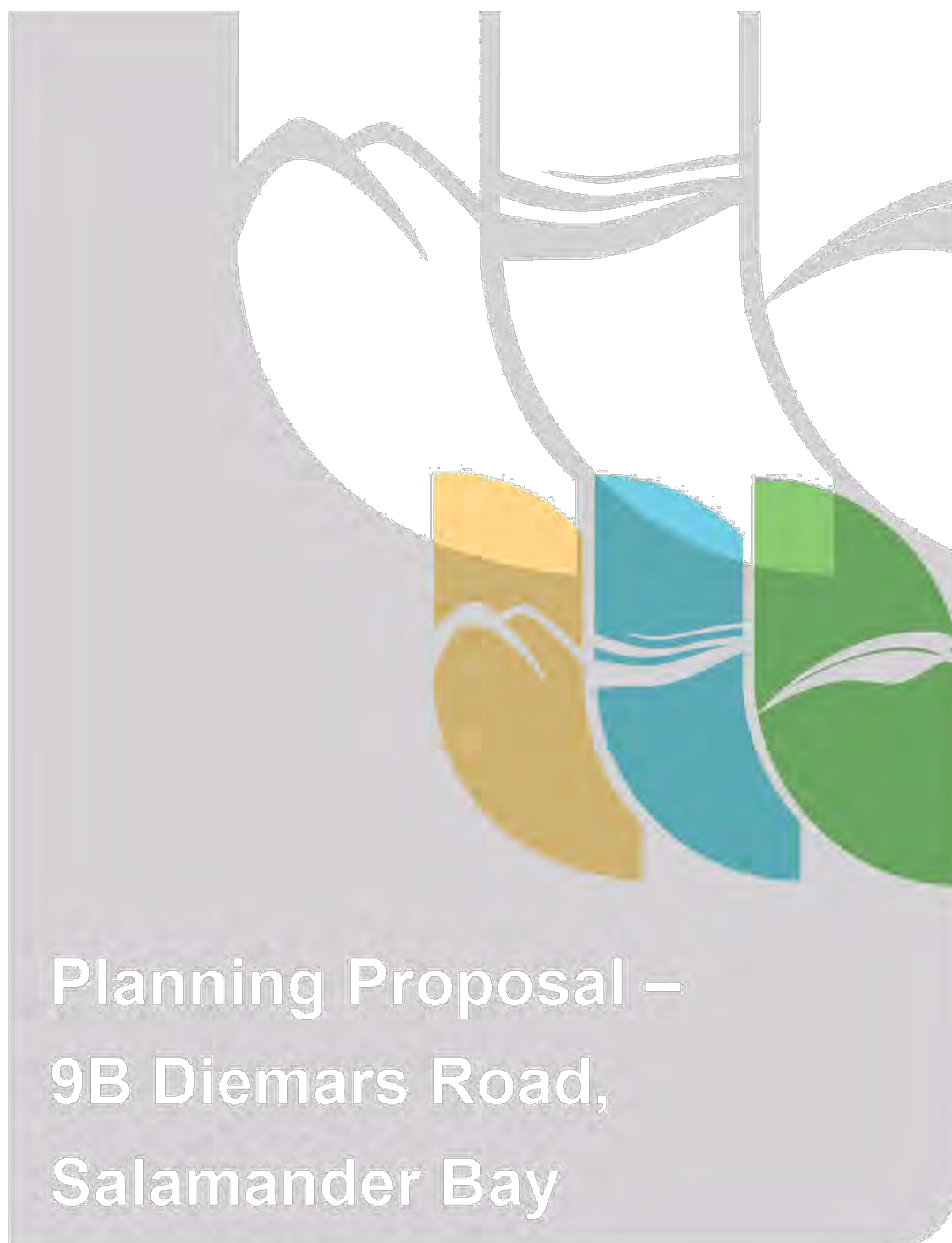


ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
SALAMANDER BAY.



**Proposed amendment to Port Stephens Local
Environmental Plan 2013**

Reclassification of Lot 644 DP 658258,
9B Diemars Road, Salamander Bay



ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.**FILE NUMBERS**

Council: PSC2015-01630

Department: PP_2016_PORTS_007_00(16/13013

SUMMARY

Subject land: Lot 644 DP 658258, 9B Diemars Road, Salamander Bay

Proponent: Property Services Section

Zone: IN4 – Working Waterfront Zone (rezoning of land is not proposed)

Current classification: Community

Proposed changes: Reclassify from 'community' to 'operational' land

Purpose: To enable sale of land to adjoining property owner/s

BACKGROUND

The planning proposal seeks to amend the *Port Stephens Local Environmental Plan 2013* (LEP 2013) by reclassifying Lot 644 DP 658258, 9B Diemars Road, Salamander Bay from 'community' to 'operational' land to facilitate the sale of the land to adjoining landowner.

The land is zoned IN4 – Working Waterfront under the PSLEP 2013. The planning proposal does not seek to amend the zoning. The proposed future use of the site for oyster farming operations is permissible in the zone and would be subject to a separate development application.

On 25 November 2008, Council considered a proposal to reclassify the site. At this time, it was resolved that:

Council note further investigation of this land be held in abeyance pending adoption of the draft Foreshore Management Plan.

The Foreshore Management Plan was adopted by Council on 28 April 2009. No specific management options are identified for this site. The key considerations for any future development proposal include consideration of visual amenity and foreshore stability. Further detail on this matter is provided below.

It is considered that the planning proposal has sufficient merit to proceed to gateway.

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
SALAMANDER BAY.

SITE

The site is zoned IN4 – Working waterfront and is approximately 3,684m². The site has direct water access to the west and is landlocked by privately owned IN4 zoned land to the north, south and east, which is used for oyster farming operations, oyster processing and a retail facility. The site does not have legal street access.

Part of the site is currently being used, without a formal licence from Council, for the storage of oyster racks and associated materials by an adjoining landholder/oyster farmer. This use is consistent with the IN4 Zone.

