

## Amendment Delegation Report

**Application No:** 2006/541/C

**Application Type:** Use & Development

**Received:** 05-Jan-2015

**The Applicant:**

Name: Andrew Crack & Associates Pty Ltd  
Address: PO BOX 8033  
Camberwell VIC 3124

**The Proposal:**

Proposal: Use and development of a Rural store - Proposed amendment to include Contractors depot, additional storage, increase hours of operation and change conditions

**The Land:**

Land Address: 15 Korumburra South Road Korumburra South VIC 3950  
Land Description: CA 1G S9 Parish of Korumburra

**Assessment:**

By:

**Zone and Overlays:**

Farming Zone  
Environmental Significance Overlay - Schedule 2 - Special Water Supply Catchment Areas  
Environmental Significance Overlay - Schedule 5 - Areas susceptible to erosion

**General Assessment:**

**What did the original permit or previously amended permit approve and is the permit still valid?**

The original permit approved the use and development of the land for a rural store (storage of grain and storage of crushed rock, gravel and sand for farm track construction), in accordance with the endorsed plans.

The planning permit was granted on 10 April 2007. The permit allowed the development to start within two years of the date of the permit and the development to be completed within four years of commencement of development. The use needed to start within two years of the date of the permit, which is odd, because they were given four years to complete development after commencement. The permit was amended on 1 October 2009 and the permit expiry condition (23) was amended to include additional expiry provisions to allow the approved amendments to start within two years of the date of the amendment and complete the approved amendments within four years of the date of the amendment.

The permit was originally acted on within the relevant timeframes and the amended permit was also acted on within the additional timeframes. The permit is therefore still valid.

**What are the specific changes being sought and can the proposal be considered under Section 72?**

The proposed changes can be summarised as follows:

- To allow for use the land for a ‘contractor’s depot’ (in addition to a rural store),
- Additional development of six new silos, bucket elevator with pit and associated works, and
- Alterations and additions to permit conditions in order to extend hours of operation from:
  - 7am-7pm Monday to Friday; and
  - 7am-2pm Saturday

To:

- 6:30am-7pm Monday to Friday; and
- 7am-4pm Saturday

And use of the restroom, office administration area, shower and kitchen facilities, refuelling of vehicles, parking of vehicles and use of the weighbridge:

- 6am-Midnight Monday to Friday; and
- 7am-8pm Saturday; and
- 12noon-8pm Sunday.

These are supported in part, but with some changes to the conditions to clarify what is considered acceptable.

**Are there any additional permit requirements triggered by the amendment, including any new planning controls / policies introduced to the Planning Scheme since the current permit was issued? If so, does the new proposal comply?**

At the time that the permit amendment application was lodged, the Planning Scheme provisions applying to the land were fundamentally the same as they were at the time of the last amendment to the application. The planning controls were the Farming Zone and Environmental Significance Overlay – Schedule 5 – Areas susceptible to erosion. The Environmental Significance Overlay – Schedule 2 – Special Water Supply Catchment Areas was applied to the site on 13/10/2016 to recognise that the site is within the Tarwin River (Meeniyah) Water Supply Catchment (ID no: 118) as proclaimed by the Victoria Government Gazette (No. G17 2 May 1990). The ESO2 provisions seek to protect and maintain the quality and quantity of water in special water supply catchments. The introduction of the ESO2 does not affect the assessment of the proposed amendment because it was already referred to the relevant water supply authority, being South Gippsland Water, under Clause 66.02-5 of the Planning Scheme.

Since the original permit and last amendment were issued, the Guidelines *Noise from Industry in Regional Victoria* (NIRV) were introduced into the Planning Scheme. The applicant has submitted an acoustic assessment report (revised multiple times) in support of the application.

**Did the original or previously amended application require referral under Clause 66 of the South Gippsland Planning Scheme and Section 55 or 57C of the Planning and Environment Act 1987? If yes, to whom:**

Authority	Which Clause? Determining or Recommending?	Date received and response
South Gippsland Water	66.02-5 Special water supply catchment - Determining	At the time of the original application and the last amendment, it does not appear to have been referred to SGW in accordance with the requirements of Clause 66.02-5. This is possibly because the planners were not aware that the site is within a declared potable water supply catchment because it was not mapped in Council's GIS and SGW had not been specifically raising it as a concern until a Victorian Supreme Court Decision in 2012 stressed the importance of catchments.

