



*Planning Proposal 17/009*

# **» 9 Byron Bay Road & Telstra Exchange Site Lennox Head**

September 2017 (V2. Gateway) 17/79112

**ballina**  
shire council



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## Contents

<b>1.</b>	<b>Introduction.....</b>	<b>4</b>
1.1	Summary of Planning Proposal .....	4
1.2	Land to Which the Planning Proposal Applies .....	5
1.3	Council Resolutions.....	6
1.4	Gateway Determination .....	7
<b>2.</b>	<b>Objectives &amp; Intended Outcomes .....</b>	<b>8</b>
<b>3.</b>	<b>Explanation of Provisions.....</b>	<b>8</b>
3.1	Background .....	8
3.2	The Proposal.....	10
<b>4.</b>	<b>Justification .....</b>	<b>12</b>
4.1	Section A – Need for the Planning Proposal.....	12
4.2	Section B – Relationship to Strategic Planning Framework .....	12
4.3	Section C – Environmental, Social and Economic Impact.....	14
4.4	Section D – State and Commonwealth Interests.....	16
<b>5.</b>	<b>Mapping.....</b>	<b>17</b>
<b>6.</b>	<b>Community Consultation .....</b>	<b>17</b>
<b>7.</b>	<b>Timeline.....</b>	<b>17</b>
<b>8.</b>	<b>Appendices .....</b>	<b>18</b>
	<b>Appendix One – Council Reports .....</b>	<b>19</b>
	<b>Appendix Two – Section 117 Direction Checklist .....</b>	<b>30</b>
	<b>Appendix Three – Gateway Determination.....</b>	<b>34</b>
	<b>Appendix 4 – Urban Growth Area Variation Principles &amp; Important Farmland Interim Variation Criteria .....</b>	<b>35</b>
	<b>Appendix 5 – Mapping .....</b>	<b>37</b>
	<b>Appendix 6 – Proponent’s Planning Proposal Submission .....</b>	<b>38</b>
	<b>Appendix 7 – Letter from Charter Keck Cramer on behalf of Telstra .....</b>	<b>73</b>

# 1. Introduction

## 1.1 Summary of Planning Proposal

This planning proposal proposes to facilitate the rezoning of Lots 1 and 2 DP 620838 (Lots 1 and 2), consisting of the Telstra exchange site and No. 9 Byron Bay Road, Lennox Head, from RU1 Primary Production (RU1) zone to an R2 Low Density Residential zone (R2). A minimum lot size requirement of 600m<sup>2</sup> is also proposed to be applied to the subject site under the provisions of Ballina LEP 2012 (BLEP 2012).

Lot 1 has an area of 2023m<sup>2</sup> and lot 2 has an additional area of 9,735m<sup>2</sup>. The total area of the subject site is 1.1758 hectares.

The registered owner of Lot 1 is the Telstra Corporation Limited.

The registered owners of Lot 2 are Mr M W Condon and Ms J M Hills.

The LEP amendment request submitted by Ardill Payne and Partners relates only to Lot 2 DP 620838, No 9 Byron Bay Road, Lennox Head. Council when considering this matter, at its Ordinary Meeting on 27 July 2017, endorsed the incorporation of the Telstra site within the planning proposal subject to confirmation being received from Telstra which indicated a preferred zoning for this property.

Charter Keck Cramer (Charter), representing Telstra, advised Council on 22 September 2017 that it supported the incorporation of Lot 1 within the planning proposal and an R2 Low Density Residential zone for this property. A copy of the letter from Charter is contained within Appendix Seven.

This planning proposal has been prepared in response to the Council's resolution of 27 August 2017.

## **1.2 Land to Which the Planning Proposal Applies**

This planning proposal relates to Lots 1 and 2 DP 620838 being land zoned RU1 Primary Production under the provisions of Ballina LEP 2012.

### 1.3 Council Resolutions

At its Ordinary Meeting held on 27 July 2017, the Council resolved as follows [Minute No. 270717/13]:

1. *That Council endorses the preparation of a planning proposal to facilitate the rezoning of Lot 2 DP 620838, No. 9 Byron Bay Road, Lennox Head, to an R2 Low Density Residential zone with a minimum lot size requirement of 600m<sup>2</sup>.*
2. *That Council endorses the incorporation of Lot 1 DP 620838 (Telstra Site) within the planning proposal and the application of either an R2 Low Density Residential zone with a minimum lot size requirement of 600m<sup>2</sup> or an SP2 Infrastructure zone to the land.*
3. *That Telstra be advised of Council's decision and be given a maximum period of eight weeks in which to respond indicating a preferred zoning, and/ or preference to be included within the proposal, failing which the planning proposal be amended prior to exhibition to exclude the Telstra site.*
4. *That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.*
5. *That subject to a Gateway determination, allowing the proposal to proceed to community consultation, the planning proposal be placed on public exhibition.*
6. *That Council give further consideration to an appropriate compliance approach following the conclusion of the public exhibition process.*

A copy of the report considered by the Council is provided in Appendix One.

## **1.4 Gateway Determination**

To be completed following the Gateway determination.

## 2. Objectives & Intended Outcomes

To amend Ballina LEP 2012 so as to:

- Apply a low density residential zone to Lots 1 and Lot 2 together with a 600m<sup>2</sup> minimum lot size requirement;

The intended outcomes of this planning proposal will be:

- To enable land proposed to be zoned for residential purposes to be considered for subdivision; and
- To more appropriately zone land utilised partly for urban infrastructure purposes.

## 3. Explanation of Provisions

### 3.1 Background

#### Strategic Context

*Lennox Head Structure Plan 2004*

The Lennox Head Structure Plan 2004 designated Lots 1 and 2 as part of Candidate Release Area I as shown on the plan extract contained within Figure 1 below.

**Figure 1 - Extract from 2004 Lennox Head Structure Plan Map**



*Far North Coast Regional Strategy 2006*

The Far North Coast Regional Strategy 2006 (now superseded) located Lots 1 and 2 within the Existing Urban Footprint of Lennox Head and designated these lots as being part of a Proposed Future Urban Release Area.



### *Ballina Shire Growth Management Strategy 2012*

The Ballina Shire Growth Management Strategy 2012 did not include Lots 1 and 2 as part of a Strategic Urban Growth Area. The non-inclusion of Lots 1 and 2 was as a result of an error of omission as opposed to a deliberate policy position of the Council.

### *North Coast Regional Plan (NCRP) 2036*

The North Coast Regional Plan 2036 (NCRP), located Lots 1 and 2 within an Urban Growth Area, but has not designated these lots as an Investigation Area – Urban Land. As a consequence Lots 1 and 2 have been evaluated in accordance with the *Urban Growth Area Variation Principles* and the *Important Farmland Interim Variation Criteria* contained within the NCRP.

The evaluation of Lots 1 and 2 in accordance with the NCRP's *Urban Growth Area Variation Principles* and the *Important Farmland Interim Variation Criteria* is contained within Appendix Four.

### Land Constraints

Land constraints which may impact on Lots 1 and 2 have been examined and are summarised in the table below:

**Table 1 – Land Constraint Impact Summary**

<b>Constraint</b>	<b>Impact</b>	<b>Consequence</b>
Aboriginal Cultural Heritage	The AHIMS Register does not record Aboriginal Sites or Places within 200 metres of Lots 1 and 2. Six sites are recorded within 1km.	Aboriginal Cultural Heritage issues should be required to be further investigated post Gateway.
Acid Sulfate Soil (ASS)	Site not mapped as containing ASS.	Assessment not required.
Bushfire Prone Land	Site not mapped as bushfire prone land.	Assessment not required.
Ecology – Sensitive or threatened communities	No information is currently available that would suggest that the site is subject to ecological constraints.	Assessment of the sites Flora and Fauna significance should be required post Gateway.
Flooding	Site not flood prone.	Assessment not required
Land Contamination	Insufficient information available to determine impact.	Assessment required in accordance with SEPP 55 and Council's <i>Management of Contaminated Land Policy</i> post Gateway determination.
Land Slip Risk	Assessed risk low to very low.	Assessment not required
Mosquito Risk	Site within a high risk area.	Assessment may be required as a part of future subdivision development application process.
Obstacle Limitation Surface (OLS)	Site within OLS for Ballina Byron Gateway Airport.	Consultation with Airport Authorities required post Gateway.
Road Access and Subdivision Concept	Access required from proposed Hutley Drive extension not from Byron Bay Road.	Site Survey Plan and Subdivision Concept Plan required post Gateway.
Significant Farmland	Regionally Significant Farmland (Non Contiguous).	Consultation with Department of Primary Industry – Agriculture required post Gateway.

### 3.2 The Proposal

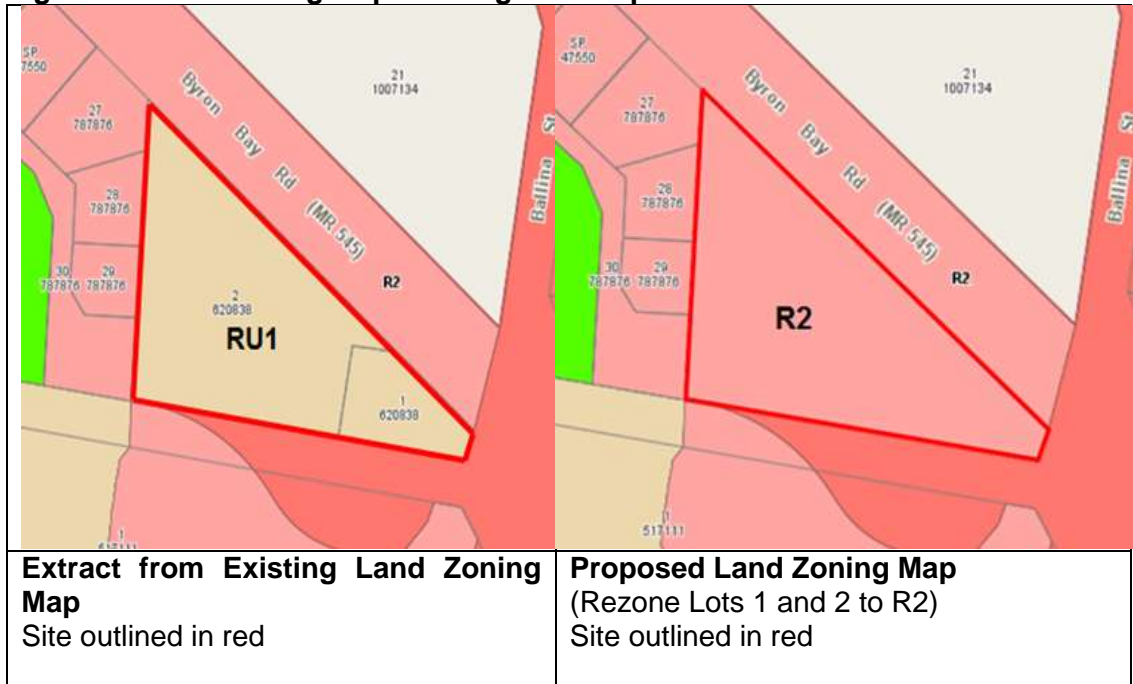
This planning proposal seeks to achieve the following amendments to Ballina LEP 2012:

- To amend the Land Zoning Map to apply a R2 Low Density Residential zone to Lots 1 and 2;
- To amend the Lot Size Map to apply a 600m<sup>2</sup> lot size requirement to Lots 1 and 2;

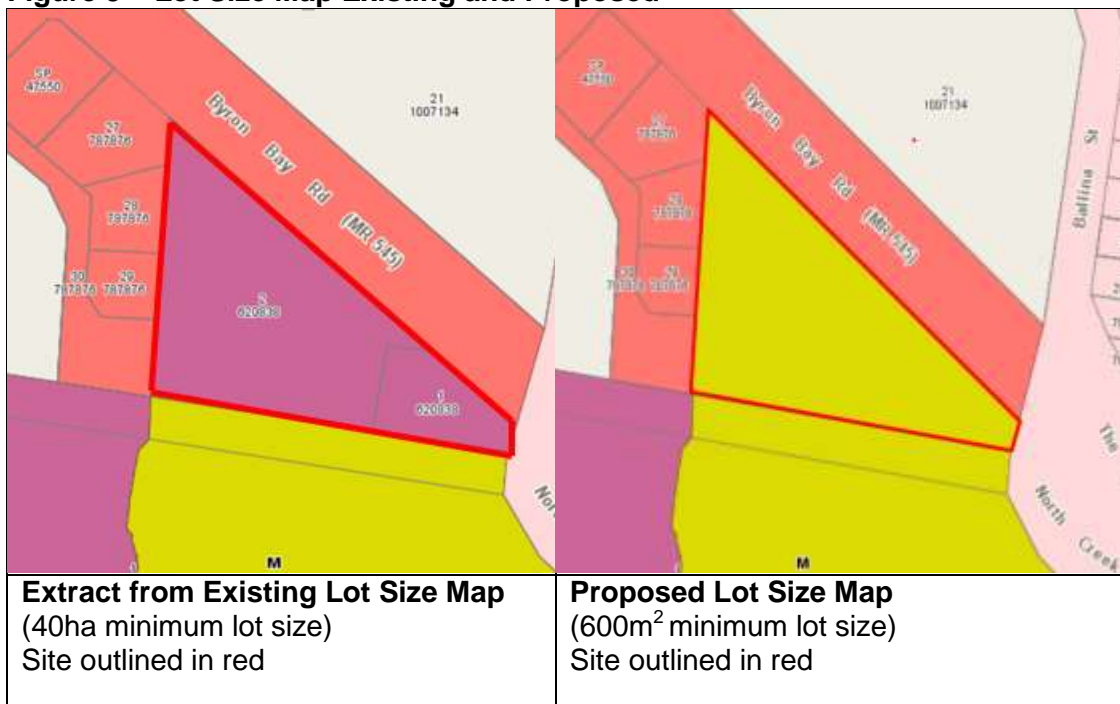
**Figure 1 - Site Plan: Lots 1 and 2 DP 620838, outlined in red**



**Figure 2 - Land Zoning Map Existing and Proposed**



**Figure 3 – Lot Size Map Existing and Proposed**



## 4. Justification

### 4.1 Section A – Need for the Planning Proposal

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

No. This planning proposal was not directly the result of strategic study or report.

Council has accepted (Refer report to Council's Ordinary Meeting on 27/7/2012 at Appendix One) that the non-inclusion of Lots 1 and 2 as a Strategic Urban Growth Area within the 2012 Ballina Shire Growth Management Strategy (BSGMS) was the result of an error of omission. Sites identified within the 2004 Lennox Head Structure Plan as Candidate Release Areas should have been incorporated within the BSGMS as Strategic Urban Growth Areas. Had this occurred then Lots 1 and 2 would also have been designated as Strategic Urban Growth Areas on the Ballina LEP 2012 Strategic Urban Growth Area Map.

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

Yes an LEP amendment is required to achieve the zoning and lot size outcomes proposed.

### 4.2 Section B – Relationship to Strategic Planning Framework

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

The proposal is considered to satisfy the North Coast Regional Plan 2036 (NCRP) *Urban Growth Area Variation Principles* and the *Important Farmland Interim Variation Criteria* (Refer Annexure Four).

The proposal seeks to correct an anomaly which has resulted in Lots 1 and 2 not being designated as an Investigation Area – Urban Land whilst being located within a designated Urban Growth Area on plans contained within the NCRP.

The proposal is therefore considered to be consistent with *Direction 1 – Deliver environmentally sustainable growth* of the NCRP for the following reasons:

- The proposal corrects an anomaly;
- The proposal satisfies the criteria nominated in the *Urban Growth Area Variation Principles* and the *Important Farmland Interim Variation Criteria*;
- The proposal represents a minor and contiguous variation to an existing designated Investigation Area – Urban Land.

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

*Ballina Shire Council Community Strategic Plan 2017-2027 (CSP)*

The planning proposal is consistent with the elements and specified outcomes of the CSP as indicated in the table below:

Element and Reference	Outcomes	Benefits
<b>PE3 Prosperous Economy</b>	<b>Improve liveability in the shire</b>	
PE3.2	Facilitate and provide affordable infrastructure	More housing opportunities created
<b>HE3 Healthy Environment</b>	<b>Our built environment blends with the natural environment</b>	
HE3.1	Develop and implement plans that balance the built environment with the natural environment	More people are satisfied with our management of development

The planning proposals consistency with the following key local plans and strategies is discussed below:

**Ballina LEP 2012**

Lots 1 and 2 have not been identified as a Strategic Urban Growth Area. This has occurred as a consequence of an oversight as opposed to a policy position of the Council.

**Ballina Shire Growth Management Strategy 2012 (BSGMS)**

The purpose of the BSGMS is to provide the framework for managing population and employment growth for Ballina Shire's urban areas over the planning period of 2012 - 2031.

The BSGMS has not identified Lots 1 and 2 as a Strategic Urban Growth Area as a consequence of an oversight. The planning proposal is, however, considered to be consistent with the Locality Objectives for Lennox Head as well as the following Strategic Action:

Lennox Head Strategic Actions	Comment
Maintain commitment to the development framework established by the Lennox Head Community Aspirations Strategic Plan and Lennox Head Structure Plan.	The Lennox Head Structure Plan identified Lots 1 and 2 as part of Candidate Release I. Also identified was land to the south "Reservoir Hill" site which has already been substantially rezoned for urban purposes – BLEP 2012 Amendment No 27.

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

The proposal consistency with applicable State Environmental Planning Policies (SEPPs) is detailed in the table below:



SEPP Title	Compliance of Planning Proposal
SEPP No. 55 Remediation of Land	At this stage of the process sufficient evidence and information has not been submitted in accordance with the requirements of SEPP 55 and Council's <i>Management of Contaminated Land Policy</i> . Post Gateway determination the proponent will be required to submit a combined Preliminary Site Investigation (PSI) and Detailed Site Investigation (DSI) to demonstrate that the land is suitable for residential purposes, with or without remediation.
SEPP (Rural Lands) 2008	<p>There are inconsistencies between this planning proposal and the relevant Rural Planning Principles contained within the SEPP. The inconsistencies arise as a consequence of Lots 1 and 2 not being designated as an Investigation Area – Urban Land within the North Coast Regional Plan 2036 and not being designated as a Strategic Urban Growth Area within the Ballina Shire Growth Management Strategy.</p> <p>Having regard to the planning history of Lots 1 and 2, Refer section 3.1 Strategic Context, it is considered that the inconsistencies with the relevant Rural Planning Principles of the SEPP are justified in the circumstances.</p>

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

No. A number of inconsistencies, considered to be of minor significance and justifiable in the circumstances, have been identified. A Section 117 Direction checklist for this planning proposal is provided at Appendix Two.

#### **4.3 Section C – Environmental, Social and Economic Impact**

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

Based on information currently available the planning proposal is not considered to give rise to any direct adverse impacts on critical habitat or threatened species, population or ecological communities, or their habitats.

Detailed ecological assessment of the sites flora and fauna characteristics will be required to be submitted by the proponent post Gateway determination and prior to public exhibition.

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

There are no other significant environmental impacts identified as a result of the planning proposal.

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

The social and economic outcomes resulting from the proposed rezoning are considered to be generally positive. The table below provides a summary of potential positive impacts associated with the planning proposal.

<b>Potential Positive Economic Impacts</b>
Lot 2 - Removes a small isolated parcel of rural zoned land which cannot be viably used for agricultural purposes and results in a residential zone consistent with the residential zone located to the west of Lot 2.
Lot 2 – Future residential subdivision will result in additional residential lots, able to be serviced with existing infrastructure, in close proximity to the Lennox Village centre.
Lot 1 – Once rezoned R2 potentially enables any land surplus to Telstra’s requirements to be consolidated with a subdivision proposal over Lot 2.
<b>Potential Positive Social Impacts</b>
Facilitates better integration of the Lennox Head communities through the removal of a small pocket of rural zoned land. Also facilitates better connectivity through the extension of an existing shared pathway network through the site once subdivided.

#### **4.4 Section D – State and Commonwealth Interests**

**Q10 Is there adequate public infrastructure for the planning proposal?**

Yes - The proposal is able to be serviced by existing infrastructure.

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

Consultation is proposed to be undertaken with the Office of Environment and Heritage, Department of Primary Industry – Agriculture and Airport Authorities post Gateway determination.



## 5. Mapping

The following maps will be prepared following the public exhibition of the planning proposal (Appendix 5):

- Map 1 – Proposed Land Zoning Map Ballina LEP 2012; and
- Map 2 – Proposed Lot Size Map Ballina LEP 2012.

## 6. Community Consultation

This planning proposal will be exhibited in accordance with the Gateway determination and the terms of the EP&A Act. A minimum public exhibition period of 28 days is proposed which will incorporate the following elements:

- Advertisement within the Ballina Shire Advocate;
- Letters to adjoining and nearby property owners;
- Notice on Council's web site; and
- Exhibition at Council's Customer Service Centre and Libraries.

## 7. Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination	October 2017
Government Agency Consultation	November - February 2017 - 18
Public Exhibition Period	March 2018
Public Hearing	N/A
Submissions Assessment	April 2018
RPA Assessment of Planning Proposal and Exhibition Outcomes	April 2018
Submission of Endorsed LEP to DP&E for Finalisation	N/A
RPA Decision to Make the LEP Amendment (if delegated)	May 2018 <sup>#</sup>
Forwarding of LEP Amendment to DP&E for Notification (if delegated)	May 2018

<sup>#</sup> Council is proposing to exercise plan finalisation functions under delegation.

