

9B Diemars Road, Salamander Bay: Reclassify from 'community' to 'operational' land

Proposal Title : **9B Diemars Road, Salamander Bay: Reclassify from 'community' to 'operational' land**

Proposal Summary : **Amend Port Stephens Local Environmental Plan 2013 by reclassifying Lot 644 DP 658258, 9B Diemars Road, Salamander Bay from 'community' to 'operational' land to facilitate the sale of the land. The IN4 Working Waterfront zone remains unchanged.**

PP Number : **PP_2016_PORTS_007_00** Dop File No : **16/13013**

Proposal Details

Date Planning Proposal Received :	02-Nov-2016	LGA covered :	Port Stephens
Region :	Hunter	RPA :	Port Stephens Council
State Electorate :	PORT STEPHENS	Section of the Act :	55 - Planning Proposal
LEP Type :	Reclassification		

Location Details

Street :	9B Diemars Road		
Suburb :	Salamander Bay	City :	Port Stephens
Land Parcel :	Lot 644 DP 658258	Postcode :	

DoP Planning Officer Contact Details

Contact Name : **Ken Phelan**
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RPA Contact Details

Contact Name : **Sarah Connell**
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DoP Project Manager Contact Details

Contact Name :
 Contact Number :
 Contact Email :

Land Release Data

Growth Centre :	N/A	Release Area Name :	
Regional / Sub Regional Strategy :	Lower Hunter Regional Strategy	Consistent with Strategy :	Yes

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MDP Number :

Date of Release :

Area of Release (Ha) **0.30**Type of Release (eg
Residential /
Employment land) :**Employment Land**No. of Lots : **0**No. of Dwellings
(where relevant) : **0**Gross Floor Area : **0**No of Jobs Created : **0**The NSW Government **Yes**Lobbyists Code of
Conduct has been
complied with :

If No, comment :

Have there been **No**
meetings or
communications with
registered lobbyists? :

If Yes, comment :

Supporting notesInternal Supporting
Notes :

External Supporting Notes : **Zoned IN4 – Working waterfront, this 3,684m2 site has direct water access to the west, Cromartys Bay, but is landlocked by privately owned IN4 zoned land to the north, south and east 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, which is consistent with the IN4 Zone.

On 25 November 2008, Council considered a proposal to reclassify the site and 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 were identified for this site. The key considerations for any future development proposal include visual amenity and foreshore stability. Further detail on this matter is provided in the Planning Proposal.

Adequacy Assessment**Statement of the objectives - s55(2)(a)**Is a statement of the objectives provided? **Yes**

Comment : **To reclassify the land from 'community' to 'operational' land, allowing the site to be sold by Council, probably to a neighbour who has expressed interest in it for oyster farming operations, consistent with the IN4 zoning.**

Explanation of provisions provided - s55(2)(b)Is an explanation of provisions provided? **Yes**

Comment : **Reclassify this unencumbered land from 'community' to 'operational' while retaining the IN4 Working Waterfront zone.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **No**

b) S.117 directions identified by RPA :

1.1 Business and Industrial Zones

* May need the Director General's agreement

1.4 Oyster Aquaculture

2.2 Coastal Protection

2.3 Heritage Conservation

Is the Director General's agreement required? **No**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

SEPP No 44—Koala Habitat Protection

SEPP No 62—Sustainable Aquaculture

SEPP No 71—Coastal Protection

e) List any other matters that need to be considered :

Planning Direction 2.1 - Environment Protection Zones

Planning Direction 4.3 - Flood Prone Land; and

Planning Direction 4.4 - Planning for Bushfire Protection

Are also relevant to the proposal.

Have inconsistencies with items a), b) and d) being adequately justified? **No**

If No, explain :

Planning Direction 2.1 - Environment Protection Zones

Over 60% of the land (western section of the lot) is mapped as Wetland (PSLEP Map ref.: 6400_COM_WET_005_080_20131022), any development of the site will need to consider impacts on this wetland, consistent with relevant clauses in the LEP. Council should update the PP to clarify this.

Planning Direction 4.3 - Flood Prone Land

This Direction applies when a relevant planning authority alters 'a provision' that affects flood prone land, regardless of whether the zone is changed.

Flood Hazard Map FHZ_005B shows some 60% of the site as being flood prone.