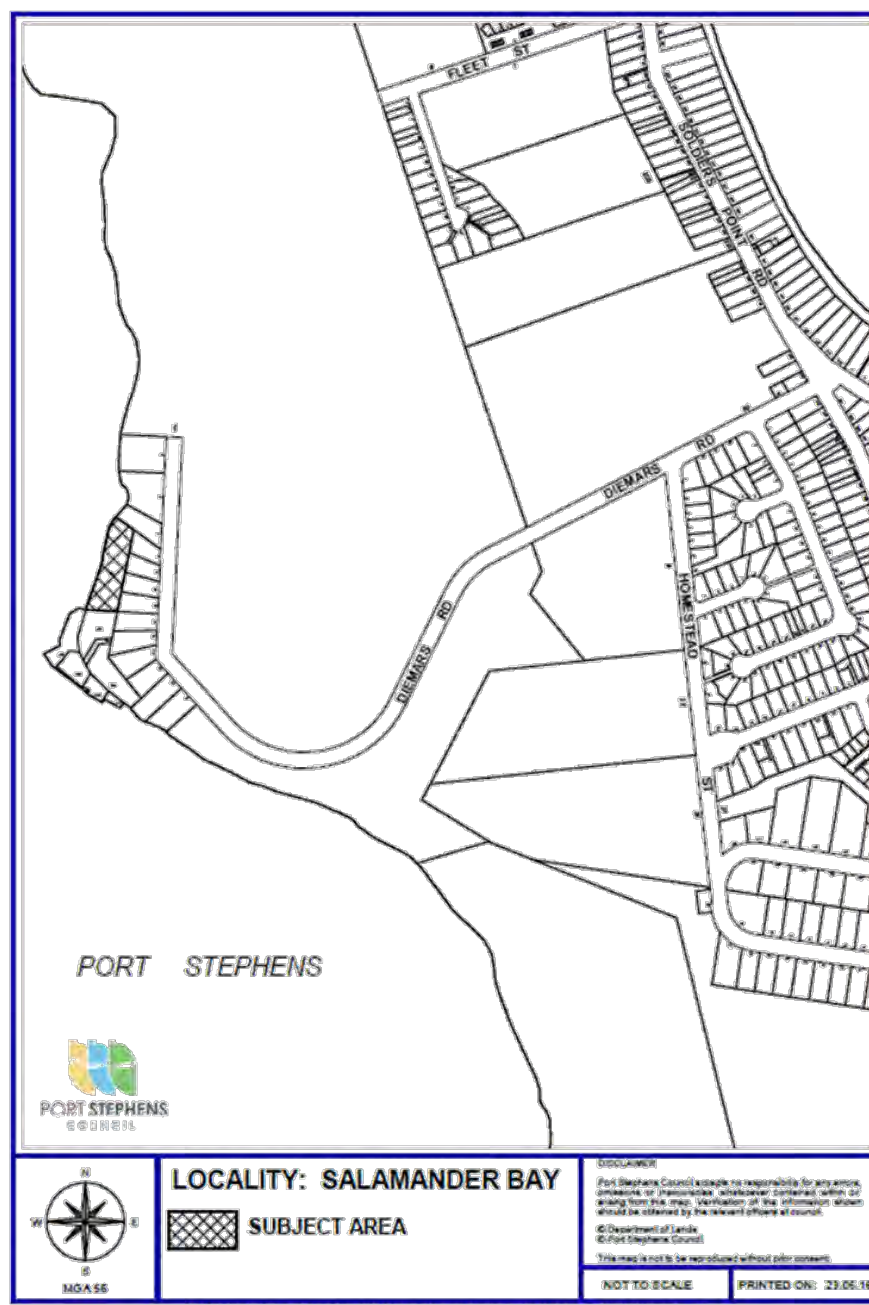
The site contains two vegetation types, being Swamp Oak Sedge Forest and cleared grassed land. A preliminary ecological assessment undertaken identifies that the site contains Swamp Oak Sedge Forest and cleared grassland. This Swamp Oak Sedge Forest consists of an overstorey dominated by Forest Red Gum (*Eucalyptus tereticornis*) and Swamp Oak (*Casuarina glauca*). The understorey was dominated by weed species such as Morning Glory, Asparagus, Lantana and Large-leaved Privet.

The site formed part of the former Naval Base lands, purchased by Council in the 1956/1957. The site was zoned 6(a) Public Recreation under the Port Stephens Local Environmental Plan 1987 and classified as 'community land'. Under the Port Stephens Local Environmental Plan 2000, the site was zoned 4(a) General Industrial and maintained its 'community' land classification. Adjoining land (Lots 1, 2 and 3 DP 212233) was reclassified in 1997 under Amendment No 112 to the LEP 1987 from 'community' to 'operational' land and subsequently sold. This had the effect of land locking the subject site.

Figure 1– 9B Diemars Road, Salamander Bay (page 4) identifies the subject land

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
SALAMANDER BAY.

FIGURE 1 – NAME OF SITE (land subject to Planning Proposal is shown in red)



ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.**PART 1 – Objective of the proposed Local Environmental Plan**

The planning proposal seeks to reclassify the land from 'community' to 'operational' land under the *Local Government Act, 1993*.

The proposal will allow the site to be sold by Council. An adjoining landholder has expressed interest in purchasing the site for oyster farming operations, consistent with the IN4 zoning.

PART 2 – Explanation of the provisions to be included in proposed LEP

The objectives of the planning proposal will be achieved by the following amendments to the *Port Stephens Local Environmental Plan 2013*:

Amend Part 2 Land classified, or reclassified as operational land – interests changed, Schedule 4 Classification and reclassification of public land to include the subject site as follows:

Column 1	Column 2	Column 3
Locality	Description	Any trusts etc discharged
9B Diemars Road, Salamander Bay	Lot 644 DP 658258,	Nil

No mapping amendments are proposed.

PART 3 – Justification for the Planning Proposal**SECTION A – Need for the Planning Proposal****Is the planning proposal a result of any strategic study or report?**

Council has acquired community land via a range of means that have not always resulted in a medium to long term net gain for the community. In the past there has been a lack of coordination and control mechanisms governing the acquisition of community land. This has resulted in Council receiving community land with little community recreation, environmental, social or cultural value.

The planning proposal is an outcome of the Open Space Consolidation Review undertaken in 2006 and 2007.

The Open Space Consolidation Review took a consistent LGA wide approach to directing Council's open space resources. This Review identified that a number of sites were surplus to Council's open space requirements based on a set of selection criteria which reflected Council's open space standards of provision. Council's 2010 draft Open Space Strategy has refined these criteria, and the sites would not be identified as suitable for open space under

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.

the draft Open Space Strategy. From an operational perspective, the review of land classifications also resulted in a number of sites being recommended for reclassification to operational land to facilitate improved management regimes.

The site was identified in the Open Space Analysis Review (May 2005) as being suitable for disposal to adjoining land holders as its landlocked nature provides limited opportunities for community use.

The proposed reclassification will allow the site to be sold by Council. An adjoining landholder has expressed interest in purchasing the site for oyster farming operations, consistent with the IN4 zoning.

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Land can be reclassified by either:

- a resolution of council under section 31, 32 or 33 of the *Local Government Act 1993* (LG Act)
- a local environmental plan

Although councils are encouraged to reclassify land through the *Local Government Act, 1993*, this proposal does not meet the requirements of the *LG Act* for reclassification of land. As such, the planning proposal to amend the *Port Stephens Local Environmental Plan 2013* is the only mechanism available to reclassify this land.

Is there a community benefit?

There is limited community benefit. Given the property's landlocked nature, the community has limited access to the site. There is sufficient and accessible public open space within 100m of the site. There is unlikely to be a negative public impact resulting from the loss of public land.

Council will gain an economic benefit by the disposal of the land.

SECTION B – Relationship to Strategic Planning Framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Lower Hunter Regional Strategy (LHRS)

The planning proposal is of minor consequence and not within the scope of the LHRS. The planning proposal is not inconsistent with the objectives of the LHRS.

