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**REPORT OF GENERAL MANAGER**  
**POLICY AND RESOURCES COMMITTEE**

**TUESDAY, 8 SEPTEMBER 2015**

**PLANNING AND DEVELOPMENT**

***ITEMS TO BE DEALT WITH UNDER DELEGATED AUTHORITY***

1. **Heritage Estates, Worrowing Heights – update and proposal to regulate vehicle access** **File 1446e**
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**SECTION MANAGER: Gordon Clark**

**PURPOSE:**

- Seek Council's endorsement to exhibit a proposal to install gates and barriers to attempt to regulate vehicular access into the Heritage Estates.
- Provide an update on finalisation of the 'E2' Planning Proposal and the Federal Court appeal by affected landowners.

**RECOMMENDED, in accordance with the Committee's delegated authority from Council, that the Committee:**

- a) **Endorse and exhibit the proposal to install gates, barriers and signs at the entrances to the Heritage Estates as outlined in this report;**
- b) **Refer the matter to the Shoalhaven Traffic Committee following the exhibition;**
- c) **Report the Shoalhaven Traffic Committee's recommendation and outcome of the exhibition to Council before determining whether to proceed;**
- d) **Continue to work collaboratively with NPWS and other the relevant stakeholders to address land degradation within the Heritage Estates; and**
- e) **Receive the updates on the Federal court appeal, the E2 Planning Proposal and the Voluntary Heritage Estates Land Purchase project for information.**

**OPTIONS**

In relation to the E2 Planning Proposal (PP), Council can

1. Receive the update for information and finalise the E2 zoning pending a favourable outcome of the Federal Court appeal. (Recommended) or
2. Not wait for a decision on the Federal Court appeal before finalising the E2 zoning.

In relation to the land degradation and illegal dumping issue, Council can

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1. Exhibit the proposed installation of gates and barriers to control vehicle access as recommended and continue to work with other stakeholders to address land degradation. (Recommended) or
  2. Do nothing to restrict vehicles access into the Heritage Estates. This is not recommended due to the public health and environmental risks.

## **DETAILS**

### **Federal Court case (Esposito & Ors v Commonwealth of Australia, State of NSW, Foundation for National Parks and Wildlife, Shoalhaven City Council & Ors) Update**

As Councillors are aware, a class action was lodged in the Federal Court by a group of Heritage Estates landowners (Esposito & Ors v Commonwealth of Australia, State of NSW, Shoalhaven City Council & Ors). The case was heard by Justice Foster in October 2013 and May 2014.

The applicants (landowners who participated in the class action) essentially claimed that actions by the Commonwealth of Australia, the State of NSW, Shoalhaven City Council and the Foundation for National Parks and Wildlife (the respondents) including the decisions to provide funding for the Voluntary Heritage Estates Land Purchase (HELP) project and the Federal Environment Minister's refusal of the proposed residential development in 2009 amounted to an acquisition of property other than on 'just terms' in contravention of the Constitution.

The judgement was delivered on 24 December 2014 and 8 January 2015. The applicants were unsuccessful on all grounds and costs were awarded against the applicants. The judgement is available on the Federal Court's website at: [www.judgments.fedcourt.gov.au](http://www.judgments.fedcourt.gov.au) (file number: NSD924/2013).

The applicants subsequently lodged an appeal in February 2015, which was heard in May 2015, by Chief Justice Allsop, Justice Flick and Justice Perram. Documents relating to the appeal are available on the [Federal Court's website](#) (file number: NSD78/2015). The judgement is currently pending.

### **'E2' Planning Proposal Progress**

A Planning Proposal (PP) to rezone the Heritage Estates and on adjoining paper subdivision land near Errol Bay to 'E2 - Environmental Conservation' was publicly exhibited in April/May 2014. As a precaution, on 29 July 2014, Council resolved to adopt the PP with minor changes but:

- f) *Do not submit the Heritage Estate component of the Planning Proposal for final notification until the outcome of the Federal Court case is known. (See update below)*

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- g) Report the outcome of the Heritage Estates Federal Court case to Council.*

In accordance with the above resolution, the exhibited PP was split into two (2) separate Local Environmental Plan (LEP) amendments:

1. Elouera and Fairview Estates (located on the southern side of Erowal Bay Road, near Erowal Bay). **Comment:** Completed when Amendment No. 3 to Shoalhaven LEP 2014 was notified on 24 October 2014.
2. Heritage Estates, Worroving Heights. (See update above on the Federal Court case.)

