

STAFF REPORTS

**F4 PLANNING PROPOSAL AT 310-314 DIAMOND BEACH RD, DIAMOND BEACH
(13/2005R-2)**

Report Author: Sue Calvin **Environmental Officer**
Authorised: Richard Pamplin **Senior Leader Strategic Planning**

Applicant: Machiko Pty Ltd

PURPOSE: *The purpose of this report is to seek a resolution of Council to forward the Planning Proposal for 310-314 Diamond Beach Rd, Diamond Beach to the Minister for Planning for Gateway Determination (section 56 of the Environmental Planning and Assessment Act 1979) enabling community consultation*

1 BACKGROUND

1.1 Subject site

The subject site is located at 310-314 Diamond Beach Road, Diamond Beach (Lot 6 on DP244030 and Lot 9 on DP250425) and has an area of 8.4Ha. The site is bordered by Hallidays Point Public School to the south, Diamond Beach Holiday Park (caravan park) to the east and rural residential properties to the north (refer Figure 1).

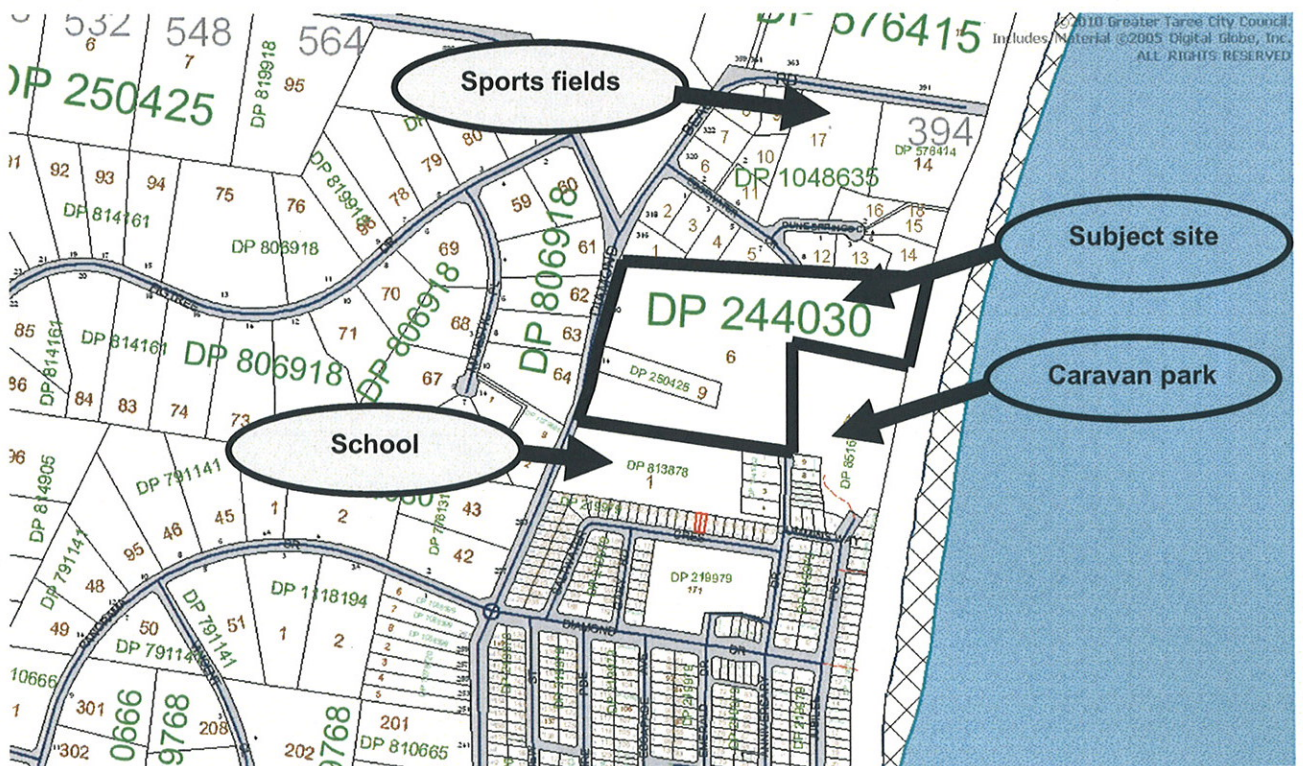


Figure 1: Location of 310 Diamond Beach Rd, Diamond Beach

The site is included in the Primary Production (RU1) zone and Environmental Conservation (E2) zone. As shown in Figure 2 the Environmental Conservation Zone (9 521m²) adjoins Diamond Beach to the east.

