



Planning Proposal 17/012

**» 23 Compton Drive,
East Ballina**

May 2018 (V2. Gateway) 18/6422

ballina
shire council



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1. Introduction

1.1 Summary of Planning Proposal

This planning proposal primarily proposes the rezoning of part of Lot 3 DP 525783 (Lot 3), No. 23 Compton Drive, East Ballina to apply an R2 Low Density Residential zone (R2). A minimum lot size requirement of 600m² and a maximum building height of 8.5m is also proposed to apply to the R2 zoned area. Lot 3 has an area of 537.5m² and a frontage of approximately 21m to Compton Drive.

Also incorporated within the planning proposal is the adjacent Council owned land known as Lot 1 DP 781542 which adjoins Lot 3 along its western boundary. The proponent has advised that the landowners are liaising with Council's Commercial Services Group regarding a proposition for Council to consider the sale of all or part of the adjoining Lot 1 contingent upon Lot 1 also being zoned for residential purposes.

Lot 1 has an area of 158m². The application of an R2 Low Density Residential Zone, 600m² minimum lot size and 8.5m maximum building height is also proposed for Lot 1.

Lot 1 is included in this planning proposal subject to further investigation and reporting, particularly in relation to the encroachment of the Coogee Street stairs located in the southwestern corner of Lot 1. There is a prior resolution of the Council to excise the stairs from Lot 1 prior to any future leasing or disposal of Lot 1 to ensure the stairs remain in public ownership and accessible to the community.

This planning proposal will be amended prior to public exhibition to clarify if all or part of Lot 1 is to be rezoned, subject to the proposed disposal of the land being reported to Council under separate cover.

The location of the land is shown in Map 1 contained within Appendix 3.

1.2 Background

Lot 3 is mapped as "Deferred Matter" under the BLEP 2012 and is currently subject to the provisions of the Ballina Local Environmental Plan 1987 (BLEP 1987), being zoned part 2(a) Living Area and part 7(d) Environmental Protection (Scenic/ Escarpment). Lot 3 does not have a dwelling entitlement in accordance with Clause 12(3) of the BLEP 1987 and is subject to a 40 hectare minimum lot size for subdivision standard. Lot 1 is also subject to the 7(d) Environmental Protection (Scenic/ Escarpment) zone under the BLEP 1987.

Existing improvements on Lot 3 comprise a single storey building which is currently vacant and has previously been used as a restaurant/ café. There is an active deferred commencement consent for alterations and additions to the building which will lapse in October 2018 unless works are physically commenced. Part of the existing building and other associated improvements encroach onto Lot 1 and the Compton Drive road reserve.

A request to rezone the subject land was previously submitted to Council in November 2016 and was considered as part of the draft planning proposal for Stage 2 of Council's deferred matters integration program at the March 2017 Ordinary Meeting. At this meeting Council resolved to delay consideration of the planning proposal until after a Councillor briefing on the matter which was subsequently held on 6 April 2017.

The planning proposal for Stage 2, incorporating the rezoning request for No. 23 Compton Drive, East Ballina, was reported to the Council at its Ordinary Meeting held on 27 April

2017. At this meeting the Council resolved to retain all deferred areas that are the subject of an environmental protection zone under the BLEP 1987 as deferred areas, having the effect that the BLEP 1987 will continue to apply.

As a result of the above resolution of the Council, the land owners have decided to make a formal site specific LEP amendment request. This planning proposal has been prepared in response to the LEP amendment request submitted by Ardill Payne & Partners on 4 December 2017 on behalf of the registered land owners Ms Sharon Barrie and Mr Kristian Moon. A copy of the amendment request is available under separate cover.

1.3 Land to Which the Planning Proposal Applies

This planning proposal primarily relates to part of Lot 3 DP 525783, No. 23 Compton Drive, East Ballina and part or all of Lot 1 DP 781542, also known as 23 Compton Drive, East Ballina as shown on the Site Identification Map contained within Appendix 3.

1.4 Council Resolutions

Council considered this planning proposal at its Ordinary Meeting of 25 January 2018. The Council resolved as follows [Minute No. 250118/8]:

1. *That Council endorses the proposed amendments to the Ballina Local Environmental Plan 2012 as outlined in the planning proposal (BSCPP 17/012 - 23 Compton Drive East Ballina) contained in Attachment 2.*
2. *That Council submit BSCPP 17/012 - 23 Compton Drive East Ballina to amend the Ballina Local Environmental Plan 2012 to the NSW Department of Planning & Environment for Gateway determination.*
3. *That the Department of Planning and Environment be advised that Council does not wish to exercise its delegated plan making functions for this LEP amendment as the planning proposal involves Council owned land.*
4. *That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.*
5. *That the planning proposal be reported to the Council for further consideration following the completion of the public exhibition of the proposed LEP amendments.*

A copy of the report considered by the Council is contained in Appendix 5.

1.5 Gateway Determination

To be completed following the Gateway determination.

2. Objectives & Intended Outcomes

The objective of this planning proposal is to amend the Ballina LEP 2012 in respect to all or part of Lot 1 DP 781542 and to part of Lot 3 DP 525783 so as to:

- Adjust the Land Application Map to include the subject land within the LEP by removing the land from a Deferred Matter designation;
- Apply a low density residential zone;
- Apply a 600m² minimum lot size requirement;
- Apply a maximum building height of 8.5 metres; and
- Apply acid sulfate soils attributes.

The intended outcome of this planning proposal is to enable the use of the subject land for residential purposes.

3. Explanation of Provisions

3.1 The Proposal

This planning proposal seeks to rezone all or part of Lot 1 DP 781542 and part of Lot 3 DP 525783 to apply the R2 Low Density Residential zone under the Ballina LEP 2012. The residual land on Lot 3 will remain subject to the provisions of the Ballina LEP 1987, being zoned part 2(a) Living Area and part 7(d) Environmental Protection (Scenic/ Escarpment). The extent of the existing and proposed zoning is shown on the land zoning maps contained in Appendix 3 and in Figure 1.

The proposed residential zone boundary on Lot 3 is indicative only and is subject to further information being submitted by the proponent post-Gateway determination, including a survey plan, geotechnical report and bushfire assessment.

