

Rezoning of Lot 18 DP 576415, 363 Diamond Head Road 'Seashells Resort'

Proposal Title : **Rezoning of Lot 18 DP 576415, 363 Diamond Head Road 'Seashells Resort'**

Proposal Summary : **Rezoning 363 Diamond Beach Road 'Seashells Resort' from RU1-Primary Production to SP3-Tourist, E2 Environmental Conservation and including a local provision permitting 30% of Gross Floor Area of tourist units to be used for permanent residential.**

PP Number : **PP_2015_GTARE_002_00** Dop File No : **15/02125**

Proposal Details

Date Planning Proposal Received : **15-Apr-2015** LGA covered : **Greater Taree**

Region : **Hunter** RPA : **Greater Taree City Council**

State Electorate : **MYALL LAKES** Section of the Act : **55 - Planning Proposal**

LEP Type : **Spot Rezoning**

Location Details

Street : **363 Diamond Beach Road**

Suburb : **Diamond Beach** City : **Taree** Postcode :

Land Parcel : **Lot 18 DP 576415**

DoP Planning Officer Contact Details

Contact Name : **Ken Phelan**

Contact Number : **0249042705**

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RPA Contact Details

Contact Name : **Michael Griffith**

Contact Number : **0259252250**

Contact Email : **michael.griffith@gtcc.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name :

Contact Number :

Contact Email :

Land Release Data

Growth Centre : **N/A** Release Area Name :

Regional / Sub Regional Strategy : **Mid North Coast Regional Strategy** Consistent with Strategy : **Yes**

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MDP Number :		Date of Release :	
Area of Release (Ha) :	5.43	Type of Release (eg Residential / Employment land) :	Both
No. of Lots :	0	No. of Dwellings (where relevant) :	60
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 proposal was initially submitted by Council on 22 January 2015. Additional information was requested and the final information provided 15 April 2015. It is this date that the proposal was considered adequate.**

External Supporting Notes :

Adequacy Assessment**Statement of the objectives - s55(2)(a)**

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

Comment : **The Planning Proposal indicates the objective of the planning proposal as being amendments to the Greater Taree LEP 2010.**

However the objectives are more clearly identified in part 1.1. of the Planning Proposal and include;

- * To recognise the current and proposed tourist use of the site and the environmental sensitivity of the remainder through a suitable zoning.**
- * To include permanent residential accommodation in order to ensure the viability, safety and security of the tourist facilities in the off season and aid in the retention of local employment.**

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

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

Comment : **• Rezone the east-west section of the site from RU1 Primary Production to SP3 Tourist (2.66ha)**

- Rezone the Coastal Heath Paperbark community to E2 Environmental Protection**
- Allow 30% of accommodation units to be permanent residential (special clause)**
- Introduce a 12m height limit**
- Change the Floor Space Ratio Map to permit 0.6:1 over the whole site**
- Change the Minimum Lot Size Map to permit 1ha land subdivision over the whole site (5.431 ha.).**

It is difficult to determine from the proposal the extent of new development that will be

permitted on the site compared to that established and/or that approved. The proposed floorspace ratio of 0.6:1 would permit up to 16,000m² of floorspace including 4,800m² of permanent residential floorspace. This, in combination with the proposed site density controls, gives a potential yield of 198 units of which 59 units could be permanent residential units. This would represent a substantial change to the current development of 65 units. A condition is recommended to make this aspect of the proposal clearer prior to exhibition.

The proposed SP3 Tourist zoning introduces a much wider range of activities permissible on the site and the proposal should be amended to more clearly highlight this. In particular newly permissible uses include; Business premises; Caravan parks; Entertainment facilities; Food and drink premises; Function centres; Information and education facilities; Neighbourhood shops; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; And all types of tourist and visitor accommodation; Water recreation structures.

The rationale for introducing a 12m height limit requires further justification. Council have indicated that it reflects the current and approved height of other tourism sites who's height limit is 8.5m but has varied 'through the development assessment process'.

In addition the rationale for extending the 1 hectare minimum lot size over the area of Coastal Heath Paperbark proposed as E2 zone, which differs from the 40 hectare minimum lot size that otherwise applies to this zone, also requires further justification.

Justification - s55 (2)(c)

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

b) S.117 directions identified by RPA :

1.2 Rural Zones

* May need the Director General's agreement

1.5 Rural Lands

2.1 Environment Protection Zones

2.2 Coastal Protection

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **No**

d) Which SEPPs have the RPA identified?

SEPP No 71—Coastal Protection

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

None apply

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

The introduction of permanent residential accommodation into the SP3 Tourist zone is a departure from the Standard Instrument Local Environmental Plan, however such a provision has previously been supported in Taree, including at the adjacent site.

