



HERITAGE ESTATES – CLEARING, SLASHING, MOWING AND MAINTENANCE OF LAND

When may landowners resume the clearing, slashing, mowing and maintenance of their land?

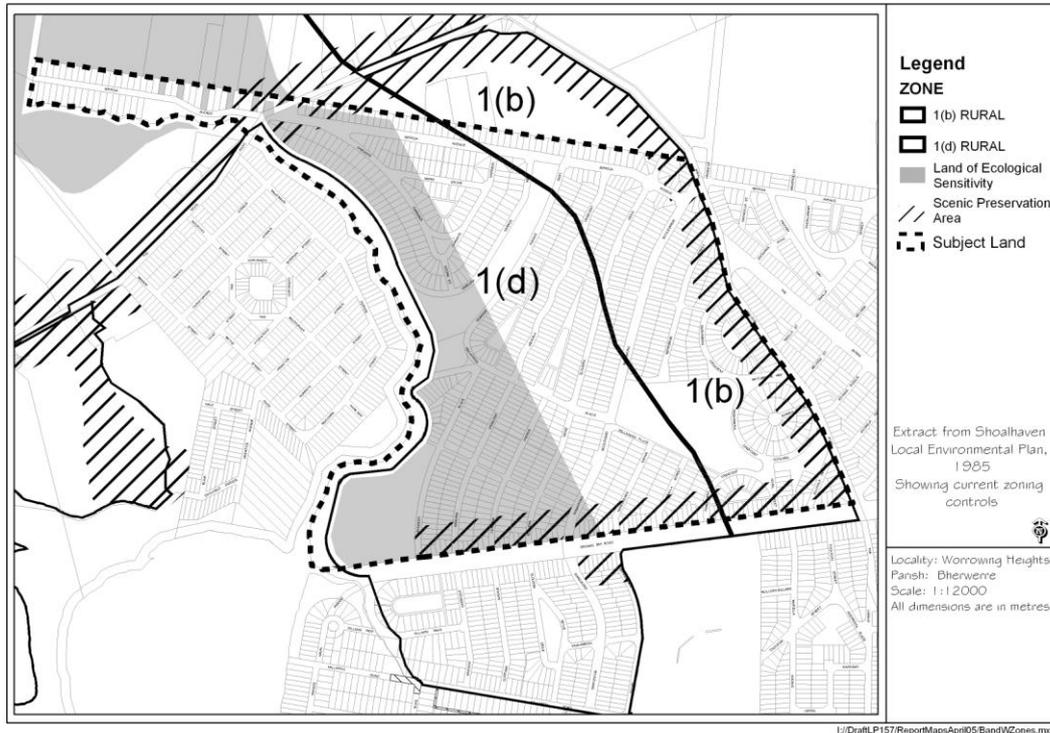
In July, 2005 Council wrote to landowners drawing attention to increased activity in the Estate with respect to the clearing, slashing and mowing of land. Landowners were advised that these activities could have the effect of compromising the integrity of the threatened biodiversity assessment in progress. In such circumstances, land owners were advised that completion of the assessment could be delayed until the land has regenerated.

At the meeting of landowners on 6th March, 2006, Council staff were asked to provide information as to when landowners could resume these activities. Due to the complexity of existing and new controls applying to the clearing of vegetation, an undertaking was given that a response would be provided on Council's Internet site.

The activities that landowners may carry out on their land are determined by the zones and controls that apply to the land under Shoalhaven Local Environmental Plan, 1985 (SLEP) and other relevant State and Commonwealth legislation. The following map is an extract from SLEP. This map shows that the land is currently zoned Rural 1(d)(General Rural) and Rural 1(b)(Arterial and Main Road Protection). Some of the land is also identified as ecologically significant and/or scenic preservation area.

Zoning

In the Rural 1(d) and 1(b) zones, agriculture is permissible without Council's development consent. However, where land is also identified as ecologically significant, within a scenic preservation area or within 50 m of a perennial stream, **all** development requires consent. This includes activities such as agriculture and removal of vegetation.



Scenic Preservation Area

Specific controls on the clearing of land in the Heritage Estates were first introduced with the gazettal of the Shoalhaven Local Environmental Plan on 17th May, 1985. In this plan, certain land within the Estates was identified by scenic preservation area hatching as illustrated in green on the above map. Development consent is specifically required for clearing of vegetation and trees on land within this area.

Land of ecological sensitivity

On 16th July, 1999 amendment No. 127 to Shoalhaven LEP, 1987 (The Rural Plan) came into effect. This plan introduced controls relating to land of ecological sensitivity within Heritage Estates as illustrated by grey hatching on the above map. Council consent is required for any development of land identified as ecologically significant including the clearing of vegetation.

