

Planning Assessment Report TP49-22

Application Details:

Application is for:	The upgrade of an existing concrete batching plant.
Applicant's Name:	CEA Consolidated Industries
Owner's Name:	Paradise Rise Pty Ltd
Date Received:	7 November 2022
Statutory Days:	Over 60 days
Application Number:	TP49-22
Planner:	Adam Moar
Land/Address:	28 Dimboola Road, Warracknabeal (Lot 1 LP 111219)
Zoning:	Farming Zone (FZ)
Overlays:	Environmental Significance Overlay – Schedule 2 (Highway Environs Protection) (ESO2)
Under what clause(s) is a permit required?	Clause 35.07-4 Buildings and works associated with a use in Section 2 of Clause 35.07-1. (FZ) Clause 42.01-2 A permit is required to construct a building or construct or carry out works. (ESO) Clause 63.05 Section 2 and 3 Uses - No building or works are constructed or carried out without a permit. A permit must not be granted unless the building or works complies with any other building or works requirement in this scheme. (Existing Uses)
Restrictive covenants on the title?	No
Current use and development:	Existing concrete batching facility.

Proposal

This application is for the replacement of the existing concrete batching plant at the site. The existing plant has been used for many years and is considered to be at the end of its useful life. The new plant is intended to be more efficient to use less water, reduce waste in production and to reduce the emission of noise and dust.

The new plant will be located approximately 10 metres north of the existing plant. It will be located behind than existing shed that is located on to the south and west of the new location.

The application documentation indicates that the hours of operation are:

- Monday to Friday 6.00 am to 6.00 pm
- Saturdays 6.00 am to 6.00 pm
- Sundays 6.00 am to 12 noon (only as required)

No traffic movements to or from the road are proposed to change.

This proposal is being considered as an existing use under the provisions of Clause 63 of the Yarriambiack Planning Scheme.

Subject site & locality

The site is located on the northern side of Dimboola Road (Borong Highway) approximately 1.35km west of the centre of Warracknabeal. A driveway connects the main road to the site via a service road to provide access to the site.

Within the locality are numerous houses on large lots (ranging from approximately 2055 sqm to approximately 6.6 ha). The Warracknabeal Hospital is located approximately 135 metres to the east of the site.

Permit/Site History

A search through Council records could not locate a planning permit for the use or development of the site for a concrete batching facility, however it is considered likely that the use would have been a permissible use (as it is now, subject to a permit) in the area potentially with or without a permit.

Public Notification

This application was referred to adjoining property owners for comment. During the exhibition period of the application 3 submissions objecting or raising concern about the application were received. The submissions will be discussed later in this report.

Cultural Heritage Management Plan (CHMP)

A CHMP is not required as the proposal is not within land affected identified as an area of Aboriginal Cultural Heritage Sensitivity, as per Regulation 7 of the Aboriginal Heritage Regulations 2018.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	
Nil	
Section 52 notices	Nil

Internal Council Referrals	Advice/Response/Conditions
Nil	

Assessment

PLANNING SCHEME REQUIREMENTS:

The Planning Policy Framework (PPF)

- Clause 02.02 – VISION
- Clause 02.03-1 Settlement
- Clause 02.03-7 - Economic development
- Clause 11.01-1R - Settlement - Wimmera Southern Mallee
- Clause 13.05-1S Noise management
- Clause 13.06-1S Air quality management
- Clause 13.07-1S Land use compatibility
- Clause 15.01-6S - Design for rural areas

Zoning Provisions:

Clause 35.07 Farming Zone

Clause 35.07-4 Building and works

A permit is required to construct or carry out any of the following:

- A building or works associated with a use in Section 2 of Clause 35.07-1.

Clause 35.07-6 Decision Guidelines

The following decision guidelines are relevant to the assessment of this application.

General issues

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The capability of the land to accommodate the proposed use or development, including the disposal of effluent.*
- *How the use or development relates to sustainable land management.*
- *Whether the site is suitable for the use or development and whether the proposal is compatible with adjoining and nearby land uses.*

- *How the use and development makes use of existing infrastructure and services.*

Design and siting issues

- *The need to locate buildings in one area to avoid any adverse impacts on surrounding agricultural uses and to minimise the loss of productive agricultural land.*
- *The impact of the siting, design, height, bulk, colours and materials to be used, on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.*
- *The impact on the character and appearance of the area or features of architectural, historic or scientific significance or of natural scenic beauty or importance.*
- *The location and design of existing and proposed infrastructure including roads, gas, water, drainage, telecommunications and sewerage facilities.*
- *Whether the use and development will require traffic management measures.*

Planning Response:

The proposed development will occur on the site of an existing concrete batching facility. The new plant will be new and will remove the existing ageing structure. The new facility will be painted white with some areas painted yellow in accordance with the relevant safety standards.

The facility will not be constructed in close proximity to the existing plant equipment to minimize inconvenience around the site and make use of the existing locations for water, power and ingredient locations on the site.

The new plant equipment is designed to minimise dust and noise emissions from the site. This will also have the benefit of minimising waste in the production of concrete.

