



# Planning Proposal – 9B Diemars Road, Salamander Bay

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

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



**PORT STEPHENS**  
COUNCIL

## FILE NUMBERS

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**Council:** PSC2015-01630

**Department:** To be provided at Gateway Determination.

## SUMMARY

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

**Proponent:** Property Services Section

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

**Current classification:** Community

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

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

## BACKGROUND

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

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

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

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

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

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

## SITE

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The site is zoned IN4 – Working waterfront and is approximately 3,684m<sup>2</sup>. The site has direct water access to the west and is landlocked by privately owned IN4 zoned land to the north, south and east, which is used for oyster farming operations, oyster processing and a retail facility. The site does not have legal street access.

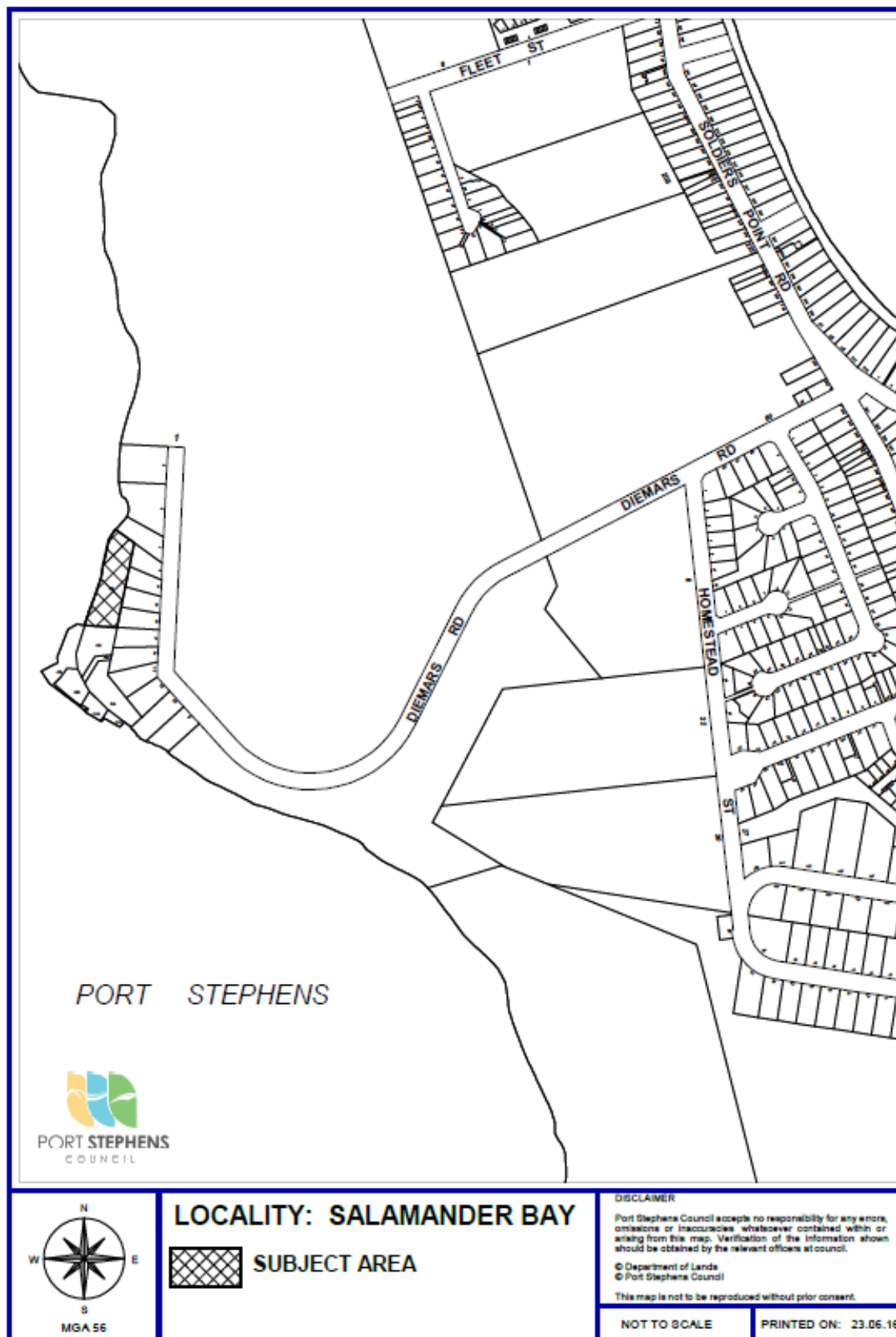
Part of the site is currently being used, without a formal licence from Council, for the storage of oyster racks and associated materials by an adjoining landholder/oyster farmer. This use is consistent with the IN4 Zone.

