

Planning and Assessment

EF19/22428

Gateway determination report

LGA	Lake Macquarie
PPA	Lake Macquarie City Council
NAME	Additional permitted use at 393 Pacific Highway, Belmont North
NUMBER	PP_2019_LAKEM_005_00
LEP TO BE AMENDED	Lake Macquarie Local Environmental Plan 2014
ADDRESS	393 Pacific Highway, Belmont North
DESCRIPTION	Part of Lot 101 DP 1021186
RECEIVED	11 July 2019 (adequate 23 October 2019)
FILE NO.	EF19/22428
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal seeks to amend Schedule 1 of the Lake Macquarie Local Environmental Plan 2014 to allow 'shops' and 'food and drink premises' as additional permitted uses at 393 Pacific Highway, Belmont North. A floor space limit would be specified for the 'food and drink premises' use.

Council advises that the proposal would enable the development of the site for the purposes of a Kaufland supermarket, with an associated food hall and retail spaces collocated within the supermarket.

1.2 Site description

The land affected by the planning proposal is the B7 Business Park portion of Lot 101 DP 1021186. The four hectare site is used as a Bunnings Warehouse, containing a large shed with associated carparking. The remainder of Lot 101 (not subject to the planning proposal) provides site access to the Pacific Highway. Refer to Figure 1. Council advises that the Bunnings Warehouse is to relocate in 2021.



Figure 1: Site (red) within Lot 101 (yellow) with LEP zones overlaid (source: NSW Planning Portal)

1.3 Existing planning controls

The site is zoned B7 Business Park (Figure 1). It has a maximum building height limit of 15 m and a minimum lot size of 1,500 m². No floor space ratio applies. These controls are the same as those applying to the adjoining B7 zoned land to the south.

1.4 Surrounding area

The site is situated off the Pacific Highway at Belmont North in a business precinct that extends either side of the highway which contains a mix of urban services, highway related uses (fast food, service station) and general business. Adjoining this area to the north, west and south are land developed for low density residential. These lands are zoned R3 Medium Density Residential so will be more densely developed in the future. To the east of the site is coastal wetlands which extend to the south-east towards the Belmont Wetlands State Park.

The Pacific Highway connects the site to the Belmont town centre (1.2 km south approx.) which provides retail, business, services and community uses. Charlestown is the nearest regional level centre (9 km to the north approx.).



Figure 2: Site locality (source: Nearmap)

1.5 Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions.

The proposal is inconsistent with the Hunter Regional Plan because it would allow retail outside of a centre.

This inconsistency may be supported provided an economic impact study is undertaken that demonstrates that adverse impacts on existing centres is unlikely.

The site is in an existing business node of an urban renewal corridor in an area targeted for increased residential growth. Council has reviewed alternative centre-based sites but no suitable sites could be found.

2. PROPOSAL

2.1 Objectives or intended outcomes

The planning proposal objectives are to facilitate the use of the site for the purpose of a Kaufland supermarket. The objectives are clear and no changes are required.

2.2 Explanation of provisions

The planning proposal states that the Lake Macquarie LEP 2014 would be amended by listing the site in the LEP's Schedule 1 Additional Permitted Uses.

The listing would provide that 'shops' and 'food and drink premises' are permitted with development consent on the site. The listing would also specify a floor space limit for the 'food and drink premises' component.

Council advises that the limit would be determined through additional economic impact analysis post-Gateway.

The explanation of provisions is clear and no changes are required.

2.3 Mapping

The proposal would require a change to the LEP's Additional Permitted Uses map which would identify the part of the site subject to the additional permitted use. The map provided in the planning proposal clearly demonstrates how that would occur.

Other maps provided in the planning proposal (e.g. to demonstrate environmental impacts) are clear and no changes are required.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a land use planning study or strategy. It has been initiated by the landowner.

Council considers the proposal to have merit because it facilitates the development of the site for a Kaufland supermarket. It states that Kaufland requires substantial land area (three hectares approx.), with stores being larger than those of existing supermarket operators.

Council advises that this site is well suited because it meets the land area needs, will become a vacant site once the Bunnings Warehouse relocates, and is strategically located being on the Pacific Highway at Belmont North.

