



Planning Proposal 17/009

» 9 Byron Bay Road & Telstra Exchange Site Lennox Head

July 2019 (V5 Final) 19/56669

ballina
shire council



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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 600m² is also proposed to be applied to the subject land under the provisions of Ballina LEP 2012 (BLEP 2012).

Lot 1 has an area of 2023m² and Lot 2 has an additional area of 9,735m². The total area of the subject site is 1.1758 hectares.

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

The original LEP amendment request to rezone the land from rural to residential was lodged in May 2017 by Ardill Payne and Partners (APP) on behalf of the former landowner of Lot 2. A copy of the original request is provided in Appendix 6.

Lot 2 was acquired by Council in March 2018 to facilitate the planned northern extension of Hutley Drive to Byron Bay Road. Following Council's acquisition of the land, Council confirmed the engagement of APP to continue the preparation of the planning proposal to rezone the land for residential purposes. A plan of the proposed Hutley Drive road extension is provided within Appendix 14.

Subject to the site being rezoned as proposed, Council envisages that part of Lot 2 will be used to accommodate a new community preschool and a Rural Fire Service building. Each of these respective community infrastructure items will be subject to separate applications.

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 7.

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, Council resolved as follows:

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 600m².*
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 600m² 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 Council is provided in Appendix 1.

Council at its Ordinary meeting held on 25 July 2019 considered the outcomes of the public exhibition process and resolved as follows:

1. *That Council endorses the amendment of the Ballina Local Environmental Plan 2012 to rezone Lots 1 and 2 DP 620838, No. 9 Byron Bay Road, Lennox Head, by applying an R2 Low Density Residential zone to the land and a minimum lot size for subdivision of 600m² as detailed in Planning Proposal BSCPP 17/009.*
2. *That Council advises the NSW Department of Planning, Industry and Environment that it does not wish to exercise its delegation to finalise the planning proposal and requests that the Department completes the LEP amendment process.*

A copy of the report considered by Council is provided in Appendix 1.

1.4 Gateway Determination

A Gateway determination was issued on 16 October 2017 allowing the planning proposal to proceed subject to conditions. An altered Gateway determination was issued on 15 August 2018 which extended the time frame for completion of the LEP amendment until 16 April 2019. On 19 March 2019 an altered Gateway determination was issued allowing a further extension of time until 16 October 2019. Appendix 3 contains copies of the original Gateway determination and the subsequent alterations.

The Gateway determination required consultation to be undertaken with certain public authorities and organisations as well as the submission of certain additional reports.

Appendix 8 contains copies of public authority and agency responses. A summary of comments received is contained within *Section D – State and Commonwealth interests* of this planning proposal report.

Additional technical reports and supporting information are referenced within Appendices 9 to 14.

A requirement of the Gateway determination was to obtain the agreement of the Department's Secretary to comply with the requirements of Section 9.1 (previously 117) Direction 3.5 Development Near Licensed Aerodromes.

The delegate of the Secretary, by letter dated 18 December 2017, has agreed that the inconsistencies are justified in accordance with the terms of the Direction. A copy of the letter is contained with Appendix 15.

2. Objectives & Intended Outcomes

To amend Ballina LEP 2012 so as to:

- Apply a low density residential zone to Lot 1 and Lot 2 DP 620838 together with a 600m² 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 community facilities and urban infrastructure purposes.

3. Explanation of Provisions

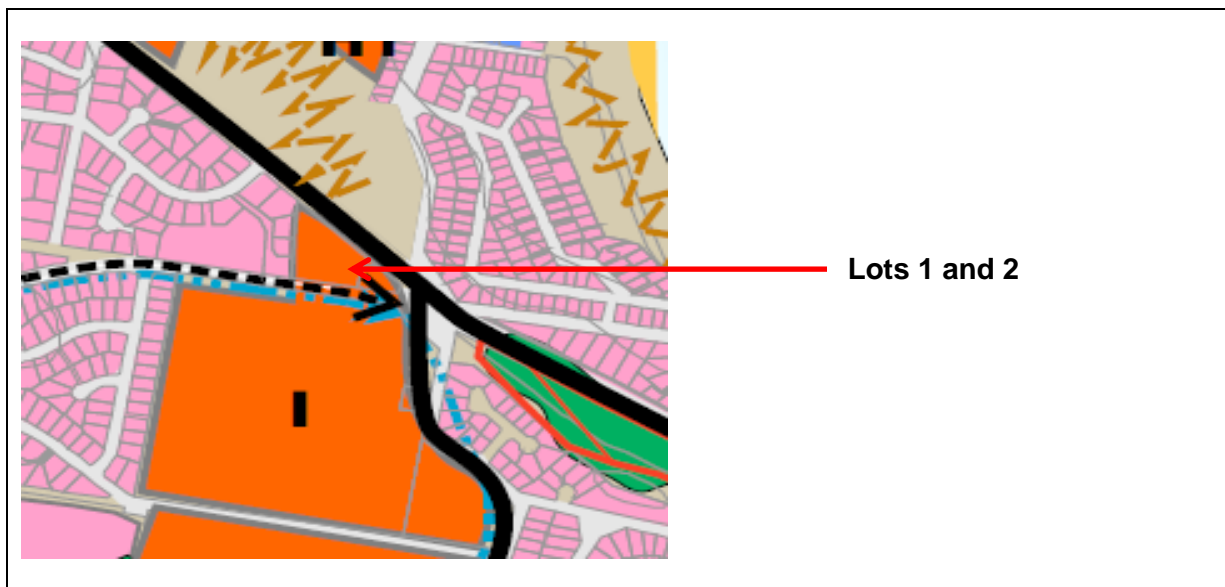
3.1 Background

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 Table 1 below. Refer to the Appendices section of this planning proposal for copies of all assessment reports and referral advice received in respect of the proposal, where indicated in the table below.

Table 1 – Land Constraint Impact Summary

Constraint	Impact	Consequence
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.	An Aboriginal Cultural Heritage Assessment has been submitted which indicates there were no items of historic heritage found on the site.
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	An Ecological Assessment has been submitted which concludes that the site is generally considered entirely suitable for the proposal.	Additional impact assessments may be required as part of a future development application once a site concept design has been finalised.
Flooding	Site not flood prone.	Assessment not required.
Land Contamination	A Preliminary Contaminated Site Investigation report has been submitted which concludes that a further detailed investigation should be undertaken to determine what remediation and subsequent validation processes are to be implemented.	A detailed contaminated site investigation would be required to be undertaken as part of a future development application for development on the subject land.
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 has been undertaken with Airport Authorities and it is concluded that the proposed rezoning has no effect on the OLS for the Ballina-Byron Gateway Airport or on any of the aerodrome's procedures.
Road Access and Subdivision Concept	Access required from proposed Hutley Drive extension not from Byron Bay Road.	A Contour and Detail Survey Plan has been submitted. A preliminary concept subdivision design plan has not been provided due to the planned future use of part of the subject land. Further details and concept design plan can be provided as part of a future development application for the land.
Significant Farmland	Regionally Significant Farmland (Non Contiguous).	Department of Primary Industries – Agriculture has reviewed the planning proposal and provides no objections to the proposal. It is recommended that suitable dwelling setback provisions from Byron Bay Road be considered with any future development application to reduce any potential land use conflict with the grazing land located to the north of the subject site.

3.2 The Proposal

The proposed outcomes will be achieved by:

- Amending the BLEP 2012 Land Zoning Map by deleting the RU1 Primary Production zone that applies to the subject land and replacing it with an R2 Low Density Residential zone; and
- Amending the BLEP 2012 Lot Size Map by deleting the 40 hectare lot size that applies to the subject land and replacing it with a 600m² lot size.

The location of the subject land is shown below in Figure 2. A site identification map is provided in Appendix 5.

The thumbnail maps contained in Figures 3 and 4 indicate the mapping outcomes proposed by this planning proposal.

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



Figure 3 - Land Zoning Map Existing and Proposed

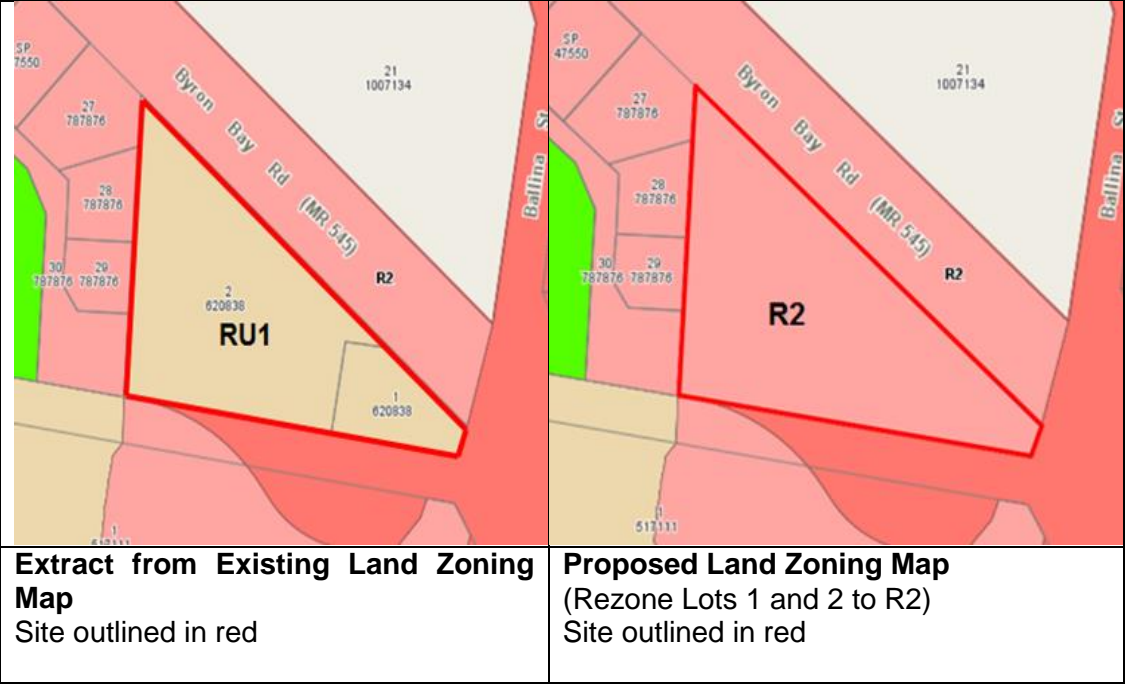


Figure 4 – Lot Size Map Existing and Proposed



4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

No. This planning proposal was not directly the result of an endorsed local strategic planning statement, strategic study or report.

Council has accepted (refer report to Council's Ordinary Meeting on 27/7/2017 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 Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

Yes, the planning proposal is considered to be consistent with the relevant Rural Planning Principles contained within the SEPP. Lots 1 and 2 are located within a designated Urban Growth Area under the provisions of the North Coast Regional Plan 2036.

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.

The proposal is also 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).

Q4 Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

Ballina Shire Council Community Strategic Plan 2017-2027 (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
PE3 Prosperous Economy	Improve liveability in the shire	
PE3.2	Facilitate and provide affordable infrastructure	More housing opportunities created
HE3 Healthy Environment	Our built environment blends with the natural environment	
HE3.1	Develop and implement plans that balance the built environment with the natural environment	More people are satisfied with our management of development

The planning proposal's 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	<p>A Stage 1 Preliminary Contaminated Site Investigation report has been submitted in accordance with the requirements of SEPP 55 and Council's <i>Management of Contaminated Land Policy</i>.</p> <p>The report concludes that a number of potentially contaminating activities have been found on the site resulting from possible agricultural pursuits on the land and surrounds, the Telstra exchange structure and the dwelling house and associated structures. A Detailed Site Investigation (DSI) is required to be undertaken to determine what remediation and validation processes are to be implemented.</p> <p>In accordance with the requirements of SEPP 55 and Council's <i>Management of Contaminated Land Policy</i>, there are mechanisms in place to ensure further investigation and remediation occurs prior to any future development of the land. A DSI would be able to be undertaken to inform any future development application for development on the subject land post rezoning.</p> <p>There were no significant issues identified that would preclude the rezoning of the site as proposed.</p>
SEPP (Rural Lands) 2008	<p>The planning proposal is considered to be consistent with the relevant Rural Planning Principles contained within the SEPP. Lots 1 and 2 are located within a designated Urban Growth Area under the provisions of the North Coast Regional Plan 2036.</p>

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

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

The (former) Department of Planning and Environment's Director Regions, Northern Planning Services, has agreed when issuing the Gateway determination that the proposal's inconsistency with Section 9.1 Directions 1.2 Rural Zones and 2.3 Heritage Conservation are justified in accordance with the terms of the Direction. No further approval is required in relation to these Directions.

