

Planning Proposal (Draft LP409)

‘The Heritage Estates’, Worrowing Heights; ‘Elouera’ and ‘Fairview Estates’, Erowal Bay (remnants of “Pacific City”)

Proposed E2 Environmental Conservation zoning

Prepared by
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Introduction

Subject Land

The subject land is located approximately 28 km south of Nowra, between the township of Vincentia, and the villages of Erowal Bay and Old Erowal Bay, on the NSW South Coast. Refer to Figure 1.

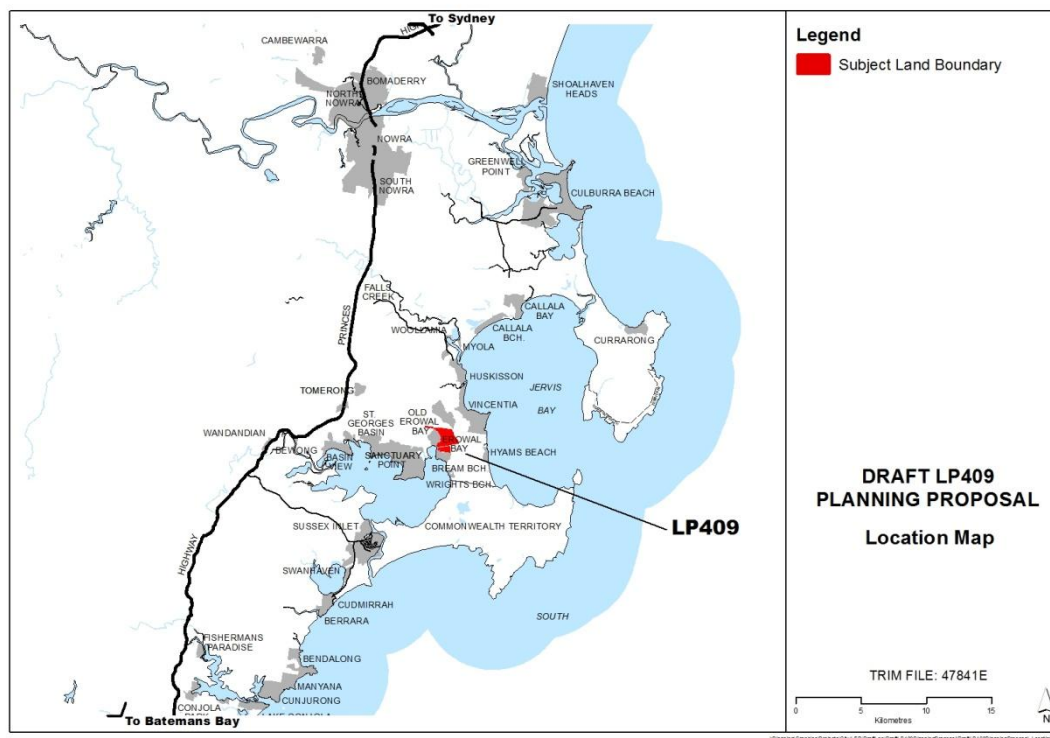


Figure 1: Location of subject land

The subject land comprises two adjoining remnants of the paper subdivision known as “Pacific City”. Refer to Figure 2.

The first area, collectively known as the “Heritage Estates”, is made up of approximately 1,200 mostly urban-sized lots in five (5) Deposited Plans (DP) within the locality of Worroving Heights:

- DP 8590 (Carlton Estate)
- DP 8591 (Terrara Estate)
- DP 8770 (Oorayne Estate)
- DP 8771 (West End Estate) and
- DP 8772 (Bindaree Estate).

The second area is made up of approximately 285 mostly urban-sized lots in two (2) DPs within the locality of Erowal Bay:

- DP 8769 (Elouera Estate) and
- DP 8592 (Fairview Estate).

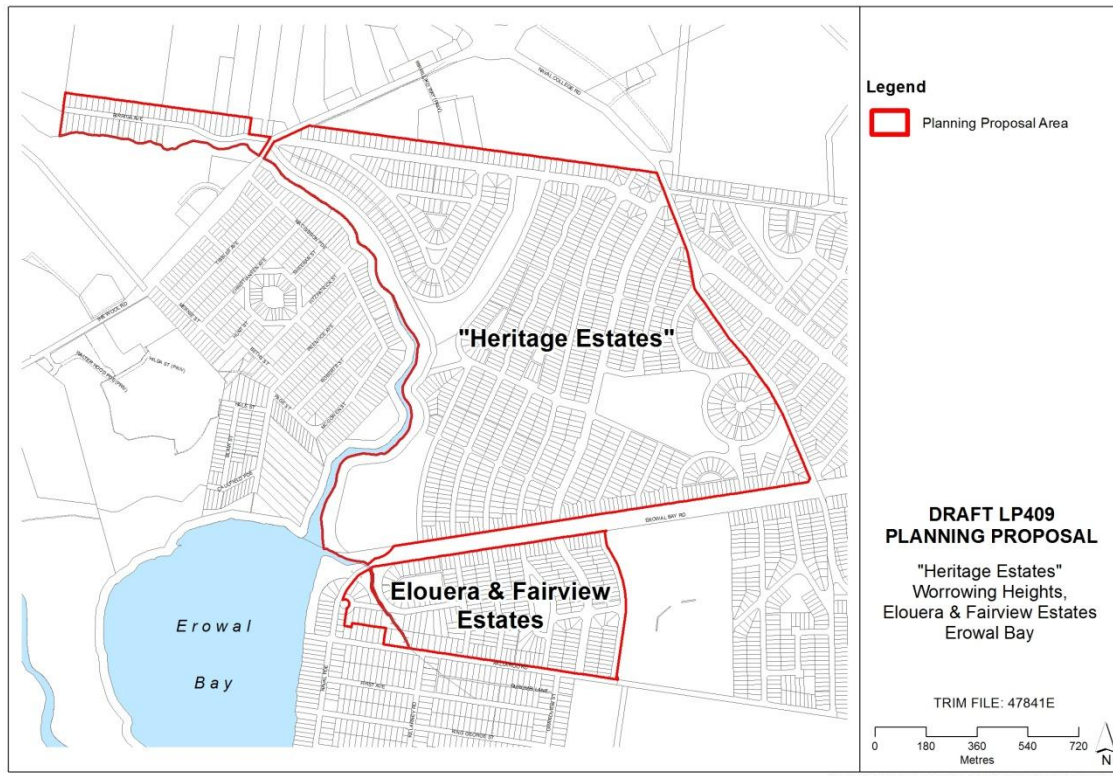


Figure 2: Boundary of the subject land

History

The selection of Canberra as the nation's capital and Jervis Bay as its maritime outlet in 1908, triggered a significant increase in subdivision activity in the Jervis Bay area in the 1910's and early 1920's. Legislation at the time did not require the essential services and infrastructure to be put in place before plans were registered. By the late 1920s the Great Depression had set in and many thousands of lots had been approved on paper but they remained undeveloped and without services.

