



Planning Proposal – Ballina Local Environmental Plan 2012

» *Conservation Zone Review*

(Integration of certain deferred matter land)

BSCPP 21/004

February 2023 (V3 Exhibition) 23/2426

ballina
shire council

Disclaimer:

As of 1 December 2021, a reference to an Environment Protection zone E1, E2, E3 or E4 in a document should be taken to be a reference to a Conservation zone C1, C2, C3 or C4. For further information please see [Standard Instrument \(Local Environmental Plans\) Amendment \(Land Use Zones\) Order 2021 \(nsw.gov.au\)](https://www.nsw.gov.au/standard-instrument-local-environmental-plans-amendment-land-use-zones-order-2021) .

Current name	New name
Zone E1 – National Parks and Nature Reserves	Zone C1 – National Parks and Nature Reserves
Zone E2 – Environmental Conservation	Zone C2 – Environmental Conservation
Zone E3 – Environmental Management	Zone C3 – Environmental Management
Zone E4 – Environmental Living*	Zone C4 – Environmental Living*

* Not proposed in Ballina LEP 2012



40 cherry street • po box 450 • ballina nsw 2478
t 02 6686 4444 • f 02 6686 7035 • e council@ballina.nsw.gov.au

ballina.nsw.gov.au

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1. Introduction

1.1 Summary of planning proposal

The purpose of the Ballina Local Environmental Plan 2012 (BLEP 2012) Conservation Zone Review project is to facilitate integration into the BLEP 2012 of certain land previously deferred from inclusion by applying appropriate zones (including environmental zones) available under the Standard Instrument Local Environmental Plan (SILEP) in accordance with the Council resolution of the April 2017 Ordinary meeting as outlined in section 1.4 of this planning proposal.

The land to which the planning proposal applies is depicted in Figure 1 and described in section 1.3 below.

1.2 Background

LEP Renewal Program 2006 – 2013

Ballina Shire Council engaged in the preparation of a comprehensive local environmental plan (LEP) under the State Government's Standard Instrument LEP (SILEP) program between 2006 and 2013. This planning process was underpinned by a comprehensive and sustained community engagement program and considerable and careful deliberation by the elected Council and staff over a prolonged period.

Council resolved to endorse a new draft LEP for the shire in December 2011 and subsequently sought finalisation and implementation of the draft plan through the then NSW Department of Planning and Environment. In September 2012, prior to Council's draft plan being finalised by the Department (it had received endorsement by the Department's regional office in Grafton), the then Minister for Planning, the Hon. Brad Hazzard made a decision to initiate a review of environmental protection zones in five local government areas on the Far North Coast. This included Ballina Shire.

The consequence of the Minister's decision was that Council's comprehensive LEP was only partly made, with areas identified as having environmental values excluded from the plan. These 'deferred matter' areas remain subject to the provisions of the Ballina LEP 1987 (being the instrument the new plan was to replace).

Northern Councils E Zone Review 2012 – Present

The Department released the interim report on the review of the E zones, prepared by consultants Parsons Brinkerhoff, for exhibition and comment in May 2014. Council responded to this with the identification of an extensive suite of shortcomings, errors and omissions within the report. This report has not been updated, nor the issues identified by Council addressed for the public record.

In October 2015 the Department published its final recommendations report for the Northern Councils E Zone Review (NCEZR). The review recommendations do not align with Council's endorsed draft LEP from 2011 or with almost 30 years of environmental protection zoning history and identified environmental attributes and values in the Ballina Shire local government area.

For Ballina Shire, the NSW Government's review recommendations result in the loss of opportunity to apply environmental protection zones to areas on the basis of scenic and amenity value, coastal value, water catchment characteristics and urban buffer characteristics. This is a substantial shift for Ballina Shire and one that represents a significant change in long standing Council planning policy. In considering this, it is important to recognise that environmental protection zones have been part of Ballina Shire since 1987 and the majority of the areas so zoned in 1987 remain zoned environmental protection under that plan at present.

Previously adopted staged integration programs

Notwithstanding the above, an initial staged approach to integrate deferred matter areas was adopted by the Council at its April 2016 Ordinary meeting in line with the requirements of the Department's final recommendations report. In response to an offer of funding support from the Department, Council resolved at its October 2016 Ordinary meeting to adjust the staging of the integration program based on a shorter timeframe.

Stage 1 of the integration program commenced with the then Department of Planning issuing a Gateway determination on 9 March 2017 in respect to land predominantly zoned 7(c) Environmental Protection (Water Catchment Zone) under the Ballina Local Environmental Plan 1987 (BLEP 1987) as well as other contiguous areas that were deferred from the BLEP 2012.

Stage 2 of the program involved land zoned 7(d) Environmental Protection (Scenic/Escarpment) and 7(d1) Environmental Protection (Newrybar Scenic/Escarpment) under the BLEP 1987 and other contiguous areas deferred from the BLEP 2012. At its Ordinary meeting held in March 2017 the Council resolved to delay consideration of the Stage 2 planning proposal until after a Councillor briefing on the matter.

In response to the resolution, a Councillor briefing was held on 6 April 2017. Councillors present expressed an interest in maintaining the status quo in relation to the existing environmental protection zones under the BLEP 1987. This reflects a view that the BLEP 1987 has been in place for a long time and has been very successful with respect to the management of the shire's environmental values, particularly given that adverse impact from development within existing environmental protection zone areas has been limited.

At its Ordinary meeting held in April 2017, the Council resolved to retain existing deferred areas the subject of an environmental protection zone under the BLEP 1987 as deferred areas, and to integrate all other deferred areas into the BLEP 2012 in accordance with the criteria established under the NCEZR.

Consequently, the Council resolved in June 2017 to formally request the discontinuance of the Stage 1 planning proposal. A response was received from the Department in July 2017 that the Department is considering possible options to facilitate the implementation of the E Zone Review and will advise Council of its decision on the discontinuation request once the preferred option for implementation has been determined.

On 2 November 2021, the Department altered the Gateway determination dated 9 March 2017 and agreed that the planning proposal should not proceed at this time on the basis that the current approach to the integration of certain deferred matters will occur within a timely manner.

A copy of correspondence from the Department is provided in Appendix 6.

Current approach to the integration of certain deferred matters

In April 2021, in response to an offer of funding support from the Department of Planning and Environment (DPE), Council engaged Ascent Ecology Pty Ltd to identify and verify proposed C2 and C3 zones under the BLEP 2012, in line with the criteria outlined by the DPIE in the NCEZR report and the April 2017 Council resolution to retain existing deferred areas that are subject to an environmental protection zone under the BLEP 1987.

This planning proposal outlines the proposed method of integration of deferred matters into the BLEP 2012.

Renaming of 'environment protection zones' to 'conservation zones'

As of 1 December 2021, the NSW Department of Planning and Environment (DPE) announced changes to the naming of environment protection zones within all standardised local environmental plans (LEP) that are in place in NSW.

Environment protection zones will now be referred to as 'conservation zones'. The change relates to the prefix and zone category only. The objectives and permissible land uses remain unchanged.

For the purposes of this planning proposal and related documents, any reference to environment protection zone E2 or E3 should be taken to be a reference to a conservation zone C2 and C3.

1.3 Land to which the planning proposal applies

It is proposed to transition all Deferred Matter (DM) areas currently subject to a BLEP 1987 zone shown in Table 1, into the BLEP 2012. Environmental protection zones listed in Table 2 will remain subject to the provisions of the BLEP 1987 as per the Council resolution of April 2017. The DM land to which this planning proposal applies is shown outlined in red in Figure 1.

Table 8 in Appendix 8 provides information outlining the properties affected by this proposal, the existing and proposed zones for each land parcel and the primary use of the land as determined by Council, prior to consultation with landowners.

A breakdown of the number of landowners affected by this proposal, the number of lots proposed to have a conservation zone and/or an alternate zone applied, and the total amount of land in hectares proposed for rezoning is provided in Table 3.

Table 1: BLEP 1987 DM Zones to be transitioned into BLEP 2012

Zone	Description
1(a1)	Rural (Plateau Lands Agriculture)
1(a2)	Rural (Coastal Lands Agriculture)
1(b)	Rural (Secondary Agricultural Land)
1(d)	Rural (Urban Investigation)
1(e)	Rural (Extractive and mineral Resources)
2(a)	Living Area

2(b)	Village Area
4	Industrial Zone
6(a)	Open Space Zone
8(a)	National Parks and Nature Reserves
9(a)	Roads (Main Roads Proposed)
9(b)	Roads (Local Roads Proposed)
UZ	Unzoned Land

Table 2: BLEP 1987 environmental protection zones

Zone	Description
7(a)	Environmental Protection (Wetlands)
7(c)	Environmental Protection (Water Catchment)
7(d)	Environmental Protection (Scenic/Escarpment)
7(d1)	Environmental Protection (Newrybar Scenic/Escarpment)
7(f)	Environmental Protection (Coastal Lands)
7(i)	Environmental Protection (Urban Buffer)
7(l)	Environmental Protection (Habitat)

Table 3: Affected land parcel information

Proposed zone	No. land parcels covered	No. hectares covered
C1	13	129.18
C2	938	2632.31
R2	25	5.48
RE1	10	12.84
RU1	197	379.68
RU2	147	204.18
	Total amount of land proposed for rezoning as part of this proposal	3363.67 ha

Total number of affected land parcels is **730**.

Total number of affected landowners is **436**.

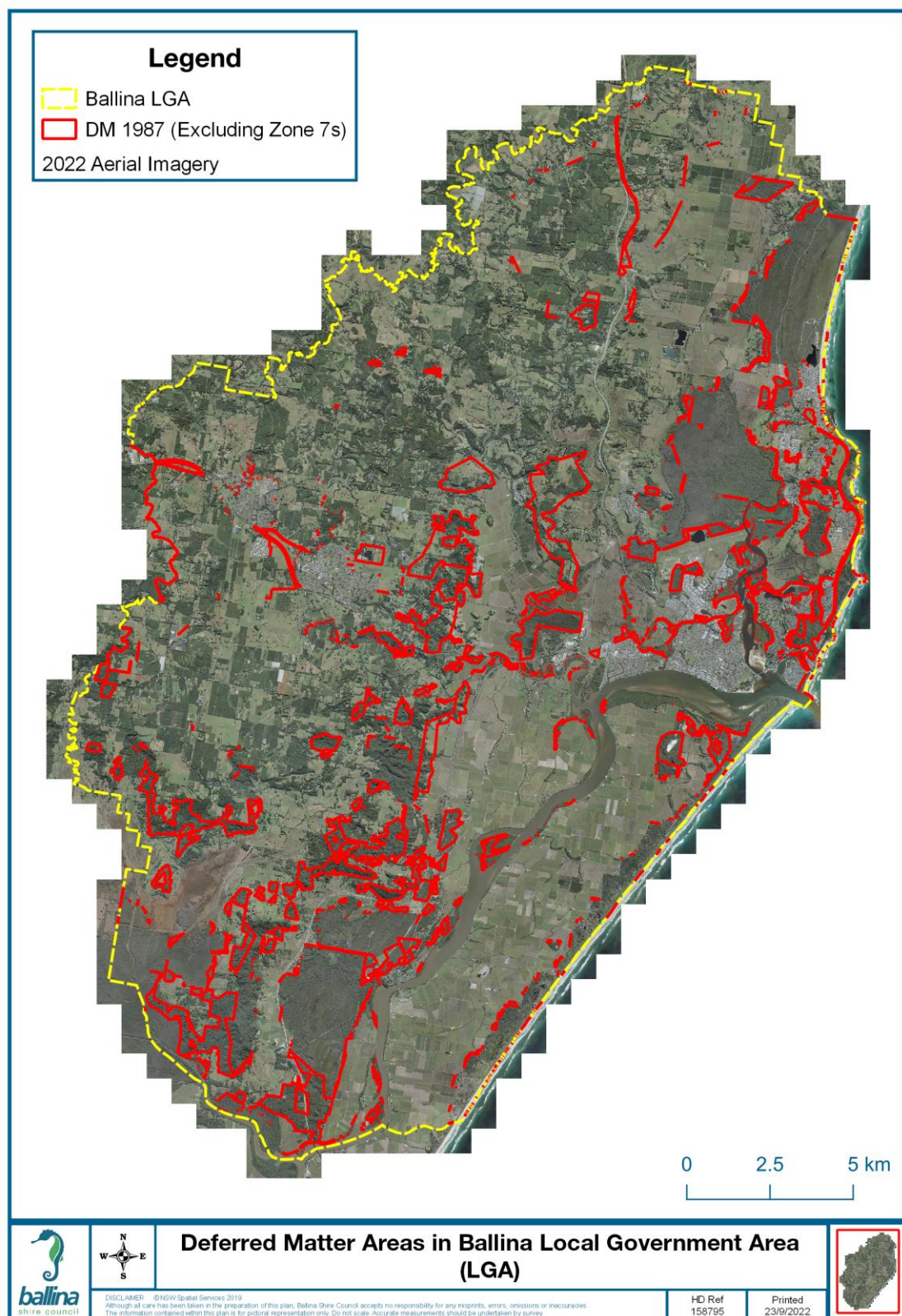


Figure 1: Deferred Matter Land (excluding environmental protection zones under the BLEP 1987) shown outlined in red

