



Nambucca Valley Council

**Planning Proposal
Nambucca Local Environmental Plan
Amendment No. 31**

**RECLASSIFICATION AND REZONING
OF PART LOT 91 DP 239693 – BANKSIA
CRESCENT, SCOTTS HEAD**

Prepared by:
*Development & Environment Section
Nambucca Valley Council*

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Preliminary

This planning proposal has been drafted in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979*, and 'Local Environmental Plan Making Guideline' (DoP, 2021) for amendment to the Nambucca Local Environmental Plan 2010 (LEP). A gateway determination under Section 3.34 of the Act is requested.

Part 1 Objectives and Intended outcomes

The objectives and intended outcomes of this planning proposal are to reclassify part Lot 91 DP 239693 – Banksia Crescent, Scotts Head from community land to operational land and to rezone that part from RE1 Public Recreation to R1 General Residential. The intention of this is limited to creating a road reservation to facilitate continued access to 3 Banksia Crescent (Lot 1 DP 1160534); 5 Banksia Crescent (Lot 2 DP 417248) and 7 Banksia Crescent (Lot 1 DP 406006).

Part 2 Explanation of Provisions

The proposed outcomes will be achieved by:

1. Amending Part 1 of Schedule 4 of the LEP by listing part Lot 91 DP 239693 – Banksia Crescent, Scotts Head (Council owned lot) as operational land.
2. Amending the LEP land zoning map for part Lot 91 DP 239693 – Banksia Crescent, Scotts Head to R1 General Residential.
3. To apply a 450m² minimum lot size to part Lot 91 DP 239693 – Banksia Crescent, Scotts Head

Part 3 Justification of strategic and site-specific merit

Section A – Need for the Planning Proposal

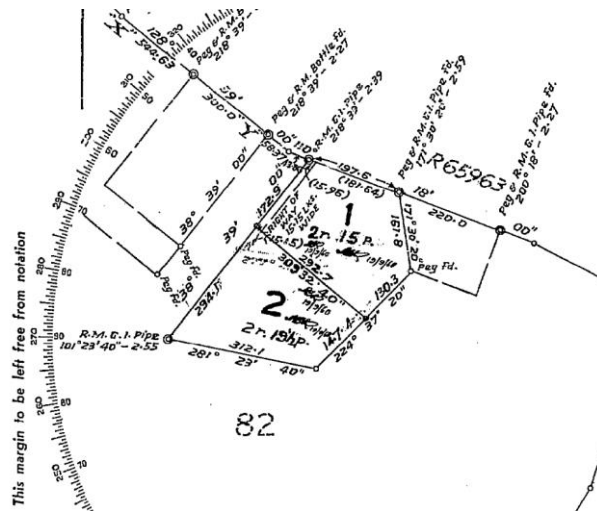
1 Is the planning proposal a result of an endorsed LSPS, strategic study or report?

No.

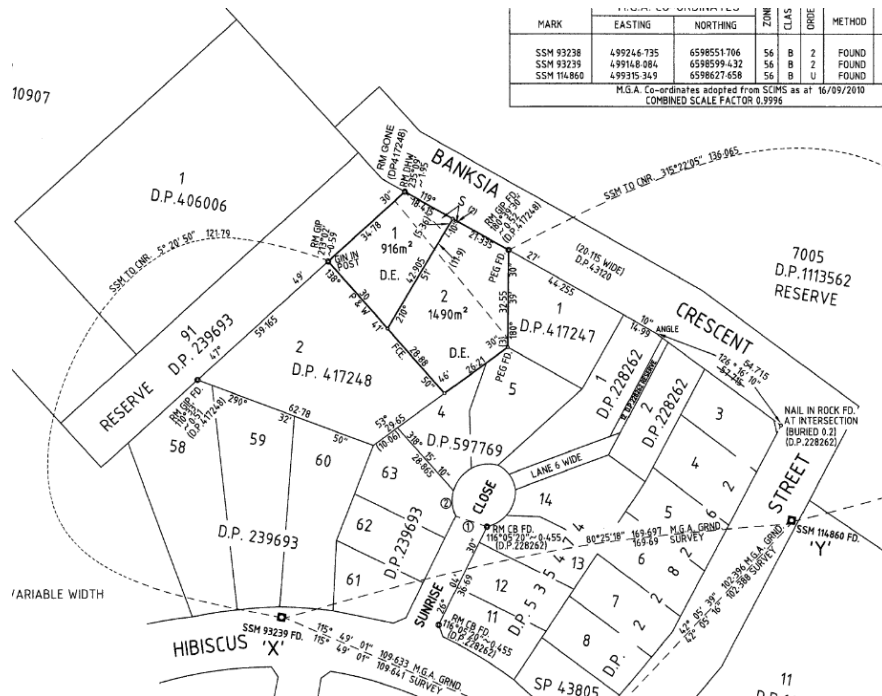
2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The owners of 5 Banksia Crescent (Lot 2 DP417248) approached Council after identifying that they do not have legal access to their property. Their property contains an existing dwelling and has subdivision potential.

