

Strengthening local government



Office of Local Government

5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541

Our Reference: A467307
Your Reference: 16/12339
Contact: Matthew Dimmock
Phone: 02 4428 4100



Clr David Wright
Mayor
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Clr Wright

Thank you for your letter of 23 February 2016 to the Minister for Local Government, the Hon Paul Toole MP, requesting a meeting in relation to the Government's Northern Councils E Zone Review Final Recommendations Report. The Minister has asked that I respond on his behalf.

I note that Council resolved to seek meetings with relevant Ministers and the Premier to discuss its concerns about issues regarding Local Environmental Plans (LEPs) and the Report.

I also note that you have written in similar terms to the Minister for Planning, the Hon Rob Stokes MP, who has primary responsibility for this issue within Government as the Minister administering the *Environmental Planning and Assessment Act 1973*.

Minister Toole has requested that representatives of the Office of Local Government make themselves available to meet with Council's delegation if this would assist Council. To discuss meeting arrangements Council staff should contact Mr Matthew Dimmock, Senior Policy Officer, on 4428 4100.

Thank you for raising this issue with the Minister.

Yours sincerely

Tim Hurst
Acting Chief Executive
Office of Local Government

1/4/16

T 02 4428 4100 F 02 4428 4199 TTY 02
4428 4209
E ola@ola.nsw.gov.au W www.ola.nsw.gov.au





The Hon Catherine Cusack MLC
Parliamentary Secretary to the Premier



Reference: A1537733

22 MAR 2016

Councillor David Wright
Mayor
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Councillor ^{David} Wright

Thank you for your correspondence regarding environmental protection zones. I have been asked to reply on behalf of the Premier.

I have carefully considered the issues you have raised and appreciate the reasons that have prompted you to write.

The issues you have raised fall within the area of portfolio responsibility of the Hon Robert Stokes MP, Minister for Planning and I have forwarded a copy of your letter to him for consideration.

If you have any further enquiries about this matter please contact the Minister's office directly. For your information the phone number for Minister Stokes' office is (02) 8574 6707.

Thank you for bringing this matter to the Premier's attention.

