

9.8 Planning Proposal – Neeld Street, Wyalong

Our leadership

Setting a benchmark for community standards

Vision: A well run council acting as the voice of the community

DP14.3 Ensure the General Manager takes on a high level role in implementing the Community Strategic Plan and associated documents

Author Manager Development Services

Conflicts of Interest Nil

Officer's Recommendation

That Council:

- a) **Endorse the amendments to the current planning proposal to include the provision of B4 Mixed Use zone over Lots 1 & 2, Section 37, DP759123 and Lots 19 & 20, Section 36, DP759123.**
- b) **Forward the revised planning proposal to the Department of Planning and Infrastructure for review of planning proposal and possible review of "gateway determination".**
- c) **Place the amended planning proposal on public notification for an additional 14 days on receipt of approval from Department of Planning and Infrastructure.**

Background

In accordance with Council resolution 19122013, the Neeld Street Planning Proposal was placed on public notification from Monday 17 March 2014 to Friday 11 April 2014.

As a result of the notification process, Council received two (2) submissions objecting to the proposed rezoning. A summary of the submissions are provided below. Council staff met with both objectors to discuss the likely impacts of the planning proposal. A meeting was also held with a local business owner who did not subsequently make a submission.

Council was also required to consult with the Office of Environment and Heritage and Roads and Maritime Services. Both agencies had no concerns in relation to the proposal.

The following is a response to the concerns and objections raised in both letters of objections.

Amarant Mechanical and Welding

1. *We acquired our business from Bob Hood in March 2004. He had previously operated that business for approximately 13 years on this site so there has been an established commercial use in respect of our land for approximately 23 years.*

At the time of purchase the land in question was zoned 2v Village under the Bland Local Environmental Plan (LEP) 1993 and as the activity was being undertaken at the time of the gazettal of the Bland LEP 1993 the activity had existing use rights and as such could remain. In addition to this the activity was permissible under the 2v Village zones as it is not defined as extractive industries; intensive livestock keeping establishments; mines; offensive and hazardous industries activity.

2. *We have invested substantially in our business by developing and extending the premises, all in accordance with Council requirements, at the time.*

Council records have indicated that the current owners have sought the necessary approvals from Council prior to undertaking any extensions to the premises.

3. *We currently employ 13 local personnel directly and a further 7 subcontractors in our business which contributes substantially to the economy of this town. These jobs are now at risk.*

The proposed rezoning does not place the current jobs at risk as the development can continue to operate under existing use rights.

4. *We further purchased a parcel of vacant land which we intended to further develop as our business expands. The zoning of that block at that time was consistent with our future plans.*

Council can confirm that at the time of purchase of the vacant allotment the zoning was 2v Village and that preliminary discussions were held in regard to the use of the land for the storage of items related to the current activities. Development consent was granted on 31 August 2011 for a commercial storage shed. As the consents has been issued and the activity was permissible under the zoning under the previous planning instrument, the current activity is permissible under existing use provisions, this being commercial storage shed only.

It should be noted that at the time of determination of the above application, the draft Local Environmental Plan 2011 was in effect and as such the proposed zoning of B6 Enterprise Corridor was taken into consideration. The proposed B6 Enterprise Corridor permitted this type of development.

5. *We believe that we have been disadvantaged by this rezoning proposal as our business was always compliant with current Council requirements until now. We will suffer a substantial economic loss should the policy be adopted.*

Council records have indicated that the current owners had sought the necessary approvals from Council. Council is unable to comment of any economic or financial impacts that the proposal may or may not have as this is outside the scope of planning legislation and is subject to market forces.

6. *We further believe that should the land be rezoned as proposed then we will be severely disadvantaged if we attempt to sell our land and business in the future.*

As the current activity is operating under valid development consents "existing use rights" are applicable, the current activities are able to legally operate until such time as activity ceases for a period of more than twelve months. Again Council is unable to comment of any economic or financial impacts that the proposal may or may not have as this is outside the scope of planning legislation and is subject to market forces.

C & N Thomas

After meeting with the objector, it is Council's understanding that the transport business referred to in the submission relates to the sole owner/operator of an interstate heavy vehicle (semi trailer). It is noted that whilst the business address is the premises in question and the administrative activities of the business are undertaken at this address, the actual operation of the business (heavy vehicle) occurs off site. As this is the case, no Council approval is required as the business is not being undertaken at that site.

In addition to the above, as general maintenance works is only being undertaken on the heavy vehicle this is also not seen as a business activity as the vehicle is classed as a private vehicle. In simple terms it is a work vehicle much like a plumber's van or a builder's utility.

The above information was confirmed in writing with the objector. Council subsequently received an email from the objectors on 6 May 2014, wishing to withdraw their objection subject to no impact upon their current and future operations.

In consideration of the full content of the email, a response to their original objection has been included in this report.

