



Broadsound Shire Council

Guide to the *Broadsound Plan*

Guide 2

Caretakers' residences

Introduction

This guide is part of a series of guides prepared to assist with interpreting the Broadsound Shire planning scheme, the *Broadsound Plan* and the Integrated Development Assessment System (IDAS).

This guide discusses 'caretakers' residences' and the circumstances in which it is lawful to have caretakers' residence on premises used for business, industry or other non-residential purposes.

What does 'caretakers' residence' mean?

To answer this question it is necessary to look at what a use of premises involves. The *Integrated Planning Act 1997* Schedule 10 defines **use**—

Use, in relation to premises, includes any use incidental to and necessarily associated with the use of the premises.

Although some people think of a caretaker's residence as simply a flat above a shop or a house built on industrial land, the reality is a good deal more complex.

A caretakers' residence is lawful only if there is a genuine **need** for somebody—an employee or proprietor, with or without family—to reside on premises that are used for a non-residential purpose. Such a need may arise because, for example, vehicles come and go at all hours and security requires somebody to open and close gates and buildings to permit loading and unloading.

Other examples might be—

- An industry that uses boilers or furnaces that need to be tended when there is no normal shift working
- Industry with processes that required measuring temperatures or the like at odd hours of the day and night.

The need for a manager or caretaker to reside on-site is recognised in the definitions used in Council's planning scheme for such uses as motel and caravan park. The definitions for business and industry do not recognise the general need for persons to live on-site. To do so is rarely necessary.

It would be difficult to establish that a caretaker's residence was necessary simply to provide security, in most cases. Suitable fences, locks and alarms and a using a security service to monitor the premises would be a usual and appropriate means to deter intruders.

A caretaker's residence can be established or continued on premises only when such use is incidental to and necessarily associated with the use of the premises for another lawful use, such as business or industry.

A caretaker's residence cannot lawfully be let to or used by persons who are not directly involved with working for or managing the primary use (business; industry etc) at the same premises

Will I need to apply for planning permission for a material change of use of premises for caretaker's residence?

Generally speaking, no. If there is a genuine need for caretaker's residence, such use is considered to be *incidental to and necessarily associated with the use of the premises* for lawful use commercial, industrial, recreational or other non-residential use conducted on the premises.

If you have any doubt, please contact Broadsound Shire Council before making any decision.

It is also necessary to keep in mind that **Development** includes—

- carrying out building work;
- carrying out plumbing or drainage work.

Even though no planning scheme approval is necessary for a bona fide caretaker's residence, a development application must be made for approval for the above.

Some other problems that might arise with caretakers' residences

Anyone contemplating 'caretaker's residence' is encouraged to look also at issues outside planning and development matters. For example, a bank or other lender may not provide 'housing' loans. Finance provided is likely to be at 'business' rates and conditions.

It is also as well to keep in mind that, if a business is sold and the purchaser has no **need** for the caretaker's residence, it cannot be used simply as a house. A buyer may not want to pay a price that reflects the value of an unusable 'house'.

It may also be necessary to ensure that bedrooms and living areas are designed, constructed and maintained in such a way as to minimise noise levels from industry nearby. As well, the caretaker's residence may be affected

by intrusive noise or smells and there is no opportunity to seek to have nearby industry abate these things.

Workplace health and safety issues may also need to be considered. Effective separation of the workplace and the residence (and its grounds) is necessary.

How do I make a development application if I need to?

It would be unusual indeed for an application to be made for development approval for material change of use to permit premises to be used for caretaker's residence. The explanations above indicated that a bona fide caretaker's residence must necessarily be a *use incidental to and necessarily associated with the use of the premises for another lawful purpose*.

An application that was seeking approval for a house in an industrial area would very likely have to be refused as incompatible with the intent of Council's planning scheme.

What happens if I don't apply for development approval if it is needed?

It is an offence to carry out assessable development under the *Integrated Planning Act 1997*. See s 4.3.1 "A person must not start assessable development unless there is an effective development permit for the development. (Maximum penalty—1665 penalty units.)"

To use premises for a caretaker's residence that was not incidental to and necessarily associated with the use of the premises for other lawful use would be an offence under s 4.3.1.

Where can I get advice?

Assistance is available from any Council office or by phoning Council's Consulting Town Planner—(07) 4685 2332.