

**Planning Proposal  
for Lot 100 DP 1208306 and Lots 1 & 2 Section 4 DP  
29748, Cabarita (PP19/0001)**

**Version 1 for Gateway Determination  
July 2019**

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## Part 1 Objectives and intended outcomes

### Introduction

1. Halcyon House was established through an approval granted by Tweed Shire Council in 2013 to upgrade an existing hotel, known as Hideaway Hotel. The Hideaway Hotel had been onsite and operating for more than 50 years before Halcyon House took over the premises.
2. During the operation of the Hideaway Hotel the planning framework for the subject site changed which resulted in Tourist and Visitor Accommodation becoming prohibited in the R2 Low Density zone. Notwithstanding, due to the nature of the ongoing operations; the use of the premises as a Hotel is enabled via existing use rights provision under the *Environmental Planning & Assessment Act (EP&A Act) 1979*.
3. Over recent years Halcyon House's 'Paper Daisy' restaurant has evolved its operations to expand beyond the development approval and compromise the existing use right provisions of the EP&A Act. There have been ongoing compliance issues following concerns raised by the public in regard to the amenity impacts resulting from the use of the restaurant for patronage by the general public.
4. Tweed Shire Council received an initial request for a Planning Proposal and Development Application from Planit Consulting on behalf of Western Partnership Pty Ltd in June 2018 to rezone the Halcyon House site (being Lot 100 DP 1208306 and Lots 1, 2 and 3 Section 4 DP 29748) from R2 Low Density Residential to B3 Local Centre and redevelop Lots 1 to 3 for tourist and visitor accommodation.
5. On 2 April 2018, Council resolved that:

1. *The development application be rejected as it is prohibited in the R2 zone and provide written advice to the proponent providing a 14 day option to agree to update their request for a smaller scale Planning Proposal that only deals with the immediate compliance issues relating to the use of the Halcyon House site, situated principally off Tweed Coast Road and Cypress Crescent Cabarita.*

*The request for a Planning Proposal is to be updated to only include an amendment to Schedule 1 of Tweed Local Environmental Plan for Lot 100 DP 1208306 to enable additional permitted use for a restaurant at Lot 100 DP1208306 and a carpark for the restaurant on Lot 1 and Lot 2 Section 4 DP 29748. This amendment would potentially resolve the existing prohibition for the 'Paper Daisy' restaurant to the extent that it is currently operating outside of the development consent. The updated request would be referred for a 'Gateway' determination, as administered by the NSW Department of Planning and Environment and;*

- a. *The Minister for Planning and Environment is advised that Tweed Shire Council is not seeking plan making delegations for this planning proposal;*
- b. *The Minister for Planning and Environment is advised that the minimum exhibition period for the Planning Proposal should be for a period of 28 days;*

- c. *Upon receiving an affirmative Gateway Determination Notice all additional studies or work is to be completed prior to and made available with the public exhibition;*
  - d. *Following public exhibition of the Planning Proposal a report is to be submitted to Council at the earliest time detailing the content of submissions received and how those, if any, issues have been addressed.*
6. In September 2018, DAC Planning Pty Ltd on behalf of Western Partnership Pty Ltd submitted a revised request to Tweed Shire Council for a Planning Proposal, intended to implement Council's resolution.
  7. The revised request applies to three lots being Lot 100 DP 1208306 (19-25 Cypress Crescent) and Lots 1 and 2, Section 4, DP 29748 (26-28 Tweed Coast Road), Cabarita (refer to Figure 1). Lot 100 DP 1208306 contains the existing Halcyon House hotel, restaurant and dining, parking, pool, staff and reception areas. Lots 1 and 2, Section 4, DP 29748 are currently undeveloped. Approval has previously been granted for construction of a tennis court on these lots.



Figure 1 – Subject Site and Locality Plan

8. The subject land and adjoining land to the north and south is currently zoned R2 Low Density Residential under the *Tweed Local Environmental Plan (LEP) 2014* (refer to Figure 2). Adjoining land to the west is zoned B2 Local Centre and adjoining land to the east is a deferred matter under the LEP 2014 and as such continues to be zoned 6(a) Open Space under the LEP 2000.
9. Development for the purposes of tourist and visitor accommodation, restaurant and car parking ancillary to the motel and restaurant is prohibited in the existing R2 zone.



# Halcyon House Planning Proposal

## Land Zoning Map

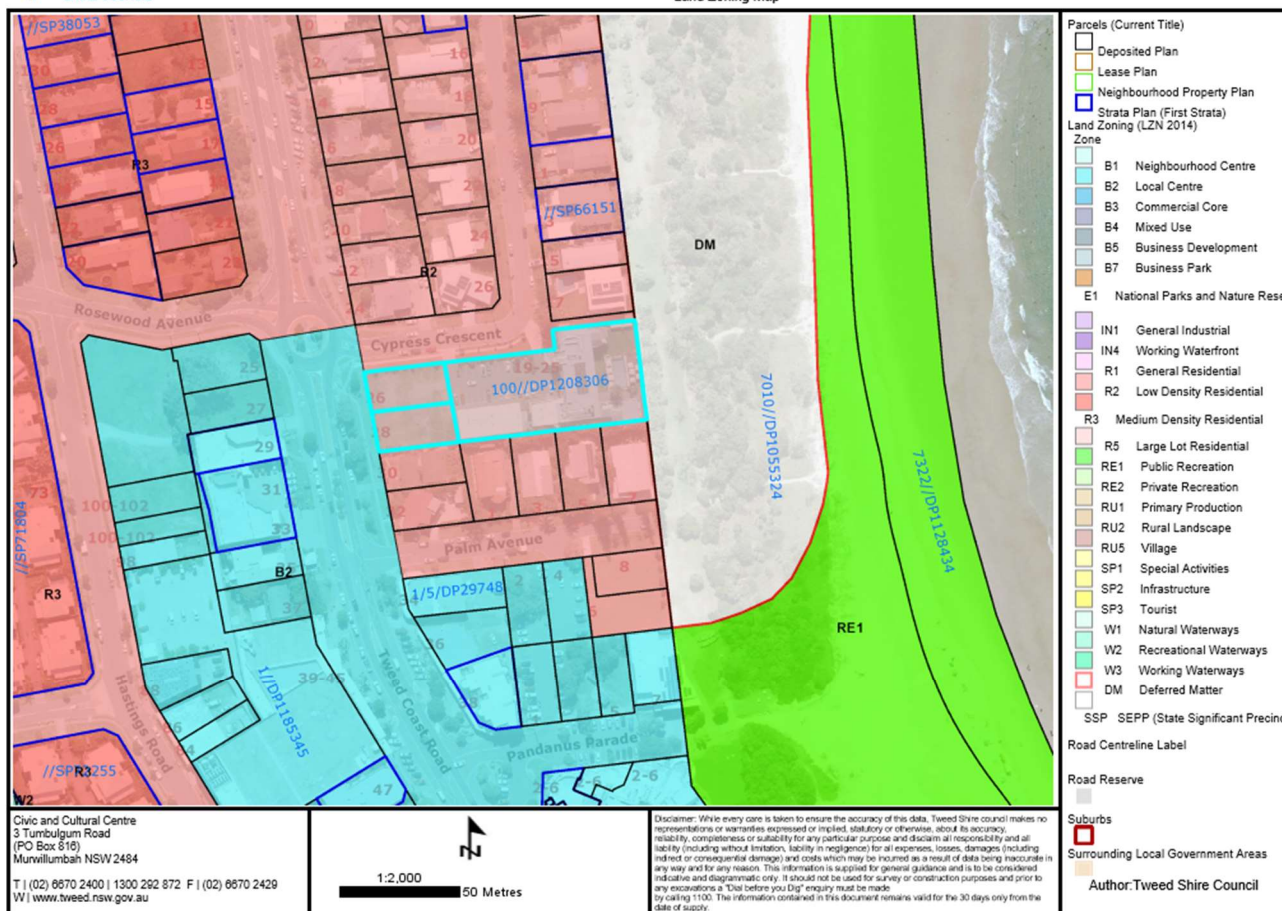


Figure 2 – Land zoning (LEP 2014)

