



North Bendalong, Bendalong, Berringer, Cunjurong, Manyana

Hello friends and neighbours.

The RHVA Inc., has been seeking answers from Shoalhaven Council regarding some key aspects of the Land and Environment Court judgement for the Inyadda Dr Nth Manyana DA since our general meeting last November. It has taken many enquiries and finally a recent meeting with SCC CEO, Andrew Constance and newly appointed Director of City Development, Emma Struys. Following are Ms Struys' written responses: There will be further discussion at our meeting on the 21st of February.

1. Community title, how this will work – has it worked in Shoalhaven elsewhere etc

A Community Title is where the property ownership structure for developments have shared infrastructure and is governed by the *Community Land Development Act 2021* and *Community Land Management Act 2021*. Owners hold title to their specific lot but share ownership and management of "association property" through a community association, often involving levies for maintenance. In this instance it includes the roads, road reserve and associated infrastructure, bioretention and stormwater infrastructure, landscaping, the Community Property that is covered by the Vegetation Management Plan (Conservation lot 1), the Park, emergency access along Curvers Drive and the retaining walls.

There is a draft Community Management Statement that was approved by the Court and is available on DA tracking for public viewing. Link to document below:

<https://www3.shoalhaven.nsw.gov.au/masterviewUI/modules/DocumentMaster/ViewDocument.aspx?key=UtP%2bYVOkBDHnWigcBVVsng%3d%3d&size=396920>

There is also a condition in the consent (condition **103**) that requires the final version to be submitted and approved by Council prior to registration.

Community Management Associations have a duty under the law to properly maintain the condition of association property and personal property vested in the association, including any open or private access ways.

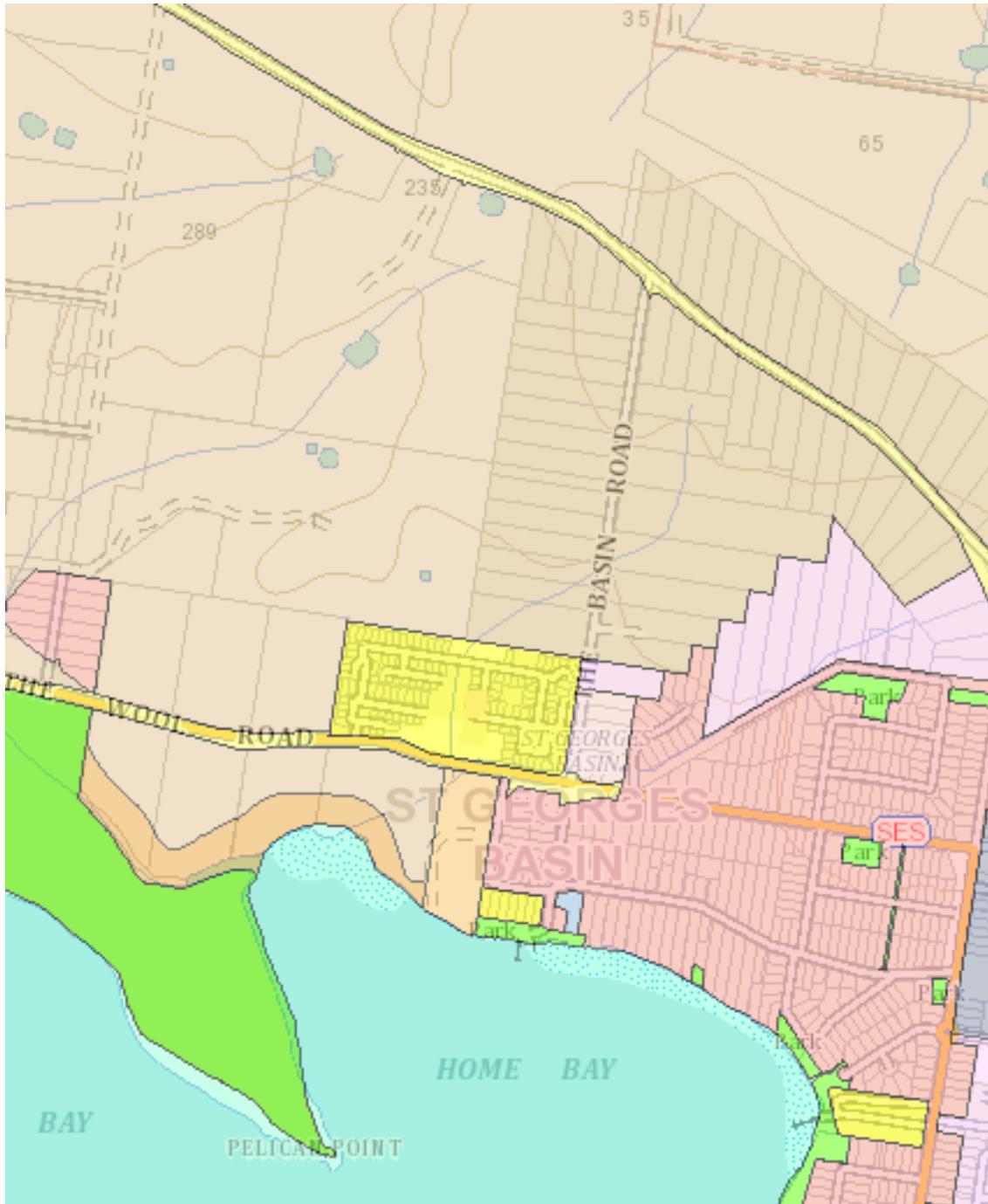
NSW Fair Trading has investigative and enforcement powers to help ensure owners corporations meet their legal duty to repair and maintain common property.