"We purchased this property from Council 12 years ago with the understanding that the current B6 Enterprise Corridor zoning would allow us to utilise this property as a place where we could live and develop our transport business."

At the time of purchase the land in question was zoned 2v Village under the Bland LEP 1993. The B6 Enterprise zoning came into effect in December 2011. As detailed above no Council approval is required as no business is being undertaken.

"This property is our primary business address and is our site for general maintenance to the vehicles."

No approval is required for the activity occurring on the site.

"We strongly believe that to change the zoning of our property at this time would cause profuse financial loss to our business and the impact of this would result in the subsequent closure of our business. We do not have the financial viability to acquire a new site to perform our maintenance nor are we in a position to contract the maintenance out to other mechanics."

The primary use of the land is a residential dwelling. Approval is not required for the current activities occurring on the site in relation to the operation of the semi trailer and therefore the rezoning of the land will have no impact on the business operations.

"We believe that if rezoning of our land were to occur, Council would be seen to be breaking the contract under which we initially bought the land."

Council has no contract with a person in regard to the zoning of the land.

"How can Council legally permit one operation for a period of time and then withdraw its approval for such?"

As the activity in question is permissible without consent, the proposed rezoning will not withdraw any approval given as no approval is required.

"We trust that we are not the only business to be negatively impacted by the proposed change and find it despicable that Council would consider such a move when Council promotes its support for local business growth."

The proposed rezoning does not impact on Council's ability to promote and support local business growth.

During the review of the submission period, the Amarants' provided a further response through Planik* Pty Ltd. The letter raised points in regard to the adequacy of the planning proposal and the justifications used. The planning proposal has been developed in accordance with the Department of Planning's guidelines, is supported by the department via the "gateway determination" and has been developed to reflect the land uses and to reduce the long term conflict between land uses.

Overall Comments

Whilst the objections raised some concerns and issues, Council must look strategically at the current and proposed future use of the subject land as well as the development history of the area and the permissible land uses. Taking into consideration the impact these developments will have on the overall amenity of the area.

It is for the above reasons that Council staff believes that the provision of an alternative zoning is the most appropriate means to ensure that any future commercial activities that may occur on the four (4) allotments identified will have a minimal impact on the amenity of the area.

In consultation with the Department of Planning it is recommended that Council utilise the B4 Mixed Use zone. The objectives of the zone, aim to provides a mixture of compatible land uses, integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling and increases the permanent population and encourage the provision of affordable housing in mixed use areas. A copy of the draft B4 Mixed Use zoning is attached.

Council also has the ability to clearly identify prohibited uses within this zone, which therefore allows Council to ensure that any future development will not have an adverse impact on the overall amenity of the area.

Conclusion

The existing vehicle repair station (Amarant Mechanical & Welding) and garden centre (The Old Gum Tree Garden Centre) have been in operation for in excess of ten years. There have been no complaints regarding the operation of these commercial premises and that the existing developments are of a low impact. It is considered that the continued operation of these developments be included in the planning proposal.

The use of the B4 Mixed Use zone for the identified allotments, will allow for Council to achieve the long term strategic plan for the area by ensuring that the appropriate zoning is applied in relation to the predominant residential use of the land as well as providing security to the existing commercial activities currently taking place within the subject area.

It is recommended that Council zone the Lots 1 & 2, Section 37, DP759123 and Lots 19 & 20, Section 36, DP759123 B4 Mixed Use and subsequently amended the current planning proposal to reflect the inclusion of B4 Mixed Use zone. Should the inclusion be adopted a further minimum consultation period of 14 days would be required.

Financial Implications

Nil

Draft B4 Mixed Use Zoning

Zone B4 Mixed Use

1 Objectives of zone

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To increase the permanent population and encourage the provision of affordable housing in mixed use areas.

2 Permitted without consent

Environmental protection works; Home-based child care; Home occupations

3 Permitted with consent

Boarding houses, Child care centres; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Garden centre; Hotel or motel accommodation; Information and education facilities; Light industries; Medical centres; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Residential accommodation; Respite day care centres; Restricted premises; Roads; Seniors housing; Shop top housing; Vehicle Repair Stations; Any other development not specified item 2 or 4

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat launching ramps; Boat Building and repair Facilities; Boat sheds; Bulky Goods; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Farm stay accommodation; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Home occupations (sex services); Industrial training facilities; Industries; Jetties; Landscaping Material Supplies; Marinas; Mooring pens; Moorings; Open cut mining; Plant Nursery; Pubs; Recreation facilities (major); Research stations; Resource recovery facilities; Roadside Stall; Rural industries; Rural Supplies; Rural workers' dwellings; Sewage treatment plants; Sex services premises; Timber Yards; Transport depots; Truck depots; Vehicle Body Repair Workshop; Warehouse or distribution centres; Waste disposal facilities; Water recreation structures; Water supply systems; Wharf or boating facilities.

Please note that final version is subject to consultation with the Department of Planning.