Yours sincerely

HON CATHERINE CUSACK MLC
Parliamentary Secretary to the Premier

Northern Councils E Zone Review

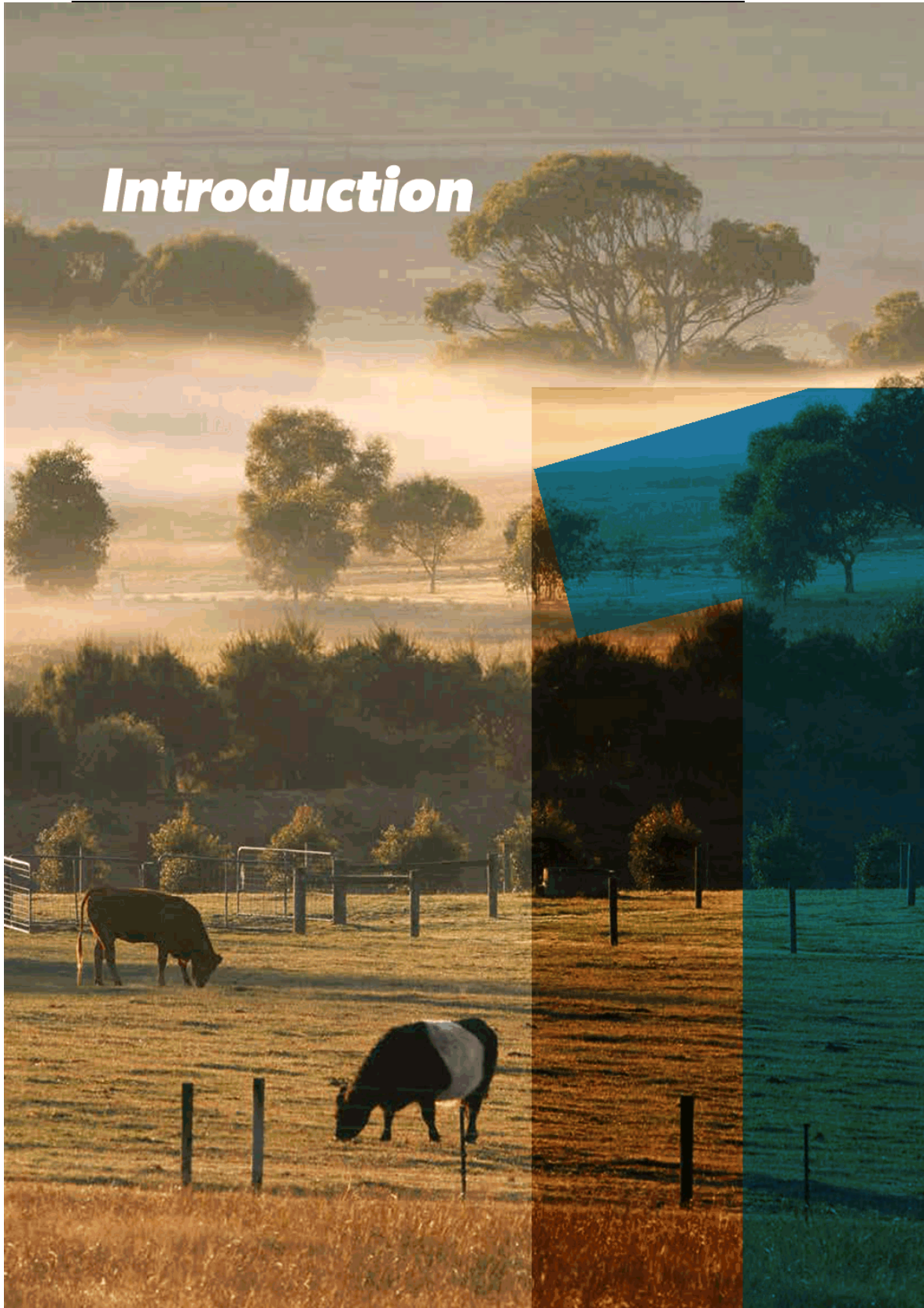
Final Recommendations Report



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Introduction



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.