## 8. Appendices

# Appendix One – Council Reports

## Report to Council's Ordinary Meeting on 27 July 2017

### 9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head

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### 9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head

**Delivery Program** Strategic Planning

**Objective** To outline to the Council a proposal to amend the Ballina Local Environmental Plan 2012 so as to rezone land zoned RU1 Primary Production to R2 Low Density Residential and apply a 600m2 minimum lot size standard.

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#### Background

Council has received a request from Ardill Payne and Partners (APP) on behalf of the Executors of the Estate of the Late William Michael Condon (property owner) to amend Ballina LEP 2012 so as to facilitate the rezoning of Lot 2 DP 620838, No 9 Byron Bay Road, Lennox Head (Lot 2) from rural to residential.

The location diagram below shows Lot 2 outlined in red.



A copy of the LEP amendment request application forms Attachment One to this report.

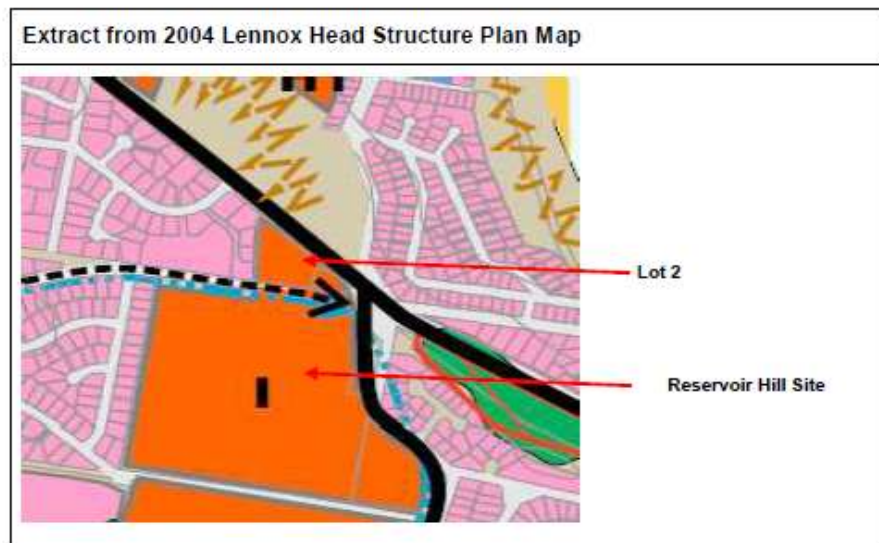
Photos of Lot 2 appear as follows.

### 9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head



Lot 2 is located immediately to the north of the Reservoir Hill site. The Reservoir Hill site was the subject of an LEP amendment, finalised in 2016, which rezoned a substantial portion of this site for residential purposes.

Lot 2, the Reservoir Hill site (Lot 1 DP 517111) and the Telstra exchange site (Lot 1 DP 620838) on the north-western corner of Byron Bay Road and North Creek Road all formed a part of candidate release area I as designated by the 2004 Lennox Head Structure Plan. The plan below is an extract from the 2004 Lennox Head Structure Plan.



The 2006 Far North Coast Regional Strategy (now superseded) located Lot 2 within the Existing Urban Footprint of Lennox Head and designated this site as being part of a Proposed Future Urban Release Area.

#### Key Issues

- Merits of proposed LEP amendment.
- Processing of LEP amendment request and preparation of a planning proposal.



### 9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head

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#### Information

Lot 2 has an area of 9,735m<sup>2</sup> and contains a dwelling house and ancillary outbuildings. Access is obtained via a sealed bitumen driveway from Byron Bay Road.

#### *Strategic Context*

Whilst it is the case that Lot 2 was part of Candidate Release Area I in the 2004 Lennox Head Structure Plan, this designation did not carry over into the 2012 Ballina Shire Growth Management Strategy. Consequently, the site was not identified as being part of a Strategic Urban Growth Area (as was the case for the Reservoir Hill Site immediately to the south). It would appear that the non-inclusion of Lot 2 (and also the adjoining Lot 1 Telstra site) was as a result of an accidental omission as opposed to a deliberate policy position.

Lot 2 was designated as being part of a Proposed Future Urban Release Area within the Lennox Head Existing Urban Footprint in the 2006 Far North Coast Regional Strategy.

The 2017 North Coast Regional Plan (NCRP), whilst locating Lot 2 within an Urban Growth Area, does not appear to have designated this land as an Investigation Area – Urban Land. Sites that are not nominated as an Investigation Area – Urban Land must be evaluated in accordance with the *Urban Growth Area Variation Principles* and the *Important Farmland Interim Variation Criteria* contained within the NCRP in order to be considered for an urban zone.

The required reviews have been undertaken and it is considered that Lot 2 is capable of meeting the criteria for an urban zoning.

The review of relevant NCRP criteria is contained within Attachment Two.

#### *Land Constraints*

A review of potential land constraint affectations has found that Lot 2 is not bushfire or flood prone, the assessed land slip risk is low to very low, and the site is not mapped as being affected by acid sulfate soils.

Lot 2 is located within an area of High Mosquito Risk. As a consequence future subdivision proposals involving more than 10 lots must consider mosquito risk impacts in accordance with the provisions of Ballina Shire Development Control Plan Chapter 2.

Lot 2 is also subject to a Regionally Significant Farmland (Non Contiguous) designation on maps produced as part of the 2005 Northern Rivers Farmland Project.

In addition, Lot 2 is within the Obstacle Limitation Surface (OLS) level area associated with the Ballina Byron Gateway Airport. The OLS affectation triggers a requirement to consult with airport authorities post Gateway determination.

A search of the on-line AHIMS register (Aboriginal Heritage Information Management System) maintained by the Office of Environment and Heritage

### 9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head

has revealed that there are no Aboriginal Sites or Places recorded on Lot 2 or within 200 metres of Lot 2.

Some six sites were found recorded within 1km of Lot 2. Notwithstanding these preliminary results, Aboriginal cultural heritage issues will be required to be further investigated post Gateway determination and this will include consultation with the Jali LALC.




The proponent has submitted that the past residential use of Lot 2 was such that it would not have given rise to land contamination. In this respect it is considered that sufficient evidence and information has not been submitted in accordance with 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 combined Preliminary Site Investigation (PSI) and Detailed Site Investigation (DSI) to demonstrate that Lot 2 is suitable for the proposed change in land zoning, with or without remediation.

The map extracts below provide information relating to the manner in which Lot 2 is affected by Ballina LEP 2012 and known land constraints.


Existing LEP and Land Constraints	Legend
<b>Land Zoning Map Extract</b> 	<ul style="list-style-type: none"> <li>R2 - Low Density Residential</li> <li>R3 - Medium Density Residential</li> <li>RU1 - Primary Production</li> <li>RE1 - Public Recreation</li> </ul>
<b>Lot Size Map Extract BLEP 2012</b> 	<ul style="list-style-type: none"> <li>AB2 (40ha)</li> <li>U2 (1200m2)</li> <li>M (600m2)</li> <li>S (800m2)</li> </ul>

**9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head**

Strategic Urban Growth Area Map Extract	
	<p>A (Strategic Urban Growth Area)</p> <p>B (Land adjacent to Strategic Urban Growth Area)</p>
Building Height Map Extract	
	<p>I (8.5m)</p>
Significant Farmland	
	<p>Significant Farmland - Non Contiguous</p> <p>Regional</p>



### 9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head

Obstacle Limitation Surface	
	<p>Obstacle Limitation Surface - 2014</p> <p>Estimated OLS Surface Level 48.5m AHD</p>
Contours – 2 metre intervals	
	

#### *Subdivision Concept Considerations and Requirements*

The proponent's consultants have indicated that, based on a 600m<sup>2</sup> minimum lot size, Lot 2 has a hypothetical potential to yield 13 lots.

A preliminary subdivision concept plan has not yet been submitted but will also be required post Gateway determination should this proposal be supported.

Council's Engineers have indicated that access to the site for the existing dwelling could remain from Byron Bay Road.

It would, however, be preferable to incorporate access to the existing dwelling (if retained) from a new road from Hutley Drive.

A cul-de-sac is considered to be appropriate to service this site with no through link to Byron Bay Road.

A suitable road intersection location along the southern side of Lot 2 will require integration with, or separation from, any intersection that may be created for the development on the Reservoir Hill site (Lot 1 DP 517111). New lots, which may front Byron Bay Road, will be subject to a restriction as to use prohibiting vehicular access to Byron Bay Road.



### 9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head

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The future subdivision of Lot 2 would also be required to incorporate a shared path connection through the site from Hutley Drive to the existing path on Byron Bay Road.

Stormwater management associated with the proposed future residential development of Lot 2 will be required to comply with Council's *Stormwater Management Standards for Development*. This may require on-site detention and a suitable area should be identified for that purpose on the proposed concept plan.

In terms of water and sewer reticulation the site is able to access existing networks in close proximity.

Road noise mitigation and management options will be required to be examined by the proponent as part of any future subdivision application process. Lot 2 is currently impacted by road traffic noise from several significant roads.

The proposed extension of Hutley Drive may further increase the level of road noise impact. Mitigation of any adverse road noise impacts will be required to ensure that a reasonable level of residential amenity is maintained for future residents at this location.

#### *Minimum Lot Size Considerations*

The proponent has submitted that a minimum lot size of 600m<sup>2</sup> should be applied to the site. In this respect the Ocean Breeze estate, to the west of Lot 2, is subject to a 1,200m<sup>2</sup> minimum lot size.

The Ocean Breeze estate is subject to a steeper land form than Lot 2 and in this context given the contours on Lot 2 there appears to be little justification for the application of a similar larger lot size.

The recently rezoned residential portions of the Reservoir Hill site, as well as the recently rezoned Greenwood Place site, are subject to a 600m<sup>2</sup> minimum lot size as opposed to 800m<sup>2</sup> which is applicable to the R3 zoned areas associated with Lennox Village.

Having due regard to land supply considerations, as well as the suitability of this site for residential development including topographical considerations, a minimum lot size of 600m<sup>2</sup> is supported for this location.

#### *Incorporation of Telstra Site within Planning Proposal*

Lot 1 DP 620838 (Lot 1) has an area of 2,023m<sup>2</sup> and is located immediately to the east of Lot 2. Lot 1 is also zoned RU1 Primary Production under the provisions of Ballina LEP 2012 and is owned by Telstra Corporation Ltd. Lot 1 contains an automatic exchange facility which services Lennox Head as well as associated underground assets.

In the interest of zoning consistency and relevance, and assuming that the Council supports the proposed LEP amendment proposed by APP, it is considered that the opportunity should be taken to also apply either an R2 zone, and 600m<sup>2</sup> minimum lot size standard, or alternatively an SP2 Infrastructure zone to Lot 1 (to replace current RU1 zone and 40ha lot size standard).

