



IRF22/419

Gateway determination report – PP-2022-456

Integration of certain deferred matter land into Ballina
LEP 2012

February 22

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Gateway determination report – PP-2022-456

Subtitle: Integration of certain deferred matter land into Ballina LEP 2012

© State of New South Wales through Department of Planning and Environment 2022. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (February 22) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

1	Planning proposal.....	1
1.1	Overview.....	1
1.2	Objectives of planning proposal	1
1.3	Explanation of provisions	2
1.4	Site description	2
1.5	Mapping.....	4
1.6	Background	5
2	Need for the planning proposal	5
3	Strategic assessment	5
3.1	Regional Plan	5
3.2	Northern Councils E Zone Review Final Recommendations	5
3.3	Local.....	8
3.4	Section 9.1 Ministerial Directions	9
3.5	State environmental planning policies (SEPPs)	14
4	Site-specific assessment	15
4.1	Environmental.....	15
4.2	Social and economic.....	16
4.3	Infrastructure	17
5	Consultation.....	17
5.1	Community	17
5.2	Agencies.....	17
6	Timeframe	18
7	Local plan-making authority	18
8	Assessment summary	18
9	Recommendation.....	18

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
BSCPP 21_004 – DM Integration – Planning Proposal (v2 Gateway)_PP-2022-456
BSCPP 21004 – Letter to DPIE requesting the Gateway determination_PP-2022-456

Council report and minutes – October 2021 – DM Integration, BLEP 2012_PP-2022-456

Deferred Matters Integration – Methodology Report (February 2022)_PP-2022-456

DM Integration – Draft Zone Mapping_PP-2022-456

Planning Proposal Application Form_PP-2022-456

Planning Proposal Submission Form_PP-2022-456

Northern Councils E Zone Review Final Recommendations Report

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Ballina Shire Local Government Area
PPA	Ballina Shire Council
NAME	Integration of certain deferred matter land into Ballina LEP 2012
NUMBER	PP-2022-456
LEP TO BE AMENDED	Ballina Local Environmental Plan 2012
ADDRESS	Local Government Area Wide
DESCRIPTION	Local Government Area Wide
RECEIVED	15/02/2022
FILE NO.	IRF21/419
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The stated objectives of the planning proposal are to:

- Introduce the C2 Environmental Conservation and C3 Environmental Management zones into Ballina LEP 2012;
- Apply environmental zones to land identified as meeting the criteria as set out under the Northern Councils E Zone Review Final Recommendations;
- Apply a minimum lot size of 40 hectares to land zoned C2 Environmental Conservation and C3 Environmental Management;
- Apply rural, residential and other non-environmental zones under the Ballina LEP 2012 to land that does not meet the criteria for an environmental zone in the Northern Councils E Zone Review Final Recommendations Report;
- Apply consequential clause changes along with any land application, acid sulfate soil, building height, flood planning, floor space, heritage and minimum lot size mapping changes associated with the rezonings; and
- Reduce the temporary use of land provisions under Ballina LEP 1987 from 52 days to 14 days.

It is considered that objectives are appropriately outlined under the proposal.

1.3 Explanation of provisions

The Explanation of Provisions is currently silent on the majority of changes sought as part of the planning proposal, omitting:

- changes sought to the suite of associated maps listed in the planning proposal (for example the reference to the mapping changes on page 11 of the report omits the Strategic Urban Growth Area map, despite this being identified as requiring update under section 5 of the planning proposal);
- proposed clause changes; and
- amendment to clause 41 of the Ballina LEP 1987.

It is recommended that the planning proposal be amended to address all proposed amendments prior to consultation.

It is noted that Council's 'Explanation of Provisions' confirms that the C3 Environmental Management zone land use table will be added to the Ballina LEP 2012 despite the proposal at this stage not seeking to rezone any land to C3. This is considered satisfactory as it is likely that as the proposal proceeds that some land currently proposed to be zoned C2 may be amended to C3 as further investigation and consultation with landowners is undertaken.

Finally, in accordance with the recent announcement by the NSW State Government and the changes to the Regulation for flood-related development, two LEP clauses have been developed to apply to local government areas with flood prone land. The LEP clauses (which have been included in Standard Instruments across the state) relate to:

- Flood Planning (clause 5.21 of the Ballina LEP 2012), and
- Special Flood Considerations (clause 5.22 of the Ballina LEP 2012, however not adopted).

The new flood clauses no longer refer to an EPI map, and as such, current maps do not require amending to reflect deferred matter land as they are no longer relevant to the flood clauses. As such, it is recommended that Council amend the planning proposal to remove reference to flood planning map provisions.

1.4 Site description

The planning proposal applies to land subject to a zone identified in column one of **Table 3** (below) under Ballina LEP 1987. Amendments to clause 41 of the Ballina LEP 1987 apply LGA wide.

Figure 1 below illustrates the location of the sites being rezoned in red which totals 3,515 hectares.

Council have not provided a detailed list of each property affected by the proposal, and it is recommended that this be included in the proposal, prior to public and agency exhibition. This list should contain a:

- List of affected properties, including legal property description (address, Lot and DP);
- Existing and proposed land uses identified for each property subject of this proposal;
- Number of landowners affected by the proposal;
- Breakdown of the number of lots proposed with either a C2, C3 zone or an alternate zone; and
- Number of hectares proposed for rezoning as part of this proposal.

