



IRF22/1566

## Gateway determination report – PP-2022-1648

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Reclassify part of Lot 91 DP 239693 Banksia  
Crescent, Scotts Head from Community to Operational  
land, rezone from RE1 Public Recreation to R1  
General Residential and introduce appropriate  
development controls

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## Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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**Table 1 Reports and plans supporting the proposal**

Relevant reports and plans
Amended Planning Proposal
Minute 27 January 2022
Council Report 27 January 2022

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Nambucca Valley</b>
<b>PPA</b>	<b>Nambucca Valley Council</b>
<b>NAME</b>	<b>Reclassify part of Lot 91 DP 239693 Banksia Crescent, Scotts Head from Community to Operational land, rezone from RE1 Public Recreation to R1 General Residential and introduce appropriate development controls</b>
<b>NUMBER</b>	<b>PP-2022-1648</b>
<b>LEP TO BE AMENDED</b>	<b>Nambucca Local Environmental Plan 2010</b>
<b>ADDRESS</b>	<b>Banksia Crescent, Scotts Head</b>
<b>DESCRIPTION</b>	<b>Lot 91 DP 239693</b>
<b>RECEIVED</b>	<b>13/05/2022</b>
<b>FILE NO.</b>	<b>IRF22/1566</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1.2 Objectives of planning proposal

The objective of the planning proposal is to facilitate the creation of a public road reserve to provide a legal means of access to Lot 2 DP 417248 5 Banksia Crescent, Scotts Head.

The objectives and intended outcomes of the proposal will need to be updated to reflect the conditions of the Gateway determination and as discussed in sections 1.3 and 2 of the report.

## 1.3 Explanation of provisions

The planning proposal as submitted seeks to amend:

- Part 1 of Schedule 4 of the Nambucca LEP 2010 to list Lot 91 DP 239693, Banksia Crescent, Scotts Head as operational land; and
- the land zoning map for Lot 91 DP 239693 Banksia Crescent, Scotts Head to R1 General Residential.

There is no minimum lot size currently applicable to the land, and Council do not propose to apply a minimum lot size. A minimum lot size of 450m<sup>2</sup> applies to land presently zoned R1 General Residential adjoining the subject site (**Figure 7**). Therefore, it is considered appropriate that

Council be required to amend the proposal to apply a 450m<sup>2</sup> minimum lot size to that part of the land proposed to be zoned R1 General Residential. A condition has been imposed on the Gateway determination to require the proposal be updated prior to consultation.

A height of building (HOB) restriction of 8.5 metres and floor space ratio (FSR) restriction of 0.55:1 already applies to the land and it is not proposed to amend these controls. The HOB restriction of 8.5 metres and the FSR of 0.55:1 both apply to surrounding land and it is considered appropriate that these restrictions are maintained.

Council's planning proposal applies to the entire area of a public reserve, being Lot 91 DP 239693. It is recommended that the planning proposal footprint be limited to the area of the public reserve required to provide a legal means of access to Lot 2 DP 417248, 5 Banksia Crescent, to align with the objective of the proposal (**Figure 18**). This recommendation is discussed in detail in section 2 of this report.

In summary, the updated planning proposal will seek to amend the Nambucca LEP 2010 as per the changes below:

**Table 3 Current and proposed controls**

Control	Current	Proposed
Zone	RE1 Public Recreation	Part R1 General Residential
Minimum lot size	Nil	Part 450m <sup>2</sup>
Reclassify land from	Community	Part operational and extinguish the public reserve status

## 1.4 Site description and surrounding area

Lot 91 DP 239693 is a public reserve located to the north west of Scotts Head, 78 metres to the east of Forster Beach (**Figure 1**). The site is bounded by residential dwellings on the south east boundary (3 and 5 Banksia Crescent), a Youth Centre to the north west boundary (7 Banksia Crescent), Banksia Crescent road reserve to the north east boundary and residential dwellings to the south west boundary (6 and 8 Hibiscus Way) (**Figure 2**). An overhead electricity easement appears to run along the eastern boundary of the Youth Centre (**Figure 2**).

The eastern portion of the site adjoining Banksia Crescent has been improved with an informal access track, which currently provides access to 3, 5 and 7 Banksia Crescent. The rear of the site (western portion) is characterised by mature vegetation (**Figure 2**). The site is approximately 2,700m<sup>2</sup> in area.

Lot 91 DP 239693 is identified as containing areas of potential High Environmental Value (HEV) under the North Coast Regional Plan 2036 (**Figure 3**) and is identified within the Coastal Environment Area under the State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP) (**Figure 4**). The site is identified as bushfire prone land (**Figure 5**) and is in close proximity to Crown Land Reserve, which is located to the north of the site.

According to the Business Paper from the Ordinary Meeting of Council on 27 January 2022, Banksia Crescent is one of two public roads and residential areas in Nambucca Valley that are anticipated to be impacted by coastal hazards. The Council report included two maps of the modelled coastal hazards taken from Council's Coastal Hazard Study showing the difference between 2009 aerial photography and 2020 aerial photography (**Figure 8 and 9**).



Figure 1 Site context (source: Six Maps)



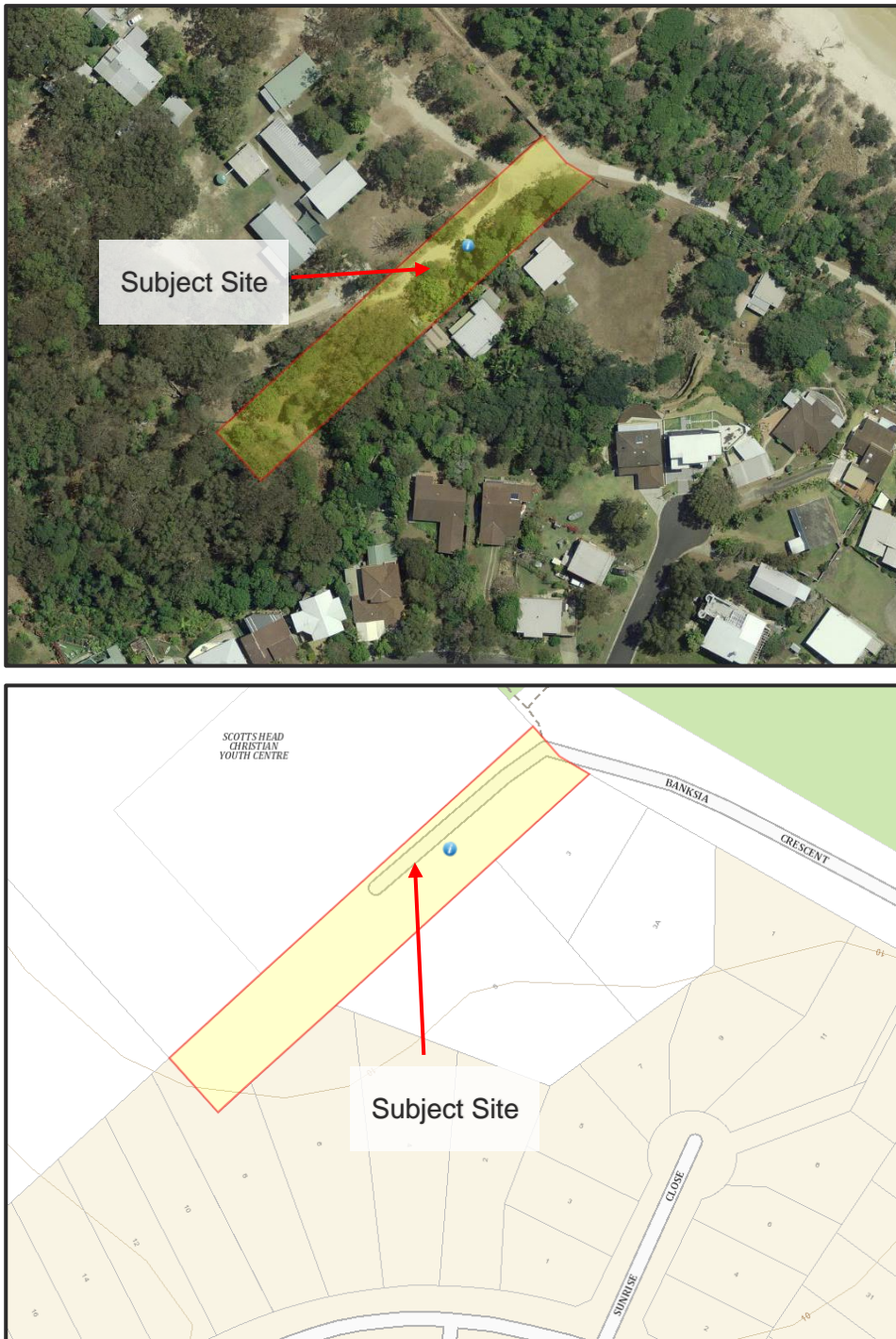


Figure 2 Subject site (source: Six Maps)



