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**REPORT OF GENERAL MANAGER**  
**STRATEGY AND ASSETS COMMITTEE**

**TUESDAY, 19 JANUARY 2016**

**PLANNING AND DEVELOPMENT**

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

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| <b>1. Heritage Estates - Proposed Gates/Barriers - Submissions</b> | <b>File 1446e</b> |
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**SECTION MANAGER: Gordon Clark.**

**PURPOSE:**

Consider submissions on the proposed installation of gates and barriers at the Heritage Estates under Section 116 of the NSW Roads Act 1993 (the Act) and to seek Council's direction to refer the proposal to the Shoalhaven Traffic Committee (STC).

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

- a) The proposal be referred to the Shoalhaven Traffic Committee in accordance with Section 116 of the NSW Roads Act 1993 subject to removing the reference to the installation of boulders and/or steel cabling along Naval College Road;
- b) Council prepare and exhibit a separate Section 116 notice in relation to the proposed erection of a gate/barrier on Birriga Avenue to the west of the Greek Orthodox Church complex and the erection of a barrier on the western side of Naval College Road adjoining the Heritage Estates;
- c) The Shoalhaven Traffic Committee recommendation be reported back to Council before proceeding in accordance with the requirements of Section 116 of the Act.

**OPTIONS**

- 1. Refer the proposal to STC as recommended.
- 2. Refer the proposal to STC as exhibited (i.e. including the potential erection of a barrier along Naval College Road) - not recommended as there is a need to ensure the requirements of the Act are met.
- 3. Not proceed – This is not recommended as the tracks will continue to deteriorate to the detriment of the environment, and increase public risk.

**DETAILS**

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## Background

Ongoing use of tracks in the Heritage Estates (HE) by vehicles and trail bikes has resulted in illegal dumping, land and water degradation, and an increased risk to public safety. The condition of the tracks has rapidly declined in recent years. New tracks are continually being created by 4WD and trail bike activities as the older tracks become impassable.

Unless vehicle and trail bike access is ultimately addressed, other control/management measures will be ineffective. Under the Act, 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).

This function of the Act has been delegated to Council, subject to a condition that requires Council to consider the technical recommendations of the STC when exercising this function.

On 8 September 2015, Council resolved to:

- 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;*

Due to the potentially contentious nature of the proposal, Council's Traffic and Transport Unit has advised that the feedback from the public exhibition should be reported to Council **before** the proposal is forwarded to the STC. The STC's recommendation will then need to be reported back to Council in accordance with The Act.

## Public exhibition details

- # The proposal was publicly exhibited from Wednesday 7 October to Friday 6 November 2015 and a notice was placed in the South Coast Register on 7 October 2015. A copy of the exhibited map and explanatory statement is provided as **Attachment "A"**. Notification letters were sent to landowners within the HE, as well as members of the community who had previously written to Council in relation to the problems caused by vehicle/trail bike activity in the area.

The proposal was available for viewing at Council's Nowra administrative building, and also on Council's website.

## Summary of submissions

- # A total of 55 submissions (including form letters) were received in response to the public exhibition, 48 were against the proposal proceeding and 7 were in favour. A full copy of the submissions is provided in the **Councillors' Room**.

All of the submissions against the proposal were from or on behalf of landowners. Legal advice obtained in response to certain issues is provided in a separate confidential report to this meeting. A detailed breakdown of the issues raised in submissions is provided in Table 1 (against the proposal) and Table 2 (for the proposal).

*Table 1 - Issues raised in submissions against the proposal by or on behalf of landowners*