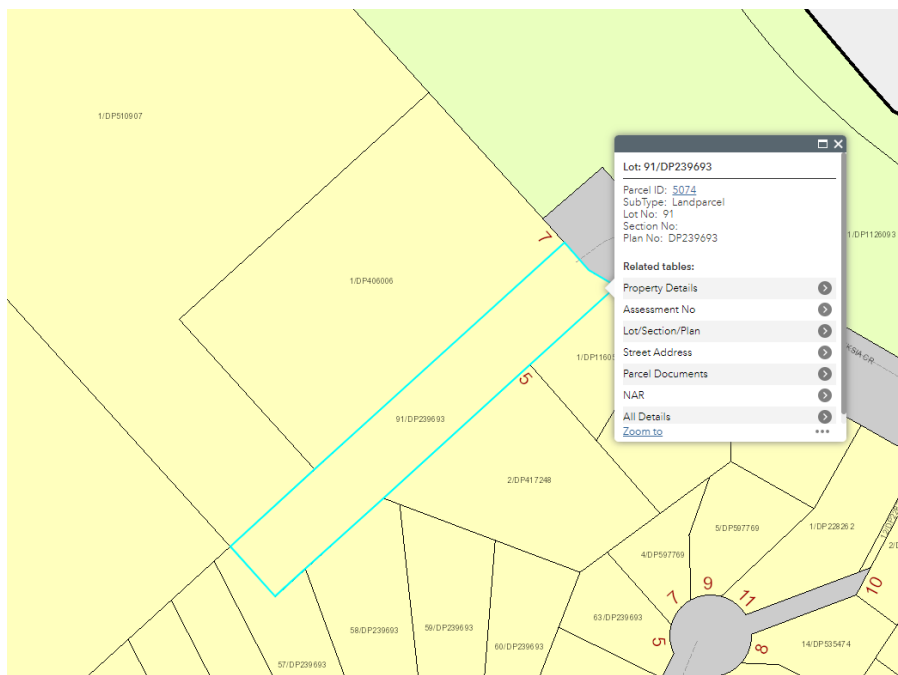
A 'right of way' existed over Lot 1 DP417248 to benefit 5 Banksia Crescent (Lot 2 DP417248) prior to Lot 1 being subdivided. See the below plan showing a 'right of way'.



In 2011 the subdivision of Lot 1 DP417248 into 2 lots was registered creating Lots 1 and 2 DP1160534. This plan was registered without a 'right of way' benefiting 5 Banksia Crescent. See the below plan showing no 'right of way'.



Currently the owners of 5 Banksia Crescent do not have "legal" access to their property and rely on access over the public reserve Lot 91 DP239693 (the land) as highlighted in blue below. This land is presently classified as community land – categorised as park.



The land was dedicated to Council as public reserve in 1970 by a developer as part of the release of the surrounding land. Council does not hold any records which provide a clear reasoning on why the land was dedicated as public reserve. However, given its shape/location it appears that its only real potential was for access through to the beach which is all that it has ever been used for.

Further legal argument/investigation into the extinguishment of the right of carriageway is unwarranted due to the location of a dwelling over the former right of carriageway. The dwelling has been there for considerable time, with this dwelling and the existing dwelling at 5 Banksia Crescent being designed to achieve access from the existing public access within the adjoining reserve. It is this public access which Council is seeking to formalise as road reserve. This can be seen in the below aerial photo

Spending further resources on legal investigations is considered to be a waste of public money, especially when it would be extremely unlikely that Council or the owner of 5 Banksia Crescent would be successful in any court proceedings pursuing an order for the dwelling over the right of carriageway to be demolished. The common sense approach is to save public funds/resources and the financial/social impacts on the owners of 3 and 5 Banksia Crescent as part of any demolition order and proceed with the reclassification of part of the land to enable it to be transferred to public road reserve. This will be consistent with the lands existing use as a vehicular access to all adjoining properties.



Section 47F of the Local Government Act 1993 provides that community land can't be dedicated as a public road unless the road is necessary "to facilitate enjoyment of the area of community land on which the road is to be constructed", and the council has considered means of access other than a public road access to facilitate that enjoyment, and there is a plan of management applying only to the land which expressly authorises the public road. These requirements cannot be satisfied to dedicate the community land as public road.

Options to allow legal access over the land include:

License agreement or lease of the community land

Council may enter a license or lease arrangement with the owners of 5 Banksia Crescent, however the license or lease arrangement is unlikely to suffice as legal access for the purposes of re-development or similar activities at 5 Banksia Crescent.

Creation of an 88K instrument

An 88K instrument may be used to provide access over the community land in accordance with the provisions of the *Conveyancing Act 1919*. However such a restriction requires the Supreme Court to determine the access and without investigating further is likely to be both a costly and lengthy process.

Reclassification of the land from community to operational land and then dedicating the land as a public road

Reclassifying the land to operational land would enable the land to be dedicated as a public road. Pursuant to section 27 of the Local Government Act 1993, an amendment to the LEP is required to reclassify the land from Community to Operational land. This is the purpose of this planning proposal which is considered to be the best means of achieving the objectives and intended outcomes.

It is considered appropriate to rezone the land to R1 General Residential as part of the reclassification process as the public road dedication is not compatible with the objectives of the current RE1 Public Recreation zoning. It is noted that the land is not currently used for public recreation as it is primarily used as informal access to surrounding properties. Rezoning the land to R1 General Residential will be consistent with the existing zoning of Banksia Crescent and other road reserves servicing residential zoned land within Scotts Head.

Section B – Relationship to strategic planning framework.

3 Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The proposed amendments are not contrary to the North Coast Regional Plan 2036.

4 Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

The proposed amendments are not contrary to Councils Local Strategic Planning Statement, Community Strategic Plan or any other strategic plan.

5 Is the planning proposal consistent with any other applicable State and regional studies or strategies?

There are no other relevant state or regional studies or strategies relevant to the planning proposal.

6 Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPP's)?