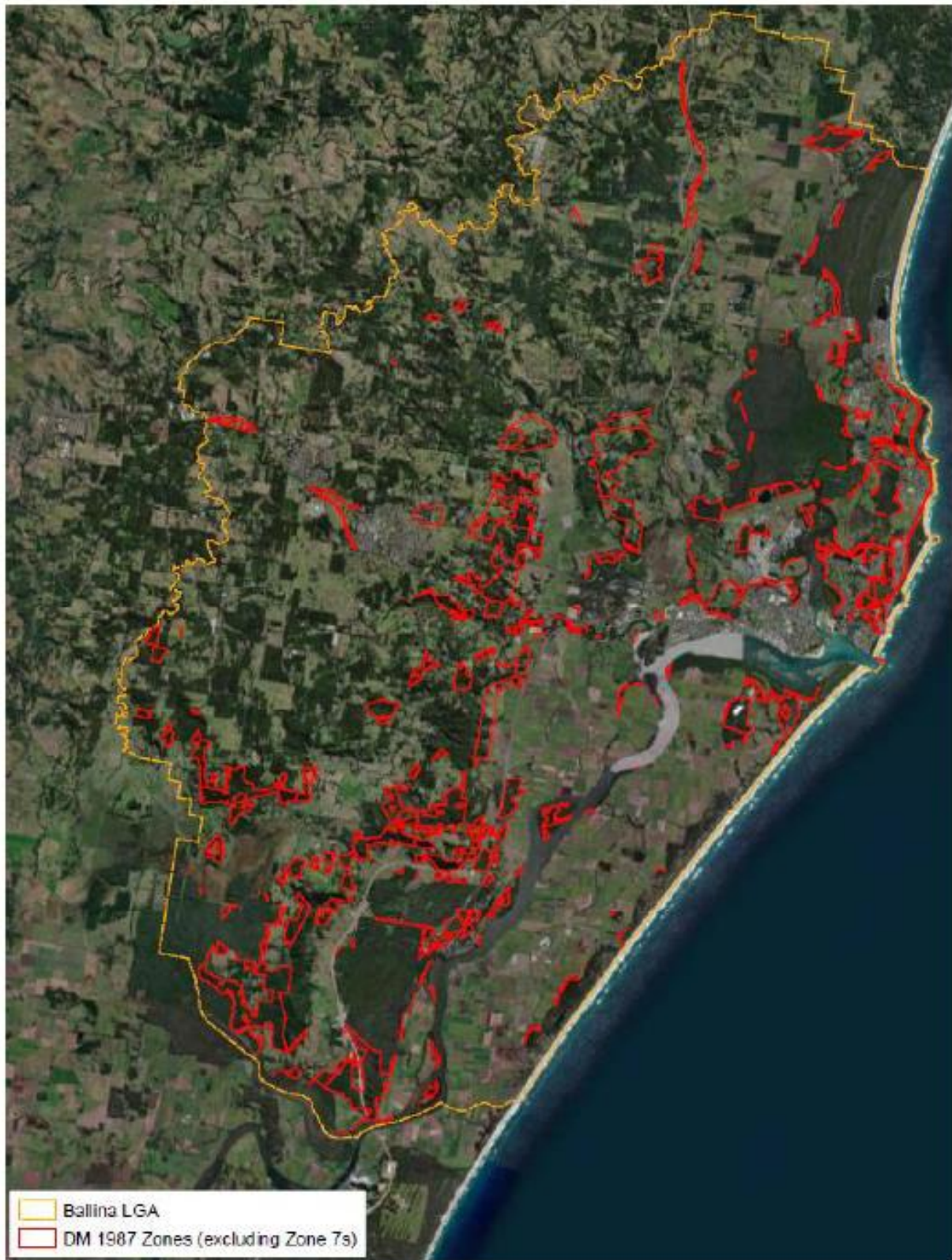


Figure 1 - Location of the deferred matter lands to be rezoned (source: Council's Planning Proposal)

Table 3 Ballina LEP 1987 zones, subject of this planning proposal and proposed transition into Ballina LEP 2012

Ballina LEP 1987 (Deferred Matter Area)	Proposed Ballina LEP 2012 Zone
1(a1) Rural (Plateau Lands Agriculture) 1(a2) Rural (Coastal Lands Agriculture) 1(e) Rural (Extractive and Mineral Resources)	RU1 Primary Production
1(b) Rural (Secondary Agricultural Land)	RU2 Rural Landscape
1(d) Rural (Urban Investigation)	Based on adjacent zoning
2(a) Living Area 2(b) Village Area	R2 Low Density Residential, or R3 Medium Density Residential
4 Industrial	IN1 General Industrial
6(a) Open Space	RE1 Public Recreation, or RE2 Private Recreation
8(a) National Parks and Nature Reserves	C1 National Parks and Nature Reserves
9(a) Roads (Main Roads Proposed) 9(b) Roads (Local Roads Proposed) UZ Unzoned Land	Based on adjacent zoning

1.5 Mapping

The planning proposal includes mapping showing all affected properties along with the proposed changes to the land zoning maps. These maps are suitable for community consultation. It is recommended that the existing planning control mapping also be added to the proposal prior to consultation.

Further, pursuant to the explanation of provisions (outlined above), a number of maps are proposed to be amended as a result of the planning proposal, including the following:

- Minimum lot size map,
- Height of building map,
- Floor space ratio map,
- Acid sulfate soil map,
- Heritage map,
- Strategic urban growth area map,
- Building height allowance map.

While the proposed land zoning maps have been included in the proposal, it is noted that the proposal outlines the rezoning of all deferred matter lands currently zoned 9(a) Roads (Main Roads Proposed) Zone, 9(b) Roads (Local Roads Proposed) Zone and unzoned land under the Ballina LEP 1987 will be zoned based on adjoining zones. There a number of sites, particularly unzoned land, that have however not been captured as part of this proposal on land zoning maps. It is

recommended that the land zoning maps shall be amended to capture all 9(a) Roads (Main Roads Proposed) Zone, 9(b) Roads (Local Roads Proposed) Zone and unzoned land proposed for rezoning to adjacent zones as part of this proposal.

None of the other supporting maps were submitted as part of planning proposal package. It is recommended that the planning proposal also be amended to outline the proposed changes within the planning proposal document and include relevant mapping as part of the planning proposal, prior to consulting any affected landholders or agencies.

