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Your ref:
Our ref: AXGS/JZAS/3698757

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Attention: Adam Hutchings and Shahana Karunakaran

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Dear Adam and Shahana

**Waluya Pty Ltd v Minister for Planning and Public Spaces
Land and Environment Court Proceedings 2023/00266853**

As you are aware, we act for Waluya Pty Ltd, the Applicant in the above proceedings (**Applicant**).

The purpose of this letter is to set out the Applicant's position on contention 1 of the Respondent's statement of facts and contentions filed on 9 October 2023, which provides the following:

The Application comprises prohibited development under s 4.3 of the EP&A Act and clause 5.13 of the Regional SEPP.

Summary

- The proposed development is permissible with development consent either because:
 - the proposed development is characterised as a 'light industry' under the Regional Precincts SEPP; or
 - the proposed development is characterised as a 'bus depot' under the Transport and Infrastructure SEPP.

Each of these points are independent foundations to establish permissibility for the development.

- The purpose of the proposed development is to process buses. It can also be said that, as part of this processing, the development will also alter, repair, clean, wash and service buses. The proposed development is an 'industrial activity'.
- The proposed development site will be used for the storage and transportation of buses, as part of its function to process the buses, which is also included within the definition of 'industrial activity'. There is no need to show that the storage and transportation aspects of the development are ancillary to the processing of the buses.
- The development is for a 'light industry'. This is because it will be a building **and** a place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood.
- Therefore, the development is for the purposes of both:
 - a (prohibited) 'transport depot (as defined in the Dictionary); and
 - a permitted 'light industry' (as also defined in the Dictionary).

- However, this apparent conflict is resolved by section 5.13(3) of the Regional Precincts SEPP. Under this provision, the definition of 'transport depot' must be read to exclude any premises that is also a 'light industry' under this provision.
- The application of section 5.13(3) of the Regional Precincts SEPP requires the exercise of judgment. In exercising this judgment, the Court must prefer the application of the provision that is more conducive to the achievement of the zone objectives (being the objectives of the Regional Projects SEPP for the land in question).
- Reading the expression 'transport depot' **down** to exclude any premises that is also a 'light industry' under section 5.13(3) **is** more conducive to the achievement of the 'B6 Enterprise Corridor' zone objectives (than reading the definition of light industry down).
- In any event, the definition of 'light industry' is a more specific definition when compared with the definition of 'transport depot'. This is because a 'light industry' does not include any development that interferes with the amenity of the neighbourhood. A 'transport depot' may well be a development that interferes with the amenity of the neighbourhood. Our position stands, even if this second point is not accepted.
- The light industry point above is sufficient, by itself, to establish the permissibility of the proposed development.
- Nonetheless, in the alternative, the 'Land Use Table' in Part 5.3 of the Regional Precincts SEPP is given operative effect by section 5.13(4) of the Regional Precincts SEPP. Section 5.13(4) of the Regional Precincts SEPP empowers other provisions of Chapter 5 to establish an exception to the prohibition on transport depots in the B6 zone.
- There is a note at the beginning of the Land Use Table in Part 5.3 of the Regional Precincts SEPP. This note forms an operative term of the instrument. The note expressly nominates, as an example, infrastructure facilities including roads[infrastructure facilities as a type of development to which Chapter 2 of the Transport and Infrastructure SEPP is relevant. It should be presumed that these **operative** words have been inserted into the Regional Precincts SEPP for a purpose.
- Subdivision 1 of Division 17 of Chapter 2 of the Transport and Infrastructure SEPP is titled 'Roads and road infrastructure facilities'. The provisions in this subdivision of the SEPP would be dead letter if these provisions did not override the Land Use table at the end of Part 5.3 of Chapter 5 of the Regional Precincts SEPP.
- The proposed development is characterised as a 'Bus depot' in the Transport and Infrastructure SEPP.
- The Transport and Infrastructure SEPP provisions permit development for the purposes of a 'bus depot' on land zoned B6. The exception to the Land Use Table in Part 5.3 of the Regional Precincts SEPP is expressly provided for in
 - section 5.13(4) of the Regional Precincts SEPP; and
 - the note in the Land Use Table in Part 5.3 of the Regional Precincts SEPP (which has operative effect as part of the instrument).

