

8.2 LEP 2012 - Deferred Matters - Teven Test Cases and Continuation

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Section Strategic Planning

Objective To address the Deferred Matters Integration Program and the Teven Test Case properties and seek direction on the next steps.

280825/5 RESOLVED

(Cr Eva Ramsey/Cr Michelle Bailey)

1. That Council adopts the six guiding principles, as detailed in this report, to evaluate the appropriateness of a C zone being applied to privately owned land.
2. That Council adopts the revised primary use of land (PUL), and zone recommendations contained within Table 1 of this report, for the Teven Test Case properties, and prepare a planning proposal on that basis. The planning proposal is to be submitted for a Gateway determination and subsequent public exhibition.
3. That Council adopts the PUL recommendations in this report, in respect to 287 North Teven Road, Teven and 54 Buckombil Mountain Road, Meerschaum Vale and the zoning outcomes shown in Diagrams 10 and 12. These properties to be incorporated in the planning proposal referenced in point 2.
4. That Council further consider the zones applied to the remaining three properties, subject to unconsidered objections, as detailed in this report, if requested to do so by the property owners, at no cost to the owners.
5. That further transitioning of privately owned deferred matter affected properties into Ballina LEP 2012, for zones substantially other than C2, or C3, be the subject of proponent-initiated planning proposals. This includes the payment of Council's fees and charges.
6. That private property owners seeking to transition deferred matter affected properties to be substantially zoned C2, or C3, be exempt from Council's rezoning fees and charges, as the proposals are to be incorporated into a Council prepared planning proposal, on an annual, or as required basis, concurrently with periodic reviews of the LEP.
7. The transition of Council owned deferred matter properties, excluded from Amendment No 55, are to be included in a planning proposal, within the next 12 months.
8. The transition of Government Agency and JALI Local Aboriginal Land Council owned deferred matter properties, excluded from Amendment No 55, are to be considered on an on-request basis.

9. That Council applies a zoning arrangement to 118 Beacon Road, Teven consistent with image 3b in the report.

10. That Council provides vegetation mapping data obtained through the deferred matters program and other initiatives to the NSW State Government to inform future updates to the Biodiversity Values Map.

FOR VOTE - Cr Sharon Cadwallader, Cr Michelle Bailey, Cr Simon Kinny, Cr Damian Loone, Cr Simon Chate, Cr Eva Ramsey, Cr Erin Karsten and Cr Kiri Dicker

AGAINST VOTE - Cr Phil Meehan

ABSENT. DID NOT VOTE - Cr Therese Crollick

Background

At the 24 April 2025 Ordinary meeting, Council considered reports regarding the deferred matters integration program.

Council resolved as follows in respect to Item 8.2 - Deferred Matters Integration - Program Continuation:

That Council defers its decision on the approach to the transitioning of deferred matters properties which were part of the 2023 Integration of Deferred Matters Planning Proposal to obtain further information from the Department of Planning and the Department of Climate Change, Energy, the Environment and Water on the application of Ministerial Direction 3.4 and the associated Northern Council's E Zone Review

Council resolved as follows in respect to Item 8.3 - Teven Test Case Methodology:

- 1. That Council defers its decision on the initiation of a planning proposal in relation to the five Teven test case properties to obtain further information from the Department of Planning and the Department of Climate Change, Energy, the Environment and Water on the application of Ministerial Direction 3.4 and the associated Northern Council's E Zone Review.*
- 2. That Council invite the Department to provide a briefing to staff and Councillors on the application of conservation zones.*

Following correspondence from the Department of Planning Housing and Infrastructure (DPHI), and the Department of Climate Change, Energy, the Environment and Water (DCCEEW), a Councillor briefing took place on 30 June 2025. The briefing was given by Council staff as the DPHI declined to provide a briefing.

The purpose of this report is to consider the matters raised in the referenced reports and to propose a way forward for the Teven Test case properties, properties inadvertently included in LEP Amendment 55 and the remaining deferred matter properties.

Key Issues

- State Government policy interpretation
- Deferred matter integration options
- Teven Test Case options

Discussion

C Zone Rules and Government Department Consultation

The 24 April 2025 reports were deferred to enable advice to be obtained regarding the degree to which the presence, or absence of agriculture, within an area proposed to be zoned for conservation purposes (C2 or C3), determined the primary use of land (PUL).

This issue was raised by a Teven Test Case property owner.

The owner contended that a C zone could not be applied to land, without owner agreement, if the land was used for agricultural purposes and the frequency of such use was not a relevant consideration.

What are the rules for the application of Conservation Zones?

The *Northern Councils E Zone Review Final Recommendations Report* (NCEZR) sets out the process for applying environmental zones (now referred to as conservation zones).

That process includes the following:

- Conservation zones only to be applied where the PUL is environmental conservation (C2) or environmental management (C3) and has been verified as meeting the criteria for such zones. The criteria relate to the land's vegetation characteristics, as specified within the Tables 1 and 2 of the NCEZR
- The PUL is referred to as the main use for which the land has been lawfully used for the last two years. Land zoned rural could continue to have a rural zone applied but may have parts of the land that meet the vegetation criteria included within a mapped planning control (vegetation overlay)
- A C3 zone may be applied to land which meets the C2 criteria but where the PUL has been determined to be environmental management instead of environmental conservation
- It is not mandatory to apply a C2 or C3 zone if Council considers that the intended PUL does not warrant a C zone. In such cases mapped planning controls (overlay) can be applied
- Land voluntarily revegetated by the current landowner cannot have a C zone applied without the landowner's agreement, unless the revegetation was undertaken through grant funding
- Private land may be zoned C2 or C3 despite being inconsistent with the criteria, only if consistent with a negotiated development outcome, or at the request of the landowner.

8.2 LEP 2012 - Deferred Matters - Teven Test Cases and Continuation

There is no discussion within the NCEZR as to how the main use of land is to be determined.

There is also no reference within the NCEZR that the absence of agriculture, within a proposed C2 or C3 zone, is part of the test for such zones being applied.

The Minister's Local Planning Directions contain a reference to the NCEZR within Direction 3.4 - *Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs*.

The direction requires that C2 and C3 zones be applied in line with the NCEZR unless the inconsistency is of minor significance.

There is no reference within the direction to a requirement relating to the absence of agriculture test.

Are there additional rules which require the absence of agriculture to be established prior to applying the NCEZR rules?

There are no formal rules relating to the absence of agriculture issue that have a legislative base.

Instead, there are two guidance documents issued by the now DPHI, detailed as follows.

Letter from the Planning and Environment Secretary 1 March 2016

This letter is the primary guidance document. A copy of this letter is included as Attachment 1.

The letter was issued to all Northern Councils affected by the then E zone review process to *"further assist Council when seeking to apply E zones in accordance with the Northern Councils E Zone Review Final Recommendations."*

The letter contains the following relevant statement which is outside of the rules contained in the NCEZR:

For the avoidance of doubt a reference to 'Primary Use of land' in the context of the Recommendations Report is considered to be:

b) If the main use is for environmental conservation or management, the environmental values of the land and vegetation need to be demonstrated and the absence of any agricultural or other land use confirmed.

The letter also indicates that a local planning direction has been issued, and that the direction provides further clarification regarding the 'primary use of land'.

The current local planning direction 3.4 provides no clarification of the 'primary use of land' matter.

It is understood that a draft 2016 direction may have referenced the absence of agriculture issue.

Department of Planning and Environment Frequently Asked Questions 'Northern Councils Environmental Zone Review Final Recommendations Report & Section 9.1 Direction July 2023' (FAQ)

The 2023 FAQ, which replaced a 2016 FAQ containing similar information, is the second guidance document.

The FAQ is included as Attachment 2.

The FAQ repeats the advice contained in the 2016 letter from the Planning and Environment Secretary including the requirements to confirm the absence of any agriculture or other land use.

Advice from Department of Planning Housing and Infrastructure (DPHI)

In accordance with the Council's April 2025 resolution further advice was sought from the DPHI.

The advice is included as Attachment 3 together with initial advice received on 22 April 2025, along with emails.

The DPHI advice confirms that the 2016 letter from the Department Secretary, and the FAQ, is the Department's position and should be taken into consideration when determining the primary use of land.