All State Environmental Planning Policies have been considered in the preparation of this planning proposal, however none are directly applicable.

7 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?

Directions under Section 9.1 of the Environmental Planning and Assessment Act 1979 that are applicable to this planning proposal are addressed as follows:

Direction 1.1 - Implementation of Regional Plans

The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.

This direction applies to a relevant planning authority when preparing a planning proposal for land to which a Regional Plan has been released by the Minister for Planning.

Direction 1.1:

(1) Planning proposals must be consistent with a Regional Plan released by the Minister for Planning.

Comment: It is inconsistent to the extent that the planning proposal does not give effect to the objective of the Direction 1.1. But the North Coast Regional Plan (NCRP) does not and cannot contain provisions which directly reference this minor planning proposal. The Plan's high level goals concerning the environment; a thriving, interconnected economy; vibrant and engaged communities; and great housing choice and lifestyle options will not be compromised by this planning proposal.

Direction 1.3 - Approval and Referral Requirements

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

This direction applies to all relevant planning authorities when preparing a planning proposal.

Direction:

1. A planning proposal to which this direction applies must:
 - (a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and
 - (b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:
 - i. the appropriate Minister or public authority, and

- ii. the Planning Secretary (or an officer of the Department nominated by the Secretary), prior to undertaking community consultation in satisfaction of Schedule 1 to the EP&A Act, and
- (c) not identify development as designated development unless the relevant planning authority:
 - i. can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the class of development is likely to have a significant impact on the environment, and
 - ii. has obtained the approval of the Planning Secretary (or an officer of the Department nominated by the Secretary) prior to undertaking community consultation in satisfaction of Schedule 1 to the EP&A Act.

Comment: This planning proposal does not include provisions which are contrary to the above direction.

Direction 3.1 – Conservation Zones

The objective of this direction is to protect and conserve environmentally sensitive areas.

This direction applies to all relevant planning authorities when preparing a planning proposal.

Direction 3.1:

1. *A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.*
2. *A planning proposal that applies to land within a conservation zone or land otherwise identified for environment conservation/protection purposes in a LEP must not reduce the conservation standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with Direction 9.3 (2) of “Rural Lands”.*

Comment: The planning proposal does not include provisions that directly facilitate the protection and conservation of environmentally sensitive areas and hence is inconsistent with this direction. In order to meet the objectives and intended outcomes of this planning proposal, the removal of vegetation is neither required nor proposed. If the Council did wish to remove vegetation from the proposed road reservation it would need to undertake an assessment of the work under Part 5 of the Act. There is no practical alternative to providing continuing access to the properties without creating a road reservation, the management of which is subject to other regulatory arrangements and is the reason for the unavoidable inconsistency. The objective of this direction will not be compromised by the planning proposal.

Direction 3.2 – Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

This direction applies to all relevant planning authorities when preparing a planning proposal.

Direction 3.2:

1. *A planning proposal must contain provisions that facilitate the conservation of:*
 - (a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,*
 - (b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and*
 - (c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.*

Comment: Similar to Direction 3.1 the planning proposal does not include provisions that directly facilitate the conservation of matters of heritage or cultural significance and by definition is inconsistent with the provision. However the objectives and intended outcomes of the planning proposal do not require any changes to the landscape. The planning proposal will legitimise the decades long informal but regular use of the land to provide access to No's 3, 5 and 7 Banksia Crescent. If the Council were to undertake works in the proposed road reservation it will be subject to other regulatory arrangements to conserve or manage items of heritage or cultural significance including an assessment of the work under Part 5 of the Act and the provisions of the National Parks and Wildlife Act 1974.

Direction 3.5 – Recreation Vehicle Areas

The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles.

This direction applies when Council prepares a planning proposal.

Direction:

1. The planning proposal must not enable land to be developed for the purpose of a recreation vehicle area (within the meaning of the *Recreation Vehicles Act 1983*):
 - (a) where the land is within an environmental protection zone,
 - (b) where the land comprises a beach or a dune adjacent to or adjoining a beach,
 - (c) where the land is not within an area or zone referred to in paragraphs (4)(a) or (4)(b) unless the relevant planning authority has taken into consideration:
 - (i) the provisions of the guidelines entitled *Guidelines for Selection, Establishment and Maintenance of Recreation Vehicle Areas*, Soil Conservation Service of New South Wales, September, 1985, and
 - (ii) the provisions of the guidelines entitled *Recreation Vehicles Act, 1983, Guidelines for Selection, Design, and Operation of Recreation Vehicle Areas*, State Pollution Control Commission, September 1985.

Comment: This planning proposal is not contrary to this direction as it does not enable land to be developed for the purpose of a recreation vehicle area.

Direction 4.2 – Coastal Management

The objective of this direction is to protect and manage coastal areas of NSW.