1.4 Council Resolutions

The planning proposal for Stage 2 of the previous integration program was presented to the Council at its Ordinary meeting held in April 2017 and the Council resolved as follows:

That Council addresses the deferred matters under the Ballina Local Environmental Plan 2012 through the following:

- (a) Retention of all deferred areas the subject of an environmental protection zone under the Ballina Local Environmental Plan 1987 as deferred areas (having the effect that the Ballina LEP 1987 will continue to apply).*
- (b) Preparation of a planning proposal to integrate all deferred areas that are not subject to existing environmental protection zones under the Ballina Local Environmental Plan 1987 into the Ballina Local Environmental Plan 2012.*
- (c) Application of the criteria established under the Northern Councils E Zone Review to the areas to be integrated into the Ballina Local Environmental Plan 2012 under point (b).*

The Council considered the current planning proposal (BSCPP 21/004) for the integration of certain deferred matters at its Ordinary meeting held in October 2021 and resolved as follows:

- 1. That Council endorses, for Gateway determination, the integration of certain land identified as deferred matters in Ballina Local Environmental Plan (BLEP) 1987 into the Ballina Local Environmental Plan 2012, including the introduction of land use tables for the E2 Environmental Conservation and E3 Environmental Management into BLEP 2012 and various other consequential amendments, in accordance with the planning proposal (BSCPP 21/004) contained in Attachment 1.*
- 2. That Council endorses for Gateway determination, amendment to Clause 41 of the Ballina Local Environmental Plan 1987 to limit the temporary use of land to a maximum of 14 days per annum.*
- 3. That Council submits the planning proposal contained in Attachment 1 to the NSW Department of Planning, Industry and Environment for review and Gateway determination.*
- 4. That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment the procedural steps associated with progression of the planning proposal, including public exhibition, be undertaken.*
- 5. That the Department of Planning, Industry and Environment be advised that Council does not seek to exercise its delegated plan making functions for this LEP amendment.*
- 6. That Council receive a further report on the deferred matter integration program following the completion of the public exhibition of the planning proposal.*

A copy of the reports considered by the Council are provided in Appendix 3 of this planning proposal.

1.5 Gateway Determination

A Gateway determination was issued on 18 March 2022 allowing the planning proposal to proceed subject to conditions. An altered Gateway determination was subsequently issued on 15 December 2022 which removed the timeframe for exhibition and extended the completion date to July 2023. Appendix 4 contains a copy of the original and altered Gateway determinations.

1.6 Deferred Matter Integration Context and Interpretation

The application of conservation zones in Ballina Shire is required to be based on the NSW Department of Planning and Environment's *Northern Councils E Zone Review Final Recommendations Report* (NCEZR) dated October 2015. This report is supported by a section 9.1 Ministerial Direction to ensure the application of C zones and mapped planning controls are consistent with the final recommendations report.

A number of matters set out in the final recommendations report and associated material require interpretation. In this regard, Council has progressed with its integration of the deferred areas based on the following understandings.

1.6.1 Primary use of land

The primary use of the land is defined as the main use for which the land has been used for the last two years.

Where a C2 or C3 conservation zone is proposed, the primary use of the land is to be considered. The primary use of land concept is not required to be directly applied in cases where zones other than C2 or C3 zones are proposed.

For land that Council has verified as consistent with the vegetation criteria for a conservation zone, an Environmental Conservation (C2) or Environmental Management (C3) zone will generally be applied if the primary use of the land is confirmed to be C2 or C3.

The primary use of the land may vary across a particular property depending on the characteristics of the land. This means that land currently zoned as rural could continue to have a rural zone, but may have parts of that land which have attributes that meet the criteria for a C2 or C3 zone mapped accordingly.

The primary use of the land will be assessed in consultation with affected landholders.

1.6.2 Verification of the C zone criteria

A C zone or other mapped planning controls can be applied to land where the presence of attributes that meet the criteria have been verified by using one or a combination of the following:

- Biodiversity field inspections and ground surveys conducted by an appropriately qualified person.
- Flora and fauna reports conducted by a suitably qualified person (field work must be less than five years old).
- Review of current (not more than five years old) high resolution digital aerial photography verified by another one of these verification techniques.
- Aboriginal heritage field inspections and ground surveys conducted by an appropriately qualified person or someone with extensive field experience.
- Cultural heritage reports conducted by a suitably qualified person and in accordance with current guidelines.
- Consultation with Aboriginal cultural knowledge holders in relation to culturally significant lands in accordance with current guidelines.

It is not mandatory to apply a C zone if the land has been verified to meet the criteria.

1.6.3 Public and private land inconsistent with the criteria

Public land may be zoned C2 or C3, despite being inconsistent with the criteria, if the primary use of the land is environmental conservation or environmental management.

Private land may be zoned C2 or C3, despite being inconsistent with the criteria, if it is consistent with a negotiated development outcome (eg master plan, rezoning, development consent or designated offset areas) or with the agreement of the landowner.

1.6.4 Voluntarily revegetated land

Land which has been voluntarily revegetated by the current landowner cannot have a C2 or C3 zone applied to it without the landowner's agreement providing:

- The revegetation has been actively undertaken and is not the result of natural regrowth;
- Active revegetation includes a combination of planting, seeding, weed control, fencing, removing stock, watering, ripping, mulching and soil improvement to encourage the natural regeneration of native vegetation; and
- The primary use of the land is agriculture.

Voluntarily revegetated land can be included on a Vegetation Map without the landowner's agreement provided the attributes have been verified to meet the C zone criteria and the primary use of the land is environmental conservation or environmental management.

If revegetation has been undertaken with the support of grant funding which requires ongoing protection of the vegetation, then a C zone may be applied to the land.

1.6.5 Zoning of State and regionally significant farmland

When zoning State or regionally significant farmland, council must have regard for the primary use of the land before applying a C zone or a rural zone.

1.6.6 Application of multiple zones to a single property (split zoned lots)

More than one zone can be applied to properties where the characteristics of different areas of the land reflect the different primary uses of the land. However, the use of multiple zones on a property should be minimised as far as possible and councils should consider the suitability of alternative zones or including the land on a Vegetation Map when considering more than one zone for a property.

1.6.7 Mapped planning controls and associated clauses

Mapped planning controls (overlays) can be used to provide protection of environmental values that do not meet the criteria for a C2 or C3 zone.

Whilst it is not proposed to introduce environmental overlays through this planning proposal, it is noted that mapped planning controls and associated clauses may be used for protection of the following:

- Matters of public health, safety, risk and hazard such as drinking water catchments, flooding, coastal risk areas and land subject to strict development controls such as steep land.
- Land that contains significant native vegetation, or that has been verified to meet the C zone criteria where the primary use of the land is not environmental conservation or environmental management, may be included on a Vegetation Map.

- A Coastal Risk Map and associated clause is to be used to manage land affected by coastal hazards.

1.6.8 Scenic protection and aesthetic values

Council is not permitted to use scenic or aesthetic values as an attribute for the application of a C zone or mapped planning controls.

1.6.9 Permissibility of agriculture in C zones

Extensive agriculture is to be listed as permissible with consent in the C2 zone and permissible without consent in the C3 zone.

The C3 zone can encompass areas where extensive agriculture occurs, such as understorey grazing or flood refuge.

1.7 Amendments to Ballina LEP 1987

The planning proposal also proposes to amend the Ballina LEP 1987 with respect to the temporary use of land clause by reducing the maximum number of days that land may be used for a temporary use.

Clause 41(2) of the BLEP 1987 states that *'development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.'*

As per the Council resolution of April 2017, only land that is zoned for environmental protection purposes will remain subject to the provisions of the Ballina LEP 1987. It is therefore appropriate that any temporary development permitted within these zones be limited to ensure consistency with the provisions of the Ballina LEP 2012, which allow temporary use for a maximum period of 14 days.

2. Objectives & Intended Outcomes

The overarching objective of this planning proposal is to amend the Ballina LEP 2012 to incorporate certain land identified as Deferred Matter, in line with the Council resolution of 27 April 2017.

It is intended to achieve this objective through the following means:

- Introduce the C2 Environmental Conservation and C3 Environmental Management zones into the Ballina LEP 2012 zoning palette.
- Apply environmental protection zones to land identified as meeting the criteria set out under the Northern Councils E Zone Review Final Recommendations Report.
- Apply a minimum lot size of 40 hectares to land zoned C2 Environmental Conservation and C3 Environmental Management.
- Apply residential, rural and other zones to other land that does not meet the criteria for application of environmental protection zones as set out under the Northern Councils E Zone Review Final Recommendations Report.
- Apply the following consequential mapping to the subject land: Acid Sulfate Soils; Building Height Allowance; Floor Space Ratio; Height of Buildings; Heritage; Lot Size and Strategic Urban Growth Area.
- Adjust the Land Application Map to incorporate the land under the Ballina LEP 2012.

The achievement of the above objectives will require a series of consequential amendments to clauses in the Ballina LEP 2012 to reference the C2 and C3 zones, including but not limited to the following:

- 4.2A Erection of dwelling houses and dual occupancies on land in certain rural zones (*Note that dual occupancies are not permissible in the C2 or C3 zones*)
- 4.2B Exceptions to minimum subdivision lot size for lot boundary adjustments
- 4.2C Exceptions to minimum subdivision lot sizes for split zones
- 7.9 Rural and nature-based tourism development

It is also proposed to amend clause 41(2) of the Ballina LEP 1987 to reduce the maximum period for which land can be used for a temporary use from 52 days to 14 days.

3. Explanation of Provisions

3.1 C2 and C3 Zone Land Use Table Introduction

Conservation zones ('C zones') are designed to recognise and protect land that has important environmental value. An overview of the C2 and C3 zones as proposed for introduction into Ballina Shire is provided below.

The Standard LEP Instrument compiled by the NSW Department of Planning and Environment (DPE) requires that certain objectives and land uses are mandatory, these are shown in **BLACK** text. These items are consistent across NSW and are not able to be altered by Council.

The DPE's *Northern Councils E Zone Review Final Recommendations Report* (NCEZR) mandates that *Extensive agriculture* be permitted with consent in the C2 zone and permitted without consent in the C3 zone. This is shown in **BLUE** text.

The objectives and land uses identified in **RED** have been included by Council based on local provisions/issues.

C2 Environmental Conservation

The C2 zone provides for the protection of key environmental assets within the shire while allowing a limited range of land uses that are compatible with the environmental values of such areas. The C2 zone will be applied to areas of high environmental significance where protection of environmental values is warranted, and other suitable areas that meet the set criteria.

Having regard for the outcomes of the DPE's NCEZR and the history and characteristics of Ballina Shire, it is proposed that the C2 zone be introduced into the Ballina LEP 2012 as follows. The zone provides for a limited range of permissible land uses recognising its targeted application to areas of high environmental value and significance.

Zone C2 Environmental Conservation

1 Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

2 Permitted without consent

Environmental protection works.

3 Permitted with consent

Dwelling houses; Environmental facilities; Extensive agriculture; Oyster aquaculture; **Research stations; Roads.**

4 Prohibited

Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service

stations; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 3.

C3 Environmental Management

The C3 zone provides for the recognition, management and protection of environmental values while providing for a range of land uses compatible with those values. This zone is slightly more flexible in the range of permissible land uses than the C2 zone.

Having regard for the outcomes of the DPE's NCEZR and the history and characteristics of Ballina Shire, it is proposed that the C3 zone be introduced in the Ballina LEP 2012 as follows. The zone provides for a limited range of permissible land uses recognising its targeted application to areas of environmental value and significance.

Zone C3 Environmental Management

1 Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.

2 Permitted without consent

Environmental protection works; [Extensive agriculture](#).

3 Permitted with consent

[Camping grounds](#); [Community facilities](#); Dwelling houses; [Emergency services facilities](#); [Environmental facilities](#); [Farm building](#); [Home-based child care](#); [Information and education facilities](#); [Intensive plant agriculture](#); [Kiosks](#); [Oyster aquaculture](#); [Pond-based aquaculture](#); [Recreation areas](#); [Research stations](#); [Roads](#); [Roadside stalls](#); [Tank-based aquaculture](#); [Tourist and visitor accommodation](#); [Water recreation structures](#).

4 Prohibited

[Backpackers accommodation](#); [Hotel or motel accommodation](#); Industries; [Intensive livestock agriculture](#); [Multi dwelling housing](#); [Residential flat buildings](#); [Retail premises](#); [Seniors housing](#); [Service stations](#); [Serviced apartment](#); [Warehouse or distribution centres](#); Any other development not specified in item 2 or 3.