Background

- The development site comprises:
 - 1-3 Faunce Street (lot 6 in DP801261);
 - 7A Racecourse Road (lot 74 in DP810836);
 - 9 Racecourse Road (lot 73 in DP810836);
 - 9A-11 Racecourse Road (lots 71 and 72 in DP810836);

- 38 Young Street (lot 1 in DP651249, lot 11 in SP 82 and in DP758466, lot 12 in DP1100110, lot 13 in DP1100206, lot 14 in DP1100206, lot 15 in DP1100216, lot 16 in DP1079150); and
- 50 Young Street (lot 18 in DP1100223, and lot 20 in SP82 in DP758466), West Gosford.

(hereafter, referred to as the '**development site**').

- The proceedings relate to the Applicant's appeal against the Respondent's deemed refusal of development application 23/1084 (**the DA**) for a bus depot transport facility that will comprise the following:
 - at-grade car park;
 - a two storey administration building for staff and visitors;
 - two storey workshop for bus maintenance and repairs;
 - hardstand for bus parking with an awning in the north east of the site;
 - bus washing and refuelling facilities, earthworks, site security including electric fencing around the site, retaining walls, and signage.
- The proceedings were commenced in the Land and Environment Court on 22 August 2023.
- On 9 October 2023, the Respondent filed and served its statement of facts and contentions in these proceedings.
- On 31 October 2023, the Applicant filed and served its statement of facts and contentions in reply in these proceedings.
- On 30 April 2024, the parties participated in a conciliation conference before Commissioner Dickson.
- The conciliation conference was terminated on 19 June 2024.
- On 27 June 2024, the proceedings were listed for second directions hearing. The Court made orders (among other things) listing the matter for hearing on 7 and 8 November 2024.

Detail

1. The relevant planning controls applicable to the development site

- 1.1 The development site is zoned 'B6 Enterprise Corridor' under the *State Environmental Planning Policy (Precincts – Regional) 2021 (Regional Precincts SEPP)*.
- 1.2 Land uses within the 'B6 Enterprise Corridor' in the 'Land Use Table' in Part 5.3 of the Regional Precincts SEPP are classified as permitted without consent, permitted with consent and prohibited.
- 1.3 The entry for the 'B6 Enterprise Corridor' in the 'Land Use Table' in Part 5.3 of the Regional Precincts SEPP provides the following:

3 Permitted with consent

Business premises; Community facilities; Garden centres; Hardware and building supplies; Hotel or motel accommodation; Landscaping material supplies; **Light industries**; Multi dwelling housing; Passenger transport facilities; Plant nurseries; Recreation facilities (indoor); Residential flat buildings; Roads; Shop top housing; Warehouse or distribution centres; Any other development not specified in item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Amusement centres; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Centre-based child care facilities; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-

tourist facilities; Electricity generating works; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Highway service centres; Home-based child care; Home businesses; Home occupations (sex services); Industries; Information and education facilities; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Recreation areas; Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Research stations; Residential accommodation; Resource recovery facilities; Restricted premises; Rural industries; Rural supplies; Service stations; Sewage treatment plants; Storage premises; Tourist and visitor accommodation; **Transport depots**; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Waste disposal facilities; Water recreation structures; Water recycling facilities; Water supply systems (bold added).

- 1.4 Relevantly, the 'Land Use Table' for the 'B6 Enterprise Corridor' zone provides that:
- (a) 'Light industries' are 'permitted with consent'; and
 - (b) 'Transport Depots' are 'prohibited'.
- 1.5 Definitions of these expressions are contained in Schedule 10 ('Dictionary for Chapter 5') of the Regional Precincts SEPP as follows:
- (a) a 'transport depot' is defined to mean:
 - a building or place used for the parking or servicing of motor powered or motor drawn vehicles used in connection with a business, industry, shop or passenger or freight transport undertaking.
 - (b) a 'light industry' is relevantly defined to mean:
 - a building or place used to carry out an **industrial activity** that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise (bold added).
 - (c) an 'industrial activity' is relevantly defined to mean:
 - the manufacturing, production, assembling, **altering**, formulating, **repairing**, renovating, ornamenting, finishing, **cleaning**, **washing**, **dismantling**, transforming, **processing**, recycling, adapting or **servicing** of, or the research and development of, any **goods**, substances, food, products or **articles** for **commercial purposes**, and includes any **storage** or **transportation** associated with any such activity (bold added)...
- 1.6 However, the definition of 'transport depot' does not apply in a strict sense, by reason of section 5.13(3) of the Regional Precincts SEPP. (This will be addressed further below.)

