



Minor zone boundary adjustment - Planning Proposal

March 2018 (Council Report)

Proposed amendment to Port Stephens Local Environmental Plan 2013

Zone boundary adjustment at
Lot 21/DP1044009 and Lot 23/DP1044009
100 Salamander Way, Salamander Bay



PORT STEPHENS
COUNCIL

FILE NUMBERS

Council: PSC2017-02843
Department: PP_2017_PORTS_006_00

SUMMARY

Subject land: Lot 21/DP1044009 and Lot 23/DP1044009
100 Salamander Way, Salamander Bay

Proponent: Port Stephens Council ABN 16 744 377 876

Proposed changes: The amendment will make a minor adjustment to the zone boundary to ensure consistency with the boundary of a registered Biobanking Agreement that applies to the site.

Area of land: 0.26ha of land will be rezoned

BACKGROUND

The Planning Proposal (the proposal) seeks to make a minor adjustment to the boundary of the E2 – Environmental Conservation Zone to ensure consistency with the boundary of a Biobank site under a registered Biobanking Agreement (Biobanking ID Number 158, registered on 17 November 2015).

The amendment to the LEP will adjust the zone boundary between the E2 - Environment Conservation Zone and SP2 - Infrastructure: School / Child care centre Zone and makes corresponding adjustments to the relevant minimum lot size map to reflect the new zone boundary.

0.11ha of E2 zoned land affected by the Biobank Agreement will be converted to the SP2 Infrastructure: School / Child care centre zone and corresponding lot size.

0.15ha of SP2 zoned land will become E2 zoned land (with a corresponding 40 ha minimum lot size) as a result of the zone boundary adjustment.

The proposal is required to correct minor mapping discrepancies between the boundary of the Biobanking Agreement and the land zoned E2 that prevent the retirement of the credits under the Agreement.

The Biobanking Agreement was prepared and registered by the Office of Environment and Heritage following extensive site surveys and investigations, which more accurately identified the boundary of the relevant land than the zoning boundaries which were prepared prior to that Agreement.

On 27 October 2017, Council submitted a request to the Minister to proceed with the Planning Proposal as a minor expedited amendment under section 73A of the *Environmental Assessment and Act 1979*.

The Department declined to expedite the amendment; however, they confirmed that the amendment is minor and issued a Gateway Determination which requires that Council exhibit the Planning Proposal for 14 days (**ATTACHMENT 7**).

Council has been delegated the functions to make the amendment following public exhibition (**ATTACHMENT 8**).

On 19 December 2017, the Department of Planning and Environment notified Council that the amendment would not be progressed as an expedited amendment and public exhibition was required.

On 19 December 2017, Council was issued with a Gateway determination that determined that the Planning Proposal should proceed, subject to a minimum 14 days public exhibition.

In accordance with the Gateway determination, no additional investigations or agency consultation is required to proceed with the proposal.

The planning proposal was exhibited from 22 February 2018 to 8 March 2018.

One submission objecting to the proposal was received during the exhibition period.

SITE

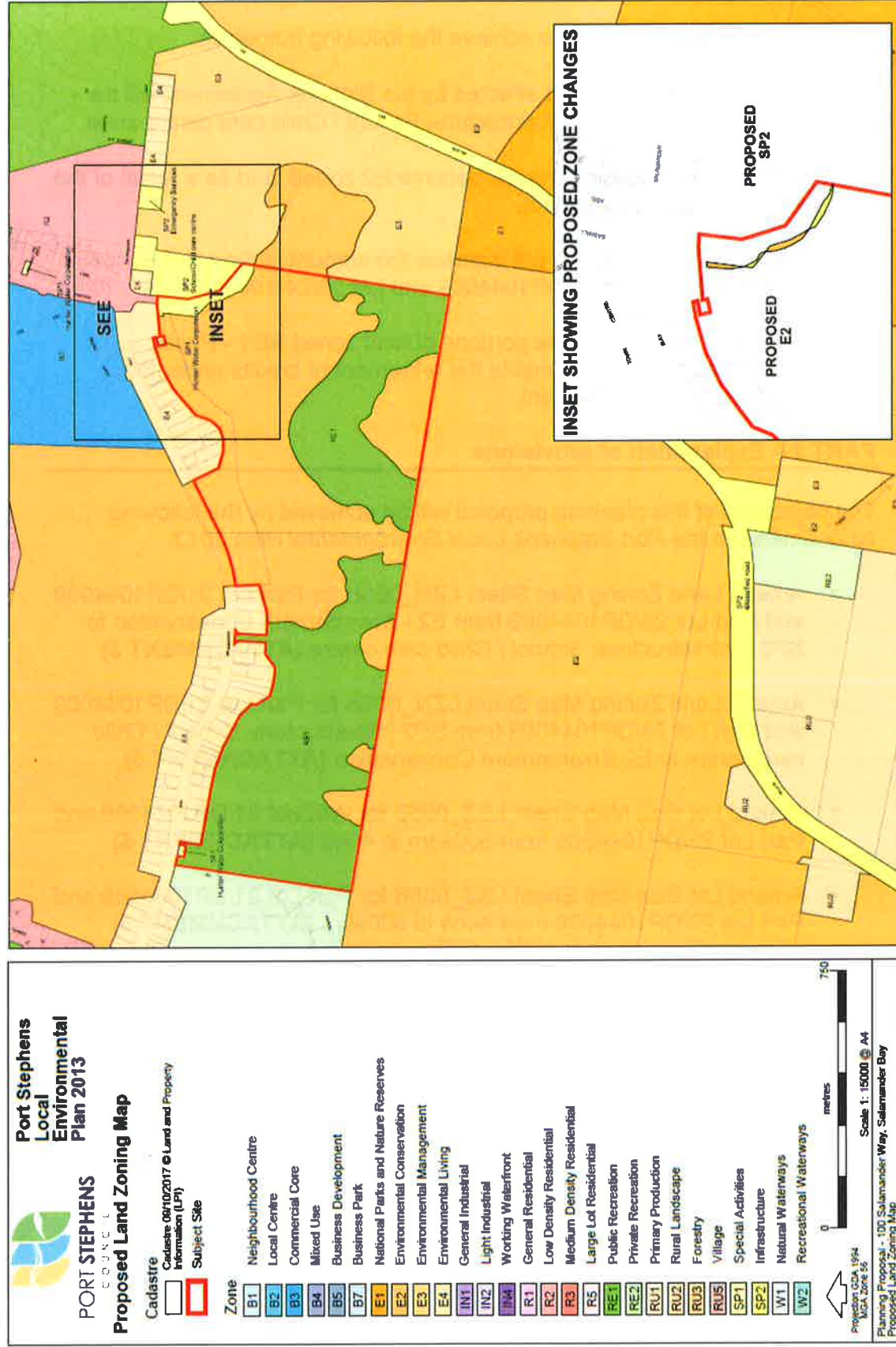
The relevant land to which this amendment applies is 100 Salamander Way, Salamander Bay, and is legally known as part Lot 21/DP1044009 and part Lot 23/DP1044009 (**ATTACHMENT 1**). The area of land affected by the zone boundary adjustment is 0.26ha.

The land is currently zoned E2 - Environmental Conservation; SP2 - Infrastructure: School / Child care centre; and RE1 - Public Recreation.

Site surveys and attributes are set out in the registered Biobanking Agreement, which can be found at <www.environment.nsw.gov.au>.

The subject land and the extent of the zone boundary adjustment is identified by **(FIGURE 1)** on the following page (p.4) of this planning proposal.

