



IRF24/2775

Gateway determination report – PP-2024-2439

Nebraska Estate, St Georges Basin

February 25



Published by NSW Department of Planning, Housing and Infrastructure

dpie.nsw.gov.au

Title: Gateway determination report – PP-2024-2439

Subtitle: Nebraska Estate, St Georges Basin

© State of New South Wales through Department of Planning, Housing and Infrastructure 2024. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Housing and Infrastructure as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (December 24) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Housing and Infrastructure), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

1	Planning proposal	1
1.1	Overview	1
1.2	Objectives of planning proposal	1
1.3	Explanation of provisions	2
1.4	Site description and surrounding area	2
1.5	Mapping	2
1.6	Background	5
2	Need for the planning proposal	8
3	Strategic assessment	8
3.1	Regional Plan	8
3.2	Local	9
3.3	Section 9.1 Ministerial Directions	10
3.4	State environmental planning policies (SEPPs)	15
4	Site-specific assessment	15
4.1	Environmental	15
4.1.1	Threatened Species Assessment	16
4.1.2	Clause 34A Savings Provision	20
4.1.3	Bushfire	21
4.2	Social and economic	21
4.2.1	Development Control Plan (DCP)	22
4.2.2	Voluntary Acquisition	22
4.3	Infrastructure	23
5	Consultation	23
5.1	Community	23
5.2	Agencies	23
6	Timeframe	23
7	Local plan-making authority	24
8	Assessment summary	24
9	Recommendation	24

Table 1: Reports and plans supporting the proposal

Relevant reports and plans
Draft Planning Proposal – Nebraska Estate, St. Georges Basin (LP145.1). November 2024
Appendix A: Aboriginal Cultural Heritage Assessment, NSW Archaeology, August 2009
Appendix A1: Further archaeological assessment of a proposed subdivision, South East Archaeology, September 2001
Appendix A2: Aboriginal Cultural Heritage Assessment, Austral Heritage Consultants, February 1996
Appendix A3: Archaeological Survey, South East Archaeology, January 1994
Appendix B: St Georges Basin Flood Study, Cardno, 2022
Appendix C: Strategic Bushfire Assessment, Eco Logical, April 2023
Appendix D: Threatened Biodiversity Survey & Assessment, Bushfire and Environmental Services, November 2009
Appendix D1: Assessment of Fauna Impact, Antcliff Ecological Services, 1994
Appendix D2: Review of Proposed Wildlife Corridor and Fauna Assessment, Andrews Neil, April 1994
Appendix E: Integrated Water Cycle Assessment, Footprint NSW, March 2017
Appendix E1: Soil and Water Management Plan – Infrastructure/Subdivision Scale, Footprint NSW, March 2017
Appendix E2: Soil and Water Management Plan – Lot Based Development, Footprint NSW, March 2017

1 Planning proposal

1.1 Overview

Table 2: Planning proposal details

LGA	Shoalhaven City Council
PPA	Shoalhaven City Council
NAME	Nebraska Estate
NUMBER	PP-2024-2439
LEP TO BE AMENDED	Shoalhaven Local Environmental Plan 2014
ADDRESS	St Georges Basin
DESCRIPTION	Multiple lots
RECEIVED	6/11/2024
FILE NO.	IRF24/2775
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- Resolve the planning status of Nebraska Estate, the last unresolved “paper subdivision” identified in the Jervis Bay Settlement Strategy
- Recognise and protect the environmentally sensitive land and Aboriginal cultural heritage values
- Make provision for a limited number of dwelling sites on less constrained land consistent with the relevant statutory and policy framework
- Protect waterways and sensitive downstream ecosystems from the potential impacts arising from residential development
- Ensure that the land is not developed until arrangements are in place to provide essential services and infrastructure, and
- Avoid any unplanned opportunities for additional dwellings and/or land fragmentation.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Shoalhaven LEP 2014 per the changes below:

Table 3: Current and proposed controls

Control	Current	Proposed
Zone	RU2 Rural Landscape R5 Large Lot Residential R2 Low Density Residential	C2 Environmental Conservation R5 Large Lot Residential C4 Environmental Living
Minimum lot size	400,000m ² (40ha) 2,000m ² 500m ²	2,000m ² 2,500m ² 5,000m ² 7,000m ² 10,000m ² (1ha) 13,000m ² (1.3ha) 30,000m ² (3ha) 400,000m ² (40ha)
Height of buildings	8.5m/11m	8.5m
Number of dwellings	0, however a number of illegal dwellings are located within the vicinity	17
Terrestrial Biodiversity		Updated to align with amended boundaries.
Local Clauses	N/A	To ensure that prior to land being developed essential infrastructure and a supporting DCP* has been prepared.

* The supporting Development Control Plan (DCP) will address the following issues pertaining to the Site:

- Subdivision Layout
- Biodiversity management (vegetation clearing and retention)
- Desired future character
- Bushfire protection planning
- Building design and location
- Aboriginal cultural heritage
- Stormwater Management
- Infrastructure works
- Flooding and emergency access
- Soil management

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The subject site is located approximately 23 km south of Nowra at the north-western fringe of the St Georges Basin urban area (figure 1). The site is approximately 33ha in size and bounded by Grange Road to the West, Nebraska Road to the North, Park Road to the East, and existing residential areas to the south (figure 2).

The overall site comprises of approximately 97 lots held in separate ownership. There are currently two (2) existing approved dwellings, one (1) existing approved shed, and one (1) existing approved building/shed ancillary to a worm farm located within the subject area. The land is currently zoned RU2 Rural Landscape and cannot be legally developed unless the prescribed minimum Lot Size is satisfied. The existing structures were all approved prior to 2006.

The Nebraska Estate is the last unresolved paper subdivision identified in Council’s adopted strategies to be finalised. The subdivision was registered in 1919 as part of the Commonwealth Government’s decision for Jervis Bay to be Canberra’s official port. The subdivision was approved on ‘paper’ however lacked infrastructure such as formed roads, drainage, reticulated water, sewer and electricity. See further discussion in section 1.6 Background.

The site is heavily vegetated and contains significant Endangered Ecological Communities (EEC) including threatened orchids specific to the South Coast Region. See further discussion in section 4.1 Environmental Assessment.



Figure 1: Site context (source: Planning Proposal pg. 8)



Figure 2: Subject site (source: Planning Proposal pg. 10)

1.5 Mapping

The planning proposal includes mapping showing the proposed changes, which are suitable for community consultation.