While Council recognises that it would be desirable for the site to be in a town centre, Council has reviewed alternative sites (B1-B4 zoned) and none have been found to be suitable. Whether this out-of-centre location may undermine the Belmont centre is yet to be fully examined, with Council intending to undertake further economic impact analysis post-Gateway.

Council notes there are no other Kaufland supermarkets in the region and so the catchment for the supermarket extends outside the catchment of Belmont itself. As the site is in an urban renewal corridor identified in the Hunter Regional Plan for further growth, Council considers the site location to have merit.

The Department supports Council's position and considers the need for the proposal justified. While the Hunter Regional Plan requires new retail activities to be in centres, the size of a Kaufland supermarket makes it difficult for suitable sites to be located as Council's review has confirmed. Council advises that Kaufland's size needs relate to its product range and set layout (including 400 car parking spaces), and that this is unable to be changed due to efficiency and customer related reasons.

Given the above, and noting the site is in an urban renewal corridor in an existing urban services node and is adjoined by land targeted for increased residential density, the use of the site for this purpose may be supported. However, the further economic study proposed by Council is required to demonstrate no adverse impacts on existing centres are likely.

Council has considered two different mechanisms for enabling the use in the LEP being the additional permitted use approach (proposed) and a zone-based approach (extending the B4). The B4 approach was not supported by Council because of concerns that it would reduce supply of B7 zoned employment land supply should the Kaufland not proceed. Council has initiated a review of employment land in its LGA and so any change to the zoning of the existing precinct should come from that review. The additional permitted use approach is supported in the interim.

4. STRATEGIC ASSESSMENT

4.1 State

There are no State level strategies or policies relevant to this proposal.

4.2 Regional

Hunter Regional Plan 2036 (HRP)

Direction 23 Grow centres and urban renewal corridors is most relevant to the proposal because the site is located within an urban renewal corridor identified in the HRP. While this direction supports a mix of uses and both economic and population growth in these corridors (Action 23.1), the direction also requires retail development to be focused in centres (Action 23.5). The proposal would enable a large retail development outside of a centre and so it is inconsistent with the HRP. As discussed, the site may be suitable given the circumstances however further investigation is required to evaluate impacts on nearby centres.

Greater Newcastle Metropolitan Plan 2036 (GNMP)

The GNMP does not provide any specific guidance relevant to the planning proposal. Council identifies the proposal as being consistent with Action 7.1 of the GNMP. It requires councils to build capacity for new economy jobs in areas well serviced by public transport and close to established centres by enabling a greater range of employment generating uses in appropriate industrial and business areas.

Whether a large supermarket may be considered a new economy job is unclear. Notwithstanding, the proposal would provide jobs closer to home and in a location well serviced by public transport. Both are underlying goals of the plan. As this would occur in an urban renewal corridor identified in the HRP for further economic and housing growth, the proposal is consistent with the GNMP.

4.3 Local

Imagine Lake Mac – 2050 and beyond

Council's local planning strategy provides guidance regarding the activity node in which the site is situated. It notes the Belmont North Precinct is to transition to provide a range of flexible spaces for a variety of employment uses. The proposal is broadly consistent with this outcome.

Shaping the future (Lake Macquarie draft Local Strategic Planning Statement)

The draft LSPS reiterates the guidance provided by Council's planning strategy for the Belmont North Precinct. It notes however an action for Council to undertake a commercial lands audit, with the view to this then informing an employment lands strategy. While not directly relevant to this proposal, the study should inform how the Belmont North Precinct may need to change, particularly should the Kaufland proposal proceed.

The proposal is considered consistent with the draft LSPS.

4.4 Section 9.1 Ministerial Directions

The planning proposal is either inconsistent with the following directions or more work is required before consistency can be determined:

3.4 Integrating Land Use and Planning – the direction applies because the additional permitted use creates a provision that applies to business zoned land. The proposal is inconsistent with *The Right Place for Businesses and Services (2001)* because it

would enable a supermarket ('shops') outside of a centre. As discussed, this inconsistency may be justified however further study is required to evaluate impacts on other centres.

4.2 Mine Subsidence and Unstable Land – the direction applies because the site is in a mine subsidence area. Consultation with Subsidence Advisory NSW is required before consistency with the direction can be determined.