### 9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head

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Telecommunication facilities are permitted with consent within an R2 zone but prohibited within an RU1 zone under the provisions of Ballina LEP 2012 (Telecommunication facilities are however permitted with development consent on this land by virtue of provisions contained within the Infrastructure SEPP).

Applying an R2 zone to Lot 1 may provide some advantages in terms of the ability to incorporate land that may be surplus to Telstra requirements within the future re-subdivision of Lot 2. The application of an R2 zone would however trigger requirements to investigate the contamination status of the land and other site characteristics as part of the rezoning process.

It is considered reasonable at this stage of the process, and assuming the Council supports the planning proposal, that Lot 1 be initially incorporated within the planning proposal and designated with an R2 or SP2 zone.

The final zone to be applied, and the issue of whether Lot 1 is ultimately included within the planning proposal, to be determined following consultation with Telstra and prior to the exhibition of the planning proposal.

#### **Sustainability Considerations**

- **Environment**  
Investigation of environmental and biodiversity issues would occur post Gateway determination if Council supports the preparation of a planning proposal for this site.
- **Social**  
The proposal has social implications as it will facilitate the creation of a small number of additional residential lots in Lennox Head and thereby contribute to the further planned growth of the Lennox Head community.
- **Economic**  
The proposal has potential positive future economic impacts through the provision of suitable land for housing.

#### **Legal / Resource / Financial Implications**

Council's processing guidelines and adopted fees and charges for LEP amendment requests would be applied to the further processing of this request. All costs associated with the processing of the application would be met by the applicant.

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 as this matter is in the initial concept phase.

### 9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head

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In the event that the proposal continues to proceed, community consultation, public exhibition and agency engagement will be undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act*. This would include consultation with the Department of Primary Industry – Agriculture, the Office of Environment and Heritage, Local and Federal Airport Authorities, and Telstra post Gateway determination and prior to community consultation. A minimum community consultation period of 28 days is proposed.

#### Options

1. Initiate a planning proposal to facilitate the rezoning of 2 for low density residential purposes with a minimum lot size requirement of 600m<sup>2</sup> and the initial incorporation of Lot 1 within the planning proposal pending advice being received from Telstra (re: desired zoning outcomes and or inclusion within the proposal).

This is the preferred option. Initiating a planning proposal will enable Council to further investigate the merits of this proposal and to obtain Government Agency comments as well as community feedback on the proposal.

Under this approach a planning proposal would be prepared that identifies the intended outcome and nominates the range of issues (such as Aboriginal cultural heritage, ecology, site contamination and subdivision concept design) which require further investigation post Gateway determination and prior to public exhibition.

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. It would also be possible to alter the zoning applied to Lot 1 (R2 or SP2) or exclude this lot from the proposal depending on the position taken by Telstra.

Given the nature of the proposed amendment if the Council endorses this approach, staff will prepare and then lodge a planning proposal to enable the rezoning 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.

Council, under this option, could also nominate an alternative minimum lot size to the proposed 600m<sup>2</sup> lot size standard. If an alternative lot size standard is nominated this would then be incorporated into the planning proposal submission for Gateway determination.

In addition to the above, it is also recommended that where a favourable Gateway determination enabling the planning proposal to proceed is received, Council proceeds at this stage on the basis that it is willing to exercise delegation from the Department of Planning and Environment for the processing of the amendment. In relation to the exercise of delegation, it is open to Council to decline to use its delegation (if granted) later in the planning proposal process.



### **9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head**

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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 with the proposal.

3. Decline to initiate the LEP amendment request.

It is open to the Council to decline the requested LEP amendment, though 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 preparation of a planning proposal to facilitate the rezoning of Lot 2 DP 620838, No. 9 Byron Bay Road, Lennox Head, to an R2 Low Density Residential zone with a minimum lot size requirement of 600m<sup>2</sup>.
2. That Council endorses the incorporation of Lot 1 DP 620838 (Telstra Site) within the planning proposal and the application of either an R2 Low Density Residential zone with a minimum lot size requirement of 600m<sup>2</sup> or an SP2 Infrastructure zone to the land.
3. That Telstra be advised of Council's decision and be given a maximum period of eight weeks in which to respond indicating a preferred zoning, and/ or preference to be included within the proposal, failing which the planning proposal be amended prior to exhibition to exclude the Telstra site.
4. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.
5. That subject to a Gateway determination, allowing the proposal to proceed to community consultation, the planning proposal be placed on public exhibition.
6. That Council give further consideration to the proposal following the conclusion of the public exhibition period.

#### **Attachment(s)**

1. LEP Amendment Proposal Submission
2. North Coast Regional Plan 2036 Criteria Considerations

**9.3 LEP Amendment Request - 9 Byron Bay Road, Lennox Head**

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**270717/13 RESOLVED**

*(Cr Sharon Cadwallader/Cr Keith Williams)*

- 1. That Council endorses the preparation of a planning proposal to facilitate the rezoning of Lot 2 DP 620838, No. 9 Byron Bay Road, Lennox Head, to an R2 Low Density Residential zone with a minimum lot size requirement of 600m<sup>2</sup>.*
- 2. That Council endorses the incorporation of Lot 1 DP 620838 (Telstra Site) within the planning proposal and the application of either an R2 Low Density Residential zone with a minimum lot size requirement of 600m<sup>2</sup> or an SP2 Infrastructure zone to the land.*
- 3. That Telstra be advised of Council's decision and be given a maximum period of eight weeks in which to respond indicating a preferred zoning, and/or preference to be included within the proposal, failing which the planning proposal be amended prior to exhibition to exclude the Telstra site.*
- 4. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.*
- 5. That subject to a Gateway determination, allowing the proposal to proceed to community consultation, the planning proposal be placed on public exhibition.*
- 6. That Council give further consideration to the proposal following the conclusion of the public exhibition period.*

*FOR VOTE - All Councillors voted unanimously.*

*ABSENT. DID NOT VOTE - Cr David Wright and Cr Jeff Johnson*

# Appendix Two – Section 117

## Direction Checklist

Section 117 Direction Checklist – (Updated Directions Dated 15 May 2017)	
Planning Proposal – Lot 2 DP 620838, 9 Byron Bay Road, Lennox Head and Lot 1 DP 620838 (Telstra site)	
Direction No.	Compliance of Planning Proposal
<b>1. Employment and Resources</b>	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Justifiably Inconsistent – The proposal is considered to be of minor overall significance and relates to an ‘in-fill’ site located within a designated Urban Growth Area as defined by the North Coast Regional Plan 2036. The non-inclusion of Lots 1 and 2 as an Investigation Area - Urban Land stemmed from these lots not being included within the Ballina Shire Growth Management Strategy due to an error of omission. Lots 1 and 2 had previously been designated as a Candidate Release area within the Lennox Head Structure Plan.
1.3 Mining, Petroleum Production and Extractive Industries	Consistent
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Justifiably inconsistent – This planning proposal is considered to be justifiably consistent with the relevant Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i> . The proposal is considered to be of minor overall significance and relates to an ‘in-fill’ site located within a designated Urban Growth Area within the North Coast Regional Plan 2036. The non-inclusion of Lots 1 and 2 as an Investigation Area - Urban Land stemmed from these lots not being included within the Ballina Shire Growth Management Strategy due to an error of omission. Lots 1 and 2 had previously been designated as a Candidate Release area within the Lennox Head Structure Plan.
<b>2. Environment and Heritage</b>	
2.1 Environment Protection Zones	Consistent. The planning proposal does not involve the development of land identified as being of environmental significance.
2.2 Coastal Protection	Consistent. The subject lots are located within the coastal zone. <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 included the provisions that give effect to and are consistent with: (a) the <i>NSW Coastal Policy: A Sustainable Future for the New South Wales Coast</i> 1997, and (b) the <i>Coastal Design Guidelines 2003</i> , and (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> ).

<b>Section 117 Direction Checklist – (Updated Directions Dated 15 May 2017)</b> <b>Planning Proposal – Lot 2 DP 620838, 9 Byron Bay Road, Lennox Head and Lot 1 DP 620838 (Telstra site)</b>	
<b>Direction No.</b>	<b>Compliance of Planning Proposal</b>
2.3 Heritage Conservation	<p>Consistent.</p> <p>Ballina LEP 2012 contains provisions (clause 5.10 and Schedule 5) which are consistent with this direction.</p> <p>At this stage there is no evidence available that would suggest that the site contains items, areas, objects and places of environmental heritage significance and / or indigenous heritage significance.</p> <p>Aboriginal Cultural Heritage issues will be required to be further investigated post Gateway determination.</p>
2.4 Recreation Vehicle Areas	<p>Consistent.</p> <p>The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.</p>
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	<p>Justifiably Inconsistent.</p> <p>The proposal is considered to be of minor significance.</p> <p>This proposal involves the rezoning of land from RU1 Primary Production to R2 Low Density Residential with a proposed 600m<sup>2</sup> minimum lot size. The lot size has been nominated to better maximise the lot yield and for its consistency with the lot size applicable to recently released residential land located to the south (Reservoir Hill BLEP 2012 Amendment 27).</p> <p>BLEP 2012 includes an existing provision (Clause 7.7) that requires that adequate servicing be in place, or suitable arrangements to have been made for such servicing, before development proceeds.</p>
3.2 Caravan Parks and Manufactured Home Estates	<p>Consistent.</p> <p>This proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.</p>
3.3 Home Occupations	<p>Consistent.</p> <p>The proposal will not affect any existing permissibility or exemptions for home occupations.</p>
3.4 Integrating Land Use and Transport	<p>Justifiably inconsistent</p> <p>The proposed rezoning is considered to be of minor significance.</p>
3.5 Development Near Licensed Aerodromes	<p>Justifiably inconsistent.</p> <p>The subject land is located within the Obstacle Limitation Surface (OLS) of the Ballina-Byron Gateway Airport which is a trigger for consultation with Commonwealth airport authorities. This consultation is proposed to take place post Gateway determination.</p> <p>Contours across the subject land (east to west) range from 34m AHD to 20m AHD. The OLS surface level for the subject land is 46.5 metres. An 8.5metre building height limit applies to the subject land. Therefore proposed residential development on the subject land will not breach the OLS level.</p> <p>The subject land is not located within an ANEF contour of 20 or greater.</p>
3.6 Shooting Ranges	Does not apply to planning proposal.
<b>4. Hazard and Risk</b>	
4.1 Acid Sulfate Soils	<p>Does not apply to planning proposal.</p> <p>The subject land is not mapped as containing acid sulfate soils on the Acid Sulfate Soil Maps which form a part of BLEP2012.</p>

**Section 117 Direction Checklist – (Updated Directions Dated 15 May 2017)****Planning Proposal – Lot 2 DP 620838, 9 Byron Bay Road, Lennox Head and Lot 1 DP 620838 (Telstra site)**