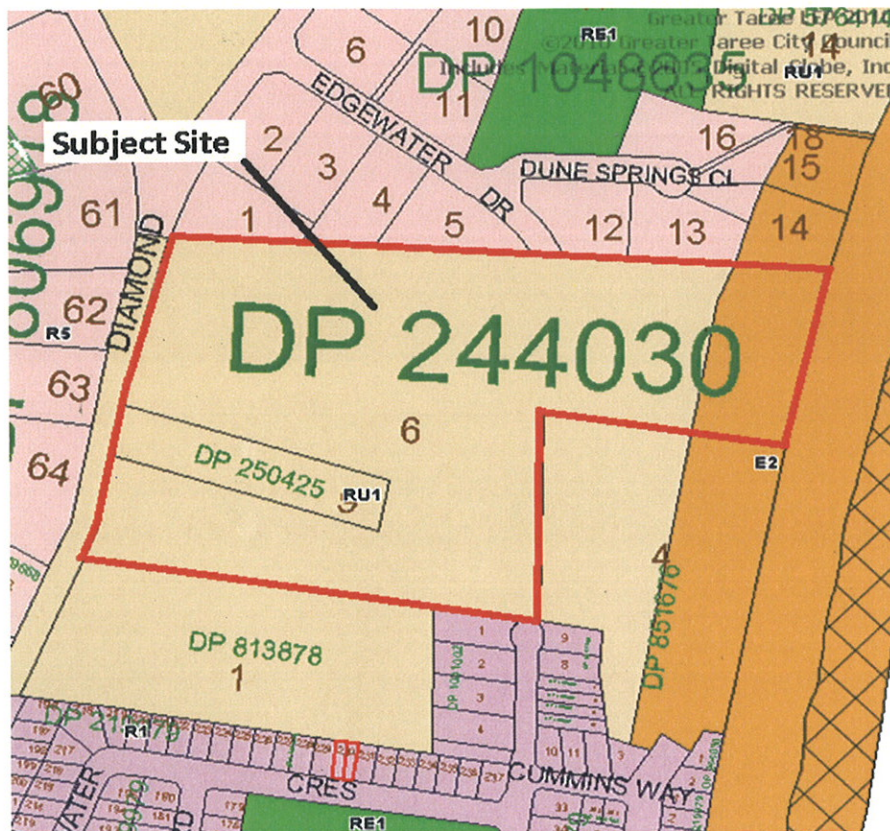


Figure 2: Current zoning of subject site under LEP 2010

The land has been subject to sand mining and agricultural activities, which resulted in much of the land being cleared in the past. Since these uses ceased regrowth of vegetation has occurred, providing a range of vegetation communities including swamp oak, mixed eucalypt, swamp mahogany and paperbark open forests, coastal scrub and grasslands. Endangered Ecological Community Swamp Sclerophyll Forest on Coastal Flood Plains has been found on the subject site.

1.2 The Proposal

On 9 May 2005, the applicant lodged a rezoning application to change the rural zoning of the land to residential. Under the new *Greater Taree Local Environmental Plan 2010* (LEP 2010), this involves changing the Primary Production Zone to General Residential (R1). The rezoning would enable the creation of around 89 residential lots. The proposed subdivision layout is shown in Figure 3.

At its Ordinary Meeting of 21 September 2005, Council resolved to prepare a draft Local Environmental Plan pursuant to Section 54 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to allow for urban and environmental protection uses. The Department of Planning (DoP) were advised of this decision and consultation with government agencies was undertaken (section 62 of the EP&A Act).

The results of the consultation with government agencies are found in section 4.4.2.1 of the Planning Proposal (in Attachment 1).

