



Planning Proposal 17/012

**» 23 Compton Drive,
East Ballina**

December 2019 (V3 Exhibition) 19/90295

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 part of 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 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.

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 was an active deferred commencement consent for alterations and additions to the building which lapsed in October 2018. Part of the existing building and other associated improvements encroach onto Lot 1 and the Compton Drive road reserve.

A request to rezone Lot 3 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 Lot 1 DP 781542 and part Lot 3 DP 525783, (Lots 1 and 3), No. 23 Compton Drive, East Ballina as shown in Figure 1 below and on the Site Identification Map contained within Appendix 3.



Figure 1: Extract from Site Identification Map

1.4 Council Resolutions

Council considered this planning proposal at its Ordinary Meeting of 25 January 2018. The Council resolved as follows:

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

A Gateway determination was issued on 6 June 2018 allowing the planning proposal to proceed subject to conditions. A number of site investigations and technical reports were required to be undertaken prior to the public exhibition of the planning proposal.

The Gateway determination also required consultation to be undertaken with certain public authorities and organisations.

An altered Gateway determination was issued on 13 November 2019 which extended the time frame for completion of the LEP amendment until 6 June 2020.

Appendix 1 contains copies of the original and altered Gateway determinations.

2. Objectives & Intended Outcomes

The objective of this planning proposal is to amend the Ballina LEP 2012 in respect to part of Lots 1 and 3 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

The proposed outcome will be achieved by:

- Amending the BLEP 2012 Land Application Map by removing the Deferred Matter designation that applies to the subject land and including the subject land within the LEP;
- Amending the BLEP 2012 Land Zoning Map by deleting the Deferred Matter designation that applies to the subject land and replacing it with a R2 Low Density Residential zone;
- Amending the BLEP 2012 Lot Size Map by deleting the 40 hectare lot size that applies to the subject land and replacing it with a 600m² lot size;
- Amending the BLEP 2012 Height of Buildings Map by applying a maximum building height of 8.5 metres to the subject land; and
- Amending the BLEP 2012 Acid Sulfate Soils Map by applying the Class 5 acid sulfate soils attribute to the subject land.

It is proposed that the R2 zone boundary will effectively follow and be offset approximately 1 metre from the northern side of the existing retaining wall on Lots 1 and 3 as shown outlined by thick red border in Figure 2 below.

The residual land on Lots 1 and 3 will remain subject to the provisions of the Ballina LEP 1987. The thumbnail maps contained in Figures 3 to 6 indicate the mapping outcomes proposed by this planning proposal.