Tree Preservation Order

A Tree Preservation Order has applied to all land in the Heritage Estates since 9th December, 1988. It requires Council consent for the ring barking, cutting down, lopping, topping removing, injuring, poisoning or wilful destruction of any tree that :

- is 3 metres or more in height
- has a girth of 300 mm or more at 1 metre above natural ground surface; or
- has a branch span of 3 metres or more

Existing or continuing use rights

Prior to 1985 the land was zoned Non-Urban "A" and Non-Urban "B" under Shoalhaven Interim Development Order No. 1. Under this plan, agriculture, forestry and dwellings on **25 acre** lots did not require development consent. Council has no record of any land in the Heritage Estates having been previously used for any of these purposes.

Existing or continuing use rights do not apply because clearing, slashing and mowing are not activities that were ever permissible on the land prior to a change of zoning.

These activities can only be approved if they are ancillary to, or necessary for, an **approved** development (ie. dwelling or structure) on the land.

Threatened Species Conservation Act, 1995 (TSC)

Removal of all vegetation requires consideration of the impact on threatened species and their habitats, including endangered ecological communities and/or populations. As development of the Estate will necessitate the removal of vegetation, Council has engaged consultants to undertake the necessary survey and assessment work to satisfy the requirements of the Act.

Where there is any doubt regarding the likely impact or where detailed information is not available a Species Impact Statement should be prepared. Recent amendments to the TSC (2004) shift the focus of "likely impact" from a regional to a local level. New penalty infringement powers came into force with the amendments to the Act.

Biodiversity assessment and investigations into significance will be ongoing as part of the rezoning investigations. Consultation between Council and the NSW Department of Environment and Conservation (DEC) is an essential part of the process and is required by the Environmental Planning and Assessment Act, 1979. Therefore, the resumption of clearing, slashing, mowing and maintenance activities resulting in the removal of vegetation has the potential to undermine the rezoning investigations and delay completion of the project.

Environment Protection and Biodiversity Conservation Act, 1999 (EPBC)

This Act came into effect on 16th July, 2000. Under this Act a person proposing to take action which may have a significant impact on a listed threatened species or Commonwealth land must refer the proposed action to the Commonwealth Minister for the Environment for his consideration. Construction work within the Estate will trigger the EPBC and Council, as the proponent, has initiated a process of liaison with the Commonwealth.

Native Vegetation Act, 2003 (NV)

This Act came into effect on 1 December, 2005 but is retrospective to November, 2004. Clearing of regrowth which has germinated or been planted since 1 January 1990 is permitted provided the initial clearing was **lawful**. However, the provision of the TSC Act and EPA Act must be complied with. Removal of vegetation within Heritage Estates would most likely require development consent from the Southern Rivers Catchment Management Authority **as well as** Council.

Clearing for Bushfire Hazard Protection

All bushfire hazard reduction activities require a Bushfire Hazard Reduction Certificate (BHRC) issued under the Rural Fires Act, 1997 by the NSW Rural Fire Service. As there are no assets (dwellings) to protect within the Estates, it is unlikely that a BHRC would be issued.

Fencing

Fencing requires development consent from Council. In assessing any application for fencing Council would need to take into consideration whether the fencing was required for an approved purpose or some other lawful use of the land.

Penalties

Landowners should be aware that significant penalties have been introduced by recent amendments to the Threatened Species Act. A person convicted of a threatened species offence may face penalties of up to \$220,000 and/or 2 years imprisonment and a further \$11,000 for each animal/plant harmed or picked. In addition, there are on-the-spot fines of \$500 for harm/damage to a vulnerable species and \$1500 for harm/damage to an endangered or critically endangered species.

For example, the Land and Environment Court recently imposed a \$180,000 fine on an individual for clearing woodland listed as an Endangered Ecological Community. The penalty is the highest imposed for such an offence and is further evidence of the continuing trend of the Court to impose significant fines for breaches of Environmental legislation. Endangered Ecological Communities do occur within the Heritage Estates, this is yet another reason owners would be wise to refrain from clearing.

Summary

There is no legal ability for land in the Heritage Estates to be cleared, slashed or mowed without development consent. As development consent has always been required, the question of existing or continuing use rights does not arise. Removal of vegetation within Heritage Estates would most likely require development consent from the Southern Rivers Catchment Management Authority *as well as* Council.

In the circumstances, land owners are advised to refrain from carrying out further clearing, slashing or mowing activities on their land without first having discussed the need for formal approval to undertake such work with Council's Development & Environmental Services Group.

The resumption of clearing, slashing, mowing and maintenance activities resulting in the removal of vegetation has the potential to undermine the rezoning investigations and delay completion of the project.

Where land has been recommended by the COI for environmental protection zoning, vegetation removal may compromise the value of any compensation that may be offered by government in the future.

For further information please contact the Development and Environmental Services Group.

Disclaimer

The above information is not legal advice. It represents Council's current understanding of the planning controls and legislation applying to the Estate based on detailed research carried out by Council staff.

Any landowner intending to carry out any work involving the clearing of vegetation without development consent should get their own independent legal advice.

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