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Please quote file no:
PSC2009-00382

Michael Leavey
Regional Director – Hunter and Central Coast Regions
NSW Department of Planning and Infrastructure
PO Box 1226
NEWCASTLE NSW 2300



Dear Michael

Re: Planning Proposal – Reclassification of Part Lot 51 in DP 803471 – 1 Diemars Road, Salamander Bay

I refer to the Department's letter dated 18th February 2011 requesting the updating of the subject Planning Proposal to address a range of outstanding matters (your reference 11/03380).

Please find enclosed an updated version of the Planning Proposal for your consideration.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M Borsato'.

Matthew Borsato

Strategic Planner
Sustainable Planning

18th May 2011



Planning Proposal

Reclassification of Part Lot 51 DP 803471 (1 Diemars Road, Salamander Bay) from Community to Operational Land

Part 1 - Objectives or Intended Outcomes

The purpose of the reclassification proposal is to provide for the potential for a 20 metre wide Asset Protection Zone (APZ) on the Council owned land known as "Stoney Ridge Reserve" (Part Lot 51 DP 803471).

The purpose of the APZ is to facilitate the foreshadowed expansion of the "Salamander Haven" aged housing complex on the adjacent site (Lot 1 DP 1074566 – not Council owned) to the east of the subject land.

Part 2 - Explanation of Provisions

It is proposed to amend the Port Stephens Local Environmental Plan 2000 by including the land in Schedule 1 of the Port Stephens Local Environmental Plan 2000 (PSLEP) as follows:

Column 1	Column 2	Column 3
Locality	Description	Any trusts, etc. not discharged
Soldiers Point		
Diemers Road	Part Lot 51 DP 803471, as shown edged heavy black and lettered "Operational" on the map marked "Port Stephens Local Environmental Plan 2000 (Amendment No 17)"	Reservations and conditions contained in the Crown Grant as noted in the Certificate of Title Folio Identifier 51/803471

The effect of this amendment is the reclassify the subject land as operational land, and to maintain its public reserve status.

The relevant Council report and resolution are at Attachment 1 and 2 respectively.

Location

The land proposed for reclassification is Part Lot 51 DP 803471. It is shown on the map at Attachment 3. An aerial photograph of the site is at Attachment 4.

The subject land is part of Stoney Ridge Reserve, and is located to the north of Diemers Road. It is a 20 metre wide strip of land immediately to the west of Lot 1 DP 1074566, 60 Diemars Road (not council owned), commonly known as the Salamander Haven aged housing complex. The 20m wide strip of land extends from Diemers Road in a northerly direction along the full length of the boundary of Lot 1 DP 1074566, a distance of 237m.

Site description

The site is heavily vegetated with a canopy of mature native trees and a thick understorey, as shown in Figures 1-4. It is comprised of largely Nerong Smooth Barked Apple Forest with a lesser proportion of Swamp Mahogany Paperbark Forest. The land is contiguous with the remainder of the Stoney Ridge Reserve to the north and to the west.

To the east the site is separated from Lot 1 DP 1074566 by a Colorbond fence which features periodic koala climbing poles. Immediately east of the Colorbond fence, an approximately 5-7 m wide strip of Lot 1 is cleared for 237 metres along the full length of the boundary (see Figure 5). Lot 1 is heavily vegetated in its western section. This western section has been the subject of considerable environmental investigations in association with previous development approvals. These investigations have led to a sizable part of the western area of Lot 1 being retained a natural state because of its environmental significance. The possible expansion of the retirement village may affect this area. The remainder of Lot 1 contains relatively new single level retirement housing and is sparsely vegetated.

To the southwest of the subject land lies Diemars Quarry, and to the southeast lies a manufactured home village. To the south of the site there is a biodiversity corridor which links Stoney Ridge to environmentally significant lands further south, and which is also part of Lot 51.

Figure 1: Subject land



Figure 2: Subject land (left of fence) looking north from Diemers Road



Figure 3: Subject land looking north along property boundary



Figure 4: Subject land looking northwest



Figure 5: Cleared land within Lot 1 DP 1074566 looking north from Diemers Road



Current classification

The Stoney Ridge Reserve is classified as Community Land and categorised as Foreshore (primary category) with secondary categories Bushland, Escarpment and Watercourse. While Council's Plan of Management for Foreshore categorised community land does not indicate the secondary category for land within a larger parcel, it would be reasonable to regard the secondary category of the site as bushland.

Current zoning

The subject land is zoned 6 (a) General Recreation A.

Council has submitted a Planning Proposal to the Department of Planning (DoP) to rezone all of Lot 51 DP 803471 to 7(a) Environmental Protection A. The DoP has advised Council that the planning proposal may proceed to public exhibition.

Reasons why Council acquired an interest

This subject land originally owned by the Commonwealth of Australia was used as part of the H.M.A.S Assault for housing naval staff. Post World War II some of this naval accommodation was leased to external parties. The Commonwealth later offered this land to Council, with Council purchasing the land in 1955 as part of a much larger land acquisition.

Any current agreements over the land

There is no current agreement over the land.

Financial implications for Council

The financial implications for Council are yet to be determined. Council may manage the APZ as a "public service", in which case the Council will incur a cost. Council may reach an arrangement with the owner of the aged persons complex to either manage the APZ themselves or alternatively reimburse Council the cost of its management. In this case the outcome would be cost neutral. Council may seek to achieve a financial return from the proposal and direct these funds towards a community benefit. Council has no intention to sell the land should the reclassification be successful.