Fair Trading can use these powers to investigate potential breaches of this duty, including being able to require documents and information, and enter premises.

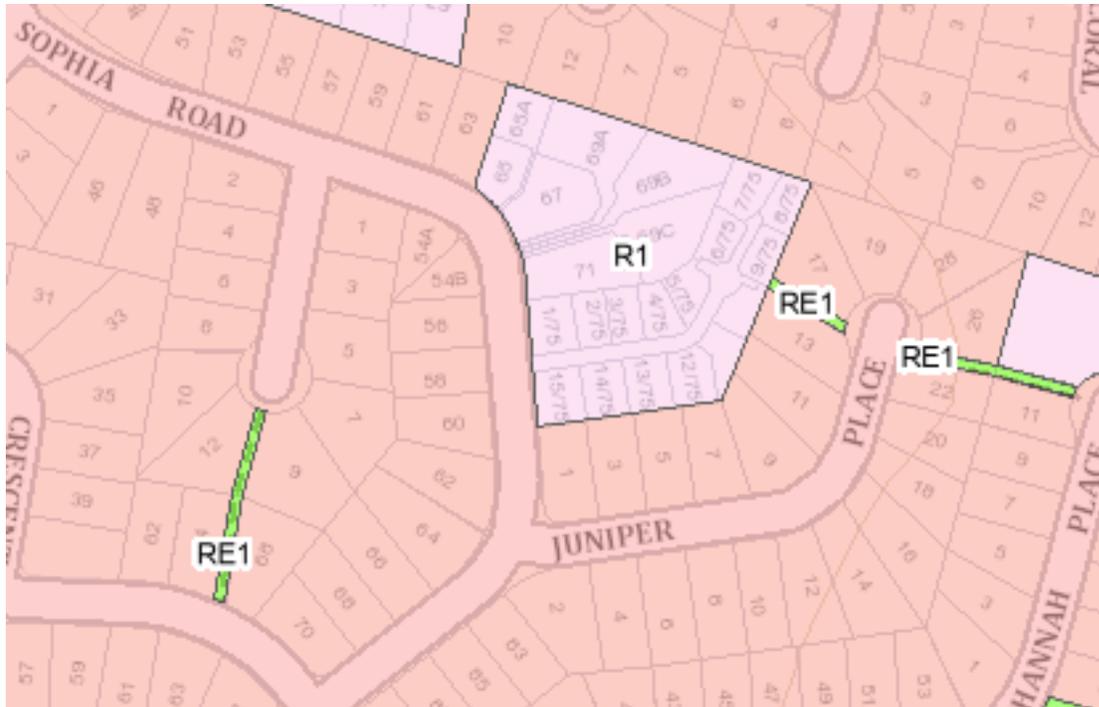
Where a breach is found, Fair Trading can use a range of enforcement actions available to it, including:

- seeking an enforceable undertaking – this is a formal, voluntary written commitment made by an owners corporation to address a breach of its duty to maintain and repair common property.
- issuing a compliance notice – this would require an owners corporation to do specific actions such as fix damage, meet particular standards, or use licensed professionals.
- issuing a penalty infringement notice – this is a monetary penalty (fine) for a breach of the law.
- applying to the Tribunal for an order – an order can require an owners corporation to stop or fix a breach of its duties, or could be for the compulsory appointment of a strata managing agent to take over management of the scheme.
- initiating prosecution action – NSW Fair Trading may take an offender to Court, where it is necessary to serve the public interest.

Some other examples of Community Title subdivision in the Shoalhaven include:



35 The Basin Road St Georges Basin (DA96/3219) larger yellow parcel



The R1 zoned portion 75 Sophia Road Worrige

2. Stewardship agreement and who is party to this, how it will be managed?

Condition (52) of the consent requires that a Biodiversity Stewardship Agreement (BSA) is entered into with the Minister responsible for *NSW Biodiversity Conservation Act 2016* in respect of the maximum extent of the land within the Management Zones identified on Figure 5.1 of the approved Vegetation Management Plan able to be included in a BSA.

Biodiversity Stewardship Agreement

A biodiversity stewardship agreement is a legal agreement between the owner of the land and the minister responsible for the *NSW Biodiversity Conservation Act 2016*. The agreement establishes the biodiversity stewardship site and creates biodiversity credits and is managed by the Biodiversity Conservation Trust (BCT)

A biodiversity stewardship agreement specifies the area (or areas) of land to which the agreement applies and is registered on the title of the land. The landholder chooses the area (or areas) of land to be placed under agreement when applying for a biodiversity stewardship agreement.

A biodiversity stewardship agreement includes:

- the number and type (or types) of biodiversity credits created

- the payment schedule from the Biodiversity Stewardship Payments Fund and Total Fund Deposit established through the sale of credits
- a management plan for the site that covers plant communities, threatened species, weeds, pests, grazing, fire and disturbance as well as monitoring legal terms and conditions and reporting requirements.

Under the Biodiversity Offsets Scheme, a biodiversity stewardship agreement creates biodiversity credits that can be sold or used to offset the loss of biodiversity values resulting from development. Credits can also be purchased to invest in conservation outcomes for philanthropy, corporate social responsibility or as part of a government program.

Here is a link to NSW Environmental and Heritage website that explains what Biodiversity stewardship agreements are:

[Biodiversity stewardship agreements | Biodiversity Offsets Scheme | Environment and Heritage](#)

Ecological Monitoring for BSAs

Regular monitoring of biodiversity outcomes using methods consistent with the BCT's [Ecological Monitoring Module](#) (EMM) has been a requirement for all new Biodiversity Stewardship Agreements (BSAs) since March 2021. As these agreements become active, requirements for implementation of baseline monitoring are triggered. To support BSA landholders and contracted assessors in this process, the BCT has produced several resources, including a [Fact Sheet](#) and a webinar delivered on 30 July 2024 (see recording [here](#)).

- The BCT continue to deliver targeted training and information sessions to build capacity among the Accredited Assessor and ecological consulting community in EMM implementation.
- The BCT has put in place a range of procedures and processes which are enacted when a BSA commences active management – including a site visit with the landholder and Accredited Assessor – to ensure that all stakeholders are aware of monitoring and management requirements.
- BCT staff use annual site visits to evaluate and quality assure both management action implementation and EMM data collection.
- If monitoring data show that the site is not on track to meet ecological outcome targets related to biodiversity gain predicted by the BAM, the 5-year management plan review process (including a BSA variation if appropriate) will be used to facilitate adaptive improvement to the BSA Management Plan in response. This process will involve a discussion between landholder, BCT and the contracted ecologist, to interpret the monitoring data and determine the most appropriate response, noting that poor biodiversity outcomes could be driven by various factors, many outside of the landholder's control (e.g. drought).

