

Jerberra Estate (DP11629)

Tomerong

Small Lot Rural Subdivision

Rezoning Investigations & Related Information

Last updated March 2009

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Historical Summary

- 1922:** Subdivision by Henry Halloran & Co. comprising 166 lots registered. Remained undeveloped and without infrastructure.
- 1964:** Zoned "non-urban" - held in two ownerships; 152 lots and 13 lots.
- 1986:** Sale of individual lots in 152 lot holding commenced. Currently 141 ownerships (approx.).
- 1992:** Council resolution to investigate rezoning.
- 1994:** Environmental Study by ERM Mitchell McCotter; limited development recommended.
- 1995:** Moratorium placed on rezoning land in Jervis Bay area by NSW Department of Planning (DoP); Jerberra investigations allowed to progress.
- 1997:** AES Flora and Fauna Study; limited development recommended.
- 1998:** Council meetings with landowners; Council to consider lobbying State Government. Matter stalled.
- 2003:** Jervis Bay Settlement Strategy finalised and endorsed; rezoning moratorium lifted.
- 2004:** Audit of unauthorised structures on 65 lots in Jerberra; one approved dwelling; 28 substantial structures (potentially compliant as either dwellings or non-habitable structures). 22 structures (approx.) permanently occupied. Council resolved not to take legal action against existing structures pending outcome of rezoning investigations.
- 2005:** Council recommenced rezoning investigations. Several studies commissioned including flora & fauna.

2006: Council briefed on draft Flora & Fauna Assessment completed by Bushfire & Environmental Services (BES). Subsequently, meeting with the NSW Ministers for Planning and for the Environment – held on 23rd November 2006. Ministers agreed to establish a Working Party between Council and the NSW Department of Environment and Conservation (DEC).

Special rate levied on Jerrerra properties for rezoning investigations and road design.

2007: Working Party between DEC and Council unable to reach agreement over preferred option. 3 options considered: BES options 1 & 2; and 1 prepared by Council staff which excluded habitat protected under the Commonwealth Environment Protection & Biodiversity Conservation Act 1999 (EPBC Act).

Advice sought from Commonwealth in respect of *EPBC Act 1999*. The advice of the Department of the Environment, Water Heritage & the Arts (DEWHA) was: should be able to avoid being “controlled action” if EPBC-affected areas protected from development.

Council resolution on 25th June 2007 included:

- *Generally accept the general constraints relevant to the EPBC Act, seeking flexibility in respect of more substantial structures in/around these areas.*
- *Make representations relevant NSW Ministers.*
- *Further consideration required on bushfire and effluent disposal issues.*

2008: Despite representations Council, NSW Department of Environment & Climate Change (DECC) remain opposed to Council's preferred option.

5th February - Council seeks advice from DoP on rezoning based on Council's option.

Meeting and site inspection with DoP and DECC on 30th July to resolve impasse.

Meetings with NSW Planning Minister, The Hon. Kristina Keneally and the NSW Environment Minister and Deputy Premier, The Hon Carmel Tebbutt on 12th November.

2009: Correspondence from the NSW Planning Minister and the NSW Environment Minister indicating State Government would not support Council's preferred option.

Rezoning investigations unable to be progressed due to impasse on threatened species issues.

Council resolved to continue lobbying relevant Ministers and prepare brief for Shadow Planning Minister, and to investigate potential use of Council land as a conservation offset, and if lobbying is unsuccessful, to investigate land pooling options.

Location & Description

Jerrerra Estate also known as 'Pacific Pastures' is located approximately 1.5 km east of Tomerong along Pine Forest Road.

