

Explanatory Note

Draft Planning Agreement

391 Diamond Beach Road, Diamond Beach

1. Introduction

The purpose of this Explanatory Note is to provide a plain English explanation of the draft planning agreement (the **Planning Agreement**) between:

- MidCoast Council (**Council**); and
- Sybury Pty Ltd who is the registered landowner (**Developer**).

This Explanatory Note has been prepared jointly by the parties and is to be exhibited at the same time as the Planning Agreement.

The Planning Agreement will be entered into by the parties in accordance with section 93F of the *Environmental Planning and Assessment Act 1979*.

2. Description of the Site

The land to which the Planning Agreement applies is land known as 391 Diamond Beach Rad, Diamond Beach being Lot 17 DP 576415 (**the Site**).

The Site is located in the Council's local government area and is within the tourism precinct of Diamond Beach. The Diamond Beach Holiday Villas currently operate from the Site.

The Site is currently zoned RU1 – *Primary Production* under the *Greater Taree Local Environmental Plan 2010* (**Greater Taree LEP**).

3. Description of Proposed Development

The Council, in response to a request from the Developer, proposes to rezone the Site to a combination of SP3 - *Tourist* and E2 - *Environmental Conservation* under the Greater Taree LEP for the purposes of future tourist facilities. The proposed rezoning is shown on the plan below.

The purpose of the rezoning is to allow for the future expansion of the existing tourist facilities on the Site and to protect environmentally sensitive areas on the Site. This includes the coastal hazard area to the east and the environmentally sensitive habitat in the south west corner.

The planning proposal also seeks to include the Site in Schedule 1 of the Greater Taree LEP to allow up to 30% of the gross floor area of the tourist facilities to be used as permanent residential accommodation, and introduce a maximum building height of 11.5 metres.

The planning proposal was lodged in August 2016 and a gateway determination to proceed was issued by the Department of Planning and Environment in June 2017.

It is proposed that a Planning Agreement be entered into to create public access along the coastal area to the east of the Site and to protect the environmentally sensitive habitat on the Site. This includes the endangered ecological community of Swamp Sclerophyll Forest on Coastal Floodplains which is in the south western corner of the Site.

4. Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to create public access along the coastal area adjacent to North Diamond Beach and to protect the environmentally sensitive habitat on the Site. This will be achieved in two ways:

- (i) The Developer will dedicate land to Council for the purpose of a public pathway and pay a monetary contribution to Council for construction of associated infrastructure.
- (ii) The Developer will prepare and implement a vegetation management plan for the environmentally sensitive habitat on the south western corner of the Site.

A plan showing the proposed rezoning of the Site, the land to be dedicated to Council for the pathway and the land subject of the vegetation management plan is below:



Under the Planning Agreement Council is required to prepare a strategy with the aim to provide a public link along the coastline of North Diamond Beach. This will include the land adjacent to the Site. Council must exhibit the strategy for public comment and adopt the strategy by 11 October 2020.

Within one year of adoption of the strategy by Council, the Developer will:

- (i) Dedicate to Council (at no cost) a 5 metre strip of land on the eastern boundary of the Site (**Public Land**) for the purpose of public access; and
- (ii) Pay a monetary contribution to Council in the amount of \$72,900 for the construction of a 3 metre wide concrete path along the Public Land to a satisfactory standard as determined by Council;
- (iii) Pay a monetary contribution to Council in the amount of \$15,100 for the construction of fencing and signage to control access to the coastal area.

Both monetary contributions are subject to CPI adjustment.

The Developer will also be responsible for constructing a bollard and cable fence along the boundary of the Site and the Public Land so as to preserve the amenity of the area.

5. Assessment of the merits of the proposed agreement

The Planning Agreement seeks to establish a framework to create public access along the coastline in North Diamond Beach, and to conserve and enhance the environmentally sensitive habitat on the Site.

Dedication of the Public Land to Council and payment of the monetary contributions for construction of a path, fencing and signage will ensure that land in the coastal area is set aside for public access and that the adjoining coastal land is protected by the erection of fencing. This will provide a positive benefit for the wider community including residents and visitors.

The preparation and implementation of the vegetation management plan for the part of the Site with the endangered ecological community will ensure the conservation and enhancement of the environmentally sensitive habitat into the future.

6. Promotion of the Public Interest and Objects of the Act

The Planning Agreement will promote the public interest by dedicating land in the Council's local government area and creating public access along the coastline of North Diamond Beach which is a planning benefit to the wider community. More generally, the Planning Agreement promotes the objects of the Act including:

- the proper management and conservation of natural resources (s 5(a)(i));
- the provision of land for public purposes (s 5(a)(iv));
- the protection of the environment (s 5(a)(vi)); and
- encouraging ecologically sustainable development (s 5(a)(vii)).

7. Promotion of Council's Charter

The Planning Agreement is consistent with a number of the guiding principles for local government set out in s 8A of the *Local Government Act 1993* including:

- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers;
- Councils should manage lands so that current and future local community needs can be met in an affordable way; and
- Councils should consider the principles of ecologically sustainable development.

8. Planning Purpose of the Planning Agreement

The Planning Agreement provides a mechanism to create public access along the coastline for the wider benefit of the community. The Planning Agreement achieves this planning purpose by binding the Developer to the dedication of the Public Land and payment of monetary contributions to enable infrastructure to be constructed to facilitate public access and enhance the coastal area.

The Planning Agreement also provides a mechanism for the Developer to carry out environmental management works to conserve and enhance the environmentally sensitive habitat on the Site. The Planning Agreement achieves this planning purpose by requiring the Developer to prepare and implement a vegetation management plan.

9. Conformity with Council's Capital Works Program

The Planning Agreement provides for dedication of the Public Land to Council and payment of monetary contributions for construction of a pathway, fencing and signage. Whilst there is no direct link between these works and Council's Capital Works Program, the ongoing enhancement of the coastal area is consistent with Council's responsibilities of managing the natural environment.

10. Requirements to be complied with before subdivision certificate

There are no requirements in the Planning Agreement which must be complied with before the issue of a subdivision certificate.