Direction No.	Compliance of Planning Proposal
4.2 Mine Subsidence and Unstable Land	<p>Justifiably inconsistent.</p> <p>The subject land is located within an area where the assessed landslip risk is low to very low, Coffey &amp; Partners Pty Ltd, 1986. An explanation for the low to very low risk assessment provided by Coffey states:</p> <p><i>“No evidence of instability observed, instability not expected unless major site changes occur. Typically flat to gentle sloping topography, though may have locally steeper slopes due to undercutting by creeks.”</i></p> <p>The subject land is not considered to be unstable land on the basis of the Coffey &amp; Partners Pty Ltd, 1986, assessment.</p>
4.3 Flood Prone Land	Not applicable. The land is not mapped as being flood prone land.
4.4 Planning for Bushfire Protection	Not applicable. The land is not mapped as bushfire prone land.
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies	<p>Justifiably inconsistent.</p> <p>The planning proposal is considered to be justifiably inconsistent with the North Coast Regional Plan 2036 as it is considered to satisfy the Urban Growth Area Variation Principles and the Important Farmland Variation Criteria.</p> <p>The subject land is shown as being part of a Ballina Shire Urban Growth Area but has not been designated as an Investigation Area – Urban Land as a consequence of an oversight.</p> <p>It is considered that this non-compliance whilst justified is also of minor significance. The planning proposal is considered to achieve the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.</p>
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	<p>Justifiably inconsistent</p> <p>The subject land is designated as significant regionally non-contiguous farmland on maps marked “Northern Rivers Farmland Protection Project, Final Map 2005 (Section 117 (2) Direction)”.</p> <p>This planning proposal is consistent with the North Coast Regional Plan 2036 in so far as the subject land complies with the Urban Growth Area Variation Principles and meets the Important Farmland Variation Criteria contained within the plan. It is also consistent with the plan as the subject land is located within a designated Urban Growth Area.</p>
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.



<b>Section 117 Direction Checklist – (Updated Directions Dated 15 May 2017)</b> <b>Planning Proposal – Lot 2 DP 620838, 9 Byron Bay Road, Lennox Head and Lot 1 DP 620838 (Telstra site)</b>	
<b>Direction No.</b>	<b>Compliance of Planning Proposal</b>
5.10 Implementation of Regional Plans	<p>Justifiably Inconsistent.</p> <p>The planning proposal is considered to be justifiably inconsistent with the North Coast Regional Plan 2036 as the subject land has not been designated as an Investigation Area – Urban Land whilst being located within a designated Urban Growth Area.</p> <p>In respect to the above, and having regard to the infill nature of the subject land, this inconsistency is considered to be of minor significance.</p> <p>The planning proposal is considered to achieve the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.</p>
<b>6. Local Plan Making</b>	
6.1 Approval and Referral Requirements	<p>Consistent.</p> <p>The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.</p>
6.2 Reserving Land for Public Purposes	<p>Consistent.</p> <p>The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes.</p>
6.3 Site Specific Provisions	<p>Consistent.</p> <p>The planning proposal does not introduce any new site specific provisions.</p>
<b>7. Metropolitan Planning</b>	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Ballina Shire.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Does not apply to Ballina Shire.

## Appendix Three – Gateway Determination

A copy of the Gateway determination will be included here.

# Appendix 4 – Urban Growth Area Variation Principles & Important Farmland Interim Variation Criteria

## Urban Growth Area Variation Principles

Principle	Requirement	Comment
Policy	The variation needs to be consistent with the objectives and outcomes in the <i>North Coast Regional Plan 2036</i> and any relevant Section 117 Directions and State Environmental Planning Policies, and should consider the intent of any applicable local growth management strategy.	<p>The proposal is considered to be generally consistent with the directions and actions contained within North Coast Regional Plan 2036, applicable S117 Directions and SEPPs when viewed in the context that what is proposed is infill development consistent with the Lennox Head Strategic Plan and located within a designated Urban Growth Area.</p> <p>The proposal is also consistent with the intent of the Ballina Shire Growth Management Strategy (LGMS). A Strategic Action for Lennox Head requires the maintenance of a commitment to the development framework established by the Lennox Head Community Aspiration's Strategic Plan and the Lennox Head Structure Plan (LHSP). It is noted that the LHSP incorporates Lots 1 and 2 within Candidate Release Area I. Its subsequent omission as a Strategic Urban Growth Area from the LGMS and Ballina LEP 2012 is considered to have resulted from an oversight as opposed to a Council policy position.</p>
Infrastructure	<p>The variation needs to consider the use of committed and planned major transport, water and sewerage infrastructure, and have no cost to government.</p> <p>The variation should only be permitted if adequate and cost-effective infrastructure can be provided to match the expected population.</p>	<p>The future subdivision of Lot 2 and potentially part of Lot 1 for residential purposes based on a minimum lot size standard of 600m<sup>2</sup> can be accommodated by existing water and sewer infrastructure located in close proximity to this site.</p> <p>All infrastructures required for a future residential subdivision will be required to be provided by the land developer at no cost to government.</p>
Environmental and farmland protection	<p>The variation should avoid areas:</p> <ul style="list-style-type: none"> <li>• of high environmental or heritage value;</li> <li>• mapped as important farmland, unless consistent with the interim variation criteria prior to finalising the farmland mapping review.</li> </ul>	<p>Lots 1 and 2 are not considered to be located within an area of high environmental or heritage value based on information currently available to Council.</p> <p>Lots 1 and 2 are designated as Important Farmland being classified as Non Contiguous Regionally Significant Farmland. Lots 1 and 2 conform to the interim variation criteria – see attached assessment.</p> <p>It should be noted that Lot 2 with an area of less than 1ha is isolated from other farmland with adjoining land to the west and south being zoned for residential purposes. Adjoining land to the east (Lot 1) is already partly used for non-agricultural purposes as it contains the Telstra Lennox Head telephone exchange infrastructure.</p> <p>Given the small size of Lot 1 (2023m<sup>2</sup>) and Lot 2 (9,735m<sup>2</sup>) and its inability to be consolidated with other land designated as Important Farmland and available for use for agricultural purposes it is considered that this land cannot viably support primary production related activities.</p>
Land use conflict	<p>The variation must avoid physically constrained land identified as:</p> <ul style="list-style-type: none"> <li>• flood prone;</li> <li>• bushfire-prone;</li> <li>• highly erodible;</li> <li>• having a severe slope; and</li> </ul>	<p>Lots 1 and 2 are not constrained by any of the nominated land constraints.</p>

	• having acid sulfate soils.	
<b>Heritage</b>	The variation must protect and manage Aboriginal and non-Aboriginal heritage.	There is no evidence currently available that the site contains items of Aboriginal or non-Aboriginal heritage.
<b>Coastal area</b>	Only minor and contiguous variations to urban growth areas in the coastal area will be considered due to its environmental sensitivity and the range of land uses competing for this limited area.	The proposal is located within the Lennox Head Urban Growth Area as designated on the map accompanying the <i>North Coast Regional Plan 2036</i> .

### Important Farmland Interim Variation Criteria

Land may be suitable for uses other than farmland if:		
<b>Principle</b>	<b>Requirement</b>	<b>Comment</b>
<b>Agricultural capability</b>	The land is isolated from other important farmland and is not capable of supporting sustainable agricultural production	<p>Lots 1 and 2 are designated as Important Farmland being classified as Non Contiguous Regionally Significant Farmland.</p> <p>Lots 1 and 2 conform to the interim variation criteria – see attached assessment.</p> <p>It is noted that Lots 1 and 2 have a combined area of 1.1758 hectares and are isolated from other farmland. Adjoining land to the west and south is zoned for residential purposes.</p> <p>Given the small size of Lots 1 and 2 and the constraints preventing its consolidation with other land designated as Important Farmland it is considered that this land cannot viably support primary production related activities.</p>
<b>Land use conflict</b>	The land use does not increase the likelihood of conflict and does not impact on current or future agricultural activities in the locality	No potential for land use conflict arises given that adjoining land is zoned for residential purposes.
<b>Infrastructure</b>	The delivery of infrastructure (utilities, transport, open space, communications and stormwater) required to service the land is physically and economically feasible at no cost to State and Local Government	Infrastructure to support the proposed future residential subdivision of lots 1 and 2 is already available and can be further augmented at no cost to government.
<b>Environment and heritage</b>	The proposed land uses do not have an adverse impact on areas of high environmental value, and Aboriginal or historic heritage significance	<p>Based on information currently available the proposal is unlikely to give rise to any adverse impact on areas of high environmental value, and Aboriginal or historic heritage significance.</p> <p>The significance of the sites ecological characteristics and its Aboriginal cultural heritage value will be required to be further investigated post Gateway determination.</p>
<b>Avoiding risk</b>	<p>Risks associated with physically constrained land are identified and avoided, including:</p> <ul style="list-style-type: none"> <li>• flood prone;</li> <li>• bushfire-prone;</li> <li>• highly erodible;</li> <li>• severe slope; and</li> <li>• acid sulfate soils.</li> </ul>	Lots 1 and 2 are not constrained by any of the nominated land constraints.

## Appendix 5 – Mapping

The following additional maps will be prepared following public exhibition:

**Map 1 – Land Zoning Map Ballina LEP 2012**

**Map 2 – Lot Size Map Ballina LEP 2012**

# Appendix 6 – Proponent's Planning Proposal Submission

## ARDILL PAYNE

& Partners  
[www.ardillpayne.com.au](http://www.ardillpayne.com.au) e: [info@ardillpayne.com.au](mailto:info@ardillpayne.com.au)  
ABN: 51 808 558 977



8116 planning proposal cover letter (may 2017)

23 May 2017

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

Dear Sir/Madam

re: **Planning Proposal/LEP Amendment Request**  
**Lot 2 DP 620838, No. 9 Byron Bay Road, Lennox Head**

I refer to prior communications in respect of the subject matter between Council's Klaus Kerzinger and Ardill Payne & Partners' (APP) Dwayne Roberts in early 2016.

APP has been commissioned by Mark Condon and Jeanette Hills (Executors of the Estate of William Michael Condon) to provide Town Planning services in the preparation and lodgement of a Planning Proposal/LEP Amendment Request with Ballina Shire Council.

