

Kingscliff Tourist Resort

Casuarina Way, Kingscliff

Planning advice regarding length of stay of tourist accommodation

Submitted to
Department of Planning
On Behalf of Leighton Properties

June 2009 ■ 09146

Reproduction of this document or any part thereof is not permitted without prior written permission of JBA Urban Planning Consultants Pty Ltd.

JBA Urban Planning Consultants Pty Ltd operates under a Quality Management System. This report has been prepared and reviewed in accordance with that system. If the report is not signed below, it is a preliminary draft.

This report has been prepared by:

Stephanie Ballango

A handwritten signature in black ink, appearing to read 'Ballango', with a large loop at the top.

18 June 2009

This report has been reviewed by:

Andrew Duggan

A handwritten signature in black ink, appearing to be a stylized 'A' or 'D', with a horizontal line extending to the right.

18 June 2009

Contents

1.0	Introduction	1
2.0	Site Description and Background	2
3.0	Planning Considerations against the Imposition of a Prescriptive Condition Restricting the Length of Stay	3
3.1	Existing Site Restrictions	3
3.2	Commerciality – Operations and Management	3
3.3	Existing Precedent	4
3.4	Forthcoming Review of ‘Short Term Accommodation’	4
4.0	Conclusion	5

1.0 Introduction

Leighton Properties ('Leightons') has engaged JBA Urban Planning Consultants to provide planning advice regarding a Part 3A Project Application for the Kingscliff Resort at Casuarina Way, Kingscliff. In particular, Leighton Properties has requested JBA to set out the planning grounds in support of a consent authority not imposing a condition of approval restricting the length of stay of the proposed tourist units at the Kingscliff Resort.

In preparing the advice, JBA has reviewed the following documents:

- Kingscliff Resort Development Summary (Leighton Properties, 2009);
- Covenant via Restriction as to User restricting permanent residential accommodation (Department of Lands, 30 August 2007);
- Lot 490 Plan of Management Incorporating Lot 490 and Parts of Lots 489 and 500 (Department of Lands, May 2005); and
- Draft Environmental Assessment for Lot 490 and Part Lots 489 & 500 Casuarina Way South Kingscliff (Jim Glazebrook & Associates).

JBA has also examined previous approvals for tourist development along the NSW coast issued by the Minister for Planning, decisions of the court addressing tourist uses and tenure arrangements. JBA has also discussed the matter with several Departmental statutory and strategic planning officers.

This report summarises our findings and presents a case as to why conditions of approval restricting the length of stay should not be imposed on any future approval of the development.

2.0 Site Description and Background

The site commonly referred to as “Lot 490” is Crown land located on Casuarina Way, Kingscliff (Tweed LGA). The site in fact comprises three (3) lots legally described as Lot 490 DP 47021, part Lot 489 DP 47021 and part Lot 500 DP727470, and is owned and managed by the Department of Lands. The Tweed Local Environmental Plan 2000 zones the site 2(f) Tourism, 7(a) Environmental Protection, 7(f) Environmental Protection (Coastal Lands) and 6(a) Open Space.

In late 2004, the Minister for Lands established a Steering Committee comprising Tweed Shire Council, State Government agencies and local stakeholder representatives to prepare the Lot 490 Plan of Management in accordance with the requirements of the Crown Lands Act, 1989 to guide development of the site. The Lot 490 Plan of Management was adopted by the Minister for Lands in August 2005 following public consultation and consideration of community input. The Plan of Management’s vision for the site is:

A quality eco-tourism development in a natural setting combining a range of passive and active recreational opportunities and economic benefits to the local community while ensuring protection and enhancement of the site’s environmental values.

In February 2007, Leightons was awarded a development lease over 11.67 hectares of the 43.4 hectare “Lot 490” site to develop a eco-tourist resort consistent with the Plan of Management.

In July 2008, the Department of Planning’s Director General declared the Leightons’ proposal to be a major project to which Part 3A of the Environmental Planning and Assessment Act, 1979 applies, and subsequently issued environmental assessment requirements (DGRs). Whilst the DGRs do not specify the tenure on the length of stay for the proposed tourist uses, they do require Leightons, amongst other things, to:

Outline the long term management plan for the use of the facility as a tourist resort. Include detail on ownership (private and central management), proposed subdivision method (if proposed) and any covenants proposed to control use and occupation of the tourist buildings. Demonstrate that no part of the development will be used for permanent accommodation. Provide details of appropriate mechanisms, including restrictive covenants to ensure that the development is used for short stay tourist uses only.

The draft Environment Assessment prepared by Jim Glazebrook & Associates addresses the above requirement in detail, including the future operation and management of the development. The following discussion complements the Environmental Assessment and provides further planning justification for the Department not to recommend restrictive conditions of approval which limit the length of stay of tourist units.

3.0 Planning Considerations against the Imposition of a Prescriptive Condition Restricting the Length of Stay

3.1 Existing Site Restrictions

Significant and permanent legal restrictions have already been placed on the land as a result of the site being Crown land. The site is also subject to a Plan of Management.