1.6 Background

The Minister for Planning and Infrastructure announced a review into the application of environmental zones on the Far North Coast in 2012. Pending this review, all land proposed to be zoned for environmental purposes was deferred from Ballina LEP 2012. The resulting Northern Councils E Zone Review Final Recommendations Report and associated Ministerial Direction were finalised in 2016.

Council resolved in April 2017 to retain all deferred areas the subject of an environmental protection zone 7(a), 7(c), 7(d), 7(d1), 7(f), 7(i), 7(l)) under the Ballina LEP 1987, while also continuing to proceed to rezone the other deferred lands in accordance with Northern Councils E Zone Review Final Recommendations Report. Council has however had resource issues in proceeding with this proposal until the Department in 2021 provided \$40,000 in funding to support the preparation of the background work to inform the proposal.

2 Need for the planning proposal

The planning proposal has arisen as a result of the Northern Councils E Zone Review and the resulting deferral of various lands under Ballina LEP 2012.

The planning proposal is the best means of incorporating the required land use tables and deferred land into the Ballina LEP 2012 and applying appropriate zones, development standards and other planning controls.

3 Strategic assessment

3.1 Regional Plan

The proposal does not release new areas of urban land outside the growth area boundaries or on land subject to natural hazards.

It is noted that the planning proposal includes the rezoning of state and regionally significant farmland to an environmental zone which is potentially inconsistent with Action 11.1 of the Regional Plan. Council's accepted methodology, prepared by Ascent Ecology, indicates that these zonings reflect the criteria required to be met to apply an environmental zone.

Notwithstanding, as Council are yet to consult widely on the proposal, or undertake site visits to verify the criteria applied, it is recommended that the consistency with the Regional Plan remain unresolved until consultation with Department of Primary Industries and landholders has occurred.

3.2 Northern Councils E Zone Review Final Recommendations

The proposal indicates proposed zones will be applied in accordance with the Northern Councils E Zone Review Final Recommendations. **Attachment A** of this Report outlines a Checklist for

Consistency with the Northern Councils E Zone Final Recommendations and this should be read in conjunction with the information contained below:

Northern Councils E Zone Final Recommendations

In applying a C2 Environmental Conservation zone, the methodology undertook the following process:

1. Application of C2 and C3 criteria (e.g. based on Tables 1 and 2 of the Northern Councils E Zone Review Final Recommendations Report),
2. Consideration of additional rules and output requirements,
3. Assessment of primary use, and
4. Verification of C2 and C3 criteria and/or primary use as required.

Council have indicated that the work conducted by the consultants resulted in all native vegetation being considered by the proposal for rezoning satisfied the C2 criteria, while also noting that some parcels may have met the C2 and C3 criteria, however Council has sought to have the higher level C2 zone applied. The appropriateness of this approach will be confirmed through consultation and further verification as required by the Gateway.

Methodology applied to proposal

In terms of the methodology developed by Council and used for the proposal, it is noted that:

- the meaning of ‘native vegetation’ for the purpose of the methodology report was taken to be the same definition as the *Local Land Services Act 2013 (LLS Act)* section 60B;
- a precautionary approach was used and the vegetation polygon was attributed with ‘assumed native’ and given an initial verification priority of ‘high’ (It is understood at this stage that a large majority of sites proposed for an environmental zone have not had attributes verified);
- a minimum area requirement of 500m² for any single proposed C2 or C3 zone, in order to exclude deferred matter areas from assessment and minimise split zones across lots in accordance with the E Zone Review Recommendations (the E Zone Review does not identify a minimum area requirement for a C2 or C3 zone, requiring more broadly that unnecessary split zones introduced to a site should be avoided);
- from an environmental perspective, the 500m² was considered practical as a substantial proportion of the Ballina LGA is considered to be over cleared;
- it was considered adequate connectivity between polygons if under 100 metres apart and it was determined that these were considered “single contiguous patches” (this means that where isolated or small polygons of land meeting the C2 or C3 criteria exist on a lot, and where these fall less than 100 metres apart, it was considered adequate to group these polygons into a single zone as shown in pink in Figure 2); and
- the 100m threshold is based on the Biodiversity Assessment Method 2020 threshold and method for calculating the patch size of native vegetation. The methodology report outlines that this is not in contravention of the E Zone Review Recommendations as it is not considered a buffer to vegetation attributes that meet the E zone criteria but demonstrates connectivity of native vegetation and is the accepted method for determining that discrete tracts of treed native vegetation are part of the same patch.

The E Zone Review Recommendations requires that E2 and E3 zones will only be applied if the primary use of the land is considered to be environmental conservation (E2) and environmental management (E3) and the land contains attributes which meet on or more of the criteria for an E2 or E3 zone. This ensures that land with demonstrated and verified attributes may have an environmental protection zone.

As Council consults with landholders, and further review is undertaken as discussed further below, it is envisaged that the proposed environmental protection zones will be amended to apply the most appropriate zone.

