



IRF25/2190

Gateway determination report – PP-2025-1798

Incorporate Deferred Matter Land and Conservation
Zone Review of Certain Land in Ballina Local
Government Area

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Acknowledgment of Country

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

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Northern Councils E Zone Review Final Recommendations Report
North Coast Regional Plan 2041

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Ballina
PPA	Ballina Shire Council
NAME	Deferred Matter and Conservation Zone Review
NUMBER	PP-2025-1798
LEP TO BE AMENDED	Ballina LEP 2012
ADDRESS	Multiple Lots in LGA
DESCRIPTION	Multiple Lots in LGA
RECEIVED	19/09/2025
FILE NO.	IRF25/2190
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to:

- incorporate deferred matter land on five (5) properties (referred to as the Teven Test Case Properties) into the Ballina LEP 2012 and apply an appropriate zone and associated development controls; and
- rezone certain land on two (2) properties zoned under Ballina LEP 2012 Amendment No. 55 to apply a zone commensurate with the Northern Councils E Zone Review Final Recommendations.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Ballina LEP 2012 per the changes outlined in Table 3 below.

Table 3 Current and proposed controls

Map Amendment	118 Beacon Rd, Teven (Lot 6 DP1162316)	225 Cumbalum Rd, Cumbalum (Lot 2 DP1154979)	444 North Teven Rd, Teven (Lot 101 DP865070)	54 Beacon Rd, Teven (Lot 104 DP862670)	54 Buckombil Mountain Rd, Meerschaum Vale (Lot 2 DP 604231)	660 Teven Rd, Teven (Lot 1 DP 1166050 and Lot 1 DP 1207272)	287 North Teven Rd, Teven (Lot 12 DP 1191626)
Current Instrument	BLEP 1987	Part BLEP 1987 and part BLEP 2012	Part BLEP 1987 and part BLEP 2012	BLEP 1987	BLEP 2012	Part BLEP 1987 and part BLEP 2012	BLEP 2012
Proposed Instrument	BLEP 2012	BLEP 2012	BLEP 2012	BLEP 2012	No change	BLEP 2012	No change
Current Zone	Rural 1(b) Secondary Agriculture	Part Rural 1(b) Secondary Agriculture and part RU1 Primary Production	Part Rural 1(b) Secondary Agriculture and part RU1 Primary Production	Rural 1(b) Secondary Agriculture	Part RU1 Primary Production, part C2 Environmental Conservation, part RU2 Rural Landscape	Part Rural 1(b) Secondary Agriculture and part RU1 Primary Production	Part RU1 Primary Production, part RU2 Rural Landscape, part C2 Environmental Conservation
Proposed Zone	Part C3 Environmental Management, part RU1 Primary Production	Part RU1 Primary Production, part C3 Environmental Management	Part RU1 Primary Production, part C3 Environmental Management	Part C2 Environmental Conservation, part RU1 Primary Production	Part RU1 Primary Production, part C3 Environmental Management, Part RU2 Rural Landscape	RU1 Primary Production	Part RU1 Primary Production
Proposed HoB	8.5m	8.5m	8.5m	8.5m	No change	8.5m	No change
Proposed Minimum Lot Size	40ha	40ha	40ha	40ha	No change	40ha	No change
Proposed Acid Sulfate Soils	N/A	Part affected (Class 5)	N/A	N/A	N/A	Part affected (Class 3, 4 and 5)	No change

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The planning proposal applies to seven sites across the Ballina Local Government Area.

Five of the seven sites are located within 'Teven' (Figure 1) a small rural locality to the northwest of Ballina. These properties were deferred from Ballina LEP 2012 Amendment No. 55 to allow for further consideration of objections received during the exhibition period for that proposal.