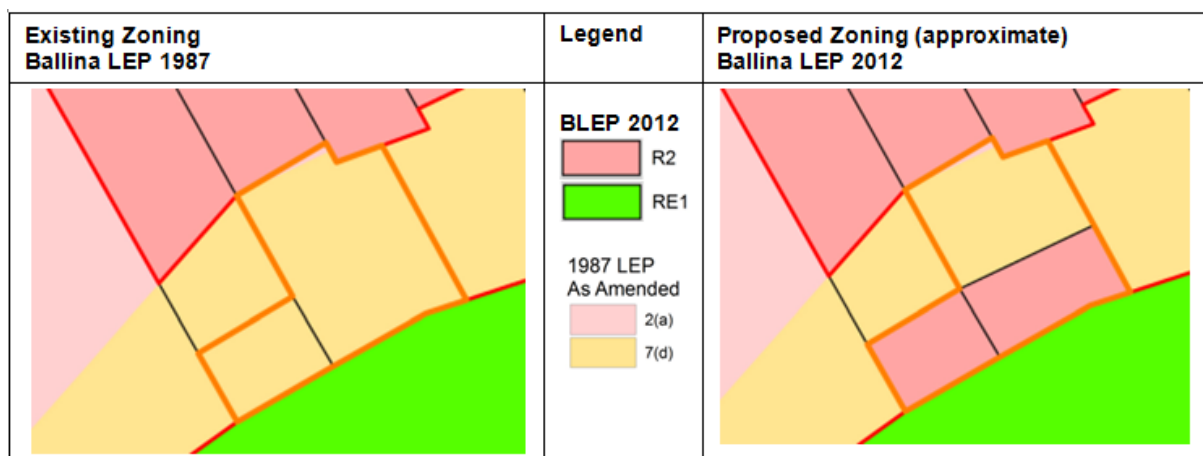


Figure 1: Existing and proposed zoning

The site has access to existing services including water, sewer, electricity and telecommunication facilities.

To facilitate a viable building envelope on the site a reduced front setback will be considered having regard for the constraints of the land, particularly in respect of bushfire and geotechnical issues. If a reduced front setback is determined to be suitable, this will be implemented by way of amendment to the Ballina Shire Development Control Plan 2012, contingent upon the provision of further information to be provided post-Gateway determination.

The proposal seeks to alter the minimum lot size from 40 hectares to 600m² for the land that is ultimately subject to an R2 zone. This is consistent with the applicable minimum lot size for the adjoining residential lots to the north. The existing and proposed lot size maps are provided in Appendix 3 and shown in Figure 2.

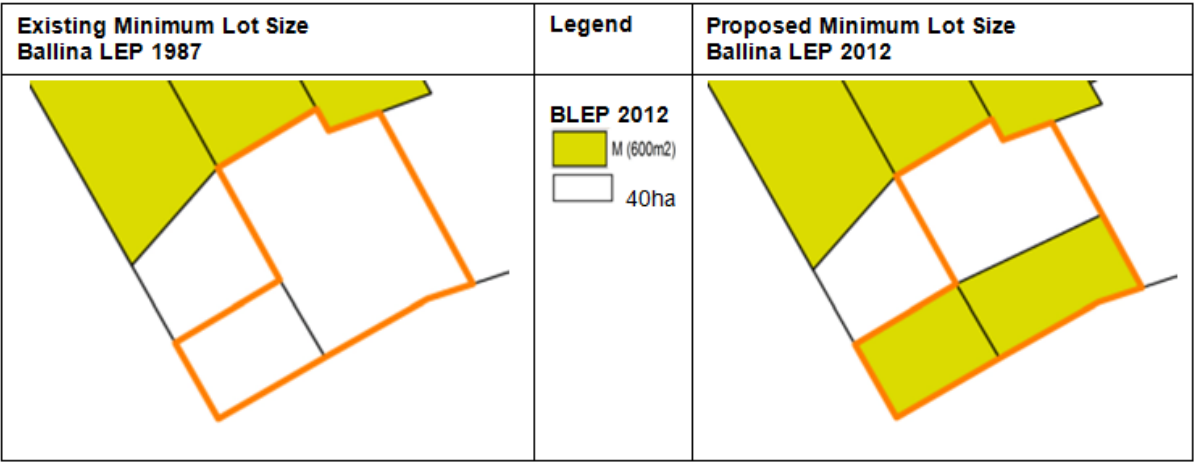


Figure 2: Existing and proposed lot size

It is also proposed to apply a maximum building height of 8.5 metres to the land that is ultimately subject to an R2 zone. This is consistent with the applicable maximum building height that applies to land within the vicinity of the subject site. Thumbnail maps of the existing and proposed height of buildings limitations are shown in Figure 3.

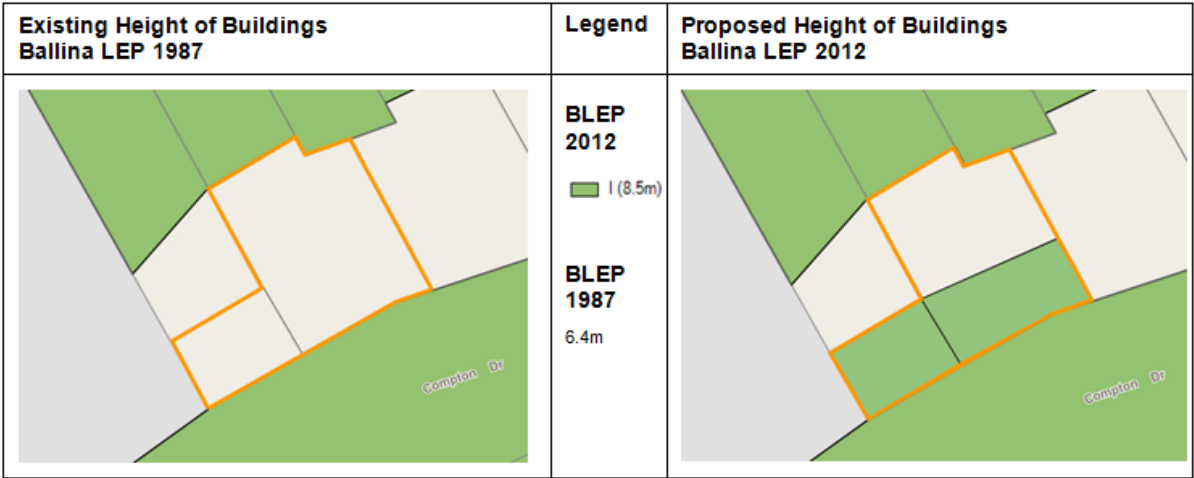


Figure 3: Existing and proposed height of buildings

The proposal will also require the mapping to be updated to apply the acid sulfate soils attribute to the subject land as it is classified as being Class 5 Acid Sulfate Soils. Thumbnail maps are shown in Figure 4.