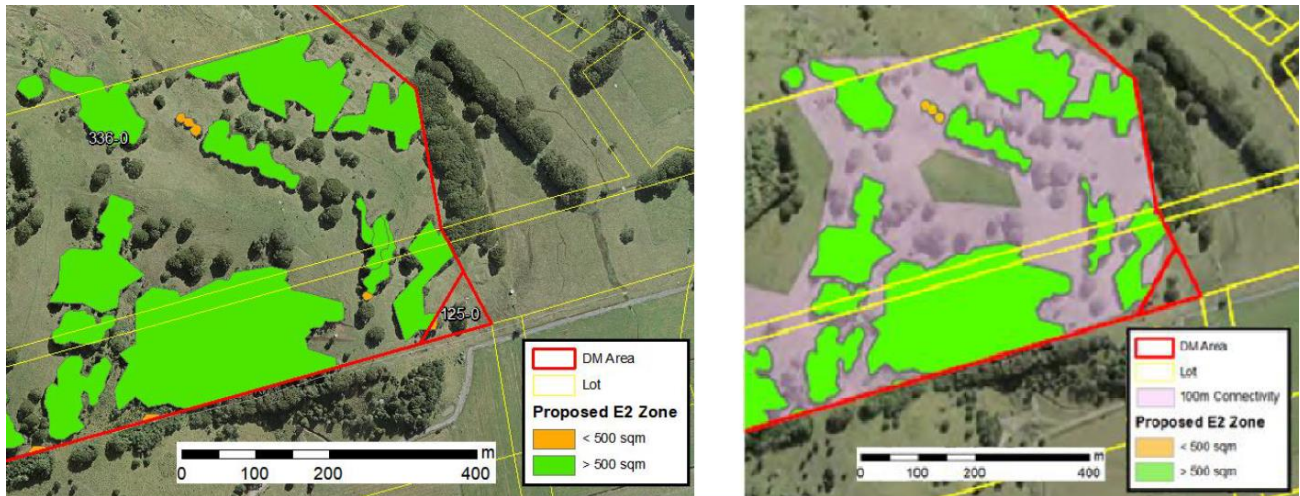


Figure 2 - 500m² minimum area requirement applied to vegetation patches on site and 100m connectivity threshold (source: Council's Planning Proposal)

Primary Use of Land

The primary use test was applied in accordance with the E Zone Review only to the areas to be rezoned C2 Environmental Conservation or C3 Environmental Management zone (which in this case was 73% of all the land to be rezoned).

The planning proposal confirms that Council has determined the primary use at this stage by using its aerial imagery from May 2018 as the primary data set. Where there was any uncertainty, recent captures from Nearthmap aerial imagery service were utilised, if available.

The main data set utilised is approximately five years old and is therefore three years older than the required two-year timeframe stipulated to determine the primary use of the land. It is highly likely that consultation with landowners will result in amendments to the primary use due to changes that have occurred since the data set was created. Additionally, it is also likely that some vegetation patches comprising the 500m² minimum area threshold and the 100m polygon threshold are also likely to have changed between 2018 and present-day conditions, potentially impacting upon the areas to be zoned for environmental purposes.

The proposal confirms that Council will undertake targeted and specific consultation post Gateway determination to confirm the primary use of the land. This is considered satisfactory.

E Zone Criteria

The report states that any areas which have been allocated an environmental primary use must also meet the criteria as identified in the E Zone Review Recommendations Report. However, the methodology outlines that “the environment primary use may include some agricultural uses such as grazing where these activities are of a secondary or ancillary nature. In general, forested areas are considered unlikely to support commercial agriculture as a primary use”. The methodology also confirmed that at this stage it has been unable to identify where land has been voluntarily revegetated by the current landowner. This is important as this land is unable to have a C2 or C3 zone applied without landowner's agreement, unless the vegetation was undertaken with grant funding which required ongoing protection of the vegetation

Whilst the use of aerial imagery is adequate for determining an initial primary use and recommending a proposed zone for consultation, it is considered that further consideration of

where agricultural activities are “primary” or “ancillary or secondary”, and the location of voluntary revegetated land, is most appropriately determined during direct engagement with landholders.

This is in keeping with the then Secretary’s letter of 1 March 2016, which outlines that the reference to ‘Primary Use of Land’ in the context of the Recommendations Report is considered to be:

- a) The main use of the land is to be determined based on evidence about the nature of activities and operations occurring on the land over the last two years. If the main use is for rural or farming operations, agricultural practices need to be demonstrated. Specific farming activities (such as grazing) do not need to have occurred in the last two years if the operations on the land (for example keeping paddocks fallow) are to be part of broader farm management practices.
- b) If the main use is for environmental conservation or management, the environmental values of the land and vegetation need to be demonstrated and the absence of any agricultural or other land use confirmed.

The letter outlines that primary use may be identified by a series of methodologies including up to date air photography, site visits, property development records, farm management plans, Private Native Forestry or Property Vegetation Plan approvals, conservation records and discussion with landowners.

E Zone Criteria Verification

The E Zone Final Recommendations state that E2 and E3 zones will only be applied if the primary use of the land is considered to be environmental conservation (E2) or environmental management (E3) and the land contains attributes which meet one or more of the criteria for an E2 or E3 zone, as identified in Tables 1 and 2 of the Recommendations Report or the landowner has agreed.

Council propose to undertake, as part of the next stage of the proposal, consultation with landholders prior to formal public exhibition to confirm primary use and the attributes identified. Where agreement is not reached as to the appropriate land zoning, attributes should be confirmed on the land using a combination of the verification criteria identified in the recommendations review. It is recommended that the Gateway require Council to confirm in the final planning proposal how the E Zone application process has been satisfied in accordance with the review recommendations.

It is also recommended that the Gateway determination should require each landowner to be notified in writing of the public exhibition arrangements and advised that an independent review of the proposed zone for their property can be undertaken by the Department should they disagree with Council’s assessment once Council has resolved to send the final planning proposal to the Department to be made.

3.3 Local

The proposal is considered broadly consistent with Ballina Local Strategic Planning Statement 2020 Healthy Environment theme.

Planning priority 13 ensures that the biodiversity values of the Shire are identified and where required protection strategies are implemented.

The planning proposal will identify where environmental protection zones can appropriately be applied on land subject of this proposal, in accordance with the Northern Councils E Zone Review Final Recommendations Report.

The planning proposal documents do not identify the consistency of the proposal against the LSPS. It is recommended that this be included prior to public exhibition.

