

Planning Services

Plan Finalisation Report

Local Government Area: MidCoast

File Number: 15/02125

1. NAME OF DRAFT LEP

Greater Taree Local Environmental Plan 2010 Amendment No.13 (draft LEP).

2. SITE DESCRIPTION

The planning proposal applies to land at 363 Diamond Beach Road, Diamond Beach (the site).

3. PURPOSE OF PLAN

The draft LEP seeks to:

- rezone the site from RU1 Primary Production zone to SP3 Tourist and E2 Environmental Conservation zones;
- increase the maximum floor space ratio (FSR) from no FSR to 0.6:1
- limit minimum lot size for SP3 zoned area to 1 hectare
- increase the maximum height of buildings from no height control to 11.5 metres; and
- include a site-specific clause allowing for 30% permanent occupancy of current and future tourist facilities on site.

The site currently accommodates 37 tourist units and council recently approved an additional 28 tourist units. The Planning Proposal will permit an increased density of built form and increase the permanent occupancy rate, but will not allow subdivision or separate title for these units consistent with the application of the SP3 zone across the LGA.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Myall Lakes Electorate. Stephen Bromhead MP is the State Member for Myall Lakes.

David Gillespie MP is the Federal Member for Lyne.

To the regional planning team's knowledge, neither MP has made any written representations regarding the proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.
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NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway determination issued on 28 April 2015 (**Attachment C**) determined that the proposal should proceed subject to conditions.

The Gateway determination was altered on 29 February 2016 to extend the time for completion to 4 November 2016 due to meeting additional study requirements.

A second Gateway alteration was determined on 6 February 2017 to extend the time for completion to 4 November 2017 due to preparation of a Voluntary Planning Agreement to dedicate land for public access.

The proposal's current completion date is 4 November 2017. This report recommends that, by signing the report, the Director Regions alters the Gateway determination dated 28 April 2015 and extend the completion timeframe by an additional 5 months, thereby making it due by 4 April 2018.

6. PUBLIC CONSULTATION

In accordance with the Gateway determination, community consultation was undertaken by Council from 16 November 2016 to 14 December 2016. Council received 18 submissions received from community members.

The main issue raised in submissions was to maintain public coastal access from the site to Diamond Beach. Council entered into a Planning Agreement with the proponent to dedicate a 5-metre strip of land on the eastern boundary of the subject site to Council and to construct a footpath. The dedication is linked to Council preparing a strategy to provide continuous public access along this strip of coastline.

Remnant vegetation on the western side of the site was raised as an issue and will be protected by zoning that portion of the land E2 Environmental conservation zone. Ongoing protection of this vegetation will be managed through the Council's Noxious Weeds Urban Inspection Program with cooperation of the land owner.

There was concern over the proposed height limit of 11.5 metres. This height will allow up to 3 storey development subject to meeting Development Control Plan controls. Other SP3 Tourist Zoned land in the LGA has an 8.5 metres height imposed on it however this can be varied under clause 4.6. There are recent examples where Council has approved up to and beyond 11.5 metres on tourist developments on neighbouring sites. It is considered that in this context, the 11.5 metre building height could be accommodated with an appropriate assessment to ameliorate any potential adverse implications.

Submissions also raised matters in relation to road upgrades and legal ownership of the land. These matters are adequately dealt with in Council's report.

The Department is satisfied that there are no outstanding issues because of the submissions received and the matters raised in submissions have been adequately addressed.

7. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult Purfleet-Taree Local Aboriginal Council (LALC), Office of Environment and Heritage and NSW Rural Fire Services, in accordance with the Gateway determination.

NSW RFS did not have any objection to the proposal.

Office of Environment and Heritage & Purfleet-Taree Local Aboriginal Land Council

Biodiversity

OEH are satisfied the Coastal Heath Paperbark vegetation community will be adequately protected under the E2 Environmental Protection zone. As this species is a groundwater dependent ecosystem OEH sought to protect its hydrological needs by zoning the farm dam on site as E2 as well. OEH withdrew this requirement in its following correspondence (22 September 2016) based on the proponent's assertion that the dam was a perched system. OEH was satisfied not to zone the dam E2 zone but cautioned Council of the effect on the Coastal Heath Paperbark if the dam had leakages into the regional aquifer.

