



Planning,
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Gateway determination report – PP-2021-3184

Reclassify Community Land to Operational Land at
Valla Beach and Nambucca Heads

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Table 1 – Attachments

Attachment	
A	Planning Proposal
B	Gateway Determination
C	Letter to Council
D	Title Search Part Lot 8 DP821952 - 22 Valla Beach Road, Valla Beach
E	Council minutes 30 April 2020
F	Council minutes 16 July 2020
G	Title Search Lot 1 DP578503 - 50 Riverside Drive, Nambucca Heads

1 Planning proposal

1.1 Overview

Table 2 – Planning proposal details

LGA	Nambucca
PPA	Nambucca Valley Council
NAME	Reclassification of Community Land to Operational Land at Valla Beach and Nambucca Heads
NUMBER	PP-2021-3184
LEP TO BE AMENDED	Nambucca LEP 2010
ADDRESS	Part of Lot 8 DP 821952 - 22 Valla Beach Road, Valla Beach; and Lot 1 DP 578503 - 50 Riverside Drive, Nambucca Heads
RECEIVED	29/6/21
FILE NO.	EF21/3269
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objective of the planning proposal is to reclassify two Council owned lots from Community Land to Operational land:

- Part of Lot 8 DP 821952 - 22 Valla Beach Road, Valla Beach; and
- Lot 1 DP 578503 - 50 Riverside Drive, Nambucca Heads

The objective of the planning proposal is clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Nambucca LEP 2010 by amending Part 1 of Schedule 4 listing two Council owned portions of land as Operational Land – no interests changed.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

Part of Lot 8 DP 821952 - 22 Valla Beach Road, Valla Beach

Valla Beach is on the mid north coast of NSW, is approximately 10km north of Nambucca Heads and approximately 40km south of Coffs Harbour.

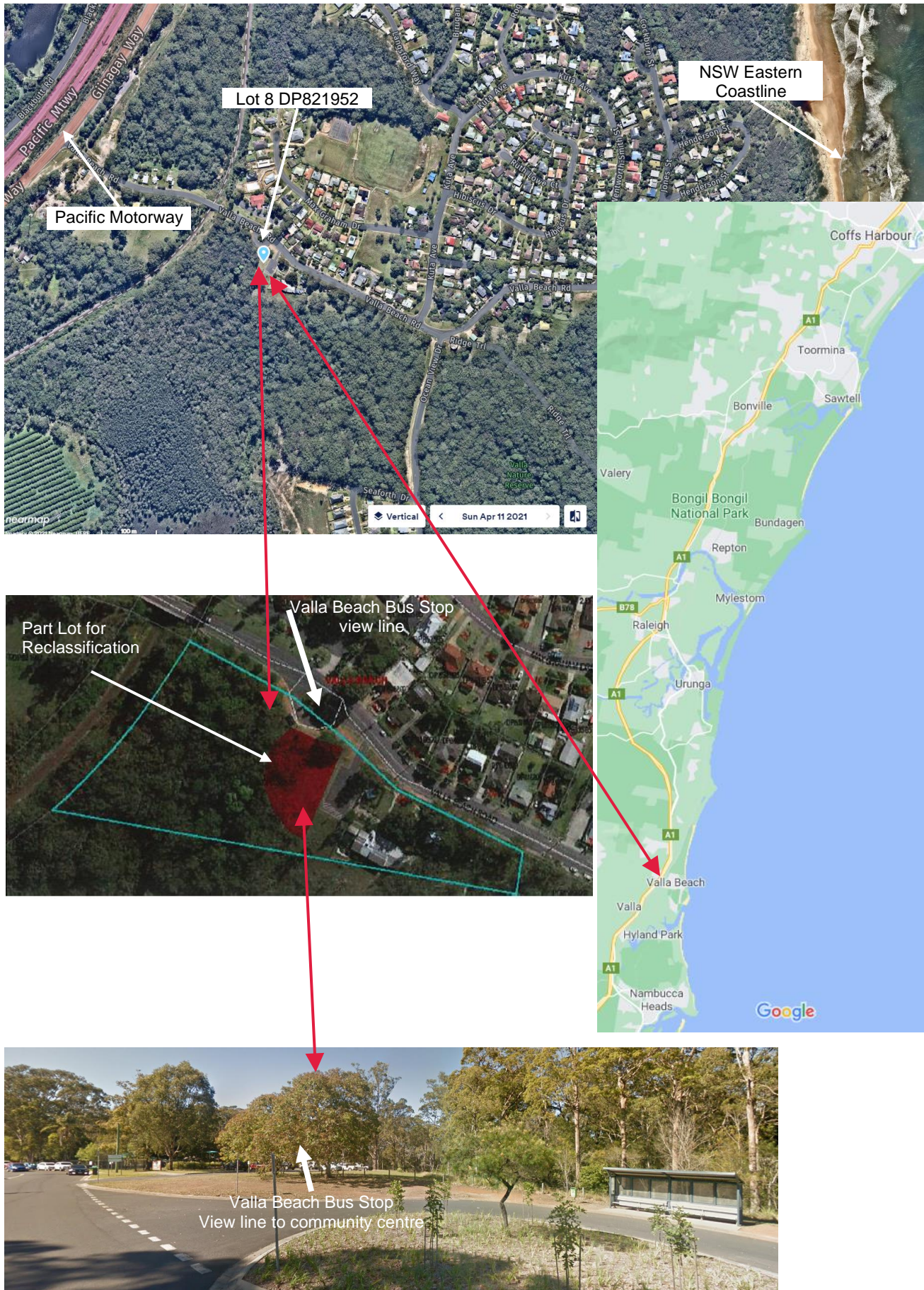
Part of Lot 8 DP 821952 - 22 Valla Beach Road, Valla Beach, is approximately 430m east of the Pacific Motorway and approximately 1100m west of the NSW eastern coastline (Figure 1).