Here is a link to NSW Environmental and Heritage website that explains the ecological monitoring regime for Biodiversity Stewardship Agreements:

[Ecological Monitoring for Biodiversity Stewardship Agreements | BCT](#)

3. The plans that were ultimately approved?

The plans that were approved by the court are available for public viewing as PDF documents on Council's DA Tracking portal under Development Application No: **SF10921**. Copy of relevant link and relevant document references are below:

<https://www3.shoalhaven.nsw.gov.au/masterviewUI/modules/ApplicationMaster/default.aspx?page=wrapper&key=152193&propkey=99869>

+ D25/562314 Approved Amended Subdivision Plan; Amended Bu... -> [View]
+ D25/562362 Approved Landscape Plans - Lot 2 DP 1161638; ... -> [View]
+ D25/562666 Approved Civil Engineering Plans - SF10921 - ... -> [View]
+ D25/562703 Approved Aboricultural Impact Assessment & Tr... -> [View]
+ D25/562726 Approved Biodiversity Assessment Report - SF1... -> [View]
+ D25/562767 Approved Vegetation Management Plan - Lot 2, ... -> [View]
+ D25/562793 Approved Vegetation Management Plan - SF10921... -> [View]
+ D25/563570 Approved Trigger Action Response Plan for Con... -> [View]
+ D25/563623 Approved Preliminary Site Investigation - Add... -> [View]
+ D25/563651 Approved Draft Community Management Statement... -> [View]
+ D25/563728 Approved Preliminary Site Investigation - SF1... -> [View]
+ D25/564256 Approved Operation and Maintenance Manual - S... -> [View]

4. APZs and what decisions were and were not made relating to this. Can we clarify where the lots with existing residential lots all back onto the subject site and their APZ which you touched on in our catch up.

Imposing an easement or s88B instrument on title of the lots adjacent to Curvers drive is not a suitable or appropriate way to formalise the current management of the land as an APZ for a number of reasons. It is important to distinguish the properties on Curvers Drive that are adjacent to the proposed building footprint (identified as area 1 on the map below) from the properties to the east of the proposed development footprint (marked as area 2 on the below map).



In relation to the properties in area 1 that would be located adjacent to new residential lots (approximately No. 112-54 Curvers Drive), the need for any formalised APZ will become redundant as the additional residential lots from the proposed subdivision would act as an improved buffer zone (managed land) between Curvers Drive and the 'high risk' area towards Bendalong Road.

The properties to the east of the proposed building footprint labelled as area 2 on the above map (approximately No. 52-2 Curvers Drive) will not receive the added bushfire protection of adjacent residential lots.

Given the approved development footprint did not extend to properties in area 2, imposing easements in favour of those properties for an APZ on the proposed conservation area was not relevant to the development application and therefore could not be conditioned by the court.

Council was not able to resolve the securing of an APZ or hazard deduction easement for the residents of Curvers Drive where the properties adjoin the development site given this would have impacted environmental considerations due to there being ecological species in that area. Residents in that area may however, liaise with the owner to obtain an easement or informal permission to continue to undertake their hazard reduction works. Alternatively, they may also apply for a bush fire hazard reduction certificate under the provisions of s 100F the *Rural Fires Act 1997*.

5. Would you be able to review how many R1 zoned blocks are included in the residential blocks in the Nth Manyana DA and how many have been subsumed into the Community Property lot? In addition can you confirm if these blocks could be subdivided at a later stage?

The minimum lot size for residential lots in R1 zoned land is 500m²

The below maps represent the approved subdivision plan over the zoning map with green overlay depicting the relevant areas of R1 zoned land for each relevant lot portion. Also note

that there are approved dwelling envelopes for each dwelling lot that will be registered on the title and s88B Instrument further restricting development potential.