Related asset management objectives

The benefit to Council of the proposal is increasing the supply of aged housing in the locality, to the community's benefit. The risk to Council is that environmental asset management may not be compatible with the establishment of an APZ on the subject land.

Any proposal to extinguish or retain other interests in the land through reclassification

It is not proposed to change any interests in the land as a result of the reclassification.

Any rezoning associated with the reclassification

It is not proposed to rezone the land. It will remain zone 6(a) General Recreation A (or zone 7(a) Environmental Protection A if that planning proposal proceeds to finality).

Part 3 - Justification

Section A - Need for the planning proposal.

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

The planning proposal is not the result of a strategic study or report.

The proposal arises from a written request from the owners of the Salamander Haven retirement village which occupies Lot 1 DP 1074566. The owner is investigating the potential expansion of the existing retirement village and requested Council to consider providing an APZ on Council's land.

This request resulted in a Mayoral minute which was adopted by Council resolution on 14 December 2010, to reclassify the subject land from community to operational land.

A Strategic Overview of Council Owned Lands at Salamander/Soldiers Point, undertaken by an independent consultant for Council in 2007, recommended that Stoney Ridge Reserve should remain community land, should receive a more conservation oriented land use zoning and a Community Land categorisation of "Natural Area". This Study had a broad focus and did not consider the specific proposal which is the subject of this report.

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

An alternative would be to locate the APZ within the retirement village land (Lot 1 DP 1074566), however the retirement village owners believe this would limit the quantity of aged housing they can provide.

Because a private benefit is being achieved by the APZ, the proposed reclassification is the only way that the APZ can be legally established on Council land.

Council's intention

Council's intention is to reclassify the land in order to provide greater certainty to the owner of Salamander Haven aged housing complex in relation to bushfire asset protection matters. This would allow the owner to commit funds to prepare a development application to expand the complex and to undertake the associated studies in the knowledge that an offsite APZ could be available. If the APZ was located within the aged housing complex site, the theoretical housing yield would be reduced.

It is noted that previous ecological studies undertaken for Salamander Haven by ERM consultants in 2007 indicate that the theoretical yield of that site may not be achieved in any case, due to ecological constraints. These matters will need to be addressed in the development application for any expansion beyond existing development approvals. An APZ on the subject land (Lot 51) is not required to provide bushfire protection in relation to existing development approvals at Salamander Haven (i.e. the existing APZ is on Lot 1).

Should the subject land be reclassified, Council has not determined the basis upon which the potential APZ would be managed, and the nature of the ongoing relationship with the owner of the aged housing complex in relation to the APZ is also still to be determined.

3. Is there a net community benefit?

The proposal seeks to facilitate the creation of an APZ on Council owned land zoned 6(a) Recreation A, adjacent to a potential development site, zoned 2(a) Residential A.

The proposal seeks to achieve a community benefit by facilitating the implementation of the residential development objectives of the Community Settlement and Infrastructure Strategy and a range of other Council policies, such as the Social Plan, by maximising the yield of land which is zoned 2 (a) Residential A, adjacent to the subject site, in order to increase the supply of aged housing in the locality. It will do this by facilitating a potential APZ to be located on adjacent Council land.

Council considered a report which canvassed the status of the land as community land and which referred to the "range of threatened flora and fauna across the site". The report also canvassed alternatives to reclassification. The Report noted that the creation of an easement for an APZ on community land was contrary to Planning for

Bushfire Protection 2006 (Section 3.3 Part (b)) and that Council is unable to offer a licence, lease, estate or private benefit on community land.

Following consideration of these planning issues, Council unanimously resolved that the land should be reclassified in order to facilitate the establishment of an Asset Protection Zone (which would be required should a foreshadowed development application to expand the adjacent aged persons housing complex be approved).

If the proposed reclassification does not occur, it would not be possible to establish the APZ and as a result the retirement village would be likely to investigate a less extensive expansion. Council considered that a community benefit would be achieved from a potential increase in aged housing in the area, given the high aged population of the area and the need to provide such accommodation.

Council's resolution reflects a willingness to maximise urban outcomes in the area, and to accept that part of the Stoney Ridge reserve may be need to be managed to reduce bushfire hazards in order to reduce risk to foreshadowed urban development (aged housing), on the basis of the Councillors assessment of the net community benefit.

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)?

The proposal is consistent with the Lower Hunter Regional Strategy's (LHRSD) policies which encourage residential infill development and increased housing choice. It is not consistent with the LHRS policies of directing new development away from areas of biodiversity significance. The area is not specifically identified in the Lower Hunter Conservation Plan (LHCP) However wider policies statements in the LHCP indicate that biodiversity offsets may need to be applied to the resultant APZ and/or if there is a loss of biodiversity as a result of expansion of the retirement village on its site.

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

The proposal is consistent with Council's Integrated Strategic Plan (Port Stephens 2022) which states that Council should provide for a range of lot sizes and housing types to respond to demographic needs and affordability. However it is may be in conflict with the statements that Council should maintain high levels of biodiversity, and maintain the unique natural and heritage assets of the LGA. The extent of this potential conflict will only be determined once detailed planning of the potential APZ and retirement village additions has been undertaken.

Council's Community Settlement and Infrastructure Strategy (CSIS) seeks to ensure a sufficient supply of a diverse range of housing in the Local Government Area (LGA). Council's Social Plan identifies the growing aged population of the LGA and the need to provide services and facilities, such as aged housing, to meet their needs.

Actions to facilitate the development of the Salamander Haven aged housing complex are consistent with these policy directions.

