

Committee:	ENVIRONMENT, PLANNING & WORKS
Section:	Strategic & Economic Planning
Date:	10 September 2013
Item:	13.187/13 PLANNING PROPOSAL – CHARLES STREET, ILUKA

ATTACHMENT**REPORT SUMMARY**

Applicant	Paddy Dawson Town Planning
Owner	EP Allgood
Subject land	Lot 1, DP 345729, 31 Charles Street, Iluka
Site area	1013 m2
Current Zoning CVLEP 2011	SP3 Tourist
Proposal	Rezone to B2 Local Centre

Council is in receipt of an application to support a planning proposal (i.e. rezoning application) for land at Charles Street, Iluka for the purposes of a retail/commercial development. The land, being within an existing urban context, is within the Iluka Growth Area as identified in the Mid North Coast Regional Strategy (p.50). However Council has no specific retail or employment land strategy to provide any direction for or manage future retail, commercial and industrial growth at Iluka.

This report recommends that Council not support the planning proposal at this stage.

OFFICER'S RECOMMENDATION

1. That Council, at this stage, not support the Planning Proposal that seeks the rezoning of Lot 1, DP 345729, 31 Charles Street, Iluka to B2 Local Centre for the following reasons:
 - (a) Rezoning of the land to B2 Local Centre to permit the full range of commercial/business purposes is inconsistent with section 117 Direction 1.1 - Business and Industrial Zones as it is not justified by a specific commercial or retail strategy.
 - (b) Supporting a rezoning for additional business/commercial land, albeit just a single lot, has the potential to undermine the ability of the currently zoned and undeveloped/underdeveloped commercial/business sites in Iluka to develop effectively over time.

RECOMMENDATION BY COMMITTEE

Williamson/Hughes

That the matter be deferred pending further information from the applicant regarding inconsistencies or consistencies of the planning proposal with the Mid North Coast Regional Strategy.

Voting recorded as follows:

For: McKenna, Williamson, Howe, Challacombe, Hughes

Against: Nil

**COUNCIL RESOLUTION – 13.187/13
(Crs Toms/Hughes)**

That

1. Council support the planning proposal that seeks the rezoning of Lot 1 DP 345729 to B2 Local Centre
2. Refer the planning proposal to the Department of Planning and Infrastructures planning gateway
3. Council requests the proponent to provide an electronic copy of the document in “pdf” format that is of reasonable file size (not exceeding 10 – 15 MB)

Voting recorded as follows:

For: Councillors Williamson, Baker, Challacombe, Howe, Hughes, Kingsley, McKenna, Simmons and Toms

Against: Nil

BACKGROUND

The location of the subject land is shown hatched on the figure below.



Under the former Maclean LEP 2001 the site was zoned 2(t) Residential (Tourism). The zone was converted to SP3 Tourist under the Clarence Valley LEP 2011. The site is occupied by an old building or dwelling that presently appears to be vacant but until recently had been used as a photographic gallery.

In 1997/1998 the then Maclean Shire Council undertook a rezoning process (Amendment No. 23) to rezone the land from 3(a) Business zone to 2(t) Residential (Tourism) zone under the then Maclean LEP 1992. The land owner raised written objection to the land being zoned from 3(a) Business zone to either 2(b) Residential (Medium Density) or 2(t) Residential (Tourism). The applicant's planning proposal document (Part C) provides his own background to this historic context.

A review of the relevant file for Amendment No. 23 to Maclean LEP 1992 indicates that Council's reasoning at the time for "back zoning" part of a broader area zoned Commercial/business area was predicated on:

- Limiting scattered commercial development
- Concentrating commercial development and helping to develop a commercial focus for Iluka

The decision was taken to restrict the commercial development/zoning to the existing neighbourhood centre on the corner of the Young and Charles Street, the area in Owen Street between Spenser and Charles Street and Charles Street properties between Owen and Denne Street.

On 5 February 2013 the landowners representative attended a Development Management Unit meeting (DMU2013/0007) in relation to this land. This meeting considered a "seven unit retail and business shopping complex". Council staff advised that:

- the proposal is broadly defined as **commercial premises** (under the CVLEP 2011) and that this use is prohibited in the SP3 Tourist zone;
- an amendment to the LEP is necessary accompanied by a planning proposal that has been prepared in accordance with the Department of Planning and Infrastructure's "A guide to preparing planning proposals", October 2012 (Planning Proposal guidelines).