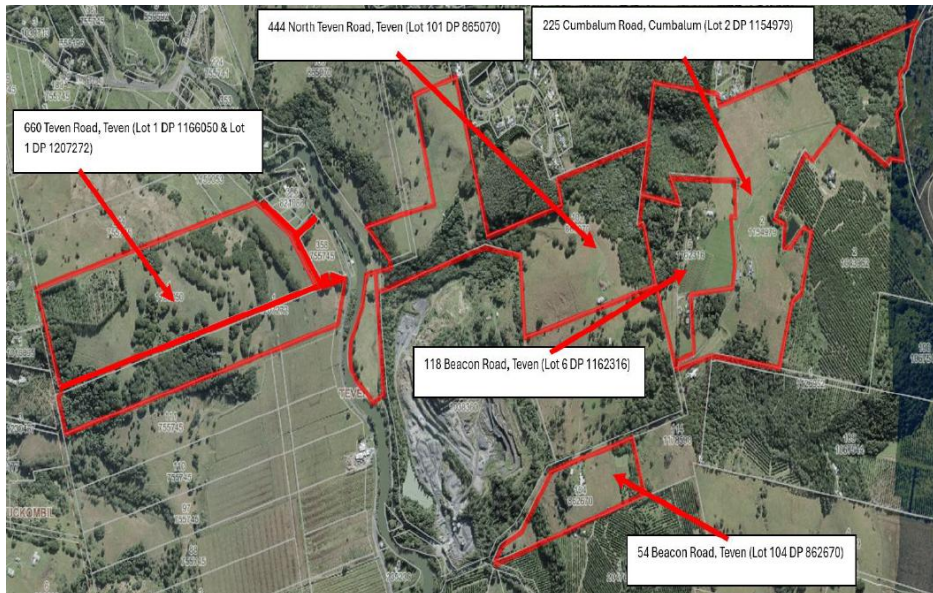


Figure 1 Teven Test Case Properties (source: Council Planning Proposal)

Two of the seven sites, one located in Teven and one in Meerschaum Vale, (Figure 2) were incorporated into Ballina LEP 2012 by Amendment No. 55. The landowners had submitted an objection to the planning proposal however these submissions were not provided to the Department by Council and the lots were inadvertently rezoned.

54 Buckambil Mountain Road Meerschaum Vale
(Lot 2 DP 604231)

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



Figure 2 Unconsidered objections (source: Council Planning Proposal)

1.5 Mapping

The planning proposal notes that changes to the land zoning, land application, height of building and lot size maps will be required. The land application, height of building and lot size maps are yet

to be prepared. Council's planning proposal indicates that draft maps will be provided in Appendix 1 post Gateway and prior to exhibition of the planning proposal.

A condition is recommended requiring maps to be prepared prior to exhibition, which are suitable for community consultation. An additional condition has been included requiring Council to update the planning proposal to clarify that the Acid Sulfate Soils map will also be amended as part of the proposal for two of the subject lots.

Extracts of the current and proposed zones for the seven properties are shown in Figures 3 – 9.

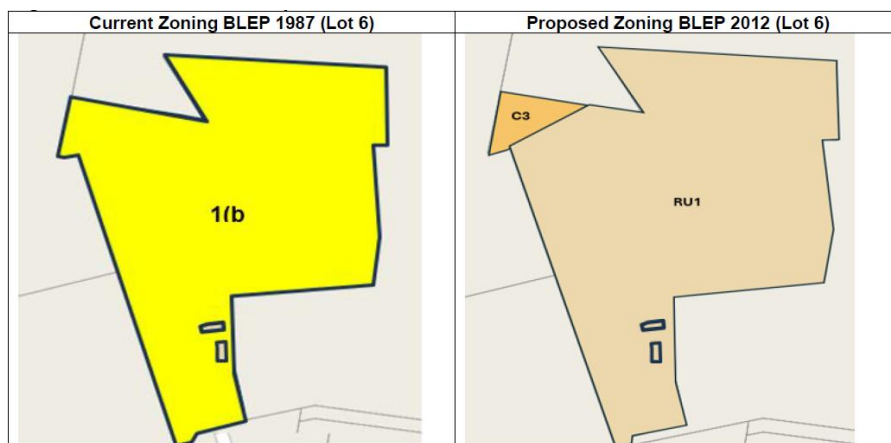


Figure 3 118 Beacon Road, Teven (Lot 6 DP 1162316) Current and Proposed zoning map