A range of Council strategies support increasing the protection of flora and fauna, and maintaining and improving the current levels of biodiversity in the LGA, including corridors of high biodiversity. The Port Stephens Comprehensive Koala

Plan of Management has identified the site as "supplementary koala habitat" (although see under SEPP 44 in Section 6 below).

The site is at the interface between areas managed for urban outcomes and those managed for open space and environmental outcomes.

Council's resolution reflects a willingness to maximise urban outcomes in the area, and to accept that part of the Stoney Ridge reserve may be need to be managed to reduce bushfire hazards in order to reduce risk to foreshadowed private urban development (aged housing).

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

SEPP (Affordable Rental Housing) 2009

The proposal potentially facilitates increased development on land to which the SEPP applies, and accordingly has the potential to increase the supply of affordable housing. Residential development is not proposed on the subject land.

SEPP (Exempt and Complying Development Codes) 2008

The proposal potentially facilitates development on land to which the Exempt and Complying Development Code may be applied.

SEPP (Rural Lands) 2008

The proposal does not affect rural or agricultural land.

SEPP (Housing for Seniors and People with a Disability) 2004

The proposal potentially facilitates development on land upon which housing for seniors and people with a disability may be developed. Residential development is not proposed on the subject land.

SEPP 71 (Coastal Protection)

Clause 8 of the SEPP (Matters for Consideration) has been considered in the preparation of this planning proposal. The relevant matters are discussed elsewhere in this report, particularly impacts on wildlife corridors and measures to conserve flora and fauna.

SEPP 65- Design Quality of Residential Development

The proposal does not involve residential development. It potentially facilitates development on an adjacent site.

SEPP 55 Remediation of Land

There is no known contamination on the land.

SEPP 44 Koala Habitat Protection

The subject land is subject to the Port Stephens Comprehensive Koala Plan of Management (PSCCKPOM). Under that Plan the site is categorised as "supplementary koala habitat".

However, studies by ERM on land immediately to the east indicate that the subject

land contains "preferred koala habitat". Under the provisions of the PSCKPOM proposed development must minimise the removal or degradation of native vegetation within preferred koala habitat or habitat buffers, and maximise the retention and minimise degradation of native vegetation within supplementary koala habitat and habitat linking areas. The planning and implementation of any APZ would need to incorporate these considerations.

SEPP 14 Coastal Wetlands

The land does not contain SEPP 14 wetlands.

SEPP 9 Group Homes

The proposal facilitates development on land upon which group homes may be developed.

SEPP 1 Development Standards

SEPP 1 will continue to apply to the land.

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

1.1 Business and Industrial Zones

The objectives of this direction are to:

- encourage employment growth in suitable locations,
- protect employment land in business and industrial zones, and
- support the viability of identified strategic centres.

This proposal does not reduce business or industrial zones.

1.2 Rural Zones

The objective of this direction is essentially to protect the agricultural production value of rural land.

This proposal does not affect agricultural land

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 of coal, other minerals, petroleum and extractive materials are not compromised by inappropriate development.

This proposal does not comprise extractive resources.

1.4 Oyster Aquaculture

Not relevant

1.5 Rural Lands

The objectives of this direction are to protect the agricultural production value of rural land and to facilitate the orderly and economic development of rural lands for rural and related purposes.

This proposal does not affect agricultural land.

2.1 Environment Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas.

The proposal affects environmental sensitive lands. A ecological/biodiversity assessment will be carried out prior to the implementation of any APZ on the land.

The subject land is not located within the green corridor identified in the Lower Hunter Regional Strategy.

2.2 Coastal Protection

The objective of this direction is to implement the principles in the NSW Coastal Policy.

The subject land is within the coastal zone. The potential APZ would need to be implemented consistent with coastal policy principles, consistent with other APZ's within Stoney Ridge Reserve.

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.

The planning proposal does not affect known areas of heritage significance. An indigenous heritage study will be done prior to the implementation of any APZ, if appropriate. The existing Stoney Ridge Reserve Bushfire Management Plan has an accompanying Aboriginal Cultural Heritage Assessment which will be supplemented if appropriate.

2.4 Recreation Vehicle Areas

The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.

It is not proposed to enable a recreational vehicle area to be developed.

3.1 Residential Zones

The objectives of this Direction are:

- To encourage a variety and choice of housing types to provide for existing and future housing needs
- To make an efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services
- To minimise the impact of residential development on the environment and resource lands.

The proposal facilitates an increased yield on an adjacent site zoned for residential use. No residential development is proposed on the subject land.

3.2 Caravan Parks and Manufactured Home Estates

The objectives of this direction are:

- to provide for a variety of housing types, and
- to provide opportunities for caravan parks and manufactured home estates.

The proposal does not affect existing land use zone provisions that permit the development of a caravan park or affect the existing zoning of a caravan park. There are no existing caravan parks on the land.

3.3 Home Occupations

The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.

The proposal does not affect this matter.

3.4 Integrating Land Use and Transport

The objective of this Direction is to ensure that development:

- Improves access to housing, jobs and services by walking, cycling and public transport;
- Increases the choice of available transport and reducing dependence on cars;
- Reduces travel demand including the number of trips generated by development and the distances travelled, especially by car;
- Supports the efficient and viable operation of public transport services; and
- Provides for the efficient movement of freight.

The proposal facilitates an increased yield on residentially zoned land in close proximity to a neighbourhood shopping centre.

3.5 Development Near Licensed Aerodromes

The objectives of this direction are:

- to ensure the effective and safe operation of aerodromes, and
- to ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity, and
- to ensure development for residential purposes or human occupation, if situated on land within the Australian Noise Exposure Forecast (ANEF) contours of between 20 and 25, incorporates appropriate mitigation measures so that the development is not adversely affected by aircraft noise.