The subject land forms part of "Pacific City", a group of subdivisions created by Henry F. Halloran in 1915/16. Refer to Figure 3.

The entire subdivision remained unzoned until 1964 when the City's first land use zoning scheme, the Interim Development Order (IDO) No. 1 came into effect. At this time, the subject land was zoned "non-urban" which later became "Rural". This essentially prohibited dwellings on the individual lots due to their small size.

The IDO was superseded by Shoalhaven Local Environmental Plan 1985 (SLEP 1985) and the rural zonings were retained and still apply to the subject land. The remainder of Pacific City was zoned as '8(b) - Proposed National Park' under Jervis Bay Regional Environmental Plan 1996 and has since been added to the Jervis Bay National Park.

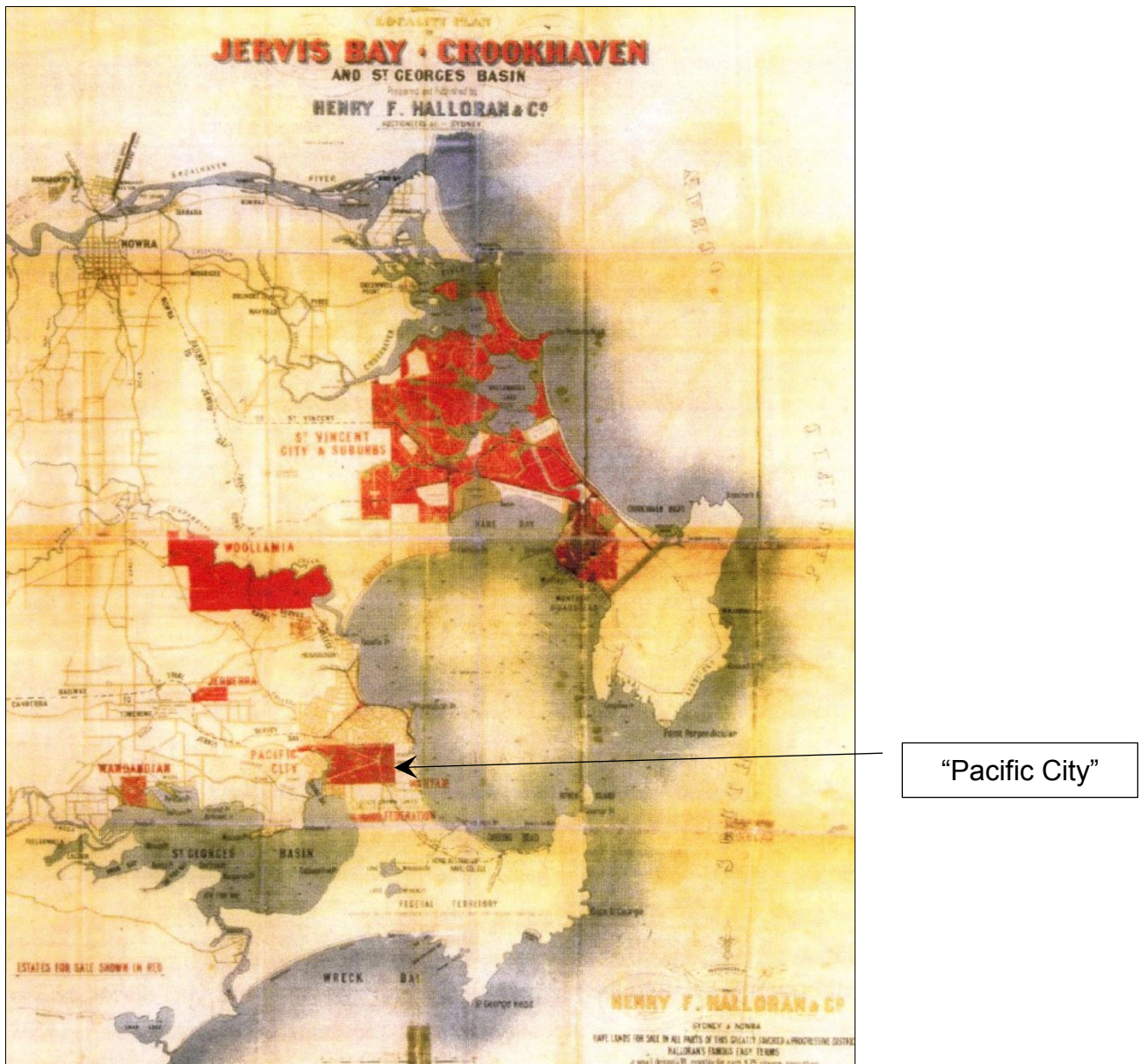


Figure 3 - Map produced by Henry Halloran & Co showing proposed settlements of Pacific City, St Vincent and other satellite towns. Note land in red was for sale at the time (c late 1910s) (source: Sant, 2004)

In recent years Council has been in the process of preparing a new Citywide LEP using the NSW Government’s “Standard Instrument LEP” as a template. In accordance with Council’s ‘best fit’ transfer ground rules, the subject land is currently proposed to be zoned ‘RU2 - Rural Landscape’ in the draft Shoalhaven LEP 2013. This zone is the equivalent of the current rural zones. The 40 hectare minimum lot size that currently applies under SLEP 1985 will be retained for the subject land. Hence dwellings will continue to effectively be prohibited on the individual lots.