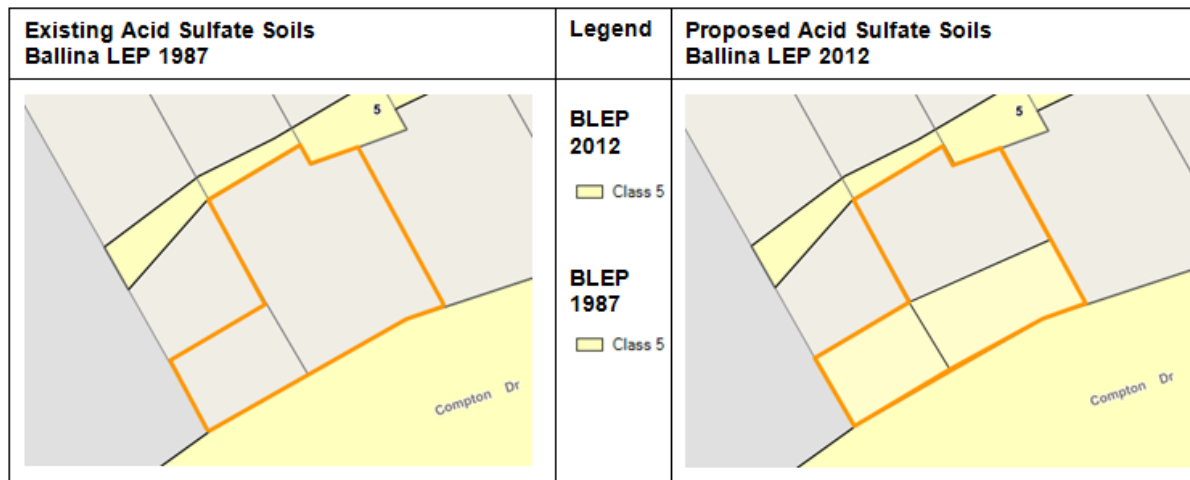


Figure 4: Existing and proposed acid sulfate soils mapping

3.2 Environmental Assessments

The proponent has not at this stage submitted comprehensive information required to justify the outcomes sought by the planning proposal. It is proposed that this information be required to be prepared and submitted by the proponent following Gateway determination.

It is expected that the following technical information will be required, at a minimum, to support the finalisation of the planning proposal:

- Geotechnical assessment including assessment of land slip hazards;
- Bushfire assessment;
- Land contamination; and
- Revised survey plan.

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of any strategic study or report?

No, the planning proposal is not the result of any specific strategic study or report. This proposal is a site specific landholder generated request for rezoning of the subject land.

Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. A planning proposal is an appropriate method to rezone the site as proposed.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The proposal is considered to be consistent with the *North Coast Regional Plan 2036* particularly in relation to the following directions:

Direction 1: Deliver environmentally sustainable growth – The site is located within an identified Urban Growth Area. The proposal for infill residential development within an existing serviced residential neighbourhood provides for low impact sustainable growth.

Direction 15: Develop healthy, safe, socially engaged and well-connected communities – The proposal will provide for residential development in close proximity to walking and cycling tracks which supports active living principles.

Q4 Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Ballina Shire Council Community Strategic Plan 2017-2027

The planning proposal is considered to be generally consistent with the elements and specified outcomes of Council's Community Strategic Plan 2017-2027 as indicated in the table below:

Element and Reference	Outcomes	Benefits
PE3 Prosperous Economy	Improve liveability in the shire	
PE3.1	Support residential development that delivers services close to home	Lower cost of living
PE3.2	Facilitate and provide affordable infrastructure	More affordable housing
HE3 Healthy Environment	Our built environment blends with the natural environment	
HE3.1	Develop and implement plans that balance the built environment with the natural environment	More people are satisfied with our management of development

Ballina Shire Growth Management Strategy 2012 (BSGMS)

The Ballina Shire Growth Management Strategy (BSGMS) provides the strategic planning context for urban development in Ballina Shire. The BSGMS identifies the following key issue of relevance to this planning proposal:

- Limited opportunities for outward expansion. Future development will occur mainly through infill development. Such development will need to be balanced with the generally low scale and coastal character of the locality.

The subject land is situated within an established residential area that is characterised by a mix of residential uses, open space/ parks, stands of bushland vegetation and Shaws Bay. The proposed rezoning of the land is considered to be generally consistent with the locality objectives for East Ballina contained within the BSGMS.

Ballina Local Environmental Plan 2012 (BLEP 2012) and BLEP 1987

The subject land is mapped as “DM – Deferred Matter” under the BLEP 2012 and is therefore subject to the provisions of the BLEP 1987. The land is currently zoned part 2(a) Living Area and part 7(d) Environmental Protection (Scenic/ Escarpment) under the BLEP 1987.

The proposal seeks to apply the R2 Low Density Residential Zone under the BLEP 2012 to part of the land that is currently zoned 7(d). The proposal is considered to be consistent with the objectives of the R2 zone which are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
- *To provide for development that meets the social and cultural needs of the community.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The proposal is considered to be consistent with applicable State Environmental Planning Policies (SEPPs).

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The proposal is consistent with the relevant Section 117 Directions. A Section 117 Direction checklist for the planning proposal is provided at Appendix 2.

4.3 Section C – Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The proponent has not yet examined the ecological significance of the subject site. Preliminary information available to Council indicates part of both Lots 1 and 3 contain littoral rainforest (not presently mapped under SEPP 26) which conforms to the Littoral Rainforest EEC and the critically endangered Littoral Rainforest and Coastal Vine Thickets community.

The land proposed for rezoning in Lot 1 contains an existing concrete pad. The extent of littoral rainforest on this land is yet to be determined. However, it is not proposed that any area of littoral rainforest on Lot 1 will be zoned for urban purposes.

The land proposed to be rezoned within Lot 3 contains an existing building and is clear of vegetation. It is not proposed that any area of littoral rainforest on Lot 3 will be zoned for urban purposes.

The proponent will be required to provide a revised survey plan to determine the exact extent of the proposed R2 zone boundary on Lot 3 and to clarify if all or part of Lot 1 is to be rezoned. It is anticipated that an ecological report will not be required unless the revised survey plan indicates an encroachment of the R2 boundary into existing vegetation located to the north of the existing building on Lot 3 and concrete pad on Lot 1.

Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The subject land is mapped as being bushfire prone land. Following a Gateway determination enabling the proposal to proceed, the planning proposal will be forwarded to the NSW Rural Fire Service for consultation.

The land is also subject to significant geotechnical constraints as both Lots 1 and 3 are situated within an area identified as having a medium to high risk of instability. Located behind the existing building on Lot 3 is a 2 metre high gravity retaining wall that supports a steep slope of the original hillside. Further investigation will be required to assess the slope stability of the land.