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

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

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

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



## **PART 1 – Objective of the proposed Local Environmental Plan**

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

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

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

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

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

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

No mapping amendments are proposed.

## **PART 3 – Justification for the Planning Proposal**

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### **SECTION A – Need for the Planning Proposal**

#### **Is the planning proposal a result of any strategic study or report?**

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

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

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

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

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

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

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

Land can be reclassified by either:

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

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

**Is there a community benefit?**

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

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

**SECTION B – Relationship to Strategic Planning Framework**

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

Lower Hunter Regional Strategy (LHRS)

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

#### Draft Lower Hunter Growth Plan

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

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

#### Integrated Strategic Plan (Port Stephens 2022)

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

#### Port Stephens Planning Strategy (PSPS) 2011

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

#### Foreshore Management Plan 2013

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

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

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

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

#### SEPP 44 – Koala Habitat Protection

##### *Aims & objectives*

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

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

*Consistency / inconsistency*

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

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

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

SEPP 62 – Sustainable Aquaculture

*Aims & objectives*

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

*Consistency/inconsistency*

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

The planning proposal is consistent with SEPP 62.

SEPP 71 – Coastal Protection

*Aims & objectives*

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

*Consistency / inconsistency*

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



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

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

### 1.1 – Business and Industrial Zones

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

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

The planning proposal is consistent with Direction 1.1.

### 1.4 – Oyster Aquaculture

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

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

The planning proposal is consistent with Direction 1.4.

### 2.2 – Coastal Protection

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

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

### 2.3 – Heritage Conservation

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

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

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

## **SECTION C – Environmental, Social and Economic Impact**

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

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

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

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

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

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

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

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

## **SECTION D – State and Commonwealth interests**

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

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

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

Consultation with relevant State and Commonwealth Agencies will be undertaken following a Gateway Determination. It is envisaged that the following agencies will be consulted with:

- Department of Primary Industry (Fisheries)
- Worimi Local Aboriginal Land Council
- Office of Environment and Heritage

#### **Part 4 - Mapping**

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The planning proposal does not propose any mapping amendments.

#### **Part 5 - Details of Community Consultation**

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Community consultation will be undertaken in accordance with the gateway determination. Due to the low impact of the planning proposal, it is anticipated that a 14 day exhibition period will be required.

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

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

The planning proposal will also be available on Council's website.

