

### Tiral Street Charlestown - Commercial and Seniors Development

Proposal Title : **Tiral Street Charlestown - Commercial and Seniors Development**

Proposal Summary : **To insert commercial premises and restaurant as an additional permitted use on land at Tiral Street Charlestown to support a proposed seniors housing development.**

**The subject site is currently zoned 2(2) Residential (Urban Living) with a small area zoned 5 Infrastructure. Seniors Housing is permitted in the 2(2) zone, however the commercial office and restaurant component of the proposed development are prohibited development.**

PP Number : **PP\_2013\_LAKEM\_002\_00**

Dop File No :

**12/17629**

#### Proposal Details

Date Planning : **28-Jan-2013**

Proposal Received :

LGA covered :

**Lake Macquarie**

Region : **Hunter**

RPA :

**Lake Macquarie City Council**

State Electorate : **CHARLESTOWN**

Section of the Act :

**55 - Planning Proposal**

LEP Type : **Spot Rezoning**

#### Location Details

Street : **27 Tiral Street**

Suburb : **Charlestown**

City :

Postcode : **2290**

Land Parcel : **Lot 223 DP 551260**

#### DoP Planning Officer Contact Details

Contact Name : **Dylan Meade**

Contact Number : **0249042718**

Contact Email : **dylan.meade@planning.nsw.gov.au**

#### RPA Contact Details

Contact Name : **Heath Dennerley**

Contact Number : **0249210298**

Contact Email : **hdennerley@lakemac.nsw.gov.au**

#### DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

## Tiral Street Charlestown - Commercial and Seniors Development

### Land Release Data

|                                       |                                   |                                                            |      |
|---------------------------------------|-----------------------------------|------------------------------------------------------------|------|
| Growth Centre :                       | N/A                               | Release Area Name :                                        | N/A  |
| Regional / Sub<br>Regional Strategy : | Lower Hunter Regional<br>Strategy | Consistent with Strategy :                                 | Yes  |
| MDP Number :                          |                                   | Date of Release :                                          |      |
| Area of Release (Ha)<br>:             |                                   | Type of Release (eg<br>Residential /<br>Employment land) : | Both |
| No. of Lots :                         | 0                                 | No. of Dwellings<br>(where relevant) :                     | 0    |
| Gross Floor Area :                    | 0                                 | No of Jobs Created :                                       | 0    |

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment :

### Supporting notes

Internal Supporting Notes : **The Department met with Council officers in December 2012 to discuss the proposal and inclusion of an additional permitted use. At this meeting, and in subsequent discussions, the Department indicated a preference for zoning of the site in order to facilitate the proposal, rather than inserting an additional permitted use. Zoning the western portion of the site to B1 Local Centre in order to facilitate the commercial office and café was considered the best option by the Department.**

**The final proposal submitted by Council explains it will be achieved through inserting an additional permitted use and not a rezoning. Council has requested this version of the proposal be forwarded to the LEP Panel for a gateway determination.**

**Council confirmed they are seeking delegations in respect to making the plan.**

External Supporting Notes :

### Adequacy Assessment

#### Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives explains that the objective of the proposal is to allow development of the site for seniors housing, cafe and commercial office uses. The wording is supported.**

#### Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions provided states the proposal will be achieved through inserting an additional permitted use in the Lake Macquarie LEP 2004, or inserting an**

additional permitted use in the Lake Macquarie LEP 2013 (if finalised).

The proposed drafting of the additional permitted use includes limitations to the additional permitted use. The scale of the retail and commercial use is to be limited to 50% of the Gross Floor Area and must 'complement and support' seniors housing. The suitability of these limitations have not been tested.

