton SC [2015] VCAT 1151
14.	Creative Landfill Pty Ltd v Hume CC [2016] VCAT 1075
15.	Calleja Properties Pty Ltd v Hume CC (Red Dot) [2016] VCAT 253
16.	Hi Quality Quarry Products Pty Ltd v EPA (Red Dot) [2016] VCAT 1445
17.	Ileowl Pty Ltd v Wodonga CC (Amended) [2016] VCAT 945

CMPA

CONSTRUCTION MATERIAL PROCESSORS ASSOCIATION