



Planning Proposal – Ballina Local Environmental Plan 2012

» *Integration of Certain Deferred Matters*



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) Integration of Certain Deferred Matters 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. To date, Council has not received any further correspondence regarding the discontinuation.

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, Infrastructure and Environment (DPIE), Council engaged Ascent Ecology Pty Ltd to identify and verify proposed E2 and E3 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.

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.

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)

The DM land to which this planning proposal applies is shown outlined in red in Figure 1.

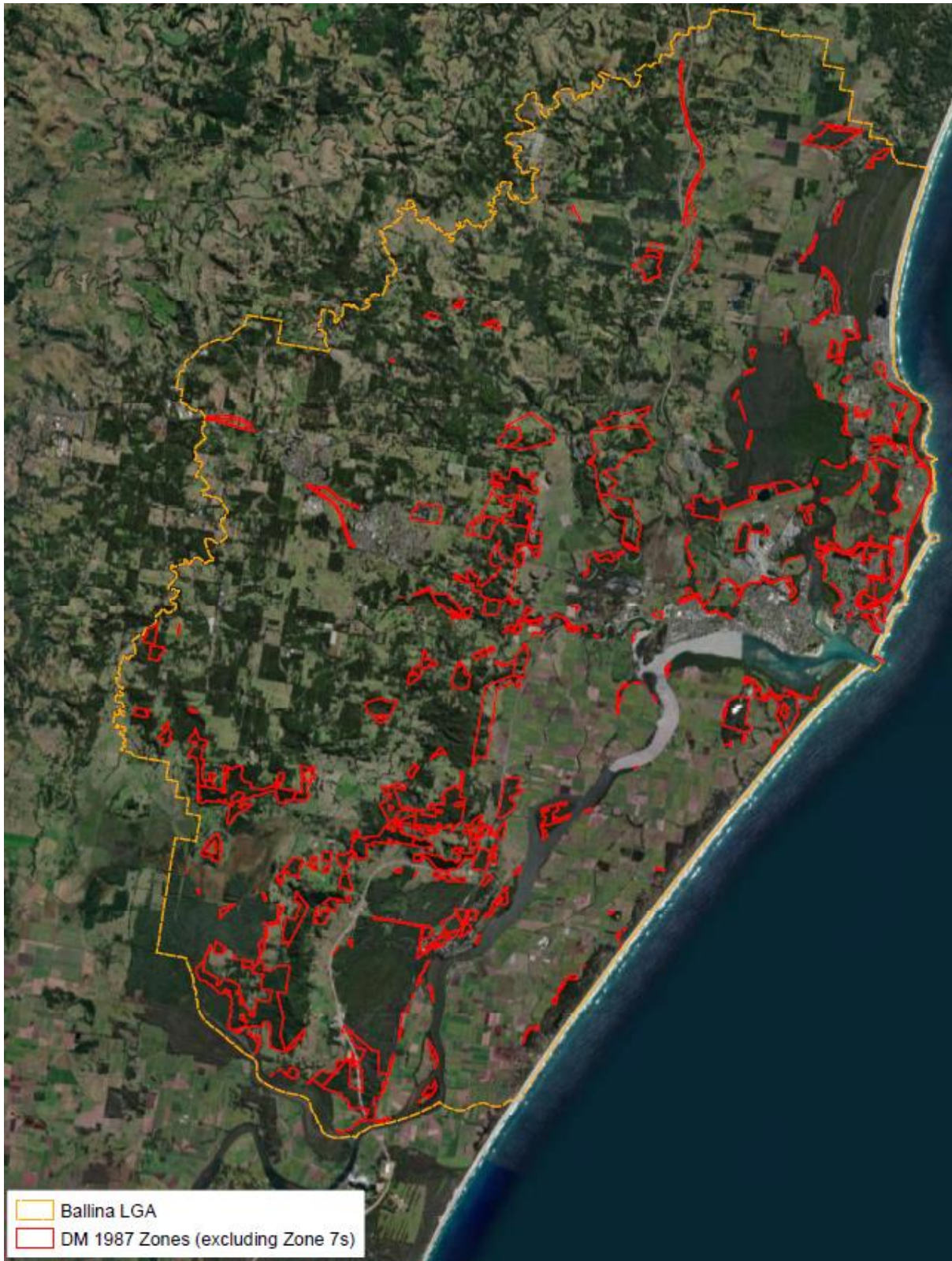


Figure 1: Deferred Matter Land (excluding environmental protection zones under the BLEP 1987) shown outlined in red

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).*

A copy of the report considered by the Council is provided in Appendix 3 of this planning proposal.

1.5 Gateway Determination

To be completed following Gateway determination.

1.6 Deferred Matter Integration Context and Interpretation

The application of environmental protection zones in Ballina Shire is required to be based on the NSW Department of Planning, Industry 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 E 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 an E2 or E3 environmental protection 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 E2 or E3 zones are proposed.

For land that Council has verified as consistent with the vegetation criteria for an environmental zone, an Environmental Conservation (E2) or Environmental Management (E3) zone will generally be applied if the primary use of the land is confirmed to be E2 or E3.

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 an E2 or E3 zone mapped accordingly.

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

1.6.2 Verification of the E zone criteria

An E 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 an E 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 E2 or E3, despite being inconsistent with the criteria, if the primary use of the land is environmental conservation or environmental management.

Private land may be zoned E2 or E3, 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 an E2 or E3 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 E 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 an E 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 an E 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 an E2 or E3 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 E 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 an E zone or mapped planning controls.

1.6.9 Permissibility of agriculture in E zones

Extensive agriculture is to be listed as permissible with consent in the E2 zone and permissible without consent in the E3 zone.

The E3 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 E2 Environmental Conservation and E3 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 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 Soil; Building Height Allowance; Flood Planning; Floor Space Ratio; Height of Building; Heritage and Minimum Lot Size.
- 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 E2 and E3 zones, including but not limited to the following:

- 4.2A Erection of dwelling houses and dual occupancies on land in certain rural 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 E2 and E3 Zone Land Use Table Introduction

Environmental zones ('E zones') are designed to recognise and protect land that has important environmental value. An overview of the E2 and E3 zones as proposed for introduction into Ballina Shire is provided below.

The Standard LEP Instrument compiled by the NSW Department of Planning, Infrastructure and Environment (DPIE) 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 DPIE's *Northern Councils E Zone Review Final Recommendations Report* (NCEZR) mandates that *Extensive agriculture* be permitted with consent in the E2 zone and permitted without consent in the E3 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.