### **Voluntary Heritage Estates Land Purchase (HELP) project - update**

Funding for the Voluntary HELP project was initially provided by the Australian Government in 2012 for a period of 12 months. For its part, Council offered to donate its land within the Estates and confirmed its intention to rezone the land to E2 to better reflect its high biodiversity values.

The funding initially expired on 31 December 2014. However, following the Federal Court's judgment and the subsequent appeal by the landowners (see above), the Australian Government is considering an extension to the project.

NSW National Parks and Wildlife Service currently now owns approximately 458 lots within the Estates, with a 'salt and pepper' distribution. The Foundation for National Parks and Wildlife (FNPW) has received offers to purchase another approximately 64 privately owned lots. Council will also donate its lots (approximately 80 lots) and ultimately, the road reserves. The road reserves may need to be donated in stages to avoid land-locking any private landowners.

A map showing uptake of the voluntary purchase offer is available on the Foundation's website at:

<http://www.fnpw.org.au/PDFS/HeritageEstates/HeritageEstatesUptake.pdf>

### **Proposal - install gates and barriers to regulate vehicular access**

#### ***Introduction***

Vehicles and trail bikes have been accessing the network of unmaintained tracks in the Heritage Estates for many years. Ongoing use of these informal tracks by trail bikes and 4WDs, combined with extensive groundwater discharge and surface runoff, has caused extensive erosion of the tracks in the last few years. Many of the tracks are now impassable to most vehicles (although they continue to be used by 4WD and trail bike enthusiasts).

Installing gates and barriers is critical to:

- Addressing land degradation and ultimately helping protect water quality in St Georges Basin

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- Preventing illegal dumping

It will also assist Council to manage public risk arising from the deterioration of the tracks, and help to prevent bushfire arson (and hence, fulfil Council's obligations to prevent the spread of fires under S. 63 of the Rural Fires Act).

Unless vehicle and trail bike access is ultimately addressed, other measures will be ineffective. Further information is provided later in this report in respect of two key issues: illegal dumping; and land degradation.

### ***Current access situation***

The road reserves in the Heritage Estates were dedicated as "public roads" on 31 March 2006.

Access to the Heritage Estates is gained at the following locations:

- From The Wool Road onto the Birriga Avenue road reserve.
- From Naval College Road across a combination of the Birriga Avenue road reserve, privately owned lots and lot 315 DP 8591 (owned by Council).
- From Erowal Bay Road at three or four access locations (one track is currently blocked by a fallen tree).

The entry points generally align with Council's road reserves. The entry to St Georges Avenue Reserve (Lot 1 DP 625153) has a locked gate. The other entry tracks align with the road reserves except for the Naval College Road entry. The road reserves in the Heritage Estates are not maintained by Council in accordance with MIN05.1555.

### ***Statutory considerations***

A public road is one that provides a right of free passage to members of the public (refer to sections 5 and 6 of the NSW Roads Act 1993). This includes providing free access to all members of the public including those intending to commit illegal or unauthorised activities. Note: The proposed traffic regulation measures are not intended to prevent pedestrian access and vehicle access will be possible for valid purposes, such as removal of dumped material subject to consideration of the risk to safety. However, as outlined below, Council does have the legal ability to erect gates and barriers on public roads under certain circumstances.

Under Section 116 of the NSW Roads Act 1993, a roads authority may apply to the NSW Roads and Maritime Services (RMS) for consent to erect a barrier for the purpose of regulating traffic on a public road for purposes (other than for road work).

The RMS has advised that Section 116 of the Act has been delegated to Council, subject to a condition that exercising of this function requires Council to consider the technical recommendations of the Shoalhaven Traffic Committee (STC), and the Traffic Committee guidelines also apply include the RMS right of appeal.

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Pursuant to the NSW Roads Act 1993 and terms of the delegation to Council any proposal to install gates or barriers to regulate vehicular access would need to be publicly exhibited for at least 28 days and a summary of feedback received during the exhibition would need to be referred to the STC for advice before Council makes a final decision.

Consistent with usual Traffic Committee practice, Council will have to notify the RMS of its decision and the RMS will have two weeks period to determine whether they will appeal Councils' decision.

While Council is not legally obliged to upgrade and maintain the roads in the Heritage Estates, it does have an obligation to minimise public risk. There is legal recognition that the actions taken by Council to minimise risk must be reasonable and within available resources considering the numerous budget needs over all Council services.