Heritage Estates

The Heritage Estates has a very long and protracted history and the background is summarised below:

- The subdivision was largely retained in the ownership of Halloran’s company (Pacific City P/L) until the late 1980’s and early 1990’s when the individual lots were controversially marketed for sale by Heritage Real Estate P/L (hence the name “Heritage Estates”) and associated companies owned by Michael Tzovaras. This resulted in the 1,200 lots being held in approximately 1,100 ownerships.
- Requests from landowners to rezone the land led to a Council decision in December 1992 to investigate rezoning to enable dwellings to be erected on the individual lots. As part of this process, an environmental study was prepared in 1994 by Hassell Planning Consultants and concluded that the land had high environmental values and that residential development should not be permitted in the form of the existing subdivision.
- Disagreement among stakeholders and the community about the appropriateness of developing the land led to formation of a taskforce in 1998 and when the taskforce was unable to reach agreement, the State Government convened a Commission of Inquiry (COI) in 1999 to resolve the matter.
- The COI held under Commissioner Kevin Cleland, Deputy Chairman was finalised in August 1999 and made 12 recommendations including that up to 730 dwellings could be considered subject to inclusion of the matter in the overall Settlement Strategy for the Jervis Bay Region. The Jervis Bay Settlement Strategy (JBSS) was completed by Council and endorsed by the State Government during 2003.
- The JBSS indicated that the area would be investigated for future rezoning to enable residential development in accordance with the COI recommendations.
- Following the release of the JBSS in 2003, a “Scoping Study” was prepared for the project. The findings of this Study were considered by Council during February 2004 and it was resolved that Council proceed with rezoning investigations for the Heritage Estates and if successful, leave the development application and construction stages to be negotiated by the landowners.
- A number of strategic planning assessments were thus completed from 2005 – 2007 including:
 - Threatened Biodiversity
 - Bushfire Assessment
 - Water Quality Monitoring
 - Hydrogeology & Soils
 - Cultural Heritage (Aboriginal and European)
- The Threatened Biodiversity Assessment concluded that the site had high conservation values due to its functions as a wildlife corridor, high species richness and diversity, and high number of listed threatened species that were found, and that it should not be rezoned for residential development.
- On 9 May 2007 Council submitted a referral for the COI proposal under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

- On 22 June 2007, it was determined that the proposal was a “controlled action” meaning Council would require the approval of the then Commonwealth Minister for Environment and Water Resources under the EPBC Act. The Minister’s delegate also determined that the proposal was to be assessed via a Public Environment Report (PER).
- The Heritage Estates PER was finalised and published in accordance with the requirements of the EPBC Act in January 2009.
- On 13 March 2009, the then Federal Minister for the Environment, Peter Garrett MP, refused the proposed rezoning and associated public works to facilitate residential development at the "Heritage Estates", Worrowing Heights under the EPBC Act, due to its impact on listed threatened species and Commonwealth land (Booderee National Park).
- Council subsequently resolved to terminate the rezoning investigations and to seek support from the NSW and Commonwealth Governments to help resolve the tenure of the land.
- Two funding applications were submitted under the Commonwealth Government’s ‘Caring for Our Country’ program to enable resolution of the land tenure. The second of these applications was ultimately approved in 2012.
- The Voluntary Heritage Estates Land Purchase (HELP) project was formally announced on 17 October 2012, giving land owners the option of selling their land for addition to the national reserve system.
- \$5,493,000 was allocated by the Commonwealth Government on the basis of the following commitments from the project partners:
 - the Foundation for National Parks and Wildlife managing the voluntary land purchase process and contributing \$60,000.
 - Council contributing its landholdings in the Estates (in accordance with its resolution on 17 May 2011) and rezoning the whole of the land in the Estates at the appropriate point to E2 Environmental Conservation (in accordance with its resolution on 15 May 2012).
 - OEH (NSW National Parks & Wildlife Service) adding the land to the Jervis Bay National Park so it can be managed for conservation in perpetuity.
 - The NSW Department of Primary Industries – Catchments and Lands also offered in principle support to contribute the 6.36 hectare Crown reserve adjacent to Worrowing Waterway.
- In May 2013, five Heritage Estates landowners initiated a class action in the Federal Court against the Commonwealth Government and the other HELP project partners. After several directions hearings, the hearing was held from 21-25 October 2013 and the judgement is currently pending. Documentation associated with the class action is available on the Federal Court’s website at:
<http://www.judgments.fedcourt.gov.au>

Further background information, including copies of the PER and the Department of Environment, Water, Heritage and the Arts’ Recommendation Report are available on Council’s website at:

<http://shoalhaven.nsw.gov.au/PlanningampBuilding/Strategicplanning/PaperSubdivisions.aspx>

Elouera and Fairview Estates

The Elouera and Fairview Estates have a complex recent ownership history as summarised below.

- In 2005, the land was sold by a private investment company to a now deregistered company called Erowal Bay Pty Ltd. (The date at which the land was purchased from Halloran’s company is unknown.)
- Erowal Bay Pty Ltd had a mortgage on the land with a finance company called Hastings Capital Ltd (HCL), which went into administration in 2008. The loan was in default and the receivers took possession of the property.
- In July 2012, the receiver advertised the land for sale. It was purchased by the current owner who, via a Sydney-based real estate agent, began marketing the lots for individual sale in mid-September 2012.
- Despite Council’s efforts to minimise the individual sale and fragmentation of the land to unsuspecting buyers (see below) a small number of the 287 lots were sold.

Action taken in response to potentially misleading advertising is outlined below.

- Council staff became aware of the advertising shortly after it began. A review of the agent’s website proved several aspects of the website advertisements and other marketing material to be potentially misleading and/or omitting certain facts about the planning status of the land.
- Council received further information from prospective purchasers who had received advice that the land would be rezoned “in 2-3 years maximum”. This added to the concerns of Council and the community that prospective purchasers would potentially be given false or unrealistic expectations.
- In the weeks that followed, Council wrote to the Real Estate Agent and/or the owner’s legal representatives on a number of occasions clarify the land’s planning status. The matter was also referred to NSW Fair Trading and the Australian Competition and Consumer Commission (ACCC).
- On 23 November 2012, Council resolved to:
 - a) *Continue to monitor the situation and pass on any appropriate information to the relevant agencies; and*
 - b) *Write to the NSW Government requesting an urgent review of the situation.*
- In accordance with part b) above, Council wrote to the NSW Premier, NSW Minister for Fair Trading, NSW Minister for Planning and Infrastructure, and the Member for South Coast requesting assistance from the NSW Government concerning the potential sale of the individual lots.
- A response from the NSW Minister for Fair Trading, The Hon Anthony Roberts MP, advised that the Department’s investigation is ongoing and that Council will be advised upon its conclusion. It is understood that the investigation has not been concluded.