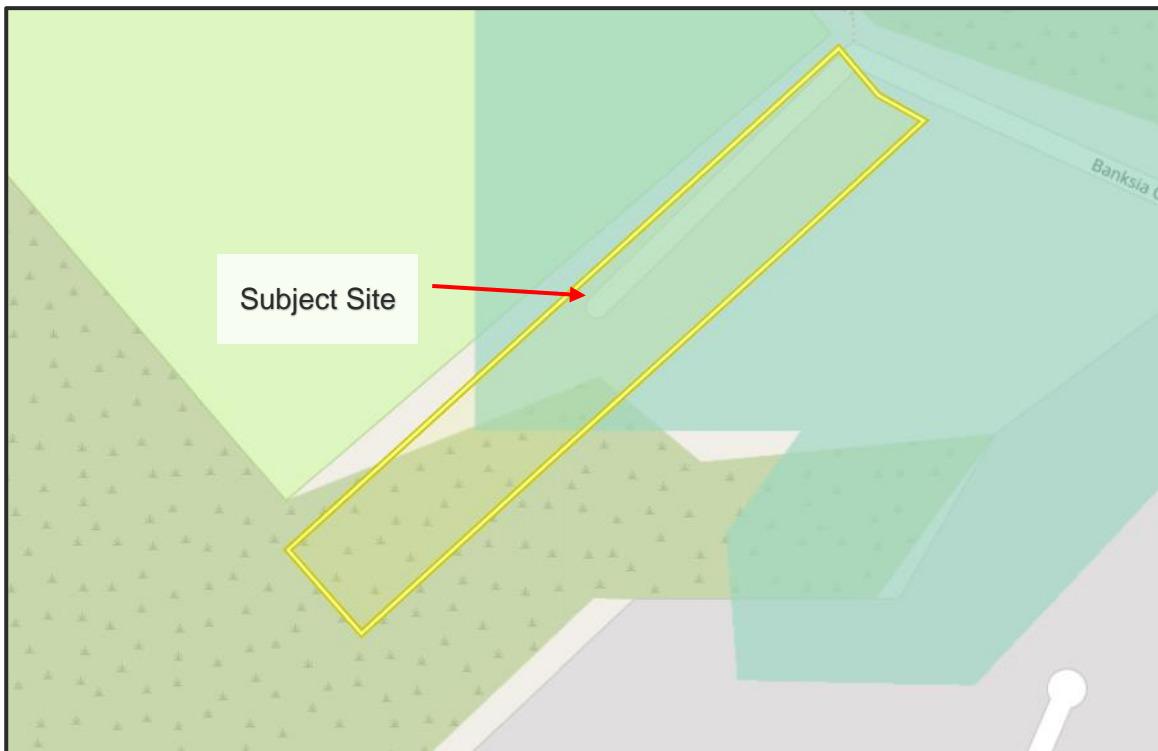


Figure 3 High Environmental Value Land (source: North Coast Regional Plan 2036)



Figure 4 Coastal Environment Area (source: SEPP (Coastal Management) 2018)



Figure 5 Bushfire prone land (source: NSW Spatial Viewer)

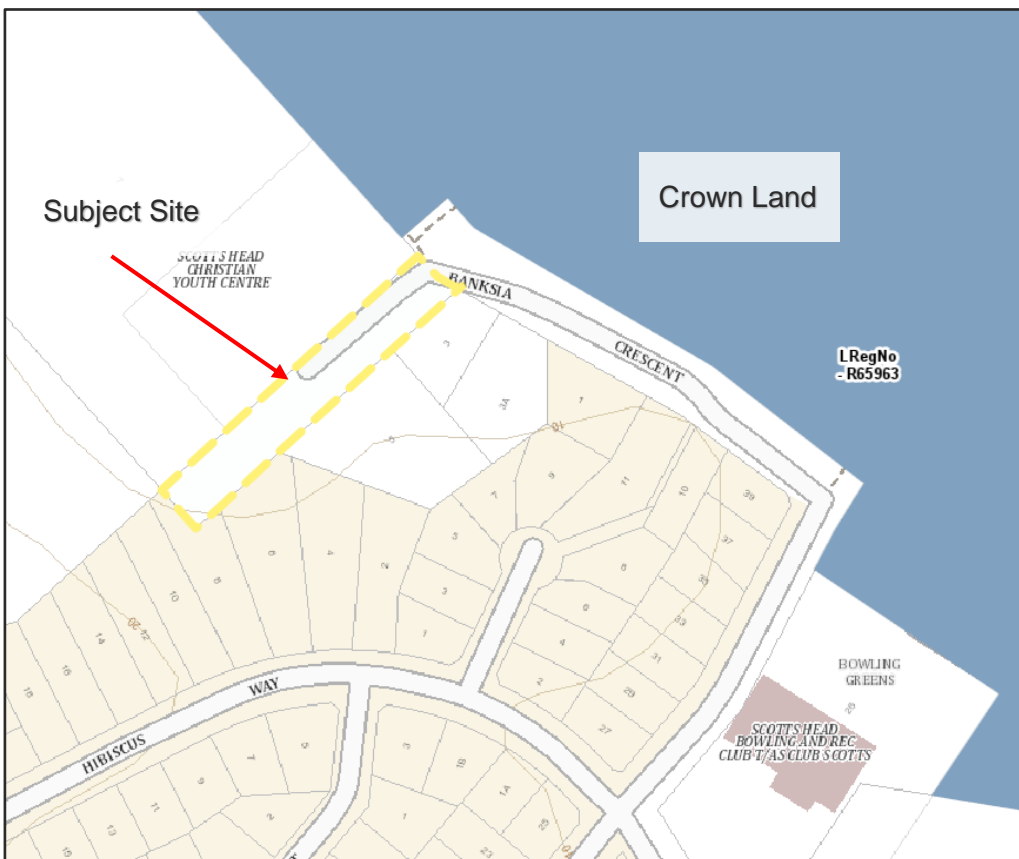


Figure 6 Proximity of Crown Land (shown in blue) (source: NSW Spatial Viewer)

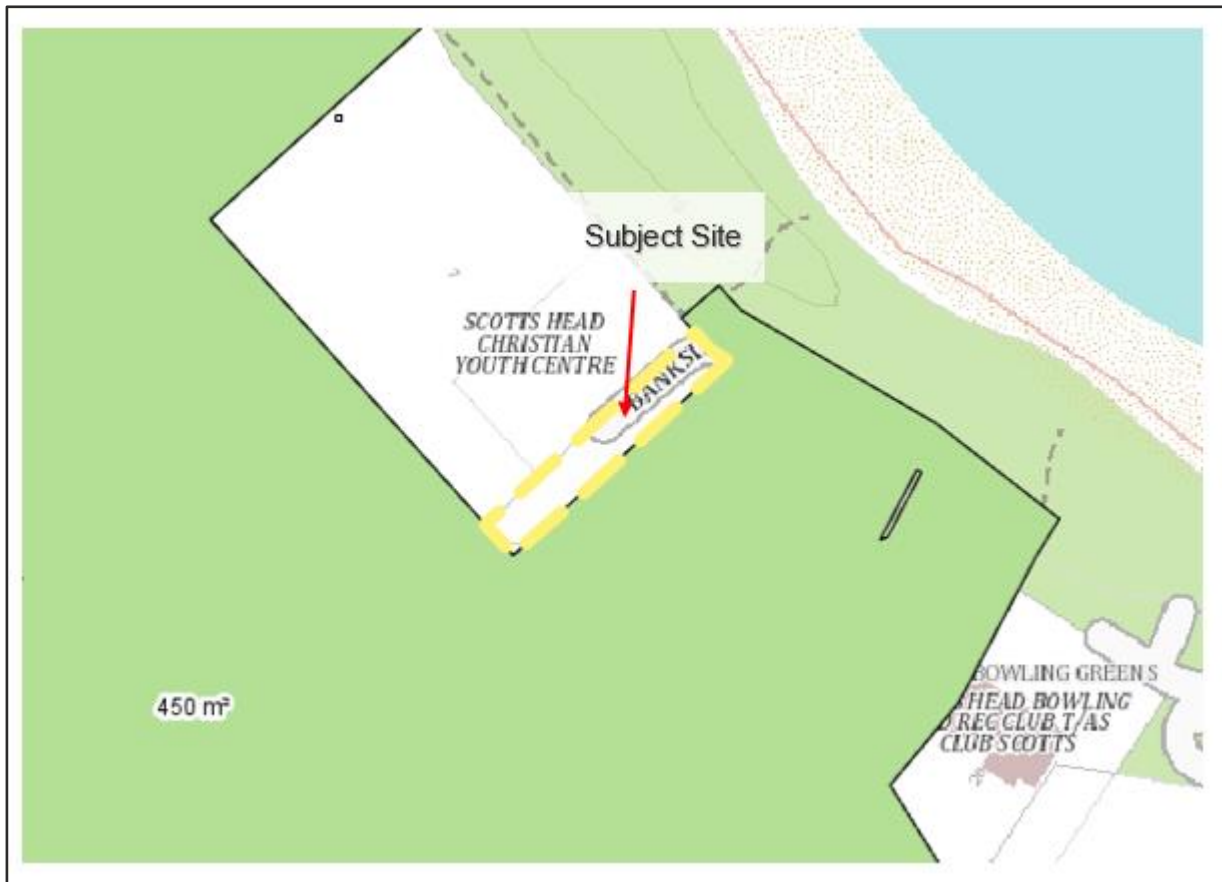


Figure 7: Figure 10 Current minimum lot size map (Source: NSW Spatial Viewer)

