

Planning challenges

The future of Jerberra Estate, a highly contentious 'paper' subdivision east of Tomerong village on the NSW South Coast, was resolved when the Jerberra Estate Local Environmental Plan (LEP) and Development Control Plan (DCP) commenced in February 2014.

Jerberra Estate is a 1922 'paper' subdivision comprising 152 lots ranging from <1,000m² to 2.8 ha. The land remained undeveloped without infrastructure when zoning was introduced in 1964.

Despite the rural zoning which effectively prohibited development on the individual lots (due to their small size) the individual lots were sold to 140 landholders in 1986. Many of the landholders were from outside the Shoalhaven area, had a non-English speaking background and/or a limited grasp of the planning system.

In 1992 Shoalhaven City Council resolved to investigate rezoning the land to allow residential development, subject to full cost recovery from the benefiting landowners. A number of planning and environmental studies were completed in the 1990s.

In 1993, a NSW Government moratorium was placed on the rezoning of land for residential development in the Jervis Bay region. The Jerberra Estate investigations were allowed to continue until 2000, when it became clear that the land's environmental and development limitations could not be reconciled with the landowners' hopes to build on each lot.

A further complication was that many landowners had erected unauthorised structures on their lots. By 2004, unauthorised structures ranging from sheds to substantial houses had been identified on 65 lots. The elected Council was reluctant to take legal action while there was a possibility that a favourable rezoning outcome might still be achieved, compounding the socio-political pressures on the planning process.

The rezoning moratorium was ultimately lifted when the Jervis Bay Settlement Strategy was completed by Council and adopted by the NSW Government in 2003. The Strategy identified specific actions to be addressed in respect of Jerberra Estate.

Council recommenced rezoning investigations in 2005 by commissioning a new set of environmental and planning assessments. In 2006, Council adopted a 10 year loan-funded special rate levy to recoup the costs of the rezoning investigations from the landholders.

A working party consisting of Council the then Department of Planning and the then Department of Environment and Climate Change was established to review and help resolve challenges identified in the threatened biodiversity assessment which did not favour the 'one dwelling per lot' outcome.

The biodiversity report identified that Jerberra Estate provides habitat for a diverse range of threatened native plants and animals listed under NSW and/or Commonwealth legislation. There is one endangered ecological community (Swamp Sclerophyll Forest) and eleven threatened species including the critically endangered Eastern bristlebird and vulnerable Biconvex Paperbark, Yellow-bellied Glider, Glossy Black Cockatoo, Gang-gang Cockatoo and Grey-headed flying fox.

In 2007, Council sought advice from the Commonwealth Government in respect of the Environmental Protection and Biodiversity Conservation (EPBC) Act and its implications for development of the Estate. Council was advised that proposed development of the Estate would need to be referred under the EPBC Act but should be able to avoid being a 'controlled activity' if areas supporting nationally-listed threatened species were avoided and protected.

The lands' biodiversity values and the existing subdivision pattern placed constraints on the ability to use the land for residential development. Biocertification was considered to allow removal of high value conservation values, but was not feasible due to the need for a substantial conservation offset.

The environmental and land capability assessments provided a high level of detail on the Estate's natural and physical constraints for residential development. In addition to biodiversity issues, the bushfire and onsite effluent management assessments showed that some of the existing lots in the Estate are not suitable for development.

However, the matter did not progress until May 2009, when Council resolved that its preferred option of 'one dwelling per lot' was not achievable and to pursue a compromise option with the Department of Planning and the Department of Environment and Climate Change.

A land pooling /community title subdivision option which would potentially benefit all landowners was considered in 2010. The working party prepared two options for presentation to the landowners:

- **Option A - Constrained development.** Limited by the existing subdivision pattern and ownership. Residential development could occur on the least constrained land. Limited development could occur in the more constrained areas excluding the areas constrained under the EPBC Act. Amalgamation of existing lots in conjunction with low impact residential development would enable the retention of high conservation value land. Amalgamation would help to provide an equitable outcome for landowners who have not illegally cleared or developed their land.
- **Option B - land pooling and community title subdivision.** All owners would share the benefits. Significant environmental areas would be protected on a large community owned lot and the less constrained land would be re-subdivided. This option could only be progressed if there was significant landowner support.