FIGURE 1 –100 Salamander Way, Salamander Bay (lots subject to Planning Proposal shown in red)



PART 1 – Objectives or intended outcomes

The Planning Proposal seeks to achieve the following outcomes:

- 0.11ha of E2 zoned land affected by the Biobank Agreement will be converted to the SP2 Infrastructure: School / Child care centre zone.
- 0.15ha of SP2 zoned land will become E2 zoned land as a result of the zone boundary adjustment.

Overall, the Planning Proposal will increase the amount of land that is currently zoned E2 on Lot 21/DP1044009 and Lot 23/DP1044009.

No changes are proposed to the portions of land zoned RE1 - Public Recreation. The proposal will enable the retirement of credits under the registered Biobanking Agreement.

PART 2 – Explanation of provisions

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

- Amend Land Zoning Map Sheet LZN_005B for Part Lot 21/DP1044009 and Part Lot 23/DP1044009 from E2 - Environment Conservation to SP2 - Infrastructure: School / Child care centre (**ATTACHMENT 3**)
- Amend Land Zoning Map Sheet LZN_005B for Part Lot 21/DP1044009 and Part Lot 23/DP1044009 from SP2 Infrastructure: School / Child care centre to E2 Environment Conservation (**ATTACHMENT 3**)
- Amend Lot Size Map Sheet LSZ_005B for Part Lot 21/DP1044009 and Part Lot 23/DP1044009 from 500sqm to 40ha (**ATTACHMENT 5**)
- Amend Lot Size Map Sheet LSZ_005B for Part Lot 21/DP1044009 and Part Lot 23/DP1044009 from 40ha to 500sqm (**ATTACHMENT 5**)

PART 3 – Justification

Section A – Need for the planning proposal

Q1. Is the planning proposal a result of any strategic study or report?

The Planning Proposal will ensure consistency with registered Biobanking Agreement (Biobanking ID Number 158, registered on 17 November 2015) and enable credits to be retired under that Agreement.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

This planning proposal is the only means to amend the *Port Stephens Local Environmental Plan 2013* to ensure consistency with registered Biobanking Agreement (Biobanking ID Number 158, registered on 17 November 2015) and enable credits to be retired under that Agreement.

Section B – Relationship to strategic planning framework

Q3. Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

Hunter Regional Plan 2036

The Hunter Regional Plan 2036 (HRP) supports investing in conservation, including biodiversity offsets made available through mechanisms such as Biobanking Agreements. The planning proposal is consistent with the HRP, as it will facilitate a registered Biobanking Agreement.

Q4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Integrated Strategic Plan (Port Stephens 2013-2023)

The proposal is consistent with Council's Integrated Strategic Plan, which states that Council should implement biodiversity programs. The planning proposal will facilitate a registered Biobanking Agreement.

Port Stephens Planning Strategy (PSPS)

The PSPS seeks to be consistent with State strategic directions to provide greater certainty as to priority conservation areas which should be protected, and those areas which are available for development. The proposal is consistent with the PSPS to the extent it facilitates a registered Biobanking Agreement.

Q5. 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.

TABLE 1 – Relevant State Environmental Planning Policies

SEPP	Relevance	Consistency and Implications
SEPP 14 —Coastal Wetlands	This SEPP applies to land across NSW identified on relevant maps published by the	Relatively small portions of the land affected by the boundary adjustment

	<p>NSW Department of Planning. The aim of this policy is to ensure that the coastal wetlands are preserved and protected in the environmental and economic interests of the State.</p>	<p>are identified as land to which the SEPP applies.</p> <p>The planning proposal will facilitate a Biobanking Agreement that will secure the protection of a significant portion of land identified as coastal wetlands in perpetuity.</p> <p>Consistent with the SEPP, this will ensure coastal wetlands on the site are preserved and protected.</p> <p>Any subsequent development applications on the relevant land will continue to be subject to restrictions under the SEPP.</p>
SEPP 44 – Koala Habitat Protection	<p>This SEPP applies to land across NSW that is greater than one hectare and is not a National Park or Forestry Reserve. The SEPP encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.</p>	<p>Consistent – The registered Biobanking Agreement (published http://www.environment.nsw.gov.au/bimsprapp/AgreementDetails.aspx?ID=158#) has addressed impacts on koalas.</p>
SEPP 55 – Remediation of Land	<p>This SEPP applies to land across NSW and states that land must not be developed if it is unsuitable for a proposed use because of contamination.</p>	<p>Consistent – There is no evidence that the relevant land is contaminated and the proposal will not facilitate an unsuitable use of the land given the minor extent of land being</p>

		rezoned and the existing zoning of the adjoining land.
State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017	This SEPP facilitates the effective delivery of educational establishments and early education and care facilities across the State.	Consistent – The proposal will not have a significant impact on the land zoned SP2 Infrastructure: School / Child care centre.
State Environmental Planning Policy (Rural Lands) 2008	This SEPP (among other matters) identifies Rural Planning Principles to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State and aims to reduce land use conflicts.	Consistent - The proposal is considered consistent with the relevant Rural Planning Principles as it will facilitate a Biobanking Agreement that will enable the identification and protection of natural resources, having regard to maintaining biodiversity.

Q6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

An assessment of relevant s.117 Directions against the proposal is provided in the table below.

TABLE 2 – Relevant s.117 Ministerial Directions

Ministerial Direction	Aim of Direction	Consistency and Implications
1. EMPLOYMENT AND RESOURCES		
1.3 Mining, Petroleum Production and Extractive Industries	The objective of this direction is to ensure that the future extraction of State or regionally significant reserves coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.	Consistent – The proposal does not seek to prohibit resource extraction and is consistent with this Direction.
1.4 Rural Lands	The objectives of this direction are to:	This direction applies because the planning

	<p>(a) protect the agricultural production value of rural land,</p> <p>(b) facilitate the orderly and economic development of rural lands for rural and related purposes.</p>	<p>proposal consists of an alteration of the existing environment protection zone boundary.</p> <p>The proposal is considered consistent with the relevant Rural Planning Principles as it will facilitate a Biobanking Agreement that will enable the identification and protection of natural resources, having regard to maintaining biodiversity.</p>
2. ENVIRONMENT AND HERITAGE		
2.1 Environment Protection	The objective of this direction is to protect and conserve environmentally sensitive areas.	Consistent – Overall, the proposal will increase the amount of land that is currently zoned E2.
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	Consistent – No items of local or State heritage significance are identified in the <i>Port Stephens Local Environmental Plan 2013</i> as located on or near the site. An AHIMS search was undertaken and no Aboriginal sites or places were detected on or near the site.
4. HAZARD AND RISK		
4.1 Acid Sulfate Soils	The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.	Consistent – The site is nominated as Class 3 in terms of Acid Sulfate Soils. Future development may require Acid Sulfate Soils Management Plan; however, it will not impede the rezoning and reclassification of the land.
4.2 Mine Subsidence and Unstable Land	The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable	Consistent – The land is not identified as being subject to mine subsidence.

	or potentially subject to mine subsidence.	
4.4 Planning for Bushfire Protection	The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.	<p>Consistent – The land is identified as Bushfire Prone Land. Given the minor nature and extent of the zone boundary adjustment, any impacts relevant to bushfire hazards are likely to be minimal to none.</p> <p>The Gateway Determination does not require consultation with the Rural Fire Service.</p>
5. REGIONAL PLANNING		
5.10 Implementation of Regional Plans	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional plans.	<p>Consistent – The Hunter Regional Plan 2036 (HRP) supports investing in conservation, including biodiversity offsets made available through mechanisms such as Biobanking Agreements. The proposal is consistent with the HRP as it will facilitate a registered Biobanking Agreement.</p>
6. LOCAL PLAN MAKING		
6.1 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	<p>Consistent – The proposal does not seek to introduce concurrence, consultation or referral provisions.</p>

Section C – Environmental, social and economic Impact

Q7. 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?