In cases where the landowner does not agree to a C2 zone being applied to their land, where agricultural land uses are demonstrated to be occurring, the DPHI has stated that the guidance in the Secretary's letter should be considered.

The DPHI initially stated in an email received on 22 April 2025 when discussing the Secretary's advice and the FAQ that:

This would not prevent a landowner requesting or agreeing to a C zone over vegetated land where understorey grazing is being undertaken. However, if the landowner does not agree to a C zone being applied to their land where understorey grazing is demonstrated to be occurring then I would expect a rural zone would be applied to this land. Council could also consider applying an environmental overlay to this land.

Council then sought to clarify this statement and received further advice from the DPHI, which included the following statement:

When considering the application of a C zone, based on the primary use of land, Council should not rely solely on the "absence of agriculture" but should also consider the presence of environmental management or environmental conservation activities on the site and this could inform if a C2 or a C3 zone is appropriate. Activities such as weed control, active planting, vegetation management, watering or the presence or absence of exclusion fencing can be indicators of management or conservation activities.

In respect to the test case properties the DPHI advised:

I note that three of the test case landowners have requested a combination of a C2 and C3 zone over part of their land instead of just a C2 zone. The C3 zone being proposed for land that I understand contains vegetation that would meet the criteria for a C zone but also accommodates some agricultural

activities and land management activities. If Council is concerned that the primary use of the land in these test cases cannot justify the application of a C2 zone, consistent with the NCEZR and the Department's guidance contained in the Secretary's letter, then Council could apply a combination of a C2 and C3 zone, as proposed by the landowner.

Finally, in cases where Council and the landowner do not agree in respect to the PUL the DPHI advised:

I note that there is a difference of opinion between Council and some of the landowners of the test case properties on the primary use of their land.

The planning proposal process provides opportunities for differences of opinion between Council and a landowner on the primary use of a particular land parcel to be resolved through consultation.

Notification, consultation and the opportunity for an independent review will be requirements of any gateway determination for a planning proposal proposing the application of a C zone.

Consideration of the advice provided by the DPHI has resulted in three test case landowners changing their positions, as previously discussed in the April 2025 report (Item 8.3).

The DPHI advice, whilst identifying the absence of agriculture test for application of C zones, also then introduces further subjectivity.

This relates to the consideration of matters such as the presence of fencing, weed control or vegetation management activities, which the DPHI states may be an indicator that the land is being utilised for conservation purposes.

This is unhelpful as such activities are also associated with the agricultural use of land.

Ultimately it may likely set up a potential conflict situation between Council and landowners.

Council may argue that such activities are related to conservation, and the landowner may argue that they relate to agricultural use.

A fundamental problem here for Council is that the statutory planning requirements do not identify the absence of agriculture test in relation to application of conservation zones, but DPHI has a policy position that does introduce this concept.

Advice from Department of Climate Change, Energy, the Environment and Water (DCCEEW)

DCCEEW was requested to review the advice received from the DPHI as well as the EarthScapes Ecological Report relating to the Teven Test Case properties.

Attachment 4 contains the advice from DCCEEW.

Relevant extracts from the DCCEEW advice are reproduced as follows.

According to the Recommendations Report, the primary use of land is the 'main use' of the land over the previous two years.

Hence, to determine the primary land use is agriculture, agricultural operations such as cropping or grazing would need to be clearly demonstrated as the 'main use' of the land over the previous two years.

The complete absence of agricultural or other land use is not required to determine the primary land use is environmental conservation or environmental management, provided agricultural or other land uses have not been the 'main use' of the land over the previous two years.

For example, where grazing within a native vegetation community occurs infrequently, such as once a week or month, grazing would not be considered the 'main use' of the land.

In respect to the EarthScapes report (Attachment 7) DCCEEW advised in part that:

... the EarthScapes report has generally assessed the land on 5 test case properties at Teven appropriately according to the criteria for C2 and C3 zones as listed in Tables 1 and 2 of the Recommendations Report.

In terms of negotiated agreements DCCEEW advise:

... there may be cases where a landowner requests a C3 zone or rural zone be applied despite Council determining the land meets the requirements for a C2 zone. In these cases, Council may seek to apply the C2 zone despite the landowner's objection. Notwithstanding, as set out on page 6 of the Recommendations Report, it is also not mandatory for Council to apply the C2 or C3 zone even if the land has been verified to meet the relevant C zone criteria.

The advice provided by DCCEEW accords with how Council staff have previously interpreted and applied the rules.

The interpretation of the rules by the DPHI differs though and it is the DPHI that controls the rezoning process.

2023 Conservation Zone Planning Proposal (2023 PP)

The 2023 PP included a detailed *Methodology Report* (57 pages) which was prepared by Ascent Ecology Pty Ltd.

The report detailed how the PUL was determined and sets out the methodology used to apply C and other zones.

The report included the following statement:

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.

The 2023 PP and the associated *Methodology Report* did not refer to the absence of agriculture issue.

This is also the case with respect to the 2024 DPHI prepared *Plan Finalisation Report* which recommended that the Minister's delegate make the LEP (Amendment No 55).

In respect to the DPHI *Finalisation Report* it indicates that in respect to Direction 3.4 that:

As discussed above, it is considered that the proposal is consistent with the direction, subject to the changes made by the Department as the local plan-making authority.

The approach and interpretations applied by the DPHI and DCCEEW are inconsistent.

Justification for applying C2 and C3 zones to privately owned land

The DPHI FAQ states that C zones are designed to protect land that is of important environmental value.

Council was initially motivated to apply C zones to privately owned land so that it would result in better vegetation management outcomes for land that had marginal agricultural potential and a high environmental value. In many cases this land was zoned for secondary agricultural purposes (Rural 1(b)) under Ballina LEP 1987.

Since the period when Ballina LEP 2012 was made (2013 to 2025) significant State based regulatory changes have occurred to provide better vegetation management outcomes for rural areas.

This includes the following:

- 2013 Local Land Services Act, and the Native Vegetation Regulatory Map 2022 which triggered enhanced clearing controls
- 2016 Biodiversity Conservation Act
- 2018 Changes to the Forestry definition in Ballina LEP 2012 which trigger consent requirements for Private Native Forestry
- 2018 Biodiversity Values Map – triggers requirement for a Biodiversity Assessment Report for any DA involving native vegetation clearing
- 2021 SEPP Biodiversity and Conservation.

In the light of more robust state-based controls related to vegetation management it is relevant for Council to consider what added value arises from zoning privately owned land for conservation purposes, particularly in cases where the landowners do not support such a zone change.

Application of a C2 or C3 zone also results in vegetation management within such a zone becoming a Council responsibility controlled by the DCP, whereas in an RU1 or RU2 zone it is Local Land Services (LLS) that is responsible for vegetation management.

Proposed guiding principles for the application of C2 or C3 zones to privately owned land

The criteria used for the 2023 planning proposal gave considerable weight to the lands ecological characteristics when determining PUL. C zones were applied to areas of vegetation as small as 500m².

In addition, a 100-metre proximity rule resulted in significant areas utilised for agricultural purposes also being designated with a PUL of conservation and a proposed C zone. This resulted if the agricultural use area was located between areas of vegetation meeting the C zone criteria.

Reviewing the previous criteria, submissions from landowners to the 2023 planning proposal, the in-depth evaluations resulting from the Teven Test Case, as well as the DPHI advice relating to the significance of establishing the absence of agriculture, all suggest that a new approach to proposing C zones on privately owned land may be required.

Based on these learnings, it is suggested that the following guiding principles are used when considering the application of C2 or C3 zone to privately owned land.

1. *Primary Use of Land (PUL).*

PUL to be assessed based on the characteristics of each lot, including recognition that different parts of a property may have different characteristics and primary land uses. This allows for different zones be applied based on specific features and uses.

2. *Minimum Land Area for C Zone.*

The minimum land area for the application of a C2 or C3 zone should not be less than 0.5ha, unless the land has been ecologically assessed as having rare characteristics.

The minimum land area may be calculated by including adjoining land (common boundary) having similar ecological characteristics.