Both options were designed to comply with the bushfire planning requirements.

The concepts and relative merits of both options were documented in an information brochure that was sent to landholders. Officers from the working party participated in a 'drop-in information day' on 4 September 2010 attended by over 110 landowners. This was followed by a landholder survey to identify which of the two development options landholders would support.

Responses clearly showed that land pooling had insufficient support and hence was not feasible. The results also showed that the landowners were still generally reluctant to accept that all of the lots in the Estate could not be developed.

In February 2011, Council resolved to accept that a land pooling and re-subdivision option was not viable and to proceed with finalising details of a rezoning option based on 'Option A' (constrained development).

The Jerberra Estate Planning Proposal received a "gateway" determination on 2 September 2011. Additional studies were prepared including an Integrated Water Cycle and Stormwater Management Assessment, and a Preliminary Land Valuation Assessment. The land valuation provided an indication of the potential value of the developable land if/when it was rezoned, which is important information if amalgamation is a requirement for development.

The Planning Proposal was exhibited in July/August 2012. It proposed a mix of three 'environmental' zones from the Standard Instrument LEP format. Dwellings would be allowed on most of the existing lots in the E4 - Environmental Living Zone. Dwellings would also be allowed in the E3 - Environmental Management Zone subject to amalgamation of existing lots (as required by the minimum lot size map). The E3 area contains habitat for various threatened tree-dwelling animals. Dwellings would be permissible subject to the provision of the minimum required bushfire asset protection zones and the retention of habitat on the remaining land. Dwellings would not be allowed in the E2 - Environmental Conservation Zone as it contains threatened species protected under both NSW and Federal environmental legislation.

The Planning Proposal also included maps showing the proposed development footprints, a suggested lot amalgamation plan (which correlated to the minimum lot size map), bushfire asset protection zones, roads and perimeter fire trails, and conservation management areas. The Planning Proposal also identified the need to

exclude specific exempt and complying development provisions under the State Environmental Planning Policy (SEPP) within the Estate to ensure the impact of development is managed.

Minor changes to the Planning Proposal were adopted by Council in December 2012 in response to public submissions and it was submitted for drafting in early 2013.

Meanwhile, Council prepared the supporting Jerberra Estate Development Control Plan (DCP 125) which sets out more detailed objectives and planning controls to achieve the intent of the Planning Proposal.

The LEP and DCP both commenced on 22 February 2014. The LEP also amended the SEPP (Exempt and Complying Development Codes) 2008 to omit certain types of exempt development activities from the Estate.

Available resources

The challenges of resolving the residential development potential of land within Jerberra Estate required a variety of resources predominantly from Council but supplemented by resources from the NSW Government agencies.

Council initially funded the rezoning investigations from its own resources. In 2006, Council borrowed \$350,000 to fund the rezoning investigations and introduced a special rate levy on properties in the Estate to repay this over 10 years. A full time planning position was created to work on resolving the planning status of paper subdivisions in the region, with Jerberra Estate as the priority.

The planning officer oversaw the preparation of the planning and environmental assessments, the DCP, Council reports, landowner correspondence and undertook the landowner survey. The survey was sent to all landholders and was available online. Most of the environmental assessments were completed by consultants.

The planning officer also provided a direct point of contact for landholders and helped to break down communication barriers. Council provided updates for landowners throughout the process via correspondence and a Jerberra Estate rezoning page was established on Council's website: <https://shoalhaven.nsw.gov.au/Planningamp;Building/Strategicplanning/PaperSubdivisions/JerberraEstate.aspx>

In the later stages of the planning process and in recognition of the communication challenges, additional staff resources were allocated to address the communication barriers. Three information drop-in days were held as part of the Planning Proposal and DCP processes. The information days enabled the planning legislation and the proposed planning controls to be discussed and explained individually with the owners. Officers from the Department of Planning and Environment and Office of Environment and Heritage also attended these days, reflecting the collaborative whole-of-government approach.