The proposal was referred to Council's Natural Resources Team. The

Natural Resources Team supports the zone boundary adjustment for the purposes of aligning the E2 - Environmental Conservation zone with the boundary of the established Biobank site.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The proposed amendment will not have any significant adverse impact on the environment or adjoining land, given the minor adjustment to zone boundary and the relatively small area of land affected.

Q9. Has the planning proposal adequately addressed any social and economic effects?

The proposed amendment will not have any significant adverse economic or social impacts, given the minor adjustment to zone boundary and the relatively small area of land affected.

Section D – State and Commonwealth interests

Q10. Is there adequate public infrastructure for the planning proposal?

No public infrastructure is required.

Q11. What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation with the Office of Heritage and Environment was undertaken as part of preparation and execution of the registered Biobanking Agreement (Biobankingofgateway ID Number 158, registered on 17 November 2015). The Office of Heritage and Environment has been notified of the mapping error required to be amended in order to facilitate the retirement of credits under that Agreement.

The Gateway Determination issued on 19 December 2017, determined that no additional agency consultation is required to proceed with the proposal.

Section E – LEPs and Council Land, Best Practice Guideline, published by the then Department of Urban Affairs and Planning, January 1997

Q12. Statement of Council's interest

Council owns Lot 21/DP1044009 and Lot 23/DP1044009 freehold.

Council acquired the land in around 1955 from the Commonwealth Government. It was part of the acquisition of a large portion of land on the Tomaree Peninsula that had been set aside by the Commonwealth for a naval base which never proceeded.

It is understood that Council acquired the land from the Commonwealth in the absence of other purchasers and for future development purposes. The source of funds Council used to purchase the land in 1955 is unknown.

Q13. Purpose of the draft LEP

The proposal will facilitate the retirement of credits under a Biobanking Agreement. The proposal enables credits under that Agreement to be set aside so as to facilitate future development in the locality.

Some of the credits will facilitate the development of a car park and a playground extension on land for use by the St Phillips Christian College. Council will licence the land required for the carpark and playground to St Phillips Christian College on a non-exclusive basis to maintain existing access for third parties.

The Planning Proposal will also have community benefits by ensuring the conservation lands in the Biobanking Agreement can be secured and the car park development facilitated by the Biobanking Agreement will improve local traffic and parking issues in connection with the College.

Q14. Anticipated development

As above, the Planning Proposal will ensure the Biobanking Agreement and associated conservation land and developments can proceed.

Q15. Financial implications

Council will benefit from the Planning Proposal as the Biobanking Agreement enables credits to be set aside so as to facilitate future development in the locality, including the development of a car park and a playground extension on land for use by the St Phillips Christian College. Council will licence the land required for the carpark and playground to St Phillips Christian College on a non-exclusive basis to maintain existing access for third parties.

PART 4 – Mapping

The proposed map layer amendments are included as attachments to the Planning Proposal as follows:

Attachment One – Map showing the extent of the land affected by the Planning Proposal

Attachment Two – Current Zoning Map – Sheet LZN_005B

Attachment Three – Extent of proposed change to the Zoning Map – Amendment to adjust the zone boundary between the E2 Environment Protection Zone and the SP2 Infrastructure: School / Child care centre SP2 Zone

Attachment Four – Current Lot Size Map LSZ__005B

Attachment Five –Proposed change to the Lot Size Map –Amendment to Lot Size Map –from 500m2 and 40ha to 40ha and 500m2, to correspond with the extent of the zone boundary adjustment

Attachment Six - *LEPs and Council Land Best Practice Guideline*, published by the then Department of Urban Affairs and Planning, January 1997

Attachment Seven - Gateway determination and correspondence from the Department of Planning and Environment dated 19 December 2017

Attachment Eight – Delegation Authorisation dated 17 December 2017

PART 5 – Community consultation

The Gateway Determination issued on 19 December 2017, determined that a minimum 14 days public exhibition is required.

The planning proposal was exhibited from 22 February 2018 to 8 March 2018.

Notice of the public exhibition period was placed in the local newspaper, The Examiner. The exhibition material was on display at the following locations during normal business hours:

- Council's Administration Building, 116 Adelaide Street, Raymond Terrace
- Tomaree Library, Town Centre Circuit, Salamander Bay

The planning proposal was also available on Council's website.

One submission was received during the exhibition period, opposing the zone boundary adjustment on the following grounds:

- The Planning Proposal is a means of rectifying a situation that has been allowed to exist in which development has taken place outside its original boundaries (with reference to the St Phillips Christian College use of the neighbouring site); and
- Part of the land zoned E2 Environmental Conservation includes wetlands identified under the *State Environmental Planning Policy No 14—Coastal Wetlands*, and has been filled in and is already a carpark.

In response to the submission, this planning proposal does not authorise the carrying out of development on the site. An application for a car park at St Phillips Christian College was approved by Council on 13 June 2017 (a modification was recently approved on 12 December 2017). This planning proposal does not authorise the carrying out of work contrary to the conditions of that consent. It is also noted that the clearing authorised by the consent included provisions for the offsetting of impacts.

State Environmental Planning Policy No 14—Coastal Wetlands (the SEPP) applies to portions of the land affected by the planning proposal:



The planning proposal will facilitate the retirement of credits under a BioBanking Agreement that will secure the protection of a significant portion of land identified as coastal wetlands in perpetuity. Consistent with the SEPP, this will ensure a large portion of coastal wetland at Salamander Bay is preserved and protected. Any development applications on the land to which the SEPP applies will continue to be subject to the restrictions and assessment requirements under the SEPP.

The preparation of the BioBanking Agreement involved ground truthing the precise location of the wetlands on the site and the boundaries of the land that should be reserved and protected under the Agreement were agreed to by the NSW Office of Environment and Heritage.

Overall it is considered the outcomes facilitated by the planning proposal, i.e. the protection and preservation of land the subject of the BioBanking Agreement, are consistent with the SEPP.

No other submissions were received.

PART 6 – Project timeline

Final mapping will be prepared and an opinion sought from Parliamentary Counsel following a decision by Council to proceed with the amendment.

The following timetable is proposed:

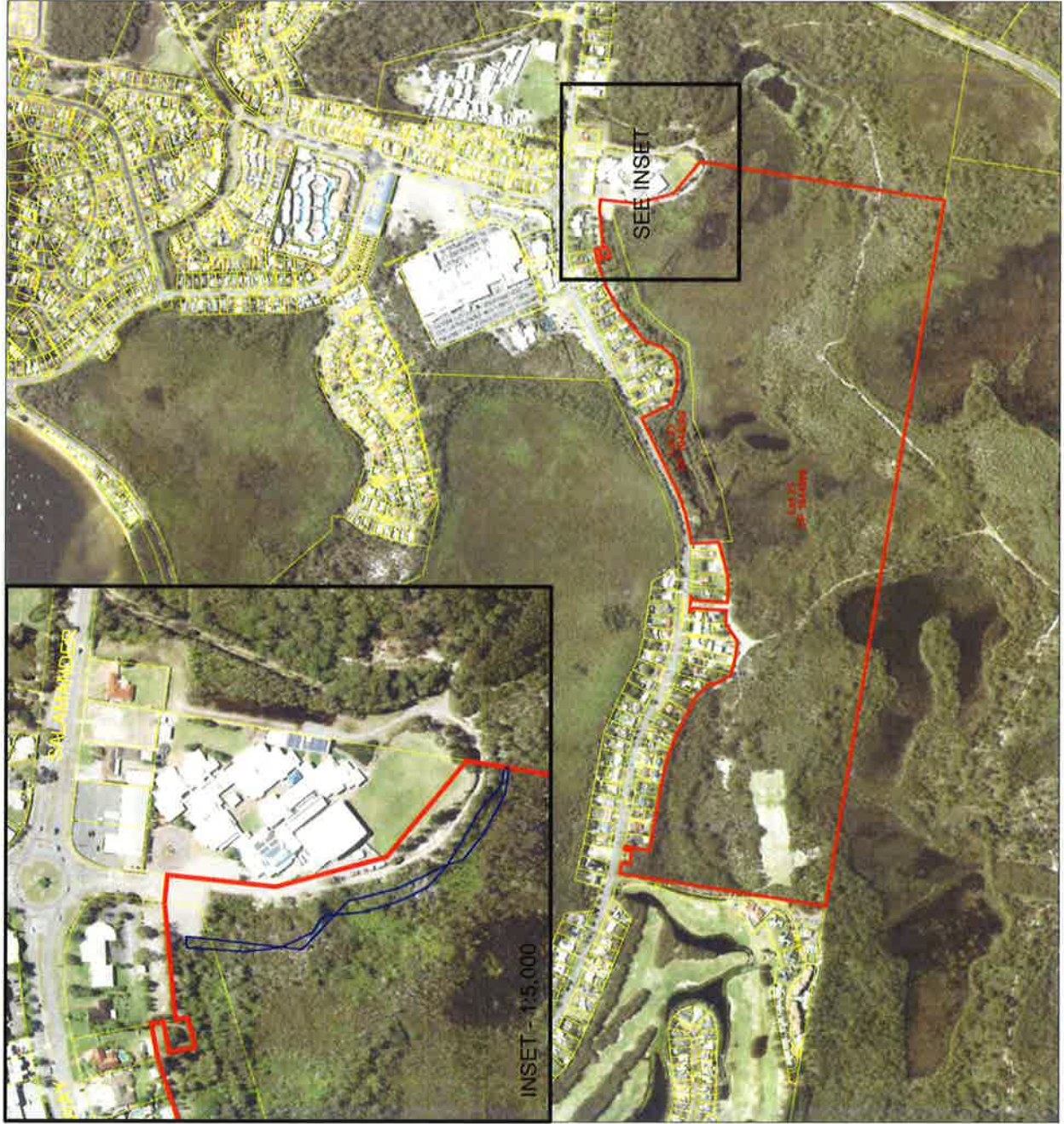
	Dec 2017	Jan 2018	Feb 2018	Mar 2018	April 2018			
Gateway Determination								
Agency Consultation	N/A							
Public Exhibition								
Notification of Public Hearing		N/A						
Public Hearing		N/A						
Council Report								
Parliamentary Counsel								

Site ID Map

Cadastral

-  Cadastral 08/10/2017 © Land and Property Information (LPI)
-  Subject Site
-  Area of land affected by the planning proposal

Aerial Photo: Aerometrix 2015



0 750 metres

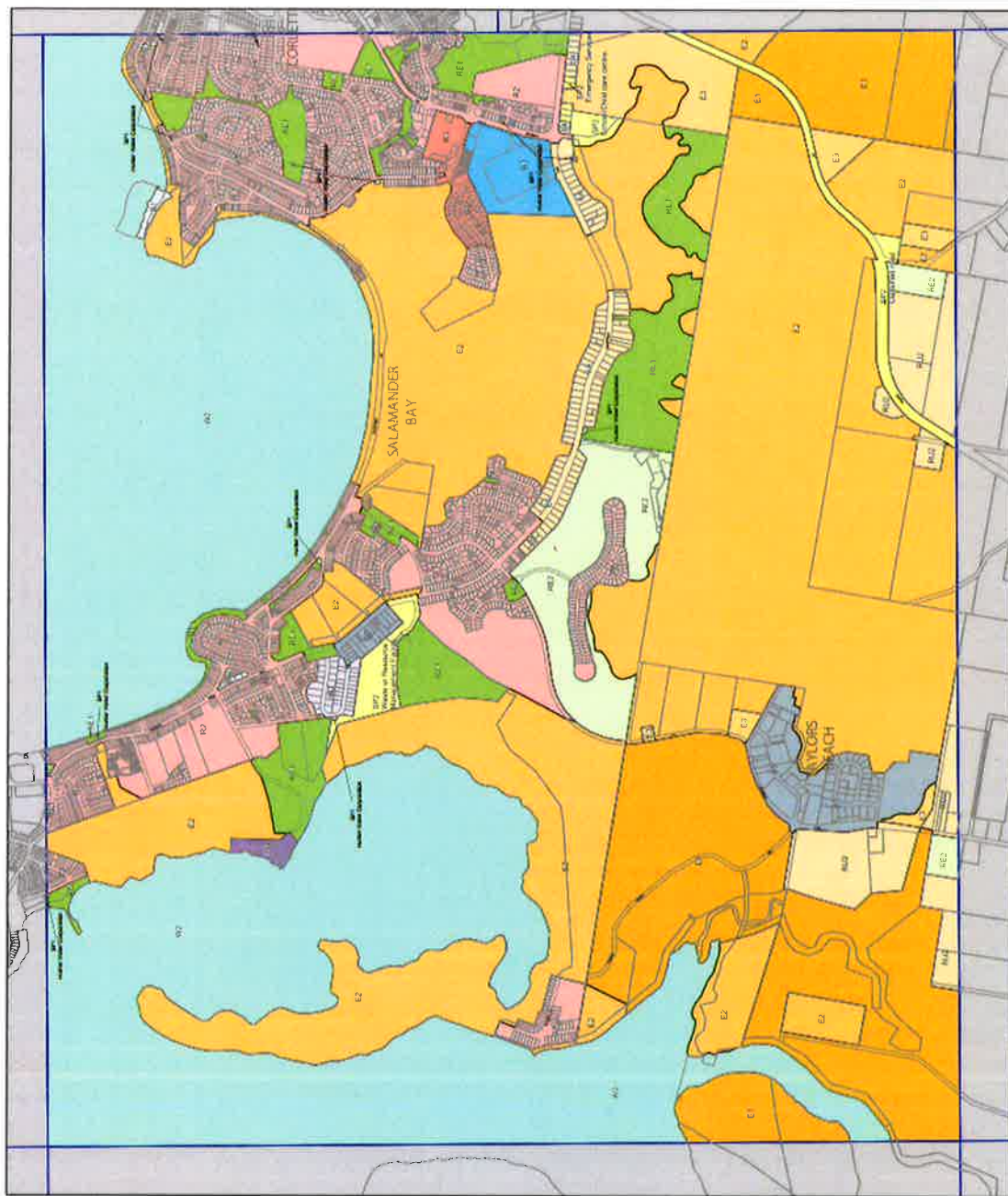
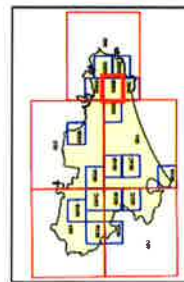
Projection: GDA 1994
MGA Zone 56

Scale 1: 15000 @ A4

Planning Proposal - 100 Salamander Way, Salamander Bay
Site ID Map

Zone	
B1	Neighbourhood Centre
B2	Local Centre
B3	Commercial Core
M1	Mixed Use
M2	Business Development
B7	Business Park
B8	National Parks and Nature Reserves
B9	Environmental Conservation
E1	Environmental Management
E2	Environmental Living
E3	General Industrial
E4	General Industrial
E5	Light Industrial
E6	Working Warehouse
R1	General Residential
R2	Low Density Residential
R3	Medium Density Residential
R4	Large Lot Residential
R5	Public Recreation
R6	Private Recreation
R7	Primary Production
R8	Rural Landscapes
R9	Forestry
R10	Village
R11	Special Activities
R12	Infrastructure
R13	Natural Waterways
R14	Recreational Waterways

