

DEPARTMENT OF PLANNING & ENVIRONMENT'S RESPONSE – NORTHERN COUNCILS E ZONE REVIEW INTERIM REPORT

Introduction

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

- concerns that environmental zones are being applied to rural and agricultural land without evidence of the environmental significance of the land; and
- concerns amongst landowners that these zones unfairly limit existing agriculture and rural activities.

The Far North Coast comprises the local government areas of Ballina, Byron, Kyogle, Lismore and Tweed.

The Far North Coast's natural beauty, climate and lifestyle make it a highly valued place to live and work, and as a place for lifestyle change and retirement. Two major contributors to these factors are the natural environment and agricultural areas.

The Far North Coast is the most biologically diverse region in NSW and agriculture is a major contributor to the regional economy. In 2010–11, the total gross value of agricultural production was \$373.5 million. The importance of agriculture to the region is reinforced through the mapping of State and regional farmland and the recent mapping of the highest quality land – Biophysical Strategic Agricultural Land.

NSW 2021 has clear goals to protect our natural environment and increase the value of primary industries in the State.

Planning decisions that apply environmental zones and environmental overlays need to allow agricultural and rural uses to continue while protecting important environmental values.

Recommendations

Parsons Brinckerhoff has undertaken an independent review into the way environmental zones and overlays are being applied to land on the Far North Coast. A summary of key recommendations and the Department of Planning & Environment's response is provided as follows:

Application of E2 and E3 Zones

Parsons Brinckerhoff recommends:

- The E2 zone must only be applied where there is a validated dataset of significant environmental attributes as described in the E2 criteria (**Tag A**). For those councils which have environmental protection zones in their pre-Standard Instrument LEP (Ballina, Byron, Lismore and Tweed), the identified previous environmental zones should be directly translated into the E2 zone, provided they meet the recommended criteria.
- The E3 zone must only be applied where the land is identified as being environmentally sensitive based on validated data that is in accordance with the criteria identified by the

consultant (**Tag B**). Land previously proposed to be zoned E3 must be assessed against the E3 criteria before the E3 zone is implemented.

- All land not meeting the zoning criteria should be zoned in line with the envisaged primary land use in the area.
- Proposed E2 and E3 zones within Kyogle should be removed. Until such time as an appropriate study is undertaken and approved, zoning of that land should be equivalent to the zoning under the superseded IDO. Protection of significant environmental attributes should be achieved by relevant clauses and overlay maps.

The Department of Planning & Environment's response:

- The approach to the use of E2 and E3 zones is supported. The proposed new reforms to the planning system are underpinned by a new strategic planning framework including the need for planning decisions to be evidence-based. Adopting clear criteria for the application of environmental zones and requiring validated data to be used to apply the zones will ensure important environmental values are protected.
- Land that does not have these values will be zoned for its primary purpose. By defining clear criteria as recommended by the consultant, environmental zones will be consistently applied across the region. In this way, the value of environmental zones is not diminished by inappropriate application and zoning decisions are evidence-based.
- The recommendation to remove E2 and E3 zones and apply equivalent zones to the previous IDO for Kyogle is supported. This approach is in line with the government's support for the application of zones where there is evidence of significant environmental attributes. As discussed below, the use of environmental overlays and associated clauses is not supported, other than for matters of public health, safety, risk and hazard.

Application of the E4 Zone

Parsons Brinckerhoff recommends:

- Byron Shire Council, the only council in the study area which has proposed the use of the E4 zone, should replace it with an appropriate residential zone. Protection of sensitive environmental attributes in the previously proposed E4 area should be achieved by means of appropriate overlay maps and clauses, as detailed by the consultant.

The Department of Planning & Environment's response:

- The replacement of the proposed E4 zone in Byron with an appropriate residential zone is supported. This recommendation 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.
- The use of an appropriate overlay and clause to protect sensitive environmental attributes in the proposed E4 zone in Byron is not supported. The protection and management of important vegetation in these areas will be more appropriately addressed through the development assessment process and the use of *clause 5.9 Preservation of trees or vegetation* in the Standard Instrument LEP. This clause ensures

that the removal of important vegetation is considered even if use of the land does not require development approval.

Permissibility of agriculture in E zones

Parsons Brinckerhoff recommends:

- Extensive agriculture should be permitted with consent in the E2 zone (except Tweed where it will be prohibited, as is currently the case under the Tweed LEP 2000) and should be permitted without consent in the E3 zone.

The Department of Planning & Environment's response:

- The recommendation in respect to the permissibility of extensive agriculture in E2 and E3 zones is supported. As the E2 zone will only be applied to land with the highest environmental significance, it is appropriate that the carrying out of extensive agriculture is assessed through a development assessment process to ensure the activity will not adversely impact on the environmental values of that land. While the E3 zone will apply to areas with environmental significance, it is of lesser significance compared to E2 zoned areas. These areas may encompass land where extensive agriculture currently occurs such as understorey grazing. This use should be able to continue without the need to obtain development approval.

Overlays and associated clauses

Parsons Brinckerhoff recommends:

- That where an environmental value is identified that does not meet the criteria for an E2 or E3 zone, it should be protected through an environmental overlay on the LEP map with an accompanying clause.
- Overlay maps identify land that has environmental values other than those that are identified for an E2 or E3 zone. The overlay maps are supported by an accompanying clause in the LEP which sets out the matters that must be considered by council when assessing a development proposal for the land. Overlay maps and accompanying clauses apply only when development which requires consent is proposed.
- The report proposes an extensive array of overlays for drinking water catchment, scenic protection areas, coastal risk areas and terrestrial biodiversity.

