



Planning &  
Environment

# ***Northern Councils E Zone Review***

## ***Submissions Report***



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The *Northern Councils E Zone Review Interim Report* (the 'Interim Report') prepared by Parsons Brinkerhoff (PB) on behalf of the Department of Planning and Environment (the 'Department') was publicly exhibited for 23 days from 14 May 2014 to 5 June 2014. At the same time, the Department also exhibited its 'interim response' to the recommendations in the Interim Report.

This report discusses the key issues raised in the submissions.

A separate Recommendations Report outlines the final recommendations for the Northern Councils E Zone Review.



# ***Key Issues Raised in Submissions***



# 1. Key Issues Raised in Submissions

## 1.1 Application of E2 and E3 Zones

### 1.1.1 E2 and E3 zone criteria

The Interim Report established criteria for the application of the E2 and E3 zones in Far North Coast Council Local Environmental Plans (LEPs). The Department supported the use of clear criteria to guide the application of E zones.

The majority of submissions also supported the development of criteria for the application of E zones. Many submissions also suggested alterations or additions to the criteria to address various concerns. The most common of which are listed in Table 1 on page 3.

The final criteria have been developed in consultation with the NSW Office of Environment and Heritage (OEH). Recommended changes to the criteria for the E2 and E3 zones are detailed in Appendix 1 of this report.

### 1.1.2 Previous environmental protection (7) zones

The Interim Report recommended a list of previous environmental protection zones that should be transferred to an E2 zone. The Department supported this approach providing the land met the specific criteria for the E2 zone and any mapping inaccuracies were rectified.

Submissions to the Interim Report both supported and opposed the transfer of existing environmental protection zones to E2 zones. Opposition to this approach was based on the inaccuracy of existing LEP mapping, or concerns from owners that an environmental protection zone was not appropriate for their land.

#### **Comment:**

The Department considers that the transfer of some of the existing environmental protection zones should proceed provided the mapping is checked and it is verified that the land contains attributes that meet the criteria for an E2 zone. The final list of existing E zones that should be transferred will be included in the Final Recommendations Report.

The 5(b) Rural (High Flood Hazard Liable) land zone under Byron Local Environmental Plan (LEP) 1988 should be removed from the list of existing E zones that may be converted to an E2 zone. This zone primarily relates to flooding, which can be appropriately managed with a mapped planning control such as the Standard LEP flood mapping and associated clause. 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.

**Table 1 Main concerns with E zone criteria**

Key matters raised regarding the criteria	Comment
<p><b>E2 and E3 criteria are not mutually exclusive.</b></p>	<p>It is acknowledged that the criteria in some instances overlap. All rainforests for example, are classed as an Endangered Ecological Community (EEC) on the Far North Coast. Rare and endangered forests would also be classified as key habitat for threatened species.</p> <p>The proposed process for applying an E zone requires the land to contain one or more of the criteria and its primary use to be consistent with the zone objectives. This will provide flexibility in the application of either the E2 or E3 zones.</p>
<p><b>The E2 criteria should be broader to include a wider range of vegetation types.</b></p>	<p>The final criteria have been prepared in consultation with OEH to ensure important vegetation types are identified and can be protected where necessary. Vegetation types outside of the criteria can be managed through other legislative provisions or management strategies.</p>
<p><b>Definitions for ‘validated dataset’ and ‘areas of habitat for threatened species’ are needed.</b></p>	<p>The presence of attributes that meet the criteria must be verified at site level. A process for verifying the criteria and validating existing datasets is included in the Final Recommendations Report.</p>
<p><b>Koala habitat should be included as a criterion for the E2 zone.</b></p>	<p><i>State Environmental Planning Policy (SEPP) 44 – Koala Habitat Protection</i> provides for the management and protection of Koala habitat. Koala habitat which is consistent with the final criteria could be zoned for environmental purposes.</p>
<p><b>Rainforest, old growth forest, wetlands, mangroves, riparian vegetation and rare, endangered and vulnerable ecosystems should be zoned E2 not E3.</b></p>	<p>All rainforests on the Far North Coast (FNC) are considered to be an EEC, which is an E2 criterion.</p> <p>Old Growth Forest is a subset of threatened species habitat and included in the E2 criteria.</p> <p>E3 is considered suitable for ‘wetlands, mangroves, and riparian vegetation’ and ‘rare, endangered and vulnerable forest ecosystems’ where these areas are not covered in the E2 criteria, as SEPP 14 wetlands, Key Threatened Species Habitat, etc.</p>
<p><b>Coastal Heathlands, shorebird roosting and nesting sites should be zoned E2.</b></p>	<p>Land which meets the definition of ‘Key Threatened Species Habitat’, as defined in the final criteria, can have an E zone applied if the primary use of the land is environmental conservation or management.</p> <p>It is noted that many of the E zone criteria may constitute threatened species habitat and that all native coastal vegetation, not specifically listed under the E2 criteria, is included under the E3 criteria.</p>
<p><b>Buffer areas around key natural assets should be included in an E zone.</b></p>	<p>Only land which meets the final criteria can be zoned E2 or E3. A mapped planning control may be applied to land that meets the E zone criteria as an alternative to applying an E zone, or if the land contains other important environmental features. Further discussion on mapped planning controls is included in Section 1.4.</p> <p>Maintaining buffer areas around key natural assets can be addressed through a development application process and/or identified under a Development Control Plan (DCP) or local strategy.</p>