## Objectives and Intended Outcomes

10. The objective of this planning proposal is to resolve existing compliance issues relating to the use of the Halcyon House site, by way of enabling additional permitted use for:
  - a. A “restaurant or cafe”, “hotel or motel accommodation” and “function centre” on Lot 100 DP 1208306; and
  - b. A “car park” ancillary to the hotel or motel accommodation on Lots 1 and 2 Section 4 DP 29748.
11. It is proposed to rely on the Standard instrument – Principal Local Environmental Plan dictionary definitions for the additional uses, being:

Permitted Use	Standard Instrument Definition
Car park	means a building or place primarily used for the purpose of parking motor vehicles, including any maneuvering space and access thereto, whether operated for gain or not.
Restaurant or cafe	means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.
Hotel or motel accommodation	means a building or place (whether or not licensed premises under the <i>Liquor Act 2007</i> ) that provides temporary or short-term accommodation on a commercial basis and that: <ol style="list-style-type: none"> <li>(a) comprises rooms or self-contained suites, and</li> <li>(b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,</li> </ol>

	but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.
Function centre	means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

## Part 2 Explanation of provisions

The planning proposal seeks to amend Schedule 1 of *Tweed LEP 2014* to include the following clause:

*"16. Use of Certain Land at 19-25 Cypress Crescent and 26-28 Tweed Coast Road, Cabarita*

- 1) This clause applies to the land at 19-25 Cypress Crescent, Cabarita, being Lot 100 DP 1208306 and 26-28 Tweed Coast Road, Cabarita, being Lots 1 and 2 Section 4 DP 29748, identified as "24" on the Additional Permitted Uses Map.*
- 2) Development is permitted with development consent for the purposes of:*
  - a. a restaurant or cafe, function centre and hotel or motel accommodation at Lot 100 DP 1208306; and*
  - b. a car park ancillary to the restaurant and hotel or motel accommodation on Lots 1 and 2 Section 4 DP 29748."*

Inclusion of this clause in Schedule 1 of *Tweed LEP 2014* will remove the uncertainty in relation to the "existing use" status of the existing restaurant, in particular and enable Tweed Shire Council to assess future Development Applications on their merits.

No change is proposed to the existing R2 zoning of the subject land. Nor are any changes proposed to the development standards or other existing provisions of the *Tweed LEP 2014* which are applicable to the subject land.

The Planning Proposal will require an amendment to the map pursuant to Clause 2.5 (Additional Permitted Land Uses Map) of the *Tweed LEP 2014* to identify land subject to this Planning Proposal.

## Part 3 Justification

### Section A Need for the planning proposal

#### 1. Is the planning proposal a result of any strategic study or report?

The revised request by DAC Planning Pty Ltd submitted to Council in September 2018, intended to implement Council's resolution for *"a smaller scale Planning Proposal that only deals with the immediate compliance issues relating to the use of the Halcyon House site"* is considered to be consistent with the intended outcomes of the Bogangar/Cabarita Beach Locality Plan.

The Tweed Development Control Plan 2008, Section B19 – Bogangar/Cabarita Beach Locality Plan (and associated Structure Plan), provides a framework for 'retaining and enhancing Cabarita Beach and embracing high quality development to promote the area as a popular location for residential living, tourism and business'.

The subject land is mapped as being partly within the 'Tweed Coast Road Commercial Precinct' and the 'Residential 'B' Precinct' under this Locality Plan.

Lots 1 and 2 are located in the Tweed Coast Road Commercial Precinct under the Plan. The Locality Plan seeks to reinforce the existing village centre by promoting business/commercial land uses and mixed use development within this Business Precinct.

The existing Halcyon House site (Lot 100) is located in the Residential 'B' Precinct under the Locality Plan. The Locality Plan notes that this Precinct should comprise tourist accommodation uses with dense built form and heights up to 13.6m. Halcyon House has a maximum height of 13.6m and is an established tourist accommodation development.

Section B19 specifically identifies an opportunity to boost tourist accommodation on the subject site.

A change in permitted use controls over the subject site as proposed would assist with ongoing operations of the Halcyon House by addressing current land use incompatibility by acknowledging the operations existing use and facilitate the construction of an onsite car park to alleviate existing on-street car parking conflicts with local residents. These measures will improve the 'whole of site' design response in a manner consistent with the intended outcomes of the Bogangar/Cabarita Beach Locality Plan.

Council is proposing to undertake a full review of the Section B19 – Bogangar/Cabarita Beach Locality Plan (and associated Structure Plan) in consultation and collaboration with the local community in the near future. As such, Council does not currently support spot rezoning and associated uplift in development standards of the site.

## **2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?**

It is considered that an amendment to Schedule 1 of the *Tweed LEP 2014* to enable additional permitted uses is the best means of achieving the objectives and intended outcomes of the Planning Proposal.

In the absence of a current economic impact assessment, public consultation and a robust precinct based locality plan / DCP to establish the appropriate built form outcomes based on desired future character for the subject site and surrounds Council does not currently support spot rezoning and associated uplift in development standards for the site.

## **Section B Relationship to strategic planning framework**

### **1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

The North Coast Regional Plan 2036 was approved by the Minister for Planning in March 2017 and is the principal regional strategy guiding growth across the North Coast Region.

Under the provisions of the North Coast Regional Plan, the subject land is within an Urban Growth Area, being the village of Cabarita. The goals under the Regional Plan which are directly applicable to this Planning Proposal Request are:

- Goal 1: The most stunning environment in NSW;
- Goal 2: A thriving, interconnected economy;
- Goal 3: Vibrant and engaged communities; and
- Goal 4: Great housing choice and lifestyle options.

### Goal 1 - The most stunning environment in NSW

The Regional Plan lists important planning principles to ensure the protection and improvement of the Region's highly valued environment, being:

- Principle 1: Direct Growth to Identified Urban Growth Areas;
- Principle 2: Manage the Sensitive Coastal Strip; and
- Principle 3: Provide Great Places to Live and Work in a Unique Environment.

Directions 1, 2 and 3 under the Regional Plan also contain actions specific to guiding development to the urban growth area boundary and unconstrained land.

A change in permitted use controls over the site as proposed would assist with ongoing operations of the Halcyon House by addressing current land use incompatibility by acknowledging the operations existing use and facilitate the construction of an onsite car park to alleviate existing on-street car parking conflicts with local residents. These measures will improve the 'whole of site' design response.