- A response from the NSW Minister for Planning and Infrastructure, The Hon Brad Hazard MP, dated 14 March 2013, made the following points:
 - *The Minister recognises there are several paper subdivisions across the Shoalhaven and the implications they present to Council.*
 - *The Department of Planning and Infrastructure (DP&I) has been working closely with Council and other government agencies to resolve the planning and tenure issues at several paper subdivisions including Jerberra, Nebraska, Verons and the Heritage Estates;*
 - *The development potential of the paper subdivision at Erowal Bay was investigated as part of the Jervis Bay Regional Environmental Plan 1996 (JB REP) and the Jervis Bay Settlement Strategy 2003 (JBSS) and the land was identified as having conservation value and not identified as an area with urban development potential.*
 - *It is not within the power of the Minister for Planning and Infrastructure to prevent the sale of individual lots. Council has rightly referred its concerns over potentially misleading information regarding the planning status of the land to the Minister for Fair Trading.*
 - *The Minister supports his letter being referenced in any Planning Certificates issued for the land under section 149 of the EP&A Act, and also supports his letter being referred to in any public announcements that Council may make concerning the likelihood of changes to planning controls applying to the land.*
 - *The Minister suggests that Council could consider rezoning the land to E2 – Environmental Conservation to reflect the environmental value of the land and help to remove any uncertainty about the future residential development potential of the land.*

Council resolutions to rezone to E2 – Environmental Conservation

Heritage Estates

Council considered rezoning the Heritage Estates to ‘E2 Environmental Conservation’ in March 2012 as part of the Draft Shoalhaven Local Environmental Plan 2009 (SLEP 2009) process. At that time, there was no government commitment to resolve the tenure of the land. Council resolved instead to retain the ‘RU2 Rural Landscape’ zoning in accordance with the ‘best fit transfer’ rule on which the overall new LEP is based.

Prior to awarding the funding for the voluntary land purchase project, the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) sought a commitment from Council that it would rezone the land to E2 Environmental Conservation and donate Council land to the Foundation for National Parks and Wildlife.

Thus Council resolved on 26 February 2013 to:

- a) ...
- b) *Subject to discussion with and agreement from the Department of Planning & Infrastructure (DP&I) advertise Council’s intent to rezone the Heritage Estates to E2 Environmental Conservation (in accordance with MIN12.544);*
- c) *Write to the affected landowners to advise them of Council’s intent.*

The re-exhibition of the draft Citywide LEP (draft Shoalhaven Local Environmental Plan 2013 (SLEP 2013)) provided an opportunity for the community to comment on the intended E2 Environmental Conservation zoning for the Heritage Estates.

Note that it was not possible to change the proposed zoning of the Heritage Estates from RU2 to E2 prior to exhibition of Draft SLEP 2013. Instead, a statement of intent and a Fact Sheet was published on the draft SLEP 2013 website and landowners were advised in writing.

A total of 34 submissions were received that mentioned Heritage Estates. Most of these also mentioned Elouera Estate and all but one was in favour of the proposed E2 zoning.

However, due to the potential risk that amending the zone prior to finalisation of the Citywide LEP could be considered a significant change requiring re-exhibition, it was decided to rezone the Heritage Estates land from RU2 to E2 via a separate Planning Proposal. Consequently, Council resolved to: “...*retain the Heritage Estates zoning as exhibited and prepare a Planning Proposal without delay to rezone Heritage Estates from RU2 Rural Landscape to E2 Environmental Conservation (in accordance with MON12.544 and MIN13.114).*”

Elouera and Fairview Estates

On 23 April 2013, Council resolved (in part) to... consider the possible rezoning of the land to an appropriate environment protection zone as part of the finalisation of draft LEP 2013.

On 17 July 2013, Council resolved to prepare a Planning Proposal to rezone the paper subdivision land at Erowal Bay to E2 Environmental Conservation.

Summary

Council first signalled its intention to rezone the Heritage Estates to E2 Environmental Conservation on 15 May 2012. In accordance with Council’s resolution on 26 February 2013, the intention to rezone the land to E2 was advertised as part of the exhibition of draft SLEP 2013. Because the timing of Council’s resolution had not allowed the exhibited draft zoning map to be amended, at the Special Development Committee Meeting held over several days between 17 July and 14 August 2013, Council decided on a precautionary approach of preparing a separate Planning Proposal ‘*without delay*’ to rezone the land to E2.

At the Special Development Committee Meeting held over several days between 17 July and 14 August 2013, Council also resolved to prepare a planning proposal to rezone the Elouera and Fairview Estates to E2.

The resolutions referred to above are provided as Attachment “A”.

Environmental Values

Heritage Estates

As detailed above, the ‘Heritage Estates’ was the subject of detailed rezoning investigations over several years and a number of environmental studies have been undertaken over the land.

The Threatened Biodiversity Assessment undertaken for the Heritage Estates concluded that the site had high conservation values due to its functions as a wildlife corridor, high species richness and diversity, and high number of listed threatened species that were found, and that it should not be rezoned for residential development (BES, 2007).

The following protected plants, animals and ecological communities were identified:

- *Threatened Species Conservation Act (NSW)*
 - 3 threatened flora species: Biconvex Paperbark, Bauer’s Midge Orchid & the Leafless Tongue Orchid
 - 1 Endangered Ecological Community: Swamp sclerophyll forest
 - 17 threatened fauna species: Black Bittern, East Coast Freetail Bat, Eastern Bentwing Bat, Eastern Bristlebird, Eastern False Pipistrelle, Eastern Pygmy-possum, Gang-gang Cockatoo, Glossy Black Cockatoo, Greater Broad-nosed Bat, Grey-headed Flying-fox, Ground Parrot, Southern Myotis, Powerful Owl, Masked Owl, Square-tailed Kite, Whitefooted Dunnart, & Yellow-bellied Glider
- *Environment Protection and Biodiversity Conservation Act (Commonwealth)*
 - 2 flora species: Biconvex Paperbark, & the Leafless Tongue Orchid
 - 2 fauna species: Eastern Bristlebird & Grey-headed Flying-fox.
 - 5 migratory species: Black-faced Monarch, Latham’s Snipe, White-bellied Sea-eagle, White-throated Needletail, & Rufous Fantail
- *Other*
 - 4 ROTAP (Rare or Threatened Australian Plants) flora species + 19 other significant species.