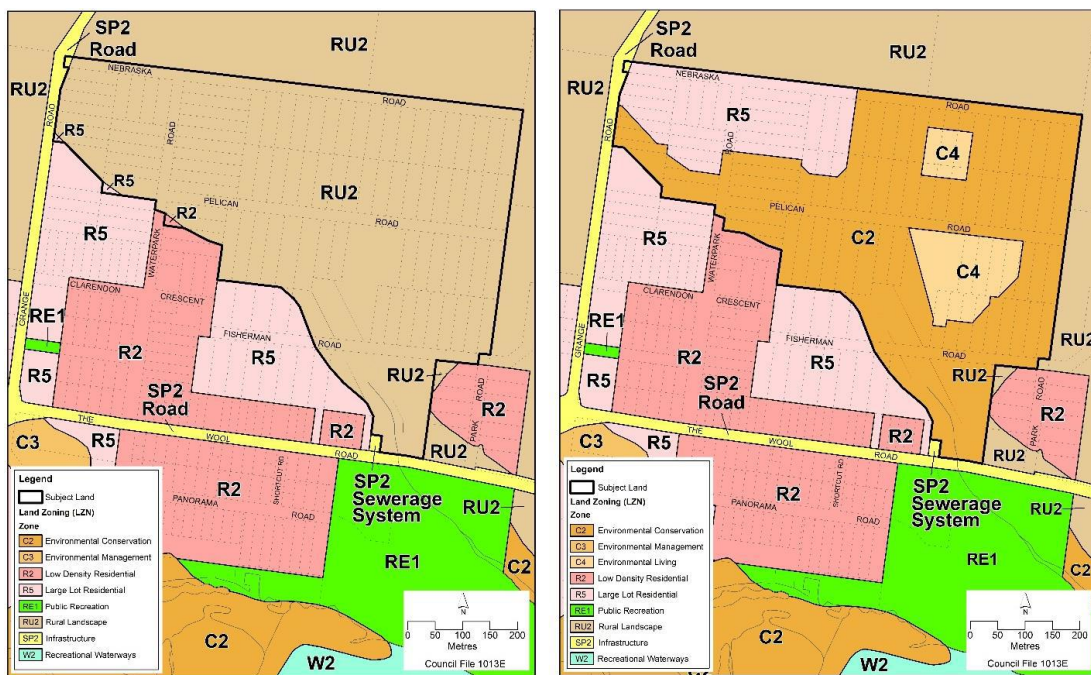


Figure 3: Current and proposed Zoning Map



Figure 4: Current and proposed Height of Building Map

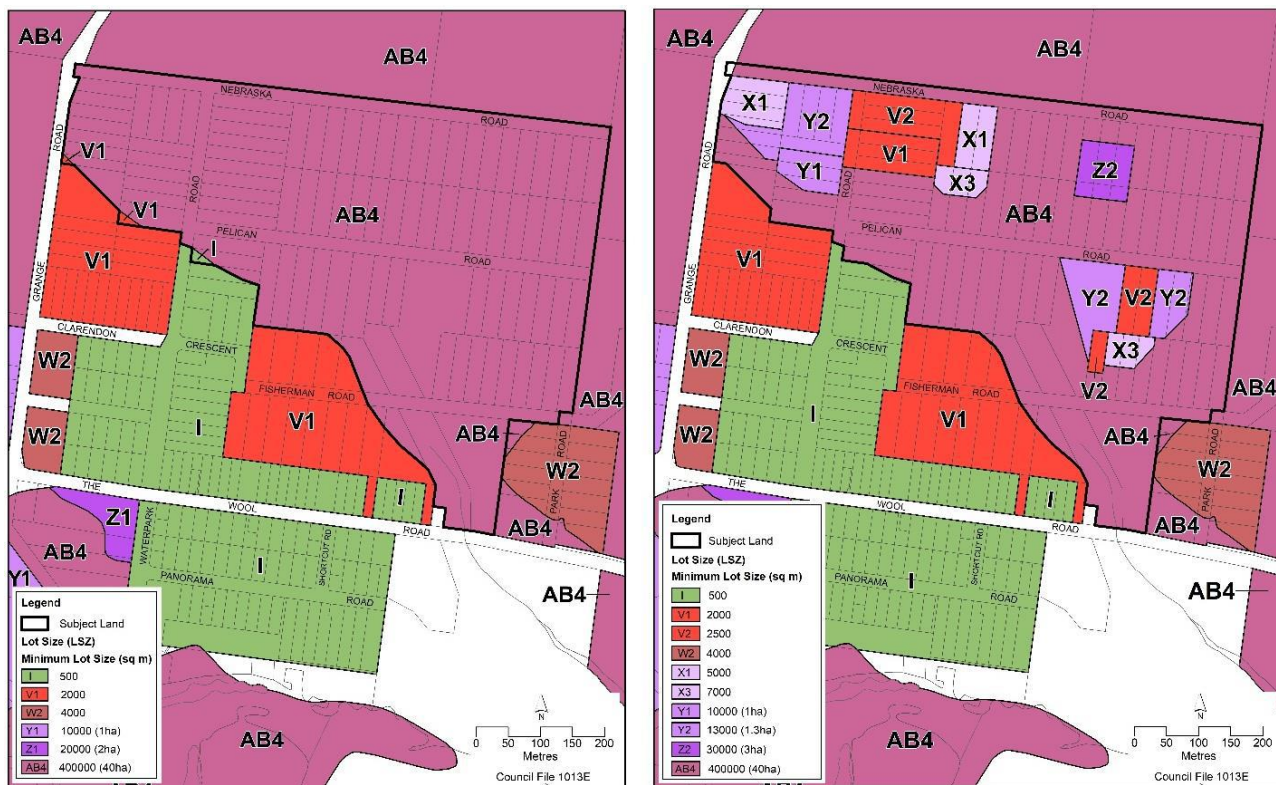


Figure 5: Current and proposed Minimum Lot Size Map

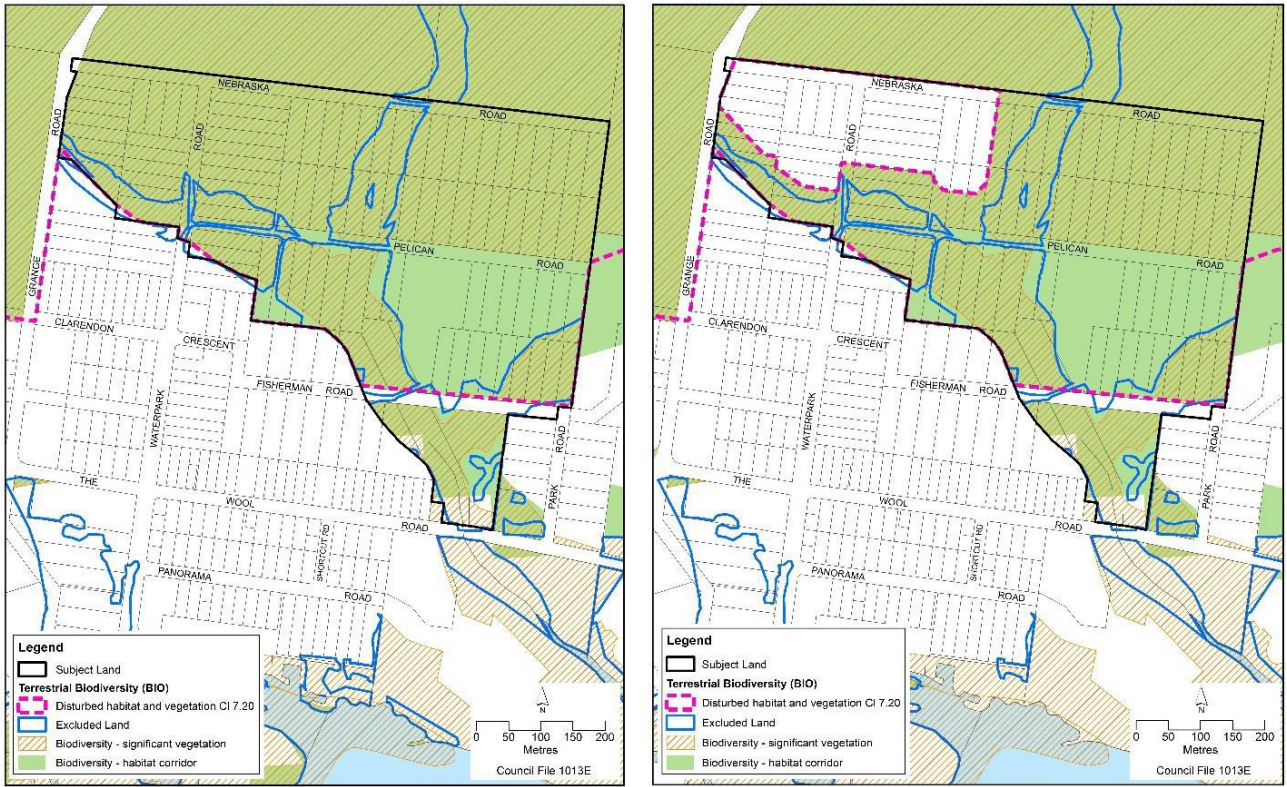


Figure 6: Current and proposed Terrestrial Biodiversity Map

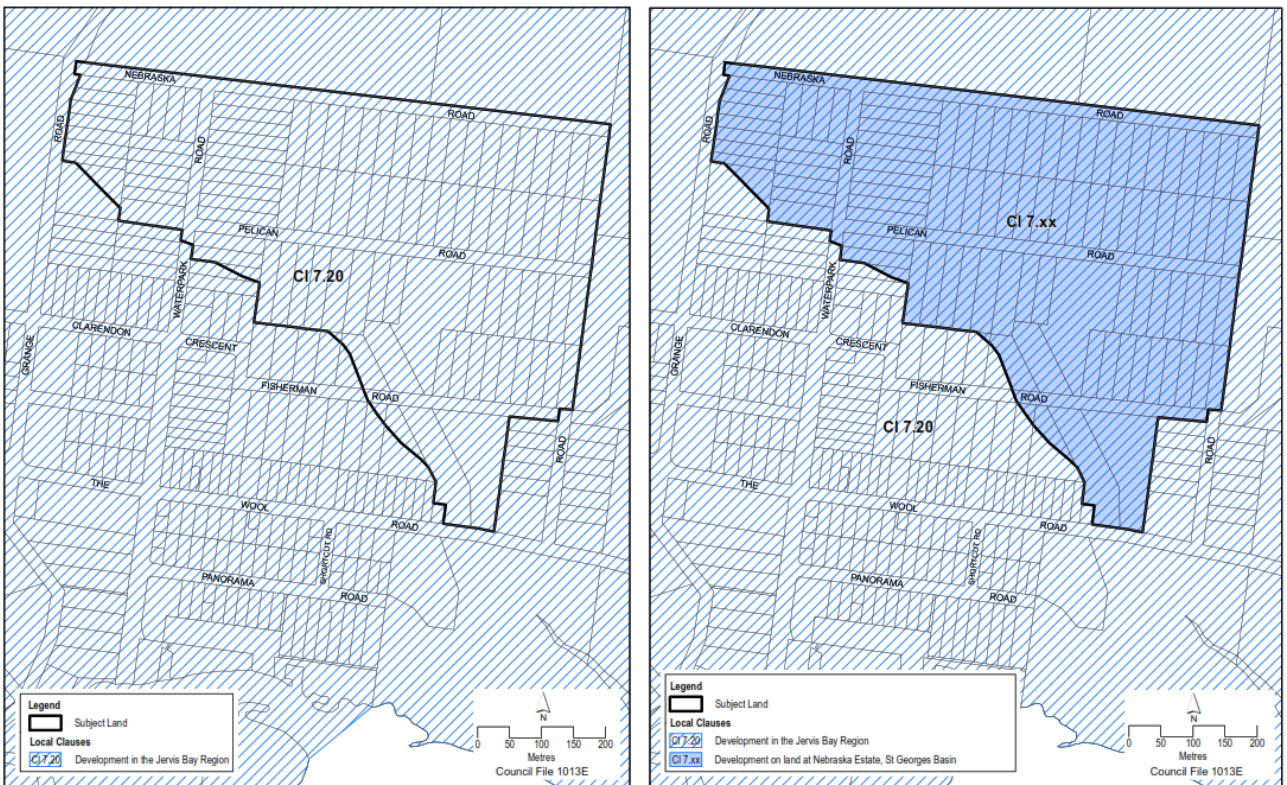


Figure 7: Current and proposed Local Clauses Map

1.6 Background

The selection of Canberra as the nation's capital and Jervis Bay as its future port in 1908 and the suggestion that a direct rail link would be provided between the two, triggered speculation that the Jervis Bay area would be extensively developed. At that time, the planning system was still in its infancy; there was no land use zoning and subdivision plans could be registered without provision of essential infrastructure. These factors contributed to a proliferation of speculative subdivision activity in the Jervis Bay area in the 1910s and 1920s.

The Nebraska Estate subdivision was registered in 1919 (figure 8). By the time these paper subdivisions were registered, individual lots could be bought and sold despite the lack of essential infrastructure. Any intentions that the developers may have had to develop these 'paper subdivisions' were put on hold indefinitely with the onset of the Great Depression in 1929-39.

Apart from the southern fringe of the Estate where some development had occurred, the land remained undeveloped when land use zoning was introduced in 1964. Under Shoalhaven Interim Development Order No.1 (IDO No. 1) most of the Estate was zoned "non-urban", generally precluding development of the individual