The NSW government agencies offered staffing resources to assist with the rezoning investigations. The Department of Planning provided staff from the Wollongong Regional Office who liaised internally with the Legal Branch and Assessment Systems and Strategies Branch to resolve issues and ensure that the rezoning investigations were consistent with NSW Government planning legislation and guidelines.

The Office of Environment and Heritage provided staff from the Southern Region to assess and review the biodiversity reports and to work with Council to identify a residential development footprint for the Estate which considers the high conservation values of the land.

Progress and Positive Effects

The Jerberra Estate Planning Controls provide the best available development potential for landholders while still protecting high conservation value land consistent with local, State and Federal planning strategies and legislation. The LEP provides an equitable outcome for landholders and a solution for the land's tenure and associated social issues.

To minimise confusion among landowners and potential purchasers, the Estate has a stand-alone LEP for the time being but will be incorporated into the city-wide LEP at some stage in the future.

A consequence of complications arising from the constraints competing objectives (e.g. bushfire risk management and environmental) the planning controls for Jerberra Estate are relatively complex. A customised development application kit has been prepared for Jerberra Estate to streamline the development application process and help landowners address the new planning controls. The kit includes a customised checklist and a "Statement of Environmental Effects" form which steps the applicant through the requirements of the LEP and DCP.

Up to 87 dwellings can now potentially be approved, of which 36 will require two or more lots to be amalgamated. Amalgamation has been the most contentious aspect of the Estate's new planning controls. However two amalgamations have now occurred (Lots 138 and 139, and Lots 25 and 29). Other landowners are in various stages of negotiations with one another and more amalgamations will follow, particularly with the implementation of infrastructure provision and cost recoupment.

Although it has been rezoned, the Estate cannot be properly and safely developed until essential infrastructure is provided. Provisions that were introduced under Schedule 5 of the NSW Environmental Planning and Assessment Act to help overcome certain barriers associated with the provision of infrastructure in paper subdivisions will not provide an overall solution for Jerberra Estate.