3. *C2 – Environmental Conservation Zone.*

A C2 zone be applied to land with a PUL of environmental conservation. This is land that contains native vegetation which meet the criteria for a C2 zone as specified in the NCEZR.

In these areas natural ecological processes predominate and require minimal intervention in terms of weed control, active planting, or other vegetation management activities.

These areas are characterised by the absence of agriculture.

4. *C3 – Environmental Management Zone.*

A C3 zone be applied to land that has a PUL of environmental management. This is land that contains native vegetation which meet the criteria for a C3 zone as specified in the NCEZR.

In these areas ongoing intervention is required through weed control, active planting, or other vegetation management activities to maintain natural ecological processes.

In these areas agricultural activities are generally absent or if present are not dominant.

5. *Rural Zones.*

Rural zones be applied to land with a PUL of agriculture. These are areas where agricultural activities including cropping, horticulture, and pasture management dominate.

Such land may also include areas substantially degraded (>50%) through weed species such as camphor laurel or privet.

6. *Application.*

Unless otherwise agreed by the landowner, C2 or C3 zones only be applied to land in accordance with the guiding principles and as specified in the NCEZR.

Teven Test Case Properties

444 North Teven Road, Lot 101 DP 865070 (Lot 101)

Lot 101 has an area of 39.98ha of which approximately 23ha (57.5%) is zoned RU1 Primary Production (BLEP 2012) and the remaining 17ha (42.5%) is zoned Rural 1(b) Secondary Agriculture (BLEP 1987).

Lot 101 is primarily used for agricultural purposes being the production of beef cattle.

The 2023 planning proposal sought to rezone approximately 8.4ha of the 1(b) zoned land to C2 with the remainder (8.6ha) being rezoned as RU1.

February 2025 ecological ground truthing of vegetation located in the area originally proposed to be zoned C2 in 2023 found that this area was part of a historic banana plantation.

Access tracks and some fences are still present from this historic use.

The ecologists recommended that the 2023 area of proposed C2 zone be reduced to 3.17ha and be designated with a PUL of environmental. This area was not weed tree species dominated (Camphor Laurel and Privet).

The remaining 5.17ha (weed dominated area), which was also used for understorey grazing, was designated with a PUL of agriculture and was recommended to be zoned rural.

The landowner originally proposed that part of the area designated with a C2 zone by the ecologists be zoned C3, as that supported the occasional grazing of cattle.

Some zone boundary straightening was also proposed as per Diagram 1.

The April 2025 Council report recommended that the C2 zone, as recommended by the ecologists, be maintained and the alternatives proposed by the landowner not be accepted.

This was because the occasional grazing of cattle, within part of the C2 zone, was not considered to be the main use of the land.

8.2 LEP 2012 - Deferred Matters - Teven Test Cases and Continuation

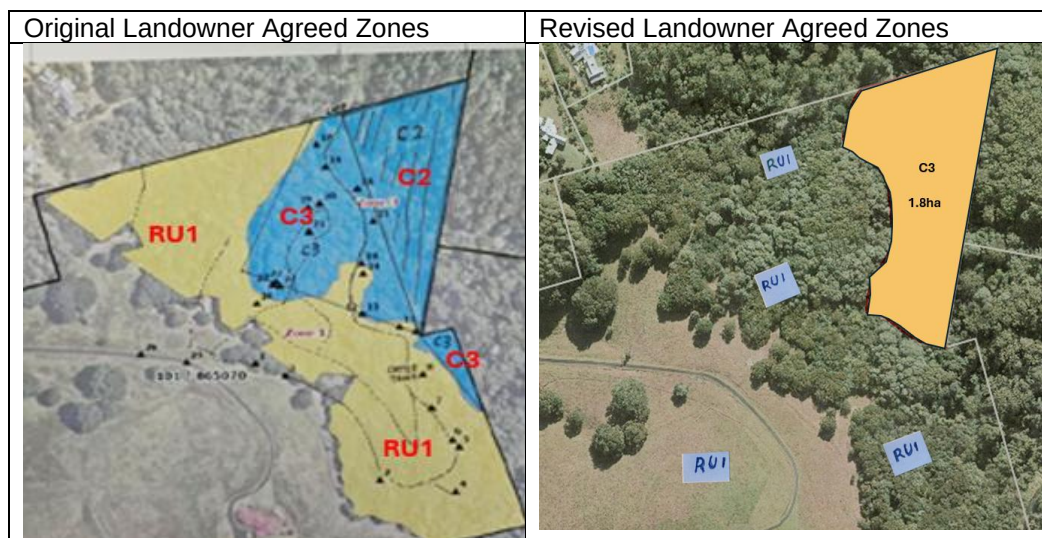
Following consideration of the DPHI advice (Attachment 3) the landowner has reduced the area they previously agreed to be zoned for conservation purposes to 1.8ha of C3 with the remaining 1(b) zoned area to be zoned RU1.

The landowner contends that part of the area they previously designated as a proposed C3 zone is used for understorey cattle grazing. This is agreed.

The 1.8ha now agreed by the landowner to be zoned C3 represents approximately 4.5% of the land area of Lot 101.

The western boundary of this area follows the line of an existing access track and old fence line which dates to the period when this part of the property was used as a banana plantation.

Diagram 1 – Landowner Agreed Rezone Areas



Council has several potential options for Lot 101:

- Take no further action to transition the deferred matter zoned area into Ballina LEP 2012
- Maintain the position recommended by the ecologists in their February 2025 report
- Proceed to prepare a planning proposal based on the landowners original mixed C2 and C3 proposal as shown in blue above
- Proceed to prepare a planning proposal based on the landowner's current C3 zone proposal for a reduced land area
- Apply the guiding principles outlined in the previous section, which supports the landowner's current C3 zone proposal as detailed below.

Application of the suggested guiding principles results in the following conclusions:

1. *Primary Use of Land* – There are variable characteristics within this lot which relate to vegetation type, topography, and vegetation location in relation to other areas on adjoining lots with similar characteristics.

On this basis a PUL of conservation management has been applied to the area now nominated by the property owner for C3 zone.

8.2 LEP 2012 - Deferred Matters - Teven Test Cases and Continuation

A PUL of agriculture is applicable for the remainder of the deferred matter area within Lot 101, on the basis that the vegetated areas in this part support an agricultural activity being understorey grazing.

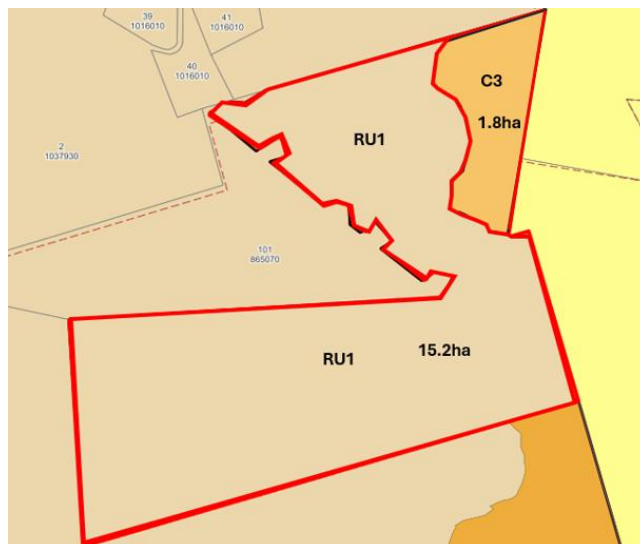
It is also on the basis that an access track and fencing separate the area designated with a PUL of agriculture from the area designated with a PUL of conservation management.

2. *Minimum Land Area* – the proposed C3 zone has an area of approximately 1.8ha and exceeds the recommended 0.5ha minimum area.

On balance given the location of the proposed C3 zone in a steep gully area, which is fenced to exclude stock (environmental management activity), as well as its proximity to adjoining land with similar attributes, acceptance of the landowner's current position is reasonable.

Diagram 2 shows the recommended zoning outcomes for the deferred matter area (red outline) on Lot 101.

Diagram 2 – Recommended Zoning Outcomes (deferred matter area) Lot 101



118 Beacon Road, Teven, Lot 6 DP 116231 (Lot 6)

Lot 6 has an area of 15.25ha. The whole of Lot 6 is zoned Rural 1(b) Secondary Agriculture (BLEP 1987).