The eastern portion of the subject lot contains the Valla community hall and pre-school and carparking area; and the western portion of the lot is heavily vegetated, as is the land to the south of the lot. North of the lot is residential housing and Valla Beach Tavern.

Lot 1 DP 578503 - 50 Riverside Drive, Nambucca Heads

Nambucca Heads is on the mid north coast of NSW, is 112km north of Port Macquarie and approximately 47km south of Coffs Harbour.

Lot 1 DP 578503, 50 Riverside Drive, Nambucca Heads, is a small land locked site (Approx. 93m²). The subject lot was an old pump station site. The subject lot is bounded by a service station and two motels. Bellwood Creek is on the southern side of Riverside Drive, as is the visitor information centre (Figure 2).



**Figure 1 – Location of Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach
(Source – NearMap, Google Maps & Planning Proposal)**



Figure 2 – Lot 1 DP 578503, 50 Riverside Drive, Nambucca Heads
(Source – NearMap & Google Maps)

1.5 Existing Planning Controls

No planning controls are proposed to be amended by this planning proposal.

The following tables outline the existing planning controls for the two subject lots.

Table 3 – Existing Planning Controls for Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach

Planning Control	Metric
Land Zone	R1 General Residential
Lot Size	450m ²
Height of Building	18.5m
Floor Space Ratio	0.55:1
Acid Sulfate Soils	Class 5
Bushfire Prone Land	Vegetation Category 1 & buffer area (Figure 3)
Coastal SEPP 2018	Coastal Environment Area & Proximity Area for Coastal Wetlands (Figure 3)