The planning proposal will not create an obstruction to flying aircraft nor is the subject land affected by ANEF greater than 20.

4.1 Acid Sulphate 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.

The proposal does not seek to disturb the ground surface through excavation. The acid sulphate soil planning category of the majority of the subject land is "Works beyond 2m below the natural ground surface", with a small area categorised as "Works within 500m of an adjacent class".

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 or potentially subject to mine subsidence.

The land is unaffected by mine subsidence.

4.3 Flood Prone Land

The objectives of this Direction are:

- To ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005
- To ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.

The proposal does not involve development on flood prone land.

4.4 Planning for Bushfire Protection

The objectives of this Direction are to protect life, property and the environment from bushfire hazards, by discouraging the establishment of incompatible land uses in bushfire prone areas and to encourage sound management of bushfire prone areas.

The proposal aims to facilitate adequate bushfire protection by providing for an APZ for a foreshadowed development on an adjacent site in another land use zone.

It is noted that Planning for Bushfire Protection provides the following guidance:

"Reduced APZs and the use of adjoining lands for meeting APZ requirements will only be permitted in exceptional circumstances based on the merits of the particular development.

The DA must demonstrate that exceptional circumstances apply to the land to be developed prior to approval for the establishment of an easement (for an APZ). The requirement for an easement will then be included in the conditions of approval for the issuing of a BFSA/development consent. The owner/occupier of the land who has benefit from the easement shall be responsible for maintaining the APZ.

Easements should not be considered where the adjoining land is used for a public purpose, where vegetation management is not likely or cannot be legally granted (e.g. National Park, council bushland reserve, SEPP 14 or SEPP 26, critical habitat)."

Should an APZ be required on the subject land, then a suitable assessment will be undertaken consistent with the Stoney Ridge Reserve Bushfire Management Implementation Plan, and background studies (Ecological Australia, 2005).

5.1 Implementation of Regional Strategies

The proposal is consistent with the Lower Hunter Regional Strategy.

5.2 Sydney Drinking Water Catchments

Not applicable

5.3 Farmland of State and Regional Significance on the NSW Far North Coast

Not applicable

5.4 Commercial and Retail Development along the Pacific Highway, North Coast

The objectives for managing commercial and retail development along the Pacific Highway are:

- to protect the Pacific Highway's function, that is to operate as the North Coast's primary inter- and intra-regional road traffic route;
- to prevent inappropriate development fronting the highway
- to protect public expenditure invested in the Pacific Highway,

- to protect and improve highway safety and highway efficiency,
- to provide for the food, vehicle service and rest needs of travellers on the highway, and
- to reinforce the role of retail and commercial development in town centres, where they can best serve the populations of the towns.

Where this Direction applies:

This Direction applies to those council areas on the North Coast that the Pacific Highway traverses, being those council areas between Port Stephens Shire Council and Tweed Shire Council, inclusive.

Not applicable

5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)

Not applicable

5.6 Second Sydney Airport: Badgerys Creek

Not applicable

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.

The proposal is consistent with this direction.

6.2 Reserving Land for Public Purposes

- The objectives of this direction are:
- to facilitate the provision of public services and facilities by reserving land for public purposes, and
- to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

The draft LEP does not create, alter or reduce zonings or reservations of land for public purposes. No requests have been received from the Minister or public authority to include provisions to reserve land, rezone land or remove a reservation for public purposes.

The proposal seeks to reclassify community land to operational land, but will retain its reserve status.

6.3 Site Specific Provisions

Objective:

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

The draft LEP is consistent with this direction.

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?**

Council already manages a number of APZ's within the Stoney Ridge reserve to provide protection for existing developments. These APZ's are managed within a framework guided by the Stoney Ridge Reserve Bushfire Management Implementation Plan (Ecological Australia 2005). It is likely that the same management principles will be applied to the site should the reclassification be successful and the APZ implemented. A site specific assessment would need to be undertaken to determine the appropriate fire management regime that should apply.

A study undertaken by ERM consultants in 2007 for earlier stages of the Salamander Haven aged housing complex noted that the bottlebrush *Callistemon linearifolius*, and the orchid *Corybas* are present in the area. Detailed flora studies will need to be undertaken to determine the presence of these threatened species and the impact of a possible APZ, before an APZ could be implemented on the site. ERM also noted that a number of other threatened flora and fauna species may be present in the locality.

Fauna habitat mapping undertaken in 2004 as part an earlier ERM study along the boundary of the subject site with the Salamander Haven aged housing complex site indicated that the area is preferred koala habitat. The nature of the vegetation in the area indicates that this preferred koala habitat extends into the subject land to the west of the boundary. Accordingly, the feasibility of any APZ would need to consider the impact on koala habitat.

The site also forms part of an important wildlife corridor from the Stoney Ridge reserve to environmentally significant areas to the south. Any APZ would need to ensure the continued operation of this movement corridor. It is noted that this corridor is at one of its narrowest points at this location.

Should an APZ be required on the subject land, then a suitable assessment will be undertaken consistent with the Stoney Ridge Reserve Bushfire Management Implementation Plan, and background studies (Ecological Australia, 2005).

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

The environmental effects of the proposal are highlighted above.

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

The social impacts of the proposal are:

- A potential increase in the supply of aged accommodation
- Community reaction to the loss of vegetation should the APZ proceed

The economic effects are:

- Potential employment creation associated with the construction and operation of the enlarged retirement village

The environmental impacts of the proposal are:

- The potential loss of habitat of biodiversity significance should the APZ proceed
- The narrowing of an important wildlife corridor should the APZ proceed.