Should Council be supportive of the planning proposal the next step is to refer the planning proposal to the Department of Planning and Infrastructure (the Department) requesting the issue of a gateway determination that gives permission to exhibit the matter. That process will also determine the Gateway's further agency consultation and any further detailed investigation /documentation requirements as well as whether or not the Plan making process will be delegated to Council.

ISSUES

The issues associated with this matter include strategic context and justification, supply of and demand for zoned commercial/business land and permissibility of commercial/business land uses.

1. Strategic justification – regional and local strategies

The Planning Proposal document provides strategic justification for the proposal by:

- Acknowledging that it is not a result any strategic study or report
- arguing in particular that the proposal is fully consistent with the Mid North Coast Regional Strategy (MNCRS)
- Acknowledging that there is no specific relevant Council strategy but arguing that the matter is not inconsistent with lesser relevant strategies including Lower Clarence Retail Strategy 2007 (LCRS), Clarence Valley Economic Development Strategy 2006 and Valley Vision 2020.

Comment

In brief, despite the relatively minor scale of the proposal, there is no strong strategic justification for a one-off zoning change. Despite the LCRS, Council does not have a specific retail or employment land strategy with a focus on Iluka.

The MNCRS identifies Iluka, both currently and into the future, as a coastal village having "...limited local services...". The Strategy does not offer specific guidance in either the Outcomes or Actions for Economic Development and Employment Growth (Chapter 6) that are neither

necessarily supportive nor negative in relation to a proposal of this nature. However it does state (p.26) that commercial development will be located within the boundaries of towns and villages, utilising existing commercial centres where possible. It could be argued therefore that as the site is located within the existing Iluka urban footprint it is consistent with at least this part of the Strategy.

2. Strategic justification – SEPPs and Section 117 Directions

The Planning Proposal document provides statements that aim to address consistency with relevant State Environmental Planning Policies (SEPPs) and Ministers section 117 Directions.

Comment

The Planning Proposal document acknowledges the following SEPPs as being relevant in this instance:

- SEPP No 22 - Shops and Commercial Premises
- SEPP No 71 - Coastal Protection
- SEPP (Exempt and Complying Development Codes) 2008 ("Codes SEPP")

Both SEPP No 22 and the Codes SEPP do not have any particular relevance for preparing local environmental plans. SEPP No 71 is considered to have some relevance for preparing local environmental plans and the statements in the Planning Proposal document that the Planning Proposal is consistent with clauses 2 and 8 of the SEPP are agreed with.

The Planning Proposal document has acknowledged that the following section 117 Directions are relevant:

- 1.1 Business and Industrial Zones
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 5.1 Implementation of Regional Strategies

The statements in the Planning Proposal document that the Planning Proposal is consistent with Directions 3.4 and 4.1 are agreed with.

The statement that there is a minor inconsistency with clause 2 of Direction 4.3 Flood Prone Land is agreed with. It is accepted that the Planning Proposal is justifiably inconsistent with this Direction for the reasons provided at pages 19/20 of the Planning Proposal document.

In terms of Direction 5.1, due to the lack of specificity of the MNCRS in relation to a proposal of this nature and scale it would be difficult to assess the matter as either specifically consistent or inconsistent with both the strategy and therefore the Direction. Given this it could be argued that the Proposal is not inconsistent with this Direction.

Finally, the Planning Proposal document has noted that the proposal is consistent with Direction 1.1. It is agreed that the proposal is consistent with much of the Direction. However, there is no strategy that is approved by the Director - General of the Department of Planning that supports proposed new employment areas at Iluka – clause 4(e) Direction 1.1. In this regard, the Planning Proposal can be considered to be inconsistent with clause 4(e). It could be accepted as justifiably inconsistent should Council accept that assertion in the Planning Proposal (p.2 of Planning Proposal Attachment G) that *"the proposal will create a commercial development opportunity in a precinct characterised by commercial usage"*.

