

Nebraska Estate, St Georges Basin – Paper Subdivision

Introduction

This factsheet provides information on the Nebraska Estate Paper Subdivision¹ at St Georges Basin (refer to Figure 1). The Nebraska Estate subdivision was registered in 1919, predating landuse zoning and contemporary planning requirements. The land was zoned non-urban in 1964, and residential development has generally been precluded since then. The subdivision has an area of 32.77 ha and comprises 97 lots. A history of the Nebraska Estate Paper Subdivision (1919-2003) is at [Attachment A](#) to this Fact Sheet.

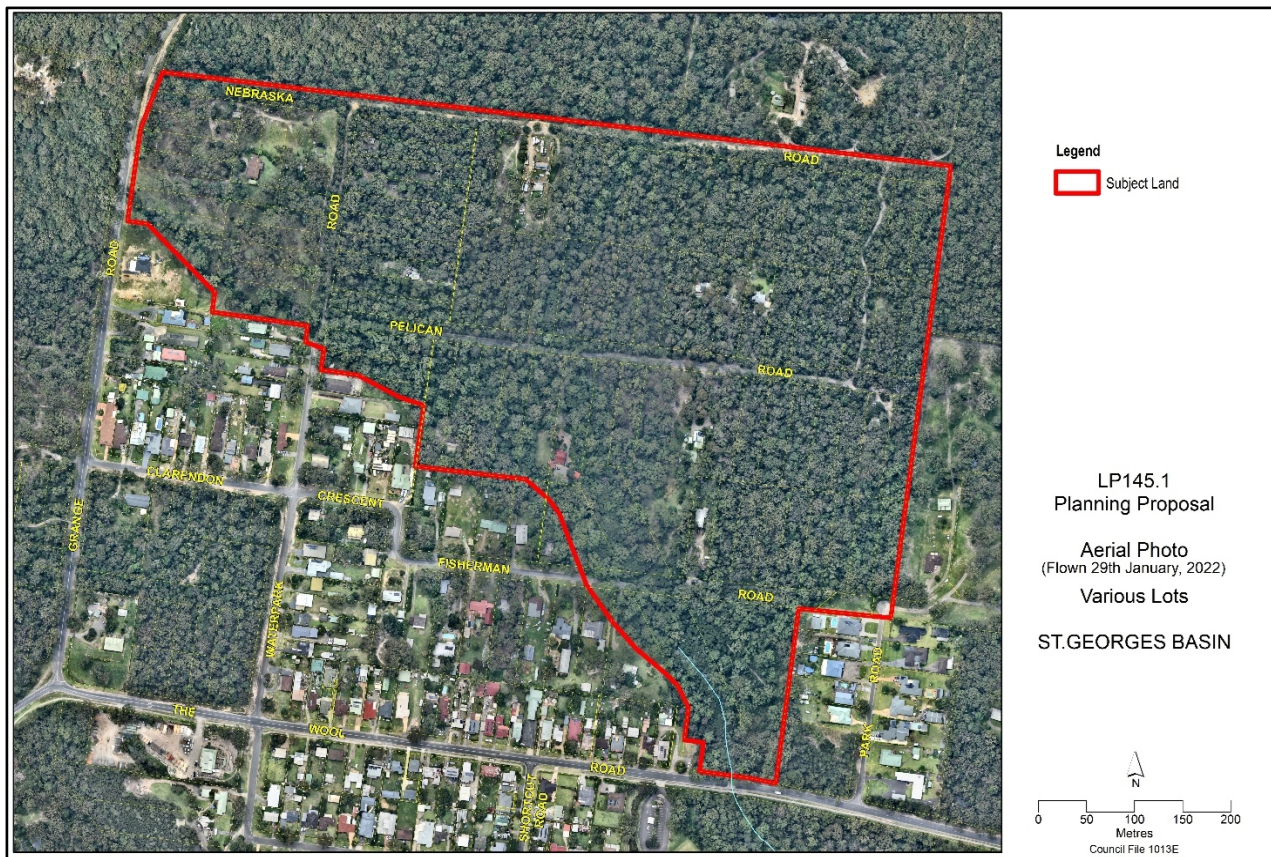


Figure 1- Nebraska Estate Planning Proposal LP145.1 – Subject Land

¹ A “paper subdivision” describes land containing lots that only have recognition on paper and, in many cases, have no formed roads, reticulated water, sewer or electricity.

