

14.2. PLANNING PROPOSAL TO REZONE NORTH DIAMOND BEACH FROM SP3 TOURIST TO R1 GENERAL AND R3 MEDIUM DENSITY RESIDENTIAL

Report Author	Louise Morris - Land Use Planner
Date of Meeting	29 June 2022
Authorising Director	Paul De Szell - Director Liveable Communities

SUMMARY OF REPORT

The purpose of this report is to seek a formal resolution of Council to request a Gateway Determination from the NSW Department of Planning and Environment (DPE) to support the processing of a Planning Proposal for North Diamond Beach to: rezone the precinct from Tourist (SP3) to a mixture of General Residential (R1) and Medium Density Residential (R3).

The intended outcome of the Planning Proposal is to permit permanent occupancy of existing approved development across the precinct and to encourage medium density residential development on undeveloped sites in the southern half of the precinct.

RECOMMENDATION

1. That a Gateway Determination on the attached Planning Proposal for North Diamond Beach (Attachment 1) be sought from the NSW Department of Planning and Environment pursuant to Section 3.34 of the Environmental Planning and Assessment Act 1979.
2. That the NSW Department of Planning and Environment be advised that Council seeks to be the local plan making authority to make the draft Greater Taree Local Environmental Plan 2010 amendment associated with the Planning Proposal.
3. That agency consultation be undertaken.
4. That the Planning Proposal be updated to incorporate the outcomes of any Gateway Determination conditions and agency consultation.
5. That the Planning Proposal be exhibited in accordance with the Gateway Determination.
6. That in the event that no objections are received during the exhibition of the Planning Proposal, that the associated Local Environmental Plan amendment be referred to the NSW Department of Planning and Environment to be drafted and made without referral back to Council.

FINANCIAL / RESOURCE IMPLICATIONS

An application fee was paid for the assessment of the planning proposal in accordance with Council's fees and charges. It is not anticipated that additional studies will be required as these were previously undertaken when rezonings occurred from rural to tourist, however, any requirements for further investigations following the Gateway Determination will be funded by the applicant, in accordance with Council policy.

LEGAL IMPLICATIONS

The Planning Proposal process has been undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and the associated *Environmental Planning and Assessment Regulation 2021*.

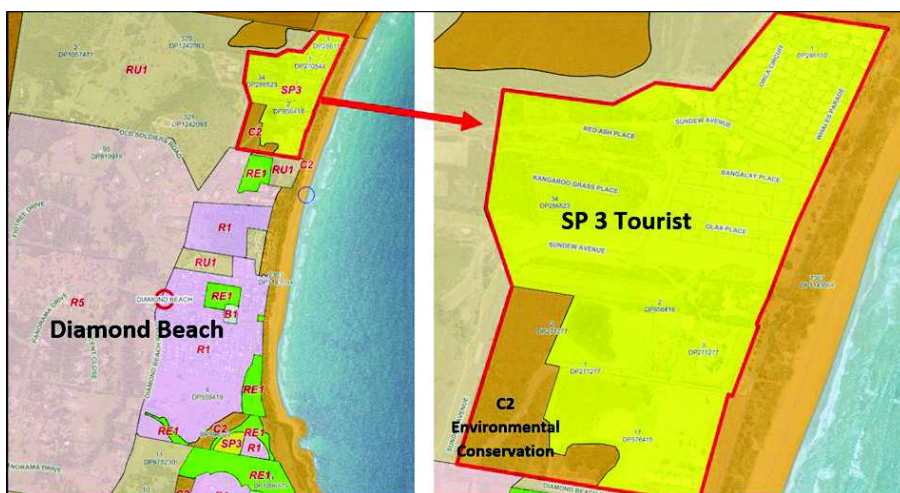
RISK IMPLICATIONS

There are minimal risks associated with the making of the LEP as a result of the standardised Planning Proposal process.

The risk of rezoning the tourist precinct to residential is that the community may think that Council is seeking to intensify development on the site, rather than the change being the result of the failure of the zone to work in the MidCoast and the need to find a residential zone that would match the development density currently found or permissible in the precinct. Careful consideration of exhibition material and messaging is required to avoid this situation.