### 1.1.3 How will the E zones be applied – Procedure

The Interim Report recommended criteria and established the principle of zoning land in accordance with the primary use of the land. The submissions raised concern that there is no defined process for applying the criteria, as well as other procedural related concerns such as:

- How is the primary use of the land determined?
- Will a council or the landowner determine the primary use of the land?
- 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?
- Will there be an independent review of the zones proposed by councils?

#### **Comment:**

The Final Recommendations Report will detail the procedure for the application of E2 and E3 zones and other mapped planning controls. This procedure will address the following matters:

**Zoning process:** Councils will apply E zones to land through the planning proposal process. When applying an E zone, councils will need to determine whether the primary use of the land is environmental conservation (E2) or environmental management (E3), considering the objectives of the zone and the presence of the E2 or E3 criteria.

The primary use of the land is the main use for which the land has been used for the last two (2) years. This time period will ensure the zone reflects established, lawful land uses. 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. This may mean that land which is currently zoned rural may continue to have a rural zone but parts of the land could be included in a mapped planning control where that land contains attributes that meet the criteria for an E2 or E3 zone. Further discussion on mapped planning controls is included in Section 1.4.

**Verification:** E zones can be applied where areas of environmentally valuable land have been accurately mapped, based on known verified attributes.

Before applying an E zone or a mapped planning control to a site, councils will need to verify the presence of the environmental attributes at the site. A process for verifying the E zone criteria will be included in the Final Recommendations Report and will include a number of verification techniques.

The Department holds regional data for the Far North Coast that could be of assistance when applying zones or other mapped planning controls at the Local Government Area (LGA) scale. It is also acknowledged that councils have a range of in-house studies, spatial datasets and records. Regional and local datasets will also require site verification.



**Multiple zoned land:** The Interim Report recommends that E zones be applied to land comprising the E2 or E3 criteria and where the primary use of that land is consistent with the environmental zone objectives. This may result in more than one zone being applied to some properties. For instance where part of a rural lot contains one or more of the E2 criteria and is being used for environmental conservation purposes, this portion of the site could be zoned E2. The remaining portion of the property could be zoned rural. However an E2 zone is not mandatory. A council may zone that part of the land containing vegetation types under the E2 criteria as rural and include that part of the land on a Vegetation Map (refer to Section 1.4) if the objectives of the rural land use zone remain appropriate.

**Voluntarily re-vegetated land:** The Department's interim position is that land which has been voluntarily revegetated by landowners in association with farming activities should not be considered for an E2 or E3 zone without the agreement of the landowner. Submissions requested further clarification of this matter. In response to submissions, the following approach is proposed:

- 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.
- Rural zoned land can be included in a Vegetation Map if it has been voluntarily revegetated and the attributes of the land have been verified to meet the criteria for an E2 or E3 zone, without the agreement of the current land owner. This approach is consistent with the option for using other mapped planning controls where the primary use of the land is not 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.

**Public or private land inconsistent with the criteria:** It should be possible to apply an E2 or E3 zone to public land even if it does not meet the criteria, if the primary use of the land is environmental conservation or environmental management.

It should also be possible to give private land an E2 or E3 zone even if it does not meet the criteria, if the application of an E zone is the result of a negotiated development outcome (such as a master plan, rezoning of a new release area, a condition of a development consent, an approved offset areas, etc). Voluntary requests by landowners seeking an E zone for their land, where it does not meet the criteria, should be able to be considered by a council through the planning proposal process.

**Independent Review Mechanism – E Zone Review Panel:**

An independent panel could be established to consider all planning proposals which seek to apply an E zone to a deferred area in the Far North Coast LEPs. The Panel could comprise professionals working in the fields of planning, terrestrial ecology, and agricultural economics and could provide advice to the Minister regarding the application of the E2 and E3 criteria and suitability of each proposal. The Minister (or delegate) could then make the final decision with respect to the proposed instrument.

Given the approach to applying E zones and other mapped planning controls detailed in the Final Recommendations, it is considered that an independent panel is not necessary at this time.

The suitability and requirement of an E Zone Review Panel could be further investigated following the release of the Final Recommendations Report.

## 1.2 Application of the E4 Zone

The Interim Report recommended that the E4 zone proposed in the draft Byron LEP 2014 should be replaced with an appropriate residential zone. The Department supported this approach.

The submissions included both support and opposition to 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.