lots due to their size. IDO No. 1 was superseded when the Shoalhaven Local Environmental Plan (SLEP 1985) was gazetted in 1985. Prior to SLEP 1985 being superseded by SLEP 2014 on 22 April 2014, the subject land was zoned part Rural 1(g) (Flood Liable) and part Rural 1(d) (General Rural).

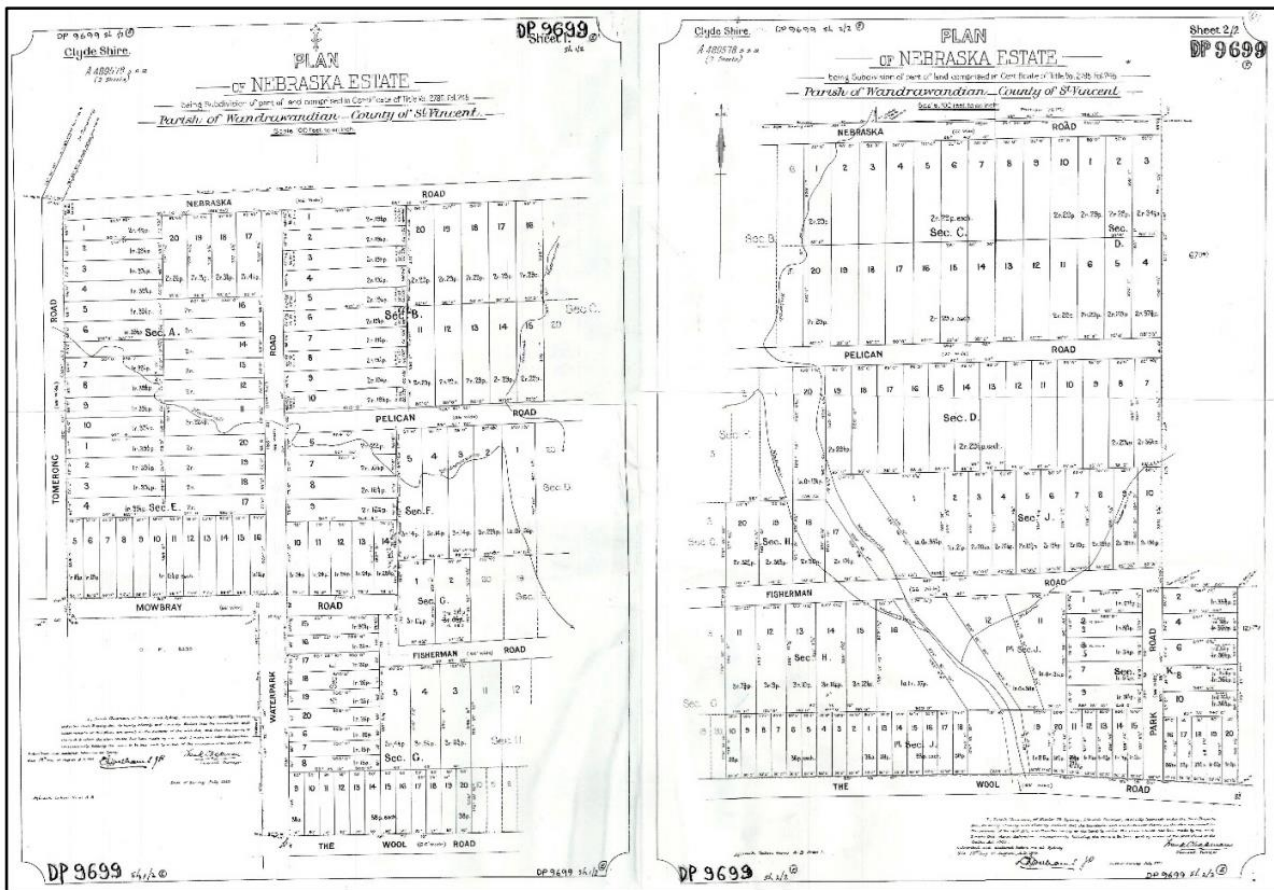


Figure 8: Copy of DP9699 for Nebraska Estate registered 12th August 1919 (Source: Nebraska Estate, St Georges Basin – Paper Subdivision, Fact Sheet)

On 20 October 1992, Council resolved to prepare a draft local environmental plan over that part of Nebraska Estate (DP9699) that was zoned Rural 1(d), for the purpose of allowing low density residential development.

On 20 September 1994, Council resolved to deal separately with lots located along Park Road because it was less constrained than the remainder of the Estate. The Park Road area was rezoned in 2001 (Amendment No. 155 to SLEP 1985) enabling 13 fully serviced dwellings to potentially be approved over 20 lots (i.e. in some cases, lots were required to be amalgamated before they could be developed).

A letter from the Department of Urban Affairs and Planning (now DPHI) dated 12 July 1995 identified several environmental concerns in relation to the remainder of Nebraska Estate. The Jervis Bay Regional Environmental Plan, 1996 (JBREP) was gazetted in 1997 and rezoning investigations for the Nebraska Estate were paused in 1999 by a NSW State Government moratorium pending completion of a Settlement Strategy for Jervis Bay. In 1999 the Department of Planning advised Council that a settlement strategy for the Jervis Bay area needed to be completed before further pursuing the rezoning.