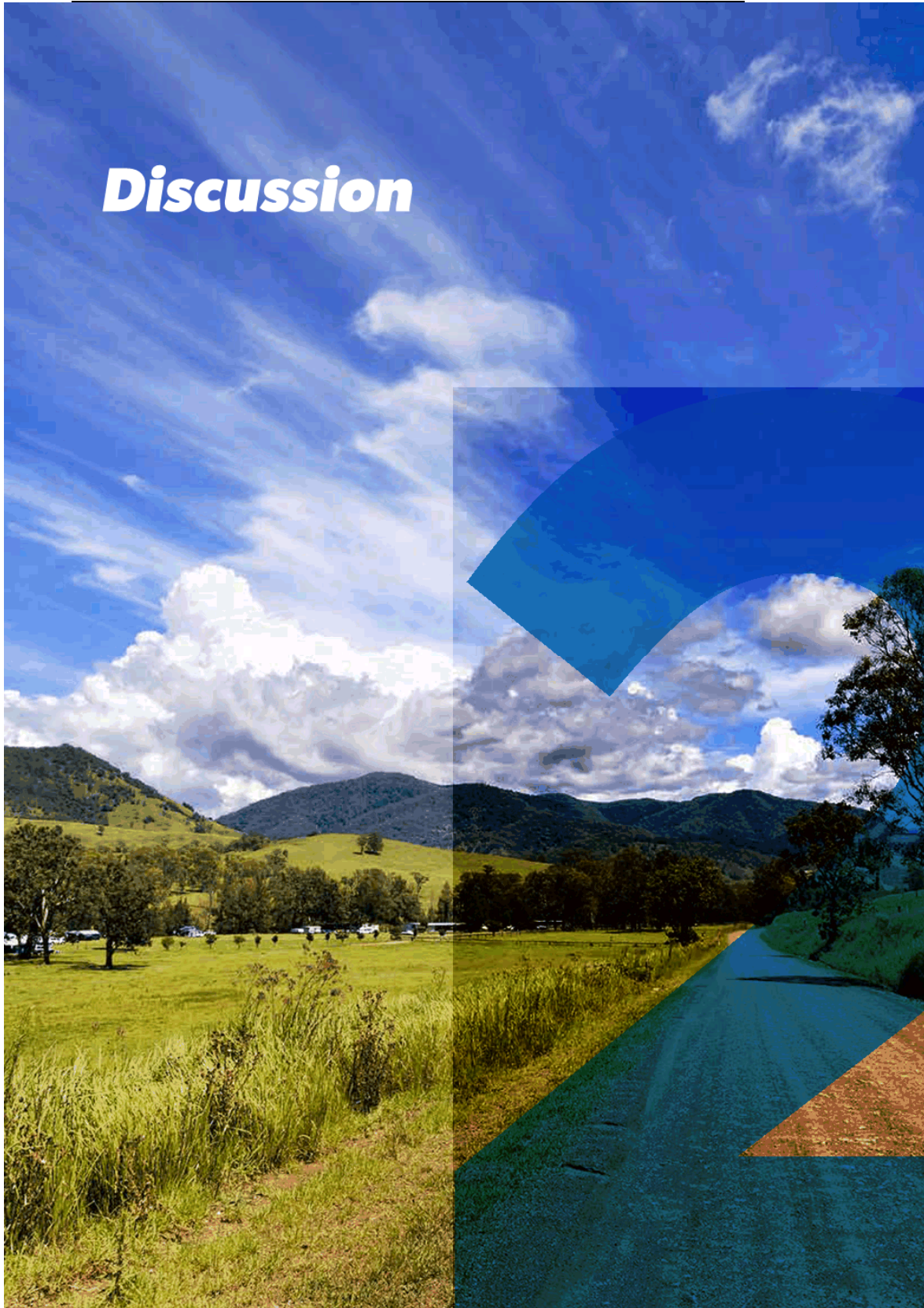
A Section 117 Ministerial direction will be issued to ensure that application of E zones in these LGAs, and to areas deferred from their Local Environmental Plans, is consistent with the final recommendations of the Northern Councils E Zone Review.

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.



Department of Planning & Environment

Discussion



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.