3.2 Application of C Zones

The application of C zones to deferred land in the shire is required to be based on the NSW DPE's Northern Councils E Zone Review Final Recommendations Report (NCEZR) and the associated s.9.1 Ministerial Direction under the *Environmental Planning and Assessment Act 1979*.

Land proposed to be zoned C2 or C3 must contain one or more of the criteria listed in Tables 1 and 2 of the Department's NCEZR (as reproduced in Table 4 below) and where applicable, be based on the primary land use.

In addition to the strict application of the Department's criteria, a number of rules were developed in order to suitably propose C2/C3 zones (refer to section 6.2 of the methodology report). A rule-based hierarchical approach was taken and the criteria applied sequentially to DM areas. Criteria with the most certainty was applied first to reduce areas required for field verification.

It should be noted that the proposed land use zones applied are subject to change as further work is undertaken in accordance with the Northern Councils E Zone Review Final Recommendations Report.

Table 4: Criteria for Application of Conservation Zones

Criteria	Description
C2 Environmental Conservation	
SEPP26 Littoral Rainforests	Land mapped as littoral rainforest in accordance with the statewide policy for littoral rainforest protection (<i>State Environmental Planning Policy 26 – Littoral Rainforests</i>).
SEPP14 Coastal Wetlands	Land mapped as coastal wetlands in accordance with the statewide policy for coastal wetland protection (<i>State Environmental Planning Policy 14 – Coastal Wetlands</i>).
Endangered Ecological Communities (EECs) listed under the <i>Threatened Species Conservation Act 1995</i> and/or the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .	<p>Land containing vegetation communities listed as Endangered Ecological Communities under the <i>Threatened Species Conservation Act 1995</i> (TSC)¹ and the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC)².</p> <p>The <i>Far North Coast Regional Conservation Plan</i>³ lists the following vegetation communities as examples of EECs that currently exist on the Far North Coast:</p> <p><i>Byron Bay Dwarf Graminoid Heath Community, Coastal Cypress Pine Forest, Coastal Saltmarsh, Freshwater Wetlands in Coastal Floodplains, Littoral Rainforest, Lowland Rainforest, Lowland Rainforest on Floodplains, Subtropical Coastal Floodplain Forest, Swamp Oak Floodplain Forest, Swamp Sclerophyll Forest on Coastal Floodplains, Themeda grassland on Seacliffs and Coastal Headlands, White Gum Yellow Gum Blakely's Red Gum Woodland, and White Gum Moist Forest.</i></p> <p>Other vegetation communities may be added consistent with these Acts in the future.</p>
Key Threatened Species Habitat	<p>This criterion includes:</p> <ul style="list-style-type: none"> old-growth forests where the overstorey or canopy trees are in the late mature stage of growth⁴; areas of predicted high conservation value for forest fauna assemblages, refugia, endemic forest fauna or endemic invertebrates⁵; and habitats for threatened species or endangered populations that cannot withstand further loss where the threatened species or endangered population is present⁶.

Over-cleared vegetation communities	<p>Land comprising:</p> <ol style="list-style-type: none"> over-cleared vegetation communities, where more than 70% of the original (pre 1750) extent of the native vegetation type has been cleared⁷ and native vegetation in over-cleared Mitchell landscapes⁸. <p>The <i>Far North Coast Regional Conservation Plan</i> lists the following as examples of:</p> <ul style="list-style-type: none"> Over-cleared vegetation communities on the Far North Coast⁹: <ul style="list-style-type: none"> Rainforests, Wet sclerophyll forests (shrubby and grassy subformations), Dry sclerophyll forests (shrubby and shrub/grass subformations), Grassy woodlands, Grasslands (<i>Themeda australis</i> sod tussock), Heathlands, Forested wetlands, Freshwater wetlands, Saline wetlands; and Over-cleared Mitchell landscapes⁹: <ul style="list-style-type: none"> Byron–Tweed Alluvial Plains, Byron–Tweed Coastal Barriers, Clarence–Richmond Alluvial Plains and Upper Clarence Channels and Floodplains.
Culturally significant lands	Areas of culturally significant lands such as Aboriginal object sites, Aboriginal places of heritage significance and other significant objects identified by the local Aboriginal community ¹⁰ .
C3 Environmental Management	
Riparian and estuarine vegetation and wetlands	<p>Land comprising riparian and estuarine vegetation on <i>waterfront land</i>, defined under the <i>NSW Water Management Act 2000</i>, or wetland areas other than those mapped as SEPP14 Coastal Wetlands.</p> <p>Waterfront land is defined under the <i>NSW Water Management Act 2000</i> as the bed of any river, lake or estuary and any land within 40 metres of the river banks, lake shore or estuary mean high water mark.</p>
Rare, Endangered and Vulnerable Forest Ecosystems	Land comprising areas of rare, endangered and vulnerable forest ecosystems as defined by the <i>Joint ANZEC/MCFFA National Forest Policy Statement Implementation sub-committee (JANIS)</i> (Commonwealth of Australia 1997) ¹¹ .
Native vegetation on coastal foreshores	Native vegetation on land with frontage, or adjoining or adjacent to, a beach, estuary, coastal lake, headland, cliff or rock platform.

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

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

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

⁴ <http://www.epa.nsw.gov.au/resources/pnf/OGFRreviewFieldIdent.pdf>

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

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

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

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

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

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

¹¹ Refer to Appendix 1 of the Department's Final Recommendations Report.

Primary Land Use

The NCEZR defines the primary land use (PLU) as the main use for which the land has been used for the last two years. Verification of PLU and site attributes that meet the C2 or C3 criteria was undertaken through a priority-driven process as outlined in section 5 of the methodology report. Council has considered the characteristics of land and zoning application

having regard for aerial photography, visual inspections undertaken and other property information available to Council.

With respect to the use of aerial photography, this assessment utilised the May 2018 Ballina Shire Council aerial imagery set as the primary data source for the PLU assessment on advice from the Department of Planning and Environment. Where uncertain, recent captures from the Nearmap aerial imagery service were also utilised if available.

Land proposed for C2 or C3 zoning was assigned a PLU in accordance with the categories set out in Table 5.

Table 5: PLU categories for the purpose of determining C Zones

PLU category	Attributes
Environmental ¹	<ul style="list-style-type: none"> Existing 7(a) Environmental Protection (Wetlands) and 7(l) Environmental Protection (Habitat) zones under BLEP 1987 and existing C2 Environmental Conservation and C3 Environmental Management zones under the BLEP 2012² Areas of native vegetation where natural ecological processes predominate³ Areas subject to active revegetation works, habitat remediation or assisted natural regeneration (not mapped) Some areas of land that where the gap between patches of native vegetation that meet C2/C3 zone criteria identified in the NCEZR is less than 100 metres and these patches contribute to habitat connectivity
Agriculture	<ul style="list-style-type: none"> Areas where agricultural activities including cropping, horticulture, pasture management, grazing or other forms of agriculture predominate Other cleared areas used on a rotational or occasional basis for cropping or grazing which are integral to the broader farm management
Other	<ul style="list-style-type: none"> Areas of existing urban, commercial, industrial, infrastructure or special purpose development Developed open space Road and waterway reserves not covered above Public land actively used for sewer and water infrastructure May include cleared and undeveloped land identified for future urban development⁴

¹ Areas allocated to the environmental PLU category must also meet other criteria that are identified in the NCEZR before they can be proposed for a C Zone.

² Under the NCEZR, areas of land identified as existing environmental protection zones under the BLEP 1987 and BLEP 2012 are assumed to have a primary use of environmental conservation or management.

³ The environmental PLU 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 PLU.

⁴ Unless zoned for urban development these areas are typically included in the "Agriculture" category reflecting their current PLU.

Further to this, Council intends to invite landowners of properties where a conservation zone is proposed to engage with Council pre-public exhibition of the planning proposal to discuss the proposed conservation zoning, thereby providing an opportunity for further consideration of the primary use of land. Council's approach is designed to provide landowners with an opportunity to review proposed conservation zoning outcomes and provide additional information or raise concerns for examination in advance of the public exhibition phase.

3.3 Application of Rural and Other Zones

Land in DM areas that did not meet the criteria for a C2 or C3 zoning is proposed to be transitioned into the BLEP 2012 based on the following methodology, as outlined in section 6.4 of the methodology report:

- Apply a proposed BLEP 2012 zone based on the BLEP 1987 zone as per the lookup table in Table 6 below; and
- Where BLEP 1987 zone was 1(d) Rural (Urban Investigation), 9(a) Roads (Main Roads Proposed), 9(b) Roads (Local Roads Proposed), or unzoned land, a proposed BLEP 2012 zone was proposed based on adjacent zoning and apparent primary land use derived from aerial photograph interpretation (API), except where adjacent to land zoned for environmental protection ('7' zone) under the BLEP 1987. These parcels have been assessed individually on a case-by-case basis to determine the appropriate zoning.

Table 6: Transition of BLEP 1987 to BLEP 2012 zones

BLEP 1987 Zone (DM Area)	Proposed BLEP 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*

* Except where adjacent to '7' zones. These parcels have been assessed individually on a case-by-case basis to determine the appropriate zoning.

It should be noted that the proposed land use zones applied are subject to change as further work is undertaken in accordance with the Northern Councils E Zone Review Final Recommendations Report.

It is proposed to apply a minimum lot size of 40 hectares to land zoned C2 Environmental Conservation and C3 Environmental Management.

3.3.1 Application of Rural Zones

The BLEP 2012 contains two rural zones applicable to land used for agricultural purposes as well as areas identified for future urban land and areas of extractive and mineral resources. An overview of the two rural zones is provided below.

The RU1 Primary Production zone provides for the identification and management of land suitable for most kinds of primary production. It is suitable for application to rural land that supports a variety of agricultural activity including extensive agriculture, horticulture and intensive livestock agriculture.

The RU2 Rural Landscape zone provides for the management of rural land that has landscape values or that is identified as having some agricultural limitations. It is suitable for application to rural areas not identified for inclusion in the RU1 zone or a conservation zone.

To be consistent with the approach previously taken by Council in transitioning land to a rural zone at the time the BLEP 2012 was adopted, the following additional criteria was applied to areas unsuitable for C2/C3 zoning for land currently zoned 1(a1), 1(a2), 1(b), 1(d) or 1(e). If the land met the following two criteria, an RU1 zone was proposed:

- Land is identified as State or Regionally Significant Farmland under the Northern Rivers Farmland Protection Project; and
- Land is identified as an agricultural class of 1, 2, 3 or 4 by the NSW Department of Primary Industries (DPI) agricultural land classification mapping.

For land zoned 1(b) that did not meet both these criteria, the RU2 zone was applied.

3.3.2 Application of Residential Zones

In the case of BLEP 1987 zones 2(a) Living Area and 2(b) Village Area, these areas are proposed to transition to R2 Low Density Residential or R3 Medium Density Residential based on adjacent residential density.

3.3.3 Application of Recreation Zones

All BLEP 1987 zone 6(a) Open Space zones are proposed to transition to the RE1 Public Recreation zone.

3.3.4 Application of Industrial Zone

Any land zoned BLEP 1987 zone 4 Industrial is proposed to transition to the IN1 General Industrial zone.

3.3.5 Site Specific Rules

There are some instances where land has been transitioned to a zone having regard for site specific considerations and is inconsistent with the transition rules as outlined in Table 6 above. These site specific rules are outlined in Table 8 of the methodology report.

3.4 Heritage Conservation

Items and places of environmental heritage significance in Ballina Shire have been identified based on the findings of the Draft Shire Wide Community Based Heritage Study (2008). Clause 5.10 of BLEP 2012 aims to conserve the heritage significance of heritage items and heritage conservation areas within the shire, including the associated fabric, settings and views, by outlining the matters for consideration with respect to development involving heritage items or within heritage conservation areas.

General heritage items and archaeological sites that have been identified as having local significance are listed in Schedule 5 of BLEP 2012 and are shown on the Heritage Map. The properties listed in Table 7 below are located in deferred areas and are listed for inclusion in Schedule 5 of BLEP 2012. This is consistent with Council's originally proposed approach to these properties during its LEP renewal program (2006-2012).