These negative impacts of the proposal can be reduced by minimising the vegetation loss associated with any APZ. Until the planning of the retirement village has proceeded further, it is difficult to determine the requirements for an APZ, and consequently its resultant impact. It may be that the environmental impact of the APZ is sufficiently

significant to preclude its establishment, and lead to a consequent reduction in the potential development footprint of the retirement village (which may be limited in any case due to site constraints on their land - Lot 1).

Section D - State and Commonwealth interests.

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

The reclassification proposal does not require additional public infrastructure. Any subsequent proposals for additional development of the retirement village will require an investigation of infrastructure capacity. Water, sewer, electricity and telecommunication services are currently provided to the retirement village.

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

Consultation with relevant authorities will be undertaken following the gateway determination, particularly the Department of Environment, Climate Change and Water.

Part 4 – Community Consultation

The reclassification proposal will be exhibited in accordance with the requirements of the Environmental Planning and Assessment Act and the Local Government Act and their regulations, and in accordance with Section 4.5 of the "Guide to Making Local Environmental Plans".

This includes public notification of the exhibition, inviting public submissions, and holding a public hearing.

Notice of the arrangements for the public hearing will be given in a local newspaper; and in a letter to each person who may have made a submission, at least 21 days before the date of the hearing. Notice of the public hearing will not be given before the conclusion of the public exhibition of the planning proposal to ensure each person making a submission is given the requisite 21 days notice.

The exhibition period will be for a minimum of 28 days and will include the availability of hard copy exhibition material at a local venue, Council libraries, the Council Administration Building and for download from the internet.

Following the exhibition, the public submissions and the outcome of the public hearing will be assessed, and a recommendation made to Council for their consideration.

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ATTACHMENT 1

COUNCIL REPORT

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MAYORAL MINUTE

ITEM NO. 2

FILE NO: PSC2009-00382

**STONEY RIDGE – LOT 1, DP1074566, 60 DIEMARS ROAD,
SALAMANDER**

THAT COUNCIL:

- 1) Re-classify a 20M wide strip of land from community to operational at Lot 1, DP1074566, 60 Diemars Road, Salamander Bay.
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ORDINARY COUNCIL MEETING - 8 JUNE 2010

RESOLUTION:

154	Councillor Bruce MacKenzie Councillor Frank Ward	It was resolved that the recommendation be adopted.
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BACKGROUND

On the 9th March 2010 a letter requesting a 15 metre wide Asset Protection Zone was submitted to Council for the Salamander Haven aged care facility by Development and Building Consultant Mr Keith Lindsay.

Stoney Ridge Reserve and in particular the area to the rear of the proposed development is Community Land and is zoned Public Recreation 6(A) pursuant to Port Stephens Local Environmental Plan 2000. As per the Local Government Act (1993) and in accordance with a Plan of Management, Community Land must not be sold, exchanged or otherwise disposed of except in the instance of enabling the land to be added to Crown land in accordance with the Crown Lands Act 1989, or a protected area under the National Parks and Wildlife Act 1974. In addition, Council is unable to offer a licence, lease, estate or private benefit on Community Land.

Council's Recreation Services Section is currently developing a Draft Open Space Strategy and has identified Stoney Ridge as a natural area bushland reserve which includes areas of cultural heritage significance. Further, in 2005 an Environmental and Cultural Heritage Study was carried out by Ecological Australia which identified a range of threatened flora and fauna across the site, as well as Aboriginal scar trees which do not appear to be in the area of the requested Asset Protection Zone.

In respect to new development the requirements of the Rural Fire Service's Planning for Bushfire Protection 2006 (Section 3.3 Part (b)) states that easements should not be considered where the adjoining land is used for a public purpose, where vegetation

ORDINARY COUNCIL – 8 JUNE 2010

management cannot be legally granted (eg. Council Reserve, National Park, SEPP 14 Wetlands and SEPP 26 Critical Habitat).

The process to reclassify the land is a lengthy and will need to be clarified once appropriate investigations have been undertaken on how Council acquired the site

For further information refer to attachments.

ATTACHMENTS

- 1) A formal response letter from Council to Mr Keith Lindsay. dated 3rd June 2010
Re LOT 1 DP 1074566
- 2) Council Report 13th October 2009
SECTION 96 APPLICATION TO MODIFY DEVELOPMENT CONSENT FOR
URBAN HOUSING AT NO. 60 DIEMARS ROAD, SALAMANDER BAY.
- 3) Minute of Meeting 13 October 2009 – re legal implication changes.

ATTACHMENT 1

Telephone Inquiries:
Amanda Gale
Parcel No: 40611

3 June 2010

Mr Keith Lindsay
2 Alton Close
RAYMOND TERRACE NSW 2324

Dear Sir,

Re: LOT: 1 DP: 1074566, 60 Diemars Road SALAMANDER BAY 2317

I refer to your previous meeting with the Mayor, Ken Solman, Len Allen and Reg Longworth and subsequent correspondence dated 9 March 2010 in relation to a proposal to extend the facility on the above mentioned site by the addition of an 80 bed aged care facility on the eastern end of the site adjacent to Soldiers Point Road and an additional 40 self care units on the western end of the site.

Council's advice was sought on two particular points, specifically relating to the additional 40 self care units on the western end of the site, which will require the removal of trees within the koala habitat area and buffer zone south of the area containing endangered flora – 'callistemon linearifolius' as was shown on the prepared Vegetation Communities and Threatened Flora plan provided.

