

Planning Proposal

Verons Estate, Sussex Inlet

Prepared by
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Shoalhaven City Council

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2 Introduction

This Planning Proposal seeks to resolve and finalise the zoning and development potential of Verons Estate, a ‘paper’ subdivision comprising 32 eight (8) hectare lots.

2.1 Location

The subject land is located on the southern side of Sussex Inlet Road, approximately 8.2 km east of the Princes Highway and 3 km west of the township of Sussex Inlet. See Figure 1 - Location of the subject land.

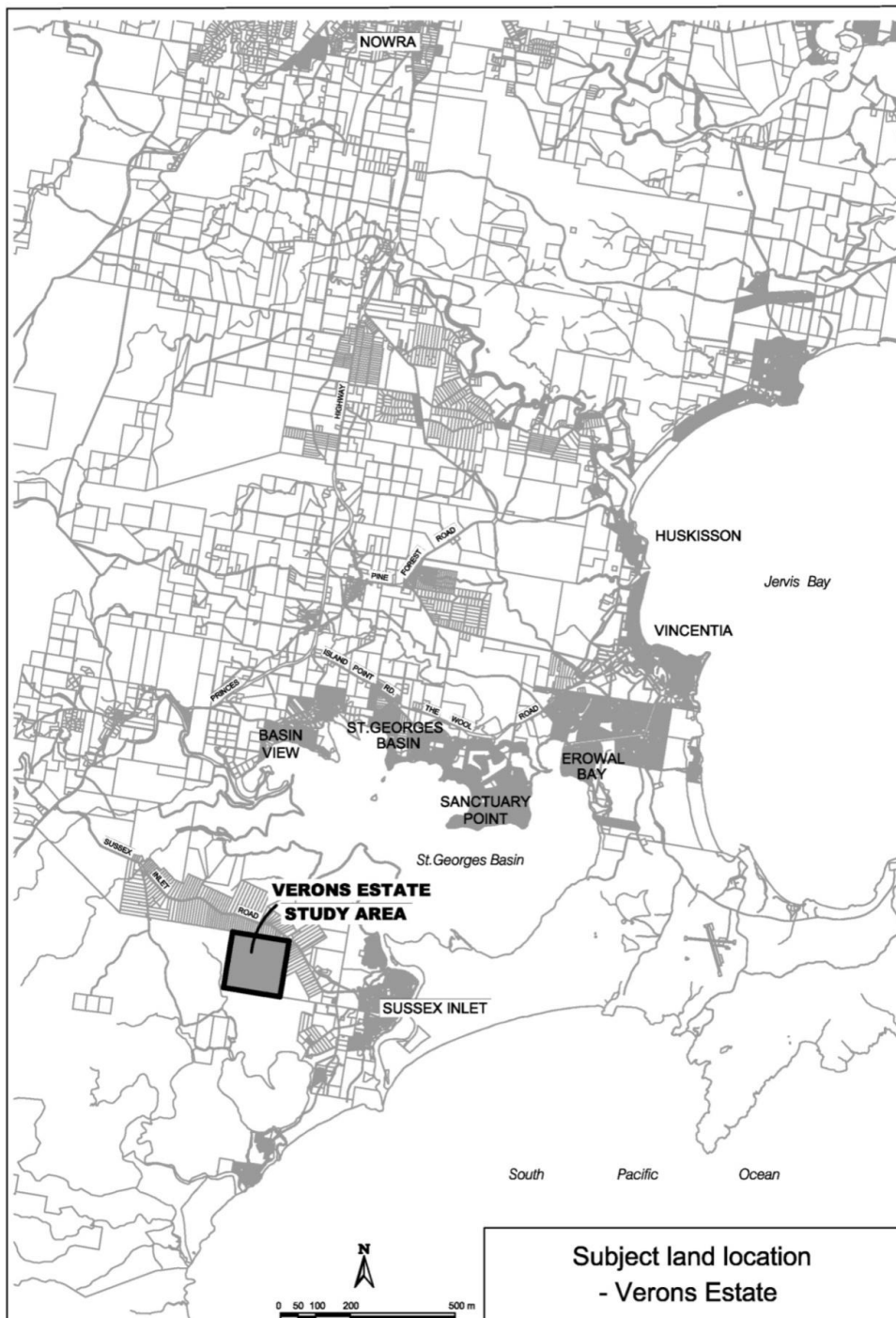


Figure 1 - Location of the subject land

2.2 Local context

Sussex Inlet is recognised as a “Town” in the South Coast Regional Strategy (Department of Planning 2007). The population of ‘Sussex Inlet - Cudmirrah & Surrounds’ in 2011 was 4,122 (ABS, 2011).

2.3 Current zoning

The subject land is currently zoned part Rural 1(d) (General Rural) and part Environment Protection 7(a) (Ecology) under Shoalhaven Local Environmental Plan 1985 (SLEP 1985). The land that drains to Swan Lake is also identified as land of ecological sensitivity, to which clause 21 of SLEP 1985 applies.

The Draft Shoalhaven Local Environmental Plan 2009 (Draft SLEP 2009) was initially exhibited from 18 July to 14 October 2011. As exhibited, the land is proposed to be zoned part Rural Landscape (RU2) and part Environmental Conservation (E2) under Draft SLEP 2009 with a 40 ha minimum lot size, maintaining the current situation under SLEP 1985. Draft Shoalhaven LEP 2013 will shortly be re-exhibited.

This Planning Proposal seeks to eventually amend the new Shoalhaven LEP to rezone the subject land to a mix of Environmental Living (E4), Environmental Management (E3) and Environmental Conservation (E2) in conjunction with a reduction in the minimum lot size requirement for part of the Estate to enable one dwelling per lot within the Badgee Lagoon catchment.

2.4 Subject Land

The subject land comprises lots 1 to 32 in DP 9897 as shown in Figure 2.

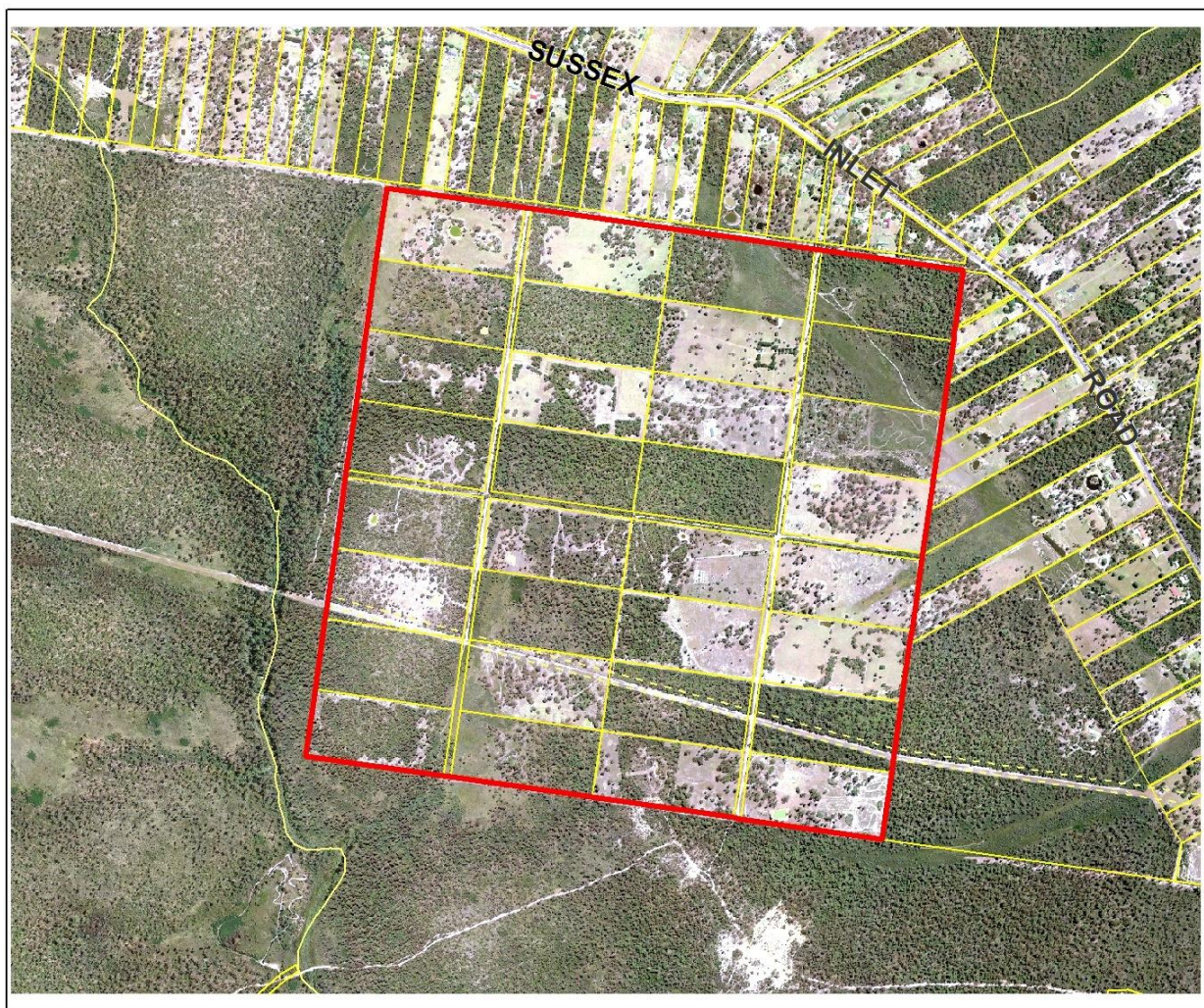


Figure 2 - Boundary of subject land.

2.5 Background

The Verons Estate subdivision was registered in 1920. Like other ‘paper’ subdivisions in the Shoalhaven LGA, the land remained undeveloped when landuse zoning was introduced in 1964 in the form of Shoalhaven Interim Development Order No.1 (IDO No. 1). Under IDO No.1 the land in the Estate was zoned “non-urban”, generally precluding development of the individual lots due to their size. There are however seven (7) “1964 holdings” (lots that were in separate ownership from adjoining land when IDO No. 1 was gazetted on 28 February 1964). Subject to consideration of matters under section 79C of the *Environmental Planning and Assessment Act 1979*, Council has the legal ability to approve a dwelling on each of these.

IDO No. 1 was superseded when the Shoalhaven Local Environmental Plan (SLEP) was gazetted in 1985. Under the provisions of SLEP 1985, the land in Verons Estate is currently zoned part *Rural 1(d) (General Rural)* and part *Environment Protection 7(a) (Ecology)*. With exception of the 1964 holdings, this effectively means Council is unable to approve dwellings on the individual lots (as they are less than 40 ha).

2.5.1 Planning studies commenced in 1993

In response to requests by the landowners over a number of years, on 6 July 1993 Council resolved that:

- a) *Council resolve to prepare a draft local environmental plan over lots 1 to 32 DP9897, Verons Estate Sussex Inlet with the objective of allowing for the erection of a dwelling on each allotment, the cost of the environmental study and draft plan being met by the individual landowners in accordance with Council's policy.*
- b) *Council adopt in principle the requirement that the servicing aspect of the environmental study provide for:*
 - i. *No extension of water reticulation to the area*
 - ii. *Sealed access to all lots*
- c) *Council reiterate to the affected landowners that all costs involved with provision of an acceptable level of services to the area must be borne by the landowners*

2.5.2 Initial rezoning investigations

Following Council's decision to commence rezoning investigations in 1993, a draft local environmental study was commissioned but before it could be completed, a rezoning moratorium was imposed by the Department of Planning. A letter from the Department of Planning dated 19 December 1994 explained that the moratorium had been placed on rezoning land for residential or rural residential use in the St Georges Basin – Sussex Inlet area pending preparation of a draft regional environmental plan (REP) (in the form of 'stage 2' to the Jervis Bay REP that was under preparation at the time).

A letter dated 20 December 1996 from the then NSW Minister for Urban Affairs and Planning indicated that the Minister had decided to defer preparation of stage 2 of the draft REP and to extend the moratorium on rezoning land in the area.