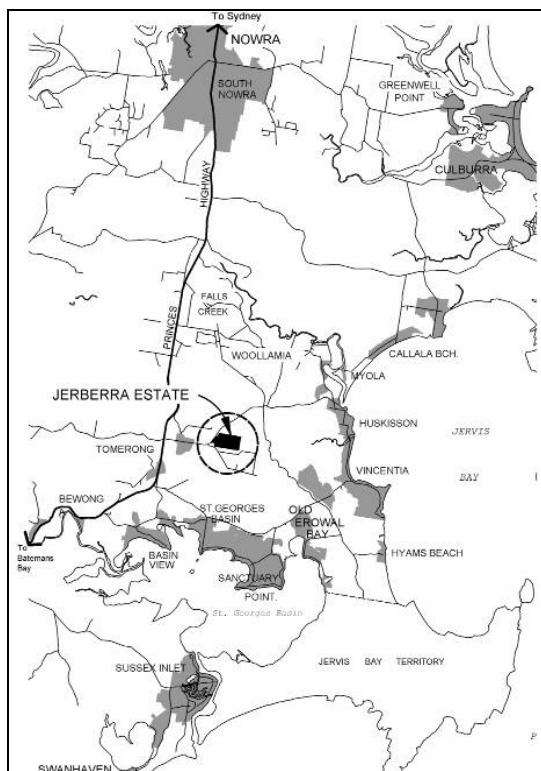


Figure 1 Location map



Figure 2 Aerial photograph of the subject land

As originally registered, the Estate consisted of 166 lots, with land areas varying in size from 1200 m² to 1.75 hectares. Of the 166 lots, 102 have an area less than 4000 m².

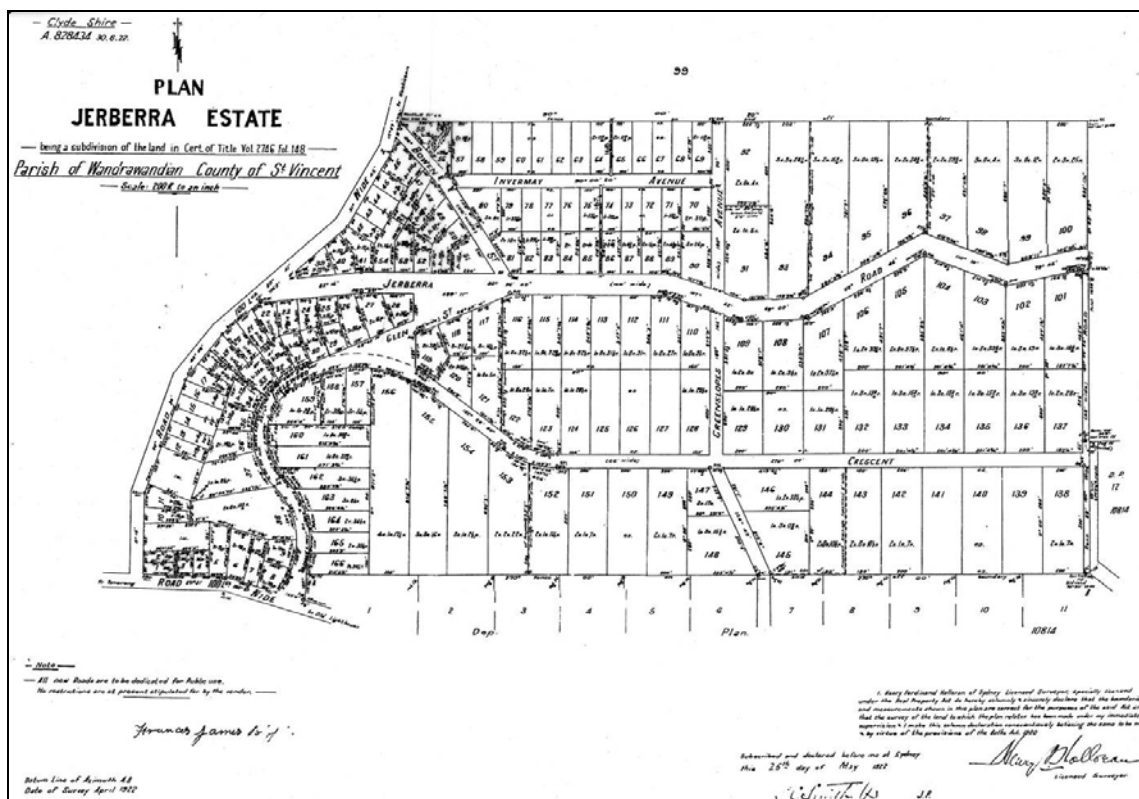


Figure 3 Jerberra Estate Deposited Plan, 1922

Detailed History

Henry F. Halloran and Co. originally submitted the Jerberra Estate subdivision plan to the Clyde Shire Council on 10th April 1922. The subdivision plan was registered in the Land Titles Office on 30th June 1922, under the provisions of the Local Government Act, 1919. At the time, a subdivision could be registered without any services/infrastructure being provided.

The Estate remained largely undeveloped when landuse zoning was introduced in 1964 in the form of Shoalhaven Interim Development Order No.1 (IDO No. 1). Under IDO No.1 the land comprising the Estate was zoned Rural, meaning that the individual lots could not be built on. At the gazettal of IDO No.1 in 1964, the entire Estate was held in two ownerships: one comprising 13 lots; the other comprising 153 lots.