Cadastre
☐ Calverze 180/2013 © Land and Property
 Information (LPI)





Port Stephens Local Environmental Plan 2013

PORT STEPHENS
COUNCIL

Proposed Land Zoning Map

Cadastre

- Cadastre 09/10/2017 © Land and Property Information (LPI)
- Subject Site

Zone

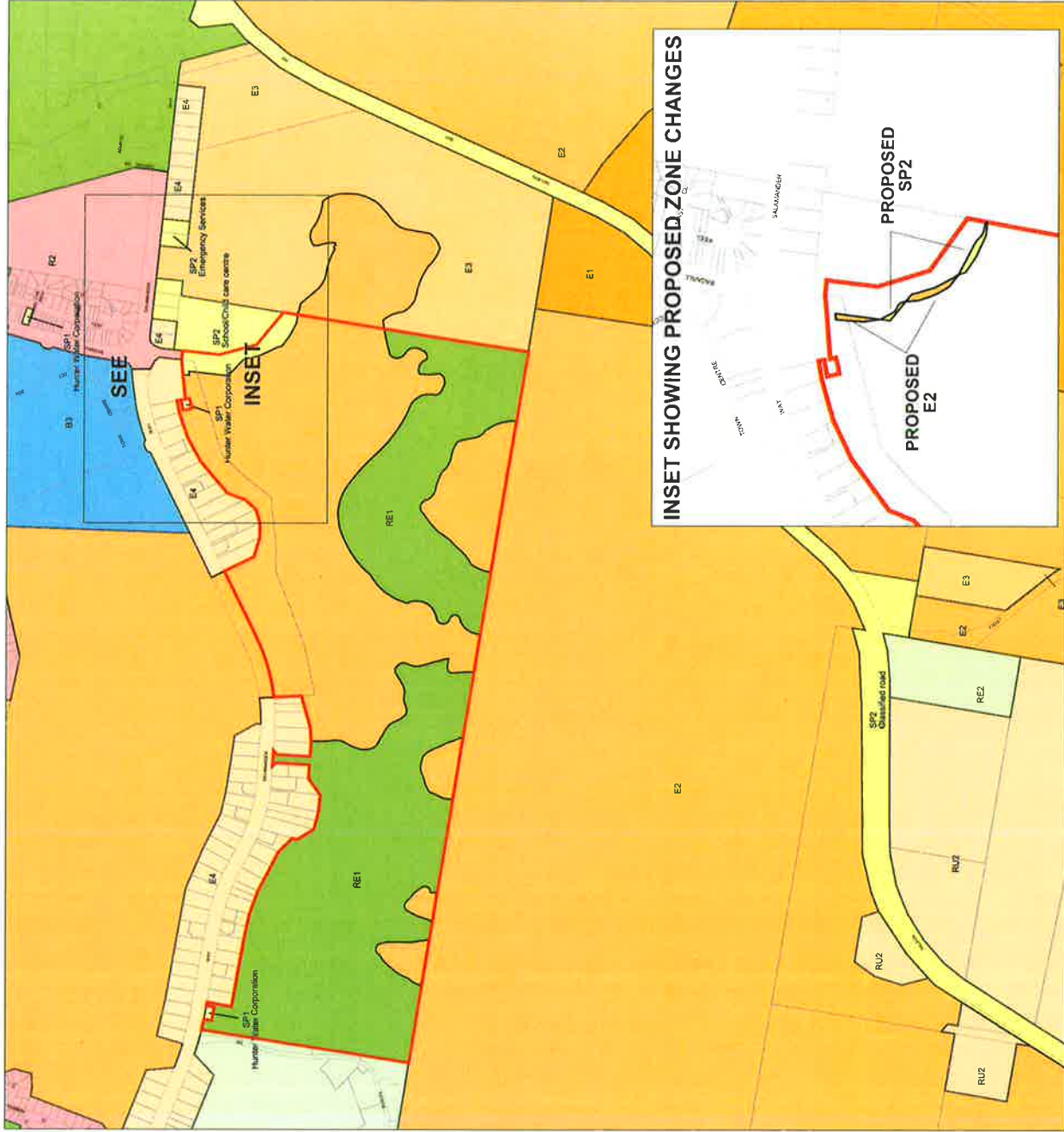
- | | |
|-----|------------------------------------|
| B1 | Neighbourhood Centre |
| B2 | Local Centre |
| B3 | Commercial Core |
| B4 | Mixed Use |
| B5 | Business Development |
| B7 | Business Park |
| E1 | National Parks and Nature Reserves |
| E2 | Environmental Conservation |
| E3 | Environmental Management |
| E4 | Environmental Living |
| IN1 | General Industrial |
| IN2 | Light Industrial |
| IN4 | Working Waterfront |
| R1 | General Residential |
| R2 | Low Density Residential |
| R3 | Medium Density Residential |
| R5 | Large Lot Residential |
| RE1 | Public Recreation |
| RE2 | Private Recreation |
| RU1 | Primary Production |
| RU2 | Rural Landscape |
| RU3 | Forestry |
| RU5 | Village |
| SP1 | Special Activities |
| SP2 | Infrastructure |
| W1 | Natural Waterways |
| W2 | Recreational Waterways |