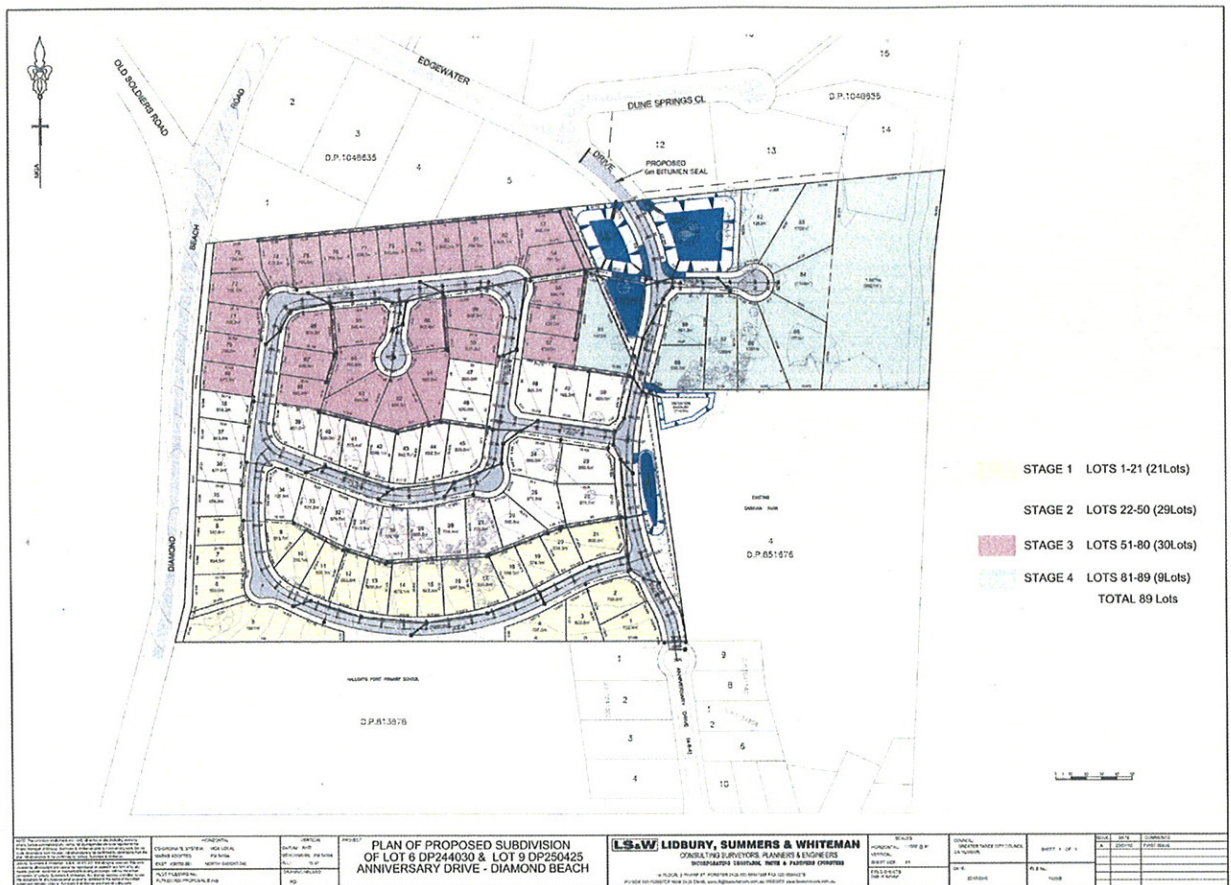


Figure 3: Proposed subdivision layout

Three key issues have resulted in the delay of the application, they being:

- **the strategic intent for the site.** The *Hallidays Point Development Strategy 2001* identified the site as “Phase 2 – Urban”. This Strategy required that land in Phase 2 “will be considered when less than 50% of the potential yield in the residential category from Phase 1 has been registered in the form of a Deposited Plan and sold to another entity (not the developer)”.

During 2005 this Strategy was reviewed, as the “Phase 1- Urban” land had been developed and it was proposed to upgrade the “Phase 2 - Urban” to “Phase 1” to ensure the demand for lots could meet the supply. The draft *Hallidays Point Conservation and Development Strategy Review* was completed in 2006 but has not been endorsed by the Department of Planning (DoP). DoP requested that the *Conservation and Development Strategy* (CADS) be finalised for the whole Council area to determine where and when future land for development should be released. CADS has not been progressed to completion and remains a draft.