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

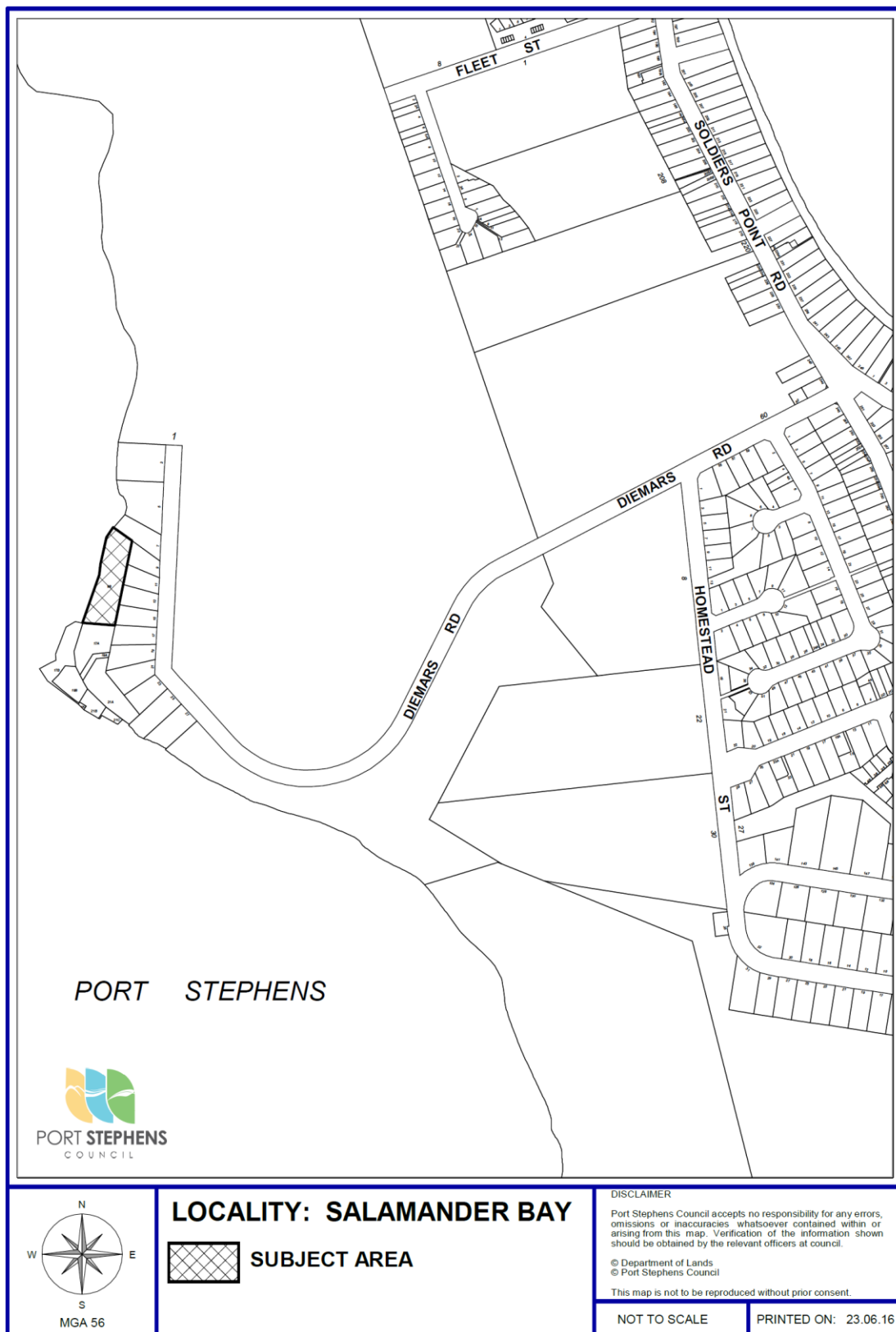
## **Part 6 – Project timeline**

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

The following timetable is proposed:

	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>
<b><i>Gateway Determination</i></b>								
<b><i>Agency Consultation</i></b>								
<b><i>Public Exhibition</i></b>								
<b><i>Notification of Public Hearing</i></b>								
<b><i>Public Hearing</i></b>								
<b><i>Council Report</i></b>								
<b><i>Parliamentary Counsel</i></b>								

## Attachment One – Locality Plan



## Attachment Two – Statement of Interest – Reclassification of Lot 644 DP 658258, 9B Diemars Road, Salamander Bay

### Introduction

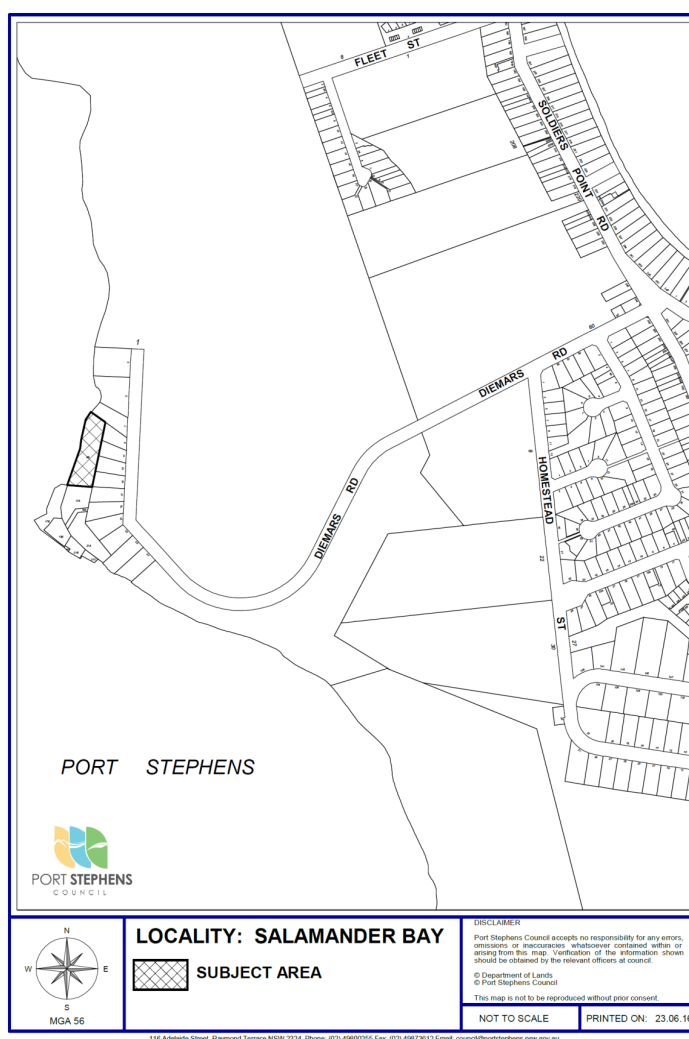
This Statement of Interest (Statement) concerns the reclassification of land under the *Port Stephens Local Environmental Plan 2013*. The proposed reclassification has been prepared in accordance the requirements of Section 27(1) of the *Local Government Act 1993*, and the NSW Department of Planning Practice Note PN 09-003 (12 June 2009) *Classification and reclassification of public land through a local environmental plan* (Practice Note).