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment :

Various maps have been provided within the Planning Proposal but they do not reflect the mapping required to amend the LEP and do not clearly identify the mapping amendments to be made. A condition of the Gateway determination is that these maps are prepared and included within the PP prior to exhibition.

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Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council resolved to exhibit as per the Gateway condition**

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 : **A number of amendments are required to the proposal to ensure that it clearly describes the changes proposed and their justification, before it is considered adequate for consultation. These amendments are recommended as conditions to the gateway determination.**

Proposal Assessment

Principal LEP:

Due Date :

Comments in
relation to Principal
LEP :

The Greater Taree Local Environmental Plan was notified in 2010

Assessment Criteria

Need for planning
proposal :

Council indicates that no new development or re-development is proposed for the site, however the motel use is currently prohibited within the current RU1 Primary Production zone and no permanent residential accommodation is permitted.

The proposal seeks to intensify the commercial use and viability of the resort by rezoning and by introducing a 30% permanent residential element into the resort's accommodation units. Council supports the proposal on the basis that it extends the economic life of a resort.

The Ramada (previously Australis) Resort to the north has an SP3 Tourist zoning and provision for permanent residential development which Council considers to support the rezoning of this resort to SP3 also.

Consistency with strategic planning framework :

-The Mid North Coast Regional Strategy-

The strategy identifies the site for urban development. It also identifies it as being a highly constrained site, mainly due to the presence of Coastal Heath Paperbark community on its western half including its associated natural drainage lines and water bodies.

-Hallidays Point Conservation and Development Strategy Review 2006-

Council's Hallidays Point Development Strategy of 2000, which has not been endorsed by the Department of Planning and Environment, was reviewed and renamed in 2006 and identifies the land for residential development (Hallidays Point Conservation and Development Strategy Review 2006. This was Adopted by Council 17 May 2006, Document Version 1.0 Date 18 May 2006). It also identifies a village centre location near the site where local routes converge at a link to the beach. Its mapping does not acknowledge the presence of the Coastal Heath Paperbark community. The proposal contains an earlier version of the Hallidays Point strategy ie. the 2000 version rather than the 2006 review.

-State Environmental Planning Policies (SEPP's)-

SEPP Rural Lands

The current RU1 Zoning emphasises food, primary production and the need to prevent the fragmentation of productive land however the site is not currently used for agricultural production. The proposed zoning amendment is considered consistent with the rural planning principles. Further information regarding lot size and height is required to determine consistency of the whole proposal with this SEPP.

SEPP No 71—Coastal Protection-

At this stage the proposal does not adequately address the following aspects of the SEPP:

- The ongoing protection of the Coastal Heath Paperbark plant community and other vegetation situated within the holding.
- Potential Aboriginal cultural heritage significance in and around the above plant community.
- Public access to the coastal foreshore in line with the requirement to consider providing/enhancing public access.
- The relationship between existing commercial accommodation on the holding and the proposed introduction of permanent residences.
- The impact of increased traffic generation along the one narrow access road on public coastal foreshore access opportunities.
- The impact on visual amenity and the scenic qualities of the coast, in particular considering the 12m height limit.
- A strategic approach to coastal management at the locality.

Matters such as access for various transport modes, long-term management of the Coastal Heath Paperbark community and the maintenance and enhancement of public access to the coastal foreshore under this SEPP will need to be managed by Council at the development application stage to ensure consistency.

Re-development or subdivision of this site could warrant the preparation of a master plan under this SEPP to address the remaining issues and would be considered at the time that any redevelopment was proposed.

To the extent that these matters are relevant to the amendment of the planning controls (primarily zone, lot size, height and FSR), several conditions requiring further investigation are recommended as part of the Gateway determination to ensure consistency with this SEPP.

Ministerial Section 117 Directions

The proposal identifies the following Directions as being relevant:

1.2 Rural Zones
1.5 Rural Lands
2.1 Environment Protection Zones
2.2 Coastal Protection
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements

-1.2 Rural Zones-

This Direction requires that any rezoning from rural zones be based on a study that addresses the objectives of the rural zone. The proposal is inconsistent with this Direction, however the land is not suitable for agricultural use and either developed or the subject of development consent. Therefore any inconsistency is considered minor.

-1.5 Rural Lands-

This Direction applies in Taree Local Government Area and seeks to protect agricultural land and ensure its orderly development for rural purposes.

-2.1 Environment Protection Zones-

While the proposed zoning is somewhat protective of the area of Coastal Heath Paperbark community, the development controls (e.g MLS) are not protective. The proposal does not contain management measures to protect the sensitive area from the range of likely impacts from being so close to urban development.

