

Conservation protection for Heritage Estates, Worrowing Heights and Elouera and Fairview Estates, Erowal Bay

Proposal Title :	Conservation protection for Heritage Estates, Worrowing Heights and Elouera and Fairview Estates, Erowal Bay		
Proposal Summary :	The planning proposal rezones Heritage Estates (1200 lots/179.4ha), Worrowing Heights and Elouera and Fairview Estates (285lots/36.3ha) from RU2 Rural Landscape to E2 Environmental Conservation in order to reflect the high biodiversity values of the land and remove any uncertainty about the future uses and zoning of the land.		
PP Number :	PP_2014_SHOAL_002_00	Dop File No :	W13/020396

Proposal Details

Date Planning Proposal Received :	20-Dec-2013	LGA covered :	Shoalhaven
Region :	Southern	RPA :	Shoalhaven City Council
State Electorate :	SOUTH COAST	Section of the Act :	55 - Planning Proposal
LEP Type :	Precinct		

Location Details

Street :	Carlton Estate		
Suburb :	Worrowing Heights	City :	Jervis Bay
Land Parcel :	all lots within DP8590		Postcode : 2540
Street :	Terrara Estate		
Suburb :	Worrowing Heights	City :	Jervis Bay
Land Parcel :	all lots within DP8591		Postcode : 2540
Street :	Oorayne Estate		
Suburb :	Worrowing Heights	City :	Jervis Bay
Land Parcel :	all lots within DP8770		Postcode : 2540
Street :	West End Estate		
Suburb :	Worrowing Heights	City :	Jervis Bay
Land Parcel :	all lots within DP8771		Postcode : 2540
Street :	Bindaree Estate		
Suburb :	Worrowing Heights	City :	Jervis Bay
Land Parcel :	all lots within DP8772		Postcode : 2540
Street :	Elouera Estate		
Suburb :	Erowal Bay	City :	Jervis Bay
Land Parcel :	all lots within DP8769		Postcode : 2540

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Street : Fairview Estate
Suburb : Erowal Bay City : Jervis Bay Postcode : 2540
Land Parcel : all lots within DP8592

DoP Planning Officer Contact Details

Contact Name : Lisa Kennedy
Contact Number : 0242249457
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RPA Contact Details

Contact Name : Michael Park
Contact Number : 0244293596
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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 :	South Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment :

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

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : The planning proposal covers two adjoining sites between the townships of Vincentia, Erowal Bay and Old Erowal Bay in the Jervis Bay Region. Heritage Estates is located on land bounded by The Wool Road, Naval College Road, Erowal Bay Road and Worrowing

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Creek and lands on the western side of Wool Road along Birriga Avenue, Worroving Heights. It consists of 1200 lots over 179.4ha

Elouera and Fairview Estates are located immediately north of Erowal Bay township and extend to Erowal Bay Road and the eastern limits of the township. The eastern boundary adjoins Jervis Bay National Park. These Estates consist of 285 lots over 36.3ha.

Shoalhaven Council first identified its intention to rezone Heritage Estates from RU2 Rural Landscapes to E2 Environmental Conservation under the draft Shoalhaven Principal LEP on 15 May 2012. The intention to rezone the land was advertised on 26 February 2013 as part of the exhibition of the draft LEP. A statement of intent and a fact sheet were published on the draft LEP website and landholders were advised in writing. 34 submissions referring to Heritage Estates were received, of which, all but one were in favour of the proposed E2 zoning. During the consideration of submissions, Council resolved to retain the Heritage Estates RU2 zoning as exhibited and prepare a separate planning proposal without delay to rezone the Estates to E2.

The three Estates remained unzoned until 1964 and since then have been continuously zoned 'non-urban' or 'rural' with a 40ha minimum lot size for the erection of a dwelling. Some other areas within the Estates were zoned as 8(b) Proposed National Park under the Jervis Bay Regional Environmental Plan, 1996 and have since been added to the Jervis Bay National Park.