This direction applies when a planning proposal authority prepares a planning proposal that applies to land that is within the coastal zone, as defined under the Coastal Management Act 2016 - comprising the coastal wetlands and littoral rainforests area, coastal vulnerability area, coastal environment area and coastal use area - and as identified by chapter 3 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Direction 4.2:

1. A planning proposal must include provisions that give effect to and are consistent with:
 - (a) the objects of the Coastal Management Act 2016 and the objectives of the relevant coastal management areas;
 - (b) the NSW Coastal Management Manual and associated Toolkit;
 - (c) NSW Coastal Design Guidelines 2003; and
 - (d) any relevant Coastal Management Program that has been certified by the Minister, or any Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016, that applies to the land.
2. A planning proposal must not rezone land which would enable increased development or more intensive land-use on land:
 - (a) within a coastal vulnerability area identified by the State Environmental Planning Policy (Coastal Management) 2018; or
 - (b) that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken:
 - i. by or on behalf of the relevant planning authority and the planning proposal authority, or

- ii. by or on behalf of a public authority and provided to the relevant planning authority and the planning proposal authority.
- 3. A planning proposal must not rezone land which would enable increased development or more intensive land-use on land within a coastal wetlands and littoral rainforests area identified by chapter 3 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- 4. A planning proposal for a local environmental plan may propose to amend the following maps, including increasing or decreasing the land within these maps, under the State Environmental Planning Policy (Coastal Management) 2018:
 - (a) Coastal wetlands and littoral rainforests area map;
 - (b) Coastal vulnerability area map;
 - (c) Coastal environment area map; and
 - (d) Coastal use area map.

Such a planning proposal must be supported by evidence in a relevant Coastal Management Program that has been certified by the Minister, or by a Coastal Zone Management Plan under the Coastal Protection Act 1979 that continues to have effect under clause 4 of Schedule 3 to the Coastal Management Act 2016.

Comment: The planning proposal does not include provisions that give effect to the objects of the Coastal Management Act 2016, the NSW Coastal Management Manual and associated Toolkit and by definition is inconsistent with the provision. But the planning proposal is not facilitating an increase in development potential as the operational land will become a road reservation to recognise long standing access arrangements to the adjoining private property. The development potential of the adjoining land is already determined by the applicable zoning. The objective of this direction will not be compromised by the planning proposal.

Direction 4.3 Planning for Bushfire Protection

The objectives of this direction are to:

- (a) protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and
- (b) encourage sound management of bush fire prone areas.

This direction applies to all local government areas when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to, land mapped as bushfire prone land.

Direction 4.3:

- 1. *In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 3.34 of the Act, and prior to undertaking community consultation in satisfaction of clause 4, Schedule 1 to the EP&A Act, and take into account any comments so made.*
- 2. A planning proposal must:
 - (a) have regard to Planning for Bushfire Protection 2019,
 - (b) introduce controls that avoid placing inappropriate developments in hazardous areas, and
 - (c) ensure that bushfire hazard reduction is not prohibited within the Asset Protection Zone (APZ).
- 3. A planning proposal must, where development is proposed, comply with the following provisions, as appropriate:
 - (a) provide an Asset Protection Zone (APZ) incorporating at a minimum:
 - i. an Inner Protection Area bounded by a perimeter road or reserve which circumscribes the hazard side of the land intended for development and has a building line consistent with the incorporation of an APZ, within the property, and
 - ii. an Outer Protection Area managed for hazard reduction and located on the bushland side of the perimeter road,

(b) for infill development (that is development within an already subdivided area), where an appropriate APZ cannot be achieved, provide for an appropriate performance standard, in consultation with the NSW Rural Fire Service. If the provisions of the planning proposal permit Special Fire Protection Purposes (as defined under section 100B of the Rural Fires Act 1997), the APZ provisions must be complied with,

(c) contain provisions for two-way access roads which links to perimeter roads and/or to fire trail networks,

(d) contain provisions for adequate water supply for firefighting purposes,

(e) minimise the perimeter of the area of land interfacing the hazard which may be developed,

(f) introduce controls on the placement of combustible materials in the Inner Protection Area.

Comment: The planning proposal is inconsistent with Direction 4.3 because technically the Council is zoning the proposed road reservation R1 General Residential without necessarily complying with the specified provisions. However there is no proposal for any development in the proposed road reservation. Its purpose is simply to provide continuing and lawful access to the three (3) adjoining properties and in particular 5 Banksia Crescent which currently has no legal access. If the vegetation in the proposed road reservation has to be managed for the purposes of reducing fuel loads or to provide an APZ then any work to remove or manage that vegetation would need to be the subject of a separate regulatory process. The objective of this direction will not be compromised by the planning proposal.

Direction 4.4 Remediation of Contaminated Land

The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.

The direction applies to land that is within an investigation area within the meaning of the *Contaminated Land Management Act 1997*; land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been carried out; the extent to which it is proposed to carry out development on it for residential, educational, recreational or childcare purposes or for the purposes of a hospital in relation to land where there is no knowledge or incomplete knowledge as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out.

Direction 4.4

1. *A planning proposal authority must not include in a particular zone (within the meaning of the local environmental plan) any land to which this direction applies if the inclusion of the land in that zone would permit a change of use of the land, unless:*
 - a. *the planning proposal authority has considered whether the land is contaminated, and*
 - b. *if the land is contaminated, the planning proposal authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
 - c. *if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority is satisfied that the land will be so remediated before the land is used for that purpose. In order to satisfy itself as to paragraph 1(c), the planning proposal authority may need to include certain provisions in the local environmental plan.*
2. *Before including any land to which this direction applies in a particular zone, the planning proposal authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.*

Comment: The planning proposal is inconsistent with Direction 4.4 as the Council has not obtained nor has had regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines. Whilst for the purposes of creating a road reservation, the planning proposal is seeking to reclassify community land to operational land and to rezone it from RE1 Public Recreation to R1 General Residential, there is no intention for the land to be used for any residential, educational, recreation, child care or hospital purpose. The use of the road reservation would be restricted to providing for continuing access to three (3) adjoining properties. Further Council's contaminated land register indicates no contaminated or potentially contaminated land either on

or within the vicinity of the planning proposal. The objective of this direction will not be compromised by the planning proposal.