The public risk associated with unmaintained roads in paper subdivisions was considered by Council in 2005. The outcome was that signs were erected indicating that the roads are not maintained by Council (MIN05.1555).

The recent deterioration of the tracks in the Heritage Estates has however increased public risk. This risk would be reduced if gates/barriers are ultimately installed as proposed.

### ***Proposed traffic regulation measures***

# The range of traffic regulation measures proposed to restrict vehicles from entering the Heritage Estates are shown on the map attached (**Attachment "A"**) and described below.

- Installation of three (3) gates similar to those shown in **Attachment "A"**, at the following locations:
  - At the entry to Birriga Avenue on the eastern side of its intersection with The Wool Road.
  - At the entry to Birriga Avenue on the western side of its intersection with Naval College Road.
  - At the entry to Wanawong Boulevard on the northern side of its intersection with Erowal Bay Road.
- Placement of boulders, mounding and/or steel cable fencing on either side of each gate as appropriate to prevent vehicles by-passing the gates.
- Placement of boulders, mounding and/or steel cable fencing as appropriate at the other entry points along Erowal Bay Road.
- Each gate would be locked. Keys would be held by Council, the RFS and NPWS. As noted previously, vehicle access will be possible for valid purposes, such as removal of dumped material subject to consideration of the risk to safety.
- Advisory signage and logos would be provided on each gate.

### ***Land and water degradation***

Council has received ongoing representations from community members about environmental degradation in the Heritage Estates.

To enable concerns about land and water degradation in the Heritage Estates to be assessed, a field survey was undertaken in May 2015 to quantify the extent and severity of erosion. The key findings are shown in Figure 1 and detailed in Table 1 below. The full erosion report is provided in the **Councillors Information Folder** for today's meeting.