Table 7: Items for inclusion in BLEP 2012 Schedule 5 Environmental Heritage

Suburb	Item name	Address	Property description	Significance
Ballina	Aboriginal site – Portion 212, Parish of Ballina	Corks Lane	Lot 212 DP 755684	Local [#]
Cabbage Tree Island	Cabbage Tree Island	Cabbage Tree Island	Lot 258 DP 755691	Local [#]
East Ballina	Aboriginal site - Lot 3 DP 528058	Jameson Avenue	Lot 3 DP 528058	Local [#]
East Ballina	Aboriginal site – Property Lot 1, Resub Lot 232, DP 709484	6 Links Avenue	Lot 105 DP 871675	Local [#]
Empire Vale	Post Office, Empire Vale	664 River Drive	Lot 3 DP 616658	Local
Goat Island	Goat Island	Goat Island	Lot 245 DP 755691	Local [#]
Keith Hall	Portion 151, Parish of South Ballina	211 Keith Hall Lane	Lot 1 DP 706961	Local [#]
Keith Hall	Portion 151, Parish of South Ballina	Keith Hall Lane	Lot 3 DP 706961	Local [#]
Lennox Head	Species of tree "Fountainia oraria" on Lot 4, DP 553415	71 Amber Drive	Lot 17 DP 1244616	Local
Lennox Head	Species of tree "Fountainia oraria" on Lot 4, DP 553415	73 Amber Drive	Lot 13 DP 1244616	Local
Lennox Head	Species of tree "Fountainia oraria" on Lot 4, DP 553415	2 Brolga Place	Lot 41 DP 1168665	Local
Lennox Head	Species of tree "Fountainia oraria" on Lot 4, DP 553415	8 Seamist Place	Lot 43 DP 1168665	Local
Lennox Head	Aboriginal site - Portion 46, Parish of Ballina	51 Henderson Drive	Lot 4 DP 1216761	Local [#]
Lennox Head	Aboriginal site - Portion 46, Parish of Ballina	61 Henderson Drive	Lot 2 DP 1216761	Local [#]
Lennox Head	Aboriginal site - Portion 46, Parish of Ballina	63 Henderson Drive	Lot 1 DP 1216761	Local [#]

[#] Property also meets C2 criteria 'culturally significant lands'

3.5 Other Amendments to the BLEP 1987 and BLEP 2012

3.5.1 Amendments to BLEP 1987

The planning proposal also proposes to amend the Ballina LEP 1987 with respect to the temporary use of land clause by reducing the maximum number of days that land may be used for a temporary use.

Clause 41(2) of the BLEP 1987 states that *'development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.'*

As per the Council resolution of April 2017, only land that is zoned for environmental protection purposes will remain subject to the provisions of the Ballina LEP 1987. It is therefore appropriate that any temporary development permitted within these zones be limited to ensure consistency with the provisions of the Ballina LEP 2012, which allow temporary use for a maximum period of 14 days.

3.5.2 Amendments to BLEP 2012

The planning proposal also proposes the following amendments to the BLEP 2012:

- Consequential amendments to clauses in the BLEP 2012 to reference the C2 and C3 zones, including but not limited to the following:
 - 4.2A Erection of dwelling houses and dual occupancies on land in certain rural zones (*Note that dual occupancies are not permissible in the C2 or C3 zones*)
 - 4.2B Exceptions to minimum subdivision lot size for lot boundary adjustments
 - 4.2C Exceptions to minimum subdivision lot sizes for split zones
 - 7.9 Rural and nature-based tourism development.
- Apply the following consequential mapping to the subject land, where applicable: Acid Sulfate Soils; Building Height Allowance; Floor Space Ratio; Height of Buildings; Heritage, Lot Size and Strategic Urban Growth Area.
- Adjust the Land Application Map to incorporate the land under the BLEP 2012.

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?

Yes, the Northern Councils E Zone Review Final Recommendations Report published by the Department of Planning and Environment in October 2015. This report outlines the criteria for the application of conservation zones (“C” zones) to deferred matters previously identified as a C zone but excluded from the new plan (Ballina LEP 2012).

The planning proposal also follows on from extensive study and reporting completed as part of the Ballina LEP renewal program between 2006 and 2012, and is also informed by the mapping undertaken by Ascent Ecology in 2021.

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

Yes. A planning proposal is the appropriate and only mechanism to integrate deferred matters into the Ballina LEP 2012.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal demonstrates strategic merit through its consistency with the objectives and actions set out in the North Coast Regional Plan 2036. Specifically, it is considered to be consistent with Direction 2: *Enhance biodiversity, coastal and aquatic habitats, and water catchments*.

The planning proposal is also considered to be consistent with the draft North Coast Regional Plan 2041, which was exhibited in July/August 2022, in particular Objective 3: *Protect and enhance important environmental assets*.

Q4 Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

Ballina Shire Local Strategic Planning Statement 2020 – 2040 (LSPS)

The planning proposal is consistent with a key theme within the LSPS of Healthy Environment and in particular, is consistent with the following planning priority and action:

Planning Priority 13: Ensure that the biodiversity values of the Shire are identified and where required protection strategies are implemented.

Action HE3.1f: Review environmental protection zone framework.

Ballina Shire Community Strategic Plan 2017 – 2027 (CSP)

The planning proposal is considered to be consistent with the Healthy Environment theme contained within Council's CSP. Specifically, it is considered to be consistent with outcome HE3.2: *Minimise negative impacts on the natural environment.*

Q5 Is the planning proposal consistent with any other applicable State and regional studies or strategies?

There are no other relevant state or regional studies or strategies relevant to the planning proposal.

Q6 Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The proposal is considered to be generally consistent with applicable State Environmental Planning Policies (SEPPs) – namely the relevant aims contained in *SEPP (Coastal Management) 2018*, *SEPP (Koala Habitat Protection) 2020 and 2021*, *SEPP (Mining, Petroleum Production and Extractive Industries) 2007*, *SEPP (Primary Production and Rural Development) 2019* and *SEPP (Vegetation in Non-Rural Areas) 2017*.

It is also consistent with the requirements of *SEPP 55 – Remediation of Land* as the SEPP 55 provisions relating to planning proposals have now been replaced by section 9.1 Direction 2.6, which is addressed in Appendix 2.

Q7 Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Yes. A number of section 9.1 directions are relevant to the planning proposal. A section 9.1 Ministerial Direction checklist is provided at Appendix 2.

4.3 Section C – Environmental, Social and Economic Impact

Q8 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

The amendments contained in this proposal are not expected to impact adversely on critical habitats, threatened species, populations or ecological communities or their habitats.

Q9 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No significant adverse environmental impacts are likely to arise as a result of the planning proposal.

Q10 Has the planning proposal adequately addressed any social and economic effects?

The proposal will facilitate the provision of a more efficient and effective land use planning framework. The proposed zonings will provide landowners with certainty around the permissible land uses on their land. In addition, the integration of Deferred Matter land into the Ballina LEP 2012 will simplify the planning controls for future development proponents. For these reasons the social and economic impacts associated with the proposal are considered to be positive.

4.4 Section D – State and Commonwealth Interests

Q11 Is there adequate public infrastructure for the planning proposal?

The planning proposal does not create the need for any additional public infrastructure.

Q12 What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

Consultation will be undertaken with relevant agencies as required by the Gateway determination during the public exhibition stage of the LEP amendment.

5. Mapping

This planning proposal will necessitate updates to the following BLEP 2012 maps:

- Land Zoning Map;
- Lot Size Map;
- Floor Space Ratio Map;
- Acid Sulfate Soil Map;
- Building Height Allowance Map;
- Height of Buildings Map;
- Heritage Map;
- Strategic Urban Growth Area Map; and
- Land Application Map.

Draft land zoning maps are provided in Appendix 1 of this planning proposal.

Other draft mapping layers are provided in Council's online public mapping tool, accessible via this link: [Online maps | Ballina Shire Council \(nsw.gov.au\)](https://www.ballina.nsw.gov.au/online-maps).

6. Community Consultation

The planning proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*.

The Gateway determination specifies that the planning proposal must be made publicly available for a minimum period of 28 days. A six week consultation period is proposed to ensure affected landholders have adequate time to consider the proposed changes.

7. Project Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination	March 2022
Landowner Consultation (affected landowners)	Feb-March 2023
Government Agency Consultation	Feb-March 2023
Public Exhibition Period	Feb-March 2023
Public Hearing	N/A
Submissions Assessment	March 2023
RPA Assessment of Planning Proposal and Exhibition Outcomes	April 2023
Submission of Endorsed LEP to DPE for Finalisation	April 2023
RPA Decision to Make the LEP Amendment (if delegated)	N/A [#]
Forwarding of LEP Amendment to DPE for Notification (if delegated)	N/A [#]

[#] Council is not authorised to be the local plan-making authority.

Appendices

Appendix 1 – Mapping

(Provided via separate attachment)

Appendix 2 – s.9.1 Ministerial Direction Checklist

Section 9.1 Ministerial Direction Checklist	
Planning Proposal – BLEP 2012 Conservation Zone Review (Integration of Certain Deferred Matter Land)	
Direction No.	Compliance of Planning Proposal
Focus area 1: Planning Systems	
1.1 Implementation of Regional Plans	<p>Justifiably inconsistent.</p> <p>The planning proposal is generally consistent with the planning framework set out under the North Coast Regional Plan – in particular, Directions 1 & 2 (and supporting actions) associated with 'Goal 1: The most stunning environment in NSW'.</p> <p>It is also considered to be generally consistent with the draft North Coast Regional Plan 2041 (exhibited July/August 2022), in particular Objective 3: 'Protect and enhance important environmental assets'.</p>
1.2 Development of Aboriginal Land Council land	Does not apply to planning proposal.
1.3 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>
1.4 Site Specific Provisions	Does not apply to planning proposal.
Focus area 1: Planning Systems – Place-based	
1.5 to 1.17	These Directions do not apply to Ballina Shire.
Focus area 2: Design and Place	
Focus area 3: Biodiversity and Conservation	
3.1 Conservation Zones	<p>Consistent.</p> <p>The planning proposal involves the application of conservation zones to land which meets the criteria contained within the NSW Government's Northern Councils E Zone Review Final Recommendations Report. This provides for the protection and conservation of environmentally sensitive areas.</p>
3.2 Heritage Conservation	<p>Justifiably inconsistent.</p> <p>The proposed amendments to Schedule 5 of the BLEP 2012 and associated Heritage Map provide for the conservation of items identified as having heritage significance.</p>
3.3 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	<p>Justifiably inconsistent.</p> <p>The proposed conservation zones are consistent with the criteria as outlined in the Northern Councils E Zone Review Final Recommendations report.</p>
3.5 Recreation Vehicle Areas	<p>Consistent.</p> <p>The planning proposal does not enable land to be developed for the purpose of a recreation vehicle area.</p>
Focus area 4: Resilience and Hazards	
4.1 Flooding	<p>Consistent.</p> <p>The planning proposal does not seek to amend the Flood Planning Maps.</p>
4.2 Coastal Management	<p>Consistent.</p> <p>The application of conservation zones to certain land that contains wetland and/or littoral rainforest communities, and that meets the criteria contained within the NSW Government's Northern Councils E Zone Review Final Recommendations Report, is consistent with the relevant objectives and provisions of this Direction.</p>

Section 9.1 Ministerial Direction Checklist Planning Proposal – BLEP 2012 Conservation Zone Review (Integration of Certain Deferred Matter Land)	
Direction No.	Compliance of Planning Proposal
4.3 Planning for Bushfire Protection	<p>Consistent (subject to consultation with the NSW Rural Fire Service).</p> <p>The proposal will result in the alteration to some planning provisions affecting bush fire prone land. This results from changes to zoning and associated planning controls. The changes to zones and planning controls are intended to reflect the characteristics of the land and current and planned land use.</p> <p>Consultation will be undertaken with the NSW Rural Fire Service in accordance with this Direction, following receipt of a Gateway determination.</p>
4.4 Remediation of Contaminated Land	<p>Consistent.</p> <p>The planning proposal does not seek to intensify development or expand the range of permissible land uses on affected lands, but instead apply a more restrictive C2/C3 zoning and/or like-for-like transition of 1987 LEP to 2012 LEP zones.</p> <p>In accordance with the <i>Contaminated Land Planning Guidelines</i> for across large areas of rural land, a more detailed contamination assessment is not warranted at this stage and the suitability of the land for any future proposed uses can be appropriately assessed if/when specific proposals are made.</p>
4.5 Acid Sulfate Soils	<p>Consistent.</p> <p>Some land to which this planning proposal applies is affected by acid sulfate soils. However, the planning proposal is unlikely to lead to intensification of land uses proposed on land identified on the Acid Sulfate Soils planning maps.</p> <p>Council will consider acid sulfate soils if it receives a development application for affected land in accordance with existing Clause 7.1 of Ballina LEP 2012.</p>
4.6 Mine Subsidence and Unstable Land	<p>Consistent.</p> <p>The land proposed for rezoning is not within a mine subsidence area.</p> <p>Some land proposed for rezoning is constrained by landslip.</p> <p>The planning proposal does not seek to intensify development or expand the range of permissible land uses on affected lands, but instead apply a more restrictive C2/C3 zoning and/or like-for-like transition of 1987 LEP to 2012 LEP zones.</p> <p>The suitability of the land for any future proposed uses can be appropriately assessed if/when specific proposals are made.</p>
Focus area 5: Transport and Infrastructure	
5.1 Integrating Land Use and Transport	<p>Justifiably Inconsistent.</p> <p>This proposal will not result in any negative impacts on accessibility or transport movements.</p> <p>The Acting Executive Director of Local and Regional Planning, Planning and Assessment, Department of Planning and Environment, in his letter dated 18 March 2022 has advised that he has agreed, as delegate of the Secretary, that the inconsistency of the planning proposal with this direction is justified and no further approval is required in relation to this Direction.</p>
5.2 Reserving Land for Public Purposes	<p>Justifiably Inconsistent.</p> <p>The planning proposal does not reduce existing zonings or reservations of land for public purposes.</p> <p>The Acting Executive Director of Local and Regional Planning, Planning and Assessment, Department of Planning and Environment, in his letter dated 18 March 2022 has advised that he has agreed, as delegate of the Secretary, that the inconsistency of the planning proposal with this direction is justified and no further approval is required in relation to this Direction. He has also agreed to the change in land for public purposes on the basis that the proposal is implementing the outcomes of the Northern Councils E Zone Review and no loss of public open space will occur.</p>