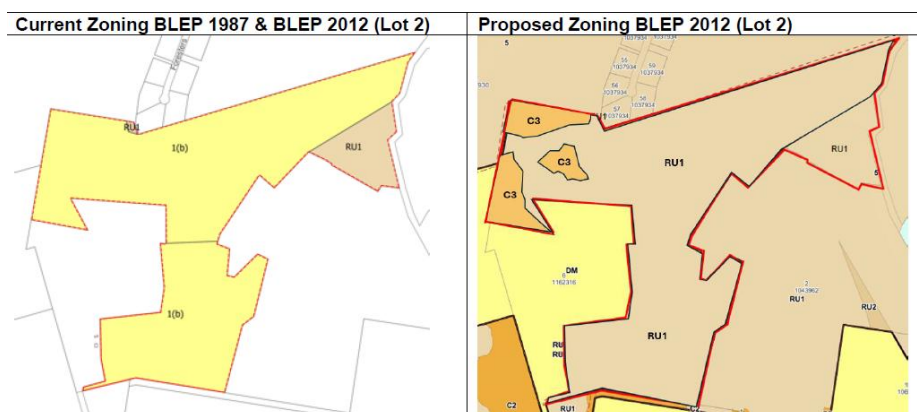


Figure 4 225 Cumbalum Road, Cumbalum (Lot 2 DP 1154979) Current and Proposed zoning map

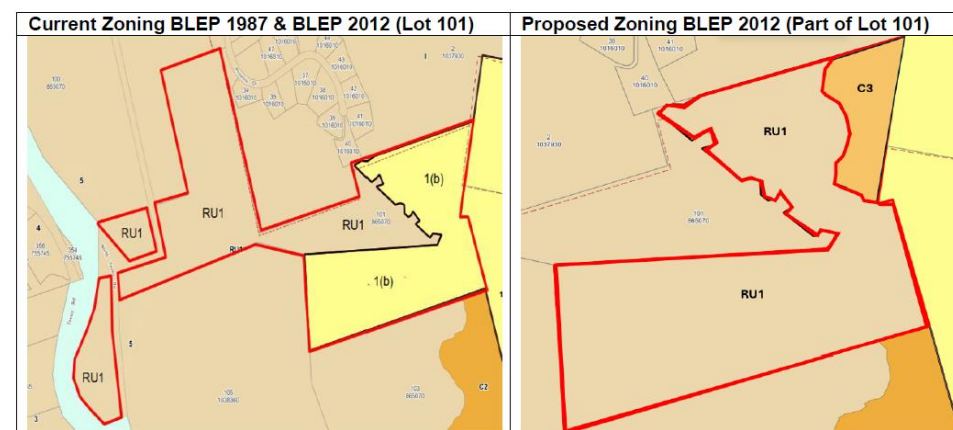


Figure 5 444 North Reven Road, Teven (Lot 101 DP 865070) Current and Proposed zoning map

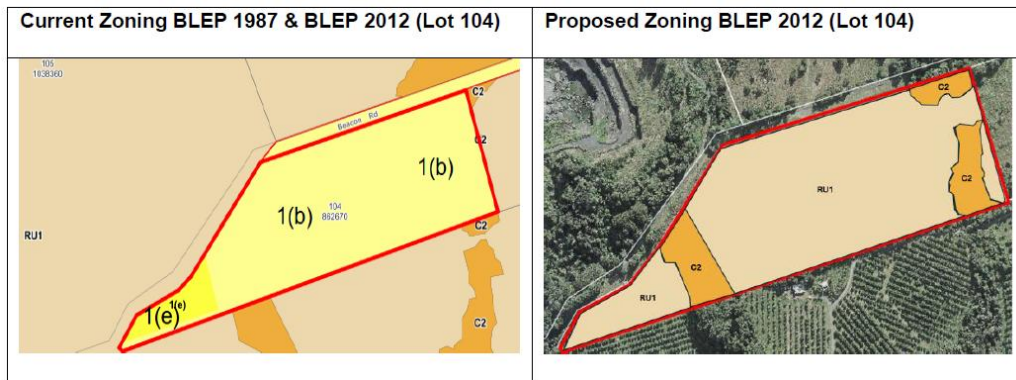


Figure 6 54 Beacon Road, Teven (Lot 104 DP 862670) Current and Proposed zoning map



Figure 7 660 Teven Road, Teven (Lot 1 DP 1166050 and Lot 1 DP 1207272) Current and Proposed zoning map