In 2000, Council and the Department of Planning discussed the possibility of preparing a settlement strategy for the Sussex Inlet area to enable the rezoning moratorium to be lifted and in 2004, the NSW Government provided funding for its preparation. The moratorium on rezoning land in the area continued while the Sussex Inlet Settlement Strategy (SISS) was being prepared.

The draft SISS was exhibited in May - June 2006. As exhibited, the draft SISS proposed that further subdivision be investigated within that part of Verons Estate which drains to the Badgee Lagoon catchment and that one dwelling per lot be considered for the remainder (which drains to Swan Lake). The proposal to consider further subdivision was not supported by the NSW Government and was ultimately removed when the SISS was finalised. The rezoning moratorium was lifted when the SISS was adopted by Council on 25 August 2007 and endorsed by the State Government. In relation to Verons Estate, the SISS states that one dwelling per lot will be investigated and considered.

2.5.3 Decision to exclude lots 20-32 from consideration of one dwelling per lot

The north-east part of the Estate drains to Sussex Inlet via Badgee Lagoon and the south-west part of the Estate drains to Swan Lake. Swan Lake was identified as a "sensitive coastal waterbody" through the Healthy Rivers Commission Independent Public Inquiry into Coastal Lakes in 2001. Historically, the NSW National Parks and Wildlife Service has opposed development of that part of Verons Estate which is within the Swan Lake catchment due to the potential impacts on the Lake.

The South Coast Regional Strategy (SCRS) was released by the Department of Planning in 2006. The Natural Environment Section of the SCRS includes the following action which is of particular relevance to Verons Estate:

“Local environmental plans will not include further residential or rural-residential zoning in the catchments of coastal lakes and estuaries shown on Map 2 [includes Swan Lake] unless it is demonstrated that a neutral or beneficial effect on water quality as measured at the boundary of the proposed new zoning can be achieved.”

A joint written response dated 1 June 2010 was received from the NSW Government. In summary, the letter stated that the State Government:

- Considers that any further development within the Swan Lake catchment is highly likely to adversely impact on water quality flowing into the Lake (i.e. increased sediment and nutrient loads);
- Considers that it is unlikely that water quality control measures could be designed and implemented with sufficient certainty to prevent adverse water quality impacts;
- Considers that it would be costly to undertake the water quality and hydrological assessments to investigate the issue further, and the result is unlikely to be favourable;
- Might support an approach where the least constrained land in the Badgee Lagoon catchment is re-subdivided for the purpose of providing a benefit to the owners of lots within the Swan Lake side of the Estate;
- Believes Council should investigate the use of Biocertification to provide some form of financial return for lots that are within the Swan Lake part of the catchment.

Following a series of reports and landowner consultation on the requirements of the South Coast Regional Strategy in relation to Swan Lake, on 19 April 2011, Council resolved to “Accept that land within the Swan Lake catchment is unable to be rezoned for rural residential development, until a neutral or beneficial effect study (NorBE) is undertaken and demonstrated...”

The key reports referred to above are available on Council’s website at:
Development Committee report 10 August 2010 -

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=d10/176214>

Development Committee report 5 April 2011 -

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=d11/76566>

2.5.4 Decision to prepare Planning Proposal

On 26 June 2012, Council resolved to prepare and submit a draft Planning Proposal, with the following components:

- i) The minimum lot size overlay would allow one dwelling per lot on the land within the Badgee Lagoon catchment;*
- ii) Proposed zoning (based on State Government’s comments): Swan Lake catchment: E2 and E3. Badgee Lagoon catchment: E2 and E4, subject to addition of E4 to SLEP 2009 and extensive agriculture as a permissible use (in either the land use table or Schedule 1 - Additional Permitted Uses) [Comment: this will be achieved via Schedule 1 - Additional Permitted Uses];*

iii) No biodiversity overlay

The above resolution (MIN12.658) was made in response to a report to Council's Development Committee on 5 June 2012, which is available on Council's website at: <http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=d12/130633>

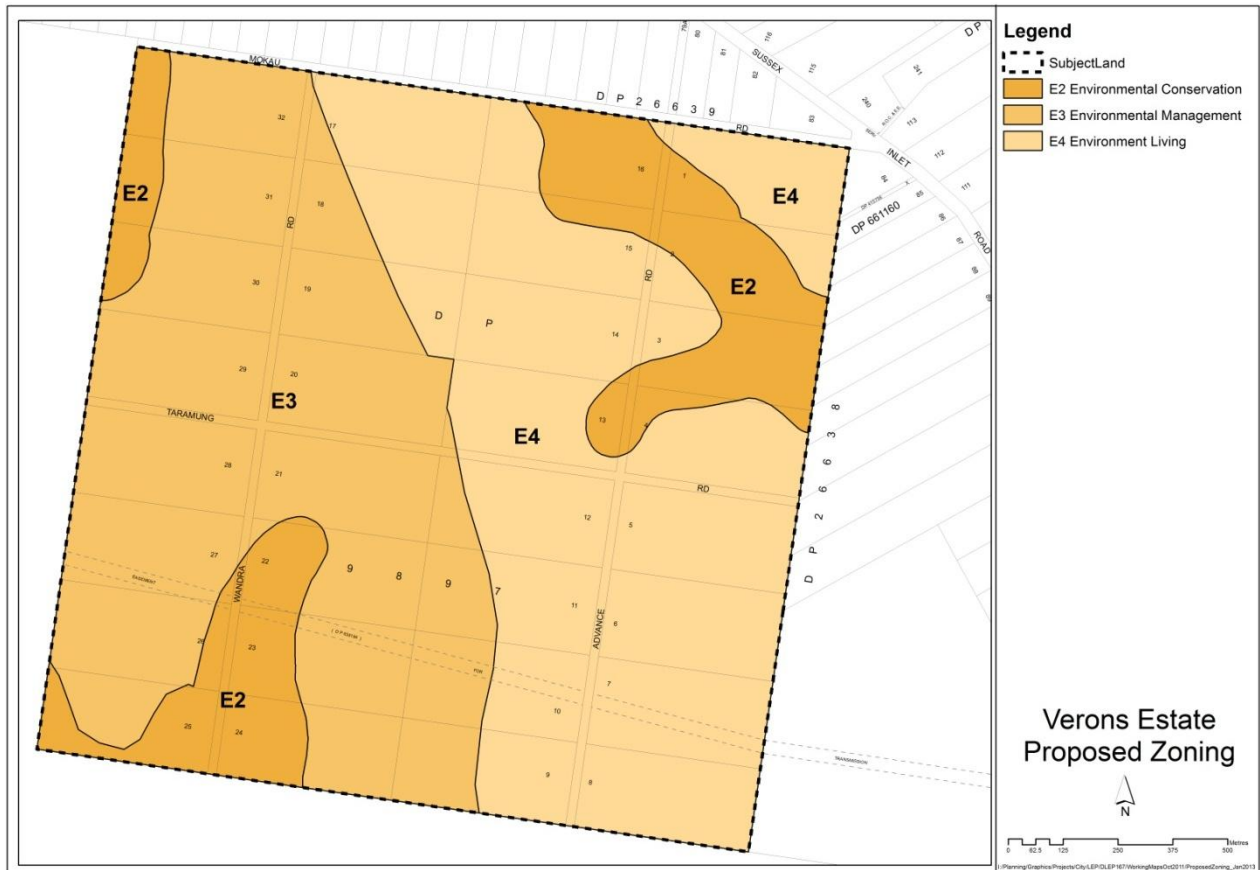
3 Objectives (Part 1)

- To enable one dwelling per lot on lots 1-19 DP 9897, excluding land within the Swan Lake catchment.
- To protect high conservation value land and limit the extent of clearing associated with residential development.
- To facilitate rehabilitation of degraded areas that have an important ecological function and/or which were cleared without the necessary approval (unless existing use rights apply).
- To minimise the bushfire risk and ensure that dwellings and associated asset protection zones are located accordingly.
- To ensure that onsite effluent disposal and stormwater are managed to protect water quality and downstream environments.

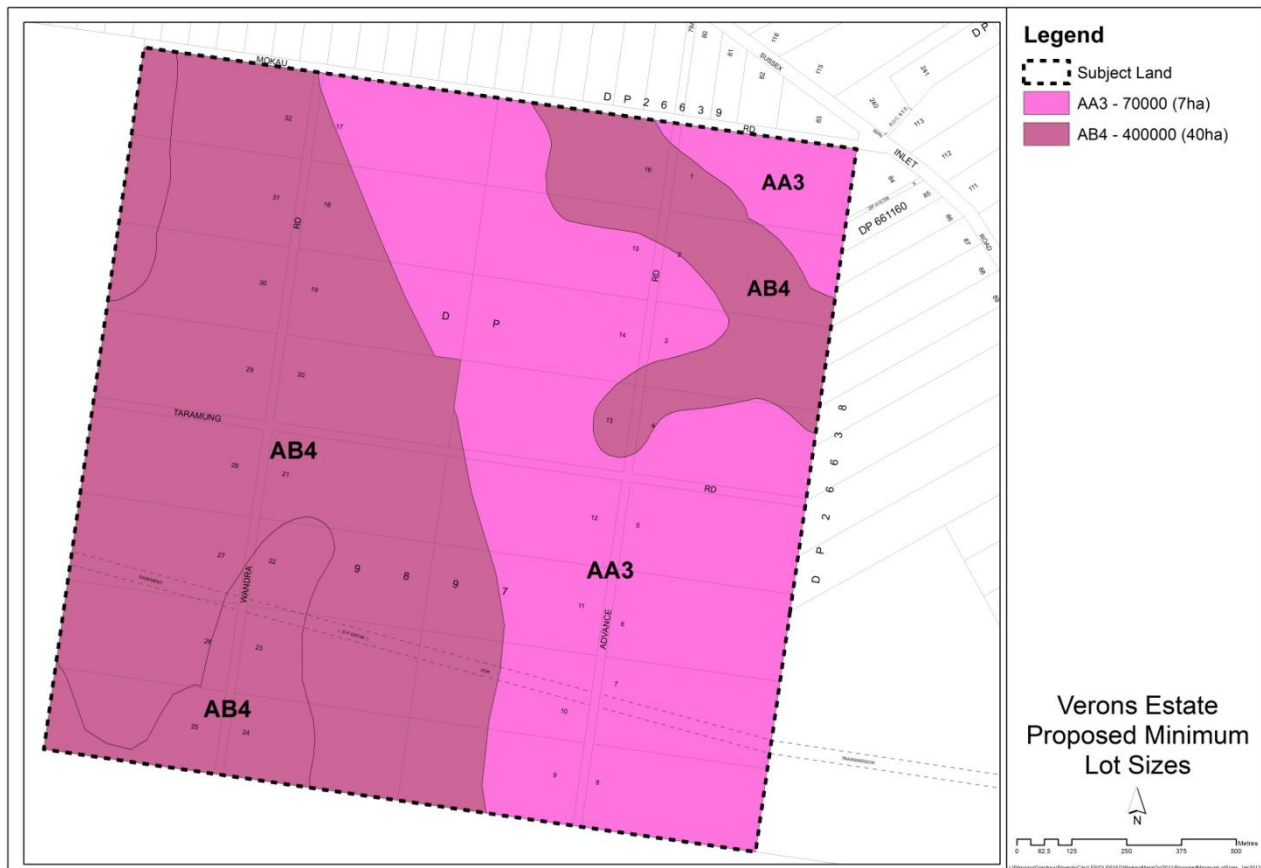
4 Explanation of Provisions (Part 2) & Planning Proposal Maps (Part 4)