### **Comment:**

The Department's position in relation to the replacement of the E4 zone with an appropriate residential zone relates only to land which was proposed to have an E4 zone under the Byron LEP 2014. The E4 zone will remain an option within the Standard Instrument LEP for all councils to apply as appropriate. The Department's *Practice Note 09-002* provides guidance on the application of the E4 zone.

It is considered that the E4 zone proposed to be applied under draft Byron LEP 2014 can be replaced with an appropriate residential zone. This can be considered through the planning proposal process.

## 1.3 Permissibility of Agriculture in the E Zones

The Interim Report recommends 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. The Department supported this approach.

A substantial number of submissions stated that *extensive agriculture* should be prohibited 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.

### **Comment:**

The criteria for the application of the E2 and E3 zones will ensure they are only applied to land containing vegetation with significant environmental attributes or cultural significance. The E zones will no longer be applied to cleared land for reasons of scenic protection, water catchments, or where the primary purpose is not environmental conservation or environmental management. The criteria for the E2 zone will in many circumstances only apply to land not suited to *extensive agriculture*.

It is important that land uses are not drawn too restrictively in zones, as they may invoke the *Land Acquisition (Just Terms Compensation) Act 1991* and the need for the Minister to designate a relevant acquiring authority.

The Department considers that *extensive agriculture* should be permitted with consent in the E2 zone for all Far North Coast LEPs. The Interim Report proposed to allow *extensive agriculture* to be prohibited in the E2 zone in Tweed LEP. However, for consistency across the Far North Coast, the Department considers it appropriate that *extensive agriculture* also be permissible with consent in the E2 zone in the Tweed LGA.

As mentioned above, it may be that the E2 zone will not be applied to land being used for agricultural purposes. Permitting *extensive agriculture* in the zone will, however, provide opportunity for new agricultural activities to be established that may be consistent with the E2 zone objectives, although this is expected to be limited to activities such as understorey grazing. It will also ensure that farmers do not have to rely on 'existing use rights' provisions where the E2 zone is applied to land that is being used in association with agricultural activities.

*Extensive agriculture* should be listed as permissible without consent in the E3 zone for the Far North Coast LEPs. This will provide a consistent approach for the whole Far North Coast region. Any clearing required to undertake *extensive agriculture* would still require approval under the *Native Vegetation Act 2003*.

The provisions relating to 'existing use rights' for *extensive agriculture* under the *Environmental Planning and Assessment Act 1979* or the Regulations should be reviewed to ensure existing agricultural land uses and interests are protected. This is discussed further in Section 2 of this report.



## 1.4 Mapped Planning Controls and Associated Clauses

The Interim Report recommended the use of overlays to address issues relating to water catchments, scenic amenity, coastal hazards and terrestrial biodiversity in a LEP. Overlays consist of a map and associated clause. The Department's interim response supported the use of mapped planning controls for matters of public health, safety, risk and hazard however it did not support the use of mapped planning controls for scenic amenity and terrestrial biodiversity.

The submissions contained both widespread support for, and opposition to the use of mapped planning controls, particularly relating to biodiversity.

Support for the use of mapped planning controls was based on protecting the environmental attributes that are

not immediately suited to an E zone but still contribute significantly to the natural environment. The broader community sees mapped planning controls as a necessary level of protection when development is proposed. Mapped planning controls also provide transparent guidance to applicants on the matters a consent authority will consider when assessing a development application, thus indicating up front what information is required and helping to speed up the development application process.

Opposition to the use of mapped planning controls was based on the fact that they constitute an unnecessary duplication of other legislation and are considered a burden on rural land owners.

### **Comment:**

**Duplication of Legislation:** The Department's Interim Response did not support the use of a biodiversity map in LEPs. However, after reviewing issues such as 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, it was considered that the use of a Vegetation Map and associated clause provides flexibility and an additional option for the management of significant native vegetation, without having to apply an E zone.

Mapped planning controls operate by requiring the consideration of certain matters when development requiring consent is proposed on land that is included on a planning control map. These planning controls cannot be used to prohibit or require consent for land uses permitted without consent in the land use tables of an LEP. Mapped planning controls do not duplicate the consent process, rather they identify what matters need to be considered as part of a development application under the *Environmental Planning and Assessment Act 1979*.

Under section 79C of the *Environmental Planning and Assessment Act 1979* a consent authority must consider "the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality" and "the suitability of the site for the development". Mapped planning controls identify the issues applicable to a particular site and therefore inform applicants of the information that must be provided with a development application. This helps to avoid delays associated with requests for additional information through the development application process.

It is intended that a Vegetation Map may be applied to land which has been verified as containing attributes consistent with the E2 or E3 criteria, however the primary use of the land is not environmental conservation or environmental management.

### **Imposition of Additional Mapped Planning Controls:**

For all rural zoned land in the Far North Coast Councils, land uses that are permitted without consent such as *extensive agriculture*, are not subject to the mapped planning control provisions in the LEPs. As mentioned above, mapped planning controls identify the matters which must be considered under a development application for all proposed land uses that require consent. They do not duplicate the consent process.