Attached herewith is the following:

- signed Executors' authorisation enabling APP act on their behalf
- completed Planning Proposal/LEP Amendment Request Proponent & Proposal Information Form
- 2 x paper and 1 x CD copies of the planning proposal request
- cheque for \$3590.00 being the Stage 1 processing fee as detailed in Council's 2016/2017 Fees and Charges

Should you have any questions in respect of this matter, please contact me on 6686 3280 or [pauls@ardillpayne.com.au](mailto:pauls@ardillpayne.com.au)

Yours faithfully

Paul Snellgrove

**ARDILL PAYNE & PARTNERS**

**Engineers | Planners | Surveyors | Environmental | Project Management**

**BALLINA**  
45 River Street  
PO Box 20  
BALLINA NSW 2478  
Ph: 02-6686 3280

**BRISBANE**  
Level 1, The Designbank  
89 Grey Street  
SOUTH BRISBANE QLD 4101  
Ph: 07-3123 6675

**GUNNDAH**  
Germane House,  
285 Conadilly Street,  
GUNNDAH NSW 2380  
Ph: 02-6742 9955

## 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  
t 02 6686 4144 • w www.ballina.nsw.gov.au • abn 53 529 887 359

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	ESTATE OF WILLIAM MICHAEL GORDON		
Address	SEE ATTACHED SIGNED LANDOWNER AUTHORITY		
Postal Address	FROM EXECUTORS (MARK GORDON / JEANETTE HILLS)		
Telephone (w)		(h)	Mobile 0468 300 937
Email Address	MCGORDON777@HOTMAIL.COM	Fax	
Signature	SEE ATTACHED	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 (Plus SNEUGROE)		
Address	PO BOX 20 BALLINA		
Telephone (w)	6686 3280	Mobile	Fax 6686 7920
Email Address	PLUS@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	9 BYRON BAY RD LENNOX HEAD		
Lot/Portion	2	Section	- DP 620838
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 type="checkbox"/> Y <input type="checkbox"/> N Amount: \$ 3,590.00	Date Received: 22-5-17	Receipt No: 779467
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)	ESTATE OF WILLIAM MICHAEL GORDON		
Address	REFER ATTACHED SIGNED LANDOWNER AUTHORITY		
Lot/Portion	Section	DP	
Telephone (w)	(h)	Mobile	
Email Address			Fax
<input type="checkbox"/> 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.

REFER ATTACHED DOCUMENT TITLED "PLANNING PROPOSAL/LEP AMENDMENT REQUEST" PREPARED BY APP DATED MAY 2017



List of Information Provided in Support of the LEP Amendment Request / Planning Proposal

REFER ATTACHED DOCUMENT TITLED "PLANNING  
PROPOSAL/LEP AMENDMENT REQUEST" PREPARED  
BY APP DATED MAY 2017

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



APP Land Owner Authority.doc

### LAND OWNER AUTHORITY

This is to advise that Ardill Payne & Partners  
 of 45 River Street, Ballina NSW has been engaged by:

Landowner's name	Estate of William Michael Condon (Executors – Mark Condon and Jeanette Hills <sup>SH</sup> ).
Landowner's address	c/- 183 CAMERON RD, McLEANS RIDGES 2480

To prepare certain applications in respect of land known as:

Street	9 Byron Bay Road
Town	Lennox Head
Real property description	Lot 2 DP 620838

The owner(s) of the aforementioned land(s) hereby authorises Ardill Payne & Partners or its agents to:

1. Inspect all relevant Council records.
2. Obtain copies of submissions made to Council or other government authorities.
3. Carry out searches and site inspections.
4. Lodge a planning proposal, development, section 96, construction certificate, Section 68 and 138, subdivision certificate or any other like application with Ballina Council.

Signed	<i>M. Condon</i>	<i>Jeanette Hills</i>
Name	Mark Condon (Executor)	Jeanette Hills (Executor)
Date	22/5/17	22/5/17
Phone	0468 300 937	0421 972614

**BALLINA**  
 45 River Street  
 PO Box 20  
 BALLINA NSW 2478  
 Ph: 02-6686 3289

**BRISBANE**  
 Level 1, The Design Bank  
 89 Grey Street  
 SOUTH BRISBANE QLD 4101  
 Ph: 07-3123 6675

**GUNNEDAH**  
 German House,  
 285 Conadilly Street,  
 GUNNEDAH NSW 2380  
 Ph: 02-6742 9955

# ARDILL PAYNE & PARTNERS

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



## **PLANNING PROPOSAL/LEP AMENDMENT REQUEST**

Submission to Ballina Shire Council

Lot 2 DP 620838  
No. 9 Byron Bay Road, Lennox Head

for:  
Estate of William Michael Condon

May 2017

Document Control Sheet

Filename:	8116 Planning Proposal/LEP Amendment Request (May 2017)
Job No.:	8116
Job Captain:	Paul Snellgrove
Author:	Paul Snellgrove
Client:	Estate of William Michael Condon
File/Pathname:	

Revision No:	Checked By		Issued By	
	Name	Signed	Name	Signed
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Table of Contents	
1	INTRODUCTION ..... 1
1.1	Background.....1
1.2	Structure and Scope of Report.....2
1.3	Background.....2
2	CONTEXT AND CHARACTERISTICS OF SUBJECT LAND..... 4
2.1	Property Details .....4
2.2	Other matters.....4
2.3	Strategic Planning Context.....5
2.3.1	Far North Coast Regional Strategy 2006-31 (FNCRS).....5
2.3.2	Lennox Head Structure Plan (2004) (LHSP) .....5
2.3.3	Ballina Shire Growth Management Strategy 2012 (GMS) .....6
2.3.4	North Coast Regional Plan 2036 (NCRP) .....6
2.4	Relevant Provisions of BLEP 2012.....6
3	OBJECTIVES OR INTENDED OUTCOMES OF PROPOSED LEP ..... 7
3.1	Objectives of Planning Proposal.....7
3.2	Possible Future Subdivision .....7
4	EXPLANATION OF PROVISIONS..... 8
4.1	Explanation of Proposed Amendments .....8
5	JUSTIFICATION FOR THE PROPOSED AMENDMENTS ..... 9
5.1	Section A – Need for the planning proposal .....9
5.2	Section B – Relationship to strategic planning framework .....10
5.3	Section C – Environmental, social and economic impact .....15
5.4	Section D – State and Commonwealth interests .....16
6	COMMUNITY CONSULTATION..... 17
7	SCOPE OF ENGAGEMENT ..... 18
8	APPENDICES..... 19



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## 1 Introduction

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*This section introduces the proposal and provides a general overview of the project.*

### 1.1 Background

This submission comprises a Planning Proposal/LEP Amendment Request which explains the intended effect of, and provides justification for, a proposed amendment to the Ballina Local Environmental Plan 2012 (BLEP).

The proposed amendments relate to land described as Lot 2 DP 620838, No. 9 Byron Bay Road, Lennox Head and involves:

- rezoning the land to R2 – Low Density Residential Zone; and
- replacing the 40ha minimum lot size with a 600m<sup>2</sup> minimum lot size.

The proposed R2 zone is the same zone as the adjoining/adjacent land in Ocean Breeze Drive and the recently rezoned Reservoir Hill site. The 600m<sup>2</sup> minimum lot size standard is the same as that recently applied to the adjoining sections of the Reservoir Hill site.

This Planning Proposal has been prepared having regard to Section 55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and:

- 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)

This submission comprises and supports the Phase 1: LEP Amendment Initiation process of the Planning Proposal and addresses all of the information on Council's *Planning Proposal/LEP Amendment Request – Proponent & Proposal Information Form*.

This submission has been prepared on behalf of the Executors of the Estate of William Michael Condon, being Mark Condon and Jeanette Hills.

There is no Political Donations and Gifts Disclosure required to accompany this request.

## 1.2 Structure and Scope of Report

This LEP Amendment Initiation Request contains the following:

<b>Section 2</b>	Context and characteristics of subject land.
<b>Section 3</b>	A statement of the Objectives and Intended Outcomes of the proposed LEP amendment (Section 2, Part 1).
<b>Section 4</b>	An Explanation of the Provisions that are to be included in the proposed LEP amendment (Section 2, Part 2).
<b>Section 5</b>	The Justification for those objectives, outcomes and provisions and the process for their implementation (Section 3, Part 2).
<b>Section 6</b>	Details of the Community Consultation in respect of the Planning Proposal (Section 4, Part 2).
<b>Section 7</b>	Conclusion

A number of appendices form part of this request being:

<b>Appendix A</b>	Aerial photograph of subject and adjoining land
<b>Appendix B</b>	Copy of deposited plan
<b>Appendix C</b>	Copy of submission to BSCPP 14/002 – Reservoir Hill, Lennox Head

## 1.3 Background

Ardill Payne & Partners prepared a submission on behalf of Mr Mark Condon by letter dated 13<sup>th</sup> May 2016 in respect of Planning Proposal

2

BSCPP 14/002 – Reservoir Hill, Lennox Head (Lots 1 & 2 DP 517111, North Creek Road, Lennox Head), with a copy of such being provided at Appendix C.

This letter advised Council that Mr Condon was not objecting to Planning Proposal BSCPP 14/002, but advised that Mr Condon “.. wants to ensure that his property maintains formal dual road frontage, and specifically maintain an existing frontage to Hutley Drive road reserve. Mr Condon is currently exploring the opportunity for rezoning of his land to enable future residential subdivision and development, and the retention of this road reserve and access opportunity is considered to be of critical importance to such...”.

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## 2 Context and Characteristics of Subject Land

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*This section describes the subject land and identifies the geographical context of the site and its relationship to the surrounding locality.*

### 2.1 Property Details

This Planning Proposal relates to a single lot which is described in real property terms as Lot 2 DP 620838, is commonly known as No. 9 Byron Bay Road, Lennox Head and has an area of 9735m<sup>2</sup>.

An aerial photograph of the subject and adjoining land is provided at **Appendix A**. A copy of the deposited plan is provided at **Appendix B**.

Existing on the land is a dwelling house and ancillary structures and improvements. Vehicular access to the site is via an existing bitumen driveway to Byron Bay Road which is a constructed urban road with a bitumen seal, kerb and gutter and a concrete footpath for the full property frontage.

### 2.2 Other matters

Preliminary planning investigations in respect of the subject land confirm that the land is:

- not mapped as being subject to SEPP 14
- not mapped as being subject to SEPP 26 or being within 100m buffer to SEPP 26
- not mapped as being bushfire prone
- not likely to be contaminated as a consequence of existing or prior land uses (existing long-standing residential use – occupied dwelling house)
- not is mapped as being subject to the 1 in 100 year flood event or tidal inundation
- not mapped as being subject to acid sulfate soils (Sheet ASS\_005 – BLEP 2012)
- not identified as being or containing an item of environmental heritage (per Schedule 5 of the Ballina LEP 2012)
- not identified as including or comprising critical habitat as prescribed in the *Threatened Species Conservation Act 1995* or Part 7A of the *Fisheries Management Act 1994*

- not identified as being affected by the operation of Sections 38 or 39 of the *Coastal Protection Act 1979*
- not 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
- not identified as being subject to acquisition by a public authority under the provisions of any environmental planning instrument, deemed or draft environmental planning instrument
- not affected by any noise contours (ANEF) of the Ballina Byron Gateway Airport
- contained wholly within the Obstacle Limitation Surface (OLS) of the Ballina Byron Gateway Airport

## 2.3 Strategic Planning Context

### 2.3.1 Far North Coast Regional Strategy 2006-31 (FNCRS)

The subject land is mapped in the FNCRS as being a 'Proposed Future Urban Release Area'.