4.1 Proposed Zones & Minimum Lot Sizes

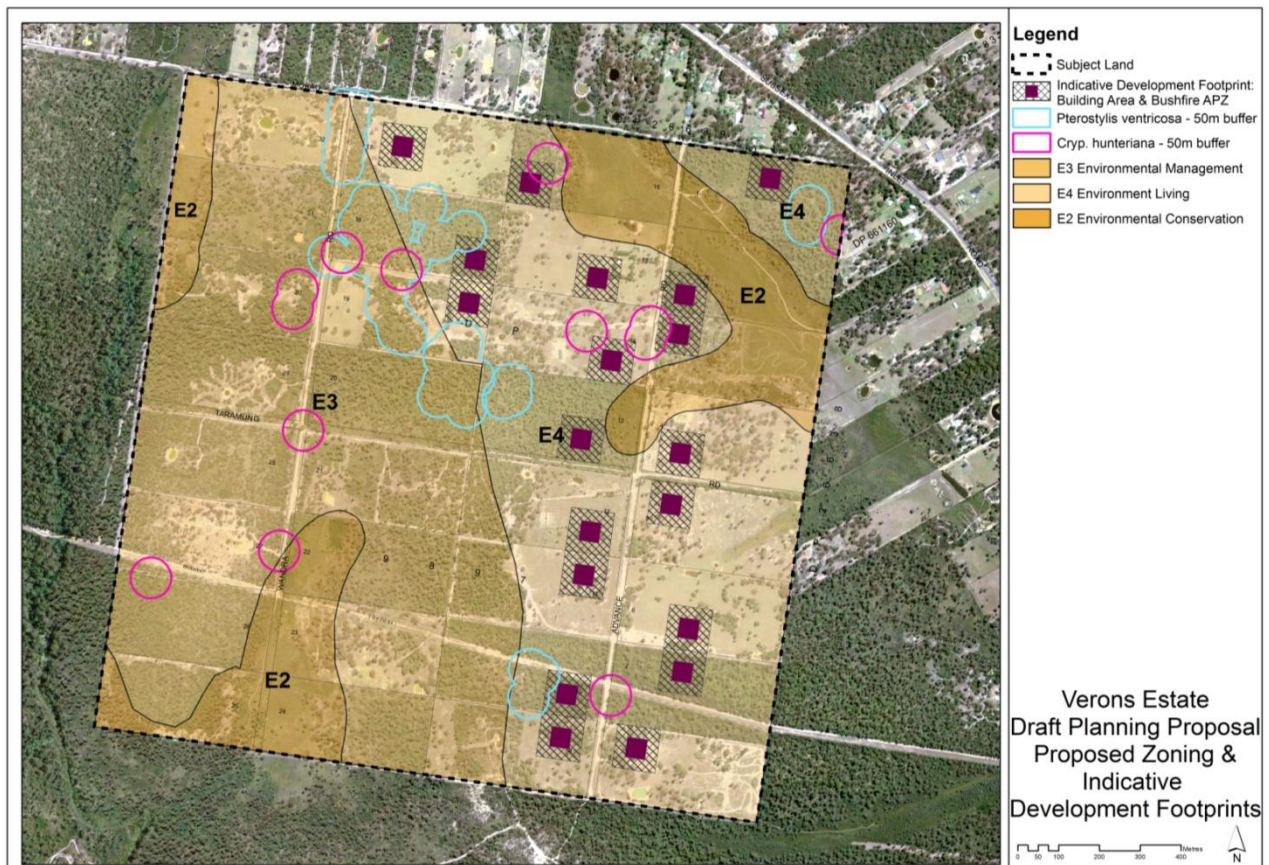
The proposed zones and minimum lot sizes and conceptual development footprints are shown in Planning Proposal Maps 1, 2 and 3 respectively and are described in the following sections.



Planning Proposal Map 1 - Proposed zoning



Planning Proposal Map 2 - Proposed minimum lot sizes



Planning Proposal Map 3 - Draft Conceptual Development Footprints

The aims of the draft conceptual development footprint plan are to:

- Define the building and development areas to enable bushfire risk to be strategically considered and minimised. In particular to:
 - ensure APZs are either located within the boundaries of each lot; or
 - align/cluster dwellings on adjoining properties so that APZs overlap and are mutually beneficial.
- Allow a sufficient area to accommodate a dwelling and associated structures on each lot.
- Avoid/minimise disturbance and/or allow regeneration of environmentally sensitive land.

Factors influencing the conceptual development footprint are discussed in detail in section 8.

4.1.1 E2 – Environmental conservation area

This area includes the following areas:

- Land currently zoned Environment Protection 7(a) (Ecology) in the south western corner of the subject land (affecting part of lots 24 and 25)
- Riparian land and associated riparian buffers identified by GHD Pty Ltd (2009)
- Habitat of threatened orchids recorded in the study area: The Leafless Tongue Orchid *Cryptostylis hunteriana* ('vulnerable' under both the NSW Threatened Species Conservation Act 1995 and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999) and *Pterostylis ventricosa* ('critically endangered' under the Threatened Species Conservation Act 1995).

The 40 hectare minimum lot size will be retained over this area.

4.1.2 E3 – Environmental management area

Land in the Swan Lake catchment that is not proposed to be zoned E2 – Environmental Conservation. The 40 hectare minimum lot size will be retained over this area.

4.1.3 E4 – Environmental living area

Land in the Badgee Lagoon catchment that is not proposed to be zoned E2 – Environmental Conservation. This is the area where dwellings are proposed to be allowed via the minimum lot size map. The proposed minimum lot size map shows a minimum lot size of 7 hectares over this area. The lots are approximately 8 hectares in size.

Draft objective and land use tables for the E2, E3 and E4 zones adopted by Council at the time of writing are provided in the Appendices. Extensive agriculture is proposed to be a permissible use in the E3 zone only. In accordance with Council's resolution on 26 June 2012, it is also proposed to make extensive agriculture permissible in the proposed E4 area via Schedule 1 - Additional Permitted Uses.

4.2 Dwelling Yield

The proposal would potentially enable 19 dwellings to be approved.

5 Justification (Part 3)

5.1 Need for the planning proposal (Section A)

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

This Planning Proposal reflects and is the outcome of a specific action in the Sussex Inlet Settlement Strategy (SISS 2007) to investigate rezoning Verons Estate – refer to section 5.2.1. As the SISS is an endorsed strategy, the Planning Proposal is also consistent with the South Coast Regional Strategy (SCRS 2007) – refer to section 5.2.2.

The following planning studies on the subject land have also been completed:

- Aboriginal & European Archaeological & Cultural Heritage (Australian Museum Business Services, 2009)
- Watercourse and Riparian Land Mapping Verification (GHD Pty Ltd, 2009)
- Threatened Biodiversity Assessment (Ecological Australia Pty Ltd (Bushfire & Environmental Services) 2011)

The proposal takes into account constraints and opportunities identified in the above studies. These are discussed in more detail in this Planning Proposal.

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

The current zoning needs to be reconsidered and amended to resolve the land's development potential and achieve environmental outcomes. Environmental and land capability studies have been undertaken. In 2011 Council accepted the State Government's advice not to pursue a rezoning that would enable residential development in the Swan Lake catchment due to concerns that water quality in Swan Lake would be adversely impacted.

5.1.3 Is there a net community benefit?

A Net Community Benefit Test has not been undertaken for this draft plan and is not considered appropriate as this planning proposal is being prepared to ensure the continuation of a drawn-out rezoning process that originally commenced in the 1993 and is consistent with an existing endorsed settlement strategy.

5.2 Relationship to strategic planning framework (Section B)

5.2.1 Sussex Inlet Settlement Strategy 2007

The Sussex Inlet Settlement Strategy 2007 (SISS) identifies the Verons Estate as an investigation area. Action 3 in section 3.0 states:

"Investigate the provision of a maximum of one dwelling per lot within the Verons Estate small lot rural subdivision."

5.2.2 South Coast Regional Strategy 2006

Relevant actions in the South Coast Regional Strategy (SCRS) include:

Natural environment:

- New urban development is to be prohibited by local environmental plans on land assessed as being of high conservation value; and appropriate planning controls are to be incorporated into LEPs to protect biodiversity values on land of lower conservation value.
- Future development in the catchments of SEPP 14 wetlands will need to demonstrate no net impact on the hydrology, water quality or ecology of these wetlands.
- Strategic assessments of riparian corridors to be applied through appropriate zoning and management through a develop control plan.

Comments:

Council has worked closely with OEH and DP&I to ensure high value conservation land is retained through appropriate zoning and appropriate planning controls. This is a key part of the Planning Proposal – refer to section 8.1.

Any future development proposal will need to demonstrate that it can meet the objectives of the environmental zones. Riparian vegetation associated with the broad drainage depressions will be protected by being zoned E2 and the 40 ha minimum lot size will be retained to ensure that dwellings are unable to be approved in these areas due to their sensitivity.

Housing and settlement: Only urban areas identified in endorsed settlement strategies will be supported.

Comment: As previously indicated, Verons Estate is identified in the Sussex Inlet Settlement Strategy, which is an endorsed strategy.

5.2.3 Consistency with Council's Community Strategic Plan

The proposal is consistent with Council's Community Strategic Plan. The relevant objective and strategy in Council's Community Strategic Plan are:

Objective 2.2 Population and urban settlement growth that is ecologically sustainable, carefully planned and managed to meet the needs of the community.

Strategy 2.2.1 Develop and implement land use zones and related strategies for future growth of the City, based on principles of connectivity, ecological sustainability, flexibility and accessibility.

The relevant activity in Council's Delivery Program is:

Activity 2.2.1.7 Implement the Planning Works Program to complete priority strategic planning policy initiatives.

The proposal is also consistent with the Sussex Inlet Settlement Strategy which was endorsed by the State Government in 2007. This Strategy is also reflected in the State Government's South Coast regional Strategy.

5.2.4 Consistency with Applicable State Environmental Planning Policies

The Planning Proposal is considered to be consistent with State Environmental Planning Policies. A checklist is provided in the Appendices.

5.2.5 Consistency with Applicable Ministerial Directions

The Planning Proposal is consistent with the following relevant Ministerial Directions:

- *1.2 Rural Zones*. It is not proposed to rezone the subject land to residential or allow subdivision.
- *1.5 Rural Lands*. The Planning Proposal is consistent with SEPP Rural Lands and subdivision is not proposed.
- *2.2.1 Environmental Protection Zones*. The Planning Proposal aims to protect environmentally sensitive land.
- *2.2.3 Heritage Conservation*. Aboriginal archaeological & cultural heritage study was completed by Australian Museum Business Services. The findings and recommendations have been incorporated into the Planning Proposal.
- *5.1 Implementation of Regional Strategies*. Refer to sections 5.2.1 and 5.2.2.

The only potential inconsistency is in relation to *6.3 Site Specific Provisions*. To ensure any dwellings are strategically located to minimise bushfire risk and environmental impact, there is a strong argument that their location should be set out as part of the Planning Proposal. Refer to information provided in section 8.

As discussed previously, the Planning Proposal is not consistent with Ministerial Direction *4.4 Planning for Bushfire Protection* in so far as the existing roads are not through roads.

A checklist of Ministerial Directions is provided in the Appendices.

5.3 Environmental, Social & Economic Impact (Section C)

5.3.1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or habitats that will be adversely affected as a result of the proposal?

Proposed zone boundaries have been delineated in consultation with the relevant government agencies to minimise any potential impacts on threatened biodiversity. Refer details provided in section 8.

5.3.2 Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The subject land has been cleared to varying degrees. In some cases no further clearing will be necessary and there will be scope for environmentally sensitive areas to be rehabilitated. Conditions could be included on development consents requiring rehabilitation of land that has been cleared without approval and where existing use rights do not apply.

In other cases bushland will need to be cleared to accommodate residential development, infrastructure and provision of bushfire asset protection zones. Given that the Planning Proposal would only potentially create 19 dwelling entitlements (four of which could already potentially be developed because they are 1964 holdings) the potential

environmental impacts would be minimal provided there are appropriate controls to limit the extent of development.

5.3.3 How has the planning proposal adequately addressed any social and economic effects?

The planning status of Verons Estate has been an issue of contention for many years. The Planning Proposal will help to resolve this issue and deliver a small but significant social benefit to the local community and affected landowners. The Planning Proposal is unlikely to be financially viable if additional roads are required. Residential development that could potentially occur as a result of the Planning Proposal would help to stimulate the local economy during the construction phase but this has not been quantified.