BACKGROUND

The precinct is located north of the Diamond Beach village. It is just under 25 hectares in size and is currently zoned SP3 Tourist and C2 Environmental Conservation. There is no change proposed to the C2 zone, so this report will focus on the SP3 Tourist zone only. The site is bordered by Diamond Beach Road to the south and Khappinghat National Park to the north. The Diamond Beach coastline runs parallel to the east with rural lands (RU1 zone) to the west. The rural lands are identified as an urban release area within the MidCoast Urban Release Areas Report (2021).



The area has been used for tourist and visitor purposes for many years and has progressively been rezoned from Rural to Tourist to reflect this. Whilst there have been various development approvals over the precinct only a few have been realised due to a lack of financial investment in short-term visitor accommodation. There has been an attempt to address this through the Additional Permitted Uses in Schedule 1 of the Greater Taree LEP 2010 which allows 30% permanent occupancy over each of the areas within the SP3 Tourist zone, however it is the zone which is deterring banks and other lenders from enabling investment in this style of development.

The MidCoast Housing strategy (2020) found a similar situation has occurred in areas zoned SP3 Tourist across the MidCoast and has made recommendations to rezone those areas in the new combined Local Environmental Plan. What has deterred lenders is the inability of the zone to permit permanent residential occupancy and hence reduce risk to lenders, as tourist accommodation is subject to seasonal variability and hence income fluctuations.

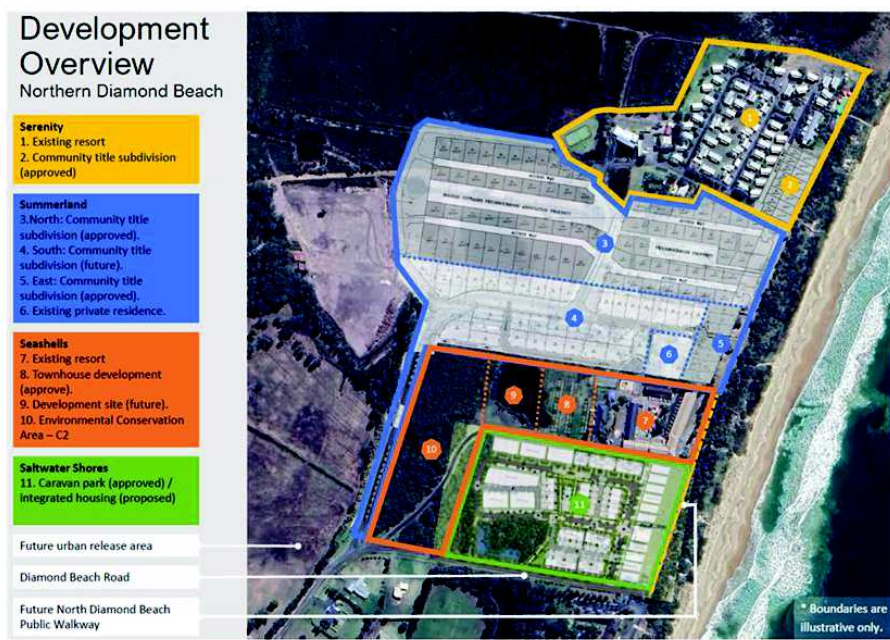
The MidCoast Housing Strategy (2020) recommends that the North Diamond Beach Tourist Precinct be rezoned to Medium Density Residential (R3) and have a masterplan to show how it can transition from a Tourist to Residential zone. By inclusion in this strategy Council would have considered it as part of the development of the MidCoast Local Environmental Plan.

The North Diamond Beach Tourist Precinct is also identified in the MidCoast Urban Release Areas Report (2021) as Diamond Beach Growth Area 1 as a nominated Urban Release Area to be rezoned in the short-term (1-5 years [ahead of the new MidCoast LEP]) to provide medium density residential development, subject to a Planning Proposal.