Lot 6 is primarily used for agricultural purposes which include the production of custard apples, figs, beef cattle and various other agricultural endeavors.

The 2023 planning proposal sought to rezone approximately 5.4ha of the 1(b) zoned land to C2, with the remaining 1(b) zoned land (9.85ha) being rezoned to RU1.

The February 2025 ecological assessment of this property recommended that the C2 zone be reduced to approximately 3.5ha, with the remainder zoned for rural purposes.

8.2 LEP 2012 - Deferred Matters - Teven Test Cases and Continuation

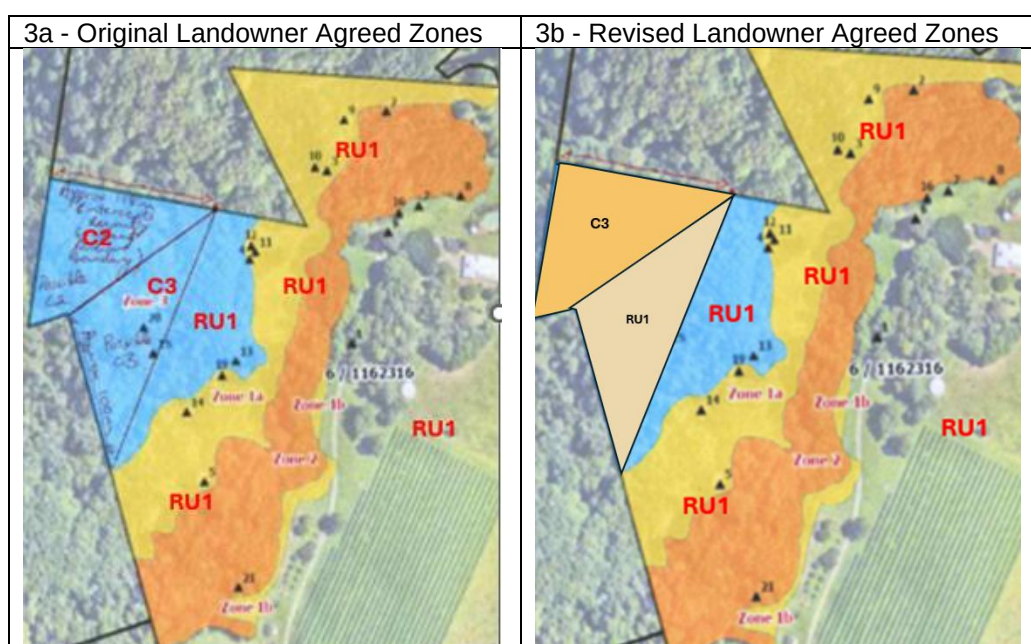
The report to the April 2025 Council meeting recommended that the proposed C2 area be further reduced to approximately 1.73ha with an RU1 zone for the remainder of the lot.

The landowners did not agree to all this area being rezoned C2 (refer to blue coloured area of Diagram 3a) but instead proposed that some of the blue-coloured area be subject to a mixed C2 and C3 zone regime.

The landowners' revised proposal is to now apply a C3 zone to only a triangular area of land in the far northwestern corner of Lot 6 as shown in Diagram 3b.

This area occupies an area of approximately 0.6ha or 4% of the lot area with the remainder of the lot requested to be zoned RU1.

Diagram 3 – Original and Revised Landowner Agreed Zones



In terms of the potential rezoning options for this property Council has a similar range of options to that outlined for Lot 101.

Application of the suggested guiding principles results in the following conclusions:

1. *Primary Use of Land* – This lot has variable characteristics in terms of vegetation type, topography, and its location in relation to other areas on adjoining lots which contains vegetation with similar characteristics.

Assessment has concluded that the area shown by the blue colour on the *Original Landowners Agreed Zones* diagram 3a warrants a PUL of conservation management with the remainder of Lot 6 being designated with a PUL of agriculture.

A PUL of conservation management has been applied as the area is generally fenced to exclude stock. Agricultural activity is not considered to be the main use.

A PUL of conservation management supports the rezoning of this area to C3.

Previously a C2 zone was proposed for all the blue-coloured area in Diagram 3a.

2. *Minimum Land Area for C Zone* – The area designated with a PUL of conservation management is approximately 1.73ha which is larger than the landowners 0.6ha agreed C3 zone.

If Council were to accept the reduced area for a C3 zone proposed by the landowners, this would still be consistent with the land area principle based on it being considered in conjunction with proposed C3 zones on adjoining lots.

3. *C2 or C3 zone* - a C3 zone is supported on the basis that fencing generally excludes stock from this area and the landowner undertakes weed management activities.

Vegetation within this area predominantly consists of wet sclerophyll forest. Canopy trees include Brushbox and Tallowwood with a rainforest midstorey and understorey. Forest areas were assessed to be in good condition with high environmental value.

Experimental plantings, with a potential commercial application, in this area are not considered to be of such significance as to warrant a PUL of agriculture and a rural zone being applied.

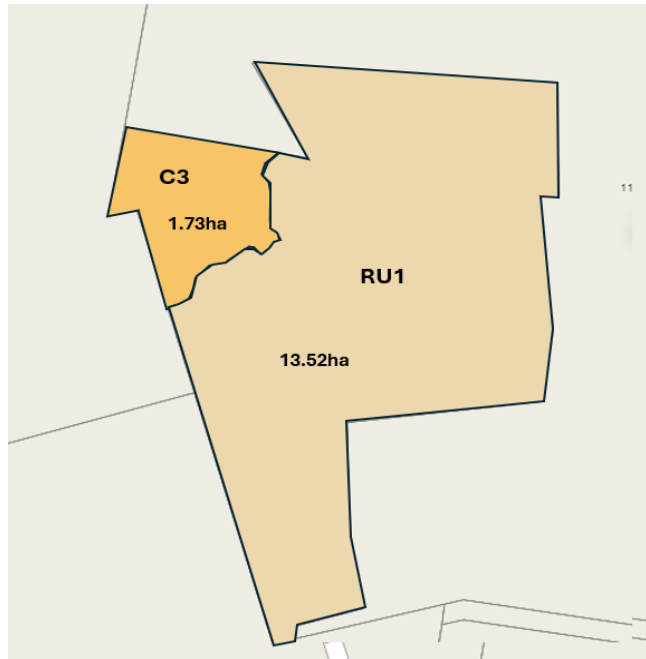
Lot 6 is not shown on the Biodiversity Values Map. The lot is located within a Koala Planning Area with a Habitat category of 'other'.

4. *Application* - Application of a PUL of conservation management and a C3 zone is consistent with the rules nominated in the NCEZR.

If a planning proposal is prepared on this basis and receives a Gateway determination from the DPHI it may result in the property owner seeking an independent review of such decision.

Diagram 4 shows the recommended rezoning outcomes for Lot 6.

Diagram 4 – Recommended Zoning Outcomes (deferred matter area) Lot 6



225 Cumbalum Road, Cumbalum, Lot 2 DP 1154979 (Lot 2)

Lot 2 has an area of 47.74ha. Approximately 44ha is zoned Rural 1(b) Secondary Agriculture (BLEP1987) with the remaining 4ha being zoned RU1 Primary Production (BLEP2012).

Lot 2 is primarily used for agricultural purposes being the production of beef cattle.