5.4 State & Commonwealth Interests (Section D)

5.4.1 Adequacy of Infrastructure

Sussex Inlet Road is a designated (Unclassified) Regional Road and as such receives State Government funding for maintenance under agreement with Roads & Maritime Services (RMS). Accordingly, RMS may have an interest in any proposed works along Sussex Inlet Road and will be consulted in conjunction with the public exhibition of the Planning Proposal. Local roads within the subject land will be upgraded as outlined in section 8.2.3.

Effluent will be treated and disposed of onsite as discussed in section 8.2. Reticulated sewerage is not proposed to be extended to the subject land. It is not proposed to extend reticulated water to the subject land.

Provision of electricity is a matter which landowners will need to consider at the appropriate point in time. Landowners may wish to consider off-the-grid electricity supply.

Sussex Inlet has a range of services including shopping facilities, sporting fields, an aquatic centre, a medical centre, allied health services, a rural fire brigade, a primary school, a community hall and a wide range of tourist accommodation.

5.4.2 State and Commonwealth public authorities consultation

Council has been consulting with government agencies throughout the process of preparing the Planning Proposal. Council intends to seek feedback from the following government agencies in conjunction with exhibition of the Planning Proposal:

- NSW Rural Fire Service
- NSW Office of Environment & Heritage
- NSW Department of Primary Industries – Fisheries
- NSW Department of Primary Industries – Office of Water
- Southern Rivers Catchment Management Authority
- NSW Office of Water
- Endeavour Energy
- Roads and Maritime Services
- Department of Planning and Infrastructure

- Australian Government - Department of Sustainability, Environment, Water, Population and Communities. Comment: The proposal is unlikely to be a 'controlled action' if the nationally-listed threatened species habitat is given increased protection under the proposed zoning than is the case under the current rural zoning.

6 Community Consultation (Part 5)

6.1 Landowner Consultation

A significant level of consultation has been undertaken with landowners throughout the Verons Estate rezoning investigations. It is standard practice to notify the landowners whenever the rezoning investigations are reported to Council and this will continue to occur. A number of landowner meetings have been held in recent years, including as part of Council's consideration of the development potential of the lots located within the Swan Lake catchment.

A dedicated project web page has also been established on Council's website and this is updated periodically. The web page can be accessed at:

<http://shoalhaven.nsw.gov.au/Planning&Building/Strategicplanning/PaperSubdivisions/VeronsEstate.aspx>

As has been the case with the Verons Estate rezoning investigations for a number of years, relevant Council staff are available for landowners to discuss the proposal (during business hours).

6.2 Public Exhibition

It is proposed that the Planning Proposal would be publicly exhibited for a minimum of 28 days. Landowners would be notified of the exhibition in writing and Council staff will continue to be available to discuss the matter with them individually. The exhibition would be advertised in the South Coast Register and on Council's website. The notification will be in accordance with DP&I's community consultation requirements (refer to "A guide to preparing local environmental plans") and Council's public consultation policy.

7 Project Timeline (Part 6)

The following milestone timeframes are anticipated. The anticipated timeframes will need to be revised if any significant delays are encountered.

Task	Anticipated timeframe
Commencement date (date of Gateway determination)	May-June 2013
Completion of studies	Completed
Government agency consultation (pre & post exhibition as required by Gateway determination)	Ongoing. To be completed by September 2013
Public exhibition of Planning Proposal Dates for public hearing (if required)	July-August 2013 Public hearing not required
Consideration of submissions	September 2013
Post exhibition consideration of Planning Proposal	November 2013
Date RPA will make the plan (if delegated)	Not applicable
Date RPA will forward to the department for notification (if delegated)	Not applicable

8 Environmental Constraints & Land Capability

8.1 Biodiversity Issues

8.1.1 Constraints

A Threatened Biodiversity Assessment was completed for Council in two stages by Ecological Australia Pty Ltd (Bushfire & Environmental Services):

Stage 1 (vegetation mapping) was undertaken prior to the finalisation of the Sussex Inlet Settlement Strategy in August 2007. (Prior to finalisation of the SISS, Council's preferred rezoning outcome was unclear.)

Stage 2 involved targeted surveys for threatened species that potentially occur on the land.

A combined report for these assessments was finalised in July 2011. The findings and recommendations are summarised below.

Findings:

- The land supports a mosaic of six vegetation communities: Scribbly Gum – Bloodwood Forest; Scribbly Gum – Bloodwood Woodland/Open Woodland; Peppermint – Blackbutt Forest; Peppermint – Bloodwood Forest; Sandstone Sedgeland; and Woollybutt – Paperbark Forest.
- The vegetation communities of the study area were not considered to constitute endangered ecological communities listed under the NSW *Threatened Species Conservation Act 1995 (TSC Act)* or the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.
- Eleven threatened fauna species were recorded in or near the study area during the survey period: the Eastern Freetail Bat *Mormopterus norfolkensis*, Eastern Bentwing Bat *Miniopterus schreibersii*, Eastern False Pipistrelle *Falistrellus tasmaniensis*, Eastern Pygmy-possum *Cercartetus nanus*, Gang-gang Cockatoo *Callocephalon fimbriatum*, Glossy Black-cockatoo *Calyptorhynchus lathami*, Grey-headed Flying-fox *Pteropus poliocephalus*, Masked Owl *Tyto novaehollandiae*, Powerful Owl *Ninox strenua*, Square-tailed Kite *Lophoictinia isura* and Yellow-bellied Glider *Petaurus australis*.
- All of these threatened fauna species are listed as Vulnerable on Schedule 2 of the TSC Act. The Grey-headed Flying-fox is also listed as Vulnerable on the Schedules of the EPBC Act.
- Two threatened flora species were recorded in the study area. The Leafless Tongue Orchid *Cryptostylis hunteriana* is listed as Vulnerable under both the TSC Act and the EPBC Act. The orchid *Pterostylis ventricosa* has recently been listed as Critically Endangered under the TSC Act.
- One migratory species listed on the schedules of the EPBC Act was recorded within the study area, the Rufous Fantail *Rhipidura rufifrons*.
- The study area does not contain any potential Koala habitat pursuant to NSW State Environmental Planning Policy No 44 – Koala Habitat Protection.
- The study area currently has good habitat connectivity with the adjoining Conjola National Park to the west and south, and disturbed habitat linkages with larger areas of vegetation to the north. Riparian habitats in the study area are also

connected to water bodies and wetland habitats of high conservation value. The protection of habitat for threatened species, maintenance of habitat connectivity and riparian/water quality are key considerations for maintaining ecological integrity with future development of the study area.

Recommendations:

- In order to maintain the long-term viability of threatened species habitat and general biodiversity in the study area, key habitat linkages need to be retained, managed and in some areas rehabilitated or re-established. Priority species for connectivity include less mobile, resident threatened fauna (Yellow-bellied Glider and Eastern Pygmy-possum) and habitat for the orchids *Cryptostylis hunteriana* and *Pterostylis ventricosa*. Maintaining connectivity with Conjola National Park should also be given a high priority.
- Maintaining the key biodiversity values within the subject land whilst allowing one dwelling per lot outside of the Swan Lake catchment appears to be achievable, provided that development is located in specific areas of least ecological constraint (refer to Figure 3) and that substantial and strategic areas of habitat are retained, rehabilitated and managed for conservation purposes. Detailed recommendations are provided to assist in this regard.
- A range of planning strategies and development controls, coupled with education and enforcement strategies would be necessary to achieve biodiversity outcomes.
- Consideration should be given to seeking biocertification of any future local environmental plan over the subject land.

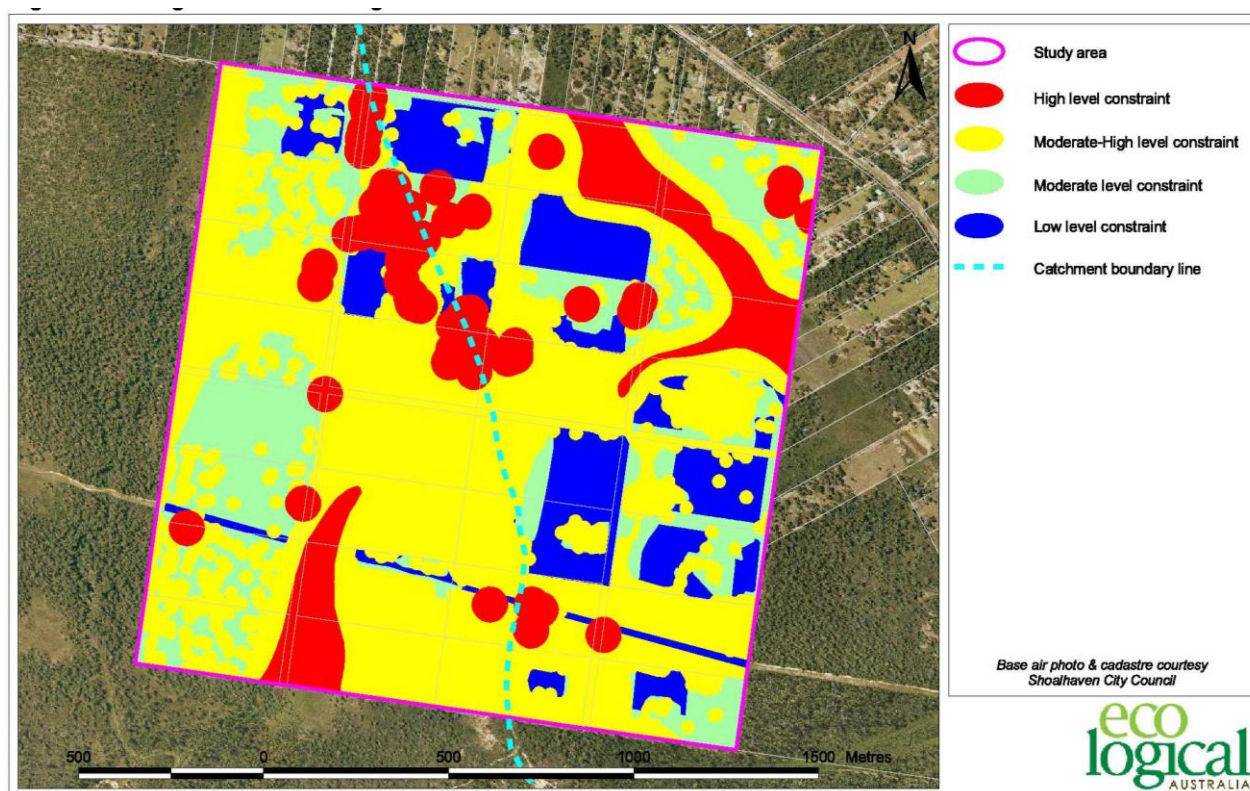


Figure 3 - Ecological constraint categories recommended in the Threatened Biodiversity Assessment (Ecological Australia, 2011)

A copy of the report is available on Council's website at:

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

Note that Figures 7, 8 and 10 have been omitted having regard to Section 161 of the NSW National Parks & Wildlife Act 1974 & Clause 12, Schedule 1 of the Government Information (Public Access) Act, 2009.

8.1.2 Conservation Outcomes

Given that each of the lots is approximately 8 hectares there is significant scope to achieve long term conservation outcomes, on land which is outside of the potential development footprint whilst providing one dwelling per lot within the Badgee Lagoon catchment (lots 1-19).

Application of subclause (9) in clause 5.9 of the Standard Instrument LEP will ensure continuation of provisions similar to those under the Tree Preservation Order (TPO). On 17 April 2012, Council resolved to “... *request the support of DP&I for the inclusion of a local provision in SLEP 2009 to ensure that clause 5.9 applies to the paper subdivisions.* (MIN12.379).

8.2 Bushfire Risk Management

8.2.1 Statutory requirements

Substantial areas of the subject land are designated as Bushfire Prone land under the Section 146 of the NSW *Environmental Planning and Assessment Act 1979*. The extent of bushfire prone land over the subject land and surrounds is shown in Figure 4.