The moratorium was lifted in 2003 when the Jervis Bay Settlement Strategy (JBSS) was adopted by Council and endorsed by the NSW Government. Investigations into Nebraska Estate land capability and constraints occurred in 2006. During this time several specialist studies have been completed and have informed the PP. These include, but are not limited to:

- Aboriginal Cultural Heritage
- Biodiversity survey and assessment
- Bushfire protection
- Flooding
- Soil and water management

These specialist studies have indicated that substantial areas of the site are heavily constrained (figure 9) which has influenced the overall site layout.

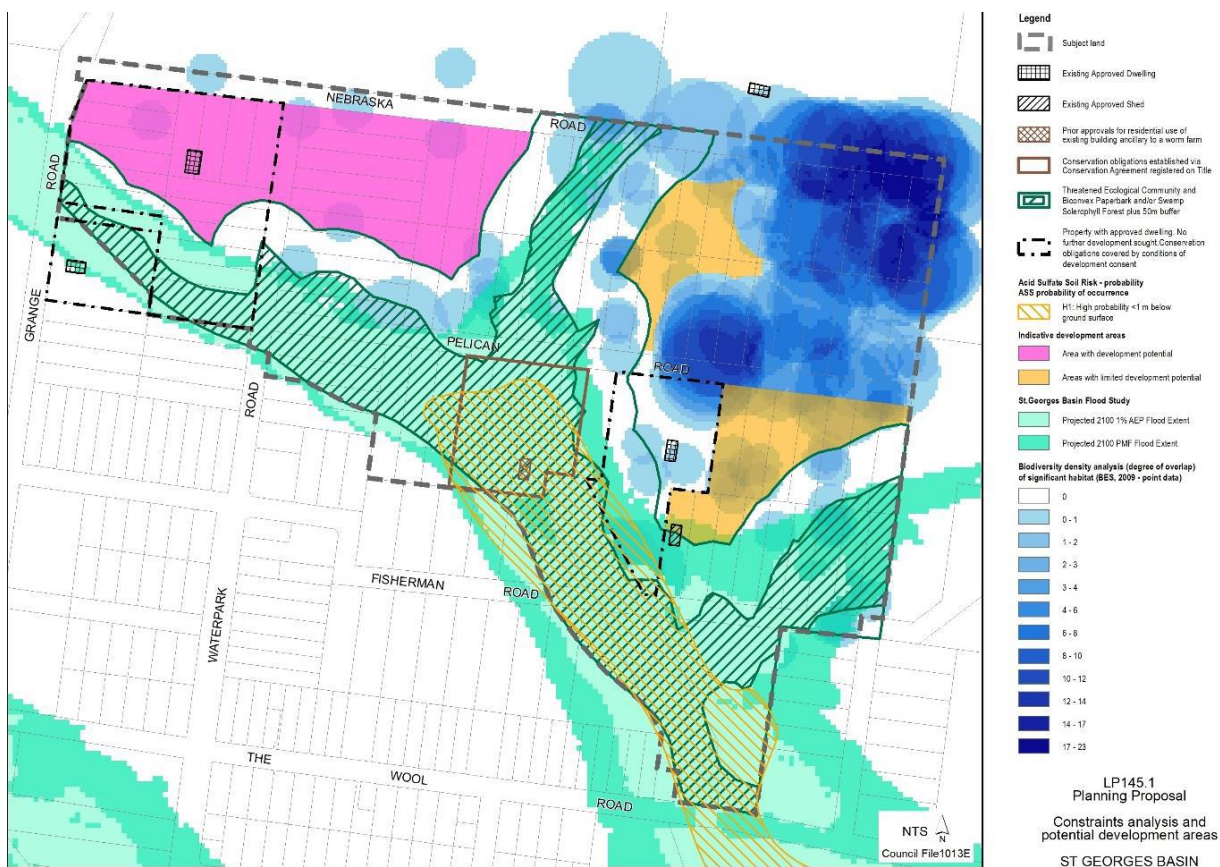


Figure 9: Updated constraints analysis and potential development areas (Source: Planning Proposal pg. 14)

The 'Updated constraints analysis and potential development areas map' (figure 4) was adopted by Council in 2010 and identified three (3) sectors suitable for development, with the rest of the site determined to be unsuitable for development due to significant land capabilities and environmental constraints.

- Northwestern (NW) Sector: this is the least constrained and largest of the potential development areas and relatively close to existing residential land south of the main watercourse.
- Northeastern (NE) Sector: this is a relatively small area of flood-free land bounded to the north, east and south by large numbers of the 'critically endangered' orchid *Pterostylis ventricosa* (*P. ventricosa*). This area has very limited potential for rural residential development.
- Eastern (E) Sector: this area is located on flood free land, between a developed rural residential lot to the west, the Endangered Ecological Community (EEC) – Swamp Sclerophyll Forest and *Melaleuca biconvexa* (*Biconvex Paperbark*) to the south and southeast, and the orchid *P. ventricosa* to the north.

The original planning proposal (OPP) was submitted to the Department for consideration in late 2014 with a Gateway Determination (GD) issued in March 2015. The GD was conditioned and required a number of supporting reports to be undertaken, along with consultation with the Estate's landowners to determine the preferred option for the NW Sector of the site. This was all required prior to public exhibition of the OPP and it did not proceed to public exhibition due to the time required to undertake this work. The OPP was extended four (4) times with a decision not proceed by the Department on the 15 December 2020.



Figure 10: Concept Subdivision and Development Plan (Source: Planning Proposal pg. 19)

Council resolved to ‘restart’ the PP on the 17 July 2023, based on an updated version of the options available to be presented to, and considered by, Councillors, with a resolving meeting being undertaken on the 28 September 2023. The matter was reported back to Council on the 26 February 2024, whereby Council resolved to update the PP and submit to the Department for a Gateway Determination. The revised concept subdivision layout and development plan, as adopted by Council on the 26 February 2024, is shown in Figure 10.

2 Need for the planning proposal

The planning proposal (PP) is the result of the Shoalhaven 2040 - Strategic Land-use Planning Statement (SLPS 2020) endorsed by the NSW Government, and the Jervis Bay Settlement Strategy (JBSS, 2003), endorsed by the NSW Government and is embedded within the Shoalhaven Growth Management Strategy (GMS) also endorsed by the NSW Government in 2014. Further discussion about the relevant strategies is detailed further in section 3.

The PP is required to implement the subject sites development potential, achieve environmental outcomes, and meet contemporary planning legislative requirements. Numerous studies have been undertaken to determine the viability of the site, particularly in respect to biodiversity, bushfire, water management and land capability.

3 Strategic assessment

3.1 Regional Plan

The planning proposal (PP) is generally consistent with the Illawarra Shoalhaven Regional Plan (ISRP) 2041. The following table provides an assessment against relevant aspects of the ISRP.

Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Objective 9: Promote agriculture innovation, sustainability and value-add opportunities	The PP is consistent with Strategy 9.2 to “Enable new rural residential development only where it has been identified in a local strategic plan, prepared by council and endorsed by DPE”. The subject land is identified for investigation in the Jervis Bay Settlement Strategy 2003 (JBSS), endorsed by the NSW Government. See further discussion in section 3.2.
Objective 11: Protect important environmental assets	<p>The PP is consistent with Strategy 11.1 to “Protect, maintain or restore important environmental assets”.</p> <p>The PP is consistent with Strategy 11.2 to “Protect and enhance the function and resilience of biodiversity corridors in strategic planning and local environmental plans”.</p> <p>The PP will provide added protections to environmental and biodiversity sensitivities within the site through the implementation of zoning controls, a site specific DCP, and voluntary acquisition of un-developable sites. Any land acquired by Council under the Voluntary Acquisition Policy will be managed for conservation in perpetuity.</p> <p>Additional protections for threatened orchids within the site will be through the implementation of a 50m buffer around known orchid sites, where no clearing will be permitted.</p>

Regional Plan Objectives	Justification
Objective 18: Provide housing supply in the right locations	The PP is consistent with Strategy 18.2 which encourages Councils to “Facilitate housing opportunities in existing urban areas. Strategic planning and local plans should consider opportunities to review planning controls so that they are creating flexible and feasible conditions for housing supply”. St Georges Basin is an existing, fully serviced urban area, and part of the overall Jervis Bay – St Georges Basin strategic centre. Nebraska Estate is separated from existing residential development by a watercourse and associated vegetation. Services can be extended from the adjacent residential area into the Estate. A pressure sewerage system is proposed. The proposed residential footprint is based on detailed environmental investigations and land capability analysis. The planning controls have been formulated using the same approach used to resolve other similar paper subdivisions in the area (Jerberra and Verons Estates).
Objective 19: Deliver housing that is more diverse and affordable	The PP is consistent with Strategy 19.1 to “Continue to provide for and encourage a range of housing choices”. The PP will provide for 17 new dwelling sites, some of which will be within the C4 Environmental Living zone, and some in the R5 Large Lot Residential zone, adding to the supply and choice of local housing.