2. The Applicant's position on permissibility

- 2.1 The proposed development is permissible with development consent either because:
- (a) the proposed development is characterised as a 'light industry' under the Regional Precincts SEPP (**the light industry point**); or
 - (b) the proposed development is characterised as a 'bus depot' under the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (**Transport and Infrastructure SEPP**) (**the bus depot point**).
- 2.2 Each of these points are independent foundations to establish permissibility for the development. The Applicant only needs to succeed on one of the points to establish permissibility.

3. The light industry point

- 3.1 The proposed development falls within the Dictionary definitions of both 'transport depot'

and 'light industry'.

- 3.2 If the Dictionary definition of 'transport depot' applies, the proposed development would fall within it.
- 3.3 However, the proposed development would also fall under the Dictionary definition of 'light industry'. We will explain why.

Industrial activity

- 3.4 **Firstly**, the proposed development is an 'industrial activity' because it is for the:
- (a) altering;
 - (b) repairing;
 - (c) cleaning;
 - (d) washing;
 - (e) processing; and
 - (f) servicing of buses (being 'goods') and includes the storage or transportation associated with such activity.
- 3.5 The ordinary meaning of the term 'goods' includes articles of trade (*Macquarie Dictionary* 2023). The buses that will be stored, transported, maintained and serviced on the site for commercial purposes as part of the proposed development fits within the definition of 'goods' or 'articles of trade'.
- 3.6 The word 'processing' is wide in scope. The *Macquarie Dictionary* provides useful guidance as to the meaning of the word, relevantly (as a verb):
- 11. to treat or prepare by some particular process, as in manufacturing.
 - 13. to apply a process to: to process an application.
- 3.7 This also calls for consideration of the meaning of the word 'process' as a noun:
- 1. a systematic series of actions directed to some end: the process of making butter.
 - 2. a continuous action, operation, or series of changes taking place in a definite manner: the process of decay.
- 3.8 The purpose of the proposed development is to process buses. It can also be said that, as part of this processing, the development will also alter, repair, clean, wash and service buses.
- 3.9 To understand the particular development that is being proposed, one must look at the particular documents accompanying the development application (*Gordon & Valich Pty Ltd v City of Sydney Council* [2007] NSWLEC 78 at [19]).
- 3.10 Most relevant here is the 'Preliminary Operational Management Plan' prepared by Urbis dated 2 May 2024. This document forms part of Exhibit JA-1 (at tab 17). The development is described (in section 2, page 3) as follows:
- The new bus depot will include:
- A two-storey building comprising office/workspace/storage rooms, circulation space, spray booth and panel area, chassis wash area, four pits, six bays and a tyre and parts store.
 - A two-storey building comprising office floorspace, reception and foyer and control centre
 - A wash bay

- A bus driveway and bus parking (catering for 96 vehicles)
- On-grade car parking
- Refuelling island bowser stanchions and a diesel fuel tank
- Landscaping, Fencing and Signage

The 'Bus Depot' will be used by Waluya to store and service their fleet of buses serving the Central Coast Region.

Two buildings will be constructed within the site. A larger 'workshop' building will be located in the north eastern corner of the site and will provide for the servicing and cleaning of vehicles. A smaller office/admin building is proposed towards the site's western boundary. A separate bus wash bay and bus wash plant will also be provided within the site.

A bus driveway (area of hardstand) will be located in the centre of the site. It will allow for vehicles to manoeuvre within the site and provide direct access to the servicing building. Island bowser stanchions and a diesel fuel tank will also be located within the centre of the site.

3.11 In section 4 of the plan (page 5) the following is said:

The proposed Bus Depot will provide a facility for the parking, refuelling, washing and servicing of buses. The depot will contain staff facilities and office/administrative space for bus drivers and other Waluya employees.

Buses will travel between the site and various strategic locations throughout the Central Coast Region bus network.

No bus routes will start or end at the depot. The depot will not be open to the public (except for the reception) and passengers will not be permitted to board or alight buses from the site.

The vehicles that will be parked and serviced on the site will comprise single decker diesel-engine buses only. However, in the future, zero tailpipe emission buses may also be parked and serviced on the site.

3.12 The development will plainly include the commissioning of buses for use each day and decommissioning the same buses at the end of each day.