Under the circumstances, the proposed application of a residential zone is consistent with the Strategy.

### 2.3.2 Lennox Head Structure Plan (2004) (LHSP)

The LHSP provides a framework to ensure that the growth and development of Lennox Head occurs in a co-ordinated and integrated manner.

The subject land is mapped on Figure 2 – Structure Plan – Summary Map as part of Candidate Release Area I, with Section 3.3.10 of the LHSP stating that:

*"... the Structure Plan recognises that Area I appears to be suited to accommodating future urban development. Should detailed assessment (via the rezoning process) confirm this to be the case residential development comprising a range of low and medium density housing (L1, L2, D & M1 pursuant to DCP No. 1) is the preferred use for this site."*



The subject land is not mapped as being subject to or containing any "constraints" as shown on Figure 1 – Opportunities & Constraints of the LHSP.

#### **2.3.3 Ballina Shire Growth Management Strategy 2012 (GMS)**

The subject land adjoins a mapped "strategic urban growth area", being the land to which Planning Proposal BSCPP 14/002 (Reservoir Hill, Lennox Head) applies.

The land is represented on the Lennox Head map as being characterised by existing urban development.

This is not considered to be an inconsistency, particularly due to the fact that the land is shown as being within an existing urban area and as a consequence of the land being identified for future urban purposes under both the FNCRS and the LHSP.

#### **2.3.4 North Coast Regional Plan 2036 (NCRP)**

The subject land is mapped on Figure 13: Urban Growth Area Map for Ballina Local Government Area as an "Urban Growth Area" under the NCRP.

Under the circumstances, the proposed application of a residential zone is consistent with the provisions of the NCRP.

### **2.4 Relevant Provisions of BLEP 2012**

The subject land is mapped under the BLEP 2012 as follows:

- RU1 – Primary Production Zone
- AB2 – 40ha minimum lot size/subdivision standard
- 8.5m maximum building height

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### 3 Objectives or Intended Outcomes of Proposed LEP

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#### 3.1 Objectives of Planning Proposal

The objective of the Planning Proposal is to rezone the subject land to an urban residential zone and to apply a minimum lot size that will enable the land to be subdivided into minimum 600m<sup>2</sup> lots, and to enable the construction of dwelling houses on the vacant lots at some future time (and subject to a separate approval process).

#### 3.2 Possible Future Subdivision

The subject land has an area of 9735m<sup>2</sup> and it is proposed to apply an R2 – Low Density Residential Zone with a 600m<sup>2</sup> minimum lot size.

Based purely on a 600m<sup>2</sup> lot size and approximately 150m<sup>2</sup> of road per lot, the site could yield in the order of 13 lots. It should be noted that this yield is purely a hypothetical numerical and has not been calculated having regard to any of the characteristics of the site.

The locality is serviced by all necessary reticulated public infrastructure services, including:

- potable water supply
- sewerage disposal
- electricity
- telecommunications
- constructed urban roads (including stormwater)

Any future new lots would be able to be connected to and serviced by such systems.

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## 4 Explanation of Provisions

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### 4.1 Explanation of Proposed Amendments

The proposed amendments to the BLEP 2012 involve:

- rezoning the lot from RU1 – Primary Production Zone to R2 – Low Density Residential Zone; and
- applying a 600m<sup>2</sup> minimum lot size to the land.

The proposed R2 zone is the same zone as the adjoining/adjacent land in Ocean Breeze Drive and the recently rezoned Reservoir Hill site. The 600m<sup>2</sup> minimum lot size standard is the same as that recently applied to the adjoining sections of the Reservoir Hill site.

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## 5 Justification for the Proposed Amendments

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### 5.1 Section A – Need for the planning proposal

*1. Is the planning proposal a result of any strategy study or report?*

The subject land is identified in the Far North Coast Regional Strategy as "proposed future urban release area" and as "Candidate Release Area I" under the Lennox Head Structure Plan.

The land is also mapped as an "urban growth area" under the North Coast Regional Plan.

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

The proposed application of a residential zone is consistent with these strategic planning documents that identify the land for future urban investigation/use.

It is submitted that an LEP amendment is the best (and only) way in which to achieve the proposed outcomes, as the proposal relates expressly to land use zoning and subdivision.

*3. Is there a net community benefit?*

The net community benefit that will result from the proposal is:

- additional economic activity generated by the development of the land for urban residential purposes
- additional land available for residential and related development

## 5.2 Section B – Relationship to strategic planning framework

### ***4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?***

As detailed elsewhere in this Planning Proposal, the proposal is consistent with the Far North Coast Regional Strategy.

The Planning Proposal involves changes to the zoning and minimum lot size standards to enable future subdivision (and construction of new dwelling houses).

The Planning Proposal will provide for increased housing opportunities which will assist in accommodating the projected local and regional population increase.

The Planning Proposal is thus consistent with the FNCRS. The information contained in this Planning Proposal document confirms and supports the capability of the land to accommodate urban residential development, which is thus consistent with the regional planning framework.

### ***5. Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?***

*Lennox Head Structure Plan 2004 (LHSP)*

The subject land is mapped on Figure 2 – Structure Plan – Summary Map as part of Candidate Release Area I which the Strategy confirms:

- is land that appears to be suited to accommodating future urban development
- that contingent upon detailed assessment (via the rezoning process) confirming this to be the case, the preferred use is residential development comprising a range of low and medium density housing



*Ballina Shire Growth Management Strategy 2012 (GMS)*

The subject land adjoins a mapped "strategic urban growth area", being the land to which Planning Proposal BSCPP 14/002 (Reservoir Hill, Lennox Head) applies.

The land is represented on the Lennox Head map as comprising existing urban development.

**6. Is the planning proposal consistent with applicable state environmental planning policies?**

There are a number of SEPP's that are of relevance to the proposal, details of which are as follows:

SEPP Title	Compliance of Planning Proposal
SEPP (Rural Lands) 2008	<p>The subject land is currently zoned RU1. The proposed rezoning of the lot to a residential zone will not compromise or prejudice the use of the subject and adjoining land for agricultural purposes, due primarily to the characteristics, existing use, adjoining use and small size of the lot.</p> <p>The application of a residential zone will not result in increased land use conflicts with adjoining agricultural land as a consequence of the siting of the existing and future dwellings, the character of the adjoining and surrounding land (being primarily urban residential) and the limited potential for agricultural use of the adjoining land.</p> <p>It is therefore submitted that the Planning Proposal is consistent with the provisions of this SEPP.</p>
SEPP 44 – Koala Habitat Protection	<p>The subject land is a small (9735m<sup>2</sup>) rural residential type lot that is devoid of significant native vegetation and is not likely to contain any Koala food trees. The subject land is not mapped as containing or being proximate to core Koala habitat on Figure 8: Core Koala Habitat of the Ballina Shire Koala Management Strategy (March 2016).</p> <p>It is therefore submitted that the Planning Proposal is consistent with the provisions of and is not contrary to the intent of the SEPP.</p>
SEPP 55 – Remediation of Land	<p>Clause 6(1) of this SEPP requires the planning authority when preparing a Draft LEP to consider whether the land is contaminated and whether the land is suitable for such purpose (as not being contaminated or requiring remediation to make it suitable). The subject land is a small rural residential lot (9735m<sup>2</sup>) that has and continues to be used for residential purposes and does not have any current or historical usage that would have contaminated the land. Further, the land does not adjoin and is not proximate to any intensive horticulture or other potentially contaminating uses, and it is submitted that there would be no requirement for any detailed contamination investigation to support Phase 2.</p> <p>It is therefore submitted that the Planning Proposal is consistent with the provisions of and is not contrary to the intent of the SEPP.</p>
SEPP 71 – Coastal	The subject land is physically and spatially removed from any coastal



Protection	foreshore area. The future subdivision and residential development of the land will not have any adverse or tangible impacts on any part of the coastal foreshore or any public land.  It is therefore submitted that the Planning Proposal is consistent with the provisions of and is not contrary the intent of the SEPP.
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**7. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?**

Section 117 of the *EP & A Act 1979* provides directions that relevant planning authorities must have regard to when preparing planning proposals for new LEPs. The following table identifies which of these directions are applicable to the proposed rezoning and how the Planning Proposal is consistent with their provisions.

Direction Number	Compliance of Planning Proposal
<b>1. Employment and Resources</b>	
1.1 Business and Industrial Zones	Does not apply to Planning Proposal.
1.2 Rural Zones	Complies – The subject land is mapped as 'Proposed Future Urban Release Area' (Town and Village Growth Boundary Map – Sheet 3 – Ballina) of the FNCRS and is thus able to be justified as a consequence of the FNCRS.
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 Lands	Complies – comments in respect of the Rural Lands SEPP are provided in Section 5.2 of this Planning Proposal. Further, the proposed rezoning is of relatively minor significance and is consistent with the FNCRS 2006-31 in that part of the lot is mapped as a 'Proposed Future Urban Release Area'.
<b>2. Environment and Heritage</b>	
2.1 Environmental Protection Zones	Does not apply to Planning Proposal.
2.2 Coastal Protection	Complies – the proposal is considered to be of a relatively minor nature, resulting in a possible maximum of 13 lots (and future houses). The subject land is physically and spatially removed from any coastal foreshore area and is not subject to flooding, tidal inundation, acid sulfate soils, or any damaging coastal processes. The proposal will not have any impact on any coastal foreshore land (public or private).
2.3 Heritage Conservation	Complies – the subject land is not identified as containing or comprising a heritage item or place (per Schedule 5 of the BLEP 2012).
2.4 Recreation Vehicle Areas	Does not apply to Planning Proposal.