By reclassifying this flood-prone land to 'Operational', and selling it to a business, the land will be rendered capable of more intensive use, contrary to Direction 4.3- Flood Prone Land which states that an LEP must not include 'a provision' that would intensify the use of flood-prone land. Council will need to ensure that development proposals do not put people or commercial investment at risk due to flooding/ inundation. This may be resolved through the development assessment process and existing provisions of the LEP in relation to flooding. Council should update the PP to clarify this.

Planning Direction 4.4 - Planning for Bushfire Protection

The land is within an area of bushfire risk. Consultation with NSW RFS will be required before consistency with this direction can be determined.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment :

It is noted that flood mapping is not provided, however this should be exhibited along with the planning proposal.

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment :

14 day exhibition period with notice of the public exhibition period in local newspaper, The Examiner and displays at:

☐ **Council's Administration Building 116 Adelaide Street, Raymond Terrace**

☐ **Raymond Terrace Library, Port Stephens Street, Raymond Terrace**

- ☐ Tomaree Library, Town Centre Circuit, Salamander Bay
- ☐ Council's website.

A Local Government Act 1993, public hearing will also be held.

Additional Director General's requirements

Are there any additional Director General's requirements? **N/A**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : **Port Stephens Local Environmental Plan 2013 was notified in December 2013**

Assessment Criteria

Need for planning proposal :

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

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.

Under the Port Stephens Local Environmental Plan 2000, the site was zoned IN4 Working Waterfront but maintained its 'community' land classification.

Reclassification of Land through a Local Environmental Plan
LEP Practice Note PN 16-001 (5 October 2016, superseding PN 09-003)

This PN provides advice to councils on classification and reclassification of public land through a local environmental plan. The planning proposal report to Council on 27 September 2016 quotes and relies on 'Department of Planning and Environment's Practice Note PN09-003 (12 June 2009) Classification and reclassification of public land through a local environmental plan'. This Planning Proposal was lodged on 29 September 2016, seven days prior to LEP Practice Note PN 16-001 coming into effect. This assessment therefore references Practice Note PN 16-001 (12 June 2009).

Council has responded to the information requirements and planning considerations of Practice Note PN 16-001. The land is seen as difficult to access (water-side access only) for public recreational use and an opportunity for the sale and commercial use of the land has been identified. The Open Space Consolidation Review 2006 identified the site as a vacant foreshore reserve with no recreational facilities and recommended that it be sold to adjoining land holders as it has no public access.

Council purchased the land freehold from the Commonwealth on 1st January 1955. Council paid the Commonwealth 50,000 pounds for the entire holding, some of which had various types of protected tenancy and other land which was progressively sold into the residential market.

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'Council and the (then) Commonwealth Department of the Interior agreed to the sale of land by exchange of letters in December 1954, with the transfer date being 1st January 1955. The agreement was based on existing tenants and the Commonwealth retaining the rights to any timber on the land. Following the sale to Council, existing tenants were advised of Council's intention to sell, with tenants being given first option to purchase the land. The agreement does not make mention of future zoning or use of the land.

In consideration of how to manage the land, Council officers were instructed by the elected representatives (in Council report dated 27 October 1954) to investigate the zoning of the land 'with a view to minimising hardship'.

In the minutes of a special meeting of Council dated 27 Oct 1954, it was noted that "the waterfront has been reserved as a park along the frontage of the industrial area. Whilst desirable from the aesthetic point of view, this would handicap development of wharfage and some modification may be desirable"

There is no evidence that the Commonwealth requested that Council zone the land for recreation purposes at the time of sale. An agreement between Council and the Commonwealth was that tenants existing at 1st January 1955 would be offered the freehold

It is anticipated that Council may be able to sell this small section of some 3,681sqm but its landlocked nature limits its market and hence could lower its market value. The sale price will be based on negotiations with adjoining owners.

Council provided the anticipated value of the land to the Department in satisfaction of this clause of the Planning Practice Note. There is no current agreement for sale or lease of the land.

A planning proposal is the only means by which this reclassification can occur.

Consistency with
strategic planning
framework :

Lower Hunter Regional Strategy

The Strategy does not specifically set policy at this level of resolution.
The proposal is not inconsistent with the Strategy.

Hunter Regional Plan 2016

The Hunter Plan does not specifically set policy at this level of resolution.
The proposal is not inconsistent with the Plan.