The change in plant equipment is not anticipated to create additional impacts on the amenity of the locality. This will be discussed later in the report.

Relevant Overlay Provisions:

Clause 42.01 – Environmental Significance Overlay - Schedule 2 (Highway Environs Protection) (ESO2)

Clause 42.01-2 Permit requirement

A permit is required to:

Construct a building or construct or carry out works. This does not apply if a schedule to this overlay specifically states that a permit is not required. The Schedule to the Overlay does not exempt any type of development.

Planning Response:

The works associated with the installation of the new plant equipment will not impact on the objectives of the ESO2 through no changes to traffic movements into or out of the highway, visual amenity from the highway will be improved with the relocation of the plant, and there will be no removal of native vegetation.

Relevant Particular Provisions

No relevant Particular Provisions are identified.

General Provisions

Clause 63 Existing Uses

Clause 63.01 Extent of existing use rights

An existing use right is established in relation to use of land under this scheme if any of the following apply:

- *The use was lawfully carried out immediately before the approval date.*
- *A permit for the use had been granted immediately before the approval date and the use commences before the permit expires.*
- *A permit for the use has been granted under Clause 63.08 and the use commences before the permit expires.*
- *Proof of continuous use for 15 years is established under Clause 63.11.*
- *The use is a lawful continuation by a utility service provider or other private body of a use previously carried on by a Minister, government department or public authority, even where the continuation of the use is no longer for a public purpose.*

63.02 Characterisation of use

If a use of land is being characterised to assess the extent of any existing use right, the use is to be characterised by the purpose of the actual use at the relevant date, subject to any conditions or restrictions applying to the use at that date, and not by the classification in the table to Clause 73.03 or in Section 1, 2 or 3 of any zone.

63.05 Section 2 and 3 uses

A use in Section 2 or 3 of a zone for which an existing use right is established may continue provided:

- *No building or works are constructed or carried out without a permit. A permit must not be granted unless the building or works complies with any other building or works requirement in this scheme.*
- *Any condition or restriction to which the use was subject continues to be met. This includes any implied restriction on the extent of the land subject to the existing use right or the extent of activities within the use.*
- *The amenity of the area is not damaged or further damaged by a change in the activities beyond the limited purpose of the use preserved by the existing use right.*

63.12 Decision Guidelines

Before deciding on an application under Clause 63.05, 63.08 or 63.10, in addition to the decision guidelines in Clause 65 and any other requirements of the Act, the responsible authority must consider the extent to which compliance can be achieved with all scheme requirements that can reasonably be met.

Planning Response:

The use of the site for a concrete batching plant has been established through existing use rights. The use has been established for a period of greater than 15 years. The original approval for the site has not been able to be located, and given the age of the facility it is likely that there may not have been an approval.

The current provisions of the Yarriambiack Planning Scheme identifies that the use of land for industry is a Section 2 use in the zone.

The existing use rights allow for the use to continue providing it does not create an addition impact on the amenity of the area and it complies with any conditions or restrictions imposed on its operation, which could include hours of operation or delivery times.

The new plant equipment will assist in the site complying with reducing its impact on the locality by addressing the dust and noise generated by the concrete batching plant.

The decision guidelines of Clause 65

Because a permit can be granted does not imply that a permit should or will be granted. The Responsible Authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

65.01 Approval of an application or plan

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in Section 60 of the Act.
- The Municipal Planning Strategy and the Planning Policy Framework.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

Planning Response

Section 60 of the at identifies that *“before deciding on an application, the responsible authority must consider—*

- a) *the relevant planning scheme; and*
- b) *the objectives of planning in Victoria; and*
- c) *all objections and other submissions which it has received and which have not been withdrawn; and*
- d) *any decision and comments of a referral authority which it has received; and*
- e) *any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development; and*
- f) *any significant social effects and economic effects which the responsible authority considers the use or development may have.*

It is considered that as the proposal is considered to address and meet the requirements of the planning scheme it is considered that sections (a), (b), (d), (e), and (f) are satisfied.

Section (c) will be addressed below.

This application was advertised to adjoining property owners for a period of not less than 14 days. During this time the application received 3 submissions all either objecting to or raising concerns over aspects of the proposal.

The submissions included:

Submission 1:

As our Health Service Nursing Homes and gardens are located in close proximity to the planned upgrades, we are concerned that there may be an increase in dust emissions that could adversely affect our residents especially those suffering with respiratory issues, we are also concerned that an increase in noise emissions that may affect our residents with dementia and at end-of-life care.

Planning response:

The proposed new plant is designed to reduce dust and noise that is emitted. The current plant is old and does not include this additional equipment. It is considered that any noise or dust that is created by the plant equipment will be reduced by this proposal. Dust or noise generated by the existing vehicle movements around the site is not considered to change as part of this proposal.

Submission 2:

We wish to put in an objection to the proposed building permit application for the address 28 Dimboola Road Warracknabeal. Vic. 3393.

Firstly, we have noticed since around the middle of this year there has been an increase in dust and noise from the yard next door, the cement works, the dust is both in the yard and around the cement batching area.

The dust is from truck movement and loader work.

