

Planning Services

Gateway Determination Report

LGA	Ballina
PPA	Ballina Shire Council
NAME	Rezoning of 23 Compton Drive, Ballina (1 dwelling, 0 jobs)
NUMBER	PP_2018_BALLI_003_00
LEP TO BE AMENDED	Ballina LEP 2012
ADDRESS	23 Compton Drive, East Ballina
DESCRIPTION	Lot 1 DP 781542 and Lot 3 DP 525783
RECEIVED	10 May 2018
FILE NO.	EF 18/6210, IRF18/2481
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The planning proposal seeks to rezone part of Lot 1 DP 781542 and part of Lot 3 DP 525783, 23 Compton Drive, East Ballina from 7(d) Environmental Protection (Scenic/Escarpment) to R2 Low Density Residential and apply a 600m² minimum lot size and 8.5m maximum building height to the land being rezoned R2.

This rezoning will also require consequent changes to the Land Application Map and Acid Sulfate Soils Map resulting from the inclusion of part of the subject land into the Ballina LEP 2012.

Site description

The subject land comprises two lots, Lot 3 DP 525783 and Lot 1 DP 781542.

Lot 3 is a 537.5m² lot which contains a single storey building on the south eastern part of the lot which has previously been used as a restaurant/café. The building and associated structures encroach onto the Compton Drive road reserve and onto the adjoining Lot 1. The north western remainder of Lot 3 is steep vegetated land. An ecological site assessment Council had previously commissioned indicates the presence of an area of littoral rainforest on this steep section of the land.

Lot 1 is a 158m² lot which is owned by Council and is classified as operational. In addition to the encroachments from the building and concrete pad from Lot 3, Lot 1

An aerial photograph of a residential neighborhood. A specific lot is outlined in red. The lot is irregularly shaped and contains a swimming pool. The lot number '3' and the address '525783' are visible within the red outline. The lot is bordered by a road labeled 'Compton Dr' to the south and another road labeled 'Pine Av' to the north. Other lots in the area are labeled with numbers and addresses: '1' 549665, '4' 525783, '2' 549665, '11' 21531, '1' 243718, '6' 1127820, '1' 781542, '4' 574594, and '7017' 1064314. The area is densely wooded with many trees.

Existing planning controls

Lot 1 is also deferred from the Ballina LEP 2012 and is zoned entirely 7(d) Environmental Protection (Scenic/Escarpment) under the Ballina LEP 1987.

2 / 10

Surrounding area

The land to the north is zoned R2 Low Density Residential and is developed for residential purposes. The land to the south of Compton Drive comprises public reserve and Shaws Bay. The land to the east is privately owned land which is also zoned 7(d) while the land to the west is public reserve which contains the Coogee Street Stairs and is also zoned part 7(d) and part 2(a) Living Area. A map of the current zones of the surrounding land, subject land outlined in orange, is at Figure 2.



Figure 2 Current zone map with subject land outlined in orange

Summary of recommendation

It is recommended that the planning proposal should proceed for the following reasons:

1. the proposal will enable that part of the subject land which is already developed to be zoned to enable it to be used for residential purposes, consistent with surrounding land uses;
2. the proposal will include the subject land into the Ballina LEP 2012; and
3. the proposal is not inconsistent with the strategic planning framework for the site.

PROPOSAL

Objectives or intended outcomes

The proposal contains an objective which adequately explains the intended outcome of the proposal. The objective of the proposal is to apply a low density residential zone, a 600m² minimum lot size and an 8.5m maximum building height to the land to enable it to be used for residential purposes.

The proposal will also make consequent amendments to the Land Application Map and the Acid Sulfate Soils Map of the Ballina LEP 2012 as a result of introducing the subject land into this LEP.

Explanation of provisions

The proposal contains an explanation of provisions which adequately describes how the objective of the proposal will be achieved. The planning proposal seeks to:

1. Rezone part of the subject land from 7(d) Environmental Protection (Scenic/Escarpment) to R2 Low Density Residential;
2. Apply a 600m² minimum lot size (MLS) to that part of the land being zoned R2;
3. Apply an 8.5m maximum building height to the land being rezoned R2; and
4. Make consequent amendments to the Land Application Map and Acid Sulfate Soils Map in Ballina LEP 2012.

Mapping

The proposal contains maps which adequately show the subject land and the current and proposed zones, minimum lot sizes, maximum building height, and acid sulfate soil class. These maps are adequate for public exhibition purposes. Maps which comply with the Standard Technical requirements for LEP maps will need to be prepared prior to the LEP being finalised.

NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of a study or report. The proposal has arisen in response to a request from the land owner to rezone Lot 3 DP 525783, 23 Compton Drive, East Ballina to R2 Low Density Residential.

Lot 3 has previously been developed for a restaurant/café though the building is currently vacant. The land does not currently have a dwelling entitlement however Council has agreed to rezone part of the land containing the vacant restaurant to enable it to be redeveloped for residential purposes.

Since the vacant restaurant and associated buildings encroach onto Lot 1 DP 781542, Council has also resolved to investigate rezoning of Lot 1 with the view to selling it to the owners of Lot 3.

If Lot 1 is to be sold it is Council's intention that the Coogee Street stairs which are located along the western edge of Lot 1, will be excised from Lot 1 to enable the stairs to be retained for public purposes. Lot 1 is already classified as operational land under the *Local Government Act 1993*.

The proposed residential use of the land is considered to be appropriate. The land is bordered to the north by existing residential development and the redevelopment of the restaurant for residential purposes will mitigate any potential land use conflict between the commercial and residential land uses.

The proposed R2 zone is appropriate for the site given it is consistent with the zoning of the surrounding residential land. The slope and vegetation constraints of the site, mean that a zone which permits more intensive development is not appropriate. Similarly, the proposed 600m² MLS and 8.5m height limit are consistent with the development standards for the surrounding residential development.

The proposed amendments to the Ballina LEP 2012 are therefore considered to be the best means of achieving the intent of the planning proposal which is to enable the land to be developed for residential purposes. While dwellings are permissible with consent in the 7(d) zone, Lot 3 does not have a dwelling entitlement under the Ballina LEP 1987, therefore it is necessary to rezone the land to R2 and apply a 600m² MLS to provide the ability to use the land for residential purposes.

STRATEGIC ASSESSMENT

State

The proposal is not inconsistent with any of the eighteen State priorities being actioned by the State Government. The proposal will enable the land to be developed to provide an additional housing opportunity in the Ballina LGA.

Regional / District

The proposal is consistent with the North Coast Regional Plan 2036. The land is located within the urban growth area boundary for Ballina and therefore its rezoning for residential purposes is appropriate.

The proposal is not inconsistent with action 2.1 to focus development to areas of least biodiversity sensitivity. Even though the land is zoned 7(d) Environmental Protection (Scenic/Escarpment), the part of the land being rezoned to residential comprises land which has already been developed and contains existing buildings and infrastructure.

Local

The proposal is not inconsistent with the Ballina Shire Growth Management Strategy 2012 (BSGMS). The BSGMS advocates for infill development which this proposal achieves. The proposal reflects the low scale and coastal character of the land and its locality by proposing an R2 Low Density Residential zone and an 8.5m maximum building height.

The planning proposal also demonstrates that the proposal is consistent with the Ballina Shire Council Community Strategic Plan 2017-2027.

Section 9.1 Ministerial Directions

The following Section 9.1 directions are relevant to the planning proposal 1.5 Rural Lands, 2.1 Environment Protection Zones, 2.2 Coastal Management, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Areas, 3.1 Residential Zones, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulfate Soils, 4.4 Planning for Bushfire Protection, 5.10 Implementation of Regional Plans, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, and 6.3 Site Specific Provisions.

The proposal is considered to be inconsistent with the following directions 2.1, 2.3, 4.1, and 4.4.

Direction 1.5 Rural Lands is relevant to the planning proposal. The proposal is considered to be consistent with the Rural Planning Principles in SEPP (Rural Lands) 2008 as discussed later in this report.

Direction 2.1 is relevant to the planning proposal. The direction provides that a planning proposal must include provisions to facilitate the protection and conservation of environmentally sensitive areas and must not reduce the environmental protection standards which apply to the land.

The land contains an area of littoral rainforest. This vegetated part of the site will retain the 7(d) Environmental Protection (Scenic / Escarpment) zoning under the Ballina LEP 1987 and therefore the proposal is consistent with this aspect of the direction.

The proposal also seeks to rezone part of the subject land from 7(d) Environmental Protection (Scenic / Escarpment) to R2 Low Density Residential and is therefore inconsistent with the direction. The direction provides that a proposal may be inconsistent with the direction if it is justified by a strategy or is of minor significance. The inconsistency is considered to be of minor significance as the portion of the land to be rezoned R2 is already developed and contains a vacant building and outside paved areas that were formerly used as a restaurant / café. The inconsistency of the proposal with the direction is therefore considered to be justified in accordance with the terms of the direction.

Direction 2.3 Heritage Conservation is relevant to the planning proposal. The direction provides that a planning proposal must contain provisions that facilitate the protection of heritage items and areas of Aboriginal Heritage significance. An Aboriginal cultural heritage assessment has not been undertaken for the subject land.

The direction provides that a proposal may be inconsistent with the direction if it is justified by provisions to conserve environmental or indigenous heritage significance in existing environmental planning instruments, legislation or regulations or it is of minor significance.

It is considered that since the land proposed to be rezoned to residential has already been developed for commercial purposes since at least 1991 and the Ballina LEP 2012 contains provisions which require the protection of matters of heritage significance through the development application process, the inconsistency is of minor significance and justified in accordance with the terms of the direction. Nevertheless, it is considered appropriate that Council consult with the Local Aboriginal Land Council during public exhibition to determine whether the land contains any Aboriginal cultural significance.

Direction 4.1 Acid Sulfate Soils is relevant to the planning proposal. The direction provides that a planning proposal must not permit an intensification of land uses on land identified as having a probability of containing acid sulfate soils. The proposal notes that inclusion of the land in the Ballina LEP 2012 will mean that land will be included as class 5 on the Acid Sulfate Soils Map. The proposed R2 zone will also permit a wider range of land uses than the 7(d) Environmental Protection zone.

The direction provides that a proposal may be inconsistent with the direction if it is justified by a strategy or study or is of minor significance. An acid sulfate soils management report has not been prepared for the site. The Acid Sulfate Soils Guidelines 1998 note that class 5 soils do not have a probability of containing acid sulfate soils but are considered as a buffer to Class 1 to 4 lands where activities on the Class 5 land may result in the lowering of the water table on adjoining Class 1 to

4 land. The inconsistency is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. The subject land is mapped as bush fire prone. The direction provides that the RPA must consult with the Commissioner of the NSW Rural Fire Service (RFS), and the draft plan must include provisions relating to bushfire control. Consultation with the RFS is required after a Gateway Determination is issued and before public exhibition and until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

The proposal is otherwise consistent with the Section 9.1 directions.

State environmental planning policies

Many state environmental planning policies (SEPPs) apply to the subject land. The proposal is inconsistent with the following SEPPs.

SEPP 55 Remediation of Land.

SEPP 55 requires that a preliminary contamination assessment be undertaken for land before it is rezoned for residential purposes. A preliminary contamination assessment has not yet been completed for this site however the proposal notes that Council intends for a contamination assessment to be undertaken after a Gateway determination is issued and prior to public exhibition. While the site has been developed for commercial purposes the proposed change of use to residential increases the potential risk of people coming into contact with contaminated matter. It is recommended that the Gateway determination contain a condition requiring a contaminated land assessment be undertaken prior to public exhibition and the planning proposal amended to reflect the outcomes of this assessment if necessary.

SEPP Rural Lands 2008

The Rural Lands SEPP contains Rural Planning Principles which must be taken into consideration when planning for rural and environmental land. The proposal is considered to be consistent with the Rural Planning Principles for the following reasons;

1. The land is not suited to agricultural purposes due to its small size, steep slope, proximity to existing residential development and existing native vegetation. As such the rezoning of the land will not result in the loss of opportunities for productive agricultural pursuits and is not expected to have any significant adverse social or economic impacts as discussed later in this report.
2. The land proposed to be zoned R2 is already developed for commercial purposes while the remainder of the site is constrained by slope and vegetation and will retain the 7(d) Environmental Protection zone. This approach is considered to balance the social, economic and environmental interests of the land owners and the community by enabling the viable use of the existing developed land while ensuring existing vegetated land is protected.
3. The proposal is consistent with North Coast Regional Plan 2036.

SITE-SPECIFIC ASSESSMENT

Social

The proposal is not expected to have significant adverse social impacts. The land to be rezoned R2 is already developed and has previously been used for commercial purposes. The building is currently vacant and its proposed use for residential purposes is not considered to be incompatible with the surrounding land uses. The public exhibition process will determine the community's attitude to the change in land use.

Environmental

The proposal is not expected to have significant impacts on critical habitat, threatened species, populations or ecological communities or their habitats. The part of the land proposed to be rezoned is already developed and is therefore cleared of significant vegetation. The remainder of the land has been identified as containing Littoral Rainforest Endangered Ecological Community vegetation and the Littoral Rainforest and Coastal Vine Thickets community. This vegetation will be retained in the 7(d) Environmental Protection zone.

The proposal states that no further investigation into the ecological attributes of the site will be undertaken unless an updated survey of the site reveals that the proposed R2 zone will encroach on vegetated areas of the site. This is considered to be appropriate.

The retention of the 7(d) Environmental Protection zone is appropriate until such time as the E2 or E3 zone is introduced into the Ballina LEP 2012.

The land is not flood prone and is identified as comprising Class 5 soils on the Acid Sulfate Soils Map.

The steepness of the site means that further geotechnical investigations will be necessary to ensure that any redevelopment can be undertaken without risk to the escarpment or properties on the top of the escarpment. It is considered that while this is an issue for future development applications, it does not prevent the land from being rezoned as the land to be rezoned is already developed.

Economic

The proposal is not expected to have significant economic impacts. The proposal will enable a change of use of the land and building from a restaurant to residential purposes. The building is currently vacant and has been for some time, so there is no immediate loss of employment opportunities. Future employment opportunities will arise from the redevelopment of the site for residential purposes.

Infrastructure

As the site is already developed the necessary, water, sewer, electricity, telecommunications and vehicular access infrastructure are already in place. No significant additional infrastructure is considered to be necessary for the proposed residential use of the land.

CONSULTATION

Community

The proposal does not nominate a period of public exhibition for the proposal. It is considered that the proposal is a low impact proposal as it seeks to rezone land which is already developed, to enable it to be used for residential purposes. It is considered that a public exhibition period of 14 days is sufficient.

Agencies

The proposal notes that Council intends to consult with the following State agencies:

1. NSW Rural Fire Service; and
2. NSW Office of Environment and Heritage.

It is also considered that Council should consult with the Local Aboriginal Land Council in the absence of an Aboriginal cultural heritage assessment, as discussed previously in this report.

TIME FRAME

The planning proposal includes a time frame which nominates the submission of the final planning proposal to the Department for completion of the LEP amendment in February 2019. Given the need for Council to conduct further site investigations, undertake community consultation and finalise the potential arrangements for sale of part of Lot 1, it is considered that an 18 month time frame for completion of the LEP amendment is appropriate.

LOCAL PLAN-MAKING AUTHORITY

Council has requested not to be the local plan-making authority for this planning proposal as the proposal includes land which is currently owned by Council and is proposed to be sold to the proponent. It is agreed that Council should not be authorised to be the local plan-making authority in this instance to maintain transparency of decision making considering that the rezoning of the Council owned land may result in a financial benefit.

CONCLUSION

It is recommended that the planning proposal should proceed for the following reasons:

1. the proposal will enable that part of the subject land which is already developed to be zoned to enable it to be used for residential purposes, consistent with surrounding land uses;
2. the proposal will include the subject land into the Ballina LEP 2012; and
3. the proposal is not inconsistent with the strategic planning framework for the site.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that the inconsistencies of the proposal with section 9.1 Directions 2.1 Environment Protection Zones, 2.3 Heritage Conservation and 4.1 Acid Sulfate Soils are justified in accordance with the terms of the directions; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification once consultation with the NSW Rural Fire Service has been undertaken.

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

1. Prior to public exhibition the following site investigations are to be undertaken:
 - (a) a site contamination assessment;
 - (b) a bushfire assessment;
 - (c) a geotechnical assessment including assessment of land slip hazards; and
 - (d) a revised survey plan and an ecological assessment if the revised survey plan identifies that the land to be zoned R2 will include land containing the Littoral Rainforest Endangered Ecological Community vegetation or the Littoral Rainforest and Coastal Vine Thickets community.
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the following public authorities:
 - NSW Rural Fire Service;
 - NSW Office of Environment and Heritage; and
 - the Local Aboriginal Land Council.
4. The time frame for completing the LEP is to be 18 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.

T. Prentice 28/5/18
Tamara Prentice
Team Leader, Northern

6/6/2018
Jeremy Gray
Director Regions, Northern
Planning Services

Contact Officer: Paul Garnett
Senior Planner, Northern
Phone: 6641 6607