It is appropriate for Council to consider this Planning Proposal now, ahead of the development of the Hallidays Point Place Strategy, as it represents a change from one urban zone to another, a zone that was found not to work in the MidCoast. Rezoning this precinct does not allow additional development such as would be experienced in changing from a rural to a residential zone and hence it is appropriate to consider it ahead of the Place Strategy which will provide a framework for rezoning the other Hallidays Point Urban Release Areas.

Development Overview

The site is divided into four distinct areas of ownership, Serenity, Summerland, Seashells and Saltwater Shores, as seen in the figure below. Most of the sites are subject to separate Development Approvals which have been granted under community title subdivision and involve additional agreements specific to each site. This means that the entire area, including infrastructure, is owned and managed privately within each of the development areas.



PLANNING PROPOSAL PROCESS

The planning proposal was lodged online via the NSW Planning Portal in December 2021 by Saltwater Shores P/L, owners of 391 Diamond Beach Road, Diamond Beach. The proposal seeks to amend the Greater Taree Local Environmental Plan 2010 (LEP 2010) by rezoning the area from tourist to residential. This is in line with the recommendations from the MidCoast Housing Strategy (2020) regarding the site. The planning proposal was returned in March 2022 with a request for further information and other updates to the document based on legislative changes that had occurred. The planning proposal was amended and relodged on the planning portal in April 2022.

DISCUSSION

Moving from short-term stay to permanent residency

The suitability of the land for residential accommodation has already been established through the previous rezoning of the land to SP3 Tourism. The environmentally sensitive land has also been identified and zoned appropriately. Further to this, there have been multiple approvals for short-term residential accommodation approved over the site. The area has been identified for transitioning to permanent residential in the MidCoast Housing Strategy (2020) and the Urban Release Area Report (2021).

The original proposal

The original planning proposal submitted by Saltwater Shores in December 2021 (and revised in April 2022) proposed to rezone the entire SP3 Tourist area to R3 Medium Density Residential, as shown below.



Current zone



Proposed R3 zone submitted in Dec 2021

Specifically, it was proposed to amend the Greater Taree LEP 2010 to:

- *Create an R3 Medium Density Residential zone in the LEP;*
- *Rezone land in the north Diamond Beach Area from SP3 (Tourist) to R3 (Medium Density Residential); and*
- *Create an additional permitted use under Schedule 1 of the LEP to enable integrated housing and subdivision on land described as Lot 17 DP 576415, 391 Diamond Beach Road, Diamond Beach.*

The proposal submitted by Saltwater Shores is in line with the recommendations from Council's Housing Strategy, however, the planning proposal has provided an opportunity to test this approach and further refine the transition from tourist to residential zone.

MidCoast Housing Strategy (2020) and further assessment

Recommendation 5.1.4 – Transition the land at North Diamond Beach to the medium density zone and identify as an Urban Release Area that requires master planning prior to development of the land.

The above recommendation from the housing strategy was aimed at treating the site as a whole and planning public infrastructure that made sense at this scale. What became apparent during the review of the planning proposal was much of the infrastructure had either been built, approved or planned for in each of the 4 development areas. All of which has been approved through Community Title Subdivision. This type of subdivision means the infrastructure, such as roads, do not need to meet Council's standards as they remain in private ownership. It was not feasible to unwind these development approvals or try to change the infrastructure to meet Council's standards to master plan the site as a new public residential area.

Further, the R3 Medium Density Residential zone was recommended to replace the SP3 Tourist zone as the development opportunities were similar, except for permanent residency which is allowed in the R3 zone and not in the SP3 zone. An additional clause to allow residential lots below the minimum lot size (1,000m² in the R3 zone) through integrated development (designed and subdivided in the same development approval), was also recommended. This provides another opportunity to achieve densities similar to those in the SP3 zone as an alternative to utilising available height. This clause is currently in use in the Great Lakes Local Environmental Plan 2014 and is recommended to be used in the new MidCoast Local Environmental Plan.