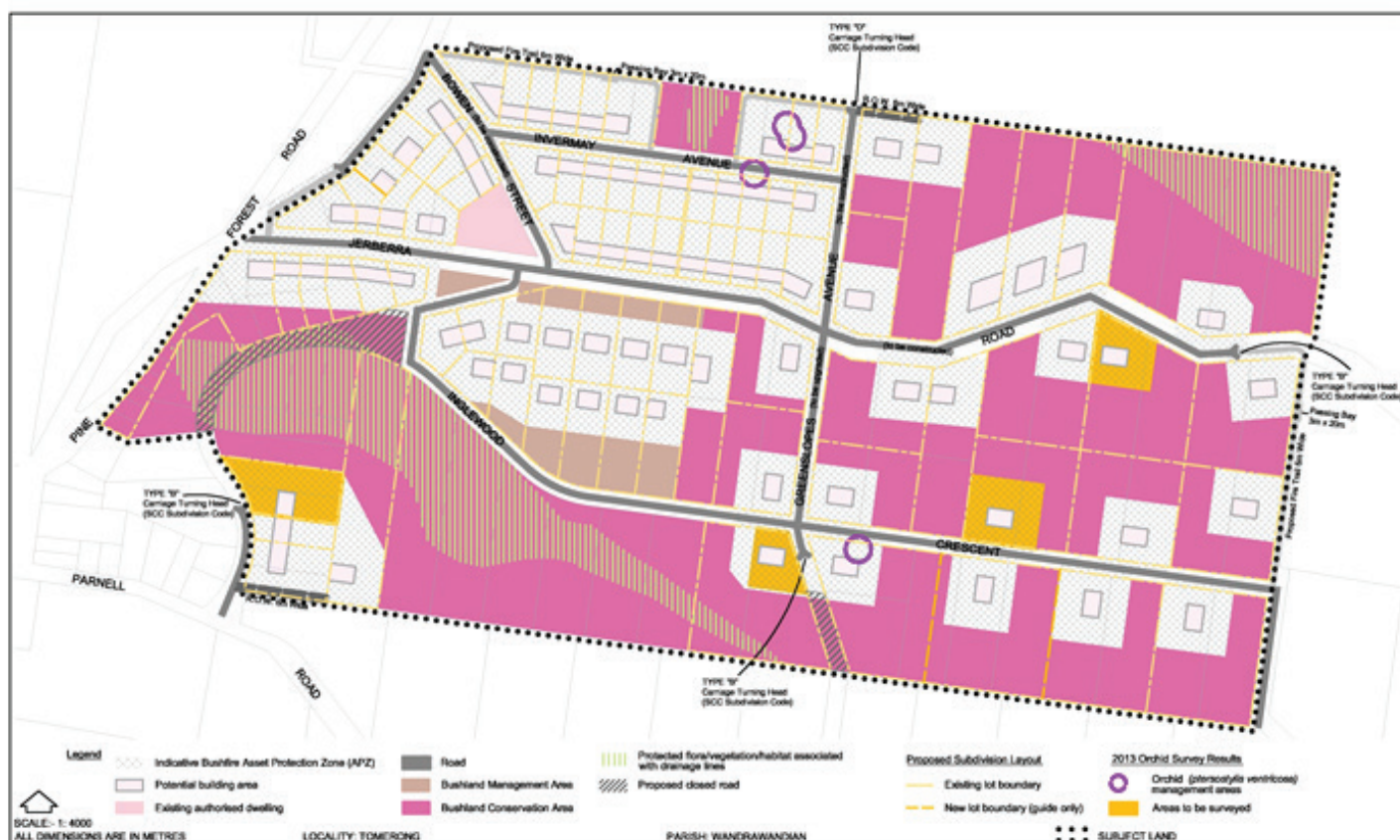
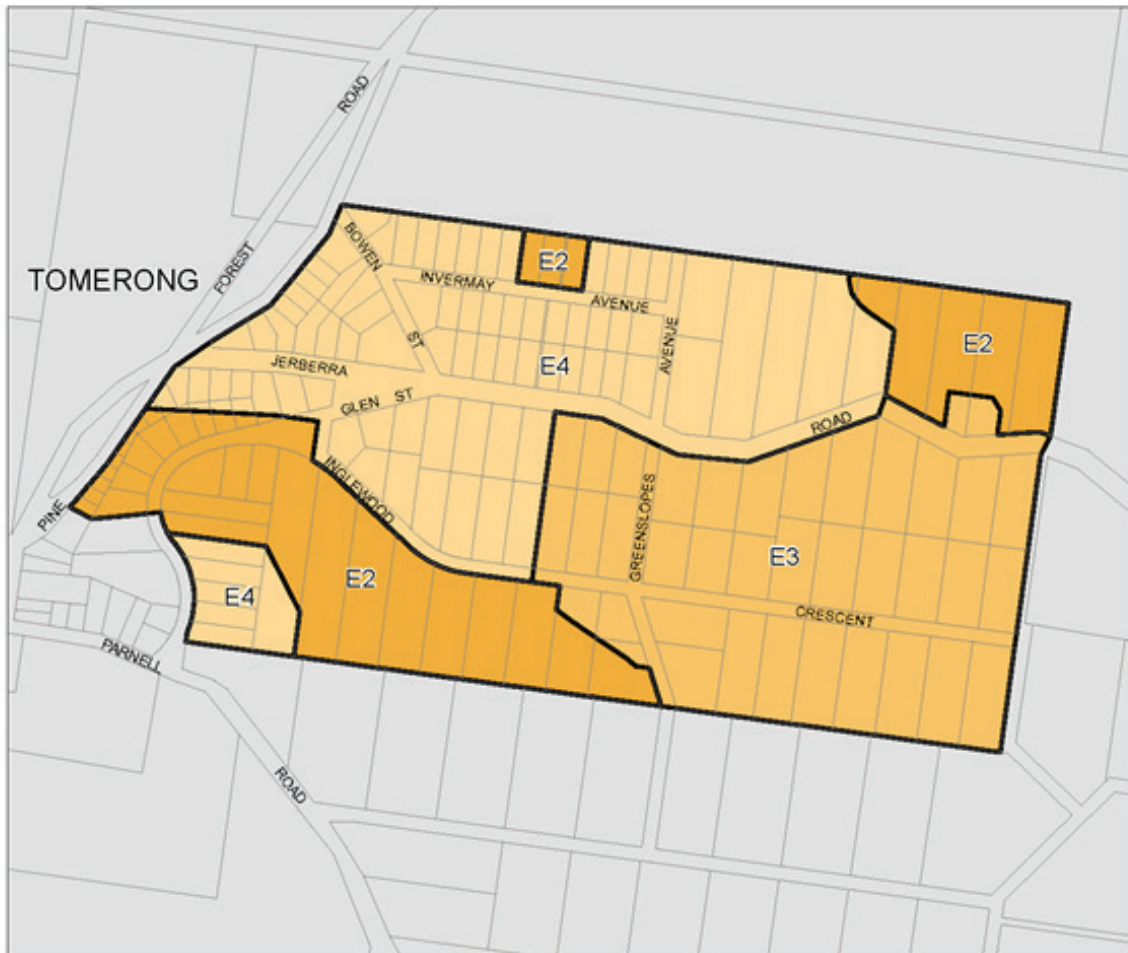
Hence, Council proposes to seek approval from the NSW Independent Pricing and Regulatory Tribunal (IPART) for a 'special variation' to borrow the money required to complete the work and recover this, including interest, through a special rate levy. This approach provides financial certainty and allows the costs to be spread over a number of years. The small proportion of properties which have no prospect of forming part of a 'developable lot' will not be levied. An information drop-in day was held on 9 August 2014 to give landowners the opportunity to view and comment on the designs and cost estimates for the provision of roads, perimeter fire trails, road drainage, electricity and communications.