In respect to the proposal's inconsistency with Section 9.1 Direction 3.5 Development Near Licensed Aerodromes it has been advised that the agreement of the Department's Secretary may still need to be obtained prior to the plan being made.

The delegate of the Secretary, by letter dated 18 December 2017, has agreed that the inconsistencies are justified in accordance with the terms of the Direction. A copy of the letter is contained with Appendix 15.

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?

Ecological assessments have been undertaken for the subject site in respect of the rezoning proposal (Appendix 10) and the Part 5 application for the Hutley Drive northern road extension (Appendix 16). Both reports have identified particular matters for consideration in relation to biodiversity.

A summary of the ecological assessments and the response from NSW Office of Environment and Heritage have been incorporated within the report to Council's Ordinary meeting held in July 2019 which is contained within Appendix 1.

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

Other potential environmental effects of the proposal relate to the following:

- Land contamination;
- Aboriginal and cultural heritage impacts; and
- Drainage.

These issues have been addressed in detailed reports submitted in support of the planning proposal (Appendices 9 to 13). Upon further assessment of these matters they have not raised issues of sufficient concern that would warrant the land not being rezoned as proposed.

Matters surrounding land contamination, including further site investigation, will be required to be undertaken as part of the assessment of any future development application for the subject site.

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.

Potential Positive Economic Impacts
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 – The application of a residential zone will enable the provision of important community infrastructure, 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.
Potential Positive Social Impacts
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 the road network (Hutley Drive).

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

The proposal for residential development on the land is generally compatible with existing and planned infrastructure in the locality. However, there may be a need for onsite stormwater management infrastructure such as on site detention. This will be further examined as part of the development application process associated with the future use of the land and proposed extension of Hutley Drive.

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

Consultation has been undertaken with the NSW Department of Primary Industry – Agriculture (DPI) and Airport Authorities post Gateway determination.

The DPI (Appendix 8) has raised no objection to the proposal given the strategic identification of the site as an urban growth area under the *North Coast Regional Plan 2036*, identification of the site as an urban release area historically in the *Lennox Head Structure Plan 2004*, and limitations for agriculture at the site given existing and future site constraints from surrounding residential development.

Consultation has occurred with Ballina-Byron Gateway Airport, Air Services Australia and Civil Aviation Safety Authority (CASA). The airport authorities (Appendix 8) conclude that the proposed rezoning has no effect on the Obstacle Limitation Surfaces (OLS) for the Ballina-Byron Gateway Airport or on any of the aerodrome's procedures.

Consultation with the NSW Office of Environment and Heritage (OEH) occurred in February 2019 in conjunction with the public exhibition of the planning proposal. No issues were raised with respect to Aboriginal and historic heritage however the OEH identified particular matters for consideration in relation to biodiversity. Responses have been incorporated within the report to Council's Ordinary meeting held on 25 July 2019 which is contained within Appendix 1.

5. Mapping

The following maps have been prepared to support the planning proposal:

- Land Zoning Map;
- Lot Size Map; and
- Site Identification Map.

Copies of the above maps are provided in Appendix 5.

6. Community Consultation

Community consultation was undertaken for this planning proposal in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*. The planning proposal was publicly exhibited from 6 February until 22 February 2019. The public exhibition process incorporated the following elements:

- Advertisement within the Ballina Shire Advocate;
- Letters to adjoining and nearby property owners; and
- Display of planning proposal for viewing on Council's website, at the Customer Service Centre and at community access points.

In response to community consultation two submissions were received from landowners adjoining the subject site. The issues raised in the submissions express concerns relating to the construction of the Hutley Drive road extension and are not directly related to the rezoning of the land.

Council's engineers have had discussions with affected landowners and the issues raised, including any mitigation measures to address these issues, are expected to be considered separately under the Part 5 activity application for the Hutley Drive north extension.

7. Timeline

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

Plan Making Step	Estimated Completion (Before)
Altered Gateway Determination	March 2019
Government Agency Consultation	February 2019
Public Exhibition Period	February 2019
Public Hearing	N/A
Submissions Assessment	July 2019
RPA Assessment of Planning Proposal and Exhibition Outcomes	July 2019
Submission of Endorsed LEP to DP&E for Finalisation	August 2019
RPA Decision to Make the LEP Amendment (if delegated)	N/A (Delegation initially granted but not exercised)
Forwarding of LEP Amendment to DP&E for Notification (if delegated)	N/A (Delegation initially granted but not exercised)

8. Appendices

Appendix 1 – Council Reports

Report to Council's Ordinary Meeting on 27 July 2017

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

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.

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.

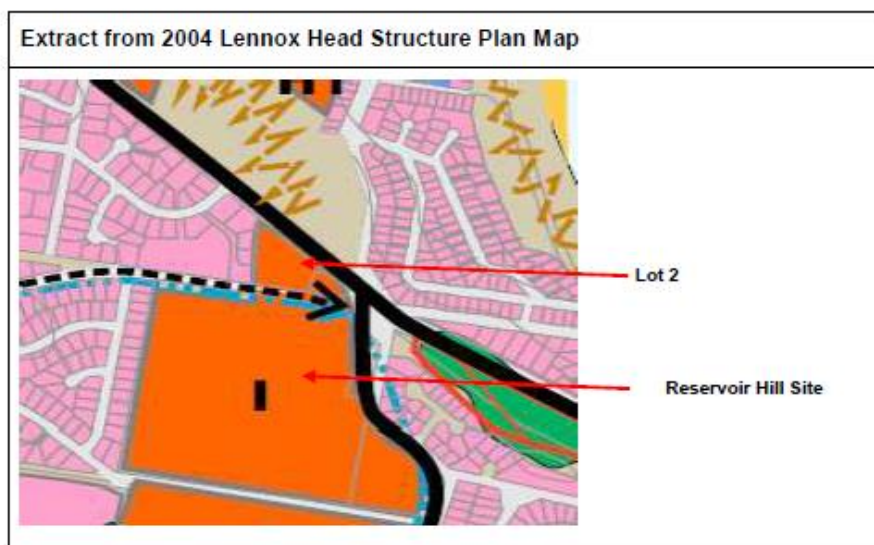
Photos of Lot 2 appear as follows.

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

Information

Lot 2 has an area of 9,735m² 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
Land Zoning Map Extract	
	<ul style="list-style-type: none"> R2 - Low Density Residential R3 - Medium Density Residential RU1 - Primary Production RE1 - Public Recreation
Lot Size Map Extract BLEP 2012	
	<ul style="list-style-type: none"> AB2 (40ha) U2 (1200m2) M (600m2) S (800m2)

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 46.5m AHD</p>
Contours – 2 metre intervals	
	

Subdivision Concept Considerations and Requirements

The proponent's consultants have indicated that, based on a 600m² 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

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 600m² should be applied to the site. In this respect the Ocean Breeze estate, to the west of Lot 2, is subject to a 1,200m² 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 600m² minimum lot size as opposed to 800m² 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 600m² is supported for this location.

Incorporation of Telstra Site within Planning Proposal

Lot 1 DP 620838 (Lot 1) has an area of 2,023m² 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 600m² 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

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

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 600m² 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 600m² 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

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 600m².
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 600m² 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

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 600m².*
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 600m² 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

Report to Council's Ordinary Meeting on 25 July 2019

8.4 Planning Proposal - 9 Byron Bay Road and Telstra Exchange Site

8.4 Planning Proposal - 9 Byron Bay Road and Telstra Exchange Site

Delivery Program Strategic Planning

Objective To present the outcomes of the public exhibition of Planning Proposal BSCPP 17/009 and to seek Council's direction with respect to the finalisation of this proposed LEP amendment.

Background

This report relates to Lots 1 and 2 DP 620838 consisting of the Telstra exchange site and No. 9 Byron Bay Road, Lennox Head, as shown outlined in red in Diagram 1 below.

Lot 1 has an area of 2,023m² and Lot 2 has an additional area of 9,735m². The total area of the subject site is 1.1758 hectares. It is proposed to apply an R2 Low Density Residential zone to both Lots 1 and 2 and to apply a minimum lot size requirement of 600m².

Lot 2 contains an existing dwelling house and Lot 1 is the site of existing Telstra infrastructure.

Diagram 1 – Site Location Plan



Council at the Ordinary meeting held on 27 July 2017 considered a request, lodged on behalf of the former landowner of Lot 2, to rezone Lot 2 from rural to residential.

Council included Lot 1 (Telstra Site) in the planning proposal and resolved as follows:

8.4 Planning Proposal - 9 Byron Bay Road and Telstra Exchange Site

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 600m².
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 600m² 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.

A Gateway determination was issued on 16 October 2017 allowing the planning proposal to proceed subject to conditions.

On 19 March 2019 an altered Gateway determination was issued which extended the time frame for completing the LEP amendment until 16 October 2019.

Delays with regard to processing the planning proposal have occurred due to a number of factors as outlined below:

- Change in ownership of Lot 2. Council acquired Lot 2 in March 2018 for the primary purpose of facilitating the planned northern extension of Hutley Drive to Byron Bay Road. Council is also proposing that part of Lot 2 be used to accommodate a new community preschool and a Rural Fire Service building.
- Finalisation of detailed road designs for the Hutley Drive northern extension.
- Negotiations with the Lennox Head Preschool Inc. and the NSW Rural Fire Service regarding the design and siting of the proposed buildings. Plans of the proposed buildings were not available at the time of writing this report.
- Discussions with Telstra regarding the incorporation of Lot 1 within the proposal and negotiation with respect to a cost sharing arrangement.
- Preparation of additional supporting documentation for the planning proposal.

The purpose of this report is to invite Council's consideration of submissions received from the community and agencies during the recent public exhibition process and to seek direction regarding the finalisation of the planning proposal.

A copy of the planning proposal as exhibited is provided as Attachment 1 to this report.

8.4 Planning Proposal - 9 Byron Bay Road and Telstra Exchange Site

Key Issues

- Consideration of the outcomes of the public exhibition process
- Finalisation of the LEP amendment

Information

The Gateway determination issued by the (then) Department of Planning and Environment on 16 October 2017 required consultation with the Ballina-Byron Gateway Airport, Civil Aviation Safety Authority (CASA), Office of Environment and Heritage (OEH) and the Department of Primary Industries (DPI) Agriculture.

The Gateway determination also required completion of a preliminary contaminated site investigation carried out in accordance with the contaminated land planning guidelines, and a detailed ecological assessment of the sites flora and fauna characteristics.

In addition to the above, the agreement of the Department's Secretary was required in respect to compliance with section 9.1 (formerly section 117) Direction 3.5 Development Near Licensed Aerodromes. The Secretary's agreement was obtained on 18 December 2017.

Supporting technical reporting and documentation commissioned by Council was publicly exhibited with the planning proposal. No significant issues have been identified which would prevent the proposed LEP amendment from being finalised. Further discussion relating to the submitted technical information is provided below.

Land Contamination

In accordance with the requirements of the Gateway determination a Preliminary Contaminated Site Investigation report was prepared by Ardill Payne & Partners dated December 2018 (Attachment 3).

The report identified three composite samples, located on Lot 2, that exceed the residential lead level threshold. Fibrous cement chips comprising chrysotile asbestos were also located on Lot 2.