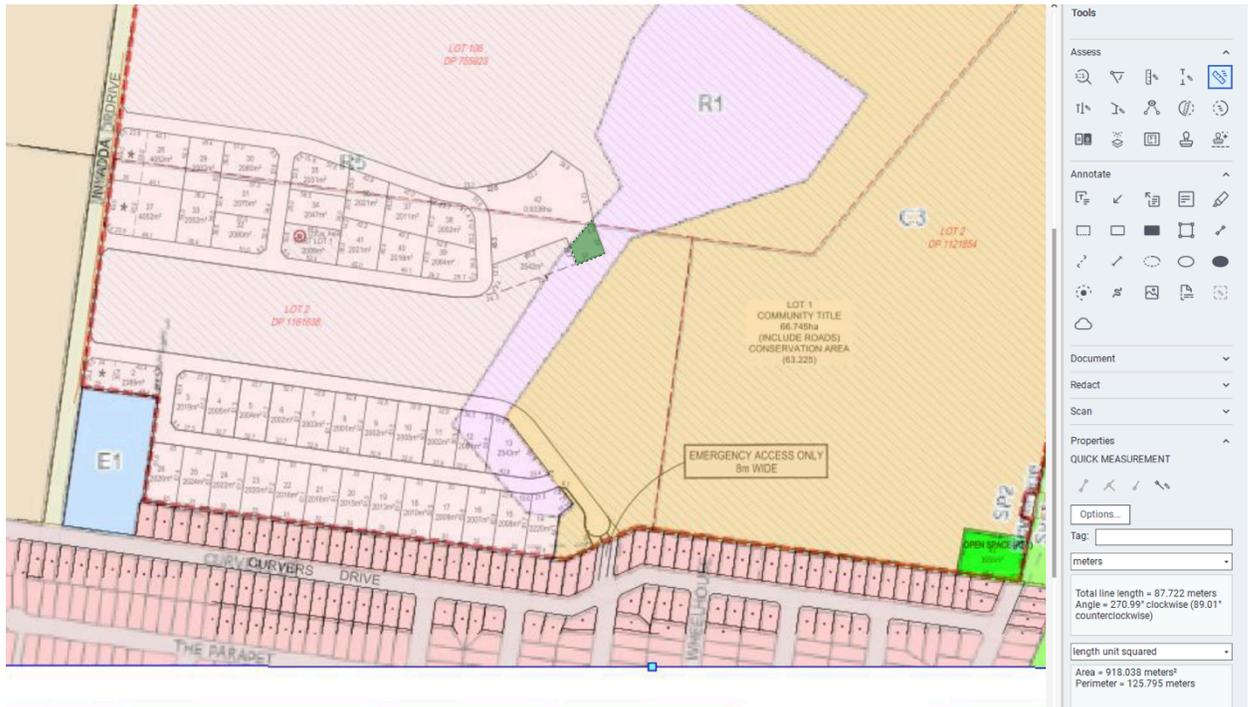


Figure 1 - R1 zoned land lot 42 (green overlay) = 918m² but not viable for subdivision