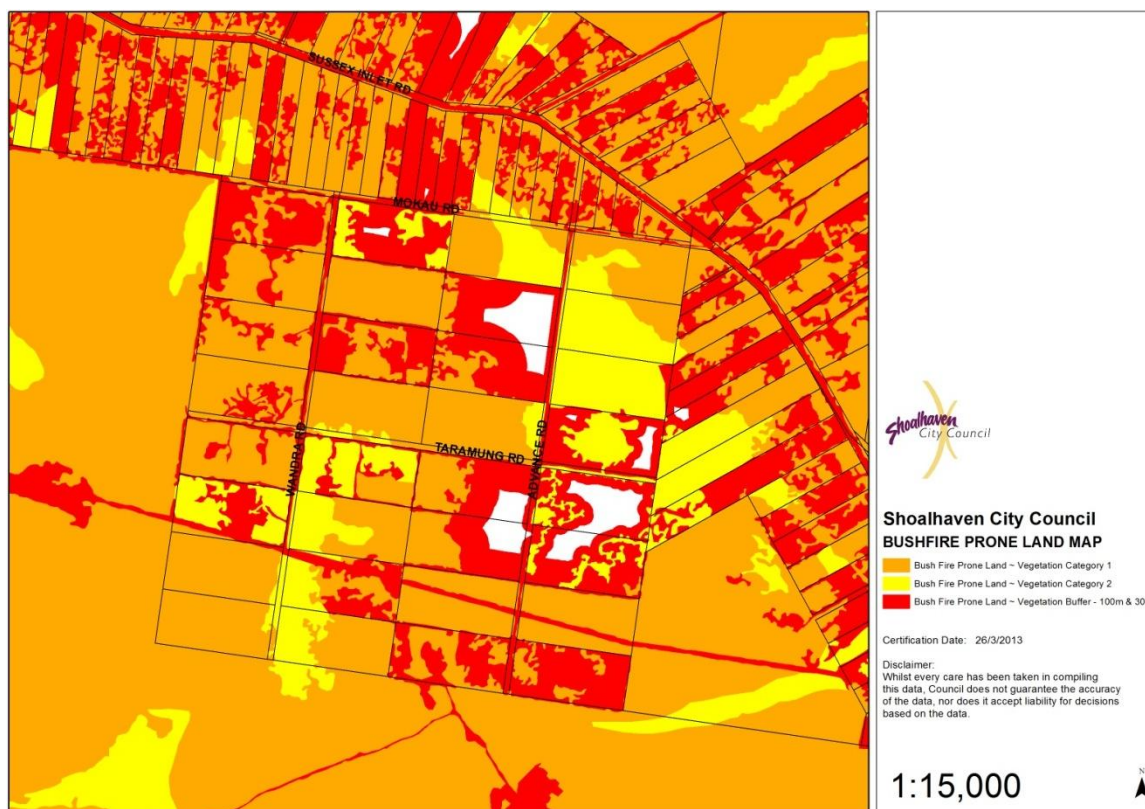


Figure 4 - Bushfire Prone Land mapping for subject land and surrounds

In relation to the rezoning process, Ministerial Direction 4.4 (Planning for Bushfire Protection) under Section 117 of the *Environmental Planning and Assessment Act 1979*, requires formal consultation with the NSW Rural Fire Service and consistency with the RFS's Planning for Bushfire Protection 2006 (PBP). PBP applies to rezoning proposals *and* development applications which seek to allow residential development on land that is classified as bushfire prone land.

The key bushfire protection measures that need to be addressed at the rezoning stage are:

- Provision of the clear separation of buildings and bushfire hazards in the form of asset protection zones (APZ);
- Construction and design of the structures;
- Appropriate access standards for residents and firefighters/emergency workers; and
- Adequate water supply and pressure; and
- Emergency management arrangements for fire protection and evacuation.

In relation to a rezoning proposal for Jerberra Estate (another paper subdivision) advice from the NSW RFS dated 22 December 2011 and 18 September 2012, as well as the Heritage Estates on 25 October 2005, has been:

- Compliance with PBP is required even if the land is not considered to be a 'greenfield site'.
- APZ width must be determined in accordance with Addendum Appendix 3 of PBP, which aligns with Table 2 in the current AS3959 (Australian Standard for building in bushfire prone areas).

- To be consistent with PBP, the Planning Proposal should be based on a building construction standard of BAL-29 or less.

These aspects are outlined and discussed in more detail below.

8.2.2 Minimum APZ and dwelling construction standards

APZs are required to ensure that buildings are not exposed to radiant heat levels above critical limits (29 kW/m²) or to direct flame contact. Guidance on management of inner protection areas (IPA) and outer protection areas (OPA) is provided in PBP 2006 and *Standards for asset protection zones* (NSW RFS, 2005¹). In summary, APZs should be managed as follows:

- Ground fuels should be removed on a regular basis.
- Grass needs to be kept short and where possible, green.
- Tree crowns should be separated from each other and the asset by at least 2 to 5 metres.
- Native shrubs and trees should be retained as clumps or islands and should maintain a covering of no more than 20% of the area.

A legal mechanism such as a positive covenant (under section 88B of the *Conveyancing Act 1919*) is needed to ensure the APZ will be maintained in perpetuity. This effectively means that dwellings need to be positioned so that the APZs can be accommodated within the property boundary unless they are clustered so that the APZs are contiguous, overlap and mutually beneficial with those on adjoining properties.

APZ width must be determined in accordance with Addendum Appendix 3 of PBP. The determining factors are:

- Predominant vegetation, which in this case is forest (dry & wet sclerophyll forest).
- Effective slope, which in this case is 0-5 degrees (refer to Figure 5).
- Fire danger index (FDI) which is a measure of regional fire weather. The FDI is 100 for the Shoalhaven region.
- Standard of construction under AS3959, which as advised by the RFS on 22 December 2011, needs to be BAL – 29 or less.

¹ http://www.rfs.nsw.gov.au/file_system/attachments/State/Attachment_20060130_7DE0A145.pdf
Accessed 30 November 2012.

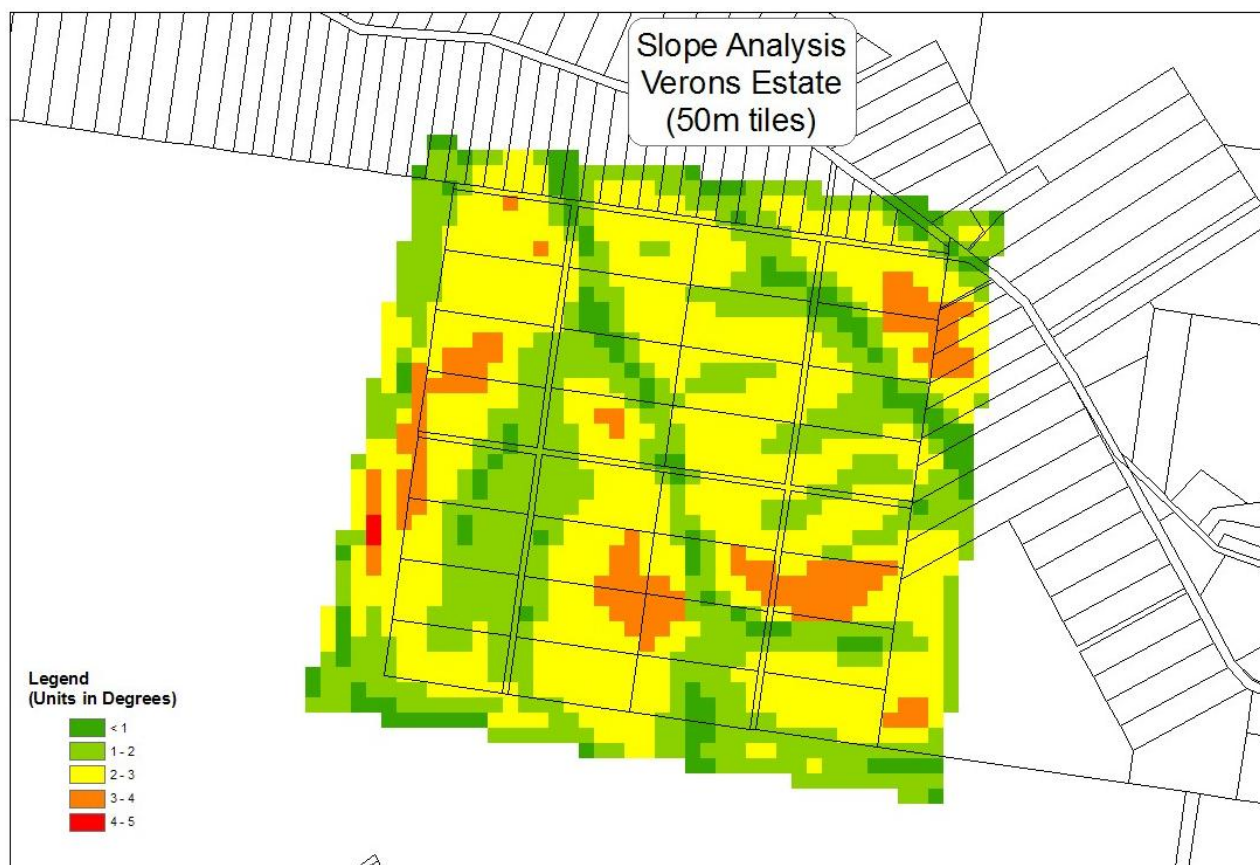


Figure 5 - Slope classes of the subject land

The minimum asset protection zone (APZ) for a dwelling constructed to Bushfire Attack Level (BAL - 29) under AS3959 would be:

- 25 m if the bushfire hazard is level or upslope, and
- 32 m if the bushfire hazard is downslope.

As outlined below, APZs of this size can be accommodated within the developable lots. Larger APZs would be required for construction standards less than BAL – 29. The categories of bushfire attack, the relevant APZ width and applicable construction level under AS3959 are identified in Table 1.

Table 1 – Summary of relevant APZ widths and applicable construction level under AS3959

Slope		Construction level AS3959 Bushfire Attack Level (BAL) ²
Vegetation is <i>level or upslope</i>	Vegetation is >0 to 5 degrees <i>downslope</i>	
48-<100 ¹	57-<100 ¹	BAL-12.5
35-<48	43-<57	BAL-19
25-<35	32-<43	BAL-29

Notes:

- 1 No specific construction level is required if the source of bushfire attack is more than 100m from the dwelling. (100m applies to forests, woodlands & tall heaths. Smaller distances apply to other vegetation classes.)
- 2 Rezoning proposals must be based on BAL-29 or less.

Construction level and APZ details would be set out in a bushfire assessment which would be done individually for each development application.

Potential development footprint areas

The development footprint area would depend on the dimensions of the potential building area. Given the size of the lots, it is considered that the potential building area should be between 30m and 50m wide/long. The development footprint area required for various development footprint sizes, including the minimum required APZ widths specified above, is provided in Table 2.

Table 2 - Indicative development footprint dimensions

Dimensions of potential building area	Typical dimensions of development footprint*	Total area of development footprint
30m x 30m = 900 m ²	25m/30m/32m x 25m/30m/32m = 87m x 87m	0.76 ha
40m x 40m = 1,600 m ²	25m/40m/32m x 25m/40m/32m = 97m x 97m	0.94 ha
50m x 50m = 2,500 m ²	25m/50m/32m x 25m/50m/32m = 107m x 107m	1.14 ha

* Dimensions are a guide only and are based on the following assumptions:

1. the footprint is located entirely within the property boundaries;
2. the corners of the footprint are not rounded; and
3. on two sides of the dwelling the hazard is upslope and on two sides the hazard is downslope.

The above dimensions are a guide only and would need to be determined for each development application (DA) based on the specific circumstances of each site and proposed development.

The draft conceptual development footprint plan (Planning Proposal Map 3) is based on building footprints of 50m x 50m and the minimum required APZs specified above.