The results of the preliminary reporting indicate that a Stage 2 detailed contaminated site investigation will be required to identify the extent of contamination present on the site and the subsequent remediation and validation processes to be implemented.

Council's Environmental Health Officer has reviewed the report and provided the following comments:

The site cannot currently be considered suitable for residential land uses however lead and asbestos are common soil contaminants associated with dwelling houses and remediation techniques are common and well understood. If the detailed assessment and remediation does not occur prior to rezoning then it will be required as part of the assessment of any future development proposals for the site.

Care should be taken during any demolition of the existing dwelling to ensure further contamination of the land does not occur.

8.4 Planning Proposal - 9 Byron Bay Road and Telstra Exchange Site

Council's engineers have advised that two of the sample sites containing elevated lead concentrations will be remediated as part of the road works associated with the construction of Hutley Drive.

It is proposed that the hotspots will be capped and the site will be managed in accordance with an environmental management plan. Council's Environmental Health Officer is satisfied with this method.

Other areas containing lead and asbestos, located in the vicinity of the existing dwelling house on Lot 2, will be required to be remediated as part of the demolition works associated with the removal of the existing dwelling house.

It is considered appropriate that further investigation will be undertaken as part of the assessment of a future development application for the demolition of the existing dwelling on the site.

This will ensure the site is made suitable prior to the consideration of any future development application relating to preschool and rural fire service use of Lot 2.

Ecological Assessments

In respect of the rezoning proposal, Biodiversity Assessments & Solutions Pty Ltd have prepared an Ecological Assessment report for the subject site dated 4 January 2019 (Attachment 2).

The report identifies the presence of a Threatened Ecological Community (TEC), being Littoral Rainforest, located in the western portion of Lot 1 (Telstra site) and along the southern boundary of Lot 2.

The report also identifies two individuals of the threatened flora species, Rough-shelled Bush Nut (*Macadamia tetraphylla*), located in the vicinity of the residential dwelling.

A copy of a site plan provided by Biodiversity Assessments & Solutions Pty Ltd showing the vegetation communities and threatened species on the site, with littoral rainforest denoted in yellow outline, is provided in Attachment 8.

The report prepared by Biodiversity Assessments & Solutions outlines that the rezoning proposal does not constitute an activity that will exceed the thresholds of the Biodiversity Offsets Scheme (BOS) in accordance with the requirements of the *Biodiversity Conservation Act 2016* (BC Act) and *Biodiversity Conservation Regulation 2017*.

Further assessment under the BC Act, including a Test of Significance, would be required for any future development application to assess the potential impacts on significant vegetation.

A review of the Ecological Assessment report prepared by Blackwood Ecological Services (Attachment 6) in respect of the Part 5 application for the Hutley Drive northern road extension indicates that no threatened flora species or TECs were recorded on the site and that vegetation to be removed includes 'planted Macadamia nut' originating as garden plantings associated with the residential dwelling.

8.4 Planning Proposal - 9 Byron Bay Road and Telstra Exchange Site

Verbal advice has since been received from the author of the report stating that the macadamia was initially misidentified in the reporting and confirming that it is the threatened species type, *Macadamia tetraphylla*.

The (former) Office of Environment and Heritage (OEH) has reviewed the ecological assessment report submitted in respect of the rezoning proposal. The OEH recommends that an offset be provided in accordance with the Biodiversity Assessment Method for areas of high environmental value in the planning area.

An offset area would not be required if a subsequent development application or activity assessment triggers the Biodiversity Offset Scheme.

To avoid further delay in finalising the planning proposal and having regard for the technical assessment associated with the planning proposal, it is recommended that any offsetting required be addressed at the development assessment stage for any future development.

The majority of littoral rainforest is located on Lot 1, being the Telstra site (see Attachment 8). To satisfy the OEH requirements, Council could seek to exclude the Telstra site from the planning proposal.

This would require an amended Gateway determination to be obtained from the Department of Planning and Environment, which would further delay finalisation of the rezoning proposal and the subsequent plans for redevelopment of Lot 2 (preschool and rural fire service infrastructure).

The northern extension of Hutley Drive will require the removal of vegetation from the site including littoral rainforest and the two *Macadamia tetraphylla*.

In respect to the removal of littoral rainforest from the southern boundary, the proponent is relying on an approval from the previous Part 5 assessment for the extension of Hutley Drive.

The removal of other vegetation, including the *Macadamia tetraphylla* and the required compensatory offsetting, is expected to be addressed under the Part 5 assessment.

In relation to the proposed preschool and rural fire service building, the proposed location of these buildings on Lot 2 has not been finalised and will be the subject of a separate application process (Council is yet to make final decisions about the location of, and timing for, this infrastructure should its provision proceed).

It will be necessary to establish the amount and method of compensatory planting required to offset the impacts of the proposed development.

Such details would be required to be submitted with the future development application for these buildings.

Stormwater Management

Ardill Payne & Partners have provided a preliminary stormwater management plan for the proposal (Attachment 4).

8.4 Planning Proposal - 9 Byron Bay Road and Telstra Exchange Site

The plan allocates a lawful point of discharge for the proposed future development on the land and demonstrates at a conceptual level that stormwater can be adequately treated on site, subject to further consideration of the Hutley Drive road extension.

This is considered sufficient for the planning proposal stage.

Aboriginal Cultural Heritage Assessment

An Aboriginal Cultural Heritage Assessment has been prepared in respect of the planning proposal (Attachment 5).

The report informs that a site inspection was undertaken with a member of the Jali Local Aboriginal Land Council and concludes there were no items of historic heritage found on the site.

The report was referred to the Office of Environment and Heritage for comment.

No issues were raised with respect to Aboriginal or historic heritage.

Telstra Site (Lot 1)

Council resolved to incorporate the Telstra site (Lot 1) within the planning proposal on the basis that the application of an R2 zone to this site would provide for consistency in zoning and may also provide some advantages in terms of the ability to incorporate land that may be surplus to Telstra requirements within the future subdivision of Lot 2.

Charter Keck Cramer (Charter), on behalf of Telstra, confirmed the incorporation of Lot 1 within the proposal and the application of an R2 Low Density Residential zone for this property. As a result all site investigations and technical reports have been prepared incorporating Lots 1 and 2.

Charter have also confirmed Telstra's agreement to a cost sharing arrangement between Telstra and Council for the completion of the planning proposal based on the respective area of each holding, resulting in Council's contribution being 80% and Telstra 20%. Should Council resolve to retain Lot 1 in the rezoning proposal then Telstra will be invoiced accordingly.

Sustainability Considerations

- **Environment**

The subject land has various attributes which are considered to have environmental value. Biodiversity matters have been assessed in detail in expert ecological reports. Such reports formed a part of the exhibition material in respect of the planning proposal and the Part V application for the Hutley Drive northern extension.

Further assessment of the amount and method of compensatory planting required to offset the impacts of the proposed development will be required to be considered as part of the respective planning approval process for the Hutley Drive northern extension and the proposed childcare centre and fire brigade building on Lot 2.

8.4 Planning Proposal - 9 Byron Bay Road and Telstra Exchange Site

- **Social**

The proposal has a number of positive social and economic impacts associated with construction and infrastructure, including the extension of Hutley Drive and potential for construction of community preschool and rural fire service infrastructure.

- **Economic**

As above.

Legal / Resource / Financial Implications

There are no significant resourcing or financial implications for Council associated with the proposed LEP amendment. The further processing of the amendment can be accommodated within the work program of the Strategic Planning Section.

Council has been granted delegation to exercise the functions of the Minister for Planning with respect to the finalisation of this planning proposal. This delegation was granted prior to Council becoming the landowner of Lot 2.

With respect to the finalisation of the matter, it is now considered appropriate that Council declines the use of delegation to complete the plan and instead requests that the NSW Department of Planning and Environment finalise the plan to reinforce transparency in the decision making process.

Consultation

The planning proposal was publically notified from 6 February until 22 February 2019. Notification included an advertisement in the Ballina Shire Advocate, letters sent to eleven nearby property owners and documents made available for viewing on Council's web site as well as community access points.

A copy of the exhibited planning proposal is contained in Attachment 1.

In response to the public exhibition of the planning proposal, two submissions were received from landowners adjoining the subject site.

The issues raised in the submissions express concerns relating to the construction of the Hutley Drive road extension and are not directly related to the rezoning of the land.

Council's engineers have had discussions with affected landowners and the issues raised, including any mitigation measures to address these issues, are expected to be considered separately under the Part 5 activity application for the Hutley Drive north extension.

Consultation has occurred with the NSW Department of Primary Industry – Agriculture, the Ballina-Byron Gateway Airport, Air Services Australia and the Civil Aviation Safety Authority as required by the Gateway determination.

No objections were raised to the proposal.

Responses received have been incorporated into the planning proposal documentation prior to public exhibition.

8.4 Planning Proposal - 9 Byron Bay Road and Telstra Exchange Site

Consultation with the NSW Office of Environment and Heritage (OEH) occurred in February 2019 in conjunction with the public exhibition of the planning proposal.

No issues were raised with respect to Aboriginal and historic heritage however the OEH identified particular matters for consideration in relation to biodiversity. Refer to discussion under the 'Information' section of this report.

Copies of all submissions received in response to the Government agency consultation and the public exhibition of the planning proposal are contained within Attachment 7.

Options

The following options are presented for the Council's consideration.

Option 1: Finalise the Planning Proposal

This is the recommended option.

Finalisation of the planning proposal would involve updating the planning proposal documentation (as contained in Attachment 1) to reflect the outcomes of the public exhibition process, Government agency consultation, Council decisions and standard LEP map sheets.

The exhibition and consultation processes have not identified any issues that suggest the planning proposal does not have sufficient merit to be finalised. Further investigations regarding land contamination is a matter for consideration via a future development application for the demolition of the existing house on the land and/or the erection of new buildings on the land.

Matters concerning ecological issues will be considered in the Part 5 application for the Hutley Drive northern extension and any future development application for the new buildings on Lot.

Option 2: Discontinue the Planning Proposal

The option to discontinue the planning proposal is open to the Council.

This option is not recommended on the basis that the planning proposal is considered to warrant support for the reasons cited above.

The rezoning of the land as proposed is required prior to the consideration of a future development application for the proposed preschool and rural fire service building (should Council pursue the location of this infrastructure on the land).

If the planning proposal was to be discontinued, this may result in the loss of grant funding obtained by the Lennox Head Preschool Inc. for the construction of the new preschool.

Option 3: Defer the Planning Proposal

Council may resolve to defer the finalisation of the planning proposal should it consider there are unresolved issues or if further information is required.

8.4 Planning Proposal - 9 Byron Bay Road and Telstra Exchange Site

Given the nature of the planning proposal and the results of the consultation and public exhibition process, this option is not recommended.

In addition, as outlined, any delay in the further processing of the rezoning application may result in the loss of grant funding obtained by the Lennox Head Preschool Inc. for the construction of the preschool.

RECOMMENDATIONS

1. That Council endorses the amendment of the Ballina Local Environmental Plan 2012 to rezone Lots 1 and 2 DP 620838, No. 9 Byron Bay Road, Lennox Head, by applying an R2 Low Density Residential zone to the land and a minimum lot size for subdivision of 600m² as detailed in Planning Proposal BSCPP 17/009.
2. That Council advises the NSW Department of Planning, Industry and Environment that it does not wish to exercise its delegation to finalise the planning proposal and requests that the Department completes the LEP amendment process.

Attachment(s)

1. Planning Proposal (Exhibition Version) (Under separate cover)
2. Ecological Assessment - Planning Proposal (Biodiversity Assessments & Solutions) (Under separate cover)
3. Preliminary Contaminated Site Investigation report (Under separate cover)
4. Preliminary Stormwater Management Plan (Under separate cover)
5. Aboriginal Cultural Heritage Assessment (Under separate cover)
6. Ecological Assessment - Part 5 Application (Blackwood Ecological Services) (Under separate cover)
7. Public Submissions and Government Agency Responses
8. Site Vegetation on Lots 1 & 2

250719/9 RESOLVED

(Cr Sharon Cadwallader/Cr Ben Smith)

1. That Council endorses the amendment of the Ballina Local Environmental Plan 2012 to rezone Lots 1 and 2 DP 620838, No. 9 Byron Bay Road, Lennox Head, by applying an R2 Low Density Residential zone to the land and a minimum lot size for subdivision of 600m² as detailed in Planning Proposal BSCPP 17/009.
2. That Council advises the NSW Department of Planning, Industry and Environment that it does not wish to exercise its delegation to finalise the planning proposal and requests that the Department completes the LEP amendment process.