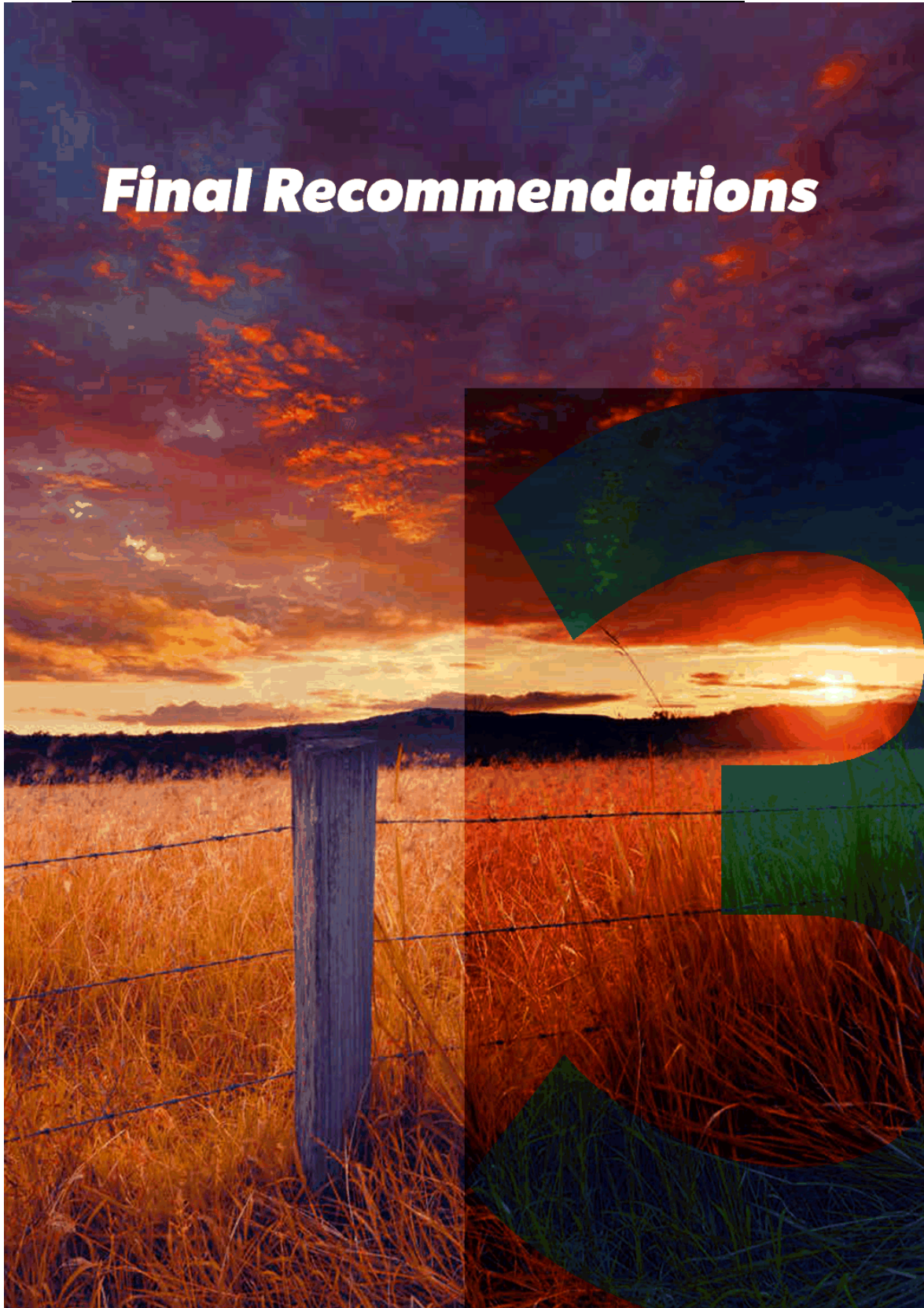
Aesthetic Values

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 (<i>State Environmental Planning Policy 26 – Littoral Rainforests</i>).
SEPP 14 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> .	Land containing vegetation communities listed as Endangered Ecological Communities under the <i>Threatened Species Conservation Act 1995</i> (TSC) and the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC) ¹ . 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: <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> 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 <i>Far North Coast Regional Conservation Plan</i> 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 (<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 .

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/OGRReviewFieldIdent.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.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)

Table 2: E3 zone Criteria

Criteria	Description
Riparian and estuarine vegetation and wetlands.	Land comprising riparian and estuarine vegetation on <i>waterfront land</i> , defined under the NSW <i>Water Management Act 2000</i> , or wetland areas other than those mapped as SEPP 14 Coastal Wetlands. Waterfront land is defined under the NSW <i>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) 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

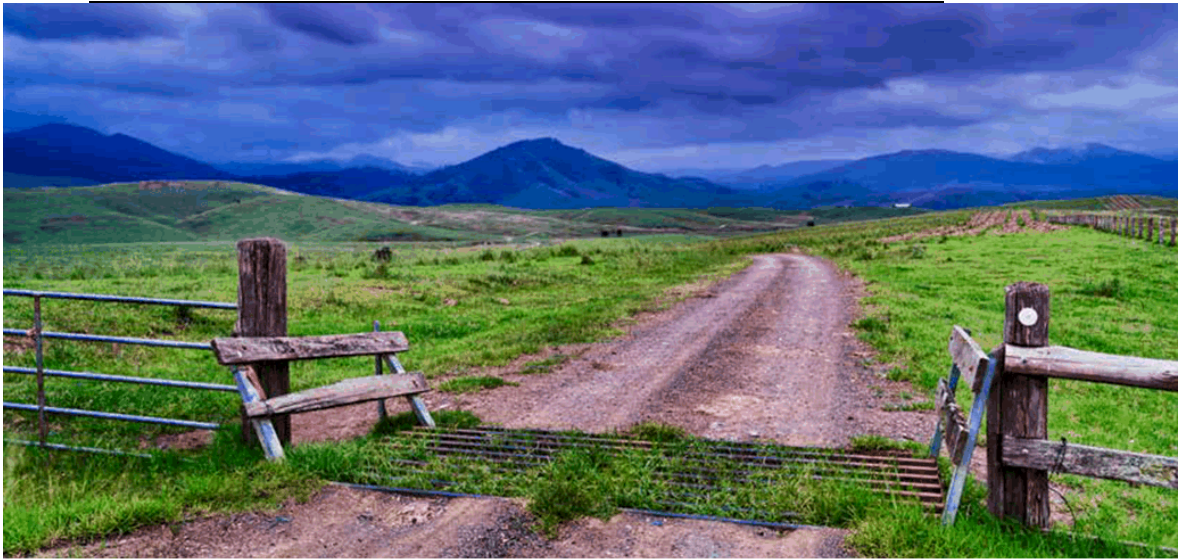
- Land which has been voluntarily revegetated by the current landowner, will not have an E2 or E3 zone applied to it without the agreement of the current landowner providing:
 - the revegetation has been actively undertaken and is not the result of natural regrowth;
 - active revegetation includes a 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.