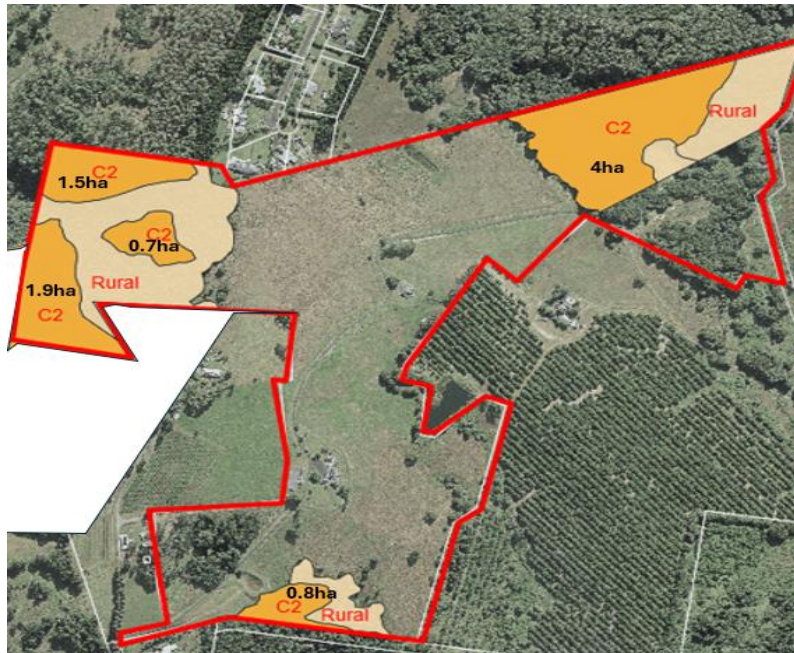
The 2023 planning proposal sought to rezone approximately 15.8ha of the 1(b) zoned land to C2 with the remaining 1(b) zoned land (28.2ha) being rezoned to RU1 and RU2.

February 2025 ground truthing of vegetation located in the area originally proposed to be zoned C2 in 2023, resulted in the ecologists recommending that the proposed C2 zoned areas be reduced to approximately 9ha (19% of the lot area).

The remaining 6.8ha was recommended to be included in a rural zone.

Diagram 5 shows the approximate area for each proposed C2 zone area as well as areas designated for a rural zone by the ecologists.

Diagram 5 – Ecologists Recommended Amendments to 2023 Planning Proposal C2 Zone Extent



The property owners previously objected to the C2 zone and sought to have a C3 zone applied instead.

The April 2025 Council report recommended that the C2 zone be maintained as recommended by the ecologists.

Following the DPHI April advice the property owners advised they object to a C2 or C3 zone being applied to any part of their property.

They maintain that the whole of the property is utilised for cattle grazing with proposed C zone areas not being fenced off from adjoining paddock areas.

Inspection of this property confirms that cattle can generally access areas designated for a proposed C2 zone due to these areas not being fenced.

However, due to the topography of these areas, their high environmental value, and little evidence of more recent agricultural activity a PUL of environmental was regarded as more appropriate.

This assessment does not resolve the difficulties associated with confirming an absence of agriculture within these areas.

In further negotiation in July 2025 the property owners have advised they are now agreeable to the three western most proposed C zoned areas (4.1ha) being in a conservation zone.

In return they have requested that the remainder of the deferred matter areas on Lot 2 be zoned RU1.

The areas agreed to be zoned for conservation are in the northwestern corner of Lot 2.

These areas have more special ecological value due to the way they link with vegetation on adjoining lots which is also proposed to be zoned for conservation purposes (C3).

In terms of the potential rezoning options for this property Council has a similar range of options to that outlined for the previous 2 lots.

Application of the suggested guiding principles results in the following conclusions:

1. *Primary Use of Land* - The lot has special characteristics in terms of vegetation type, topography, and its location relative to other areas on adjoining lots with similar characteristics.

The three areas in the north-western corner warrant a PUL of environmental conservation or environmental management.

On the basis that the three landowner C zone nominated areas link with areas on adjoining lots designated with a PUL of environmental management the same PUL has been applied to the areas.

Given also that these areas are not fenced from adjoining grazing paddocks and that conservation management activities including feral animal control (dog baiting) take place on a whole of farm basis the application of a conservation management PUL is considered reasonable.

The remainder of Lot 2 within the deferred matter area has been designated with a PUL of agriculture.

This has been done as the topography within the eastern most area (4ha) originally designated by the ecologists for a conservation zone is not as steep as the northwestern section of Lot 2.

Understorey grazing cannot be excluded from this area given the absence of fencing. This is also the case for the smaller area (0.8ha) adjoining the southern boundary.

2. *Minimum Area* - The combined area (4.1ha) and each individual component exceeds the minimum 0.5ha nominated in the guiding principles.

When combined with proposed C zones on the adjoining property the area increases to 7.63ha in total.

3. *C2 or C3 zone* - In respect to the vegetation contained within the three areas assigned with a PUL of environmental management the ecologists found that the vegetation was wet sclerophyll forest. Some areas were dominated by Brushbox and other areas also contained Tallowwood (Koala food tree). Rainforest species were also found within these areas at the understorey and midstorey level.

Generally, the native vegetation is in good condition and has high environmental value.

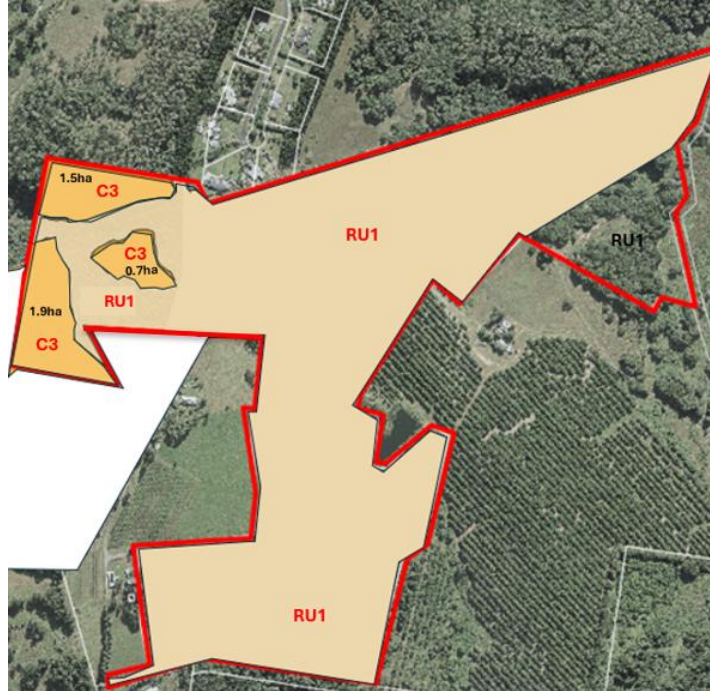
8.2 LEP 2012 - Deferred Matters - Teven Test Cases and Continuation

The vegetation meets the C2 and C3 zone criteria being designated as native vegetation in over cleared Mitchell Landscapes and as a key threatened species habitat.

A C3 zone has been nominated for the three areas in the northwestern corner based on consistency with proposed zones on adjoining land and due to the inability to rule out occasional understorey grazing.

Diagram 6 shows the zones recommended for deferred matter areas on Lot 2. These zones are also recommended based on a negotiated development outcome as provided for within the NCEZR.

Diagram 6 – Recommended Zoning Outcomes (deferred matter area) Lot 2



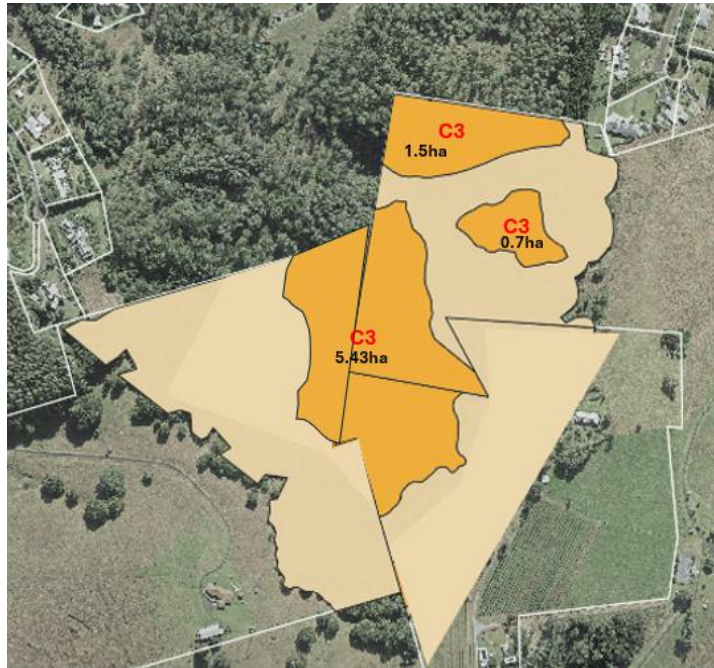
Consolidated Conservation Outcomes Recommended for Lots 101, 6 and 2

Diagram 7 shows how the proposed C3 zones on Lots 101, 6 and 2 fit together.