Projection GDA 1994
MGA Zone 56

Scale 1: 15000 @ A4

Planning Proposal - 100 Salamander Way, Salamander Bay
Proposed Land Zoning Map



INSET SHOWING PROPOSED ZONE CHANGES

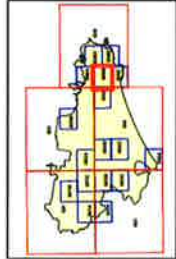
PROPOSED
SP2

PROPOSED
E2

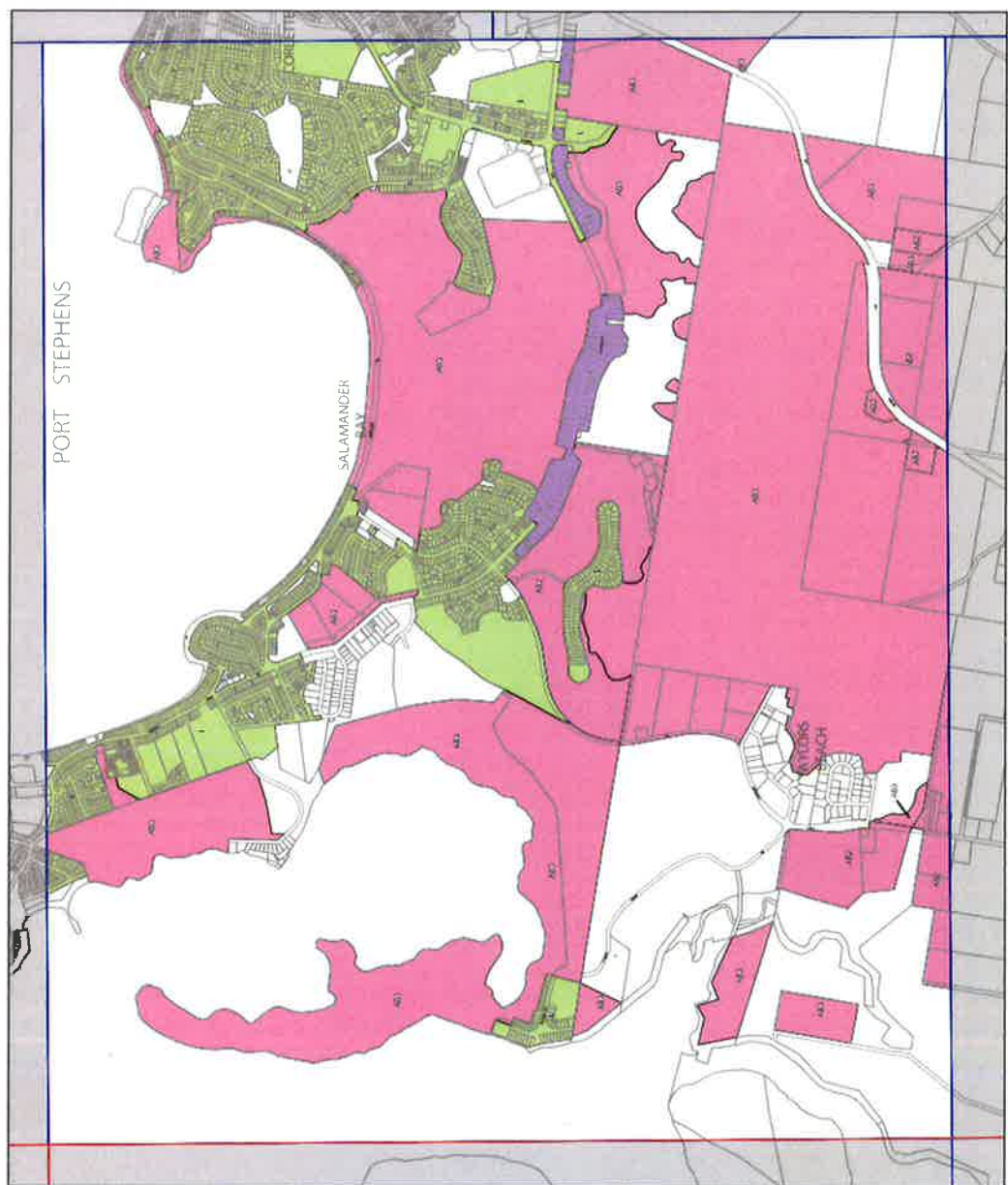
Minimum Lot Size (sq m)

10	200
15	400
20	600
25	800
30	1000
35	1200
40	1400
45	1600
50	1800
55	2000
60	2200
65	2400
70	2600
75	2800
80	3000
85	3200
90	3400
95	3600
100	3800
105	4000
110	4200
115	4400
120	4600
125	4800
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770	30600
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790	31400
795	31600
800	31800
805	32000
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825	32800
830	33000
835	33200
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995	39600
1000	39800

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 Callastre 14000013 © Land and Property
 Information (LPI)



Scale 1:2000 @ A3
 Date 1/1/2008 @ A3
 Map ID LSZ_005B_001



Attachment Five – Proposed change to the Lot Size Map



**Port Stephens
Local
Environmental
Plan 2013**

PORT STEPHENS
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Proposed Lot Size Map

Cadastre

Cadastre 09/10/2017 © Land and Property
Information (LPI)

Subject Site



Minimum Lot Size (sq m)

B	200
F	400
G	450
I	500
M	600
Q	700
T	900
U	1000
V	2000
W	4000
Y	1 ha
Z1	2 ha
Z2	4 ha
AB1	10 ha
AB2	20 ha
AB3	40 ha

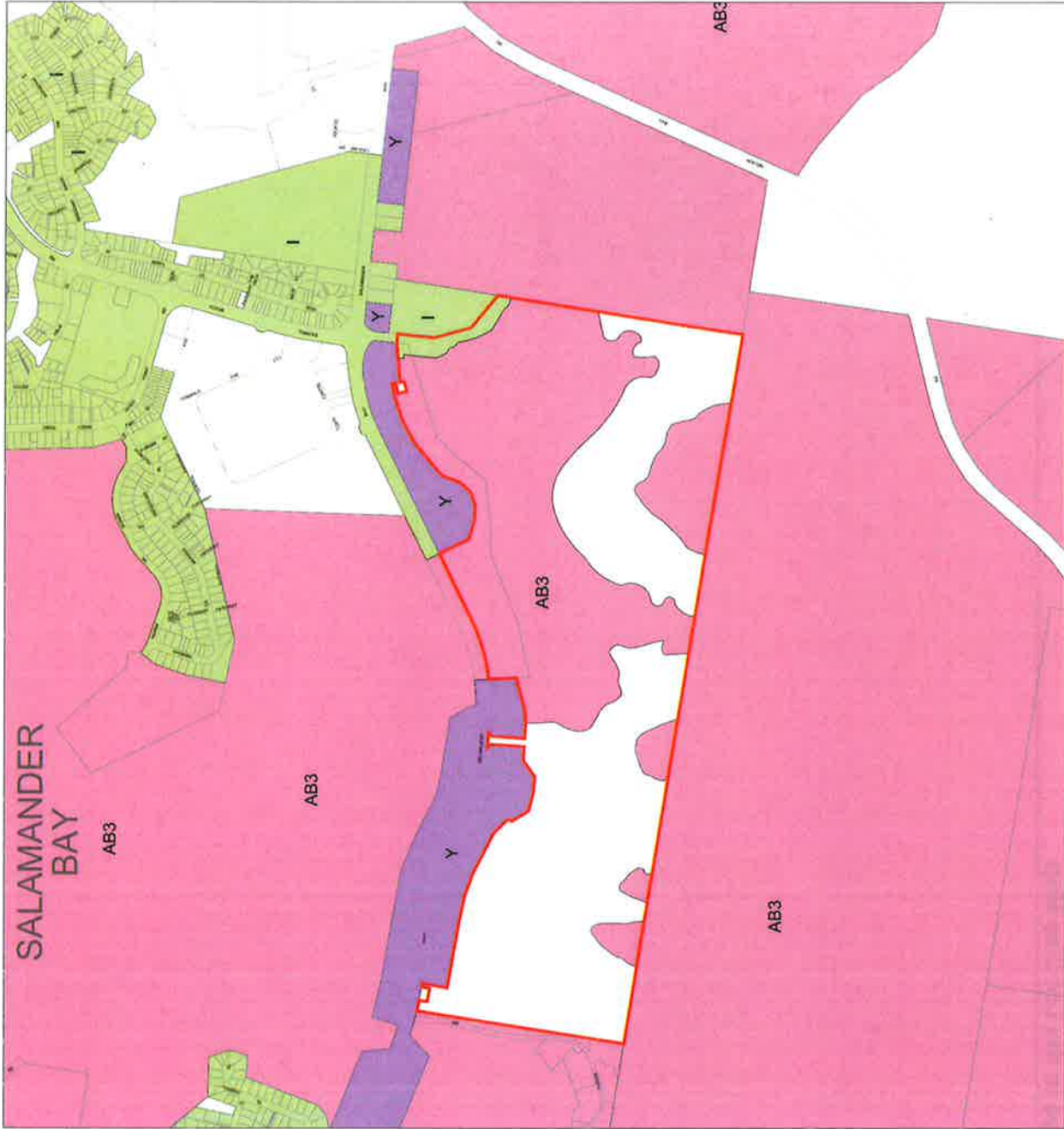


Projection: GDA 1984
MGA Zone 56



Scale 1: 15000 @ A4

Planning Proposal - 100 Salamander Way, Salamander Bay
Proposed Lot Size Map



Attachment Six – *LEPs and Council Land Best Practice Guideline*, published by the then Department of Urban Affairs and Planning, January 1997

LEPs and Council Land

BEST
PRACTICE
GUIDELINE
January
1997

KEY ISSUES IN THIS GUIDELINE

- status of this guideline
- requirements for exhibition
- notification of outcome
- withdrawal of delegations

**Guideline for
councils using
delegated powers to
prepare LEPs
involving land that is
or was previously
owned or controlled
by Council.**

New South Wales
DEPARTMENT OF URBAN AFFAIRS AND PLANNING

SECTION ONE – INTRODUCTION

1.1 REASON FOR THIS GUIDELINE

Instances where a council proposes to change the planning controls that apply to land in which it has or has had an interest present an unusual situation. In many cases Council will be both regulator acting in the interest of the community, and entrepreneur seeking to maximize the benefit realized from a community asset.