Amending Schedule 1 of *Tweed LEP 2014* as proposed in this Planning Proposal is therefore consistent with Goal 1 of the Regional Plan.

### Goal 2 - A thriving, interconnected economy

Direction 6 seeks to encourage the growth and role of centres throughout the region, however it recognises the importance of commercial precinct outside of these centres for serving local communities and delivering positive social and economic benefits and regional economy.

The subject site is being used for commercial and tourist purposes and/or mapped as forming part of the Cabarita Beach town centre and flagged for increased commercial and tourist uses. Amending Schedule 1 of *Tweed LEP 2014* to permit the proposed uses will contribute to the identity, role and function of the Cabarita Beach town centre, consistent with the actions under the Regional Plan.

Direction 8 is specific to the promotion and growth of tourism in the region and contains actions directly applicable to this proposal, such as 'facilitating tourism and visitor accommodation' and 'supporting land uses in coastal locations through local environmental plans'.

The subject site is already being used for tourism accommodation purposes and the proposed amendment to Schedule 1 of *Tweed LEP 2014* would contribute to current operations, improving development outcomes over the site and provide new tourist and commercial opportunities.

In summary, the proposal is consistent with Goal 2 under the Regional Plan.

### Goal 3 - Vibrant and engaged communities

Goal 3 acknowledges the region's identity as being shaped by its culture, environment and communities and seeks to ensure growth in the region respects and builds upon and around this legacy.

Amendment to Schedule 1 of *Tweed LEP 2014* as proposed will facilitate additional commercial and community use opportunities within the Cabarita Beach town centre, with benefits for social cohesion and interaction with the existing Halcyon House and surrounding commercial land. It will contribute to

the existing walkable commercial and tourist node in Cabarita Beach, promoting activity, social interaction and healthy lifestyles.

Actions under Direction 18 indicate that Aboriginal Cultural Heritage Assessments are to be undertaken to ensure impacts to Aboriginal cultural heritage are minimised and appropriate heritage management mechanisms are identified.

As indicated in Section C(2) and Appendix 2, there are no registered Aboriginal objects or declared places on the subject site and the site is not mapped as an *Aboriginal Place of Heritage Significance* or Predictive Aboriginal Cultural Heritage area.

Direction 21 seeks to ensure the cost-effective and efficient use of infrastructure by directing development towards existing infrastructure. The site is in an existing urban area and serviced by all required trunk infrastructure.

#### Local Government Narratives – Tweed

The Regional Plan recognises that Tweed needs to support ongoing growth in the tourism industry, to showcase its significant natural features and take advantage of its proximity to the nationally significant tourist area of the Gold Coast.

Halcyon House is a nationally award-winning tourist and commercial operation and Cabarita Beach has recently been nominated as a National Surfing Reserve. Amendment to Schedule 1 of *Tweed LEP 2014* as proposed would be consistent with this Local Government Narrative.

## **2 Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?**

#### Tweed Community Strategic Plan (CSP) 2017-2027

The Tweed Community Strategic Plan (CSP) 2017-2027 establishes the following vision: *"The Tweed will be recognised for its desirable lifestyle, strong community, unique character and environment and the opportunities its residents enjoy"*.

A goal of the CSP is to provide social, cultural and economic opportunities enabling healthy, safer and more inclusive communities, and is to be achieved through several actions, including:

- Provide support and advise to businesses and industry;
- Market the Tweed as a tourism destination; and
- Provide more opportunities for people in the Tweed to work.

Another goal of the CSP is to provide places for people to live, work, visit, play and enjoy the Tweed. This is to be achieved through several actions, including:

- Provide places, spaces and facilities for the sporting, recreation, leisure and cultural pursuits of locals and visitors; and
- Provide diverse, affordable and attractive accommodation and facilities.

The intended outcome of this planning proposal responds to the actions and objectives of the Tweed CSP 2017-2027.

### Tweed Urban and Employment Land Release Strategy 2009

The Tweed Urban and Employment Land Release Strategy 2009 outlines an urban land release program for the Shire until 2031, with a focus on existing zoned and some greenfield development. It was adopted by Council on 17 March 2009.

This Strategy does not identify tourism opportunities in new locations but does acknowledge that tourism is a significant part of the Tweed economy.

The planning proposal is considered to be consistent with the Tweed Urban and Employment Land Release Strategy 2009.

### Tweed Development Control Plan – Section B19 – Bogangar/Cabarita Beach Locality Plan

Section B19 of Council's Development Control Plan (DCP) specifically relates to the Bogangar and Cabarita Beach Locality.

The DCP acknowledges the importance of protecting the environmental and scenic qualities of this coastal locality as well as encouraging higher density development near the town centre, to create easy access to services and stimulating the town centre environment.

The vision set for Bogangar/Cabarita Beach under this Locality Plan is a unique coastal village, characterised by significant natural assets, a peaceful quiet beach lifestyle and community living in harmony with the natural environment. It envisaged a community embracing a beach village atmosphere and an attractive holiday destination for a variety of tourists as well as a safe environment.

The DCP also provides a number of objectives for the area such as facilitating economic development through a viable and attractive 'niche market' for tourists, retail and commercial investors, ensuring the compact village form is retained and enhanced through appropriate forms of infill development and ensuring that new development is adequately protected from environmental hazards, such as coastal processes.

In summary the proposed amendment to Schedule 1 of *Tweed LEP 2014* is consistent with the objectives, strategic policies and preferred outcomes of Council's Bogangar/Cabarita Beach Locality Plan.

## **3 Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?**

The planning proposal is consistent with relevant State Environmental Planning Policy applying to the Tweed local government area, being:

### State Environmental Planning Policy No 55 - Remediation of Land

The aim of this Policy is to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

As outlined in Section C(2) of this report, the site has historically been developed for commercial and for residential purposes. Previous investigations and onsite testing indicate that contamination is unlikely to be a constraint on the subject site.

### State Environmental Planning Policy (Coastal Management) 2018

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*.

The subject site is located within the Coastal Zone and is mapped within the within the 2100 coastal hazard area. As outlined in Section C(2) of this report, Tweed Shire Council issued Development Consent No. DA12/0170.14 for alterations and additions to the existing motel subject to Condition 107A. Condition 107A stipulates that a positive covenant under section 88E of the *Conveyancing Act 1919* be applied acknowledging that the subject land is within a Coastal Hazard Zone and puts in place provisions in the event erosion encroaches on the subject land.

As the site is well clear of the immediate impact line and having regard to Condition 107A, coastal hazards do not impose a significant constraint on the proposed amendment to Schedule 1 of *Tweed LEP 2014*. Coastal hazards will be further assessed with any future development assessment.

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#### 4 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 Directions)?

The planning proposal is consistent with the Ministerial s9.1 Directions, as outlined in the following table.

