

Planning and Assessment

IRF19/4866

Gateway determination report

LGA	Tweed
PPA	Tweed Shire Council
NAME	Additional permitted uses - Halcyon House, Cabarita (0 homes, 0 jobs)
NUMBER	PP_2019_TWEED_003_00
LEP TO BE AMENDED	Tweed LEP 2014
ADDRESS	Halcyon House, corner of Cypress Crescent and Tweed Coast Road, Cabarita
DESCRIPTION	Lot 100 DP 1208306 and Lots 1 and 2 Section 4 DP 29748
RECEIVED	9 July 2019
FILE NO.	EF19/22364 and IRF19/4866
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The proposal seeks to permit a restaurant or café, hotel or motel accommodation function centre and carpark as additional permitted uses on the land.

1.2 Site description

The site is located on the corner of Cypress Crescent and Tweed Coast Road, Cabarita. Lot 100 contains the existing Halcyon House hotel, restaurant and parking area. Lots 1 and 2 are currently undeveloped though development approval for a tennis court applies to these lots.

Halcyon House had originally operated as the Hideaway Hotel for approximately 50 years. In 2013 Tweed Shire Council approved upgrades to the hotel and it became Halcyon House. In 2014 The Tweed LEP 2014 zoned the land R2 Low Density Residential and as a result tourist and visitor accommodation, restaurants or cafes and car parks became prohibited uses. The use of the building as a hotel is enabled through the existing use rights provisions of the *Environmental Planning and Assessment Act 1979* (the Act).

The operation of the restaurant in the building has expanded beyond the parameters of the development approval. The original development approval limited the use of the restaurant to guests of the hotel. Council has had to instigate compliance action in response to concerns the impact the restaurant is having on the amenity of the

area arising from the use of the restaurant by the public and the parking of patron's cars in nearby residential streets.

1.3 Existing planning controls

The site is zoned R2 Low Density Residential by the Tweed LEP 2014. Tourist and visitor accommodation, restaurants and carparks are prohibited in the R2 zone. The site is also subject to a floor space ratio of 0.8:1, a maximum building height of 9 metres and a minimum lot size of 450m².

1.4 Surrounding area

The land to the north and south is zoned R2 Low Density Residential and is developed for residential purposes. Land to the west is zoned B2 Local Centre and comprises the Cabarita commercial area. To the east is the coastal foreshore which is public land and is currently zoned 6(a) Open Space by Tweed LEP 2000.

1.5 Summary of recommendation

It is recommended that the proposal proceed subject to conditions for the following reasons:

- the proposal will confirm the use of the site for tourism and commercial purposes consistent with the existing use and strategic planning framework for the site;
- the proposal enables consideration of a development application to resolve compliance issues associated with the expansion of the restaurant; and
- the inconsistencies of the proposal with section 9.1 directions are considered to be of minor significance and justified in accordance with the terms of the direction.

2. PROPOSAL

2.1 Objectives or intended outcomes

The existing use provision in the Act restrict the expansion or intensification of existing uses. The intent of the proposal is to enable a development application to be submitted for the expansion or intensification of the existing uses so that Council can assess the proposal on its merits without the restrictions that arise from the existing use right status of the existing development.

A development application can only be considered if the land uses are permissible on the site and therefore the objective of the proposal is to enable the following additional permitted uses with development consent:

- a restaurant or café, hotel or motel accommodation and function centre on Lot 100; and
- a carpark ancillary to the hotel and motel accommodation on lots 1 and 2.

2.2 Explanation of provisions

The objective of the proposal will be achieved by:

- amending Schedule 1 of the Tweed LEP 2014 to include a new clause for the land which enables the proposed additional permitted uses; and
- amending the Additional Permitted Uses Map in Tweed LEP 2014 to identify the site.

No changes are proposed to the zoning of the site or the other development controls in Tweed LEP 2014 which apply to the site.

2.3 Mapping

The proposal contains maps which adequately show the subject site in the context of its surroundings. This mapping is adequate for public exhibition purposes. An Additional Permitted Uses Map consistent with the Standard Technical Requirements will need to be prepared before the making of the LEP amendment.

3. NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of a strategic study or report. The proposal has arisen in response to changes in the zoning of the site which have made the existing land uses prohibited and causing the development to rely on existing use rights under the Act.

By amending the Tweed LEP 2014 to permit with consent 'restaurant or café', 'hotel or motel accommodation', 'function centre' and 'carpark' as additional permitted land uses on the site, Council will be able to consider the expansion or intensification of these land uses on merit and impose appropriate conditions on development consents.

The proposal notes that permitting the construction of a carpark on lots 1 and 2 will resolve one of the major issues arising from the current operation of the development, being the parking of cars in neighbouring residential streets by restaurant patrons.

The proposal acknowledges that the land is not intended to be rezoned, despite the existing land uses being more consistent with the B2 Local Centre zone which is applied to land adjoining the site.