In 2009, the *Mid North Coast Regional Strategy 2006-2031* identified the site as a “proposed urban area”. Environmental constraints over the site were identified and need to be considered in any future development. The application is consistent with this Strategy.

- **changing legislation.** During 2006 it was proposed that the zone of the site be changed through the drafting of the LEP 2010. In 2007, the DoP withdrew this site from consideration in the new LEP based on the need for "further information/ justification". The application then proceeded as a separate rezoning application.

In July 2009, the EPA Act was amended to introduce the Gateway Process for amending Local Environmental Plans in NSW. Given the application was lodged in 2005, this application is being transitioned into a Planning Proposal to be assessed under the Gateway Process (sect 55-60 of the EPA Act). The application has been forwarded to the DoP for a Gateway determination. It is envisaged that the DoP will have consideration for the extent of work undertaken by the applicant to resolve the issues over the site.

Council's determination of this report will be forwarded to the DoP to provide Council's position on the Planning Proposal. Based on the work undertaken to-date, it is envisaged that the Gateway determination will enable the Planning Proposal to proceed to community consultation (formerly known as public exhibition).

- **the environmental significance of the site.** The site contains 0.8Ha of Swamp Oak Floodplain Forest which represents an endangered ecological community (EEC) as listed under the *Threatened Species Conservation Act 1995*. The applicant has worked with Council, the Department of Environment Climate Change and Water (DECCW) and the Hunter-Central Rivers Catchment Management Authority (HCRCA) to identify a suitable biodiversity offset site that meets State's Biodiversity 13 Point Test. A 32ha site was identified at Darawank (Lot 47 on DP 753207), which met the State's requirements. The identification of a suitable site has involved negotiations over the last 2 years.

2 KEY ISSUES

There have been two key issues for this application that needed to be addressed:

- justification for changing the zone from Primary Production to General Residential
- the environmental values of the site.

These issues are discussed in detail below

3 DISCUSSION

3.1 Justification for the rezoning

Justification has been considered at three levels: strategic, district and local. As mentioned above (section 1.2) the application is consistent with the **strategic** intent for the area (both approved and draft strategies).

At a **district** level consideration was given to the land supply in the Redhead/Diamond Beach locality. Developments at Sea Scape (245 lots) and 210 Diamond Beach Road (150 lots) have the ability to provide 9-13 years supply to the district (based on an average sale of 30-40 lots/year). This Proposal has the potential to add an additional 89 lots to the market (around 3 years supply). As outlined in the Planning Proposal there are a number of factors considered at the district level being the different markets for each subdivision, the timeframe for release of stages and the timeframe for development approvals. It is considered that the rezoning of this site will ensure the future demand for lots will be met. The market will determine the timing for release of subdivision stages in the district.

At a **local** level, the site is considered "infill development" as it is located in the Diamond Beach village and is surrounded by existing residential uses. Future development of the site will provide the "missing link" in road connections providing the community with better access to the school, playing fields, shops and the beach. Future residents will provide support for local services and facilities such as the school and shops and will utilize existing infrastructure. Further details of the community net benefit analysis are contained in section 4.1.3 of the Planning proposal (Attachment 1).

Given the above, the Planning Proposal is justified particularly at a strategic and local level.

3.2. Environmental constraints

A key impact of the Proposal is to native vegetation and the potential habitat for native fauna, including threatened species and Endangered Ecological Communities. Negotiations have resulted in the securing of 32 ha of land at Darawank as a biodiversity offset for the removal of vegetation from this site. Securing the offset site in perpetuity for conservation purposes will provide a positive environmental outcome at Darawank, which is within 12 km of the subject site. The offset ratio has been calculated at approximately 4.5/1. That is, the provision of 32 ha for the removal of 7.1 ha of vegetation. This offset has been undertaken to the satisfaction of officers at the Department of Climate Change and Water, the Hunter-Central Rivers Catchment Management Authority and Council.

The details of the assessment and referrals are included in the Planning Proposal and attached technical studies. The offset will be provided through a Voluntary Planning Agreement (VPA) that will need to be approved prior to the amendment of the LEP 2010 being finalised (the "plan being made" formerly known as "gazettal").