**Does the amendment application require referral under Clause 66 of the South Gippsland Planning Scheme and Section 55 or 57C of the Planning and Environment Act 1987? If yes, to whom and why:**

Authority	Which Clause? Determining or Recommending?	Date received and response
South Gippsland Water	66.02-5 Special water supply catchment - Determining	15 December 2015 – Unconditional consent

**Does the amendment application require any non-statutory or internal referrals?**

Authority	Which Clause / Overlay / Why?	Date received and response
SGSC Engineering	To determine if provision of access / parking / stormwater facilities is acceptable and complies with the Planning Scheme / IDM / Australian Standards.	10 December 2015 – Unconditional consent. Further advice was sought from the engineering department regarding traffic movements. This advice was provided by email and gave guidance regarding the existing traffic volumes along Korumburra South Road and what could be expected from the proposal. The average daily number of traffic movements on Korumburra South Road in 2011 was 385 vehicles per day, with a daily average of 11 Heavy /Articulated Vehicles per day.
Environment Protection Authority	For comments/advice regarding the potential noise amenity impacts of the proposal.	29 December 2015 – advised that they have no concern with Council issuing a planning permit according to the information submitted. However, they recommended certain conditions on the planning permit. Three of the four recommended conditions concern matters that are already either covered by conditions in some way, or that would not be reasonable to impose having regard to section 73(2) of the Planning and Environment Act which states that if the responsible authority decides to grant an amendment to a permit subject to conditions, the conditions must relate to the amendment to the permit.  The recommended condition requiring compliance with NIRV in relation to noise is considered

		reasonable. The others are not.
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**Is there a registered restrictive covenant or a Section 173 Agreement on the title? If so, does the proposal comply with the restriction or Section 173 Agreement?**

No.

**Is Further Information Required pursuant to Section 54?**

Further information was required regarding noise and vibration and traffic. The applicant provided this advice back to Council over a number of different emails.

**Does the amendment application require notice under Section 52 or 57B of the Act? If yes, to whom? And if not, why?**

The application was notified to adjoining/adjacent owners and occupiers. The application was also notified by placing a sign on the land.

**Were there any objections or submissions to the amendment? If so, what were the concerns?**

There were five objections received. The issues raised are summarised below, with a planning response to each below:

- *Additional silos should be colour treated so to avoid being reflective and as per requirements of existing permit (condition 5).*

It would appear that condition 5 does indeed require all structures (including silos) to be colour treated and maintained in muted low-reflective tones. The condition is not being proposed to be amended and therefore compliance with the condition will need to be enforced. However, it should be noted that it is not uncommon to have silos or other buildings made of galvanised steel or 'zincalume' in rural environments. There is an identical silo (not colour treated) located on the adjoining farm to the south west of the subject site. There would be hundreds of other examples across the Shire, particularly where sites are used for intensive (or extensive) animal husbandry where food sources need to be stored in silos or sheds.

- *Amenity impacts.*

It is considered that the greatest amenity impact as a result of the proposed amendment would be noise generated outside of existing hours of operation, possibly visual amenity as a result of larger stockpiles and increased dust as a result of additional traffic movements and handling of material.

The applicant submitted a noise assessment which demonstrated that the proposal can comply with NIRV requirements. An additional permit condition will require monitoring to be conducted and the results submitted to Council for review following the increase in hours of operation and installation of a bucket elevator.

The issue of decreased visual amenity as a result of larger stockpiles can be addressed by an additional permit condition limiting the height of stockpiles to no greater than the existing silos. It should be noted that there is currently no limit on height of stockpiles and stipulating a maximum height would provide clarity to all

parties regarding what is permitted. It should be noted that overtime, stockpiles on the site have increased in size, however they have become increasingly screened from view since the applicant planted the necessary landscaping.

There is potential for an increase in dust due to intensification of operations, however, it should be noted that the existing operations could already have such an undesirable effect and there are existing conditions on the permit that may need to be enforced to ensure that the amenity of the area is not affected by dust (as per conditions 12 and 19). There are also other uses in the vicinity, including agriculture that could have an amenity effect on the objectors' property, particularly in relation to dust.

- *Decrease in property value.*

This is not a relevant planning consideration and this has been established by VCAT on numerous occasions.

- *Previous breaches of planning permit. Increase in hours of operation and storage could amplify the breaches.*

It is known that there have been previous breaches of the planning permit. Council has responded to these enquiries. However, previous breaches are not able to be considered against an applicant in considering an amendment. It is understandable that the objector considers that an increase in hours of operation and storage could amplify this and be more difficult to enforce, however, Council has a duty to consider all applications on their merit and must also ensure that any permits are complied with. Therefore, Council does not consider that the amendment itself will lead to an amplification in breaches (if any).