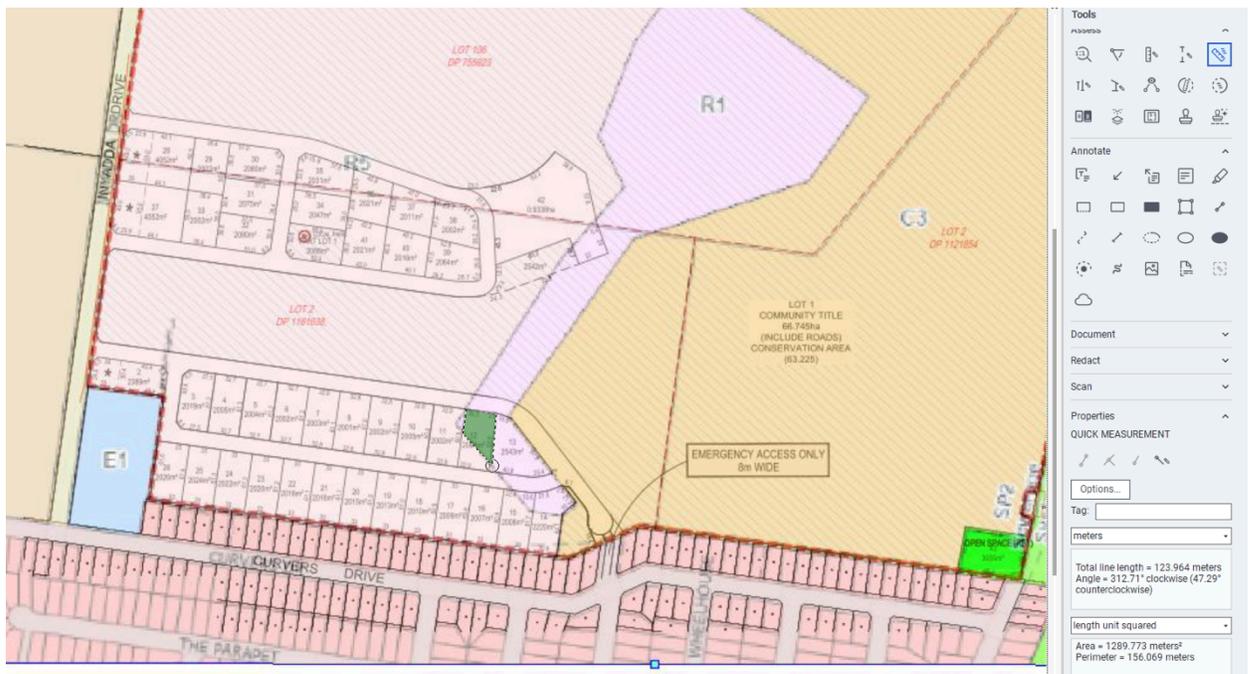


Figure 2 - R1 zoned land lot 12 (green overlay) = 1289m² would not be viable for further subdivision due to R5 portion of lot



Figure 3 - R1 zoned lot 13 (green overlay) = 2368m² which may be subdivided subject to bushfire and ecology constraints