3. Zoned commercial/business land – supply and demand

The Planning Proposal (pp. 7/8) provides a “windshield” or “walkby” style survey level of analysis and description of the existing business zoned lands in Iluka. It acknowledges the 3 discrete and separate business zoned precincts and the obvious (historically) fragmented nature of the “Iluka CBD”.

In addressing consistency with the MNCRS the Planning Proposal document states that the proposal *“will result in the opening of suitable land for economic investment which would not otherwise occur and which investment will contribute to the strength of the Iluka CBD and without generating land use conflict”*.

In addressing consistency with the LCRS the Planning Proposal document (p.16) makes the following comments:

- the proposal will not generate unsustainable retail development because of the attractive commercial character and location of the subject site. This contrasts with the character and location of existing Zone B2 lands situated to the north-east of the subject site. These latter lands are significantly under-utilised for commercial purposes and contain a number of failed/derelict business sites. That is, while unsustainable development has occurred in the larger Zone B2 area (predominantly bounded by Charles, Denne, Owen and Spenser Streets) the proposal will, in a practical sense, create a sustainable commercial opportunity.
- The opportunity that such rezoning would present would serve to encourage investment otherwise not forthcoming to the benefit and sustainability of the business centre overall. The modest scale of the land proposed for rezoning has the consequence that no threat to the functioning of the Maclean business centre can reasonably be anticipated if the proposed rezoning goes ahead.

Comment

A walkby survey of the 3 zoned business precincts (depicted in the maps at Attachment 1) was undertaken by Council's Senior Strategic Planner (Policy) on 25 July 2013. Precinct 1, depicted in the first map at Attachment 1, is the largest zoned precinct concentrated on the block predominantly bounded by Charles, Denne, Owen and Spenser Streets. Precincts 2 & 3, depicted in the second map at Attachment 1, are focussed on the corner of Young & Charles Streets and Young & Spenser Streets, respectively.

Precinct 1 - Precinct 1 comprises 32 lots, 14 of which have houses upon them, some of which appear to be available for holiday letting. Most of these houses (8) are located along Spenser Street with at least 2 of these each having another smaller building (both vacant) available for commercial letting. At the time of survey there appeared to be 4 vacant businesses premises along Charles Street. Other features of Precinct 1 include a vacant lot at the corner of Owen & Spenser Streets, a former service station (currently Ledonne site office) on the opposite Owen/Spenser Street corner and another vacant shed (possible former commercial use) along Denne Street.

Precinct 2 – this precinct features a butcher, bakery, pharmacy, café, bottle shop as well as a vacant business premise. The former Spar supermarket was located in Precinct 2.

Precinct 3 – this precinct features the now expanding Foodworks supermarket and the Caltex Service Station.

In the absence of a specific commercial or retail strategy for Iluka the genuine need for more business zoned land and more lettable retail/commercial and business or services related floor space is not known. Nor has the Planning Proposal adequately justified the need for more business zoned land and more lettable retail/commercial and business or services related floor space.

The conditions that the Planning Proposal has described (at p.16 of the Planning Proposal document and referred to above) in Precinct 1 are considered to be overstated, particularly that they *“are significantly under-utilised for commercial purposes and contain a number of failed/derelict business sites”*. The lands that are not currently being used for business or commercial purposes in relation to Precinct 1 generally have houses that are used either for permanent residential living or holiday purposes and in 3 cases where there is a dwelling there is also a separate building apparently intended for business/commercial occupation but currently vacant. As mentioned above, there appears to be 4 vacant business premises along Charles Street as at 25 July 2013.

The current supply of zoned commercial/business land at Iluka not developed or used for business/commercial purposes would appear to be adequate compared to the apparent modest level of demand at present. Setting aside the March 2013 DMU meeting for a seven (7) unit retail and shopping complex for the subject land there has been in recent years little enquiry or interest for business or commercial proposals or opportunities. On this basis, the level of demand for new commercial development opportunities or additional commercial zoned land would appear to be modest or minimal at present.

Notwithstanding the recent minimal level of commercial/business development pressure at present it is acknowledged that these conditions could change for one reason or another with one possible trigger being the imminent connection of residential and business/industrial premises to the recently completed Iluka sewerage scheme; this has been designed for a forecast permanent population of 3,500 people by 2025.