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Hunter Growth Plan 2016

The planning proposal is of minor consequence and not within the scope of the Hunter Growth Plan. The planning proposal is not inconsistent with the objectives of the Growth Plan.

5. Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

Integrated Strategic Plan (Port Stephens 2022)

The proposal is consistent with Council's Integrated Strategic Plan (Port Stephens 2022), in particular Action 2.3.1 – Implement the draft Open Space Strategy, as this land was identified, through the open space analysis review as being suitable for disposal to adjoining land holders due to its landlocked nature and no public access.

Port Stephens Planning Strategy (PSPS) 2011

The planning proposal is of minor consequence and not within the scope of the PSPS. Notwithstanding, there is an identified shortfall of industrial zoned land in Salamander Bay. The reclassification will allow the land to be used for an industrial development that is consistent with the IN4 – Working Waterfront Zone.

Foreshore Management Plan 2013

The Foreshore Management Plan was adopted by Council on 28 April 2009. No specific management options are identified for this site. The Strategy provides a framework that can be used to protect and enhance the environmental, recreational, aesthetic, economic and cultural values of the Port Stephens foreshore. It provides key considerations for development on the foreshore, such as visual amenity and foreshore stability.

While the Foreshore Management Plan seeks to ensure that foreshore land remains in Council ownership for public use, the landlocked nature of this site limits the opportunities for community use. A significant amount of publicly accessible foreshore land is located within 100m from the site.

6. Is the planning proposal consistent with applicable state environmental planning policies?

There are no existing or draft State Environmental Planning Policies that prohibit or restrict the proposed development as outlined in this planning proposal. An assessment of relevant State Environmental Planning Policies against the planning proposal is provided below.

SEPP 44 – Koala Habitat Protection

Aims & objectives

This SEPP applies to land across NSW that is greater than 1 hectare and is not a National Park or Forestry Reserve. The SEPP encourages the conservation and management of natural vegetation areas that provide

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.

habitat for koalas to ensure permanent free-living populations will be maintained over their present range.

Consistency / inconsistency

The 2002 Port Stephens Comprehensive Koala Plan of Management mapping identified the majority of the site as cleared, however this is not consistent with the vegetation identified on site during a site inspection. The vegetation is dominated by Forest Red Gum, a preferred koala feed tree, and Swamp Oak. More detailed koala habitat mapping prepared by Council for the Salamander Bay area identifies the site as Marginal and Cleared.

Based on the results of the preliminary ecological assessment and site inspection by Council, this vegetation represents an existing wildlife corridor from the foreshore through Stoney Ridge Reserve and is likely to represent preferred/supplementary koala habitat.

Council's Natural Resources Team have advised that the site is suitable for reclassification, however further assessment would be required for any future development application proposal.

SEPP 62 – Sustainable Aquaculture

Aims & objectives

The Sepp encourages sustainable aquaculture, including sustainable oyster aquaculture, in the State, namely, aquaculture development which uses, conserves and enhances the community's resources so that the total quality of life now and in the future can be preserved and enhanced. It also sets development standards for aquaculture, including oyster aquaculture, across the State.

Consistency/inconsistency

The site is within a 'priority oyster aquaculture area', therefore oyster aquaculture can be undertaken without consent pursuant to Clause 8A(3)(a). The proposed reclassification will not prevent future aquaculture development.

The planning proposal is consistent with SEPP 62.

SEPP 71 – Coastal Protection

Aims & objectives

Clause 7(a) of SEPP 71 requires Council to consider a number of matters when preparing a draft LEP on land within the coastal zone in order to protect and manage the the natural, cultural, recreational and economic attributes of the New South Wales coast.

Consistency / inconsistency

The planning proposal has been considered against the Clause 8 matters contained in the SEPP. The planning proposal is consistent with these matters.

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7. Is the planning proposal consistent with applicable Ministerial Directions?

The planning proposal is consistent with relevant s117 Directions, as detailed below:

1.1 – Business and Industrial Zones

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone.

The site is zoned IN4 – Working Waterfront Zone. The planning proposal does not seek to rezone the site. The reclassification of the site will allow adjoining landholders (should they purchase the site) to utilise the site for oyster operation, consistent with the zone.

The planning proposal is consistent with Direction 1.1.

1.4 – Oyster Aquaculture

Direction 1.4 applies as the site is located in a Priority Oyster Aquaculture Area.

The site will not adversely impact on oyster farming in the area. Land adjoining the site is currently used for oyster operations. Given the landlocked nature of the site, it is likely that it will be purchased by adjoining landholders for use associated with oyster operations. The planning proposal does not seek to amend the zoning of the property.

The planning proposal is consistent with Direction 1.4.

2.1 – Environmental Protection Zones

The land is located within the coastal zone. Clause 5.5 of the PSLEP 2013 will ensure that any future development of the site considers its location within the coastal zone.

It is considered that the inconsistency with this Direction is of minor significance.

2.2 – Coastal Protection

This direction applies when a relevant planning authority prepares a planning proposal that applies to land in the coastal zone.

The planning proposal is not inconsistent with this Direction. While the Coastal Policy seeks to ensure public access to the foreshore is maintained, the subject site does not currently have public road or pedestrian access. The planning proposal will not impact on the quality of waterways, visual amenity, cultural heritage or coastal processes. These matters may need to be

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
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addressed should a development application be lodged over the site in the future.

2.3 – Heritage Conservation

This direction applies when a relevant planning authority prepares a planning proposal.

The site is not known to contain any items of European or Aboriginal heritage significance. The Foreshore Management Plan does not identify the site as an 'Area of Aboriginal Heritage Sensitivity'.

The proposed reclassification will not have an impact on known European or Aboriginal Heritage. The planning proposal is consistent with Direction 2.3.

4.3 – Flood Prone Land

Part of the site is identified as being flood prone and is categorised as High Hazard Fringe.

The planning proposal does not seek to rezone flood prone land.

There is sufficient flood free land to enable its use for waterfront industry (oyster aquaculture), consistent with the zone.

4.4 – Planning for Bushfire Protection

The land is bushfire prone.

The Rural Fire Service will be consulted with in the preparation of the planning proposal to ensure its consistency with Planning for Bushfire Protection 2006.

SECTION C – Environmental, Social and Economic Impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

A small disturbed example of Swamp Oak Floodplain Forest, which is listed as an endangered ecological community under the *Threatened Species Conservation Act 1995*, was recorded on site. The vegetation is considered to be of low to moderate quality due to the absence of a native understorey and ground layer.

Council's Vegetation Management Officer conducted a site inspection on 1 July 2016 to identify whether the Swamp Oak Forest was being utilised by koalas. The outcome of the inspection concluded that koalas are utilising the Forest Red Gum (*Eucalyptus tereticornis*) on site.