The new planning controls provide a legal framework for existing unauthorised structures to be regularised. Landowners have been encouraged to be proactive in this regard and the provision of infrastructure and cost recoupment will be a critical element. Nevertheless, some legal action is likely to be necessary to resolve the fate of all of the unauthorised structures in the Estate.

The LEP and DCP also set a framework and direction for the consideration of future planning proposals and the resolution of other old 'paper' subdivisions in the Jervis Bay area. The imminent notification of the Shoalhaven LEP 2014 Amendment No 1 Verons Estate ('paper' subdivision near Sussex Inlet) builds upon the successful LEP planning controls for Jerberra Estate. The Nebraska Estate rezoning investigations will also benefit from the framework provided by the Jerberra Estate planning controls.

Zone

- ☒ Environmental Conservation
☒ Environmental Management
☒ Environmental Listing
☐ Callisto 210002013 @Bills@Karen City Council



CITY OF SHOALHAVEN
DEVELOPMENT CONTROL PLAN 125 - JERBERRA ESTATE, TOMERONG

DEVELOPMENT & CONSERVATION AREAS

AUTOCAD FILE: C:\DATA\Planning\Greenbelt\Projects\City\Dev\DCP\DCx125\Figures\ Dcp125_Development&ConservationAreas

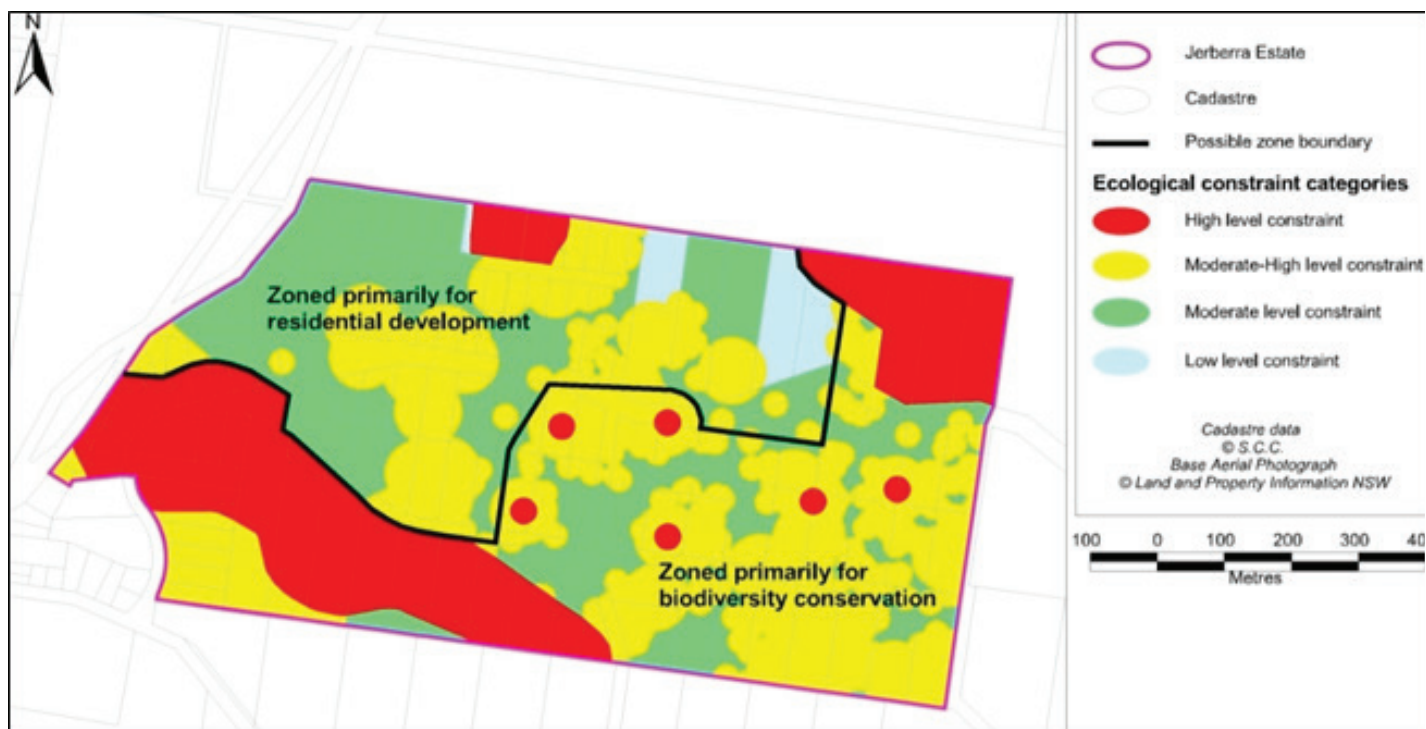
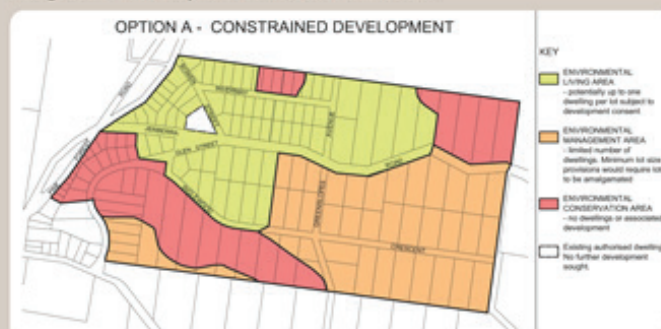


Figure 1 – 'BES Option 2': One of two options recommended in the Flora and Fauna Assessment (BES, 2007)

Option A - Constrained Development

The number of dwellings would be limited to the existing subdivision pattern. Only some of the landowners would potentially benefit due to the need to protect sensitive environmental areas, manage bushfire risk and provide services and infrastructure.



Existing lots would fall into one of three categories:

1. Environmental Living Area — Could be developed subject to a development consent for each house. Some lots may still need to be consolidated to have sufficient area for onsite effluent disposal and bushfire management. Native vegetation would need to be retained on larger lots.
2. Environmental Management Area — Could not be developed for a dwelling on their own but would need to be amalgamated with one or more other lots to create up to 10 larger developable lots. These lots would contain high conservation value vegetation and be zoned and managed for conservation.
3. Environmental Conservation Area — Lots where development is not proposed or supported. This area contains Commonwealth and NSW threatened species and associated buffers.

Once the land is rezoned, a development application would need to be prepared for each proposed dwelling, as is normally the case. Each application would need to address potential environmental impacts, bushfire protection and servicing.