### **State wide implications of not permitting the use of some mapped planning controls:**

The final recommendations of the Northern Councils E Zone Review will initially apply only to the five Far North Coast councils. The Department of Planning and Environment will investigate the implications of the Northern Councils E Zone Review final recommendations for the rest of the State. In the meantime, if other councils in the State are reviewing the application of E zones, then they could apply the principles contained in the Final Recommendations Report.

### **Mapped Planning Controls for matters of public health, risk and hazard:**

The Department maintains its position in support of using mapped planning controls to address matters of public health, safety, risk and hazard. Accordingly these maps will be able to be used for matters such as drinking water catchments, flooding, coastal risk areas and land subject to strict development controls such as steep land.



## 1.5 Aesthetic Values as an Attribute of the E Zones

The Interim Report recommended that the E3 zone be amended to remove aesthetic values as an attribute to be protected and managed. The Department supported this recommendation on the basis that aesthetic value can be managed through the development assessment process.

The submissions contained both support for, and opposition to, the concept of scenic protection. Where scenic protection was supported, a zone was preferred to a mapped planning control. Concerns were also raised by councils outside the Far North Coast that the removal of aesthetic values as an attribute of the E3 zone would have ramifications for their LEPs.

### **Comment:**

The Department's practice note *PN09-002 Environment Protection Zones* identifies aesthetic values as an attribute of the E2 and E3 zone. Additionally, the mandatory objectives for both E2 and E3 zones in the Standard Instrument LEP include "aesthetic values" as an attribute of land to be protected. The Northern Councils E Zone Review has however 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 Development Control Plan (DCP) provisions or development assessment. This may eventually require the amendment of the Department's practice note and the objectives of the E zones in the Standard Instrument Principal LEP. Any review of the suitability of aesthetic values as an attribute of the E zones would need to include consultation with other councils throughout the State. In the meantime, Far North Coast councils could address areas of scenic protection through DCP provisions, if required.



An aerial photograph of a river winding through lush green agricultural fields. The fields are divided into various plots, some showing distinct rows of crops. A large, semi-transparent green leaf graphic is overlaid on the right side of the image, partially covering the fields and the river. The text is positioned in the upper left quadrant, overlaid on the image.

***Issues Raised  
by State Agencies,  
Councils, and  
Organisations***



## 2. Issues Raised by State Agencies, Councils, and Organisations

The following section contains the key issues raised in the submissions from State agencies, councils and organisations. These issues are in addition to the major issues discussed in Section 1 of this report.

### 2.1 Errors and Omissions in the Report

The submissions from Ballina, Byron, Lismore and Tweed Councils raised concerns that the Interim Report contained errors and omissions relating to the councils' approach to the application of E zones in their draft LEPs. Some of the councils requested that a Final Report be prepared which corrected the errors and omissions.

#### **Comment:**

The Interim Report is an independent assessment of the approach that the affected councils have taken in applying E zones in their LEPs. While it is acknowledged that the councils have concerns with the content of the report, it is considered that the councils have been able to address these concerns, and clarify their approach to the application of E zones in their draft LEPs, through their submissions to the Interim Report.

A final report which addresses these particular concerns of the councils is not considered necessary. These concerns have been noted and the information contained in their submissions which clarify the errors and omissions in the Interim Report have been considered in the development of the Final Recommendations Report.

### 2.2 Financial Assistance

The five North Coast councils requested financial assistance be provided for the necessary investigations, mapping and the preparation of planning proposals to apply appropriate zones to the areas of land deferred from the respective LEPs. Councils outlined that they had undertaken significant work to inform the application of E zones in accordance with the Department's original requirements and the new criteria will require an extensive review of this work.

#### **Comment:**

The Department is investigating whether information is available from State agencies that could help councils to review which areas of the deferred land would meet the criteria for an E zone. The Department will consider the issue of financial assistance through future Planning Reform funding.





### 2.3 A New Coastal Hazard Zone

The Interim Report recommended that land affected by coastal hazards be zoned E3. The Department's interim position was that land affected by coastal hazards should be zoned in accordance with the primary use of the land and be subject to mapped planning controls. Ballina and Byron Councils requested a new zone for use on land subject to coastal erosion. They explained that mapped planning controls to address coastal hazards do not provide sufficient transparency for prospective purchasers and do not have sufficient legal strength to prevent the development of inappropriate land uses on land impacted by coastal hazards. This concern was also raised by a substantial number of public submissions.

#### **Comment:**

In 2012, in response to concerns raised by councils to the Standard Instrument LEP, a Local Planning Panel was established. One of the recommendations of the Panel was the development of a new zone for use on land affected by natural hazards. At the time the decision on a new natural hazards zone was deferred by the Department pending the review and recommendations of a Ministerial taskforce on improvements to coastal planning policy. The NSW Government's coastal management reforms are currently in the second stage which will provide detailed proposals in three key areas:

- establishing a simpler and more integrated legal and policy framework for coastal management;
- providing improved guidance and technical advice to councils, while enabling and supporting local decision making; and
- identifying potential funding options, particularly to implement coastal asset management strategies.