Current planning controls

The land is currently zoned Rural Landscape (RU2) under the Shoalhaven Local Environmental Plan 2014. Dwellings are generally not permissible on the individual lots due to the 40 ha minimum lot size requirement. The site contains significant environmental constraints to development. For several years, Council has been progressing a Planning Proposal (rezoning) to allow for some residential development in less constrained areas, whilst providing increased protection for the remaining land by rezoning it to 'C2 – Environmental Conservation'.

What is a Planning Proposal / rezoning?

A Planning Proposal (PP) is a plain English document which explains proposed changes to the Local Environmental Plan (LEP) applying to the land. An LEP is a legal document under Part 3 of the Environmental Planning & Assessment Act, 1979. Planning Proposals may seek to change the land use zoning and or other provisions in the LEP such as minimum lot sizes required for subdivision and building height limits. Development applications could ultimately be considered if/when: the LEP is amended; a development control plan has been adopted by Council; and essential infrastructure is in place.

Update on Nebraska Estate Planning Proposal – April 2022

Background

A report on the Nebraska Estate PP and the outcomes of a landowner survey was considered by Council on 5 April 2016. It was resolved (MIN16.230) that Council:

- a) *Adopt revised version 2 of Option 1 – Lower Density Residential Development outlined in this report and provided in Attachment D, as the preferred option to move forward with, and the Planning Proposal be amended accordingly.*
- b) *Prepare the required water cycle assessment.*
- c) *On completion of a) and b) publicly exhibit the Planning Proposal².*

² Progression of the PP to public exhibition, was effectively stalled by the commencement of the *NSW Biodiversity Conservation Act 2016* and supporting Regulations on 25 August 2017.



Figure 2 - Nebraska Estate - Option 1.v2 (2020) - Conceptual Subdivision and Development Plan upon which the Planning Proposal is based

(Note: minor changes have been made to the concept plan considered by Council in 2016. Working draft, subject to change)

Water Cycle Assessment

An Integrated Water Cycle Assessment was undertaken by “Footprint Sustainable Engineering” and completed in March 2017. The Assessment report demonstrates that the PP can achieve a “neutral or beneficial” effect (NorBE) on water quality, water quantity and the receiving environment subject to implementation of the controls and performance standards recommended in the report. Detailed, site specific planning provisions to guide development in the Estate, including water quality controls and performance standards, can be incorporated into the DCP chapter intended to support the PP.

Strategic Bushfire Assessment

In response to changes to the NSW Rural Fire Service’s (RFS) “Planning for Bushfire Protection” Guidelines (including a new section on strategic planning), a strategic bushfire assessment was commissioned in late 2018. The final report was received in October 2019. The report recommended several bushfire mitigation measures, including establishment of a fire trail in the Nebraska Road reserve between Grange Road and Waterpark Road. These measures can be incorporated into the supporting DCP.

Subsequently, also in October 2019, a new version of Planning for Bushfire Protection was published by the NSW RFS which included new strategic planning considerations. In order to ensure that the Nebraska Estate Planning Proposal is consistent with these new strategic principles, Council commissioned an updated Bushfire Assessment Report. The report was completed on 3 March 2022. Ultimately, this report will be exhibited with the Planning Proposal, if a new Gateway Request is supported by Council in 2022.

NSW Biodiversity Conservation Act 2016 (BC Act) – Implications for Nebraska Estate

The BC Act introduced a new Biodiversity Assessment Methodology (BAM) and a new Biodiversity Offsets Scheme (BOS). In recognition of the previous biodiversity assessments completed as part of the rezoning processes for both Jerberra and Verons Estates, the planning controls for these Estates were certified as “relevant planning arrangements” by the NSW government in 2019 under clause 34A of the Biodiversity Conservation (Savings and Transitional) Regulation. This means that development applications (DA) in these Estates can be assessed under the legislation that applied before the BC Act commenced; the BOS is not triggered and a Biodiversity Development Assessment Report (BDAR) is not required to support a DA.

An initial assessment of the Nebraska Estate PP against the above criteria suggests that the BAM would need to be applied to all 23 individual proposed dwellings in the Nebraska Estate, each of which would require its own BDAR to determine the offsetting requirement for each development. The cost of offsetting the impacts of each development (i.e. purchasing credits from the market or paying into the fund) would also be borne by each applicant.

Clause 34A certification is considered the most likely solution for Nebraska Estate. Clause 34A (4) sets out the following eligibility criteria for “relevant planning arrangements”:

- a) that the proposed development the subject of a development application is part of a relevant planning arrangement and the biodiversity impacts of the proposed development were satisfactorily assessed before the commencement of the Act as part of the relevant planning arrangement, and*
- b) that conservation measures have been secured into the future (by a planning agreement, a land reservation or otherwise) to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts.*

In respect of part (a) the biodiversity impacts were assessed prior to commencement of the BC Act, generally to the satisfaction of the relevant NSW Government agencies.

In principle support for clause 34A certification for the proposed planning controls for Nebraska Estate was sought from the then NSW Office of Environmental Heritage (OEH) on 31 May 2018. However, OEH was reluctant to commit to clause 34A certification, partly due to uncertainty around the future management of the residual C2 land that potentially would be a significant proportion of the Estate. The new policy (discussed further below) will potentially help to secure clause 34A certification for Nebraska Estate because it will help to secure long term conservation management arrangements for the environmentally sensitive land that is unable to be developed.

New Policy to help resolve future management of C2 Environmental Conservation land

Following discussions with the NSW Biodiversity & Conservation Division - BCD (formerly OEH) Council considered a report (DE20.128: [Link below](#)) on *Options for future management of E2 Environmental Conservation Land* with a view to securing cl 34A certification for the Nebraska Estate.

In summary, BCD offered qualified support for a proposed policy that would allow Council to purchase land (willing buyer/willing seller) proposed to be zoned C2 Environmental Conservation so that it can be managed for conservation in perpetuity. To be clear, compulsory acquisition is not being considered.

On 1 December, 2020 (MIN20.885) Council resolved to:

1. *Receive the update on the Nebraska Estate Planning Proposal (LP145.1) for information.*
2. *Agree “in principle” to the development of a new policy for the voluntary acquisition of “residual” E2 Environmental Conservation land in the Nebraska & Jerberra Estates, to be funded by any profits from the sale of developable Council land in each Estate.*
3. *Agree to the preparation of a draft policy for Council’s consideration based on the following:*
 - a) *the cost-neutral voluntary acquisition of undevelopable E2 land in each Estate, to the extent possible, funded by the net profit from the sale of Council-owned land with development potential;*
 - b) *if offers to sell E2 land are received before any developable Council-owned land has been sold, general funds be used to purchase E2 properties in each Estate limited to the anticipated net profits from the future sale of the Council-owned land;*
 - c) *land in Nebraska Estate is not purchased until the Planning Proposal has been finalised and the land zoning has been resolved;*
 - d) *the policy be limited to the acquisition of E2 properties that are not able to form part of a development parcel;*
 - e) *the cost of removing any unauthorised structures from the land be deducted from the acquisition price;*
 - f) *any land acquired by Council under the new policy be managed for conservation purposes consistent with clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation using any available surplus funds and/or external funding programs and subject to resourcing;*
 - g) *receiving further advice from the NSW Government on the likelihood of receiving clause 34A certification for Nebraska on the basis of parts 2 and 3 above; and*
 - h) *consultation with the landowners in each Estate, in particular to gauge the interest of the E2 land in Jerberra Estate and proposed E2 land in Nebraska Estate.*
4. *Agree an independent valuation advice be obtained in order for management to provide detailed estimates of the following for consideration before a draft policy is presented to Council:*
 - a) *the potential net profit from the sale of Council land in each Estate;*
 - b) *total unimproved land value of the undevelopable E2 land (existing and proposed); and*
 - c) *the annual cost of maintaining land to the Council.*

The outcomes of tasks referred to in the above resolution were reported to Council's Development & Environment Committee on 5 October 2021, and the Policy was adopted as recommended (MIN21.699):

1. *Proceed to:*
 - a. *Adopt the draft Policy for the Voluntary Acquisition of 'Residual' E2 Land in the Jerberra & Nebraska Estates with immediate effect for the Jerberra Estate (Attachment 1);*
 - b. *Classify all land acquired under the Policy as Community Land – Natural Area – Bushland under s31 & s36 of the Local Government Act 1919 and s101 of the NSW Local Government (General) Regulation 2021;*
 - c. *Meet reasonable conveyancing costs (valuation and solicitors fees) directly related to transfer of Residual E2 Land to Council but not including any legal costs incurred by the vendor in pursuit of dispute resolution;*
2. *Endorse the allocation of net profits from the sale of Council's developable land, as identified on the maps at Attachments 2 and 3, to the Jerberra and Nebraska Estates Property Reserve to fund purchases of the E2 Land and management activities as outlined in the Policy;*
3. *Receive for information, the:*
 - a. *Strategic independent valuation reports for the relevant land in Jerberra & Nebraska Estates prepared by Opteon P/L for information (Attachments 4 & 5);*
 - b. *Summary report on Community Engagement (Attachment 7);*
4. *Note that:*
 - a. *The Policy will also **only apply to land in the Nebraska Estate, St Georges Basin if/when the Planning Proposal (LP145.1) for the Estate has been finalised and the land rezoned** [emphasis added], at which point the Policy and Figure 3 in it will need to be updated to reflect the final outcome;*
 - b. *The independent strategic valuation advice (Recommendation 3a) is valid at the date of valuation only and that each proposed sale to/by Council will require an independent valuation prepared not more than 6 months prior to the date of offer;*
 - c. *Subject to internal Council discussion, Standard Operating Procedures (SOPs) and/or Work Instructions may need to be developed to support implementation of the Policy.*
 - d. *All Jerberra and Nebraska Estates landowners who either responded to the targeted survey or provided comments on the proposed Policy will be advised of Council's decision.*

The Policy titled '[Voluntary Acquisition – Residual C2 Environmental Conservation Land - Jerberra & Nebraska Estates](#)' (POL21/44) is available via the this link.

As noted in part 4a) of Council's resolution above, the Policy will only apply to Nebraska Estate if/when the Nebraska Estate Planning Proposal (LP145.1) has been finalised and the land rezoned.

The Council reports and supporting information can be accessed online at:

<https://getinvolved.shoalhaven.nsw.gov.au/jerberra-nebraska-estates>

Changes to the Gateway Process & Implication for the Nebraska Estate Planning Proposal

The Planning Proposal (rezoning) process, also known as the 'Gateway process', is overseen by DPE. The Gateway step was originally intended to be a checkpoint, allowing proposals to be considered on preliminary information, before resources were committed to carrying out necessary assessments and consultation. A Gateway Determination issued by DPE would typically include conditions (such as any required technical studies and consultation requirements) that the Council would need to satisfy before a Planning Proposal could be publicly exhibited and finalised. This approach allowed detailed and time-consuming technical studies to be completed post-gateway. For complex sites with multiple constraints (such as Nebraska Estate) the Planning Proposal process could, and often did, span several years.

In 2020 however, the NSW Government fundamentally changed the Planning Proposal process, effectively requiring supporting technical studies to be completed pre-gateway and Planning Proposals to be completed within one year of a Gateway determination.

The Nebraska Estate PP was one of five 'legacy' PPs, the Gateway Determinations for which were terminated by DPE on 15 December 2020. Please see Council reports and minutes dated 1 December 2020 (MIN20.887) and 18 January 2021 (MIN21.6) for further information about this process and the outcome.

On 18 January 2021, Council resolved to:

seek a new Gateway determination at the appropriate point once the policy is adopted that will help resolve the tenure and management of the proposed E2 land (as per Council resolution MIN20.885) to help secure certification for the new planning controls under Clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation 2017.

Following adoption of the Policy for 'Voluntary Acquisition of residual C2 land' on 5 October 2021, the draft Nebraska Estate Planning Proposal has been updated to include, as a minimum, details of Council's Policy and a contemporary analysis of:

- the strategic planning framework including the [Illawarra-Shoalhaven Regional Plan 2041 \(2021\)](#), applicable State Environmental Planning Policies and Ministerial Directions (s.9.1);
- consistency with [Shoalhaven 2040 - Strategic Land-use Planning Statement \(SLPS 2020\)](#), a strategy endorsed by the NSW Government;
- site specific merit, including an updated constraints analysis incorporating the results of both the St Georges Basin Flood Study, Cardno 2022 and the Strategic Bushfire Assessment, ELA 2023;
- Summary of NSW Government agency consultation since 2011.

An updated version of the Planning Proposal can be accessed at this link: [Draft Planning Proposal - Nebraska Estate, St Georges Basin](#).

Council considered the updated Planning Proposal on 17 July 2023, and resolved to:

defer consideration of the recommendation of Nebraska Estate, St Georges Basin - Potential Recommendation of Planning Proposal to a briefing to enable Council to be fully briefed on

- 1. The possible expansion of the proposed C2 Environmental Conservation zone to the whole of the subject land, or parts of it, to afford greater protection to the Estate's environmental values and Jervis Bay wildlife corridors, and*
- 2. Minimise the creation of areas of isolated development in bushland that are at risk from bushfire and may incur large infrastructure maintenance costs per capita.*

A Council briefing was held on 28 September 2023. A follow-up report will be prepared for Council's consideration in due course. Landowners will be notified in advance of the meeting.

Camping in Paper Subdivisions

Camping cannot be undertaken on land within paper subdivisions without development consent under the Environmental Planning & Assessment Act 1979. This applies to all 'moveable dwellings', which includes tents, caravans (including tiny homes and tiny houses) and campervans (including camper trailers). For more information, please refer to Council's [Camping in Paper Subdivisions Fact Sheet](#).

Other Information

- [Threatened Biodiversity Survey & Assessment completed by BES, 2009. Note: Figures 4-6 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.](#)
- [Summary of landowner meeting on 13 March 2010](#)
- [Link to NSW Rural Fire Service Planning for Bushfire Protection 2019](#)

Council reports and Minutes

Date	Report	Resolution
24-Jan-95	Report to the Policy and Planning Committee – Nebraska Estate rezoning investigations	MIN95.24 (p.19)
1-Dec-09 & 18-Jan-10	Report to the Development Committee – Nebraska Estate rezoning investigations (Deferred MIN.1694 & Reconsidered)	MIN10.25
6-Apr-10	Report to the Development Committee – Nebraska Estate Rezoning Investigations	MIN10.376
18-May-10	Report to the Ordinary Meeting of Council – Special Rates Levied on Jerberra & Nebraska Estates (Item.57) and removal from certain properties	MIN10.608
12-Apr-11	Report to the Budget Working Party – Jerberra & Nebraska Estates – Removal of special rates from certain properties	MIN11.401
17-July-12	Report to the Development Committee – Planning proposal and possible zoning options	MIN12.868
5-Apr-16	Report to the Development Committee – Landowner survey outcomes (Item.5)	MIN16.230
1-Dec-20	Report to the Development & Environment Committee (DE20.128) – Options for future management of E2 Environmental Conservation Land	MIN20.885
1-Dec-20	Report to the Development & Environment Committee (DE20.130) – ‘Legacy’ Planning Proposals – Timing and Progression – NSW Government Direction	MIN20.887
18-Jan-21	Report to the Development & Environment Committee (DE21.5) – Update on “Legacy’ Planning Proposals – Timing and Progression – NSW Government Direction	MIN21.6
5-Oct-21	Report to the Development & Environment Committee (DE21.113) – Jerberra & Nebraska Estates – Draft Policy for the Voluntary Acquisition of ‘Residual’ E2 Land	MIN21.699
17-Jul-23	Report to the Ordinary Council Meeting (CL23.214) - Nebraska Estate, St Georges Basin - Potential Recommencement of Planning Proposal	MIN.23.361

Important notes:

1. 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 factsheet has been updated to respond to this change.
2. Where Council reports and resolutions predate this change, references to “E2 Environmental Conservation” have not been amended.
3. Council will update the Voluntary Acquisition Policy and all other references to ‘E2’ zones as soon as possible.

Attachment A

History of Nebraska Estate Paper Subdivision

History of 'paper subdivisions' in the Jervis Bay area

The selection of Canberra as the nation's capital and Jervis Bay as its future port in 1908 and the suggestion that a direct rail link would be provided between the two, triggered speculation that the Jervis Bay area would be extensively developed. At that time, the planning system was still in its infancy; there was no landuse zoning and subdivision plans could be registered without provision of essential infrastructure. These factors contributed to a proliferation of speculative subdivision activity in the Jervis Bay area in the 1910s and 1920s.

By the early 1920s many 'paper subdivisions' had been registered in the Jervis Bay area including the Nebraska Estate. The individual lots, of which there were thousands, could be bought and sold despite the lack of essential infrastructure. Any intentions that the developers may have had to develop these 'paper subdivisions' were put on hold indefinitely with the onset of the Great Depression in 1929-39.

Nebraska Estate planning history 1919-2003

The Nebraska Estate subdivision was registered in 1919.

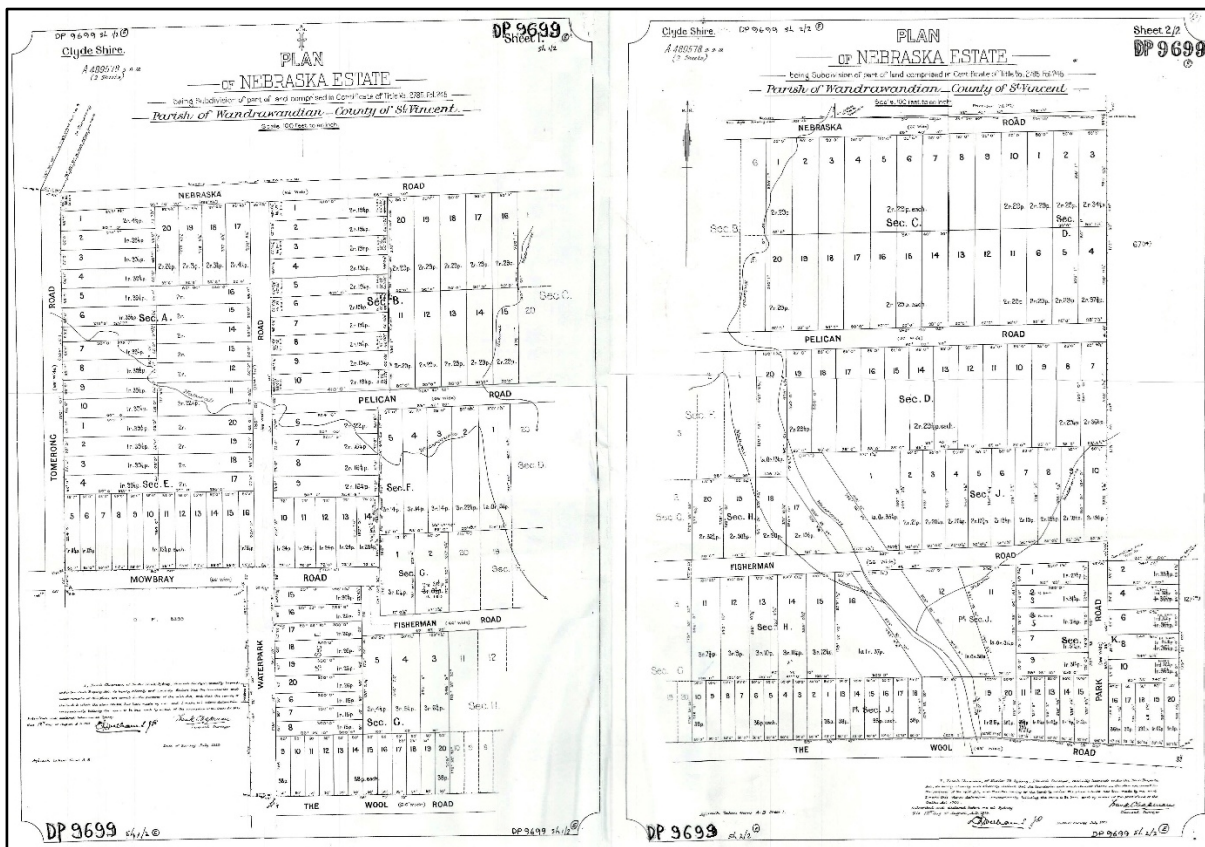


Figure A.1 Copy of DP9699 for Nebraska Estate registered 12th August 1919

Apart from the southern fringe of the Estate where some development had occurred, the land remained undeveloped when landuse zoning was introduced in 1964. Under Shoalhaven Interim Development Order No.1 (IDO No. 1) most of the Estate was zoned "non-urban", generally precluding development of the individual lots due to their size. The land that was partially developed was zoned 'Village'. An excerpt from the original IDO map and an aerial photograph taken in 1964 are provided in Figure A.2 below.

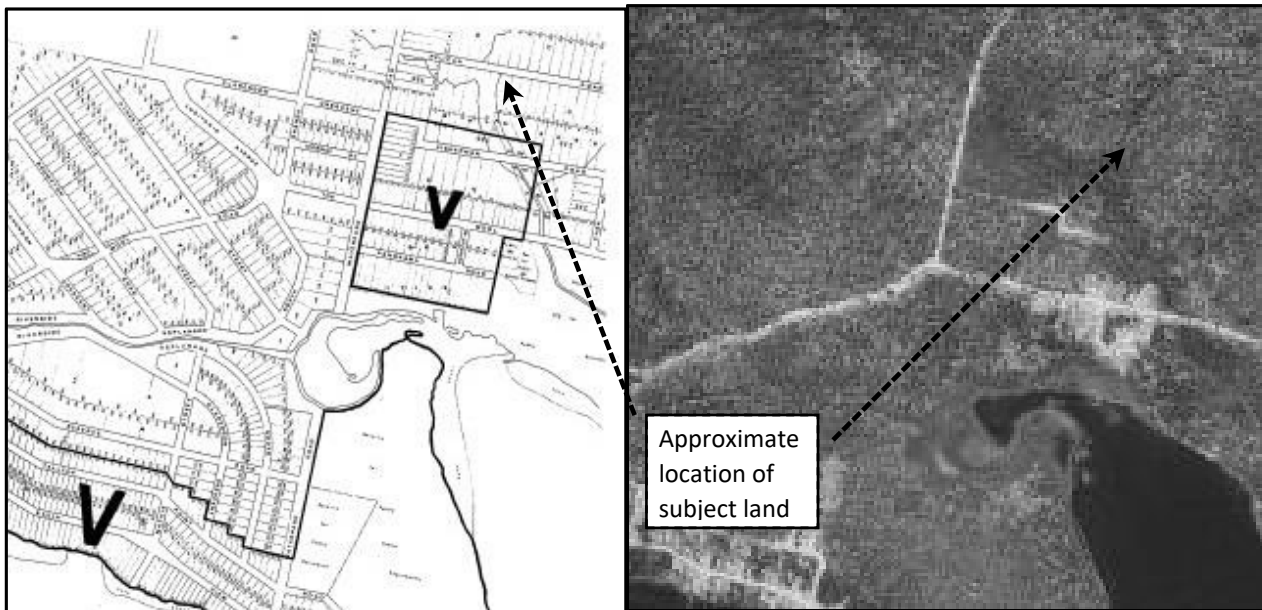


Figure A.2 - Excerpt from Shoalhaven IDO No. 1 as gazetted in 1964 and aerial photo 1964

IDO No. 1 was superseded when the Shoalhaven Local Environmental Plan (SLEP 1985) was gazetted in 1985.

Prior to SLEP 1985 being superseded by SLEP 2014 on 22 April 2014, the subject land was zoned part Rural 1(g) (Flood Liable) and part Rural 1(d) (General Rural).

Initial rezoning investigations (1992-2003)

On 20 October 1992, Council resolved to prepare a draft local environmental plan over that part of Nebraska Estate (DP9699) that was zoned Rural 1(d), for the purpose of allowing low density residential development.

On 20 September 1994, Council resolved to deal separately with lots located along Park Road because it was less constrained than the remainder of the Estate. The Park Road area was rezoned in 2001 (Amendment No. 155 to SLEP 1985) enabling 13 fully-serviced dwellings to potentially be approved over 20 lots (*i.e.* in some cases, lots were required to be amalgamated before they could be developed).

A letter from the Department of Urban Affairs and Planning dated 12 July 1995 expressed a number of environmental concerns in relation to the remainder of Nebraska Estate. The [Jervis Bay Regional Environmental Plan, 1996 \(JBREP\)](#) was gazetted in 1997 and rezoning investigations for the Nebraska Estate were ultimately interrupted in 1999 by a NSW State Government moratorium pending completion of the [Jervis Bay Settlement Strategy \(JBSS\)](#) in 2003. Although the moratorium on re-zoning of land in the Jervis Bay area was first introduced in 1995, the Nebraska Estate investigations were initially allowed to continue. In 1999 the Department of Planning informed Council that there was little point in pursuing the matter further until a settlement strategy for the Jervis Bay area was completed.

The JBSS prepared by Council and endorsed by the State Government, was finalised in 2003. The JBSS states that the remainder of the Nebraska Estate will be investigated for rural residential opportunities through a review of lot sizes and configuration to accommodate onsite effluent disposal³ and a review of the performance of environmental measures at Park Road.

³ The extent and significance of environmentally contained land within the Nebraska Estate determined the necessity for reticulated water and sewer infrastructure (funded by the landowners) to be provided if the land is re-zoned. Feasibility investigations by Shoalhaven Water in 2012 confirmed that existing water and sewer infrastructure can be extended to service proposed dwellings under Option 1.v2 adopted by Council