3.13 Section 3 of the plan also explains how the following activities will be carried out on the site:

- (a) bus refuelling (page 6);
- (b) bus washing (pages 6-7); and
- (c) bus servicing (page 7).

3.14 **Secondly**, the fact that the proposed development also provides facilities for the storage of buses does not mean that it is not an 'industrial activity'.

3.15 The definition of 'industrial activity' expressly says that it:

includes any **storage** or transportation associated with any such activity (bold added)...

3.16 It should be presumed that these words have been inserted into the definition for a purpose (*Commonwealth v Baume* (1905) 2 CLR 405, 414). They are not to be thought of as merely surplusage. Accordingly, the express identification of 'storage' and 'transportation' as being included should be understood to be the identification of items which might not generally be thought to fall within the preceding class, but which are intended to be included in this provision (cf *Cranbrook School v Woollahra Municipal Council* [2006] NSWCA 155 at [44]).

3.17 Storage and transportation that was **ancillary** to the preceding class would have fallen into the preceding class in any event. (In planning law, where one use of a premises

subserves another, it is ancillary and will be characterised as being for the same purpose as the dominant purpose: *Foodbarn Pty Limited v Solicitor-General* (1975) 32 LGRA 157 at [161]. A development might not qualify as ancillary if it has a not insignificant extraneous purpose: cf *Toner Design Pty Ltd v Newcastle City Council* [2013] NSWCA 410 at [10].)

- 3.18 Furthermore, the wording of this inclusion is notably different from the definitions of the other expressions that appear in Schedule 10 ('Dictionary for Chapter 5') of the Regional Precincts SEPP. Namely:
- (a) 'animal boarding or training establishment' which is defined to include any 'ancillary veterinary hospital';
 - (b) 'hospital' which is defined to include certain 'ancillary facilities';
 - (c) 'marina' which is defined to include 'any car parking or commercial, tourist or recreational or club facility that is ancillary to the boat storage facility';
 - (d) 'medical centre' which is defined to include 'ancillary provision of other health services';
 - (e) 'neighbourhood shop' which is defined to include 'ancillary services such as a post office, bank or dry cleaning'; and
 - (f) 'recreation area' which is defined to include 'ancillary buildings'.
- 3.19 The absence of the word 'ancillary' from the definition of 'industrial activity' (when it is included in similar definitions in the same dictionary) should be understood to be a deliberate choice of the author of the legislative instrument (*Salemi v MacKellar (No 2)* (1977) 137 CLR 396).
- 3.20 Accordingly, no issue can arise as to whether the storage and transportation aspects of the development are ancillary to the processing of the buses aspect of the development. It is sufficient that they form part of the single development (for the purposes of applying the definition of 'industrial activity').
- 3.21 For the above reasons the proposed development is an 'industrial activity'.

Light industry

- 3.22 Having established that the development is to carry out an 'industrial activity', the development is for a 'light industry'. This is because it will be a building **and** a place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise. This is evidenced by the following documents prepared in support of the development application:
- (a) In relation to **noise** and **vibration** impacts, a Noise and Vibration Impact Assessment has been prepared by E-LAB Consulting (at tab 23 of the class 1 application). The report concludes at page 40 that:

Having regard to the analysis conducted within this report, it is the finding of this noise and vibration impact assessment that the proposal is **compliant with the relevant noise and vibration criteria controls** for this type of development, and it is expected to comply with the applicable regulations with regards to noise and vibration, particularly those listed above, subject to the mitigation measures outlined within section 7 of this report.

In conclusion, the Development Application for the proposed redevelopment of the subject site **is supportable from a noise and vibration perspective** (bold added).
 - (b) In relation to **waste** impacts:
 - (i) A construction and demolition waste management plan has been

prepared by Elephants Foot (at tab 32 of the class 1 application), which assesses the management of construction and demolition waste generated by the proposed bus depot during the construction and demolition phases. The plan implements the following waste management practices for the duration of the demolition and construction stages of the development (at section 1.6, page 3):

- Re-use of excavated material on-site and disposal of any excess to an approved site;
- Green waste mulched and re-used on-site as appropriate, or recycled off-site;
- Bricks, tiles and concrete re-used on-site as appropriate, or recycled off-site;
- Plasterboard waste returned to supplier for recycling;
- Framing timber re-used on site or recycled off-site;
- Windows, doors and joinery recycled off-site;
- All asbestos, hazardous and/or intractable wastes are to be disposed of in accordance with WorkCover Authority and EPA requirements;
- Plumbing, fittings and metal elements recycled off site;
- Ordering accurate quantities of materials and prefabrication of materials where possible;
- Re-use of formwork;
- Careful source separation of off-cuts to facilitate re-use, resale or recycling.