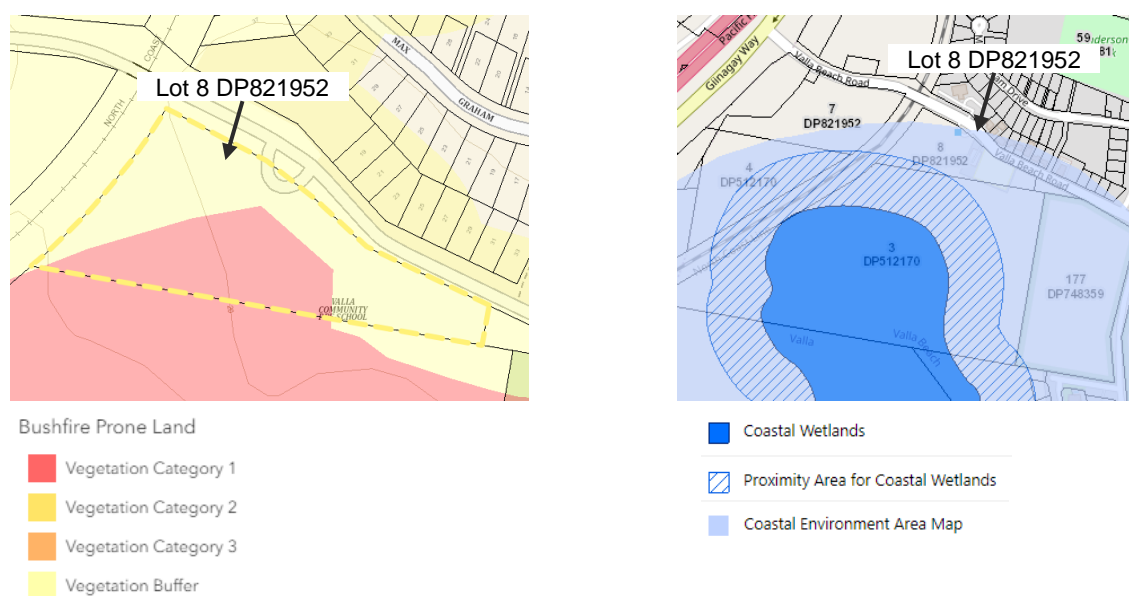


Figure 3 – Lot 8 D P821952, 22 Valla Beach Road, Valla Beach
Bushfire Prone Land & Coastal SEPP 2018
 (Source – ePlanning Spatial Viewer & NSW Coastal SEPP 2018 viewer)

Table 4 – Existing Planning Controls for Lot 1 DP 578503, 50 Riverside Drive, Nambucca Heads

Planning Control	Metric
Land Zone	B4 Mixed Use
Lot Size	No minimum lot size
Height of Building	10m
Floor Space Ratio	1:1
Acid Sulfate Soils	Class 5

1.6 Mapping

The planning proposal does not include a draft map showing the exact part of Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach, which will be reclassified.

The planning proposal does however include two aerial pictures of the subject lots. Lot 8 DP 821952 is shown with an indicative shape indicating the area to be reclassified.

Prior to community consultation a draft map showing the exact area agreed to be reclassified of Lot 8 DP 821952, should be included to help the community to understand the proposed changes.

A map consistent with the Standard Technical Requirements will also need to be prepared before the making of the LEP amendment.

1.7 Background

Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach

The planning proposal states the original Parish portion of land was owned by the Crown and had a cottage leased to tenants and that the original portion has been reduced over time by road realignments. The existing community hall and child-care centre were developed on the land in place of the cottage.

The title search confirms there is no public reserve status on the lot (**Attachment D**).

The following table shows:

- when and why Council decided for the subject lot to be the preferred site;
- why Council does not want to retain ownership; and
- resolution for reclassification of the part lot.

Table 5 – Chronology for part Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach

Council Meeting	Extracts from Council Agenda
30 April 2020 Item 9.9 DA2020/077 (Attachment E)	<p>The Council has received a development application, DA 2020/077 for the establishment of the Alithia Learning Centre on Council owned land beside the Valla Beach Hall on Valla Beach Road. <u>This is much better site than the site options previously reported to Council which were on either side of Anderson Park; were distant from services; had no off street parking and encroached on the proposed playing field.</u></p> <p>A Statement of Environmental Effects; Bushfire Assessment Report and Biodiversity Assessment has also been lodged with the application.</p> <p>It is proposed that the facility will be used by the community for after school and weekend activities for all age groups, music recording, mums and bubs fitness classes and additional workshops. The facility will also be used three full days per week for programs that cater for 6-12 year old's (primary school age children) to support those with various disabilities, including Autism Spectrum Disorder, learning difficulties and those requiring emotional and social support.</p> <p>As the applicant Alithia Learning is a registered charity providing a specialist service to support families who have children with various disabilities it is recommended that Council assist them via the provision of a donation for all application fees and contributions. There are some State Government fees and charges which Alithia Inc. will need to pay.</p> <p><u>Following the determination of the development application it is proposed to finalise a licence for Alithia to occupy the land and construct the learning centre preparatory to Council undertaking a subdivision of the land and transferring ownership to Alithia Inc. for a nominal sum.</u> The creation of an allotment for the Alithia Learning Centre is permissible as the land is zoned Residential R1.</p>