16 Department of Planning & Environment

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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Planning &
Environment

Office of the Secretary

Mr P Hickey
General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

13/16799

Dear Mr Hickey

I am writing in regard to the Northern Councils Environmental Zone Review (E Zone Review). The Department wrote to all Northern Councils when the E Zone Review was released.

The following information is provided to further assist Council when seeking to apply E zones in accordance with the *Northern Councils E Zone Review Final Recommendations*.

Primary Use of Land

The Recommendations Report confirms that an E zone can only be applied to land if its primary use is environmental conservation or management purposes and meets the criteria for an E2 or E3 zone.

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

- a) The main use of the land is to be determined based on evidence about the nature of the activities and operations occurring on the land over the last two years. If the main use is for rural or farming operations, agricultural practices need to be demonstrated. Specific farming activities (such as grazing) do not need to have occurred in the last two years if the operations on the land (for example keeping paddocks fallow) are part of broader farm management practices.
- b) If the main use is for environmental conservation or management, the environmental values of the land and vegetation need to be demonstrated and the absence of any agricultural or other land use confirmed.

The primary use may be identified by a series of methodologies including up to date air photography, site visits, property development records, farm management plans, Private Native Forestry or Property Vegetation Plan approvals, conservation records and discussion with landowners.

Councils shall include information in its planning proposals which confirm how the primary use of the land has been determined.

Department of Planning & Environment

Notification to affected landowners

Councils are encouraged to liaise with landholders early in the rezoning process when proposing to apply E zones to private land.

A condition will be included on all Gateway determinations for planning proposals that seek to apply an E zone to private land, which will require a council to write to each affected landholder unless a letter from the landholder agreeing to the proposed zoning has been provided.

Council will also be required to notify landholders once it resolves to adopt an E zone following a review of submissions. This letter is to advise landholders of their opportunity to have the matter reviewed by the NSW Chief Planner. This matter is discussed in more detail below.

Independent Review Body

In the event that a landholder disputes that their land meets the primary use or validation criteria for an E zone, the NSW Chief Planner has been appointed by the Minister for Planning to undertake an independent review. The Chief Planner will make a decision on the dispute, based on an assessment of the evidence provided by both Council and the landholder.

Landholders will have 28 days from Council's notification of the adoption of the final proposed zones to notify the Department of their request for a review by the Chief Planner.

Role of Development Control Plans

Councils seeking to apply controls under Development Control Plans (DCPs) in response to the Final Recommendations are reminded of the role of DCPs in accordance with the *Environmental Planning and Assessment Act 1979* (the Act).

In accordance with the Act, DCPs are to provide guidance to developers and consent authorities when carrying out development to:

- give effect to the aims of any environmental planning instrument;
- facilitate permissible development; and
- achieve the objectives of land zones under an environmental planning instrument.

Under the Act, a provision of a DCP has no effect to the extent that:

- it is the same or substantially the same as a provision of an environmental planning instrument; or
- it is inconsistent or incompatible with a provision of any such instrument.