FOR VOTE - All Councillors voted unanimously.

Appendix 2 – Section 9.1 Direction Checklist

Section 9.1 Direction Checklist 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
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	<p>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.</p> <p>The Director, Regions Northern Planning Services, Department of Planning and Environment in his letter dated 16 October 2017 has advised that he has agreed as a delegate for the Secretary that the inconsistency is justified and that no further approval is required in relation to this Direction.</p>
1.3 Mining, Petroleum Production and Extractive Industries	Consistent
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	<p>Consistent – This planning proposal is considered to be consistent with the relevant Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i>.</p> <p>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.</p> <p>This planning proposal is consistent with the North Coast Regional Plan 2036 as the subject land is located within a designated Urban Growth Area.</p> <p>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.</p>
2. Environment and Heritage	
2.1 Environment Protection Zones	<p>Consistent.</p> <p>The planning proposal does not involve the development of land identified as being of environmental significance.</p>
2.2 Coastal Protection	<p>Consistent.</p> <p>The subject lots are located within the coastal zone.</p> <p><i>Clause 5.5 Development within the coastal zone</i> contained within Ballina LEP 2012 is applicable to development proposed within the coastal zone. Clause 5.5 included the provisions that give effect to and are consistent with:</p> <p>(a) the <i>NSW Coastal Policy: A Sustainable Future for the New South Wales Coast</i> 1997, and</p> <p>(b) the <i>Coastal Design Guidelines</i> 2003, and</p> <p>(c) the manual relating to the management of the coastline for the purposes of section 733 of the <i>Local Government Act 1993</i> (the <i>NSW Coastline Management Manual</i> 1990).</p>

Section 9.1 Direction Checklist**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
2.3 Heritage Conservation	<p>Justifiably inconsistent.</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> <p>The Director, Regions Northern Planning Services, Department of Planning and Environment in his letter dated 16 October 2017 has advised that he has agreed as a delegate for the Secretary that the inconsistency is justified and that no further approval is required in relation to this Direction.</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.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	<p>Consistent.</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 600m² 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>Consistent</p> <p>The proposed rezoning is considered to be of minor significance.</p>

Section 9.1 Direction Checklist 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
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> <p>The Director, Regions Northern Planning Services, Department of Planning and Environment in his letter dated 16 October 2017 has advised that Council may still need to obtain the agreement of the Department Secretary to comply with this Direction. Following consultation with airport authorities the agreement of the Secretary was obtained on 18 December 2017. The Secretary has agreed that the proposal is consistent with the terms of the Direction.</p>
3.6 Shooting Ranges	Does not apply to planning proposal.
3.7 Reduction in non-hosted short term rental accommodation period	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	<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>
4.2 Mine Subsidence and Unstable Land	<p>Consistent.</p> <p>The subject land is located within an area where the assessed landslip risk is low to very low, Coffey & 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 & 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.
5. Regional Planning	
5.1 Implementation of Regional Strategies	<p>Consistent.</p> <p>The planning proposal is consistent with the North Coast Regional Plan 2036 as the subject land is located within a designated Urban Growth Area.</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>Consistent</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 as the subject land is located within a designated Urban Growth Area. Notwithstanding this the planning proposal also complies with the Urban Growth Area Variation Principles and meets the Important Farmland Variation Criteria contained within the plan.</p>

Section 9.1 Direction Checklist	
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
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.
5.10 Implementation of Regional Plans	<p>Consistent.</p> <p>The planning proposal is considered to be consistent with the North Coast Regional Plan 2036 as the subject land as the subject land is located within a designated Urban Growth Area notwithstanding that the land has not been designated as an Investigation Area – Urban Land.</p> <p>The planning proposal is also 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>
5.11 Development of Aboriginal Land Council land	Does not apply to this planning proposal.
6. Local Plan Making	
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>
7. Metropolitan Planning	
7.1 to 7.10	These Directions do not apply to Ballina Shire.

Appendix 3 – Gateway Determination



17/11171 PP_2017_BALLI_007_00

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

Dear Mr Hickey,

Planning Proposal PP_2017_BALLI_007_00 to amend Ballina Local Environmental Plan 2012

I am writing in response to Council's request for a Gateway determination under Section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) and additional information received on 26 September 2017 in respect of the Planning Proposal to rezone Lot 1 and Lot 2 DP 620838 Byron Bay Road, Lennox Head to R2 Low Density Residential zone, and amend the Minimum Lot Size to 600m².

As delegate of the Minister for Planning, I have now determined the Planning Proposal should proceed subject to the conditions in the attached Gateway determination.

I have also agreed, as delegate of the Secretary, the Planning Proposal's inconsistency with Section 117 Directions 1.2 Rural Zones and 2.3 Heritage Conservation are justified in accordance with the terms of the Direction. No further approval is required in relation to this these Direction.

Council may still need to obtain the agreement of the Department's Secretary to comply with the requirements of relevant Section 117 Direction 3.5 Development Near Licensed Aerodromes. Council should ensure this occurs prior to the plan being made.

Plan making powers were delegated to Councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.


The amending Local Environmental Plan (LEP) is to be finalised within 9 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 6 weeks prior to the

projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment.

The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under Section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any further enquiries about this matter, I have arranged for Ms Heidi Naylor to assist you. Ms Naylor can be contacted on (02) 6641 6604.

Yours sincerely

 16-12-2017

Jeremy Gray
**Director, Regions Northern
Planning Services**

Encl: Gateway Determination
Written Authorisation to Exercise Delegation
Delegated Plan Making Reporting Template



Planning & Environment

Gateway Determination

Planning Proposal (Department Ref: PP_2017_BALLI_007_00): to rezone Lot 1 and Lot 2 DP 620838 Byron Bay Road, Lennox Head to R2 Low Density Residential zone, and amend the Minimum Lot Size to 600m².

I, the Director, Regions Northern at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act, 1979* (the Act) that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to rezone Lot 1 and Lot 2 DP 620838 Byron Bay Road, Lennox Head to R2 Low Density Residential zone, and amend the Minimum Lot Size to 600m² should proceed subject to the following conditions:

1. Council is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines, prior to the plan being made.
2. Council is to obtain and have regard to a detailed ecological assessment of the sites flora and fauna characteristics, prior to public consultation.
3. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the Planning Proposal is classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment 2016) and must be made publicly available for a minimum of **14 days**;
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).
4. Consultation is required with the following public authorities/organisations under section 56(2)(d) of the Act and/or to comply with the requirements of relevant Section 117 Directions:

Civil Aviation Safety Authority
Lessee of the aerodrome
Office of Environment and Heritage
Department of Primary Industries (Agriculture)

LGA PP_2017_BALLI_007_00 (Ref 17/11171)



Planning & Environment

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

5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. The timeframe for completing the LEP is to be **9 months** following the date of the Gateway determination.

Dated *16* day of *OCTOBER* 2017.

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

Delegate of the Minister for Planning



**Planning &
Environment**

Attachment 5 – Delegated plan making reporting template

Reporting template for delegated LEP amendments

Notes:

- Planning proposal number will be provided by the Department of Planning and Environment following receipt of the planning proposal
- The Department of Planning and Environment will fill in the details of Tables 1 and 3
- RPA is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the Department of Planning and Environment with the RPA's request to have the LEP notified

Table 1 – To be completed by Department of Planning and Environment

Stage	Date/Details
Planning Proposal Number	PP_2017_BALLI_007_00
Date Sent to DP&E under s56	26 September 2017
Date considered at LEP Review Panel (if applicable)	N/A
Gateway determination date	16-10-2017

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt LEP		
Have changes been made to the draft LEP after obtaining final PC opinion?	YES NO	
Date LEP made by GM (or other) under delegation		
Date sent to DPE requesting notification		

Table 3 – To be completed by Department of Planning and Environment

Stage	Date/Details
Notification Date and details	

Additional relevant information:



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Ballina Shire Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following Planning Proposal:

Number	Name
PP_2017_BALLI_007_00	Planning Proposal to rezone Lot 1 and Lot 2 DP 620838 Byron Bay Road, Lennox Head to R2 Low Density Residential zone, and amend the Minimum Lot Size to 600m ² .

In exercising the Minister's functions under Section 59 of the EP&A Act, the Council must comply with the Department's "*A guide to preparing local environmental plans 2016*" and "*A guide to preparing planning proposals 2016*".

Dated *16 October* 2017

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

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

Delegate of the Secretary
of the Department of Planning and Environment

Altered Gateway Determination – 13 August 2018



PP_2017_BALLI_007_00/IRF18/4343

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

Att: Klaus Kerzinger

Dear Mr Hickey

Planning proposal PP_2017-BALLI_007_00 – Alteration of Gateway determination

I refer to your email seeking an extension of time to complete planning proposal PP_2017_BALLI_007_00 for the rezoning of Lot 1 & 2 DP 620838 to R2 Low Density Residential and amendment to the minimum lot size at Byron Bay Road, Lennox Head.

I have determined as the delegate of the Minister, in accordance with section 3.34(7) of the *Environmental Planning and Assessment Act 1979*, to alter the Gateway determination dated 16 October 2017 for PP_2017_BALLI_007_00. The Alteration of Gateway determination is enclosed.

If you have any questions in relation to this matter, I have arranged for Ms Jenny Johnson to assist you. Ms Johnson can be contacted on 6641 6614.

Yours sincerely

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

Jeremy Gray
Director Regions, Northern
Planning Services

Encl: Alteration of Gateway determination



Planning &
Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2017_BALLI_007_00)

I, Director Regions, Northern at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 16 October 2017 for the proposed amendment to the Ballina Local Environmental Plan 2012 as follows:

1. Delete condition 6:

"6. The timeframe for completing the LEP is to be 9 months following the date of the Gateway determination."

and replace with:

a new condition 6 "The time frame for completing the LEP is by 16 April 2019."

Dated 13 day of August 2018.

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

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

Delegate of the Minister for Planning

PP_2017_BALLI_007_00 (IRF18/4343)

Altered Gateway Determination – 19 March 2019



PP_2017_BALLI_007_00/(IRF19/1680)

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

Att: Leah Toole

Dear Mr Hickey

Planning proposal PP_2017_BALLI_007_00 – Alteration of Gateway Determination

I refer to your email seeking an extension of time to complete planning proposal PP_2017_BALLI_007_00 for the rezoning and amendment of the minimum lot size at Lot 1 and Lot 2 DP 620838, Byron Bay Road, Lennox Head.

I have determined as the delegate of the Minister, in accordance with section 3.34(7) of the *Environmental Planning and Assessment Act 1979*, to alter the Gateway determination dated 16 October 2017 for PP_2017_BALLI_007_00 (since altered). The Alteration of Gateway determination is enclosed.

If you have any questions in relation to this matter, I have arranged for Ms Jenny Johnson to assist you. Ms Johnson can be contacted on 6643 6414.

Yours sincerely

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

19-3-2019

Jeremy Gray
Director Regions, Northern
Planning Services

Encl: Alteration of Gateway Determination



Planning &
Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2017_BALLI_007_00)

I, Director Regions, Northern at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 16 October 2017 (since altered) for the proposed amendment to the Ballina Local Environmental Plan 2012 as follows:

1. Delete condition 6:

"6. The time frame for completing the LEP is by 16 April 2019."

and replace with:

a new condition 6 "The time frame for completing the LEP is by 16 October 2019."

Dated 19 day of April 2019.

