

# Voluntary Acquisition – Residual C2 Environmental Conservation Land – Jerberra & Nebraska Estates

<b>Adoption Date:</b>	05/10/2021
<b>Amendment Date:</b>	01/08/2022, 6/06/2023
<b>Minute Number:</b>	MIN21.699, MIN22.499
<b>Review Date:</b>	01/12/2024
<b>Directorate:</b>	City Futures
<b>Record Number:</b>	POL23/18

# Contents

1. Purpose .....	1
2. Land to Which This Policy Applies .....	1
3. Statement .....	1
4. Planning controls – clause 34A Certification.....	1
5. Financial Arrangements.....	2
6. Provisions .....	2
7. Implementation .....	5
8. Application of ESD Principles .....	5
9. Policy Notes .....	5
10. Review .....	6
<b>FIGURES</b> .....	<b>7</b>
<i>Figure 1 - Site Locations</i> .....	7
<i>Figure 2 - Jerberra Estate – Residual C2 Land</i> .....	8
<i>Figure 3 – Nebraska Estate – Proposed Residual C2 Land*</i> .....	9

## 1. Purpose

This document describes Shoalhaven City Council's policy for the voluntary acquisition of certain land in the Jerberra Estate, Tomerong and the Nebraska Estate, St Georges Basin. Voluntary acquisition is the transfer of land between a willing seller and willing buyer.

## 2. Land to Which This Policy Applies

- 2.1. This policy applies to land shown in Figure 1, being land in the **Jerberra Estate, Tomerong** that is within the Zone C2 Environmental Conservation under a Local Environmental Plan applying to the land made in accordance with the *Environmental Planning & Assessment Act 1979*; and that is identified as 'Residual C2 Land' in Figure 2;
- 2.2. This policy will also apply to land shown in Figure 1 being land in the **Nebraska Estate, St Georges Basin** that is identified as 'Residual C2 Land' in Figure 3 but only if/when the land has been rezoned for the purposes of residential development and environmental conservation under a Local Environmental Plan applying to the land made in accordance with the *Environmental Planning & Assessment Act 1979*.

<p><b>Note:</b> The Nebraska Estate Planning Proposal (LP145.1) is yet to be finalised. If/when the land is rezoned, <u>Figure 3</u> will be updated.</p>
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- 2.3. 'Residual C2 Land' is land that due to one or more environmental constraints:
  - does not/will not have a dwelling entitlement; and
  - is not proposed for consolidation into a larger development parcel.
- 2.4. The policy does not apply to 'Residual C2 Land' described in clause 2.3 that is owned by Council either at the date of adoption of this policy or that has been acquired by Council under this policy.

## 3. Statement

- 3.1. This policy facilitates and provides a mechanism for the cost-neutral voluntary acquisition of 'Residual C2 Land' in Jerberra Estate, Tomerong (Jerberra) and the Nebraska Estate, St Georges Basin (Nebraska) (if/when the land is rezoned) using net profits from the sale of Council land [in the relevant Estate] that is both zoned and suitable for development (developable).
- 3.2. Land acquired by Council under this policy will be managed for environmental and biodiversity conservation purposes in perpetuity consistent with clause 34A of the *NSW Biodiversity Conservation (Savings & Transitional) Regulation 2017*.

## 4. Planning controls – clause 34A Certification

- 4.1. Planning controls for Jerberra are certified under clause 34A of the *NSW Biodiversity Conservation (Savings and Transitional) Regulation 2017* (Biodiversity Savings Order). This means that development applications (DA) that comply with the Estate's biodiversity controls can be assessed under the legislation that applied before commencement of the *NSW Biodiversity Conservation Act 2016*. Therefore, a Biodiversity Conservation Assessment Report (BCAR) is not required to accompany an individual DA. *Clause 5.2.2 – Legal requirements for considering*

*the impact of proposed development* – Shoalhaven Development Control Plan (DCP) 2014 – Chapter N20 – Jerberra Estate applies and should be referred to for more information.

- 4.2. This policy will support Council's application for a similar Biodiversity Savings Order for Nebraska when the planning proposal has been finalised.
- 4.3. The effect of the Biodiversity Savings Order will be included in the provisions of the DCP for Nebraska, if adopted by Council.