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On review of Council's Biodiversity connectivity corridors, the vegetation present on site has been identified as part of a landscape habitat and local stepping stone wildlife corridor and specifically a landscape link for Koalas. The planning proposal to reclassify the land will be unlikely to impact on these threatened species and endangered ecological communities. Any future development should be restricted to cleared grassland areas of the site.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

A review by Council of the Department of Primary Industry Estuarine vegetation mapping identified seagrass (*Zostera*) adjacent to the site. Any future development proposals would need to consider any potential impacts on this sensitive community such as a decrease in water quality from runoff and sedimentation.

10. Has the planning proposal adequately addressed any social and economic effects?

There are limited social and economic implications arising from this planning proposal. Council will gain an economic benefit from the disposal of the land by generating non-rate income from the sale of the property. Council will save a nominal amount of money in maintenance cost, which includes a biannual inspection and the regular removal of illegally dumped rubbish.

SECTION D – State and Commonwealth interests**11. Is there adequate public infrastructure for the planning proposal?**

The site is landlocked and does not have road access. Without legal access, it is likely that the site will be sold to adjoining property owners, who have sufficient access to their land via Diemars Road.

12. What are the views of the State and Commonwealth public authorities consulted in accordance with the gateway determination?

In accordance with the Gateway determination, consultation was undertaken with the following government agencies:

Department of Primary Industries – Fisheries (DPI)

DPI advised that Priority Oyster Aquaculture Areas are present in the estuarine waters in proximity to the site and protecting the water quality is crucial to the long term future of the industry. The most critical issue for consideration of development in this area is any proposed on-site treatment and/or disposal system.

Comment

Should future development of the site propose on-site effluent treatment, approval from Council to operate will be required. The assessment would be undertaken in accordance with Council's On-site Sewerage Development

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.

Assessment Framework and be subjected to regular inspections to ensure that it is being maintained in a satisfactory condition.

Rural Fire Service (RFS)

The RFS do not object to the planning proposal given that any future development on the land would be for industrial or commercial purposes and not be for a dwelling or temporary accommodation. Any future development application for the site shall be accompanied by a Bush Fire Assessment Report outlining how the proposal complies with Planning for Bush Fire Protection 2006.

Comment

Dwellings and tourist and visitor accommodation is not permitted in the IN4 Working Waterfront Zone.

Part 4 - Mapping

The planning proposal does not propose any mapping amendments.

Part 5 - Details of Community Consultation

Community

Public exhibition

In accordance with the Gateway determination, the planning proposal was exhibited for a period of 14 days, from 16 February 2017 to 3 March 2017.

No submissions were received during the exhibition period.

Public hearing

In accordance with section 29 of the *Local Government Act, 1993*, a public hearing was held after the exhibition period, on 28 June 2017 in respect of the planning proposal.

Four members of the public attended the public hearing. No matters were raised at the public hearing that affect the outcome of the reclassification and all attendees support the planning proposal. As required by s47G of the *Local Government Act, 1993*, the public hearing was facilitated by an independent consultant, who prepared a report pertaining to the public hearing (**ATTACHMENT 7**). The report provides details of matters raised.

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Part 6 – Project timeline

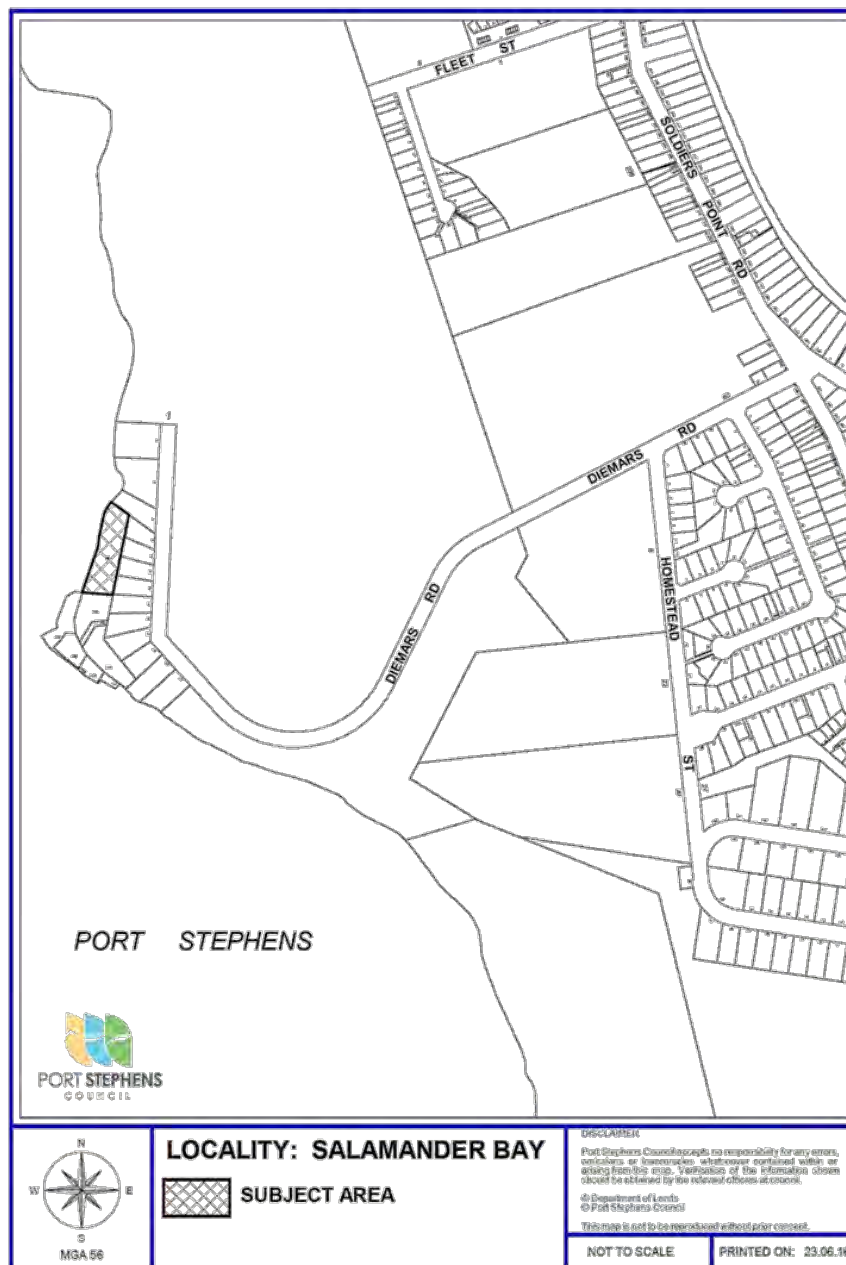
The planning proposal is expected to be reported to Council following the completion of the public exhibition period.

The following timetable is proposed:

	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July
<i>Gateway Determination</i>									
<i>Agency Consultation</i>									
<i>Public Exhibition</i>									
<i>Update planning proposal</i>									
<i>Notification of Public Hearing</i>									
<i>Public Hearing</i>									
<i>Council Report</i>									
<i>Parliamentary Counsel</i>									

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
SALAMANDER BAY.