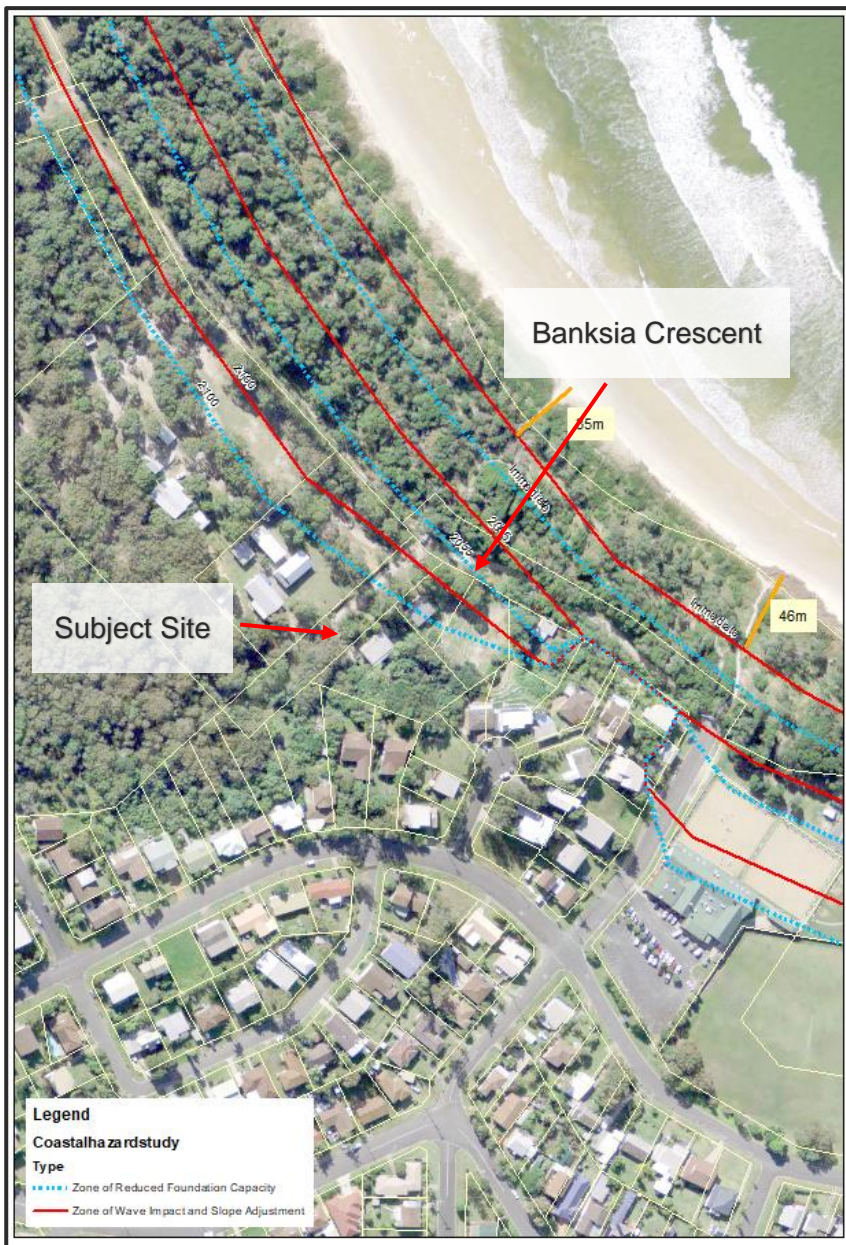
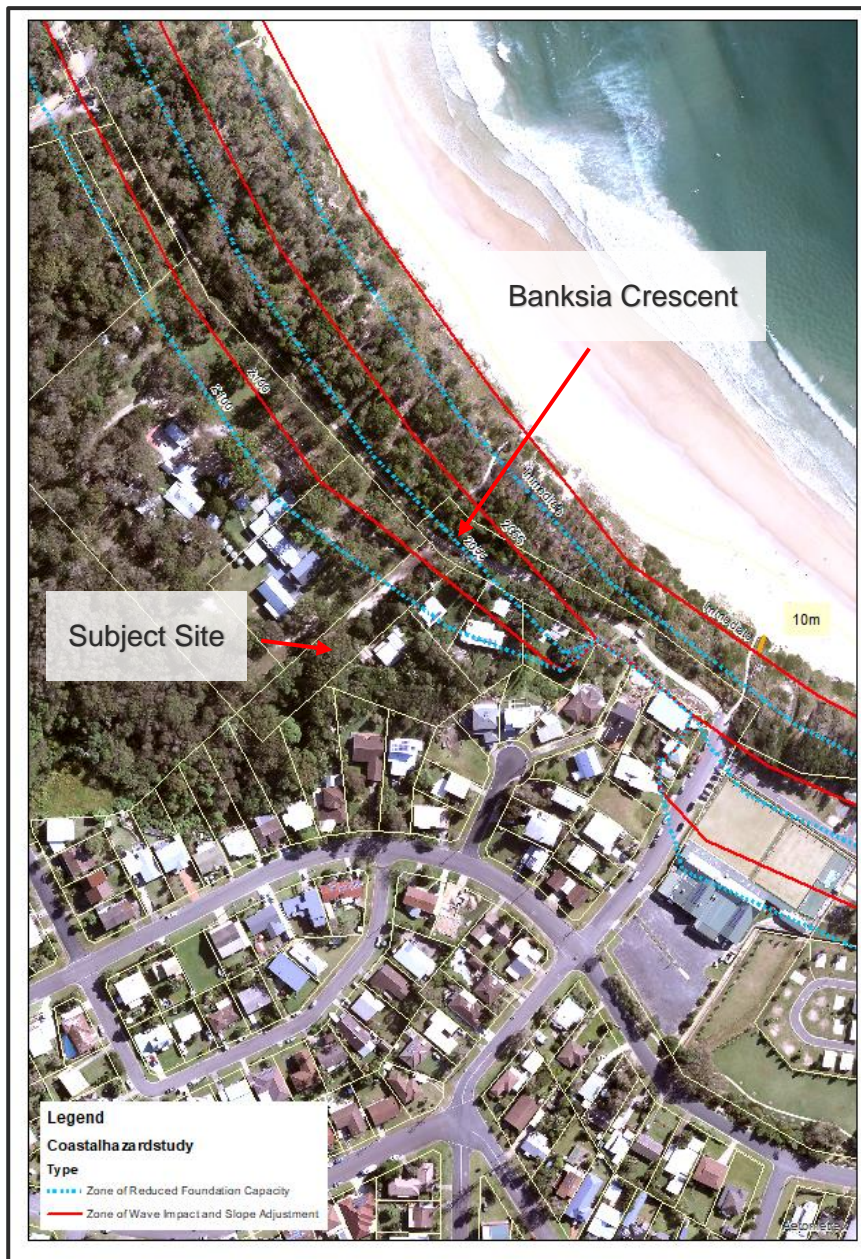


Figure 8 Coastal Hazard Study 2009 (source: General Manager's Report 27 January 2022)





**Figure 9 Coastal Hazard Study 2020 (source: General Manager's Report 27 January 2022)**

## 1.5 Mapping

The planning proposal does not include maps that show the existing and proposed controls. The only map included within the proposal is the existing Land Zoning Map (**Figure 10**). Prior to consultation, the planning proposal will need to be updated to include:

- existing and proposed Land Zoning maps;
- existing and proposed Lot Size maps; and
- proposed Land Reclassification (Part Lots) map.