- (ii) An operational waste management plan has been prepared by Elephants Foot (at tab 27 of the class 1 application), which assesses the different waste streams likely to be generated during the operational phase of the development, including how the waste will be handled and disposed, details of bin sizes/quantities and waste rooms, descriptions of the proposed waste management equipment used and information on waste collection points and frequencies. The consent, if granted, will be subject to the operational waste management plan through the imposition of a suitable condition of consent.

(c) In relation to **contamination** impacts:

- (i) A preliminary site investigation has been prepared by Stantec (at tab 56 of the class 1 application), which assesses potential contamination at the site. The executive summary (on page i) provides that:

The identified potential sources of contamination have been preliminarily classified as having a low or medium likelihood of complete exposure pathway for human and ecological receptors...

The recommendations (on page i) provides that:

[F]urther investigation to determine the extent and nature of the contamination at the site [is required]...

- (ii) A detailed site investigation has been prepared by Stantec (at tab 8 of Exhibit JA-1). Section 11.0 on page 11.2 concludes that:

Based on the findings of this investigation asbestos in soil contamination has been identified within the site that presents an unacceptable risk to human users of the site and will require management...

Metals, TRH and PFOS contamination of soil and groundwater was identified in exceedance of adopted Tier 1 ecological criteria but are not considered to present an unacceptable risk to site users under the proposed land-use.

From the findings of this investigation, with the exception of areas impacted by friable asbestos in soil, the site is suitable for the proposed land-use as a bus depot with predominantly hardstand cover...

- (iii) A remediation action plan has been prepared by Stantec (at tab 10 of Exhibit JA-1) The purpose of the remediation action plan is to guide the remediation of identified asbestos in soil identified at the site. The consent, if granted, will be subject to the remediation action plan through the imposition of a suitable condition of consent.
- (d) In relation to **soil and water management**, a civil report has been prepared (at tab 14 of Exhibit JA-1), which includes a soil and water management plan (**SWMP**) at section 6.2. It concludes on page 12 that:

The proposed SWMP will ensure that the best management practice is applied to the development site in controlling and minimising the negative impacts of soil erosion.

3.23 Therefore, the development is for the purposes of both:

- (a) a (prohibited) 'transport depot (as defined in the Dictionary); and
- (b) a permitted 'light industry' (as also defined in the Dictionary).

3.24 However, this apparent conflict is resolved by section 5.13(3) of the Regional Precincts SEPP.

Section 5.13(3) of the Regional Precincts SEPP

3.25 Section 5.13(3) of the Regional Precincts SEPP relevantly says:

In the Land Use Table at the end of this Part—...

- (b) a reference to a type of building or other thing does not include (**despite any definition in this Chapter**) a reference to a type or other thing referred to separately in the Land Use Table in relation to the same zone (bold added).

3.26 The definition of 'transport depot' must be read to exclude any premises that is also a 'light industry' under this provision.

3.27 There are two key reasons for this.

3.28 **Firstly**, and primarily, the zone objectives must be considered.

3.29 The objectives of a zone do not **ordinarily** dictate permissibility: *Abret Pty Ltd v Wingecarribee Shire Council* [2011] NSWCA 107 at [43]; *Terra Ag Services Pty Limited v Griffith City Council* [2017] NSWLEC 167 at [141].

3.30 However, in *Abret*, Beazley JA said at [45] (with Campbell JA and Handley AJA agreeing):

... I am not to be taken as saying that the [zone] objectives are not relevant to the construction of **other provisions in the LEP**. A provision is to be construed within the statutory instrument as a whole **Thus a construction of a provision which was more conducive to the achievement of the objectives of the LEP is to be preferred to a construction that does not achieve those aims** (bold added)

3.31 The application of section 5.13(3) of the Regional Precincts SEPP requires the exercise of judgment. In exercising this judgment, the Court must prefer the application of the provision that is more conducive to the achievement of the zone objectives (being the objectives of the Regional Projects SEPP for the land in question).