The introduction of a new zone to apply to land affected by natural hazards could be further considered, once the final outcomes of these reforms is known. In the interim, councils can map and manage land affected by coastal hazards through a Coastal Risk Map and associated clause in the LEP.



## 2.4 Implications of E Zone Review Recommendations for Remainder of the State

The submissions contained concerns that the Interim Report and recommendations are specific to councils on the Far North Coast and do not reflect the situation in other regions of the State. There was also concern that other councils had not been consulted and that the criteria developed for the E2 and E3 zones would not be compatible with the vegetation characteristics of other regions of the State. The Interim Report does not address the approach used by councils in other areas of the State, therefore the recommendations may not be appropriate to be applied statewide.

### **Comment:**

The final recommendations for applying E zones on the Far North Coast could be used to inform the approach for the remainder of the State. It is acknowledged, however, that further work will be required before a set of statewide or region specific criteria for applying E zones is settled. The Department will investigate the implications of the Northern Councils E Zone Review recommendations on other LEPs in the State, prior to any changes being considered.

## 2.5 Appeal Process for Zoning Proposals

A number of submissions requested the introduction of an appeal process that could be used by landowners when they object to a zone proposed to be applied to their land. The appeal process should be free of charge to the landowner, and any costs associated with independent reports should be borne by either the council or the State Government.

### **Comment:**

There is no legislation at present that allows landowners to appeal the application of a zone to their land in a LEP. To introduce such a process would require a significant change in legislation and to the planning process, and consequently is beyond the scope of this review. Landowners will continue to have the opportunity to make submissions to councils when planning proposals for the rezoning of their land are publicly exhibited.

Any review of Part 3 of the *Environmental Planning and Assessment Act 1979* in relation to the making of local environmental plans should be considered as part of broader planning reforms.





## 2.6 Compensation for the Application of E Zones to Private Land

The submissions requested that compensation be provided to landowners where an E zone is applied to their land without their agreement. This request is made on the basis that the application of an E zone to private land reduces the value of that land.

### **Comment:**

The website of the Valuer General of NSW states that one of the factors considered when valuing land is “*constraints on use such as zoning and heritage restrictions*”. While zoning may influence the value of a property, zones are applied to land on the basis of identifying the most appropriate uses for that land. The zoning of land is a component of the NSW planning system and it is acknowledged that it can have an impact on land values. Compensation for private landowners is not appropriate where a council or the State applies a zoning in accordance with established planning policy and procedure.

The proposal to introduce compensation for landowners who do not agree with a zone applied to their property constitutes a significant departure from the current planning process in the State, and is beyond the scope of this review.

## 2.7 Existing Use Rights

The submissions expressed concerns that existing use rights for agricultural activities should be broadened, and should not lapse after 12 months.

### **Comment:**

When a LEP is amended, and as a result, a land use becomes prohibited on certain land, the landowner is able to rely on existing use rights, under section 107 of the *Environmental Planning and Assessment Act 1979*, to continue the existing use. Submissions have raised concern with the existing use rights provision, specifically because of a part of the provision which states that existing uses may cease if the use is abandoned for more than 12 months. In addition, there are limitations on the expansion of existing uses. There is a perception that a 12-month time period is an inappropriate factor when considering the continuity of an agricultural land use.

Allowing *extensive agriculture* in the E2 zone with consent and without consent in the E3 zone ensures that farmers do not have to rely on existing use provisions.

In consideration of agricultural practices it may be appropriate to remove or extend the 12-month time limit for abandonment of existing uses for *extensive agriculture*. This would require an amendment to the *Environmental Planning and Assessment Act 1979* or its Regulations. This matter will be further investigated by the Department.



## 2.8 Right to Farm

The submissions expressed support for positive rights for farming activities to help protect farmers from land use conflict issues.

### **Comment:**

Guidelines published on council websites and in documents such as *Living and Working in Rural Areas, A handbook for managing land use conflict issues on the NSW North Coast (Department of Primary Industries, 2007)* aim to reduce and avoid rural land use conflict and pressures on key natural resource assets. Guidelines such as these help improve understanding of agricultural practices and how potential land use interface issues can be avoided or managed.

It is noted that the NSW Department of Primary Industries is investigating other ways to deal with these issues.



# ***Issues Raised by Public Submissions***





# 3. Issues Raised by Public Submissions

The following section contains the key issues raised in the public submissions which are in addition to the matters already discussed in Sections 1 and 2 of this report.

## 3.1 E Zones on Freehold Land

The submissions raised concern that the proposed criteria for applying E2 and E3 zones would still permit an E zone on freehold land, without the landowner's permission.

### Comment:

The NSW planning system does not require landowner permission to rezone public or private land. The planning system also requires environmental protection through land use zoning. Amending the NSW planning system to require landowner permission for rezoning proposals or to remove environmental land use zones is beyond the scope of this review.