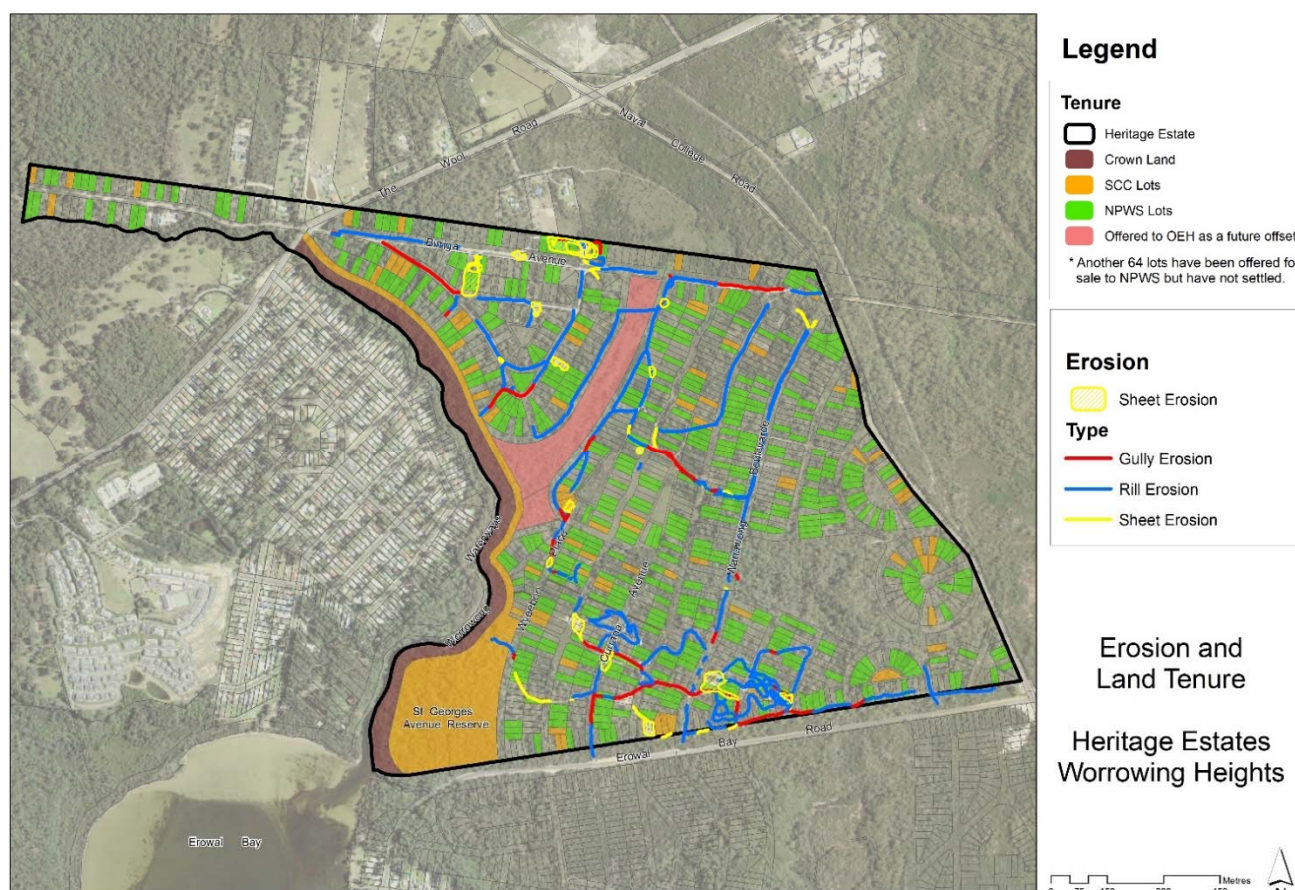


Figure 1 - Extent of erosion in Heritage Estates, May 2015

Table 1 – Erosion length/area

Type	Total length/area
Sheet erosion <sup>1</sup>	Linear: 1,060 metres Areas: 7.6 hectares
Rill erosion <sup>2</sup>	10,595 metres
Gully erosion <sup>3</sup>	2,646 metres

1. Sheet erosion is removal of a uniform thin layer of soil by raindrop splash or water run-off.
2. Rill erosion is the removal of soil by concentrated water in shallow drainage lines less than 30 cm deep.
3. Gully erosions occurs when running water erodes soil to form channels deeper than 30 cm.

All of the erosion is essentially associated with vehicle and trail bike tracks. Of the combined areas of erosion, approximately 39% is within the road reserves. Some of the road reserves (Birriga Avenue between The Wood Road and Naval College Road and

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Wanawong Boulevard) are identified on the fire trail register. Birriga Avenue also contains a water main. It is important that gates are installed before any work is undertaken to improve the condition of these roads.

The tenure of the remaining 61% of erosion has not been calculated at this stage, but it involves a mix of Council, NPWS and private land. Consultation with the landowners and other stakeholders will be essential in any efforts to address degradation of this land. Preliminary discussions have been held with NPWS staff about a possible collaborative approach to addressing the erosion on the Council and NPWS land.

In general, the less severely degraded land will regenerate naturally if vehicles and trail bikes are excluded. A combination of brush matting (laying seed-bearing branches from surrounding vegetation) and diversion banks may need to be employed for moderately degraded land. The deep rills and gullies may need to be reshaped and stabilised. Any such work should not be undertaken until the vehicle/trail bike access is addressed.

Working in collaboration with NPWS, Council has submitted an application for \$100,000 over 3 years under the NSW Environmental Trust – Restoration and Rehabilitation program. If awarded, the funding would be used primarily for erosion control and stabilisation on the public land. The local bushcare group has offered to assist with seed collection.

### ***Illegal dumping***

The Heritage Estates has been a hotspot for illegal dumping for many years. Dumped items include motor vehicles (that are often stolen), furniture and white goods, building materials (including asbestos) garden waste and general household waste. In the past, Council Rangers have liaised with metal recyclers to have the motor vehicles and other large metal items removed. However, the tracks are now virtually inaccessible to the trucks used by the metal recyclers.

Council arranged to have several tons of dumped rubbish removed in May 2010, with labour assistance provided by Department of Corrective Services. In 2012, over 3.5 tons of illegally dumped bonded asbestos was removed. Council removed the bulk of the material and specialist contractors were engaged to remove the smaller pieces of asbestos that had been broken up and spread to other areas by passing traffic and storm water runoff. NSW National Parks and Wildlife Service (NPWS) contributed to the cost.

Over the years, Rangers have investigated numerous instances of illegal dumping in the area and enforcement action has been undertaken when evidence exists. Despite best efforts, only 10—15% of illegal dumpers are prosecuted.

The following quantities of dumped materials were estimated by the Regional Illegal Dumping Ranger to be in the Heritage Estates in May 2015:

- 15 tonnes of building/demolition waste
- 20 cubic metres of household waste, *i.e. mattresses/fridges/lounges etc*
- 20 cubic metres of green waste

Restricting vehicle access has proven to be the single most effective means of preventing illegal dumping.