IDO No. 1 was superseded when the Shoalhaven Local Environmental Plan (SLEP) was gazetted in 1985. Under the provisions of SLEP 1985, the land in Jerberra Estate is now zoned part Rural 1(b) and part Rural 1(d). This effectively means Council is unable to approve dwellings on the individual lots in the Estate (as the lots are less than 40 hectares).

In terms of 'paper subdivisions', the lack of a formal policy framework for dealing with small existing lots with no development rights is a statewide problem. No legislation exists to prevent the sale of the individual lots. Since 1986 many of the 153 lots have been bought and sold on the presumption that the land would be rezoned to allow dwellings to be constructed on each individual lot. Land ownership in the Estate is now highly fragmented.

Council resolution to prepare draft local environmental plan

On 15th December 1992, Council initially resolved to prepare a draft local environmental plan (LEP) over 153 of the original 166 lots in the Estate. (13 lots were excluded at the owner's request.)

In relation to costs, Council's resolution also stated:

"... This plan be undertaken with a view to recouping costs through the introduction of a differential rate levy over those lots contained within the Estate."

'Special rates' are currently levied on properties within the Jerberra Estate rezoning investigation area, in part to fund the rezoning investigation work.

Previous rezoning investigations: 1994 - 2003

A significant amount of work was completed by Council on the rezoning investigations during this period. In 2000 despite the then advanced consideration of the rezoning, and a previous commitment that the rezoning could continue, the State government advised Council that it had placed a moratorium on the progression of any rezonings in the Jervis Bay area until completion of the Jervis Bay Settlement Strategy (JBSS).

A detailed description of the rezoning investigations is provided in the following Council report: [Report 05.10.2004](#) (click on the link to open & scroll to page 34.)

The [Jervis Bay Settlement Strategy \(JBSS\)](#) was completed by Council and endorsed by the State Government in 2003. The JBSS identifies Jerberra Estate as an opportunity for rural residential settlement, and specifically states:

"The development potential for rural residential development will be investigated through a review of lot sizes and configuration in order to accommodate on site effluent management and meet the guiding principles and policy actions of this Strategy."

Changes in legislation in several areas have required comprehensive studies to be undertaken to ensure compliance and provide the information that various State Government agencies will require when considering the proposed rezoning.

Rezoning investigations: 2005 to current

In 2005, Council borrowed \$350,000 to fund the Jerberra Estate rezoning investigations. Since 2005, work completed on the rezoning investigations has included:

- Threatened Biodiversity Survey & Assessment completed by Bushfire & Environmental Services (BES)
- Preliminary Bushfire Assessment completed by BES
- Aboriginal Archaeology & Cultural Heritage Assessment completed by NSW Archaeology
- Desktop Review of Effluent Disposal Issues & Recommendations for Further Work completed by Daniel Martens & Associates

Further information on these is provided below.

Threatened species

A detailed report on threatened species issues arising from the Threatened Biodiversity Survey & Assessment completed by BES was prepared for Council's Policy and Planning Committee on 12th June 2007. To view the Jerberra Estate report, open the link & scroll to item 11 on page 30 of the Business Papers which can be viewed at:

<http://shoalhaven.nsw.gov.au/council/pubdocs/papers/2007/2007Jan-Jun/20070612%20P&P.pdf>

A briefing meeting was held for landowners on 21st June 2007 at the St Georges Basin Community Centre. Then, on 25th June 2007, Council resolved to:

- a) *Accept the general constraints relevant to the Commonwealth EPBC Act and negotiate with the objective of one dwelling per lot on the remaining area as well as the more substantial existing structures shown within EPBC constrained areas;*
- b) *Due to the unique social and economic considerations, make representations to the Minister for Climate Change, Environment and Water, The Hon. Phil Koperberg MP, the NSW Minister for Planning, The Hon. Frank Sartor MP and the Minister for Lands, the Hon. Tony Kelly MLC in accordance with a) above;*
- c) *Continue to evaluate the detailed implications of Bushfire Asset Protection zones, vegetation buffers and onsite effluent disposal relative to a) above;*
- d) *When the above steps are clarified, remove those lots that definitely could not accommodate a dwelling from the Special Rate Provisions;*
- e) *Council approve the release of Attachment C of the Policy and Planning Committee report to Jerberra Estate residents and property owners subject to deletion of specific threatened species locations of gang gang cockatoo, eastern bristlebird and den trees of the yellow-bellied glider.*

After concerted attempts to persuade the relevant State Government agencies to support Council's preferred option, Council resolved the following on 12th May 2009:

"that Council accept that its preferred option is not achievable due to the State Government position and pursue the compromise option with DoP and DECC to explore avenues for regularising existing unauthorised structures and dealing with equity issues in areas that may be zoned for environmental conservation ('E' zones)."