These dual roles may give rise to a real conflict of interest or the appearance that council is affording itself special treatment. While both roles are legitimate, council must make sure that its decisions as regulator are not biased by its financial interests in property.

The mere fact that council is both applicant and decision maker is sufficient to create an appearance of unfairness and to erode the community's confidence in the planning process.

Council has a responsibility to ensure that any proposal is objectively assessed. It is important that the community sees proper procedures being followed and balanced, consistent assessment of environmental, social and economic considerations in these situations.

As a hypothetical example, consider the following:

Ten years ago council carried out and published a retail centre study. The study identified key sites which should be held for major development or re-development in the future.

Two years after the study was adopted, council bought one of the key sites and made it temporarily available to address a shortfall in public car parking.

The time is now right for the site to be developed for retail/residential use and council has entered into an agreement with a developer which ensures public car

parking will be provided as part of a new development.

Council prepares a draft LEP to rezone the land from its original residential zone to the mixed use zone in place throughout the retail centre. The controls and urban design principles covering adjoining sites will apply to council's land.

Even based on this brief description, the council's actions appear reasonable. A different impression may be gained by local residents who hear through 'the grapevine' that council is going to rezone the community's land, close the public car park, sell the land to a big developer to build a retail/residential tower and make \$1.3 million profit.

The aim of this guideline is to make the planning process open to public scrutiny by ensuring that all relevant information is available in situations such as the one described above. Through this the community can develop confidence that fair, proper processes have been followed and that council has managed its conflicting interest satisfactorily.

1.2 DELEGATION

Section 23 of the Environmental Planning and Assessment Act 1979 (the Act) allows the Director-General of the Department of Urban Affairs and Planning to delegate certain planning powers to councils. At present the Director-General delegates to some councils the ability to exercise local environmental plan (LEP) preparation powers under s.65 and s.69 of the Act.

A report released by the Independent Commission Against Corruption in 1992 highlighted several instances where councils did not satisfactorily deal with a conflict of interest between their roles as regulator and developer. This prompted the Director-General to withdraw delegated powers for LEPs involving land that is owned or controlled by a council or was owned or controlled by a council where any aspect of the LEP was the

subject of an undertaking between council and the purchaser.

The Director-General has now reinstated delegated powers, confident that this guideline will assist councils to administer the LEP making process in a fair and responsible manner. This guideline is intended to assist by ensuring that conflicts of interest are disclosed and resolved in an accountable and open manner. Where councils' actions are fair and reasonable, the decision process will be seen to be impartial.

In exceptional circumstances a council or the Director-General still may decide that it is not appropriate for a council to exercise delegated LEP making powers (further information in Section 3).

1.3 STATUS OF THIS GUIDELINE

This guideline is referred to in the instrument of delegation issued by the Director-General regarding powers under s.65 and s.69 of the Act. Councils are allowed to exercise these powers in the preparation of LEPs that apply to land that is owned or controlled by Council, or was owned or controlled by Council and is the subject of an undertaking between council and the purchaser (referred to from here on as *council land*), if they comply with this guideline.

This guideline does not replace the requirements in the Act concerning the preparation and exhibition of LEPs. The guideline adds detail and specifies several additional requirements where a council wishes to use its delegated powers to prepare an LEP that applies to *council land*.

On 22 November 1990 the Department issued Department of Planning Circular No. C18 titled *Processes for the Rezoning of Council Assets for Disposal*. That Circular addresses rezoning of council owned land generally and is advisory only.

This guideline has a focus on matters concerning the exercise of delegated powers and must be followed when

delegation is used. Both provide consistent advice on a number of common issues, and the additional information in the earlier Circular still may be of assistance to councils in some cases.

SECTION 2 – REQUIREMENTS

2.1 EXHIBITION

When a council exhibits a draft LEP (in accordance with 2.66 of the Act) that applies to *council land* this guideline requires additional information to be included.

The aim of this is to make clear Council's interest in the land and the reasons why the draft plan is being prepared. This makes the plan preparation process more open and allows the community to assess proposals with a full appreciation of all relevant information.

Consistent with this aim, information must be exhibited in a clear manner. Information must be detailed enough to be informative, without being overwhelming.

The following information must be included in the material displayed during exhibition:

2.1.1 Statement of Council's Interest

A written statement must be provided which describes Council's interest in the land. This should include information such as:

- the nature of Council's interest in the land (e.g. Council has a 30 year lease over the site, Council owns the land freehold);
- when Council first acquired an interest in the land;
- why Council acquired an interest in the land (e.g. for an extension to the adjoining park, Council was given responsibility for the land by a State authority);
- how Council acquired its interest in the land (e.g. the land was purchased, through s.94); and

- for land previously owned or controlled by Council, whether any aspect of the LEP formed part of the agreement to dispose of the land, and the terms of any such agreement.

2.1.2 Purpose of the draft LEP

A written statement must be provided explaining why council is preparing the draft plan. A statement such as "to rezone the land" is not sufficient. The following must be addressed:

- why the draft LEP is being prepared (e.g. to facilitate growth of a commercial centre, to provide opportunities for higher density residential development near a railway station, to allow a child care centre in an open space zone);
- how the draft plan will affect planning controls (e.g. change a residential zoning to commercial, introduce heritage controls); and
- what prompted preparation of the draft LEP (e.g. the findings of a residential development strategy, a request from an affected land owner, Council's intention to dispose of the land).

2.1.3 Anticipated development

Knowing what type of development may result from a change in planning controls helps everyone interested in the draft LEP understand how they will be affected in real life. This allows people to make more constructive comments than they otherwise might. The following must be addressed:

- what actual physical or operational changes may result? A change to the maximum floor space ratio, for example, may not mean very much to most people. It would be more helpful to explain that the change will create an opportunity for several additional storeys of development on the site, subject to assessment and approval in accordance with Council's controls and policies;
- is the draft LEP being prepared to permit a particular proposal? If so, any available details of the proposal should be included in the exhibition.

2.1.4 Financial Implications

While any change in planning controls will have some effect on land values, there will be instances where Council or another party stands to make a substantial financial gain or loss as a result of making an LEP.

In some cases the increase in land value resulting from an LEP may be one of the reasons why council has decided to prepare the LEP. Council may have even made an agreement for the sale or lease of the land conditional on the controls being changed.

The community should be aware of the financial implications of a change in planning controls, especially when they are more than a minor consequence of the change. While it may be inappropriate to make known all financial details (in the interest of protecting commercial advantage) Council must at least provide an indication of the magnitude of any financial gains or losses.

Council could indicate the magnitude of value that will be added to the land by comparing current and likely future land value (e.g. the land is currently valued at \$100 m², nearby land zoned for

commercial development is valued at between \$200 and \$250 m²).

Where an agreement for lease or sale of the land has been made, council must at least state that this is the case and provide basic details of the agreement. Information on the terms of the agreement should be made available where possible.