Q9 Has the planning proposal adequately addressed any social and economic effects?

The potential for adverse social impact is considered to be limited given the infill nature of the proposed LEP amendment request. The use of the land for residential purposes will be compatible with the existing adjacent residential uses, particularly from an amenity and land use conflict perspective.

The social and economic outcomes resulting from the proposed rezoning are considered to be positive.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

Infrastructure available to service the site and future residential development comprises the following:

- Electricity
- Water
- Sewer
- Telephone
- Sealed roadway

Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation is proposed to be undertaken with relevant agencies as required by the Gateway determination during the public exhibition stage of the planning proposal. At this stage consultation is proposed to be undertaken with the NSW Rural Fire Service and the Office of Environment and Heritage.

5. Mapping

The following maps have been prepared to support this planning proposal and are contained in Appendix 3:

- Map 1 – Site Plan (Aerial);
- Map 2 – Current Land Zoning Map Ballina LEP 1987;
- Map 3 – Proposed Land Zoning Map Ballina LEP 2012;
- Map 4 – Current Lot Size Map Ballina LEP 2012; and
- Map 5 – Proposed Lot Size Map Ballina LEP 2012.

Maps will be amended as the planning proposal progresses in response to a revised survey plan and detailed site assessment reports.

The proposal will also require amendments to the following maps:

- Height of Buildings Map;
- Acid Sulfate Soils Map; and
- Land Application Map to include the subject land within the LEP by removing the land from a Deferred Matter designation.

6. Community Consultation

This proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*.

7. Timeline

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination	June 2018
Government Agency Consultation	October 2018
Public Exhibition Period	November 2018
Public Hearing	N/A
Submissions Assessment	December 2018
RPA Assessment of Planning Proposal and Exhibition Outcomes	January 2019
Submission of Endorsed LEP to DP&E for Finalisation	February 2019
RPA Decision to Make the LEP Amendment (if delegated)	N/A [#]
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	N/A [#]

[#] Council is not proposing to exercise plan finalisation functions under delegation.

8. Appendices

Appendix 1 – Gateway Determination

A copy of the Gateway determination will be included here.

Appendix 2 – Section 117 Direction Checklist

Section 117 Direction Checklist Planning Proposal – 23 Compton Drive, East Ballina	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Does not apply to planning proposal.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Does not apply to planning proposal.
2. Environment and Heritage	
2.1 Environment Protection Zones	<p>Justifiably Inconsistent.</p> <p>The planning proposal involves the development of land identified as being of environmental significance. The land is presently subject to the 7(d) Environmental Protection (Scenic/ Escarpment) zone under the Ballina LEP 1987.</p> <p>Preliminary information available to Council indicates part of both Lots 1 and 3 contain littoral rainforest (not presently mapped under SEPP 26) which conforms to the Littoral Rainforest EEC and the critically endangered Littoral Rainforest and Coastal Vine Thickets community.</p> <p>The land proposed for rezoning in Lot 1 contains an existing concrete pad. The extent of littoral rainforest on this land is yet to be determined. However, it is not proposed that any area of littoral rainforest on Lot 1 will be zoned for urban purposes.</p> <p>The land proposed to be rezoned within Lot 3 contains an existing building and is clear of vegetation. It is not proposed that any area of littoral rainforest on Lot 3 will be zoned for urban purposes.</p>
2.2 Coastal Protection	<p>Consistent.</p> <p>The subject lot is located within the coastal zone.</p> <p><i>Clause 5.5 Development within the coastal zone</i> contained within Ballina LEP 2012 is applicable to development proposed within the coastal zone. Clause 5.5 includes provisions that give effect to and are consistent with:</p> <p>(a) the <i>NSW Coastal Policy: A Sustainable Future for the New South Wales Coast</i> 1997, and</p> <p>(b) the <i>Coastal Design Guidelines</i> 2003, and</p> <p>(c) the manual relating to the management of the coastline for the purposes of section 733 of the <i>Local Government Act 1993</i> (the <i>NSW Coastline Management Manual</i> 1990).</p>
2.3 Heritage Conservation	<p>Consistent.</p> <p>The planning proposal does not involve the development of land on which a heritage item is located, within a heritage conservation area or within the vicinity of a heritage item or conservation area.</p>
2.4 Recreation Vehicle Areas	<p>Consistent.</p> <p>The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.</p>
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	<p>Consistent.</p> <p>The planning proposal does not propose to introduce or alter an E2 Environmental Conservation or E3 Environmental Management zone.</p>
3. Housing, Infrastructure and Urban Development	

Section 117 Direction Checklist Planning Proposal – 23 Compton Drive, East Ballina	
Direction No.	Compliance of Planning Proposal
3.1 Residential Zones	Consistent. This proposal involves the rezoning of all or part of Lot 1 and part of Lot 3 from 7(d) Environmental Protection (Scenic/ Escarpment) under BLEP 1987 to R2 Low Density Residential zone under BLEP 2012. The proposed rezoning will provide for infill residential development which can be adequately serviced by existing infrastructure and services. The proposed rezoning will not result in any material loss or gain to any existing zoned residential areas.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. This proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.
3.3 Home Occupations	Consistent. The proposal will not affect any existing permissibility or exemptions for home occupations.
3.4 Integrating Land Use and Transport	Consistent. This proposal will not result in any negative impacts on accessibility or transport movements.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Consistent. The subject land is mapped as being Class 5 acid sulfate soils. The Ballina LEP 2012 includes an existing provision (Clause 7.1) that addresses development on land that has the potential for acid sulfate soils.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Does not apply to planning proposal.
4.4 Planning for Bushfire Protection	Justifiably Inconsistent. The subject land is mapped as bush fire prone land. Consultation will be undertaken with the NSW Rural Fire Service post Gateway determination.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Revoked.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Does not apply to planning proposal.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Revoked.

Section 117 Direction Checklist Planning Proposal – 23 Compton Drive, East Ballina	
Direction No.	Compliance of Planning Proposal
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.
5.10 Implementation of Regional Plans	Consistent. The planning proposal is considered to be consistent with the North Coast Regional Plan 2036 as the subject land is located within a designated Urban Growth Area.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes.
6.3 Site Specific Provisions	Consistent. The planning proposal does not relate to a specific development proposal to be carried out nor does it contain or refer to drawings that show details of the development proposal.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Ballina Shire.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Does not apply to Ballina Shire.
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.