Please refer to the site contamination report in Attachment 2.

Direction 4.5 - Acid Sulfate Soils

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

This direction applies to all relevant planning authorities that are responsible for land having a probability of containing acid sulfate soils when preparing a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps held by the Department of Planning, Industry and Environment.

Direction:

1. The relevant planning authority must consider the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary when preparing a planning proposal that applies to any land identified on the Acid Sulfate Soils Planning Maps as having a probability of acid sulfate soils being present.
2. When a relevant planning authority is preparing a planning proposal to introduce provisions to regulate works in acid sulfate soils, those provisions must be consistent with:
 - (a) the Acid Sulfate Soils Model LEP in the Acid Sulfate Soils Planning Guidelines adopted by the Planning Secretary, or
 - (b) other such provisions provided by the Planning Secretary that are consistent with the Acid Sulfate Soils Planning Guidelines.
3. A relevant planning authority must not prepare a planning proposal that proposes an intensification of land uses on land identified as having a probability of containing acid sulfate soils on the Acid Sulfate Soils Planning Maps unless the relevant planning authority has considered an acid sulfate soils study assessing the appropriateness of the change of land use given the presence of acid sulfate soils. The relevant planning authority must provide a copy of any such study to the Planning Secretary prior to undertaking community consultation in satisfaction of clause 4 of Schedule 1 to the Act.
4. Where provisions referred to under 2(a) and 2(b) above of this direction have not been introduced and the relevant planning authority is preparing a planning proposal that proposes an intensification of land uses on land identified as having a probability of acid sulfate soils on the Acid Sulfate Soils Planning Maps, the planning proposal must contain provisions consistent with 2(a) and 2(b).

Comment: The land is mapped as potentially containing class 5 acid sulfate soils. The planning proposal is considered to be consistent with this direction because it does not include any changes to the existing provisions within clause 7.1 of the LEP which regulates works in acid sulfate soils or intensification of development on land which has the probability of containing acid sulfate soils that would be contrary to that clause.

Direction 5.1 - Integrating Land Use and Transport

The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- (a) improving access to housing, jobs and services by walking, cycling and public transport, and
- (b) increasing the choice of available transport and reducing dependence on cars, and
- (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and
- (d) supporting the efficient and viable operation of public transport services, and
- (e) providing for the efficient movement of freight.

This direction applies to all relevant planning authorities when preparing a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.

Direction:

1. A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of: (a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and (b) The Right Place for Business and Services – Planning Policy (DUAP 2001).

Comment: This planning proposal is not considered to be contrary to this direction as the land is to be dedicated as public road which will facilitate access to existing lots.

Direction 5.2 - Reserving Land for Public Purposes

The objectives of this direction are to:

- (a) facilitate the provision of public services and facilities by reserving land for public purposes, and
- (b) facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

This direction applies to all relevant planning authorities when preparing a planning proposal.

Direction:

1. A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Planning Secretary (or an officer of the Department nominated by the Secretary).
2. When a Minister or public authority requests a relevant planning authority to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991, the relevant planning authority must:
 - (a) reserve the land in accordance with the request, and
 - (b) include the land in a zone appropriate to its intended future use or a zone advised by the Planning Secretary (or an officer of the Department nominated by the Secretary), and
 - (c) identify the relevant acquiring authority for the land.
3. When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal relating to the use of any land reserved for a public purpose before that land is acquired, the relevant planning authority must:
 - (a) include the requested provisions, or
 - (b) take such other action as advised by the Planning Secretary (or an officer of the Department nominated by the Secretary) with respect to the use of the land before it is acquired.
4. When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request.

Comment: The land is currently public reserve and Council is requesting to remove this reservation as part of this planning proposal. As noted above, the land is used as access to adjoining land and not for public recreation.

Direction 6.1 – Residential Zones

The objectives of this direction are to:

- a encourage a variety and choice of housing types to provide for existing and future housing needs,
- b make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and
- c minimise the impact of residential development on the environment and resource lands.

This direction applies to all relevant planning authorities when preparing a planning proposal that will affect land within an existing or proposed residential zone (including the alteration of any existing residential zone boundary), or any other zone in which significant residential development is permitted or proposed to be permitted.

Direction:

1. A planning proposal must include provisions that encourage the provision of housing that will:
 - (a) broaden the choice of building types and locations available in the housing market, and
 - (b) make more efficient use of existing infrastructure and services, and
 - (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and
 - (d) be of good design.
2. A planning proposal must, in relation to land to which this direction applies:
 - (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
 - (b) not contain provisions which will reduce the permissible residential density of land.

Comment: The planning proposal is not considered to be contrary to this direction as its intention is to enable the dedication of the land as a road reserve so that existing access arrangements over the land can be formalised.

Direction 6.2 Caravan Parks and Manufactured Home Estates

The objectives of this direction are to:

- (a) provide for a variety of housing types, and
- (b) provide opportunities for caravan parks and manufactured home estates.

This direction applies to Council when it prepares a planning proposal.

Direction:

1. In identifying suitable zones, locations and provisions for caravan parks in a planning proposal, the relevant planning authority must:
 - (a) retain provisions that permit development for the purposes of a caravan park to be carried out on land, and
 - (b) retain the zonings of existing caravan parks, or in the case of a new principal LEP zone the land in accordance with an appropriate zone under the Standard Instrument (Local Environmental Plans) Order 2006 that would facilitate the retention of the existing caravan park.
2. In identifying suitable zones, locations and provisions for manufactured home estates (MHEs) in a planning proposal, the relevant planning authority must:
 - (a) take into account the categories of land set out in Schedule 6 of State Environmental Planning Policy (Housing) as to where MHEs should not be located,
 - (b) take into account the principles listed in clause 9 Schedule 5 of State Environmental Planning Policy (Housing) (which relevant planning authorities are required to consider when assessing and determining the development and subdivision proposals), and
 - (c) include provisions that the subdivision of MHEs by long term lease of up to 20 years or under the Community Land Development Act 1989 be permissible with consent.