*Table 2- Consistency with s9.1 Directions*

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
<b>1. Employment and Resources</b>			
1.1 Business and Industrial Zones	<p><u>Summary of Objectives</u> To protect, encourage and support employment / strategic centres.</p> <p><u>Application</u> When a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).</p>	<p>In accordance with the Tweed Development Control Plan 2008, Section B19 – Bogangar/Cabarita Beach Locality Plan the subject site is mapped across two precincts being the 'Tweed Coast Road Commercial Precinct' and 'Residential 'B' Precinct'.</p> <p>A change in permitted use controls over the site as proposed would assist with ongoing operations of the Halcyon House by addressing current land use incompatibility by acknowledging the operations existing use and facilitate the construction of an onsite car park to alleviate existing on-street car parking conflicts with local residents. These measures will improve the 'whole of site' design response.</p> <p>The Planning Proposal is considered to be consistent with the intended outcomes of the Bogangar/Cabarita Beach Locality Plan.</p>	Consistent.
1.2 Rural Zones	<p><u>Objectives:</u> The objective of this direction is to protect the agricultural production value of rural land.</p> <p><u>Application:</u> A planning proposal must:</p> <ul style="list-style-type: none"> <li>(a) not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</li> <li>(b) not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).</li> </ul>	Not relevant. This planning proposal does not apply to land with a rural zone.	Not applicable.

Table 2- Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
1.3 Mining, Petroleum Production and Extractive Industries	<p><u>Objectives:</u> The future extraction of State or regionally significant reserves of coal, other minerals, petroleum and extractive materials is not compromised by inappropriate development.</p> <p><u>Application:</u> When a relevant planning authority prepares a planning proposal that would have the effect of:</p> <p>(a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or</p> <p>(b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.</p>	This planning proposal does not include provisions that would trigger the application of this direction.	Consistent.
1.4 Oyster Aquaculture	<p><u>Objectives:</u> To protect Priority Oyster Aquaculture Areas (POA) and oyster aquaculture outside such an area, from adverse impacts on water quality, the health of the oysters and oyster consumers.</p> <p><u>Application:</u> When there is a change in land use that could result with adverse impact or incompatibility of land uses.</p>	This planning proposal does not apply to land that would be known or identified as a Priority Oyster Aquaculture Area.	Not applicable.
1.5 Rural Lands	<p><u>Objectives:</u> To protect the agricultural production value of rural land and to facilitate the orderly and economic development of rural lands for rural and related purposes.</p> <p><u>Applies when:</u></p> <p>(a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone, or</p> <p>(b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.</p>	Not relevant. This planning proposal does not apply to land with a rural zone.	Not applicable.

Table 2- Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
<b>2. Environment and Heritage</b>			
2.1 Environment Protection Zones	<u>Objective</u> To protect and conserve environmentally sensitive areas. <u>Application</u> When a relevant planning authority prepares a planning proposal	The subject land does not contain any environmentally sensitive areas and is not subject to an environment protection zone.	Not applicable.
2.2 Coastal Protection	<u>Objective</u> To implement the principles in the NSW Coastal Policy. <u>Application</u> When a relevant planning authority prepares a planning proposal that applies to land in the coastal zone.	<p>The subject site is located within the Coastal Zone. A positive covenant has been applied to the subject site via condition 107A of DA12/0170 acknowledging that the subject land is within a Coastal Hazard Zone and puts in place provisions in the event erosion encroaches on the subject land.</p> <p>This planning proposal seeks to resolve existing compliance issues associated with the existing development. In this context, coastal hazards are not considered to impose a significant constraint to the proposed Planning Proposal. Coastal hazards associated with any future proposed development will be addressed at the Development Application stage.</p>	Consistent.
2.3 Heritage Conservation	<u>Objective</u> To conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. <u>Application</u> When a relevant planning authority prepares a planning proposal.	No known items of heritage significance or cultural value are known to occur within or immediately adjoining the subject site.	Consistent.
2.4 Recreation Vehicle Areas	<u>Objective</u> To protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles. <u>Application</u> When a relevant planning authority prepares a planning proposal.	Not relevant to this planning proposal because it does not seek to change the regulation of recreation vehicles or land on which a recreation vehicle access or development may occur.	Not applicable.

Table 2- Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	<p><u>Objective:</u> To ensure that a balanced and consistent approach is taken when applying environmental protection zones and overlays to land on the NSW Far North Coast.</p> <p><u>Application:</u> When a relevant planning authority prepares a planning proposal that introduces or alters an E2 or E3 zone, or an overlay with associated clause.</p> <p>A relevant planning authority must apply the proposed E2, E3 or the overlay and associated clause consistent with the Northern Councils E Zone Review Final Recommendations.</p>	The subject land does not contain any environmentally sensitive areas and is not subject to an environment protection zone.	Not applicable.
<b>3. Housing, Infrastructure and Urban Development</b>			
3.1 Residential Zones	<p><u>Summary of Objectives:</u> (a) to encourage a variety and choice of housing types, (b) to make efficient use of existing infrastructure and services, (c) to minimise the impact of residential development on the environment and resource lands.</p> <p><u>Application</u> When a planning proposal affects land within: (a) an existing or proposed residential zone, or (b) any other zone in which significant residential development is permitted or proposed to be permitted.</p>	The proposal is generally consistent with this Direction in that it will make efficient use of existing infrastructure and will not preclude development of the land for residential purposes in accordance with the current R2 zone provisions.	Consistent.
3.2 Caravan Parks and Manufactured Home Estates	<p><u>Objectives:</u> (a) to provide for a variety of housing types, and (b) provide opportunities for caravan parks and manufactured home estates.</p> <p><u>Application:</u></p>	The planning proposal does not aim to alter permissibility of caravan parks on the subject land and can be considered as consistent with the provisions of this direction.	Consistent.

Table 2- Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
	When a relevant planning authority prepares a planning proposal.		
3.3 Home Occupations	<p><u>Objective:</u> To encourage the carrying out of low-impact small businesses in dwelling houses.</p> <p><u>Application:</u> When a relevant planning authority prepares a planning proposal.</p> <p><u>If this direction applies:</u> Planning proposals must permit home occupations to be carried out in dwelling houses without the need for development consent</p>	This planning proposal will not alter provisions regulating home occupations, which will remain a land use permitted without development consent.	Consistent.
3.4 Integrating Land Use and Transport	<p><u>Summary of Objectives:</u> To ensure that urban structures, building forms, land use, subdivision and street layouts achieve the following objectives:</p> <ul style="list-style-type: none"> <li>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</li> <li>(b) increasing the choice of available transport and reducing dependence on cars, and</li> <li>(c) reducing travel demand including the number of trips generated by development and the distances travelled,</li> <li>(d) supporting the efficient operation of public transport services, and</li> <li>(e) providing for the efficient movement of freight.</li> </ul> <p><u>Application:</u> This direction applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land.</p>	The subject site is in an urban area and adjacent to the commercial centre of Cabarita Beach. The proposal will contribute to the creation of a vibrant walkable commercial and tourist node in this coastal village.	Consistent.
3.5 Development Near Licensed Aerodrome	<p><u>Summary of Objectives:</u> (a) ensure the effective and safe operation of aerodromes,</p>	This planning proposal applies to land outside of the ANEF contour areas. Also, because of significant distance from the nearest	Consistent.