E2 Environmental Conservation

The E2 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 E2 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 DPIE's NCEZR and the history and characteristics of Ballina Shire, it is proposed that the E2 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 E2	Environmental Conservation
1	Objectives of zone <ul style="list-style-type: none">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 <p>Environmental protection works.</p>
3	Permitted with consent <p>Dwelling houses; Environmental facilities; Extensive agriculture; Oyster aquaculture; Research stations; Roads.</p>
4	Prohibited <p>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</p>

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

E3 Environmental Management

The E3 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 E2 zone.

Having regard for the outcomes of the DPIE's NCEZR and the history and characteristics of Ballina Shire, it is proposed that the E3 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 E3 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 E Zones

The application of E zones to deferred land in the shire is required to be based on the NSW DPIE'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 E2 or E3 must contain one or more of the criteria listed in Tables 1 and 2 of the Department's NCEZR (as reproduced in Table 3 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 E2/E3 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.

Table 3: Criteria for Application of Environmental Zones

Criteria	Description
E2 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

	<p>2. native vegetation in over-cleared Mitchell landscapes⁸. 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 .
E3 Environmental Management	
Riparian and estuarine vegetation and wetlands	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. 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.
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/OGRFreviewFieldIdent.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 E2 or E3 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, Infrastructure and Environment. Where uncertain, recent captures from the Nearmap aerial imagery service were also utilised if available.

Land proposed for E2 or E3 zoning was assigned a PLU in accordance with the categories set out in Table 4.

Table 4: PLU categories for the purpose of determining E 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 E2 Environmental Conservation and E3 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 there gap between patches of native vegetation that meet E2/E3 zone criteria identified in the NCEZR the 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 an E 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 an environmental protection zone is proposed to engage with Council pre-public exhibition of the planning proposal to discuss the proposed environmental protection 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 environmental protection 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 an E2 or E3 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 5 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).

Table 5: 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	E1 National Parks and Nature Reserves
9(a) Roads (Main Roads Proposed) 9(b) Roads (Local Roads Proposed) UZ Unzoned Land	Based on adjacent zoning

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 an environmental protection 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 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 (DPI) agricultural land classification mapping.

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

One 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 therefore should transition to the RU1 zone based on the above methodology.

At its July 2021 Ordinary meeting, Council considered a report on the potential use of the quarry site for the purpose of a film studio. In order to maintain flexibility in the range of land use permissibilities for the site, it is proposed to apply the RU2 zone.

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.

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 environmental zones (“E” zones) to deferred matters previously identified as an E 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.

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

The planning proposal is consistent with the principles of Council’s Community Strategic Plan, Local Strategic Planning Statement and other local strategies in that it seeks to achieve application of a single local environmental plan to the shire consistent with local and State planning policy.

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The proposal is considered to be generally consistent with applicable State Environmental Planning Policies (SEPPs) – namely the relevant aims contained in *SEPP (Koala Habitat Protection) 2020 and 2021*, *SEPP (Coastal Management) 2018*, *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.

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

The planning proposal is consistent with the relevant section 9.1 Ministerial Directions. A section 9.1 Ministerial Direction checklist for the planning proposal is contained in Appendix 2.

4.3 Section C – Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result 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.

Q8 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.

Q9 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 land owners 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

Q10 Is there adequate public infrastructure for the planning proposal?

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

Q11 What are the views of state and Commonwealth public authorities consulted in accordance with 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;
- Flood Planning Map;
- Height of Buildings Map;
- Heritage Map;
- Strategic Urban Growth Area Map; and
- Land Application Map.

It is proposed that these maps be prepared post-Gateway. Preliminary land zoning maps are provided in Appendix 1.

6. Community Consultation

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

7. Project Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway Determination	February 2022
Government Agency Consultation	May 2022
Public Exhibition Period	May 2022
Public Hearing	N/A
Submissions Assessment	August 2022
RPA Assessment of Planning Proposal and Exhibition Outcomes	September 2022
Submission of Endorsed LEP to DPIE for Finalisation	December 2022
RPA Decision to Make the LEP Amendment (if delegated)	N/A [#]
Forwarding of LEP Amendment to DPIE for Notification (if delegated)	N/A [#]

[#] Council is not proposing to exercise plan finalisation functions under delegation.

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 Integration of Certain Deferred Matters	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	<p>Consistent.</p> <p>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.</p>
1.2 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 an environmental zone (E2 or E3), 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 E2 and E3 zones enabling certain agricultural activities on the land.</p>
1.3 Mining, Petroleum Production and Extractive Industries	<p>Consistent.</p> <p>This proposal does not include any amendments that will result in compromising any future extraction of coal, minerals, petroleum or other resources.</p>
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	<p>Consistent.</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 E2 and E3 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>
2. Environment and Heritage	
2.1 Environmental Protection Zones	<p>Consistent.</p> <p>The planning proposal involves the application of environmental 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>
2.2 Coastal Management	<p>Consistent.</p> <p>The application of environmental 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>
2.3 Heritage Conservation	<p>Consistent.</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>

Section 9.1 Ministerial Direction Checklist
Planning Proposal – BLEP 2012 Integration of Certain Deferred Matters

Direction No.	Compliance of Planning Proposal
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not enable land to be developed for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Consistent. The proposed environmental zones are consistent with the criteria as outlined in the Northern Councils E Zone Review Final Recommendations report.
2.6 Remediation of Contaminated Land	Consistent. 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 E2/E3 zoning and/or like-for-like transition of 1987 LEP to 2012 LEP zones. 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.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Consistent. 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.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. This proposal will not result in any reduction in the existing availability of land for caravan parks or manufactured home estates.
3.3 Home Occupations	Revoked.
3.4 Integrated Land Use and Transport	Consistent. This proposal will not result in any negative impacts on accessibility or transport movements.
3.5 Development Near Regulated Airports and Defence Airfields	Consistent. The planning proposal seeks to apply E2 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.
3.6 Shooting Ranges	Does not apply to planning proposal.
3.7 Reduction in non-hosted short term rental accommodation period	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Consistent. 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. 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.