Aboriginal Cultural Heritage (ACH)

OEH had concerns about the methodology of the ACH Assessment Report. The report relied on predictive modelling based on access to water sources which does not allow for changes to hydrology overtime or the shallow water table. There were other inadequacies in the report in relation to management recommendations and consultation process.

The Gateway required Council to consult with Purfleet-Taree LALC which Council did but did not receive a reply. OEH stated (20 May 2016) that minimum consultation requirements were undertaken however there was no follow up correspondence. OEH's secondary correspondence dated 22 September 2016, stated that the ACH assessment had been updated but OEH had not been requested to review the new material. The Aboriginal heritage impact assessment was revised however this new material was not reviewed by OEH. OEH indicated that they had no further advice to provide on the Planning Proposal on 15 February 2018 (**Attachment F**). More detailed assessment of ACH is appropriately conducted through any future development assessment.

Flood Management

Although the land is not flood affected there are minor drainage lines passing through the site. Increasing the FSR has the potential to affect the regional aquifer and therefore OEH requests Council to employ water sensitive urban design (WSUD) throughout the site. WSUD techniques can be imposed on the development through the development application process.

There are no outstanding issues with Government agencies.

8. POST EXHIBITION CHANGES

A Planning Agreement was added to the Planning Proposal after exhibition as a result of submissions. The Planning Agreement provided by the applicant delivers;

- a 5-metre, dedicated strip of land to Council
- Funds for the construction of a concrete footpath

These deliverables are conditional upon a strategy be prepared by Council to secure a public coastal link along Diamond Beach.

It is recommended that the amendment be endorsed without requiring further exhibition as it does not change the intent of the planning proposal as exhibited.

9. ASSESSMENT

It is recommended that the amendment be published as it will;

- Formalise an existing tourist use through appropriate zoning;
- Align the development controls to the permissible uses in the zone;
- Allow up to 30% of the gross floor area of the tourist facilities to be used as permanent residential accommodation to incentivise the development; and
- Formalise public access to the coastal area through dedication of land

Coastal erosion and sea-level rise

Council provided additional information on 5 January 2018 clarifying the evidence base being relied upon to assess future coastal erosion and sea-level rise potential. The basis for the information is consistent with that used for the adjoining site Planning Proposal (PP_2017_MCOAS_007_00) and is a consistent approach used for the whole Diamond Beach area.

This Planning Proposal (PP_2015_GTARE_002_00) for 363 Diamond Beach Road was updated prior to exhibition to include the then current information in accordance with the Gateway condition. The CZMP 2015 was adopted by Council in September 2015. The proposal complies with the Council's 2100 coastal hazard line given that the SP3 zoned land is landward of the 2100 line. CZMP 2015 has since been superseded by the Manning Valley CZMP adopted by Council in July 2017 for which the SP3 zoned land remains landward of the 2100 coastal hazard line.

While the justification in the Planning Proposal did not include reference to the 2017 CZMP or DCP amendment, the E2 zone line has not altered.

Section 9.1 Directions

Direction 2.2 Coastal Protection – the Planning proposal is consistent with the *Coastal Design Guidelines for NSW*.

Evidence was also required to demonstrate that the designed controls proposed over the land will comply with the *Guidelines* cited in Direction 2.2 Coastal Protection. Council provided additional information on 5 January 2018 demonstrating compliance with the *Guidelines* specifically;

- Defining the Footprint and Boundary
 - Maintaining a Compact Settlement Footprint
 - Protecting natural edges
 - Appropriate buildings for a coastal context

This information was not included in the Planning Proposal at exhibition, however a blanket response to the *Guidelines* was included. This is considered sufficiently consistent with the intent of the Gateway determination condition. It is considered that no further exhibition of the Planning Proposal is required as the proposed development of the site complies with these Guidelines and there are no outstanding submissions in relation to these matters.