This should, subject to higher level economic conditions, stimulate an increase in the rate of new residential construction and development with a correspondent increase in the resident population. In turn this should trigger the need for more commercial and community services and facilities over time. The rate at which new residential, tourist and commercial demand might grow cannot be accurately forecast. In this context Council should take the lead and commission a retail/commercial lands strategy for Iluka; that is a study/strategy that analyses existing and future floor space requirements, assesses the relative merits of potential locations for retail expansion, and recommends a preferred location and scale for future retail expansion that will not adversely impact the existing commercial/business area and retail sector. Council in February 2013 applied to the Department for Planning Reform Funding (PRF Round 8) to undertake a valley wide retail & commercial strategy (Grafton/South Grafton, Maclean, Yamba and Iluka). The amount applied for was \$100,000. However Council has not received any advice of an outcome.

4. Permissibility of commercial/business land uses

A review and assessment of the Planning Proposal following its lodgement found that limited commercial uses were permissible in the current SP3 zone – these include notably shops, food and drink premises; but also charter and tourism boating facilities, entertainment facilities, function centres, home businesses, home industries, kiosks, marinas, markets, recreation facilities (indoor), recreation facilities (major), recreation facilities (outdoor) and registered clubs.

This situation was put to the proponent's consultant who responded as follows:

"The permissibility of a 'shop' under the current SP3 zoning does not support the best economic use of the site. If that was the case, the site would likely have been redeveloped by now considering the time that has elapsed since the tourist zoning of the site was imposed.

The current zoning prohibits commercial premises, the definition of which incorporates a somewhat wider range of shop type uses than does the definition of a "shop" which encompasses a significantly lesser range of uses than is permitted under the definition of a retail premise (noting that a retail premise is included in the definition of "commercial premises.") The current zoning also relevantly prohibits a medical centre.

The Planning Proposal draws on the type of development that was put to the Development Management Unit as an important element to the justification for the proposal. As a rezoning is proposed, the planning proposal is not tied to the detail of that development. However, that development is utterly indicative of what can reasonably be envisaged in the event of a rezoning. Clearly, the particularities that relate to the site that warrant the proposed rezoning also limit the type(s) of development, specified as permissible under the B2 zoning, that could be economically undertaken on the site.

That is, future economic development of the site cannot be satisfied by the maintenance of a prohibition on commercial premises".

Comment

It seems that the current zone prohibits some of the uses that may be potentially carried on in any future commercial complex on the land eg prohibition of the full range of commercial premises (i.e. business premises, office premises, retail premises) and medical centre for instance. The proponent clearly wishes to have the flexibility of the full range of commercial and business options afforded by a B2 Local Centre zone.

The current dwelling on the land will become a non-conforming existing use should the land be rezoned to B2, whilst the dwelling remains on the land. It is noted that tourist and visitor accommodation will still remain a permissible use should the land be rezoned to B2.

Refer also comments by Council's Development Engineering staff under "CONSULTATION" below.

Conclusion

Supporting a rezoning for additional business/commercial land, albeit just a single lot has the potential to undermine the ability of the currently zoned and undeveloped/underdeveloped commercial/business sites to develop effectively over time. Given the existing amount of non or under utilised commercially zoned land in Iluka and the lack of an analysis to demonstrate an under supply, further incremental extensions to the supply of commercial may further delay/inhibit the development and consolidation of existing areas. Those existing zoned areas have been zoned as such for some time and owners would have an expectation that in time, market forces would warrant their development.

Rezoning of additional land at Iluka for commercial/business purposes should not be contemplated in the absence a specific commercial or retail strategy. This would normally be a pre-requisite to adequately addressing section 117 1.1 - Business and Industrial Zones. Supporting rezoning of the subject land for commercial/business purposes on the basis that it is of minor significance would establish an argument for rezoning of individual sites on a similar basis.

Council should, before supporting the zoning of additional land for commercial/business purposes commission a retail/commercial lands strategy for Iluka; that is a study/strategy that analyses existing and future floor space requirements, assesses the relative merits of potential locations for retail expansion and recommends a preferred location and scale for future retail expansion that will not adversely impact the existing commercial/business area and retail sector.