Submission No.	Issue	Staff comments
General/historical/miscellaneous		
1	<i>"Council will try anything but I will not sell our property"</i>	Noted.
9*, 10, 23, 28, 31, 35, 38	The proposal is a violation of the owners' private property rights. <i>"The proposal will deny access to my property."</i> Landowners have the right of access.	Landowners will continue to be able to access their land by foot in accordance with statutory requirements. The Act states: <i>"The owner of land adjoining a public road is entitled, as of right, to access (whether on foot, in a vehicle or otherwise) across the boundary between the land and the public road."</i>
9*, 10, 20, 23, 35	The Shoalhaven Landowners Association (SLA) previously spent \$45K on installing gates and locks and fences but the gates and locks were continually broken.	Fencing is still located around much of the perimeter of the Estate. The proposed gates have been used successfully elsewhere in Shoalhaven (e.g. Forest Road).
10, 35	Landowners represented by the SLA have paid rates for 28-34 years.	Noted.
37	SLA has instructed its members to refuse consent to install gates and barriers. <i>"I instructed my members to refuse consent to protect their financial interests in their land and... to force the State to issue a Property Acquisition Notice (PAN)..."</i>	Noted.
37	Minutes of the Voluntary Heritage Estates Land Purchase (HELP) project Steering Committee meeting on 4 <sup>th</sup> /5 <sup>th</sup> April 2013 noted discussion of the potential installation of gates and barriers, and the anticipated push back from landowners. <i>"...should become an immense embarrassment to all parties involved in this State and Federally sanctioned LAND THEFT escapade."</i>	The minutes show that the Steering Committee discussed the distinction between installing barriers (i.e. under Part 8 of the Act) and formally closing the roads (under Part 4 of the Act). The minutes show that the Steering Committee asked the Council representatives to seek further advice given the likely reaction from the landowners and potential impact on the Voluntary HELP project, which at that time had only 3 months left to run.
38	<i>"I have invested a lot of time and money in improving the area as well (building bridges, clearing access tracks, &amp; installing perimeter fence and lockable gates)." "By investing in this neighbourhood, residents would have created many new jobs and businesses..."</i>	Noted.
35	Complained to Council in the 1990s about trail bikes and their ramps, and illegal dumping. Council's response was that nothing could be done about it. The problem hasn't just appeared in the last several years. Council's statement that it has been going on for several years <i>"is a gross fabrication"</i>	The status of the roads in the HE was not resolved until they were dedicated as public roads in 2005. It is acknowledged that erosion and illegal dumping have been occurring in the HE for a number of years. The erosion has accelerated in recent years. Other efforts to curtail recreational vehicle and trail bike use

	<i>and lie".</i>	have had limited effect.
35	Why are you proposing to erect barriers which will not stop entry from surrounding land such as Old Erowal Bay?	Pedestrian access will not and cannot be restricted. Monitoring will be necessary to identify any new trail bike access points and take remedial action as appropriate.
35	Proposal will be technically illegal without our permission.	This issue is addressed in confidential report.
35	Trail bikes can, and have been entering from multiple points wherever there is a gap in the bush.	The proposal will aim to reduce trail bike activity with the available resources. It is acknowledged that this is a challenging task.
35	It will not stop dumping, which can be done by four wheel drive vehicles, by bikes, trailers and hand.	Restricting vehicle access is a proven illegal dumping prevention strategy.
35	Proposal is a misuse of public money and a violation of public trust and responsibility.	The proposal will help to prevent further erosion from occurring and therefore protect St Georges Basin. It will also help to reduce/eliminate illegal dumping on the land.
35	<i>"I and other landowners are not the source of these breaches."</i>	The vast majority (more than 95%) of landowners live outside Shoalhaven. It is highly likely that the vast majority of vehicle and trail bike activity can be attributed to non-landowners.
<b>Statutory issues (NSW Roads Act and NSW Roads Regulation)</b>		
2, 3, 5, 6, 7, 11, 12, 13, 14, 15, 19, 20, 21, 24, 25, 26, 29, 30, 34, 35, 36, 37	<p>Under <i>Clause 73 of the NSW Roads Regulation 2008</i> (the Regulation):</p> <p>An application for a public gate permit that is made by a person who owns land on one side only of the road across which the proposed public gate is to be erected must be accompanied by the written consent of the owner or owners of the land on the other side of the road.</p> <p><i>"In respect of [relevant gate numbers inserted], I do not give my permission for those gates to be erected as it would deny me access to my property."</i></p> <p><i>"I also object to the placement of concrete boulders and steel cabled fences along Erowal Bay and Naval College Roads as intimidated..."</i></p>	<p>Section 128 of the Act and Clause 73 of the Regulation do not apply.</p> <p>Large areas of the Estate cannot be safely accessed by vehicle at present. The proposed gates will generally prevent vehicle access due to safety and environmental concerns. Pedestrian access will be provided.</p>
5	<p>Under Clause 74 of the Regulation, before determining an application for a public gate permit, the roads authority:</p> <p>(a) must cause notice of the proposal to erect a public gate (including particulars as to the proposed location of the gate) to be published in a local newspaper, and</p>	The proposal is not for a public gate under Section 128 of the Act to which Clause 74 of the Regulation relates.