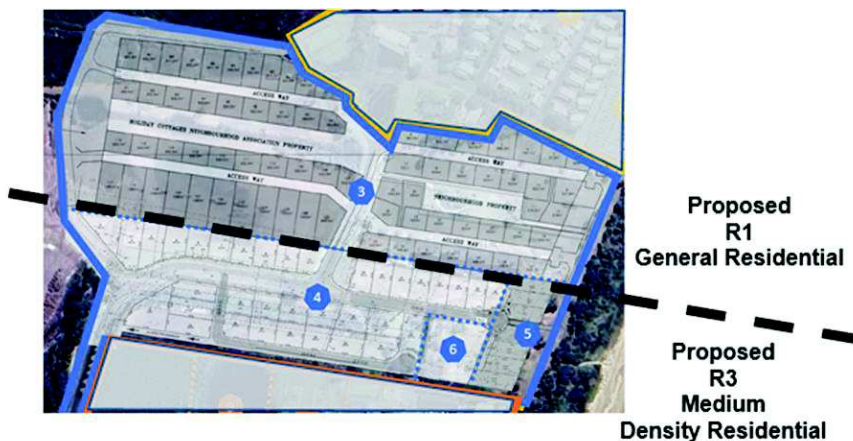
Serenity



1. Existing resort
2. Community title subdivision (approved)

When the review of the precinct began it was found that the northern part of the site had been largely developed or approved. An example of this is the Serenity development located at the top of the precinct (shown above), which is completely developed and operational. It has features more aligned with an R1 General Residential zone as it permits dwellings on a single lot, which is what is found at Serenity. There are also over fifty owners within the community title subdivision plan, making a wholesale shift to medium density residential unlikely. An R1 zone in this area also makes sense to act as a transition from the precinct to the National Park in the north.

Summerland



3. Community Title subdivision (approved).
- 4 & 5 Community Title subdivision (future).
6. Existing private residence.

The northern section of Summerland, shown in the figure above, adjoining Serenity, includes a mixture of subdivision that has been approved, with some lots created and sold. It is recommended that this part of Summerland transition to an R1 General Residential zone.

The remaining southern area of Summerland includes future development and an existing residence. There is still an opportunity for the landowner to develop under an R3 Medium Density Zone, similar to the opportunities currently within the SP3 Tourist zone. The change from R1 General Residential to R3 Medium Density Residential within the Summerland development area is delineated by a dotted line in the figure above.

Seashells Ltd



- 7. Existing resort
- 8. Townhouse development (approved)
- 9. Development site (future – dam to be filled)
- 10. Environmental Conservation area (no change)

Saltwater Shores



- 11. Caravan Park (approved), Integrated Housing (proposed and shown on figure above)

Seashells and Saltwater Shores shown respectively above is proposed to be rezoned R3 Medium Density Residential as it offers the most similar development opportunities to the current tourist zone. In addition, the development application over Saltwater Shores that is currently being assessed for smaller lot housing through a community title subdivision will be permissible using the additional clause related for integrated development that is currently used for this zone in the Great Lakes LEP and proposed for this zone in the Greater Taree LEP.

The amended proposal

It is now proposed to apply a combination of R1 General Residential and R3 Medium Density Residential zones over the site area.



Planning Mechanism

It is now proposed to alter the Greater Taree LEP 2010 by:

- Introducing the R3 Medium Density Residential zone into the Greater Taree LEP 2010.
- Adding a *Part 4 Principal Development Standards* clause which allows single dwellings on lots down to 200 square metres in the R3 zone, where they are part of an integrated development (dwellings designed and subdivided within the same development approval).

This will be modelled on *Clause 4.1A Exceptions to minimum lot sizes for certain residential development*, from the Great Lakes Local Environmental Plan 2014.

- Rezoning the land from Tourist (SP3) to a combination of R1 General Residential (R1) and R3 Medium Density Residential (R3) as shown above.

The R1 zone is applied to areas that have been constructed or where subdivision has occurred or commenced. The R3 zone is applied in areas where subdivision is not yet approved or finalised, providing an opportunity to achieve higher densities and where the zone matches current built form. This combination will provide diversity in housing stock and help curb under development of the site.