As discussed under Section 1, only land which meets the final criteria for applying E2 or E3 zones and has as its primary use is environmental conservation or management will be given an E zone. This is to minimise the application of E zones over cleared agricultural land. Section 2 discussed the potential for provisions relating to existing use rights for *extensive agriculture* to be expanded to protect agricultural land uses and interests.

Any landowner affected by a proposal to rezone their land as E2 or E3 would be consulted as part of the rezoning process, and any issues they raised must be considered prior to the proposal being finalised.

## 3.2 Extensive Agriculture Permits Coal Seam Gas (CSG) and Mining

A number of submissions wanted *extensive agriculture* to be made a prohibited land use in all LEPs within the region to avoid permitting Coal Seam Gas (CSG) and other mining activities.

### Comment:

The planning rules that apply to CSG projects and other mining activities are set out in the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (the 'Mining SEPP')*. Under the Mining SEPP, mining and CSG projects can be approved and carried out on land for which agricultural uses are permitted (with or without consent).

In order to exclude CSG projects and other mining activities from the North Coast Region as suggested in the submissions, agricultural activities would have to be prohibited in all land use zones under the Standard Instrument LEPs. Alternatively, an amendment to the Mining SEPP would be required. This is beyond the scope of this review.



### 3.3 Urban Buffer Zones

Submissions expressed concern that the review did not consider the environmental zoning around the Alstonville and Wollongbar villages. The Ballina LEP 1987 has historically included an environmental (urban buffer) zone surrounding the villages of Alstonville and Wollongbar, as well as sensitive coastal locations such as Skennars Head and Lennox Head to limit development pressure. Submissions raised concern that the removal of this zone will expose these areas to development pressure permitted by statewide planning policies, such as the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP)*.

#### **Comment:**

The Interim Report and the Department's Interim Response recommended that only land which meets the final criteria for applying E2 or E3 zones should be given an E zone. An urban buffer is not an attribute in the criteria for the application of E zones.

Local and regional growth strategies provide the framework for managing housing and employment growth. These strategies identify existing and potential future urban areas based on site compatibility and population projections. Any proposed residential areas outside of identified existing and potential future urban areas must demonstrate consistency with the overall intent of these strategies.

A development control plan (DCP) could be developed to give applicants clear guidance about what to consider when preparing development applications for these areas.

Any development proposed under a Statewide-planning policy would need to demonstrate site compatibility, strategic merit and a statutory context. This would include an assessment of, among other matters, the strategic planning for the area as well as the effect the development might have on surrounding and preferred land uses such as agriculture.



### 3.4 Natural Resource Buffer Zones

Submissions have indicated support for buffer areas around natural resources such as estuaries, streams, wetlands, and rainforests. The submissions also sought the inclusion of buffer zones as criteria for applying E2 and E3 zones or as a mapped planning control in the LEP.

#### **Comment:**

It is acknowledged that buffers are an accepted planning tool for minimising land use conflict and promoting environmental protection. A DCP provision or Biodiversity Management Strategy could be used to establish buffer zones around significant natural resources as an alternative to land use zones.

Including buffer areas within the E2 and E3 criteria would be inconsistent with the intended outcome of the review, which is that land should only be zoned according to its primary use.

### 3.5 Incentives

Submissions requested that incentives be provided to landowners where land is zoned for environmental protection purposes. These incentives would encourage the protection and regeneration of these significant areas.

#### **Comment:**

As discussed in Section 2, land use zoning is a component of the NSW planning system. Mandatory compensation or incentives for landowners are not appropriate where a council or the State applies a zoning in accordance with established planning policy and procedure.

It is acknowledged however that incentive mechanisms are currently being used by all levels of government to promote environmental protection including grants, covenants, management agreements, education and support programs and regulatory instruments.

The NSW Government's Biodiversity Banking and Offsets Scheme is applicable to E zones. Under the scheme, credits can be generated by landowners who commit to enhance and protect biodiversity values on their land, which may then be sold or used as an offset for development.

Funding opportunities and support for landowners undertaking natural resource management activities are available from time to time through a range of grant programs. Some NSW councils have also included development incentive type provisions in their LEPs to promote environmental protection. Clauses in LEPs which allow exemptions to development standards, such as minimum lot size provisions to promote development opportunities that contribute positively to environmental protection and management are examples of such incentives.





### 3.6 Incorrectly Zoned Land

Submissions were received from landowners and consultants seeking to have their land rezoned as part of the final outcomes of the review. Some even requested the Department rezone their land as part of the review process. The submissions raised concern that an E zone had been incorrectly applied to their land when compared to the Interim Report's proposed E2 and E3 criteria. Alternatively, a number of landowners were concerned that their land warranted an E zone but had been zoned for alternative uses.