It is recommended that the proposal be referred to Office of Environment & Heritage for advice on minimum lot size and appropriate management measures for this plant community and associated habitat and drainage.

It is noted that the additional accommodation and permanent residential use would increase exposure to people to bushfire. This will trigger demand for vegetation clearing under the Bush Fire Act 10/50 Resident Clearing Entitlement. The proximity of the proposed SP3 Tourist zone boundary to the Coastal Heath Paperbark woodland has the potential to effectively clear the whole community under the 10/50 clearing entitlement without any planning control by either the Department or the Council. The proposal's mapping should show the extent of potential clearing that this proposal will enable prior to public exhibition such that the potential environmental impact is made transparent.

-2.2 Coastal Protection-

The proposal does not present evidence that its controls will be consistent with the sustainability and design guidelines cited in this policy.

The proposal is inconsistent with this Direction.

Council should be requested to update the proposal to indicate how the relevant policies will be considered in any future redevelopment of the site in order to demonstrate the proposal's consistency with this Direction.

-4.4 Planning for Bushfire Protection-

The land subject of this planning proposal is mapped as being bushfire prone land on Council's bushfire prone land mapping.

For consistency with this Direction the proposal should be referred to the NSW Bush Fire Service.

Other Applicable S.117 Directions

-1.3 Mining, Petroleum Production and Extractive Industries-

This Direction requires consideration as the proposed SP3 Tourist and E2 Environmental Conservation zone prohibits extractive industries.

The area of land so constrained is relatively small and largely developed compared with mineral lease areas however and so the resultant inconsistency is considered minor.

It is recommended that the Delegate accept the proposal as being of a minor nature in the context of this Direction.

Environmental social
economic impacts :

-3.4 Integrating Land Use and Transport-

Clause (3) triggers this Direction in respect of a new Tourist zone and requires that planning proposals address its objectives as well as demonstrate consistency with the aims, objectives and principles of:

- (a) 'Improving Transport Choice- Guidelines for planning and development' and
- (b) 'The Right Place for Business and Services- Planning Policy (DUAP 2001)'

Council will need to ensure that the proposal is compliant with the provisions of this Direction at the Development Application stage.

-Environmental Impacts-

Environmental impacts relate to the proposed SP3 footprint, the increased intensity of use (floor space ratio) and the proportion of units proposed for permanent residential occupation.

The proposed zone introduces a much wider range of urban permissible uses (see 'Comparable Permissible Uses' in uploaded documents) in association with greater development intensities. If many of these uses were proposed and approved they have the potential to clash with and erode the natural scenic character of this section of coastline.

The proposal would permit residential accommodation along the immediate eastern edge of the Coastal Paperbark plant community. This will trigger the Bush Fire Act 10/50 clearing entitlement which could result in additional clearing of the plant community. Any widening of the Seashells Road access, could involve further loss of the Coastal Paperbark plant community which closely flanks the Seashells access road. Further assessment of the impact of this is required.

The plan at Appendix D shows a golf course in both the E2 Environmental Conservation zone and SP3 zone. This is not a permissible use in the E2 zone although it will become a permitted use within the SP3 zone. Council has advised that this does not form part of the proposal and should be deleted prior to exhibition. Any impact would need to be considered through the development assessment process.

Broad-scale modelling of coastal erosion has the seaward resort units at risk of physical damage in the period 2050-2100 (Worley Parsons, 2010). Council's more localised erosion study shows little erosion occurring along this section of coastline.

The movement of water through the site, the dam in the western portion and the Coastal Paperbark community should be investigated, documented and assessed in relation to possible impacts from the construction and operational phases of any future development.

-Social Impacts-

The proposal seeks to intensify the commercial use and viability of the resort by rezoning and by introducing a 30% permanent residential element into the resort's accommodation units. Council supports the proposal on the basis that it extends the economic life of the resort.

There is potential for land use conflict given that the 30% of people who are residents will likely perceive the site as a residential area and the neighbourhood for their homes whereas 70% of people will be staying as part of a holiday or private function. Appropriate management is seen by the proponent as the means to resolve the potential land use conflicts.

At 12m high and in the absence of building setbacks from roads used by the public, there is no analysis of visual impacts, overshadowing or loss of views from a public place.

The proposal would generate both visitor and commuter/ resident traffic along the single narrow access road. No specific provision is made for the access/ egress by pedestrians or cyclists.

-Economic Impacts-

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In the short term the enhanced site value from increased development potential may enable some of the multiple owners to divest themselves of their stake in the property.