## **5. Financial Arrangements**

- 5.1. All purchases of 'Residual C2 Land' will be funded by the net profit from the sale of Council land in the relevant Estate as outlined in the Statement at Section 3.
- 5.2. If an offer to sell 'Residual C2 Land' is received before any Council land in the relevant Estate has been sold, the funds will be borrowed from the Property Reserve to make the purchase and will be paid back into reserve when Council land is sold. The dollar value of such purchases must not exceed the dollar value of the anticipated net profits from the future sale of Council land.
- 5.3. Net profits from the sale of land in the relevant Estate may also be directed towards conservation objectives and the implementation of management plans outlined in clause 6.7 of this policy.
- 5.4. If net profits from the sale of developable Council land in one Estate are surplus to those required to purchase and manage Residual C2 land in that Estate, such funds may be used to purchase or manage Residual C2 land in the other Estate.
- 5.5. The internal reserve (*Jerberra and Nebraska Estates Property Reserve*) to be established to restrict net profits from the sale of land of the relevant Estate and to fund purchases of the C2 Land and other relevant activities as outlined in this Policy.
- 5.6. Net profits from the sale of land will **not** be directed towards the provision of roads and service infrastructure.
- 5.7. All decisions regarding the allocation of funds for each Estate will be at the discretion of the CEO or his delegate within relevant financial delegations.

## **6. Provisions**

### **6.1. Applicable legislation**

The following legislation, as amended from time to time, and relevant statutory instruments apply:

- *NSW Biodiversity Conservation Act 2016*
- *NSW Conveyancing Act 1919*
- *Environment Protection and Biodiversity Conservation Act 1999 (C'wth).*
- *NSW Environmental Planning & Assessment Act 1979*
- *NSW Local Government Act 1993*
- *NSW Real Property Act 1900*
- *NSW Valuation of Land Act 1916*

## 6.2. Related policies

Related policies include:

- [Acquisition of Land by Shoalhaven City Council](#)
- [Rates - Small Lot rural Subdivisions – Dealing with Unpaid Rates and Charges](#)
- [Sale of Land to Recover Unpaid Rates and Charges](#)

## 6.3. Voluntary acquisition

The owner(s) of 'Residual C2 Land' identified in clause 2.1 may make a request in writing to sell their interest in the land to Council.

This policy does not bind Council to acquire the land.

## 6.4. Land valuation

The maximum amount that Council is willing to pay for 'Residual C2 Land' is the market value, as determined by an Independent Valuer.

## 6.5. Threatened Species – Nebraska – Priority acquisitions if/when the land is rezoned

6.5.1. The [Leafless Tongue Orchid \[\*Cryptostylis hunteriana\*\]](#) is listed as 'vulnerable' under the *NSW Biodiversity Conservation Act 2016* and the *Environment Protection and Biodiversity Conservation Act 1999 (C'wth)[effective 16-Jul-2000]* and is the subject of a Priority Action Statement.

6.5.2. [The Pot-Bellied Greenhood Orchid \[\*Pterostylis ventricosa\*\]](#) is listed as 'critically endangered' under the *NSW Biodiversity Conservation Act 2016*. Nebraska has been identified as a Priority Management site under the 'Saving Our Species' Program.

6.5.3. Priority for voluntary acquisition is therefore focused on:

- Lots 8-13, Section C, DP9699
- Lots 1-6, Section D, DP 9699.

## 6.6. Land classification

Land acquired under this policy will be classified as 'Community land – Natural Area Bushland' in accordance with Section 31 and Section 36 of the *NSW Local Government Act 1993* and Section 102 of the *NSW Local Government (General) Regulation 2021*.

## 6.7. Management plans

A management plan for each Estate will be prepared for land acquired under this policy as required by s36 of the *Local Government Act 1993*. Each management plan will provide for:

- Management of the land for in-perpetuity protection / conservation of its ecological/ biodiversity values in accordance with *NSW Biodiversity Conservation Act 2016*.
- Monitoring of nearby development impacts and conservation outcomes on the above values;

and identify:

- net profits from the sale of developable Council land in the relevant Estate as an internal funding source; and
- key opportunities, in general terms, for access to external funds for environmental/biodiversity conservation management/works including, for example, any Commonwealth or NSW State Government programs.

Options for the establishment of a Biodiversity Stewardship Agreement (BSA) or Conservation Agreement (CA) over consolidated areas of 'Residual C2 Land' will be explored. If a BSA or CA is deemed to be the preferred management tool to conserve the environmental values of the land, management plans under the *Local Government Act 1993* would not be required.