Council Meeting	Extracts from Council Agenda
16 July 2020 Item 9.8 DA2020/077 (Attachment F)	<p><u>Comment from General Manager</u></p> <p><u>The land being Lot 8 DP 821952 is classified as community land in Council's land register. As such the site of the facility and its immediate curtilage cannot be subdivided off and transferred to Alithia Learning without the land being reclassified as operational.</u> This is a lengthy process, effectively involving an amendment to Council's local environmental plan via a public hearing conducted by a person independent of Council.</p> <p><u>It is not recommended that the Alithia Learning community facility remain on Council owned land as the Council will become financially responsible for the asset and potentially for any governance issues in the event that the Incorporated Association is unable to function. It is recommended that Council undertake a reclassification of the Alithia Learning building site including an agreed curtilage from community to operational land to allow a subdivision and transfer of ownership to Alithia Learning.</u></p> <p>As this process is likely to take at least 12 months to complete and that Alithia Learning will seek to commence the build before then it is proposed that Council and Alithia Learning Inc, <u>enter into a Deed of Agreement wherein Alithia agree to accept ownership of the building site and an agreed curtilage. In addition to the Deed of Agreement there will also need to be a licence to occupy the land and construct the learning centre as per a resolution of Council from its meeting on 30 April 2020.</u></p> <p>RECOMMENDATION:</p> <ol style="list-style-type: none"> 1. That Council as the Consent Authority, pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, grant development consent subject to conditions provided as Attachment 1. 2. That Council as the landowner require Alithia Inc. to enter into a Deed of Agreement with Council wherein Alithia agree to accept ownership of the building site and an agreed curtilage. In addition to this Deed of Agreement there is to be a licence to occupy the land and construct the learning centre. Further that Council require the Deed of Agreement and licence to be in place prior to the commencement of construction and Council's seal be applied as required. 3. <u>That Council resolve to seek to reclassify the Alithia Inc. building site and agreed curtilage as operational land and request a gateway determination to allow the process to commence.</u>

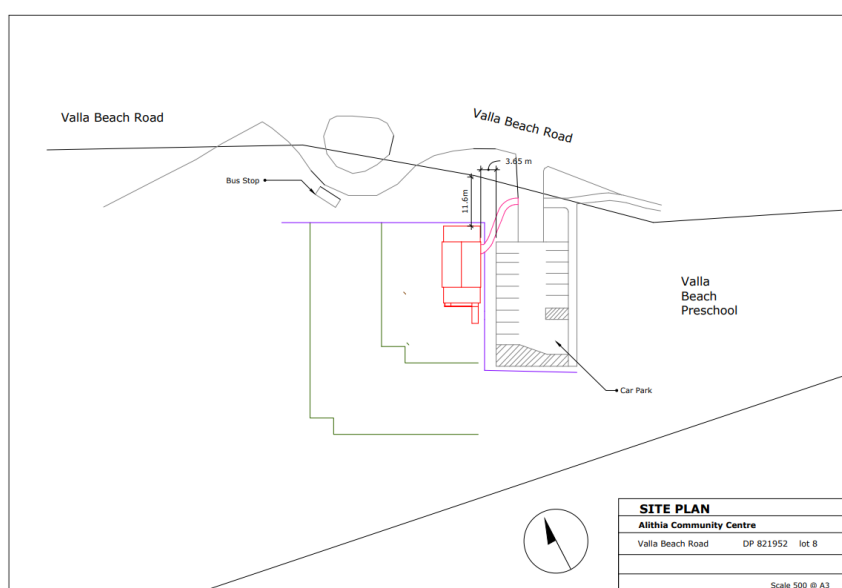


Figure 4 – Proposed Community Facility at Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach
(Source – Council Minutes 16/7/2020 – Item 9.8)

Lot 1 DP 578503, 50 Riverside Drive, Nambucca Heads

Council undertook an audit of community land revaluation in 2016 in consultation with Council's auditors. This particular site was identified as incorrectly classified as community land.

At Council's meeting on 30 March 2017 it was resolved to reclassify this particular lot to operational land as it encompassed a disused sewer pump station. Whilst the pump station itself has been demolished there is still some pipe infrastructure on site.