Section 9.1 Ministerial Direction Checklist	
Planning Proposal – BLEP 2012 Conservation Zone Review (Integration of Certain Deferred Matter Land)	
Direction No.	Compliance of Planning Proposal
5.3 Development Near Regulated Airports and Defence Airfields	Justifiably inconsistent. The planning proposal seeks to apply C2 and RU2 zones to land in the vicinity of the Ballina/Byron Gateway Airport. In accordance with the terms of the Direction, consultation with the airport is proposed post-Gateway determination.
5.4 Shooting Ranges	Does not apply to planning proposal.
Focus area 6: Housing	
6.1 Residential Zones	Justifiably inconsistent. The application of a residential zone (R2 Low Density Residential or R3 Medium Density Residential) in this proposal will largely retain the same provisions as the adjoining residential zone. Clause 7.7 of Ballina LEP 2012 already applies essential services provisions to development in residential zones.
6.2 Caravan Parks and Manufactured Home Estates	Justifiably inconsistent. This proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.
Focus area 7: Industry and Employment	
7.1 Business and Industrial Zones	Justifiably inconsistent. The planning proposal involves the transitioning of land zoned '4 Industrial Zone' under the Ballina LEP 1987 to the 'IN1 General Industrial Zone' under the Ballina LEP 2012. The subject land is located adjacent to an existing industrial zone and will increase the availability of land for industrial purposes.
7.2 Reduction in non-hosted short term rental accommodation period	Does not apply to planning proposal.
7.3 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
Focus area 8: Resources and Energy	
8.1 Mining, Petroleum Production and Extractive Industries	Justifiably inconsistent. Land containing State and regionally significant mineral reserves was previously identified as being zoned 1(e) Rural (Extractive and Mineral Resources) in the Ballina LEP 1987. With respect to the Tuckombil Quarry site and the adjacent council owned nursery, it is proposed to apply the RU2 Rural Landscape zone under the Ballina LEP 2012. The RU2 zone permits extractive industries with consent, therefore the proposed zone is consistent with the Ministerial direction as it does not prohibit or restrict the potential for extraction of minerals or resources. With respect to Fox's Quarry and the South Ballina Sand Quarry, the C2 zone has been applied to vegetated areas that are located outside of the approved quarry footprint and therefore are not expected to restrict quarry activities. The remaining Deferred Matter land not proposed for C2 zone will be zoned RU1 (Fox's Quarry) and RU2 (South Ballina Sand Quarry) which is compatible with the existing BLEP 2012 zoning applicable to each site. In addition, extractive industries are permitted in both the RU1 and RU2 zones. Notwithstanding the above, it is proposed that consultation will occur post-Gateway determination with the Director-General of the Department of Primary Industries (DPI) as required by the Ministerial Direction.
Focus area 9: Primary Production	

Section 9.1 Ministerial Direction Checklist Planning Proposal – BLEP 2012 Conservation Zone Review (Integration of Certain Deferred Matter Land)	
Direction No.	Compliance of Planning Proposal
9.1 Rural Zones	<p>Consistent.</p> <p>The planning proposal does not seek to rezone land from a rural zone to a residential, business, industrial, village or tourist zone, nor contain provisions that will increase the permissible density of land within a rural zone.</p> <p>Whilst the planning proposal does include the rezoning of certain rural land to a conservation zone (C2 or C3), this is proposed in accordance with the NSW Government's Northern Councils E Zone Review Final Recommendations Report and associated Ministerial Direction 2.5 (see below).</p> <p>The planning proposal provides for extensive agriculture as a permissible land use in both the C2 and C3 zones enabling certain agricultural activities on the land.</p>
9.2 Rural Lands	<p>Justifiably inconsistent.</p> <p>The planning proposal is consistent with the objectives of the North Coast Regional Plan 2036 and the Ballina Shire Local Strategic Planning Statement.</p> <p>The planning proposal has been prepared having regard for the provisions of the <i>State Environmental Planning Policy (Primary Production and Rural Development) 2019</i> and the NSW Government's Northern Councils E Zone Review Final Recommendations Report.</p> <p>Furthermore, the planning proposal provides for extensive agriculture as a permissible land use in both the C2 and C3 zones enabling certain agricultural activities on the land.</p> <p>The planning proposal does not seek to vary the existing minimum lot size within a rural or environmental protection zone.</p>
9.3 Oyster Aquaculture	Does not apply to planning proposal.
9.4 Farmland of State and Regional Significance on the NSW Far North Coast	<p>Consistent.</p> <p>The proposal does not propose the rezoning of identified significant farmland for urban, residential or rural residential purposes.</p>

Appendix 3 – Council Reports and Resolutions

Ordinary Meeting 27 April 2017

9.1 Local Environmental Plan - Deferred Matters Integration

9.1 Local Environmental Plan - Deferred Matters Integration

Delivery Program Strategic Planning

Objective To seek the Council's direction on the approach to addressing deferred matters under the Ballina Local Environmental Plan 2012.

Background

The integration of deferred matters into the Ballina Local Environmental Plan 2012 (BLEP 2012) is currently being implemented by way of a staged approach which aims to complete the integration program over a two year period.

An initial staged approach was adopted by the Council at its April 2016 Ordinary Meeting. However, in response to an offer of funding support from the NSW Department of Planning and Environment, Council resolved at its October 2016 Ordinary Meeting to adjust the staging of the integration program based on a shorter timeframe [Minute No. 271016/10]. Under the current program, planning proposals need to be submitted to the Department of Planning for Gateway determination by 30 June 2017.

Stage 1 of the program commenced with the Council requesting a Gateway determination for its Stage 1 planning proposal in December 2016. A Gateway determination allowing the Stage 1 planning proposal to proceed to the stakeholder and community consultation phase was issued by the Department of Planning on 9 March 2017.

Stage 1 addresses zoning arrangements for land predominantly zoned 7(c) Environmental Protection (Water Catchment Zone) under the Ballina Local Environmental Plan 1987 (BLEP 1987) as well as other contiguous areas that are deferred from the BLEP 2012. Stage 1 also introduces land use tables into the LEP for the E2 Environmental Conservation and E3 Environmental Management zones and includes a special provision requiring consideration of natural areas and habitat in relation to certain development applications.

Stage 2 of the program is centred on the integration of land currently zoned 7(d) Environmental Protection (Scenic/Escarpment) and 7(d1) Environmental Protection (Newrybar Scenic/Escarpment) under the BLEP 1987 as well as other contiguous areas that are deferred from the BLEP 2012. At its Ordinary Meeting held on 23 March 2017 Council resolved to delay consideration of the Stage 2 planning proposal until after a Councillor briefing on the matter.

In response to the resolution, a Councillor briefing was held on 6 April 2017. Councillors present expressed an interest in reconsidering the current approach to the deferred matters integration, including review of ways to enable retention of existing environmental protection zones as contained in the Ballina Local Environmental Plan 1987.

The purpose of this report is to re-present the planning proposal for Stage 2 of the deferred matters integration and also provide an overview of the key options available to address the overall integration of deferred matters into the Ballina LEP 2012.

9.1 Local Environmental Plan - Deferred Matters Integration

Key Issues

- Comprehensive local environmental plan for Ballina Shire
- Environmental protection zoning under the local environmental plan
- Allocation of staff and financial resources

Information

Based on the outcomes of the Councillor briefing held on 6 April 2017, it is apparent that a number of Councillors are not entirely comfortable with the current approach to the integration of deferred matters into the BLEP 2012.

Specifically, a number of the concerns expressed relate to the following matters:

- The Department of Planning and Environment's process and approach to the E zone review and the application of environmental protection zones.
- The financial and administrative costs to Council (the community) associated with the implementation of the E zone review.
- The outcomes for the community including the lack of recognition of environmental attributes that are not predominately ecological (e.g. coastal land, water catchments, urban buffer).

Environmental protection zone matters are an emotional and often divisive consideration in planning. This is why the Council applied extensive resources over a period of five years to study, understand and contemplate environmental attributes and associated zoning in the shire before proceeding to endorse a new draft local environmental plan for implementation in December 2011.

For Ballina Shire the NSW Government's review recommendations result in the loss of opportunity to apply environmental protection zones to areas on the basis of scenic and amenity value, coastal value, water catchment characteristics and urban buffer characteristics. This is a substantial shift for Ballina Shire and one that represents a significant change in long standing Council planning policy. In considering this, it is important to recognise that environmental protection zones have been part of Ballina Shire since 1987 and the majority of the areas so zoned in 1987 remain zoned environmental protection under that plan at present.

During the Councillor briefing a number of Councillors expressed an interest in maintaining the status quo in relation to the existing environmental protection zones under the Ballina LEP 1987. This reflects a view that the BLEP 1987 has been in place for a long time and has been very successful with respect to the management of the shire's environmental values, particularly given that adverse impact from development within existing environmental protection zone areas has been limited.

The State Government's decision to remove environmental protection zones from Council's LEP prior to implementation has resulted in additional financial and administrative costs to Council.

9.1 Local Environmental Plan - Deferred Matters Integration

Although the Department of Planning has offered grant funding in the amount of \$40,000 for the overall integration project, the total cost to Council is estimated at \$150,000 to \$200,000 (in staff time and cash, with cash estimated to be in the order of \$40,000 to \$60,000).

In considering the approach to the deferred matters, a balancing of planning, community, financial, intrinsic, intragenerational and intergenerational considerations is necessary. It is also suggested that the approach taken needs to be one made at a principle level as environmental protection zones (as with many planning provisions) involve the potential for some to be advantaged whilst others may feel disadvantaged. That is, whatever the approach to the deferred matters, it is unlikely that Council will be able to appease all interests.

On one hand, consolidation of the 1987 and 2012 LEPs would reduce complications associated with having to consider multiple zones under two LEPs. On the other hand, the limited scope of the Department's E zone criteria and reduced palate of zones under the Standard Instrument LEP has the potential to undermine the ability of the planning scheme to adequately recognise and protect the environmental values of the shire. This is an important consideration as on recent occasions where Council has sought community feedback, the environment and associated lifestyle opportunities are consistently identified as key attributes of the shire (e.g. through the recent Ballina Major Regional Centre Strategy).

Several options to address the deferred matters integration are set out in the options section below to assist the Council in determining the preferred course of action.

Sustainability Considerations

- **Environment**
Environmental protection zoning is a long standing element of the land use planning system and is used as a tool to recognise environmental values and apply an associated planning framework to land. The approach to application of environmental protection zones involves balancing private and broader public interests and short and long term considerations associated with the use, value and protection of environmental attributes.
- **Social**
Environmental protection zones can be a divisive issue having regard for differing public and private interests and the interests of individuals and the broader community. However, they also provide certainty and clarity regarding community expectations.
- **Economic**
Environmental protection zoning influences the way in which land is permitted to be used and hence can influence economic outcomes.

Legal / Resource / Financial Implications

The primary legal consideration is compliance in terms of the *Environmental Planning and Assessment Act 1979*, particularly including adherence to

9.1 Local Environmental Plan - Deferred Matters Integration

relevant Ministerial Directives made under section 117 of the Act, and the associated Regulation.

From a legal perspective, the Ministerial Direction regarding the E zone review does not direct Council to implement the review, nor does it specify a specific timeline for the deferred matters to be addressed. Rather, it says that if Council seeks to apply E2 Environmental Conservation or E3 Environmental Management zones in its Standard Instrument LEP, Council must do this in a manner consistent with the E zone review recommendations report. The June 2017 timeframe that has been referenced in relation to the deferred matters is a requirement of the Department of Planning's grant funding. It is not a statutory requirement.

Resource and finance wise, the State Government's E zone review process has impacted Council in both a financial and administrative sense. The work required to be undertaken in relation to the deferred matter integration program is presently being funded through grant funds from the Department of Planning and Environment (in the amount of \$40,000 for the overall integration project) and Council funds. If Council adopts an approach that does not involve addressing all of the deferred areas under the Ballina LEP 2012 by 30 June 2017, then Council will not be eligible for the \$40,000 in grant funds. This will, however, be offset by a reduced work volume associated with Council's preferred approach.

Although considered manageable at present, the completion of the integration program is impacting on Council's endorsed work program and is less than optimal in that such work would normally be completed over a longer timeframe.

Council has engaged external consultants to provide ecological assessment and advice in relation to the identification of environmental protection zones in the shire. Regardless of the approach taken to the address of the deferred matters, it is recommended that these engagements be completed as they are well progressed and the information to be obtained will have other benefits for Council.