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

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

Delegate of the Minister for Planning

PP_2017_BALLI_007_00 (IRF19/1680)

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.	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. 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.
Infrastructure	The variation needs to consider the use of committed and planned major transport, water and sewerage infrastructure, and have no cost to government. The variation should only be permitted if adequate and cost-effective infrastructure can be provided to match the expected population.	The future subdivision of Lot 2 and potentially part of Lot 1 for residential purposes based on a minimum lot size standard of 600m ² can be accommodated by existing water and sewer infrastructure located in close proximity to this site. All infrastructures required for a future residential subdivision will be required to be provided by the land developer at no cost to government.
Environmental and farmland protection	The variation should avoid areas: <ul style="list-style-type: none"> • of high environmental or heritage value; • mapped as important farmland, unless consistent with the interim variation criteria prior to finalising the farmland mapping review. 	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. 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. 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. Given the small size of Lot 1 (2023m ²) and Lot 2 (9,735m ²) 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.
Land use conflict	The variation must avoid physically constrained land identified as: <ul style="list-style-type: none"> • flood prone; • bushfire-prone; • highly erodible; • having a severe slope; and • having acid sulfate soils. 	Lots 1 and 2 are not constrained by any of the nominated land constraints.
Heritage	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.
Coastal area	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:		
Principle	Requirement	Comment
Agricultural capability	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>
Land use conflict	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.
Infrastructure	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.
Environment and heritage	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>
Avoiding risk	<p>Risks associated with physically constrained land are identified and avoided, including:</p> <ul style="list-style-type: none"> • flood prone; • bushfire-prone; • highly erodible; • severe slope; and • acid sulfate soils. 	Lots 1 and 2 are not constrained by any of the nominated land constraints.

Appendix 5 – Mapping

Site Identification Map



ballina shire council
geographical information system
Projection: GDA94 / MGA zone 56
Date: 31/01/2019

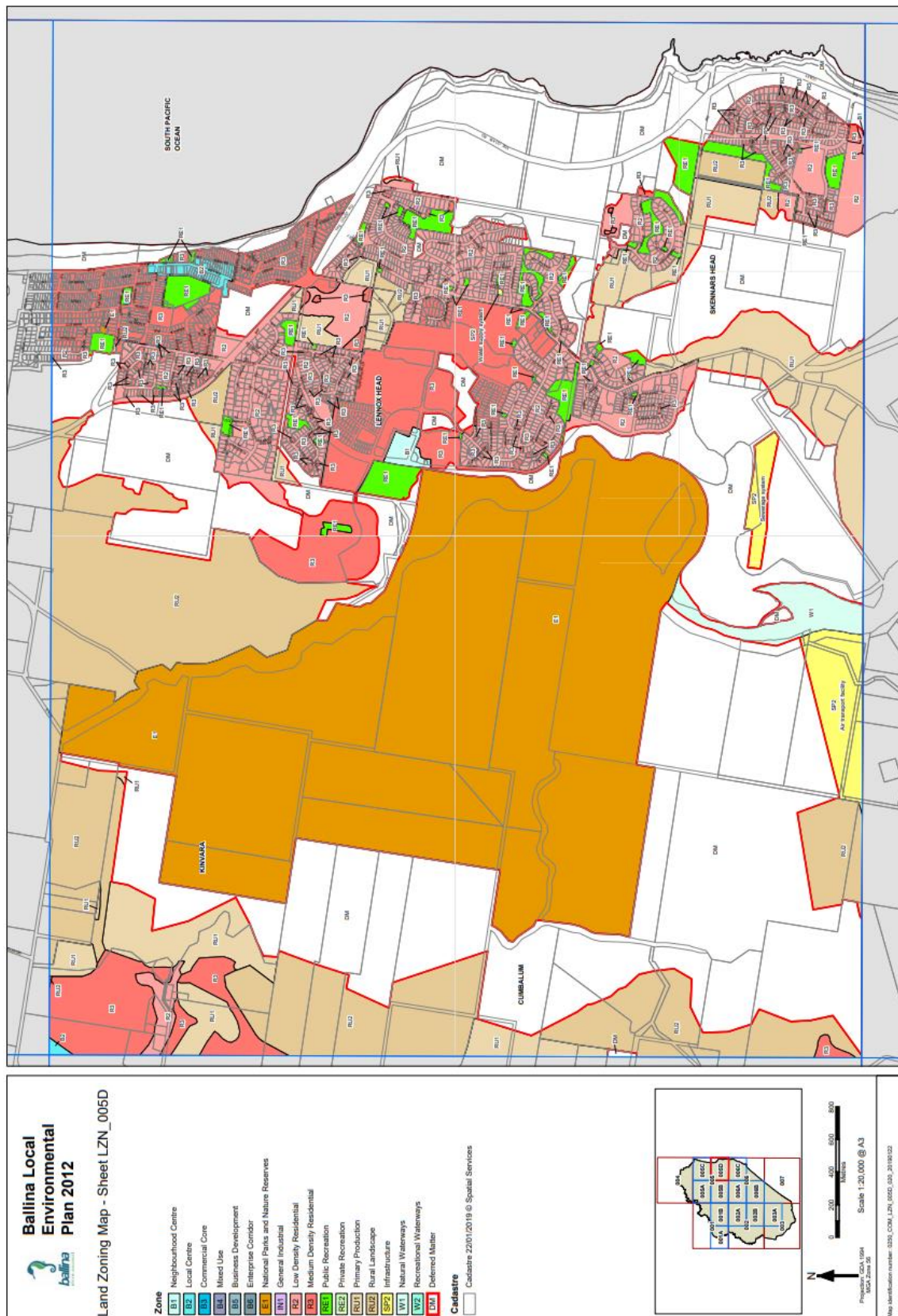
Site Identification Map
9 Byron Bay Road, Lennox Head



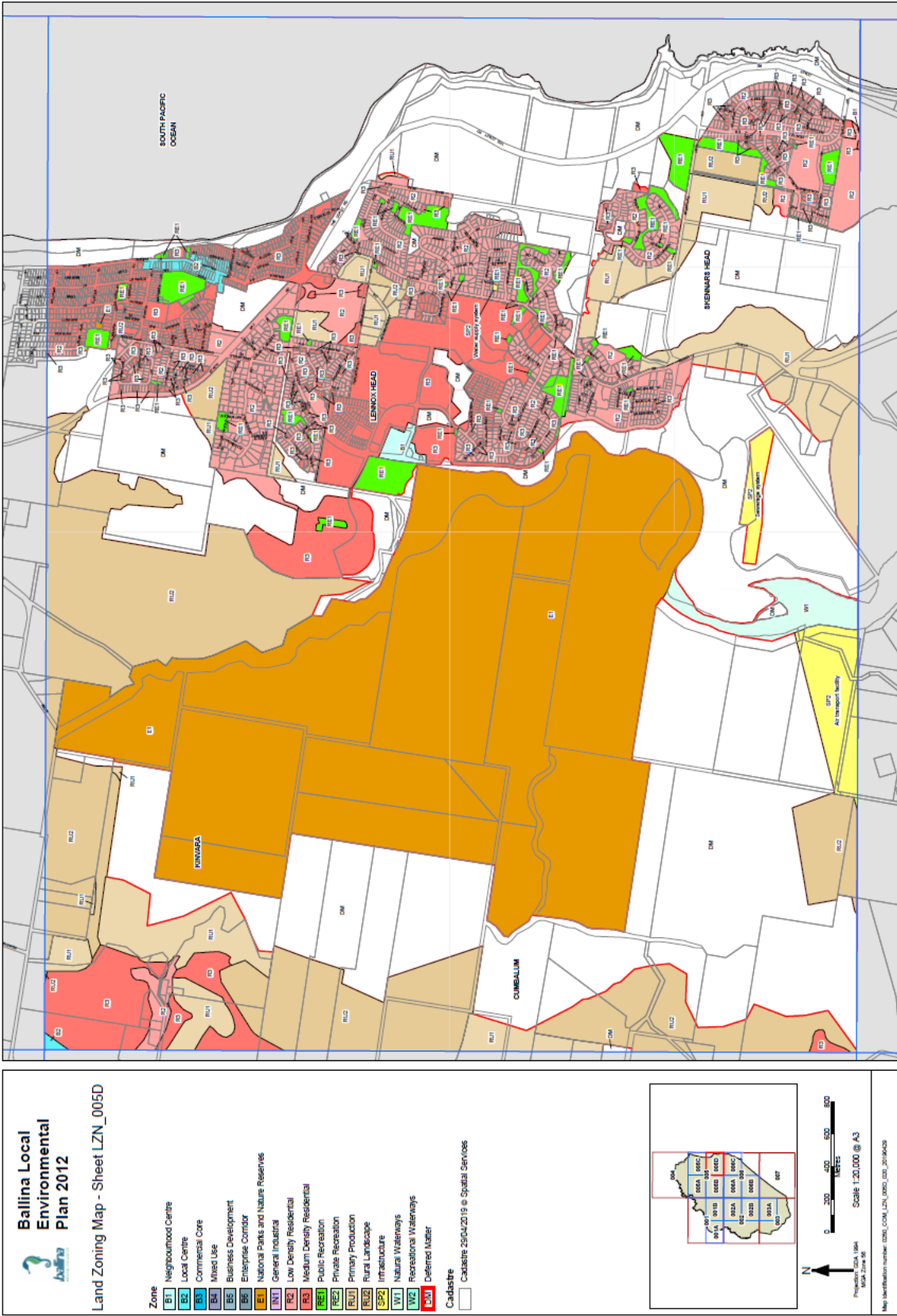
Ballina Shire Council
40 Cherry Street
BALLINA NSW 2478
PO Box 450
BALLINA NSW 2478
1300 864 444
council@ballina.nsw.gov.au
www.ballina.nsw.gov.au

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While every care is taken to ensure the accuracy of this product, Ballina Shire Council and the Local / State / Federal Government departments and their Government organisations accept liability for any particular purpose and disclaimer of responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damages) and costs which you might incur as a result of the product being issued and is not responsible in any way and for any reason.