The proposal notes that Council intends to undertake a full review of the Bogangar/Cabarita Beach Locality Plan and Structure Plan in the near future. Such a review may include an economic impact assessment, public consultation and a review of planning controls to achieve the desired future character. Consequently, Council has chosen to defer rezoning the site and considering alternative development controls until this work has been done.

However, since the land uses on the site are existing and have expanded due to the success of their operations, Council has determined that it is necessary to enable the resolution of the compliance issues through the development application process. Council's approach is considered to be appropriate.

It is considered that the proposal to permit the additional permitted land uses is the best means of achieving the objectives of the proposal at this time.

4. STRATEGIC ASSESSMENT

4.1 State

The proposal is not inconsistent with the Premiers' Priorities. The proposal seeks to resolve existing land use issues on a site containing established tourist accommodation and commercial land uses.

4.2 Regional / District

The proposal is consistent with the North Coast Regional Plan 2036. The site is located within the urban growth area boundary for Cabarita and is therefore

appropriately sited to be considered for increased development potential. The proposal will contribute to the ongoing operation of the site for tourism purposes which are a significant component of the regional economy.

4.3 Local

The proposal is consistent with the Tweed Community Strategic Plan 2017-2027 and Tweed Urban and Employment Land Release Strategy 2009 as it will facilitate tourism and enable the retention of employment opportunities on the site.

The proposal is consistent with the Tweed Development Control Plan (DCP), the Bogangar/Cabarita Beach Locality Plan and associated structure plan, which provides a framework for retaining and enhancing Cabarita Beach and promoting the area for residential living, tourism and business. The locality plan identifies lots 1 and 2 as being in the commercial precinct and promotes business/commercial land uses for this site. The proposed carpark, while not the highest and best commercial use, is not inconsistent with this vision and will support the commercial development of the existing Halycon House on the adjoining land.

Halcyon House on Lot 100 is located in the residential "B" precinct of the locality plan which notes that this precinct should comprise tourist accommodation with a dense built form. Halcyon House, being an established tourist accommodation development is consistent with this aspect of the plan.

The objectives of the DCP seek to facilitate economic development through niche markets for tourists, retail and commercial investment while ensuring a compact village form. The proposal achieves these objectives by enabling tourist accommodation and commercial land uses with consent on a site which is already developed for such purposes but has potential for more intensive development and is located adjacent to the town centre.

4.4 Section 9.1 Ministerial Directions

The proposal is considered to be consistent with all relevant section 9.1 directions except the following:

Direction 2.1 Environment Protection Zones

This direction requires a planning proposal to include provisions which facilitate the protection and conservation of environmentally sensitive areas. The proposal contains no such provisions and seeks only to permit additional permitted uses on the site.

The site has historically been developed for tourist accommodation, residential and commercial purposes. The site does not contain any environmentally significant areas. The inconsistency of the proposal with the direction is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

Direction 2.2 Coastal Management

This direction requires a proposal to include provisions which give effect to the objectives of the *Coastal Management Act 2016*, the NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003 and any coastal management program or coastal zone management plan that applies to the land. The proposal contains no such provisions and seeks only to permit additional permitted uses on the site.

The provisions of the *Coastal Management Act 2016* comprise legislation which does not need to be given effect by an environmental planning instrument. The provisions of the NSW Coastal Management Manual and any coastal management program are given effect by the *Coastal Management Act 2016*. The provisions of the NSW Coastal Design Guidelines 2003 are more appropriately given effect through Council's development control plan. The inclusion of provisions that give effect to these documents is beyond the scope of a planning proposal that seeks to permit additional permitted uses on a single site.

The direction also states that a proposal should not rezone land to enable increased development or more intensive land use on land affected by current or future coastal hazards.

The proposal notes that part of Lot 100, which contains the Halcyon House building, is located within the 2100 coastal hazard area as mapped in the Tweed Development Control Plan B25. The most recent approval for the hotel (DA12/0170.14) contained a condition requiring the building to be relocated or demolished if the erosion escarpment comes within 20m of the building.

The inconsistency of the proposal with this direction is considered to be of minor significance as:

- the proposal seeks only to permit additional uses to the existing development on the site;
- only part of the site is in a risk area;
- the risk is the lowest identified category in Tweed LEP 2014 (2100 coastal hazard); and
- existing coastal hazard retreat conditions apply to the development under DA12/0170.14 should coastal hazard issues eventuate in the future.

Direction 2.3 Heritage Conservation

This direction requires a planning proposal to include provisions which facilitate the conservation of matters of heritage significance. The proposal contains no such provisions and seeks only to permit additional permitted uses on the site.

The site has historically been developed for tourist accommodation, residential and commercial purposes. The site is not mapped as containing any heritage items in Tweed LEP 2014. The site is not mapped as an Aboriginal place of heritage significance or predictive Aboriginal cultural heritage by the Tweed Shire Council Aboriginal Heritage Management Plan 2018. The inconsistency of the proposal with the direction is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

Direction 4.1 Acid Sulfate Soils

This direction requires that a planning proposal must not propose an intensification of development on land identified as containing acid sulfate soils unless an acid sulfate soil study has been completed.