A State government led taskforce in 1998; Commission of Inquiry in 1999; Jervis Bay Settlement Strategy (JBSS) in 2003; and finally a decision in March 2003 under the Environment Protection and Biodiversity Conservation Act by the Federal Minister for the Environment to refuse a proposed rezoning and associate public works to facilitate residential development at Heritage Estates resulted in a decision by Council to terminate the rezoning investigations.

The voluntary Heritage Estates Land Purchase Project was funded on 17 October 2012, by the Commonwealth Government, giving landholders the option of selling their land for addition to the national reserve system. Nearly \$5.5 million was allocated with a number of conditions including Council rezoning the Estates at an appropriate point to E2 Environmental Conservation and all purchased land would be added to the Jervis Bay National Park.

The Elouera and Fairview Estates have not been studied to the same level of detail as Heritage Estates. They were, however, investigated during the preparation of the Jervis Bay Regional Environmental Plan 1996 and JBSS, 2003. The studies identified the high conservation value of the Estates including threatened species and the potential impacts on the adjoining Jervis Bay National Park. The Estates were not identified in the JBSS as areas with urban development potential.

As a result of the complex and contentious planning history of all three Estates and the State and National significance of the rezoning proposal, the planning proposal is being referred to the LEP Panel for an assessment and Gateway determination.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? Yes

Comment :

The objective of the planning proposal is to rezone land within Heritage Estates and the Elouera and Fairview Estates to E2 Environmental Conservation in recognition of the land's high biodiversity values.

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Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The planning proposal seeks to amend the draft Shoalhaven LEP 2014 by amending the Land Zoning Map from RU2 Rural Landscape to E2 Environmental Conservation.**

The 40ha minimum lot size is to remain unchanged.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

1.2 Rural Zones

1.5 Rural Lands

* May need the Director General's agreement

2.1 Environment Protection Zones

2.2 Coastal Protection

5.1 Implementation of Regional Strategies

Is the Director General's agreement required? **Yes**

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

d) Which SEPPs have the RPA identified?

SEPP No 71—Coastal Protection

SEPP (Rural Lands) 2008

Jervis Bay REP 1996

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

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain :

Council has identified a number of s117 Directions that by default apply to the planning proposal, however, as the proposal is not proposing any form of development and the Directions are not relevant.

The planning proposal is consistent with the s117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.2 Coastal Protection and 5.1 Implementation of Regional Strategies. It is not proposing to rezone the land for urban development. All Estates have little or no agricultural use and are unlikely to be suitable for such uses in the future due to their environmental values. The proposal will facilitate the protection and conservation of environmentally sensitive coastal areas and is consistent with the actions of the Jervis Bay Settlement Strategy and South Coast Regional Strategy in that it is rezoning the land to E2 Environmental Conservation.

The planning proposal is consistent with the SEPP Rural Lands, SEPP71 Coastal Protection and the Jervis Bay REP, 1996.

Mapping Provided - s55(2)(d)

Is mapping provided? **Yes**

Comment : **A proposed Land Zoning Map (based on the draft Shoalhaven LEP 2014) has been provided for the sites. The map will need to be refined to comply with the Department's 'Standard technical requirements for LEP maps' prior to the public exhibition of the planning proposal.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council proposes to exhibit the planning proposal for a minimum of 28 days in accordance with the EP&A Act and/or any other requirements as determined by the**

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Gateway process. Public notification of the exhibition will include local newspaper notifications, notice on Council's website and hard copies to be available at Council's administration buildings. Council has previously written to all Heritage Estates landholders as part of the exhibition of the draft Shoalhaven LEP 2014, however, Council will write to all owners within both Heritage and Elouera and Fairview Estates as part of the community consultation process.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

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

If No, comment : The planning proposal addresses the Department's "A guide for preparing a planning proposals" and is considered adequate for a Gateway Determination with conditions.

A project timeframe of 6 months to complete the rezoning process is included in the planning proposal. Such a timeframe is considered achievable in light of the previous work undertaken for the rezoning and strategic planning investigations for the Estates.

Council has confirmed in its referral letter of 12 December 2013 that it is seeking delegation to prepare the draft LEP under Section 59 of the EP&A Act. Appendix 4 – Evaluation Criteria for the Delegation of Plan making Functions was submitted by Council on 20th December 2013. It is considered appropriate that the delegation of plan making functions be given to Council due to the proposal's consistency with s117 Directions, SEPPs, Jervis Bay Settlement Strategy and South Coast Regional Strategy.