2.1.5 Guideline

A copy of this guideline must be included in the exhibition. This helps the public understand why certain information has been exhibited and to check that all relevant information has been made available.

2.2 NOTIFICATION

After the LEP has been made or a decision taken not to proceed with the draft LEP, everyone who made a written submission must be notified in writing. Notification must be sent within 14 days of the decision and must include an explanation of how the issues raised in the submission were addressed and the reasons for council's decision.

2.3 MONITORING

Although the Director-General has delegated certain powers to councils, she retains a responsibility to make sure that the LEP making system operates satisfactorily. To provide for monitoring, the following is required of councils:

- a copy of all written material to be exhibited must be included with Council's s.64 submission;

- where LEPs are prepared using s.69 delegated powers: a section must be added to the s.69 report to the Minister briefly setting out Council's interest, issues raised in any relevant submissions, and an explanation of how these issues have been addressed or resolved;
- where the s.69 report will be prepared by the Director-General: a copy of the final report submitted to Council (or where this report does not include the matters listed in the previous point – a report dealing with these matters) must be included in the s.68(4) submission.

Regional Managers will monitor council's compliance on an ongoing basis. A full review of the operation of this guideline will be carried out 12 months after delegation is reinstated, with the involvement of the Local Government Liaison Committee.

SECTION 3 – OTHER MATTERS

3.1 WITHDRAWAL OF DELEGATION BY THE DIRECTOR-GENERAL

The option of the Director-General withdrawing delegation for a particular LEP (or from a particular council) is always available. This option may be exercised in circumstances where it is unlikely that, or unreasonable to expect that a council will be able to deal with a LEP in an objective and impartial way.

While it is not possible to envisage every such situation, the following provides an indication of possible circumstances:

- where controversial events precede the decision to prepare a LEP;
- where the community has strong feelings or an emotional attachment to the land or buildings involved;
- where the magnitude of the benefits (financial or otherwise) that Council may obtain as a result of making the LEP is significant;
- where strong community opposition to the LEP is shown by: submissions during exhibition, letters to the Director-General or Minister, or extensive media coverage;
- where an unreasonably short, poorly timed (i.e. during a holiday period) or uninformative exhibition is held by Council; or
- where Council's consideration of relevant issues is prejudiced and a biased or unfair outcome is likely.

If experience shows that a particular council is not able to exercise delegated LEP making powers in a responsible way, the Director-General may withdraw

delegation for future LEPs in the interest of maintaining the integrity of the planning system.

3.2 WHERE COUNCIL DECIDES NOT TO USE DELEGATION

There may be occasions on which the nature of a conflict of interest or the sensitivity of a proposal make it very difficult for Council to impartially prepare an LEP. While councils are encouraged to use their delegated powers whenever possible, there may be cases where it would be best for the Department to process an LEP.

Where a council believes that it is in this situation, contact should be made with the local Regional Manager from the Department to discuss possible alternative arrangements. If the Department feels that a conflict can be satisfactorily managed by council, it will not become involved in the preparation of a draft LEP.

3.3 FURTHER INFORMATION

If you would like to discuss any aspect of this guideline please contact your regional office of the Department.

**Attachment Seven – Gateway determination and correspondence from the
Department of Planning and Environment dated 19 December 2017**



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

Dear Mr Wallis

Planning Proposal PP_2017_PORTS_006_00 to amend Port Stephens Local Environmental Plan 2013

I am writing in response to Council's request for a Gateway determination under Section 73A of the *Environmental Planning and Assessment Act 1979* (the Act) on 16 November 2017 in respect of the Planning Proposal to adjust the zone boundary between E2 Environmental Conservation and SP2 Infrastructure: School / Child care centre zoned land and adjust the minimum lot size controls at 100 Salamander Way, 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. In making this determination under section 56, I have decided to not support Council's request that the amendment be progressed under section 73A. A planning proposal should be prepared and the conditions of the determination satisfied before the plan may be finalised.

Plan making powers were delegated to Councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending LEP is to be finalised within 3 months of the date of the Gateway determination. As it has been determined that this is a minor amendment, Council is to request Parliamentary Counsel's Office commence drafting the instrument as soon as practicable. A copy of the request should be forwarded to the Department of Planning and Environment for administrative purposes.

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 Act if the time frames outlined in this determination are not met.

Should you have any further enquiries about this matter, I have arranged for Ms Corrine Manyweathers to assist you. Ms Manyweathers can be contacted on (02) 4345 4404.

Yours sincerely

Robert Hodgkins
**Acting Director Regions, Hunter
Planning Services**

Encl: Gateway Determination
Written Authorisation to Exercise Delegation
Delegated Plan Making Reporting Template

Gateway Determination

Planning Proposal (Department Ref: PP_2017_PORTS_006_00): to adjust the zone boundary between E2 Environmental Conservation and SP2 Infrastructure: School / Child care centre zoned land and adjust the minimum lot size controls at 100 Salamander Way, Salamander Bay.

I, the Acting Director Regions, Hunter, at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act, 1979* (the Act) that an amendment to the Port Stephens Local Environmental Plan (LEP) 2013 to adjust the zone boundary between E2 Environmental Conservation and SP2 Infrastructure: School / Child care centre zoned land and adjust the minimum lot size controls at 100 Salamander Way, Salamander Bay should proceed subject to the following conditions:

1. Prior to community consultation Council is to prepare a planning proposal consistent with the Department's "*A guide to preparing local environmental plans 2016*" and "*A guide to preparing planning proposals 2016*".
2. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment 2016) and 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 local environmental plans* (Department of Planning and Environment 2016).
3. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the 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).
4. No consultation is required with public authorities/organisation under section 56(2)(d) of the Act
5. The timeframe for completing the LEP is to be 3 months following the date of the Gateway determination.



Planning & Environment

6. The final LEP maps shall be prepared in accordance with the requirements of the Department's "Standard Technical Requirements for Spatial Datasets and Maps" Vers: 1.0 November 2015.

Dated 19th day of December 2017.

Robert Hodgkins
Acting Director Regions, Hunter
Planning Services
Department of Planning and Environment

Delegate of the Minister for Planning

Attachment Eight – Delegation Authorisation dated 19 December 2017



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Port Stephens Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2017_PORTS_006_00	Planning proposal to adjust the zone boundary between E2 Environmental Conservation and SP2 Infrastructure: School / Child care centre zoned land and adjust the minimum lot size controls at 100 Salamander Way, Salamander Bay.

In exercising the Minister's functions under Section 59 of the EP&A Act, the Council must comply with the Department's "*A guide to preparing local environmental plans 2016*" and "*A guide to preparing planning proposals 2016*".

Dated 19 December 2017

Robert Hodgkins
Acting Director Regions, Hunter
Planning Services
Department of Planning and Environment

Delegate of the Secretary
of the Department of Planning and Environment

Attachment 5 – Delegated plan making reporting template

Reporting template for delegated LEP amendments

Notes:

- Planning proposal number will be provided by the Department of Planning and Environment following receipt of the planning proposal
- The Department of Planning and Environment will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the Department of Planning and Environment with the RPA's request to have the LEP notified

Table 1 – To be completed by Department of Planning and Environment

Stage	Date/Details
Planning Proposal Number	PP_2017_PORTS_006_00
Date Sent to DP&E under s56	22 November 2017
Date considered at LEP Review Panel (if applicable)	N/A
Gateway determination date	19 December 2017

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt LEP		
Have changes been made to the draft LEP after obtaining final PC opinion?	YES NO	
Date LEP made by GM (or other) under delegation		
Date sent to DPE requesting notification		

Table 3 – To be completed by Department of Planning and Environment

Stage	Date/Details
Notification Date and details	

Additional relevant information: