

Jerberra & Nebraska Estates - Proposed Residual E2 Zoned Land Acquisition Policy

Frequently Asked Questions

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What is Council's current policy on purchasing land in these Estates?

Council's policy titled [Small Lot Rural Subdivisions - Dealing with Unpaid Rates and Charges](#) states that if requested by the owner, Council will accept the transfer of land in Jerberra and Nebraska Estates in full satisfaction of unpaid rates and charges and will meet all legal costs associated with the transfer of the land. This is consistent with Section 570 of the Local Government Act (LGA) 1983, with the policy specifically formulated to assist the owners of land in 'paper subdivisions' seeking to extricate themselves from their rate burden.

Also under the Policy, property owners subject to debt recovery action have 30 days to settle the debt. If the debt has been outstanding for more than one year (for vacant land) or five years (for any other land) Council may, under Section 713 of the LGA, sell the land by Public Auction.

Hundreds of lots in 'paper subdivisions' have been acquired by Council over the years and the majority will be retained as bushland in perpetuity.

Why would Council want to purchase land that is zoned E2 Environmental Conservation, when currently it will only accept it in lieu of unpaid rates?

There are three parts to this answer.

Firstly, at some stage, Council will sell its developable land in both Estates. Any profit arising from the sale of this land could be reinvested in that Estate (as would be the case if the proposed new policy is adopted) or it could go into general revenue.

Secondly, offering to purchase the undevelopable/residual E2 properties in each Estate and managing any land acquired for conservation, will help to resolve the long term tenure and management of this land. These landowners will otherwise have very limited options for using and/or selling their land. The land's environmental values will not be as secure while it remains in fragmented private ownership.

Thirdly, the new policy would improve the eligibility of the proposed new Nebraska Estate planning controls for a biodiversity savings provision, i.e. Clause 34A of the Biodiversity Conservation (Savings and Transitional) Regulation 2017. The owners of the developable land in

Nebraska Estate will benefit if this savings provision can be secured in the same way as a similar savings provision has benefitted some owners in Jerberra.

Why is Council considering a new policy on this now?

The NSW Government made major changes to the States biodiversity laws in 2016 and 2017. Central to these changes is the Biodiversity Conservation Act 2016 (BC Act). These changes included the introduction of the NSW Biodiversity Offset Scheme and a new methodology for assessing biodiversity impacts called the Biodiversity Assessment Methodology (BAM) both of which have significant implications for development that will result in the removal or disturbance of native vegetation.

When the BC Act commenced, Council initiated in discussions with the relevant NSW Government agencies on options to have the biodiversity assessments completed as part of the rezoning processes for Jerberra, Verons and Nebraska Estates formally recognised and to minimise the need for additional assessments required by landowners at development application stage.

Jerberra and Verons Estates were rezoned prior to commencement of the BC Act. Council applied for the new planning controls in these Estates to be recognised by a legal 'savings provision' under Clause 34A of the Biodiversity Conservation (Savings & Transitional) Regulation 2017. These requests were ultimately granted, meaning that development applications (DA) in these Estates, can be assessed under the legislation that applied prior to commencement of the BC Act and a Biodiversity Conservation Development Assessment (BCAR) is not required to accompany individual DAs.

The Nebraska Estate Planning Proposal however, had not been finalised prior to commencement of the BC Act. Council has been in ongoing discussions with the Biodiversity Conservation Division (BCD) of the NSW Department of Planning, Industry and Environment, to establish if the proposed planning controls for Nebraska Estate will also qualify for the savings provision under the BC Act. The implications for the cost of developing the individual dwellings within the Estate could be significant, hence, the importance of resolving this issue as part of the Planning Proposal (rezoning) process.

The proposed policy, if ultimately adopted, will help to address the eligibility criteria in the Clause 34A biodiversity savings provision in respect of Nebraska Estate, which in turn will help bring the Nebraska Estate Planning Proposal to a timely conclusion.

What is residual E2 Environmental Conservation land?

Residual E2 Environmental Conservation land is land zoned E2 in the Jerberra Estate or proposed to be zoned E2 in the Nebraska Estate (if/ when the land is rezoned) that is so environmentally constrained that it is unsuitable for development. It is land that does not/ will not have a dwelling entitlement and nor is it proposed for consolidation into a larger development parcel. To see if your property is identified as residual E2 Environmental Conservation land please view the relevant map on Council's Get Involved community engagement platform at:

getinvolved.shoalhaven.nsw.gov.au/jerberra-nebraska-estates.

What other options for resolving the future tenure and management of the residual E2 land have been investigated?

Council has investigated a range of options to help to resolve the future tenure and management of the undevelopable E2 land. These are outlined below.

Conservation Agreements - NSW Conservation Management Program (CMP)

The NSW Conservation Management Program (CMP) seeks to encourage and support *private landholders, in 'priority investment areas' or with 'conservation assets' on their property, to participate in conservation. Landholders who enter into **conservation agreements** under this program receive annual conservation management payments for the term of the agreement. They also receive ongoing support from the BCT¹.*

The CMP is administered by the NSW Biodiversity Conservation Trust (BCT). The Trust determines the eligibility of sites for new conservation agreements based on the size, biodiversity values, configuration, and condition of the area. Five (5) hectares is generally the minimum land area for conservation agreements, hence this option is not currently available because the individual lots are too small.

Biodiversity Stewardship Agreements - Biodiversity Offset Scheme

The Biodiversity Offset Scheme is a market-based scheme that brings together:

- *landowners who create biodiversity credits by establishing a **biodiversity stewardship site**, and*
- *purchasers who buy the credits created.*

¹ <https://www.bct.nsw.gov.au/conservation-management-program>

Purchasers can be the NSW Biodiversity Conservation Trust or developers wanting to 'offset' biodiversity loss from a new development site. Landowners who enter into a biodiversity stewardship agreement and sell their credits can receive an annual payment in return for actively managing their land's biodiversity.²

NSW Coastal Lands Protection Scheme

The Coastal Lands Protection Scheme is a NSW funding program whereby the NSW Government can acquire land on or near the coast. The acquisition criteria are: public access to the coast, scenic quality, and/or ecological values.

Of the proposed E2 land in Nebraska Estate, only Lot 1 in DP 777950 is within the Coastal Zone. However, all the proposed E2 land has significant ecological value.

In May 2018, Council wrote to the then Department of Planning and Environment (now DPIE) seeking advice on the eligibility of land in Nebraska Estate for acquisition under the NSW Coastal Lands Protection Scheme. A response dated 28 March 2019 stated that:

"The Department has undertaken an assessment of your request and can advise you at this point in time we will not be pursuing acquisition of any of the lots within the Nebraska Estate planning proposal.

...While we acknowledge that some of the land within the proposed Nebraska Estate subdivision maintains ecological value, we also note that much of the land lies outside the NSW coastal zone.

The Department may in future reconsider application of the Coastal Lands Protection Scheme to those lots within the coastal zone that satisfy the Scheme's acquisition criteria, and where it is known the landowners are willing to sell."

As such, application could be made under the Coastal Lands Protection Scheme for the acquisition of Lot 1 DP 777950 by the NSW Government, if the owner is seeking to sell.

There are no other land acquisition schemes administered by the NSW Government that could be accessed by the owners of E2 land in the Jerberra or Nebraska Estates.

Council has also made enquiries to determine if any external funding programs are available to assist with the cost of managing land for conservation.

- *Saving Our Species (SOS)* - the current program ends in June 2021 and all money is currently allocated. There will be no more rounds of funding in the current program model. A second

iteration of this program is subject to announcement of the NSW State Budget 2021-22 on 22 June 2021.

- Nebraska is listed as a priority management site for the critically endangered orchid *Pterostylis ventricosa*. The Biodiversity Conservation Division (BCD) of the Department of Planning, Industry and Environment (DPIE) advised that up to \$10,000 is available this financial year for conservation work in Nebraska provided any proposed work is consistent with adopted conservation strategies. However, the new policy would not come into effect in Nebraska Estate until the Planning Proposal (rezoning) has been finalised and this will not occur within the 2020/21 financial year.