Attachment One – Locality Plan



ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
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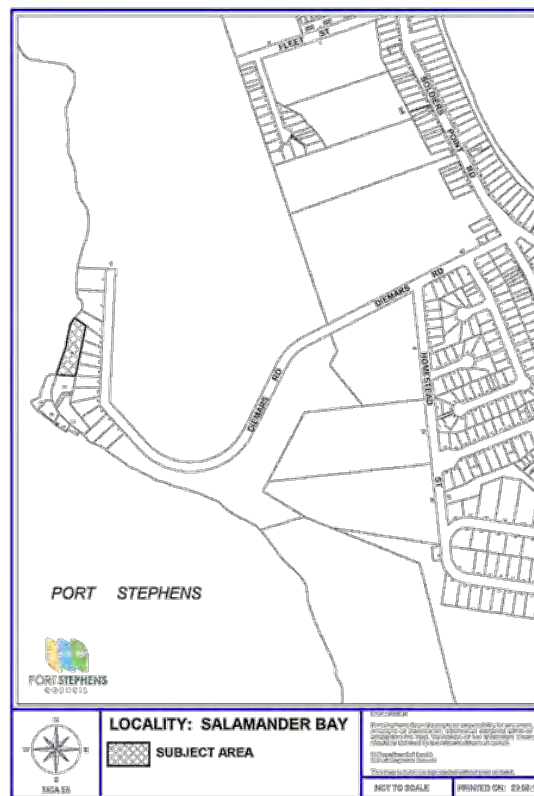
**Attachment Two – Information pertaining to the reclassification of Lot 644 DP
658258, 9B Diemars Road, Salamander Bay**

Introduction

The following information concerns the reclassification of land under the *Port Stephens Local Environmental Plan 2013*. The proposed reclassification has been prepared in accordance the requirements of Section 27(1) of the *Local Government Act 1993*, and the NSW Department of Planning Practice Note PN 16-001 (5 Oct 2016) *Classification and reclassification of public land through a local environmental plan* (Practice Note), which requires the following information to be included in a planning proposal that seeks to reclassify council owned land.

Subject land

The following Statement of Council's Interest concerns Lot 644 DP 658258, 9B Diemars Road, Salamander Bay



Statement of Council's Interest

- Current classification of the land

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.

The land is currently classified as 'community' land under the Local Government Act 1993.

- *Proposed classification of the land*

It is proposed to reclassify the land to 'operational' land under the *Local Government Act 1993*.

- *Whether the land is a 'public reserve' (defined by the LG Act)*

The Port Stephens Foreshores Plan of Management does not identify the site as a public reserve.

- *Strategic and site specific merits of the reclassification and evidence to support this*

The site was identified in the Open Space Analysis Review (May 2005) as being suitable for disposal to adjoining land holders due to its landlocked nature and no public access.

- *Whether the planning proposal is the result of a strategic study or report*

The planning proposal is the result of the Open Space Analysis Review (May 2005).

- *Whether the planning proposal is consistent with council's community plan or other local strategic plan*

Integrated Strategic Plan (Port Stephens 2022)

The proposal is consistent with Council's Integrated Strategic Plan (Port Stephens 2022), in particularly Action 2.3.1 – Implement the draft Open Space Strategy, as this land was identified, through the open space analysis review as being suitable for disposal to adjoining land holders due to its landlocked nature and no public access.

Port Stephens Planning Strategy (PSPS) 2011

The planning proposal is of minor consequence and not within the scope of the PSPS. Notwithstanding, there is an identified shortfall of industrial zoned land in Salamander Bay. The reclassification will allow the land to be used for an industrial development that is consistent with the IN4 – Working Waterfront Zone.

Foreshore Management Plan 2013

The Foreshore Management Plan was adopted by Council on 28 April 2009. No specific management options are identified for this site. The key considerations for any future development proposal include consideration of visual amenity and foreshore stability.

Port Stephens Myall Lakes Estuary Management Plan 2000

The importance of oyster farming at Cromarty Bay is noted in the Management Plan, and strategies related to water quality and wetland protection including the management of stormwater, oyster leases and septic systems is identified. The proposed reclassification is consistent with the strategy. Any future development

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.

application will need to give consideration to the matters containing in the Port Stephens Myall Lakes Estuary Management Plan 2000.

- *Council's interest in the land*

Port Stephens Council is the land owner.

The land formed part of the former Naval Base lands, purchased by Council in the 1956/1957.

- *Whether an interest in the land is proposed to be discharged and reasons why*

Council intends to dispose of the land by selling to adjoining landholders. The planning proposal is consistent with the Open Space Analysis Review that identified the land as surplus to Council's needs and suitable for disposal, due to its landlocked nature, no public access and sufficient public open space within 100m from the site.

- *The effect of the reclassification*

Council intends to extinguish its interests as the land is surplus to the recreational needs of the community as identified in the Open Space Analysis Review (May 2005).

- Evidence of public reserve status or relevant interests, or lack thereof applying to the land

Port Stephens Foreshore Plan of Management (2001)

- *Land Rlassification (part lots)Map*

The planning proposal seeks to reclassify the entire lot, as such a map is not required.

- *Current use of the land*

The land is vacant. An adjoining land owner uses the site informally for the storage of oyster racks and the like in conjunction with oyster farming operations.

- *Lease agreements over the land*

There are no current agreements over the land.

- *Current or proposed business dealings*

There has been no agreement for the sale or lease of the land. The landlocked nature of the site limits the potential buyers to adjoining property owners. An adjoining property owner has informally expressed interest in purchasing the property. All adjoining property owners will be given opportunity to purchase the property.

- *Any rezoning associated with the reclassification*

The site will retain its IN4 – Working Waterfront zoning.

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.

- *How council will benefit financially, and how these funds will be used*

Council intends to sell the site to an adjoining landholder. The landlocked nature of the site is likely to affect the value of the property as it does not have legal street access, which limits its practical use. A formal valuation, along with negotiations, will form the basis of the sale price for the property to be recommended to Council, following the reclassification.

Any funds raised will be used for assets in the Ward.

- *How Council will ensure funds remain available to fund proposed open space sites or improvements.*

The funds will be used for projects identified in Council's Works Plus Program or Capital Works Program, within the ward.

- *Any preliminary comments by a relevant government agency, including and agency in which the land is vested or held*

Department of Primary Industries – Fisheries

DPI advised that Priority Oyster Aquaculture Areas are present in the estuarine waters in proximity to the site and protecting the water quality is crucial to the long term future of the industry. The most critical issue for consideration of development in this area is any proposed on-site treatment and/or disposal system.

Comment

Should future development of the site propose on-site effluent treatment, approval from Council to operate will be required. The assessment would be undertaken in accordance with Council's On-site Sewerage Development Assessment Framework and be subjected to regular inspections to ensure that it is being maintained in a satisfactory condition.

Rural Fire Service

The RFS do not object to the planning proposal given that any future development on the land would be for industrial or commercial purposes and not be for a dwelling or temporary accommodation. Any future development application for the site shall be accompanied by a Bush Fire Assessment Report outlining how the proposal complies with Planning for Bush Fire Protection 2006.

