

Planning Services

Plan Finalisation Report

Local Government Area: Port Stephens

File Number: 16/13013

1. NAME OF DRAFT LEP

Port Stephens Local Environmental Plan 2013 Amendment No. 21 (draft LEP).

2. SITE DESCRIPTION

The Planning Proposal applies to land at 9B Diemars Road, Lot 644 DP 658258, Salamander Bay. The land is zoned IN4 Working Waterfront and is approximately 3684sqm. 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 material by an adjoining landholder. This use is consistent in the IN4 zone.

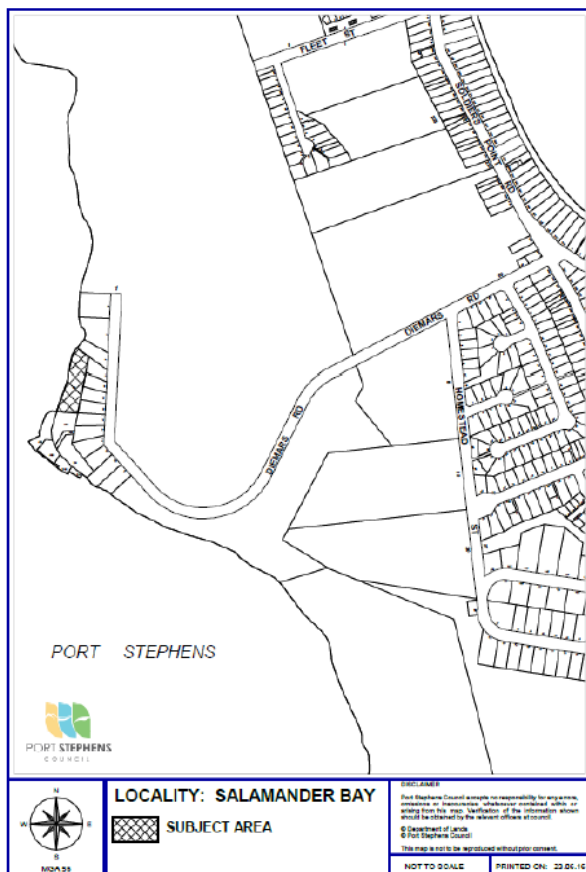


Figure 1 and 2 – Subject Site

3. PURPOSE OF PLAN

The draft LEP seeks to reclassify the land from 'community' to 'operational' land under the *Local Government Act 1993*. This will be achieved by amending Part 2 'Land classified, or reclassified as operational land – interests changed', of Schedule 4 'Classification and reclassification of public land' of the Port Stephens LEP 2013 to include the subject site.

The Proposal will allow the site to be sold by Council, with an adjoining landholder expressing interest in purchasing the site for oyster farming operations.

The proposal will give effect to Council's Open Space Consolidation Review, which identified the site as being suitable for disposal to adjoining land holders given its landlocked nature and limited opportunities for community use.

4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Port Stephens Electorate. Kate Washington MP is the State Member for Port Stephens.

Meryl Swanson MP is the Federal Member for Paterson.

To the Regional Planning Team's knowledge, neither MP has made any written representations regarding the Proposal.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this Proposal.
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NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION

The Gateway determination issued on 22 November 2016 (**Attachment C**) determined that the Proposal should proceed subject to conditions.

The Proposal is due for finalisation on 29 August 2017.

6. PUBLIC CONSULTATION

In accordance with the Gateway determination, community consultation was undertaken by Council from 16 February 2017 to 3 March 2017.

No submissions were received during the exhibition period.

A public hearing was held on 28 June 2017, in accordance with section 29 of the *Local Government Act 1993*. Four members of the public attended the public hearing. All attendees supported the Planning Proposal and no matters were raised at the hearing that would affect the outcome of the reclassification.

7. ADVICE FROM PUBLIC AUTHORITIES

Council was required to consult NSW Department of Primary Industries (Fisheries) (DPI) and NSW Rural Fire Service (RFS) in accordance with the Gateway determination.

Council has consulted these authorities in accordance with the Gateway determination.

DPI advised that Priority Oyster Aquaculture Areas are present in the estuarine waters in proximity to the site and protecting the water quality is crucial to the long-term future of the industry. Council has outlined that should future development of the site propose on-site effluent treatment, approval from Council to operate will be required and that assessment will be undertaken in accordance with Council's On-Site Sewerage Development Assessment Framework.

RFS did not object to the Planning Proposal, given that any future development on the land would be for industrial or commercial purposes and not be for a dwelling or temporary accommodation.

8. POST EXHIBITION CHANGES

Only minor amendments were made to the Planning Proposal following public exhibition, such as further details regarding community consultation and further information provided for some Section 117 Directions. It is recommended the amendments be endorsed without requiring further exhibition as they do not change the intent of the Planning Proposal as exhibited and merely add clarity.

9. ASSESSMENT

The Planning Proposal has merit because:

- the subject site is landlocked in nature and there is no community access to the site, therefore reclassifying the site will not cause a negative public impact from the loss of public land;
- reclassification will create opportunities for redevelopment and potential growth of the adjacent oyster farming industry; and
- Council's Open Space Consolidation Review identified that the site is surplus to Council's open space requirements and that its landlocked nature provides limited opportunities for community use.

Section 117 Directions

S117 Directions 2.1 Environment Protection Zones, 4.3 Flood Prone Land and 4.4 Planning for Bushfire Protection require the Secretary's agreement. It is recommended that the Secretary's delegate agree that the Planning Proposal is now consistent with the terms of the Directions and that no further approval is required in relation to the Directions.

Direction 2.1 Environment Protection Zones

The Planning Proposal has been updated to reflect that the subject site is located in the coastal zone, an environmentally sensitive area. It has also been updated to clarify that future development of the site will consider the impacts on the coastal environment by way of clause 5.5 of the Port Stephens LEP 2013. Inconsistency with this Direction is therefore considered to be of minor significance and it is recommended that the Secretary's delegate agree that no further approval is required in relation to this Direction.

Direction 4.3 Flood Prone Land

The Gateway determination required Council to update the Planning Proposal to clarify how future development of the subject site will not put people or commercial investment at risk of flooding/inundation. Council has addressed this by outlining that there is sufficient flood free land on the subject site to enable its use for waterfront industry, consistent with the zone. Clause 7.3 Flood Planning of the Port Stephens LEP 2013 will also apply to future development applications for the subject site. Inconsistency with this Direction is therefore considered to be of minor significance and it is recommended that the Secretary's delegate should agree that no further approval is required in relation to this Direction.

Direction 4.4 Planning for Bushfire Protection

The NSW Rural Fire Service has been consulted and the Planning Proposal is now consistent with this Direction. NSW RFS did not raise any objections to the Proposal. Any future development application for the site shall be accompanied by a Bush Fire Assessment Report outlining how the application complies with Planning for Bushfire Protection 2006.

State Environmental Planning Policies

The draft LEP is consistent with relevant and deemed SEPPs.

10. MAPPING

There are no maps associated with the LEP amendment.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument (Tab E). Council confirmed on 11 October 2017 that it was happy with the draft and that the Plan should be made (Tab E).

12. PARLIAMENTARY COUNSEL OPINION

On 6 October 2017, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Tab PC.

13. GOVERNOR AND EXECUTIVE COUNCIL

Under section 30(2) of the Local Government Act 1993, the Governor granted approval for the reclassification of the land on 13 December 2017.

14. RECOMMENDATION

It is recommended that the Minister's delegate determine to make the draft LEP.