Table 2- Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<p>(b) ensure that their operation is not compromised by development,</p> <p>(c) ensure development for residential purposes or human occupation, if situated on land within the Australian Noise Exposure Forecast contours of between 20 and 25, incorporates appropriate mitigation measures.</p> <p><u>Application:</u></p> <p>When a planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of a licensed aerodrome.</p> <p><u>What must be done</u></p> <p>Summary: a planning proposal that sets controls for the development of land in the vicinity of a licensed aerodrome must be subject to prescribed consultation and take certain prescribed matters into account.</p>	aerodrome, it is not likely to affect the safe operation of aerodromes through inappropriate development.	
3.6 Shooting Ranges	<p><u>Objectives:</u></p> <p>(a) to maintain public safety and amenity,</p> <p>(b) to reduce land use conflicts,</p> <p>(c) to identify issues for consideration when rezoning land adjacent to an existing shooting range.</p> <p><u>Application:</u></p> <p>When a planning authority prepares a planning proposal that will affect, create, alter or remove a zone or a provision relating to land adjacent to a shooting range.</p> <p><u>What must not be done</u></p> <p>A planning proposal must not seek to rezone land adjacent to and/ or adjoining an existing shooting range that has the effect of permitting more intensive land uses than those which are permitted under the existing zone or permitting land uses that are incompatible with the noise emitted by the shooting range.</p>	The site subject to this planning proposal is not adjacent to an existing shooting range.	Consistent.

#### 4. Hazard and Risk

Table 2- Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
4.1 Acid Sulfate Soils	<p><u>Objective</u> To avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p> <p><u>Application:</u> When a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils.</p>	<p>The site is mapped as potentially containing Class 4 Acid Sulfate Soils. Acid sulphate soils do not impose a significant constraint because excavation below 2m is unlikely to be required.</p> <p>Acid Sulfate Soils will be further assessed with any future development assessment.</p>	Consistent.
4.2 Mine Subsidence and Unstable Land	<p>To prevent damage to life, property and the environment on land unstable or potentially subject to mine subsidence.</p> <p><u>Application:</u> When a relevant planning authority prepares a planning proposal that permits development on land that is within a mine subsidence district, or has been identified as unstable in a study, strategy or other assessment.</p>	Not relevant to this planning proposal as the subject site is not within a mine subsidence district and has not been identified as unstable in a study, strategy or other assessment.	Not applicable.
4.3 Flood Prone Land	Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land.	The subject site is not subject to flooding in the design flood event, climate change event or probable maximum flood event. Accordingly the planning proposal is considered to be consistent the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005.	Consistent.
4.4 Planning for Bushfire Protection	<p><u>Objective</u></p> <p>(a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and</p> <p>(b) to encourage management of bush fire prone areas.</p> <p><u>Application:</u> When a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land.</p>	<p>There is an established asset protection zone (APZ) servicing the existing development managed in perpetuity in accordance with the Tweed Coast Regional Crown Reserve Plan of Management.</p> <p>The Planning Proposal enables the existing uses to be regularised and in this regard the Rural Fire Service has issued General Terms of Approval for DA12/0170.14 for alterations and additions to the existing motel accommodation.</p>	Consistent.

## 5. Regional Planning

Table 2- Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
5.1 Implementation of Regional Strategies	<p><u>Objective</u> To give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.</p> <p><u>Application:</u> When a relevant planning authority prepares a planning proposal.</p>	Compliance of this planning proposal with the general directions of the North Coast Regional Plan, 2036 has been demonstrated in Section B 1 of this report.	Consistent.
5.2 Sydney Drinking Water Catchments	Local government areas not including Tweed.	Not relevant.	Not applicable.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	<p><u>Objective</u> (a) to ensure that the best agricultural land will be available for current and future generations to grow food and fibre, (b) to provide more certainty on the status of the best agricultural land, and (c) to reduce land use conflict.</p> <p><u>Application:</u> When a relevant planning authority prepares a planning proposal for land mapped as: State significant farmland, regionally significant farmland, or significant non-contiguous farmland. A planning proposal must not rezone land identified as "State Significant Farmland", "Regionally Significant Farmland" or "significant non-contiguous farmland" for urban or rural residential purposes.</p>	This planning proposal relate to any land or change the permissibility of any land mapped as state or regionally significant farmland or as non-contiguous farmland.	Not applicable.
5.4 Commercial and Retail Development along the Pacific Hwy, North Coast	<p><u>Objective</u> To manage commercial and retail development along the Pacific Highway to preserve and protect the safe function of the highway and its users.</p> <p><u>Application:</u> When a relevant planning authority prepares a planning proposal for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.</p>	Not relevant to this planning proposal.	Not applicable.

Table 2- Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
5.8 Second Sydney Airport: Badgerys Creek	Applies to other local government areas than Tweed.	Not relevant to this planning proposal.	Not applicable.
5.9 North West Rail Link Corridor Strategy	Applies to other local government areas than Tweed.	Not relevant to this planning proposal.	Not applicable.
5.10 Implementation of Regional Plans	<p><u>Objective</u> To give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>Applies when preparing a planning proposal.</p>	Compliance of this planning proposal with the general directions of the North Coast Regional Plan, 2036 has been demonstrated in Section B 1 of this report.	Consistent.
<b>6.Local Plan Making</b>			
6.1 Approval and Referral Requirements	<p><u>Objective</u> To ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p><u>Application:</u> When a relevant planning authority prepares a planning proposal.</p> <p><u>What must be done:</u> Ensure provisions minimise concurrence roles, consultation or referral of DAs to public authority.</p>	This planning proposal does not propose an amendment of the kind referred to in the Direction.	Consistent.
6.2 Reserving Land for Public Purposes	<p><u>Objective</u> (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.</p>	Not relevant to this planning proposal because it does not create, reduce or alter existing zoned reserves, and is not the subject of a direction of the Minister or public authority for that purpose.	Not applicable.
6.3 Site Specific Provisions	<p><u>Objective</u> To discourage unnecessarily restrictive site specific planning controls.</p>	The proposal is consistent with this Direction as it does not alter the existing zone but rather, permits additional uses, with consent.	Consistent.

Table 2- Consistency with s9.1 Directions

S9.1 Direction	Application	Relevance to this planning proposal	Consistency with direction
	<u>Application</u> : When a relevant planning authority prepares a planning proposal that will allow a particular development.		
<b>7. Metropolitan Planning</b>			
7.1 Implementation of A Plan for Growing Sydney	Applies to local government areas other than Tweed.	Not relevant to this planning proposal.	Not applicable.
7.2 Implementation of Greater Macarthur Land Release Investigation	Applies to local government areas other than Tweed.	Not relevant to this planning proposal.	Not applicable.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Applies to local government areas other than Tweed.	Not relevant to this planning proposal.	Not applicable.
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Applies to local government areas other than Tweed.	Not relevant to this planning proposal.	Not applicable.
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Applies to local government areas other than Tweed.	Not relevant to this planning proposal.	Not applicable.
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Applies to local government areas other than Tweed.	Not relevant to this planning proposal.	Not applicable.
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Applies to local government areas other than Tweed.	Not relevant to this planning proposal.	Not applicable.
7.8 Implementation of Western Sydney Aerotropolis Interim	Applies to local government areas other than Tweed.	Not relevant to this planning proposal.	Not applicable.

*Table 2- Consistency with s9.1 Directions*

<b>S9.1 Direction</b>	<b>Application</b>	<b>Relevance to this planning proposal</b>	<b>Consistency with direction</b>
Land Use and Infrastructure Implementation Plan			
7.9 Implementation of Bayside West Precincts 2036 Plan	Applies to local government areas other than Tweed.	Not relevant to this planning proposal.	Not applicable.
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	Applies to local government areas other than Tweed.	Not relevant to this planning proposal.	Not applicable.