As outlined, to facilitate the development would require Council agreeing to dedicate a portion of Stoney Ridge Reserve adjacent to the western boundary of the site, such area being approximately 15 metres wide as an Asset Protection Zone (APZ).

Advice from Council was sort prior to any further preparation of plans for lodgement under a development application given the costs associated with preparation of a development application for such a proposal. Two specific questions were asked of Council and below is an outline of Council's response to the proposal.

Further, it should be noted that since the meeting with the Mayor and others and subsequent correspondence, the Mayor has called the matter to Council for consideration. A report will be forwarded to full Council from Facilities and Services Group in relation to the use of Council land for a future Asset Protection Zone.

Council's concurrence to the Asset Protection Zone being located on Council land

The following comment is provided in relation to the request for Council to provide a 15 metre wide Asset Protection Zone (APZ) across Council's land for the purposes of protecting a private development.

Stoney Ridge Reserve and in particular the area to the rear of the proposed development is 'community land' and is zoned Public Recreation 6(A) Zone pursuant to Port Stephens Local Environmental Plan 2000.

As taken from the Local Government Act 1993 and in accordance with a plan of management, 'community land' must not be sold, exchanged or otherwise disposed of except in the instance of enabling the land to be added to Crown land in accordance with the Crown Lands Act 1989, or a protected area under the National Parks and Wildlife Act 1974. In addition, Council is unable to offer

a licence, lease, estate or private benefit on 'community land' which also includes land categorised as a natural area – inclusive of bushland, wetland, water course, cultural significance and general community use land.

Council's Recreation Services Section is currently developing a Draft Open Space Strategy and has identified Stoney Ridge as a natural area bushland reserve which includes areas of cultural heritage significance. Further, in 2005 an Environmental and Cultural Heritage Study was carried out by Ecological Australia which identified a range of threatened flora and fauna across the site, as well as Aboriginal scar trees which do not appear to be in the area of the requested Asset Protection Zone.

That said, the only way a lease, licence or estate could be considered would be for the purpose of providing public utilities, public recreation or to provide a public road.

Further, in respect to new development the requirements of the Rural Fire Service's Planning for Bushfire Protection 2006 (Section 3.3 Part (b)) states that, easements should not be considered where the adjoining land is used for a public purpose, where vegetation management cannot be legally granted (eg. Council Reserve, National Park, SEPP 14 Wetlands and SEPP 26 Critical Habitat).

Council's thoughts on the feasibility of the proposal

For the purpose of providing background information, the original Development Consent 16-2004-1681-1 was granted for the original urban housing development (97 units and recreation facility) on 4 August 2005. This original consent was subsequently modified on seven (7) occasions with the last modified consent granted on 23 November 2007.

A separate Development Consent 16-2007-1117-1 was granted on 8 May 2008 for an additional eight (8) dwellings and a community building to form a part of the existing Salamander Retirement Village. This application also involved the relocation of drainage basins to facilitate the siting of the eight dwellings and to accommodate the community facility on-site. A subsequent application 16-2007-1117-2 was lodged in order to modify the proposed size of the underground detention structure and consent was granted on 14 August 2008.

Furthermore, a subsequent Section 96 application 16-2007-1117-3 was lodged in order to modify the development consent by removal of Condition No.11 which stated:-

'The remaining vegetated western portion of the site shall not be the site of further development. The title of these properties shall be endorsed under Section 89B of the Conveyancing Act to give effect to this condition. Council shall be nominated as the sole authority permitted to alter/remove the endorsement prior to issue of the Occupation Certificate.'

This Section 96 modification application was reported to full Council for determination and Council's resolution did not support the recommendation to refuse contained in the report and resolved to support the request to remove Condition 11 from the consent. The modified development consent was granted on 20 October 2009.

The proposal now the subject of enquiry for additional development at both the eastern and western ends of the site is permissible within the zone subject to development consent from Council. However, major concern exists in relation to further development on the western end of the site where it is proposed to seek approval for an additional forty (40) self care units, given ecology and bushfire constraints that exist over the site.

It is advised that further development of the site (within the western end) is considered inconsistent with the original development consent and the mitigation measures that were put in place with that consent to offset the impacts of existing development on the site.

The first development application lodged at the site was DA 16-2000-425-1 proposing 124 dwellings, supported by a Species Impact Statement. This application was refused by Council on 18 December 2001.

The second DA 16-2004-1681- 1 (proposing 97 dwellings and recreation facility/community building and clearing approximately two-thirds of the site) was to be mitigated by the protection of the remainder of the site vegetation through a Vegetation Management Plan determined by Port Stephens Council. Council supported this DA after 26 dwellings were removed to overcome the prior objections from the National Park and Wildlife Service in consideration of the requirements of the Squirrel Glider under the Threatened Species Conservation Act 1995.

Subsequently DA 16-2007-1117-1 was lodged which sought to develop a further eight dwellings and relocation of the community building. Additional clearing was proposed for the relocated community building within the land affected by the Vegetation Management Plan imposed by the Council. Development staff recommended approval of the Development Application only subject to the imposition of the 88B instrument as a condition to offset the impacts of the development through conservation of the remainder of the vegetation and to uphold the intentions of the previous determination in mitigating the impact of the original development. This was accepted and has been acted upon by the applicant.

Throughout Council's assessment of the application Council's Environmental Services Section has consistently sought to respect and acknowledge the decision to protect this part of the site, as a mitigation measure of the development, to protect the local squirrel glider population.

