

Northern Councils EZone Review Interim Report

30 September 2013



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Abbreviations

Ballina SC	Ballina Shire Council
BCL	Biodiversity Conservation Lands
Byron SC	Byron Shire Council
CMA	Catchment Management Authority
DP&I	Department of Planning and Infrastructure
DIPNR	Department of Infrastructure, Planning and Natural Resources
EEC	Endangered ecological community
EIS	Environmental impact statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EBPC Act	Commonwealth <i>Environmental Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental planning instrument
EZones	Environmental Protection Zones
FNCRCPP	Far North Coast Regional Conservation Plan
GIS	Geographic Information System
HCV	High conservation value
IDO	Interim Development Order
LEP	Local Environmental Plan
LES	Local Environmental Study
LGA	Local Government Area
Lismore CC	Lismore City Council
NOROC	Northern Rivers Regional Organisation of Councils
NSW	New South Wales
OEH	Office of Environment and Heritage
QPP	Queensland Planning Provisions
REP	Regional Environmental Plan

REVM	Relative ecological values matrix
SEPP	State Environmental Planning Policy
SILEP	Standard Instrument Local Environmental Plan
Tweed SC	Tweed Shire Council
VPP	Victorian Planning Provisions

Executive summary

Background

Local Environmental Plans (LEPs) guide planning decisions for local government areas. Through zoning and development controls, LEPs allow councils and other consent authorities to manage land use. LEPs are the primary planning tool to shape the future of communities (Department of Planning and Infrastructure (DP&I), 2013).

The Standard Instrument Local Environmental Plan (SILEP), introduced by the then NSW Department of Planning in 2006, creates a common format for LEPs across the State for use by local government. The current SILEP template provides a suite of defined zones for application within respective LEPs. Currently there are four designated environmental zones (EZones) which councils can apply to private land. They are:

- E1 National Parks and Nature Reserves
- E2 Environmental Conservation
- E3 Environmental Management
- E4 Environmental Living.

All councils within NSW are required to prepare a LEP consistent with the Standard Instrument Order. Councils within the Northern Rivers area of NSW have progressed their LEPs in accordance with these directions and are currently at various stages of completion.

Following public concern raised during the exhibition of a majority of LEPs in the Northern Rivers area, the Minister for Planning and Infrastructure issued a media release which expressed an intention to review the application of EZones in the Northern Rivers area.

The media release issued 20 September 2012 stated that:

‘...the Government would not endorse the use of E2 and E3 environmental zones on land that is clearly rural in council LEPs on the Far North Coast’.

The release also stated that the intention was to defer areas zoned E2 and E3 from LEPs when they were made.

The councils subject to this review are:

- Ballina SC
- Byron SC
- Kyogle Council
- Lismore CC
- Tweed SC.

Figure E.1 provides an overview of the study area.

As a result of the Minister for Planning and Infrastructure's media release, Parsons Brinckerhoff (hereafter referred to as the consultants) was commissioned by the DP&I to undertake an independent review of the application of EZones and controls within the five councils.

On 17 January 2013, the Minister for Planning and Infrastructure extended the review to land zoned E4. Byron SC is the only council within the study area containing E4 zoned land. The inclusion of land zoned E4 ensures the entire suite of EZones that can be applied to private land under the SILEP is reviewed within the target Shires.



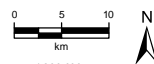
Figure E.1
Northern Councils EZone Review
Study area

DEPARTMENT OF
PLANNING
AND
INFRASTRUCTURE

Data Source: NSW Department of Lands



Map No:
NorthernCouncilsEZoneReview_B1
Author: DH
Approved by: -
Date: 30/09/13



Scale ratio correct when printed at A4 Portrait

Projection: Transverse Mercator
Coordinate System: GDA 1994 MGA Zone 56

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Scope of the review

This review considered the latest publicly exhibited version of the council's SILEP. Those SILEPs, EZones and overlays are:

- Draft Ballina SC Local Environmental Plan 2011:
 - ▶ E2 Environmental Conservation Zone
 - ▶ E3 Environmental Management Zone
 - ▶ Clause 7.8 Natural areas and habitat.
- Draft Byron SC Local Environmental Plan 2012:
 - ▶ E2 Environmental Conservation Zone
 - ▶ E3 Environmental Management Zone
 - ▶ E4 Environmental Living Zone
 - ▶ Clause 6.14 Biodiversity (terrestrial).
- Draft Kyogle Local Environmental Plan 2012:
 - ▶ E2 Environmental Conservation Zone
 - ▶ E3 Environmental Management Zone
 - ▶ Clause 7.2 Natural resources sensitivity – biodiversity (terrestrial)
 - ▶ Clause 7.3 Natural resources sensitivity – riparian land and waterways.
- Draft Lismore Local Environmental Plan 2012:
 - ▶ E2 Environmental Conservation Zone
 - ▶ E3 Environmental Management Zone.
- Draft Tweed Local Environmental Plan 2012:
 - ▶ E2 Environmental Conservation Zone
 - ▶ E3 Environmental Management Zone
 - ▶ Clause 7.8 Terrestrial biodiversity
 - ▶ Clause 7.9 Steep land.

The land currently mapped by EZones within each of the councils is shown in Appendix C.

The scope of works requested by the DP&I was to review the application of EZones and overlays in five SILEPs.

Method of review

To address this scope of works it was necessary to develop four lines of enquiry to ensure the full suite of issues relating to the EZones was captured. These four lines of enquiry consisted of the following:

1. Meet with DP&I and councils and obtain feedback on the LEP process and the origin of EZones and overlays.
2. Desktop review of available background information.
3. Gathering of information from a comprehensive community engagement process.
4. Field inspections of affected sites by an ecologist and land use planner.

Figure E.2 illustrates the methodology of the review diagrammatically.



Figure E.2 Overview of study methodology and procedure

The consultants met with key staff from the DP&I during December 2012 to discuss the scope of the project and to obtain background information on the preparation and status of council LEPs. Following this meeting the consultant and DP&I representatives met with key representatives of each council for the purpose of obtaining more detailed information on each council's LEP preparation and the origin of the EZones. Ongoing dialogue with both DP&I and council staff was maintained for the course of the review.

The information obtained from this phase of the project was reviewed for the purposes of forming a background to the study. Details of this review can be found within Appendix A of this report.

Information from the community and stakeholders was gathered through an extensive community consultation process which included:

- community drop-in sessions within each of the five local government areas throughout February 2013 which were attended by approximately 500 people
- a follow up phone interview with 34 interested stakeholders not able to attend or wait for an interview at the drop-in sessions
- a public comment period from 5 February 2013 to 25 March 2013 resulting in more than 2,500 submissions
- direct consultation with local members of State Parliament during June 2013. These members included:
 - ▶ The Hon. Don Page – Member for Ballina, Minister for Local Government and Minister for the North Coast
 - ▶ The Hon. Thomas George – Member for Lismore
 - ▶ The Hon. Geoff Provest – Member for Tweed.

Details of the community consultation phase of the project are presented in Appendix B of this report.

Field inspections of areas zoned as EZones within each council area were an essential element of the study. The aims of the field assessment were to document the environmental and land use attributes actually present within the sites located within EZones and to document the characteristics of each site with respect to the zone objectives. Field inspection was undertaken across approximately 80 sites throughout May and June of 2013. To avoid skewing of any data collected as a result of the field assessment, approximately half of the sites inspected were chosen at random with a representative number of sites located within the respective EZone across the five local government areas (LGAs). A detailed discussion on the field assessment methodology is contained within Appendix B of this report.

Significant findings

Information gathered as a result of the project was analysed to define the main areas of concern to stakeholders relating to the implementation of EZones within the north coast LEPs. These specific areas of concern are summarised below and discussed in more detail within section 2 of this report.

The areas of concern are:

- the mapping of EZones within LEPs – the findings indicate that there are problems regarding the composition and quality of background data as well as the accuracy of EZone mapping
- the impact of an EZone on land use – this was a common area of concern and comprised a number of sub issues including:
 - ▶ the significant changes in permissible land uses between the existing zoning and the proposed new zoning
 - ▶ how to balance agricultural production and environmental protection
 - ▶ suggested impacts to existing land uses and land use rights
 - ▶ impacts on land valuations
 - ▶ the replication of protection with other legislation and the suggestion of too many controls.
- the consistency of the application of EZones and overlays. Concerns were raised over consistency of the application of EZones and overlays. There were two main aspects to the consistency issue which are:
 - ▶ the clarity of DP&I guidelines and the consistent application of the guidelines
 - ▶ the consistency of the application of EZones across councils which was particularly relevant for landholders whose properties adjoined or straddled local government boundaries.
- consultation processes – concerns were raised regarding consultation processes at varying stages of the LEP process as well as between affected stakeholders. Specific interrelated issues are:
 - ▶ consultation between councils and DP&I
 - ▶ consultation between councils and the community and how this may have affected community perceptions generally.