Comment

Dwellings and tourist and visitor accommodation is not permitted in the IN4 Working Waterfront Zone.

**ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
SALAMANDER BAY.**

Attachment Three – Council report and minutes

**ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
SALAMANDER BAY.**

MINUTES ORDINARY COUNCIL - 27 SEPTEMBER 2016

ITEM NO. 2

FILE NO: 16/355708
RM8 REF NO: PSC2016-01630

PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION
MANAGER
GROUP: DEVELOPMENT SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the planning proposal at **(ATTACHMENT 2)** to reclassify the subject site from 'community' to 'operational' land.
- 2) Forward the planning proposal to the NSW Department of Planning and Environment under Section 56 of the *Environmental Planning and Assessment Act 1979* with a request for a Gateway determination.

**ORDINARY COUNCIL MEETING - 27 SEPTEMBER 2016
MOTION**

273	<p>Mayor Bruce MacKenzie Councillor Ken Jordan</p> <p>It was resolved that Council:</p> <ol style="list-style-type: none">1) Endorse the planning proposal at (ATTACHMENT 2) to reclassify the subject site from 'community' to 'operational' land.2) Forward the planning proposal to the NSW Department of Planning and Environment under Section 56 of the <i>Environmental Planning and Assessment Act 1979</i> with a request for a Gateway determination.
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In accordance with Section 375 (A) of the *Local Government Act 1993*, a division is required for this item.

Those for the Motion: Mayor Bruce MacKenzie, Crs Chris Doohan, Sally Dover, Ken Jordan, Paul Le Mottee, John Morello, John Nell and Steve Tucker.

Those against the Motion: Nil.

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.**MINUTES ORDINARY COUNCIL - 27 SEPTEMBER 2016****BACKGROUND**

The purpose of this report is to obtain Council's endorsement of the planning proposal at (**ATTACHMENT 2**) and request a gateway determination from the Department of Planning & Environment under Section 54 of the *Environmental Planning and Assessment Act 1979*.

Subject land:	Lot 644 DP 658258, 9B Diemars Road, Salamander Bay.
Proponent:	Port Stephens Council - Property Services Section.
Area of land:	3,684m ²
Zone:	IN4 – Working Waterfront Zone (rezoning of land is not proposed).
Current classification:	Community.
Proposed changes:	Reclassify from 'community' to 'operational' land.
Purpose:	To enable sale of land to adjoining property owner/s.

The planning proposal seeks to amend the *Port Stephens Local Environmental Plan 2013 (LEP 2013)* by reclassifying Lot 644 DP 658258, 9B Diemars Road, Salamander Bay from 'community' to 'operational' land in order to facilitate its sale to an adjoining landowner. The planning proposal does not seek to amend the zoning. The proposed future use of the site for oyster farming operations is permissible in the IN4 – Working Waterfront zone and would be subject to a separate development application.

The site is zoned IN4 – Working waterfront and is approximately 3,684m². The site has direct water access to the west and is landlocked by privately owned IN4 zoned land to the north, south and east, which is used for oyster farming operations, oyster processing and a retail facility. The site does not have legal street access.

Part of the site is currently being used, without a formal licence from Council, for the storage of oyster racks and associated materials by an adjoining landholder/oyster farmer. This use is consistent with the IN4 Zone.

A preliminary ecological assessment undertaken identifies that the site contains Swamp Oak Sedge Forest and cleared grassland. This Swamp Oak Sedge Forest consists of an overstorey dominated by Forest Red Gum (*Eucalyptus tereticornis*) and Swamp Oak (*Casuarina glauca*). The understorey was dominated by weed species such as Morning Glory, Asparagus, Lantana and Large-leaved Privet.

The land formed part of the former Naval Base lands, purchased by Council in the 1956/1957. The site was zoned 6(a) Public Recreation under the Port Stephens Local Environmental Plan 1987 and classified as 'community land'. Under the Port Stephens Local Environmental Plan 2000, the site was zoned 4(a) General Industrial.

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.**MINUTES ORDINARY COUNCIL - 27 SEPTEMBER 2016**

Adjoining land was reclassified in 1997 under Amendment No 112 to the LEP 1987 from 'community' to 'operational' land and subsequently sold. This had the effect of land locking the subject site.

On 25 November 2008, Council considered a proposal to reclassify the site. At this time, it was resolved that:

Council note further investigation of this land be held in abeyance pending adoption of the draft Foreshore Management Plan.

The Foreshore Management Plan was adopted by Council on 28 April 2009. No specific management options are identified for this site. The key considerations for any future development proposal include consideration of visual amenity and foreshore stability.

On 27 October 2015, Council resolved to formally prepare a planning proposal to submit to the Department of Planning & Environment for the reclassification of this and another site. However, given that the report was prepared by Council's Property Services Section, a separate report from Council's Strategic Planning Section, as the relevant planning authority, is required.

It is considered that the planning proposal has sufficient merit to proceed to gateway.

COMMUNITY STRATEGIC PLAN

Strategic Direction	Delivery Program 2013-2017
Sustainable Development.	Provide Strategic Land Use Planning Services. Provide Development Assessment and Building Certification Services.

FINANCIAL/RESOURCE IMPLICATIONS

The cost of processing the planning proposal will be covered by Rezoning Fees, in accordance with Council's Fees & Charges. The planning proposal is categorised as a Category B Planning Proposal. Fees are detailed below:

Source of Funds	Yes/No	Funding (\$)	Comment
Existing budget	No		
Reserve Funds	No		
Section 94	No		
External Grants	No		

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.

MINUTES ORDINARY COUNCIL - 27 SEPTEMBER 2016

Other	Yes	\$5,302.50	Category B Planning Proposal: Stage 1 Paid (18 May (\$5,302.50) 2016) Stage 2 Required prior (\$10,500) to exhibition Stage 3 Required prior (\$5,250) to gazettal
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The landlocked nature of the site is likely to affect the value of the property as it does not have legal street access, which limits its practical use. A formal valuation, along with negotiations, will form the basis of the sale price for the property to be recommended to Council, following the reclassification.

LEGAL, POLICY AND RISK IMPLICATIONS

The planning proposal will be processed in accordance with the plan making procedures in the *Environmental Planning and Assessment Act, 1979*, the *Local Government Act 1993* and the Department of Planning and Environment's Practice Note PN09-003 (12 June 2009) *Classification and reclassification of public land through a local environmental plan*.

In accordance with the practice note, Council must provide a Statement of Interest when the planning proposal is exhibited. The Statement of Interest seeks to:

- a) Identify land owned by Council proposed to be reclassified; and
- b) Allow the community the opportunity to assess the proposal with a full appreciation of all relevant information.

A copy of the Statement can be found in the planning proposal at **(ATTACHMENT 2)**.

Environmental Planning and Assessment Act 1979

The planning proposal is being progressed in accordance with Part 3 of the *EP&A Act, 1979*.

Local Government Act 1993

Reclassification of the site from 'community' to 'operational' land under the *Local Government Act 1993* will allow Council to sell the land.