Whilst, a modified consent was granted through Council resolution to remove Condition 11 and the 88B instrument, the major issues in relation to further development on this remaining land do not change. Therefore, on the basis of the above, it is not considered feasible to propose any further development on this remaining portion of the site and impose added impact on the adjoining Council land (due to the need to provide an asset protection zone on this adjoining land).

I hope this advice has been of assistance in responding to your enquiries for future expansion of this development on site and in relation to the use of the adjoining Council land. Please do not hesitate to contact the undersigned for any further enquiries in relation to this matter or report to Council.

Yours faithfully

Amanda Gale
Development Co-ordinator

DA TRACKER

Development & Building has been listening to your suggestions for improvement. Council has now launched its On-line Application Tracking System and a revised Website so you can access key information, forms and application updates anytime, 24 hours, 7 days a week. Council welcomes your feedback on these new initiatives. Email council@portstephens.nsw.gov.au or write to The Manager Development & Building, Port Stephens Council, PO Box 42, Raymond Terrace NSW 2324

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ATTACHMENT 2

COUNCIL RESOLUTION

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MINUTES ORDINARY COUNCIL – 14 DECEMBER 2010

ITEM NO. 14

FILE NO: PSC2009-00382

STONEY RIDGE – LOT 51 DP 803471, 1 DIEMARS ROAD, SALAMANDER BAY

REPORT OF: JASON LINNANE - FACILITIES AND SERVICES, ACTING GROUP MANAGER
GROUP: FACILITIES AND SERVICES

RECOMMENDATION IS THAT COUNCIL:

- 1) Rescind the Mayoral Minute of 8 June 2010 Item No. 2 (Resolution No. 154) Attachment 1 as the information relating to the property address is incorrect and should have read Lot 51, DP803471 1 Diemars Road, Salamander Bay.
- 2) Re-classify a 20M wide strip of land from community to operational at Lot 51, DP 803471, 1 Diemars Road, Salamander Bay in its capacity as the landowner.
- 3) Reclassify the land from community to operational pursuant to Section 54 of the Environmental Planning and Assessment Act in its capacity as a planning authority.

**COUNCIL COMMITTEE MEETING – 7 DECEMBER 2010
RECOMMENDATION:**

	Councillor Bruce MacKenzie Councillor Sally Dover	That the recommendation be adopted.
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ORDINARY COUNCIL MEETING – 14 DECEMBER 2010

406	Councillor Frank Ward Councillor Sally Dover	It was resolved that the recommendation be adopted.
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In accordance with the Section 375A, Local Government Act 1993, a division is required for this item.

Those for the Motion: Crs Peter Kafer, Glenys Francis, Caroline De Lyall, Ken Jordan, Steve Tucker, Shirley O'Brien, Geoff Dingle, John Nell, Frank Ward, Sally Dover and Bob Westbury.

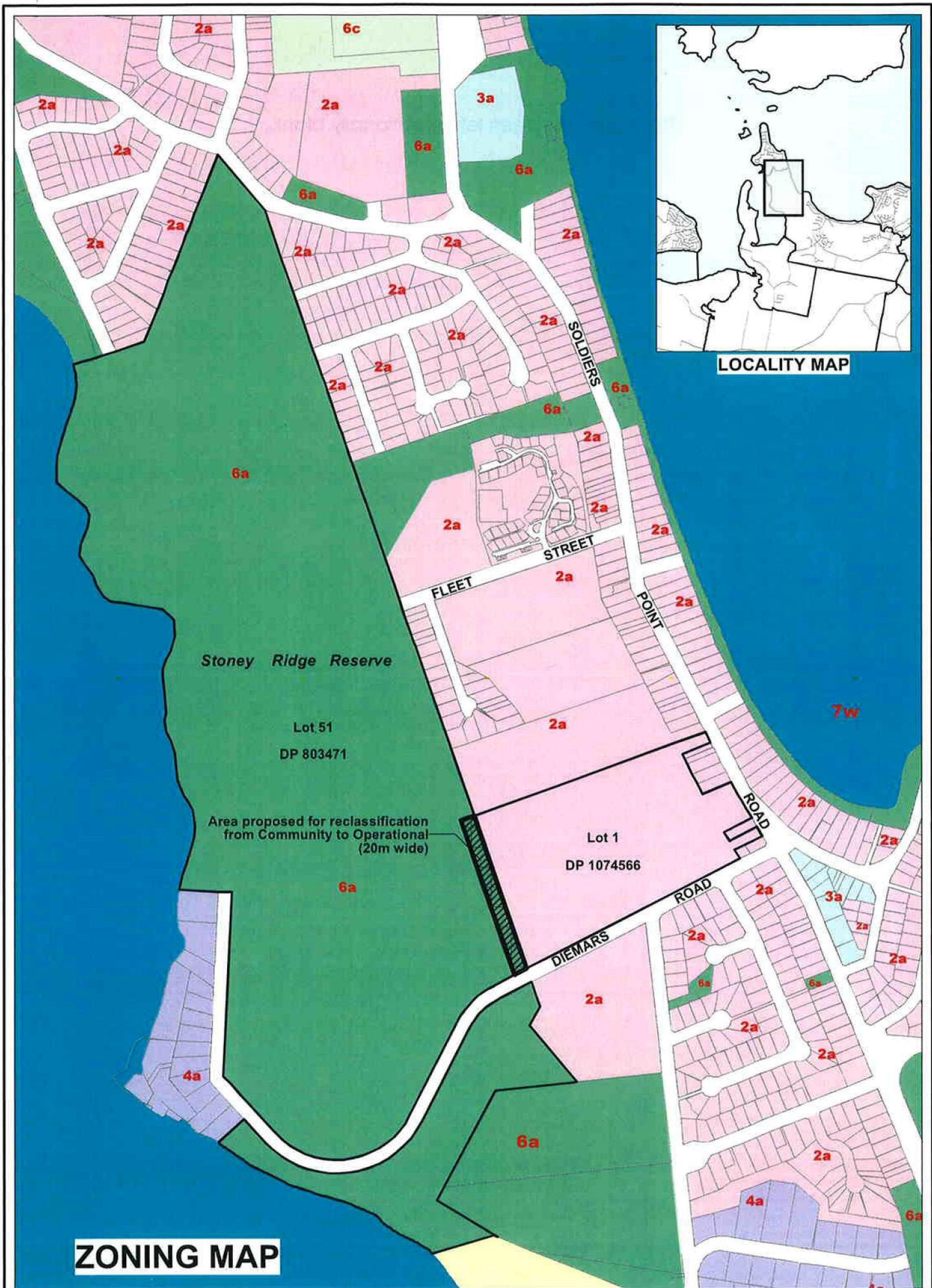
Those against the Motion: Nil.