4.4 Planning for Bushfire Protection – the direction applies because part of the site is bushfire prone. Consultation with the RFS is required before consistency with this direction can be determined.

5.10 Implementation of Regional Plans – as discussed, the proposal is inconsistent with the HRP. Further economic impact analysis is required before it can be determined whether this inconsistency is of minor significance.

6.3 Site Specific Provisions – the proposal would impose a floor space limit on 'food and drink premises' which is inconsistent with this direction. Council advises that the purpose of the limit is to ensure that these uses do not undermine 'food and drink premises' in the adjoining area and locality. Further study is required to establish this limit. This approach is supported as it would prevent these activities from undermining existing centres, consistent with an underlying principle of the regional plan. It is recommended that the Secretary agree that the proposal's inconsistency with this direction is of minor significance.

4.5 State environmental planning policies (SEPPs)

SEPP 55 Remediation of Land – Council advises that a site contamination audit has been undertaken to evaluate whether on-site contamination is being effectively managed. While contamination management will need to be reconsidered at the development application stage, Council is satisfied that the land is suitable for the proposed uses as required by clause 6(1) of the SEPP.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

Social impacts from the proposal are likely to be positive because the proposal would provide increased supermarket choice and an accessible location.

5.2 Environmental

The site is subject to environmental constraints such as bushfire, mine subsidence, and contamination which have already been discussed.

The proposal would generate increased traffic, placing pressure on the existing intersection with the Pacific Highway. A traffic study has been prepared and this would need to be considered by the RMS post-Gateway.

The site is subject to flooding. The flood study identifies that pre and post development flooding impacts are acceptable, with impacts restricted to the southern boundary of the site and most eastern portion of the site. As the site is already developed and impacts appear restricted to the site, this can be further evaluated through the development application stage.

Coastal wetlands adjoin the site. Impacts on these wetlands would be considered at the development application stage as required by the SEPP (Coastal Management) 2018.

5.3 Economic

Economic impacts are likely to be positive through the creation of an additional 150 jobs. As discussed, further investigation is required to evaluate impacts on nearby centres.

5.4 Infrastructure

The site is already serviced so servicing infrastructure issues are not anticipated. Consultation with RMS would inform any necessary road infrastructure upgrades.

6. CONSULTATION

6.1 Community

Council intends to undertake community consultation for 28 days. As the proposal is inconsistent with the regional plan, a 28 day consultation period is supported.

6.2 Agencies

Agency consultation should occur with the following agencies

- Transport for NSW (RMS)
- NSW Rural Fire Service
- Subsidence Advisory NSW.

7. TIME FRAME

Council's planning proposal does not include a time frame, it has been provided separately. A six month period is nominated by Council. A nine month period is recommended to account for any unexpected delays.

A condition is proposed to require Council to update the planning proposal to include a timetable, per the Department's *A guide to preparing planning proposals*.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested to be the local plan-making authority. It should be authorised because the proposal is routine. While inconsistent with the HRP and *The Right Place for Business and Services*, the Secretary would need to approve inconsistencies with the related Ministerial directions before Council could make the plan.

9. CONCLUSION

The proposal is supported because it enables a large-scale supermarket on a site that is in an existing business node in an urban renewal corridor adjoining land identified for increased residential development.

Council has reviewed alternative site options in existing centres and no alternatives are viable. The proposal would increase supermarket choice by enabling a new entrant for the region and would provide an additional 150 jobs.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistency with section 9.1 Direction 6.3 Site Specific Provisions is minor or justified; and

2. note that the consistency with section 9.1 Directions 3.4 Integrating Land Use and Transport, 4.2 Mine Subsidence and Unstable Land, 4.4 Planning for Bushfire Protection and 5.10 Implementation of Regional Plans is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
 - Transport for NSW (Roads and Maritime Services)
 - NSW Rural Fire Service
 - Subsidence Advisory NSW.
3. The time frame for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.
5. Prior to exhibition, Council is to update the planning proposal to include:
 - (a) community consultation and project timeline details per the Department's *A guide to preparing planning proposals*;
 - (b) the findings of additional economic analysis that considers potential impacts on existing centres; and
 - (c) the proposed floor space limit for 'food and drink premises'.



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