Consultation

Community engagement in response to the deferred matters program is scheduled to occur post Gateway determination for each part of the current staged implementation program. Specifically, the program involves providing an opportunity for affected landholders to engage with Council prior to public exhibition of proposed zones.

Options

The options relate to the broader progress of the deferred matters program in response to the outcomes of the Councillor briefing held on 6 April 2017.

In considering the options, it is noteworthy that Tweed, Lismore and Byron councils have not resolved to progress the deferred matters integration through application of the Department of Planning's criteria in line with the grant funding timeframe set by the Department of Planning (being to have a planning proposal for all deferred areas submitted for Gateway determination by 30 June 2017).

9.1 Local Environmental Plan - Deferred Matters Integration

Option 1: Continue with the adopted staged program

As noted previously, Council resolved at its October 2016 Ordinary Meeting to progress with an adjusted staging program which aims to accelerate completion of the deferred matters integration program. Stage 1 of the program has received a Gateway determination from the Department of Planning and Environment to proceed to the stakeholder and community consultation phase. The planning proposal for Stage 2 was initially presented to Council at its March 2017 Ordinary Meeting. Council resolved to delay consideration of the Stage 2 planning proposal until after a Councillor briefing on the matter.

The advantage of this option is the consolidation of planning controls resulting in only one comprehensive LEP for the shire, thereby simplifying the planning system. It has the disadvantage that environmental protection zones will only be centred on ecological and cultural heritage attributes (and only where evidence of those values has been verified). This means the community foregoes the operation of urban buffer, scenic, water catchment and coastal zones in the local planning framework.

If the Council resolves to continue with the adopted staged program, it is recommended that Council progress the planning proposal for Stage 2 by submitting the planning proposal to the Department of Planning and Environment for Gateway determination. The planning proposal for Stage 2 is provided at Attachment One. Further planning proposals for three more stages would then be presented in the coming months to June 2017.

In line with Council's October 2016 resolution, continuation of the staged implementation program is the recommended approach.

Option 2: Cease further progression of the deferred matters program

Council could decide to cease with the implementation of the deferred matters program and retain the operation of Ballina LEP 1987 in relation to the deferred areas. This option has the advantage of retaining the status quo in terms of identifying a variety of environmental protection values in Ballina Shire and incurs no direct financial costs. It has the disadvantage of requiring the ongoing administration of two plans (including a significant number of zones under the 1987 LEP) and there is the risk that the Minister may appoint another planning authority to complete the integration of deferred matters.

If Council resolves to proceed with this option, a resolution is required to withdraw the Stage 1 planning proposal from the Department of Planning and Environment.

If this approach is preferred, it is recommended that the Council resolves as follows:

1. That Council takes no further action with respect to the integration of the deferred matters into the Ballina Local Environmental Plan 2012.
2. That Council withdraws the Stage 1 Deferred Matters Integration Program planning proposal.

9.1 Local Environmental Plan - Deferred Matters Integration

Option 3: Pursue a hybrid approach to address the deferred matters

As an alternative to the adopted staged approach, the Council may elect to progress the integration of the deferred areas in the BLEP 2012 by way of a hybrid approach. This would involve the retention of the existing environmental protection zones under the BLEP 1987 (that is retain the status quo for those already subject to environmental protection zones) and the integration of the remaining deferred areas into BLEP 2012.

The integration of the remaining deferred areas could occur either through the application of zones based on the outcomes of the State Government's E zone review (i.e. include E zones where the criteria is met) or by attempting to apply zones other than environmental protection zones. The second option here may prove difficult in that where environmental attributes are known to occur s117 Ministerial Direction 2.1 Environmental Protection Zones (separate to the E zone review direction) requires that environmentally sensitive areas are zoned for environmental protection purposes (or provisions to facilitate protection and conservation are otherwise put in place).

In any case, Council can determine its preferred approach to these deferred areas through a more detailed further report.

The primary advantage of this option is the retention of the status quo for most properties affected by environmental protection considerations and in terms of identifying a variety of environmental protection values in Ballina Shire. It also results in a significant reduction in the number of properties subject to a change in zoning arrangements.

It has the disadvantage of requiring the ongoing administration of two separate LEPs, albeit retaining fewer zones under the BLEP 1987 (compared to option 2), and there is the risk that the Minister may appoint another planning authority to complete the integration of deferred matters.

This approach also has the advantage of requiring those who are seeking to have their properties removed from existing environmental protection zones to lodge a planning proposals and justify the proposed outcome through suitable supporting information and studies (as is the case with others who seek a zoning change and particularly zoning changes that increase the range of permissible land uses). This reduces the financial impact on Council as the costs for such requests are met by the landholder in accordance with Council's fees and charges.

If the Council resolves to proceed with this option, staff would proceed to prepare a planning proposal to address the deferred areas that are not subject to existing environmental protection zones and report this to Council for further consideration.

It is noted that there are other matters such as permissibility of tourist uses in environmental protection zones, environmental protection zone arrangements in the Cumbalum Urban Release Areas and the overall range of permissible land uses in rural zones that also require further consideration should this option be pursued (having regard for the circumstances associated with the approach adopted). These matters would be addressed further in future reporting to Council associated with a planning proposal designed to progress this approach.

9.1 Local Environmental Plan - Deferred Matters Integration

The recommended resolution to progress this option is as follows:

1. *That Council ceases implementation of the deferred matters program via the staged implementation program previously adopted.*
2. *That Council withdraws the Stage 1 Deferred Matters Integration Program planning proposal.*
3. *That Council addresses the deferred matters under the Ballina Local Environmental Plan 2012 through the following:*
 - (a) *Retention of all deferred areas the subject of an environmental protection zone under the Ballina Local Environmental Plan 1987 as deferred areas (having the effect that the Ballina LEP 1987 will continue to apply).*
 - (b) *Preparation of a planning proposal to integrate all deferred areas that are not subject to existing environmental protection zones under the Ballina Local Environmental Plan 1987 into the Ballina Local Environmental Plan 2012.*
 - (c) *Application of the criteria established under the Northern Councils E Zone Review to the areas to be integrated into the Ballina Local Environmental Plan 2012 under point (b).*

Overall, the Council is in a position now where a decision is required as to the overarching direction preferred to address the deferred matters. Based on broad principles, the options can be summarised as follows:

- If the Council wishes to comply with the outcomes of the E zone review and utilise grant funding, option 1 is the most suitable approach.
- If the Council more bluntly does not wish to apply further resources to this matter, option 2 is the most compatible approach.
- If the Council wishes to maintain the existing approach in relation to environmental protection zoning in the shire (being to recognise a broad range of characteristics), then option 3 is the approach to achieve this outcome.

The recommendation is consistent with earlier decisions of Council. It is now a matter for Council to determine whether it wishes to continue with that approach.

RECOMMENDATIONS

1. That Council endorses, for Gateway determination, the application of land use zones and associated planning provisions in relation to the land identified within Stage 2 of the deferred matter integration program as contained in Attachment 1.
2. That Council submits the planning proposal contained in Attachment 1 to the NSW Department of Planning and Environment for review and Gateway Determination.
3. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken.
4. That Council receive a further report on Stage 2 of the deferred matters integration program following the completion of the public exhibition of the

9.1 Local Environmental Plan - Deferred Matters Integration

planning proposal.

Attachment(s)

1. Planning Proposal Stage 2 Deferred Matters (Under separate cover)

9. Strategic and Community Facilities Group Reports

9.1	<p><u>Local Environmental Plan - Deferred Matters Integration</u></p> <p>270417/12 RESOLVED</p> <p>(Cr Keith Williams/Cr Nathan Willis)</p> <p>That Council addresses the deferred matters under the Ballina Local Environmental Plan 2012 through the following:</p> <ul style="list-style-type: none"> (a) Retention of all deferred areas the subject of an environmental protection zone under the Ballina Local Environmental Plan 1987 as deferred areas (having the effect that the Ballina LEP 1987 will continue to apply). (b) Preparation of a planning proposal to integrate all deferred areas that are not subject to existing environmental protection zones under the Ballina Local Environmental Plan 1987 into the Ballina Local Environmental Plan 2012. (c) Application of the criteria established under the Northern Councils E Zone Review to the areas to be integrated into the Ballina Local Environmental Plan 2012 under point (b). <p>FOR VOTE - Cr David Wright, Cr Phillip Meehan, Cr Sharon Parry, Cr Jeff Johnson, Cr Nathan Willis, Cr Keith Williams, Cr Sharon Cadwallader and Cr Ben Smith</p> <p>AGAINST VOTE - Cr Eoin Johnston and Cr Stephen McCarthy</p>
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Ordinary Meeting 28 October 2021**8.3 Ballina Local Environmental Plan 2012 - Deferred Matters Integration**

Section	Strategic Planning
Objective	To provide an update to Council on the program to integrate deferred matters into the Ballina Local Environmental Plan 2012 and to seek direction with respect to the submission of a planning proposal addressing certain deferred matter areas for Gateway determination and subsequent public exhibition.

Background

The Ballina Local Environmental Plan 2012 (BLEP 2012) currently includes areas known as deferred matters (DM) due to the State Government's decision in 2012 to not allow the Ballina LEP 2012 (and other LEPs for surrounding LGAs) to include environmental protection zones. These areas remain subject to the provisions of the BLEP 1987.

Council staff have prepared a planning proposal which seeks to rezone certain land previously deferred from inclusion into the BLEP 2012 by applying appropriate zones available under the Standard Instrument Local Environmental Plan (SILEP).

The extent of the proposal and the land to which it applies is set out in the Information Section of this report.

Land use zones, including environmental zones, are proposed having regard for legislative requirements, the NSW Department of Planning, Infrastructure and Environment's Northern Councils E Zone Review Final Recommendations Report, the associated section 9.1 Ministerial Direction and the Council's resolution of 27 April 2017.

The State Government's decision to defer areas from the LEP also affected other provisions and maps within the instrument, not directly related to environmental protection zones. These matters have been addressed within the planning proposal.

The purpose of this report is to provide the Council with an overview of the history of deferred matters within the shire and the current approach to the integration of deferred matters, and to seek direction with respect to the submission of a planning proposal for Gateway determination and conduct of a subsequent public exhibition process.

A copy of the planning proposal is provided in Attachment 1.

Key Issues

- Comprehensive local environmental plan for Ballina Shire
- Environmental protection zoning under the local environmental plan
- Inclusion of various planning provisions not related to environmental protection zoning under the Ballina LEP 2012

Information

History of environmental protection zoning in the Draft Ballina LEP 2012

Ballina Shire Council engaged in the preparation of a comprehensive local environmental plan (LEP) under the State Government's Standard Instrument LEP (SILEP) program between 2006 and 2013. This planning process was underpinned by a comprehensive and sustained community engagement program and considerable and careful deliberation by the elected Council and staff over a prolonged period.

Council resolved to endorse a new draft LEP for the shire in December 2011 and subsequently sought finalisation and implementation of the draft plan through the then NSW Department of Planning and Environment.

In September 2012, prior to Council's draft plan being finalised by the Department (it had received endorsement by the Department's regional office in Grafton), the then Minister for Planning, the Hon. Brad Hazzard made a decision to initiate a review of environmental protection zones in five local government areas on the Far North Coast. This included Ballina Shire.

The consequence of the Minister's decision was that Council's comprehensive LEP was only partly made, with areas identified as having environmental values excluded from the plan.

These 'deferred matter' areas remain subject to the provisions of the Ballina LEP 1987 (being the instrument the new plan was to replace).

The Department released the interim report on the review of the E zones, prepared by consultants Parsons Brinkerhoff, for exhibition and comment in May 2014. Council responded to this with the identification of an extensive suite of shortcomings, errors and omissions within the report. This report has not been updated, nor the issues identified by Council addressed for the public record.

In October 2015 the Department published its final recommendations report for the Northern Councils E Zone Review (NCEZR). The review recommendations do not align with Council's endorsed draft LEP from 2011 or with more than 30 years of environmental protection zoning history and identified environmental attributes and values in the Ballina Shire local government area.

Environmental protection zone matters are an emotional and often divisive consideration in planning. This is why the Council applied extensive resources over a period of five years to study, understand and contemplate environmental attributes and associated zoning in the shire before proceeding to endorse a new draft local environmental plan for implementation in December 2011.

For Ballina Shire, the NSW Government's review recommendations result in the loss of opportunity to apply environmental protection zones to areas on the basis of scenic and amenity value, coastal value, water catchment characteristics and urban buffer characteristics.

This is a substantial shift for Ballina Shire and one that represents a significant change in long standing Council planning policy.

In considering this, it is important to recognise that environmental protection zones have been part of Ballina Shire since 1987 and the majority of the areas so zoned in 1987 remain zoned environmental protection under that plan at present.

Previously adopted staged integration programs

An initial staged approach to integrate deferred matter areas was adopted by the Council at its April 2016 Ordinary meeting in line with the requirements of the Department's final recommendations report.