To ensure that dwellings are strategically located to minimise bushfire risk, consideration should be given to identifying the location of the potential building areas as part of the local environmental plan.

Construction level and APZ details would be set out in a bushfire assessment which would need to be done individually with each development application.

8.2.3 Public roads

A gravel road has been constructed along Mokau Road from Sussex Inlet Road to Wandra Road; along Advance Road from Mokau Road to lots 8 and 9; and along Wandra Road from Mokau Road to lots 22 and 27. The existing gravel pavement width is approximately 4 to 4.5 metres.

To meet the relevant requirements of PBP, it will be necessary to upgrade the existing road network. Arrangements to recoup costs from the benefiting landowners will need to be put in place at the appropriate stage before the work can be undertaken.

It is proposed that Mokau Road (from Sussex Inlet Road to Wandra Road), Advance Road and Wandra Road to Lot 19 be upgraded to a total pavement width of 6 metres. Indicative costs are provided in section 9.1.1 for two options:

1. sealed with gravel shoulders, and
2. unsealed.

Whilst option 1 is preferred from a bushfire perspective, feedback will be sought from the relevant stakeholders including the NSW RFS and the landowners before the final standard of upgrade is determined.

The sealed option would be a 5.0 metre seal with 0.5 metre gravel shoulders (total pavement width of 6 metres) for the following sections:

- Mokau Road from its intersection with Sussex Inlet Road to Advance Road; and
- Advance Road.

The following sections would be upgraded to a 4.0 metre seal with 1.0 metre gravel shoulders (total pavement width of 6 metres):

- Mokau Road west of its intersection with Advance Road to its intersection with Wandra Road; and
- Wandra Road from its intersection with Mokau Road to the property access for lot 19.

Formal turning areas will be provided at the southern extent of residential development along Wandra and Advance Roads and at the Taramung Road / Advance Road intersection in compliance with Figure 4.4 in PBP.

Development consents for dwellings within the subject land will require indented splayed driveways to specifications shown in (see Figure 6) which have been designed to accommodate category 1 firefighting vehicles.

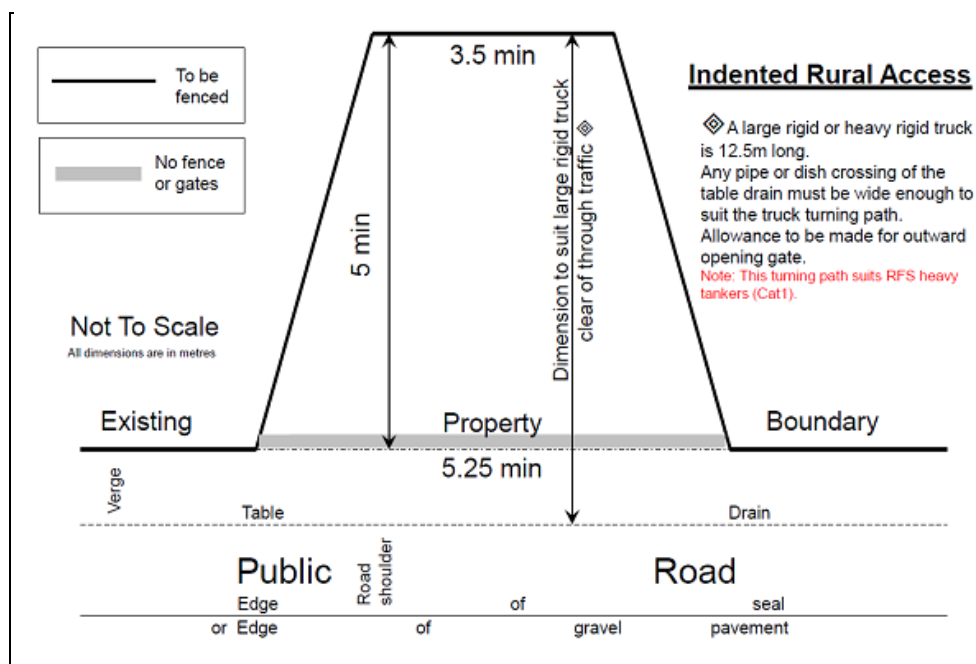


Figure 6 – Proposed indented splayed driveway specifications for Verons Estate (designed in accordance with Figure 4.4 in PBP)

An assessment of the planned road upgrades against the relevant criteria in PBP is provided in Table 3.

Table 3 - Assessment of the Planning Proposal against the criteria for public roads in PBP 2006

Performance criteria	Acceptable solutions	Comment
Firefighters are provided with safe all weather access to structures	Public roads are 2WD, all weather standard.	A single lane gravel road has been constructed to the extent described above. It is proposed to widen the existing road.
Public road widths and design that allow safe access for firefighters while residents are evacuating an area.	Urban perimeter roads are 2-way. Non-perimeter roads comply with requirements for Category 1 Tankers.	The proposed development would be located to the east of Wandra Road and south of Mokau Road. It is not feasible to create a new road on the southern and eastern borders of the subject land. See planned upgrades described above.
	Perimeter road is linked to the internal road system at intervals of $\leq 500\text{m}$.	
	Traffic management devices are constructed to facilitate access by emergency services vehicles.	To be addressed when roads are upgraded/constructed.
	Roads have a cross fall of $\leq 3^\circ$	There will be no difficulty meeting this requirement.
	All roads are through roads. Dead end roads are not recommended but if unavoidable, dead ends are $\leq 200\text{m}$ and incorporate a minimum 12m outer radius and are clearly sign posted.	It is not proposed to construct Taramung Road due to environmental and cost constraints. Hence, Advance and Wandra Roads will not be through roads.
	Curves of roads (other than perimeter roads) have a minimum inner radius of $\geq 6\text{m}$.	
	The distance between inner & outer curves $\geq 6\text{m}$.	
	Maximum and average grades for sealed roads are 15° and 10° respectively.	
	Vertical clearance is $\geq 4\text{m}$.	
The capacity for road surfaces and bridges is sufficient to carry fully load firefighting vehicles	Capacity is sufficient to carry fully loaded firefighting vehicles & bridges clearly indicate load rating.	These requirements can be readily accommodated when the roads are upgraded. The Planning Proposal should not be finalised and become effective until the roads are upgraded. It will therefore be necessary to put in place cost recruitment arrangements at the appropriate stage..
Roads are clearly sign-posted and buildings/properties clearly numbered.	Public roads between 6.5 and 8m wide are No Parking on one side.	
Clear access to reticulated water supply	Public roads $\leq 6.5\text{m}$ wide provide parking bays and locate services outside of the parking bays.	Reticulated water is not provided to the subject land is likely to be cost prohibitive. Properties will need to have a dedicated static water supply. Refer to section 8.2.5.
Parking does not obstruct the minimum pavement width.	Parking bays are $\geq 2.6\text{m}$ wide.	Given the large size of the properties there is unlikely to be a need for on-street parking.
	Public roads directly interfacing the bushfire hazard vegetation provide roll top kerbing to the hazard side of the road.	Kerbing will not be provided. Swales will be provided where appropriate.

8.2.4 Property access

Except for lots 18 & 19, dwellings will be able to be positioned within 200 metres of a public road. On lots 18 & 19, the dwellings will be located approximately 300 metres from Wandra Road. Given the large size of the properties (200m x 400m) alternative access/egress will be possible. Another option to provide alternative access/egress for lots 18 and 19 would be to establish a Right of Carriageway from Mokau Road along the

eastern boundary of lots 17 and 18 and the western boundary of lot 16. This would be difficult if all owners involved are not supportive. If this is not possible due to the environmental constraints, consideration will need to be given to alternative solutions. Any such circumstances will need to be considered as part of the owner's bushfire assessment and development application stage.

An assessment of the relevant requirements in PBP is provided in Table 4.

Table 4 - Assessment of Planning Proposal against property access criteria in PBP 2006

Performance criteria	Acceptable solutions	Comment
Access is provided in recognition of the risk to firefighters and evacuating residents	At least one alternative property access road is provided for individual dwellings (or groups of dwellings) that are located more than 200m from a public through road.	Except for lots 18 & 19, dwellings will be able to be positioned within 200m of a public road. On lots 18 & 19, the dwellings will be located approximately 300m from Wandra Road. Given the large size of the properties (200m x 400m) alternative access/egress will be possible within each lot. Another option would be to establish a R.O.W. from Mokau Rd along the eastern boundary of lots 17 & 18 and the western boundary of lot 16.
Capacity of road surfaces and bridges is sufficient to carry fully loaded firefighting vehicles. All-weather access is provided.	Bridges clearly indicate load rating and pavements and bridges are capable of carrying a load of 15t. Roads do not traverse a wetland or other land potentially subject to periodic inundation.	It is unlikely that bridges will be required on any of the properties. If they are however, they will need to be designed to comply with this requirement. This would be addressed at development application stage.
Road widths and design enable safe access for vehicles	Minimum carriage width of 4m.	These requirements will be readily addressed by each landowner at development application stage.
	Passing bays every 200m that are 20m x 2m.	
	Minimum vertical clearance of 4m.	
	Internal roads for rural properties provide a loop road around any dwelling or incorporate a turning circle with an outer radius of $\geq 12\text{m}$.	
	Curves have inner radius of $\geq 6\text{m}$ and are minimum in number.	
	Minimum distance between inner and outer curves is 6m.	
	Crossfall $\leq 10^\circ$.	
	Maximum grades for sealed roads $\leq 15^\circ$ and $\leq 10^\circ$ for unsealed roads.	NA - Subject land has a maximum gradient of 4° .
	Access to a development comprising more than 3 dwellings have formal road access and not by right of way.	Development will be limited to one dwelling per lot and each lot has direct access to existing public road(s).

Any development applications will also need to demonstrate compliance with the requirements in PBP for property access, including provision of a perimeter fire trail around each dwelling.

8.2.5 Water supply

Shoalhaven Water has advised that reticulated water could be provided to the lots within Verons Estate at a cost of approximately \$34,882 per lot.

In non-reticulated areas (rural residential and rural developments) a water supply reserve dedicated for firefighting purposes is required. For lots that are larger than one hectare, a supply of at least 20,000 litres is required. Specific requirements include:

- A suitable connection for fire fighting purposes must be provided within the Inner Protection Area (IPA) and away from the structure. A 65 mm Storz valve outlet with a gate or ball valve must be provided.
- Valves, pipes and taps must be metal, not plastic.
- Underground tanks have a 200 mm access hole to allow tankers to refill directly from the tank. A hardened ground surface for truck access must be supplied within 4m of the access hole.
- Above ground tanks must be concrete or metal, not plastic. Stands on raised tanks must be protected and any tanks on the hazard side of the building should be shielded for the protection of firefighters.
- Pumps must be shielded.

In addition to the use of water tanks, some of the 27 farm dams identified within the subject land by GHD in 2009 (refer to Figure 7) may potentially be suitable for inclusion in the RFS's Static Water Supply Program.

8.2.6 Shoalhaven Bush Fire Risk Management Plan 2010

In terms of existing bushfire risk management arrangements, the subject land is bounded to the north-west, north and north-east by rural residential lots collectively known as the "Millallen Farmlets" which are accessed directly from Sussex Inlet Road. The Shoalhaven Bush Fire Risk Management Plan (BFRMP) prepared by the Shoalhaven Bush Fire Management Committee in 2010 identifies this rural residential area as at 'very high' risk, of which the likelihood is categorised as 'likely' and the consequence is 'major'. The treatments identified are in the BFRMP are:

- hazard reduction;
- preparedness (implementation of the RFS's 'Static Water Supply Program' which aims to identify properties with an alternate water supply that can be used for fire fighting purposes); and
- property planning (implementation of the 'Farm Firewise' Program).