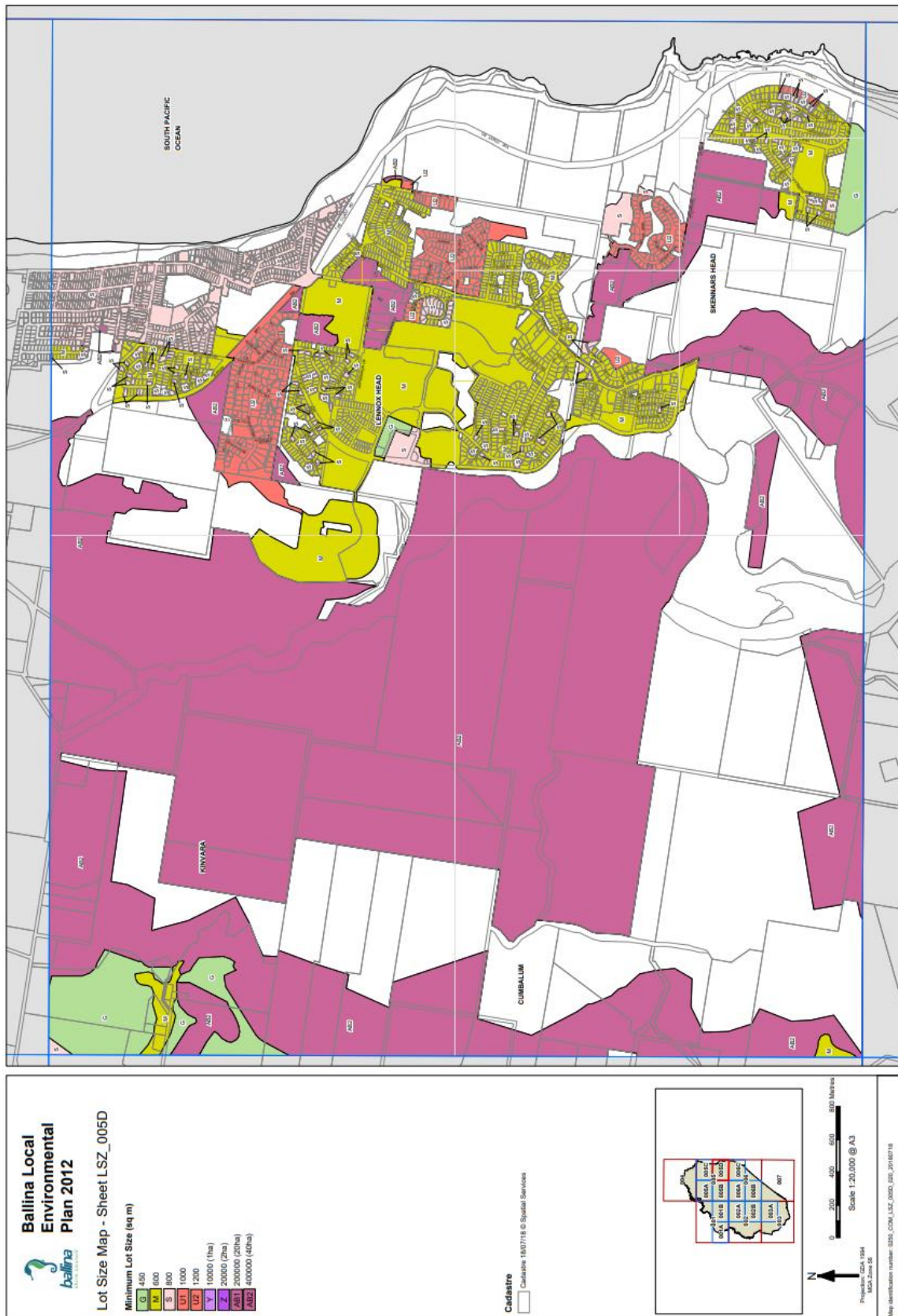
Existing Land Zoning Map



Proposed Land Zoning Map



Existing Lot Size Map



Appendix 6 – Original Planning Proposal Submission

ARDILL PAYNE

& Partners
www.ardillpayne.com.au e: 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

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 • fax 27789 • f 02 6686 7035 • e council@ballina.nsw.gov.au
t 02 6686 4444 • w www.ballina.nsw.gov.au • abn 53 929 887 369

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 (PAUL SNEELARGE)		
Address	PO BOX 20 BALLINA		
Telephone (w)	66 86 3280	Mobile	
		Fax	66 86 7920
Email Address	PAUL@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)	<input type="text" value="ESTATE OF WILLIAM MICHAEL GORDON"/>		
Address	<input type="text" value="REFER ATTACHED SIGNED LANDOWNER AUTHORITY"/>		
Lot/Portion	<input type="text"/>	Section	<input type="text"/>
		DP	<input type="text"/>
Telephone (w)	<input type="text"/>	(h)	<input type="text"/>
		Mobile	<input type="text"/>
Email Address	<input type="text"/>		Fax <input type="text"/>
<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	<input type="text"/>		Date <input type="text"/>

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.

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

ARDILL PAYNE

& Partners
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ABN: 51 808 558 977



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)
Landowner's address	cl- 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	M. Condon	Jeanette Hills
Name	Mark Condon (Executor)	Jeanette Hills (Executor)
Date	22/5/17	22/5/17
Phone	0468 300 937	0421972614

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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

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1 Introduction

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 600m² 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 600m² 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:

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

A number of appendices form part of this request being:

Appendix A	Aerial photograph of subject and adjoining land
Appendix B	Copy of deposited plan
Appendix C	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 13th May 2016 in respect of Planning Proposal

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..."*.

2 Context and Characteristics of Subject Land

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 9735m².

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

3 Objectives or Intended Outcomes of Proposed LEP

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 600m² 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 9735m² and it is proposed to apply an R2 – Low Density Residential Zone with a 600m² minimum lot size.

Based purely on a 600m² lot size and approximately 150m² 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.

4 Explanation of Provisions

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 600m² 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 600m² minimum lot size standard is the same as that recently applied to the adjoining sections of the Reservoir Hill site.

5 Justification for the Proposed Amendments

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 (9735m²) 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 (9735m²) 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.
------------	--

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
1. Employment and Resources	
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'.
2. Environment and Heritage	
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.

3. Housing, Infrastructure and Urban Development	
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.
4. Hazard and Risk	
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.
5. Regional Planning	
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"> The subject land is effectively contained in the Lennox Head urban area and is well serviced with roads and reticulated water and sewerage services. 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. The 9735m² 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. 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. The land is not flood affected or subject to any other significant hazard. <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 Milfield (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.
6. Local Plan Making	
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.
7. Metropolitan Planning	
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.

6 Community Consultation

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.

7 Scope of Engagement

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.

8 **Appendices**

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

APPENDIX A

Appendix A
Aerial photograph of subject
and adjoining land

An aerial photograph of a residential area with property boundaries overlaid. The central focus is Lot 2 DP 620838, a large green field. To its north is a road labeled 'BYRON BAY ROAD'. To its east is another road labeled 'NORTH CREEK ROAD' which intersects with 'SAULTWA STREET'. Various other lots are labeled with numbers and codes: DP 1007134, DP 29654, SP 75431, DP 29654, DP 10041, SP 47314, SP 41250, DP 767876, SP 41550, DP 517111, and DP 517111. The NSW logo is in the bottom right corner.

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APPENDIX B

Appendix B Copy of deposited plan

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

[illegible]

APPENDIX C

Appendix C

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

ARDILL PAYNE

& P a r t n e r s
www.ardillpayne.com.au e:info@ardillpayne.com.au
ABN: 51 808 558 977
bscpp 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 13th 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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2.
bscpp 14.002 - condon submission (may 2016)
13 May 2016

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 600m² 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 600m² lot size.

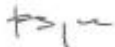
Mr Condon is not objecting to the proposed residential zoning of Lots 1 & 2 or the Hutley Drive road reserve, however wants to ensure that his property maintains formal dual road frontage, and specifically maintains an existing frontage to the Hutley Drive road reserve. Mr Condon is currently exploring 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.

Yours faithfully



Paul Snellgrove
Ardill Payne & Partners

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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 Snellgrove 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.

Yours sincerely
Charter Keck Cramer

A handwritten signature in black ink, appearing to read "Nick Ashton".

Nick Ashton
National Director

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Level 19/8 Exhibition Street
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Charter Keck Cramer Pty Ltd
ABN 78 618 794 853

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PROJECTS.

Appendix 8 – Public Authority and Agency Responses

Ballina Byron Gateway Airport

From: ☐ Howard Ludgate
To: ☒ Klaus Kerzinger
Cc: ☒ Kylie Hardy
Subject: Proposed Rezoning of Lots 1 and 2, DP 620838, Byron Bay Road, Lennox Head

Sent: Tue 31/10/2017 4:27 PM

Klaus

Reference the proposed rezoning for this site:

- The site sits outside the 20 ANEF
- The top RL of a typical residential building (8.5m) and street light (typically 9m) at approximately RL 41m AHD does not infringe the airport Obstacle Limitation Surface (Inner Horizontal Surface at RL46.5m AHD) and does not require referral to CASA or Airservices Australia
- Construction cranes above a top RL of 46.5m AHD should be advised to this office with at least 24 hours notice.
- The issue of waste becoming a bird attractant seems unlikely with such a development
- The site sits outside Zone D of maximum lighting Intensities for CAR 94 Dangerous Lights

If any questions please call.

Howard Ludgate
Acting Operations Supervisor



ballina.nsw.gov.au | discoverballina.com | ballinabyronairport.com.au
p: (02) 6681 1858 m: 0418 984 710

Air Services Australia

From: ☐ Airport Developments <Airport.Developments@AirservicesAustralia.com>
To: ☒ Klaus Kerzinger
Cc: ☐ 'Airspace Protection'
Subject: AIRSERVICES RESPONSE: BNA-MA-012 - Rezoning, Lots 1 & 2, DP620838, Byron Bay Road, Lennox Head [SEC=UNCLASSIFIED]

Sent: Wed 22/11/2017 11:07 AM

Hi Klaus,

I refer to your request for an Airservices assessment of rezoning lots 1 and 2, DP620838 Byron Bay Road, Lennox Head.

Airspace Procedures

With respect to procedures designed by Airservices in accordance with ICAO PANS-OPS and Document 9905, at the maximum structure height of 41m (135ft) AHD, the rezoning will not affect any sector or circling altitude, nor any instrument approach or departure procedure at Ballina Airport.

Note that procedures not designed by Airservices at Ballina Airport were not considered in this assessment.

Communications/Navigation/Surveillance (CNS) Facilities

The proposal for rezoning will not adversely impact the performance of any Airservices Precision/Non-Precision Nav Aids, Anemometers, HF/VHF/UHF Comms, A-SMGCS, Radar, PRM, ADS-B, WAM or Satellite/Links.

Kind regards,

Daniela Carrafa
Operations Standards & Assurance
Airservices
Level 1, Building 330, Tower Road
Tullamarine VIC 3043
Phone: 03 9339 2182
Email: airport.developments@airservicesaustralia.com

Civil Aviation Safety Authority (CASA)



Australian Government
Civil Aviation Safety Authority

STAKEHOLDER ENGAGEMENT GROUP

CASA Ref: GI17/991

7 December 2017

Mr Klaus Kerzinger
Strategic Planner
Strategic and Community Facilities Group
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Email: Klaus.kerzinger@ballina.nsw.gov.au

Dear Mr Kerzinger

Thank you for your letter of 23 November 2017 addressed to Mr Daniel Eatock at the Civil Aviation Safety Authority (CASA) about proposed rezoning of land on Byron Bay Road, Lennox Head, NSW.

CASA has reviewed the proposal and has no concerns with the application, as it has no effect on the Obstacle Limitation Surface for the Ballina/Byron Gateway Aerodrome or on any of the aerodrome's procedures.

However, it is recommended that the proponent consider the specific issues which are contained in the attachment as part of any planning and development.

For further information or to discuss this matter please email anaa.corro@casa.gov.au.

I trust this information is of assistance.

Yours sincerely

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

Carolyn Hutton
Manager
Government and International Relations Branch

ATTACHMENT – CASA Recommendations

Departure and Approach Procedures

Any proposed structures and cranes if used in construction should be referred to the procedure design organisation/s responsible for the maintenance of instrument flight procedures at the Aerodrome. Please be aware that there may be more than one organisation responsible for the procedures at the aerodrome.

To check which organisations are responsible you can view the procedures at: <http://www.airservicesaustralia.com/aip/aip.asp> then Departure and Approach Procedures. The logo on the bottom of each procedure plate indicates the design organisation responsible.

Compliance with standards

Any aerodrome developments to aviation facilities associated with the planning proposal need to be consistent with the requirements of Civil Aviation Safety Regulations 1998 Part 139 and the associated Manual of Standards. Further details are available on the CASA website. <https://www.casa.gov.au/standard-page/casr-part-139-aerodromes>

The National Airports Safeguarding Framework provides guidance on planning requirements for development that affects aviation operations. This includes building activity around airports that might penetrate operational airspace and/or affect navigational procedures for aircraft. The Framework consists of a set of guiding principles with six guidelines relating to aircraft noise, windshear and turbulence, wildlife strikes, wind turbines, lighting distractions and protected airspace. Further information is available from the following link: https://infrastructure.gov.au/aviation/environmental/airport_safeguarding/nasf/

Aerodrome operations

Consultation should also be undertaken with the aerodromes operational management team to manage the following issues with developments adjacent to any aerodromes:

- Airport master planning: Council should ensure that the proposal does not affect any future development or upgrades planned by the aerodrome's operational management.
- Obstacle limitation surfaces (OLS) and Procedures for Air Navigation Services – Aircraft Operations: Prior to construction, the development and crane activity should be reviewed by the aerodrome's management team for the protection of these surfaces.
- Wildlife hazard management plan: Consideration needs to be given to the final heights and bird attractions of landscaping provisions which potentially may cause a risk to aviation activities.
- Obstacle lighting: The building and any construction cranes would need to be marked to comply with CASR 139 and associated MOS, paying particular attention to the quantity, type, luminescence and whether day and/or night marking is required.
- Lighting in the vicinity of an aerodrome: Any proposed non-aeronautical ground light in the vicinity of an aerodrome may by reason of its intensity, configuration or colour, cause confusion or glare to pilots and therefore might endanger the safety of aircraft.
- Gaseous plume: Exhaust plumes can originate from a number of sources and aviation authorities have established that an exhaust plume with a vertical gust in excess of 4.3 metres/second may cause damage to an aircraft airframe, or upset an aircraft when flying at low levels.
- Control of dust: During any construction the emission of airborne particulate may be generated which could impair the visual conditions.