Accordingly, Council staff will arrange to meet with DoP (Department of Planning) and the Department of Environment & Climate Change (DECC) as soon as possible to discuss options for proceeding with the rezoning investigations on the basis of 'BES option 2'. Landowners will be informed of the outcomes in due course. The business paper report submitted to Council's Development Committee (starts on page 4) can be found at:

<http://shoalhaven.nsw.gov.au/council/pubdocs/papers/2009/Dev/20090505%20DEV.pdf>

Whilst the above resolution will hopefully allow the threatened species issues that have stalled the rezoning investigations for the last two or so years, there is no guarantee that individual lots will ultimately receive dwelling entitlements.

Subsequent reports and Council resolutions are provided below (click to open):

[Report 03.02.2009](#) (Rezoning investigations update) - item commences page 4
[Resolution 10.02.2009 \(MIN09.173\)](#)

[Report 13.05.2008](#) (Rezoning investigations update) - item commences page 97
[Resolution 13.05.2008 \(MIN08.641\)](#)

[Report 22.01.08](#) (Rezoning update - Threatened species issues)
[Resolution 29.01.2008 \(MIN08.19\)](#)

[Report 05.05.09](#) (Rezoning update - Threatened species issues, starts on page 4)
[Resolution 12.05.09 \(MIN09.586\)](#)

Planning for bushfire protection

Changes to the [Environmental Planning and Assessment Act, 1979](#) and [Rural Fires Act](#) in 2002 require compliance with [Planning for Bush Fire Protection](#), a State Government guideline for all new development in bushfire prone locations.

In 2005, Bushfire and Environmental Services Pty Ltd (BES) were engaged by Council to prepare a bushfire assessment to address requirements of the Planning for Bushfire Protection Guidelines 2001. The report was completed in August 2006. However, Planning for Bush Fire Protection 2006 was gazetted on 1st March 2007, replacing the 2001 guidelines, necessitating a review of the assessment completed by BES. This will be undertaken once the threatened species issues are closer to resolution. Key issues that will need to be considered further include:

- Perimeter access requirements (perimeter roads and fire trails) where potential residential land adjoins bushfire prone land.
- Asset Protection Zone (APZ) dimensions in relation to:
 - Any adjoining bushfire prone land;
 - Areas retained for biodiversity conservation.
- The ability for individual properties to accommodate APZs and perimeter access (if necessary) and/or possible use of covenants or other appropriate legal instruments.
- Ability to retain threatened species habitat within APZs.

Aboriginal archaeology and cultural heritage

A report prepared by NSW Archaeology Pty Ltd identified no aboriginal archaeological constraints in Jerberra Estate. This report was forwarded to the then Department of Environment and Conservation (DEC) as required by the *Environmental Planning and Assessment Act* and they raised no objection to the proposed rezoning in respect of Aboriginal archaeological issues.

European cultural heritage

Correspondence was received from the NSW Heritage Council indicating that an assessment of non-indigenous heritage values will be required, particularly in relation to the subdivision and road pattern because of their potential historical significance. This will be completed once other, primary constraint issues have been resolved.

Effluent disposal

Onsite effluent disposal constraints in Jerberra Estate include:

- The number of small-sized lots (refer to Table below)
- The characteristics of the soil profile
- The Estate's location upstream from SEPP 14 wetlands within the Moona Moona Creek catchment meaning more stringent water quality objectives apply than would otherwise be the case.

Number of smaller properties in Jerberra Estate

Size category	No. of properties in size category
Less than 0.15 ha (1,500 m ²)	25
Less than 0.2 ha (2,000 m ²)	45
Less than 0.25 ha (2,500 m ²)	75
Less than 0.3 ha (3,000 m ²)	83
Less than 0.4 ha (4,000 m ²)	91

In 2005 Council commissioned a desktop study by Martens & Associates Pty Ltd to review current onsite effluent disposal technology and any implications for Jerberra Estate. Findings of the report by Martens & Associates included:

Individual Effluent Treatment Systems

More elaborate and complex systems would need to be considered for smaller/more constrained lots and non-potable reuse would be essential (requiring a very high standard of treatment). In respect of the larger lots, a standard aerated wastewater treatment system (AWTS) may suffice.

