



14 October 2016

Claire Swan
Acting Team Leader
Department of Planning and Environment
Hunter and Central Coast Region

Dear Claire

Subject: Request for further justification and information

Please find attached Council's response to the Department of Planning and Environment's request for further justification and information in regards to the Planning Proposal for additional permitted uses within the Belmont North Business Precinct.

Should you require further information, please contact me on 4921 0492 or Council's Integrated Planning Department on 4921 0333.

Yours faithfully

Adam Kennedy
Student Landuse Planner
Integrated Planning Department

Our Ref: RZ/1/2016 Your Ref: RZ/1/2016

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- To demonstrate how vehicle body repair workshops would be in conflict with the B7 Business Park zone objectives.

Allowing *vehicle body repair workshop* as an addition within the B7 Business Park zone was determined to conflict with the following B7 Business Park zone objectives of:

- To provide a range of office and light industrial uses
- To enable bulky goods premises and commercial uses that do not undermine the function of existing and future urban centres
- To provide opportunities for high technology industries, scientific development and research activities

Initial consideration was given to include *vehicle body repair workshop* in the B7 Business Park zone when drafting LMLEP2014. However, *vehicle body repair workshop* as a use was considered to be inconsistent with the objectives of the zone. The objectives reference a desire to limit development to light industries. *Vehicle body repair workshop* is considered a use that does not meet with criteria in the definition of light industry. Light industry is defined as:

light industry means 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, and includes any of the following:

- (a) high technology industry,
- (b) home industry.

As compared to *vehicle body repair workshop* definition:

vehicle body repair workshop means a building or place used for the repair of vehicles or agricultural machinery, involving body building, panel building, panel beating, spray painting or chassis restoration.

As defined above, *vehicle body repair workshop* was considered to incorporate industrial uses, such as fabrication and panel beating. These industrial uses could produce negative social and environmental impacts, such as increased air, noise and emission pollution which would interfere with the amenity of the neighbourhood. Therefore, the decision was made by Council to place *vehicle body repair workshop* as permissible with consent in the IN1 General Industrial and IN2 Light Industrial zones of LMLEP2014, which best reflected operations.

Furthermore, B7 Business Park zones in general were interpreted by Council to represent a transition towards bulky goods, retail and warehousing in function. Effectively, this transition would guide landowners towards lower impact operations that promoted a mix of commercial uses to accommodate the amenity of surrounding neighbourhoods. The specific area of the Belmont and Belmont North Precinct has been widely discussed within Council in regards to the long-term direction of the precinct, which has been viewed to accommodate more retail, warehouse and bulky goods type operations rather than industrial type activities. Therefore, permitting with

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consent *vehicle body repair workshop* would conflict with this transition due to the uses industrial operations.

- To explain, if vehicle body repair workshops were to cause land use conflicts in other locations zoned B7 Business Park, why would permitting this use in this location not cause land use conflicts, particularly if the intent of permitting the use is to facilitate growth and expansion of existing businesses. Unlike this location, it seems other areas of B7 Business Park zoned land within the LGA are not within close proximity to residential zoned land.

As addressed above, the reasoning behind not including *vehicle body repair workshop* within the B7 Business Park zone was due to its industrial operations and potential environmental and social implications. However, the proposed LEP amendment addresses and facilitates the continuing operations of existing *vehicle body repair workshop* operations, which have demonstrated a history of minimum social and environmental impacts as discussed below.

Potential environmental and social implications, such as noise, air and emission pollution are a probability within the Belmont and Belmont North Business Precinct, due to future business expansion of 411 Pacific Highway Belmont North and 28 Bluebell Street Belmont. However, these land use conflicts are believed to be mitigated by the following points:

- The *vehicle body repair workshops* businesses were operating with consent prior to the introduction of LMLEP2014

Before adoption of LMLEP2014 the existing zone was 4(2) Industrial (General) under LMLEP2004, which allowed *vehicle body repair workshop*. The transition to LMLEP2014 and the B7 Business Park zone equated to no change to business operations and therefore the historical precedent remained unchanged. Therefore, allowing additional permitted use of *vehicle body repair workshop* will enable continued business certainty. However under the B7 Business Park zone the means to mitigate land-use conflict will be far more controlled, as for either business to obtain consent for expansion will require greater consideration to the impacts on neighbouring residential residents.