Appendix 3 – Maps

Map 1 – Site Plan (Aerial)



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Site Map
23 Compton Drive, East Ballina

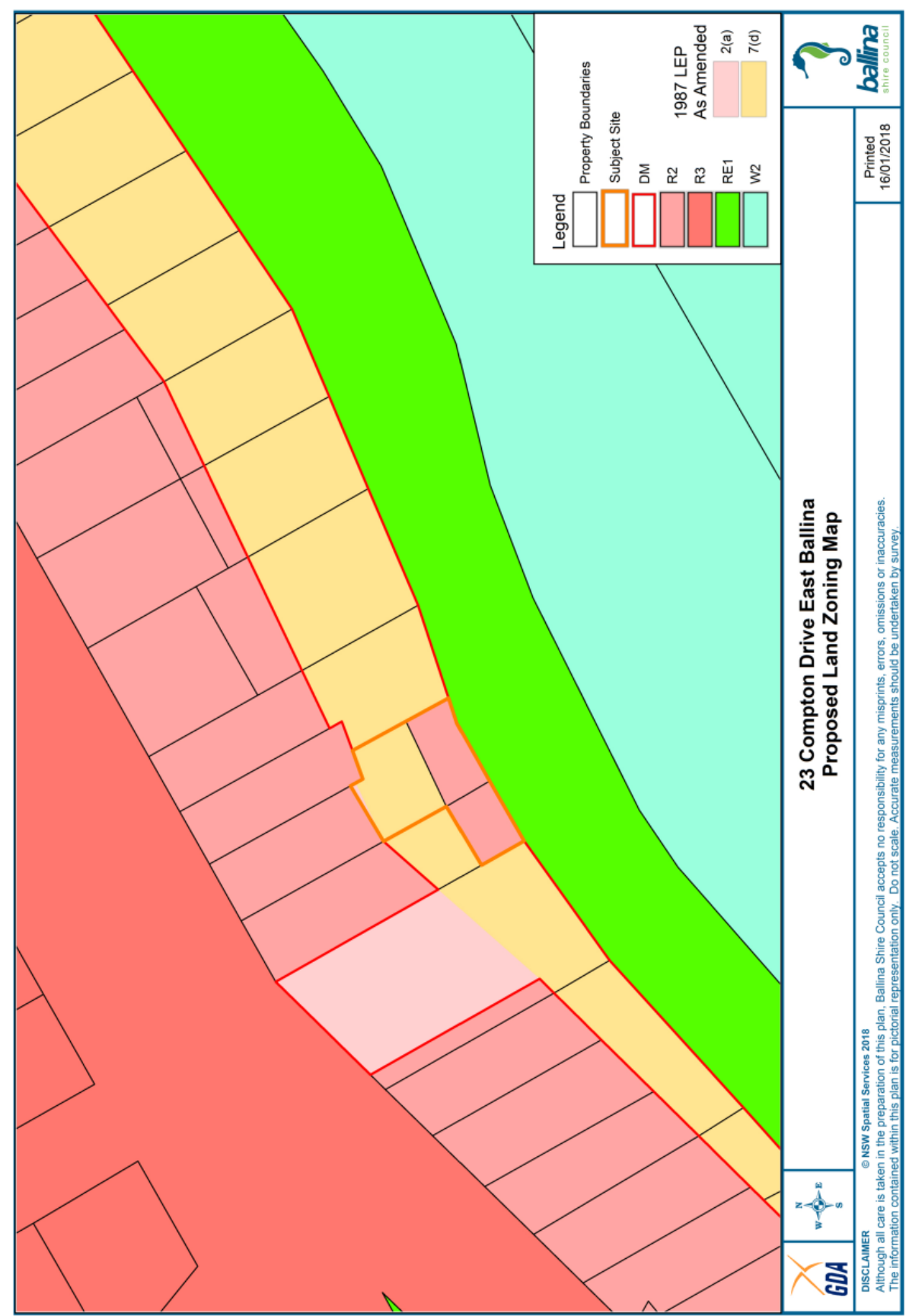
ballina shire council
geographical information system
Projection: GDA94 / MGA zone 56
Date: 17/01/2018

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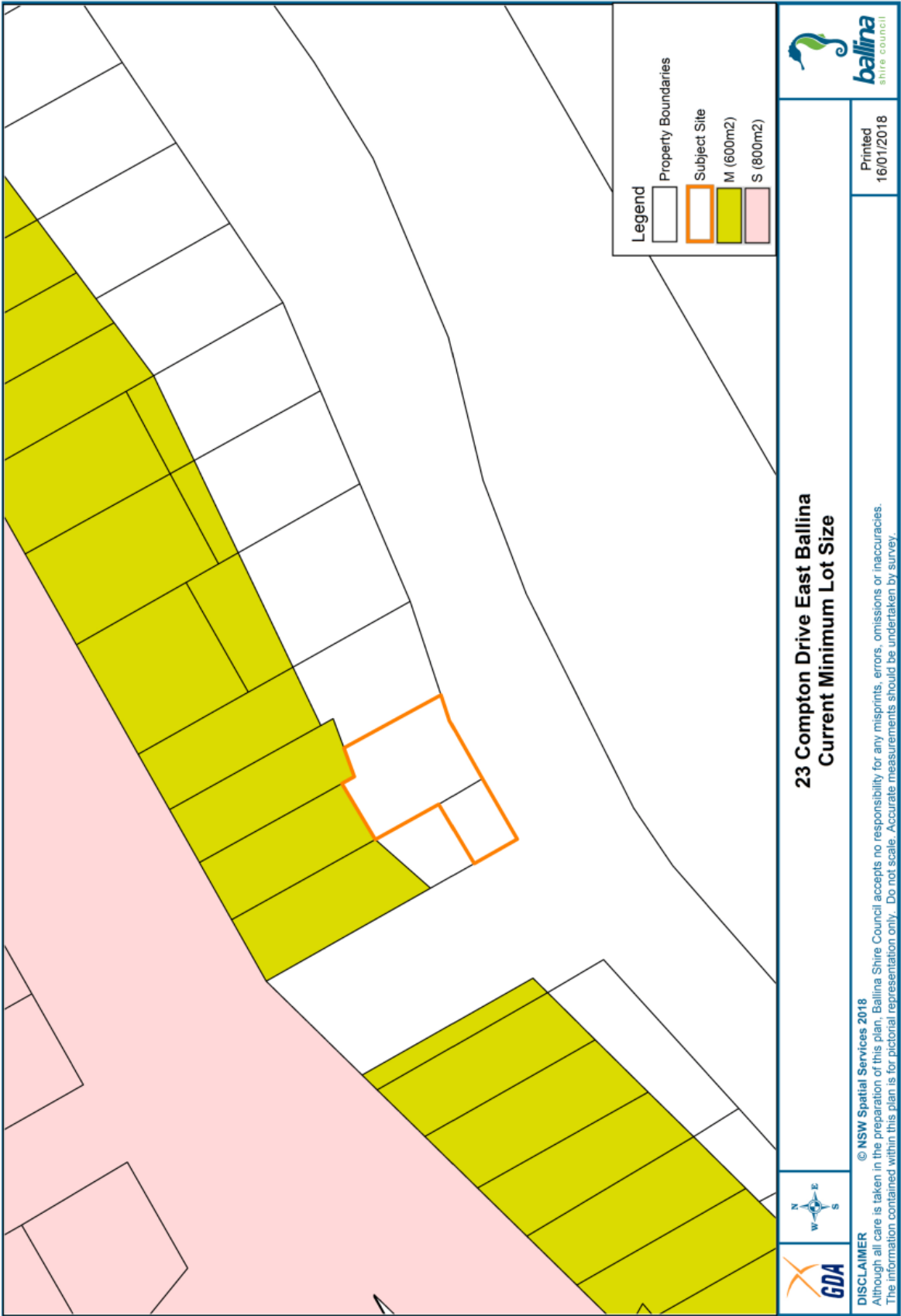
Map 2 – Current Land Zoning Map (Ballina LEP 1987 and Ballina LEP 2012)