NSW Department of Primary Industries (Agriculture)



**Department of
Primary Industries**

Our ref: V17/176#85
Your ref: Trim 1918

30 November 2017

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Klaus Kerzinger
klaus.kerzinger@ballina.nsw.gov.au

Dear Sir/Madam

**Planning Proposal BSCPP 17/009 – Proposed rezoning of RU1 Primary Production land to
R2 Low Density Residential, Byron Bay Road, Lennox Head**

Thank you for the opportunity to provide comment for the above proposal as per your correspondence dated 24 October 2017. The NSW Department of Primary Industries (NSW DPI) Agriculture provides advice to consent authorities about the protection and growth of agricultural industries and the resources upon which these industries depend to provide economic growth.

DPI Agriculture has reviewed the supporting documentation for the above planning proposal and provides no objections to the proposal given the strategic identification of the site as an urban growth area under the *North Coast Regional Plan 2036*, identification of this site as an urban release area historically in the *Lennox Head Structure Plan 2004*, and limitations for agriculture at the site given existing and future site constraints from surrounding residential development.

It is recommended that council have due consideration of suitable dwelling setback provisions from Byron Rd at the development application stage should the planning proposal be approved. This will aid in reducing any potential land use conflict with the grazing land to the north of the subject site.

Should you require clarification on any of the information contained in this response please contact Agricultural Resource Management Officer, Selina Stillman on (02) 66261215.

DPI Agriculture is working to ensure that the advice provided is of the highest quality. Please take some time to provide us with feedback on our work by completing a [short survey](#).

Yours sincerely

A handwritten signature in blue ink, appearing to read "L. Parker".

For Lilian Parker
A/Manager Agricultural Land Use Planning

NSW Office of Environment and Heritage



Our Ref: DOC19/78695
Your Ref: BSCPP 17/009 – Byron Bay Road, Lennox Head (19/6753)

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Attention: Ms Leah Toole

Dear Mr Hickey

Re: Planning Proposal for 9 Byron Bay Road, Lennox Head

Thank you for your letter dated 29 January 2019 about the planning proposal to rezone land at 9 Byron Bay Road, Lennox Head seeking comments from the Office of Environment and Heritage (OEH). I appreciate the opportunity to provide input.

The OEH has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats), Aboriginal and historic heritage, National Parks and Wildlife Service (NPWS) estate, flooding and estuary management.

We have reviewed the information provided and can advise that we do not have any issues to raise for Aboriginal and historic heritage, NPWS estate or flooding and estuary management. However, we have identified issues with the assessment for biodiversity as set out below.

The results of the ecological assessment undertaken by Biodiversity Assessments and Solutions in January 2019 recorded the littoral rainforest in the North Coast bioregion endangered ecological community (LR EEC) in the planning area, which is a criterion set out in the E zone review for establishing an E2 zone. However, the planning proposal does not include an E2 zone, despite the known occurrence of LR EEC and the threatened flora species, *Macadamia tetraphylla*, in the planning area.

Furthermore, Section 117 (now 4.55) Direction 2.1 requires environmentally sensitive areas to be protected and conserved. However, the planning proposal would apply an R2 zone to the entire planning area, the objectives of which are incompatible with protecting and conserving environmentally sensitive areas.

It is stated in Section 4.3 of the planning proposal that *"a majority of the site is devoid of native vegetation and is of low habitat value, and where native vegetation exists, it is highly disturbed and fragmented, with little connectivity to local native vegetation communities of significance."*

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Federation House, Level 8, 24 Moones Street
Coffs Harbour NSW 2450
Tel: (02) 6659 8200 Fax: (02) 6659 8281
ABN 30 841 387 271
www.environment.nsw.gov.au


Therefore, habitat impacts at the site based on the proposal and potential future development would be negligible". The OEH does not concur with this statement given the planning proposal would facilitate future development likely to adversely affect confirmed threatened species and an endangered ecological community.

To address these issues the OEH recommends that, prior to finalising the planning proposal, the Ballina Shire Council should either:

1. Apply an E2 zone to areas of known habitat for the threatened species and the Littoral Rainforest endangered ecological community in the planning area; or
2. Enter into a planning agreement with the landowner that:
 - a. identifies an offset in accordance with the Biodiversity Assessment Method for the areas of high environmental value in the planning area and requires that offset to be provided prior to either:
 - i. release of the subdivision linen plan if the land is to be subdivided;
 - ii. issuing of the construction certificate if the land is to be otherwise developed; or
 - iii. commencement of works subject to a determination under Part 5 of the *Environmental Planning and Assessment Act 1979*.
 - b. Indicates the offset specified in a. above is not required if the subsequent development application or activity assessment triggers the Biodiversity Offset Scheme.

If you have any further questions about this issue, Mr Don Owner, Senior Conservation Planning Officer, Conservation and Regional Delivery, OEH, can be contacted on 6659 8233 or at don.owner@environment.nsw.gov.au.

Yours sincerely

 28 February 2019

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Conservation and Regional Delivery

Contact officer: DON OWNER
6659 8233

Appendix 9 – Covering Letter and Contour/Detail Survey



ENGINEERS PLANNERS SURVEYORS ENVIRONMENTAL PROJECT MANAGEMENT

8116 - public exhibition submission

10 January 2019

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

Attn: Steve Barnier

Dear Steve

re: Gateway Determination – BLEP 2012 Amendment
Planning Proposal PP_2017_BALLI_007_00
Lots 1 & 2 DP 620838, No. 9 Byron Bay Road, Lennox Head

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

- Council's letter dated 20th October 2017
- NSW Planning and Environment's letter and Gateway Determination dated 16th October 2017

As required by the above, the following reporting/documentation has been prepared and is attached herewith:

- Contour and detail survey (Ballina Shire Council, 12th November 2018)
- Ecological assessment (Biodiversity Assessments & Solutions Pty Ltd, 4th January 2019)
- Preliminary contaminated site investigation (Ardill Payne & Partners, 3rd December 2018)
- Preliminary stormwater management plan (Ardill Payne & Partners, 21st November 2018)
- Aboriginal cultural heritage assessment (Everick Heritage Consultants, 12th November 2018)

There were no significant issues identified in any of the above investigations/reporting that would preclude, compromise or require modification to the proposed zoning (or zone boundaries) and minimum lot size provisions with a precis of the findings/conclusions and recommendations of the respective reports being provided below:

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info@ardillpayne.com.au
abn: 51 808 558 977

GUNNEDAH
Germane House
285 Conadilly Street
GUNNEDAH NSW 2380
02 6742 9955

Ecological Assessment

As detailed in Section 9 – Summary and Conclusion:

“Following assessment of all available information, threatened species records and habitat assessment of the site, it is concluded that:

- *The area identified for rezoning is heavily disturbed and of limited ecological value;*
- *A majority of the site is devoid of native vegetation and is of low habitat value, and where native vegetation exists, it is highly disturbed and fragmented, with little connectivity to local native vegetation communities of significance. Therefore, habitat impacts at the site based on the proposal and potential future development would be negligible;*
- *The TEC (Littoral Rainforest) patch identified at the site is very small (0.175ha) and heavily degraded with only limited habitat value;*
- *Vegetation identified as Littoral Rainforest represents as a small lot condition patch and is neither mapped under SEPP (Coastal Management) 2018 as Littoral Rainforest, or within an area mapped as Proximity Area for Littoral Rainforest (refer Figure 6.1);*
- *The site is not mapped as containing or being adjacent to any Significant Urban Bushland as mapped by Ballina Shire Council;*
- *The threatened flor species, Rough-shelled Bush Nut (*Macadamia tetraphylla*), has been recorded at the site with two (2) individuals identified;*
- *The site has a very low likelihood of occurrence of any threatened fauna except for Grey-headed Flying-fox (*Pteropus poliocephalus*), which has the potential to occur from time to time;*
- *Additional impact assessments would potentially be required when site concept design is finalised, with regards to the threatened flora species and threatened ecological community identified at the site;*
- *Opportunities exist to mitigate development impacts through restoration of any native vegetation retained on the site through regeneration, and/or rehabilitation of any areas of the site currently devoid of native vegetation through revegetation; and*
- *Based on the information provided for this assessment, and as a result of the assessment undertaken, the site is generally considered entirely suitable for the proposal covered by this assessment.”*

Preliminary Contaminated Site Investigation

As detailed in Section 10 – Conclusion & Recommendations:

“The desk-top site history review found a number of potentially contaminating activities on the site resulting from possible agricultural pursuits on the land and surrounds, the Telstra exchange structure and the dwelling house and associated structures. Sampling focused on a systematic screening approach with twenty-five individual soil samples being collected to form seven composite samples to be analysed by EAL Lismore. Chromium and manganese were above the adopted composite HIL-A for all composite samples and cobalt was elevated in five of the seven composite samples, however, these results were determined to be as a result of naturally occurring, elevated background levels as a result of the heavy



volcanic activity that occurred in the area approximately 23 million years ago. Elevated lead was identified in three of the seven composites (C2, C4 and C5) and when analysed individually, three of the twelve individual samples (S10, S13 and S14), were above the individual HIL-A with a maximum concentration of 3674 mg/kg.

During the site investigation, a small fragment of fibrous cement sheeting was located and sent for analysis at the Australian Safer Environment & Technology Laboratory in Sydney where it was identified to contain chrysotile asbestos.

The results of this investigation determine that a Stage 2: Detailed Contaminated Site Investigation is to be undertaken with focus on the areas covered by samples S10, S13 and S14. The findings of the Stage 2 investigation will determine what remediation and subsequent validation processes are to be implemented."

Any Stage 2 detailed contaminated site investigation would be able to be undertaken to support/inform any future development application for development on the subject land post rezoning.

Preliminary Stormwater Management Plan

As detailed in Section 4 – Conclusion:

"This Preliminary SMP allocates a lawful discharge point to the site and demonstrates that compliance with Council's requirements with respect to stormwater quantity and quality will be possible.

The site SMP will need to be further developed at the DA stage based on the site development plan. In development of the site SMP the necessary hydraulic and stormwater quality modelling will be undertaken."

Aboriginal Cultural Heritage Assessment

As detailed in the Executive Summary:

"As a result of the desktop study and field inspection the following conclusions were established with Sites Officer Mr Grant Rhodes of Jali LALC:

- (a) No Indigenous cultural heritage sites or objects were identified within the lands subject to the planning proposal to amend the Ballina Local Environmental Plan at 9 Byron Bay Road Lennox Head.
- (b) Consultation with Grant Rhodes found no places of Aboriginal 'intangible' cultural heritage in the Project Area, or association with spiritual or mythological stories or places elsewhere.
- (c) The Project Area was found to be highly disturbed in a manner which constitutes 'disturbance' within the meaning of the Due Diligence Code and is consistent with the Due Diligence Code.

There were no items of historic heritage found therefore no recommendations are warranted.

Having regard to the low archaeological potential of the Project Area, the following recommendations are cautionary in nature and considered adequate for application in both planning proposal and development application stages.