	<p>(b) must allow sufficient time (being not less than 28 days from the date of publication of the notice) for written submissions on the proposal to be made to the roads authority, and</p> <p>(c) must have due regard to any written submissions on the proposal that are made to the roads authority within that time.</p>	
5, 31	Installation of the proposed gates/barriers is "...tantamount to Compulsory Acquisition by Shoalhaven City Council..." by permanently closing the roads. The roads in the Estate are public roads. Quotes Section 41 of the Act (Compulsory acquisition of land operates to close public road)	Council is not proposing to close the roads under Part 4 of the Act, hence Section 41 is not relevant. Installation of the proposed gates/barriers would not alter the status of the roads in the HE as 'public roads'.
10	Council denied responsibility for the roads for 25 years. Landowners maintained the privately-owned roads themselves.	For many years the status of the roads in the HE was uncertain. They were dedicated as public roads in 2005. Council has a legal obligation to manage public risk but is not legally obliged to maintain the roads. Signs were erected in 2005 stating that the roads are not maintained.
<b>Issues concerning the Federal Court appeal</b>		
5, 6, 7, 11, 12, 13, 15, 24, 26, 28, 31, 34, 35	The proposal is presumptuous because a decision by the Federal Court is pending.	The Federal Court dismissed the appeal lodged by representatives of the HE landowner class action on 17 November 2015. The Federal Court case is not relevant to this Section 116 application and vice versa.
23	Do not want to delay Judge Foster's decision.	See above.
9*, 10, 20	Any attempt by Council may be seen to prejudice landowners' legal claims.	See above.
38	Proposal is an underhanded way to influence the Judges' decision.	See above.
9*, 10, 20, 23, 38	Council should delay any decision until all legal challenges have been resolved.	Irrespective of the status of the court matter the proposed installation of gates and barriers is an appropriate response to the deterioration of the tracks in the HE. Any delay will be detrimental to the in situ and downstream environments.
20, 23	Council may be required to remove the barriers if the Federal Court appeal rules in favour of the landowners.	See above.
35	"... the correct course of action is to resolve the land dispute..." believe the problems identified by Council will potentially be resolved by "an Appeal and legal process".	See above.
<b>Submission from Pikes Verekers Lawyers on behalf of owner of Lot 232 DP8590</b>		
32	"It is unclear from your notice whether or not this proposal will interfere with our client's access but, clearly there is the potential for it	The intention is ensure that vehicles do not enter the land from any of the surrounding roads, including Naval College Road. The only existing

	<p><i>to do so."</i></p> <p><i>"Apart from Naval College Road, our client has no other alternative means of vehicular access available." Proposal does not meet the requirement of s.116(3)(a) to 'specify the particular action'."</i></p> <p>The proposal is "bad for uncertainty". No thought has been given to properties and public roads along Naval College Rd.</p>	<p>vehicle track leading into the Heritage Estates from Naval College Road is at the Birriga Ave/Wanawong Blvd intersection, where a locked gate is proposed. To avoid any ambiguity, this report recommends that a new Section 116 notice be prepared and exhibited in relation to the erection of a barrier between the HE and Naval College Road.</p> <p>Properties along Naval College Road are accessible by foot from the road and this will continue to be the case. The roads which intersect with Naval College Road from within the HE are unformed and unmaintained.</p>
32	Section 116 does not entitle the roads authority to prevent the owner of adjoining land from access to the road.	Acknowledged. Landowners will continue to be able to access their land by foot in accordance with the requirements of Section 6 of the Act.
32	<i>"The proposal is unreasonable... because it unduly curtails our client's use and enjoyment of his land without financial compensation."</i>	Provided the process required by the Act is followed, Council has the power to restrict vehicular access to the roads in the manner prescribed. There is no express right to compensation arising from a roads authority restricting access to a road under the Act.
32	<i>"...consideration ought to be given to the provision of locked gates to those public roads adjoining our client's premises with each affected landowner... to be provided with a key... ...This would ameliorate the unreasonableness referred to above."</i>	The purpose of the proposal is to prevent vehicles and trail bikes from entering the land to prevent further environmental degradation, and to protect public health. Any person seeking vehicle entry will be able to contact Council to request access. It is neither appropriate from a public risk perspective, nor logistically feasible to provide all landowners with a key to the gates.

