

Committee:	ENVIRONMENT, ECONOMIC & COMMUNITY
Section:	Strategic & Economic Planning
Date:	12 March 2013
Item:	12.041/13 PLANNING PROPOSAL TO ENABLE AN INDOOR RECREATION FACILITY AT 14 ARGYLE STREET, MACLEAN

ATTACHMENT**REPORT SUMMARY**

A Planning Proposal has been prepared to schedule the use of 14 Argyle Street, Maclean for an indoor recreational facility (dance studio) as this use is prohibited by the current R3 residential zoning. However the owner wishes to retain the long term potential use of the land for residential purposes and no change to the current zoning is recommended. The change in use is considered minor, compatible with the surrounding amenity, and reflects prior usage on the site. On this basis, the Planning Proposal is supported and referral for a Gateway determination to allow public exhibition is recommended.

OFFICER'S RECOMMENDATION

That Council:

1. Endorse the draft Planning Proposal prepared by CivilTech Consulting Engineers (Ref M12019), to allow a Recreational Facility (Indoor) on 14 Argyle Street, Maclean, Lot 31 DP627, and
2. Forward the draft Planning Proposal to the Department of Planning and Infrastructure with a request for a Gateway determination and proceed to public exhibition subject to advice received.
3. Request that the Gateway delegate to Council plan making functions under Sections 59(2) and (3) of the Environmental Planning and Assessment Act, 1979, in this instance.

RECOMMENDATION BY COMMITTEE

Baker/Williamson

That the Officer's Recommendation be adopted.

Voting recorded as follows:

For: Baker, Howe, Hughes, McKenna, Williamson
Against: Nil

**COUNCIL RESOLUTION – 12.041/13
(Crs Hughes/Challacombe)**

That Council

- 1. Endorse the draft Planning Proposal prepared by CivilTech Consulting Engineers (Ref M12019), to allow a Recreational Facility (Indoor) on 14 Argyle Street, Maclean, Lot 31 DP627, and**
- 2. Forward the draft Planning Proposal to the Department of Planning and Infrastructure with a request for a Gateway determination and proceed to public exhibition subject to advice received.**
- 3. Request that the Gateway delegate to Council plan making functions under Sections 59(2) and (3) of the Environmental Planning and Assessment Act, 1979, in this instance.**

Voting recorded as follows:

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

Against: Nil

BACKGROUND

This subject site comprises a former bus depot located within a residential zone. The large shed was previously used for the storage of buses and has been unused for several years. The owner wishes to establish a dance studio in the existing shed on the site but this is not a permissible use in the zone. The owner does not wish to rezone the land to a zone that would normally permit such uses, such as a business or recreation zone, as it is desirable to retain the option of developing the land for residential purposes in the long term. Furthermore, an isolated business zoning remote from the CBD is not supported and would be inconsistent with a number of planning strategies/instruments.

The application proposes to enable the preferred additional use without changing the zoning by inserting that use into Schedule 1 of the Clarence Valley Local Environmental Plan 2011 (CVLEP 2011).

Full details of the proposal are set out in the accompanying Planning Proposal at Attachment 1.

ISSUES

The proposed use of a "dance studio" falls within the definition of "*Recreational facilities (indoor)*". These are only permissible with consent in the Business zones, B1, B2 or B3, B5, the Industrial zone- IN1, the SP3 zone-Tourist, and the Private Recreation zone- RE2.

Whilst it is acknowledged that scheduling of uses is not encouraged as general planning policy, rezoning of the site to one of the above zones, thereby permitting indoor recreational facilities, is not considered appropriate. None of these zones are ideal to be juxtaposed with the surrounding residential context of the site. Furthermore, many of the uses permitted within these zones could create potential for undesirable uses and activities in close proximity to residential development. In addition, the owner wishes to retain options to develop the land for residential purposes in the long term.

The proposed use of the existing building is for a dance studio. Such uses are often carried out in halls within residential areas without any adverse impacts, and it would be subject to a development application and suitable conditions. This would enable the desired use to be assessed under Section 79C of the EPA Act without rezoning the site for commercial, recreational or inappropriate development.