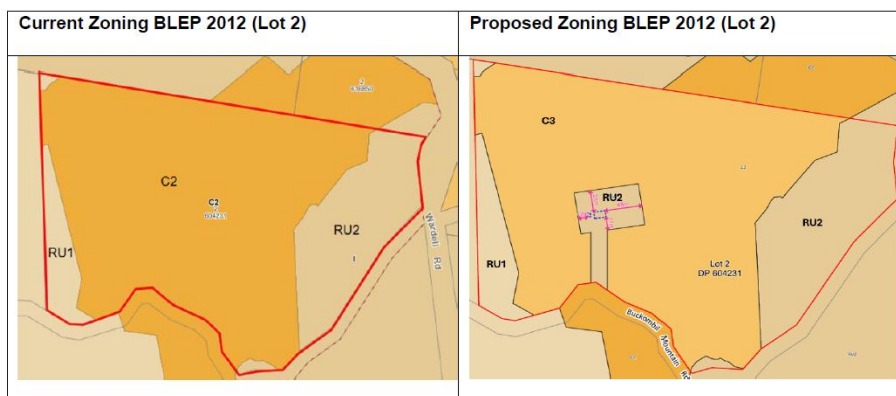


Figure 8 54 Buckombil Mountain Road, Meerschaum Vale (Lot 2 DP 604231) Current and Proposed zoning map

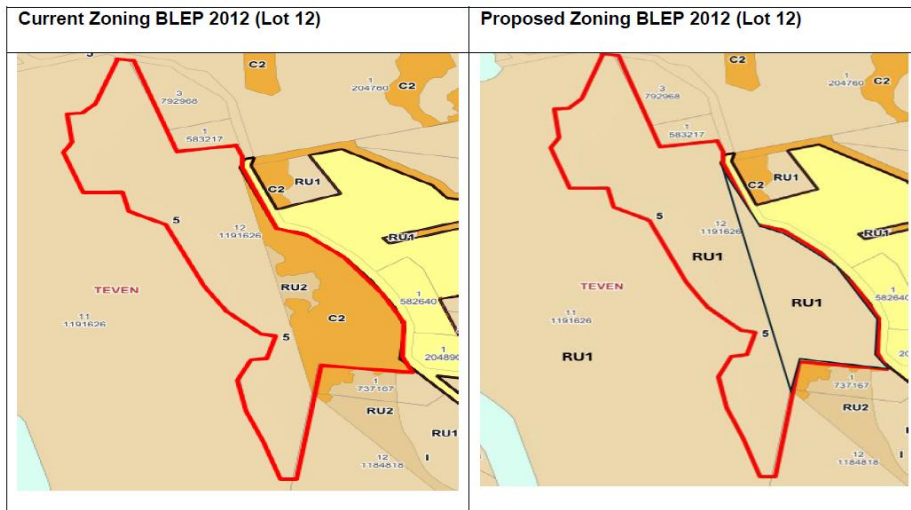


Figure 9 287 North Teven Road, Teven (Lot 12 DP 1191626) Current and Proposed zoning map

1.6 Background

Stage 1 of Ballina Council's C Zone program (Ballina LEP 2012 Amendment No. 55) was completed in 2024.

Where a landowner objected to the application of a C zone to their land and Council advised the Department of this objection, the land was deferred from this LEP amendment and Council was advised to work with landowners to determine an appropriate zone to be applied to the land in accordance with the C Zone Review. The Department deferred 256 sites from Amendment No. 55.

In response to the above, Council resolved to work with landowners of five properties within Teven (now the subject of this planning proposal), known as the Teven Test Case properties. Council undertook site visits and ecological evaluation at no cost to landowners to determine appropriate zones for these five lots.

Five properties were inadvertently rezoned as part of Stage 1 (Amendment No. 55) as Council did not advise the Department that the landowners had objected to the zone proposed to be applied to their properties.

Two of the five affected landowners agreed to work collaboratively with Council to identify a more appropriate zone and are now subject of this planning proposal. Council engaged an ecological consultant to undertake evaluation of the land to inform a more appropriate zone.

2 Need for the planning proposal

The planning proposal has arisen as a result of Ballina Shire Council's need to integrate deferred matter land into Byron LEP 2012. This planning proposal seeks to rezone five test case properties that were deferred as part of Amendment No. 55 and two sites that were inadvertently rezoned despite registered objections.

The planning proposal is the best means of achieving the objectives and incorporating deferred matter land into the Ballina LEP 2012 by rezoning and amending associated development controls, or rezoning land to a more appropriate zone than already applied under the Ballina LEP 2012.