Recommendations

A detailed set of recommendations have been developed to address the main findings of the report. These recommendations have been developed in recognition that, in most cases, councils had previous environmental protection zones within their former LEPs. Provision has therefore been made for the retention or updating of these zones within the new amended SILEPs.

An overriding consideration for the development of the recommendations is that EZones should only be applied to those areas containing tangible environmental attributes, and in locations where there is adequate evidence of environmental attributes worthy of the protection afforded by zoning provisions. Where there is uncertainty over the location of these environmental attributes, or the environmental attributes do not satisfy specified criteria, the recommendations require default to previous zonings.

The recommendations include the updating of certain maps and clauses within each SILEP, or the provision of new maps and clauses to ensure the protection of recognised sensitive environmental areas outside the EZones.

For the proposed application of the E2 Zone and E3 Zone, the recommendations contain a set of specific criteria common to the region. These criteria have been developed from known environmental datasets relating to conservation significance. The criteria are applied to each of the E2 and E3 Zone on the basis of the representative levels of protection afforded by each.

The use of the criteria to identify EZones is expected to reduce the areas of prime agricultural lands currently affected by EZones within the current and draft SILEPs. Additionally, a recommendation has been included to amend the land use tables to allow extensive agriculture as a permissible use (with consent) within the E2 Zone for all councils except Tweed SC (where it will remain prohibited), and allow extensive agriculture without consent within the E3 Zone.

The use of the E4 Zone in Byron SC is recommended to be removed and replaced with a suitable residential zoning. It is considered that protection of sensitive environmental attributes can be achieved by alternate means and these are suggested in the recommendations.

EZones within Kyogle Council area are recommended to be removed, due to inconsistency with regional EZone mapping methodology and mapping which does not accurately reflect on-ground physical attributes. It is recommended that the zoning revert to previous zones and the protection of significant environmental attributes be achieved through extension of relevant clauses and overlays.

Additional considerations

As the review methodology encompassed a wide variety of stakeholders affected by the draft and current SILEPs there were many issues captured which were considered external to the scope of the review. For example, many submitters raised the issue of the lack of public consultation in the formative process adopted for each of the SILEPs'. Although such issues were not considered to be directly related to the intent of the review, they were considered important to understand the context of how EZones may or may not have been accepted by stakeholders. This report has attempted to identify, discuss and address such issues and an additional set of specific considerations is provided in Section 4 of this report.

Applicability of findings

To enable the reader of this report to cross reference the findings discussed in Section 2 with either the relevant recommendations or additional considerations an applicability matrix has been provided within Section 5.

Study limitations

It should be noted that it is not the intention of the review to undertake a detailed assessment of the effect of the EZones on an individual site basis. The review is general in nature and examines the key issues specific to the implementation of EZones and overlays within respective LEPs and this includes the assessment of representative sample sites. The recommendations contained within this report may result in a number of actions that have the effect of initiating finer scale assessments.

This interim report has been prepared in accordance with the scope of work/services set out in the contract, or as otherwise agreed, between Parsons Brinckerhoff and the client. In preparing this review, Parsons Brinckerhoff has relied upon data, surveys, analyses, designs, plans and other information provided by the client and other individuals and organisations, most of which are referred to in the report. Except as otherwise stated in this report, Parsons Brinckerhoff has not verified the accuracy or completeness of the data. To the extent that the statements, opinions, facts, information, conclusions and/or recommendations in this assessment (conclusions) are based in whole or part on the data, those conclusions are contingent upon the accuracy and completeness of the data. Parsons Brinckerhoff will not be liable in relation to incorrect conclusions should any data, information or condition be incorrect or have been concealed, withheld, misrepresented or otherwise not fully disclosed to Parsons Brinckerhoff.

This interim report review has been prepared for the exclusive benefit of the client and no other party. Parsons Brinckerhoff assumes no responsibility and will not be liable to any other person or organisation in relation to any matter dealt with in this assessment, or for any loss or damage suffered by any other person or organisation arising from matters dealt with or conclusions expressed in this review (including without limitation matters arising from any negligent act or omission of Parsons Brinckerhoff or for any loss or damage suffered by any other party relying upon the matters dealt with or conclusions expressed in this review). Other parties should not rely upon the assessment or the accuracy or completeness of any conclusions and should make their own enquiries and obtain independent advice in relation to such matters.