- The B7 Business Park zone conversion prioritised Belmont and Belmont North Business Precinct as a commercial bulky goods precinct not taking into account the subject uses.

As discussed above the Belmont and Belmont North Business Precinct was zoned as 4(2) Industrial (General) under LMLEP2004. Prior to the conversion of LMLEP2004 to LMLEP2014, Council staff reviewed the precinct and determined that majority of the then uses consisted of bulky goods premises, hardware and building suppliers, light industries and vehicle repair stations. A B7 Business Park zone was considered most appropriate to accommodate the wide range of uses within the mixed-use precinct. However, not all existing uses such as *vehicle body repair workshop* and *timber yards* could be directly accommodated within the B7 Business Park zone consistent with the standard LEP requirements. Whilst draft LMLEP2014 was widely

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exhibited it seems that no response from affect landowners was received. At the same time, no direct consultation was undertaken with the landowners of the subject land. Therefore, this Planning Proposal seeks to amend LMLEP2014 to reinstate the permissibility of certain uses, which although were existing uses were made prohibited in the conversion of LMLEP2004 to LMLEP2014.

- Long-term operation of businesses within the Belmont and Belmont North Business Precinct locality

Both 411 Pacific Highway Belmont North and 28 Bluebell Street Belmont have been operating in the Belmont and Belmont North Business Park for over 15 years. Within that time, both businesses have generated local employment and serviced the surrounding area and workers who reside within the Belmont and Belmont North Business Precinct. The locality of these two *vehicle body repair workshop* businesses are seen to be unique to entire Belmont Area and extend their services as far as the suburb of Swansea. Effectively the closest other *vehicle body repair workshop* business is either located within the industrial zoned lands of Gateshead and Redhead localities. Disadvantaging both businesses ability to expand would therefore disadvantage the locality as a whole and deny the B7 Business Park zone objectives to encourage employment opportunity.

- Minimal land-use conflict and complaints

Council reviewed its archives to ascertain whether either business (411 Pacific Highway Belmont North and 28 Bluebell Street Belmont) had been issued an order or received complaint over the use of *vehicle body repair workshop*. The search highlighted no related complaints or orders in relation to *vehicle body repair workshop* operations over a 10 year period. Furthermore, when Council staff approached landowners, Ian Bower (411 Pacific Highway) on the 29 March 2016 for onsite inspection and Michelle Cook (28 Bluebell Street) by phone call on the 31 March 2016 it was made clearly evident that both owners had complied with any request made by Council. These requests included adhering to development consent conditions and installing equipment to reduce noise. Both owners indicated that they have maintained a constructive narrative and relationship with surrounding residential landowners.

- Development controls

As discussed above, any future expansion of either business would be assessed against the provisions in LMCCDCP2014, *Part 5 – Development in Industrial, Business Park and Infrastructure Zones*. The sensitivity of the area would be taken into account through a social impact assessment as a requirement within Part – 5 LMDCP2014. These controls are deemed to be more sensitive to local residential land owners and environmental considerations. Effectively, assessing future expansion under these development controls will equate to *vehicle body repair workshop* operations being lower impact and transitioning towards the desired objectives of the B7 Business Park zone.

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- Locality of other B7 Business Park zones within the LGA

Consideration was given that other B7 Business Park zones were located away from the proximity of residential land throughout the LGA. However, the Warners Bay B7 Business Park abutted residential land, which was thought to have a larger industrial use footprint comparable to Belmont North. Allowing *vehicle body repair workshop* within this precinct could potentially exacerbate land conflict. It was determined that *vehicle body repair workshop* would only be granted to the *vehicle body repair workshop* businesses within the Belmont and Belmont North Business Precinct, due to the rarity of the type of business to the locality, historical legacy of operations and generation of employment.

- To consider the option of including timber yard as permitted with consent within the B7 Business Park zone, given its similarity to hardware and building supplies.

Including *timber yard* as permitted with consent within the B7 Business Park zone was considered inappropriate due to the industrial type of activity (cutting of timber) it allowed. As defined:

timber yard means a building or place the principal purpose of which is the sale of sawn, dressed or treated timber, wood fibre boards or similar timber products. It may include the cutting of such timber, boards or products to order and the sale of hardware, paint, tools and materials used in conjunction with the use and treatment of timber.

It is considered that *timber yards* have the potential to interfere with the amenity of the neighbourhood by reasoning of noise, smell, dust and other waste products. The operations are therefore not considered to be light industrial.