Section 9.1 Ministerial Direction Checklist	
Planning Proposal – BLEP 2012 Integration of Certain Deferred Matters	
Direction No.	Compliance of Planning Proposal
4.2 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 E2/E3 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>
4.3 Flooding	<p>Consistent.</p> <p>The planning proposal seeks to amend the Flood Planning Map to include the relevant DM areas proposed to be transitioned into the Ballina LEP 2012.</p> <p>The planning proposal is consistent with the NSW Flood Prone Land Policy, the principles of the Floodplain Development Manual 2005 and the <i>Considering flooding in land use planning guideline 2021</i>.</p> <p>The planning proposal does not rezone land within the flood planning areas from Recreation, Rural, Special Purpose or Environmental Protection Zones to a Residential, Business, Industrial or Special Purpose Zone.</p> <p>Ballina LEP 2012 existing clause 5.21 provides controls for development in the flood planning area.</p>
4.4 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>
5. Regional Planning	
5.1 Implementation of Regional Strategies	Revoked.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	<p>Consistent.</p> <p>The proposal does not propose the rezoning of identified significant farmland for urban, residential or rural residential purposes.</p>
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA)	Revoked.
5.6 Sydney to Canberra Corridor	Revoked.
5.7 Central Coast	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Revoked.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.

Section 9.1 Ministerial Direction Checklist
Planning Proposal – BLEP 2012 Integration of Certain Deferred Matters

Direction No.	Compliance of Planning Proposal
5.10 Implementation of Regional Plans	Consistent. 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'.
5.11 Development of Aboriginal Land Council land	Does not apply to planning proposal.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal does not reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions	Does not apply to planning proposal.
7. Metropolitan Planning	
7.1 to 7.13	These Directions do not apply to Ballina Shire.

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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Appendix 4 – Gateway Determination

A copy of the Gateway determination will be included here.

Appendix 5 – Northern Councils E Zone Review Final Recommendations Report



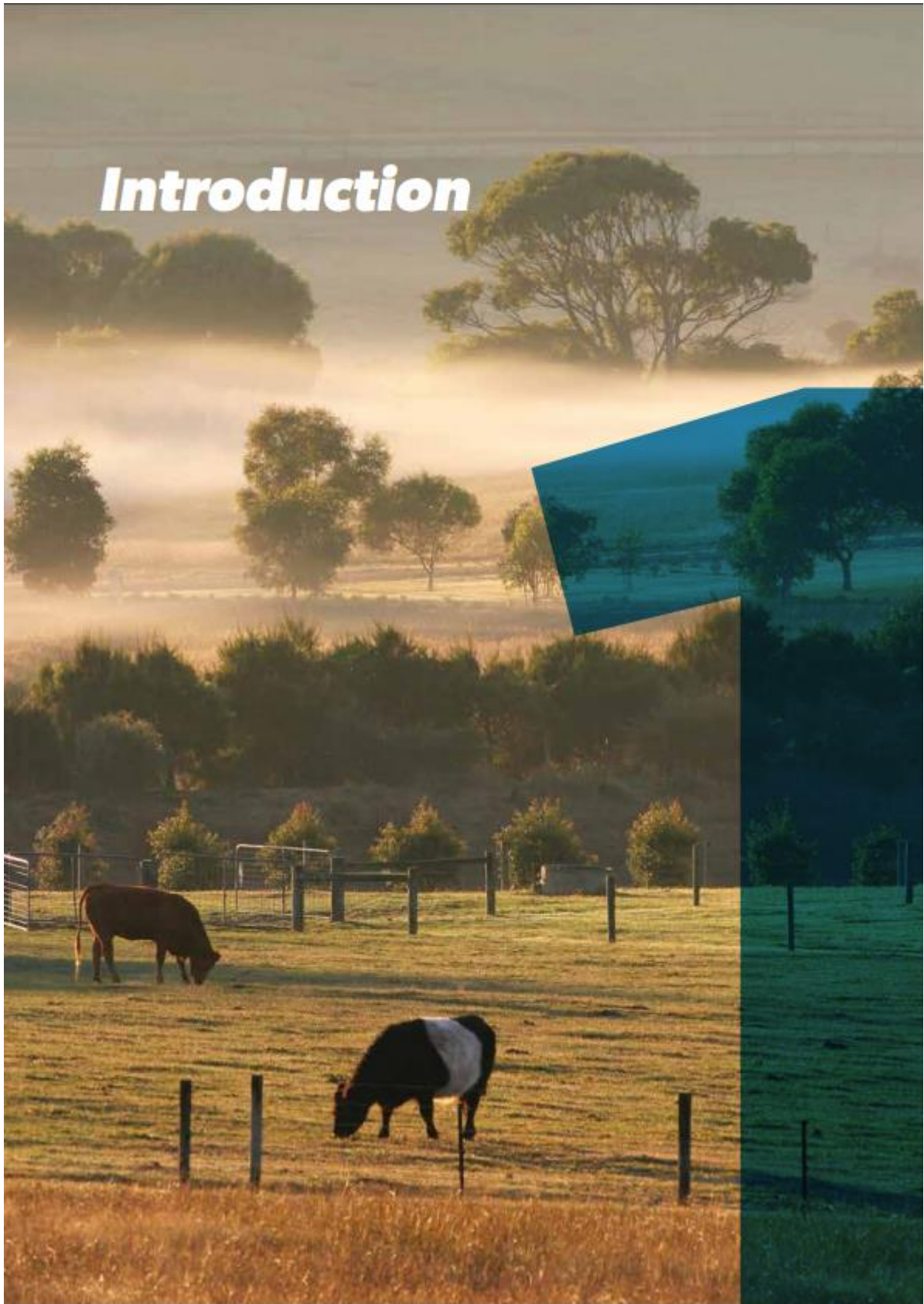
Northern Councils E Zone Review

Final Recommendations Report



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1. Introduction

The Minister for Planning and Infrastructure, in September 2012, announced a review of the application of environmental zones (E zones) and environmental overlays in Local Environmental Plans (LEPs) on the Far North Coast.

The review applies to the Local Government Areas (LGAs) of Ballina, Byron, Kyogle, Lismore and Tweed.

Parsons Brinckerhoff undertook an independent review into the way E zones and overlays were being applied to land on the Far North Coast. The findings of Parsons Brinckerhoff are contained in the *Northern Councils E Zone Review Interim Report* (the 'Interim Report').