The proposed reclassification is to be the subject of a public hearing pursuant to section 29 of the *Local Government Act 1993*.

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.**MINUTES ORDINARY COUNCIL - 27 SEPTEMBER 2016**S117 Ministerial Direction

The planning proposal is consistent with relevant s117 Directions, as detailed in the planning proposal at (ATTACHMENT 2).

State Environmental Planning Policies

There are no existing or draft State Environmental Planning Policies that prohibit or restrict the proposed development as outlined in the planning proposal. An assessment of relevant State Environmental Planning Policies against the planning proposal is provided in (ATTACHMENT 2).

Department of Planning & Environment Practice Note PN09-003 (12 June 2009) – Classification and reclassification of public land through a local environmental plan

The purpose of the *Department of Planning & Environment Practice Note PN09-003 (12 June 2009) – Classification and reclassification of public land through a local environmental plan* is to provide guidance on how to classify and reclassify public land through a local environmental plan. The planning proposal is consistent with the Practice Note.

Port Stephens Local Environmental Plan 2013

The objectives of the planning proposal will be achieved by the following amendments to the *Port Stephens Local Environmental Plan 2013*:

Amend Part 2 Land classified, or reclassified as operational land – interests changed, Schedule 4 Classification and reclassification of public land to include the subject site as follows:

Locality	Description	Any trusts etc discharged
9B Diemars Road, Salamander Bay	Lot 644 DP 658258,	Nil

Foreshore Management Plan 2009

The Foreshore Management Plan was adopted by Council on 28 April 2009. No specific management options are identified for this site. The Strategy provides a framework that can be used to protect and enhance the environmental, recreational, aesthetic, economic and cultural values of the Port Stephens foreshore. It provides key considerations for development on the foreshore, such as visual amenity and foreshore stability.

While the Foreshore Management Plan seeks to ensure that foreshore land remains in Council ownership for public use, the landlocked nature of this site limits opportunities for community use. A significant amount of publicly accessible foreshore land is located within 100m from the site.

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.**MINUTES ORDINARY COUNCIL - 27 SEPTEMBER 2016**Open Space Analysis Review 2005

Council has acquired community land via a range of means that have not always resulted in a medium to long term net gain for the community. In the past there has been a lack of coordination and control mechanisms governing the acquisition of community land. This has resulted in Council receiving community land with little community recreation, environmental, social or cultural value.

The planning proposal is an outcome of the Open Space Consolidation Review undertaken in 2006 and 2007.

The Open Space Consolidation Review took a consistent LGA wide approach to directing Council's open space resources. This Review identified that a number of sites were surplus to Council's open space requirements based on a set of selection criteria which reflected Council's open space standards of provision. Council's 2010 draft Open Space Strategy has refined these criteria, and the sites would not be identified as suitable for open space under the draft Open Space Strategy. From an operational perspective, the review of land classifications also resulted in a number of sites being recommended for reclassification to operational land to facilitate improved management regimes.

The site was identified in the Open Space Analysis Review (May 2005) as being suitable for disposal to adjoining land holders as its landlocked nature provides limited opportunities for community use.

The proposed reclassification will allow the site to be sold by Council. An adjoining landholder has expressed interest in purchasing the site for oyster farming operations, consistent with the IN4 zoning.

Risk	<u>Risk Ranking</u>	Proposed Treatments	Within Existing Resources?
There is a risk that Council becomes liable for illegal use of the land.	Low	Adopt the recommendation to reclassify the site so that it can be sold to adjoining land holders.	Yes

SUSTAINABILITY IMPLICATIONS

Includes Social, Economic and Environmental Implications

There are limited social and economic implications arising from this planning proposal. Council will gain an economic benefit from the disposal of the land by generating non-rate income from the sale of the property. Council will save a nominal amount of money in maintenance cost, which includes a biannual inspection and the regular removal of illegally dumped rubbish.

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.**MINUTES ORDINARY COUNCIL - 27 SEPTEMBER 2016**

A small disturbed example of Swamp Oak Floodplain Forest, which is listed as an endangered ecological community under the *Threatened Species Conservation Act 1995*, was recorded on site. The vegetation is considered to be of low to moderate quality due to the absence of a native understorey and ground layer.

Council's Vegetation Management Officer conducted a site inspection on 1 July 2016 to identify whether the Swamp Oak Forest was being utilised by koalas. The outcome of the inspection concluded that koalas are utilising the Forest Red Gum (*Eucalyptus tereticornis*) on site.

On review of Council's Biodiversity connectivity corridors, the vegetation present on site has been identified as part of a landscape habitat and local stepping stone wildlife corridor and a landscape link for Koalas.

The planning proposal to reclassify the land will be unlikely to impact on these threatened species and endangered ecological communities. Any future development should be restricted to cleared grassland areas of the site and will need to address the potential environmental impacts.

A review by Council of the Department of Primary Industry Estuarine vegetation mapping identified seagrass (*Zostera*) adjacent to the site. Any future development proposals would need to consider any potential impacts on this sensitive community, such as a decrease in water quality from runoff and sedimentation.

MERGER PROPOSAL IMPLICATIONS

The proposed merger is not anticipated to have any implications on the planning proposal.

CONSULTATION

The planning proposal has been prepared by Strategic Planning, in consultation with Property Services Section.

Internal

Council's Natural Resources team provided comments on the ecological assessment and Foreshore Plan of Management.

External

Government agency - Government agency consultation will be undertaken in accordance with the Gateway determination. It is anticipated that the following agencies will be consulted:

- Department of Primary Industry (Fisheries)
- Office of Environment and Heritage

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.

MINUTES ORDINARY COUNCIL - 27 SEPTEMBER 2016

- Worimi Local Aboriginal Land Council

Community - The planning proposal will be exhibited in accordance with the Gateway determination. Due to the low impact nature of the planning proposal, is anticipated that an exhibition period of 14 days will be required.

In accordance with the *Local Government Act 1993*, a public hearing must be held on the matter following the exhibition period.

OPTIONS

- 1) Accept the recommendations.
- 2) Amend the recommendations.
- 3) Reject the recommendations.

ATTACHMENTS

- 1) Locality Plan.
- 2) Planning Proposal - 9B Diemars Road, Salamander Bay.

COUNCILLORS ROOM


Nil.

TABLED DOCUMENTS

Nil.

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
SALAMANDER BAY.

Attachment Four – Gateway determination 22 November 2016

 **Planning & Environment**

Current PR 2016 PORTS 007 00 (16/18013)
Your ref: PEO2015-01630

Mr Wayne Wallis
General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Attn: Sarah Connell

Dear Mr Wallis

Planning proposal to amend Port Stephens Local Environmental Plan 2013

I refer to your Council's request for a Gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") and additional information received on 2 November 2016 to reclassify land at 9B Diemars Road, Salamander Bay.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

Council may still need to obtain the agreement of the Secretary's delegate to comply with the requirements of relevant S117 Directions. Council should ensure this occurs prior to the plan being made.