The Department of Planning & Environment's response:

- The recommendations for environmental overlays are not fully supported. Overlays and accompanying clauses which manage matters of public health, safety, risk and hazard are appropriate as these are fundamental matters of public health and safety which must be managed through the planning system. In line with that principle, the recommendation in the interim report that drinking water catchment areas and coastal risk areas should be managed by means of an overlay and related clause is supported.
- However, the recommendation regarding the use of overlays to manage scenic protection areas and terrestrial biodiversity areas is not supported.

- It is considered 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, if necessary. Issues relating to scenic protection could be identified in a development control plan to provide guidance in terms of design and siting of buildings in visually prominent locations.
- In regard to terrestrial biodiversity and other environmental overlays, the proposed criteria for establishing E2 and E3 zones provide clear guidance for the identification and protection of the most important vegetation in the region outside of national parks and other protected areas. Additionally a range of other legislation applies to rural areas including the *Threatened Species Conservation Act*, *Fisheries Management Act*, *Native Vegetation Act*, and *Water Management Act* all of which provide protection for important environmental values. Accordingly, the use of an overlay map and clause to manage terrestrial biodiversity and other environmental values would duplicate other legislation and approval procedures and is considered overly restrictive on productive agricultural land.
- There are many private landowners across the Far North Coast who manage native vegetation on their land and voluntarily revegetate their land. These activities often integrate with agricultural activities on the land and play an important role in the protection of biodiversity. These approaches should be encouraged and should not be burdened by the imposition of overlays and environmental protection zones unless agreed to by the land owner.

Aesthetic values should be removed as an attribute from the E3 zone

Parsons Brinckerhoff recommends:

- That the E3 zone should be amended to remove aesthetic values as an attribute to be protected and managed.

The Department of Planning & Environment's response

- This recommendation is supported. The intent of councils to protect and manage scenic amenity is considered valid and it is recognised that councils have included scenic amenity areas in the E3 zone based on the existing mandatory zone objective. However, scenic amenity is a highly subjective value, related to an individual's perception of what is "scenic". Further, differing land use contributes to the composition and perception of a scenic view.
- Where the primary use of the land is agriculture it is not appropriate that the land is zoned E3. Scenic protection or the aesthetic value of the land use should be managed through the development assessment process, as discussed under the overlays and associated clauses section of the report.

Criteria for the application of the E2 Environmental Conservation Zone

The E2 Environmental Conservation Zone should be applied to land which meets any of the criteria set out in the table below (pg 75 of the Northern Councils EZone Review Interim Report by Parsons Brinckerhoff dated 13 September 2013):

E2 Criteria	
1	Statutory mapping for SEPP 26 Littoral Rainforests
2	Statutory mapping for SEPP 14 Wetlands
3	Land identified in a validated spatial dataset comprising areas of EECs (as listed under the <i>Threatened Species Conservation Act 1995</i> and/or the <i>Environmental Protection and Biodiversity Conservation Act 1999</i>)
4	Land identified within a validated spatial dataset comprising areas of habitat for threatened species (as listed under the <i>Threatened Species Conservation Act 1995</i> and/or the <i>Environmental Protection and Biodiversity Conservation Act 1999</i>)
5	Land identified within a validated spatial dataset comprising over-cleared vegetation communities where >70% of the original extent has been cleared (vegetation formations as defined by Keith, D 2004, <i>Ocean Shores to Desert Dunes: The Native Vegetation of New South Wales and the ACT</i> , Department of Environment and Conservation, Hurstville.)
6	Land identified within a validated spatial dataset comprising areas of native vegetation in over-cleared Mitchell landscapes (includes native vegetation in the Byron-Tweed Alluvial Plains, Byron-Tweed Coastal Barriers, Clarence-Richmond Alluvial Plains, and Upper Clarence Channels and Floodplains)
7	Where appropriate, land identified within a validated spatial dataset comprising areas of culturally significant lands such as Aboriginal object sites and Aboriginal places and other significant objects and places that are not formally recorded (as identified by the local Aboriginal community)

Criteria for the application of the E3 Environmental Management Zone

The E3 Environmental Management Zone should be applied to land which meets any of the criteria set out in the table below (pg 77 of the Northern Councils EZone Review Interim Report by Parsons Brinckerhoff dated 13 September 2013):

E3 Criteria	
1	Land identified within a validated spatial dataset comprising areas of all types of rainforest other than SEPP 26 mapped areas
2	Land identified within a validated spatial dataset comprising areas of old-growth forest, defined as an ecologically mature forest where the effects of disturbances are now negligible (Commonwealth of Australia 1997)
3	Land identified within a validated spatial dataset comprising areas of riparian, wetland and estuarine vegetation other than SEPP 14 mapped areas
4	Land identified within a validated spatial dataset comprising areas of rare, endangered and vulnerable forest ecosystems based on criteria defined by the Joint ANZECC/MCFFA National Forest Policy Statement Implementation sub-committee (JANIS) (Commonwealth of Australia 1997).
5	Land identified within a validated spatial dataset comprising areas of native vegetation on coastal foreshores and land subject to coastal hazards (as listed under the <i>Coastal Protection Act 1979</i>), including climate change effects.
6	Land identified within a validated spatial dataset comprising areas of land where strict controls on development should apply. Such land includes those areas of native vegetation where the ecosystem services provided by the vegetation is critical including: <ul style="list-style-type: none"> ▪ where the risks of severe erosion and landslides are extremely high (i.e. steep land) and the consequences are potentially catastrophic ▪ where native vegetation that is critical to watershed protection (i.e. when vegetation protects against catastrophic floods or drought and the destruction of fisheries where spawning grounds are protected by mangroves or riparian forests).