**Justification - s55 (2)(c)**

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

**1.1 Business and Industrial Zones**

\* May need the Director General's agreement

**3.4 Integrating Land Use and Transport**

**4.2 Mine Subsidence and Unstable Land**

**4.4 Planning for Bushfire Protection**

**5.1 Implementation of Regional Strategies**

**6.3 Site Specific Provisions**

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

**SEPP No 19—Bushland in Urban Areas**

**SEPP No 55—Remediation of Land**

e) List any other matters that need to be considered :

**The proposal is inconsistent with 'draft Practice Note: Schedule 1 Additional Permitted Uses' as Council has not demonstrated that there is no other acceptable solution to address the matter.**

Have inconsistencies with items a), b) and d) being adequately justified? **Unknown**

If No, explain :

**Further information to determine the extent of inconsistencies and whether they are justified is required. This is discussed in the assessment section of this report.**

**Mapping Provided - s55(2)(d)**

Is mapping provided? **Yes**

Comment :

**Community consultation - s55(2)(e)**

Has community consultation been proposed? **Yes**

Comment :

**Council proposes a 28 day exhibition period. This is supported given the scale of the proposed development and recommendation that the concept plan is exhibited together with the rezoning.**

**Additional Director General's requirements**

Are there any additional Director General's requirements? **No**

If Yes, reasons :

**Overall adequacy of the proposal**

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

## **Proposal Assessment**

### **Principal LEP:**

Due Date : June 2013

Comments in relation to Principal LEP : The draft Lake Macquarie LEP 2012 was exhibited from 21 November until 21 December 2012. It is expected a Section 68 submission to the Department will be made in April 2013.

## **Assessment Criteria**

Need for planning proposal :

The Planning Proposal is required in order to permit 'commercial premises' and 'restaurant' uses on the subject site. Seniors housing is already permissible in the current 2(2) Residential (Urban Core) zone under the Lake Macquarie LEP 2004, however it is argued that the additional uses are required in order to support the seniors development.

The Department has discussed suitable alternatives to inserting an additional permitted use, including the preferred approach of zoning part of the site to B1 Local Centre. The Planning Proposal provides a number of reasons the zoning part of the site to B1 as being inappropriate, including:

- There is no equivalent commercial zone in the Lake Macquarie LEP 2004 to the B1 Zone, which is to be introduced into the LEP 2013, Council argue that there would be difficulties and a lack of transparency by introducing this new zone in the LEP 2004.
- The proponent intends to integrate the office and café use into the seniors housing, zoning part of the site to B1 may inhibit development for Seniors Housing as it could be considered inconsistent with the B1 zone objectives. The exhibited version of the LMLEP 2013 included seniors housing as permissible with consent in the B1 zone. One B1 zone objective states that the zone is to provide for shop top housing as part of a mixed use development.
- As a master plan has not been prepared, Council are unsure of the area or location required to zone to B1. Instead Council have proposed to insert an additional permitted use allowing up to 50% of the gross floor area (GFA) to be used for commercial premises. The figure is intended to ensure that at least 50% of the GFA will be used for seniors housing.

It is considered that permitting office premises across the entire site, albeit with GFA restrictions, could result in land use conflicts with surrounding low density residential development. Zoning an appropriate area of the site to commercial may avoid potential conflicts. Zoning the western area of the site to commercial would form an extension of the existing commercial zone to the north. Permitting commercial premises on up to 50% of the GFA, is also considered inappropriate and inconsistent with existing local and regional strategies as described in the next section.

It is considered that information has not been provided to demonstrate that an additional permitted use is the only option available. It is considered that zoning part of the site B1 Local Centre to enable office and restaurant uses could achieve the desired outcome. It is suggested that completion of a preliminary concept plan prior to exhibition will enable Council to zone an appropriate area of the site to B1, or clearly show that inserting an additional permitted use is the only option due to the integrated nature of the proposal.

Consistency with strategic planning framework :

**LOWER HUNTER REGIONAL STRATEGY (LHRS)**

Charlestown is identified as a major regional centre in the LHRS, with key functions including concentrating businesses, higher order retailing, employment, and professional services. The subject site is located in a transitional residential area on the edge of the current commercial centre. Allowing seniors housing on the subject site is consistent with the actions of the LHRS to promote higher density housing in close proximity to centres.