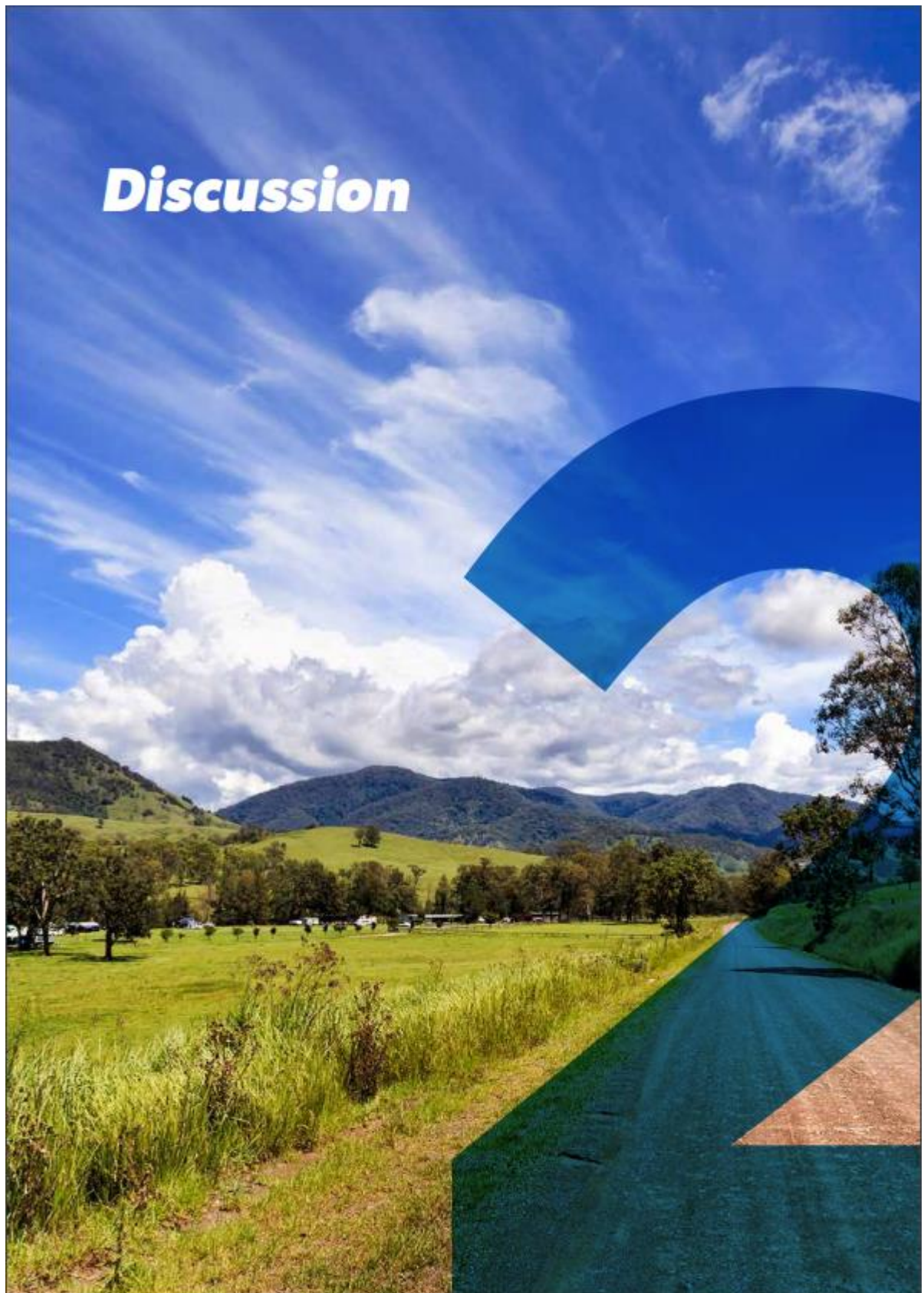
The Interim Report was placed on public exhibition from 14 May 2014 to 5 June 2014. Over 400 submissions to the Interim Report were received. The matters raised in the submissions are discussed in the *Northern Councils E Zone Review Submissions Report*.

Following consideration of all the submissions received and the recommendations of the Interim Report, final recommendations have been developed. The recommendations apply to the five LGAs of Ballina, Byron, Kyogle, Lismore and Tweed.

A Section 117 Ministerial direction will be issued to ensure that application of E zones in these LGAs, and to areas deferred from their Local Environmental Plans, is consistent with the final recommendations of the Northern Councils E Zone Review.

The Final Recommendations will initially apply only to the five Far North Coast councils. The Department of Planning and Environment will investigate the implications of these recommendations for the rest of the State. However, if other councils in the State are reviewing the application of E zones, then the principles contained in these recommendations can be used.





2. Discussion

Application of E2 and E3 Zones

The Interim Report established criteria for the application of the E2 and E3 zones and the principle of zoning land consistent with its primary use.

The vast majority of submissions to the Interim Report supported the development of criteria for the application of E zones. Many submissions suggested alterations or additions to the criteria and raised concerns regarding the procedure for applying the criteria, including:

- What is the process for applying the criteria?
- How is the primary use of the land determined?
- How will the criteria be validated?
- Will the criteria allow for multiple zones on single allotments?
- How will land that has been voluntarily revegetated be treated if it satisfies the criteria for an E zone?
- Can an E zone be applied to land which does not meet the criteria if it is public land or where there is landowner agreement?

The Department supports the use of clear criteria to ensure that the value of E zones is not diminished by inappropriate application and that zoning decisions are evidence-based. The final criteria for the application of the E2 and E3 zones have been developed by taking account of matters raised in the submissions and in consultation with the NSW Office of Environment and Heritage (OEH). The final criteria are listed in **Section 3 – Final Recommendations**.

Responding to the concerns raised in the submissions, a defined process for applying E zones is recommended. The process for applying E zones is listed in **Section 3 – Final Recommendations** and summarised in the next column and on page 7.

Process for applying the E zone criteria

- E2 and E3 zones will only be applied if the primary use of the land is considered to be environmental conservation (E2) or environmental management (E3) and the land has attributes which have been verified to meet the criteria for an E2 or E3 zone.
- The *primary use of the land* is the main use for which the land has been used for the last two (2) years. This period of time will ensure the zone reflects established, lawful land uses. This may mean that land which is currently zoned rural could continue to have a rural zone but may have parts of that land which have attributes that meet the criteria for an E2 or E3 zone included in a mapped planning control.
- If the land has attributes that meet the E2 criteria, however the primary use of the land is environmental management rather than environmental conservation, a council may apply an E3 zone.
- It is not mandatory to apply an E2 or E3 zone even if the land has been verified to meet the criteria. If council believes the intended primary use of the land does not warrant an E zone, then other mapped planning controls can be applied.