While a council can include environmental considerations in its DCPs, these will only apply when the LEP requires development consent for an activity. I encourage you to consider whether your DCP requires review or updating to reflect the final recommendations of the E Zone Review.

Plan Making Delegations

To ensure a consistent approach to the finalisation of zoning decisions under the E Zone Review, planning proposal matters which seek to apply an E zone or overlay and associated clause will remain with the Department. As a consequence, written authorisation to use the Minister's plan making functions will not be issued.

In addition, to ensure there are agreed protocols for these planning proposals, delegations will be exercised at the Executive Director or Deputy Secretary level of the Department. Proposals where the land owners agree to E zones or request that an E zone be applied will be dealt with by the Director Regions, Northern, of the Department.

Local Planning Direction

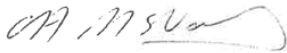
In accordance with the *Northern Councils E Zone Review Final Recommendations* a local planning direction has been issued to ensure that the application of E zones is consistent with these final recommendations. This direction requires councils to implement the adopted recommendations when preparing planning proposals that seek to introduce an E2 or E3 zone or an overlay and associated clause. It also contains further clarification regarding the 'primary use of land'.

The Department will be ensuring that any proposed E zone planning proposal is consistent with the final recommendations and matters discussed above.

Implementation of the Final Report Recommendations in a transparent and credible manner will strengthen the value of zoning decisions made to finalise the deferred areas in Council's LEP. The Department is more than happy to meet with Council to ensure that any technical or process issues can be resolved.

Should you have any further enquiries, please contact Mr Steve Murray, Acting Executive Director, Regions, at the Department on (02) 9228 6249.

Yours sincerely



Carolyn McNally
Secretary

1.3.16

Schedule 1

2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs

Objective

- 1) The objective of this direction is to ensure that a balanced and consistent approach is taken when applying environmental protection zones and overlays to land on the NSW Far North Coast.

Where this direction applies

- 2) This direction applies to the local government areas of Ballina, Byron, Kyogle, Lismore and Tweed.

When this direction applies

- 3) This direction applies when a relevant planning authority prepares a planning proposal:
 - a) that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone;
 - b) that introduces or alters an overlay and associated clause.

What a relevant planning authority or council must do if this direction applies

- 4) A planning proposal that introduces or alters an E2 Environmental Conservation or E3 Environmental Management zone or an overlay and associated clause must:
 - a) apply the proposed E2 Environmental Conservation or E3 Environmental Management zones, or the overlay and associated clause, consistent with the Northern Councils E Zone Review Final Recommendations.

Consistency

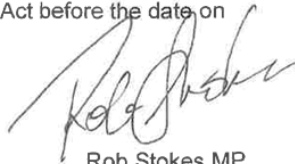
- 5) A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Secretary, Department of Planning and Environment (or an officer of the Department nominated by the Secretary) that the provisions of the planning proposal that are inconsistent are of minor significance.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Direction under Section 117(2)

I, the Minister for Planning, under section 117(2) of the *Environmental Planning and Assessment Act 1979* ("the Act"), direct that:

- 1) Councils must exercise their functions under Divisions 4 and 5 of Part 3 of the Act in accordance with Schedule 1.
- 2) For the avoidance of doubt a reference to 'Primary Use of land' in the context of the Northern Councils E Zone Review Final Recommendations Report is considered to be:
 - a) The main use of the land is to be determined based on evidence about the nature of the activities and operations occurring on the land over the last two years.
 - b) If the main use is for rural or farming operations, agricultural practices need to be demonstrated. Specific farming activities (such as grazing) do not need to have occurred in the last two years if the operations on the land (for example keeping paddocks fallow) are part of broader farm management practices.
 - c) If the main use is for environmental conservation or management, the environmental values of the land and vegetation need to be demonstrated and the absence of any agricultural or other land use confirmed.
- 3) This direction takes effect on the date that the Local Planning Direction: Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs is published on the website of the NSW Department of Planning and Environment.
- 4) This direction does not apply to any planning proposal that has been issued with a Gateway determination under section 56 of the Act before the date on which the direction takes effect.



Rob Stokes MP
Minister for Planning
Sydney

[Date: 25.2.16]