Although the biodiversity offset is located within Great Lakes Council LGA, officers took the view that it is important to take a regional perspective when considering environmental issues. The proposed offset meets regional objectives and is identified in a corridor for potential acquisition by DECCW

The Planning Proposal also recommends that:

- vegetation removal not be undertaken through the breeding season (mid-September to April) of the Rufous Fantail to minimise impacts

- retention of the fig trees on the site
- retention of the swamp mahoganies on site, where possible.

3.3 Other issues

The Planning Proposal has considered the following issues:

- **stormwater management and runoff quality** – through the use of detention basins and stormwater quality improvement devices the applicant is to demonstrate that stormwater can be managed. More detailed examination will be required at the subdivision stage regarding the size, volume and detail of these basins to deliver no net impact from stormwater off-site. This may result in some minor changes to the layout of the lots in the vicinity of the stormwater basins.
- **land included in the Environmental Conservation zone** – given the environmental values of this land, it should remain in single ownership to minimise disturbance of the site. This land will be tied to one of the residential lots. Through the VPA it will be specified that a house will not be permitted in the land zoned Environmental Conservation. A Vegetation Management Plan will be required to show how the site can be remediated. No public beach access is proposed through this lot given its environmental quality and the proximity of existing access to the north and south.
- **traffic management** – a permeable street layout is provided, which connects surrounding residential areas. Widening of Diamond Beach Road to enable a pedestrian/cycle path will improve safety, particularly for children travelling to school.
- **bushfire protection** – analysis of the bushfire report has demonstrated general compliance with requirements. Further detailed assessment will be undertaken at the subdivision stage.
- **cultural heritage** – review by DECCW indicates that the report has adequately addressed the cultural heritage issues.
- **acid sulfate soils (ASS)** – studies demonstrated that there is the presence of ASS. At the subdivision stage more testing will be required along with remediation strategies.
- **contaminated land** – land was previously used for agriculture (use listed within Table 1 of the Contaminated Land Planning Guidelines) and the Study noted that there was previously a dwelling on the site which may potentially have resulted in contamination by pesticides, herbicides, hydrocarbon spills and asbestos within the vicinity of the dwelling location. The Study recommends surface soil sampling in these locations at the subdivision stage to determine the presence of contaminants and remediation (if any), to ensure that the land is suitable for residential development and occupation.

- **coastal hazards** – the potential hazards were considered having regard to Council's Draft Coastline Hazard Definition Study and indicated that:
 - there will be no potential coastal inundation
 - the projected 100 year design wave run-up level and mid-range sea level rise (5.1 metres AHD) will occur on the eastern side of the dune
 - the projected 100 year design wave run-up level and high range sea level rise (6.2 metres AHD) is likely to affect the eastern part of the land proposed to be retained in the Environmental Conservation zone.
- **visual assessment** – given the dune system and retention of vegetation on land zoned Environmental Conservation, it is expected that the future development will have limited impact on views from Diamond Beach. Views from Diamond Beach Road (west) towards the Pacific Ocean (east) will be substantially modified and will reflect the urban nature of a residential subdivision, consistent with the existing village character.

3.4 Summary

Relevant studies have been undertaken that demonstrate that the site is suitable to be developed for residential purposes. The next step for this proposal is for Council to seek endorsement from the DoP through the Gateway Process to proceed to undertake community consultation (formerly public exhibition) for the **Planning Proposal** (section 57 the EP&A Act).

The Proposal seeks to amend the Greater Taree Local Environmental Plan 2010 to change the Primary Production (RU1) zone to General Residential (R1). The following mapping amendments would be required to enable the development requirements of the site to be in accordance with the General Residential (R1) zone:

- Amendment of the LEP 2010 zoning map
- Amendment of the LEP 2010 Floor Space Ratio (FSR) Map
- Amendment of the LEP 2010 Height of Buildings Map
- Amendment of the LEP 2010 Minimum Lot Size Map
- Amendment of the LEP 2010 Urban Release Area Map.

A change will be made to enable the land included in the Environmental Conservation zone to be subdivided below the 40 ha minimum as the size of land included in this zone is approximately 9 241m².

An amendment to the **Development Control Plan** will be required to ensure recommendations for additional studies and the Vegetation Management Plan are undertaken for subsequent development applications.