3.4 Section 9.1 Ministerial Directions

On 28 February 2022, the Minister for Planning gave directions at Schedule 1 under section 9.1 of the *Environmental Planning and Assessment Act 1979*, to take effect on 1 March 2022. Council's planning proposal addresses the former section 9.1 directions and will need to be amended to reflect the updated directions. The planning proposal's consistency with relevant section 9.1 Directions is discussed below and it is recommended that prior to consultation that for better clarity, Council should update the planning proposal to identify and discuss the inconsistencies identified below:

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans (previously s9.1 5.10)	Unresolved	<p>As discussed under section 3.1 of this report, the proposal is potentially inconsistent with Action 11.1 of the North Coast Regional Plan 2036, which relates to important farmland.</p> <p>It is considered appropriate that the consistency with this Direction remain unresolved until consultation has been undertaken with DPI and affected landholders on the proposal.</p>
3.2 Heritage Conservation (previously s9.1 direction 2.3)	Yes	<p>The proposal seeks to transfer existing heritage listings for the land to be rezoned from Ballina 1987 to Ballina LEP 2012. This is considered appropriate.</p> <p>It is however recommended that consultation should be undertaken with Heritage NSW, to confirm suitability of the proposal.</p>
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs (previously s9.1 direction 2.5)	Unresolved	<p>As discussed above, a number of matters such as consultation with landowners and verifying the primary use and the site attributes of some lands are still outstanding. Until these matters are completed and resolved the consistency of the proposal with this direction can't be determined.</p>
4.3 Planning for Bushfire Protection (previously s9.1 direction 4.4)	Unresolved	<p>This direction is relevant to the proposal as the proposal will affect or is in proximity to land mapped as bushfire prone land. The proposal is therefore potentially inconsistent with the proposal.</p> <p>The direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS) after a Gateway determination is issued and before community consultation is undertaken. Until consultation has been undertaken, the direction remains unresolved.</p>

<p>5.1 Integrating Land Use and Transport (previously s9.1 direction 3.4)</p>	<p>Justifiably Inconsistent</p>	<p>This direction is relevant to the proposal as the proposal will remove a zone or provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.</p> <p>The proposal is inconsistent with the direction as it has not considered consistency of the proposal with the aims, objectives and principles of:</p> <ul style="list-style-type: none"> (a) <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001), and (b) <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001). <p>The inconsistency is considered to be minor as the proposal has been informed by the Northern Councils E Zone Review Recommendations. The proposed zonings generally do not result in an increase in development potential and is highly unlikely to impact on planning objectives identified in the direction.</p>
<p>5.2 Reserving Land for Public Purposes (previously s9.1 direction 6.2)</p>	<p>Justifiably Inconsistent</p>	<p>The planning proposal is inconsistent with this direction as it decreases the amount of land currently zoned for recreation purposes in Ballina without the approval of the Department of Planning and Environment Secretary. This is because some lands have been rezoned from recreational to environmental as Council considers they satisfy E Zone Criteria.</p> <p>This inconsistency is considered to be of minor significance as the rezonings have been undertaken to better reflect the environmental attributes of the land in accordance with the E Zone Review and it is understood that no actual loss of public space will occur as a result.</p>
<p>5.3 Development Near Regulated Airports and Defence Airfields (previously s9.1 direction 3.5)</p>	<p>Unresolved</p>	<p>This direction applies to the planning proposal as the proposal outlines the intention to alter a zone relating to land near a regulated airport.</p> <p>Sites in the vicinity of the Ballina/Byron Gateway Airport propose a C2 Environmental Conservation and RU2 Rural Landscape zone.</p> <p>The proposal is silent on the height of building control applied to the land, however it is assumed that RU2 Rural Landscape zone will be applied an 8.5m height restriction, in accordance with the surrounding height restriction on other RU2 land. It is not clear what height restriction, if any, will be imposed on C2 land.</p> <p>In accordance with the requirements of the direction, it is considered that consultation should</p>

		<p>be undertaken with the operator of the Ballina Airport. It is recommended that the inconsistency remain unresolved until Council has undertaken this consultation.</p>
6.1 Residential Zones (previously s9.1 direction 3.1)	Unresolved	<p>This direction is relevant to the proposal as the proposal will affect land within an existing residential zone.</p> <p>The proposal is inconsistent with this direction as it will reduce the permissible residential density of land by rezoning parts of numerous properties from urban/residential land under Ballina 1987 (deferred matter land under Ballina 2012) to an environmental protection zone (C2 Environmental Conservation).</p> <p>Whilst Council have demonstrated methodology guided by the Northern Councils E Zone Review Recommendations, no consultation has occurred with landholders at this stage to determine primary land use and no verification of the criteria has been undertaken.</p> <p>It is appropriate that these be undertaken at a future stage of the proposal, however the inconsistency with this direction cannot be addressed until this is undertaken.</p>
6.2 Caravan Parks and Manufactured Home Estates (previously s9.1 direction 3.2)	Unresolved	<p>This direction is relevant to the proposal as the proposal will affect land that currently provides opportunities for caravan parks and manufactured home estates.</p> <p>The proposal is inconsistent with the direction as it does not retain provisions that permit the development for the purpose of a caravan park to be carried out on land.</p> <p>The proposal outlines the intent to rezone land under the Ballina LEP 1987, which supports</p>

		<p>caravan parks, to an C2 Environmental Conservation zone, which prohibits caravan parks.</p> <p>Under the Ballina LEP 1987, it has been interpreted that the following zones subject to this proposal permit caravan parks:</p> <ul style="list-style-type: none"> • 2(a) Living Area Zone, • 2(b) Village Area Zone, • 4 Industrial Zone, • 9(a) Roads (Main Roads Proposed) Zone, • 9(b) Roads (Local Roads Proposed) Zone. <p>In addition, the following zones permit caravan parks, with the exception of caravan parks for permanent occupation:</p> <ul style="list-style-type: none"> • 1 (b) Rural (Secondary Agricultural Land) Zone, • 1 (d) Rural (Urban Investigation Zone). <p>It is noted that 73 per cent of land proposed for rezoning as part of this application is proposed to apply an C2 Environmental Conservation, and seven of the 13 zones subject of this proposal permit caravan parks under the Ballina LEP 1987.</p> <p>As no consultation on the primary land use has been undertaken and Council has applied high-level criteria to the proposed C2 Zone and at this stage, has not verified attributes of the land, nor considered an C3 zone, it is considered necessary to reassess the consistency of the proposal with the direction after public exhibition has been undertaken and Council has had the opportunity to review submissions made by landholders relating to the proposed C2 zone applying to their land.</p>
7.1 Business and Industrial Zones (previously s9.1 direction 1.1)	Unresolved	<p>This direction applies as the proposal will affect land within an existing or proposed business or industrial zone.</p> <p>The planning proposal is potentially inconsistent with this direction as it proposes to rezone a parcel of land from Zone No 4 Industrial Zone (Ballina LEP 1987) to C2 Environmental Conservation (Ballina LEP 2012).</p> <p>Council's planning proposal indicates the proposal is consistent with the direction as the '4 Industrial Zone' will be rezoned to IN1 General Industrial, representing a direct transition of the zone.</p> <p>Notwithstanding, a review of the land zoning maps could only identify one lot (Lot 456 DP 729144) currently zoned '4 Industrial Zone' under the</p>