#### **Comment:**

The Minister for Planning will issue the final criteria which must be used when applying an E zone. Each council will then implement the review outcomes through the planning proposal process. This process will provide an opportunity for all affected landowners to make submissions to councils regarding the zoning of their land.

Where landowners request an E zone be applied to their land even though it does not meet the criteria, there should be flexibility to allow such requests. These voluntary requests for an E zone can also be considered through the planning proposal process.

### 3.7 State and Regionally Significant Farmland

Submissions have requested that State and regionally significant farmland should only be zoned for rural purposes. A number of submissions raised concern that significant environmental values on land mapped as State or regionally significant farmland should be zoned for environmental protection purposes.

#### **Comment:**

The mapping under the *Northern Rivers Farmland Protection Project* identifies State and regionally significant farmland areas based on criteria other than vegetation. Not all land mapped as either State or regionally significant is currently being used for agricultural purposes.

It is not mandatory to zone regional and State significant farmland as rural, nor is it mandatory to apply an E2 or E3 zone to regional and State significant farmland if it contains vegetation which meet one or more of the criteria, if it is not considered to be consistent with the zone objectives. This approach is consistent with the mapping and recommendations of the *Northern Rivers Farmland Protection Project: Final Recommendations, February 2005*.

# Appendix 1

## E2 criteria: Review Table

#	Simplified Name	Comment
1	SEPP 26 Littoral Rainforests.	Zoning mapped SEPP 26 Littoral Rainforest for environmental resources in addition to the development control provisions.
2	SEPP 14 Coastal Wetlands.	Zoning mapped SEPP 14 Coastal Wetlands for environmental resources in addition to the development control provisions.
3	Endangered Ecological Communities (EECs) listed under the <i>Threatened Species Conservation Act 1995 (TSC)</i> and the <i>Environment Protection and Biodiversity Conservation Act 1999 (EPBC)</i> .	<p>This criterion includes vegetation communities listed under the <i>Threatened Species Conservation Act 1995 (TSC)</i> and the <i>Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC)</i>.</p> <p>The <i>Far North Coast Regional Conservation Plan</i> identifies the following EECs:</p> <p>These are as follows:</p> <p><i>Byron Bay Dwarf Graminoid Heath Community, Coastal Rainforest, Littoral Rainforest, Lowland Rainforest, Lowland Rainforest, Swamp Sclerophyll Forest on Coastal Floodplains, The Woodland, and White Gum Moist Forest.</i></p> <p>Other vegetation communities may be listed consistently.</p>
4	Key Threatened Species Habitat.	<p>Habitat for threatened fauna species is expansive, diffused zone to all areas which could be considered habitat for or otherwise contribute positively to the protection and habitat for threatened fauna species.</p> <p>This criterion has been refined to include:</p> <ul style="list-style-type: none"> <li>old-growth forests where the overstorey or canopy</li> <li>areas of predicted high conservation value for forests</li> <li>habitats for threatened species or endangered populations where a population is present.</li> </ul>
5	Over-cleared vegetation communities.	<p>Over-cleared means that more than 70 per cent of the over-cleared vegetation communities have been recorded as <i>Rainforests, Wet sclerophyll forests (shrubby and grassy woodlands), Grasslands (Themeda australis sod tussock)</i>.</p> <p>Descriptions of these formations may be found in <i>Keithley's ACT, Department of Environment and Conservation</i> documented in <a href="http://www.environment.nsw.gov.au/resources">www.environment.nsw.gov.au/resources</a>.</p>
6	Vegetation in over-cleared Mitchell landscapes.	<p>Of the 16 Mitchell Landscapes identified for the Far North Coast (over-cleared). These include:</p> <p><i>Byron-Tweed Alluvial Plains, Byron-Tweed Coastal Bar</i></p>
7	Culturally significant lands.	Zoning culturally significant lands will help to minimise