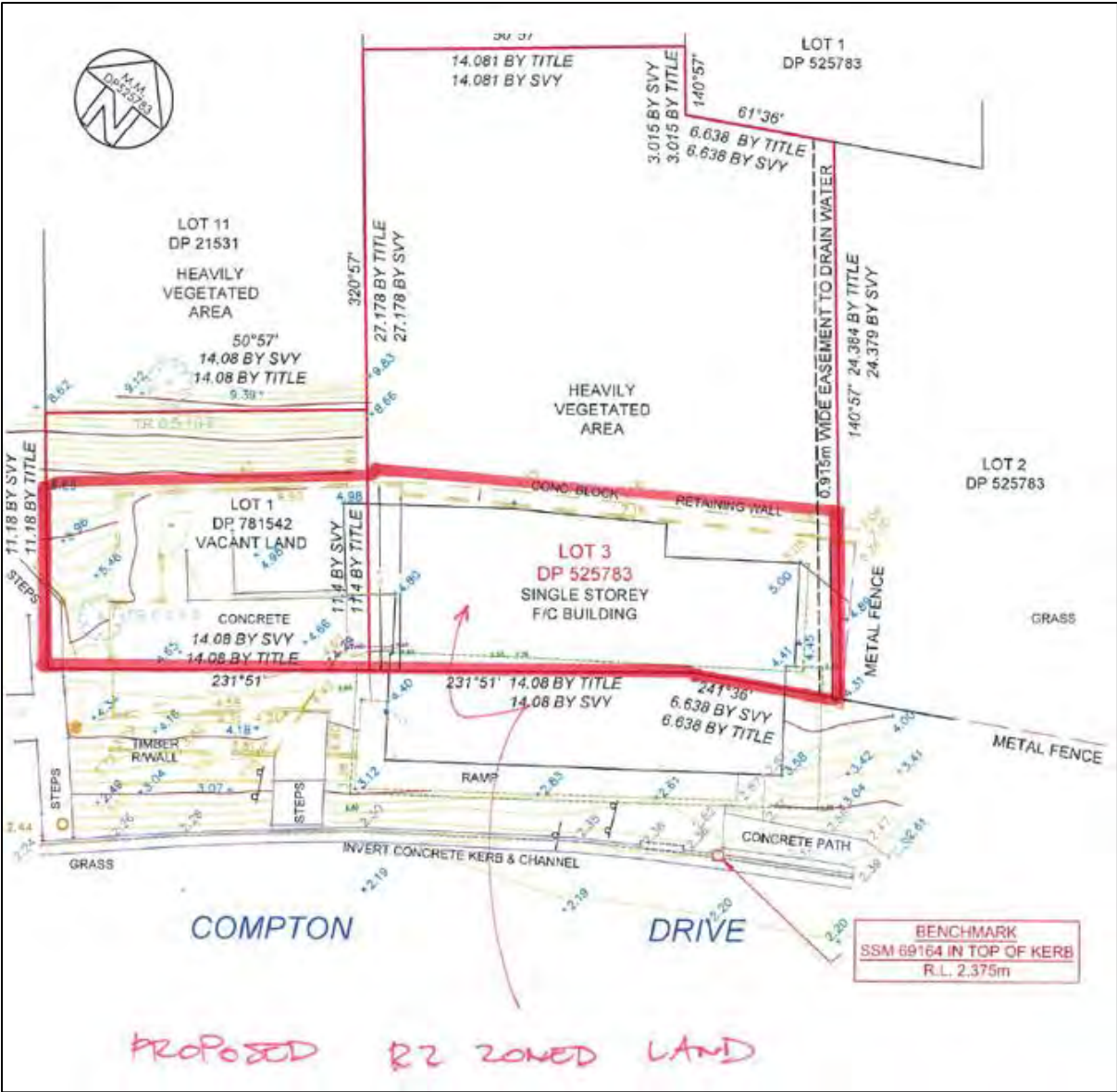


Figure 2: Proposed R2 zone boundary outlined in thick red border

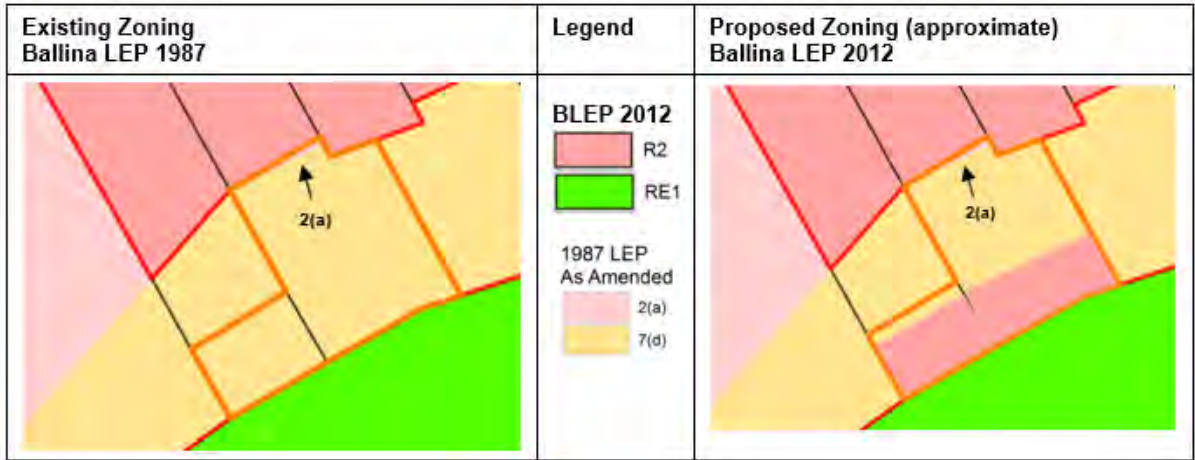


Figure 3: Existing and proposed zoning

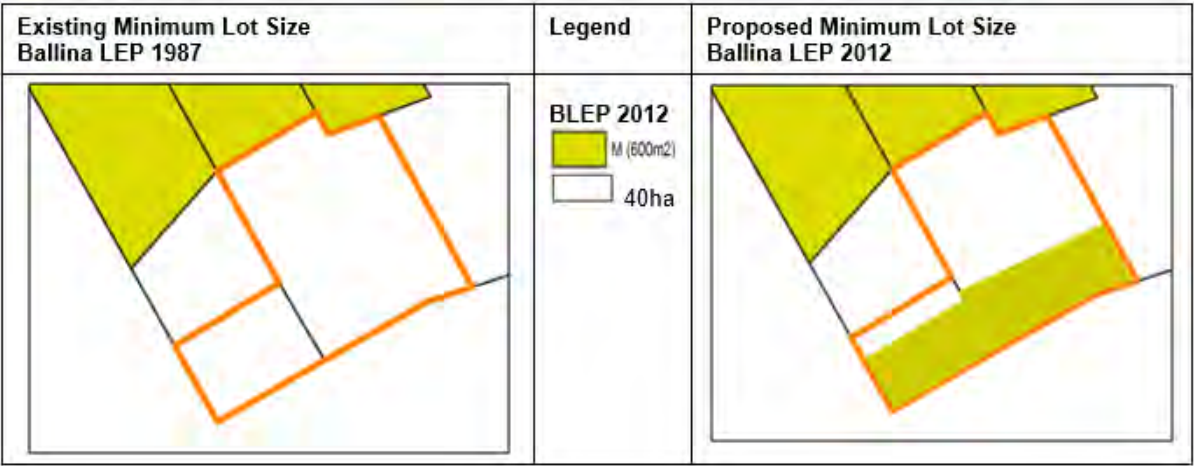


Figure 4: Existing and proposed lot size

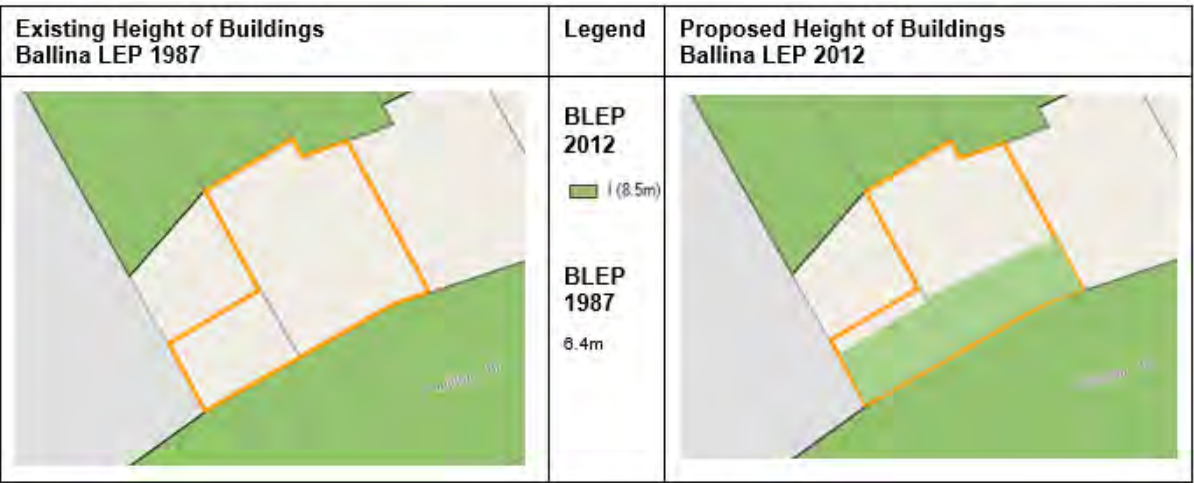


Figure 5: Existing and proposed height of buildings

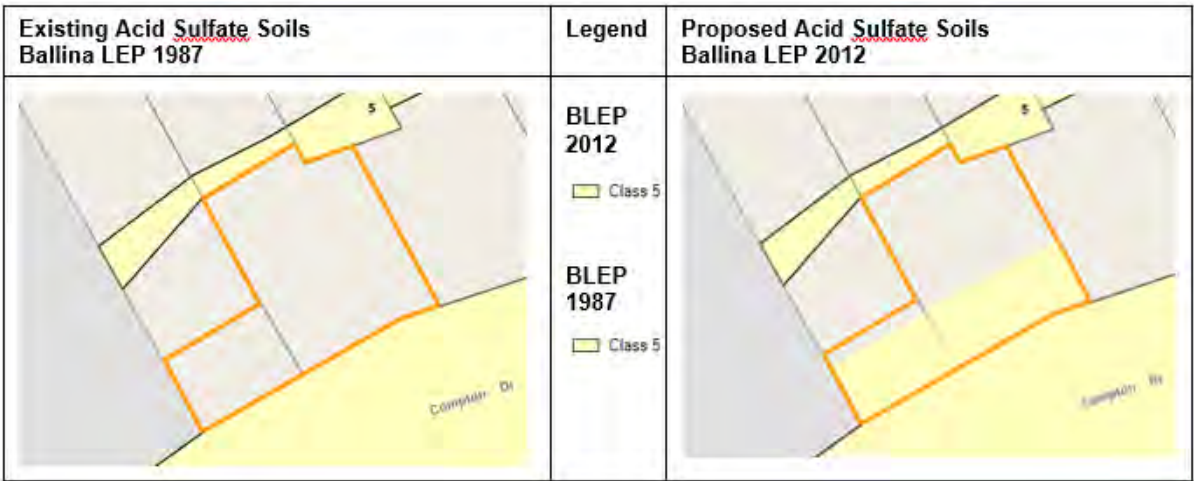


Figure 6: Existing and proposed acid sulfate soils mapping

3.2 Environmental Assessments

The Gateway determination required the following site investigations to be undertaken prior to the public exhibition of the planning proposal:

- A site contamination assessment;
- A bushfire assessment;
- A geotechnical assessment including assessment of land slip hazards; and
- 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.

The proponent has submitted the required technical reports and information. There were no significant issues identified in the reports that would prevent the subject land from being rezoned to residential as proposed.

The additional technical reports and supporting information being exhibited concurrently with this planning proposal are referenced within Appendices 6 and 7.

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of an endorsed local strategic planning statement, 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 Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

The 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 Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or 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	

Element and Reference	Outcomes	Benefits