3 Strategic assessment

3.1 Regional Plan

The planning proposal is consistent with key aspects of the North Coast Regional Plan 2041.

The proposal seeks to apply a conservation zone where land is found to meet the criteria as established by the Northern Councils E Zone Review Final Recommendations Report (NCEZR), or a rural zone that meets the existing use of the land and/or is consistent with the existing zoning applied under Ballina LEP 1987. This is discussed in greater detail under section 3.4 of this report.

The proposal includes the rezoning of some sites mapped as important farmland. The overlap of conservation zones applied to important farmland is however minimal, has been verified as being appropriate based on an ecological review and site visit, with 54 Beacon Rd, Teven being the most affected site with 1.4ha of important farmland proposed to be zoned C2 Environmental Conservation.

Extensive agriculture is a use permissible in both the C2 Environmental Conservation (with consent) and C3 Environmental Management (without consent) zones, allowing for farming activities in these areas to continue to occur. Any continuing use rights for important farmland currently being used for extensive agriculture would also not be affected.

3.2 Local

The proposal confirms that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 6 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement	Consistent with Healthy Environment Theme and Planning Priority 13: <i>Ensure that the biodiversity values of the Shire are identified and where required protection strategies are implemented.</i>
Community Strategic Plan 2025-2035	Consistent with community priority: <i>Protect the environment and live sustainably.</i>

3.3 Section 9.1 Ministerial Directions

The planning proposal is consistent with all relevant section 9.1 Directions except as discussed in Table 7 below.

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.1 Conservation Zones	Unresolved	The planning proposal is inconsistent with this direction as it seeks to rezone land from a conservation zone to a rural zone for two sites due to further consideration of the primary land use along with detailed ecological evaluation and ground truthing. Consultation with Department of Climate Change, Energy, the Environment and Water is considered appropriate. Until this consultation has occurred, consistency with this direction will remain unresolved.
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	Unresolved	A planning proposal that introduces or alters a C2 Environmental Conservation or C3 Environmental Management zone or an overlay and associated clause in Far North Coast Councils must apply the zones in accordance with the NCEZR. Council has sought to apply conservation zones in accordance with the requirements set out by the NCEZR. As outlined in Table 8 below, there are aspects of the proposal that remain unresolved until landowners are consulted during public exhibition. Until this consultation has occurred, consistency with this direction will remain unresolved. Further discussion of the proposal's consistency with the NCEZR is outlined in Table 8 and Attachment 1.
4.3 Planning for Bushfire Protection	Unresolved	This direction is relevant to the proposal as it will affect, or is in proximity to, land that is mapped as bushfire prone. The proposal is therefore potentially inconsistent with the proposal. The direction provides that Council must consult with the Commissioner of the NSW Rural Fire Service (RFS). Until consultation has occurred, consistency with the direction remains unresolved.
4.5 Acid Sulfate Soils	Justifiably Inconsistent	The proposal is inconsistent with this direction as it applies to land that contains acid sulfate soils and is not supported by an acid sulfate soils study. The inconsistency with this direction is considered minor as Ballina LEP 2012 already contains acid sulfate soils provisions that can ensure this issue is addressed appropriately at the development application stage, if necessary.

8.1 Mining, Petroleum Production and Extractive Industries	Justifiably Inconsistent	The proposal is potentially inconsistent with the direction as it seeks to apply conservation zones to formerly zoned Rural 1(b) land. Extractive industries are permissible under zone 1(b) of the Ballina LEP 1987 but are not permissible under Ballina LEP 2012 in conservation zones. Notwithstanding, the application of new conservation zones is considered minor, given the small overall area that is proposed to be rezoned for conservation purposes and noting that consultation with DPRID was undertaken with the Amendment 55.
9.2 Rural Lands	Justifiably Inconsistent	The proposal is inconsistent with this direction as it affects land in an existing or proposed rural or conservation zone and does not satisfy all the requirements such as supporting farmers in exercising their right to farm in all instances. The inconsistency is considered to be of minor significance noting that Council has undertaken detailed ecological evaluations and ground truthing, along with applying a primary land use test for agriculture and are only applying conservation zones to areas that can satisfy the requirements of the NCEZR.