Recommendation 1: Aboriginal Objects Find Procedure

It is recommended that if suspected Aboriginal material has been uncovered because of development activities within the Project Area:

- a) work in the surrounding area is to stop immediately;*
- b) a temporary fence is to be erected around the site, with a buffer zone of at least 10 metres around the known edge of the site;*
- c) an appropriately qualified archaeological consultant is to be engaged to identify the material;*
- d) if the material is found to be of Aboriginal origin, the Aboriginal community is to be consulted in a manner as outlined in the OEH guidelines: Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010); and*
- e) should the works be deemed to have harmed the Aboriginal objects the OEH should be notified immediately via the EPA Enviro Hotline.*

Recommendation 2: Aboriginal Human Remains

Although it is unlikely that Aboriginal Human Remains will be located at any stage during earthworks within the Project Area, should this event arise it is recommended that all works must halt in the immediate area to prevent any further impacts to the remains. The site should be cordoned off and the remains themselves should be left untouched. The nearest police station, the Jali Local Aboriginal Land Council and the OEH Regional Office (Coffs Harbour) are all to be notified as soon as possible. If the remains are found to be of Aboriginal origin and the police do not wish to investigate the Site for criminal activities, the Aboriginal community and the OEH should be consulted as to how the remains should be dealt with. Work may only resume after agreement is reached between all notified parties, provided it is in accordance with all parties' statutory obligations.

It is also recommended that in all dealings with Aboriginal Human Remains, workers or contractors should use respectful language, bearing in mind that they are the remains of Aboriginal people rather than scientific specimens.

Recommendation 3: Notifying the OEH

It is recommended that if Aboriginal cultural materials are uncovered because of earthworks within the Project Area, they are to be registered as Sites in the Aboriginal Heritage Information Management System (AHIMS) managed by the OEH. Any management outcomes for the site will be included in the information provided to the AHIMS.

Recommendation 4: Conservation Principles

It is recommended that all effort must be taken to avoid any impacts on Aboriginal Cultural Heritage values at all stages during future earthworks. If impacts are unavoidable, mitigation measures should be negotiated between the Ballina Shire Council, the Aboriginal community and OEH."



Notwithstanding that Council's 20th October 2017 letter advised that a preliminary concept subdivision design plan should be prepared and provided prior to public exhibition, it has been agreed that due to the planned future use of part of the subject land, that a concept subdivision design plan is no longer required.

A number of email communications have been had with Telstra's representatives, Mr Michael Allsopp (Charter Krek Cramer - CKC) in respect of the Planning Proposal. CKC has advised that Telstra is desirous of being involved in the Planning Proposal in respect of their land, however, at this point in time, they have not provided any formal confirmation of such or agreed to any cost sharing arrangement for the finalisation of the Planning Proposal.

Should you have any questions in respect of this matter please contact me on 6686 3280 or pauls@ardillpayne.com.au.

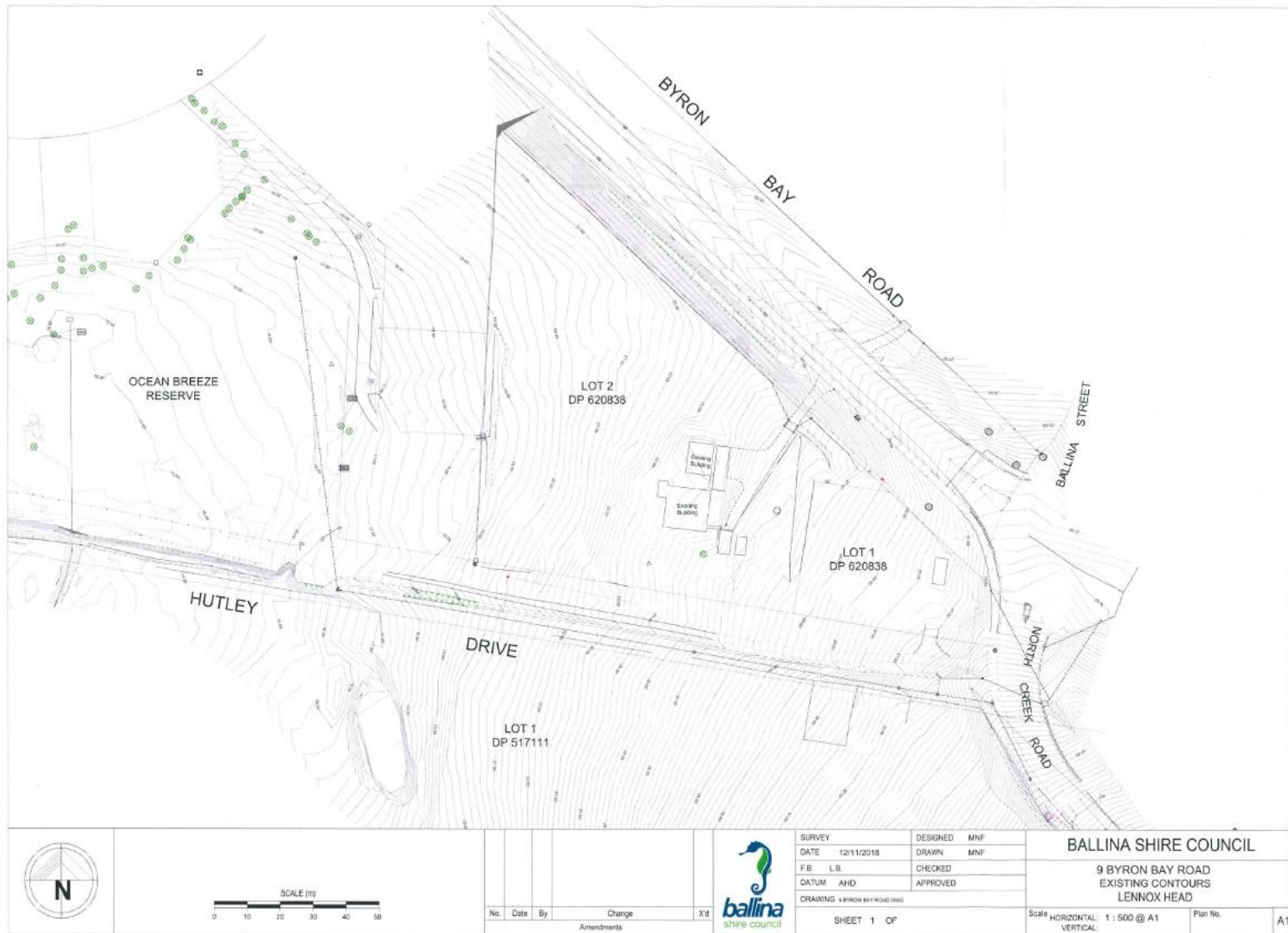
Yours faithfully

A handwritten signature in blue ink, appearing to read 'P. Snellgrove'.

Paul Snellgrove

ARDILL PAYNE & PARTNERS

s:\01 jobs\8100-8199\8116 re-zoning of 9 byron bay rd, lennox head\03 town planning\8116 - public exhibition submission.docx



Appendix 10 – Ecological Assessment – Biodiversity Assessments & Solutions

(Under Separate Cover)

Appendix 11 – Preliminary Contaminated Site Investigation

(Under Separate Cover)

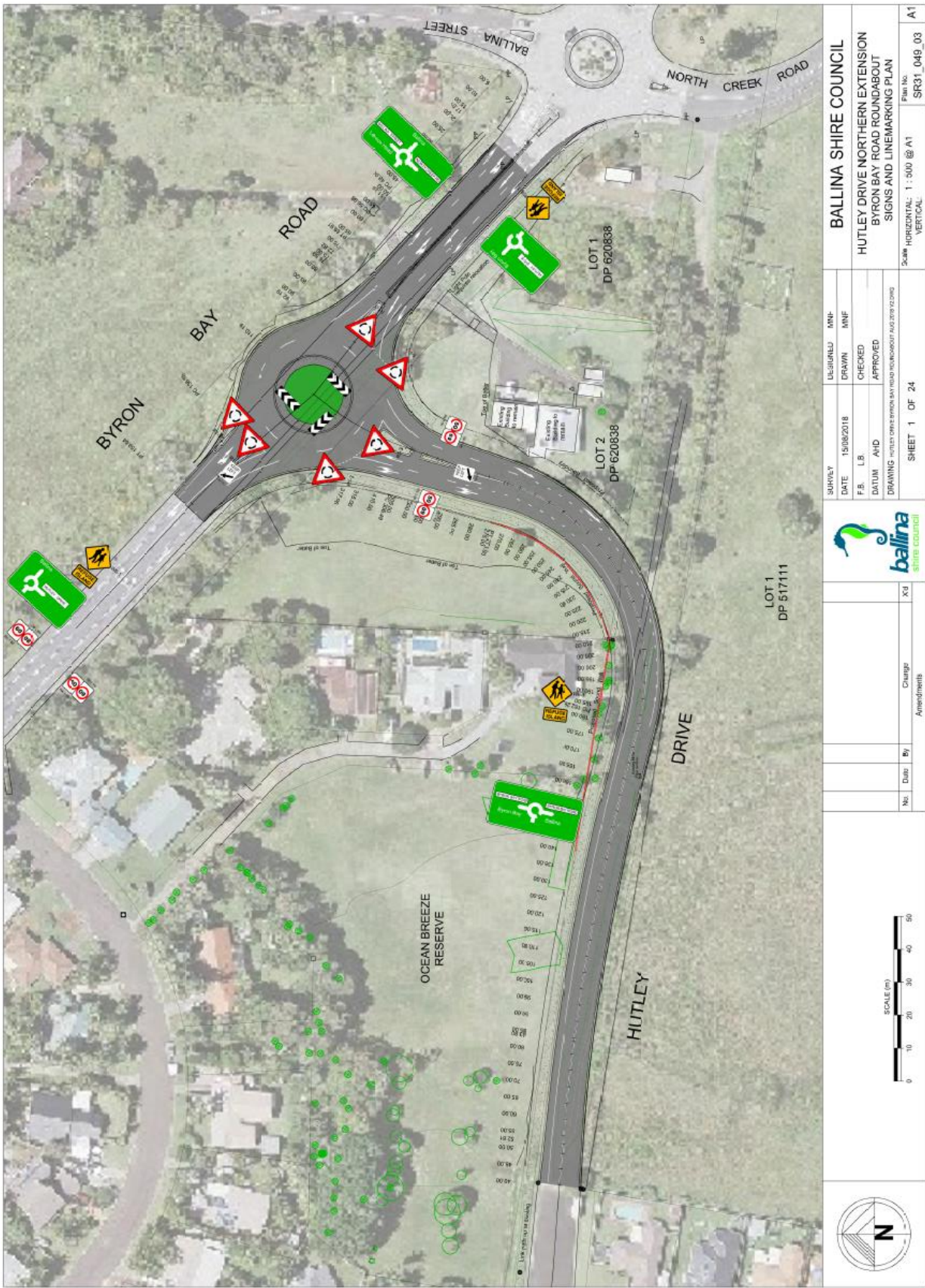
Appendix 12 – Preliminary Stormwater Management Plan

(Under Separate Cover)

Appendix 13 – Aboriginal Cultural Heritage Assessment

(Under Separate Cover)

Appendix 14 – Plan of Proposed Hutley Drive Road Extension



Appendix 15 – Secretary's Agreement



Our ref: OBJ17/11171

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

Attention: Klaus Kerzinger

Dear Mr Hickey

Planning Proposal PP_2017_BALLI_007_00 to amend the Ballina Local Environmental Plan 2012

I refer to your correspondence of 7 December 2017 requesting the Secretary's agreement to the consistency of the above proposal with section 117 Direction 3.5 Development Near Licensed Aerodromes.

I have considered this matter, and as a delegate of the Secretary, I have agreed that the proposal is consistent with the terms of the Direction.

Council can now proceed with the planning proposal in accordance with the requirements of the Gateway determination.

Should you have any further enquiries about this matter, I have arranged for Ms Heidi Naylor to assist you. Ms Heidi Naylor can be contacted on (02) 6641 6604.

Yours sincerely

A handwritten signature in black ink, appearing to be 'C. Diss'.

18 December 2017

Craig Diss
Acting Director Regions, Northern
Planning Services

Appendix 16 – Ecological Assessment – Blackwood Ecological Services

(Under Separate Cover)