		<p>Ballina LEP 1987, with this lot proposed to be zoned C2 under the Ballina LEP 2012.</p> <p>It is noted that this land is identified as coastal wetlands, proximity area for coastal wetlands, under SEPP (Coastal Management) 2018 (Coastal SEPP) maps. The former is identified as being part of the criteria for application of a C2 Conservation Zone under the E Zone Recommendations Report. According to Council's methodology, the primary land use of land mapped under the Coastal SEPP were considered to have a primary land use of environmental.</p> <p>It is noted that Council, as part of the next stage of the planning proposal, intend to consult with landholders on the proposed zoning changes to verify the primary land use, following the issuing of a gateway. Council also intend to conduct the public exhibition as a separate step to landowner consultation, which will occur immediately following the issuing of the Gateway determination. Until the rezoning of the existing '4 Industrial' land can be clarified and confirmed the consistency with this direction remains unresolved.</p>
8.1 Mining, Petroleum Production and Extractive Industries (previously s9.1 direction 1.3)	Unresolved	<p>The direction applies as the proposal would have the effect of:</p> <ul style="list-style-type: none"> (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development. <p>Council's planning proposal indicates the proposal is consistent with the direction, as concessions and decisions have been made around the zoning applied to existing quarry sites that align with ongoing operations.</p> <p>Notwithstanding, examples of Zone No1(a1) Rural (Plateau Lands Agriculture) Zone outlines objectives for development of land for "extractive resources extraction".</p> <p>The proposal outlines the intent to rezone parts of Zone No 1(a1) to C2 Environmental Conservation.</p>

		<p>This would have the effect of prohibiting extractive industries as a result.</p> <p>It is considered that the inconsistency with this direction will remain outstanding until consultation has been undertaken with Department of Regional NSW Mining, Exploration and Geoscience.</p>
9.2 Rural Lands (previously s9.1 direction 1.5)	Unresolved	<p>The proposal is inconsistent with this direction as it is unable to satisfy all of the objectives listed within the direction when applying appropriate zones to land in accordance with the requirements of the Northern Councils E Zone Review Final Recommendations.</p> <p>Given 73 per cent of land subject of the proposal is identified for an C2 Environmental Conservation zone, it is considered that the proposal does not specifically promote opportunities for rural economic activities over all the subject land nor does it specifically include provisions for farmers in exercising their right to farm. This is particularly relevant to the proposed change for rural zoned land under the Ballina LEP 1987, where agricultural activities are permitted without consent, to an C2 zone, where agricultural activities will require consent be granted.</p> <p>It is recommended that this potential inconsistency remains unresolved until consultation with the Department of Primary Industries to confirm suitability of the proposal. This is of particular importance as some of the areas affected by the proposal are identified as state and regionally significant farmland.</p> <p>Additionally, it is considered that the proposal's consistency with the direction will remain outstanding until consultation with individual landholders has been undertaken in order to verify the primary land use of subject lands across the LGA.</p>

3.5 State environmental planning policies (SEPPs)

The planning proposal is broadly consistent with all relevant SEPPs. It should be noted that according to Council's planning proposal, 73 per cent of the subject land will be rezoned as part of this proposal to accommodate an environmental zone. In the case of the proposal at this stage, the only environmental zone sought is an E2 Environmental Conservation zone.

Given the land subject of this proposal is currently not recognised as an environmental zone, the zoning as proposed may affect the ability to carry out complying development under SEPP (Exempt and Complying Development Codes) 2008 on affected land.

It should be further noted that as of 1 March 2022, 45 existing SEPPs have been consolidated into 11 policies, which reflect the new focus areas. SEPP (Exempt and Complying Development

Codes) 2008 is not included in the consolidation program. Any future reference to the former 45 SEPPs as part of this planning proposal will require reference to one of the new 11 policies.

4 Site-specific assessment

4.1 Environmental

The environmental impacts of the proposal are considered below.

Contamination

The planning proposal notes a high-level assessment has been carried out in accordance with the Contaminated Land Planning Guidelines. The assessment found that a more detailed contamination assessment was not warranted at this stage. If further development or intensification of land uses were proposed in the future a specific contamination investigation should be carried out. This is considered satisfactory.

Biodiversity

The proposal is considered to have a positive impact in relation to protection of biodiversity across the LGA as it affords additional protections via environmental zonings to land that does not currently have an environmental protection zone. The proposal is not expected to have an adverse impact on critical habitats or threatened species, populations or ecological communities or their habitats. For land not proposed to have an environmental protection zone applied, an equivalent zone has been applied under Ballina LEP 2012. This will ensure the proposed zones will not result in a significant increase beyond their current use or in development potential for land containing significant native vegetation.

Notwithstanding, it is considered that the Biodiversity Conservation Division should be consulted on the proposal during agency exhibition.