1. Introduction

This interim report presents the findings and recommendations of a review of the EZones within five SILEPs of Ballina, Byron, Kyogle, Lismore and Tweed councils.

The report is structured into the following sections:

- Section 2 – Presents the findings of the review identifying and assessing the key issues followed by a discussion on desirable outcomes.
- Section 3 – Contains recommendations to address issues associated with EZones and provide a direction for amendment within each of the SILEPs.
- Section 4 – Contains additional considerations identified as part of this review that are outside of the review's scope.
- Section 5 – Contains a reference table which gives guidance to the reader on the correlation between the review's findings and the developed recommendations.

In addition to the main report relevant supporting information is contained within the attached appendices as follows:

- Appendix A – Background assessment and the methodology adopted to undertake the review.
- Appendix B – Community and stakeholder engagement report.
- Appendix C – Location of EZones per council area.
- Appendix D – Examples of aerial photograph reviews.

This interim report will inform the next phases of the project involving additional consultation with stakeholders, review of feedback, production of a final report and revised recommendations.

2. Findings

Information gathered as part of the review process was analysed and distilled to define the main areas of concern to stakeholders. These specific areas of concern are summarised below and discussed in more detail below.

The areas of concern are:

The mapping of EZones within LEPs:

This issue identified problems regarding the composition of EZone mapping and the quality of background data as well as the accuracy of EZone mapping. Concerns over mapping were voiced through all lines of enquiry and was a common theme raised by the community through drop-in sessions (refer Appendix B). The main concern was the accuracy of mapping used to develop EZones within the LEPs.

At the drop-in sessions, evidence was produced by members of the community to suggest that EZones as mapped covered land containing no vegetation or values specific to the intent of the EZone, and were applied to land which contained weeds or other noxious species (for example camphor laurel or lantana). This issue was further investigated as part of the site inspections across the five councils.

The impact of an EZone on land use

This area of concern was also widely voiced, particularly from the community and comprised a variety of sub issues including:

- the significant changes in permissible land uses between the existing zoning and the proposed new zoning
- how to balance agricultural production and environmental protection
- suggested impacts to existing land uses and land use rights
- impacts on land valuations
- the replication of protection with other legislation and the suggestion of too many controls.

The consistency of the application of EZones and overlays:

Many stakeholders also raised concerns relating to the consistency of the application of EZones and overlays. There were two main aspects to the consistency issue which are:

- the clarity of DP&I guidelines and the consistent application of the guidelines
- the consistency of the application of EZones across councils which was particularly relevant for landholders whose properties adjoined or straddled local government boundaries.

Consultation processes:

Numerous concerns were raised regarding consultation processes at varying levels. When examined in more detail these concerns were separated into three subsets comprising:

- consultation between councils and DP&I
- consultation between councils and the community
- community perceptions generally.

The following sections address each of the areas of concern that are summarised above.

2.1 Mapping accuracy and precision

A common theme raised by the community through drop-in sessions (refer Appendix B) was the accuracy of mapping used to develop EZones within the LEPs. At the drop in sessions evidence was produced by members of the community to suggest that EZones covered:

- land containing no vegetation
- land containing weeds or other noxious species (for example camphor laurel or lantana).

This issue was further investigated as part of the site inspections across the five councils and the results of that investigation are discussed below by the respective council.

2.1.1 Lack of valid evidence base for application of EZones

EZones in Byron SC, Lismore CC and Tweed SC are based (at varying levels) on data collected through studies undertaken for LGA wide biodiversity strategies and/or Local Environment Studies (LES). However, at the time of this review, Kyogle Council and Ballina SC had not conducted these studies and as such the EZones in the LEPs are not supported by a strategy. Consequently, the EZones in the Ballina and Kyogle SILEPs have not been developed from an environmental study based on robust data sources and analysis.

At the time of this review, Ballina SC is preparing detailed vegetation mapping and a LGA wide biodiversity strategy. Lismore CC is also preparing a LGA wide biodiversity strategy.

The evidence base used by each council in the development of the respective EZones within LEPs is documented below.

- For Ballina SC, the majority of areas zoned as environmental protection under the Ballina LEP 1987 were directly converted to E2 and E3 Zones in the Ballina SILEP. Wetland and habitat zones were converted to the E2 Zone, while areas of scenic value, urban/rural buffer areas, and drinking water catchments were included in the E3 Zone.