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ATTACHMENT 3

MAP OF SUBJECT LAND

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ZONING MAP

PROPOSED LAND RECLASSIFICATION
Part Lot 51 DP 803471 - Salamander Bay

© Land & Property Management Authority
 © Port Stephens Council



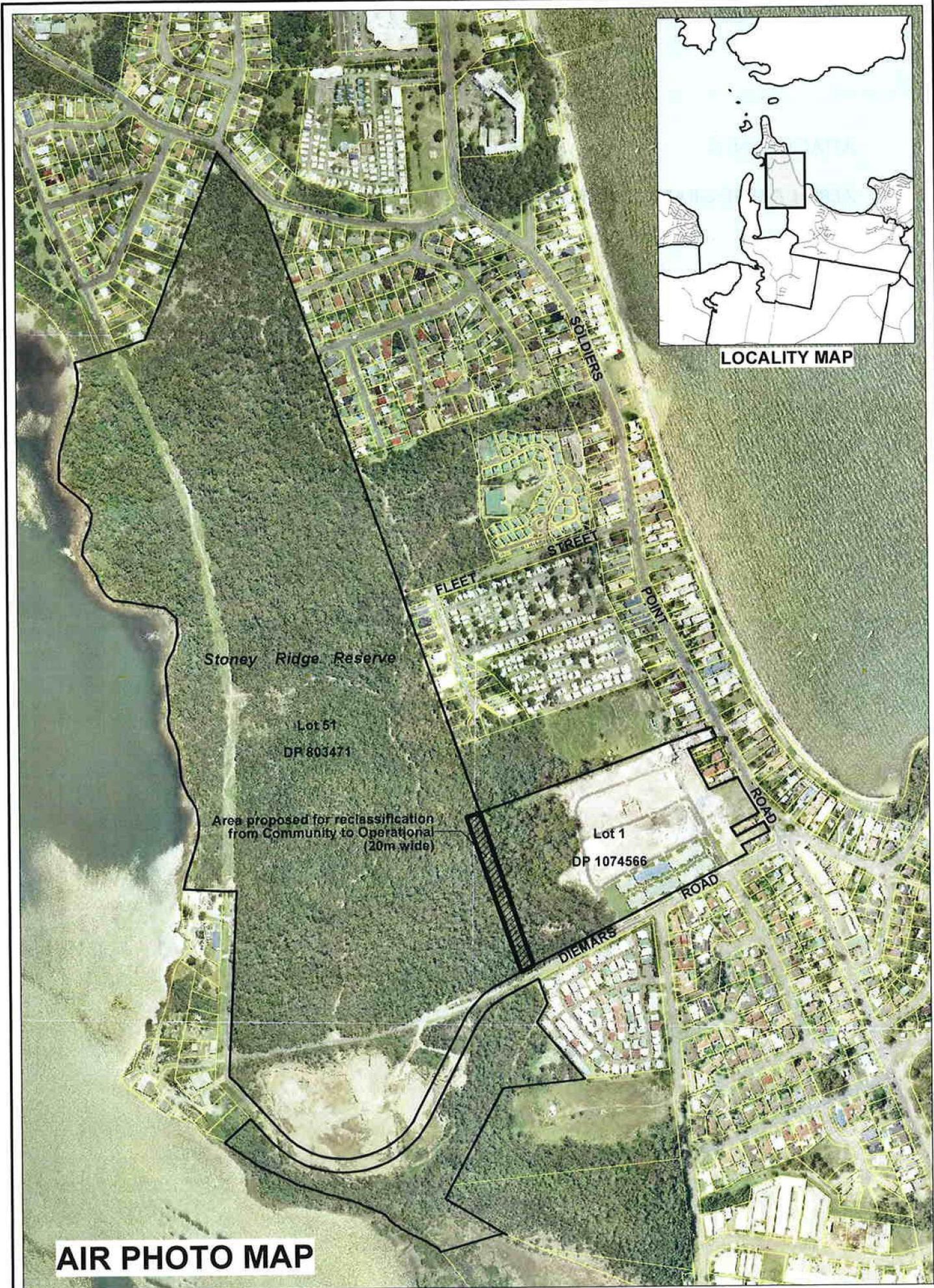
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ATTACHMENT 4

AERIAL PHOTOGRAPH OF SUBJECT LAND



AIR PHOTO MAP

PROPOSED LAND RECLASSIFICATION

Part Lot 51 DP 803471 - Salamander Bay

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