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. Lot 1 is subject to the 7(d) Environmental Protection (Scenic/ Escarpment) zone and Lot 3 is 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 Lots 1 and 3 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 generally consistent with applicable State Environmental Planning Policies (SEPPs).

SEPP 55 – Remediation of Land

The proponent has submitted a Stage 1 Preliminary Contamination Assessment report in accordance with the requirements of SEPP 55, the Gateway determination and Council's *Management of Contaminated Land Policy*.

The report concludes that based on the investigation undertaken that the site is suitable for the proposed residential rezoning.

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

No. A number of inconsistencies, considered to be of minor significance and justifiable in the circumstances, have been identified. A section 9.1 Direction checklist for the planning proposal is provided at Appendix 2.

The Department of Planning, Industry and Environment's Director Regions, Northern Planning Services, has agreed when issuing the Gateway determination that the proposal's inconsistencies with section 9.1 Directions *2.1 Environment Protection Zones*, *2.3 Heritage Conservation* and *4.1 Acid Sulfate Soils* are justified or of minor significance.

In respect to the proposal's inconsistency with section 9.1 Direction *4.4 Planning for Bushfire Protection* it has been advised that the agreement of the Department's Secretary may still need to be obtained and this should occur prior to the plan being made.

Consultation with the NSW Rural Fire Service is being undertaken concurrently with the exhibition of this planning proposal.

4.3 Section C – Environmental, Social and Economic Impact

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

The Gateway determination required that an ecological assessment be prepared 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.

The proponent has submitted a revised site survey plan which indicates the proposed R2 zone boundary will effectively follow and be offset approximately 1 metre from the northern side of the existing retaining wall on Lots 1 and 3 (refer to Appendix 6).

Whilst it is not proposed that any land containing littoral rainforest on Lots 1 and 3 will be zoned for urban purposes, the proponent has submitted an Ecological Assessment report which examines whether the planning proposal is likely to give rise to any direct adverse impacts on critical habitat or threatened species, population or ecological communities, or their habitats.

The Ecological Assessment, prepared by Geolink and dated October 2019, concludes the following:

- *The littoral rainforest vegetation located in the north-western portion of the site is of high biodiversity conservation value and comprises the following threatened ecological communities (TECs):*

- *Littoral rainforests and coastal vine thickets of eastern Australia TEC (listed under the Environment Protection and Biodiversity Conservation Act); and*
- *Littoral rainforest in the NSW North Coast, Sydney Basin and South East Corner bioregions TEC (listed under the Biodiversity Conservation Act).*
- *The littoral rainforest vegetation is of moderate condition with weeds and edge effects apparent.*
- *The residential rezoning and future development within the existing cleared/developed portion of the site would have minimal biodiversity impact.*
- *Some direct impacts to the littoral vegetation on the edge of this area is likely through:*
 - *Establishment and maintenance of the required Asset Protection Zone (APZ) to the north-west; and*
 - *Removal of overhanging trees.*
- *It is recommended that consideration should be given to applying a reduced front setback in the south-eastern portion of the site along Compton Drive to minimise impacts to the littoral rainforest vegetation.*
- *Mechanisms to protect retained vegetation (outside the building envelope and APZ) should form part of any future development application.*

A copy of the Ecological Assessment is being exhibited concurrently with the planning proposal and has also been forwarded to the NSW Biodiversity and Conservation Division for comment.

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

Bushfire Impacts

The subject land is designated as bushfire prone land. A 100 metre wide buffer to Category 2 vegetation extends across the majority of Lot 1 and the south-eastern portion of Lot 3. Lot 3 is also affected by Category 2 vegetation on the north-western portion of the site.

The proponent has submitted a Bush Fire Assessment Report, prepared by Bushfire Consultancy Australia and dated 6 September 2019, as required by the Gateway determination. The report concludes that any proposed future development will be constructed to the minimum standard required in accordance with the guidelines of *Planning for Bushfire Protection 2018* and *AS 3959-2009 Construction of buildings in bushfire prone areas*.

Consultation with the NSW Rural Fire Service is being undertaken as part of the exhibition process of this planning proposal. A copy of the Bush Fire Assessment Report is being exhibited concurrently with the planning proposal as required by the Gateway determination.

Geotechnical Constraints

Lots 1 and 3 are located within an area identified as being susceptible to landslip (Coffey Partners Pty Ltd report). Coffey Geotechnics prepared a draft Slope Hazard Assessment report in 2013 for the previous landowner. The proponent has submitted

a Geotechnical Assessment prepared by GHD Pty Ltd dated 17 September 2019 which provides follow up geotechnical advice to the draft 2013 report.

The report prepared by GHD Pty Ltd concludes the following:

- *The review of the slope conditions and the 2013 report identifies slope instability hazards. These are not insurmountable and the 2013 report provides methods for mitigation of those hazards.*
- *Further geotechnical work would be required once the proposed building layout and design has been finalised, including a revised slope risk assessment to consider the suitability of the proposed structural controls to geotechnical hazards.*
- *Given suitable geotechnical advice and structural engineering solutions, the site can safely be developed as a residential site. The residual risks can be managed to 'Low' which is in line with community expectations for residential land.*

A copy of the Geotechnical Assessment prepared by GHD, which includes the draft 2013 report prepared by Coffey Geotechnics, is being exhibited concurrently with the planning proposal as required by the Gateway determination.

Land Contamination

The proponent has submitted a Stage 1 Preliminary Contamination Assessment report prepared by ENV Solutions dated September 2019. The report concludes that the site is suitable for the proposed residential rezoning from an environmental (contamination) perspective.

A copy of the Stage 1 Preliminary Contamination Assessment report is being exhibited concurrently with the planning proposal as required by the Gateway determination.

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 being undertaken with the NSW Rural Fire Service, the NSW Department of Planning, Industry and Environment's Biodiversity and Conservation Division (formerly Office of Environment and Heritage) and the Jali Local Aboriginal Land Council as required by the Gateway determination during the public exhibition of the planning proposal. .

5. Mapping

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

- Map 1 – Site Identification Map (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.

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*. The planning proposal will be exhibited for a minimum period of 28 days and will incorporate the following elements:

- Advertisement within the Ballina Shire Advocate;
- Letters to adjoining and nearby property owners;
- Site signage;
- Notice on Council's website; and
- Exhibition at Council's Customer Service Centre and Community Access Points.

7. Timeline

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

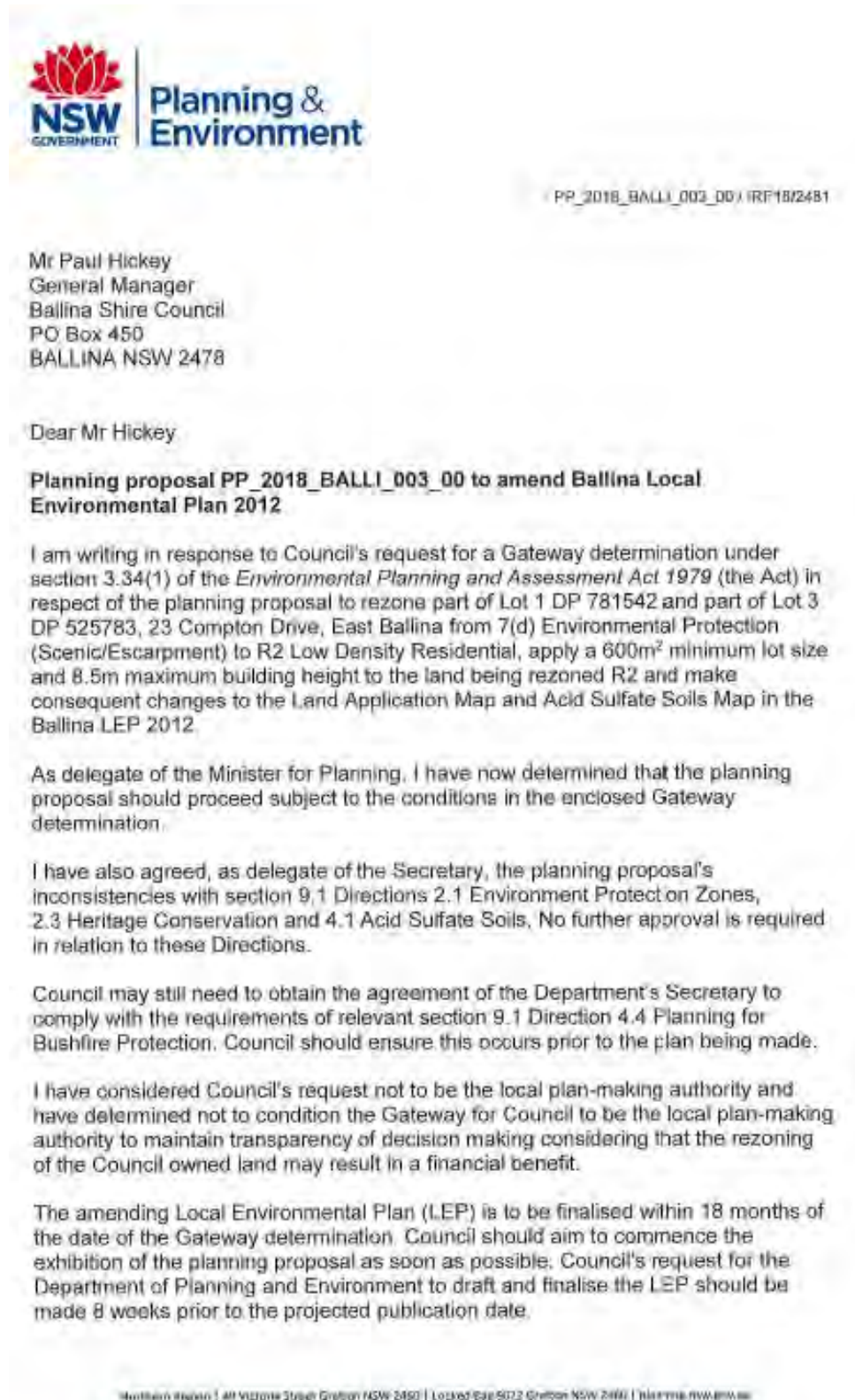
Plan Making Step	Estimated Completion (Before)
Original Gateway Determination	June 2018
Government Agency Consultation	February 2020
Public Exhibition Period	February 2020
Public Hearing	N/A
Submissions Assessment	March 2020
RPA Assessment of Planning Proposal and Exhibition Outcomes	April 2020
Submission of Endorsed LEP to DP&E for Finalisation	April 2020
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

Original Gateway determination – 6 June 2018



The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any further enquiries about this matter, I have arranged for Mr Paul Garnett to assist you. Mr Garnett can be contacted on 6641 6607.

Yours sincerely

 6/6/2012

Jeremy Gray
Director Regions, Northern
Planning Services

Encl: Gateway determination



Planning & Environment

Gateway Determination

Planning proposal (Department Ref: PP_2018_BALLI_003_00): 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, apply a 600m² minimum lot size and 8.5m maximum building height to the land being rezoned R2 and make consequent changes to the Land Application Map and Acid Sulfate Soils Map in the Ballina LEP 2012.

I, the Director Regions, Northern at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Ballina Local Environmental Plan (LEP) 2012 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, apply a 600m² minimum lot size and 8.5m maximum building height to the land being rezoned R2 and make consequent changes to the Land Application Map and Acid Sulfate Soils Map in the Ballina LEP 2012 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. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment 2016) and must be made publicly available for a minimum of **14 days**, and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).

PP_2018_BALLI_003_00 (HRE18/2481)

3. Consultation is required with the following public authorities and organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

- NSW Rural Fire Service;
- NSW Office of Environment and Heritage; and
- The Local Aboriginal Land Council.

Each public authority/organisation is to be provided with a copy of the Planning Proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

4. 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. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The time frame for completing the LEP is to be **18 months** following the date of the Gateway determination.

Dated 6 day of June 2018.



Jeremy Gray
Director Regions, Northern
Planning Services
Department of Planning and
Environment

Delegate of the Minister for Planning

Altered Gateway Determination – 13 November 2019



**Planning,
Industry &
Environment**

PP_2018_BALLI_003_00 / IRF19/6903

Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Mr Hickey

**Planning proposal PP_2018_BALLI_003_00 – Alteration of Gateway
Determination**

I refer to your letter seeking an extension of time to complete planning proposal PP_2018_BALLI_003_00 for the rezoning of land for residential purposes at 23 Compton Drive, East Ballina.

I have determined as the delegate of the Minister, in accordance with section 3.34(7) of the *Environmental Planning and Assessment Act 1979*, to alter the Gateway determination dated 6 June 2018 for PP_2018_BALLI_003_00. The Alteration of Gateway determination is enclosed.

If you have any questions in relation to this matter, I have arranged for Ms Helen Willis to assist you. Ms Willis can be contacted on 5778 1489.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Gray'.

13-11-2019

**Jeremy Gray
Director, Northern Region
Planning and Assessment**

Encl: Alteration of Gateway Determination



Planning,
Industry &
Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2018_BALLI_003_00)

I, Director, Northern Region, at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 6 June 2018 for the proposed amendment to the Ballina Local Environmental Plan 2012 as follows:

1. Delete condition 5:

"5. The time frame for completing the LEP is to be 18 months following the date of the Gateway determination."

and replace with a new condition 5:

"5. The time frame for completing the LEP is by 6 June 2020."

Dated 13 day of November 2019.

A handwritten signature in black ink, appearing to read "J. Gray".

Jeremy Gray
Director, Northern Region
Planning and Assessment
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning
and Public Spaces

PP_2018_BALLI_003_00 / IRF19/8903

Appendix 2 – Section 9.1 Direction Checklist

Section 9.1 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> <p>The Director Regions, Northern Planning Services, Department of Planning, Industry & Environment, in his letter dated 6 June 2018 has advised that he has agreed as delegate for the Secretary that the inconsistency is justified and no further approval is required in relation to this Direction.</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 1997</i>, and</p> <p>(b) the <i>Coastal Design Guidelines 2003</i>, 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 1990</i>).</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> <p>The Director Regions, Northern Planning Services, Department of Planning, Industry & Environment, in his letter dated 6 June 2018 has advised that he has agreed as delegate for the Secretary that the inconsistency is justified and no further approval is required in relation to this Direction.</p>

Section 9.1 Direction Checklist Planning Proposal – 23 Compton Drive, East Ballina	
Direction No.	Compliance of Planning Proposal
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Consistent. The planning proposal does not propose to introduce or alter an E2 Environmental Conservation or E3 Environmental Management zone.
3. Housing, Infrastructure and Urban Development	
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.
3.7 Reduction in non-hosted short term rental accommodation period	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. The Director Regions, Northern Planning Services, Department of Planning, Industry & Environment, in his letter dated 6 June 2018 has advised that he has agreed as delegate for the Secretary that the inconsistency is justified and no further approval is required in relation to this Direction.
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 as required by the Gateway determination.
5. Regional Planning	

Section 9.1 Direction Checklist Planning Proposal – 23 Compton Drive, East Ballina	
Direction No.	Compliance of Planning Proposal
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.
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.
5.11 Development of Aboriginal Land Council land	Does not apply to planning proposal.
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 to 7.10	These Directions do not apply to Ballina Shire.

Appendix 3 – Maps

Map 1 – Site Identification Map (Aerial)



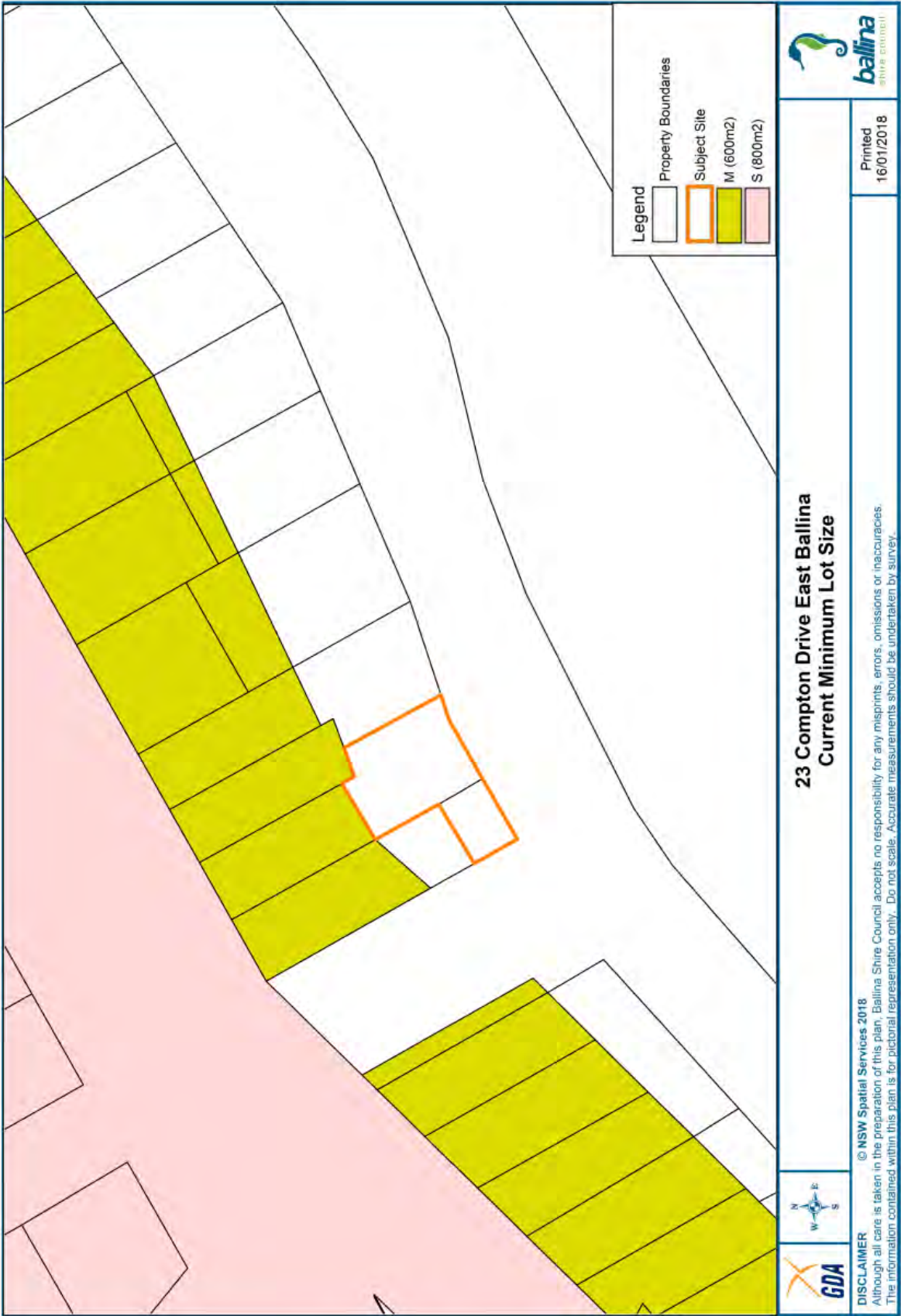
Map 2 – Current Land Zoning Map (Ballina LEP 1987 and Ballina LEP 2012)



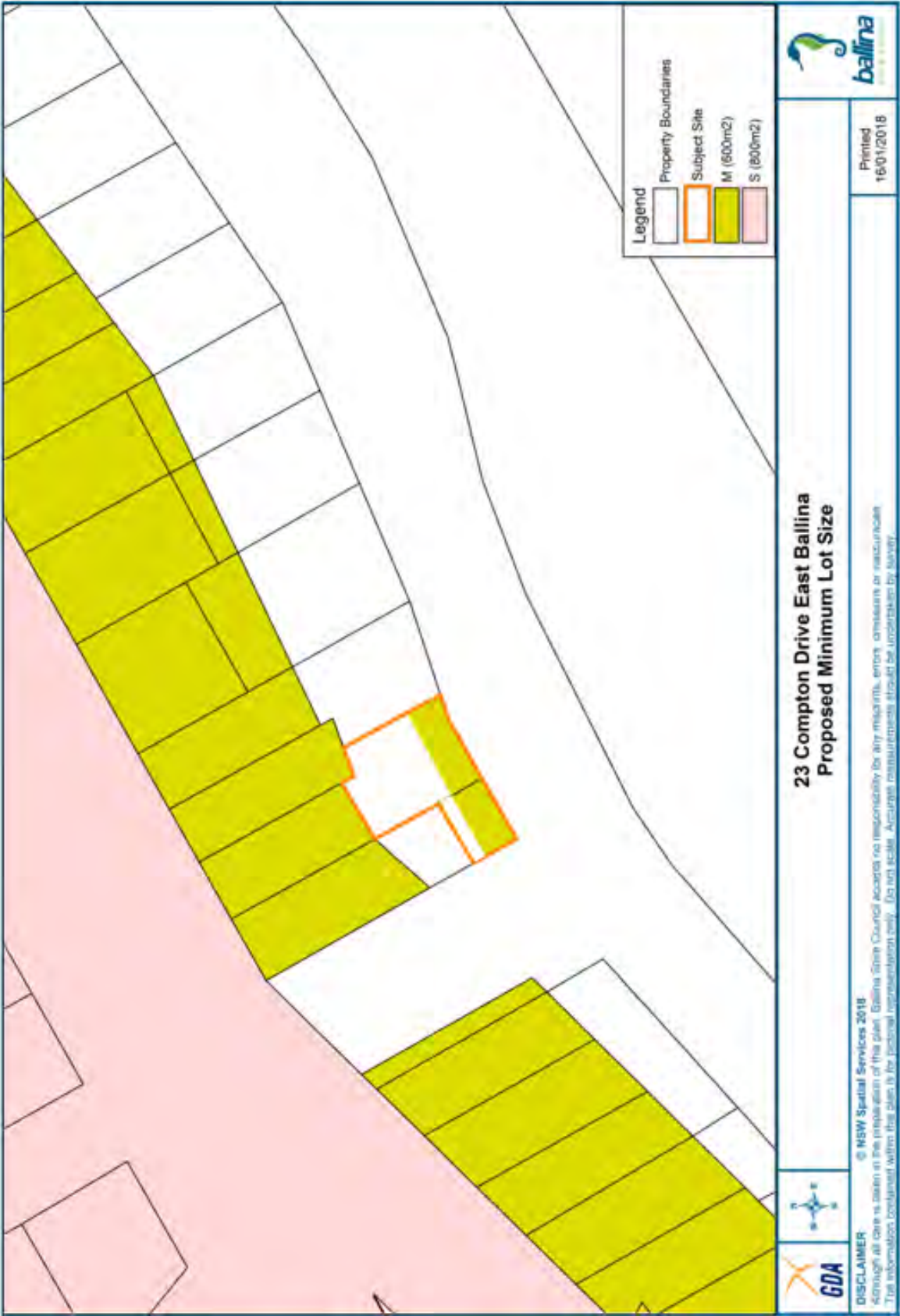
Map 3 – Proposed Land Zoning Map Ballina LEP 2012



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

9.1 LEP Amendment Request - 23 Compton Drive, East Ballina

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

9.1 LEP Amendment Request - 23 Compton Drive, East Ballina

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.

9.1 LEP Amendment Request - 23 Compton Drive, East Ballina

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.

9.1 LEP Amendment Request - 23 Compton Drive, East Ballina

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)

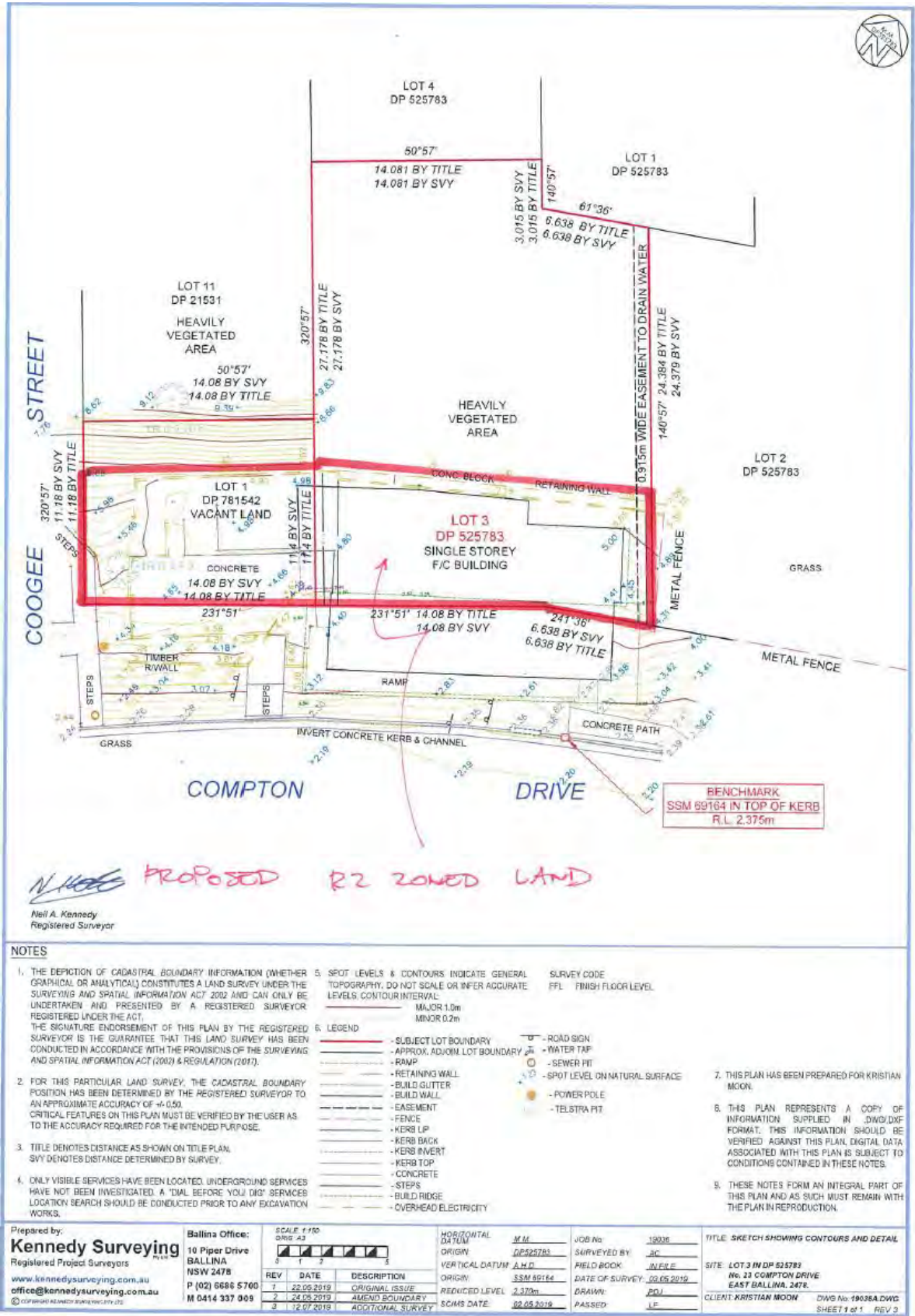
1. LEP Amendment Request - 23 Compton Drive, East Ballina (Ardill Payne & Partners)

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>

Appendix 6 – Contour and Detail Survey



Appendix 7 – Technical Reports and Supporting Information

The proponent has submitted a number of reports and other information in support of this planning proposal. This material is being exhibited as part of this planning proposal (available under separate cover) and comprises the following:

- Bush Fire Assessment Report;
- Ecological Assessment;
- Geotechnical Assessment; and
- Stage 1 Preliminary Contamination Assessment.