EZone mapping was also supplemented by an incomplete vegetation layer of the council area, regional mapping projects undertaken for the North Coast, field notes from council staff, and consultant's studies.

- Byron SC developed EZones in its draft SILEP based on a detailed high conservation value identification method, and a transfer of existing EZones.

The draft Byron SILEP is supported by a range of documents and studies including the Byron Flora and Fauna Study (Landmark Ecological Services Pty Ltd *et al.* 1999), Byron Biodiversity Conservation Strategy (Byron SC 2004), LGA wide vegetation mapping (Ecograph & Terrafocus Pty Ltd 2007), the Byron Shire Local Environment Study (Parsons Brinckerhoff 2008), and Koala Habitat Study (Biolink Ecological Consultants 2012). The EZones are based on a combination of Geographic Information System (GIS) analysis and ground truthing across the council area.

- In the Kyogle SILEP, the E2 Zone is limited to two areas of Crown land.

Land within the E3 Zone is based on agricultural classification eight lands (i.e. cliffs, lakes or swamps and other lands unsuitable for agricultural and pastoral production) as opposed to environmental values. In Kyogle Council, conflicting outcomes for biodiversity and agriculture have arisen due to the lack of a biodiversity strategy upon which to base EZones.

- Lismore CC has applied EZones by transferring existing environmental zones into EZones, and from work undertaken for the Lismore Local Environment Study (LES) (Lismore CC 2010).

As outlined in the Lismore LES, the EZones were developed through combining vegetation mapping of the council area, with site inspections conducted by an ecologist to refine EZone boundaries.

- Tweed SC directly transferred existing environmental zones from the Tweed LEP 2000, despite having developed the Tweed Vegetation Management Strategy 2004 (Kingston *et al.* 2004) to guide a coordinated approach to the management of biodiversity in Tweed SC. The vegetation mapping for the Tweed Vegetation Management Strategy was updated in 2009.

The Revised Environmental Strategy of LEP 2012 (Tweed SC 2012) was prepared to make council's LEP consistent with council and state adopted environmental policy; however the recommendations within the Revised Environmental Strategy of LEP 2012 were not adopted into the Tweed LEP 2012.

The Tweed Coast Koala Habitat Study (Biolink Ecological Consultants 2011) outlines important koala habitat in Tweed SC, but was not used to assist the development of the EZones. The EZone mapping in the Tweed LEP 2012 does not appear to reflect the intent of several studies and guiding documents that provide information on environmental values within Tweed SC.

2.1.1.1 Ballina SC

E2 Zone

The results of the site inspections show that 100% of the E2 zoned sites inspected within Ballina SC contained some high conservation value biodiversity assets. This result was largely due to the presence of threatened species habitats and endangered ecological communities (EECs). Over-cleared vegetation communities, wetlands (including SEPP14 Wetlands), and rainforests (including SEPP26 Littoral Rainforests) were also a common feature of the E2 Zone in Ballina SC.

Approximately 38% of inspected sites with an E2 zoning were dominated by exotic vegetation, predominantly Camphor laurel. These sites were located in the Ballina hinterland. This result was predicted as it is known that a considerable amount of the original rainforest vegetation was cleared or disturbed for agricultural activities. The *Native Vegetation Act 2003* defines vegetation dominated by exotic species to be in low condition.

Mapping errors of accuracy and precision were apparent in Ballina SC. While all sites inspected within the E2 Zone in Ballina SC contain some form of high conservation value biodiversity asset, approximately 38% of areas inspected contained vegetation in low condition that is dominated by exotic species including Camphor laurel and Privet (*Ligustrum* spp.).

Approximately 31% of sites inspected contain features including small areas of grazing land and some larger anomalies included an operating sand mine and a caravan park. Imprecise mapping of E2 zones was found at approximately 38% of inspected sites as the mapping did not reflect the on ground location of the high conservation value biodiversity assets. An example of a mapping error in the Ballina E2 Zone is provided in Appendix D Figure 1.

The variety of features contained within the areas zoned E2 in Ballina SC are illustrated in Photos 2.1 to 2.4.