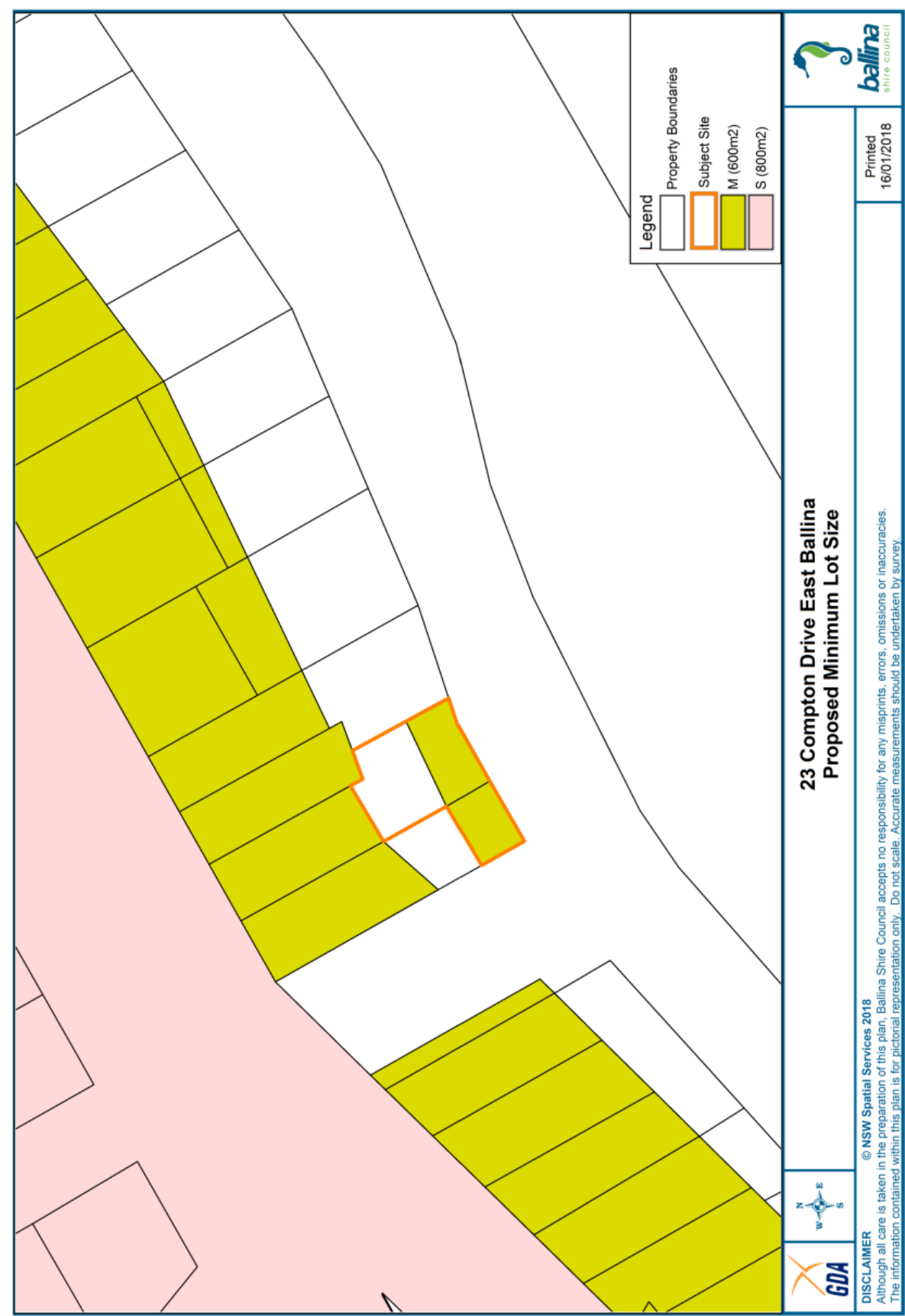
Map 3 – Proposed Land Zoning Map Ballina LEP 2012



Map 4 – Current Lot Size Map Ballina LEP 2012



Map 5 – Proposed Lot Size Map Ballina LEP 2012



Appendix 4 – Proponent's Planning Proposal Submission

Provided under separate cover.

Appendix 5 – Council Resolutions

9.1 LEP Amendment Request - 23 Compton Drive, East Ballina

9.1 LEP Amendment Request - 23 Compton Drive, East Ballina

Delivery Program	Strategic Planning
Objective	To outline a proposal to amend the Ballina Local Environmental Plan 2012 to rezone part of Lot 3 DP 525783, No. 23 Compton Drive, East Ballina and adjacent public land at Lot 1 DP 781542, to R2 Low Density Residential and seek direction on the submission of a planning proposal for Gateway determination.

Background

Council has received a request from Ardill Payne and Partners on behalf of the property owners Ms Sharon Barrie and Mr Kristian Moon to rezone part of Lot 3 DP 525783, No. 23 Compton Drive, East Ballina from Deferred Matter to R2 Low Density Residential under the Ballina Local Environmental Plan 2012 (BLEP 2012).

The proposal also involves a change from the 40ha minimum lot size for subdivision standard to apply a 600m² minimum lot size to the area proposed for the R2 zoning.

The proponent has advised that the landowners are liaising with Council's Commercial Services Section regarding a proposition for Council to consider the sale of all or part of the adjoining lot (Lot 1 DP 781542) contingent upon Lot 1 also being zoned for residential purposes.