The land is bounded to the south-west, south and south-east by Conjola National Park. That part of the Conjola National Park which adjoins the subject land is identified in the Shoalhaven BFRMP as a Strategic Fire Advantage Zone (SFAZ). The purpose of the SFAZ is to:

- *To provide strategic areas of fire protection advantage which will reduce the speed and intensity of bush fires, and reduce the potential for spot fire development; and*
- *To aid containment of wildfires to existing management boundaries.*

According to the Shoalhaven BFRMP, an SFAZ is managed to achieve a mosaic of fuel reduction patterns so that the majority of the SFAZ has an overall fuel hazard (OFH) of less than high.

8.2.7 Information required at development application stage

Exact APZ dimensions including inner and outer protection areas, access, water supply and construction standard would be determined at development application stage. A development application for each dwelling would need to be accompanied by individual bushfire assessment.

8.3 Watercourses and riparian land

A watercourse and riparian land mapping assessment was completed by GHD Pty Ltd in April 2009, to provide more accurate information than was available from the 1:25,000 topographic mapping.

Watercourses and riparian land were defined using geospatial data, and verified in the field in October and November 2008 using a GPS. Information was also collected on riparian condition using a Rapid Appraisal of Riparian Condition (RARC) field survey method.

The identified watercourses, riparian land and farm dams are shown in Figure 7.



Figure 7 - Watercourses and riparian land within the subject land (GHD, 2009)

The report made several recommendations relevant to this Planning Proposal to help ensure protection of the watercourses, including:

- Zoning the riparian land to an appropriate environmental zone.
- Minimising the number of road crossings in riparian areas.

- Provision of a minimum 40 metre wide core riparian zone (CRZ) and a 10 metre vegetated buffer to protect the CRZ from edge effects.
- Locating services outside of the CRZ and vegetated buffer areas.
- Restoration and rehabilitation of the riparian zone to pre European condition as far as possible.
- Any stormwater treatment measures should be located outside of the CRZ and buffer before discharge into the watercourse.

The full report is available on Council's website at:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D09/66634>

8.4 Soils

The soil profile across the subject land is relatively uniform. It is a duplex (textural contrast) soil that comprised of a weakly structured, shallow sandy loam topsoil ('A' horizon) and a clay subsoil ('B' horizon).

Samples from each soil horizon were collected in December 2011. Composite samples were sent to the Soil Conservation Service's Scone Laboratory for analysis. The results are summarised below.

The topsoil is strongly acidic, has a low nutrient holding capacity and may be prone to crusting and surface sealing if cultivated/disturbed when wet. The indicators of this include:

- the Exchangeable Sodium Percentage (ESP) is in the 'marginally sodic' range for the topsoil indicating that it is potentially dispersive;
- Emmerson Aggregate Test (EAT) results showed soil dispersion occurred after 'remoulding' of the topsoil sample; and
- the dispersion percentage is high in the topsoil and moderate in the subsoil.

In addition to the above, there is evidence of soil dispersion where the soil profile is exposed within sections of the road reserves (refer to Figure 8).



Figure 8 - Photo showing exposed soil profile in table drain along Advance Road. Note evidence of dispersion and erosion of B horizon (clay subsoil)

8.5 Effluent Disposal

In terms of its suitability for onsite effluent disposal, the high clay content and imperfect drainage of the subsoil precludes primary treatment (i.e. septic tank) and disposal via absorption trenches. Treatment by an aerated wastewater treatment system (AWTS) or equivalent, with an appropriately designed irrigation system would be required as a minimum. The application of gypsum and organic matter (e.g. a commercially available organic soil blend that meets the relevant Australian Standard) to the effluent disposal area is recommended to improve soil structure and encourage. These measures should also be considered in any works that will disturb or expose the soil profile across the Estate.

At this stage it is not been determined whether reticulated water will be provided to the subject land. Sole reliance on rainwater tanks would help to minimise wastewater volumes generated by dwellings, and therefore help to minimise the risk of system failure.

8.6 Water cycle and catchment management

As shown in Figure 9, wetlands identified in State Environmental Planning Policy No. 14 (SEPP 14 Wetlands) are located downstream from the subject land in both the Badgee Lagoon (SEPP 14 Wetland No. 302) catchment and the Swan Lake catchment (SEPP 14 Wetland No. 306).



Figure 9 - Catchment boundaries and SEPP 14 Wetlands

No development is proposed within the catchment of SEPP 14 Wetland No. 306. One of the key objectives of the Planning Proposal is to ensure that the hydrology, water quality and ecology of these SEPP 14 Wetlands are not adversely impacted by any development within the Estate.

The proposal will enable a number of current potential sources of pollution to be better managed including:

- Upgrading the roads and the road drainage system will help to reduce erosion.
- Regeneration of degraded areas and removal of any unauthorised structures from inappropriate/ environmentally sensitive land.

8.7 Agricultural land capability

As shown in Figure 10, Verons Estate is mapped as Class 5 on the Huskisson Agricultural Land Classification map produced by the Department of Agriculture in 1986. According to the Department, Class 5 land is “...unsuitable for agriculture, or at best suited only to light grazing. Agricultural production is very low or zero as a result of severe constraints, including economic factors which prevent land improvement.” Given the land’s Class 5 Agricultural Classification, it is appropriate that “extensive agriculture” remains a permissible use on the less constrained land, but not “intensive animal agriculture” or “intensive plant agriculture” due to the potential impacts on water quality.

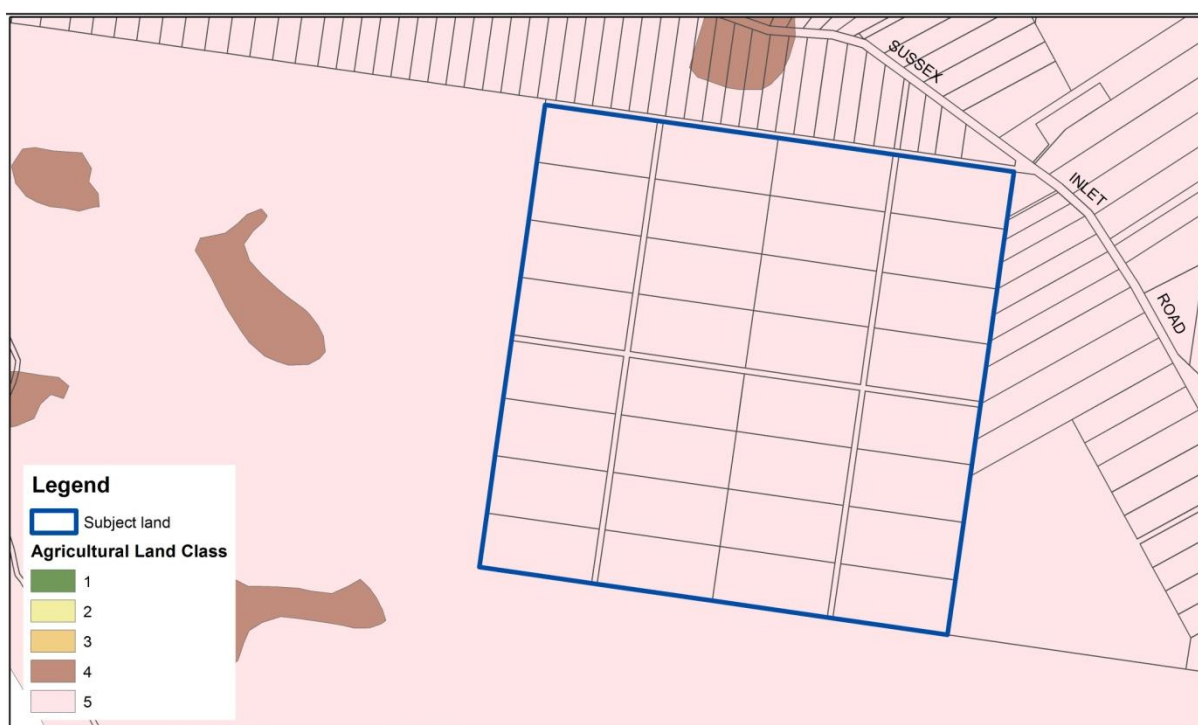


Figure 10 - Agricultural land classification (insert source)

Some landowners have suggested that they have existing use rights in relation to agricultural uses but this has not been formally assessed or substantiated. The relevant “appointed day” in this regard is likely to be 9 December 1989. It appears that extensive agriculture is currently being undertaken on a number of properties within the Estate. Consents have been issued for viticulture and associated structures on two properties (Lots 6 and 17) both of which are largely cleared and are currently used for grazing. As is normally the case, the onus is on the landowner to demonstrate existing use rights as required in the future.

8.8 Aboriginal & European archaeological & cultural heritage

An Aboriginal & European archaeological & cultural heritage assessment was completed by Australian Museum Business Services in June 2009.

Two Aboriginal sites were identified within the south-western part of the subject land. The site of most importance is located on land currently zoned Environment Protection 7(a) (Ecology) which affects lots 24 and 25. It was recommended that the environment protection zone be retained over this area. The other site was located west of Wandra Road and south of the transmission line. Consent would be required under section 90 of the *National Parks and Wildlife Act, 1974 (NP&W Act)* if development or disturbance was proposed at this location.

Other areas within and adjacent to swamps and creeks were considered to have archaeological sensitivity and potential for “substantial in situ archaeological deposit”. These areas cover parts of Lots 1, 2, 3 and 16. If development was proposed within these areas further archaeological investigation involving sub-surface excavation, would be required under a section 87 permit (NP&W Act).

Land affected by the above findings and recommendations is shown in Figure 11.



Figure 11 - Land affected by findings and recommendations of the Aboriginal Archaeological & Cultural Heritage Assessment (Australian Museum Business Services, 2009)

A copy of the report prepared by Australian Museum Business Services is available on Council's website at:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D10/280852>

Note that certain information has been removed having regard to Section 161 of the NSW National Parks & Wildlife Act 1974 & Clause 12, Schedule 1 of the Government Information (Public Access) Act, 2009.

9 Implementation

9.1 Essential Infrastructure

Council has a longstanding position that if the land is rezoned, the costs associated with the rezoning process and the provision of services and infrastructure should be borne by the benefiting landowners. This ‘user-pays’ principal was also recommended by the NSW Commission of Inquiry into the Heritage Estates in 1999. Cost recovery mechanisms that could be considered are outlined in section 9.2.

To ensure that firefighting vehicles can access and protect any dwellings in the event of a bushfire emergency, it is important that the roads are upgraded to the required standard before the individual properties are developed. Indicative costs to upgrade the internal roads and the Sussex Inlet Road – Mokau Road intersection are provided in sections 9.1.1 and 9.1.2 respectively.

9.1.1 Internal road upgrades

As discussed in section 8.2.3, the roads will need to be upgraded and preferably sealed to meet the requirements of Planning for Bushfire Protection. Sealed roads would also greatly reduce the potential for erosion and sediment runoff from the road surface. Indicative costs for internal upgrades for sealed and unsealed options are provided in Table 5.

These cost estimates are based on typical construction rates. An allowance has been made for grassed swales to be provided, to help minimise transport of eroded sediment in road runoff. Actual costs could be higher, particularly if there are unforeseen site constraints and costs. A 40% contingency is shown separately.

Table 5 - Indicative internal road upgrade costs for sealed and unsealed options

Location Description	Road Length (m)	Carriageway Width (m)	Sealed (recommended)		Unsealed	
			Minimum cost	Contingency (if required) [#]	Minimum cost	Contingency (if required) [#]
Mokau Rd: Between Sussex Inlet Rd & Advance Rd	470	5.0	\$124,550	\$49,820	\$71,440	\$28,576
Mokau Rd: Between Advance Rd & Wandra Rd	830	4.0	\$208,330	\$83,332	\$126,160	\$50,464
Advance Rd	1450	5.0	\$403,463	\$161,385	\$231,420	\$92,568
Wandra Rd	420	4.0	\$110,691	\$44,276	\$67,032	\$26,813
Total			\$847,034	\$338,813	\$496,052	\$198,421
Total per dwelling (19)*			\$44,581	\$17,832	\$26,108	\$10,443

[#] The contingency is an upper limit that would only be borrowed/recouped if required (i.e. if the actual cost exceeds the cost estimate).