The land was acquired by Council when the subdivision was registered on 19 August 1975. A search of Council records has not found evidence of this land being classified as operational. The *Local Government Act 1993* commenced on 16 July 1993 and it appears that the subject lot has been automatically classified as community land as per Clause 31 of the Act.

The Title Search confirms there is no public reserve status on the lot (**Attachment G**).

2 Need for the planning proposal

The planning proposal is not the result of any specific strategy or study.

Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach, has been determined by Council to be the best site for the new community facility. The community facility is being built by Alithia Learning, a registered charity, and Council is offering their support by donating the application fees and contributions, and transfer of ownership of the building site and agreed curtilage at no cost to Alithia Learning.

Development consent has been granted by Council on 16 July 2020 for the community facility. As outlined above in Section 1.7, Council will finalise a licence for Alithia Learning to occupy the land and construct the learning centre. Due to the financial responsibility for the asset and potentially any governance issues, Council does not wish to have the centre on Council owned land. To allow the transfer of the building site and agreed curtilage, Council will have to reclassify the portion of community land to operational land to allow the transfer of land to Alithia Learning.

The proposal is also needed to rectify land reclassification errors identified through a Council audit in 2016 of community land revaluation which identified Lot 1 DP 578503, 50 Riverside Drive, Nambucca Heads as community land.

The proposal is considered the only means for achieving the reclassification of the public land from community to operational.

3 Strategic assessment

3.1 Regional Plan

The proposal is not inconsistent with the North Coast Regional Plan (NCRP) (2036) and in particular is consistent with Direction 15 (Table 6).

Table 6 – North Coast Regional Plan assessment

Regional Plan Objectives	Justification
Direction 15: Develop healthy, safe, socially engaged, and well-connected communities	<p>The proposal is consistent with this Direction as it is helping to provide a community facility that promotes a healthy, safe, socially engaged and well-connected community within walking distance of the Valla Beach childcare centre, public hall, car park, and Valla Beach bus stop. Alithia Learning will facilitate a socially inclusive community by establishing social infrastructure to:</p> <ul style="list-style-type: none"> • enable access to programs for school aged children; • support those with various disabilities and learning difficulties; • support those requiring emotional and social support; • after school and weekend activities; and • support for mums and babies.

3.2 Local

The proposal is not inconsistent with Council's Local Strategic Planning Statement or Community Strategic Plan.

3.3 Section 9.1 Ministerial Directions

The planning proposal is consistent with all applicable section 9.1 Directions except as discussed below:

Table 7 – 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
2.2 Coastal Management	Justifiably inconsistent	<p><u>Lot 8 DP821952, 22 Valla Beach Road, Valla Beach</u></p> <p>The planning proposal is inconsistent with this Direction as it includes land mapped in the State Environmental Planning Policy (Coastal Management) 2018 and does not include provisions which give effect to the objectives of the <i>Coastal Management Act 2016</i>, NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003 and any coastal management program or coastal zone management plan that applies to the land.</p> <p>The inconsistency is considered to be of minor significance as the proposal isn't altering any planning provisions and is only reclassifying the land.</p> <p>It is noted that Council has approved a DA2020/077 for the part lot and has considered the DA as compliant with Clause 13 of the Coastal SEPP 2018.</p>
3.1 Residential Zones	Justifiably inconsistent	<p><u>Lot 8 DP821952, 22 Valla Beach Road, Valla Beach</u></p> <p>The planning proposal is inconsistent with this Direction as it is affecting land within the existing R1 General Residential zone and does not include provisions that encourage the provision of housing. The inconsistency is considered to be of minor significance as the reclassification will provide the opportunity for further community facilities and is not inconsistent with the NCRP.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
4.1 Acid Sulfate Soils	Justifiably inconsistent	<p>The planning proposal is inconsistent with this Direction as both lots contain acid sulfate soils and are not supported by an acid sulfate soils study.</p> <p>The inconsistency is considered to be of minor significance as Nambucca LEP 2010 contains existing provisions (Clause 7.1) that allow this matter to be adequately addressed at the development application stage.</p> <p>It is noted that Council has approved DA2020/077 for the part lot and has stated the site is mapped as Class 5, therefore an ASSMP is not required in this instance.</p>
4.4 Planning for Bushfire Protection	Unresolved	<p>This Direction applies as the revised planning proposal affects land that is identified as being bushfire prone. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued and prior to community consultation.</p> <p>It is noted that Council has approved DA2020/077 for the part lot and the DA states that conditions have been included in the conditions of consent which will ensure the proposed development is consistent with Planning for Bushfire Protection 2019.</p> <p>Consistency with this Direction will remain unresolved until consultation has been undertaken.</p>
6.2 Reserving Land for Public Purposes	Justifiably inconsistent	<p>The planning proposal is inconsistent with this Direction as the change in community to operational land will reduce existing reservations of land for public purposes without the approval of the Department of Planning, Industry and Environment Secretary.</p> <p>This inconsistent is considered to be of minor significance due to the existing nature of the land and the community benefit that will result particularly associated with from the proposed community facility at Valla Beach.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 7 – Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Coastal SEPP 2018	The planning proposal includes Lot 8 DP821952, 22 Valla Beach Road, Valla Beach, which has identified Coastal Environment and Proximity Area for Coastal Wetlands.	No – Justifiably inconsistent	As discussed above under Direction 2.2.