A **Voluntary Planning Agreement** will be sought prior to the proposed amendment of the Greater Taree Local Environmental Plan 2010 (the "plan being made") to generally address:

- the transfer of the offset site to DECCW or the use of a Conservation Agreement under Section 69B of the NPW Act
- the restriction to remove vegetation from the site until the subdivision application is approved
- the dedication of a 5 metre road widening of Diamond Beach Road and the construction of a pedestrian/cycleway path
- land included in the Environmental Conservation zone will be included in one of the proposed residential lots. The minimum lot size will be 10 200m². Any house built on the lot is to be located on land included in the General Residential zone.

Both the Development Control Plan amendment and the Voluntary Planning Agreement will be reported to Council after the Gateway determination is made. Both of these documents will be available for community consultation with the Planning Proposal.

TIMEFRAME

Given the application was lodged in 2005, this application is being transitioned into a Planning Proposal to be assessed under the Gateway Process (section 55-60 of the EP&A Act). The application has been forwarded to the DoP for a Gateway determination. It is envisaged that the DoP will have consideration for the extent of work undertaken by the applicant to resolve the issues over the site.

Council's determination of this report will be forwarded to the DoP to provide Council's position on the Planning Proposal. Based on the work undertaken to-date, it is envisaged that the Gateway determination will enable the Planning Proposal to proceed to community consultation (formerly known as public exhibition).

CONSULTATION

Consultation with Council officers has been undertaken with regard to engineering (stormwater and traffic/transport management), environmental and bushfire assessment and park requirements.

Consultation with government agencies was undertaken (section 62 of the EP&A Act), the results of which are found in section 4.4.2.1 of the Planning Proposal (in Attachment 1).

External consultation has taken place between Council, DoP, DECCW and the Hunter-Central Rivers Catchment Management Authority during revision of the proposed Planning Proposal.

BUDGET IMPLICATIONS

All required studies and fees associated with the Planning Proposal have been, and will continue to be, incurred wholly by the applicant. The applicant has funded on a user-pays basis, additional staff time required to process this application.

There are future cost implications to Council in regard to incurring ownership and management responsibility for the proposed infrastructure (roads, detention basins) that are general requirements of any rezoning and subsequent subdivision.

STATUTORY OR LEGISLATIVE REQUIREMENTS

The transition of the rezoning application to a Planning Proposal is being considered under the Saving Provisions of Part 2 of the *Environmental Planning and Assessment Regulation 2000*. Given the rezoning had not progressed enough to be considered for gazettal by 31 December 2010, Council forwarded the Planning Proposal to the DoP for a Gateway determination.

If the DoP favorably determine that the application is now a Planning Proposal, it is likely that the application will progress to the community consultation stage.

ATTACHMENTS

- (i) [The Planning Proposal for 310-314 Diamond Beach Road, Diamond Beach](#)

Note: A copy of the appendices as referenced in the Planning Proposal will be made available in the Councillor's room.

Note: Appendix 5 – Cultural Heritage Assessment is confidential – Section 10A(2)(h) – information concerning the nature and location of a place of an item of Aboriginal significance

- (ii) [Draft mapping amendments to the Greater Taree Local Environmental Plan 2010](#)

RECOMMENDATION

- (i) That Council forward the Planning Proposal for 310-314 Diamond Beach Rd, Diamond Beach to the Minister for Planning for Gateway determination (sect 56 of the *Environmental Planning and Assessment Act 1979*).
- (ii) That Council resolve to undertake community consultation (formerly public exhibition) for the Planning Proposal for 310-314 Diamond Beach Road, Diamond Beach in accordance with the requirements of the Gateway determination.

**F4 - PLANNING PROPOSAL AT 310-314 DIAMOND BEACH RD, DIAMOND BEACH
(13/2005R-2)**

Mr Brian Lidbury addressed the meeting in respect of this item.

MOVED Cr West/Richardson (*as per recommendation*)

- (i) That Council forward the Planning Proposal for 310-314 Diamond Beach Rd, Diamond Beach to the Minister for Planning for Gateway determination (sect 56 of the *Environmental Planning and Assessment Act 1979*).
- (ii) That Council resolve to undertake community consultation (formerly public exhibition) for the Planning Proposal for 310-314 Diamond Beach Road, Diamond Beach in accordance with the requirements of the Gateway determination.

CARRIED

For: Bell, Tickle, Marks, Jennison, Keegan, Richardson, West, Loftus & Hogan.