The total proposed C3 zoned area is 7.6ha.

The owners of Lots 101 and 2 have agreed to the location and extent of proposed C3 zones whereas the owner of Lot 6 has not agreed to the full extent of the proposed zone.

Diagram 7 - Teven Test Case Consolidated C Zone Outcomes



54 Beacon Road, Teven, Lot 104 DP 862670 (Lot 104)

Lot 104 has an area of 9.8850ha. Lot 104 is zoned partly Rural 1(b) Secondary Agricultural (9.1ha) and partly Rural 1(e) Extractive and Mineral Resources (0.8ha) under the provisions of LEP1987.

The 2023 planning proposal sought to rezone approximately 2ha of Lot 104 as C2 with the remainder proposed to be zoned RU1.

The C2 zone was in 4 separate sections with the largest section having an area of around 0.7ha.

The February 2025 ground truthing of Lot 104 resulted in the C2 area being reduced to approximately 1.4ha located in 3 sections as shown in Diagram 8 below.

Diagram 8 - Ecologists Recommended Amendments to 2023 Planning Proposal C2 Zone Extent



Lot 104 was the subject of an ownership change in April 2025.

The previous and current owners do not support any part of Lot 104 being zoned for conservation purposes.

The previous owner revegetated sections of Lot 104.

Applying NCEZR rules, a conservation zone could not be applied to the revegetated areas without that owner's consent.

This rule does not apply to the current owner.

The previous owner also excluded cattle from some of the revegetated areas, through fencing and gates, whereas the current owner has advised that they have recently reintroduced cattle to previously excluded areas.

In terms of the potential rezoning options for this property, Council has a similar range of options to that outlined for the previous three lots.

Application of the suggested guiding principles would support a PUL of environmental being applied to the areas previously recommended for a C2 zoning.

The C2 zoning was recommended based on the characteristics of the vegetated areas at the time of Council's on-site assessment.

The proposed C2 areas also adjoin C2 zoned land on adjacent properties.

This is now complicated by the landowner's indication that cattle have been allowed into these restored areas since Council last visited the property.

Based on Council's original inspection and ecological reporting for the test case program, it is recommended that Council maintains a proposed zoning of C2 for the three areas shown in Diagram 8.

8.2 LEP 2012 - Deferred Matters - Teven Test Cases and Continuation

If the landowner disagrees with this and has evidence of agricultural activities, this can be provided in response to public exhibition of the planning proposal, or the owner can seek a review by DPHI.

An alternative approach, that recognises environmental values, and the previous restoration works as a site management initiative, is for Council to apply a C3 zone rather than a C2 zone to the nominated areas.

660 Teven Road, Teven, Lot 1 DP 1166050 and Lot 1 DP 12072272

The whole of this property has previously been assigned a PUL of agriculture and was recommended to be wholly zoned as rural. This property is primarily used for agricultural purposes being cattle grazing and as an orchard. Trees located on the property are predominantly Camphor Laurel.

No changes are proposed to this PUL designation. The recommended zoning outcome for this property is rezoning to RU1. This rezoning outcome is supported by the property owner.

Summary of Test Case Rezoning Recommendations

Table 1 details the test case evaluation recommendations contained in the April 2025 Council report (Item 8.3) and the zone change recommendation now proposed.

Changes are recommended following consideration of DPHI advice, negotiation with landowners and consideration of the guiding principles.

Table 1 – Teven Test Case Summary of Zone Change Recommendations

Property	April 2025 Recommendation	Revised Recommendation
444 North Teven Road, Teven (Lot 101 DP 865070)	Proceed with application of C2 zones as recommended by the ecologists with an RU1 zone to be applied to the remaining deferred matter areas.	Apply a mixed PUL of agriculture and environmental management. Rezone deferred matter area as shown in Diagram 2.
118 Beacon Road, Teven (Lot 6 DP1162316)	Apply a C2 zone to the western area as indicated in Figure 3 with an RU1 zone to be applied to the remaining deferred matter areas.	Apply a mixed PUL and zoning regime of agriculture and environmental management. Rezone the lot as shown in Diagram 4.
54 Beacon Road, Teven (Lot 104 DP 862670)	Proceed with application of C2 zones as recommended by the ecologists with an RU1 zone to be applied to the remaining deferred matter areas.	Apply a mixed PUL of environmental conservation and agriculture and rezone deferred matter area as shown in Diagram 8 (noting all areas outside C2 zone would be zoned RU1.)
660 Teven Road, Teven (Lot 1 DP 1166050 & Lot 1 DP 1207272)	Apply an RU1 zone to all the deferred matter areas on this property.	Apply a PUL of agriculture to the whole of the deferred matter area on this lot and rezone these areas to RU1.
225 Cumbalum Road, Cumbalum (Lot 2 DP 1154979)	Proceed with application of C2 zones as recommended by the ecologists with an RU1 zone to be applied to the remaining deferred matter areas.	Apply a mixed PUL of agriculture and environmental management. Rezone deferred matter area as shown in Diagram 6.

Confidential Submissions to 2023 Conservation Review

Not included in Amendment No 55 were 157 lots that were the subject of landowner objections (including the Teven test cases discussed), apart from five lots for which confidential submissions were made.

This meant these properties were zoned as proposed in Council's 2023 planning proposal, instead of being excluded.

Report 8.2 to the April 2025 Council meeting recommended that ground truthing and preparation of a zoning recommendations report be prepared for these five properties unless the landowner does not consent to ground truthing.

In this case, zoning recommendations would be based on available ecological mapping, aerial photography and landowner submissions.

Responses have been received from three of the five affected owners.

Two of these owners agreed with ground truthing of their properties and evaluation by ecologists and one declined as detailed below.

278 Marom Creek Road, Meerschaum Vale

The landowners advised Council as follows by email dated 3 April 2025:

In response to your letter dated 30 March 2025 document SP006-06 we do not give permission for you to come on our property. We strongly oppose this conservation review and will continue to oppose the rezoning with various government agencies.

Council has been on our property in the past and has enough data from those previous visits. The trees, as previously stated in other documents to you, are not Australian natives. They are Camper Laurel and other introduced species that have been deemed as noxious weeds. There is not the native wildlife on our property as they have been decimated by the wild dog population.

I will forward a copy of this objection to the Department of planning housing and infrastructure their documentation PP – 204-2305/IRF24/2548 so that they are aware of our objection.

A further invitation to discuss the response was forwarded to the landowners, together with a copy of the EarthScapes Teven Test Case report.

No further response has been received.

Unless the landowners initiate further communication with Council regarding the zoning of their property, no further action is proposed.

287 North Teven Road, Teven, Lot 12 DP 1191626 (Lot 12)

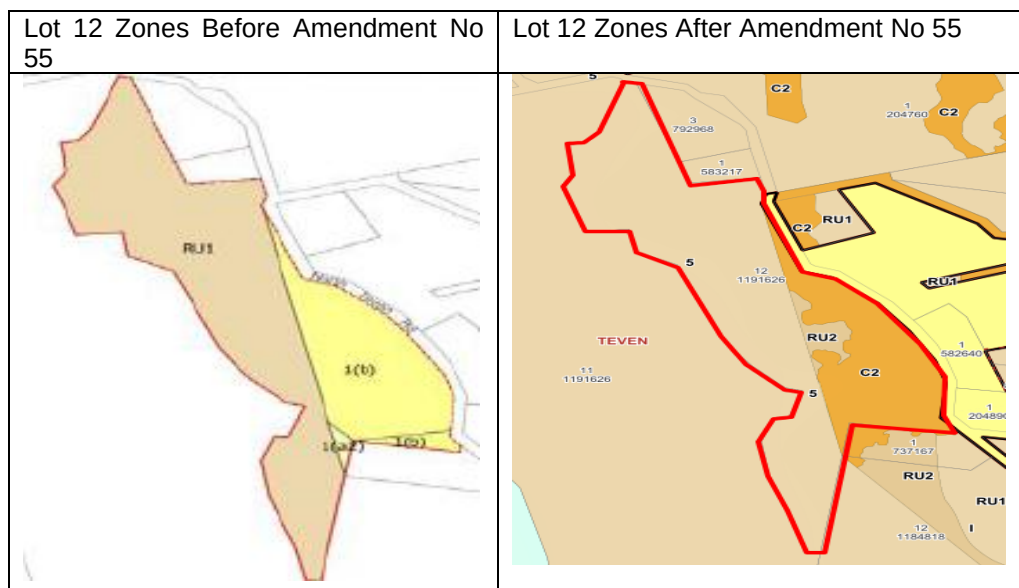
Lot 12 has an area of 24.86ha and is zoned partly RU1, RU2 and C2 under BLEP 2012.