3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 5 Local strategic planning assessment

Local Strategies	Justification
Shoalhaven 2040 - Strategic Land-use Planning Statement 2020	<p>The PP is consistent with Shoalhaven 2040 - Strategic Land-use Planning Statement 2020 (SLPS) endorsed by the NSW Government and identifies St Georges Basin as a major urban area. The PP addresses the following priorities:</p> <p>Priority 1 – Providing homes to meet all needs and demands.</p> <p>The site has been identified in the JBSS for further investigation for residential uses. The site has undergone rigorous studies to determine viability for safe future residential uses which can meet the needs of the site and wider community.</p> <p>Priority 8 – Supporting Agriculture and Aquaculture.</p> <p>The site is currently zoned rural under SLEP 2014 and is identified in the JBSS. As such the site may be developed for residential purposes as it is in accordance with the JBSS (see discussion below).</p> <p>Priority 10 – Protecting the environment.</p> <p>The subject land supports an Endangered Ecological Community (EEC) and a range of other endangered and vulnerable species. The PP will recognise, protect and conserve 23.3 ha of environmentally sensitive land (71% of the rural-zoned land) for long-term management by</p>

	rezoning the land to C2 Environmental Conservation. Further, the “significant vegetation” and “exempt land” provisions of the Biodiversity Conservation layer of SLEP 2014 to which clause 7.5 applies. A range of environmental protection provisions will be included in a supporting site-specific DCP.
Jervis Bay Settlement Strategy 2003	<p>The PP is an outcome of the Jervis Bay Settlement Strategy 2003 (JBSS) which identified Nebraska Estate as a potential rural residential development, subject to site specific studies to be undertaken.</p> <p>The site comprises of approximately 120 small rural lots, part of an old 1920’s paper subdivision, which do not currently have dwelling entitlement. The JBSS identified 4 options for existing small rural lot subdivisions in the region:</p> <ol style="list-style-type: none"> 1. Retain current zoning; 2. Investigate rezoning in accordance with the Strategy and, where appropriate, allow each lot to have a dwelling built on it; 3. Investigate rezoning in accordance with this Strategy and, where appropriate, amalgamate lots to a minimum size in order to accommodate on-site effluent disposal; or 4. Public purchase of the land for a public use such as addition to the national park. <p>In accordance with the JBSS, Nebraska Estate was divided into 2 sections; Park Road, which has already been developed, and the remainder of the estate, which is subject of this PP, which required further studies into development potential specifically in relation to flooding risk and native vegetation. A number of studies have since been completed to satisfy the requirements, and others arisen due to new legislation, of the JBSS which ultimately result in rural residential development.</p>
Shoalhaven Growth Management Strategy	The PP is consistent with the Shoalhaven Growth Management Strategy (GMS) which was adopted by Council in December 2012 and endorsed by the NSW Government in May 2014. The GMS sets out broad principles for planning growth across the city and incorporates several more detailed settlement strategies/structure plans, including the endorsed Jervis Bay Settlement Strategy (JBSS, 2003). As such, the JBSS was effectively re-endorsed and embedded within the GMS.

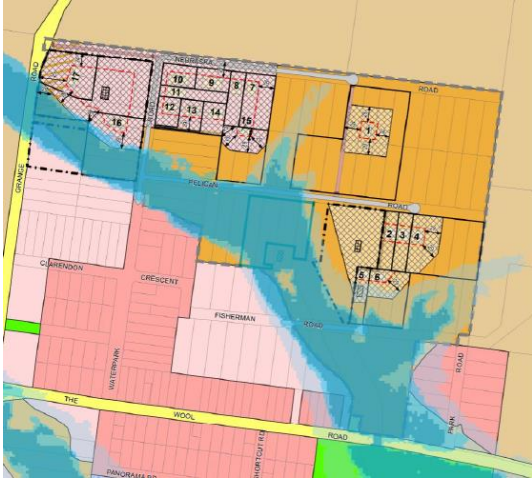
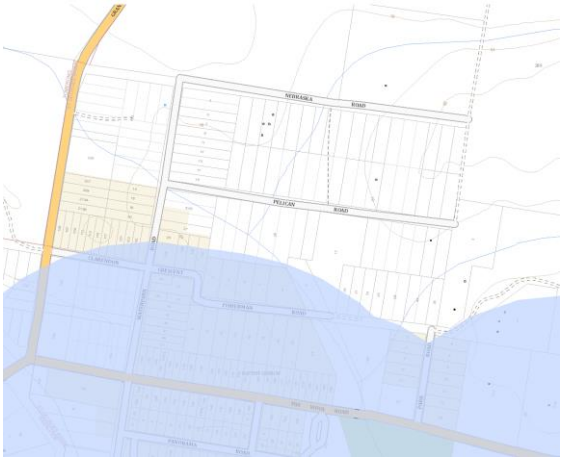
3.3 Section 9.1 Ministerial Directions

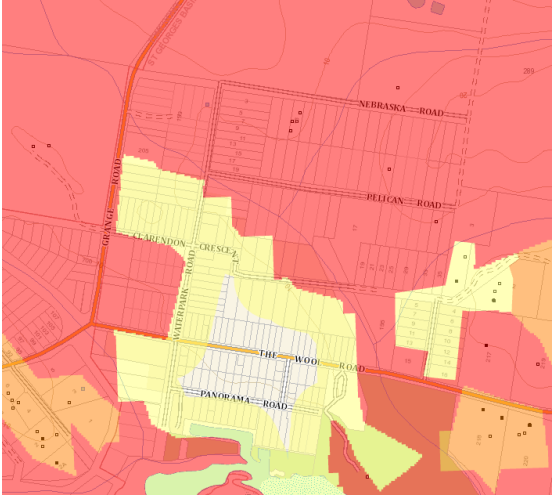
The planning proposal’s consistency with relevant section 9.1 Directions is discussed below:


Table 6 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	See section 3.1

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.1 Conservation Zones	Consistent	<p>The PP is supported by <i>Nebraska Estate Threatened Biodiversity Survey and Assessment</i> (Appendix D) prepared by BES Australia in 2009 and previous studies undertaken in 1994 (Appendix D1 and D2).</p> <p>All environmentally sensitive land is proposed to be zoned C2 Environmental Conservation, 23.3ha or 71% of the Estate, and has the potential to be voluntarily acquired by Council and managed for conservation in perpetuity. The PP also seeks to allow a limited number of dwellings on less constrained land.</p> <p>To ensure the PP complies with this Direction and the proposed environmental issues are thoroughly considered the proposal will be referred to DEECCW for comment.</p>
3.2 Heritage Conservation	Consistent	<p>The subject site is not identified as containing any items of historical significance.</p> <p>The PP is supported by an Aboriginal Cultural Heritage Assessment (Appendix A) prepared by NSW Archaeology and previous studies undertaken in 2001 (Appendix A1), 1996 (Appendix A2) and 1994 (Appendix A3).</p> <p>The reports conclude that Aboriginal sites are located within the proposed C2 Environmental Conservation, where no development is proposed.</p> <p>The proposed supporting DCP will include provisions to ensure that an Aboriginal Heritage Impact Permit (AHIP) is obtained prior to work being undertaken within C2-zoned land adjacent to the watercourses that could potentially harm the sites, such as for the provision of subdivision infrastructure. Note that consultation with the Aboriginal community is an integral part of the AHIP process.</p> <p>The Jerrinja Local Aboriginal Land Council (LALC) will be consulted as part of the exhibition process.</p>
4.1 Flooding	Consistent Any inconsistencies are of minor significance and can be supported.	<p>The subject site is identified as flood prone land (Figure 11).</p> <p>The PP is supported by the St Georges Basin Flood Study (Appendix B) which was adopted by Council on 23 January 2023. The supporting flood study highlights that all proposed dwelling sites are to be located outside of the flood planning area (FPA) and Projected 2100 Probable Maximum Flood extent (PMF), with areas subject to flooding to be located within the C2 Environmental Conservation zone.</p> <p>The proposed supporting DCP will demonstrate how a network of public roads, rights-of-way and emergency access routes can achieve flood free access for each of the proposed dwelling sites.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>Any work within the floodway will be limited to infrastructure works essential to widening/upgrading of the existing culvert at the intersection of Waterpark/Pelican Roads from one lane to two lanes and to widening and strengthen the existing pavement of Fisherman and Pelican Roads.</p> <p>To ensure compliance with the Direction, the PP will be forwarded to DCCEEW – Flooding, as part of the exhibition process.</p>  <p>Figure 11: Flood Land Mapping (Source: Planning Proposal)</p>
4.2 Coastal Management	Consistent	<p>The southern portion of the site is identified as Coastal Environment Area (Figure 12).</p>  <p>Figure 12: Coastal Management Land Mapping (Source: Planning Spatial Viewer)</p> <p>Land impacted by the Coastal Management Zone will be zoned C2: Environmental Conservation, with no increased development opportunities or intensive land uses proposed.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.3 Planning for Bushfire Protection	Further justification required	<p>The subject site is identified as Bush fire prone land (Figure 13).</p> <p>A Strategic Bushfire Study was undertaken by Eco Logical Australia (Appendix C), which determined that the concept subdivision can satisfy the performance criteria for residential subdivisions.</p> <p>This direction requires that RFS is consulted following the receipt of a Gateway determination, which has not been undertaken. Therefore, this has been included as a condition of the Gateway.</p>  <p>Figure 13: Bushfire Prone Land Mapping (Source: Planning Spatial Viewer)</p>
4.4 Remediation of Contaminated Land	Further justification required	<p>The site is not identified on any mapping that it could be impacted by Potentially Contaminated Land.</p> <p>The PP states that when a Gateway Determination is issued, Council will undertake a <i>Phase 1 Preliminary Land Contamination Assessment</i> prior to public exhibition, with the results incorporated into an updated PP. A condition of the gateway will be that this work is undertaken and sent back to the Department for review, prior to public exhibition.</p> <p>Any required remediation works will need to be undertaken prior to undertaking works.</p>
4.5 Acid Sulphate Soils	Consistent	<p>The subject site is identified as containing Acid Sulphate Soils (ASS) (Figure 14).</p> <p>The PP has been supported by a number of Soil and Water Management Plans prepared in 1994, 2001 and 2017. The 2017 Reports (Appendix E, E1 and E2) have been prepared by Footprint (NSW) P/L and identify ASS class #2 and #5 within the subject site.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>The subject PP does not propose an intensification of land uses within the Class #2 ASS area, and minor development, which can be mitigated, within the Class #5 area.</p> <p>An Acid Sulphate Soil Management Plan will be required prior to undertaking works, with the results to be incorporated into the future DCP.</p>  <p>Figure 14: Acid Sulphate Soils Mapping (Source: Planning Spatial Viewer)</p>
5.1 Integrating Land Use and Transport	Consistent	<p>This Direction applies because the PP is seeking to rezone land for residential development, but it is more relevant to densely populated urban areas. Any inconsistency with this Direction is justified and minor.</p>
6.1 Residential Zones	Consistent as justified by a strategy approved by the Planning Secretary	<p>The Jervis Bay Settlement Strategy (JBSS) identifies Nebraska Estate as having potential for rural residential development subject to further investigation.</p>
9.1 Rural Zones		<p>The PP is informed by and consistent with the results of detailed constraints analysis. A variety of low-density housing types are permissible in the R5 and C4 zones. The C4 zone is more limited and will be applied to the proposed development footprints in the East and Northeast Sectors. The C2 zone will be applied to the environmentally sensitive land that is unsuitable for development.</p>
9.2 Rural Lands		<p>The PP is considered generally consistent with these directions. However, an inconsistency has been identified in the case of 6.1 Residential Zones and the requirement to reduce the consumption of land for housing and associated urban development on the urban fringe. This is considered a minor inconsistency which is justified by the JBSS which has been approved by the Planning Secretary, the strategy has considered the objective of this direction and identifies the land which is subject of the planning proposal.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 7 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Biodiversity and Conservation 2021	Chapter 3 – Koala Habitat Protection 2020 Chapter 4 – Koala Habitat Protection 2021	Consistent	The PP is generally consistent with the SEPP as targeted surveys have not detected any Koala activity within Nebraska Estate or the wider Jervis Bay area. Consultation with DEWWCC (BCS) has agreed that no further koala assessment is required.
Housing 2021		Consistent	The PP is generally consistent with the SEPP, as there are no specific clauses applicable. Secondary Dwellings and Short-Term Rental Accommodation are permitted with consent, within the R5 and C4 zones.
Primary Production 2021	Chapter 2 – Primary Production and Rural Development	Consistent	The PP is generally consistent with the SEPP with the aim of protecting native vegetation, biodiversity, water resources, and the retention of rural land where not impacted by biodiversity constraints.
Resilience and Hazards 2021	Chapter 2 – Coastal Management	Consistent	The PP is generally consistent with the SEPP as the lower portion of the site is located within the Coastal Environmental Area. The PP proposes to zone the affected area as C2 land and does not propose increased development opportunities.

4 Site-specific assessment

4.1 Environmental

The PP will increase the level of environmental protection over the land with important biodiversity values, including the riparian corridors that link areas of bushland to the north and south of the Estate. The proposed C2 land in the Estate's northeast, which supports a large population of threatened orchids, is contiguous with bushland to the east and north of the Estate. Under Council's Policy titled Voluntary Acquisition – Residual C2 Environmental Conservation Land – Jerberra & Nebraska Estates, the owners of residual C2 land (i.e. not encompassed within a

development lot) will potentially be able to sell their land to Council (subject to agreement by both parties). Any land acquired by Council under the Policy will be managed for conservation in perpetuity.

4.1.1 Threatened Species Assessment

The PP is supported by Nebraska Estate Threatened Biodiversity Survey and Assessment (Appendix D) prepared by BES Australia in 2009 and previous studies undertaken in 1994 (Appendix D1 and D2). The most recent survey identified three (3) Vegetation Communities, eight (8) threatened fauna species, two (2) threatened flora species, one (1) Endangered Ecological Community (EEC), and one (1) migratory species.

When the biodiversity assessment was completed in 2009, all threatened flora and fauna species recorded within Nebraska Estate were listed as “vulnerable” under the NSW Threatened Species Conservation Act 1995. However, only the threatened flora; the Grey-headed Flying-fox and the migratory species were also listed on the Commonwealth Environment Protection and Biodiversity Conservation Act, 1999 (EPBC Act). Since 2009 an additional fauna species, flora species and EEC have been added to the EPBC Schedules. A full list of identified species is listed below in table 8:

Table 8 Threatened Species Assessment

Community/ species	Distribution and significance	BC Act / EPBC Act Listing	Comment
Vegetation Communities			
Currambene Lowlands Forest	The most widespread vegetation community within the subject land, occurring on most of the more elevated land. The north-eastern area was more intensely logged in the past.	N/A	This vegetation type is dominated by Koala use trees species <i>Eucalyptus pilularis</i> , and <i>Corymbia gummifera</i> . Targeted surveys were undertaken in 2009 and did not detect any evidence of Koalas habituating the area.
Coastal Sand Swamp Forest	Occurs in association with the drainage depressions and watercourses. This community is classed as Swamp Sclerophyll Forest, an Endangered Ecological Community (EEC).	N/A	No residential development is proposed within the EEC. See further discussion below.
Coastal Sand Forest	Occurs in the south-eastern extremity of the subject land.	N/A	
Threatened Fauna Species			
Eastern Coastal Free-tailed Bat	The Eastern Coastal Free-tailed Bat, Eastern False Pipistrelle, and the Greater broad-nosed Bat were detected and are expected to	Vulnerable / Not listed	The PP is generally consistent with the recommendations of the