It is appropriate for Council to be authorised to use the Minister's plan making delegations.

Proposal Assessment

Principal LEP:

Due Date : **March 2014**

Comments in relation to Principal LEP :

The draft Shoalhaven Principal LEP is currently with the Department for finalisation and is expected to be notified by the end of March 2014.

The three Estates have both been zoned RU2 Rural Landscapes in the draft Shoalhaven LEP 2014.

Council first identified its intention to rezone Heritage Estates to E2 Environmental Conservation on 15 May 2012. The re-exhibition of the draft LEP from 4 April to 10 May 2013 provided an opportunity for the community to comment on this proposed rezoning. The intention to rezone the land was advertised on 26 February 2013 as part of the exhibition of the draft Shoalhaven LEP. A statement of intent and a fact sheet were published on the draft SLEP website and landholders were advised in writing. 34 submissions mentioning Heritage Estates were received by Council of which all but one supported the proposed E2 zoning. During the consideration of submissions Council resolved to retain the Heritage Estates exhibited RU2 Zone and prepare a planning proposal without delay to rezone the Estates to E2.

The planning proposal will be an amendment to the notified Shoalhaven Principal LEP.

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Assessment Criteria

Need for planning proposal :	The planning proposal is the only means of resolving the long standing issues associated with use and tenure of the land. It will protect the high biodiversity values of the land and remove any uncertainty about the future use and zoning of the land. Commonwealth Government funding to the HELP Project for the purchase of lots within Heritage Estates was on the basis that Council would rezone the land to E2. Council considers that now is an appropriate time to do so.
Consistency with strategic planning framework :	The planning proposal is consistent with the Jervis Bay Settlement Strategy (JBSS), 2003. The JBSS was endorsed by the Minister for Infrastructure and Planning in 2003. Heritage Estates has been thoroughly investigated in accordance with the recommendations of the JBSS and the COI recommendations and the land is unable to be developed due to its significant biodiversity constraints. Elouera and Fairview Estates were not identified for urban development investigation in the JBSS due to biodiversity constraints. The JBSS identifies that significant areas of land based biodiversity are to be conserved and appropriately managed under proposed planning instruments. The South Coast Regional Strategy (SCRS), 2007 endorses the JBSS and provides specific requirements regarding urban development and environmental protection. The proposal is consistent with the SCRS in that it seeks to protect high value environments including threatened species, vegetation community and habitat corridors by ensuring no new urban development occurs in these areas. The proposal is consistent with Council's Community Strategic Plan 2023 and its subsequent Delivery Program in that it is resolving the small lot rural subdivision in the Jervis Bay Region consistent with the JBSS.
Environmental social economic impacts :	The planning proposal identifies that the Estates have been subject to detailed investigations in relation to their biodiversity values and potential for urban development. The Heritage Estates Threatened Biodiversity Assessment concluded that the site had high conservation values due to its functions as a wildlife corridor, high species richness and biodiversity and high number of listed threatened species. The Estates have been identified as containing 3 threatened flora species, 1 Endangered Ecological Community (EEC) and 17 threatened fauna species under the NSW Threatened Species Conservation (TSC) Act; 2 flora, 2 fauna and 5 migratory species under the EPBC Act; and 4 Rare or Threatened Australian Plants (ROTAP). Whilst the Elouera and Fairview Estates have not been studied to the same extent as Heritage Estates, the woodland and heath vegetation communities that predominate in Heritage Estates occur across the Elouera and Fairview Estates. These Estates have been identified as containing 1 EEC and 4 threatened fauna species under the TSC Act; and 1 fauna species under the EPBC Act. The proposal to rezone the lands to E2 will not result in any adverse environmental effects. The objectives of the proposed E2 zoning will afford greater protection to the land's environmental values. Both positive and negative social and economic effects may arise as a result of the proposal. The proposed zoning will help minimise uncertainty about the future of the land and is therefore seen as a positive for both the landholders and local community.