The truck movement is between the batching plant and the FEL pit and washout box (bowl washing area), the speed of the trucks have increased in that area.

The dust may contain silica and does enter our property when the winds blow in our direction.

There is an area where left over concrete is poured on to the ground sometimes near the bowl wash area which is levelled out with the loader later in the day of the pour ,the ground is used all year for this purpose

The next day it is piled up nearby and used as secondary gravel sold to the public from time to time. This area then becomes a dust bowl when it is dry because of the truck movements to and from batching plant.

With the larger batching plant to be built we feel that this problem will only get out of control and affect us more.

The noise factor is around when the loader spreads out the leftover concrete and around the batching plant area during the day when loading the batching plant.

This process has become louder with faster loading of the plant, ie , dropping of the frontend loader bucket and the scaping of the floor in loading bays where the sand and gravel are stored this noise has increased in the last 5 months or so.

This building permit application is for more days and longer hours and we feel our environment will be dramatically effected making our lifestyle and wellbeing on our property not as good as we are used to enjoying our peaceful and calm area on Saturday and Sunday each week.

In the permit, it is proposed to unload the cement bulkers with concrete powder in after hours, we feel this will also affect the quality of our life style and wellbeing.

But the permit doesn't say if the afterhours unloading is, am or pm , so we want this un loading of the cement bulkers to occur in working hours strictly.

Planning response:

As mentioned above it is considered that the new plant equipment will reduce some of the noise and dust that is generated from the site, specifically in the batching of concrete. Dust and noise from vehicle movements may be slightly altered by the different position of the plant equipment, but it is not considered to increase the levels.

Hours of operation has been discussed with the applicant and will be conditioned to be different to that proposed in the submitted documents. It's the assessing planners understanding that the proposed hours are consistent with facilities in Melbourne and surrounds but is in excess of what would be occurring at the site. The proposed hours were:

- Monday to Friday 6.00 am to 6.00 pm
- Saturdays 6.00 am to 6.00 pm
- Sundays 6.00 am to 12 noon (only as required)

However, it is considered appropriate that the conditions on any approval change these hours to:

- Monday to Friday 7.00 am to 5.00 pm
- Saturdays 8.00 am to 12 noon
- Sundays and public holidays no operations.

These hours will also be specified to include deliveries within these timeframes. It is considered acceptable that office type work is suitable beyond these hours as this will not generate any amenity issues to the surrounding locality.

Some of the issues raised in this submission are operational in nature and would need to be managed by the owner or site manager of the facility and may not be specifically related to what is proposed through this application. It is considered that it might be appropriate for these issues to be discussed with the EPA.

Submission 3

I am against the upgrade concrete plant working after hours weekend work due to noise and dust hazard etc.

As older people with health issues we would like quiet times as we are light sleepers and with asthma the dust won't help the issue.

Planning response:

It is considered that these issues are addressed above.

Other relevant adopted State policies/strategies – (e.g. Melbourne 2030.)

Nil

Relevant incorporated or reference documents

Nil

Relevant Planning Scheme amendments

Nil

Conclusion

The proposed development is considered to be consistent with the provisions of the Yarriambiack Planning Scheme and therefore should be approved.

Recommendation

Planning Permit

That Council grant a Permit under the provisions of the Yarriambiack Planning Scheme in respect of the land known and described as 28 Dimboola Road, Warracknabeal being Lot 1 LP111219, for the upgrade of an existing concrete batching plant in accordance with the

endorsed plans, with the application dated 7 November 2022<date>, subject to the following conditions:

1. The plans to be endorsed and which will then form part of the permit are the plans submitted with the application.
2. The layout of the site and size of the proposed building and works must be in accordance with the endorsed plans and must not be altered or modified, (whether or not to comply with any statute, statutory rule or by-law or for any other reason) without the consent of the responsible authority.
3. Soil erosion control measures must be employed throughout the construction stage of the development to the satisfaction of the responsible authority.
4. The use, including deliveries, may operate only between the hours of:
 - Monday to Friday 7 am to 5 pm
 - Saturdays 8 am to 12 noon
 - Sundays and public holidays no operation.
5. Before the use begins and/or the building is occupied all stormwater and surface water discharging from the site, buildings and works must be retained on site or conveyed to the legal point of discharge drains to the satisfaction of the responsible authority. No effluent or polluted water of any type will be allowed to enter the stormwater drainage system.
6. The existing concrete batching plant equipment is to be removed within 28 days of the new plant becoming operational. Concrete is not permitted to be produced from both plants simultaneously.
7. The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:
 - a. transport of materials, goods or commodities to or from the land
 - b. appearance of any building, works or materials
 - c. emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil
 - d. presence of vermin.

Permit Expiry

8. This permit will expire if one of the following circumstances applies:
 - The development is not started within two years,
 - The development is not completed within four years of the date of this permit.

The responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months afterwards.

NOTE:

- It is your responsibility to ensure all other authorisations are obtained prior to any works commencing. This may include Building, Engineering and Local Laws Permits. You are also required to abide by any State and Federal Legislation in relation to your approved proposal.

Signature: A.D. Moar.

Planner Responsible: Adam Moar

Date: 23 March 2023