Verifying the E zone criteria

- An E2 or E3 zone or mapped planning control cannot be applied to land unless attributes that meet the E2 or E3 criteria have been verified on the land.
- Verification of the presence of attributes that meet the E2 or E3 criteria on the site must be undertaken by one, or a combination of verification techniques, such as field inspections, flora and fauna studies conducted by a suitably qualified person, review of current high resolution imagery and cultural studies, or consultation with Aboriginal cultural knowledge holders in relation to culturally significant lands.



Voluntarily revegetated land

- Land which has been actively revegetated by the current landowner will not have an E2 or E3 zone applied to it without the landowner's agreement unless the revegetation was undertaken with grant funding which required ongoing protection of the vegetation.
- Planning controls through a Vegetation Map can be applied to this revegetated land without the landowner's agreement.

Public and private land inconsistent with the criteria

- Public land may be zoned E2 or E3, despite being inconsistent with the criteria, if the primary use of the land is environmental conservation or environmental management.
- Private land may be zoned E2 or E3, despite being inconsistent with the criteria, only if it is consistent with a negotiated development outcome (master plan, rezoning, development consent, designated offset areas) or at the request of the landowner.

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 different primary uses of the land.

Previous Environmental Protection (7) Zones

The Interim Report recommended a list of previous environmental protection zones that should be transferred to an E2 zone.

Submissions to the Interim Report both supported and opposed the transfer of existing environmental protection zones to the E2 zone. Opposition was based on the inaccuracy of existing LEP mapping, or a belief that an environmental protection zone was inappropriate for the land.

The Department supports the transfer of some current environmental protection (7) zones to an E2 or E3 zone once councils have verified the attributes of the land against the criteria. If the land does not meet the criteria the zone will not be transitioned. This approach is consistent with the Government's support for the application of zones where there is evidence of significant environmental attributes. It is not considered necessary for councils to apply the primary use of land principle to land which already has an environmental protection (7) zone as the land is currently identified for environmental conservation or management.

The list of current E zones which may be transferred, subject to verification, is included in **Section 3 – Final Recommendations**. The 5(b) Rural (High Flood Hazard Liable) land zone under Byron LEP 1988 has been removed from the list of existing E zones that may be transferred to an E2 zone. This zone primarily relates to flooding, which can be appropriately managed by the Standard LEP flood mapping and associated clauses. Significant vegetation communities that may be present in the existing 5(b) zone are listed under other E2 criteria. Land comprising these vegetation communities could therefore be zoned E2 if the land is primarily used for environmental conservation purposes.

In accordance with the recommendations of the Interim Report, Kyogle Council should apply a rural zone, equivalent to the zone in the Interim Development Order, to the land which was proposed to be zoned E2 or E3 and was deferred from the Kyogle LEP 2012, until such time as investigations are completed to identify appropriate E zones.



Application of the E4 Zone

The Interim Report recommended that the E4 zone which was proposed in the draft Byron LEP 2014 should be replaced with an appropriate residential zone.

The submissions both supported and opposed the replacement of the E4 zone with a residential zone.

The submissions also included support for the retention of the E4 zone within the Standard Instrument LEP for use in other areas and in other LGAs.

The Department supports replacement of the proposed E4 zone in Byron with an appropriate residential zone. This is consistent with the principle that if the environmental significance is not the primary consideration, then the land should not be allocated an environmental zoning. A suitable residential zone is to be applied to this land.

In future and throughout the Far North Coast and the State, an E4 zone can be applied if the zoning is consistent with the Department's Practice Note PN09-002 *Environment Protection Zones*. The zone will be typically applied to existing low impact residential development. This may include areas already zoned for rural residential that have higher conservation values.

Permissibility of Agriculture in E Zones

The Interim Report recommended that *extensive agriculture* should be permitted with consent in the E2 zone (except in Tweed LEP 2012) and should be permitted without consent in the E3 zone.

A substantial number of submissions stated that *extensive agriculture* should be prohibited (i.e. not permitted) in the E2 zone and be permitted with consent in the E3 zone. Concerns were raised that activities associated with *extensive agriculture* would not be compatible with the significant environmental attributes of land in an E zone.

On the other hand, many submissions raised concerns that not permitting *extensive agriculture* in environmental zones would significantly affect current and future agricultural activities. Such an effect could occur where agriculture is being conducted on land which was to be zoned E2 or E3. If *extensive agriculture* is not permitted in that zone, landowners would have to rely on existing use rights to continue their farming practices.

Permissibility of Agriculture in the E2 zone

The Department recommends that *extensive agriculture* be permitted with consent in the E2 zone for the Far North Coast LEPs. The Interim Report proposed to allow *extensive agriculture* to be prohibited in the E2 zone in Tweed LEP. However *extensive agriculture* is permitted with consent in the Tweed LEP 2000, subject to additional provisions in the LEP, and therefore in order to maintain the development potential of this land, and for consistency across the Far North Coast, the Department considers it appropriate that *extensive agriculture* be permitted with consent in the E2 zone in the Tweed Local Government Area or any other LGA.



The criteria for the application of the E2 zone will ensure that it is only applied to land containing vegetation with significant environmental attributes that is being used primarily for environmental conservation purposes. Listing *extensive agriculture* as 'permitted with development consent' in the E2 zone land use table, would ensure farmers do not have to rely on 'existing use rights' if an E2 zone is applied to land that is being used for agricultural activities. It will also provide opportunity for new agricultural activities that may be consistent with the E2 zone objectives, to be considered by a council through a development application process. Such activities would constitute those that do not destroy, damage or have an adverse effect on areas of high ecological, scientific or cultural values. This is expected to be limited to activities such as understorey grazing.

Permissibility of Agriculture in the E3 zone

Extensive agriculture should be permitted without consent in the E3 zone for the Far North Coast LEPs. While the E3 zone will apply to areas with environmental significance, the criteria allow a broader application than the E2 criteria. These areas may encompass land where *extensive agriculture* currently occurs, such as understorey grazing or for flood refuge. It is appropriate that *extensive agriculture* activities should be able to continue on this land without the need to obtain development approval. New *extensive agriculture* activities will be permitted without consent as it is envisaged that the impact on land will be minimal. Any required clearing will still require approval under the *Native Vegetation Act 2003*.