Permitting up to 50% of the GFA in the subject site (which has an area of 2.079 ha and maximum heights up to 43m) is considered inconsistent with the action in the LHRS of not permitting commercial offices outside the commercial centre. The western part of the site adjoining the existing commercial zoning and fronting a main road may be an appropriate location for commercial offices.

**CHARLESTOWN MASTER PLAN (CMP)**

The CMP identifies the site as being in the town centre periphery, which is intended for 'a mix of uses creating a transition between the core and surrounding residential areas'. The plan promotes locating higher-density residential buildings in the southern parts of the town centre, including the subject site. The plan also mentions that a limited amount of retail and commercial floor space may be provided on the lower levels of buildings, along the highway and Dudley Road. As drafted the proposed amendment would allow for 50% of the GFA to be developed thus representing a large scale proposal.

**STATE ENVIRONMENTAL PLANNING POLICIES****\*SEPP 19 - Bushland in Urban Areas**

Council has identified SEPP 19 as being applicable as remnant bushland covers part of the site. This SEPP is not applicable as the site is not zoned for public open space, however consideration of bushland as part of the Concept Plan is supported.

**\*SEPP 55 - Remediation of Land**

A Site Contamination Assessment was undertaken in 2004, and recent review by Council has indicated that further soil sampling for arsenic is required. Council should prepare an updated preliminary Contamination Assessment which considers if the site can be remediated as required by the SEPP.

**SECTION 117 DIRECTIONS****\*1.1 - Business and Industrial Zones**

Allowing commercial development over 50% of the GFA for the entire site is not consistent with objectives of this direction in relation to encouraging employment growth in suitable locations. However, the proposal's consistency with this direction cannot be adequately determined as the location and size of the proposed commercial offices has not been identified. It is considered that completion of a preliminary concept plan will help in determining consistency with this direction.

**\*1.3 - Mining, Petroleum Production and Extractive Industries**

The proposal identifies this direction as being applicable. However, the proposal is considered consistent with this direction as it does not seek to prohibit resource extraction, or permit a land use that is likely to restrict the development of State or regionally significant resources anymore than is already restricted by the current zone. The site is also not identified in an 'Identified Resource Area' or 'Potential Resources Area' by Trade and Investment, and as such does not require referral.

**\*4.2 - Mine Subsidence and Unstable Land**

The subject site is within a mine subsidence district, and as such consultation with the Mine Subsidence Board is required under the direction.

**\*4.4 Planning for Bushfire Protection**

This direction applies as the proposal will affect land mapped as bushfire prone land. Consultation with the Commissioner of the NSW Rural Fire Service following receipt of a

**gateway determination prior to undertaking community consultation is required.**

## \*5.1 Implementation of Regional Strategies

The proposal is not consistent with the LHRS in regards to not permitting retail and commercial offices outside commercial centres other than where consistent with the 'Right Place for Businesses'. Similar to the assessment of Direction 1.1, it is considered that completion of a preliminary concept plan will help in determining consistency with this direction.

### \*6.3 Site Specific Provisions

The proposal is inconsistent with this direction as it proposes to allow an additional permitted use on the subject site and imposes development requirements in relation to maximum GFA in addition to those already contained in the principal environmental planning instrument being amended.

Environmental social  
economic impacts :

## ENVIRONMENTAL

**There are limited environmental impacts associated with the proposal. Council advises some remnant vegetation exists on the subject site, however retention of the vegetation will be considered in the concept plan.**

## SOCIAL AND ECONOMIC

The development of the site for seniors housing in close proximity to a major regional centre will have positive social and economic impacts. However, as discussed, seniors housing is already permitted on the site, and the planning proposal is required to allow associated offices and a café.