The refusal by the Commonwealth Government’s Environment Minister under the EPBC Act on 13 March 2009 was based on the potential impacts on the EPBC-listed species as well as potential impacts on Commonwealth land (i.e. Booderee National Park on the southern peninsula of Jervis Bay). It was considered that development of the ‘Heritage Estates’ would have a significant impact on biodiversity in the Booderee National Park and will restrict the ability of locally extinct species to re-colonise adjacent areas, and increase the risk of extinction of species of concern.

The environmental values of the land, particularly in respect of the EPBC Act are described in detail in the following documents that are available online:

- [Recommendation Report](http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=d09/51173) prepared by the Federal Department of the Environment Water Heritage & the Arts (DEWHA)
<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=d09/51173> (PDF 1 mb)
- [Public Environment Report](http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D09/4639) prepared by Council
<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D09/4639> (PDF 19 mb)

Elouera and Fairview Estates

Council’s records indicate that the following threatened species and ecological communities occur on the Elouera and Fairview Estates land:

- *Threatened Species Conservation Act (NSW)*
 - 1 Endangered Ecological Community: Coastal Salt Marsh
 - 4 threatened fauna species: Eastern Bristlebird, Southern Myotis, Powerful Owl & Yellow-bellied Glider
- *Environment Protection and Biodiversity Conservation Act (Commonwealth)*
 - 1 fauna species: Eastern Bristlebird.

Whilst the Elouera and Fairview Estates have not been studied to the same extent as the Heritage Estates, as shown in Figure 4, the woodland and heath vegetation communities that are predominant in the Heritage Estates occur across Elouera and Fairview Estates.

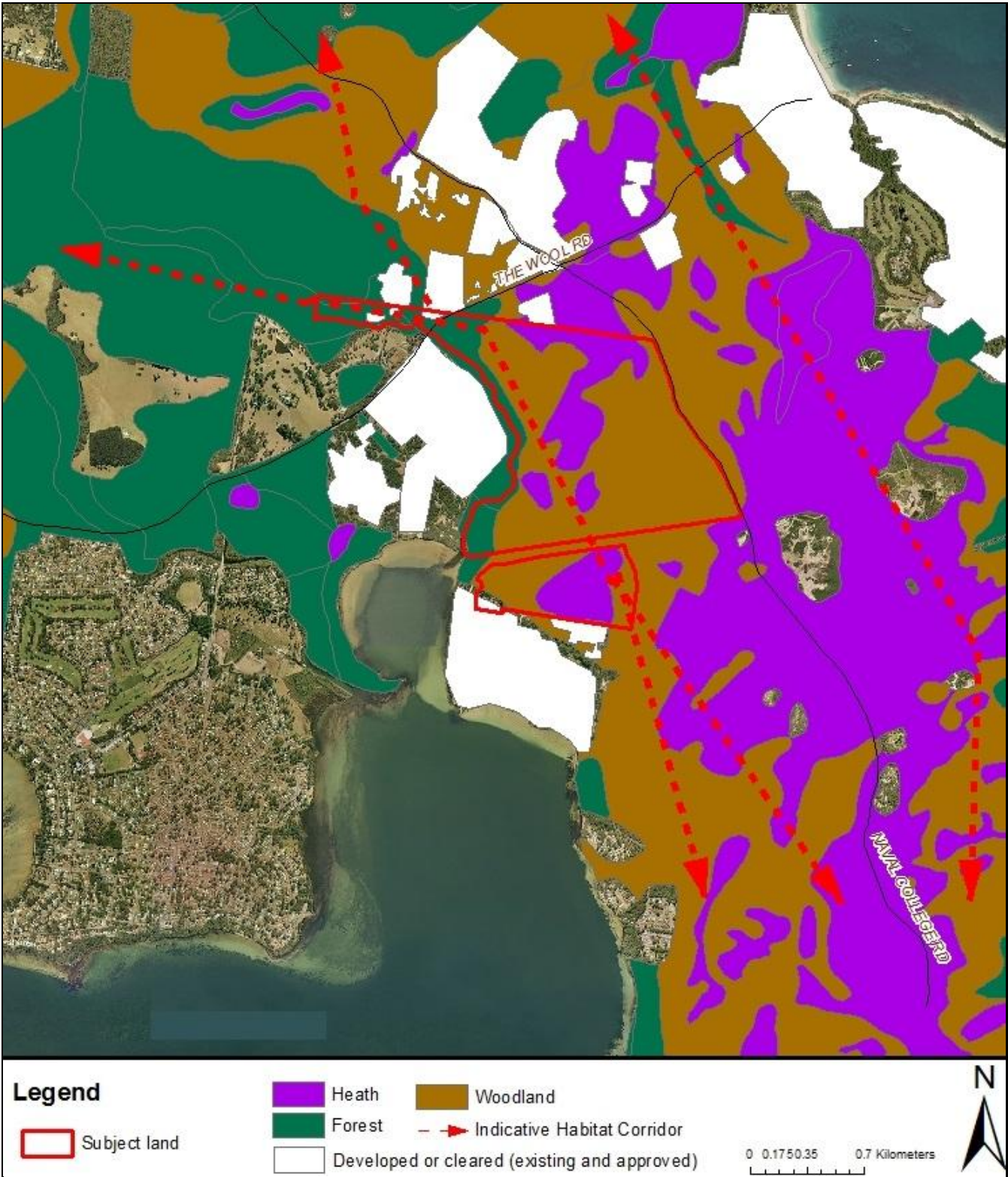


Figure 4 - Broad vegetation types over the subject land and surrounds

Species that are known to occur in the Heritage Estates and are predicted to occur in Elouera/Fairview Estates based on the vegetation types present are listed in Table 1.