Community/ species	Distribution and significance	BC Act / EPBC Act Listing	Comment
Eastern False Pipistrelle Greater broad- nosed Bat	forage throughout the subject land as part of much larger home ranges. No evidence of communal roosting was found but several large hollow-bearing trees are potentially suitable as potential refuge and breeding sites.		Threatened Species Assessment. The PP aims to retain as many hollow-bearing trees as possible within land proposed to be zoned C2 Environmental Conservation.
Grey-headed Flying-fox	The Grey-headed Flying-Fox was recorded foraging within the subject land. Breeding activity was not detected, and the species has extensive foraging areas.	Vulnerable / Vulnerable	The PP is generally consistent with the recommendations of the Threatened Species Assessment. The PP would enable the retention of forest and scattered trees, primarily within the C2 zone.
Yellow-bellied Glider	The subject landforms part of the home range of a group of Yellow-bellied Gliders, with the core habitat on adjoining land to the north. One individual Yellow-bellied Glider and two sap feeding trees were identified within the subject land. Sap feeding trees were also observed to the north and southwest of the subject land.	Vulnerable / Vulnerable	The PP is generally consistent with the recommendations of the Threatened Species Assessment. The PP would enable a large proportion of the key Yellow-bellied Glider habitat to be retained within the C2 zone.
Southern Greater Glider	The Southern Greater Glider was not observed by BES in 2009, but it was recorded in 1994 by Andrews Neil. Greater gliders were recorded at the northern edge of the subject land and within a then proposed regional “wildlife corridor” which extended from Pelican Road to north of Island Point Road. The Southern Greater Glider was listed in 2022 as ‘endangered’ on the NSW BC Act and the EPBC Act.	Endangered / Endangered	Given that the Greater Glider was not recorded in the 2009 assessment by BES, it is unclear if the species is still locally present. The PP seeks to rezone the higher value conservation land, including some potential Greater Glider habitat, to C2.
Gang-gang Cockatoo	The species was recorded foraging within the subject land and a nest tree was located just outside the northern boundary. Much of the subject land contains	Vulnerable / Endangered	The PP is generally consistent with the recommendations of the Threatened Species Assessment.

Community/ species	Distribution and significance	BC Act / EPBC Act Listing	Comment
	suitable foraging habitat, and the species is expected to forage in the area on a regular basis. Potential nesting resources also occur in larger hollow-bearing trees however these are of lower quality relative to the larger hollow-bearing trees within less disturbed areas of forest in the locality, including forest areas to the north.		The PP would enable some Gang-gang cockatoo habitat to be retained within the C2 zone.
Glossy Black-cockatoo	Feed trees (Black She-oaks) were identified, mostly in the northern part of the subject land. A small number were also located in the southeastern corner. No nesting activity was recorded, although there are many potentially suitable hollow-bearing trees.	Vulnerable / Vulnerable	The PP has been designed to minimise the potential removal of the identified Glossy Black-cockatoo feed trees and hollow-bearing trees. Approximately 50% of Glossy Black-cockatoo feed trees identified are within land proposed to be zoned C2. Others are located within the proposed bushfire asset protection zones (APZs) and therefore are likely to be removed in the long term.
Powerful owl	A Powerful Owl was observed roosting by day in the northern gully of the subject land. According to BES, the subject land is likely to form part of a much larger home range and habitat within the subject land is generally marginal or unsuitable.	Vulnerable / Not listed	The PP is generally consistent with the recommendations of the Threatened Species Assessment. The PP aims to retain the identified roost site within land proposed to be zoned C2.

Flora Species

Pterostylis Ventricosa	BES identified around 1,000 Biconvex Paperbark individuals within the drainage lines on the subject land. Several individuals or clusters of individuals were also identified away from the main occurrence. The recommendations for the Swamp Sclerophyll Forest EEC also apply to the Biconvex Paperbark.	Critically endangered/ not listed	No development is proposed in the areas where the orchid was found. This land is proposed to be zoned C2 Environmental Conservation and a 50-metre buffer has been applied as recommended. The PP does, however, seek to allow some limited rural residential development
------------------------	---	--------------------------------------	--

Community/ species	Distribution and significance	BC Act / EPBC Act Listing	Comment
			adjacent to the main occurrence in the northeast.
Leafless Tongue Orchid	A single Leafless Tongue Orchid was found in the north-eastern corner of the subject land. According to BES, the subject land is not expected to contain a large or important population of this species. A 50-metre buffer was recommended to retain habitat for other possible undetected individuals and ensure connectivity with suitable habitat to the northeast of the subject land.	Vulnerable/Vulnerable	No development is proposed within 50 metres of the recorded Leafless Tongue Orchid. The northeast corner of the subject land is affected by other threatened biodiversity constraints, in particular the presence of the critically endangered orchid, <i>Pterostylis ventricosa</i>
Biconvex Paperbark	BES identified around 1,000 Biconvex Paperbark individuals within the drainage lines on the subject land. Several individuals or clusters of individuals were also identified away from the main occurrence. The recommendations for the Swamp Sclerophyll Forest EEC also apply to the Biconvex Paperbark.	Vulnerable/Vulnerable	See comment below on Swamp Sclerophyll Forest

Endangered Ecological Community

Swamp Sclerophyll Forest	This EEC occurs in the drainage depressions and riparian land and corresponds closely with occurrence of the Biconvex Paperbark. BES recommended that a 50 m vegetated buffer be provided to the EEC, except where the buffer is dissected by roads. The report also recommended that no disturbances should be allowed within the buffer except that the outer edge could be reduced for bushfire asset protection where this does not substantially compromise the objectives of the buffer.	Endangered / Endangered	No residential development is proposed within the EEC and the PP is generally consistent with the recommendations of the Threatened Species Assessment. The PP identifies a buffer to the EEC between 30 and 50 metres wide. Where possible, proposed dwelling sites and APZs have been located outside the EEC buffer.
--------------------------	--	-------------------------	--

Migratory Species

Community/ species	Distribution and significance	BC Act / EPBC Act Listing	Comment
Black-faced Monarch	This migratory species, listed on the EPBC Act, is known to breed in damp forest types and forage in rainforest and eucalypt forest. Several individuals were heard calling from the gully near the northern boundary of study area. Primary habitat (including potential breeding habitat) for this species occurs throughout the dense, forested creek lines of the study area. Foraging habitat may extend into adjacent drier forest. Breeding by this species was not confirmed in the study area, although it is possible, given the suitability of habitat		The PP is generally consistent with the recommendations of the Threatened Species Assessment. The PP aims to retain the primary habitat within land proposed to be zoned C2.

4.1.2 Clause 34A Savings Provision

The Threatened Biodiversity Survey and Assessment (Appendix D) prepared by BES Australia in 2009 is supported by mapping that highlights the flora and fauna constraints across the site, and an area to be retained (no development), as per the recommendation made by the Department of Climate Change, Energy, the Environment and Water (DCCEEW) in 2009 (Figure 15).



Figure 15: Ecological Constraints Category Mapping (Source: Threatened Biodiversity Survey and Assessment 2009)

While substantial parts of the study area contain high level ecological constraints and should not be developed further, it is considered possible to allow limited development in the remaining areas provided other significant biodiversity values are not substantially impacted.

The success of this PP relies heavily on the Clause 34A savings provision, and the desired outcome will only work if the provision can be relied on. This clause has previously been used to support the development of other paper subdivisions within the Shoalhaven LGA, namely Jerberra and Verons Estates.

Clause 34A certification under the Biodiversity Conservation (Savings and Transitional) Regulation 2017 (NSW) recognises offset arrangements made before the commencement of Part 7 of the Biodiversity Conservation Act 2016 (NSW), which deals with biodiversity assessment and approval under the Environmental Planning and Assessment Act 1979 (NSW).

The clause 34A certification will formalise the proposed planning arrangement and ensure strict biodiversity provisions requiring important biodiversity values to be legally protected and managed in perpetuity through a positive covenant or equivalent.

'In-principle' support for clause 34A certification was sought from the then NSW Office of Environmental Heritage (now DCCEEW - BCS) on 31 May 2018. Further contact has been made between Council and the now DCCEEW-BCS to assist in achieving the certification of the estate.

In terms of satisfying the clause requirements, a complicating factor is that a significant proportion of the environmentally sensitive land, proposed to be zoned C2 Environmental Conservation, is unable to be incorporated into a larger development parcel. This "residue" land is proposed to be addressed via Council's *Voluntary Acquisition – Residual C2 Environmental Conservation Land – Jerberra and Nebraska Estates* policy, whereby residue C2 land can be acquired by Council and managed for conservation purposes in perpetuity. Further discussion around voluntary acquisition is discussed below in section 4.2.2.