Existing Use Rights

The Department will investigate the possibility of an amendment to the *Environmental Planning and Assessment Act 1979* or the *Environmental Planning and Assessment Regulation 2000*, to remove or extend the 12-month time limit which extinguishes existing use rights for the land use *extensive agriculture*.

Mapped Planning Controls and Associated Clauses

The Interim Report recommended the use of overlays (mapped planning controls) to protect environmental values that do not meet the criteria for an E2 or E3 zone.

Support for the use of mapped planning controls in the submissions was based on protecting environmental attributes that are not immediately suited to an E zone. Mapped planning controls also provide transparent guidance to applicants on the matters a consent authority will consider when they assess a development application. Submissions which did not support the use of mapped planning controls raised concerns that they constitute an unnecessary duplication of other legislation and are considered a burden on rural landowners.

The following recommendations are made in response to the matters relating to mapped planning controls:

Public health, safety, risk and hazard

- The Department supports LEP mapping and accompanying clauses which manage matters of public health, safety, risk and hazard. These are fundamental matters of public health and safety which must be managed through the planning system. Accordingly, it is recommended that mapped planning controls can be applied for matters such as drinking water catchments, flooding, coastal risk areas and land subject to strict development controls such as steep land.



Native Vegetation

- The Department's Interim Response did not support the use of biodiversity mapping. However, after reviewing the principle of the primary use of the land, the use of clear criteria for the application of E zones, and the need for verification of the vegetation attributes, the Department has reconsidered its position. The use of a Vegetation Map provides flexibility and an optional mechanism for the management of significant native vegetation, without having to apply an E zone. A Vegetation Map will not duplicate E2 or E3 zones. The map and associated clauses will identify the matters that need to be considered in a development application for proposed land uses that require development consent. Land uses that are permitted without consent, such as some forms of extensive agriculture in rural zones, will not be subject to the map provisions in the LEPs. Existing agricultural practices that are currently being undertaken on land will not be subject to the provisions of the map.

Scenic Protection

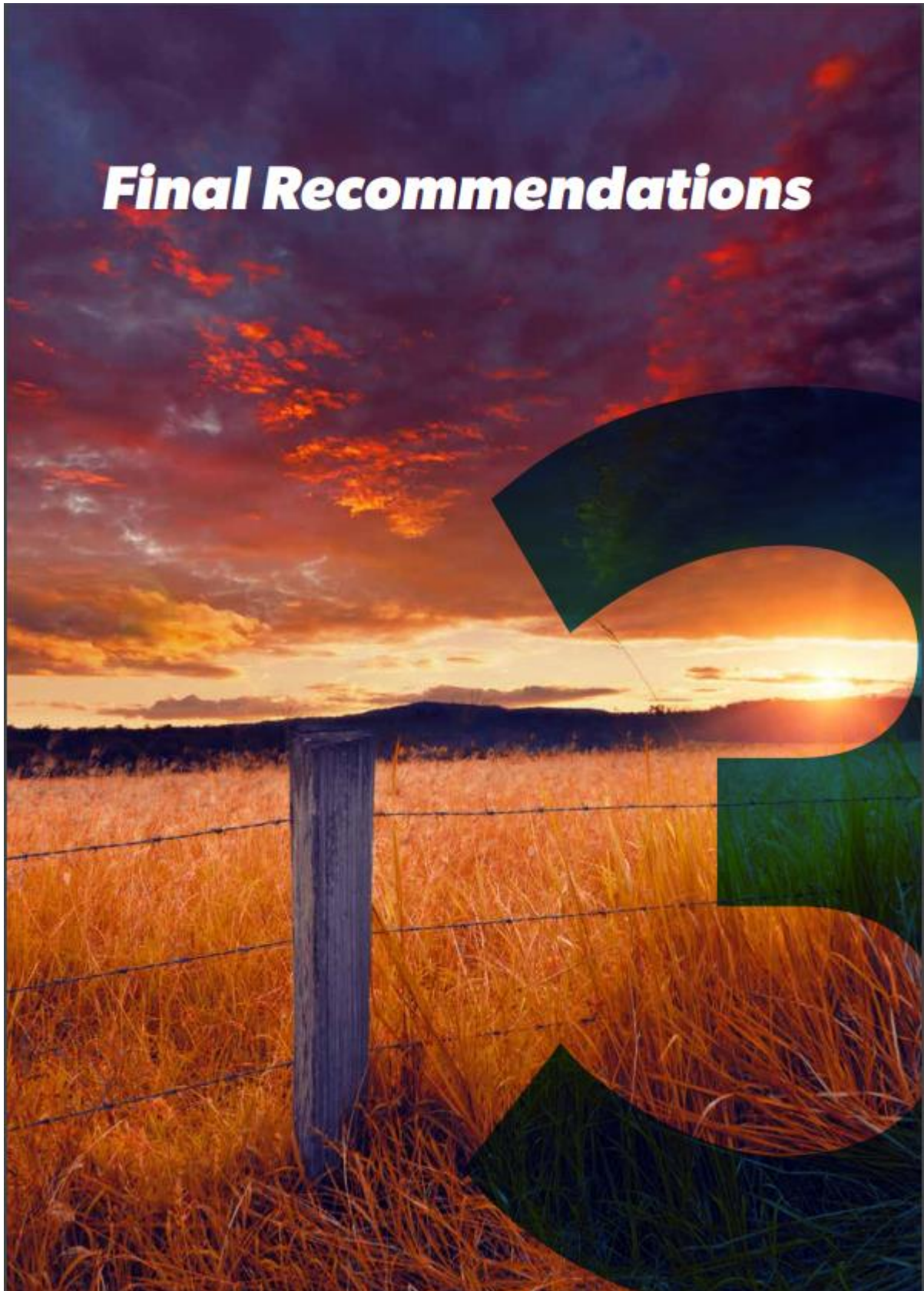
- The Department maintains its position that scenic protection is a matter best assessed and managed at development application stage, when details of a proposal are assessed and appropriate conditions can be imposed. Issues relating to scenic protection may be identified in a development control plan or Scenic Protection Strategy, to provide guidance in terms of design and siting of buildings in visually prominent locations. Councils on the Far North Coast will not be permitted to apply mapped planning controls for scenic protection in LEPs.