- Removal of Additional Permitted Uses 4, 5 and 6 in Schedule 1 of Greater Taree LEP 2010 which relates to restrictions on residential accommodation.
- Apply a maximum height of building of 8.5m over the R1 and 12m over the R3.
- Use the standard R3 minimum lot size of 1,000m².
- Use the standard R1 minimum lot size of 450m².
- Not apply a floor space ratio map for the precinct.

Use of delegations

Council has been issued with plan making delegations from the NSW Minister for Planning in regard to processing Planning Proposals. What this means is that Council can, following exhibition of the Planning Proposal seek the LEP amendment to be made (formerly called gazettal). For this to occur Council needs to resolve to use these delegations and the Gateway Determination needs to then confirm that Council can use these.

In deciding whether to request to use its delegations Council must decide whether it has a potential or actual conflict of interest in the Planning Proposal.

Regarding this Planning Proposal it is noted that Council has no involvement in the land (as owner or manager) and a situation is unlikely to arise where Council would have a conflict of interest.

For these reasons it is recommended that Council advise DPE that it wishes to use its plan making delegations for this Planning Proposal.

CONSULTATION

In accordance with Section 3.34(2)(c) of the *Environmental Planning and Assessment Act 1979* and Council's Community Engagement Strategy 2019-2022, this Planning Proposal will be made publicly

available for a minimum of 28 working days should a successful Gateway Determination be achieved. Although the Gateway Determination could specify a different timeframe, Council's 28 working days is usually granted.

Formal consultation with identified government agencies will occur post-Gateway, prior to public exhibition.

No community consultation has been carried out to date and any consultation required by the Gateway Determination will be undertaken as outlined above.

COMMUNITY IMPACTS

The planning proposal is anticipated to have a positive community impact by giving existing owners within the site an opportunity to live permanently within dwellings that have been constructed and providing investors the confidence to release the development approvals. The community consultation process will identify any potential impacts on the community.

ALIGNMENT WITH COMMUNITY PLAN/OPERATIONAL PLAN

The Planning Proposal has been assessed against *MidCoast 2030 Shared Vision, Shared Responsibility 2018-2030* - being MidCoast Council's Community Strategic Plan.

In particular, the Planning Proposal assists to meet the value of "*our unique, diverse and culturally rich communities*" by supporting the action to "*Support a diverse housing mix that provides choice and meets the needs of our community*".

TIMEFRAME

The Gateway Determination will identify the next steps which will determine the length of time needed. The process for considering a planning proposal is shown below. This application is currently in the initial stages of the process.

Application lodged December (2021)	✓ Revised Planning Proposal received April (2022)	✓ Council Report (May 2022)	✓ Gateway Determination (July 2022)	Exhibit planning proposal (Aug 2022)	Consider submissions. Report to Council (Sep 2022)	Consult with Parliamentary Council to make the plan (Oct 2022)	Minister / delegated authority to approve rezoning (Nov 2022)
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ATTACHMENTS - UNDER 50 PAGES

Nil

ATTACHMENTS - OVER 50 PAGES

1. Amended North Diamond Beach Planning Proposal (51 pages)

Attachment 1 is available on Council's website for this meeting under the "Related Information" heading.

14.2. PLANNING PROPOSAL TO REZONE NORTH DIAMOND BEACH FROM SP3 TOURIST TO R1 GENERAL AND R3 MEDIUM DENSITY RESIDENTIAL

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Moved Cr P Epov/Seconded Cr P Howard

That the matter be deferred for two months pending further consultation with the Community and Councillors, including a community meeting facilitated by Council Staff.

FOR VOTE - Cr C Pontin, Cr D Smith, Cr K Bell, Cr J Miller, Cr P Epov

AGAINST VOTE – Cr A Tickle, Cr T Fowler, Cr D West, Cr P Howard

ABSENT, DID NOT VOTE – Cr K Smith, Cr P Sandilands

217/2022 RESOLUTION

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