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Assessment Process

Proposal type : **Precinct** Community Consultation **28 Days**
Period :

Timeframe to make LEP : **6 months** Delegation :

Public Authority **Southern Rivers Catchment Management Authority**
Consultation - 56(2) **Office of Environment and Heritage**
(d) : **Office of Environment and Heritage - NSW National Parks and Wildlife Service**
Other

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

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

If no, provide reasons : **It is noted that the Southern Rivers CMA is now known as South East Local Land Services.**

Other agencies to be consulted include the NSW Office of Water, Booderee National Park and the Commonwealth Department of Environment, National Reserve System Section.

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

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

The Estates have been extensively studied as part of the preparation and development of the Jervis Bay Regional Environmental Plan, 1996 and Jervis Bay Settlement Strategy, 2003. Further detailed studies were conducted for Heritage Estates as part of the 1999 Commission of Inquiry and 2004-2007 rezoning investigations. The studies have identified the environmental significance of the lands. No further studies are required to justify the land's rezoning for conservation purposes.

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 : **No infrastructure is required as the lands are not proposed for development.**

Documents

Document File Name	DocumentType Name	Is Public
131213 Heritage Estates and Elouera & Fairview Estates Planning Proposal letter SCC to DoPI request for Gateway.pdf	Proposal Covering Letter	Yes
131213 Heritage Estates and Elouera & Fairview Estates Planning Proposal.pdf	Proposal	Yes
131220 Heritage Estates and Elouera & Fairview Estates Planning Proposal Attachment 4 Evaluation criteria for the delegation of plan making functions.doc	Proposal	No
140122 Heritage Estates and Elouera & Fairview Estates Planning proposal Attachment 4 DoPI assessment.doc	Proposal	No

Planning Team Recommendation

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

S.117 directions: **1.2 Rural Zones**
 1.5 Rural Lands
 2.1 Environment Protection Zones
 2.2 Coastal Protection
 5.1 Implementation of Regional Strategies

Additional Information : **The Deputy Director General, as delegate of the Minister for Planning and Infrastructure, determine under section 56(2) of the EP&A Act that an amendment to the draft Shoalhaven Local Environmental Plan 2014 to rezone lands within Heritage Estates, Worrowing Heights and Elouera and Fairview Estates, Erowal Bay to E2 Environmental Conservation should proceed subject to the following conditions:**

- 1. No further investigations or studies are required.**
- 2. Council is to prepare draft Maps for the subject land consistent with an amendment to the draft Shoalhaven LEP 2014 prior to exhibition and in accordance with the Department's 'Standard technical requirements for LEP maps'.**
- 3. 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 is to be made publicly available for 28 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 local environmental plans (Department of Planning and Infrastructure 2013)'.**
- 4. Consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:**
 - * Office of Environment and Heritage;**
 - * Office of Environment and Heritage, NSW National Parks and Wildlife Service;**
 - * NSW Office of Water;**
 - * South East Local Land Services;**
 - * Booderee National Park; and**
 - * Commonwealth Department of Environment, National Reserve System Section**

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material. Each public authority is to be given at least 21 days to comment on the proposal, or to indicate that it will require additional time to comment on the proposal. Public authorities may request additional information or additional matters to be addressed in the planning proposal.
- 5. No public hearing is required to be held into the matter 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 6 months from the week following the date of the Gateway determination.**
- 7. Council be authorised to use its delegation of the Minister's plan making functions under sections 59(2),(3)&(4) of the Environmental Planning and Assessment Act 1979.**
- 8. The Director General can be satisfied that the planning proposal is consistent with s117 Directions 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.2 Coastal Protection and 5.1 Implementation of Regional Strategies.**

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9. The Director General can be satisfied that the planning proposal is consistent with all other relevant s117 Directions or that any inconsistencies are only of minor significance.

10. No further referral is required in relation to s117 Directions while the planning proposal remains in its current form.

Supporting Reasons :

The conditions are necessary to ensure that the planning proposal meets the requirements in the Department's 'A guide to preparing a planning proposal'.

Signature:



Printed Name:

MARK PARKER
Local Planning Manager

Date:

24th January 2014