- 3.32 Reading the expression 'transport depot' **down** to exclude any premises that is also a 'light industry' under section 5.13(3) **is** more conducive to the achievement of the 'B6 Enterprise Corridor' zone objectives. These objectives are as follows:
- To promote **businesses** along main roads and to encourage a **mix** of **compatible** uses.
 - To provide a **range of employment uses** (including **business**, office, retail and **light industrial uses**).
 - To maintain the economic strength of centres by limiting **retailing activity**.
 - To provide for residential uses, but only as part of a mixed use development (bold added).
- 3.33 In terms of the first dot point:
- (a) The proposed development is a business — and it will be located on a main road.
 - (b) A business of this kind (a bus processing and storage facility) is not common. This means it will contribute to the mix of uses in the zone.
 - (c) The proposed development is plainly compatible with the other land uses envisaged in the zone. Land use that are permitted in the zone include:
 - (i) business premises;
 - (ii) garden centres;
 - (iii) hardware and building supplies;
 - (iv) landscaping material supplies;
 - (v) light industries;
 - (vi) passenger transport facilities;
 - (vii) plant nurseries;
 - (viii) recreation facilities (indoor);
 - (ix) warehouse or distribution centres.
- 3.34 In terms of the second dot point:
- (a) The proposed land use will provide for the ongoing employment of 115 staff (as per tab 2 of the class 1 application). This is in addition to the employment that will be supported through the provision of public transport services within the locality.
 - (b) Again, as the proposed land use is not commonplace, it will contribute to the 'range' of employment uses found within the zoned land.
- 3.35 In terms of the third dot point, the objectives expressly refer to the need to limit 'retailing activity' (and do not refer to limiting any other non-residential activity). The proposed development is not a form of retailing activity.
- 3.36 **Secondly**, and in any event, the definition of 'light industry' is a more specific definition when compared with the definition of 'transport depot'. This is because a 'light industry' does not include any development that interferes with the amenity of the neighbourhood. A 'transport depot' may well be a development that interferes with the amenity of the neighbourhood.
- 3.37 Our position stands, even if this second point is not accepted. The first reason is sufficient by itself.

Conclusion on the light industry point

- 3.38 Therefore, the Applicant's primary position is that the proposed development is characterised as a 'light industry' which is permitted with consent in the 'B6 Enterprise Corridor' zone for the following reasons:
- (a) The proposed development includes a building and place that will be used to carry out an 'industrial activity'.
 - (b) The development application (as amended) provides evidence that the proposed development will not interfere with the amenity of the neighbourhood as required by the definition of a 'light industry' in Schedule 10 of the Regional Precincts SEPP.
 - (c) The ordinary meaning of the term 'goods' includes articles of trade (*Macquarie Dictionary* 2023). The buses that will be stored, transported, maintained and serviced on the site for commercial purposes as part of the proposed development fits within the definition of 'goods' or 'articles of trade'.
 - (d) The development will plainly include the commissioning of buses for use each day and decommissioning the same buses at the end of each day. The various services that will be accommodated on the site as part of the proposed development — for instance, workshop (mechanic and cleaning) facilities and diesel refuelling tanks and washdown bays — are activities that fit within the definition of 'industrial activity' in Schedule 10 of the Regional Precincts SEPP.
 - (e) The proposed development site will be used for the storage and transportation of buses, as part of its function to process the buses, which is also included within the definition of 'industrial activity'. No issue can arise as to whether the storage and transportation aspects of the development are ancillary to the processing of the buses aspect of the development.

4. The bus depot point

- 4.1 The light industry point above is sufficient, by itself, to establish the permissibility of the proposed development.
- 4.2 Nonetheless, in the alternative, it should be appreciated that the Transport and Infrastructure SEPP also has a role to play.
- 4.3 the 'Land Use Table' in Part 5.3 of the Regional Precincts SEPP is given operative effect by section 5.13 of the Regional Precincts SEPP. This provision is titled 'Zone Objectives and 'Land Use Table' which relevantly provides the following:
- (1) The Land Use Table at the end of this Part specifies for each zone—
 - (a) the objectives for development, and
 - (b) development that may be carried out without development consent, and
 - (c) development that may be carried out only with development consent, and
 - (d) development that is prohibited...
 - (4) **This section is subject to the other provisions of this Chapter** (bold added).
- 4.4 In other words, section 5.13(4) of the Regional Precincts SEPP empowers other provisions of Chapter 5 to establish an exception to the prohibition on transport depots in the B6 zone.