Prior to Amendment No 55 Lot 12 was zoned part Rural 1(a1) and 1(b) under the provisions of BLEP1987 and part RU1 under the provisions of BLEP 2012.

8.2 LEP 2012 - Deferred Matters - Teven Test Cases and Continuation

Diagram 9 shows the way Lot 12 was zoned prior to Amendment No 55 and its current zoning.

Diagram 9 – Zoning Diagrams Lot 12 Before and After Amendment No 55



The C2 zone occupies approximately 7.2ha or 29% of the area of Lot 12.

The landowner objected to the 2023 planning proposal based on mapping inaccuracies, revegetation by owner of proposed C2 areas, and claimed PUL of farming and grazing.

The *Gyde Consulting* 2023 evaluation of the landowner's submission recommended correction of cadastral misalignment before fixing zone boundaries, undertaking of ground truthing to confirm PUL and vegetation type, amending the RU2 zone to an RU1 zone, and removal of the C2 zone from cleared areas.

Lot 12 was subject to ecological ground truthing in May 2025.

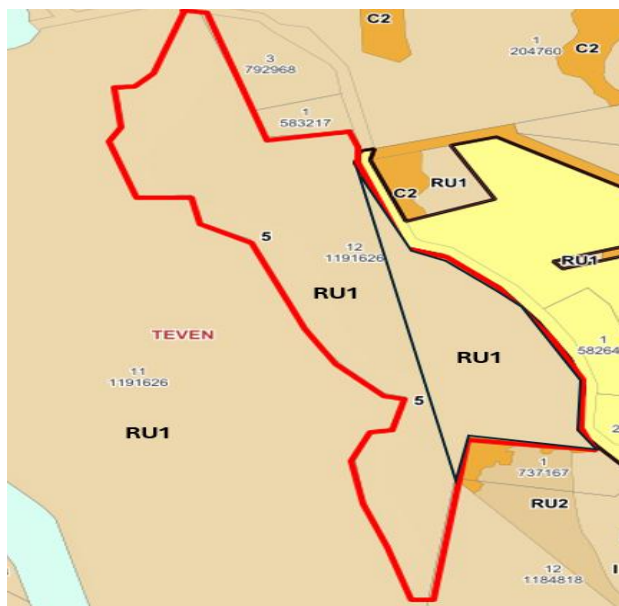
Attachment 5 contains a copy of the EarthScapes Ecological Report.

The ecologists site visit assessment states that:

No Threatened Ecological Communities (TECs) or threatened species were observed. None of the vegetation observed meets the criteria for a C2 or C3 zone because of the dominance of weed species, especially the Camphor laurel dominated canopy. The study area is best suited to a Rural zone.

Application of the suggested guiding principles results in a PUL of agriculture (cattle grazing) being applied to this lot and a recommended zoning of RU1 as shown in Diagram 10.

Diagram 10 – Proposed Zoning Outcome for Lot 12

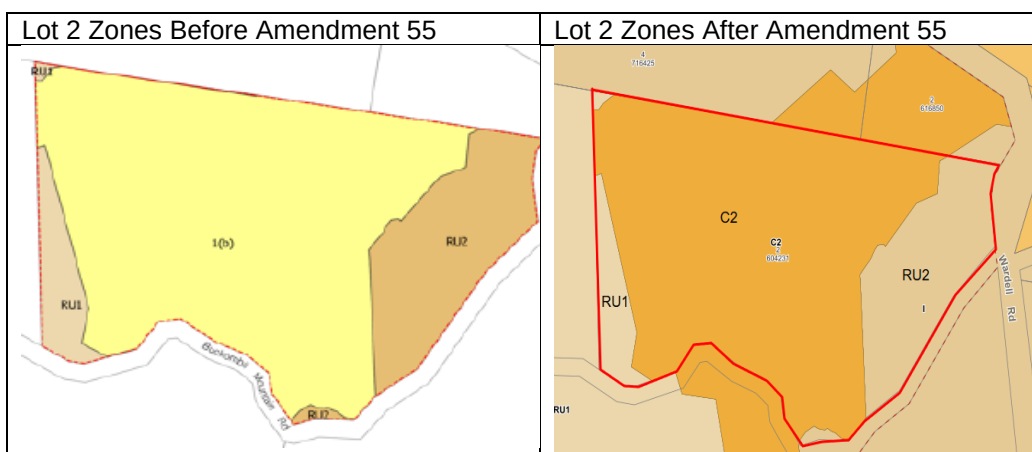


54 Buckombil Mountain Road, Meerschaum Vale, Lot 2 DP 604231(Lot 2)

Lot 2 has an area of 13.49ha and is zoned partly C2, RU1 and RU2. The C2 zone occupies an approximate area of 10.5ha or 78% of the lot area.

Prior to Amendment No 55 Lot 2 was zoned part Rural 1(b) under BLEP1987 and part RU1 and RU2 under BLEP2012. Diagram 11 shows the zoning of Lot 2 prior to and after (current zoning) Amendment No 55.

Diagram 11 – Zoning Diagrams Lot 2 Before and After Amendment No 55



The landowner had objected to the 2023 planning proposal and the proposed C2 zone based on financial impact, cleared land being designated for C2 zoning, loss of development opportunities for dual occupancy and cabins, and ongoing need to manage existing Asset Protection Zones (APZs).

The *Gyde Consulting* 2023 evaluation of the landowner's submission recommended ground truthing to verify vegetation type, checking of cadastral alignment of zone boundaries and application of an RU2 zone to the areas occupied by the dwelling and APZs.

Lot 2 was the subject of ecological ground truthing in June 2025.

Attachment 6 contains a copy of the EarthScapes Ecological Report.

Lot 2 is wholly located within a *Koala Planning Area* with the area subject to the C2 zone mapped as *Core Koala Habitat – Secondary Areas B and C*.

These areas, except for the area occupied by the dwelling, are also reflected in the NSW 2022 *Biodiversity Values Map* and designated as *Core Habitat* within an approved Koala Plan of Management.

The ecologists advised that vegetation on the property is predominantly Northern Brush Box Subtropical Wet Forest with rainforest regrowth present in gullies.

This vegetation type meets the criteria for a C2 zone as it contains threatened species habitat.

No evidence of koala activity on this property was found at the time of inspection.

The property owner advised that since the construction of the Pacific Motorway koalas have not been sighted on this property.

The ecologists classified the vegetation as 'open forest' with poor midstorey and fair understorey.

There were no old growth forest trees and a low density of weeds.

A PUL of environmental was nominated by the ecologists for the existing C2 zoned area.

The ecologist recommended that the area of the driveway, house and APZs be excised from the conservation zone and zoned rural and the C2 zone be changed to C3.

This was partly influenced by the C3 zoning of a neighbouring property (owned by Transport for NSW), which contains the same vegetation community.

The site visit found the vegetation within the C2 zoned area to be in overall good condition. This is attributed to the landowner's substantial vegetation management work, consisting mainly of weed species removal, with some replanting, over a 25-year period.

This work extended to the rainforest regrowth areas in gullies which have been maintained mostly weed free.

In accordance with the suggested guiding principles, application of a C3 zone to areas previously zoned C2, excluding the dwelling related areas, is supported.

This is based on the need for ongoing intervention to maintain the natural ecological processes on this land.

8.2 LEP 2012 - Deferred Matters - Teven Test Cases and Continuation

Diagram 12 shows the zoning outcomes negotiated with the property owner, which require Council endorsement to progress to a rezoning planning proposal.