All maps will need to be prepared to the Department's Standard Technical Requirements prior to the plan being finalised.



**Figure 10 Current zoning map (Source: Council's Planning Proposal)**

## 1.6 Background

### 1.6.1 Legal Access

The planning proposal seeks to reclassify Lot 91 DP 239693 to provide a legal means of access to 5 Banksia Crescent. Council has indicated that they were approached by the owners of 5 Banksia Crescent after it was identified there was no legal access to their property. According to the planning proposal, legal access to 5 Banksia Crescent was historically provided via a right of way over 3 Banksia Crescent (**Figure 11**). However, when 3 Banksia Crescent was subdivided in 2011, the right of way was omitted from the Deposited Plan and legal access to the property was removed (**Figure 12**).

The owners of 5 Banksia Crescent currently access their property via Lot 91 DP 239693. A recent site visit conducted in May 2022 indicates that 3 Banksia Crescent also utilises Lot 91 DP 239693 to access their lot. Further, both the primary and secondary access to the Youth Centre at 7 Banksia Crescent is via the public reserve. This equates to a total of four properties using the existing track situated within the eastern portion of the public reserve as their primary access. None of these existing arrangements are regularised (**Figures 13, 14, 15 and 16**).



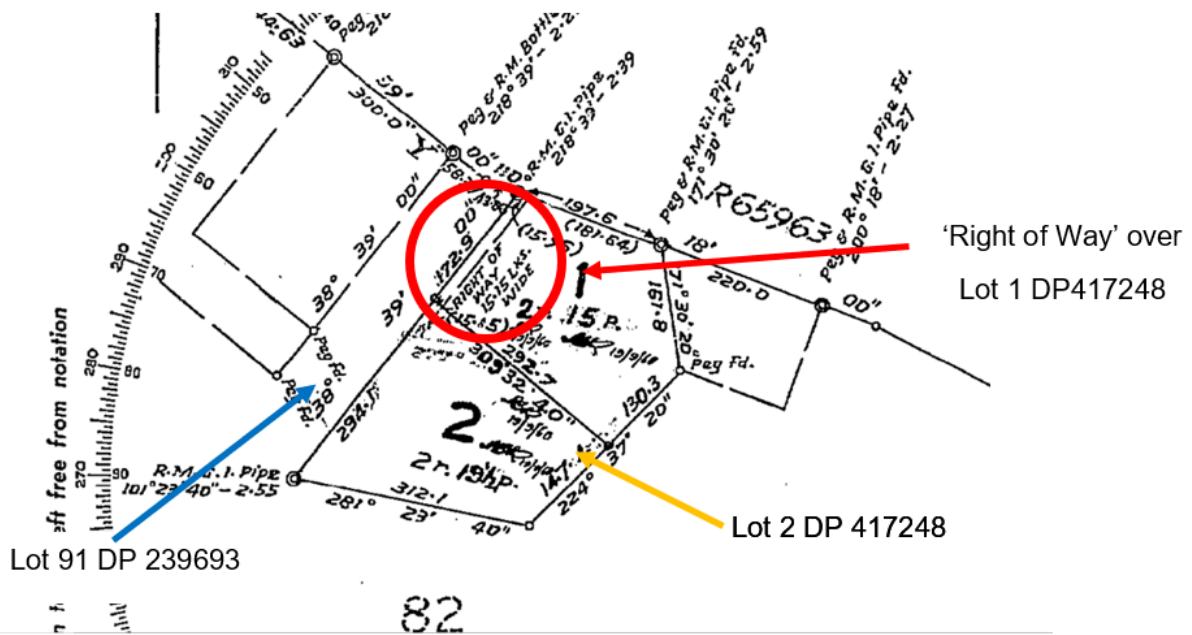


Figure 11 Former Deposited Plan, demonstrating 'Right of Way' (circled) on former Lot 1 DP 417248 (Source: Councils Planning Proposal)

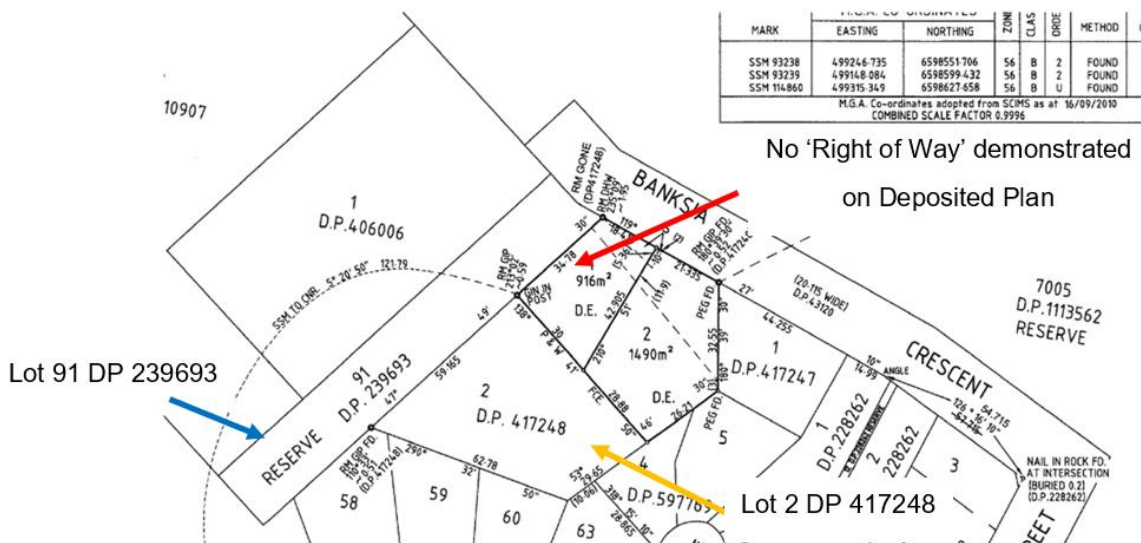


Figure 12 Current Deposited Plan, demonstrating subdivision of former Lot 1 DP 417248 with no 'Right of Way' (circled) depicted on Lot 1 1160534 (Source: Councils Planning Proposal)



**Figure 13 Site Visit 12 May 2022 – looking west from Banksia Crescent, showing first driveway (circled) to 7 Banksia Crescent within Public Reserve**



**Figure 14 Site Visit 12 May 2022 – looking west at second driveway into 7 Banksia Crescent (Public Reserve to left)**





**Figure 15 Site Visit 12 May 2022 – Looking along the Public Reserve toward beach from second driveway into 7 Banksia Crescent. Driveways into 3 and 5 Banksia Crescent on right.**



**Figure 16 Site Visit 12 May 2022 – Driveway into 5 Banksia Crescent from Public Reserve**

### 1.6.2 Public Reserve

Council has indicated in its planning proposal that Lot 91 DP 239693 is classified as community land under the *Local Government Act 1993*. The Certificate of Title confirms the land to be a Public Reserve. The land was dedicated to Council in 1970 by a developer to support the release of surrounding land.

Council has advised that there are no clear records on the why the land was dedicated as a public reserve but surmises that the shape and location would suggest that the lands potential was to provide access through to the beach, which Council indicate is how it is used currently.

## 2 Need for the planning proposal

The planning proposal is neither the result of a strategy nor a study. The objective of the planning proposal is to provide a legal means of access to 5 Banksia Crescent. Council has considered a number of options to provide legal access over the land to 5 Banksia Crescent. These are documented in **Table 4** below:

**Table 4 Alternative options**

Option	Comment
Section 47F of the <i>Local Government Act 1993</i>	<p>Pursuant to Section 47F of the <i>Local Government Act 1993</i>, community land cannot be dedicated as a public road under section 10 of the <i>Roads Act 1993</i> unless:</p> <ul style="list-style-type: none"> <li>(a) the road is necessary to facilitate the enjoyment of the area of community land on which the road is to be constructed, and</li> <li>(b) the council has considered means of access other than public road access to facilitate enjoyment, and</li> <li>(c) there is a plan of management applying only to the land concerned and provision of the public road is expressly authorised in the plan of management.</li> </ul> <p>As the objective of the proposal is to provide legal access to a private lot, Council does not consider that the requirements of section 47F can be satisfied.</p>
License Agreement or lease of community land	Council have explored the option to enter into a license or lease arrangement with the owners of 5 Banksia Crescent, however, note that the licence or lease will not address the issue of legal access to the site.
Creation of an 88K Instrument under the <i>Conveyancing Act 1919</i>	As the land is classified as community land, a restriction on the title would need to be pursued through an 88K Instrument in accordance with the provisions of the <i>Conveyancing Act 1919</i> . Council have indicated that the Supreme Court would be required to determine the restriction and due to the cost and potential timeframe implications of this approach, has not been further investigated as a legitimate option.