The Covenant, Crown Lease and Plan of Management all represent legal restrictions which are readily enforceable. The Covenant clearly states that development proposals cannot be lodged that would permit any part of the site being permitted for permanent residential accommodation. Similarly, the Crown Lease entered into between Department of Lands and Leightons requires Leightons to lodge an application for development that is consistent with the Plan of Management. As outlined above, the Plan of Management clearly envisages tourist uses on the site.

The land on which the Kingscliff Resort is proposed is zoned 2(f) Tourism under the Tweed LEP. 'Tourist resorts' and 'tourist accommodation' are both permissible with consent in the zone, and are respectively defined as follows:

tourist resort is a largely self-contained holiday destination establishment which provides:

- (a) *tourist accommodation, and*
 - (b) *on-site facilities to satisfy all, or substantially all, of the recreational, entertainment, dining and other holiday needs of its resident tourists;*
- and

tourist accommodation is a building principally used for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule.

Notably, neither definition nominates a maximum length of stay. Accordingly it is our view that a condition providing for a maximum length of stay is also not required on any future approval in order for the development to operate within its approved use as a tourist resort or tourist accommodation.

3.2 Commerciality – Operations and Management

As outlined in Section 3 of the Environmental Assessment, the development is to be operated by a resort operator and managed in accordance with Maintenance Plans, which will be approved by the Department of Lands (as landowner). There are therefore clearly mechanisms to ensure the operation and management of the site continues to be benchmarked against the Covenant, Crown Lease and plan of Management.

In our review of similar consents issued by the Minister for Planning for tourist developments, conditions restricting the length of stay have been imposed to "protect the site's employment potential" or ensure the amenity of other residents is protected. In this case, however the absence of conditions restricting the length of stay will not comprise the site's employment potential or the number of jobs created by the development. In fact, offering flexibility in the length of stay is

likely to increase the take up of units (refer to Section 6.10 of the Environmental Assessment).

3.3 Existing Precedent

From an approval context, our investigations have concluded that the Department of Planning appears to be moving away from restricting the length of stay on tourist development along the entire NSW coast. We have identified the following approvals issued by the Minister for Planning for tourist developments since the introduction of SEPP 71 – Coastal Protection, which have not included any conditions restricting the length of stay:

- Peppers Tourist Resort, Casuarina Way, Kingscliff (346 rooms);
- River Sands Tourist Lodge, Evans Head (39 rooms);
- Evans Head Tourist Resort (24 units);
- Magenta Shores, The Entrance;
- Trendwest Resort/Pacific Bay Resort, Coffs Harbour; and
- Pacific Bay, Tourist Resort.

Whilst we are aware that the Department has previously imposed conditions of approval on tourist developments that restrict the length of stay to a maximum of 42 consecutive days and no more than 150 days over a 12 month term, these conditions generally appear on older consents and have typically only been imposed on the request of the local Council on a project by project basis.

We have reviewed the Department of Planning's Register of Determinations and we were only able to find only one recent development consent (ie: within the last 12 months) for tourist accommodation which included a condition related to managing tourist uses. The objective of such conditions have typically been imposed on tourist developments in the Tweed Shire to ensure the provision of short stay accommodation and prevent such accommodation being used as permanent residential accommodation. As outlined above, these objectives will clearly be met through the existing legal arrangements in place and the appointment of a reputable resort operator.

Notably, precedent exists elsewhere in Kingscliff of similar developments (size and scale) that permit a mix of short and long stay accommodation (eg: the SALT development), subject to there always being a greater proportion of short stay accommodation. The imposition of a condition restricting stay, would render the Kingscliff Resort development at odds with other tourist facilities in the immediate vicinity, potentially to the disadvantage of the commercial viability of the development.

3.4 Forthcoming Review of 'Short Term Accommodation'

Finally, verbal advice from the Department of Planning's LEP Implementation Team suggests lengths of stay for tourist accommodation will not be mandated by the new definition for '*short term accommodation*' proposed to be introduced under amendments to the definition within the Standard LEP template.

By not mandating a maximum length of stay (or being conditioned in such a manner), the Kingscliff Resort will be consistent with the Department's emerging policy on short term accommodation.

4.0 Conclusion

There are sound planning reasons why the Leightons' Kingscliff Resort proposal can operate as a tourist facility without the imposition of prescriptive conditions restricting the length of stay on the following grounds:

- Significant and permanent legal restrictions have already been placed on the land by way of the Covenant, Crown Lease and Plan of Management;
- The Department of Planning appears to be moving away from restricting the length of stay on tourist developments along the entire NSW coast;
- Providing flexibility will enhance the variety of tourist accommodation on offer and meet the demands and expectations of the growing tourist numbers on the Tweed coast;
- The lack of conditions restricting the length of stay will not comprise the site's employment potential or the number of jobs created by the development;
- The imposition of a condition restricting the length of stay would render the Kingscliff Resort development at odds with other tourist facilities in the immediate vicinity;
- Verbal advice from the Department of Planning suggests lengths of stay for tourist accommodation will not be mandated by the new definition for short term accommodation;

Having regard to the above, the Department of Planning can be satisfied that a framework exists to ensure no permanent occupation of the site and accordingly conditions restricting the length of stay are not warranted.