## **Section C Environmental, Social and Economic Impact**

### **1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?**

Tweed Shire Council's Vegetation Mapping identifies the site as mainly highly modified and disturbed and the site is not mapped on the Biodiversity Value Map.

It is unlikely that there are any habitat, threatened species, population or ecological communities or their habitats onsite, however a Flora and Fauna Assessment can be prepared after the Gateway Determination, if required.

### **2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

The key constraints associated with the subject site, including bushfire hazards, acid sulfate soils and coastal erosion hazards can be appropriately managed and mitigated as outlined below.

#### Acid Sulfate Soils

The subject site is mapped as Class 4 acid sulphate soils (refer to Figure 3). An Acid Sulfate Soil Management Plan is required to accompany any application for excavation greater than 2m in depth.

The purpose of this planning proposal is to resolve compliance issues associated with the existing Halcyon House site. Any proposed excavation below 2m can be appropriately addressed at the Development Application stage.

#### Bushfire Prone Land

As shown on Figure 4, the existing Halcyon House site (Lot 100) is mapped as bushfire prone land (vegetation buffer).

There is an established asset protection zone (APZ) between the dune vegetation and urban development fronting the foreshore. This APZ reduces bushfire risk and is managed in perpetuity in accordance with the Tweed Coast Regional Crown Reserve Plan of Management.

This Planning Proposal enables the existing uses to be regularised and in this regard the Rural Fire Service has issued General Terms of Approval for DA12/0170.14 for alterations and additions to the existing motel accommodation.

In this context, bushfire risk is not considered to impose a significant constraint to the proposed Planning Proposal and will be appropriately addressed at the Development Application stage for any future development.