- *Additional vehicle movements and safety concerns regarding ability of Korumburra South Road to handle the additional vehicle movements.*

As previously discussed, the Engineering Department advised that the latest traffic counts in Korumburra South Road in 2011 were 385 vehicles per day, with a daily average of 11 Heavy /Articulated Vehicles per day. This is not considered to represent the maximum number of heavy vehicles that could be expected on the Road if all businesses and farms in the vicinity were operating at peak capacity at the same time (including the subject site). It is considered that the operation at its current maximum storage capacity of 1,500m<sup>3</sup> of material, could generate up to 75 traffic movements into the site per day as well as 75 movements out of the site (based on each vehicle being able to carry approx. 20m<sup>3</sup> of material). However, that is considered unlikely to be a representation of the average likely movements given that such activity would likely be seasonal and based on demand from specific projects that the business services in the area or more broadly. It is expected that average movements would equate to half of that turnover (if not less).

The Road is considered to adequately cater for the amount of vehicle movements per day, even if the amount of vehicle movements were doubled as a result of this amendment. The safety of the road is not expected to be compromised as a result

of the amendment application. The safety of the crossover has been previously tested before VCAT.

- *Inaccurate noise testing during quieter time for the business.*

Whilst the noise testing may have been conducted during a quieter time for the business, the noise assessment showed that background noise levels in the vicinity of the site were effected by other noise sources including traffic along the South Gippsland Highway and the adjoining timber yard. The noise and vibration monitoring appears to be accurate even if the above claim is correct. The additional increase in traffic movements, the bucket elevator and the increase in hours of operation are not expected to have an amenity impact beyond the existing permit and can be controlled/measured via an appropriate condition.

- *Dust emissions and respiratory effects.*

As previously stated, the amendment has the potential to create more dust due to intensification of operations, however, it should be noted that the existing operations could already have such an undesirable effect and there are existing conditions on the permit that may need to be enforced to ensure that the amenity of the area is not affected by dust (as per conditions 12 and 19). There are also other uses in the vicinity, including agriculture that could have an amenity effect on the objectors' property, particularly in relation to dust.

The use 'contractor's depot' is not listed in *Recommended Separation Distances for Industrial Residual Air Emissions*, EPA Publication 1518. It is also not likely to generate hazardous emissions such as those listed in SEPP AQM (Air Quality Management) or AAQ (Ambient Air Quality) in order to warrant a risk assessment.

It is considered that the amenity impacts of dust generated from the site is a relevant consideration, however, it would be extremely difficult (if not impossible) for Council to determine that general dust emissions (particulate matter) from the subject site are causing any respiratory (medical) effects on the objectors, given that respiratory issues could be caused by a number of other factors including genetics or other sources of pollution that the person is exposed to, whether they are local sources of dust or from elsewhere that the person is exposed to.

- *Previous issues with the original application process and need to rectify previous errors.*

Any previous issues with the original application process are not considered relevant to consideration of this amendment application. Council cannot, without relevant consideration to section 73(2) of the Act add, amend or delete the existing conditions. Whilst Council can impose additional conditions or amend them, the changes must relate to the amendment application and it is not an opportunity for Council to re-visit previous issues or errors. Council only has limited powers under Section 71 to correct mistakes/omissions, but that is not the case here.

- *Impact on mental health/wellbeing as a result of compliance issues.*

This is something that Council cannot quantify or verify because it is something that could affect someone's mental health or wellbeing, although it would be impossible to know if there are other issues affecting the person.

Any compliance matters on the site are a separate matter and will need to be dealt with through those other process. They cannot be taken into account here, nor is it considered appropriate to consider their possible mental health/wellbeing effects.

- *Increase in vermin.*

This is not considered to be a relevant planning consideration. The Planning Scheme does not require Council to consider it, nor is it a matter that can easily be attributed to the subject site and its operations. The source of vermin could be from other adjoining uses or the objector's property itself, not necessarily the subject site. The additional use of the land for a contractor's depot, hours of operation and additional silos are not considered to increase the risk of vermin any more than the existing use of the land.

**Is the amendment acceptable having regard to the relevant permit triggers and decision guidelines of the Planning Scheme and relevant considerations under Section 60 of the Planning and Environment Act 1987?**

The proposed amendment is considered acceptable subject to appropriate conditions, having regard to the relevant permit triggers and decision guidelines in the Farming Zone, ESO2 and ESO5.