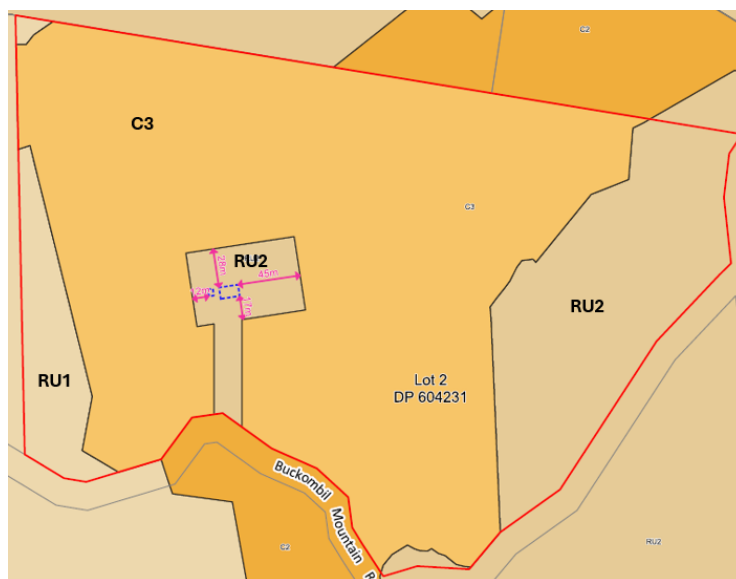
The map shows application of the C3 zone to that part of Lot 2 zoned C2 with the area occupied by the dwelling including the APZs and driveway to be zoned RU2.

The APZs required by the 2009 development consent for the dwelling (DA2009/284) have been extended from 30 to 45 metres east of the dwelling.

This is supported by the applicant's then submitted Bush Fire Assessment.

A 20-metre wide RU2 corridor has also been placed generally over the area occupied by the access driveway.

Diagram 12 - Proposed Zoning Outcomes 54 Buckombil Mountain Rd



Transitioning Program for land Excluded from Amendment No 55

The April 2025 Council report (Item 8.2) proposed options for the transitioning of the deferred matter land excluded from Amendment No 55 into BLEP 2012.

The recommendations of that report included a proposal for a staged annual program.

Such a program is no longer supported due to the extra complexity introduced by the DPHI maintaining their 'absence of agriculture' test position.

The Teven Test Cases highlight the difficulties associated with negotiating rezoning outcomes in accordance with the NCEZR rules as amended by the DPHI guidance documents.

With respect to transitioning the remaining privately owned deferred matter (conservation) lots, 120 of these lots may require ground truthing, which is not feasible in terms of available resources.

There is also Council owned and other land not in private ownership that needs to be considered.

The approach now proposed has the following elements:

1. Transitioning of privately owned deferred matter affected properties into BLEP 2012 for zones substantially other than C2 or C3 to be the subject of proponent-initiated planning proposals. This includes the payment of fees as nominated in Council's Schedule of Fees and Charges.
2. Private property owners wishing to transition deferred matter affected properties to be substantially zoned C2 or C3 to be incorporated in a Council initiated planning proposal on an annual or as required basis generally concurrently with the general amendments planning proposal process. These property owners to be exempt from rezoning fees.
3. Transitioning of Council owned properties excluded from Amendment No 55 be the subject of a planning proposal to be prepared for the consideration of Council within the next 12-month period.
4. Transition of government agency and JALI properties excluded from Amendment No 55 be considered on an on-request basis.

Delivery Program Strategy / Operational Plan Activity

Reviewing deferred matter areas and the preparation of planning proposals aligns with the 2025 – 2029 Delivery Program and Operational Plan Healthy Environment Direction - Strategy HE3.1 *Develop and implement plans that balance the built environment with the natural environment.*

Community Engagement Strategy

Further consultation with affected landowners and nearby property owners will occur in accordance with Council's Community Participation Plan and the requirements of the *Environmental Planning and Assessment Act 1979* and associated Regulation.

Consultation will take place once a planning proposal has been prepared, and a Gateway determination made, which allows the proposal to proceed to public exhibition.

Financial / Risk Considerations

The ecological evaluations referenced in this report cost approximately \$1,600 per property plus GST.

Staff costs to date and any additional staff costs associated with the preparation of a planning proposal will be met through existing budget allocations.

Options

Option 1 – Take no further action

This option is not recommended.

Council has already invested considerable resources into reaching a resolution in respect to the Teven Test Case properties, the benefits of which would be lost if this project did not proceed to the planning proposal stage.

This is also the case in respect to the properties subject to the previously unconsidered objections.

Further with the Teven Test case properties, although there have been substantial points of difference and changes, Council and the landowners have engaged in the process to try and resolve the zoning issues in good faith and considerable effort has been expended to date.

This is a sound basis for completing the deferred matters transition for these properties.

Option 2 – Teven Test Case Properties - Maintain Position as Recommended in the Report to Council on 24 April 2025 (Item 8.3)

It is open to the Council to maintain the position as previously recommended.

This position was mainly in line with the PUL, and zone recommendations contained within the ecological evaluations and the preparation of a planning proposal on that basis.

Adopting this position may not receive the support of the DPHI as it conflicts in each case with their policy guidance position.

It will also likely result in considerable landowner objection. It is for these reasons that this option is not recommended.

Options 3 – Adopt the Guiding Principles outlined in this report and the amended PUL and zones recommended for the Teven Test Case Properties, and the properties subject to unconsidered objections. Adopt the transition strategy detailed in this report.

This is the recommended option.

Adopting this option will result in the preparation of one planning proposal dealing with all seven properties referenced in this report.

The adoption of the guiding principles will also assist in the determination of any future rezoning proposals relating to deferred matter affected properties excluded from Amendment No 55.

Adoption of the transitioning strategy detailed in this report will also better ensure that planning proposals which seek to transition land into BLEP 2012 to maximise landowner perceived economic benefits proceed on a fee for service basis.

This also recognises Council's limited resource capacity to continue with the deferred matters integration.

Council can effectively operate and administer its planning framework with two LEPS, with this now having been demonstrated for over ten years.

RECOMMENDATIONS

1. That Council adopts the six guiding principles, as detailed in this report, to evaluate the appropriateness of a C zone being applied to privately owned land.
2. That Council adopts the revised primary use of land (PUL), and zone recommendations contained within Table 1 of this report, for the Teven Test Case properties, and prepare a planning proposal on that basis. The planning proposal is to be submitted for a Gateway determination and subsequent public exhibition.
3. That Council adopts the PUL recommendations in this report, in respect to 287 North Teven Road, Teven and 54 Buckombil Mountain Road, Meerschaum Vale and the zoning outcomes shown in Diagrams 10 and 12. These properties to be incorporated in the planning proposal referenced in point 2.
4. That Council further consider the zones applied to the remaining three properties, subject to unconsidered objections, as detailed in this report, if requested to do so by the property owners, at no cost to the owners.
5. That further transitioning of privately owned deferred matter affected properties into Ballina LEP 2012, for zones substantially other than C2, or C3, be the subject of proponent-initiated planning proposals. This includes the payment of Council's fees and charges.
6. That private property owners seeking to transition deferred matter affected properties to be substantially zoned C2, or C3, be exempt from Council's rezoning fees and charges, as the proposals are to be incorporated into a Council prepared planning proposal, on an annual, or as required basis, concurrently with periodic reviews of the LEP.
7. The transition of Council owned deferred matter properties, excluded from Amendment No 55, are to be included in a planning proposal, within the next 12 months.
8. The transition of Government Agency and JALI Local Aboriginal Land Council owned deferred matter properties, excluded from Amendment No 55, are to be considered on an on-request basis.

Attachment(s)

1. Planning and Environment Secretary letter to Ballina Council - E Zone Review - 1 March 2016
2. DPHI 2023 FAQ Northern Councils C Zone Review
3. Email Correspondence from Department of Planning Housing and Infrastructure re: Absence of Agriculture Issue
4. Letter from DCCEEW regarding Primary Use of Land - Absence of Agriculture Issue
5. EarthScapes Report - 287 North Teven Road
6. EarthScapes Report - 54 Buckombil Mountain Road
7. EarthScapes Report - Review of C zone on Teven Test Case properties