- 4.5 There is a note at the beginning of the Land Use Table in Part 5.3 of the Regional Precincts SEPP (which forms part of Chapter 5). The note says:
- State environmental planning policies, including the following, may be relevant to development on land to which this Chapter applies—**State Environmental Planning Policy (Transport and Infrastructure) 2021**, Chapter 2—relating to **infrastructure facilities, including** air transport, correction, education, electricity generating works and solar energy systems, health services, ports, railways, **roads**, waste management and water supply systems (bold added).
- 4.6 The note at the beginning of the Land Use Table is a note to a **table**. Under section 35(4)(b) of the *Interpretation Act 1987*, notes to a table **form part of an instrument**. The note forms part of the Regional Precincts SEPP and is 'a provision of' Chapter 5 of the Regional Precincts SEPP: *New South Wales Trustee and Guardian v Clark* [2019] NSWCATAP 257 at [11]-[14]; cf *Hacienda Caravan Park Pty Ltd v Dodge* [2019] NSWSC 1296 at [56].
- 4.7 The note expressly nominates, as an example, infrastructure facilities including roads [infrastructure facilities] as a type of development to which Chapter 2 of the Transport and Infrastructure SEPP is relevant.
- 4.8 Again, it should be presumed that these **operative** words have been inserted into the Regional Precincts SEPP for a purpose (*Commonwealth v Baume* (1905) 2 CLR 405 at [414]). They are not to be thought of as merely surplusage.
- 4.9 Subdivision 1 of Division 17 of Chapter 2 of the Transport and Infrastructure SEPP is titled 'Roads and road infrastructure facilities'.
- 4.10 The provisions in this subdivision of the SEPP would be dead letter if these provisions did not override the Land Use table at the end of Part 5.3 of Chapter 5 of the Regional Precincts SEPP. There would be no purpose for the Regional Precincts SEPP to refer to the provisions of the Transport and Infrastructure SEPP in relation to roads infrastructure facilities, unless the author envisaged that the provisions of Subdivision 1 of Division 17 of Chapter 2 of the Transport and Infrastructure SEPP would override the Land Use Table (as per section 5.13(4) of the Regional Precincts SEPP).
- 4.11 Accordingly, there is no inconsistency between Chapter 5 of the Regional Precincts SEPP and Subdivision 1 of Division 17 of Chapter 2 of the Transport and Infrastructure SEPP: *Hastings Point Progress Association Inc V Tweed Shire Council* [2009] NSWCA 285 at [49 and [76].
- 4.12 In this regard, it should be appreciated that every attempt should be made to reconcile competing statutes by the same legislator. It is only if the competing provisions are **irreconcilable** that one instrument will be taken to have overridden the other (Gummow and Hayne JJ in *Ferdinands v Commissioner for Public Employment* (2006) 225 CLR 130, 14; *ISPT Nominees Pty Ltd v Chief Commissioner of State Revenue* [2003] NSWSC 697 at [101]).
- 4.13 The authorities are clear that a court should read statutes together if it possibly can: *City of Canada Bay Council v Bonaccorso Pty Ltd* [2007] NSWCA 351 at [83]
- 4.14 The two instruments work harmoniously together by reason of:
- (a) section 5.13(4) of the Regional Precincts SEPP; and
 - (b) the note in the Land Use Table in Part 5.3 of the Regional Precincts SEPP (which has operative effect as part of the instrument).
- 4.15 The proposed development is characterised as a 'Bus depot' in the Transport and Infrastructure SEPP as the premises will be used for the servicing, repairing, garaging or parking of buses as per the dictionary definition of a 'Bus depot' in section 2.108 of the Transport and Infrastructure SEPP.

- 4.16 Section 2.122 of the Transport and Infrastructure SEPP explicitly provides that development for the purpose of bus depots is permitted on land in a prescribed zone.
- 4.17 Section 2.108 of the Transport and Infrastructure SEPP provides that the B6 zone is a prescribed zone.
- 4.18 Therefore, the Transport and Infrastructure SEPP provisions permit development for the purposes of a 'bus depot' on land zoned B6.

Please do not hesitate to contact Julide Ayas on (02) 8035 7918 or Aaron Gadiel on (02) 8035 7858 if you would like to discuss this letter.

Yours sincerely



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