The proposed additional use is Section 2 use in the Farming Zone, as a 'Contractor's depot' is an innominate (undefined) use within the Planning Scheme. The use is considered to be appropriate having regard to the relevant purposes of the zone:

- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities

Part of the proposal is to provide for additional storage silos and stockpile areas for goods and materials that can be used in the agricultural sector. It therefore promotes the continuous use of other land for agriculture, even if the site itself is not used for agriculture. It encourages the retentions of agricultural land by consolidating another use on a site that is already taken out of agricultural production. It will not adversely affect the use of land for agriculture because the land is already being used for another purpose. The amendment application encourages the retention of employment and population within rural communities by providing a service to them and other businesses within the Shire.

The proposed amendment requires minimal works and is not considered to have an impact having regard to the provisions of the ESO5. Existing conditions on the permit are considered adequate.

The proposed amendment is not considered to have any effect on the Tarwin River (Meeniyah) Water Supply Catchment having regard to the provisions of the ESO2. As previously discussed, the overlay was not in affect when the application was lodged, however the application was still referred to SGW as a determining referral authority under Clause 66.02-5 of the Planning Scheme. SGW had no objection to the proposal and no conditions.

The proposal is also considered acceptable having regard to the relevant SPPF and LPPF summarised below:

#### 11 SETTLEMENT

- 11.05 Regional development
  - 11.05-3 Rural productivity
  - 11.05-4 Regional planning strategies and principles
- 11.08 Gippsland regional growth
  - 11.08-1 A diversified economy
  - 11.08-2 Planning for growth
  - 11.08-3 Sustainable communities
  - 11.08-4 Infrastructure

#### 12 ENVIRONMENTAL AND LANDSCAPE VALUES

- 12.04 Significant environments and landscapes
  - 12.04-1 Environmentally sensitive areas

#### 13 ENVIRONMENTAL RISKS

- 13.03 Soil Degradation
  - 13.03-2 Erosion and landslip
- 13.04 Noise and air
  - 13.04-1 Noise abatement
  - 13.04-2 Air quality

#### 14 NATURAL RESOURCE MANAGEMENT

- 14.01 Agriculture
  - 14.01-1 Protection of agricultural land
  - 14.01-2 Sustainable agricultural land use
- 14.02 Water
  - 14.02-1 Catchment planning and management
  - 14.02-2 Water quality
  - 14.02-3 Water conservation

#### 15 BUILT ENVIRONMENT AND HERITAGE

- 15.03 Heritage
  - 15.03-1 Heritage conservation
  - 15.03-2 Aboriginal cultural heritage

#### 16 HOUSING

- 16.02 Housing form
  - 16.02-1 Rural residential development

#### 18 TRANSPORT



- 18.01 Integrated Transport
  - 18.01-1 Land use and transport planning
  - 18.02-4 Management of the road system

## LPPF

The following LPPF clauses are considered relevant to the assessment of this application:

### 21.02 MUNICIPAL PROFILE

- 21.02-7 Economic development
- 21.02-8 Transport

### 21.03 KEY ISSUES

- 21.03-2 Environmental and landscape values
- 21.03-3 Environmental risks
- 21.03-7 Economic development
- 21.03-8 Transport

### 21.04 VISION

- 21.04-2 Vision

### 21.05 SETTLEMENT

- 21.05-1 Growth of towns

### 21.08 NATURAL RESOURCE MANAGEMENT

- 21.08-1 Agriculture

### 21.10 HOUSING

- 21.10-3 Rural residential development

### 21.11 ECONOMIC DEVELOPMENT

- 21.11-1 Processing and manufacturing
- 21.11-2 Technology and service industry

### 21.12 TRANSPORT

- 21.12-1 Transport

**Are there any conditions that either need to be amended, deleted or added to ensure that the amendment is acceptable and so that conditions are consistent?**

Yes. The following conditions require modification:

- Amend the permit allows statement to delete “(storage of grain and storage of crushed rock, gravel and sand for farm track construction)” after the words “rural store” and insert the words “and contractor’s depot” instead.
- Delete condition 1 under Section 71(1)(a) of the Act as being a clerical mistake that replicated the requirements of the original condition 9 (currently condition 10). The requirements of Condition 10 have been completed to the satisfaction of Council.
- Add a new condition 1 requiring:

Amended plans generally in accordance with the proposed plans must be submitted to and approved by the Responsible Authority prior to any further works or use starting, showing:

- The dimensions (height, width and length) of the bucket elevator.
  - The height of the additional silos being consistent with the existing silos shown on the endorsed plans
  - Noise management plan for the site which ensures that all staff are aware of their potential amenity impacts and that they undertake any activities during the 'night time' period such as re-fuelling and weighbridge use by minimising noise.
- Add a new condition 3 requiring:  
The six additional silos must be of the same dimensions and capacity as the existing silos.
  - Amend current condition 8 (to become condition 9) under Section 71(1)(a) of the Act that contains a clerical mistake (typographical). Substitute the word "commencing" with "commences".
  - Amend current condition 10 (to become condition 11) under Section 71(1)(a) of the Act that contains a clerical mistake (typographical). Substitute the incorrect numbering "9.1, 9.2, 9.3 and 9.4" to be "11.1, 11.2, 11.3 and 11.4", respectively.
  - Delete current condition 12 (f) under Section 71(1)(a) of the Act that contains a clerical mistake (typographical). The words "others as appropriate" were not in the original condition and were not intended to be. This will become condition 13.
  - Amend current condition 13 (to become condition 14) and to state:  
The uses may only operate between the hours of:  
7am-7pm Monday to Friday; and  
7am-4pm Saturday.  
This includes the physical loading and unloading of goods or materials from the transport vehicles by way of bucket elevator, excavator, front end loader or any other machinery such as a forklift. Carrying out of incidental servicing or repairs of machinery is also limited to these times.
  - Insert new condition 15 to state:  
The site may be accessed between 6:30am-7am Monday to Saturday by staff associated with the two uses to conduct any OH&S or procedural pre-checks of machinery, prior to commencing use at 7am.
  - Insert new condition 16 to state:  
The site may be accessed between the hours of:  
6am-Midnight Monday to Friday; and  
7am-8pm Saturday; and  
12noon-8pm Sunday.  
For the carrying out of administrative office functions such as book keeping ancillary to the two uses of the land, use of the restroom, shower and kitchen facilities, refuelling and use of the weighbridge by vehicles associated with the two uses of the land.
  - Amend current condition 14 (to become condition 17) to state:  
Any other deliveries to and from the site (including waste collection) must only take place between the hours of:  
7am-7pm Monday to Friday; and  
7am-4pm Saturday
  - Amend current condition 15 (to become condition 18) to state:

A cumulative total of no more than 3,000m<sup>3</sup> of gravel, crushed rock, sand, pebbles, soft rock, soil, mulch or similar products may be stored in the areas marked as 'hard stand area' on the endorsed plans. The stockpiles of materials must not exceed the height of the existing silos on the land at any time.

- Add condition 19 to state:  
The overnight parking of vehicles associated with the permitted uses must take place within the areas marked 'overnight parking area' on the endorsed plans.
- Amend current condition 16 (to become condition 20) to state:  
The weighbridge may be used for commercial purposes unrelated to the permitted uses, by no more than six vehicles per day between 7am-7pm Monday to Friday.
- Insert new condition 21 to state:  
Noise emitted from the premises must not exceed the recommended levels as set out in Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011) or as amended.
- Insert new condition 22 to state:  
Within one month of starting the use of the land for a contractor's depot and extended operating hours, the applicant/owner must engage an experienced and qualified acoustic/noise assessment professional, to conduct noise monitoring to the satisfaction of the Responsible Authority.  
A copy of the noise monitoring assessment must be provided to the Responsible Authority within one month of the monitoring being completed. If the assessment finds any non-compliance with the recommended levels as set out in NIRV (or as amended), it must also recommend mitigation measures to bring the premises back into compliance. These mitigation measures must be implemented to the satisfaction of the Responsible Authority within a reasonable timeframe. Evidence of compliance with NIRV (or as amended) must be provided to the Responsible Authority after the implementation of the mitigation measures.
- Amend current condition 22 (to become condition 28) by deleting the words "or office administration".
- Amend current condition 23 (to become condition 29) by adding the following:  
(f) The additional works including silos and bucket elevator are not completed within two years of the date of the amendment.  
(g) The use of the land for the contractor's depot is not started within two years of the date of the amendment.
- Re-number all other conditions accordingly
- Note on permit to record the amendment

**Conclusion and Recommendation:**

Council has considered the matters under Section 60 of the Planning & Environment Act 1987. It considers that the proposed amendment is appropriate having regard to the relevant matters.

That a report be written to the next available Council meeting recommending approval of the amendment subject to appropriate amendments as detailed above.

Signed: \_\_\_\_\_  
Planning Co-ordinator

Date: \_\_\_\_\_