**Table 2 - Issues raised in submissions in favour of the proposal**

Submission No.	Issue	Comment
4,16, 17, 22, 33	The land has high biodiversity value. Concerned by the extent of erosion, illegal dumping, public safety, and potential sedimentation in St Georges Basin. Illegal dumping in the area is appalling, e.g. several burnt out cars.	Acknowledged.
17, 27	Trail bikes cause a nuisance.	Acknowledged.
16, 17	Halting damaging processes is a positive step.	Acknowledged.
33	The proposal will help to manage and maintain the land's conservation values.	Excluding vehicles and trail bikes will hopefully enable land degradation and public risk to be managed.
4,16	Suggest signage at entrances to explain the	Appropriate signage will be provided to convey

	area's biodiversity values, as well as alternative trail bike riding venues.	the reasons for the barriers. An information leaflet has been prepared.
8	Have made ongoing representations to local police to use their limited resources to address illegal activities within the Estate.	Advice provided to Council by NSW Police has been to encourage members of the community to make requests to the Police for the Estate to be patrolled by the Police trail bike squad. The squad is a state wide resource, so its availability is very limited.
8, 16, 17	Community education/awareness campaign is/will be needed using newspaper/radio/website.	Signage at entry points has been improved. An educational leaflet targeting trail bike riders who use the Heritage Estates has been prepared and distributed through the local community.
8	Community should be advised of the planning history of the Heritage Estates.	Council has a dedicated 'Heritage Estates' page on its website. See: <a href="http://shoalhaven.nsw.gov.au/Planning-and-Building/Strategic-planning/Paper-subdivisions">http://shoalhaven.nsw.gov.au/Planning-and-Building/Strategic-planning/Paper-subdivisions</a>
27	The signs that have been installed do not prevent cars/trail bikes from entering the area.	Acknowledged.
27	Cars have been set on fire in the Estate at night, close to our [residential] property [within the coat hanger site]. Would have been devastating if not for RFS.	Acknowledged.
8, 18, 22	Trail bike riders will continue to gain access via small foot trails. All access points need to be signed and controlled.	It is acknowledged that preventing trail bikes from entering any land is problematic. The proposal seeks to achieve this with the available resources but it is likely that it will not be 100% effective.
8	Residents along MacGibbon Parade access the Crown Reserve from the rear of their properties.	The south-western side of Worroving Waterway is separated from the HE by the creek. A site inspection identified at least two makeshift pedestrian crossings above the tidal section of the creek, both of which appear to have limited pedestrian use. These should be monitored and if required, measures can be implemented to exclude trail bikes without requiring a Section 116 application.
16	Trail bike riders use the area because they believe they won't get caught.	It is inherently difficult to police/manage illegal trail bike activity. Council Rangers patrol the area but they are not able to pursue trail bikes. Numerous requests have been made to the get the NSW Police trail bike squad to target the area but it is a state wide resource so availability is extremely limited.
17	Insufficient support has been provided by Council Rangers and NSW Police in relation to trail bikes.	See above.
16	Council should also install a gate/barrier on Birriga Ave west of The Wool Rd, beyond the Greek Orthodox Church, or if this is not possible, increase signage and compliance to address illegal dumping.	The exhibited plan did not identify any treatment at this location. Council rangers have advised that this location is targeted by illegal dumpers. It is recommended that a separate Section 116 notice be prepared and exhibited, incorporating