	Recommendation
Environmental conservation purposes will provide land use control within these State significant provisions provided by the SEPP.	This criterion should be retained.
Environmental conservation purposes will provide land use control within these State significant provisions provided by the SEPP.	This criterion should be retained.
Under both the <i>NSW Threatened Species Conservation Act 1995</i> and <i>Biodiversity Conservation Act 1999</i> , there are 12 endangered ecological communities that exist on the Far North Coast. These include <i>Coastal Cypress Pine Forest, Coastal Saltmarsh, Freshwater Wetlands in Coastal Floodplains, Forest on Floodplains, Subtropical Coastal Floodplain Forest, Swamp Oak Floodplain Forest, Sphagnum heath on Seacliffs and Coastal Headlands, White Gum Yellow Gum Blakely's Red Gum</i> and <i>White Gum Yellow Gum</i> . These communities are protected under these Acts in the future.	This criterion should be retained.
It is difficult to map and can include open grassland and noxious weed communities. Applying an E2 or E3 criterion for threatened fauna species could prohibit land uses or development which may have little risk to the conservation and management of these areas. Many of the other E2 and E3 criteria could be considered as suitable for these areas. Many of the other E2 and E3 criteria could be considered as suitable for these areas.	This criterion should be revised such that it applies only to "Key Threatened Species Habitat".
Many of the trees are in the late mature stage of growth; many of the threatened fauna assemblages, refugia, endemic forest fauna or endemic invertebrates; and many of the populations that cannot withstand further loss where the threatened species or endangered ecological communities are present.	This criterion should be retained.
The original (pre 1750) extent of the vegetation types has been cleared. On the Far North Coast, the following vegetation formations are recorded in the following vegetation formations: <i>Coastal Cypress Pine subformations, Dry sclerophyll forests (shrubby and shrub/grass subformations), Grassy woodland, Heathlands, Forested wetlands, Freshwater wetlands, Saline wetlands.</i> The <i>NSW Threatened Species Conservation Act 1995</i> , <i>Biodiversity Conservation Act 1999</i> , <i>Threatened Species Action Plan, D 2004, Ocean Shores to Desert Dunes: The Native Vegetation of New South Wales and Northern Rivers</i> , Hurstville and full descriptions of vegetation types in the Region (Northern Rivers) are available at <a href="#">https://www.environment.nsw.gov.au/resources/nature/BioMetric_Vegetation_Type_CMA.xls</a>	This criterion should be retained.
On the Far North Coast Region, four are classed as over-cleared (>70 per cent of their pre-1750 extent) and are <i>Coastal Cypress Pine, Clarence-Richmond Alluvial Plains and Upper Clarence Channels and Floodplains.</i>	This criterion should be retained and merged with criterion 5.
The potential impacts to important Aboriginal heritage values.	This criterion should be retained.

**E3 criteria: Review Table**

#	Simplified Name	Comment
1	All types of rainforest other than SEPP 26 mapped areas.	All rainforest on the Far North Coast is an EEC and the be removed.  The inclusion of rainforest as a criterion for E3 may be
2	Old-growth forest.	Old-growth forest has been included in the E2 criteria
3	Riparian, wetland and estuarine vegetation other than SEPP 14 mapped areas.	This criterion would include riparian and estuarine veg or wetland areas other than those mapped as SEPP 14  Most wetlands in the Region are listed as threatened e coastal floodplains; and upland wetlands, montane pe
4	Rare, Endangered and Vulnerable Forest Ecosystems.	All remaining occurrences of rare, endangered and vu land use control within these significant areas.
5	Native vegetation on coastal foreshores and land subject to coastal hazards.	Land subject to coastal hazards should be removed fr Section 2 and 3 of this report discusses the option of  This criterion should only include native vegetation on rock platform.
6	Land where strict controls on development should apply	Land comprising areas where strict controls on develo  The Department supported the mapping of hazard area lands in an overlay will ensure that all development whi  Significant vegetation communities within these areas

**Land which meets the E2 criteria**

Land which meets the E2 criteria but is not consistent with the E2 zone objectives may be zoned E3 where the intended use of the land is environmental management rather than environmental conservation. This is a procedural issue and does not need to be included as a criterion for the E3 zone.



	Recommendation
<p>Therefore already listed under the E2 criterion. This criterion is therefore unnecessary and should be removed from the E3 criteria. This criterion is therefore unnecessary and should be removed from the E3 criteria. Further investigation of the applicability of this criterion for the remainder of the State is required.</p>	<p>This criterion should be removed from the E3 criteria. Further investigation of the applicability of this criterion for the remainder of the State is required.</p>
<p>as Key Threatened Species Habitat. It is therefore unnecessary and should be removed.</p>	<p>This criterion should be removed from the E3 criteria.</p>
<p>vegetation on waterfront land defined under the <i>NSW Water Management Act 2000</i>, and Coastal Wetlands.</p>	<p>This criterion should be retained.</p>
<p>ecological communities, including coastal saltmarsh along estuaries; freshwater wetlands on floodplains and swamps on the tablelands. These areas will be included in the E2 criteria.</p>	<p>This criterion should be retained.</p>
<p>vulnerable forest ecosystems should be reserved or protected. Applying an E zone will promote the protection of these ecosystems.</p>	<p>This criterion should be retained.</p>
<p>from the criteria pending the outcomes of the NSW Government's coastal management reforms. The mapping of coastal hazard areas in Coastal Risk Map.</p>	<p>This criterion should be modified to remove 'land subject to coastal hazards'.</p>
<p>land with frontage, or adjoining or adjacent to, a beach, estuary, coastal lake, headland, cliff or other coastal feature.</p>	<p>This criterion should be deleted.</p>
<p>development should apply (hazard areas) should be removed from the criteria.</p>	<p>This criterion should be deleted.</p>
<p>as in council LEPs in its 'Interim Response' and maintains this approach. The mapping of these areas is permissible with consent on this land considers the potential hazards that exist on the land.</p>	<p>This criterion should be deleted.</p>
<p>which would generally already be included in the criteria listed for E2 and E3 zones.</p>	<p>This criterion should be deleted.</p>



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