

8152 - planning proposal submission (nov 2017)

**30 November 2017**

The General Manager  
Ballina Shire Council  
PO Box 450  
**BALLINA NSW 2478**

**Attention: Leah Toole**

**Dear Leah**

**re: LEP Amendment Request – Lot 3 DP 525783, No. 23 Compton Drive, East Ballina**

I refer to prior communications in respect of the subject matter and in particular to the following:

- our letter dated 22<sup>nd</sup> November 2016 and our Rezoning Submission dated November 2016
- Council's Planning Proposal – Ballina Local Environmental Plan 2012 – Deferred Matters Integration – Stage 2 (March 2017 (V1. Council Initiation) 17/2092)
- Council's letter dated 31<sup>st</sup> May 2017
- our meeting on the 4<sup>th</sup> September 2017 with Matthew Wood and Sharon Barrie.

As a consequence of Council's resolution at its Ordinary Meeting on the 27<sup>th</sup> April 2017 (Minute No. 270417/12) and further to discussions during our 4<sup>th</sup> September meeting, Ms Barrie and Mr Moon have decided to make a formal "stand-alone" request to Ballina Council to rezone the subject land from part 2(a) – Living Area and part 7(d) – Environmental Protection (Scenic/Escarpment) Zone under the BLEP 1987 to R2 – Low Density Residential Zone under the BLEP 2012.

This proposed zoning change to R2 is as per our November 2016 Rezoning Submission (attached), which submitted that an "E" zone was not appropriate for the subject land having regard to the findings and recommendations of the Northern Councils E Zone Review – Final Recommendations Report.

Further to our Rezoning Submission, it is requested that the Planning Proposal also includes a request to amend the minimum lot size/subdivision standard from 40ha to 600m<sup>2</sup> which is the same standard that has been applied to the adjoining/adjacent lots on the southern side of Hill Street.

As detailed in Council's Planning Proposal – Ballina Local Environmental Plan 2012 – Deferred Matters Integration – Stage 2 (March 2017 (V1. Council Initiation) 17/2092), it was Council's Strategic Planners' position that an R2 zone was appropriate for the subject land.

It is submitted that there is sufficient information contained in our November 2016 Planning Proposal document, which coupled with the work already undertaken by Council's Strategic Planners in the Deferred Matters Integration – Stage 2, to explain the planning proposal in the context of both:

- Planning Proposals – A Guide to Preparing Planning Proposals (Department of Planning and Environment, August 2016)
- Planning Proposals and Local Environmental Plan Amendments: Process Guidelines v3.0 (Ballina Council, 23 June 2015)

Attached herewith is:

- completed Planning Proposal/LEP Amendment Request Proponent & Proposal Information Form that has been signed by the land owners
- a cheque for \$3690.00 being the Stage 1 Commencement fee as advised by Mr Wood's email dated 4<sup>th</sup> September 2017 (copy attached)
- 1 x paper and 1 x CD copies of APP's Rezoning Submission – Lot 3 DP 525783, No. 23 Compton Drive, East Ballina, dated November 2016

I trust that Council will favourably consider this Planning Proposal.

**Yours faithfully**



Paul Snellgrove

**ARDILL PAYNE & PARTNERS**

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# Planning Proposal / LEP Amendment Request Proponent & Proposal Information Form

Lodge Applications at Ballina Shire Council • 40 Cherry Street • Ballina (Mon-Fri 8.15am to 4.30pm)  
mail PO Box 450 Ballina 2478 • dx 27789 • f 02 6686 7035 • e council@ballina.nsw.gov.au  
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This form is to be completed and submitted when a request for an LEP amendment or planning proposal is lodged with Council.

## Proponent Details

All correspondence will be forwarded to this name and address unless alternative details are specified below.

Proponent's Name	AS PER BELOW		
Address			
Postal Address			
Telephone (w)		(h)	
Mobile			
Email Address		Fax	
Signature		Date	

## Consultant / Representative Details

Details of consultants/representatives acting on behalf of the proponent are required. Please nominate whether the consultant/representative will be the principal contact for the proposal.

Name	ARDILL PAYNE & PARTNERS		
Address	PO BOX 20 BALLINA		
Telephone (w)	66863280	Mobile	
Fax	66863280		
Email Address	PAULS@ARDILLPAYNE.COM.AU		

☒ Please tick if consultant/representative is to be the principal point of contact with Council.

## Description of the Land

Property descriptions of all land holdings the subject of the LEP amendment request/planning proposal are required. Additional properties the subject of the proposal should be documented in the additional information field at the end of the form.

Property Address	23 COMPTON DRIVE EAST BALLINA		
Lot/Portion	3	Section	-
DP	525783		
Property Address			
Lot/Portion		Section	
DP			
Property Address			
Lot/Portion		Section	
DP			

## Office Use Only

Proposal Name:	Type: <input type="checkbox"/> Major <input type="checkbox"/> Minor	Pre-Lodgement Discussion: <input type="checkbox"/> Y <input type="checkbox"/> N
Fee Paid: <input checked="" type="checkbox"/> Y <input type="checkbox"/> N Amount: \$ 3 690.00	Date Received: 11/2/17	Receipt No: 881484
Code 6, Job No: 20001.1001.061		



## Landholder Details and Consent

Details of all landholders are to be provided. If landholders do not sign this form, evidence of the consent of landholders for the nomination of their landholding as part of the LEP amendment/planning proposal is required in conjunction with this form. Space is provided at the end of this form for additional landholder details.

Owner's Name(s)	SHARON BARRIE + KRISTIAN MOON		
Address	31 PINE AVE EAST BAWINA		
Lot/Portion	3	Section	- DP 525783
Telephone (w)		(h)	
		Mobile	0415 841 466
Email Address	EXAM @ BIAFOND.COM		Fax

☐ I/we being the owner(s) of the property identified above, consent to the submission of this planning proposal/LEP amendment.

Signature  Date

## Summary of the LEP Amendment Request / Planning Proposal

Brief outline of the concept or idea underpinning the LEP amendment request / planning proposal.

0400 660000 K@KRISTIANMOON.COM

REFER ATTACHED REZONING SUBMISSION  
DATED NOVEMBER 2018

REFER ATTACHED REZONING SUBMISSION  
DATED NOVEMBER 2016

#### Privacy Protection Notice

The completed application form contains personal information which is being collected for the purpose of assessing this LEP amendment request/planning proposal. Please be aware that information contained in this documentation is public information and may be accessed by other government agencies, service providers, the general community or other organisations. The information will be processed by Council officers and may be made available to public enquiries under the Government Information (Public Access) Act. The information will be stored in Council's electronic document management system.

#### Disclosure of Political Donations and Gifts

A person who submits an LEP amendment request/planning proposal to Council is required to disclose the following reportable political donations and gifts (if any) made by any person with a financial interest in the proposal within the period commencing two years before the request is made and ending when the proposal is determined:

- All reportable political donations made to any Ballina Shire Councillor; and
- All gifts made to any local Councillor or employee of Ballina Shire Council.

A reference to a reportable political donation made to a 'Councillor' includes a reference to a donation made at the time the person was a candidate for election to the Council.

Significant penalties apply to non-disclosure. For more information and to obtain a political donations and gifts disclosure statement go to the Department of Planning and Infrastructure website at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au).

Is a disclosure statement to accompany your application? ☐ Yes ☒ No



## Paul Snellgrove

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**From:** Matthew Wood <Matthew.Wood@ballina.nsw.gov.au>  
**Sent:** Monday, 4 September 2017 4:42 PM  
**To:** Paul Snellgrove  
**Subject:** LEP Amendment Fees 17/18

Hi Paul,

Further to our meeting today, the fees expected to be applicable in relation to an LEP amendment for Ms Barrie's land at Compton Drive are as follows (no GST is applicable):

Stage 1 Commencement: \$3,690

Stage 2 Planning Proposal: \$6,130

Stage 3 Processing: \$12,650 (plus any third party costs incurred by Council). This is on the basis that specialist reports will be required in relation to geotechnical conditions and bushfire.

Let me know if you would like to discuss this further.

Regards, Matt.

Matthew Wood  
Manager Strategic Planning



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p: (02) 6686 1289 | f: 02 6686 7035 | m: 0409 090 431

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# ARDILL PAYNE & PARTNERS

Civil & Structural Engineers – Project Managers – Town Planners – Surveyors



## REZONING SUBMISSION

Subject land:  
Lot 3 DP 525783  
23 Compton Drive, East Ballina

For:  
Sharon Barrie & Kristian Moon

November 2016





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**Document Control Sheet**

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Filename:	8152 – Rezoning Submission (Nov 2016).doc
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Client:	Sharon Barrie and Kristian Moon
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0	Dwayne Roberts		Paul Snellgrove	
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## 1.1 Background

Ardill Payne and Partners (APP) has been engaged by Sharon Barrie and Kristian Moon to provide Town Planning services in respect of Lot 3 DP 525783, No. 23 Compton Drive, particularly to provide advice in respect of:

- site constraints (eg flooding, bushfire, acid sulfate soils etc)
- current applicable planning controls (including relevant LEPs, SEPPs and DCPs)
- planning pathways for securing a dwelling entitlement and/or obtaining consent for a dwelling house on the land

There have been numerous communications (letters, emails and discussions) with Council's Town Planners Matthew Wood, Andrew Smith and Anthony Peters and the Department of Planning's Luke Blandford in respect of the subject land.

Numerous communications from Council (including Section 149 Certificate No. 8322) have confirmed that the land is mapped as "DM – Deferred Matter" under the BLEP 2012 and thus remains subject to the provisions of the BLEP 1987, being zoned thereunder as:

- part 2(a) – Living Area Zone
- part 7(d) – Environmental Protection (Scenic/Escarpment) Zone

A formal dwelling entitlement search letter was sent to Council (dated 23<sup>rd</sup> May 2016), seeking detailed investigation into and a formal response from Council about such. Council provided a response by letter dated 28<sup>th</sup> June 2016 which confirmed that the land does not have a dwelling entitlement pursuant to Clause 12(3) of the BLEP 1987

Council at its Ordinary Meeting of the 27<sup>th</sup> October 2016 resolved to accept the funding offer from the NSW Department of Planning and Environment to support the integration of the "DM – Deferred Matters" into the BLEP 2012, with the 7(d)/7(d1) zones being scheduled for commencement in February 2017.



A number of appendices form part of this report being:

**Appendix A**     Aerial photograph of subject and adjoining land

**Appendix B**     Copy of Certificate of Title and 2006 survey plan showing boundaries and improvements (as at 29.11.2006)

## **1.2 DA/BA/CC History**

A search of Council's records (including DA's Online on the 4<sup>th</sup> July 2016) has revealed the following applications that have been determined by Council over the subject land:

- DA 1991/7256 – Alterations to restaurant
- DA 1996/3049 – Additions to restaurant (approved 31<sup>st</sup> July 1995)
- DA 1999/22 – Extensions to existing restaurant (approved 8<sup>th</sup> July 1998)
- DA 2013/189 – Alterations/additions to commercial building (retail/wholesale) (refused 7<sup>th</sup> June 2013)
- DA 2013/211 – Alterations/additions to existing restaurant involving partial demolition of existing building and it re-construction and refurbishment of existing verandah area contained in the road reserve (approved 10<sup>th</sup> October 2013)

DA 2013/211 is an active "deferred commencement" consent that will lapse on the 10<sup>th</sup> October 2018 unless building, engineering or construction works relating to the building or work are physically commenced on the subject land (pursuant to Section 95 of the EP & A Act 1979).

### **2.1 Subject Land**

The subject land is described in real property terms as Lot 3 DP 525783 and is commonly known as No. 23 Compton Drive, East Ballina.

A locality plan is provided at **Appendix A** with a Copy of Certificate of Title and 2006 survey plan showing boundaries and improvements (as at 29.11.2006) being provided at **Appendix B**.

The subject land is irregular in shape with a frontage of 20.73m to Compton Drive and an area of 537.5m<sup>2</sup>. Existing on the land is a single storey timber and F/C building, which is currently vacant and has previously been used as a restaurant/café.



Extract: Google Maps (22<sup>nd</sup> November 2016)

As detailed on the plan at **Appendix B**, part of the existing building and other associated improvements encroach into adjoining Lot 1 DP 781542 (which is owned by Ballina Council) and the Compton Drive road reserve.



## 2.2 Constraints

Preliminary planning investigations (including reference to Council's Section 149 Certificate No. 8322) have confirmed the following:

### 2.2.1 Acid Sulfate Soils

The subject land is mapped on Council's Acid Sulfate Soils Planning Maps as being Class 5 Acid Sulfate Soils. Consent is required on Class 5 land for works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m AHD and by which the watertable is likely to be lowered below 1m AHD on adjacent Class 1, 2, 3 or 4 land.

### 2.2.2 Bushfire

The subject land is mapped as being bushfire prone as a consequence of Vegetation Category 2 vegetation + 30m buffer.

### 2.2.3 Geotechnical

The subject land is situated in an area identified by Coffey & Partners (March 1986) as having a medium to high risk of instability.

## 2.3 Adjoining and Surrounding Land Uses

As evidenced on the aerial photograph at **Appendix A**, the subject land is situated in a residential area that is characterised by a mix of residential uses, open space/parks, stands of bushland vegetation and Shaws Bay.

## 2.4 Other matters

The subject land is not:

- mapped as being subject to the 1 in 100 year flood event
- mapped as being subject to coastal hazards or processes
- identified as being or containing an item of environmental heritage under Part 1 of Schedule 5 of the Ballina LEP 2012



- identified as being within a heritage conservation area under Part 2 of Schedule 5 of the BLEP 2012
- identified as being an archaeological site under Part 3 of Schedule 5 of the BLEP 2012
- identified as including or comprising critical habitat as prescribed in the Threatened Species Conservation Act 1995 of Part 7A of the Fisheries Management Act 1994
- identified as being affected by the operation of Sections 38 or 39 of the Coastal Protection Act 1979
- affected by any road widening or realignment proposal under either Division 2 of Part 3 of the Roads Act 1993, any environmental planning instrument or any resolution of Council
- identified as being subject to acquisition by a public authority under the provisions of any environmental planning instrument, deemed or draft environmental planning instrument
- mapped as containing SEPP 14 – Coastal Wetlands
- mapped as containing SEPP 26 – Littoral Rainforest
- likely to be contaminated as a consequence of its restaurant/café use, however, due to the age of the building, there is the potential for asbestos and lead paint to be contained in the building

### 3.1 Environmental Planning Instruments (EPIs)

This section identifies and provides comment on the EPIs that are of relevance to the subject land.

#### 3.1.1 Ballina Local Environmental 1987 (BLEP 1987)

As detailed in Section 149 Certificate No. 8322, the subject land is zoned part 2(a) – Living Area and part 7(d) – Environmental Protection (Scenic/Escarpment) Zone under the BLEP 1987.

Below is an extract from the BLEP 1987 that was provided by Council via email dated 4<sup>th</sup> April 2016 which shows the zoning over the land. The pink is the 2(a) zone and the beige is the 7(d) zone.

Council's 28<sup>th</sup> June letter advised that there is approx. 8.5m<sup>2</sup> of 2(a) zoned land out of the 537.5m<sup>2</sup> total lot area.



As evidenced on the Certificate of Title provided at **Appendix B**, the subject lot was registered on the 19<sup>th</sup> October 1967 and was subject of the Shire Clerk's Certification, Subdivision No. 11-18/1966 (dated 11<sup>th</sup> August 1966).



As advised in Council's 28<sup>th</sup> June 2016 letter, the subject land does not enjoy a dwelling entitlement pursuant to any of the relevant Clause 12(3) criteria of the BLEP 1987.

Clause 16 of the BLEP 1987 applies to land within 50m of a boundary between any 2 zones, except Zone No. 7(a), 7(f) or 7(l) and provides that Council may grant consent to any development that may be carried out in any adjoining zone.

Subclause (3) provides that consent must not be granted to such unless in the opinion of the Council, the carrying out of the development is desirable due to design, ownership, servicing or similar requirements relating to the optimum development of the land.

Notwithstanding the above, the use of Clause 16 has no effect as a consequence of Clause 13 of SEPP 71 – Coastal Protection and therefore cannot be utilised (refer **Section 3.1.3** below).

### **3.1.2 Ballina Local Environmental 2012 (BLEP 2012)**

The BLEP 2012 came into effect on the 4<sup>th</sup> February 2013. The land is mapped under the BLEP 2012 as "DM – Deferred Matter" and therefore, the land remains subject of the provisions of the Ballina LEP 1987.

The subject land was proposed to be zoned E3 – Environmental Management Zone under the Draft BLEP 2011 (as exhibited). The BLEP 2012 does not apply to the land.

### **3.1.3 State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)**

SEPP 71 applies to the subject land as it is situated within the "coastal zone" (Clause 4). The land is mapped as being a "Sensitive Coastal Location" as it is within 100m of Shaws Bay.

Clause 16 of SEPP 71 relates to flexible zone provisions and provides that a provision in an environmental planning instrument that allows development within a zone to be



consented to as if it were in a neighbouring zone (or similar provision) has no effect.

This clause therefore appears to be such that precludes the use of Clause 16 of the BLEP 1987.

### **3.2 Northern Councils E Zone Review – Final Recommendations Report**

In 2012, the Minister for Planning and Infrastructure, announced a review of the application of environmental zones (E zones) and environmental overlays in Local Environmental Plans (LEPs) on the Far North Coast (including Ballina Council).

The Final Recommendations Report was published in October 2015 and articulates the manner in which Councils are required deal with the “DM – Deferred Matters” and how to apply environmental protection zones to land.

Below are extracts from the Final Recommendations report, which will have to be considered by Council in applying any future zoning regime to the subject land.

# 3. Final Recommendations

## Application of E Zones

### 1 When will E zones be applied?

- E2 and E3 zones will only be applied if the *primary use of the land* is considered to be environmental conservation (E2) or environmental management (E3) and the land contains attributes which meet one or more of the criteria for an E2 or E3 zone (Tables 1 and 2).
- An E4 zone can be applied if the land contains attributes that are consistent with the Department's Practice Note PN09-002 Environment Protection Zones.

### 2 How will the primary use of the land be determined?

- The primary use of the land is the main use for which the land has been used for the last two (2) years. This may mean that land which is currently zoned rural will continue to have a rural zone but it may have parts of that land which have attributes that meet the criteria for an E2 or E3 zone included in a mapped planning control.
- The primary use of the land may vary across a particular property depending on the characteristics of the land. This may result in more than one zone being applied to the land.
- The primary use of land will be identified during the preparation of a planning proposal.

### 3 What are the E zone Criteria?

- The land proposed to be zoned E2 or E3 must contain one or more of the criteria listed in Tables 1 and 2.

### 4 What is the procedure for applying an E2 or E3 zone to land?

- Councils will assess land against the E zone criteria and consider the primary use of the land before proposing an E2 or E3 zone.
- An E2 or E3 zone can only be applied to land with a primary use of environmental conservation or environmental management and, which has attributes that have been verified to meet the E zone criteria.
- If the land has attributes that meet the E2 criteria, however the primary use of the land is environmental management rather than environmental conservation, a council may apply an E3 zone.
- If a council believes the primary use of the land does not warrant an E zone, and the land meets the E zone criteria, then a LEP Map and associated clauses can be applied.
- The E zones will not include buffers to the vegetation attributes that meet the E zone criteria.

**Table 1: E2 zone Criteria**

Criteria	Description
SEPP 26 Littoral Rainforests.	Land mapped as littoral rainforest in accordance with the statewide policy for littoral rainforest protection (State Environmental Planning Policy 26 – Littoral Rainforests).
SEPP 14 Coastal Wetlands.	Land mapped as coastal wetlands in accordance with the statewide policy for coastal wetland protection (State Environmental Planning Policy 14 – Coastal Wetlands).
Endangered Ecological Communities (EECs) listed under the <i>Threatened Species Conservation Act 1995</i> and/or the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .	<p>Land containing vegetation communities listed as Endangered Ecological Communities under the <i>Threatened Species Conservation Act 1995</i> (TSC)<sup>1</sup> and the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC)<sup>2</sup>.</p> <p>The Far North Coast Regional Conservation Plan<sup>3</sup> lists the following vegetation communities as examples of EECs that currently exist on the Far North Coast:</p> <p>Byron Bay Dwarf Grassland Heath Community, Coastal Cypress Pine Forest, Coastal Saltmarsh, Freshwater Wetlands in Coastal Floodplains, Littoral Rainforest, Lowland Rainforest, Lowland Rainforest on Floodplains, Subtropical Coastal Floodplain Forest, Swamp Oak Floodplain Forest, Swamp Sclerophyll Forest on Coastal Floodplains, Themeda grassland on Beaches and Coastal Headlands, White Gum Yellow Gum Blacky's Red Gum Woodland, and White Gum Moist Forest. Other vegetation communities may be added consistent with these Acts in the future.</p>
Key Threatened Species Habitat.	<p>This criterion includes:</p> <ul style="list-style-type: none"> <li>old-growth forests where the overstorey or canopy trees are in the late mature stage of growth<sup>4</sup>;</li> <li>areas of predicted high conservation value for forest fauna assemblages, refugia, endemic forest fauna or endemic invertebrates<sup>5</sup>; and</li> <li>habitats for threatened species or endangered populations that cannot withstand further loss where the threatened species or endangered population is present<sup>6</sup>.</li> </ul>
Over-cleared vegetation communities.	<p>Land comprising:</p> <ol style="list-style-type: none"> <li>over-cleared vegetation communities, where more than 70% of the original (c. 1750) extent of the native vegetation type has been cleared<sup>7</sup>; and</li> <li>native vegetation in over-cleared Mitchell landscapes<sup>8</sup>.</li> </ol> <p>The Far North Coast Regional Conservation Plan lists the following as examples of:</p> <ul style="list-style-type: none"> <li>Over-cleared vegetation communities on the Far North Coast<sup>9</sup>: <ul style="list-style-type: none"> <li>Rainforests, Wet sclerophyll forests (shrubby and grassy subformations), Dry sclerophyll forests (shrubby and shrub/grass subformations), Grassy woodlands, Grasslands (Themeda australis sod tussock), Heathlands, Forested wetlands, Freshwater wetlands, Saline wetlands, and</li> </ul> </li> <li>Over-cleared Mitchell landscapes<sup>8</sup>: <ul style="list-style-type: none"> <li>Byron-Tweed Alluvial Plains, Byron-Tweed Coastal Barriers, Clarence-Richmond Alluvial Plains and Upper Clarence Channels and Floodplains.</li> </ul> </li> </ul>
Culturally significant lands.	Areas of culturally significant lands such as Aboriginal object sites, Aboriginal places of heritage significance, and other significant objects identified by the local Aboriginal community <sup>10</sup> .

1 <http://www.environment.gov.au/biodiversity/threatened/communities/nsw-act>

2 <http://www.environment.nsw.gov.au/threatenedspeciesapp/default.aspx?keywords>

3 Far North Coast Regional Conservation Plan, NSW Environment Climate Change and Water, 2010, p24

4 <http://www.epa.nsw.gov.au/resources/pnl/QGRReviewFieldIdent.pdf>

5 Scotts, D 2003, Key Habitats and Corridors for Forest Fauna: A Landscape Framework for Conservation in North-east New South Wales, NPWS Occasional Paper no. 32, National Parks and Wildlife Service, Sydney, NSW.

6 NSW Office of Environment and Heritage 'Threatened Species Profiles Database' <http://www.bionet.nsw.gov.au>

7 Keith, DA 2006, Ocean Shores to Desert Dunes the Native Vegetation of New South Wales and the ACT, Department of Environment and Climate Change, Hurstville.

8 Mitchell, PB 2002, 'NSW Ecosystem Study: Background and Methodology', report prepared for National Parks and Wildlife Service, Hurstville, NSW and Far North Coast Regional Conservation Plan, NSW Environment Climate Change and Water, 2010, p27.

9 Far North Coast Regional Conservation Plan, NSW Environment Climate Change and Water, 2010, p26

10 Guide to Investigating, assessing and reporting on Aboriginal cultural heritage in NSW, NSW Department of Environment, Climate Change & Water (2011)



**Table 2: E3 zone Criteria**

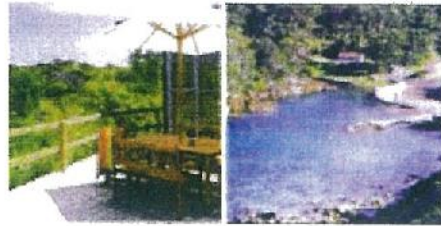
Criteria	Description
Riparian and estuarine vegetation and wetlands.	Land comprising riparian and estuarine vegetation on waterfront land, defined under the NSW Water Management Act 2000, or wetland areas other than those mapped as SEPP 14 Coastal Wetlands.  Waterfront land is defined under the NSW Water Management Act 2000 as the bed of any river, lake or estuary and any land within 40 metres of the river banks, lake shore or estuary mean high water mark.
Rare, Endangered and Vulnerable Forest Ecosystems.	Land comprising areas of rare, endangered and vulnerable forest ecosystems as defined by the Joint ANZEC/MCFFA National Forest Policy Statement Implementation sub-committee (JANIS) (Commonwealth of Australia 1997).
Native vegetation on coastal foreshores.	Native vegetation on land with frontage, or adjoining or adjacent to, a beach, estuary, coastal lake, headland, cliff or rock platform.

Having regard to the above, it is aparent that an E2 or E3 zone would not be possible over the subject land.

Below is an extract from the DoP's Practice Note PS 09-002 – Environment Protection Zones which confirms when an E4 zone is applicable and that "dwelling houses" are mandatory permitted uses with consent within the zone. As per PS 09-002, it is submitted that an E4 zone would also not be appropriate due to the fact that the subject land does not:

- contain existing low impact residential development
- have any special ecological, scientific or aesthetic values

## E4 Environmental Living



### Application

This zone will be typically applied to existing low impact residential development. This may include areas already zoned for rural residential that have special conservation values. Where lands have higher conservation values and fewer intended land uses than the E4 zone, an E2 or E3 zone may be appropriate.

Regional councils should distinguish carefully between the E4 zone, the RU4 Rural Small Holdings and R5 Large Lot Residential zones to address environmental, agricultural and residential land capabilities respectively.

Where small holdings undertake agricultural production such as viticulture or cropping such as growing berries, the RU4 zone should be considered. If there are few environmental considerations, then R5 may be the appropriate zone.

### Objectives

The mandatory zone objectives seek to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values and to ensure that residential development does not have an adverse effect on those values.

Any additional objectives should reflect local characteristics and not duplicate the matters covered in the core objectives.

### Uses

#### **Mandatory uses**

The zone permits dwelling houses (with consent) and home occupations (without consent).

In accordance with the direction for this zone, councils must permit environmental protection works and roads with or without consent in the zone.

#### **Additional uses**

Councils can specifically list additional uses to be permitted in the zone at items 2 and 3. The direction for this zone allows home industries to be permitted if desired (they would otherwise be prohibited under the term industries).

Care should be taken to select uses that are in keeping with the special conservation values of the land and complement low impact residential development. Additional uses that may be suitable (as permitted with consent), depending on location, include, but are not limited to:

- bed and breakfast accommodation
- building identification signs and business identification signs
- caravan park
- community facility
- dwelling house
- eco-tourism<sup>3</sup>
- environmental facility
- home business, home industry and home-based child care
- information and education facility
- kiosk
- recreation area
- secondary dwellings, e.g. attached to the principal dwelling
- tourist and visitor accommodation.

Additional uses that are generally unsuitable in the zone include:

- business premises
- office premises
- residential accommodation (other than dwelling houses and secondary dwellings)
- retail premises
- rural industry
- storage premises.

### Other considerations

Where environmental capabilities are the primary concern on land that may be zoned R5 Large Lot Residential, RU4 Rural Small Holdings or E4 Environmental Living, preference should be given to the E4 zone.

<sup>3</sup> The draft definition of 'eco-tourism development' means nature-based tourism development with a primary focus on the education, interpretation, cultural understanding and appreciation of the natural environment that is managed to be ecologically sustainable.



It is requested that as part of the integration of the 7(d)/7(d1) zones into the BLEP 2012, that Council apply an R2 – Low Density Residential Zone to the subject land, with the following justification being provided for such:

- As per the final recommendations from the Department's report for the Northern Council's E Zone Review, the application of an E2 or E3 zone would **NOT** be possible as the subject land does **NOT** satisfy the E2 and E3 zone criteria in Tables 1 and 2 respectively.
- As per the final recommendations from the Department's report for the Northern Council's E Zone Review, the application of an E4 zone would **NOT** be appropriate as the subject land does **NOT** comply with the applicability provisions contained in the Department of Planning's Practice Note PN 09-002 for the E4 – Environmental Living Zone
- The location and characteristics of the subject land and the adjacent/adjoining land uses are such that would **NOT** be appropriate for the application of the following zones:
  - RU1 – Primary Production
  - RU2 – Rural Landscape
  - B1 – Neighbourhood Centre
  - B2 – Local Centre
  - B3 – Commercial Core
  - B4 – Mixed Use
  - B5 – Business Development
  - B6 – Enterprise Corridor
  - IN1 – General Industrial
  - SP2 – Infrastructure
  - RE1 – Public Recreation
  - RE2 – Private Recreation
  - E1 – National Parks and Nature Reserves
  - W1 – Natural Waterways
  - W2 – Recreational Waterways
- Having regard to the above and the zones contained in the "standard instrument" it is submitted that, effectively by default, that the most appropriate zone is a residential zone, and in particular the R2 – Low Density Residential Zone.



- The use of the land for residential purposes (dwelling house) is such that would have significantly lesser/reduced impacts on the natural and man-made environment than the existing approved restaurant (and the yet to be completed alterations/additions approved under DA 2013/211).
- The use of the subject land for residential purposes would be more compatible with the existing adjacent/adjoining residential uses (dwelling houses and residential flat buildings) than that of a restaurant, particularly from an amenity and land use conflict perspective.
- If the land was rezoned for residential purposes, there is scope for the existing consents over the land to be surrendered, contingent upon consent being granted for residential development thereon.

Having regard to the above, it is respectfully submitted that an R2 – Low Density Residential Zone is appropriate for the subject land and that Council duly apply such zone during the 7(d)/7(d1) rezoning process.

This submission has been prepared by Ardill Payne & Partners (APP) on behalf of Sharon Barrie and Kristian Moon in respect of Lot 3 DP 525783, No. 23 Compton Drive, East Ballina.

This report has been prepared from the information provided to us and from other information obtained as a result of enquiries made by us. APP accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this document for a purpose other than that described above.

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APP declares that it does not have, nor expects to have, a beneficial interest in the subject project.

To avoid this advice being used inappropriately it is recommended that you consult with APP before conveying the information to another who may not fully understand the objectives of the report. This report is meant only for the subject site/project and should not be applied to any other.

**Appendix A** Aerial photograph of subject and adjoining land

**Appendix B** Copy of Certificate of Title and 2006 survey plan showing boundaries and improvements (as at 29.11.2006)



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## APPENDIX A

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**Appendix A**  
Aerial photograph of subject  
and adjoining land



# Locality Plan

Lot 3 DP 525783, No. 23 Compton Drive, East Ballina



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## APPENDIX B

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**Appendix B**  
Copy of Certificate of Title  
and 2006 survey plan  
showing boundaries and  
improvements (as at  
29.11.2006)





NEW SOUTH WALES

Crown Grants Volume 2870 Folio 17  
Volume 2911 Folio 26  
Prior Titles Volume 3161 Folio 78  
Volume 8045 Folio 224

**CERTIFICATE OF TITLE**  
PROPERTY ACT, 1900, as amended.



Vol. **10822** Fol. **236**

Edition issued 24-6-1968.

I certify that the person described in the First Schedule is the registered proprietor of the under-mentioned estate in the land within described subject nevertheless to such exceptions encumbrances and interests as are shown in the Second Schedule.

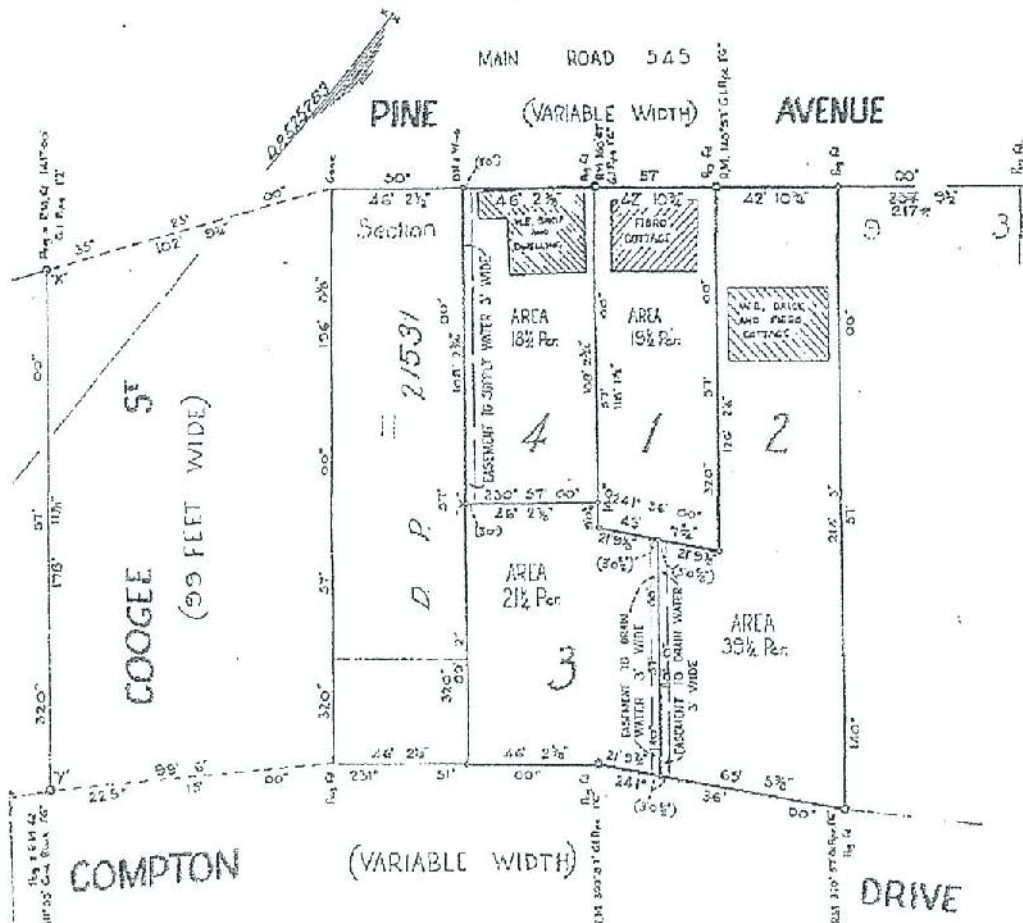
Witness *M. Flint*

*J. Watson*  
Registrar General



SEE AUTO FILE

**PLAN SHOWING LOCATION OF LAND**



**ESTATE AND LAND REFERRED TO**

Estate in Fee Simple in Lot 3 in Deposited Plan 525783 at East Ballina in the Municipality of Ballina Parish of Ballina and County of Ross EXCEPTING THEREOUT the minerals reserved by the Crown Grants.

**FIRST SCHEDULE (continued overleaf)**

~~ARTHUR STANLEY LARSEN, of Ballina, Storekeeper, and DORIS LILLIAN ELIZABETH LARSEN, his wife, as Joint Tenants.~~

**SECOND SCHEDULE (continued overleaf)**

- GRM**
1. Reservations and conditions, if any, contained in the Crown Grants above referred to.
  2. Mortgage No. 1042640 of that part of the land above described formerly comprised in Certificate of Title Volume 2161 Folio 78 to Director of War Service Homes Entered 6-2-1965. Dated 1.9.66
  3. Covenant created by Transfer No. K808405 affecting part.
  4. Easement to drain water affecting the part of the land above described 3 feet wide shown in plan hereon created by the registration of Deposited Plan 525783 See K836067.
  5. Easement for water supply appurtenant to the land above described created by the registration of Deposited Plan 525783 See K836067.
- CV3**  
**EW**  
**EW2**

*J. Watson*  
Registrar General

WARNING: THIS DOCUMENT MUST NOT BE REMOVED FROM THE LAND TITLES OFFICE.