		this suggestion.
16, 17	Council should organise a community clean up, possibly in conjunction with Clean Up Australia Day.	Advice has been provided to these submitters on how to register for Clean Up Australia Day to access resources/assistance.
16, 17	Council should run a media campaign to raise awareness.	This will be considered as part of a communication strategy associated with this project.
16,17, 18, 33	Monitoring should be increased for several weeks after the gates/barriers have been installed.	Acknowledged.
16	Council in conjunction with NPWS should immediately undertake erosion control, and develop a restoration and management plan for the HE.	This would require resources to be redirected away from existing and current priorities. Funding has been sought under the NSW Environmental Trust's Restoration and Rehabilitation Program, and if successful, these suggestions will be implemented on public land in HE.
16	There is a significant amount of community support for the proposed installation of gates and barriers to prevent entry by trail bikes. Members of the community are willing to participate in restoration and would like to get schools involved in tree planting.	These opportunities can be explored once the gates/barriers have been installed.
17	Access from residential land in the adjoining 'coat hanger site' will need to be considered in with the landowners.	This is a matter between landowners.
	Consideration should be given to the future of the existing barbed wire fences surrounding the HE.	It is understood that fencing around HE was erected by the landowners in early 1990s. It is not anticipated that this will be removed or replaced at this stage.
17, 18, 22	Any gates/barriers at the junction of Birriga Avenue and Naval College Road ('Site 2') should also embrace Wanawong Boulevarde which meets Naval College Road at the same point.	A 110 m section of the Birriga Ave Fire Trail is not within the road reserve, cutting across private, Council and NPWS land. It is also heavily eroded in this location and not safe for use. The proposed gate will be located on Wanawong Boulevarde and the eastern end of the Birriga Avenue track will be blocked with boulders. Alignment of the eastern end of the Birriga Avenue Fire Trail will be reviewed in due course. See map provided in <b>Attachment "B"</b> .
17, 22,	The junction of Wanawong Boulevarde and Erowal Bay Road ('Site 3') is a critical entry point for trail bike riders. Proposed blocking should be sufficient.	Acknowledged.
17, 18	Additional entry points along Erowal Bay Rd occur in the vicinity of Kinkuna Crescent, Currana Avenue, Kowil Street (?) and near the intersection with Naval College Road. Some of these will require additional barriers.	The exhibited plan identified that a barrier would be erected along the entire length of Erowal Bay Road.



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## **FINANCIAL IMPLICATIONS:**

No additional funding is required to cover the cost of preparing a separate and additional Section 116 application for Birriga Avenue. Funding for the actual installation of the gates/barriers will be sourced from:

- Council's existing fire trail budget;
- The Bay and Basin Illegal Dumping Prevention project (recently funded by the State Government); and
- NSW NPWS.

## **COMMUNITY ENGAGEMENT:**

The proposal was publicly exhibited in accordance with the requirements of the Act. Council also wrote to the directly affected landowners. The separate Section 116 application which is recommended for the western end of Birriga Avenue (to the west of the Baptist Church complex) and the barrier between the Heritage Estates and Naval College Road, will be publicly exhibited for a minimum of 28 days in accordance with the Act should it proceed.

Tim Fletcher

**DIRECTOR PLANNING AND DEVELOPMENT SERVICES**

Carmel Krogh

**ACTING GENERAL MANAGER**



## EXPLANATORY STATEMENT

### **Proposal to install gates and barriers to regulate vehicle access into the 'Heritage Estates', Worrowing Heights**

#### Overview

An extensive network of informal vehicle and trail bike tracks has been created in the Heritage Estate over several years, causing erosion and land degradation. Vehicle access has also made the Heritage Estates a hotspot for illegal dumping. Unless vehicle and trail bike access is addressed, other measures to address these problems will have limited effect.

Pursuant to Section 116 of the NSW Roads Act 1993, Council proposes to install a series of gates and barriers to generally exclude vehicles and trail bikes, while allowing pedestrian access.

#### Statutory process

Although the tracks in the Heritage Estates occur across a range of land tenures, the entry points generally align with Council's road reserves.

A public road is one that provides a right of free passage to members of the public.

Under Section 116 of the NSW Roads Act 1993, a roads authority (i.e. Council) 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). Section 116 of the Act has been delegated to Council, however Council must consider the technical recommendations of the Shoalhaven Traffic Committee (STC), and the Traffic Committee guidelines also apply, including the RMS right of appeal.

The proposal to install gates and is being publicly exhibited until 6 November 2015. A summary of feedback received during the exhibition will be referred to the STC for advice before Council makes a final decision. Consistent with usual practice, Council will notify the RMS of its decision and the RMS will have two weeks to appeal Council's decision if it chooses.