Aesthetic Values

The Interim Report recommended the removal of aesthetic values as an attribute to be protected and managed by an E zone. Concerns were raised in the submissions that the removal of aesthetic values would have ramifications for all Standard Instrument LEPs in NSW.

The Northern Councils E Zone Review has resulted in a refocusing of E zones towards land containing significant native vegetation. Aesthetic values do not always rely on the presence of significant native vegetation, for instance agricultural landscapes can have aesthetic significance. The Department maintains its position that aesthetic values can be addressed through DCP provisions, a Scenic Protection Strategy, or the development application process, and therefore recommends the removal of aesthetic values as an attribute to be protected and managed by an E zone.

The exclusion of aesthetic value criteria from E zones will initially apply only to the five Far North Coast councils. The Department will consider a revision of the Standard Instrument LEP template to remove 'aesthetic values' from the zone objectives of the E2 and E3 zones. Until this revision takes place, councils on the Far North Coast will not be permitted to use scenic or aesthetic values as an attribute for the application of an E2 or E3 zone or mapped planning controls.



Final Recommendations

3. Final Recommendations

Application of E Zones

1 When will E zones be applied?

- E2 and E3 zones will only be applied if the *primary use of the land* is considered to be environmental conservation (E2) or environmental management (E3) and the land contains attributes which meet one or more of the criteria for an E2 or E3 zone (Tables 1 and 2).
- An E4 zone can be applied if the land contains attributes that are consistent with the Department's Practice Note *PN09-002 Environment Protection Zones*.

2 How will the primary use of the land be determined?

- The primary use of the land is the main use for which the land has been used for the last two (2) years. This may mean that land which is currently zoned rural will continue to have a rural zone but it may have parts of that land which have attributes that meet the criteria for an E2 or E3 zone included in a mapped planning control.
- The primary use of the land may vary across a particular property depending on the characteristics of the land. This may result in more than one zone being applied to the land.
- The primary use of land will be identified during the preparation of a planning proposal.

3 What are the E zone Criteria?

- The land proposed to be zoned E2 or E3 must contain one or more of the criteria listed in Tables 1 and 2.

4 What is the procedure for applying an E2 or E3 zone to land?

- Councils will assess land against the E zone criteria and consider the primary use of the land before proposing an E2 or E3 zone.
- An E2 or E3 zone can only be applied to land with a primary use of environmental conservation or environmental management and, which has attributes that have been verified to meet the E zone criteria.
- If the land has attributes that meet the E2 criteria, however the primary use of the land is environmental management rather than environmental conservation, a council may apply an E3 zone.
- If a council believes the primary use of the land does not warrant an E zone, and the land meets the E zone criteria, then a LEP Map and associated clauses can be applied.
- The E zones will not include buffers to the vegetation attributes that meet the E zone criteria.

Table 1: E2 zone Criteria

Criteria	Description
SEPP 26 Littoral Rainforests.	Land mapped as littoral rainforest in accordance with the statewide policy for littoral rainforest protection (State Environmental Planning Policy 26 – Littoral Rainforests).
SEPP 14 Coastal Wetlands.	Land mapped as coastal wetlands in accordance with the statewide policy for coastal wetland protection (State Environmental Planning Policy 14 – Coastal Wetlands).
Endangered Ecological Communities (EECs) listed under the Threatened Species Conservation Act 1995 and/or the Environment Protection and Biodiversity Conservation Act 1999.	Land containing vegetation communities listed as Endangered Ecological Communities under the Threatened Species Conservation Act 1995 (TSC) ¹ and the Environment Protection and Biodiversity Conservation Act 1999 (EPBC) ² . The Far North Coast Regional Conservation Plan ³ lists the following vegetation communities as examples of EECs that currently exist on the Far North Coast: <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 Seaciffs and Coastal Headlands, White Gum Yellow Gum Bloekely's Red Gum Woodland, and White Gum Moist Forest.</i> Other vegetation communities may be added consistent with these Acts in the future.
Key Threatened Species Habitat.	This criterion includes: <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.	Land comprising: <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. The Far North Coast Regional Conservation Plan lists the following as examples of: <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 (Themeda australis sod tussock), Heathlands, Forested wetlands, Freshwater wetlands, Saline wetlands; and Over-cleared Mitchell landscapes⁸: <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 .

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.cpa.nsw.gov.au/resources/print/DGRFviewFieldIdent.pdf>

5 Scotts, D 2003, Key Habitats and Corridors for Forest Fauna: A Landscape Framework for Conservation in North-east 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.bicnet.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)

Table 2: E3 zone Criteria

Criteria	Description
Riparian and estuarine vegetation and wetlands.	Land comprising riparian and estuarine vegetation on waterfront land, defined under the NSW Water Management Act 2000, or wetland areas other than those mapped as SEPP 14 Coastal Wetlands. Waterfront land is defined under the NSW Water Management Act 2000 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.
Rare, Endangered and Vulnerable Forest Ecosystems.	Land comprising areas of rare, endangered and vulnerable forest ecosystems as defined by the Joint ANZEC/MCFFA National Forest Policy Statement Implementation sub-committee (JANIS) (Commonwealth of Australia 1997) ¹ .
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 Refer to Appendix 1

5 How is the E zone criteria verified?

- An E2 or E3 zone or other mapped planning controls cannot be applied to land unless the attributes that meet the E2 or E3 criteria have been verified on that land.
- Verification of the presence of attributes that meet the E2 or E3 criteria on the site must be undertaken by one or a combination of the following:
 - biodiversity field inspections and ground surveys conducted by an appropriately qualified person.
 - Aboriginal heritage field inspections and ground surveys conducted by an appropriately qualified person or someone with extensive field experience and in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW*, NSW Department of Environment, Climate Change & Water (2010).
 - supporting flora and fauna reports conducted by a suitably qualified person and guided by the *Draft Framework for Biodiversity Assessment*, NSW Office of Environment and Heritage (2014) and the *Draft*

Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities, NSW Department of Environment and Conservation (2004). Such reports will only be acceptable where the field work is not more than five years old.

- review of current (not more than five years old) high resolution digital aerial photography that has been verified by another one of these verification techniques.
- supporting cultural heritage reports conducted by a suitably qualified person and in accordance with a *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*, NSW Department of Environment, Climate Change & Water (2011).
- consultation with Aboriginal cultural knowledge holders in regard to culturally significant lands in accordance with a *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*, NSW Department of Environment, Climate Change & Water (2011).