CONSULTATION

Council's Development Engineering staff have provided comment as follows:

"There are no engineering issues with a rezoning application, as similar engineering conditions would apply to any development proposal under either zoning (SP3 or B2). The engineering comments provided in DMU2013/0007 are still applicable, with some additional comments / modification".

Public consultation has not occurred as yet as that will occur following a Gateway Determination.

SUSTAINABILITY ASSESSMENT**Summary Statement**

As the supply of and demand for additional business/commercial land has not been strategically assessed the impact on the sustainability and viability of existing commercial/business enterprises and properties in the Iluka CBC cannot be properly determined.

Ecology

No significant impacts anticipated.

Economic

The proposal will have no economic impact upon Council unless Council is required to prepare an employment lands (commercial or retail) strategy. The proposal may have positive economic impacts for anyone intending to develop the site for commercial/business purposes, once individual premise resulting for the development are leased. Any possible economic impacts on other commercial/business owned land or premises in Iluka has not as yet been assessed.

Social & Cultural

Significant social and cultural impacts are not expected.

Human Habitat & Infrastructure

The resulting development, according to a preliminary concept development sketch, indicates up to 6 individual commercial premises ranging in floor area from 39 m² through to 187 m² (approximately 500 m² in total) and provision for up to 16 car parking spaces onsite.

Governance

There is not a strong strategic context and justification to support a one-off zoning change.

Guiding Sustainability Principles

The following guiding sustainability principles are relevant to this issue:

- Supporting social and intergenerational equity.
- Encouraging community involvement and awareness.
- Taking a precautionary and anticipatory approach.
- Focusing on continuous improvement.

OPTIONS

1. That Council, at this stage, not support the Planning Proposal that seeks the rezoning of Lot 1, DP 345729, 31 Charles Street, Iluka to B2 Local Centre for the following reasons:
 - (a) Rezoning of the land to B2 Local Centre to permit the full range of commercial/business purposes is inconsistent with section 117 Direction 1.1 - Business and Industrial Zones as it is not justified by a specific commercial or retail strategy.
 - (b) Supporting a rezoning for additional business/commercial land, albeit just a single lot, has the potential to undermine the ability of the currently zoned and undeveloped/underdeveloped commercial/business sites in Iluka to develop effectively over time.
2. That Council:
 - (a) commission a retail/commercial lands strategy for Iluka; that is a study/strategy that analyses existing and future floor space requirements, assesses the relative merits of potential locations for retail expansion and recommends a preferred location and scale for future retail expansion that will not adversely impact the existing commercial/business area and retail sector.
 - (b) Allocate funding (maximum of \$25,000) to undertake a retail/commercial lands strategy for Iluka.
3. That Council:
 - (a) support the Planning Proposal that seeks the rezoning of Lot 1, DP 345729, 31 Charles Street, Iluka to B2 Local Centre and provide reason for such support.
 - (b) refer the Planning Proposal to Department of Planning and Infrastructure (the Department) requesting the issue of a Gateway determination.
4. That in the event that Council supports the Planning Proposal it should request the proponent to make available an electronic copy of the document in "pdf" format that is of reasonable file size (not exceeding 10 – 15 MB)

Option 1 is recommended.

Option 2 is a desirable outcome but is not part of the adopted strategic planning works program. It would be addressed as part of a valley-wide retail strategy if Council's application to the State Government's Planning Reform Fund is successful. Alternatively, in the absence of a specific proposal for the site, the proponent could be requested to prepare such a study, given the lack of demonstrated need provided to date.

Note – should Option 3 be adopted, Option 4 should be adopted as well.

FINANCIAL IMPLICATIONS

The Applicant has paid the Council adopted rezoning application fee which is expected to cover the reasonable costs associated with dealing with this matter excluding the cost of any additional studies or other documentary requests that may be specified in any Gateway determination.

The cost of undertaking a retail/commercial lands strategy, as recommended, could range up to \$25,000. Preparation of such an analysis is not currently funded and not included in Council's Operational and Delivery Plans.

Des Schroder
DIRECTOR – ENVIRONMENT, PLANNING & COMMUNITY

Prepared by staff member:	Terry Dwyer
Approved/Reviewed by Manager:	David Morrison
Section:	Strategic & Economic Planning
Attachments:	1. Map showing commercial/business precincts at Iluka
To Be Tabled:	2. Planning Proposal