In response to an offer for funding support from the Department, Council resolved at the October 2016 Ordinary meeting to adjust the staging of the integration program based on a shorter timeframe.

Stage 1 of the integration program commenced with the then Department of Planning issuing a Gateway determination on 9 March 2017 in respect to land predominantly zoned 7(c) Environmental Protection (Water Catchment Zone) under the Ballina Local Environmental Plan 1987 (BLEP 1987) as well as other contiguous areas that were deferred from the BLEP 2012.

Stage 2 of the program involved land zoned 7(d) Environmental Protection (Scenic/Escarpment) and 7(d1) Environmental Protection (Newrybar Scenic/Escarpment) under the BLEP 1987 and other contiguous areas deferred from the BLEP 2012. At its Ordinary meeting held in March 2017 the Council resolved to delay consideration of the Stage 2 planning proposal until after a Councillor briefing on the matter.

During the Councillor briefing held on 6 April 2017, maintaining the status quo in relation to the existing environmental protection zones under the BLEP 1987 was one of the approaches discussed.

This reflects a view that the BLEP 1987 has been in place for a long time and has been very successful with respect to the management of the shire's environmental values, particularly given that adverse impact from development within existing environmental protection zone areas has been limited.

At the April 2017 Ordinary meeting, Council reconsidered the previously adopted approach to the deferred matters integration including a review of ways to enable retention of existing environmental protection zones as contained in the BLEP 1987.

Council subsequently resolved as follows:

That Council addresses the deferred matters under the Ballina Local Environmental Plan 2012 through the following:

- a) Retention of all deferred areas the subject of an environmental protection zone under the Ballina Local Environmental Plan 1987 as deferred areas (having the effect that the Ballina LEP 1987 will continue to apply).*
- b) Preparation of a planning proposal to integrate all deferred areas that are not subject to existing environmental protection zones under the Ballina Local Environmental Plan 1987 into the Ballina Local Environmental Plan 2012.*

- c) *Application of the criteria established under the Northern Councils E Zone Review to the areas to be integrated into the Ballina Local Environmental Plan 2012 under point (b).*

Consequently, the Council resolved in June 2017 to formally request the discontinuance of the Stage 1 planning proposal.

A response was received from the Department in July 2017 that the Department is considering possible options to facilitate the implementation of the E Zone Review and will advise Council of its decision on the discontinuation request once the preferred option for implementation has been determined.

To date, Council has not received any further correspondence regarding the discontinuation.

Current approach to the integration of certain deferred matters

In April 2021, Council accepted an offer of funding from the Department of Planning, Infrastructure and Environment (DPIE) to support the integration of certain land previously deferred from inclusion into the BLEP 2012, excluding deferred matter areas identified as an existing environmental protection zone (ie. a "7" zone) under the BLEP 1987.

This is in line with the Council resolution of April 2017.

The terms of the funding agreement required that Council expend the funds by 30 July 2021, with an expectation that a planning proposal will be lodged shortly after.

To facilitate the integration of deferred matters and the preparation of a planning proposal, Council engaged consultants Ascent Ecology Pty Ltd to identify and verify proposed E2 Environmental Conservation and E3 Environmental Management zones under the BLEP 2012 in line with the recommendations and criteria outlined in the DPIE's NCEZR report.

Ascent Ecology worked with Council to develop and refine the methodology used for transitioning DM land into the BLEP 2012. The report prepared by Ascent Ecology, which focusses on the identification and verification of E zone criteria as outlined in the NCEZR report, is supplemented by other information that is considered to be essential for the project. As a result, a final combined methodology report has been prepared and is provided at Attachment 2.

Despite the short timeframe provided by the Department, the overarching approach to the project was to ensure that any proposed zoning is evidence-based and accompanied by appropriate data and a well-documented process.

The DM areas that are proposed to be transitioned from the BLEP 1987 into the BLEP 2012 are shown in Table 1.

The total area of DM land to be transitioned equates to approximately 3,515 hectares. Of this, approximately 80% of DM areas to be transitioned are currently zoned 1(b) Rural (Secondary Agricultural Land).

Environmental protection zones listed in Table 2 will remain subject to the provisions of the BLEP 1987 as per the Council resolution of April 2017.

Table 1: BLEP 1987 DM Zones to be transitioned into BLEP 2012

Zone	Description
1(a1)	Rural (Plateau Lands Agriculture)
1(a2)	Rural (Coastal Lands Agriculture)
1(b)	Rural (Secondary Agricultural Land)
1(d)	Rural (Urban Investigation)
1(e)	Rural (Extractive and mineral Resources)
2(a)	Living Area
2(b)	Village Area
4	Industrial Zone
6(a)	Open Space Zone
8(a)	National Parks and Nature Reserves
9(a)	Roads (Main Roads Proposed)
9(b)	Roads (Local Roads Proposed)
UZ	Unzoned Land

Table 2: BLEP 1987 environmental protection zones not to be transitioned into BLEP 2012

Zone	Description
7(a)	Environmental Protection (Wetlands)
7(c)	Environmental Protection (Water Catchment)
7(d)	Environmental Protection (Scenic/Escarpment)
7(d1)	Environmental Protection (Newrybar Scenic/Escarpment)
7(f)	Environmental Protection (Coastal Lands)
7(i)	Environmental Protection (Urban Buffer)
7(l)	Environmental Protection (Habitat)

The methodology report recommends the application of E2 and E3 zoning to deferred areas as presented in the accompanying maps (Attachment 3). Based on the work completed to date, approximately 73% of DM land the subject of the current planning proposal is identified for an E zone.

Attachment 4 contains a copy of the current gazetted 2012 LEP map sheets showing the extent of existing zoning that applies to land within the shire.

Subject to obtaining a Gateway determination that allows the planning proposal to proceed, the mapping will be finalised taking into account any additional information received (including any refinements to ensure consistency) prior to the public exhibition of the planning proposal.

It is also necessary to make a series of consequential amendments to various clauses within the BLEP 2012 to reference E zones. There is also a need to

adjust various maps under the BLEP 2012 to reflect the inclusion of the DM land (e.g. acid sulfate soils, strategic urban growth areas, minimum lot size for subdivision).

These maps will be prepared based on consistency with the existing standards that apply in the BLEP 2012 and the map data that underpinned the BLEP 2012's preparation (where it remains applicable).

Deferred areas unsuitable for an E2/E3 zoning are to be transitioned into the BLEP 2012 by applying the most appropriate equivalent zone as outlined in section 6.4 of the methodology report and reproduced in Table 3 below.

Table 3: Transition of BLEP 1987 to BLEP 2012 zones

BLEP 1987 Zone (DM Area)	Proposed BLEP 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
9(a) Roads (Main Roads Proposed) 9(b) Roads (Local Roads Proposed) UZ Unzoned Land	Based on adjacent zoning

To ensure consistency with the approach previously taken by Council in the transitioning of land to a rural zone (RU1 or RU2) at the time the BLEP 2012 was adopted, the following additional criteria was applied to areas unsuitable for E2/E3 zoning for land currently zoned 1(a1), 1(a2), 1(b), 1(d) or 1(e). If the land met the following two criteria, an RU1 zone was proposed:

- Land is identified as State or Regionally Significant Farmland under the Northern Rivers Farmland Protection Project; and
- Land is identified as an agricultural class of 1, 2, 3 or 4 by the NSW Department of Primary Industries agricultural land class mapping.

For land that is zoned 1(b) that does not meet both of these criteria, the RU2 zone was applied.

One proposed exception to this rule is the Tuckombil Quarry site which, despite the presence of some attributes that meet the E2 criteria, is mapped as State Significant Farmland and meets the criteria for the RU1 zone based on the above methodology.

At the July 2021 Ordinary meeting, Council considered a report on the potential use of the quarry site for the purpose of a film studio and other community uses.

In order to maintain flexibility in the range of land use permissibility for the site, until further planning assessment for the land is completed, it is proposed to

apply the RU2 zone to the parts of the land that do not qualify for an E zone at this time.

Land Use Tables

New land use tables for E2 and E3 zones are proposed as outlined in Section 3 of the planning proposal, having regard for the DPIE's NCEZR Final Recommendations Report. Based on the outcomes of the E zone review, limited land uses are proposed within the E zones.

Amendment to Ballina LEP 1987

It is also proposed to amend the Ballina LEP 1987 with respect to the temporary use of land clause by reducing the maximum number of days that land may be used for a temporary purpose.

Clause 41(2) of the BLEP 1987 allows for development consent to be considered for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.

As per the Council resolution of April 2017, only land that is zoned for environmental protection purposes will remain subject to the provisions of the Ballina LEP 1987.

It is appropriate that any temporary development permitted within these zones be limited to ensure consistency with the provisions of the Ballina LEP 2012, which allow temporary use for a maximum period of 14 days.

This change is consistent with a recent amendment to the Ballina LEP 2012 which applied a 14 day maximum period for temporary uses subject to the 2012 plan.

Delivery Program Strategy / Operational Plan Activity

The integration of deferred matters is identified in Council's adopted Delivery Program and Operational Plan at action *HE3.1f – Review environmental protection zone framework*.

Community Consultation Policy

Community consultation in relation to the attached planning proposal is scheduled to occur post-Gateway determination and will involve targeted engagement with affected landholders prior to public exhibition of the proposed zones.

In accordance with Council's Community Consultation Policy, the proposal is considered to be of a high level impact on a shire-wide scale.

Consultation will also be undertaken in accordance with the requirements of the Gateway determination.

Financial / Risk Considerations

The State Government's E zone review process has impacted Council in both a financial and administrative sense.

The work required to be undertaken in relation to the deferred matter integration program is presently being funded through grant funds from the Department of Planning, Industry and Environment (in the amount of \$40,000 for the overall integration project) and existing Council resources.

Options

The following options are presented for Council's consideration.

Option 1 – Endorse the submission of the planning proposal to the Department of Planning, Industry and Environment for Gateway determination

This is the preferred option.

The proposed integration of deferred matters into the BLEP 2012 accords with the Council resolution of April 2017 to proceed to integrate all deferred areas under the BLEP 1987 excluding existing environmental protection zones.

The planning proposal will facilitate the introduction of E2 and E3 zoning into the BLEP 2012 land use table, thereby enabling application of such zones to areas within the shire that meet the criteria.

It is recommended that Council proceeds to lodge the planning proposal (Attachment 1) with the Department of Planning, Industry and Environment (DPIE) for Gateway determination and then proceed to public exhibition after initial engagement has occurred with those landholders with land the subject of proposed environmental protection and other zones.

Council would receive further reporting on the planning proposal following public exhibition.

Under this option, it is proposed to proceed with public exhibition following final refinements to the mapping based on information gathered post Gateway determination and initial engagement with landholders.

Council also needs to determine whether to exercise its delegated plan making functions to finalise this LEP amendment.

It is recommended that Council does not seek to exercise its plan making delegation in this instance, should the LEP amendment proceed to completion.

This is because the planning proposal includes Council owned land.

Option 2 – Cease further progression of the deferred matters program

Council could decide to cease with the implementation of the deferred matters program and retain the operation of Ballina LEP 1987 in relation to all deferred areas.

This option has the disadvantage of not providing Council with a mechanism for protection of areas identified as suitable for environmental conservation or environmental management under the Standard Instrument LEP.

There is also the risk that the Minister may appoint another planning authority to complete the integration of deferred matters, which could result in Council losing the ability to retain the existing environmental protection zones under the 1987 plan and to integrate remaining deferred areas.

Council may also be required to return the grant funds provided to date if this option is chosen.

This option is not recommended.

Option 3 – Defer consideration of the planning proposal

The deferral of the proposal is not recommended on the basis that it is considered that a suitable level of technical information has now been compiled to enable a Gateway determination.

Council received a briefing on the current approach to deferred matters in September 2021.

If Council wishes to receive another briefing on the matter, it is recommended that this be scheduled to occur post-Gateway determination and after initial engagement has occurred with landholders of land subject to proposed environmental protection zones.

RECOMMENDATIONS

1. That Council endorses, for Gateway determination, the integration of certain land identified as deferred matters in Ballina Local Environmental Plan (BLEP) 1987 into the Ballina Local Environmental Plan 2012, including the introduction of land use tables for the E2 Environmental Conservation and E3 Environmental Management into BLEP 2012 and various other consequential amendments, in accordance with the planning proposal (BSCPP 21/004) contained in Attachment 1.
2. That Council endorses for Gateway determination, amendment to Clause 41 of the Ballina Local Environmental Plan 1987 to limit the temporary use of land to a maximum of 14 days per annum.
3. That Council submits the planning proposal contained in Attachment 1 to the NSW Department of Planning, Industry and Environment for review and Gateway determination.
4. That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment the procedural steps associated with progression of the planning proposal, including public exhibition, be undertaken.
5. That the Department of Planning, Industry and Environment be advised that Council does not seek to exercise its delegated plan making functions for this LEP amendment.
6. That Council receive a further report on the deferred matter integration program following the completion of the public exhibition of the planning proposal.