<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	Complies – adequate public infrastructure is available in the immediate locality to service the existing lot and possible new lots (contingent upon consent being granted to future subdivision).  The proposal will facilitate urban development which is able to connect to and make use of existing infrastructure services.
3.2 Caravan Parks and Manufactured Home Estates	Does not apply to Planning Proposal.
3.3 Home Occupations	Complies – home occupations are permitted without consent in the R2 zone under the BLEP 2012.
3.4 Integrated Land Use and Transport	Complies – the land is identified in the 'Proposed Future Urban Release Area' of the FNCRS. The proposal will facilitate development which is able to make use of existing roads and transport services.
3.5 Development Near Licensed Aerodromes	Complies – the proposal does not create or alter a zone in the vicinity of the Ballina Airport, with the eastern end of the runway being approx. 3.7km to the south-west. The land is within the OLS of the airport, however, there is adjoining/adjacent land and buildings that are higher than the subject land. There were no issues with Air Services Australia, CASA or the Ballina Airport in respect of BSCPP 14/002, parts of which are of a comparable elevation to the subject land.  The subject land is not impacted by the ANEF contours for the airport.
3.6 Shooting Ranges	Does not apply to Planning Proposal.
<b>4. Hazard and Risk</b>	
4.1 Acid Sulphate Soils	Does not apply to Planning Proposal.
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	Does not apply to Planning Proposal.
<b>5. Regional Planning</b>	
5.1 Implementation of Regional Strategies	Complies – the land is identified as a 'Proposed Future Urban Release Area' under the FNCRS.
5.2 Sydney Drinking Water Catchments	Does not apply to Planning Proposal.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Complies – The land is mapped in the "Northern Rivers Farmland Protection Project – Final Recommendations", February 2005 as "regionally significant farmland" with a "significant non-contiguous farmland" overlay.  Notwithstanding such, the land is mapped as a 'Proposed Future Urban Release Area' under the FNCRS 2006-31. Pursuant to Subclause (2) of Direction 5.3, land identified as such is excluded from the requirements of the Direction.  It can also be justified against Section 4 of the Final Recommendations Report which states that urban development could be considered on regionally significant farmland if all seven of the following criteria apply:  1. The proposal is for an infill urban area that will be part of Lennox Head and is not a disjointed suburb. Council has

	<p>consistently included this land as a future urban area, and it is surrounded by existing zoned and mostly developed residential land.</p> <ol style="list-style-type: none"> <li>The subject land is effectively contained in the Lennox Head urban area and is well serviced with roads and reticulated water and sewerage services.</li> <li>It will not be a wedge into regionally significant farmland because it is surrounded on all sides by roads and existing or approved residential development. The land is not used for any productive purpose and will thus will not be lost from production. Allowing development on this site will not disrupt the use of any other farmland.</li> <li>The 9735m<sup>2</sup> is not being used for any productive agricultural purpose (particularly cane or beef). The land is not critical to the viability of either the sugar or beef industry. No agricultural infrastructure or transport routes will be affected by this site being used for residential development.</li> <li>No impacts arising from the development of this site will compromise sugar cane production or grazing being carried out on other significant farmland in the broader area.</li> <li>The land is not flood affected or subject to any other significant hazard.</li> </ol> <p>In this case, all seven criteria have been met by the planning proposal.</p>
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to the Planning Proposal.
5.5 Development in the Vicinity of Ellalong, Paxton and Murrumbidgee (Cessnock LGA)	Revoked 18 June 2010.
5.6 Sydney to Canberra Corridor	Revoked 10 July 2008
5.7 Central Coast	Revoked 10 July 2010
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to the Planning Proposal.
5.9 North West Rail Link Corridor Strategy	Does not apply to the Planning Proposal.
<b>6. Local Plan Making</b>	
6.1 Approval and Referral Requirements	Complies – does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Does not apply to the Planning Proposal.
6.3 Site Specific Provisions	Complies – seeks to apply the existing R2 land use zone and standards that are compatible with the residential development of the site and adjoining land.
<b>7. Metropolitan Planning</b>	
7.1 Implementation of the Metropolitan Plan for Sydney 2036	Does not apply to Planning Proposal.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Planning Proposal.



**5.3 Section C – Environmental, social and economic impact**

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

As evidenced from the aerial photograph at **Appendix A**, the subject land is largely cleared, containing a house and ancillary structures and improvements, with mown grass and domestic type landscaping.

The subject land is not likely to contain any critical habitat or threatened species, populations or ecological communities.

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

The subject land is not mapped as being subject to flooding, acid sulfate soils or damaging coastal processes and is not mapped as being bushfire prone.

The land is in a locality that is mapped as being high mosquito risk. The whole of the towns of Lennox Head and Ballina are situated in such an area and it has not been Council's practice to preclude urban residential development in such areas as a consequence of mosquito risk.

In accordance with Council's current controls and strategies (Section 3.6 – Mosquito Management, Chapter 2 – General and Environmental Considerations, DCP 2012), any future dwellings will be required to contain effective screening to all windows, external doors and other openings to habitable rooms (would be conditioned at DA stage for future houses).

***10. How has the planning proposal adequately addressed any social and economic effects?***

The proposed rezoning (and construction of future houses) may have impacts on the landscape and scenic character of the locality but would not have any significant amenity impacts on adjacent dwellings and residents. These matters would have to be addressed in more detail should the Planning Proposal proceed to Phase 2.

The subject land is already connected to all necessary reticulated public infrastructure services and thus there are no significant economic issues with the servicing of any future lots.

**5.4 Section D – State and Commonwealth interests**

***11. Is there adequate public infrastructure for the planning proposal?***

The existing locality is connected to and serviced by all necessary reticulated public infrastructure services. There is sufficient capacity for any proposed new lots to be efficiently and economically connected to and serviced by such services.

***12. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?***

The views of the Department of Planning & Infrastructure and other relevant Governmental bodies would be obtained should Council resolve to enable the Planning Proposal to proceed.

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**6 Community Consultation**

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There has not been any community consultation undertaken in respect of this Planning Proposal at this point in time.

It is likely that a requirement for community consultation will be contained in any Gateway Determination, with such community consultation and advertising having to be duly undertaken by Council in the further processing of this Planning Proposal.

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## 7 Scope of Engagement

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This Planning Proposal has been prepared by Ardill Payne & Partners (APP) on behalf of the Executors of the Estate of William Michael Condon (being Mark Condon and Jeannette Hills) for lodgement with Ballina Shire Council and is not to be used for any other purpose or by any other person or corporation.

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.

No part of this report may be reproduced, stored or transmitted in any form without the prior consent of APP.

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.

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**8 Appendices**

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<b>Appendix A</b>	Aerial photograph of subject and adjoining land
<b>Appendix B</b>	Copy of deposited plan
<b>Appendix C</b>	Copy of submission to BSCPP 14/002 – Reservoir Hill, Lennox Head



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APPENDIX A

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

*Planning Proposal/LEP Amendment Request  
Lot 2 DP 620838  
9 Byron Bay Road, Lennox Head*

20

## Aerial photograph of subject and adjoining land

Lot 2 DP 620838



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## APPENDIX B

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**Appendix B**  
Copy of deposited plan

21

*Planning Proposal/LEP Amendment Request  
Lot 2 DP 620838  
9 Byron Bay Road, Lennox Head*

[illegible]

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APPENDIX C

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**Appendix C**

Copy of submission to  
BSCPP 14/002 – Reservoir  
Hill, Lennox Head

22

**ARDILL PAYNE**

& P a r t n e r s  
www.ardillpayne.com.au e:info@ardillpayne.com.au

ABN: 51 808 558 977

bispp 14.002 - condon submission (may 2016)

**E-MAILED**

13.5.2016

TO KLAUS KERZINGER



13 May 2016

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

**Attn: Mr Klaus Kerzinger**

Dear Klaus

re: **BSCPP 14/002 – Reservoir Hill, Lennox Head**  
**Lots 1 & 2 DP 51711, North Creek Road, Lennox Head**

Ardill Payne & Partners has been commissioned by Mr Mark Condon to prepare a submission in respect of the subject Planning Proposal which is currently on public exhibition until the 13<sup>th</sup> May 2016.

Mr Condon owns Lot 2 DP 620838, No. 9 Bryon Bay Road, Lennox Head which is separated from the land that is subject of the Planning Proposal by the Hutley Drive road reserve ('paper road'), as shown below:



Source: SixMaps (13 May 2016)

**Engineers | Planners | Surveyors | Environmental | Project Management**

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45 River Street  
PO Box 20  
BALLINA NSW 2478  
Ph: 02-6686 3280

**BRISBANE**  
Level 1, The Design Bank  
89 Gray Street  
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Germane House,  
285 Conadilly Street,  
GUNNDAH NSW 2380  
Ph: 02-6742 9955



2.  
bscpp 14.002 - condon submission (may 2016).  
13 May 2016

NAME

This submission has been prepared based on the exhibition documentation provided on Council's web-page titled Documents on Exhibition. As detailed in such, the Planning Proposal proposes to rezone the subject land to part R2 – Low Density Residential and part R3 – Medium Density Residential and to apply a minimum lot size/subdivision standard of 600m<sup>2</sup> to both the R2 and R3 zoned land.

From the exhibition documentation, it is evident that the Planning Proposal is also proposing to rezone that section of the Hutley Drive road reserve which adjoins Mr Condon's land to part R2 and part R3 and to apply a 600m<sup>2</sup> lot size.

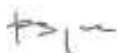
Mr Condon is not objecting to the proposed residential zoning of Lots 1 & 2 or the Hutley Drive road reserve, however wants to ensure that his property maintains formal dual road frontage, and specifically maintains an existing frontage to the Hutley Drive road reserve. Mr Condon is currently exploring the opportunity for rezoning of his land to enable future residential subdivision and development, and the retention of this road reserve and access opportunity is considered to be of critical importance to such.

Notwithstanding that the "Current Indicative Subdivision Layout Plan" is indicative at this point in time, significant concerns are raised in respect of the proposed alignment of the eastern extension of Hutley Drive (which does not adjoin and actually veers away from Mr Condon's land) and the notation on the plan "Proposed Closed Road (Subject of Voluntary Planning Agreement)". Mr Condon will likely strenuously object to the closure and purchase of the road reserve, should it be deleterious to or compromise the future development opportunities for his land.

Council is therefore requested to consider the progress of the subject Planning Proposal in the context of preserving and/or providing formal public road frontage to his land.

Should you require any further information, please contact me on 6686 3280 or [pauls@ardillpayne.com.au](mailto:pauls@ardillpayne.com.au).

Yours faithfully



**Paul Snellgrove**  
**Ardill Payne & Partners**

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German House,  
285 Conadilly Street,  
GUNNEDAH NSW 2380  
Ph: 02-6742 9955

# Appendix 7 – Letter from Charter Keck Cramer on behalf of Telstra

Our Reference  
30234700:TEL

Date 22 September 2017

Klaus Kerzinger  
Strategic Planner  
Ballina Shire Council  
40 Cherry Street  
BALLINA NSW 2478

Via Email: Klaus.Kerzinger@ballina.nsw.gov.au

Dear Klaus

Re: Planning Proposal for Application of R2 Low Density Residential Zone  
Property: Lot 1 DP 620838 - Byron Bay Road, Lennox Head NSW

Pursuant to your letter dated 1 August 2017 and our subsequent correspondence, I reiterate that Charter Keck Cramer (Charter) represents Telstra Corporation Limited (Telstra) in its divestment matters nationally.

In this capacity, we are instructed to advise that Telstra intends to pursue the designation of an R2 Low Density Residential Zone for the Property, which is in part occupied by the Lennox Head Telephone Exchange.

To this end, discussions have been initiated with Paul Snelgrove of Ardill Payne & Associates towards the Property being included in the current planning proposal for 9 Byron Bay Road, Lennox Head (Lot 2 DP 620838).

Should you have any further queries in relation to this matter, please do not hesitate to contact me on direct telephone number (03) 8102 8825 or via email at [nick.ashton@charterkc.com.au](mailto:nick.ashton@charterkc.com.au).

Yours sincerely  
Charter Keck Cramer



Nick Ashton  
National Director



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