How would the new policy benefit me?

If you own land in Jerberra Estate that is zoned E2 Environmental Conservation that is not able to be incorporated into a developable parcel (i.e. residual E2 land) the new policy will provide an option that is not currently available: landowners would have the additional option of selling their land to Council. The same would apply in Nebraska Estate if/when the land is rezoned.

If you own surrounding land, the new policy will provide greater certainty that the E2 land will be managed for conservation in perpetuity and kept free of unauthorised development.

What other options are available for owners of the residual E2 land?

Owners of the residual E2 land do not have to sell their land to Council. The land could be retained or sold on the open market, if a buyer can be found, or it could be retained in private ownership. However, the options for using or developing the land are very limited noting that 40 ha is required to enable a dwelling to be approved. Refer to the [E2 zone objectives and land use table](#) in the [Shoalhaven Local Environmental Plan 2014](#).

Would Council purchase all of the 'residual E2 land in each Estate?

Council would only purchase land if the owner/s wish to sell and the land meets Council's criteria for acquisition. Given these variables, it is unlikely that Council would purchase all of the residual E2 land in the foreseeable future.

² https://www.bct.nsw.gov.au/sites/default/files/2018-04/offset_BSA_brochure.pdf

Will the rates paid over the years be taken into account in the purchase price?

Any property purchased by Council must be unencumbered by debt at the date of settlement and Council will not reimburse any rates previously paid on the property. The purchase price offered will be based on the Unimproved Value (indexed) as determined by the independent valuer at the date of the transaction.

How would the purchase price be determined?

Any offers to purchase the residual E2 land would be based on the unimproved value. An independent Valuer has been engaged to provide valuation advice which will be presented to Council for consideration, along with landowner feedback, the draft policy and other supporting information.

The cost of any outstanding rates/charges, and/or removing any unauthorised development and/or rehabilitating the land would be deducted from any sale price.

The valuations provided to Council by the Valuer General (VG) for rating purposes (rateable value) potentially provide a rough guide to the land's market value. In Jerberra Estate the rateable values of the residual E2 properties range from \$20,000 to \$32,000. The rateable value of the rural-zoned land in Nebraska that will potentially be 'residual E2 lots' (if Nebraska Estate Planning Proposal is ultimately finalised) range from \$1,800 to \$90,000 per lot. The reason or rationale for this wide variation is unknown.

How would outstanding rates, land tax and mortgage balances be treated?

As per normal conveyancing practice, you would need to pay any outstanding amounts at the time of sale. If you have a mortgage, you would have to arrange with your financier to repay the amount required by them for you to provide a Discharge of Mortgage on settlement. If the amount of outstanding rates and charges is greater than the value of the land as determined by the independent valuer, the land could be offered to Council in full satisfaction of the overdue rates and charges under the current Policy titled [Small Lot Rural Subdivisions - Dealing with Unpaid Rates and Charges](#).

Who or what is an independent valuer?

An independent valuer means a person who is "suitably qualified" to provide evidence of 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.

What will Council do with any land purchased under the new policy?

Any land acquired by Council under the new policy would be managed for conservation purposes in perpetuity consistent with clause 34A of the NSW Biodiversity Conservation (Savings and Transitional) Regulation 2017 using any available surplus funds and/or external funding programs and subject to resourcing.

Once purchased, the land would be generally classified as community land (natural area) and opportunities for parcel consolidation could be pursued as they arise.

How do I know that Council will not seek to rezone the E2 land and sell it in the future?

The entire basis for the new policy is that any E2 land acquired by Council will be managed for conservation in perpetuity.

The process for rezoning land in NSW is governed by the Environmental Planning and Assessment Act, 1979 (EP&A Act), and is overseen by the NSW Department of Planning, Industry and Environment. Land zoned/proposed to be rezoned E2 in these Estates is affected by a combination of well documented environmental constraints/values and is unsuitable for development. Any proposal to rezone this land to enable development and reduce the environmental protections, would be contrary to Ministerial Directions issued under section 9.1 of the EP&A Act.