	Comments on Option A – Constrained Development
Equity	Some landowners will benefit, some will not.
Approval process	The environmental living area and lot size will be identified. Some lots would need to be amalgamated with others so that a development application could be lodged. Approval of each house will require a development application addressing environmental and other issues.
Resolution of zoning and tenure	Zoning uncertainty would be resolved. Future tenure of lots outside the potential living area would depend on negotiations between landowners.
Development Outcomes	About 70 houses in the environmental living area (maximum one dwelling per lot) and up to 10 houses in the environmental management area.
Development Cost	Servicing costs per house are likely to be higher as there would be fewer lots to share the costs.
Environmental outcomes	Conservation areas in fragmented ownership which could result in diminished conservation value over time. Individual land owners would be responsible for conservation management.
Effluent Management	Individual existing lots may be too small for effluent disposal. Lots may need to be amalgamated to comply with a minimum lot size requirement.

Option B – Land Pooling/Community Title

Community title is a form of land subdivision that enables individual freehold lots to be created and allows shared ownership of a common area.

Under this option the number of houses in the potential living area can be increased while the conservation areas are protected. The lots within the living area would be privately owned and all landowners would jointly own the conservation area.



To achieve this option all the current lots would be pooled together and a new subdivision layout designed. Landowners would need to be involved in designing the new subdivision. It would assist if there was a landowner representative with development expertise to help drive and co-ordinate the process.

A variation to this option, where some dwellings are allowed within the conservation area could be considered. However, the loss of additional high conservation value vegetation would need to be offset by a reduction in the potential living area (see conceptual example in inset map - Option B Variation).

	Comments on Option B – Land Pooling/Community Title
Equity	All landowners potentially benefit. Owners would need to collectively agree on how equity in the new subdivision would be allocated. This could be complex and would require the establishment of a landowner entity (e.g. a body corporate).
Approval process	Needs to be supported by a large majority of owners. There would be a step-by-step process in designing the new subdivision. Approvals for housing in the potential living area could be simplified.
Resolution of zoning and tenure	Zoning uncertainty and future tenure of all lots within the estate would be resolved.
Development Outcomes	About 110 houses could be accommodated in the potential living area if effluent is treated on each lot. For the variation of this option where some houses would be allowed in the conservation area, the overall number of houses in the potential living area would be less (because the potential living area would need to be reduced to offset vegetation losses in the conservation area).
Development Cost	Servicing costs per house are likely to be lower as there would be more lots to share the costs.
Environmental outcomes	The conservation area would be owned and maintained by the community association with greater certainty for protection than if held in fragmented private ownership. All land owners would, through the Community Association, collectively manage the conservation area.
Effluent Management	A common effluent system (CES) could be possible and would allow smaller lot size than if effluent is treated on individual lots.



South Coast Register

southcoastregister.com.au

WEDNESDAY, JUNE 23, 2010

PRICE \$1.60 includes GST

Proudly serving the local community for over 120 years

RETAIL MOVE

**FISHY BUSINESS
ON THE
HIGHWAY**

PAGE 3



FIRE ALARM

**DON'T
FORGET
THE CHIPS**

PAGE 9



COMMUNITY FOCUS

**A LIFE
HELPING
OTHERS**

PAGE 11



HOME UNDER TREAT

**Council moves
against illegal
estate dwellings**

By GLENN ELLARD

A YOUNG family is facing homelessness after Shoalhaven City Council launched legal action to evict them from their home built illegally in the Jerbera Estate.

Council last week initiated legal action in the Land and Environment Court to evict Glen and Kim Bonner, and their children, Ilgen, 14, Renae, 10, and 13-month-old Jemma.

It is not the first time the Bonners have faced the prospect of being homeless.

They built their first home in the Jerbera Estate in 2004 but just days before they were due to move in, the home burnt to the ground on December 1, 2004.

The community rallied around the Bonners, raising more than \$12,000 through the Mayor's Relief Fund, which helped them build a new home on the estate despite some of the estate's 166 lots being zoned for residential development.

The Bonners are the first people targeted in a new council campaign to remove illegal dwellings from the estate.