#### Proposed gates and barriers

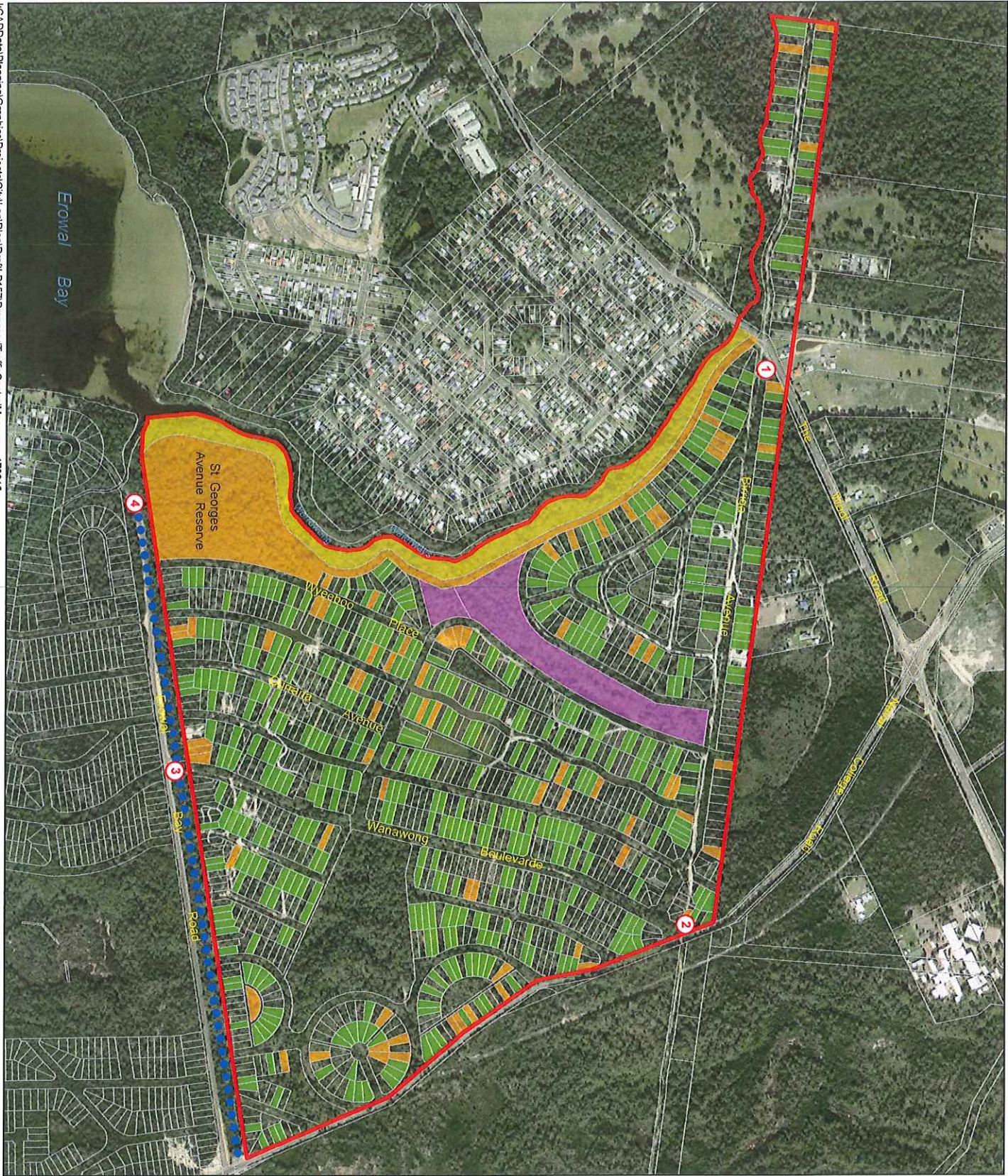
A plan showing the proposed location of the gates and barriers can be viewed on Council's website at [www.shoalhaven.nsw.gov.au](http://www.shoalhaven.nsw.gov.au) under "Documents on exhibition" or at Council's Nowra administrative building. Each gate would be locked. Keys would be held by Council, the RFS and NPWS. Vehicle access will be possible for valid purposes, such as removal of dumped material, subject to consideration of the risk to safety.

#### Have your say

Submissions may be made in writing to the General Manager, Shoalhaven City Council, PO Box 42, Nowra NSW 2541, or by email [council@shoalhaven.nsw.gov.au](mailto:council@shoalhaven.nsw.gov.au) by 6 November 2015. Enquiries: Eric Hollinger, Senior Project Planner on (02) 4429 3320. File Reference 1446E/2.