Comment: The planning proposal is not considered to be contrary to this direction as it does not alter existing provisions for caravan parks and does not include provisions for MHE.

Section C – Environmental, social and economic impact

8 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

It is not considered that the proposal will have any significant effects on threatened species, populations, communities or their habitats as the proposal will not result in any physical impacts on the land the subject of the proposal aside from upgrades to existing disturbed areas already used as access roads.

Please refer to the ecological report in Attachment 3.

9 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No as there will be no significant physical activity resulting from the planning proposal.

10 *Has the planning proposal adequately addressed any social and economic effects?*

The planning proposal will result in legal access being provided to an adjoining dwelling which is not currently available. The social and economic impacts by this property not having legal access is significant.

Section D – Infrastructure (Local, State and Commonwealth)

11 *Is there adequate public infrastructure for the planning proposal?*

Additional public infrastructure is not considered necessary to support the proposed amendments.

Assessment of Proposal against Nambucca Shire Coastal Hazard Study

Banksia Crescent is situated directly behind the back dune of Forster Beach, which is the main beach at Scotts Head. Whilst parts of the caravan park are expected to be impacted by coastal hazards within 40 years, the Bowling Club and Christian Youth Centre which are either side of the planning proposal were determined by consultants SMEC to be generally landward of the expected reach of the coastal hazards within the next 50 – 100 years.

According to SMEC, sections of Banksia Crescent are quite low in elevation and could be affected by wave inundation after 2100 if the main dune was to completely erode as a result of future climate change.

The planning proposal is not increasing the development potential of the land off Banksia Crescent. Rather it is acknowledging existing and long standing access arrangements to 3 Banksia Crescent (Lot 1 DP 1160534); 5 Banksia Crescent (Lot 2 DP 417248) and 7 Banksia Crescent (Lot 1 DP 406006). In particular the planning proposal will provide legal access to the existing dwelling at 5 Banksia Crescent which was denied by a survey/registration error in 2011.

Section E – State and Commonwealth Interests

12 *What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?*

Government authorities have not been formally involved in this planning proposal as it is yet to receive gateway approval. Given the intention of the proposal is to facilitate the transfer of the land to road reserve, that there is an existing road on the land, that no environmental impacts will be resulting from the proposal, and that the proposal will facilitate improved access during bushfire events should development occur which requires road upgrade; it is not considered that consultation with public authorities is warranted prior to gateway determination.

Classification and reclassification of public land

The proposed reclassification is assessed against the Local Environmental Plan Making Guideline and Attachment 1 of LEP Practice Note PN 16-001 as follows:

Required Consideration	Comment
Is the planning proposal the result of a strategic study or report?	No. It is to provide legal access of an existing road used by the public to access adjoining land.
Is the planning proposal consistent with the council's community plan, or other local strategic plan?	Yes, the proposal provides a positive social outcome which is consistent with the existing use of the land as a road.
The concurrence of the landowner must be obtained, where the land is not owned by the PPA	The land is owned by Council.
The effect of the reclassification, including loss of open space, any discharge of interests, and/ or removal of public reserve status	It is not considered that the proposal will result in the loss of any active public open space as it is currently used as a road to access adjoining

	land. The proposed change in classification will facilitate the lands transition to a road reserve. This will maintain the communities existing use of the land as an access way.
The strategic and site-specific merits of the reclassification and evidence to support this	As outlined above, the proposal will not alter the communities existing and historical use of the site as a public access way.
Does the planning proposal deliver a public benefit?	Yes. The proposal provides both legal access to private property as well as alternate access to other properties which are not accessible from primary access routes. The presence of this road will be of benefit during a bushfire event.
Have the implications for open space in the LGA in relation to current and future open space needs been considered and will there be a net gain to open space?	The land is currently used as a road. It is not considered that it provides any public benefit as public open space.
The current and proposed classification of the land;	The land is currently community land. It is proposed to reclassify it as operational land to facilitate its transition to public road reserve.
Whether the land is a 'public reserve' (defined in the LG Act);	The land is a public reserve.
A summary of council's interests in the land, including: - how and when the land was first acquired (e.g. was it dedicated, donated, provided as part of a subdivision for public open space or other purpose, or a developer contribution) - if council does not own the land, the land owner's consent; - the nature of any trusts, dedications etc;	There are no interests to be extinguished aside from the lands public reserve status. See attached title search. The land was dedicated as public reserve in 1970. Given its location and configuration, its practical purpose has only ever been to provide connectivity for development to the south to the beach. This is supported by the historic use of the land as a public access way. The transfer of the land to road reserve will not alter this existing/intended use.
Whether an interest in land is proposed to be discharged, and if so, an explanation of the reasons why;	Addressed above.
The effect of the reclassification (including, the loss of public open space, the land ceases to be a public reserve or particular interests will be discharged);	Addressed above. It is not considered that the proposal will result in the loss of public open space.
Evidence of public reserve status or relevant interests, or lack thereof applying to the land (e.g. electronic title searches, notice in a Government Gazette, trust documents);	See attached title search.
Current use(s) of the land, and whether uses are authorised or unauthorised;	The land is currently used as a public access road to surrounding properties. Adjoining buildings are lawful and have been there for considerable time. The dwellings on 3 and 5 Banksia Crescent are designed to obtain access from the land.
Current or proposed lease or agreements applying to the land, together with their duration, terms and controls;	There are no existing or proposed leases on the land.
Current or proposed business dealings (e.g. agreement for the sale or lease of the land, the basic details of any such agreement and if relevant, when council intends to realise its asset, either immediately after rezoning/reclassification or at a later time);	The only agreement is to transfer the land to road reserve to facilitate legal access to adjoining properties. The land will not be sold.
Any rezoning associated with the reclassification (if yes, need to demonstrate consistency with an endorsed Plan of Management or strategy);	The existing zoning is RE1 Public Recreation. The transfer of the land to road reserve and existing use of the land as a road is contrary to