Assessment Process

Proposal type : **Minor** Community Consultation Period : **14 Days**

Timeframe to make LEP : **12 months** Delegation :

Public Authority **NSW Aboriginal Land Council**
Consultation - 56(2) **Office of Environment and Heritage**
(d) : **NSW Rural Fire Service**

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. :

Flora
Fauna
Heritage
Bushfire

If Other, provide reasons :

-Flora and Fauna Study-

To establish the ecological value of the Coastal Paperbark community including the drainage patterns on which it relies, and appropriate minimum lot size. To ensure the zone boundary accommodates buffers necessary to protect the Coastal Paperbark community against clearing including clearing under the 10/50 Residential Clearing Entitlement.

-Bushfire Study-

To reconcile the conflicting needs of bush fire safety for residents and visitors with the need to conserve the Coastal Heath Paperbark community.

-Aboriginal Heritage Study-

Consultative study of the Aboriginal heritage potential of the site including adjoining public foreshore land and Coastal Heath Paperbark community.

-Visual Amenity - Further information is required to demonstrate that the proposed 12 m height limit is appropriate for the site. This may include presenting and exhibiting scale-graphics demonstrating the realistic impacts of 12m high buildings on views from surrounding land, development and public areas. This should demonstrate protection of the natural scenic qualities of the surrounding area

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

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Document File Name	DocumentType Name	Is Public
Planning Proposal V4 Lot 18 DP 576415 363 Diamond Beach Road Diamond Beach 30 October 2014.pdf	Proposal	Yes
GTCC Report - Planning Proposalfor Lot Council Report_18 DP 576415, 363 Diamond Beach Road.pdf	Proposal Covering Letter	Yes
Hallidays Point Development Strategy 2000- Map.docx	Map	Yes
Comparative Permissible Uses.docx	Study	Yes

Planning Team Recommendation

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

- S.117 directions:
- 1.2 Rural Zones
 - 1.5 Rural Lands
 - 2.1 Environment Protection Zones
 - 2.2 Coastal Protection
 - 4.4 Planning for Bushfire Protection
 - 5.1 Implementation of Regional Strategies
 - 6.1 Approval and Referral Requirements

- Additional Information :
- The proposal be granted Gateway approval subject to the following:
 - The Delegate accepts the minor nature of the proposal in relation to inconsistencies with:
 - Section 117 Direction 1.3- Mining, Petroleum Production and Extractive Industries
 - Section 117 Direction 1.5- Rural Lands

1.Consultation be required with the following public authorities under section 56(2)(d) of the EP&A Act and/or to comply with the requirements of relevant s117 Directions:

- Office of Environment and Heritage regarding the zone boundaries for environmental protection lands and minimum lot size.
- Office of Environment and Heritage regarding the assessment of Aboriginal Heritage.
- Rural Fire Service of NSW regarding s117 direction 4.4 Planning for Bushfire Protection.
- The Taree-Purfleet Local Aboriginal Land Council

2) The planning proposal be amended prior to exhibition to include:

- a) A clear Floor Space Ratio (FSR) Map showing the application of the 0.6:1 FSR over the proposed SP3 zone.
- b) A clear Minimum Lot Size (MLS) Map showing the application of the 1 hectare MLS over the proposed SP3 zone and a town planning justification for the 1 hectare minimum lot size.
- c) Clarification of the evidence-base being relied upon to assess future coastal erosion and sea-level rise potential across the land
- d) Evidence that the design controls proposed over the land will comply with the coastal guidelines cited in Section 117 Direction 2.2- Coastal Protection
- e) More clearly state the objectives of the proposal and potential development that will result from the amendment to the planning controls.

3) The planning proposal be amended prior to exhibition to remove:

- The golf course shown in the proposed E2 zone

4) The following studies/ investigations are to be undertaken prior to exhibition:

- a) An assessment of the ecological values of the site, particularly the Coastal Heath Paperbark community including its hydrological needs and habitat values and justification for the 1 hectare minimum lot size.
- b) Assessment of the Aboriginal cultural heritage significance of the holding.
- c) An assessment of the visual impacts of the prospective building envelopes on the beach, surrounding properties and public areas having regard to the 12m building height proposed.

5) The time-frame for completing the LEP is to be 12 months from the week following

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Gateway Determination. A 12 month time-frame has been provided due to the need for Council to undertake the identified studies / investigations, consultations and proposal amendments.

Supporting Reasons : Submitted documentation is, in parts, confusing and potentially misleading and so needs revision. The use of specific development descriptions and plans does not reflect the actual development potential of the site under the planning controls being proposed as they tend to under-represent the pattern and intensity of development that would be possible. For transparency the planning proposal needs to be revised in these areas.

Having regard to the required studies and consultations as well as amendments to the planning proposal, a period of 12 months has been allowed, Council has not been issued delegations.

Signature:



Printed Name:

K O'Flaherty

Date:

23/4/15