The proposal seeks to permit additional permitted uses on the site which is mapped as class 4 acid sulfate soils. An acid sulfate soils study has not been prepared to support the planning proposal.

The inconsistency is considered to be of minor significance as the site is already developed for urban purposes, and the class 4 classification is a low risk classification. The Tweed LEP 2014 already contains provisions (clause 7.1) which require an acid sulfate soil study for development which proposed excavation of deeper than two metres. The inconsistency is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

Direction 4.4 Planning for Bushfire Protection

The site is identified as being bushfire prone. This direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS), and the draft plan must include provisions relating to bushfire control. Consultation with the RFS is required after a Gateway determination is issued and before public exhibition. Until this consultation has occurred, the inconsistency of the proposal with this direction remains unresolved.

4.5 State environmental planning policies (SEPPs)

The proposal is considered to be consistent with all relevant state environmental planning policies.

SEPP 55 (Remediation of Land)

The SEPP provides that the potential for contamination of the site is to be investigated prior to the land being rezoned. The land has historically been developed for hotel, commercial and residential purposes. The planning proposal notes that recent development proposals investigated the potential for radiation contamination from historic sand mining activities from before 1951. The investigations did not identify any issues of concern. The proposal is therefore considered to be consistent with the requirements of the SEPP.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal is not expected to have any significant adverse social impacts. The proposal will permit the additional permitted uses with development consent. The restaurant and hotel are existing uses on the site. The impact of any changes to these uses will be able to be assessed at development application stage. The proposed carpark will support these land uses and mitigate the current impact of patrons parking in neighbouring residential streets.

5.2 Environmental

The proposal will not have an adverse impact on critical habitat or threatened species, populations or ecological communities or their habitats. The site has been developed for urban purposes for approximately 50 years and contains no significant native vegetation.

5.3 Economic

The proposal is not expected to have a significant economic impact. The hotel and restaurant land uses exist on the site. The proposed carpark will support these land uses. The proposal may permit potential expansion of these current land uses which may have a minor positive economic impact for the local community.

5.4 Infrastructure

The proposal is not expected to require significant new infrastructure. The site is already predominantly developed and serviced with the necessary infrastructure.

The proposal to permit carparks on the site will provide the necessary parking infrastructure to alleviate current concerns relating to the parking associated with the development on the site.

6. CONSULTATION

6.1 Community

The planning proposal nominates a public exhibition period of 28 days. The proposal is considered to be a low impact planning proposal as the proposed additional permitted uses are consistent with the historical uses undertaken on the site and consistent with the surrounding pattern of development and the strategic planning framework. A 14 day public exhibition period is therefore recommended however this does not prevent Council from conducting a longer public exhibition period.

6.2 Agencies

The site is predominantly developed for urban purposes and the proposed additional permitted land uses are intended to resolve local planning issues with the development on the site. Consequently, it is considered that only the NSW Rural Fire Service needs to be consulted due to the bushfire prone nature of the site and in order to satisfy section 9.1 Direction 4.4 Planning for Bushfire Protection.

7. TIME FRAME

The planning proposal nominates a time frame for completion of the LEP amendment in March 2020. It is considered that since the proposal relates only to permitting additional permitted uses on a specific site which is already developed for tourist and visitor accommodation and a restaurant, a nine month time frame for completion of the LEP amendment is adequate.

8. LOCAL PLAN-MAKING AUTHORITY

Council has not requested to be authorised to act as the local plan-making authority. The proposal is considered to be a local matter as it relates to existing land uses at a specific site for which Council would be the consent authority. The proposal is not considered to be of State or regional environmental planning significance. It is recommended that The Gateway determination be conditioned to authorise Council to be the local plan making authority.

9. CONCLUSION

It is recommended that the proposal proceed subject to conditions for the following reasons:

- the proposal will confirm the use of the site for tourism and commercial purposes consistent with the existing use and strategic planning framework for the site;
- the proposal enables consideration of a development application to resolve compliance issues associated with the expansion of the restaurant; and
- the inconsistencies of the proposal with section 9.1 directions are considered to be of minor significance and justified in accordance with the terms of the direction.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that inconsistencies with section 9.1 Directions 2.1 Environment Protection Zones, 2.2 Coastal Management, 2.3 Heritage Conservation and 4.1 Acid Sulfate Soils are justified in accordance with the terms of the Directions; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved until consultation with the NSW Rural Fire Service has been undertaken.

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

1. the planning proposal should be made available for community consultation for a minimum of 14 days.
2. consultation is required with the following public authorities:
 - NSW Rural Fire Service
3. the time frame for completing the LEP is to be nine months from the date of the Gateway determination.
4. given the nature of the planning proposal, Council should be authorised to be the local plan-making authority to make this plan.



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