Further Work Required

- *More detailed and precise land capability mapping to identify those lots which are constrained or cannot be undertaken*
- *More detailed water and nutrient balance assessments will be required to reflect various scenarios.*
- *Review minimum lot size in light of the above and prepare detail on minimum performance standards for the subdivision.*

It is possible that smaller lots in the Estate may need to be consolidated to provide sufficient area to accommodate onsite effluent disposal. At this point in time, the minimum area has not been determined. Since completion of the desktop review by Martens & Associates, Council staff have progressed the above matters as far as possible given other uncertainties. This work will need to be finalised when other issues arising from the rezoning investigations have been resolved, particularly threatened species.

Reticulated Sewer and Water?

Whilst it was previously Council's position that it would be more cost effective to manage effluent onsite, further consideration may be given to providing reticulated sewer and water. Council would not consider providing reticulated water unless reticulated sewer was also provided, as water usage (and therefore effluent generation) is considerably higher where reticulated water is provided.

In 2006, Shoalhaven Water completed a preliminary feasibility assessment on provision of reticulated water and sewer to the Estate in conjunction with Tomerong village and surrounds. This work will be reviewed once other issues have been resolved.

Special rates

Special Rates are now levied on all properties in Jerberra Estate to contribute toward the cost of undertaking the rezoning works, road design and road construction.

Information on special rates funding and expenditure is provided at:

<http://shoalhaven.nsw.gov.au/council/pubdocs/communityissues/Heritage/SLRSbudgets.pdf>

Links to relevant reports and Council resolutions are provided below (click to open):

[Report 02.11.2005](#) (Roads, risk management and cost recovery issues) – item commences on page 68

[Resolution 02.11.2005](#) (MIN05.1555)

[Report 08.03.2006](#) (Paper subdivisions in Shoalhaven, rezoning investigations - finance options) – commences page 14

[Resolution 14.07.2006](#) (Special rate levy) – pages 4-5

[Recommendation 23.01.2007](#) (Roads and risk management) – item commences on page 10

[Resolution 30.01.2007](#) (MIN07.43)

[Report 17.06.08](#) (Special rates for road construction) – item commences on page 22

[Resolution 24.06.08](#)

[Report 09.09.2008](#) (Road construction funding) – item commences page 22

[Resolution 09.09.2008](#) (MIN08.1276)

Unauthorised development

Council does not have the legal ability to approve dwellings on individual lots in Jerberra Estate. On 19th October 2004 Council resolved that:

Council continue to take appropriate legal action against any further unauthorised development since the date of the audit [2004].

Landowners seeking to carry out bushfire hazard reduction work (eg. ground fuel reduction) around assets, may apply for a Bushfire Hazard Reduction Certificate (at no cost) from the Rural Fire Service (phone 02 4424 4424).

Links to relevant reports and Council resolutions are provided below (click to open):

[Report 08.12.2003](#) (Unauthorised buildings) – item commences on page 31

[Resolution 16.12.2003](#) (MIN03.1677)

[Report 05.10.2004](#) (Unauthorised buildings) – item commences on page 34

[Resolution 19.10.2004](#) (item 35, page 9)

[Report 01.05.2007](#) (Unauthorised buildings) – item commences on page 57

[Resolution 29.05.2007](#) (MIN07.670)

Advice on clearing, slashing, mowing etc

Council's advice to landowners is that no further clearing, slashing, mowing or "maintenance" of land should be undertaken without an appropriate approval from Council and/or the RFS until the rezoning investigations have been advanced and the rezoning status of all land in the Estate has been determined. This is not legal advice and landowners intending to carry out any work involving the clearing of vegetation without development consent or a Bushfire Hazard Reduction Certificate should get their own legal advice.

Transfer of land in lieu of unpaid rates

Council has recently reviewed its policies regarding the transfer of land in lieu of unpaid rates. A comprehensive policy and accompanying maps entitled Small Lot Rural Subdivisions – Transfer of Land in Lieu of Unpaid Rates was adopted by Council on 27th February 2007, and can be viewed at:

<http://www3.shoalhaven.nsw.gov.au/applications/policyindexinternet/docs/1257324.pdf>

Under this Policy, Council may accept the transfer of land within Jerberra Estate, in lieu of unpaid rates, if requested to do so by the owner. In such circumstances, Council will meet all legal costs associated with the transfer of the land.

Contact details & further information

The contents of this page will be updated as this matter progresses. For further information please contact Eric Hollinger, Senior Project Planner on 02 4429 3320 or planning@shoalhaven.nsw.gov.au