The context of the site (see below), which is surrounded on three sides by formed roads and only minimal residential development abutting, suggests that the proposed use could occur with minimal potential for disturbance to local residential amenity. This particular site history and characteristic makes the proposed use a suitable one whereas it might normally be so in the residential zones.



An Environmental Report to assess the likelihood of contaminated land from past uses of the land has been prepared by Melaleuca Group Pty Ltd to accompany the Planning Proposal. The report concluded *'that the investigation area does not represent a significant risk of harm to end users of the proposed change in use'*. Council's Senior Environmental Officer has reviewed the report and agrees with the conclusions that the site meets the relevant health investigation levels and is suitable for its proposed use.

The requested Planning Proposal is considered to be a spot rezoning of local significance. Accordingly, Council should request that the Gateway delegate to Council plan making functions under sections 59(2) and (3) of the Environmental Planning and Assessment Act 1979. This will expedite the processing of the application.

CONSULTATION

Subject to receipt of a Gateway determination, the Planning Proposal would be placed on public exhibition for 28 days.

SUSTAINABILITY ASSESSMENT

Summary Statement

The Planning Proposal would enable re-use of an existing building and site and is not likely to have any adverse social economic or environmental impacts.

Ecology

The land is cleared, within Maclean township and is not likely to hold ecological values.

Economic

Support of the Planning Proposal would enable the owner to lodge a development application to establish a dance studio which would positively contribute to the economic development of the township.

Social & Cultural

Provision of cultural and social facilities would be positive to the local community.

Human Habitat & Infrastructure

The land lies within the Maclean Heritage Conservation Area in proximity to several heritage items. Re-use of an existing building for the proposed use is not likely to have any adverse impacts on these aesthetic and cultural values.

Governance

The Planning Proposal has been prepared in accordance with the guidelines set out by the NSW Department of Planning and Infrastructure.

Risk Management – N/A**Guiding Sustainability Principles**

The following guiding sustainability principles are relevant to this issue:

- Encouraging community involvement and awareness: Public consultation will form part of the Planning Proposal.
- Taking a precautionary and anticipatory approach: Subject to approval of the Planning Proposal, the proposed dance studio will still require development approval. Appropriate conditions may be imposed on any approval to control hours of operation and noise levels etc.

OPTIONS

1. That Council endorse the draft Planning Proposal prepared by CivilTech Consulting Engineers (Ref M12019). Under the submitted Planning Proposal, the specific amendment to the CVLEP 2011 would be to Schedule the use under Schedule 1, as an additional use permitted on that particular site. While that would be the preferred drafting approach, it is open for the Gateway to require an amendment to the Planning Proposal to a more generic zone which permits such uses, as that is the Department's preferred approach. The recommendation would facilitate that alternative approach.
2. Endorse the draft Planning Proposal but only on the basis of the proposed "scheduling" of the additional requested land use. Should the Gateway prefer a change in the site's zoning rather than scheduling, the matter would then need to come back to Council for reappraisal. Although this approach may be consistent with the Department's preferred practice, it is considered inappropriate in this instance, as a change to a recreational zoning may be too restrictive for the long term use of the site, whereas a commercial or industrial zone would be incompatible with surrounding land uses.
3. Take a broader approach to amend the CVLEP to make such uses (i.e. "recreational facility (indoor)" *permissible with consent in all R3 zones*). Whilst facilitating the desired outcome for this site, such an approach is not supported as it will most likely have potential to create land use conflicts elsewhere. Fundamentally, such uses can cause local amenity conflicts in residential areas due to noise, car parking and hours of use, and therefore have not been included as permissible in those zones. This site has particular circumstances that warrant a departure on this site specific instance.

4. Decline to support the Planning Proposal.
5. Utilise the plan making delegation previously offered to Council on the basis that the proposal is one of minor local significance.

Options 1 and 5 are recommended.

FINANCIAL IMPLICATIONS

The applicant has paid scheduled fees for Council's administration of the Planning Proposal.

Des Schroder
DEPUTY GENERAL MANAGER – ENVIRONMENTAL & ECONOMIC

Prepared by staff member:	Deborah Wray
Approved/Reviewed by Manager:	David Morrison
Section:	Strategic & Economic Planning
Attachment:	1. Planning Proposal - CivilTech Consulting Engineers 2. Letter of Support - Maclean Chamber of Commerce