Council advice that reclassification of the land from community to operational would enable the land to be dedicated as public road. Council propose to rezone the land from RE1 Public Recreation to R1 General Residential to align with the land zoning applied to other road reserves adjoining residential zoned land in Scotts Head.

Council nominate that in addition to providing legal access to 5 Banksia Crescent, the proposal would facilitate additional vehicular access “to other undeveloped residential land which adjoins the land”. However, no undeveloped land directly adjoins Lot 91 DP 239693. The public reserve adjoins the rear of 6 and 8 Hibiscus Way (**Figures 2 and 17**). To the north of these lots lies undeveloped land zoned R1 General Residential. However, Lot 91 DP 239693 does not directly adjoin this land, with 8 and 10 Banksia Way in-between. Therefore, the potential to service undeveloped land is not a justification to support reclassification of the entire area of Lot 91 DP 239693.

Further, given Banksia Crescent is anticipated by Council to be impacted by coastal hazards (**Figure 8 and 9**), is bushfire prone (**Figure 5**) and contains areas of potential HEV (**Figure 3**), it is not considered to be appropriate that any future road reserve service an area beyond the existing

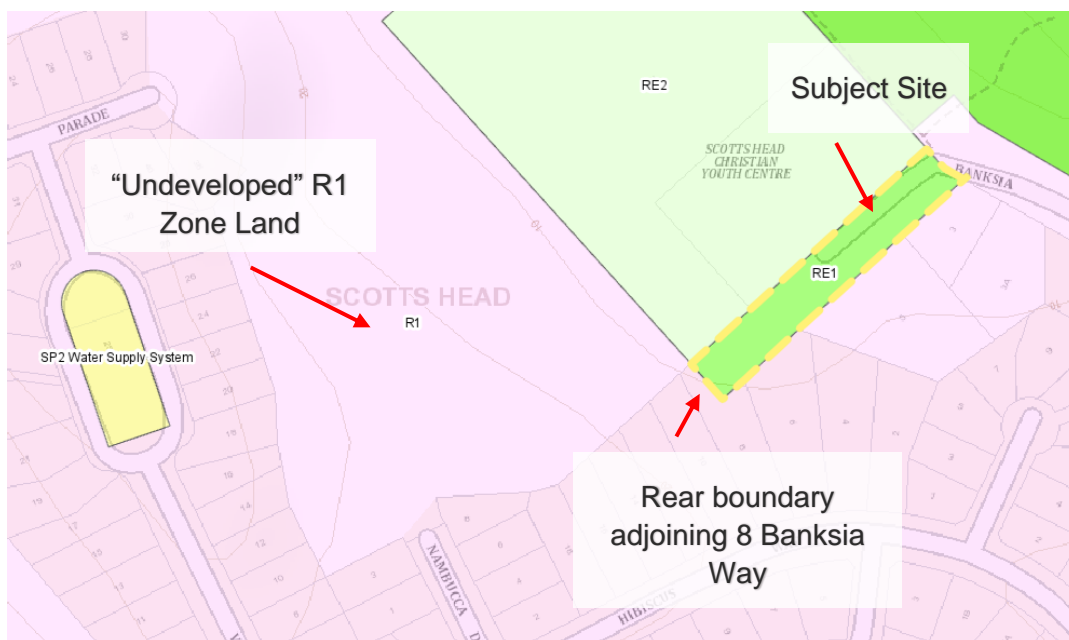
users at 3, 5 and 7 Banksia Crescent. Additionally, it is considered that there are adequate alternative options to access the undeveloped land in the R1 General Residential zone, including Panorama Parade and Nambucca Drive.

For these reasons, it is recommended that the planning proposal footprint be limited to the eastern area of Lot 91 DP 239693 currently utilised for vehicle access to 3, 5 and 7 Banksia Crescent. The western vegetated section of the land will not comprise part of the planning area. A condition has been included on the Gateway determination to require that the planning proposal be updated prior to consultation to reflect this requirement. Council will be required to submit the amended proposal to the Department for approval prior to exhibition.

It is also recommended that a condition be imposed on the Gateway determination to require that Council amend the planning proposal to remove any discussion about additional vehicular access to undeveloped residential land, as this is not relevant to the amended planning proposal.

It is further recommended that the objectives and intended outcomes of the proposal be updated to clearly articulate that the proposal seeks to establish a public road reserve within the eastern portion of Lot 91 DP 239693 which will formalise existing access arrangements and provide legal access to 3, 5 and 7 Banksia Crescent.

It is noted that Lot 1 DP 510907 comprises part of the Youth Centre at 7 Banksia Crescent, and access to this lot is through Lot 1 DP 406066.



**Figure 17 Location of “undeveloped” R1 General Residential land in proximity to the subject site (Source: NSW Spatial Viewer)**

Strategic assessment

## 2.1 Regional Plan

The following table provides an assessment of the amended planning proposal against relevant aspects of the North Coast Regional Plan 2036.



Table 4 Regional Plan assessment

Regional Plan Objectives	Justification
Direction 1: Deliver environmentally sustainable growth	<p>The amended proposal is not inconsistent with this Direction which aims to focus future urban growth to mapped urban growth areas. Lot 91 DP 239693 is within the urban growth area boundary mapped in the North Coast Regional Plan 2036.</p>
Direction 2: Enhance biodiversity, coastal and aquatic habitats and water catchments	<p>The amended proposal is inconsistent with Action 2.1 as it seeks to rezone land currently zoned RE1 Public Recreation to R1 General Residential and amend associated controls. The proposal further seeks to reclassify the land from community to operational to enable the dedication of land as a public road. The site is identified as containing potential HEV (<b>Figure 3</b>).</p> <p>It is noted that the existing access track in the eastern portion of the site is located within the area identified as containing potential HEV. Council's planning proposal concludes that there will be no impact on threatened species, populations, communities or their habitats as the proposal will not result in any physical changes to the land beyond upgrades to existing disturbed areas.</p> <p>It is recommended that an ecological report be prepared to determine the impact of the proposal and that consultation be undertaken with the Biodiversity and Conservation Division (BCD) to confirm the suitability of the proposal. It is recommended the planning proposal be updated to address the outcomes of the report prior to consultation. Appropriate conditions are included on the Gateway determination in this regard.</p>
Direction 3: Manage natural hazards and climate change	<p>The amended proposal is considered to be inconsistent with Action 3.1. The proposal would result in the continuation of the road reserve to facilitate legal access to existing driveways at 3, 5 and 7 Banksia Crescent. As identified in <b>Figures 8 and 9</b>, Banksia Crescent is one of two public roads and residential areas in Nambucca Valley that are anticipated to be impacted by coastal hazards. The inconsistency is considered to be of minor significance as the amended proposal aims to formalise existing access arrangements to 3, 5 and 7 Banksia Crescent.</p> <p>It is noted that the land is bushfire prone and also contains class 5 acid sulfate soils. The proposal will be referred to the Rural Fire Service (RFS) in accordance with Direction 4.3 Planning for Bushfire Protection and it is considered that acid sulfate soils may adequately be addressed in association with any work undertaken in the road reserve in the future.</p>
Direction 15: Develop healthy, safe, socially engaged and well connected communities.	<p>The amended proposal is inconsistent with Action 15.5 as it does not address crime prevention through environmental design (CPTED) outcomes, including surveillance, access control, territorial reinforcement and space management. Specifically, the proposal does not identify whether effective lighting of public spaces is or can be achieved.</p> <p>Notwithstanding, the inconsistency is considered to be of minor significance as the amended proposal aims to regularise existing access arrangements to 3, 5 and 7 Banksia Crescent.</p>



Direction 18:  
Respect and  
protect the North  
Coast's Aboriginal  
heritage

The amended proposal is inconsistent with Action 18.2 as Council has not sought, nor prepared any documentation which demonstrates that Aboriginal cultural heritage has been considered nor have they engaged with the Aboriginal community in preparation of this planning proposal.

It is recommended that Council consult with the Nambucca Heads Local Aboriginal Land Council (LALC) to confirm the suitability of the proposal and determine whether further assessment is required to be undertaken to support the proposal.