## Assessment Process

|                 |          |                                    |         |
|-----------------|----------|------------------------------------|---------|
| Proposal type : | Precinct | Community Consultation<br>Period : | 28 Days |
|-----------------|----------|------------------------------------|---------|

Timeframe to make LEP : **12 Month**      Delegation : **RPA**

|                         |                                    |
|-------------------------|------------------------------------|
| Public Authority        | <b>NSW Aboriginal Land Council</b> |
| Consultation - 56(2)(d) | <b>Hunter Water Corporation</b>    |
| :                       | <b>Mine Subsidence Board</b>       |
|                         | <b>NSW Rural Fire Service</b>      |

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

**Resubmission - s56(2)(b) : No**

If Yes, reasons :

**Identify any additional studies, if required. :**

**Other - provide details below**

If Other, provide reasons :

A Concept Plan is required under the Lake Macquarie Town Centres DCP before a DA is lodged with the site. Full completion of a Concept Plan as required by the DCP is not considered necessary at this stage, however a Preliminary Concept Plan showing proposed layout of uses, is required. Providing more detailed information as part of a Preliminary Concept Plan will demonstrate how seniors housing, café and offices uses will be integrated across the site. Exhibition of a Preliminary Concept Plan will also enable clearer understanding by the community of the proposed changes to the site.

## Tiral Street Charlestown - Commercial and Seniors Development

Identify any internal consultations, if required :

**No internal consultation required**

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

### Documents

| Document File Name                                                                    | DocumentType Name        | Is Public |
|---------------------------------------------------------------------------------------|--------------------------|-----------|
| Planning Proposal Lot 223 DP 551260 - 27 Tiral Street Charlesto.pdf                   | Proposal                 | Yes       |
| Covering letter (email) Tiral Street Charlestown from lake Macquarie City Council.pdf | Proposal Covering Letter | No        |

### Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.1 Business and Industrial Zones
- 3.4 Integrating Land Use and Transport
- 4.2 Mine Subsidence and Unstable Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 6.3 Site Specific Provisions

Additional Information : **The Planning Proposal should proceed subject to the following conditions:**

1. Prior to exhibition, Council is to prepare a preliminary concept plan which identifies the location of the proposed uses and facilities for the site. The preliminary concept plan should be included in the public exhibition material.
2. Council is to proceed with the planning proposal as a rezoning unless work on the preliminary concept plan demonstrates a need for inserting an additional permitted use. Council is to seek an amendment to the Gateway determination, outlining the outcomes of the concept plan work, if that is the case.
3. Council is to ensure that the planning proposal satisfies the requirements of State Environmental Planning Policy (SEPP) 55 – Remediation of Land. If required by Council an updated site contamination investigation report should be prepared to demonstrate that the site is suitable for rezoning to the proposed zone. This report is to be included as part of the public exhibition material.
4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:
  - (a) the planning proposal must be made publicly available for 28 days; and
  - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of A Guide to Preparing LEPs (Department of Planning 2009).
5. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
  - Hunter Water Corporation
  - Transport for NSW – Roads and Maritime Services
  - Rural Fire Service
  - Mine Subsidence Board
  - Awabakal Local Aboriginal Land Council

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that they will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.

6. Council is to consult with the NSW Rural Fire Services as per the requirements of S117 Direction 4.4 Planning for Bushfire Protection and amend the planning proposal, if necessary, to take into consideration any comments made prior to undertaking public exhibition.

7. Council is to consult with the Mine Subsidence Board as per the requirements of S117 Direction 4.2 – Mine Subsidence and Unstable Land and amend the planning proposal, if necessary, to take into consideration any comments made prior to undertaking public exhibition.

8. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

9. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Supporting Reasons :

Development of the site for seniors housing is supported as it achieves aims of the LHRS Strategy in relation to providing housing for seniors within a major regional centre. However, permitting commercial premises over the entire site and up to 50% of the GFA is not supported. It is considered that completion of preliminary concept plan for the site will be able to identify the area required for commercial uses, and thus allow appropriate zoning, or adequately demonstrate that an additional permitted use is justified.

Signature:



Printed Name:

K-O'FLAHERTY

Date:

8-2-13