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Koala SEPP 2021	The Koala SEPP 2021 is relevant to the revised planning proposal as Nambucca Valley is listed in the Schedule 1 of the SEPP.	Consistent	<p>The planning proposal does not discuss the Koala SEPP 2021. It does not however propose to remove any trees or approve development, rather the reclassification from community to operational land.</p> <p>It is noted however that Council has approved DA2020/077 for the part lot and has assessed the DA against SEPP (Koala Habitat Protection) 2019. The DA apprises that the proposed development requires minimal tree clearing for the purpose of creating a bushfire APZ. The DA has noted that the application indicates approximately 10 trees are to be removed and that none are koala feed trees.</p>
SEPP Vegetation in Non-Rural Areas 2017	This SEPP applies as the planning proposal has land identified in Clause 5, R1 General Residential.	Consistent	<p>It is noted that the reclassification is not proposing the clearing of any native vegetation, however, there is potential for clearing of native vegetation in relation to the reclassification for the part lot at Valla Beach.</p> <p>It is noted that Council has approved DA2020/077 for the part lot. The DA has no specific assessment against the SEPP, however the DA notes the applicant has indicated that approximately 10 trees are to be removed.</p>

4 Site-specific assessment

4.1 Environmental

There is no known critical habitat or threatened species, populations or ecological communities or their habitats currently identified on the individual lots in the planning proposal.

The planning proposal for the reclassification of part Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach, has already had a development application assessed, granted and conditions of consent imposed for this part lot, addressing issues of acid sulfate soils, the Coastal SEPP 2018, Koalas SEPP 2019 and bushfire prone land.

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 8 – Social and economic impact assessment

Social and Economic Impact	Assessment
Social	It is considered there will be positive social impacts by permitting the land reclassification for both subject lots, allowing the important community facility at Valla Beach and the sale of the redundant sewer pump station lot at Nambucca Heads.
Economic	<p>Council have indicated that the part of Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach, will have the ownership transferred to Alithia Learning at no cost, so there is no financial benefit to Council. Council is also donating the Section 64 developer charges for water and sewer which will be funded from their 2020/2021 donations program. The planning proposal notes that Council will, via a Deed of Agreement, retain first option to purchase the land for a fee of \$1 if Alithia Learning become unviable in the future.</p> <p>The planning proposal notes that there are some issues around the current sewer network overflowing into the Nambucca River at times. It is intended that the finances from the sale of Lot 1 DP578503, 50 Riverside Drive, Nambucca Heads, will be utilised on the continual improvement of the Shires sewer network.</p>

4.3 Reclassification Principles and Public Open Space

The following table provides an assessment of the reclassification principles and public open space impacts associated with the proposal.

Neither lot has any public reserve status that is required to be extinguished.