The purpose of this Statement is to:

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

### Subject land

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



## Statement of Council's Interest

- *Current classification of the land*

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

- *Proposed classification of the land*

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

- *Justification for the planning proposal*

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

- *Council's interest in the land*

Port Stephens Council is the land owner.

- *Reasons why Council acquired an interest*

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

- *Details of any proposal to extinguish or retain other interests in the land through the reclassification*

Council intends to dispose of the land.

- *A justification / explanation as to why such interests are being extinguished*

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

- *Any rezoning associated with the reclassification*

The site will retain its IN4 – Working Waterfront zoning.

- *Any agreements over the land*

There are no current agreements over the land. An adjoining land owner uses the site informally for the storage of oyster racks and the like in conjunction with oyster farming operations.

- *An indication of the financial gain or loss from the reclassification and the types of benefit that could arise*

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

- *Asset Management Objectives*

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

- *Whether there has been any agreement for the sale and lease of the land*

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

- *Council's proposed future use of the site*

Council intends to sell the asset.

- *How the reclassification relates to Council's Strategic Framework*

#### Integrated Strategic Plan (Port Stephens 2022)

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

#### Port Stephens Planning Strategy (PSPS) 2011

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

#### Foreshore Management Plan 2013

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

#### Port Stephens Myall Lakes Estuary Management Plan 2000

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



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

- *Site specific requirements*

There are no site specific requirements

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

No preliminary advice of government agencies has been obtained. Consultation with relevant agencies will occur in accordance with Gateway requirements.

- *Consideration of any relevant directions, eg section 117 Direction 6.2 – Reserving Land for Public Purposes*

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

#### 1.1 – Business and Industrial Zones

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

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

The planning proposal is consistent with Direction 1.1.

#### 1.4 – Oyster Aquaculture

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

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

The planning proposal is consistent with Direction 1.4.

#### 2.2 – Coastal Protection

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

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

### 2.3 – Heritage Conservation

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

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

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

- *Relevant matters required in plan making under the EP&A Act*

The reclassification is being processed in accordance with Part 3 of the *EP&A Act*.

#### **Public hearing**

The proposed reclassification is to be the subject of a public hearing pursuant to section 29 of the *Local Government Act 1993* and *PN09-003*.

## Attachment Three – Council report and minutes

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### MINUTES ORDINARY COUNCIL - 27 SEPTEMBER 2016

ITEM NO. 2

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

#### PLANNING PROPOSAL - 9B DIEMARS ROAD, SALAMANDER BAY

REPORT OF: DAVID ROWLAND - STRATEGY AND ENVIRONMENT SECTION  
MANAGER

GROUP: DEVELOPMENT SERVICES

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#### RECOMMENDATION IS THAT COUNCIL:

- 1) Endorse the planning proposal at **(ATTACHMENT 2)** to reclassify the subject site from 'community' to 'operational' land.
  - 2) Forward the planning proposal to the NSW Department of Planning and Environment under Section 56 of the *Environmental Planning and Assessment Act 1979* with a request for a Gateway determination.
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#### ORDINARY COUNCIL MEETING - 27 SEPTEMBER 2016 MOTION

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

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

Those against the Motion: Nil.

## **BACKGROUND**

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

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

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

The site is zoned IN4 – Working waterfront and is approximately 3,684m<sup>2</sup>. The site has direct water access to the west and is landlocked by privately owned IN4 zoned land to the north, south and east, which is used for oyster farming operations, oyster processing and a retail facility. The site does not have legal street access.

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

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

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

## MINUTES ORDINARY COUNCIL - 27 SEPTEMBER 2016

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

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

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

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

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

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

### COMMUNITY STRATEGIC PLAN

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

### FINANCIAL/RESOURCE IMPLICATIONS

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

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

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**MINUTES ORDINARY COUNCIL - 27 SEPTEMBER 2016**

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

### **LEGAL, POLICY AND RISK IMPLICATIONS**

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

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

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

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

#### Environmental Planning and Assessment Act 1979

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

#### Local Government Act 1993

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

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

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### S117 Ministerial Direction

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

### State Environmental Planning Policies

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

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

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

### Port Stephens Local Environmental Plan 2013

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

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

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

### Foreshore Management Plan 2009

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

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



Open Space Analysis Review 2005

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

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

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

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

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

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

**SUSTAINABILITY IMPLICATIONS**

Includes Social, Economic and Environmental Implications

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



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

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

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

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

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

### **MERGER PROPOSAL IMPLICATIONS**

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

### **CONSULTATION**

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

#### Internal

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

#### External

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

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

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- Worimi Local Aboriginal Land Council

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

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

### OPTIONS

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

### ATTACHMENTS

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

### COUNCILLORS ROOM

Nil.

### TABLED DOCUMENTS

Nil.