## 6.8. Conveyancing Requirements

- 6.8.1. Land offered for sale to/or by Council under this policy must be unencumbered by any outstanding rates and/or charges. Alternatively amounts outstanding, if any, will be adjusted at the date of settlement by agreement with Council.
- 6.8.2. The land must be in fair-good condition and suitable for inclusion in a management plan/program/agreement to protect and enhance its environmental conservation values into the future. It must be:
- clear of any unauthorised buildings or structures (including any inground or above ground domestic infrastructure such as water tanks, outhouses and associated pipework or cables); and
  - clear of all debris, including builders waste, concrete slabs, scrap metal, green waste heaps and any other extraneous refuse located on the land.

In this regard:

- all demolition works must be undertaken in accordance with an approved Development Consent or Development Control Order issued by Council; and
- All works must be completed prior to settlement.

**Note:** Removal of **structures** can only be lawfully undertaken with a *Development Consent* or a *Development Control Order* issued by Council.

- 6.8.3. Where the requirements of clause 6.8.2 are not satisfied Council may, at its discretion, accept the land in "as is" condition. In this regard, the costs of reinstatement must be independently assessed by a contractor approved by Council, must be met by the Vendor, and will be deducted from the agreed sale price.
- 6.8.4. Council shall bear the reasonable conveyancing costs (valuation and solicitors fees) incurred in consequence of the transfer of the land.
- 6.8.5. Council will not meet any legal costs incurred by the Vendor in pursuit of dispute resolution.

## 7. Implementation

The policy will be implemented as follows:

City Futures Directorate (Strategic Planning) – policy maintenance

City Performance Directorate (Finance Department) – funding allocation and budgeting

City Services Directorate (Property Services) – acquisition decisions, conveyancing, land classification

City Development Directorate (Environmental Services) – land management

## 8. Application of ESD Principles

The policy is consistent with the principles of ecologically sustainable development. It provides a mechanism for Council to voluntarily acquire 'Residual C2 Land' currently in fragmented ownership so that it can be managed sustainably for conservation in perpetuity by Shoalhaven City Council as Community Land – Natural Area – Bushland.

## 9. Policy Notes

### 9.1. Nebraska Estate

Nebraska Estate is zoned RU2 Rural Landscape under Shoalhaven Local Environmental Plan 2014. Residual C2 Land in Nebraska will not be voluntarily acquired until the planning proposal has been finalised, the land has been rezoned and a DCP has been adopted by Council. If/when the land has been rezoned the policy will be updated to reflect the new planning controls that apply.

### 9.2. Who or what is an independent valuer?

An independent valuer is a person who is "suitably qualified" to provide evidence of the value of property, who does not have a conflict of interest and does not work for Council or any other authority with an interest in the land. For example, for the purposes of Section 305 of the *Duties Act 1997* the NSW Commissioner for Revenue has determined that the following persons are considered suitably qualified to provide evidence of value of property:

- i. a member of the Australian Valuers Institute (other than an associate or student member), or
- ii. a member of the Australian Property Institute (other than a student or provisional member), who has acquired membership in connection with his or her occupation as a valuer, or
- iii. a member of the Royal Institution of Chartered Surveyors who holds the designation "Chartered Valuer" or 'Chartered Valuation Surveyor'. The NSW Valuer General sets the standards and policies for the valuation system to ensure that valuations are consistent and accurate, transparent and in line with the Valuation of Land Act 1916.

### 9.3. Priority Acquisitions

The identification of priority acquisitions under clause 6.5 does not preclude the acquisition of other land identified in clause 2.1. All voluntary acquisitions will be at the discretion of Council.

**9.4. Additional Information**

For additional information refer to Council's webpage: [Paper-Subdivisions](#)

**9.5. Enquiries**

Enquiries about this policy should be directed to the City Futures Directorate – Strategic Planning on 1300 293 111.

**9.6. Administrative update**

On 1 December 2021, the prefix for all Environmental Zones in NSW was changed from 'E' to 'C'. For example, the 'E2 Environmental Conservation' zone became 'C2 Environmental Conservation'. This Policy has been updated to respond to this change.