Bushfire

Sites subject of this proposal have been identified as bushfire prone. The proposal will not result in a significant increase beyond the current use or in development potential for land identified as bushfire prone. Notwithstanding, consultation is required with NSW Rural Fire Service, in accordance with section 9.1 Direction 4.4 Planning for Bushfire Protection.

Flood

Some sites subject of this proposal have the potential to be affected by flood. The proposal will not result in a significant increase beyond the current use or in development potential for land identified flood planning area. If further development or intensification of land uses were proposed in the future a specific investigation can be carried out in accordance with clause 5.21 of the Ballina LEP 2012. This is considered satisfactory.

Additionally, the proposal is required to be amended, to reflect a recent announcement by the NSW State Government and the changes to the Regulation for flood-related development.

The new flood clauses no longer refer to an EPI map, and as such, current maps do not require amending to reflect deferred matter land as they are no longer relevant to the flood clauses. As such, it is recommended that Council amend the planning proposal to remove reference to updating flood planning map provisions.

Heritage

It is considered that the proposal will have a positive impact in relation to heritage, maintaining heritage protections on deferred matter land, proposed to be included in the Ballina LEP 2012 as part of this proposal.

It is also considered that the broad application of the C2 Environmental Conservation zone will afford protections to Aboriginal cultural heritage, however, further consultation with Aboriginal cultural knowledge holders, including Jali LALC and wider Aboriginal community members is considered appropriate to confirm suitability of the proposal.

4.2 Social and economic

Temporary Uses

The proposal to amend clause 41 of the Ballina LEP 1987 to limit the temporary use of land to a maximum of 14 days per annum is appropriate as the proposed changes will only leave land zoned for environmental protection purposes under the Ballina LEP 1987. This will also align the temporary use timeframes between the instruments to ensure consistency. This is in keeping with an existing housekeeping amendment planning proposal to Ballina LEP 1987 (PP-2022-315) which aims to align some controls between the two instruments.

9(a) Roads (Main Roads Proposed) Zone, 9(b) Roads (Local Roads Proposed) Zone and Unzoned Land

The proposal outlines that land currently zoned 9(a) Roads (Main Roads Proposed) Zone, 9(b) Roads (Local Roads Proposed) Zone and unzoned land will be rezoned based on adjacent zoning.

However, in some cases, it appears that Council is seeking to apply an alternate zone. For example, the Bruxner Highway is identified as unzoned land under Ballina LEP 1987 and the proposed corridor is zone 9(a) (**Figures 3 and 4**). The land surrounding the highway and proposed corridor is 7(c) Environmental Protection (Water Catchment) Zone and is not proposed to be amended as part of this proposal. Council is however seeking to apply a RU1 Primary Production zone to the land.

It is recommended that Council update the proposal prior to consultation to address this issue.

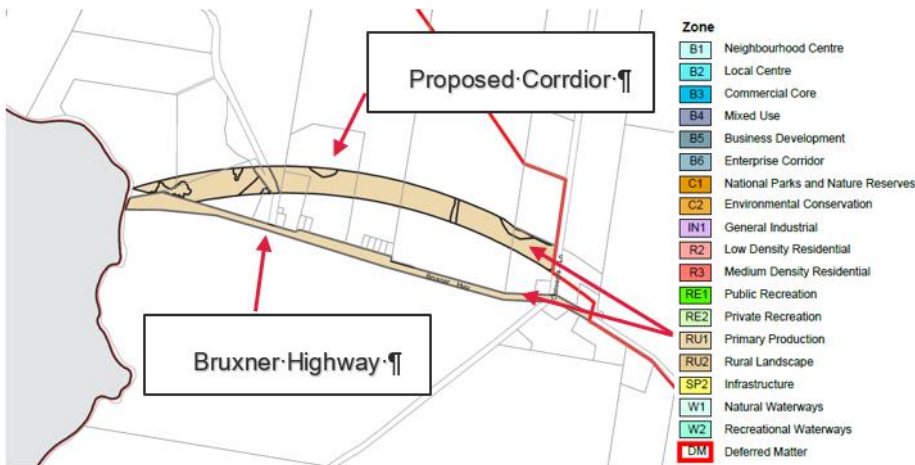


Figure 3 Land use zones proposed

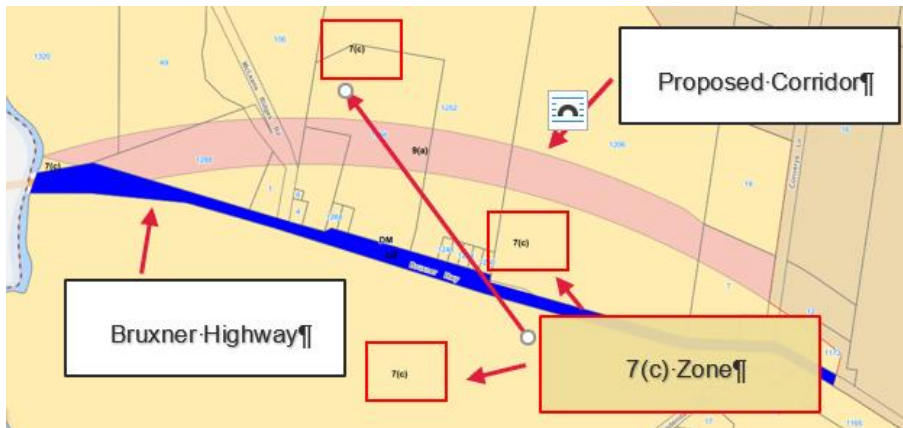


Figure 4 Existing land use zones

4.3 Infrastructure

The proposal is not expected to create a need for additional public infrastructure. It seeks to include deferred land into the Ballina LEP 2012 and apply zones and other mapped planning controls as necessary to reflect the current primary use of the land or the environmental attributes.

The proposed zoning will not result in a significant increase in the development potential of the land that would require additional infrastructure as the proposed zones will be similar to either the existing zones or current uses of the land. Should future development proposals require additional infrastructure requirements, these can be appropriately addressed at the development application stage.