	the objectives of this zone. It is intended to rezone the land R1 General Residential to be consistent with surrounding lots and road reserves.
How council may or will benefit financially, and how these funds will be used;	There will be no financial benefit as the land will not be sold.
How council will ensure funds remain available to fund proposed open space sites or improvements referred to in justifying the reclassification, if relevant to the proposal;	The land will not be sold.
A Land Reclassification (part lots) Map, in accordance with any standard technical requirements for spatial datasets and maps, if land to be reclassified does not apply to the whole lot; and	The whole lot is proposed to be reclassified as operational.
Preliminary comments by a relevant government agency, including an agency that dedicated the land to council, if applicable.	As outlined earlier, it is not considered appropriate to consult with government agencies prior to gateway determination. The land was not dedicated by an agency.

Part 4 Maps

It is proposed to amend the Land Zoning Map for Part Lot 91 DP 239693 – Banksia Crescent, Scotts Head from RE1 Public Recreation to R1 General Residential to be consistent with the adjoining residential land and road reserves.

Existing Land Zoning Map



Part 5 Community Consultation

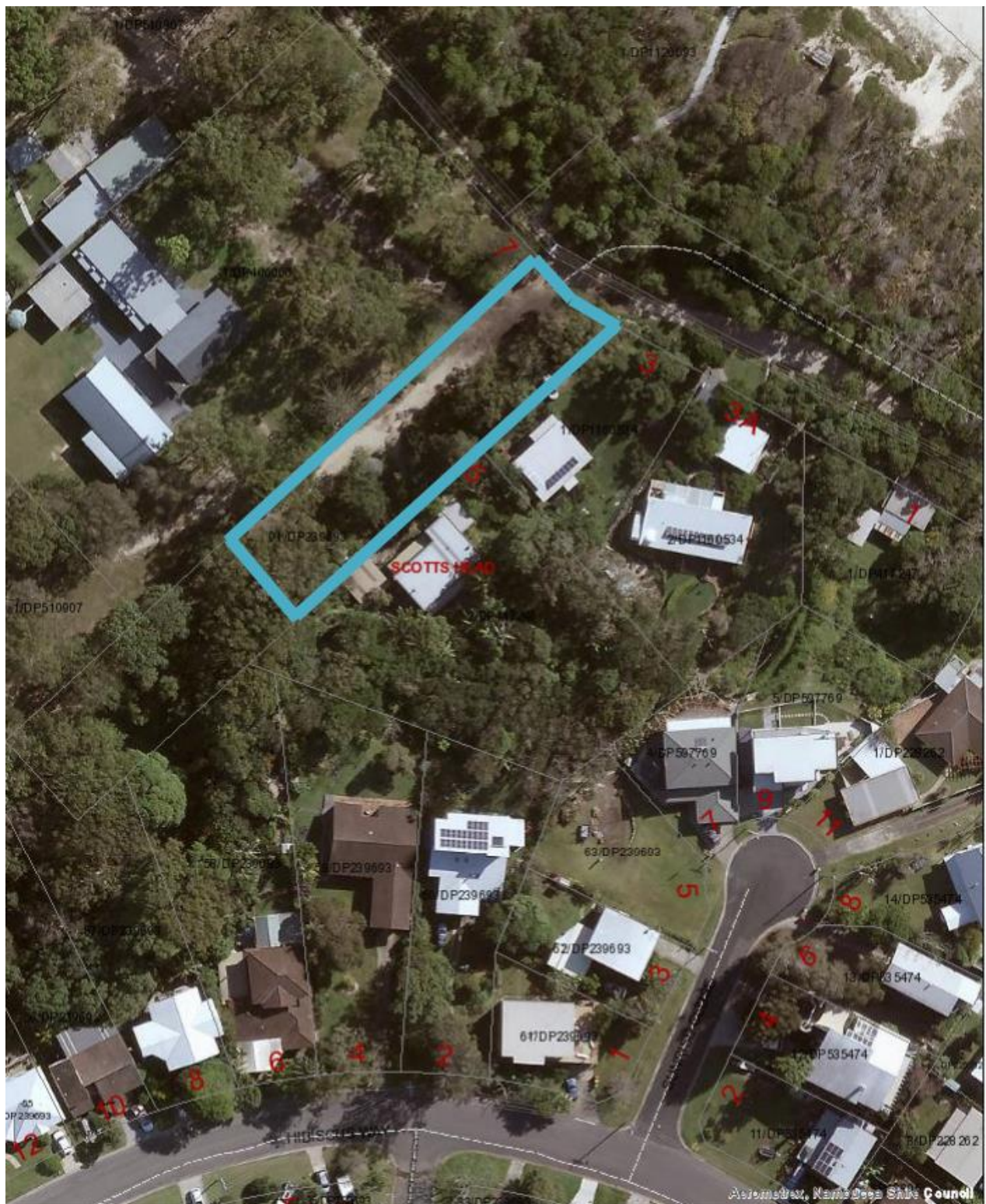
It is intended to undertake community consultation by way of an advertisement in the local newspaper and Councils website and notification to adjoining landowners advising of the planning proposal and the opportunity to make a submission. It is intended to advertise the planning proposal for 28 days. It is also intended to undertake a public hearing.