Council's Commercial Services Group has supported the inclusion of Lot 1 in this planning proposal subject to further investigation and reporting, particularly in relation to the retention of the Coogee Street stairs in public ownership. Importantly, Council as a landholder can withdraw from the rezoning process at any time.

The Coogee Street stairs are partly located within Lot 1 and there is a prior resolution of the Council to excise the stairs from Lot 1 prior to any future leasing or disposal of Lot 1 to ensure the stairs remain in public ownership and accessible to the community.

The proposed amendment enables the land to be used for residential development. A copy of the information submitted by the proponent in support of the LEP amendment request is contained in Attachment 1.

A copy of the planning proposal prepared by Council staff that provides details about the proposed LEP amendment (BSCPP 17/012) is contained in Attachment 2.

The location of the land (Lots 1 and 3) is shown outlined in red in Figure 1.

9.1 LEP Amendment Request - 23 Compton Drive, East Ballina



Figure 1: Site Locality Lot 1 DP 781542 and Lot 3 DP 525783 (23 Compton Drive) East Ballina.

A request to rezone Lot 3 was considered as part of the draft planning proposal for Stage 2 of Council's deferred matters integration program which was reported to the Council at its April 2017 Ordinary Meeting. The planning proposal recommended the R2 Low Density Residential zone be applied to part of the land that was considered unsuitable for the application of an environmental zone.

At its April 2017 meeting the Council resolved not to proceed with the previously adopted staging program for the integration of deferred matters into the Ballina LEP 2012. Council resolved instead to retain the existing environmental protection zones under the Ballina LEP 1987 as deferred areas and to transition the remaining deferred areas into the Ballina LEP 2012.

Given the uncertainty surrounding the timeframe for resolving the integration of deferred matter land, the landowners have submitted a 'stand-alone' request to rezone part of Lot 3 to enable the residential development of the site. The adjacent public land (Lot 1) is also included for consideration as noted above.

The purpose of this report is to outline the amendment proposal and seek direction in relation to the further consideration and assessment of the amendment request.

Key Issues

- Merits of proposed LEP amendment.
- Infill residential development.
- Suitability of land for residential zoning and development.

9.1 LEP Amendment Request - 23 Compton Drive, East Ballina

Information

Zoning – Ballina LEP 2012 and Ballina LEP 1987

Both Lot 1 DP 781542 and Lot 3 DP 525783 are mapped as 'Deferred Matter' under the BLEP 2012 and remain subject to the provisions of the BLEP 1987. Lot 1 is zoned 7(d) Environmental Protection (Scenic/ Escarpment) and Lot 3 is zoned part 2(a) Living Area and part 7(d) Environmental Protection (Scenic/ Escarpment). Both land parcels are subject to a 40 hectare minimum lot size standard for subdivision.

Lot 3 does not currently have a dwelling entitlement in accordance with Clause 12(3) of the BLEP 1987.

Maps showing the current and proposed zoning and minimum lot size standards are provided in Appendix 2 of the planning proposal (Attachment 2).

Site Assessment

Lot 3 has an area of 537.5 square metres, is irregular in shape and has a frontage of approximately 21 metres to Compton Drive. Existing improvements on the land comprise a single storey timber and F/C clad building which is currently vacant and has previously been used as a restaurant/café. The site has access to existing services including water, sewer, electricity and telecommunication facilities.

Part of the existing building and associated improvements encroach onto the adjoining Lot 1 to the west (which is owned by Council) and the Compton Drive road reserve.

A survey plan dated November 2006 has been submitted by the proponent and is included in Attachment 1. The survey plan indicates the extent of the encroachments noted above and also identifies an easement for drainage of water, approximately 915mm wide that runs parallel with the northeastern boundary and benefits the adjacent Lot 1 to the north.

A further site survey plan will be required to be submitted after Gateway determination to confirm that a viable building envelope is available on the land and accurately define the position of the residential zone boundary.

It is likely that a reduced setback will be required to achieve a viable building envelope having regard for the constraints of the land, particularly in respect of bushfire and geotechnical issues. This is contingent upon the provision of further information post-Gateway determination. If a reduced front setback is deemed to be an acceptable approach, this can be addressed through an amendment to the Ballina Shire Development Control Plan 2012.

Lot 1 is Council owned land that is classified as Operational Land. The land is rectangular in shape and is 158m² in area. Lot 1 currently contains a concrete pad structure and part of the Coogee Street stairs.

The extent of Lot 1 proposed for rezoning to R2 Low Density Residential will be determined post-Gateway determination based on additional site assessment to be undertaken and further investigation to address the retention of the Coogee street stairs in public ownership. The zoning of this

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land may also be subject to further reporting to the Council as a landholder by Council's Commercial Services Section.

The planning proposal does not seek to change the zoning of that part of the land containing significant vegetation. That is, it is proposed that the 7(d) Environmental Protection (Scenic/ Escarpment) will be retained for these areas.

Strategic Context

The Ballina Shire Growth Management Strategy (BSGMS) provides the strategic planning context for urban development in Ballina Shire. The BSGMS identifies the following key issue of relevance to this planning proposal:

Limited opportunities for outward expansion. Future development will occur mainly through infill development. Such development will need to be balanced with the generally low scale and coastal character of the locality.

The subject land is situated within an established residential area that is characterised by a mix of residential uses, open space/ parks, stands of bushland vegetation and Shaws Bay. The proposed rezoning of the land is considered to be generally consistent with the locality objectives for East Ballina contained within the BSGMS.

Land Constraints

Bushfire

The land the subject of the amendment request is mapped as being bushfire prone land comprising Vegetation Category 2 and a 30m buffer as depicted in the map extracts in Diagram 1. The proponent will be required to submit a bushfire risk assessment report post-Gateway determination to enable consultation to occur with the NSW Rural Fire Service.

Geotechnical Conditions

The land is situated in an area identified by Coffey & Partners (March 1986) as having a medium to high risk of instability. A retaining wall approximately 2m high is located behind the existing building to support a steep slope of the original hillside. A geotechnical report will be required to be submitted post-Gateway determination to assess the slope stability for the site.

Ecology

The proponent has not submitted any information regarding the vegetation located on the land. Preliminary information provided by Biolink ecological consultants to Council in relation to Stage 2 of the former deferred matters integration program indicates the presence of an area of littoral rainforest that is not presently mapped under *State Environmental Planning Policy No. 26 Littoral Rainforests* (SEPP 26) located on both Lot 1 and Lot 3 and on other land within this vicinity.