* Before any cost recoupment arrangements are finalised, consideration should be given to cost sharing with other potential users of the roads in Verons Estate, including other properties within the Estate and the properties between Mokau Road and Sussex Inlet Road.

It is suggested that the contingency would only be borrowed/recouped if the actual cost exceeds the estimates. This arrangement would help to minimise Council's financial risk whilst minimising the financial burden on landowners.

9.1.2 Upgrade of the Sussex Inlet Road – Mokau Road intersection

Council's Traffic Unit has advised that any (formalised) intensification of the intersection of Mokau Road at Sussex Inlet Road would require works to be compliant with "Austroads Guide to Road Design – Part 4A: Unsignalised and Signalised Intersections". The standard of upgrade required will depend on number of properties utilising Mokau Road, and in particular, the potential use by up to 24 properties in the Millallen Farmlets that have direct access to Mokau Road and Sussex Inlet Road and Lots 20 to 32 in Verons Estate.

The Traffic Unit's advice, including indicate cost for the intersection upgrade scenarios is outlined below.

Depending on the number of dwellings this road could potentially service (which will depend on the level of use by properties between Mokau Road and Sussex Inlet Road) upgrade of the intersection could involve two options each for right-turn & left-turn treatments. An assessment of the Warrants for turn treatments in Section 4.8 of the Austroads Guide will determine the upgrade required. Details on turn treatments are shown in the following diagrams in that document:

- Figure 7.5 – Basic right (BAR) turn treatment on a two-lane rural road
- Figure 7.6 – Channelised right-turn treatment with a short turn slot [CHR(S)] two-lane rural road
- Figure 8.2 – Rural basic left-turn treatment (BAL)

Sussex Inlet Road is a designated (Unclassified) Regional Road and as such receives State Government funding for maintenance under agreement with Roads & Maritime Services (RMS). Accordingly, RMS may have an interest in any proposed works along Sussex Inlet Road.

The intersection should be designed to accommodate at 12.5m heavy rigid vehicle for all turning movements into and out of Mokau Road.

The following indicative costs for the two intersection upgrade scenarios were provided by the Traffic Unit:

- BAR & BAL could cost in the order of \$100,000 - \$200,000 (likely to be appropriate for access of up to 20 dwellings)
- CHR(S) & BAL could cost in the order of \$300,000 - \$400,000 (likely to be appropriate for access to more than 20 dwellings)

Note that the above costs would also allow the sealing of Mokau Road for a minimum of at least 20m (if remainder of road is proposed to be unsealed) on approach to Sussex Inlet Road to ensure that gravel and other loose material is not transported onto the intersection.

Any cost recovery arrangements would need to consider potential use by other property owners and seek to share the cost accordingly.

9.2 Cost recoupment options

Preferably the landowners or someone acting on their behalf would coordinate the provision of essential infrastructure. Failing this, Council may be required to put in place arrangements to secure funding from the owners and coordinate the site works on their behalf.

It is imperative that Council's financial risks are minimal in any arrangements to recoup costs for the necessary infrastructure.

Site costs could be recovered upfront or over a period of time. If the roads are to be sealed after a given period of time, the funding arrangement could be staged accordingly.

Cost recoupment options are briefly discussed below.

9.2.1 Special rates

Section 495 of the Local Government Act (1993) allows Council to levy Special Rates. A Council may make a special rate for or towards meeting the cost of any works, services, facilities or activities provided or undertaken, or proposed to be provided or undertaken, by the Council within the whole or any part of the Council's area, other than domestic waste management services. The special rate is to be levied on such rateable land in the council's area as, in the council's opinion:

- *benefits or will benefit from the works, services, facilities or activities; or*
- *contributes or will contribute to the need for the works, services, facilities or activities; or*
- *has or will have access to the works, services, facilities or activities.*

In 2006, Council determined that the most appropriate way to raise the funds necessary to carry out the re-zoning and associated road design for Verons Estate was via a special rate. Council was granted a special variation and subsequently introduced special rates in 2006/2007 to repay loans taken out by Council for the rezoning investigations and road design. These special rates will cease after 2015/2016 when the loans will have been repaid.

A road construction special rate was introduced in 2008/2009 to allow a minimum standard gravel road to be progressively constructed. The amount raised by this special rate is small in comparison to the cost of completing the road network to the minimum required standard. This arrangement will need to be reviewed as the planning process continues.

Council could seek to borrow funds required to complete the necessary site works (upgrading the roads and road drainage) and recoup costs via special rates from the benefitting properties over a given period.

9.2.2 Development contributions - Contributions Plan

In 2010 the State Government introduced a cap on Section 94 contributions as follows:

- a cap of \$20,000 for established areas,

- a cap of \$30,000 for greenfield areas,
- the Minister to consider, on the application of a council and request of a developer, approving a higher contribution amount, subject to review by the Independent Pricing and Regulatory Tribunal (IPART).

It is likely that the site costs may exceed these caps, particularly given other section 94 contributions.

9.2.3 Voluntary planning agreements

Voluntary planning agreement/s (VPA) could be used as a mechanism to establish a legally binding agreement with each landowner to pay their proportion of site costs upfront or through a schedule of payments. However, given the number of landowners involved it may be difficult to get agreement from all landowners.

9.2.4 Schedule 5, Environmental Planning & Assessment Amendment Act, 2008

Provisions for developing land in paper subdivisions under the *Environmental Planning & Assessment Amendment Act, 2008* and the *Environmental Planning & Assessment Amendment (Paper Subdivisions) Regulation 2013* became effective on 8 March 2013. The provisions recognise that the existing subdivision layout in paper subdivisions may be inappropriate as well as the difficulties with getting the necessary commitments from multiple landowners to allow infrastructure to be provided and costs recouped. Importantly, the provisions do not override or circumvent existing legislative requirements concerning the identification of developable land.

The provisions are designed to enable land in paper subdivisions that is suitable for development to be developed and to specifically overcome the situation where a minority of landowners could potentially hold up, or prevent development of the land. A prerequisite to be able to utilise the provisions would be that at least 60% of the owners AND owners of at least 60% of the land area, consent to the proposed development plan. This has to be assessed by formal ballot.

The provisions were originally put forward to enable paper subdivisions in the Riverstone and Marsden Park (Blacktown LGA) to be developed, where Landcom is likely to be designated as the relevant authority. Other potential relevant authorities include a development corporation established under the Growth Centres (Development Corporations) Act 1974, a Council, or any other body prescribed by the regulations.

The provisions include additional means of recouping development costs from landowners. However, Council would need to carefully consider whether it would seek to be appointed as the relevant authority by the Minister and prepare a “development plan”. Doing so would put Council in the role of developer and potentially create a conflict of interest. There would need to be strong justification for seeking this role and a high level of certainty that the necessary landowner support exists.

Appendices & Further Information

Checklist for State Environmental Planning Policies and Ministerial Directions

Council Reports & Resolutions

(Press ctrl click on the links to open)

Report to Development Committee on 5 June 2012 - zoning options:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=d12/130633>

Council resolution on 26 June 2012 to prepare & submit a Planning Proposal:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=MIN12.658>

Report to Development Committee on 5 April 2011 regarding rezoning investigations :

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=d11/76566>

Council resolution 19 April 2011 to remove rezoning special rates from Swan Lake properties:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=MIN11.309>

Report to Development Committee on 10 August 2010 on requirements of South Coast Regional Strategy:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=d10/176214>

Council resolution on 24 August 2010 to defer consideration pending a landowner meeting:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=min10.972>

Status report to Development Committee on rezoning investigations - 1 December 2009:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=d09/218852>

Report to Council on 22 June 1993 and resolution to prepare draft Local Environmental Plan on 6 July 1993 (93/1593)

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D13/56963>

Planning & environmental assessments

Verons Estate Threatened Biodiversity Assessment (Ecological Australia 2011)

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=d12/128889>

Note: Maps 5 - 8 & 10 have been removed having regard to Section 161 of the NSW National Parks & Wildlife Act 1974 & Clause 12, Schedule 1 of the Government Information (Public Access) Act, 2009.

Verons Estate Aboriginal & European Archaeological & Cultural Heritage Assessment (Australian Museum Business Services 2009)

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D10/280852>

Note: Some information has been removed having regard to Section 161 of the NSW National Parks & Wildlife Act 1974 & Clause 12, Schedule 1 of the Government Information (Public Access) Act, 2009.

Verons Estate Watercourse & Riparian Land Mapping Assessment (GHD 2009)

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D09/66634>

Landowner meeting 18 November 2010

Summary of discussion:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D11/90703>

SCC presentation:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D11/90793>

DECCW presentation:

<http://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=D10/291041>

Draft LEP Checklist – Section 117(2) Directions – Verons Estate Planning Proposal

Direction No:	Subject	Applies ?	Relevant?	Consistent?	Comment
1	Employment and Resources				
1.1	Business and Industrial Zones	N			
1.2	Rural Zones	N			It is not proposed to rezone the subject land to residential and it is not proposed to allow subdivision.
1.3	Mining, Petroleum Production and Extractive Industries	N			
1.4	Oyster Aquaculture	N			
1.5	Rural lands	Y	Y	Y	The Planning Proposal is consistent with SEPP Rural Lands.
2	Environment and Heritage				
2.1	Environmental Protection Zones	Y	Y	Y	Proposal has been designed to protect environmentally sensitive land.
2.2	Coastal Protection	N			
2.3	Heritage Conservation	Y	Y	Y	Aboriginal archaeological & cultural heritage study was completed by Australian Museum Business Services. The findings and recommendations have been incorporated into the Planning Proposal.
2.4	Recreation Vehicle Areas	Y	N		
3	Housing, Infrastructure and Urban Development				
3.1	Residential Zones	N			
3.2	Caravan Parks and Manufactured Home Estates	Y	N		
3.3	Home Occupations	N			
3.4	Integrating Land Use and Transport	N			
3.5	Development Near Licensed Aerodromes	N			
4	Hazard and Risk				
4.1	Acid Sulfate Soils	N			
4.2	Mine Subsidence and Unstable Land	N			
4.3	Flood Prone Land	N			
4.4	Planning for Bushfire Protection	Y	Y	N	Public roads are not through roads. Refer to section 4 of Planning Proposal for details.
5	Regional Planning				
5.1	Implementation of Regional Strategies	Y	Y	Y	Refer to sections on the South Coast Regional Strategy and the Sussex Inlet Settlement Strategy.
5.2	Sydney Drinking Water Catchments	N			

Draft LEP Checklist – Section 117(2) Directions – Verons Estate Planning Proposal

Direction No:	Subject	Applies?	Relevant?	Consistent?	Comment
5.3	Farmland of State & Regional Significance on Far North Coast	N			
5.4	Commercial & Retail Development, Pacific Hwy	N			
5.5	Development in the vicinity of Ellalong, Paxton & Millfield	N			
5.6	Sydney to Canberra Corridor	N			
5.7	Central Coast	N			
5.8	2 nd Sydney Airport: Badgerys Creek	N			
6	Local Plan Making				
6.1	Approval and Referral Requirements	Y	N		
6.2	Reserving Land for Public Purposes	Y	N		
6.3	Site Specific Provisions	Y	Y	N	To strategically manage bushfire risk and deliver environmental outcomes it would be advantageous to identify potential building areas on each lot as part of the Local Environmental Plan.

State Environmental Planning Policies applying to the Verons Estate Planning Proposal	Relevant	Consistent?	Comment
Rural Lands	Y	Y	The subject land is NOT prime crop and pasture land. Any agricultural activities which have existing use rights will continue to do so. No subdivision is proposed. The Planning Proposal will help to ensure that any development is consistent with the land's capability and environmental constraints and limit the potential for landuse conflict.
14 – Coastal Wetlands	Y	Y	The subject land drains to SEPP 14 wetlands at Badgee Lagoon and Swan Lake. Both SEPP 14 wetlands are located approx 1.5 km from the subject land. The Planning Proposal will not permit any development within the Swan Lake catchment other than is already possible and the proposed environmental zones will help to ensure that any development that is approved will be sympathetic to the land's environmental constraints.