To ensure the PP can utilise this clause, it is recommended that the PP be forwarded to DCCEEW-BCS as part of the exhibition process.

4.1.3 Bushfire

A Strategic Bushfire Study was undertaken by Eco Logical Australia (Appendix C), which determined that the proposed conceptual subdivision could meet the requirements set out for subdivision in Planning for Bushfire Protection (PBP) 2019. The construction standard for all proposed dwellings within the subject area will be minimum BAL-29, with Asset Protection Zones (APZ's) located within the developable area and maintained in perpetuity by a positive covenant.

Existing access roads are currently not to a standard required in PBP and will require upgrade works to be undertaken with supporting fire trails (with locked gates) for potential use during fire and flooding. The proposed road network is identified in the concept subdivision plan shown in figure 10.

4.2 Social and economic

A Social Impact Assessment has not been undertaken as part of this planning proposal as the proposal has been informed by Council's previous experiences with other paper subdivisions within the LGA. The Nebraska Estate rezoning investigations date back to a 1992 Council resolution, so the community expects that the planning status of this paper subdivision will be resolved. Finalising the PP will provide certainty on the Estate's development potential and environmental outcomes.

4.2.1 Development Control Plan (DCP)

A supporting site-specific chapter in the overall Shoalhaven Development Control Plan (DCP) 2014 will be needed to resolve complexities associated with developing the Estate and to help achieve intended outcomes. The site-specific DCP chapter would provide additional objectives, performance controls and acceptable solutions, supported by relevant maps and figures based on the concept plan (figure 10). The following themes and development issues are proposed to be covered:

- Subdivision layout: The draft concept plan in shows any consolidation and/or re-subdivision proposed to be required/allowed under the LEP. The draft concept plan will continue to be refined and improved.
- Biodiversity management (vegetation clearing and retention): Detailed controls to ensure development is designed to avoid and minimise impacts on biodiversity. Where relevant, a positive covenant (88B instrument) will need to be registered on the property title to ensure that any important biodiversity values within the lot will be protected and managed into the future.
- Desired Future Character: Desired future character provisions would aim to facilitate residential development that responds to the land's environmental qualities and achieves ecologically sustainable development principles.
- Bushfire protection planning: Provisions will be informed by the Bushfire Strategic Assessment completed by Eco Logical Australia (Appendix C).
- Building Design and Location: The location and design of dwellings and ancillary structures should be responsive to the environmental constraints.
- Aboriginal Cultural Heritage: Controls are to be introduced to ensure that Aboriginal sites previously identified, are not developed or disturbed unless the relevant approvals have been obtained and further assessment undertaken if necessary.
- Stormwater management: Provisions will be informed by the recommendations of the Integrated Water Cycle Assessment prepared by Footprint Engineering (Appendix E, E1 and E2).
- Infrastructure works: controls to ensure that roads, fire trails, rights-of-way and other subdivision infrastructure are designed and managed consistent with objectives to manage bushfire risk, protect adjoining biodiversity habitat, and maintain natural flow conditions and protect water quality.
- Flooding & Emergency access: All dwellings are proposed to be located above the Projected 2100 PMF Flood Extent. A Home Emergency Plan (Flood) is proposed to be required with each DA for a dwelling.
- Soil Management: Provisions to ensure risks associated with Acid Sulfate Soils (ASS) and soil erosion are minimised during the construction phase.

The DCP will be required to be prepared and finalised prior to development consent being granted. A local clause will be required to ensure compliance.

4.2.2 Voluntary Acquisition

The Council's longstanding policy position is that it does not purchase properties in paper subdivisions, as doing so would set an unacceptable precedent and be financially untenable. Council's policy 'Rates – Small Lot Rural Subdivisions – Dealing with Unpaid Rates & Charges' facilitates the acquisition of lots in paper subdivisions in lieu of unpaid rates in limited circumstances. The Policy titled Voluntary Acquisition – Residual C2 Environmental Conservation Land – Jerberra & Nebraska Estates was first adopted by Council on 5 October 2021. The Policy currently applies to Jerberra Estate which was rezoned in 2014. The Policy will apply to Nebraska Estate when finalised.

The objective of the Policy is to “*facilitate and provide a mechanism for the cost-neutral voluntary acquisition of ‘Residual C2 Land’ in the Jerberra and Nebraska Estates “using net profits from the sale of Council land [in the relevant Estate] that is both zoned and suitable for development (developable)”*. The Policy means that owners of ‘residual C2 land’ in Nebraska will potentially be able to sell their land to the Council (if they wish) subject to an agreement on the value. Council will not compulsorily acquire land. The Policy will not apply to Nebraska Estate until the land has been rezoned and a DCP is in place.

Any land acquired under the Policy will be included in a conservation management plan as required by s36 of the Local Government Act 1993.

4.3 Infrastructure

Nebraska Estate is located on the fringe of the existing serviced area of St Georges Basin. Nebraska Estate is a paper subdivision, and substantial infrastructure upgrades will be required to enable residential development. The costs of designing, acquiring land (where relevant), and constructing proposed infrastructure upgrades, including roads, fire trails, reticulated water, sewer, and stormwater management, would be borne by the benefiting landowners via a special rate or other suitable funding mechanism.

Consultation with Transport for NSW (TfNSW), Endeavour Energy, Rural Fire Service, and Shoalhaven Water will be undertaken during the exhibition phase of the planning proposal to ensure future serviceability can be achieved.

5 Consultation

5.1 Community

Council proposes a community consultation period of 30 days.

Due to the complexities and quantity of supporting information associated with the PP the extended exhibition period proposed is considered appropriate, and forms the conditions of the Gateway determination.

5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 40 working days to comment:

- NSW Rural Fire Service (RFS)
- NSW State Emergency Service (SES)
- NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW)
 - Biodiversity, Conservation and Science (BCS)
 - Flooding
 - Heritage
- Transport for NSW
- Water NSW
- Endeavour Energy
- Shoalhaven Water
- Jerrinja Local Aboriginal Land Council

6 Timeframe

Council proposes a 12-month time frame to complete the LEP.

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a standard

The Department recommends an LEP completion date of 27 February 2026 in line with its commitment to reducing processing times and with regard to the benchmark timeframes. A condition to the above effect is recommended in the Gateway determination.

It is recommended that if the gateway is supported it is accompanied by guidance for Council in relation to meeting key milestone dates to ensure the LEP is completed within the benchmark timeframes.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority.

As the site/planning proposal is categorised as standard and Council is intimately involved in the proposal the Department recommends that Council be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The PP is considered to have strategic and site merit.
- The PP is consistent with current local and regional strategic plans.
- The PP will formalise an existing paper subdivision to create dwelling potential for 17 dwellings.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 4.1 Flooding, 6.1 Residential Zones, 9.1 Rural Zones, 9.2 Rural Lands are minor and/or justified, and
- Note that the consistency with section 9.1 Direction, 4.3 Planning for Bushfire Protection and 4.4 Remediation of Contaminated Land, is unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to conditions.

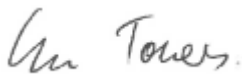
The following conditions are recommended to be included on the Gateway determination:

1. The planning proposal is to be updated to:
 - Undertake the Phase 1 Preliminary Land Contamination Assessment Report and incorporate the findings into a revised planning proposal.
2. Prior to community consultation, consultation is required with the following public authorities:
 - Rural Fire Service (RFS)
 - NSW State Emergency Service (SES)
 - NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) – Flooding
3. Prior to community consultation, the planning proposal is to be revised to address conditions 1 and 2 and forwarded to the Department for review.

4. Consultation is required with the following public authorities:
- NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW)
 - Biodiversity, Conservation and Science (BCS)
 - Flooding
 - Heritage
 - Water NSW
 - Endeavour Energy
 - Shoalhaven Water
 - Jerrinja LALC
5. The planning proposal should be made available for community consultation for a minimum of 30 working days

Given the nature of the planning proposal, it is recommended that the Gateway authorise council to be the local plan-making authority and that an LEP completion date of 27 February 2026 be included on the Gateway.

The timeframe for the LEP to be completed is on or before 27 February 2026



24/2/25

Graham Towers
Manager, SWAM



18/3/2025

Chantelle Chow
A/Director, SWAM

Assessment officer

Stephanie Wood
Planning Officer
Ph: 9274 6550