The vegetation communities have been identified by Biolink as conforming to the Littoral Rainforest endangered ecological community (EEC) and the critically endangered Littoral Rainforest and Coastal Vine Thickets community

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as listed under state and federal legislation. Three threatened plant species have also been recorded in this area. Due to the identified conservation value of the vegetation, an ecological report will be required post-Gateway determination to provide further information on the ecological values of the site.

Acid Sulfate Soils

The land is mapped as being Class 5 Acid Sulfate Soils. Development consent is required on Class 5 land for works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m Australian Height Datum (AHD) and by which the water table is likely to be lowered below 1mAHD on adjacent Class 1, 2, 3 or 4 land.

The land is within 500m of Shaws Bay which is mapped as being Class 1 Acid Sulfate Soils. Any future development on the land must consider the provisions of Clause 7.1 of Ballina LEP 2012.

Land Contamination

The proponent has submitted that Lot 3 is unlikely to be contaminated as a result of its past use as a restaurant/café but acknowledges that due to the age of the building there is the potential for asbestos and lead paint to be contained in the building. In this respect, and given the characteristics of Lot 1 in relation to site contamination have not been examined at this stage, it is considered that further information is required to address the requirements of SEPP 55 and Council's *Management of Contaminated Land Policy*.

Should this proposal be supported then post-Gateway determination the proponent will be required to submit a preliminary site investigation report to demonstrate that the land is suitable for the proposed change in land zoning, with or without remediation.

Sustainability Considerations

- **Environment**
Investigation of environmental and biodiversity issues as well as bushfire, land contamination and geotechnical constraints in relation to the proposed residential use of the land would occur post Gateway determination if the planning proposal proceeds.
- **Social**
The proposed zoning does not raise any significant social implications for surrounding properties. The use of the land for residential purposes will be compatible with the existing adjacent residential uses (dwelling houses and residential flat buildings).
- **Economic**
There are no significant economic implications currently identified in relation to the proposed zoning.

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Legal / Resource / Financial Implications

Council's processing guidelines and adopted fees and charges for LEP amendment requests are applicable to the further processing of this request. The proponent is required to meet the costs associated with the processing of the application.

Processing of the amendment can be accommodated within the Strategic and Community Facilities Group work program.

Consultation

There has been no consultation undertaken with either the community or government agencies in relation to this LEP amendment request to date as the matter is in its initial phases.

Should the matter proceed, an affirmative Gateway determination will identify consultation requirements.

Public exhibition will occur following assessment of the required additional information and in accordance with the Gateway determination.

Options

1. Proceed to submit the planning proposal, for the application of an R2 Low Density Residential zone to part of Lot 3 and to all or part of Lot 1, to the Department of Planning and Environment for Gateway determination.

This is the preferred option.

A favourable Gateway determination will enable Council to further investigate the merits of the proposal and to obtain Government agency comments as well as community feedback on the proposal.

Under this approach a range of issues will be further investigated post-Gateway determination and prior to public exhibition. The outcomes of the further assessment will inform the extent of residential zoning proposed for the land (that is, adjustment may be required in relation to the currently proposed zone boundaries as shown in Attachment 2).

Given the small scale nature of the proposed rezoning it is recommended that Council authorises the submission of the planning proposal (BSCPP 17/002 contained in Attachment 2) to the Department of Planning and Environment for Gateway determination.

As further investigations and procedural steps are undertaken it is open to Council to either cease the amendment or change its approach, depending on the available information.

If the Council endorses this approach, the planning proposal to enable the rezoning will be lodged with the Department of Planning and Environment upon payment of the applicable Stage 2 processing fees by the proponent. A further report would be presented to the Council following the completion of the public exhibition phase of the process.

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In addition to the above, it is also recommended that Council indicates that it does not wish to exercise delegation from the Department of Planning and Environment for the processing of the amendment. This approach is recommended on the basis that the proposal involves Council owned land.

2. Defer consideration of the LEP amendment request.

The Council may defer consideration of the LEP amendment request in order to undertake an inspection of the site and locality, to seek additional information and/or to obtain a more in-depth briefing of the proposal.

This approach is recommended only in the event that the Council has unresolved initial concerns about the proposal.

3. Decline to initiate the LEP amendment request.

It is open to the Council to decline the requested LEP amendment, although this is not recommended.

Endorsement of this option would mean that no further action would be taken by Council with respect to the processing of the request. If this was to occur, it is open to the proponent to exercise a right to lodge a request for a pre-Gateway determination review with the Department of Planning and Environment.

RECOMMENDATIONS

1. That Council endorses the proposed amendments to the Ballina Local Environmental Plan 2012 as outlined in the planning proposal (BSCPP 17/012 - 23 Compton Drive East Ballina) contained in Attachment 2.
2. That Council submit BSCPP 17/012 - 23 Compton Drive East Ballina to amend the Ballina Local Environmental Plan 2012 to the NSW Department of Planning & Environment for Gateway determination.
3. That the Department of Planning and Environment be advised that Council does not wish to exercise its delegated plan making functions for this LEP amendment as the planning proposal involves Council owned land.
4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That the planning proposal be reported to the Council for further consideration following the completion of the public exhibition of the proposed LEP amendments.

Attachment(s)

1. LEP Amendment Request - 23 Compton Drive, East Ballina (Ardill Payne & Partners)

9.1 LEP Amendment Request - 23 Compton Drive, East Ballina

**2. Planning Proposal BSCPP 17/012 - 23 Compton Drive, East Ballina
(Council Initiation Version)**

9.1	LEP Amendment Request - 23 Compton Drive, East Ballina
	<p>250118/8 RESOLVED</p> <p>(Cr Sharon Cadwallader/Cr Ben Smith)</p> <ol style="list-style-type: none"> 1. That Council endorses the proposed amendments to the Ballina Local Environmental Plan 2012 as outlined in the planning proposal (BSCPP 17/012 - 23 Compton Drive East Ballina) contained in Attachment 2. 2. That Council submit BSCPP 17/012 - 23 Compton Drive East Ballina to amend the Ballina Local Environmental Plan 2012 to the NSW Department of Planning & Environment for Gateway determination. 3. That the Department of Planning and Environment be advised that Council does not wish to exercise its delegated plan making functions for this LEP amendment as the planning proposal involves Council owned land. 4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition. 5. That the planning proposal be reported to the Council for further consideration following the completion of the public exhibition of the proposed LEP amendments. <p>FOR VOTE - Cr David Wright, Cr Sharon Parry, Cr Jeff Johnson, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Nathan Willis, Cr Keith Williams, Cr Sharon Cadwallader and Cr Ben Smith</p> <p>AGAINST VOTE - Cr Phillip Meehan</p>