Table 8 – Consistency of specific sites with the NCEZR (further commentary in Attachment 1)

Recommendation	118 Beacon Rd, Teven (Lot 6 DP1162316)	225 Cumbalum Rd, Cumbalum (Lot 2 DP1154979)	444 North Teven Rd, Teven (Lot 101 DP865070)	54 Beacon Rd, Teven (Lot 104 DP862670)	54 Buckombil Mountain Rd, Meerschaum Vale (Lot 2 DP 604231)
1	Consistent	Consistent	Consistent	Unresolved	Consistent
2	Consistent	Consistent	Consistent	Unresolved	Consistent
3	Consistent	Consistent	Consistent	Consistent	Consistent
4	Consistent	Consistent	Consistent	Unresolved	Consistent
5	Consistent	Consistent	Consistent	Unresolved	Consistent
6	Not Relevant	Not Relevant	Not Relevant	Not Relevant	Not Relevant
7	Not Relevant	Not Relevant	Not Relevant	Unresolved	Not Relevant
8	Consistent	Not Relevant	Not Relevant	Unresolved	Not Relevant
9	Consistent	Consistent	Consistent	Unresolved	Not Relevant
10	Consistent	Consistent	Consistent	Unresolved	Consistent
11	Not Relevant	Not Relevant	Not Relevant	Not Relevant	Not Relevant

Recommendation	118 Beacon Rd, Teven (Lot 6 DP1162316)	225 Cumbalum Rd, Cumbalum (Lot 2 DP1154979)	444 North Teven Rd, Teven (Lot 101 DP865070)	54 Beacon Rd, Teven (Lot 104 DP862670)	54 Buckombil Mountain Rd, Meerschaum Vale (Lot 2 DP 604231)
12	Not Relevant	Not Relevant	Not Relevant	Unresolved	Consistent
13	Consistent	Consistent	Consistent	Consistent	Consistent
14	Not Relevant	Not Relevant	Not Relevant	Not Relevant	Not Relevant
15	Not Relevant	Not Relevant	Not Relevant	Not Relevant	Not Relevant
16	Unresolved	Unresolved	Unresolved	Unresolved	Unresolved

As 660 Teven Road, Teven (Lot 1 DP 1166050 and Lot 1 DP 1207272) and 287 North Teven Road, Teven (Lot 12 DP 1191626) are proposed to be wholly zoned RU1 Primary Production, there are no C Zones proposed to be applied to these sites and as such, Local Planning Direction 3.4 does not apply to these sites.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs.

4 Site-specific assessment

4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

Table 9 Environmental impact assessment

Environmental Impact	Assessment
Contamination	Part of 287 North Teven Road is potentially contaminated as it contains a historic cattle dip. Further, there are sites that may have potentially been used for purposes referred to in Table 1 of the contaminated land guidelines. The contaminated land planning guidelines state that for “<i>rezonings that cover a large area, for example, more than one property, usually describe proposed land uses very generally both in type and location. This makes it difficult for a planning authority to be satisfied that every part of the land is suitable for the proposed use(s) in terms of contamination at the rezoning stage. In these cases, the rezoning should be allowed to proceed, provided measures are in place to ensure that the potential for contamination and the suitability of the land for any proposed use is assessed once detailed proposals are made</i>”. Further, the guidelines state “<i>for some rezonings contamination will not be an issue if, for example, there is no change of use or where there is a change to a similar use</i>”. The application of zones has occurred through the review of the primary use of the land and is supported by site visits and an ecological evaluation for each site. It is

	considered that a more detailed contamination assessment is not warranted and suitability of future proposed uses can be appropriately assessed at future development application stage, if required.
Flooding	Some sites the subject of this proposal have the potential to be affected by flooding. The proposal will not however result in any significant increase in development potential, and this issue can be addressed adequately at the development stage if required in accordance with clauses 5.21 of the Ballina LEP 2012.
Bushfire	Various sites subject to this proposal have been identified as being bushfire prone. It is recommended that consultation should be carried out with NSW RFS to determine suitability of the proposal.
Biodiversity	The proposal is considered to have a net positive impact in relation to the protection of biodiversity within the planning proposal areas as it provides for further application of conservation zones under Ballina LEP 2012 where it can be demonstrated as needed and appropriate in accordance with the NCEZR. The proposal is supported by ecological evaluations for each site which establishes that the land proposed for rezoning to conservation zones meets the criteria for the application of a C zone. Council has also applied the primary use test to land in identifying appropriate zones (noting that further consultation is warranted with landowners and will be undertaken during to the exhibition period of the planning proposal to confirm Council's assessment). As the proposal seeks to remove C2 zones from some of the subject land in response to site investigation it is recommended that DCCEEW is consulted on the proposal.