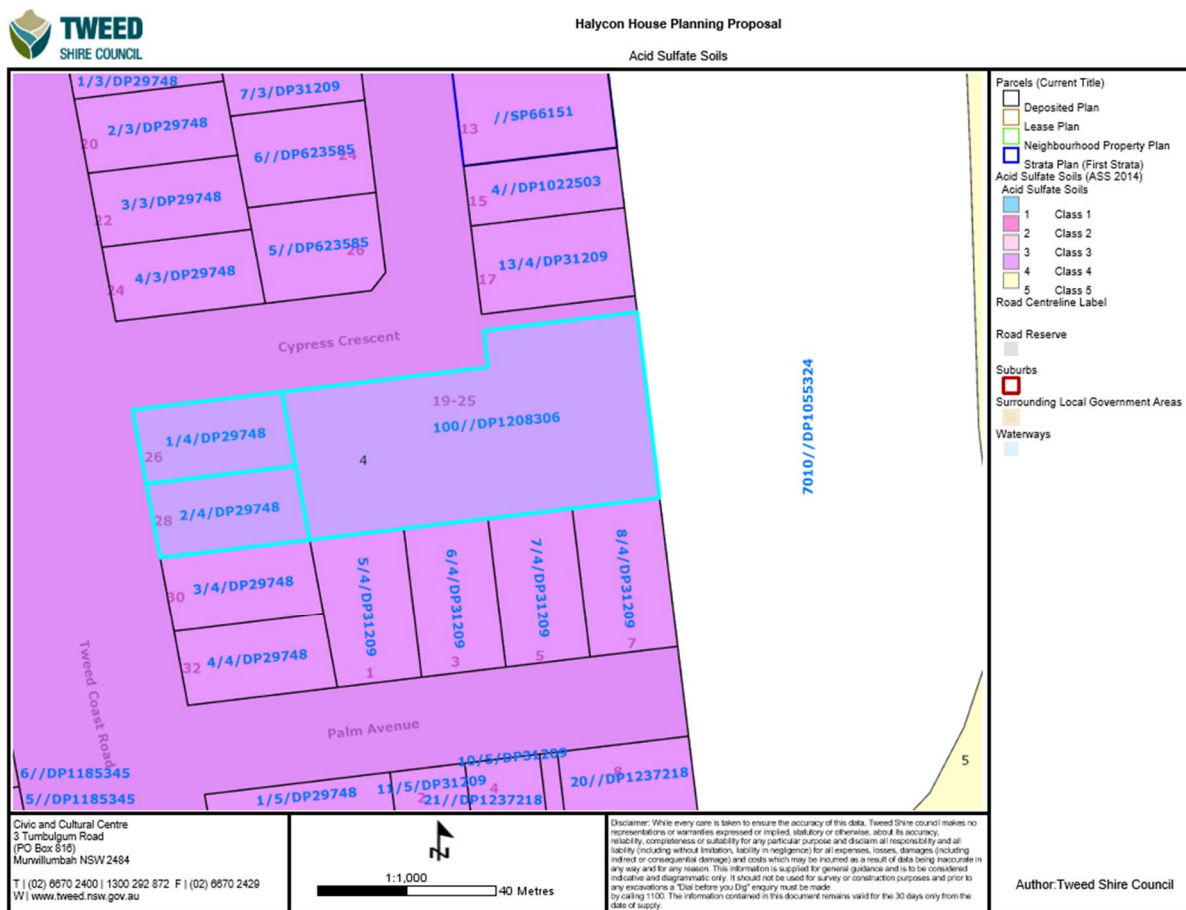


Figure 3 – Acid Sulfate Soils

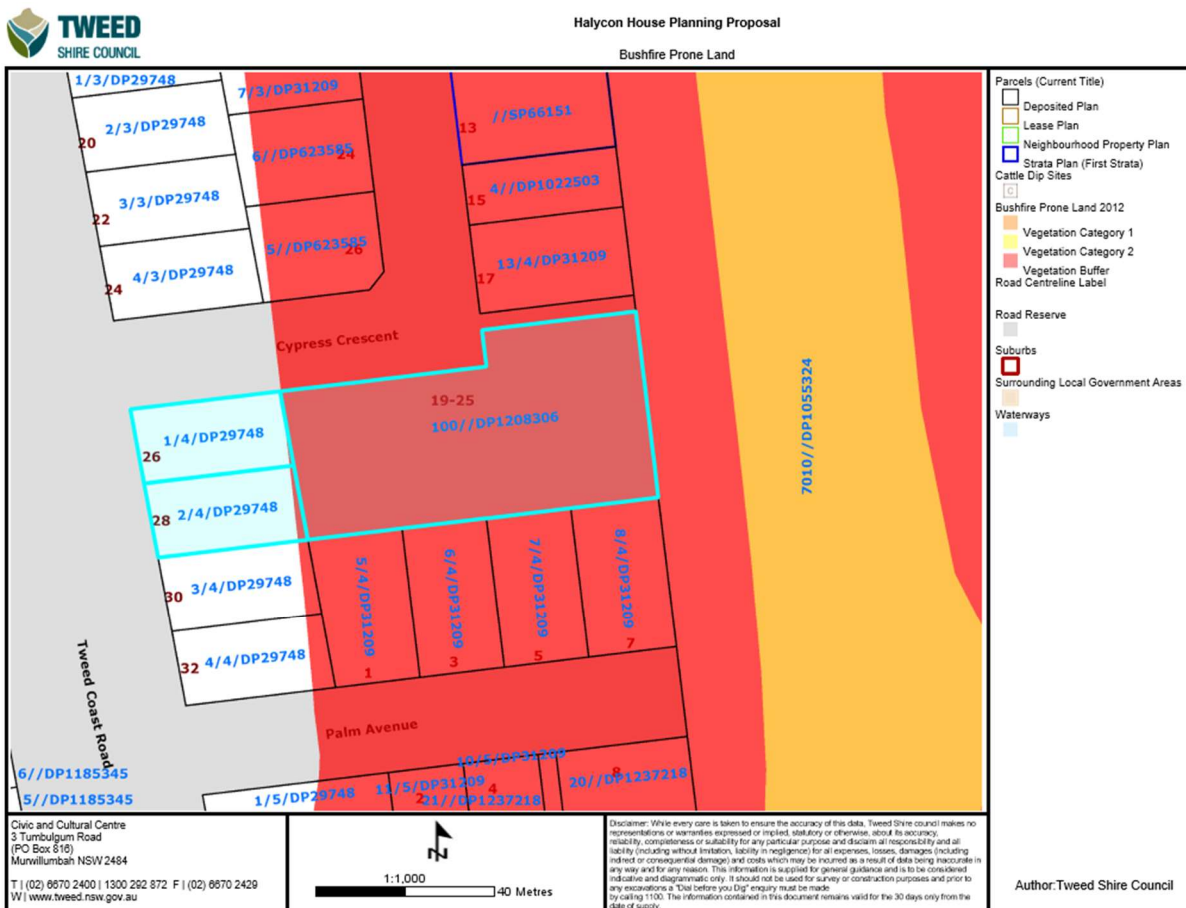


Figure 4 – Bushfire Prone Land

### Flooding

The subject site is not subject to flooding in the design flood event, climate change event or probable maximum flood event.

### Contaminated Land

The original Hideaway Hotel was established on Lot 100 in circa 1951 and has continued to operate since that date. Lots 1 and 2, as well as the adjacent properties have historically been developed for commercial and for residential purposes.

Council approved alterations and additions to the motel on Lot 100 (DA12/0170) on 18 February 2013 and a tennis court on Lots 1 and 2 (DA15/0552) on 4 May 2016. As a condition of consent, Council required radiation testing to be undertaken as part of the works onsite to ensure potential radiation levels associated with historical sand mining (pre 1951) did not pose a public health risk. Under slab testing was also undertaken for former dwellings on Lots 1 & 2, which were demolished as part of DA 12/0170. The onsite testing did not identify any issues of concern.

The previous investigations indicate that contamination is unlikely to be a constraint on the subject site.

### Coastal Erosion

As shown on Figure 5 the subject site is not impacted by the immediate coastal hazard line or the 2050 coastal hazard line. The existing Halcyon House site (Lot 100) is however located within the mapped 2100 coastal hazard area.

Tweed Shire Council issued Development Consent No. DA12/0170.14 for alterations and additions to the existing motel subject to Condition 107A being:

*“107A. As the development subject of this consent has been identified as being within one or more of the Coastal Hazard Zones as described in Tweed Development Control Plan B25 this consent is subject to the owner of the subject land PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE creating a positive covenant under section 88E of the (Conveyancing Act, 1919) on the following terms:*

*(i) The registered proprietor of the subject land acknowledges that the subject land is within a Coastal Hazard Zone as described in Tweed Development Control Plan B25 or any other subsequent iteration of that planning instrument.*

*(ii) The registered proprietor also acknowledges that any development within the subject land must comply with the terms set out herein as follows:*

*a. In the event that the erosion escarpment comes within 20 metres of any building/s on the subject land then the use of any building/s shall cease and the registered proprietor of the subject land shall remove any or all buildings to a location on the subject land that is further than 20 metres from the erosion escarpment where possible, or off site where not possible. In the event that relocation is not possible, then any affected building shall be demolished.*

*b. The registered proprietor of the subject land shall bear all costs in relation to the relocation or demolition of any or all buildings located on the subject land.*

*c. The terms "Coastal Hazard Zones", "erosion escarpment" and any other references of this covenant are to be read as having the meaning in accordance with their definitions in the Tweed Development Control Plan B25".*

As the site is well clear of the immediate impact line and having regard to Condition 107A, coastal hazards do not impose a significant constraint on the proposed amendment to Schedule 1 of *Tweed LEP 2014*.