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### ***Trail bike leaflet***

- # A draft educational leaflet has been produced targeting people who ride trail bikes in the Heritage Estates. It explains the damage being caused by this activity and provides information on alternative locations where trail bike riding is permitted/appropriate. The leaflet will be distributed to local schools and businesses. Council is currently seeking approval from the NSW Police to have its logo added. A copy of the draft leaflet is provided in **Attachment “B”**.

Council has a responsibility to respond to community concerns about the land degradation issues in the Heritage Estates. Council is working cooperatively with NPWS (the other significant landowner in the Heritage Estates) and other relevant agencies to resolve the land and environmental degradation issues with a combination of available resources and external funding assistance (see below).

### **FINANCIAL IMPLICATIONS:**

The total cost of installing the gates and signs will be approximately \$10,500. This will be partly funded from the fire trail budget and partly from funding provided by the State Government to help curb illegal dumping, as announced on 21 August 2015.

The NPWS Nowra office has been allocated funding that, subject to resolving policy issues will be available for the installation of fences/barriers along Errowal Bay Road. The total value of NPWS contribution (including in kind) will be in excess of \$100,000.

An application for funding is being submitted in collaboration with NPWS under the NSW Government’s Environmental Restoration and Rehabilitation program. The application will be seeking \$100,000 over three years to undertake erosion control and stabilisation. More detail will be provided when the matter is next reported to Council.

### **COMMUNITY ENGAGEMENT:**

It is proposed to publicly exhibit the proposed traffic control measures for a minimum of 28 days. This would involve:

- writing to landowners, and relevant CCB’s
- placing a notice in the South Coast Register
- displaying details at Council’s administrative building in Nowra and on Council’s website.

The proposal and feedback received during the exhibition would then be forwarded to the STC. The STC’s recommendation would then be reported to Council for a final decision on whether to proceed.

At the appropriate stage, further consultation would be undertaken in relation to any proposed erosion control and remediation works.

### **CONCLUSION:**

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The proposed measures to control recreation vehicle use in the Heritage Estates are critical to preventing illegal dumping and worsening of land degradation. Landowners and the community will have the opportunity to formally comment on the proposal as part of the public exhibition process.

## Legend

### Land Tenure

- Heritage Estate
- Crown Land
- SCC Lots
- NPWS Lots
- Offered to OEH as a future offset

\* Another 64 lots have been offered for sale to NPWS but have not settled.

Install locked gates with boulders and/or steel cable wire fence to prevent side access and chicanes where appropriate

- ① Birriga Ave - The Wool Rd
- ② Birriga Ave - Naval College Rd
- ③ Wanawong Blvd - Errowal Bay Rd

●●●● Install boulders and/or steel cable fence

- ④ Entry to St Georges Avenue Reserve - Existing locked gate

## Proposed Vehicle Control Measures

## Heritage Estates Worworing Heights

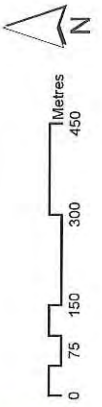




Plate 1 – Photograph of a gate installed along Forest Rd. This is the style of gate proposed at both ends of Birniga Ave and the southern end of Wanawong Blvd.



Plate 2 - Photograph of a post and cable fence

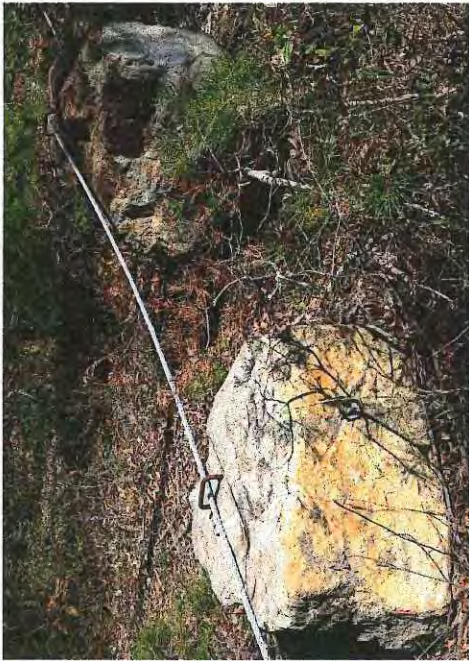


Plate 3 - A rock and cable fence, typically used where bedrock hinders installation of posts

## check out Dirt bike riding

Braidwood Rd, Nowra

[www.nowramotorcycleclub.com.au](http://www.nowramotorcycleclub.com.au)

Nowra and Districts Motorcycle Club offer a number of very good tracks including SX, MX, enduro, pit bike and beginners tracks.