State Environmental Planning Policies

SEPP No 44—Koala Habitat Protection

The site contains remnant bushland species that are koala feed trees and is considered to be koala habitat.

Council's assessment is that:

.....
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 No 62—Sustainable Aquaculture

This policy seeks to permit and protect appropriate coastal activities such as oyster aquaculture.

The proposal is consistent with this state policy.

SEPP No 71—Coastal Protection

The land has a 118m foreshore frontage to Cromartys Bay.

Clause 7 of this policy requires Councils to assess draft LEP's, as well as Development Applications, against the matters for consideration as set out in clause 8 of the SEPP.

It is noted that the land-locking of the site appears due to Council's previous pattern of sales of adjoining waterfront land which it acquired from the Commonwealth. These may have precluded Council negotiating easements for public access to the foreshore consistent with SEPP 71- Coastal Protection. Further consideration of SEPP 71 will be given if/when any development application is considered of the site.

It is further noted that the site lies within a NSW Marine Park, the Port Stephens-Great Lakes Marine Park. The Marine Parks Act 1997 Sections 19 and 20 places requirements and sets out considerations for use by responsible planning authorities when assessing development applications:

Section 117 Directions

1.1 – Business and Industrial Zones

Notwithstanding that this is a reclassification of land proposal, with the industrial zone IN4 remaining unchanged, this Direction is triggered in that the planning proposal affects an existing industrial zone.

Objective cl.(1)(a) of the Direction is to:

'encourage employment growth in suitable locations'

It is considered that a site which is 60% flood-affected is not a suitable location in which to encourage general employment growth, however the most likely future use of the land is

for the oyster industry which may be sensitive to site constraints. The proposal is considered consistent with this direction in that the site may be suitable for facilitating employment growth in the area consistent with its constraints, namely growth in oyster aquaculture employment.

Planning Direction 1.4 – Oyster Aquaculture

The site lies within a Priority Oyster Aquaculture Area.

The reclassification will not adversely impact on oyster farming in the area. Land adjoining the site is currently used for oyster operations.

Given its landlocked nature, the site will likely be purchased by adjoining landholders for use associated with oyster operations, in Council's view.

It is emphasised that Council will need to ensure consistency with this SEPP 62 Sustainable Aquaculture in any development application, following any reclassification and sale of the land to a private interest. This is to ensure that the permitted industrial activities are planned, designed and managed so as not to contaminate or prejudice the quality of the many nearby Priority Oyster Leases in Cromartys Bay.

Planning Direction 2.2 Coastal Protection

Clause 4 of this policy requires that:

- (4) A planning proposal must include provisions that give effect to and are consistent with:
- (a) the NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997, and
 - (b) the Coastal Design Guidelines 2003, and
 - (c) the manual relating to the management of the coastline for the purposes of section 733 of the Local Government Act 1993 (the NSW Coastline Management Manual 1990).

While the Planning Proposal anticipates that the land, once reclassified, will be used for the open storage of oyster racks, this assessment must consider that other future uses are permissible under the IN4 zoning and so Council's attention is drawn to the above requirements as well as SEPP 71 when considering any future development application. With this the proposal, and subsequent development applications, will be consistent with this Direction.

Planning Direction 2.3 Heritage Conservation

Aboriginal Heritage-

A search of the Aboriginal NSW Heritage Information System with a 50m buffer indicated that there are no known sites on, or within 50m of, Lot 644 DP 658258.

The land-locked nature of the site may have resulted in it not being the subject of any survey for Aboriginal relics. The local area has extensive rock platforms, has potential in the tidal shallows for fish-traps and a 2011 aerial image appears to show a circular feature in the centre of the lot.

Any future development assessment will require consideration of these matters, with this the proposal will be consistent with this Direction.

Non-Aboriginal Heritage-

The area was associated in earlier times with a Royal Australian Navy Naval Base.

The deep-water eastern side of the Soldiers Point peninsula was known amongst seafarers as a very good natural harbour. The shallow profile of the Cromarty Bay shoreline west of the peninsula was unlikely to have been of such maritime significance but in more recent times has provided good water access for the establishment of extensive oyster leases and related commercial activities.