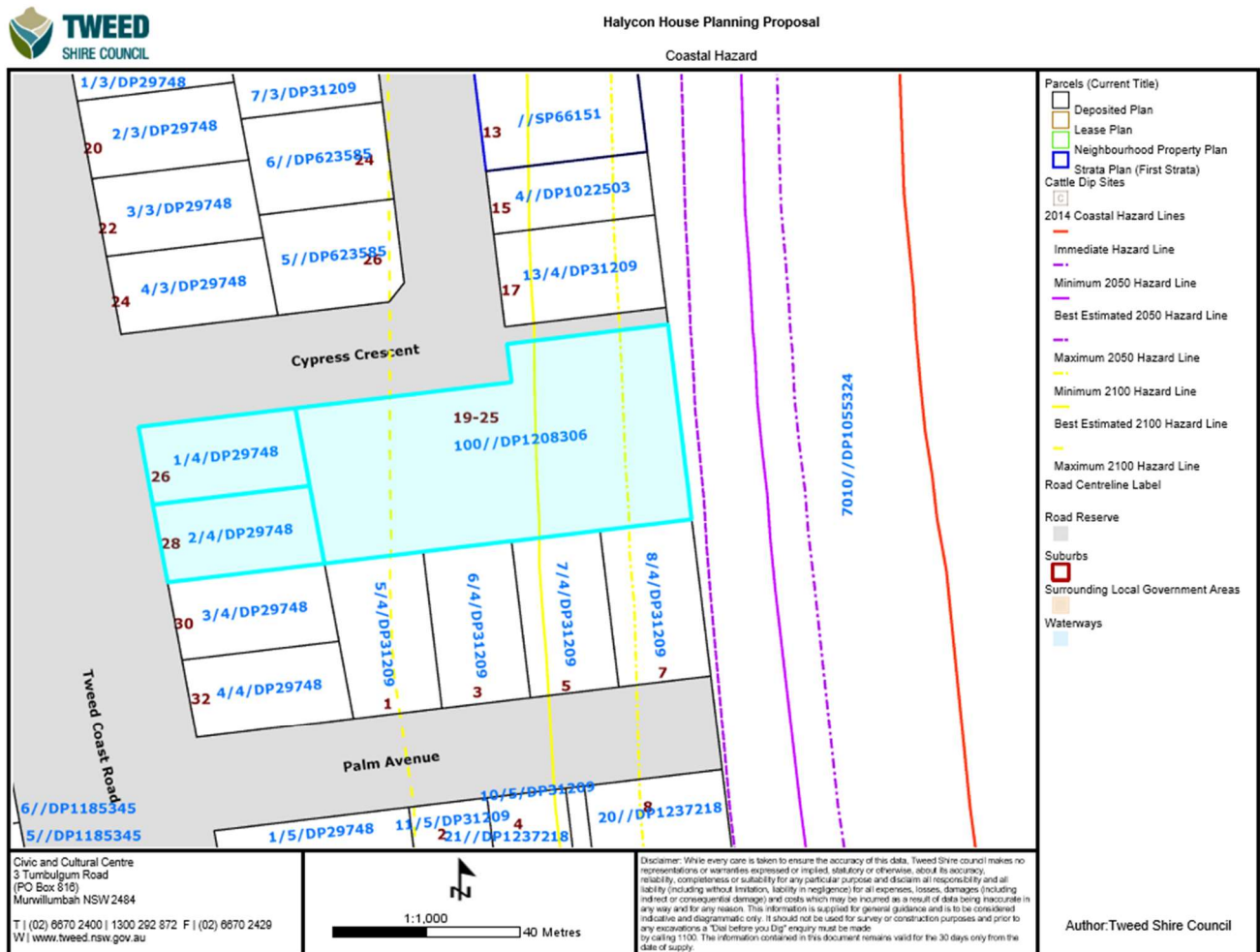


Figure 5 – Coastal Hazard Lines

## Cultural Heritage

A search of the Aboriginal Heritage Information Management System (AHIMS) maintained by the Office of Environment and Heritage indicated that there are no registered Aboriginal objects or declared places on or immediately adjacent to the subject site. The site is not mapped as an *Aboriginal Place of Heritage Significance* or Predictive Aboriginal Cultural Heritage under the Tweed Shire Council Aboriginal Heritage Management Plan 2018.

The subject site has been significantly modified as a result of past sand mining operations and more recently development of the existing motel and ancillary services. The site is largely

cleared of native vegetation. It is considered unlikely that the planning proposal and any future development of the site would impact on Aboriginal cultural heritage.

### Historic Heritage

The heritage database provided under Schedule 5 of the *Tweed LEP 2014* indicated that no items of Historic heritage significance are known to occur within or immediately adjoining the subject site. It is considered unlikely that the planning proposal and any future development of the site would impact on Historic heritage.

## **3 How has the planning proposal adequately addressed any social and economic effects?**

The Planning Proposal would have positive social and economic effects in terms of:

- Providing support and additional infrastructure for an existing and long-standing business which provides tourism, accommodation and recreational facilities; and
- Reduced amenity impacts on neighbouring residents in terms of parking through provision of adequate off-street parking for restaurant and motel guests.

The value of the existing development and local business is well documented by State and local tourism authorities as outlined below.

Destination NSW - *“New South Wales (NSW) has cemented its position as home of the world's best hotel with the naming of Halcyon House as the Best Smith Hotel in the coveted international Mr & Mrs Smith Hotel Awards 2016 Note: The annual Mr & Mrs Smith Hotel Awards recognise excellence, celebrating the best-in-class boutique hotels in the world”.*

Destination Tweed - *“The tranquil, carefree days of summers passed will be recaptured at Halcyon House – Australia’s most unique beachside property. The former surfer motel turned luxury hotel is situated at one of the country’s best surf breaks and in one of its most idyllic beachfront towns – Cabarita Beach, Northern New South Wales.”*

## **Section D State and Commonwealth interests**

### **1 Is there adequate public infrastructure for the planning proposal?**

This planning proposal does not trigger the provision of any significant additions to or upgrading of public infrastructure within the area, as detailed below.

### Transport

A traffic impact assessment prepared by Bitzios Consulting in June 2018 has confirmed that the local road network is capable of accommodating any additional traffic likely to be generated by recognising the existing development at the subject site and that there is significant opportunity for improving the car parking layout and allocation through a ‘whole of site’ design response. The Report was prepared as part of a planning proposal request to rezone the subject land, as well as Lot 3 Section 4 DP 29748 however, the conclusions in the Report are also relevant to the current Planning Proposal Request.

The subject site is located within 300m walking distance of two bus stops serviced by the 603 Surfside Bus Route providing hourly services to Tweed Heads during the day.

The areas surrounding the subject site are pedestrian friendly with good quality pedestrian footpaths provided on both sides of the majority of adjacent streets providing access to retail, food, entertainment facilities and public transport facilities. A good network of off-road bikeways, cycle friendly roads and shared footpaths are also located within close proximity to the subject site.

#### Water Supply and Sewer

Reticulated water supply is available to the subject site. Council has recently augmented the Murwillumbah Water Treatment Plant and sufficient capacity exists in that system to accommodate future development of the site.

Reticulated sewer is available to the site. There are no known capacity constraints in the existing system.

#### Power and Telephone

The subject site is currently serviced by existing power and telecommunications infrastructure. Power supply and the provision of telecommunication services are not expected to be a constraint. The adequacy of existing services will be addressed as part of any future development application for the subject site.

#### Health

A public hospital and emergency department is located in Tweed Heads approximately 15 kilometres north of the site. General medical, dental and other health care professionals are located within the village of Cabarita.

#### Emergency Services

Emergency services including a police station, fire brigade and ambulance station are located at Kingscliff approximately 8 kilometres north of the site.

#### Schools

Cabarita/Bogangar has a local primary school. The nearest high school is located in Kingscliff, along with a further two primary schools and a TAFE.

## **2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?**

A Gateway determination has not yet been issued for this planning proposal. Relevant authorities will be consulted in accordance with the requirements of the Gateway Determination.

The views of consulted public authorities will be summarised and addressed as appropriate in the final Planning Proposal.

## Part 4 Mapping

The Planning Proposal will require an amendment to the map pursuant to Clause 2.5 (Additional Permitted Land Uses Map) to identify land subject to this Planning Proposal as item number 24, being:

- Lot 100 DP 1208306;
- Lot 1 Section 4 DP 29748; and
- Lot 2 Section 4 DP 29748.

All other maps will remain unchanged.

## Part 5 Community consultation

Council will place the Planning Proposal on public exhibition for a period of not less than 28 days and undertake consultation with all stakeholders as directed, in accordance with conditions of the Gateway Determination.

Community consultation will be commenced with placing a public notice in the local newspapers and on the website of the Tweed Shire Council and/or the Department of Planning and Environment. In addition, adjoining landowners will be notified in writing.

## Summary and conclusions

This planning proposal seeks to resolve existing compliance issues relating to the use of the Halcyon House site, by way of enabling additional permitted use for:

- a “restaurant or cafe”, “hotel or motel accommodation” and “function centre” on Lot 100 DP 1208306; and
- a “car park” ancillary to the hotel or motel accommodation on Lots 1 and 2 Section 4 DP 29748.

The preferred method to achieve this outcome is an amendment to Schedule 1 of LEP 2014. This planning proposal will be subject to agency and community consultation. The outcomes of the consultation process will be provided in the final version of the planning proposal.

## Part 6 Timeframe

The following project timeline is intended to be a guide only and may be subject to changes in response to the public consultation process and/or community submissions.

Task	Timeframe	Completed
Referral of the planning proposal for a Gateway determination	July 2019	
<b>Gateway Determination</b>	August 2019	
Undertake requirements of the Gateway Determination and prepare V2 planning proposal	September 2019	
Public exhibition	October 2019	
Agency consultation	October 2019	
Review submissions, respond and prepare V3 planning proposal for Council's consideration	November/December 2019	
Council report to finalise and refer the plan to the DPE to be made	January 2020	
Referral of the Plan to the DPE for making	February 2020	
Plan to be made within 9 months of Gateway	March 2020	



Customer Service | 1300 292 872 | (02) 6670 2400

[tsc@tweed.nsw.gov.au](mailto:tsc@tweed.nsw.gov.au)  
[www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au)

Fax (02) 6670 2429  
PO Box 816  
Murwillumbah NSW 2484