## 2.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

**Table 6 Local strategic planning assessment**

Local Strategies	Justification
Nambucca Living at its best 2027 Community Strategic Plan (CSP)	<p>The following Community Aspirations contained in the CSP are relevant to the proposal:</p> <ul style="list-style-type: none"> <li>• Aspiration 1: Caring for our Community</li> <li>• Aspiration 2: Caring for our Environment</li> <li>• Aspiration 4: Promoting Prosperity</li> </ul>
Nambucca Local Strategic Planning Statement 2020 (LSPS)	<p>The following Planning Priorities contained in the LSPS are relevant to the proposal:</p> <p>Planning Priority 1 Community and Place</p> <p><i>Promote healthy living choices by providing opportunities for walking, cycling and public transport. Walkable streets that are attractive, legible, well connected, safe and shaded.</i></p> <p>Comment: It is considered that the proposal is broadly consistent with this priority as it will not reduce the opportunities for walking and cycling. However, Council should consider appropriate measures as part of any future development of the road reserve to ensure that it is walkable, attractive, legible, well connected and safe.</p> <p>As discussed in section 2.10 of this report, it is recommended that Council consult BCD in relation to coastal hazards. In addition Council is required to consult with the NSW Rural Fire Service (RFS) in relation to the bushfire risk.</p> <p><i>Protect and conserve cultural places and values of our community including built and Aboriginal cultural heritage. Provide opportunities for artistic and creative expression to strengthen local awareness of these historic and cultural values as well as add features of interest and identity within our community.</i></p> <p>Comment: As discussed in section 2.1 of this report, Council will be required to consult with the Nambucca Heads LALC and Heritage NSW to confirm the suitability of the proposal.</p> <p>Planning Priority 2 The Environment in the Nambucca Valley</p> <p><i>Our community values our natural environment and related cultural values of the Nambucca Valley.</i></p>

*The vegetation, biodiversity and habitats of the Nambucca Valley will be protected and enhanced to support sustainable, diverse and abundant wildlife populations.*

*Access to environmental areas will be managed to provide safe, peaceful and beautiful places to learn and enjoy for current and future generations.*

*Well planned and prepared communities that are resilient and adaptable to a changing climate.*

*A community that is aware of its contribution to anthropogenic impacts and is proactive in reducing its environmental footprint.*

Comment: The land contains areas of potential HEV. It is recommended that Council prepare an ecological study and consult with BCD to confirm the suitability of the proposal. As previously outlined, consultation will also need to be undertaken with both the Nambucca Heads LALC and Heritage NSW.

Nambucca Shire Council Community Facilities and Public Open Space Needs Strategy - Findings and Directions (the Strategy)

The Nambucca Shire Council Community Facilities and Public Open Space Needs Strategy identifies the site as having local value to Scotts Head (**Figure 18**).



**Figure 18 Open Space Hierarchy - Scotts Head (Source: Nambucca Shire Council Community Facilities and Public Open Space Needs Strategy)**

According to the 'Community Land in Towns' table contained in the Strategy (p. 33), Scotts Head has a community land provision of 19.1 hectares. The 2011 Census, on which this Strategy is based, nominates that Scotts Head has a population of approximately 896 people. This equates to approximately 213m<sup>2</sup> of open space per person within Scotts Head.

According to this same table, Nambucca Valley more broadly has a community land provision of 566.4 hectares and a total population of 18,644 people (ABS, 2011). This equates to approximately 303m<sup>2</sup> of open space per person within Nambucca Valley. As such, there is a difference of 90m<sup>2</sup> between the amount of accessible open space to residents of the wider Nambucca Valley area, when compared to residents of Scotts Head.

It should also be noted that the Strategy identifies that whilst provision of land for open space is good across the LGA, there is "potentially a need for additional recreation open space and ideally there would be some higher quality larger recreational parks in the main towns". Council identifies that open space that is primarily bushland does not meet the requirements of local residents in new

development areas, residents should have access to recreation parks that include a playground and other activity opportunities.

Notwithstanding, it is noted that the Nambucca community highly value the natural environment and the Strategy identifies that these areas should be protected and maintained. The Strategy notes that some of these natural areas require rejuvenation and there is potential for natural vegetation and wetlands to be increased in the urban areas, such as urban forests and habitat corridors where the land is less suitable for sport or recreation.

The Strategy also notes that there is high participation in walking and cycling identified in community feedback and trails and footpaths are therefore important within the Nambucca Valley to increase walkability.

On this basis, the amended proposal with a reduced footprint is not inconsistent with the Strategy as it will maintain the existing vegetated area in the western portion of the public reserve. Additionally, the proposal directly reflects the existing informal access to three properties that currently utilise the existing track and is broadly in keeping with the purpose of the land identified by Council which is to facilitate beach access.

The strategy also refers to vandalism within open space in Nambucca Valley, particularly to amenities and buildings, is a major issue and strategies are recommended to be considered to reduce the risks. The commentary regarding vandalism is noted and Council are encouraged to consider CPTED solutions where relevant as part of future stage of development, in accordance with Council's strategy.

## 2.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 7 9.1 Ministerial Direction assessment**

Directions	Consistency	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Inconsistent	<p>The proposal is inconsistent with this Direction as the proposal is inconsistent with Directions 2 and 18 of the North Coast Regional Plan 2036 as discussed in section 2.1 of this report.</p> <p>The proposal will remain inconsistent with Direction 2 of the Regional Plan until report in relation to ecology has been prepared and consultation has been undertaken with BCD.</p> <p>In addition, the proposal will remain inconsistent with Direction 18 of the Regional Plan until consultation has been undertaken with the Nambucca Heads LALC.</p>
3.1 Conservation Zones	Inconsistent	<p>The proposal is inconsistent with this Direction as the planning proposal does not include provisions that facilitate the protection and conservation of</p>

		<p>environmentally sensitive areas, noting that the land contains areas of potential HEV.</p> <p>The proposal will remain inconsistent with this Direction until an ecological report has been prepared and consultation has been undertaken with BCD. It is recommended the planning proposal is updated to address the outcomes of the report prior to consultation. Appropriate conditions are included in the Gateway determination.</p>
3.2 Heritage Conservation	Inconsistent	<p>The proposal is inconsistent with this Direction as the impact of the proposal on Aboriginal objects, areas or places is not adequately addressed as part of the planning proposal. It is recommended that consultation is undertaken with Nambucca Valley LALC and Heritage NSW to confirm the suitability of the proposal.</p> <p>The inconsistency with this Direction will remain outstanding until this consultation has been undertaken.</p>
4.2 Coastal Management	Inconsistent	<p>The proposal is inconsistent with this Direction as it is identified as a coastal environment area under the SEPP (Resilience and Hazards) 2021 and does not satisfy the requirements of the Direction.</p> <p>Direction 4.2 (2) states that a planning proposal must not rezone land which would enable increased development or more intensive land-use on land 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 by or on behalf of a public authority and the planning proposal authority.</p> <p>A proposal may be inconsistent with the terms of this direction, only if the planning proposal authority can demonstrate that the provisions that are inconsistent are:</p> <ul style="list-style-type: none"> <li>justified by a study or strategy prepared in support of the planning proposal which gives consideration to the objective of the direction, or</li> <li>in accordance with any relevant Regional Strategic Plan, prepared under division 3.1 of the EP&amp;A Act by the relevant strategic planning authority, which gives</li> </ul>

		<p>consideration to the objective of the direction, or</p> <ul style="list-style-type: none"> <li>• of minor significance.</li> </ul> <p>Council is required to include further information in the planning proposal to address this Direction, including findings from the Coastal Hazard Study 2020. Further, it is recommended that consultation is undertaken with BCD to confirm the suitability of the proposal. This Direction will remain outstanding until further information has been included in the planning proposal and consultation has occurred.</p>
4.3 Planning for Bushfire Protection	Inconsistent	<p>This Direction is relevant to the proposal as the application affects or is in proximity to land mapped as bushfire prone. The Direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) after a Gateway determination is issued. Until consultation has been undertaken, the direction remains unresolved.</p>
4.4 Remediation of Contaminated Land	Inconsistent	<p>This Direction aims 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 the subject planning proposal as the proposal could facilitate development of Lot 91 DP 239693 for residential purposes. Council has not provided any information regarding the potential for contamination. Therefore, it is considered that there is incomplete knowledge regarding whether the land to be rezoned is suitable for its intended purpose.</p> <p>It is recommended that a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines and the planning proposal updated to address the outcomes of the report. Appropriate conditions are included on the Gateway determination.</p>
4.5 Acid Sulfate Soils	Justifiably Inconsistent	<p>The planning proposal is inconsistent with this Direction as it relates to land that contains acid sulfate soils on which an intensification of land use will be possible and is not supported by an acid sulfate soils study. The inconsistency is considered to be of minor significance as Class 5 are considered to be low risk and the Nambucca LEP 2010 contains suitable provisions to ensure that this matter can be appropriately considered</p>