Council is reminded of its obligations for undertaking a public hearing in relation to the proposed reclassification of land in accordance with the department's practice note *PN09-003, Classification and reclassification of public land through a local environmental plan*.

The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made 6 weeks prior to the projected publication date.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met.

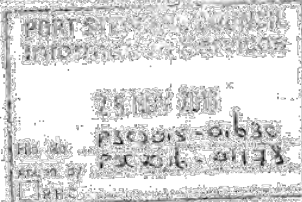
Should you have any queries in regard to this matter, I have arranged for Ken Phelan from the Hunter office to assist you. Mr Phelan can be contacted on (02) 4904 2705.

Yours sincerely,



22/11/2016
Monica Gibson
Director Regions, Hunter and Central Coast
Planning Services

Hunter and Central Coast Region - Hunter Office - Level 2 25 Honeysuckle Drive (PO Box 1246) Newcastle NSW 2300
Phone 02 4904 2700 Fax 02 4904 2701 Website planning.nsw.gov.au



ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
SALAMANDER BAY.



Planning &
Environment

Gateway Determination

Planning proposal (Department Ref: PP 2016 PORTS 007 00) to reclassify land at 9B Diemars Road, Salamander.

1. the Director Regions, Hunter and Central Coast at Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Port Stephens Local Environmental Plan (LEP) 2013 to reclassify land at 9B Diemars Road, Salamander should proceed subject to the following conditions:

1. Prior to exhibition Council is to update the Planning Proposal to reflect the additional relevant section 117 directions:

- Planning Direction 2.1 - Environment Protection Zones
- Planning Direction 4.3 - Flood Prone Land
- Planning Direction 4.4 - Planning for Bushfire Protection

2. Council is to co-exhibit with the Planning Proposal the Open Space Consolidation Review, undertaken in 2006, which provided the recommendation regarding the disposal of the land.

3. Prior to exhibition consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act and amend the Planning Proposal to reflect their comments:

- NSW Department of Primary Industries (Fisheries) (Direction 1.4)
- NSW Rural Fire Service (Direction 4.4)


4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- a. the planning proposal must be made publicly available for a minimum of 14 days; and
- b. the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Planning & Infrastructure 2013).

5. A public hearing is not required to be held into the matter by any person or body under section 56(2) (e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

Dated 22nd day of November 2016.


Monica Gibson
Director Regions, Hunter and Central Coast
Planning Services
Department of Planning and Environment
Delegate of the Minister for Planning

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY.

Attachment Five – Department of Primary Industries (Fisheries) correspondence



**Department of
Primary Industries**

OUT17/5558

Sarah Connell
Strategic Planner
Port Stephens Council
116 Adelaide Street
Raymond Terrace NSW 2324

Your Ref: PP_2016_PORTS_007_00(16/13013)
6 February 2017

Re: SEPP 62 referral for proposed reclassification of land from 'community' to 'operational' – Lot 644 DP 658258, 9B Diemars Road, Salamander Bay

Thank you for referring the above development application to the NSW Department of Primary Industries (NSW DPI) in accordance with SEPP 62 – Sustainable Aquaculture.

NSW DPI can confirm that Priority Oyster Aquaculture Areas (POAA) are present in the estuarine waters in proximity to the proposed development. These POAA areas are mapped and described in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS). This strategy also details the required water quality growing and harvest standards for the NSW oyster industry in chapters 3 & 4. OISAS can be accessed at: <http://www.dpi.nsw.gov.au/fishing/aquaculture/publications/oysters/industry-strategy>

The harvest standards are prescribed under the NSW Shellfish Program administered by the NSW Food Authority and the NSW oyster industry has a statutory responsibility to meet these standards. These standards also reflect the Australian standards for shellfish harvest prescribed in the Australian Shellfish Quality Assurance Program. These internationally accepted water quality standards are designed to protect the consumers of shellfish from human pathogenic bacteria and viruses that may accumulate in shellfish where shellfish growing waters are polluted by sewage or stormwater effluent.

Given the sensitivity of the adjacent waters, the most critical issue for consideration in the proposed on-site treatment and/or disposal system is the ability of the system to adequately removal or inactivate human pathogenic viruses and bacteria that may be present to ensure the protection of the sanitary water quality of the adjacent oyster growing areas.

It is recognised that protecting water quality in oyster growing and harvest areas is crucial to the long term future of the oyster industry and protecting water quality in oyster growing and harvest areas from incompatible development is the primary purpose of Part 3A of SEPP 62 Sustainable Aquaculture.

NSW DPI would like to reiterate the requirement for council to ensure the proposed wastewater infrastructure for the subject development is consistent with AS/NZS

Fisheries NSW
Port Stephens Fisheries Institute
Locked Bag 1, NELSON BAY NSW 2315
Tel: 02 4962 1232 Fax: 02 4961 5074
ABN 72 189 919 072 www.dpi.nsw.gov.au

**ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
SALAMANDER BAY.**

1547:2012 On-site domestic wastewater management. Key criteria NSW DPI requires to be enforced are:-

- Appropriate setbacks from waterways;
- Avoidance of pump-out systems;
- Appropriate dispersal areas;
- Soil type is suitable to accommodate loading;
- Design components will result in mean pollutant loads meeting required levels; and
- Regular inspection program.

Further, as the NSW Shellfish Program is administered by the NSW Food Authority, this agency should also be consulted as part of the development approval process, NSWSP@foodauthority.nsw.gov.au.

Please also note that NSW DPI notifies the potentially affected sectors of the oyster industry for all applications referred to NSW DPI under SEPP 62– Sustainable Aquaculture.

It is also strongly recommended that Council classify systems that are not connected directly to a Council operated STP as high risk under Council's on-site sewage management system and that these systems be inspected annually for compliance.

Should you have any enquiries, please do not hesitate to contact me on (02) 4916 3824.

Yours sincerely



Ryan Jefferson
A/Policy Officer Aquaculture

ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
SALAMANDER BAY.

Attachment Six – Rural Fire Service correspondence

Hi Sarah,

As per our discussion this morning, the Referral – Planning Proposal – 9B Diemars Road, Salamander Bay, was reviewed and there is no objection to the proposal.

This is with the understanding that any development proposed on the land would only be for industrial or commercial purposes and not be for a dwelling or temporary accommodation. Any future development application for the site shall be accompanied by a Bush Fire Assessment Report outlining how the proposal complies with Planning for Bush Fire Protection 2006.

Regards

Josh Calandra | Development Assessment & Planning Officer | Planning and Environment Services (East)

NSW RURAL FIRE SERVICE

42 Lamb Street Glendenning NSW 2761 | Locked Bag 17 Granville NSW 2142

P 13 0067 9737 **F** 02 8867 7983 **E** Joshua.Calandra@rfs.nsw.gov.au

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PREPARE. ACT. SURVIVE.

**ITEM 10 - ATTACHMENT 1 PLANNING PROPOSAL - 9B DIEMARS ROAD,
SALAMANDER BAY.**

Attachment Seven – Public Hearing report