It is noted that the former RAN vessel HMAS Psyche, which was retired to become a commercial coastal mixed-cargo lighter, sank in Salamander Bay around Soldiers Point from the site, where it is now a dive wreck, and unplanned artificial reef.

Any future development proposals which involve disturbance of the ground should be subject to a study and assessment of non-Aboriginal and maritime heritage on the land.

With these actions the proposal will be consistent with this Direction.

Planning Direction 4.3- Flood Prone Land

The site is classified as 'high hazard flood fringe area' in Council's flood hazard mapping.

As 'Community' classified land the range of formally permitted uses is limited , notwithstanding this land's current informal use for oyster rack storage. The range of uses currently permissible within the zone however are more broad.

Formalisation of the unauthorised use, via reclassification and subsequent development consent may intensify the use of flood-prone land, prospectively contravening subclause (c) above by significantly increasing the intensity of a flood-prone site.

Council will need to ensure that development proposals do not put people or commercial investment at risk due to flooding/ inundation. This may be resolved through the development assessment process and existing provisions of the LEP in relation to flooding. Council should update the PP to clarify this.

Planning Direction 4.4- Planning for Bushfire Protection

The land is within an area of bushfire hazard.

Where land is so located, the Direction requires referral to the Bush Fire Commissioner for advice. The proposal should be referred to the Rural Fire Service for bushfire protection advice.

With this the proposal will be consistent with this Direction.

Environmental social
economic impacts :

Environmental Impacts

Council's anticipated outcome of this land reclassification proposal is that the land is sold for commercial use consistent with uses permissible in the IN4 Working Waterfront zone. Any new use is likely to be more intensive than the current low-key use as a new owner seeks a return-on-investment.

Any development application will need to consider the environmental impacts including the clearing of vegetation (koala habitat), impacts on mangroves and Aboriginal cultural heritage significance of the land.

Social Impacts

The main social impacts of the reclassification and sale of this land are:

- 1) Foregone opportunities for enhanced public access to and along this section of Cromartys Bay foreshore
- 2) Potential benefits for small oyster-related businesses along Diemars Road.

Economic Impacts

Council is likely to receive a one-off capital payment on sale of the land while sustaining an opportunity cost in that the land will not be available for public recreation. Given the site is landlocked, realisation of any tourism or public recreation potential would require acquisition of a right of access to Diemars Road. Current maintenance costs of the land appear minimal.

Assessment Process

Proposal type :	Minor	Community Consultation Period :	14 Days
Timeframe to make LEP :	9 months	Delegation :	Nil
Public Authority Consultation - 56(2)(d) :	NSW Rural Fire Service		

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Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
PSSC_email_Gateway Request.pdf	Proposal Covering Letter	Yes
2016 09 29 - Planning proposal 9B Diemars Road Salamander Bay.pdf	Proposal	Yes
9B Diemars Road relative to Priority Oyster Lease Areas, 2014 Sustainable Aquaculture Strategy (DPI).pdf	Map	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **1.1 Business and Industrial Zones**
 1.4 Oyster Aquaculture
 2.2 Coastal Protection
 2.3 Heritage Conservation

Additional Information : **This planning proposal should proceed subject to the following conditions:**

1. Prior to exhibition Council is to update the PP to reflect the additional relevant section 117 directions;

*** Planning Direction 2.1 - Environment Protection Zones**

*** Planning Direction 4.3 - Flood Prone Land**

*** Planning Direction 4.4 - Planning for Bushfire Protection**

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

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

•NSW Department of Primary Industries (Fisheries) (Direction 1.4)

•NSW Rural Fire Service (Direction 4.4)

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

a) the planning proposal must be made publicly available for a minimum of 14 days; and

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

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

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

Plan-making delegation should not be given to Council given Council owns the site.

The Gateway determination letter should:

- suggest Council consider the Department's guide "LEPs and Council Land - Best Practice Guideline 1997" to ensure adequate disclosure as part of the exhibition process; and

Supporting Reasons :

The parcel is zoned for industrial use, heavily constrained by flooding and land locked. The Open Space Consolidation Review 2006 identified the site as a vacant foreshore reserve with no recreational facilities and recommended that it be sold to adjoining land holders as it has no public access. Due to the location of the land, its lack of access and its constraints. Council considers the land unsuitable for public use and more appropriately classified as operational.

Signature:



Printed Name:

K O'Flaherty

Date:

22/11/14