Part 6 Project Timeline

August 2022	Gateway determination issued by Department of Planning & Environment
September/October 2022	Public exhibition of planning proposal and consultation with government agencies
October 2022	Public Hearing
October 2022	Analysis of public submissions and agency responses
	Preparation of Council report
November 2022	Endorsed planning proposal submitted to Department of Planning and Environment for finalisation.

Attachment 1 – Aerial Photo and Cadastral Map of the Land

The blue hatching shows that part of Lot 91 DP 239693 which is proposed to be reclassified. The part of Lot 91 to be reclassified is approximately 1,600m² or 60% of the total area of lot 91 which is 2,719m².







LAND
REGISTRY
SERVICES

Title Search



NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH

FOLIO: 91/239693

SEARCH DATE	TIME	EDITION NO	DATE
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13/4/2022	12:09 PM	-	-

VOL 11425 FOL 137 IS THE CURRENT CERTIFICATE OF TITLE

LAND

LOT 91 IN DEPOSITED PLAN 239693

AT SCOTTS HEAD

LOCAL GOVERNMENT AREA NAMBUCCA VALLEY

PARISH OF WARRELL COUNTY OF RALEIGH

TITLE DIAGRAM DP239693

FIRST SCHEDULE

THE COUNCIL OF THE SHIRE OF NAMBUCCA

SECOND SCHEDULE (3 NOTIFICATIONS)

- 1 LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND CONDITIONS IN FAVOUR OF THE CROWN - SEE CROWN GRANT(S)
- 2 K200000P CAVEAT BY THE REGISTRAR GENERAL FORBIDDING REGISTRATION OF INSTRUMENTS NOT AUTHORISED BY THE PROVISIONS OF THE LOCAL GOV ACT, 1919, RELATING TO PUBLIC RESERVES
- 3 DP239693 RESTRICTION(S) ON THE USE OF LAND

NOTATIONS

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

Planning

PRINTED ON 13/4/2022

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Attachment 2 – Site Contamination Report

The land the subject of the planning proposal shown outlined in blue below is 650m to the south of the closest contaminated or potentially contaminated site shown in pink shading. The closest contaminated site shown in pink below is a former garbage depot for Scotts Head. The depot has been closed for in excess of two decades and poses no risk to the planning proposal, noting that the planning proposal does not propose nor facilitate any change to the existing development potential of the adjoining land. There are no recommendations arising out of this site contamination report other than the noting of the information.



Attachment 3 – Ecological Report

The vegetation association on adjoining land to the south and at the southern end of Lot 91 is potentially modified Swamp Sclerophyll Forest on Coastal Floodplains being an endangered ecological community.

This is most evident in photographs 5 and 6 below which are respectively land to the south of Lot 91 and the rear of 7 Banksia Close being the Christian Youth Centre. The evidence for this is a tree canopy dominated by Broad-leaved paperbark (*Melaleuca quinquenervia*) with Swamp Mahogany (*Eucalyptus robusta*). There are also Cabbage Tree Palms (*Livistona australis*). The land has poor drainage which is another indicator of the association.

However the integrity of this forest has been affected by historic clearing, filling and the planting of non-indigenous trees such as a row of Cadagi (*Corymbia torrelliana*) along the boundary of the Christian Youth Centre and Lot 91.

Photographs 1 to 4 indicate the section of Lot 91 which is proposed to be reclassified and where the vegetation has been substantially modified by clearing, the placement of road gravel, and exotic plantings.

The photographs indicate that no clearing is required to maintain the existing access points to 3, 5 and 7 Banksia Crescent and that the planning proposal will have no impact on flora or fauna.

There are no recommendations arising out of this site contamination report other than the noting of the information.



Photograph 1 – Lot 91 looking south from Banksia Crescent with waste bins outside 3 Banksia Crescent and 7 Banksia Crescent to the right of the photo. Photo indicates extent of existing road access.



Photograph 2 – garage at 5 Banksia Crescent showing access to Lot 91. The boundary of Lot 91 and 5 Banksia Crescent is not defined. However most of the planted shrubs are located on Lot 91.



Photograph 3 – Lot 91 viewed looking south from outside 5 Banksia Crescent and showing access to 7 Banksia Crescent to the right. Shrubs in the left of the photo have been planted on Lot 91. The unsealed road pavement shown in the photo is only approximately half the 20m width of Lot 91.



Photograph 4 – Lot 91 viewed looking north with 7 Banksia Crescent to the left of photo and No. 5 Banksia Crescent to the right. Access to No. 7 Banksia Crescent is to the left of the eucalypt shown in the centre of the photograph.



Photograph 5 – Privately owned land to the south of Lot 91 showing modified *Melaleuca quinquenervia* forest association



Photograph 6 – Southern most access point from Lot 91 to 7 Banksia Crescent. Bulk waste bin indicates Lot 91 is used by waste vehicles. Note modified *Melaleuca quinquenervia* forest association