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## 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 Wana Wong Blvd - Errowal Bay Rd

- Install boulders and /or steel cable fence including along Naval College Rd if necessary

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

### Proposed Vehicle Control Measures

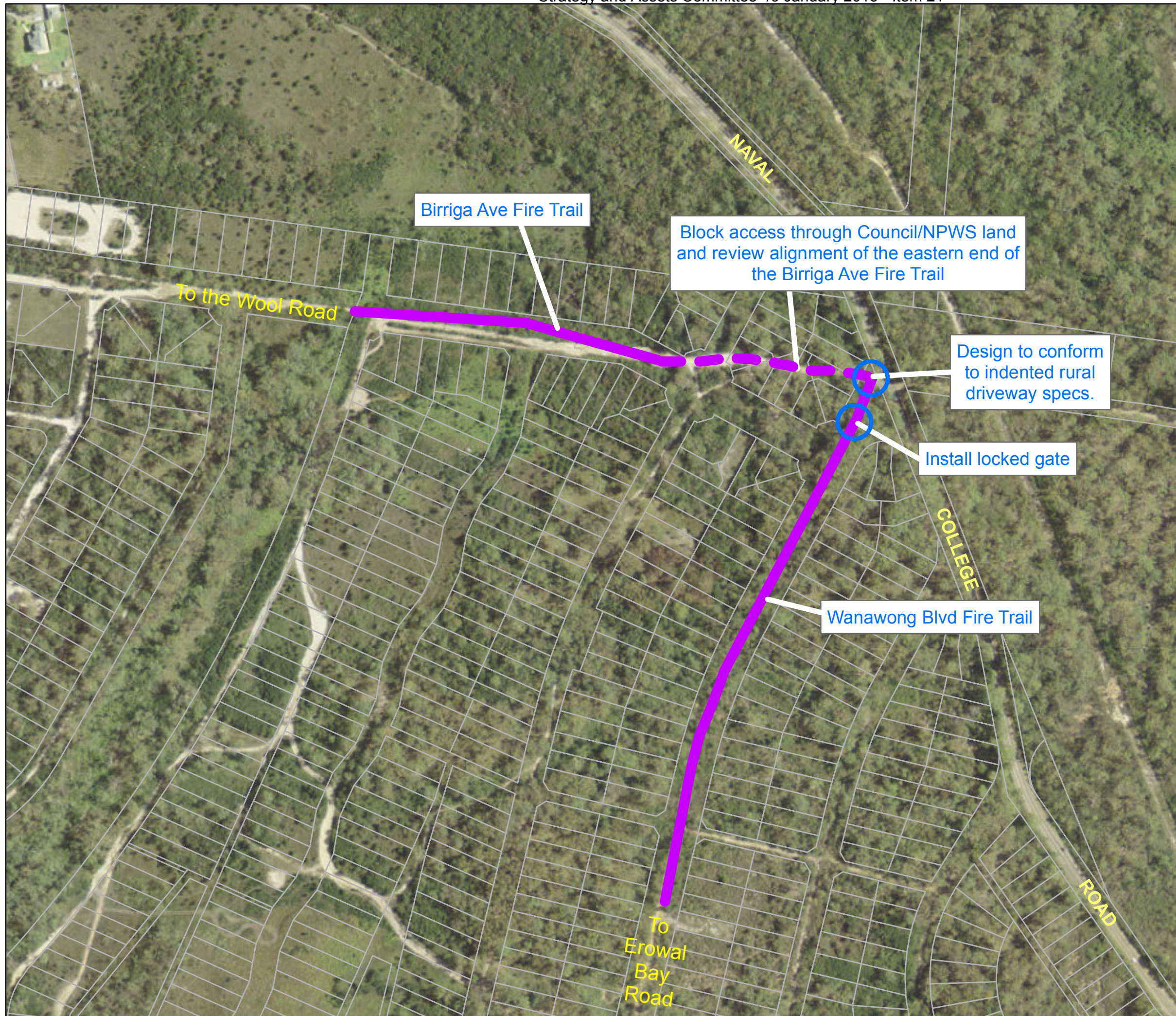
### Heritage Estates Worworing Heights

0 75 150 300 450 Metres





ATTACHMENT B



Proposed Vehicle Control Measures

Heritage Estates Worrowing Heights

0 25 50 100 150 Metres