Nowra Motoplex, Braidwood Road,  
Yerriyong

[www.nowramotoplex.com.au](http://www.nowramotoplex.com.au)

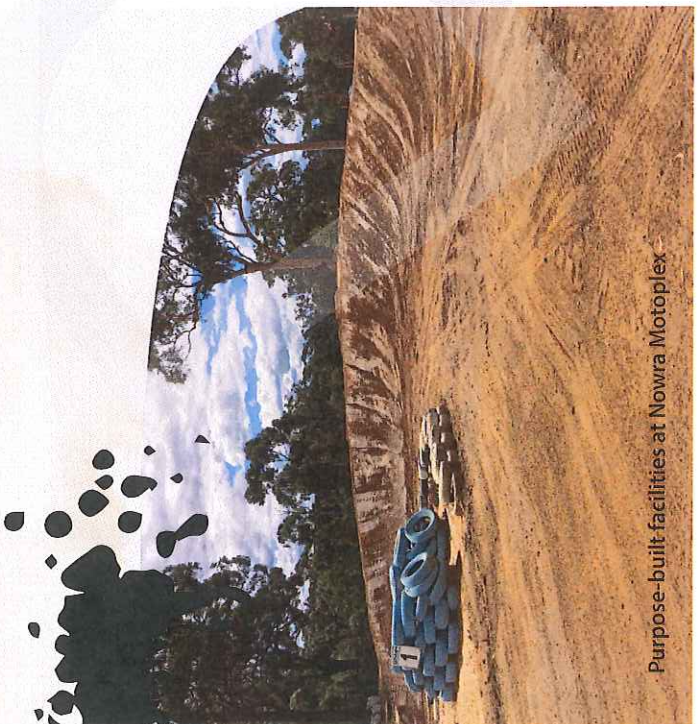
Phone: 0458 200 860 or 0458 200 999

The Nowra Motoplex has a number of very good tracks including SX, MX, enduro, pit bike and beginners tracks.

State Forests & National Parks

[www.forestrycorporation.com.au](http://www.forestrycorporation.com.au)

Registered bikes with a licenced riders wearing required safety gear can ride on public roads and trails through State Forests and National Parks.



Purpose-built facilities at Nowra Motoplex

## facts

- Heritage Estates is a 180 ha paper subdivision near Erowal Bay and Old Erowal Bay. It was created during WW1 and comprises 1200 urban size lots in bushland.
- Even though the land's zoning has prevented the individual lots from being developed since zoning was introduced in 1964, they were sold in the 1980s. Council was powerless to prevent this from happening.
- Vegetation in the Heritage Estates is protected under state and national environmental legislation due to its high biodiversity value.
- The NSW National Parks and Wildlife Service (NPWS) has purchased more than 450 of the 1200 lots in the Heritage Estates with funding provided by the Australian Government. Council will be donating the 70 lots that it owns to NPWS.

Shoalhaven  
City Council

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## Dirt bikes & Heritage Estates



Shoalhaven  
City Council

# why not?

## Dirt bikes

on Heritage Estates

Trail bike riding in the Heritage Estates land has caused severe soil erosion by damaging plants that normally protect the soil. Trail bikes create ruts in tracks that become worse with wet weather and ongoing trail bike use. When the ruts become too deep to ride in, users make new tracks. Trail bike riding is prohibited in the public land in the estate because of the problems it causes.

### A Special Place

Heritage Estates is rich in biodiversity with nine types of vegetation which support at least 26 different threatened species. The land is also part of a wildlife corridor that is strategically important to biodiversity in the Jervis Bay region.

The land's natural vegetation also filters runoff before it enters St Georges Basin, an important recreational fishery and community asset. These are some of the reasons why the site cannot be developed and will eventually become a national park.

### How can you help?

- Spread the word that trail bike riding is not allowed in the Heritage Estates due to the damage it is causing.
- If you are a trail bike rider, ride in other locations where trail bike riding is allowed (See overleaf).
- Don't be a tosser. Significant penalties apply for illegal dumping.
- Report any illegal or suspicious activity to Council on XXXXXXXXXX.