Table 1 - Threatened species known to occur in Heritage Estates and known or predicted to occur in Elouera/Fairview Estates

Species	Status	
	TSC Act (NSW)	EPBC Act (Commonwealth)
Eastern Bristlebird*	E	E
Eastern Pygmy-possum	V	
Gang-gang Cockatoo	V	
Glossy Black-Cockatoo	V	
Grey-headed Flying-fox	V	V
Ground Parrot	V	
Latham’s Snipe		M
Masked Owl	V	
Powerful Owl*	V	
Square Tailed Kite	V	
White-footed Dunnart	V	
Yellow-bellied Glider*	V	
Eastern False Pipistrelle	V	
Eastern Bent-wing Bat	V	
East Coast Freetail Bat	V	
Southern Myotis*	V	
Greater Broad-nosed Bat	V	
Leafless Tongue Orchid	V	V
Brittle Midge Orchid	V	

V = vulnerable

E = endangered

M = migratory species (EPBC Act)

* = recorded in Elouera/Fairview Estates

In addition to the species listed in Table 1, the following RoTAP species are considered likely to occur in Elouera/Fairview Estates:

- Jervis Bay Grevillea
- *Leptospermum epacridoideum*
- *Pultenaea villifera*
- *Acacia subtilinervis*

Part 1 - Objectives

The objective of this Planning Proposal is to rezone the land within the ‘Heritage Estates’ and the adjoining ‘Elouera and Fairview Estates’ to E2 Environmental Conservation in recognition of the land’s high biodiversity values.

Part 2 - Explanation of provisions

It is proposed to amend the Shoalhaven Local Environmental Plan 2013 to rezone the land to E2 Environmental Conservation in accordance with the proposed zoning map shown in Figure 5.

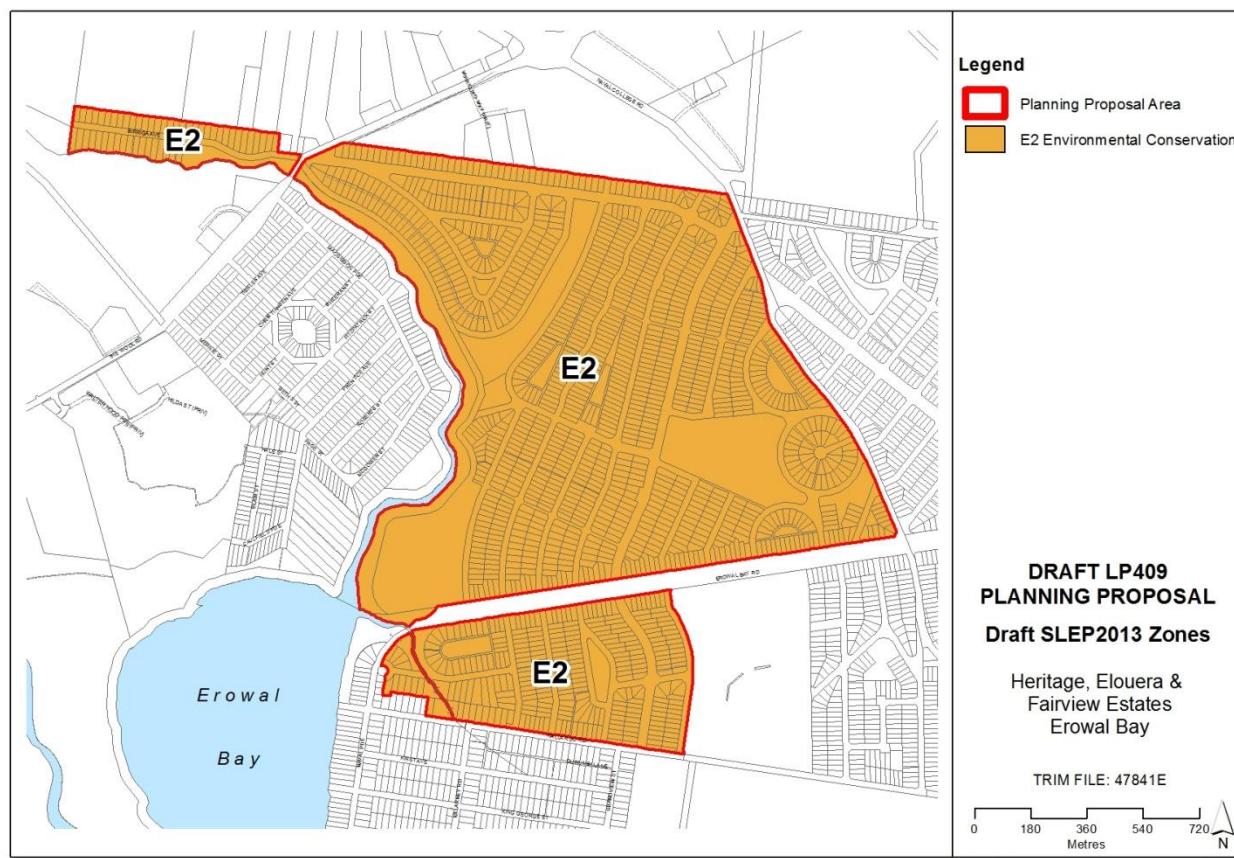


Figure 5 - Proposed zoning

The 40 hectare minimum lot size (which is relevant to the permissibility of dwellings) will remain unchanged.

Part 3 - Justification

Heritage Estates

It is appropriate to rezone the land to E2 Environmental Conservation to reflect the high biodiversity values of the land and remove any uncertainty about the future zoning of the land.

The proposal will also assist in resolving the long standing issues associated with the tenure of the land. The voluntary Heritage Estates Land Purchase (HELP) project gives individual landowners the option of selling their land for addition to the Jervis Bay National

Park. This funding was allocated on the basis that Council rezone the land at the appropriate point to E2 Environmental Conservation and it is now appropriate to do so.

Elouera and Fairview Estates

It is appropriate to rezone the land in these Estates to E2 Environmental Conservation to reflect the high biodiversity values of the land and remove any uncertainty about the future zoning of the land.

The development potential of the Elouera and Fairview Estates land was considered as part of the Jervis Bay Regional Environmental Plan 1996 (JB REP) which is a deemed State Environmental Planning Policy (SEPP) and the Jervis Bay Settlement Strategy (JBSS). The land was identified as having conservation value and was not identified as an area with future urban development potential.

Need for the Planning Proposal (Section A)

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

Heritage Estates

As outlined in the introduction, Council has been attempting to resolve the zoning of the Heritage Estates for many years and the land has been the subject of several strategic studies/reports including:

- Local Environmental Study prepared by Hassell Planning Consultants in 1994.
- NSW Commission of Inquiry (COI) in 1999, the recommendations from which were incorporated into the Jervis Bay Settlement Strategy 2003 (JBSS).
- Scoping Study prepared by Cowman Stoddart P/L in 2004.
- Assessments and studies completed as part of the rezoning investigations between 2005 and 2007 including:
 - Threatened Biodiversity
 - Bushfire Assessment
 - Water Quality Monitoring
 - Hydrogeology & Soils
 - Cultural Heritage (Aboriginal and European)
 - Geotechnical
- Assessments completed as part of the EPBC assessment process, including the Heritage Estates Public Environment Report prepared by Council (which included an assessment of the social impacts on the affected landowners), and the Recommendation Report prepared by the Commonwealth.

The context of the above studies/reports is explained in more detail elsewhere in this Planning Proposal.

Elouera and Fairview Estates

The development potential of the Elouera and Fairview Estates was considered as part of the Jervis Bay REP 1996 and the JBSS. The land was identified as having conservation value and was not identified as an area with urban development potential.

As such, the planning proposal seeks to appropriately zone the land to ensure the environmental characteristics of the land are protected.

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

To achieve the desired outcome of resolving the long standing planning issues and protecting the biodiversity values of the land, the following options are available to Council:

- A. Rezone the land from the current RU2 Rural Landscape to E2 Environmental Conservation.** This option was adopted by Council and is considered the most appropriate zoning given the land’s high biodiversity value and tenure.
- B. Do nothing and retain the current RU2 Rural Landscape zone.** This option is not considered appropriate given the land’s biodiversity attributes.

Relationship to strategic planning framework?

2. Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy?

The South Coast Regional Strategy (SCRS) provides the key regional level guidance applying to the site. The proposal is consistent with the aims of the SCRS in that it seeks to *‘protect high value environments including pristine coastal lakes, estuaries, aquifers, threatened species, vegetation communities and habitat corridors by ensuring that no new urban development occurs in these important areas and their catchments’*.

3. Is the planning proposal consistent with a council’s local strategy or other local strategy plan?

At the local level, Council has developed a number of policies and strategies relevant to this proposal. These include:

- Jervis Bay Settlement Strategy (2003)
- Community Strategic Plan 2020 (2010)

Jervis Bay Settlement Strategy

The JBSS is a non-statutory plan adopted by Council and endorsed by the State Government. It is also recognised in the South Coast Regional Strategy (2007) and forms a strategic framework for conservation and development in the Jervis Bay region. This planning proposal is consistent with the actions and outcomes identified in the JBSS given that:

- The Heritage Estates has been thoroughly investigated in accordance with the recommendations of the JBSS and the land is unable to be developed due to its significant biodiversity constraints.
- Elouera and Fairview Estates were not identified for investigation in the JBSS due to biodiversity constraints.

In both cases, the proposed E2 zoning will better reflect the land's high biodiversity value than the current rural zoning does and the 40 hectare minimum lot size will be retained.

Community Strategic Plan 2023

Council's Community Strategic Plan, Shoalhaven 2023 provides the long-term direction for the overall development of the City and is a tool for managing private and public development in the Shoalhaven. The proposal is consistent with Council's Community Strategic Plan in that it meets:

Objective 2.1 - A city which values, maintains and enhances its natural and cultural environment, and

Strategy 2.1.1 - Ensure that the natural ecological and biological environments and the built and cultural heritage of the Shoalhaven are protected and valued through careful management.

The proposal is also consistent with Council's Delivery Program which aims to *resolve the future small lot rural subdivisions located in the Jervis Bay region consistent with the Jervis Bay Settlement Strategy.*

4. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Relevant State Environmental Planning Policies (SEPPs) considered in the preparation of the Planning Proposal include:

- SEPP 71 – Coastal Protection
- Jervis Bay Regional Environmental Plan 1996 (deemed SEPP)
- Rural Lands SEPP

The Planning Proposal is not inconsistent with any SEPPs. A checklist with the applicable SEPPs is provided in Attachment “B”.

5. Is the planning proposal consistent with applicable Ministerial Directions (s. 117 directions)?

The Planning Proposal is consistent with all relevant Section 117 directions as identified in Attachment “C”.

6. *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?*

No, the purpose of the Planning Proposal is to rezone the subject land to E2 Environmental Conservation in recognition of the land’s high biodiversity value.

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

The proposed E2 zoning will not result in any adverse environmental effects. The 40 hectare minimum lot size that currently applies will be retained. Furthermore, the objectives of the proposed E2 zoning afford greater protection to the land’s environmental values.

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

Some social or economic impacts, both positive and negative, may arise but these have not been specifically assessed. The ability of the land to be developed/not developed will not be effectively altered by the proposed change in zoning to E2. However the proposed zoning will help to minimise uncertainty about the future of the land and is therefore generally seen as a positive.

Potential social and economic impacts on the landowners within the Heritage Estates were assessed as part of the Public Environment Report (PER) in 2008. That assessment only considered the potential impacts on landowners within the investigation areas if the proposal was refused. Social and economic impacts on landowners outside of the investigation areas or the broader community were not considered. The assessment, which was completed by Judith Stubbs & Associates, can be viewed at: <http://shoalhaven.nsw.gov.au/PlanningampBuilding/Strategicplanning/PaperSubdivisions/HeritageEstates.aspx>

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

No public infrastructure is required to support the Planning Proposal.

10. *What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?*

Gateway determination has not been given yet. In its submissions on the Draft Shoalhaven LEP 2013, the NSW Office of Environment and Heritage (OEH) expressed support for an E2 zoning over the subject land.

Prior to awarding funding for the Voluntary Heritage Estates Land Purchase (HELP) project, the former Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) sought and obtained a commitment from Council that it would seek to rezone the land to E2.

The HELP project is a collaboration of all three levels of government and the community sector (i.e. the Foundation for National Parks & Wildlife). The project is well underway and the other levels of government are now committed to resolving the tenure of the land.

The Minister for Planning & Infrastructure wrote to Council in 2012 supporting Council's decision to seek to rezone the Heritage Estates to E2 and suggesting that Council “consider a similar approach for the North Erowal Bay Estate”.

The Planning Proposal is supported by the following maps.

- Location map
- Land subject to the planning proposal
- The proposed alternative zone.

Community Consultation

Council proposes to exhibit the Planning Proposal for a period of 28 days in accordance with the requirements of Section 57 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and/or any other requirements as determined by the Gateway process. Council will seek the Director General's approval to exhibit under section 57(2) of the EP&A Act before undertaking any community consultation. Public notification of the exhibition will include a notice in newspapers circulating in the local area, a notice on Council's website and hard copies to be available at Council's Administrative Building.

Consultation will be made with relevant State or Commonwealth public authorities in accordance with Section 56 (2)(d) of the Environmental Planning and Assessment Act 1979 (EP&A Act) and/or any other requirements as determined by the Gateway process.