4.2 Social and economic

The proposal is anticipated to have a generally positive community and social impact. The application of the C2 and C3 zones in the Ballina LEP 2012 will allow for land with ecological value consistent with the C Zone Review to be protected consistent with community expectations and in line with primary use of land tests.

With regard to economic impact, the proposed zones will continue to allow for land uses that can be applied to privately owned land and support the overall objectives of the zones. Both the C2 and C3 zones will allow for extensive agriculture in some form to continue in the zones.

The economic impact of the proposal on agricultural land is considered to be limited noting that zones have been applied subject to primary use of land test or through negotiated outcomes with landowners. The public exhibition of the proposal will allow for further consultation with landowners, particularly in the case of 54 Beacon Road, Teven, where the Department has identified some potential concerns in relation to the primary use test and also the C2 zone footprint proposed in the western area in relation to the vegetation coverage. **Attachment 1** provides further information in relation to this matter. In this regard, it is considered appropriate that Department of Primary Industries and Regional Development – Agriculture and Biosecurity (DPIRD Ag) be consulted on the proposal.

4.3 Infrastructure

The proposal is not expected to create a need for additional public infrastructure. The proposal mostly brings deferred land into the Ballina LEP 2012 through the application of zones and associated controls in accordance with established state legislation. Some land already subject to

the Ballina LEP 2012 is also proposed to be rezoned to better reflect the current primary use of the land and environmental attributes.

The proposal will not result in a significant increase in the development potential of the land that would require additional infrastructure. Should future development proposals require minor additional infrastructure requirements, these can be appropriately addressed at the development application stage.

5 Consultation

5.1 Community

Council does not indicate a specific timeframe for undertaking community consultation, however, notes that consultation will be undertaken in accordance with the Gateway determination.

The planning proposal is categorised as a complex proposal under the LEP Making Guidelines (September 2022). Accordingly, a community consultation period of 30 working days is recommended and this forms part of the conditions to the Gateway determination.

5.2 Agencies

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

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

- NSW RFS
- DCCEEW
- DPIRD Agriculture and Biosecurity

6 Timeframe

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

The LEP Plan Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category. This planning proposal is categorised as a complex proposal.

An LEP completion date of nine months is supported and is within the Department's benchmark timeframes for complex proposals and commitment to reducing processing times. A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

As the planning proposal seeks to zone land in Ballina to a conservation zone, and consistent with the advice provided to the Northern Rivers Councils by the former Secretary in 2016, Council will not be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions as it seeks to apply rural and conservation zones consistent with the NSW Government's Northern Councils E Zone Review Final Recommendations Report.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 4.5 Acid Sulfate Soils, 8.1 Mining, Petroleum Production and Extractive Industries and 9.2 Rural Lands are minor or justified and
- Note that the inconsistencies with section 9.1 Directions 3.1 Conservation Zones, 3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs, 4.3 Planning for Bushfire Protection are unresolved and will require justification.

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

The following conditions are recommended to be included on the Gateway determination:

1. Land application, height of building and lot size maps are to be prepared prior to exhibition, which are suitable for public exhibition and demonstrate the proposed changes.
2. The planning proposal is to be updated to reference the intention to amend the Acid Sulfate Soils map under section 5 of the planning proposal.
3. Consultation is required with the following public authorities:
 - NSW RFS
 - DPIRD Agriculture and Biosecurity
 - DCCEEW
4. The planning proposal should be made available for community consultation for a minimum of 30 working days.
5. Consistent with the Secretary's letter of 1 March 2016, 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.
6. 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 to undertake an independent review of the proposed zoning of their property.
7. The final planning proposal is to detail how the C Zone application process for each property has been satisfied in accordance with the Northern Councils C Zone Review Final Recommendations Report.



(Signature)

3 October 2025 (Date)

Paul Garnett

Manager, Hunter and Northern



10/10/25

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