It should be noted that the proposal outlines rezoning of land currently zone 9(a) Roads (Main Roads) Proposed to an adjacent zone to the roads. This is considered appropriate in principle, however as some of these roads are managed by Transport for NSW, it is appropriate for Council to consult with TfNSW to determine suitability of the proposal and to ensure the proposed zones do not cause impediments to current and future routes.

Additionally, it may be beneficial for Council to identify some of these zones on the land reservation acquisition map or alternatively apply an SP2 Infrastructure zone to capture important networks and proposed route upgrades accordingly. Again, this is a matter which can be discussed in further detail with TfNSW as part of the agency consultation process.

5 Consultation

5.1 Community

Council outlines that community consultation will be undertaken in accordance with the Gateway determination. Additionally, Council have outlined that it intends to consult with affected landholders prior to community consultation. This is strongly encouraged as a first step of this proposal, to ensure Council confirm primary uses of the land, in accordance with the E Zone Review Recommendations. In addition to this consultation, Council is encouraged to verify attributes of the land as part of this consultation, in accordance with the requirements of the review.

It is considered appropriate that public exhibition be undertaken for a period of 28 days. This recommendation forms part of the recommended conditions of the Gateway determination.

5.2 Agencies

The proposal does not specifically raise which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 40 days to comment:

- Department of Primary Industries
- NSW Rural Fire Service
- Department of Regional NSW Mining, Exploration and Geoscience
- Heritage NSW
- Jali Local Aboriginal Land Council
- Biodiversity Conservation Division
- Ballina Airport Operator
- Transport for NSW

6 Timeframe

Council proposes a 12 month time frame to complete the LEP.

The Department recommends a time frame of 12 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has not requested delegation to be the Local Plan-Making authority.

Consistent with the former Secretary's letter to Ballina Council of 1 March 2016, which specified plan making delegations, an authorisation to act as the Local Plan-Making authority is not to be issued where a planning proposal seeks to apply an E Zone to land. This is to ensure a consistent approach to the finalisation of rezoning decisions consistent with the E Zone Review Final Recommendations Report. It is recommended that Council is not authorised to act as the Local Plan-Making authority.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- Integration of the deferred subject land into Ballina LEP 2012 will update the planning controls for the subject land and provide greater certainty to the landowners and the community,
- The proposal will implement the Final Recommendations of the Northern Councils E Zone Review.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 5.1 Integrating Land Use and Transport and 5.2 Reserving Land for Public Purposes are minor or justified; and
- Note that the consistency with section 9.1 Directions 1.1 Implementation of Regional Plans, 3.4 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs, 4.3 Planning for Bushfire Protection, 5.3 Development Near Regulated Airports and Defence Airfields, 6.1 Residential Zones, 6.2 Caravan Parks and Manufactured Home

Estates, 7.1 Business and Industrial Zones, 8.1 Mining, Petroleum and Extractive Industries and 9.2 Rural Lands is unresolved and will require justification.

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

1. The planning proposal is to be updated prior to consultation to:
 - Amend the Explanation of Provisions to capture the suite of changes as put forward by the planning proposal,
 - Remove reference to amending the Flood Planning maps,
 - Clarify that not all 9(a) Roads (Main Roads Proposed) Zone, 9(b) Roads (Local Roads Proposed) Zone and unzoned land will be rezoned based on adjacent zoning;
 - Update references and inconsistencies with section 9.1 Directions,
 - Address consistency with Ballina Local Strategic Planning Statement
 - Include a note in the proposal that land use zones applied are subject to change as further work is undertaken post-Gateway in accordance with the Northern Councils E Zone Review Final Recommendations Report,
 - Include a table containing information:
 - that lists each property affected by the proposal,
 - outlines existing zones,
 - outlines proposed zones,
 - outlines primary use of the land (as determined by Council, prior to consultation with landholders),
 - Include information in the planning proposal that:
 - indicates the number of affected landowners,
 - a breakdown of the number of lots proposed to have an environmental protection zone,
 - the number of lots proposed to have an alternate zone applied,
 - the amount of land (in hectares) proposed for rezoning as part of this proposal,
 - Include all existing and proposed maps that will be amended as a result of this proposal (Land Zoning, Height of Building, Floor Space Ratio, Lot Size, Acid Sulfate Soils, Heritage, Building Height Allowance and Strategic Urban Growth Area),
 - Amend all maps to identify all relevant proposed controls for land zoned 9(a) Roads (Main Roads Proposed), 9(b) Roads (Local Roads Proposed) and unzoned land within the LGA, in accordance with the objectives and explanation of provisions,
2. Consultation is required with the following public authorities:
 - NSW Mining, Exploration and Geoscience,
 - Jali Local Aboriginal Land Council,
 - Heritage NSW,
 - Ballina Airport Operator,
 - NSW Rural Fire Service,
 - Biodiversity Conservation Division,
 - Transport for NSW
3. The planning proposal should be made available for community consultation for a minimum of 28 days.

4. Consistent with the recommendations of the E Zone Review, Council must ensure that any landowner whose land is proposed to have an E Zone applied is notified in writing of the planning proposal and consultation arrangements.
5. When Council has considered the submissions received during public exhibition and has endorsed the final planning proposal, the landowners whose land will be subject to an E Zone must be notified in writing of Council's decision and advised that they have 28 days to notify the Department if they would like the Chief Planner (or equivalent) to review the proposed zoning of their property.
6. The final planning proposal is to detail how the E Zone application process for each property has been satisfied in accordance with the review recommendations.
7. The timeframe for completing the LEP is to be 12 months from the date of the Gateway determination.
8. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



8 March 2022

(Signature)_____
(Date)

Craig Diss

Acting Director, Northern Region



18 March 2022

(Signature)_____
(Date)

Jeremy Gray

Acting Executive Director, Local and Regional Planning

Assessment officer

Ella Wilkinson

Senior Planner, Northern Region