Considerations for Applying E Zones and Additional Mapped Planning Controls

6 Transferring environmental zones

- The areas of land to which the current environmental protection zones listed in the Table 3 (below) apply, may be zoned E2 or E3 once councils have verified the attributes of the land against the criteria.

Table 3: Current Environmental Protection Zones

Ballina LEP 1987
7(a) Environmental Protection (Wetlands)
7(l) Environmental Protection (Habitat)
Byron LEP 1988
7(a) Environmental Protection (Wetlands)
7(b) Environmental Protection (Coastal Habitat)
7(j) Environmental Protection (Scientific)
7(k) Environmental Protection (Habitat)
Lismore LEP 2000
7(a) Environment Protection (Natural Vegetation and Wetlands)
7(b) Environment Protection (Habitat)
Tweed LEP 2000
7(a) Environmental Protection (Wetlands and Littoral Rainforests)
7(l) Environmental Protection (Habitat)

- Kyogle Council should apply a rural zone, equivalent to the zone in the superseded Interim Development Order, to the land which was proposed to be zoned E2 or E3 and was deferred from the Kyogle LEP 2012, until such time as investigations are completed to identify appropriate E zones or additional mapped planning controls.

7 Public and private land inconsistent with the criteria

- Public land may be zoned E2 or E3 despite being inconsistent with the criteria, if the primary use of the land is environmental conservation or environmental management.

- Private land may be zoned E2 or E3 despite being inconsistent with the criteria, only if it is consistent with a negotiated development outcome (master plan, rezoning, development consent, designated offset areas) or at the request of the landowner.

8 Voluntarily revegetated land

- Land which has been voluntarily revegetated by the current landowner, will not have an E2 or E3 zone applied to it without the agreement of the current landowner 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.
- Land which has been voluntarily revegetated can be included on a Vegetation Map without the agreement of the current landowner if the attributes have been verified to meet the criteria for an E2 or E3 zone and the primary use of the land is environmental conservation or environmental management.
- If revegetation has been undertaken with the support of grant funding, and a condition of that funding was the ongoing conservation or management of the vegetation, then an E2 or E3 zone may be applied to the land.

9 Zoning of State and regionally significant farmland

- When zoning State or regionally significant farmland, councils will have to take account of the primary use of the land before applying an E zone or a rural zone.

10 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.
- 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.
- As a general principle, the use of multiple zones on a property should be minimised as far as possible.



11 Application of the E4 zone in Byron Council

- Byron Shire Council is to prepare a planning proposal to apply a suitable residential zone to that land where an E4 zone was proposed under the draft Byron LEP.

12 Application of additional mapped planning controls

- 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 may be included in a LEP Map.
- A LEP Map is not to be used for areas of scenic protection or aesthetic values.
- Land that has been verified to meet the criteria for an E2 or E3 zone where the primary use of the land is not environmental conservation or environmental management may be included in a mapped planning control, such as a Vegetation Map.

Additional Considerations for Far North Coast Councils

13 Aesthetic values

- Councils on the Far North Coast will not be permitted to use scenic values as an attribute for the application of an E2 or E3 zone or mapped planning controls.

14 Permissibility of agriculture in E Zones

- *Extensive agriculture* is to be listed as permissible with consent in the E2 zone for all Far North Coast LEPs.
- *Extensive agriculture* is to be listed as permissible without consent in the E3 zone for all Far North Coast LEPs.

15 Coastal Zone Management

- Far North Coast councils are to use a Coastal Risk Map and associated clause to manage land affected by coastal hazards.

16 Section 117 Direction

- A Section 117 Ministerial Direction specific to applying E zones and mapped planning controls in Far North Coast LEPs will ensure the consistent application of the final recommendations of the Northern Councils E Zone Review for Ballina, Byron, Kyogle, Lismore and Tweed Local Government Areas.

Statewide Implications

17 Existing Use Rights

- The Department will investigate the possibility of an amendment to the *Environmental Planning and Assessment Act 1979* or the *Environmental Planning and Assessment Regulation 2000*, to remove or extend the 12-month time limit for abandonment of existing uses for the land use *extensive agriculture*.

18 Implications for remainder of the State

- These recommendations will initially apply only to the five Far North Coast councils. However, in the meantime, if other councils in the State are reviewing the application of E zones, then the principles contained in these recommendations can be used. Councils should contact the Department of Planning and Environment for assistance.
- The Department of Planning and Environment will investigate the implications of the Northern Councils E Zone Review final recommendations on the application of E zones and mapped planning controls across the State.
- The Department will consider a revision of the Standard Instrument LEP template to remove 'aesthetic values' from the zone objectives of the E2 and E3 zones.

Appendix 1

1.1 Rare, Endangered and Vulnerable Forest Ecosystems (JANIS vegetation types)

Map unit	Map unit name
22	Coast Cypress Pine (R)
45	Dunns White Gum (R)
61	Grey Box-Ironbark (R)
62	Grey Box-Northern Grey Gum (R)
66	Herbfield (R)
77	Mangrove (R)
115	Red Bloodwood (R)
125	Saltmarsh (R)
138	Steel Box (R)
143	Swamp Oak (R)
304	Dry Rainforest (E)
315	Horsetail Casuarina (R)
318	Coastal Swamp Box (R)
320	Sedgeland/Rushland (E)
21	Lowlands Grey Box (V)
46	Eastern Red Gums (V)
50	Wet Bangalow-Brushbox (V)
74	Lowlands Scribbly Gum (V)
76	Coastal Mallee (V)
100	Northern Grassy Sydney Blue Gum (V)
112	Paperbark (V)
120	River Oak (V)
122	Rough-barked Apples (V)

Rare or Endangered Forest Ecosystems

(R) Rare ecosystems

(E) Endangered ecosystems

(V) Vulnerable ecosystems

The Map Unit reference relates to the map unit in the *Joint ANZEC/MCFFA National Forest Policy Statement Implementation sub-committee (JANIS)* (Commonwealth of Australia 1997)

Northern Councils E Zone Review Final Recommendations Report

October 2015

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Appendix 6 – Letter from NSW DP&E - 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' written in the same ink.

Jeremy Gray
Director Regions, Northern
Planning Services

Appendix 7 – Methodology Report

(Provided under separate cover).