		and addressed at development application stage.
5.1 Integrating Land Use and Transport	Justifiably Inconsistent	<p>This Direction is relevant to the planning proposal as it will alter a provision relating to urban land. The proposal is inconsistent with this direction as it has not considered the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development (DUAP 2001)</i> and the <i>Right Place for Business and Services – Planning Policy (DUAP 2001)</i>.</p> <p>The inconsistency is considered to be of minor significance as the proposal will facilitate the use of the land for the purposes of a road reserve, to support adjoining residential land uses.</p>
5.2 Reserving Land for Public Purposes	Justifiably Inconsistent	<p>This Direction is relevant to the planning proposal as it reduces the amount of land currently zoned RE1 Public Recreation without the approval of the Secretary. Notwithstanding, the amended proposal as specified by the Department is considered to be of minor significance as the amount of land impacted by the proposal will reflect current arrangements and has been limited to the area required to facilitate legal vehicle access to 3, 5 and 7 Banksia Crescent.</p>
6.2 Caravan Parks and Manufactured Home Estates	Justifiably Inconsistent	<p>This Direction aims to provide for a variety of housing types and provide opportunities for caravan parks and manufactured home estates. The planning proposal is inconsistent with the terms of this direction as it will prohibit the construction of a caravan park on the subject land.</p> <p>The inconsistency is considered to be of minor significance as the land is unlikely to be suitable for the purposes of a caravan park due to its constraints. Further, the amended proposal will be limited to the area required to facilitate legal vehicle access to 3, 5 and 7 Banksia Crescent and regularise an existing arrangement.</p>

## 2.4 State environmental planning policies (SEPPs)

With exception of the SEPPs outlined below, the planning proposal is consistent with all relevant SEPPs as discussed in the table below.



**Table 8 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Applicable/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Biodiversity Conservation) 2021	Chapter 4 Koala habitat protection 2021	Applicable	<p>This SEPP is relevant to the proposal as the land contains native vegetation, which is identified as potential HEV by the North Coast Regional Plan 2036. Chapter 4 of the SEPP establishes controls for development applications where land (other than RU1, RU2 and RU3 zoned land) is identified as containing core koala habitat.</p> <p>As no studies have been undertaken to support the proposal, it is unknown whether the land supports core koala habitat.</p> <p>The required ecological report will establish whether the planning area contains core koala habitat and whether the SEPP is applicable to the proposal.</p>
SEPP (Resilience and Hazards) 2021	Chapter 2 Coastal Management	Applicable	<p>This SEPP is relevant to the proposal as land is identified as being coastal environment area on the relevant SEPP mapping. Any future development would be required to address the requirements of Chapter 2 Coastal management, Division 3 Coastal environment area.</p>

SEPP (Transport and Infrastructure) 2021	Division 12 Parks and other public reserves	Applicable	<p>This SEPP is relevant to the proposal as Division 12 applies specifically to parks and other public reserves. The subject site is currently registered as a public reserve and is classified as community land.</p> <p>Subclause (3) outlines that development for the purposes of a roads can be carried out by or on behalf of council without consent on a public reserve under the control of or vested in the council.</p> <p>Notwithstanding, as outlined under section 2, Section 47F of the <i>Local Government Act 1993</i> requires that community land only be dedicated as a public road under section 10 of the <i>Roads Act 1993</i> where,</p> <ul style="list-style-type: none"> <li>(a) the road is necessary to facilitate the enjoyment of the area of community land on which the road is to be constructed, and</li> <li>(b) the council has considered means of access other than public road access to facilitate enjoyment, and</li> <li>(c) there is a plan of management applying only to the land concerned and provision of the public road is expressly authorised in the plan of management.</li> </ul> <p>As the intention of the proposal is to facilitate legal access to Lot 2 DP 417248, it is considered that the proposal cannot meet this requirement.</p>
	Division 17 Roads and traffic	Applicable	<p>This SEPP is relevant to the proposal as Division 17 Roads and traffic, Subdivision 1 Roads and road infrastructure facilities. This will be relevant to future processes to construct the proposed public road on part of Lot 91 DP 239693, following successful rezoning and reclassification of the land.</p>

## 3 Site-specific assessment

### 3.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

**Table 9 Environmental impact assessment**

Environmental Impact	Assessment
Bushfire	The subject site is mapped as bushfire prone land ( <b>Figure 5</b> ). Consultation with the NSW Rural Fire Service in accordance with Direction 4.3 Planning for Bushfire will be required to determine suitability of the proposal.
Coastal Hazards	<p>The wider surrounds, including Banksia Crescent and the wider residential area, have been identified in a study prepared by Nambucca Valley Council as one of two areas in Nambucca Valley that are anticipated to be impacted by Coastal Hazards.</p> <p>Council will be required to update the planning proposal, specifically to address section 9.1 direction 4.2 Coastal Management to identify the proposals inconsistency and how it proposes to meet the requirements of the inconsistency. Council will also be required to discuss the findings of the Coastal Hazards Study 2020 in the planning proposal and any impacts or required mitigation. This will be required to be completed prior to proceeding to agency consultation and shall be submitted to the Department of Planning and Environment for review and approval, in accordance with the requirements of the Gateway determination.</p> <p>Additionally, it is recommended that BCD be consulted on the proposal to provide comment on the suitability of the proposal.</p>
Contaminated Land	<p>Council has not provided any information regarding the potential for contamination; however a site visit indicates that gravel has been placed within a narrow track contained within the vegetated area, past the rear driveway of the Youth Centre. Given the development of a road is also not permitted within the reserve, under Section 47F of the <i>Local Government Act 1993</i>, it is also queried whether fill has been brought in from elsewhere, to facilitate the formation of the informal road on the site. Therefore, there is incomplete knowledge regarding whether the land to be rezoned is suitable for residential rezoning.</p> <p>In order to determine that the land is suitable for the proposed use, 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.</p>
High Environmental Value Land	The subject site is identified as containing potential HEV. No ecological study has been prepared to inform the proposal and the value of the land is therefore not known. It is recommended an ecological report be prepared consultation is undertaken with BCD.

Heritage	No engagement has occurred of the Nambucca LALC on the proposal and no supporting studies have been provided to inform the significance of the land in relation to cultural heritage. Given the public reserve status of the land, it is recommended that both the Nambucca LALC and Heritage NSW be consulted on the proposal, to inform whether the land holds significance in regard to cultural heritage.
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## 3.2 Social and economic

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

**Table 10 Social and economic impact assessment**

Social and Economic Impact	Assessment
Loss of public open space	The amended proposal will result in the loss of approximately 1350m <sup>2</sup> of public open space. This impact is considered acceptable as it reflects current arrangements for vehicle access. It is appropriate within the context of the current onsite circumstances to reclassify and rezone the portion of land required to facilitate legal access to 5 Banksia Crescent. As a consequence of the proposal, access will also be resolved for both 3 and 7 Banksia Crescent which is appropriate as access to these lots will be captured in the reduced planning area.
Crown Land	A Crown Land Reserve adjoins land to the east of Banksia Crescent. It is considered that the Department of Industry – Crown Lands should be consulted.
Electrical Easements	An electrical easement adjoins land to the east of the Youth Centre and it is considered appropriate the Transgrid and Essential Energy are consulted.
Economic	Council has indicated that it does not intend to sell the land. The proposal will facilitate the transfer of land to road reserve to facilitate legal access to adjoining properties. Therefore, the reduced planning area is considered sufficient to achieve this aim.

## 3.3 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. The public reserve status of part of the land will need to be extinguished.

Principles	Assessment
How can public land deliver a benefit?	<p>The planning proposal seeks to reclassify Lot 91 DP 239693 from community to operational land and extinguish the public reserve status. The land was dedicated as a public reserve in 1970 by a developer as part of the release of the surrounding land. The intention of the proposal is to create a public road to provide legal access to 5 Banksia Crescent. As a consequence of the proposal, access arrangements will also be resolved for 3 and 7 Banksia Crescent.</p> <p>The amended planning area is considered to capture the intent of the proposal, while also retaining the rear portion of Lot 91 DP 239693 as a public reserve, as it is not considered this portion of the land is required to facilitate the objectives of the planning proposal.</p>
How public land contributes to public & open space?	<p>Lot 91 DP 239693 is located approximately 78m from Forster Beach. Lot 91 DP 239693 is open to public use as a public accessway, providing connectivity for development to the south to the beach. This is supported by the location and configuration of the lot. The transfer of the planning area to road reserve to facilitate legal access is not considered to alter the existing use of the lot. Further, public reserve status will be retained for the rear of the lot, not required to facilitate the objectives of this proposal.</p>

## 3.4 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

**Table 12 Infrastructure assessment**

Infrastructure	Assessment
Local	<p>The proposal will facilitate the dedication of the land as a public road. It is unlikely that this will generate the need for additional local infrastructure beyond that required for an upgrade the existing track in accordance with standards for local roads if Council seek to pursue such work in the future.</p>
State	<p>There will be no impact on State or regional infrastructure or the requirement for additional funding.</p>

## 4 Consultation

### 4.1 Community

Council proposes a community consultation period of 28 days.