Council officers inspected 10 and 24 Bluebell Street Belmont on the 29 March 2016 and located a timber saw mill on site (refer figure 1). The landowners, Mr & Ms Volkens, advised that the mill was still in operation and timber was sawn, treated and stored on site. It was considered that the definition of *timber yard* reflected the current operations of the lots, as hardware and building supplies only incorporated the storage of building materials for sale or hire not to produce on site.

A desktop search of historical aerial photos found the timber saw mill had been established onsite from 1969. The Lots have had a historical legacy of timber mill operations in the Belmont North area, which is unique from other B7 Business Park zones where timber saw mills in operation are a rarity. Allowing *timber mills* as permitted with consent within the B7 Business Park zone would also cause negative social and environmental impacts, such as increased noise, air and emission pollution. Therefore, it is considered that allowing additional permitted use of *timber yard* specifically for 10 and 24 Bluebell Street has strategic merit as it enables a currently prohibited use do to a change in zone to be again permitted and identifies the historical legacy of operations.

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Figure 1: Timber saw mill located on 24 Bluebell Street

- To outline the details of the rezoning proposal that was lodged in 2012 in relation to 10 Bluebell Street.

GHD Pty Ltd prepared the Planning Proposal, *Planning Submission for a Rezoning of Part Lot 127 DP 861468, Bluebell Street, Belmont*, on behalf of landowner Phillip Volkens, Macquarie Timber and Building Supplies Pty Ltd in December 2012.

The Planning Proposal requested Lake Macquarie City Council to reconsider the split zoning when preparing its then draft citywide standard instrument LEP and allow the lot be amalgamated into one zone type. At the time, Lot 127 DP 861468 (the Lot) was zoned partly 4(2) Industrial General with the southern portion of the Lot being zoned 7(2) Conservation (Secondary) Zone under Lake Macquarie Local Environmental Plan 2004 (LEP). This was later transitioned to B7 Business Park Zone and the southern portion of the Lot to E2 Environmental Conservation under LMLEP2014.

The Planning Proposal included a Preliminary Ecological Assessment, with investigations into the environmental sensitivity of the Lot. The Assessment concluded that the land was of low environmental, aesthetic and historical significance and had been incorrectly zoned 7(2) Conservation (Secondary) following the transition from the Northumberland Planning Scheme 1960 to LMLEP1984.

Ministerial directions highlighted a justifiable inconsistency with 4.3 Flood Prone Land (5) *A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.* The Planning Proposal stated that the existing Lot had been identified within a flood planning area, though any future development on the Lot would be undertaken with consideration to local hydrological regimes and in accordance with LMCC's flood planning guidelines.

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The Planning Proposal highlighted that the environmental impacts would be minor due to the findings within the Preliminary Ecological Assessment. Socially, the Planning Proposal stated that nearby residents would be at risk from impacts during construction and operation of the developed Lot, though these impacts would be managed through local development controls. Economically, the Planning Proposal stated that the rezoning would capitalise on the potential to accommodate commercial activities and contribute to the local and regional economy of Lake Macquarie through employment generation. Conclusively, the Planning Proposal advised that the mapping anomaly was unjustifiably restricting future development of the Lot and had strategic merit.

Council's response was that the rezoning did have merit. Though, the preparation of a flood study would need to be undertaken due to the Lot being within a high hazard flood area and rezoning to B7 would could potentially increase overall lot size increasing water run-off due to site development. However, Phillip Volkens declined to proceed with the flood impact study, effectively ceasing the planning proposal.

In conclusion, this Planning Proposal seeks to reinstate the permissibility of certain uses, which although were existing operations were made prohibited use in the conversion of LMLEP2004 to LMLEP2014. The conversion to LMLEP2014 prioritised the Belmont and Belmont North Business Precinct to transition to a bulky goods and warehouse supplier district, which was influenced by the predominant uses operating at the time of conversion. Consequently, the subject lands could not be accommodated within the B7 Business Park zone when finalising the draft LMLEP2014. Therefore, it is believed allowing additional permitted uses will address this issue, while respecting the historical legacy of the subject lands within the Belmont and Belmont North Business Precinct. The Planning Proposal will facilitate business certainty and continue to generate employment and serve the locality. Potential land-conflicts to the neighbouring residential properties are believed to be mitigated through Councils DCP2014 controls within the B7 Business Park zone and a business precedent of cooperation with Council.