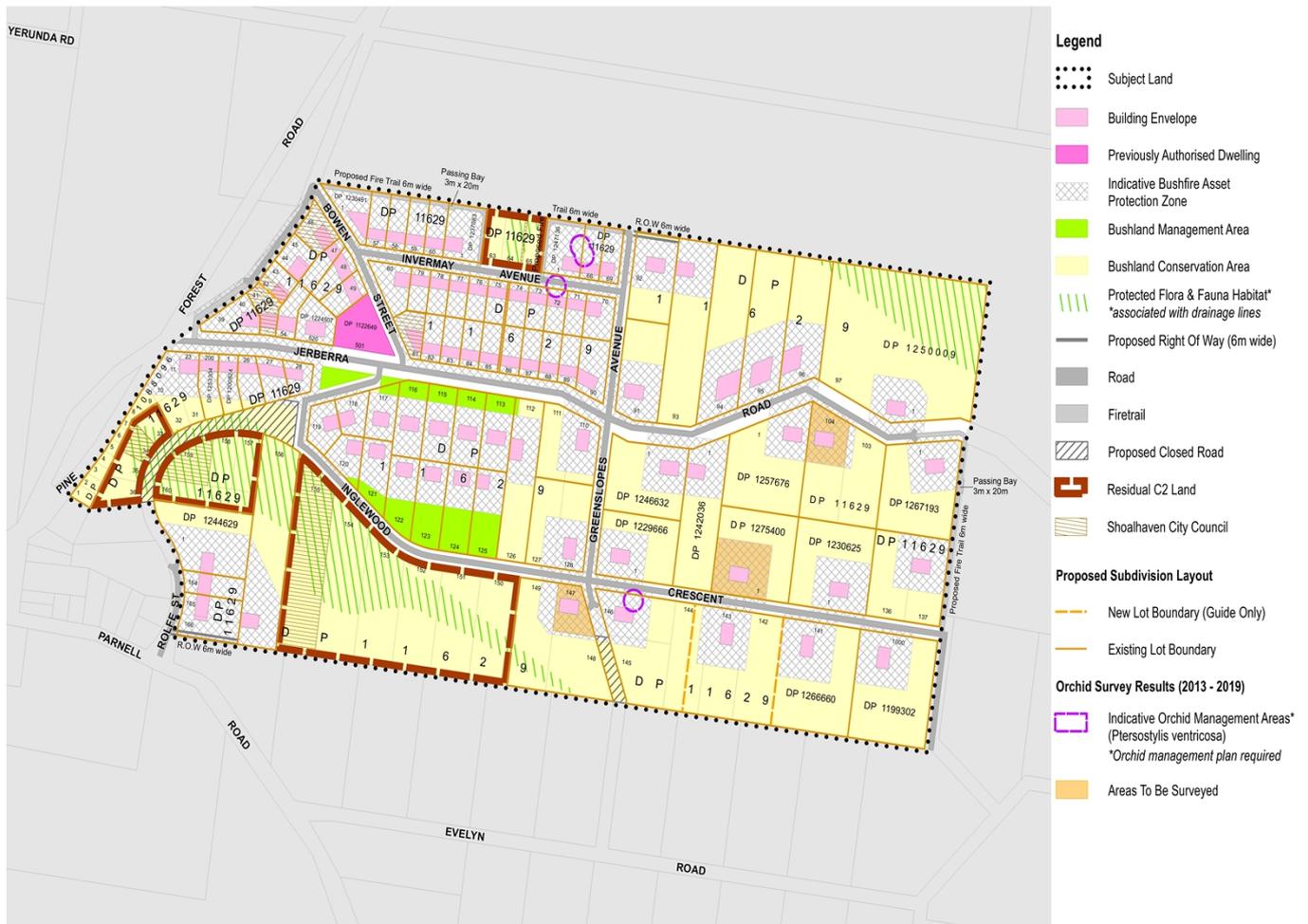
## **10. Review**

The policy will be reviewed within one year of the election of each new Council, or earlier if circumstances require.

FIGURES



Figure 1 - Site Locations



Base Map: DCP Chapter N20 - Jerberra Estate

Policy - Voluntary Acquisition - Residual C2 Environmental Conservation Land - Jerberra & Nebraska Estates



Dec 2021 Scale 1:5,000 @ A3

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Figure 2 - Jerberra Estate – Residual C2 Land



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**Figure 3 – Nebraska Estate – Proposed Residual C2 Land\***

*\*Note: the Nebraska Estate Planning Proposal (LP145.1) is yet to be finalised and is subject to change.*