Pursuant to the Department's Local Environmental Plan Making Guideline dated December 2021, the subject planning proposal is classified as 'standard' and a period 20 working days (Monday – Friday) is specified for proposals with this classification.

The Department's LEP Practice Note PN 16-001 Classification and reclassification of public land through a local environmental plan requires a period of 28 calendar days (Monday – Sunday), which broadly aligns with the LEP Making Guideline. Council's Community Participation Plan supports the 28-calendar day timeframe.

As such, the Gateway determination specifies 28 calendar days, to ensure consistency with the practice note.

A public hearing will also be required to be held in accordance with section 29(1) of the *Local Government Act 1993*. This must occur after the exhibition has ended and 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. This is specified in the Gateway determination.

The Gateway determination also clarifies that Council must undertake all relevant obligations in regard to the reclassification of public land in accordance with the LEP Making Guidelines, PN16-001 Classification and reclassification of public land through a local environmental plan and Practice Note No. 1 (Revised) May 2000 – Public Land Management.

## 4.2 Agencies

The proposal does not identify which agencies Council intends to consult with.

It is recommended the following agencies be consulted on the planning proposal and given 30 working days to comment:

- NSW Department of Planning and Environment – Biodiversity and Conservation Division,
- Nambucca Heads Local Aboriginal Land Council,
- NSW Rural Fire Service,
- Heritage NSW,
- Department of Industry – Crown Lands,
- Transgrid,
- Essential Energy.

## 5 Timeframe

Council proposes a five month time frame to complete the LEP.

The Department recommends a time frame of 10 months to enable sufficient time to prepare the information required to support the proposal and ensure it is completed in line with its commitment to reduce processing times. In accordance with the LEP Making Guidelines (Department of Planning and Environment, December 2021) the timeframe for completion of a standard planning proposal is 255 working days following receipt of a referral for a Gateway determination. The timeframe provided is within the target set by the LEP Making Guidelines for finalisation of a standard planning proposal.

It is recommended that if the Gateway is supported it also include a conditions requiring council to exhibit the proposal by specified milestone date. A condition to this effect is recommended in the Gateway determination.

## 6 Local plan-making authority

Council does not request delegation to be the Local Plan-Making authority.

As the Governor's approval is required to remove the public reserve status of part of the land, Council cannot be authorised to be the local plan making authority.



## 7 Assessment summary

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

- the proposal as amended will regularise an existing arrangement on Lot 91 DP 239693 and provide legal access to 3, 5 and 7 Banksia Crescent.

As discussed in the previous sections 4 and 5 of this report, the proposal should be updated to:

- limit the planning area to the land required to facilitate legal access to 3, 5 and 7 Banksia Crescent. This will restrict the planning area to that part of the land already established as an access track and should only extend so far as is required to encapsulate the currently established driveways to 3, 5 and 7 Banksia Crescent.

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

- (a) amend the objectives to capture the benefit of the proposal in providing legal access to Lot 2 DP 417248 and Lot 1 DP 406006 and continued access to Lot 1 DP 1160534;
- (b) amend the Explanation of Provisions to apply a 450m<sup>2</sup> minimum lot size to the planning area;
- (c) include existing and proposed Land Zoning, Minimum Lot size and Reclassification (Part Lot) Maps;
- (d) amend the planning proposal to remove the reference to providing vehicular access to undeveloped residential land which adjoins the land which is not relevant to the objective of the planning proposal;
- (e) address outstanding inconsistencies with section 9.1 Ministerial Directions 1.1 Implementation of Regional Plans, 3.1 Conservation Zones, 3.2 Heritage Conservation, 4.2 Coastal Management, 4.3 Planning for Bushfire Protection and 4.4 Remediation of Contaminated Land;
- (f) amend the planning proposal to include an assessment of the proposal against the Council's Coastal Hazard Study 2020, including any required mitigation or construction techniques;
- (g) prepare an ecological study to address the impact of the proposal on area of potential high environmental value within the land and have regard to the findings of this report in the amended planning proposal; and
- (h) prepare a preliminary contamination investigation report and have regard to the findings of this report in the amended planning proposal.

The amended planning proposal is to be submitted to the Department of Planning and Environment's Northern Region Team for review and approval prior to commencement of consultation.

## 8 Recommendation

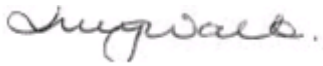
It is recommended the delegate of the Secretary:

- agree that any inconsistencies with section 9.1 Directions 4.5 Acid Sulfate Soils, 5.1 Integrating Land Use and Transport and 6.2 Caravan Parks and Manufactured Home Estates are minor or justified *and*
- note that the consistency with section 9.1 Directions 1.1 Implementation of Regional Plans, 3.1 Conservation Zones, 3.2 Heritage Conservation, 4.2 Coastal Management, 4.3 Planning for Bushfire Protection and 4.4 Remediation of Contaminated Land are unresolved and will require justification.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation the planning proposal should be updated to:
  - (a) limit the planning proposal area to that part of Lot 91 DP 239693 Banksia Crescent required to facilitate continued access to Lot 1 DP 1160534, 3 Banksia Crescent, Lot 2 DP 417248, 5 Banksia Crescent and Lot 1 DP 406006, 7 Banksia Crescent. The planning proposal area should extend no further than required to encapsulate the established driveways to these lots;
  - (b) amend the objectives to capture the benefit of the proposal in providing legal access Lot 1 DP 1160534, 3 Banksia Crescent, Lot 2 DP 417248, 5 Banksia Crescent, Lot 1 DP 406006, 7 Banksia Crescent, Scotts Head from a future public road;
  - (c) amend the Explanation of Provisions to apply a 450m<sup>2</sup> minimum lot size to the planning area;
  - (d) include existing and proposed Land Zoning, Minimum Lot Size and Reclassification (Part Lot) maps for the planning area;
  - (e) remove reference to providing vehicular access to undeveloped residential land which adjoins the land;
  - (f) refer to the proposal's inconsistencies with section 9.1 Ministerial Directions 1.1 Implementation of Regional Plans, 3.1 Conservation Zones, 3.2 Heritage Conservation, 4.2 Coastal Management, 4.3 Planning for Bushfire Protection and 4.4 Remediation of Contaminated Land;
  - (g) amend the planning proposal to include an assessment of the proposal against the findings of Council's Coastal Hazard Study 2020, including any required mitigation or construction techniques;
  - (h) prepare reports in relation to:
    - ecology; and
    - site contamination
  - (i) include the recommendations of the reports required by condition 1(h).
2. The amended planning proposal is to be submitted to the Department of Planning and Environment's Northern Region team for review and approval prior to community consultation.
3. Consultation is required with the following public authorities:
  - Biodiversity Conservation Division,
  - Nambucca Heads Local Aboriginal Land Council,

- NSW Rural Fire Service,
  - Heritage NSW,
  - Department of Industry – Crown Lands,
  - Transgrid,
  - Essential Energy.
4. The planning proposal should be made available for community consultation for a minimum of 28 days.
  5. Exhibition must commence within six months following the date of the Gateway determination.
  6. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. Council must, however, hold a public hearing when reclassifying public land from community to operational in accordance with the requirements of the *Local Government Act 1993*. A period of at least 21 days after the exhibition period has ended is to be given before the hearing.
  7. Council must ensure that all relevant obligations in relation to the reclassification of public land through an LEP are undertaken in accordance with the LEP Making Guidelines, Practice Note PN16-001 Classification and reclassification of public land through a local environmental plan and Practice Note No. 1 (Revised) May 2000 – Public Land Management.
  8. The timeframe for completing the LEP is to be 10 months from the date of the Gateway determination.
  9. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



25/05/2022

\_\_\_\_ (Signature)

\_\_\_\_ (Date)

Lucy Walker

Specialist Planning Officer, Local and Regional Planning, Northern Region



1/6/2022

\_\_\_\_ (Signature)

\_\_\_\_ (Date)

Jeremy Gray

Director, Northern Region

Assessment officer

Ella Wilkinson

Senior Planner, Northern Region

9995 5665