Furthermore, the land would be classified as 'community' land under the Local Government Act, 1993, preventing Council from selling or disposing of the land. A Planning Proposal would be required to reclassify 'community' land to 'operational' land, and a public hearing would have to be held as part of this process.

Would the land be classified as 'community' or 'operational' under the Local Government Act 1993

Under the existing [Policy](#), land acquired in lieu of unpaid rates is classified as either community or operational depending on the particular circumstances.

- Land identified through rezoning investigations as potentially suitable to accommodate development will be classified as "operational".
- Where the rezoning investigations have not progressed sufficiently (e.g. the Woollamia Farmlets) to ascertain whether or not the land has development potential, the land will be classified as "operational". The classification of this land will be reviewed when the rezoning potential has been determined.
- Other land would generally be classified as "community – natural area" unless an operational need is evident or likely.

Any E2 land acquired under the new proposed policy would be classified as "community – natural area" except when it is needed for servicing or infrastructure.

What is the difference between 'community' and 'operational' land?

Council is required by the Local Government Act 1993 (LG Act) to classify all land vested in it as either 'community' or 'operational'.

- **Community** land – is land council makes available for use by the general public, for example, parks, reserves or sports grounds and natural areas.
- **Operational** land – is land which facilitates the functions of council, and may not be open to the general public, for example, a works depot or council garage.

How public land is classified determines the ease or difficulty a council can have dealing in public land, including its sale, leasing or licensing. Community land cannot be sold, exchanged or otherwise disposed of. Community land must be managed in accordance with a Plan of Management prepared and adopted by Council, under section 36 of the LG Act 1993.

Once classified, the reclassification of public land from 'Community' to 'Operational' (or vice versa) is generally required to be done through the Local Environmental Plan process.

There are no special restrictions on council powers to manage, develop, dispose, or change the nature and use of operational land.

What land would Council potentially sell in these Estates?

Some lots owned by Council in Jerberra Estate have some limited residential development potential under the Estate's planning controls which commenced in 2014.

Similarly, Council owns a few lots in Nebraska Estate that potentially will be rezoned to allow limited residential development (if/when the Planning Proposal is ultimately finalised).

Any 'developable lots' will be sold at the appropriate stage. It is proposed that any net profit from the sale of this developable land is 'ring-fenced' for the purchase and management of the undevelopable E2 zoned land in each Estate.

When would the new policy (if adopted) come into effect?

The new policy would take effect in Jerberra Estate if/when it is adopted.

The new policy would take effect in Nebraska Estate if/when the Planning Proposal has been finalised and Council owns land (with development potential) that it can sell (to fund the acquisition of residual E2 land).

How do I give feedback on the proposed policy?

Feedback from all landowners in the Jerberra and Nebraska Estates on the proposed policy is welcome. Feedback must be in writing and can be provided by using the online feedback form on Council's 'Get Involved' project webpage for this project: getinvolved.shoalhaven.nsw.gov.au/jerberra-nebraska-estates

If you are the owner of residual E2 land in the Jerberra Estate or potentially residual E2 land in the Nebraska Estate (if / when the land is rezoned) Council has written to you and provided a link to the targeted survey form.

If you prefer, you may also complete a hardcopy survey form which will be mailed to you and send any additional feedback to:

- **Post:** The chief Executive Officer, Shoalhaven City Council, PO Box, Nowra NSW 2541
- **Email:** council@shoalhaven.nsw.gov.au

Survey forms and any additional feedback on the proposed policy, must be received by **5pm, Sunday, 25 July 2021**.

In any correspondence, please quote Council's reference:

- Nebraska Estate: **1013E/3**
- Jerberra Estate: **2653E/2**

Where can I get further information?

A webpage has been set up for this project on Council's Get Involved community engagement platform at: getinvolved.shoalhaven.nsw.gov.au/jerberra-nebraska-estates

If you have read the FAQs and viewed the project webpage but still have questions, please contact Maggie Chapman, Strategic Planner (Monday-Wednesday) on (02) 4429 3485 or email:

maggie.chapman@shoalhaven.nsw.gov.au

Alternatively, you can contact the Special Projects team in Council's Strategic Planning section on (02) 4429 3320.