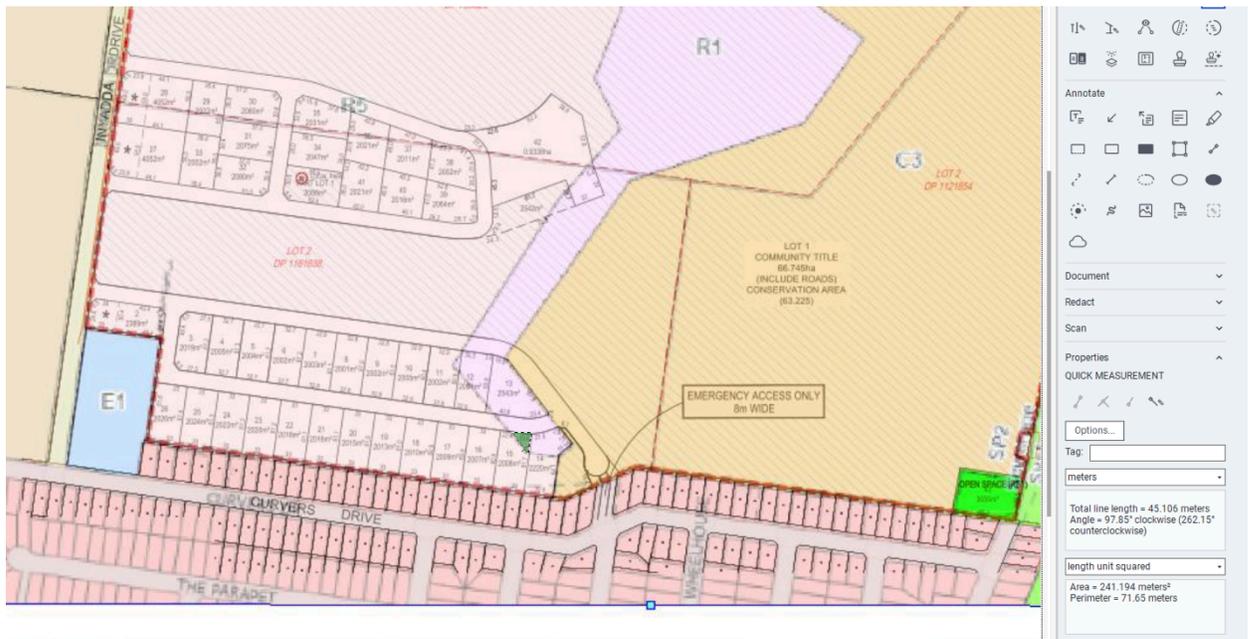


Figure 4 - R1 zoned lot 15 (green overlay) too small for subdivision at 241m²



Figure 5 - R1 zoned lot 14 (green overlay) = 1004m² would not support further subdivision given split zoning with R5 portion

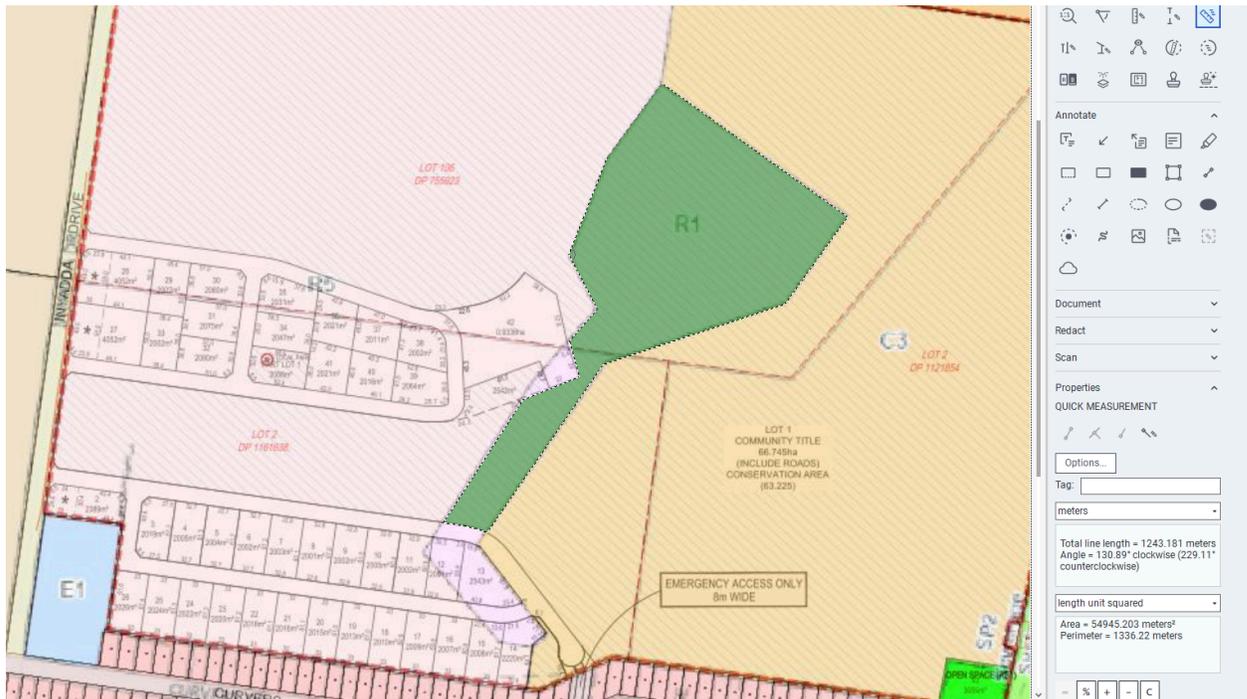


Figure 6 - R1 zoned land within the community conservation lot that cannot be further developed for housing = 54945m²

6. Can you please confirm that this development will continue to be referred to the Federal Government under the EPBC Act as it is a declared controlled action?

It is the developer, company or organisation undertaking the development actions that is responsible for referring to the Federal Government under the EPBC Act, if their proposed activities triggers need for assessment and approval under the EPBC Act. If it's a controlled action, the proponent will need to comply with the conditions this controlled action was issued with.