Visual impact assessment

A Visual Impact Assessment was prepared by Terras Landscape Architects. The report concludes through visual analysis from various viewpoints and distances around the site that there will be low impact from the proposed development. In particular, due to the sand dune topography, the Seashells Resort is not visible from Diamond Beach and will continue, post development, to be obscured by the dunes. Any amelioration required to screen visual impact on the side boundary to immediate, adjoining properties can be screened through landscaping required by the development application process.

State Environmental Planning Policies

The draft LEP is consistent with relevant SEPPs and deemed SEPPs.

State, regional and district plans

The Planning Proposal is consistent with the *Hunter Regional Plan 2036*. In particular it is consistent with;

Direction 6: Grow the economy of Midcoast and Port Stephens

Action 6.3 Enable economic diversity and new tourism opportunities that focus on reducing the impacts of the seasonal nature of tourism and its effect on local economies.

- The Planning Proposal is consistent with Action 6.3 as it allows for a tourist use that will enhance the local economy and propose permanent occupation to ameliorate the effects of seasonal tourism.

Direction 10: Protect and enhance agricultural productivity

Action 10.1 Protect locations that can accommodate agricultural enterprises from incompatible development, and facilitate the supply chain, including infrastructure, distribution areas, processing facilities and research and development in local plans.

Action 10.4 Encourage niche commercial, tourist and recreation activities that complement and promote a stronger agricultural sector, and build the sector's capacity to adapt to changing circumstances.

- The Planning Proposal is consistent with actions 10.1 and 10.4 as the land is not identified as prime agricultural land and is part of a strip of tourist operations along the coastal hinterland of Diamond Beach.
- The Planning Proposal will formalise an existing tourist operation.

10. MAPPING

The maps provided are adequate to facilitate the proposed changes to the Planning Proposal. Maps tiles to be changed in Greater Taree Local Environmental Plan 2010 are as follows and have been checked by the Department's ePlanning Team and sent to Parliamentary Counsel.

Land Zoning Map	3350_COM_LZN_015B_040_20171122
Height of Buildings Map	3350_COM_HOB_015B_040_20171122
Lot Size Map	3350_COM_LSZ_015B_040_20171122

Floor Space Ratio Map	3350_COM_FSR_015B_040_20171122
Additional Uses Map	3350_COM_APU_015B_040_20171122

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument (**Attachment D**). Council confirmed on 27 March 2018 that it was happy with the draft and that the Plan should be made (**Attachment E**).

12. PARLIAMENTARY COUNSEL OPINION

On 27 March 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided (**Attachment PC**).

13. RECOMMENDATION

As delegate of the Secretary:

1. **determine** that the draft LEP's inconsistency with Section 9.1 Direction 2.1 Environmental Protection Zone is justified in accordance with the terms of the Direction.

As delegate of the Minister:

1. **determine** in accordance with section 56(7) of the *Environmental Planning and Assessment Act 1979* (the Act) to alter the Gateway determination dated 28 April 2015, as amended, to extend the time of completion to 4 April 2018;
2. **note** the Planning Proposal (**Attachment A**), the Gateway determination (**Attachment B**) and the Gateway alteration (**Attachment C**);
3. **note** Parliamentary Counsel's Opinion that the draft LEP can legally be made and no changes have been made to the draft LEP since obtaining this Opinion (**Attachment PC**);
4. **note** the LEP maps (**Attachment Maps**), which have been approved by the Department's ePlanning Team and provided to Parliamentary Counsel;
5. **make** the draft LEP under section 3.36 of the Act, by signing the instrument (**Attachment LEP**) and supporting Map Cover Sheet (**Attachment MCS**) respectively; and
6. **sign** the letter to Mid Coast Council (**Attachment Council**) advising of this decision.



3/4/2018

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Planning Services

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Attachments

Attachment	Title
A	Planning proposal
B	Gateway determination
C	Gateway alteration
D	Section 3.36(1) consultation with Council
E	Council's comments on draft LEP
F	OEH comments on Aboriginal Cultural Heritage
PC	Parliamentary Counsel's Opinion
LEP	Draft LEP
MCS	Map Cover Sheet
Council	Letter to council advising of the decision