Attachment(s)

1. Planning Proposal (Under separate cover)
2. Methodology Report (Under separate cover)
3. Draft Zone Mapping
4. Gazetted Land Zoning Maps

8.3	<p><u>Ballina Local Environmental Plan 2012 - Deferred Matters Integration</u></p> <p>A Motion was moved by Cr Sharon Cadwallader and seconded by Cr Jeff Johnson</p> <p>That Council defer consideration of the proposal and write to each landholder and consult prior to commencing the planning proposal.</p> <p>The Motion was LOST.</p> <p>FOR VOTE - Cr Jeff Johnson and Cr Sharon Cadwallader AGAINST VOTE - Cr David Wright, Cr Phillip Meehan, Cr Sharon Parry, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Keith Williams and Cr Ben Smith ABSENT, DID NOT VOTE - Cr Nathan Willis</p> <hr/> <p>281021/5 RESOLVED</p> <p>(Cr Ben Smith/Cr Phillip Meehan)</p> <ol style="list-style-type: none"> 1. That Council endorses, for Gateway determination, the integration of certain land identified as deferred matters in Ballina Local Environmental Plan (BLEP) 1987 into the Ballina Local Environmental Plan 2012, including the introduction of land use tables for the E2 Environmental Conservation and E3 Environmental Management into BLEP 2012 and various other consequential amendments, in accordance with the planning proposal (BSCPP 21/004) contained in Attachment 1. 2. That Council endorses for Gateway determination, amendment to Clause 41 of the Ballina Local Environmental Plan 1987 to limit the temporary use of land to a maximum of 14 days per annum. 3. That Council submits the planning proposal contained in Attachment 1 to the NSW Department of Planning, Industry and Environment for review and Gateway determination. 4. That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment the procedural steps associated with progression of the planning proposal, including public exhibition, be undertaken. 5. That the Department of Planning, Industry and Environment be advised that Council does not seek to exercise its delegated plan making functions for this LEP amendment. 6. That Council receive a further report on the deferred matter integration program following the completion of the public exhibition of the planning proposal. <p>FOR VOTE - All Councillors voted unanimously. ABSENT, DID NOT VOTE - Cr Nathan Willis</p>
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Appendix 4 – Gateway Determination

Original Gateway Determination issued 18 March 2022:



Department of Planning and Environment

Your ref: BSCPP 21/004 – DM Integration (CM2388)

Our ref: IRF22/419

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

Via email: council@ballina.nsw.gov.au
leah.toole@ballina.nsw.gov.au

Dear Mr Hickey

Planning proposal PP-2022-456 to amend Ballina Local Environmental Plan

I am writing in response to the planning proposal you have forwarded to the Minister under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) to integrate certain deferred matter land into Ballina Local Environmental Plan 2012 and amend Ballina LEP 1987.

As delegate of the Minister for Planning and Homes, I have determined that the planning proposal should proceed subject to the conditions in the enclosed gateway determination.

I have also agreed, as delegate of the Secretary, the inconsistency of the planning proposal with applicable directions of the Minister under section 9.1 of the EP&A Act 5.1 Integrating Land Use and Transport and 5.2 Reserving Land for Public Purposes is justified in accordance with the terms of the Direction. In relation to Direction 6.2 Reserving Land for Public Purposes, I have agreed to the change in land for public purposes on the basis that the proposal is implementing the outcomes of the Northern Councils E Zone Review and no loss of public open space will occur.

Council may still need to obtain the agreement of the Secretary to comply with the requirements of relevant applicable directions of the Minister under section 9.1 of the EP&A Act 1.1 Implementation of Regional Plans, 3.2 Heritage Conservation, 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, 9.2 Rural Land.

Consistent with the former Secretary's letter to Ballina Council on 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 a conservation 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. Therefore, I have determined not to authorise Council to be the local plan-making authority.

The amending local environmental plan (LEP) is to be finalised 12 months from the date of Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the LEP should be made eight weeks in advance of the date the LEP is projected to be made.

Should you have any enquiries about this matter, I have arranged for Ms Ella Wilkinson to assist you. Ms Wilkinson can be contacted on 9995 5665.

Yours sincerely



18/3/2022

Jeremy Gray
Acting Executive Director
Local and Regional Planning
Planning and Assessment

Encl: Gateway determination



Department of Planning and Environment

Gateway Determination

Planning proposal (Department Ref: PP-2022-456): Integration of certain deferred matter land into Ballina LEP 2012 and amend Ballina LEP 1987

I, the Executive Director, Local and Regional Planning at the Department of Planning and Environment, as delegate of the Minister for Planning and Homes, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Ballina Local Environmental Plan 2012 and Ballina Local Environmental Plan 1987 to integrate certain deferred matter land should proceed subject to the following conditions:

1. Prior to agency and community consultation, the planning proposal is to be updated to:
 - (a) Amend the Explanation of Provisions of the planning proposal to identify all the changes put forward by the planning proposal and to include a note that the proposed land use zones applied are subject to change as further work is undertaken in accordance with the Northern Councils E Zone Review Final Recommendations Report;
 - (b) Address consistency of the proposal against the Ballina Local Strategic Planning Statement;
 - (c) 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;
 - (d) Include a table that:
 - (i) lists each property affected by the proposal;
 - (ii) outlines existing zones;
 - (iii) outlines proposed zones;
 - (iv) outlines primary use of the land (as determined by Council, prior to consultation with landholders);
 - (e) Include information that confirms:
 - (i) the number of affected landowners;
 - (ii) a breakdown of the number of lots proposed to have an environmental protection zone;
 - (iii) the number of lots proposed to have an alternate zone applied;
 - (iv) the amount of land (in hectares) proposed for rezoning as part of this proposal;
 - (f) Include all existing and proposed maps that will be amended as a result of this proposal (Land Application, Land Zoning, Height of Building, Floor Space Ratio, Lot Size, Acid Sulfate Soils, Heritage, Building Height Allowance and Strategic Urban Growth Area);

- (g) 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;
 - (h) Remove reference to amending the Flood Planning maps; and
 - (i) Update references and inconsistencies with all relevant section 9.1 Directions.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
- (a) the planning proposal is categorised as complex as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 28 days;
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021);
 - (c) Consistent with the recommendations of the E Zone Review, Council must ensure that any landowner whose land is proposed to have a conservation zone applied, is notified in writing of the planning proposal and consultation arrangements;
 - (d) 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 a conservation 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.

Exhibition must commence within six (6) months following the date of the gateway determination.

3. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act:
- 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.

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 40 days to comment on the proposal.

PP-2022-456 (IRF22/419)

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The final planning proposal is to detail how the E Zone application process for each property has been satisfied in accordance with the review recommendations.
6. The LEP should be completed 12 months from the date of Gateway determination.

Dated 18 day of March 2022.



Jeremy Gray
Acting Executive Director
Local and Regional Planning
Department of Planning and
Environment

**Delegate of the Minister for Planning
and Homes**

Altered Gateway Determination issued 15 December 2022:



Department of Planning and Environment

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

Our ref: PP-2021-456 (IRF22/4031)

Via email: council@ballina.nsw.gov.au
leah.toole@ballina.nsw.gov.au

Dear Mr Hickey

Planning proposal PP-2021-456 – Alteration of Gateway Determination

I refer to your letter seeking an extension of time to complete planning proposal PP-2022-456 to integrate certain deferred matter land into Ballina LEP 2012 and amend Ballina LEP 1987.

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 18 March 2022 for PP-2021-456. The Alteration of Gateway determination is enclosed.

Please note that the Gateway completion date has been extended only to July 2023. As the original Gateway determination for this matter was granted in March 2022, I encourage Council to consider ways to move forward and complete this proposal as quickly as possible within the revised completion date to provide the community with greater certainty and resolution. This could include combining the landowner, agency and public consultation processes to reduce the timeframes.

If you have any questions in relation to this matter, I have arranged for Ms Ella Wilkinson to assist you. Ms Wilkinson can be contacted on 9995 5665.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. McDonald'.

15 December 2022

Malcolm McDonald
Executive Director
Local and Regional Planning

Encl: Alteration of Gateway Determination



Department of Planning and Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: PP-2022-456)

I, Executive Director, Local and Regional Planning 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 18 March 2022 for the proposed amendment to the Ballina Local Environmental Plan 2012 as follows:

1. Delete condition 2

and replace with a new condition 2:

"2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:

- (a) the planning proposal is categorised as complex as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 28 days;
- (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021);
- (c) Consistent with the recommendations of the E Zone Review, Council must ensure that any landowner whose land is proposed to have a conservation zone applied, is notified in writing of the planning proposal and consultation arrangements;
- (d) 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 a conservation 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.

PP-2022-456 (IRF22/4031)



Department of Planning and Environment

2. Delete condition 6

and replace with new condition 6:

"6. The time frame for completing the LEP is by 4 July 2023."

Dated

15 December 2022

A handwritten signature in blue ink, appearing to read "M. McDonald".

Malcolm McDonald
Executive Director
Local and Regional Planning
Department of Planning and Environment

Delegate of the Minister for Planning

Appendix 5 – Northern Councils E Zone Review Final Recommendations Report

Click [here](#) to view the NSW Department of Planning and Environment's *Northern Councils E Zone Review Final Recommendations Report* (October 2015).

Appendix 6 – Correspondence from NSW DPIE re: Discontinuation of Stage 1 Planning Proposal



Your ref: 17/51024
Our reference: 17/09204

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

Dear Mr Hickey

Planning Proposal PP_2017_BALLI_001_00 – Ballina LEP 2012 Deferred Matter Integration Stage 1

Thank you for your letter of 26 June 2017 requesting discontinuation of planning proposal PP_2017_BALLI_001_00 for stage 1 of the integration of deferred land into Ballina LEP 2012.

I am also aware of Council's position to retain the existing environmental protection zones under Ballina LEP 1987 for deferred land, as resolved at its meeting of 27 April 2017. Council's adopted approach does not implement the Northern Councils E Zone Review Final Recommendations (the 'E Zone Review').

The Department is considering possible options to facilitate the implementation of the E Zone Review, and will advise of a decision on the discontinuation request once the preferred option for implementation has been determined.

We will advise Council of this outcome when a decision has been made.

Should you have any further questions in relation to this matter, please contact Paul Garnett, Senior Planner of the Department's Northern Region Office on (02) 6641 6607.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Gray', followed by the date '17-7-2017'.

Jeremy Gray
Director Regions, Northern
Planning Services



Planning,
Industry &
Environment

IRF21/3926

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

Via email: matthew.wood@ballina.nsw.gov.au
council@ballina.nsw.gov.au

Dear Mr Hickey

I refer to your request to withdraw planning proposal PP_2017_BALLI_001_00 for stage one of the integration of deferred land into Ballina Local Environmental Plan (LEP) 2012.

I have carefully considered Council's request and 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 9 March 2017 for PP_2017_BALLI_001_00. The Alteration of Gateway determination is enclosed.

Although I have agreed that the planning proposal should not proceed at this time, there is an expectation from the Department and the community that integration of the deferred matters into Ballina LEP 2012, and implementation of the Northern Councils E zone Review and Final Recommendations Report (E Zone Review) will occur within a timely manner.

However, I note that the Department has recently provided funding to Council to prepare a study to enable the preparation of a planning proposal to rezone deferred land not currently in an environmental zone under Ballina LEP 1987. I understand that Council has resolved to endorse the submission of the planning proposal to the Department for a Gateway determination, and my expectation is that this planning proposal will be submitted to the Department for consideration shortly.

The Department looks forward to working with Council to progress the E zone implementation program and would be pleased to arrange a meeting to discuss how it may be approached at a time that is convenient to the relevant Council staff.

If you have any more questions, please contact Mr Craig Diss, Manager, Local and Regional Planning, Northern Region at the Department on 5778 1485 or Ms Lucy Walker, Specialist Planning Officer, Local and Regional Planning, Northern Region on 5778 1408.

Yours sincerely



2/11/2021
Monica Gibson
Executive Director
Local and Regional Planning



Planning,
Industry &
Environment

Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2017_BALLI_001_00)

I, Executive Director, Local and Regional Planning, at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 9 March 2017 for the proposed amendment to *Ballina Local Environmental Plan 2012* as follows:

1. Delete paragraph 2

"I, the Executive Director Regions, 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 for stage one of the integration of deferred land into the Ballina LEP 2012 should proceed subject to the following conditions:"

and replace with

"I, Executive Director, Local and Regional Planning at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to Ballina Local Environmental Plan (LEP) 2012 for stage one of the integration of deferred land into the Ballina LEP 2012 should not proceed."

2. Delete conditions 1 to 6.

Dated 2nd day of November 2021.

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

Monica Gibson
Executive Director
Local and Regional Planning
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning and
Public Spaces

PP_2017_BALLI_001_00 (IRF21/3926)

Appendix 7 – Methodology Report

(Provided under separate cover).

Appendix 8 – Affected Land Parcel Details

Table 8: Affected land parcel details (730 in total)

(Provided under separate cover)