Table 9 – Social and economic impact assessment

Principles	Assessment
How can public land deliver a benefit?	<p><u>Lot 1 DP 578503, 50 Riverside Drive, Nambucca Heads</u>, is a small lot of land that is surrounded by a service station and 2 motels. Sale of the lot will financially support further improvements to Council's sewerage network. These improvements will benefit the environment and the community.</p> <p><u>Part of Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach</u>, is currently classified as community land, however, is heavily vegetated and not an open space that the community currently uses.</p> <p>The small area of land that is proposed to be reclassified will provide substantial community benefit by:</p> <ul style="list-style-type: none"> • enabling to access programs for school aged children; • support those with various disabilities and learning difficulties; • support those requiring emotional and social support; • after school and weekend activities; and • support for mums and babies. <p>The remainder of the lot will remain as Community Land.</p>

Principles	Assessment
How public land contributes to public & open space?	<p><u>Lot 1 DP 578503, 50 Riverside Drive, Nambucca Heads</u>, is not an open space area that the community can access. There will be no loss of public space due to the reclassification of this lot.</p> <p><u>Part of Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach</u>, is not currently utilised for open space as the site is currently heavily vegetated. There is a community hall, pre-school and car park on part of the lot. The addition of the Alithia Learning community centre will bring social and community benefits as described above and keep the current lot in its original vegetated state. The reclassification of this part lot helps to deliver the draft NSW Public Spaces Charter principles, in particular Principle 1: Open and Welcoming; Principle 2: Community-focused; Principle 6: Healthy and active; and Principle 9: Designed for people.</p>

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days. This is in line with the Department's Practice No. 16-001 Classification and reclassification of public land through a local environmental plan.

A public hearing will also be required to be held in accordance with section 29(1) of the *Local Government Act 1993*. After the exhibition has ended, at least 21 days public notice is to be given before the hearing. This allows the person chairing the hearing sufficient time to consider written submissions and all issues raised.

The exhibition period proposed is considered appropriate, and forms part of the conditions of the Gateway determination.

5.2 Agencies

It is recommended that the NSW Rural Fire Service is to be consulted on the planning proposal.

6 Timeframe

The proposal includes a project timeline which estimates completion of the LEP amendment by September 2021.

The Department recommends a time frame of nine months, due to the community consultation process of 28 days and a 21 day public notice period for the public hearing, to ensure a sufficient period to complete the LEP amendment.

The proposal is to be amended to update the proposed timeline for completion to reflect the nine month timeframe.

7 Local plan-making authority

Council has not requested the use of plan making delegations.

It is recommended that delegations not be granted in order to promote transparency in the plan making process as the reclassification has the potential to generate income for Council in relation to Lot 1 DP 578503, 50 Riverside Drive, Nambucca Heads.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposal is not inconsistent with the North Coast Regional Plan 2036; and
- The reclassification of Lot 1 DP 578503, 50 Riverside Drive, Nambucca Heads, and part of Lot 8 DP 821952, 22 Valla Beach Road, Valla Beach, both deliver positive community benefits.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- Include a draft map showing the exact area to be reclassified of Lot 8 DP 821952 to help the community to understand the proposed changes; and
- Update the planning proposal project timeline to take into account the new timeframe of nine months.

9 Recommendation

It is recommended the Director, as delegate of the Secretary:

1. **Agree** that any inconsistencies with section 9.1 Directions 2.2 Coastal Management, 3.1 Residential Zones, 4.1 Acid Sulfate Soils and 6.2 Reserving Land for Public Purposes are minor or justified in accordance with the terms of the Directions.
2. **Note** that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended the Director, as delegate of the Minister:

1. **Note** the planning proposal (**Attachment A**);
2. **Determine** that the planning proposal should proceed subject to the following conditions:
 - Prior to community consultation, the planning proposal is to be updated to:
 - (a) Include a draft map showing the exact area to be reclassified of Lot 8 DP 821952; and
 - (b) Update the planning proposal project timeline to reflect the new timeframe;
 - Consultation is required with the NSW Rural Fire Service;
 - The planning proposal should be made available for community consultation for a minimum of 28 days;
 - Council must arrange a public hearing in respect of the planning proposal to reclassify community land as operational land in accordance with the requirements of the *Local Government Act 1993*;
 - The timeframe for completing the LEP is to be **nine** months from the date of the Gateway determination; and
 - Given the nature of the proposal, Council should **not** be authorised to be the local plan-making authority.
3. **Sign** the Gateway determination (**Attachment B**) noting that Nambucca Shire Council is **not** the plan making authority and the letter to Council (**Attachment C**).



21/7/21

(Signature)

(Date)

Craig Diss
Manager, Local and Regional Planning
Northern Region



22/7/2021

(Signature)

(Date)

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