Council has written to all landowners within the Heritage Estates, as part of the Draft Shoalhaven LEP 2013 exhibition process, advising them of its intent to rezone the land to E2 Environmental Conservation. The draft LEP was exhibited with a fact sheet providing further detail of Council's intent to rezone the land. The fact sheet can be accessed online at: <http://slep2013.shoalhaven.nsw.gov.au/content/post-2011-exhibition-changes>

Project Timeline

The project plan below sets out the anticipated key steps and dates within the project finalisation timeframe.

Target Date	Process
December 2013/January 2014	Anticipated commencement date (date of Gateway determination)
N/A	Anticipated timeframe for the completion of required studies
February/March 2014	Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)
March/April 2014	Commencement and completion dates for public exhibition period Dates for public hearing (if required)
April/May 2014	Timeframe for consideration of submissions
April/May 2014	Timeframe for the consideration of a proposal post exhibition
May/June 2014	Anticipated date RPA will make the plan (if delegated), and
May/June 2014	Anticipated date RPA will forward to the Department for notification (if delegated)

Attachment A – Council Resolution to prepare a Planning Proposal

ADOPTED AT COUNCIL MEETING HELD ON TUESDAY 26 FEBRUARY 2013

114. (Item 8, Page 5) Heritage Estates – Zoning & Tenure Resolution Project Update
File 1446E (PDR)
-

Note: Cllr Guile left the meeting.

MOTION:

Moved: White / Second: Findley

That Council:

- a) Continue to work collaboratively with the NSW and Federal Governments and the Foundation for National Parks and Wildlife to help resolve the tenure of the Heritage Estates;
- b) Subject to discussion with and agreement from the Department of Planning & Infrastructure (DP&I) advertise Council's intent to rezone the Heritage Estates to E2 Environmental Conservation (in accordance with MIN12.544);
- c) Write to the affected landowners to advise them of Council's intent.

CARRIED

FOR: Gash, Tribe, Kearney, Baptist, White, Wells, Anstiss, Findley, Kitchener, McCrudden

AGAINST: Watson

ADOPTED AT SPECIAL DEVELOPMENT COMMITTEE MEETING HELD ON
WEDNESDAY 17 JULY 2013

Recommendation 5.6:

MOTION: Moved: Guile / Second: Kearney

RESOLVED that the Special Development Committee, in accordance with its delegated authority, following the finalisation of LEP 2013, Council prepare a Planning Proposal to rezone the paper subdivision at Erowal Bay known as Elouera Estates to E2 Environmental Conservation.

CARRIED

FOR: Robertson, Kearney, Gash, Wells, Baptist, Findley, Guile, Watson, Kitchener, Russ Pigg, White

AGAINST: Nil

Attachment B - Relevant State Environmental Planning Policies

Title: SEPP (Rural Lands) 2008

Comment: Consistent – the planning proposal implements measures designed to reduce land use conflicts

Policy: The aim of this policy is to facilitate the orderly and economic use and development of rural lands for rural and related purposes. The policy applies to local government areas that are not listed in clause 4

Title: SEPP No. 71 - Coastal Protection

Comment: Consistent

Policy: The policy has been made under the Environmental Planning and Assessment Act 1979 to ensure that development in the NSW coastal zone is appropriate and suitably located, to ensure that there is a consistent and strategic approach to coastal planning and management and to ensure there is a clear development assessment framework for the coastal zone.

Attachment C – Ministerial Directions (Section 117)

Direction No:	Subject	Applies ?	Relevant?	Consistent?	Comment
1	Employment and Resources				
1.1	Business and Industrial Zones	N			
1.2	Rural Zones	Y	Y	Y	The objective of the direction is to protect the agricultural production value of rural land. Clause 4(a) states: A Planning Proposal must: <i>Not rezone land from a rural zone to a residential, business, industrial, village or tourist zone.</i> This Planning Proposal seeks to rezone the land to E2 Environmental Conservation in recognition of its environmental characteristics and corridor value.
1.3	Mining, Petroleum Production and Extractive Industries	N			
1.4	Oyster Aquaculture	N			
1.5	Rural lands	Y	Y	Y	The planning proposal is consistent with the Rural Planning Principles listed in the State Environmental Planning Policy (Rural Lands) 2008.
2	Environment and Heritage				
2.1	Environmental Protection Zones	Y	Y	Y	The planning proposal includes provisions that facilitate the protection and conservation of environmentally sensitive areas in that it seeks to rezone the land to E2 Environmental Conservation in recognition of its environmental characteristics and corridor value.
2.2	Coastal Protection	Y	N	Y	The planning proposal includes provisions that will meet with the NSW Coastal Policy, Coastal Design Guidelines and the manual.
2.3	Heritage Conservation	Y	N	Y	No known heritage items are located within the subject area and the Planning Proposal will not allow for any development of the area.
2.4	Recreation Vehicle Areas	Y	N	Y	No proposals for recreational vehicle areas form part of this Planning Proposal.
3	Housing, Infrastructure and Urban Development				
3.1	Residential Zones	N			
3.2	Caravan Parks and Manufactured Home Estates	Y	N		
3.3	Home Occupations	Y	N		
3.4	Integrating Land Use and Transport	N			
3.5	Development Near Licensed Aerodromes	N			

3.6	Shooting Ranges	N			
4	Hazard and Risk				
4.1	Acid Sulfate Soils	Y	N		
4.2	Mine Subsidence and Unstable Land	N			
4.3	Flood Prone Land	Y	N		
4.4	Planning for Bushfire Protection	Y	N		
5	Regional Planning				
5.1	Implementation of Regional Strategies	Y	Y	Y	Implements outcomes of the South Coast Regional Strategy and the Jervis Bay Settlement Strategy.
5.2	Sydney Drinking Water Catchments	N			
5.3	Farmland of State & Regional Significance on Far North Coast	N			
5.4	Commercial & Retail Development, Pacific Hwy	N			
5.5	Development in the vicinity of Ellalong, Paxton & Millfield	N			
5.6	Sydney to Canberra Corridor	N			
5.7	Central Coast	N			
5.8	2 nd Sydney Airport: Badgerys Creek	N			
6	Local Plan Making				
6.1	Approval and Referral Requirements	Y	N		
6.2	Reserving Land for Public Purposes	Y	N		
6.3	Site Specific Provisions	N			