E3 Zones

Approximately 60% of E3 zones in the Ballina SC contained high conservation value biodiversity assets. The presence of threatened species habitats, vegetated riparian corridors and wetlands contributed most to this result. The areas zoned E3 in Ballina SC contained a considerable number of other 'special' values with 50% of all E3 zoned land inspected containing such values as vegetation important for ecosystem functioning (i.e. vegetation that provides ecosystem services such as soil stability, water filtration, nutrient cycling, habitat for pollinators or seed dispersers, etc.), restoration potential, very steep land, possessing scenic values, or being part of a drinking water catchment. Scenic values, location of a property that acts as an 'urban break', and the presence of a property in a drinking water catchment appear to be key drivers of the placement of the E3 Zone in Ballina SC, as many of the sites visited in the Cumbalum, Teven, Alstonville and Newrybar areas did not contain high conservation value biodiversity assets.

Camphor laurel formed the dominant vegetation type in 60% of all sites inspected within an E3 Zone. Other exotic species such as Privet were also common. The majority of sites with an E3 Zone were cleared of native vegetation.

The results of the site inspections show that mapping errors are apparent in the E3 Zone in Ballina SC. Regarding accuracy, 100% of the sites inspected were actively farmed rural properties with large expanses of cleared grazing land and/or plantations of fruit or nut trees. Likewise, mapping precision was low with 100% of sites inspected within the E3 Zone incorrectly mapped. In some cases, it is unknown what features the E3 boundary mapping follows. An example of this is the straight lines placed across cleared paddocks that do not match any on ground feature (whether vegetation or topographic). An example of a mapping error in the Ballina E3 Zone is provided in Appendix D Figure 2.

Mapping for scenic protection purposes in Ballina SC generally follows cadastral boundaries. However areas of scenic protection are typically determined by other features such as viewing locations and corridors (refer Section 2.3 for further discussion) as opposed to cadastral boundaries. In addition, both sides of a ridgeline may be mapped for scenic amenity values, however as a result of the location of significant viewpoints, only one side of a ridge may be visible and therefore mapping for scenic protection should be limited to the side of the ridge that is visible from the viewing location. E3 mapping for scenic amenity purposes is a particular issue along the ridgeline in Teven and examples of viewpoints from sites within Teven are shown in figures 2.31 and 2.32 in section 2.3.1.1 of this report.

The variety of features contained within the Ballina E3 Zone is illustrated in Photos 2.5 and 2.6.



Photo 2.1 High conservation values swamp forest in the Ballina E2 Zone LC6



Photo 2.2 Disturbed Camphor laurel dominated vegetation in the Ballina E2 Zone



Photo 2.3 Sand mine in the Ballina E2 Zone



Photo 2.4 Accommodation cabins at South Ballina in the Ballina E2 Zone



Photo 2.5 Cleared grazing land in the Ballina E3 Zone



Photo 2.6 Nut plantation in the Ballina E3 Zone

2.1.1.2 Byron SC

E2 Zone

Approximately 78% of sites inspected within E2 zoning within Byron SC contained high conservation value biodiversity assets. This result was largely due to the presence of threatened species habitats, EECs, over-cleared vegetation communities, and wetlands (including SEPP14 Wetlands). These sites possessed high quality native vegetation and habitat spread throughout Byron SC from the coastal areas to the hinterland.

Approximately 57% of sites inspected within an E2 zoning in Byron SC were dominated by exotic vegetation, predominantly Camphor laurel. Camphor laurel is a major component of vegetation in the Byron SC, particularly the hinterland where the majority of native vegetation has been cleared. The vegetation in the E2 Zone that is dominated by exotic species is generally in low condition as defined under the *Native Vegetation Act 2003*.

Mapping errors were apparent in the sites inspected within an E2 Zone in Byron SC. While most of the sites mapped as E2 in Byron SC contain some form of high conservation value biodiversity asset, approximately 57% of these sites inspected contain vegetation in low condition that is dominated by Camphor laurel. Approximately 36% of sites inspected within an E2 Zone contain actively farmed cleared grazing land. Imprecise mapping of E2 Zones was found at approximately 36% of all sites inspected as the mapping did not correctly follow the high conservation value biodiversity asset. An example of a mapping error in the Byron E2 Zone is provided in Appendix D.

High Conservation Value vegetation is a key input into the E2 Environmental Conservation Zone in Byron. Aerial photography relied upon to identify High Conservation Value vegetation mapping is primarily sourced from the Byron Flora and Fauna Study vegetation mapping (updated in 2007), which was based on aerial photography from 2004 mapped at 1:25,000 at a Shire-wide scale.

The variety of features contained within the Byron E2 Zones is illustrated in Photos 2.7 and 2.8.

E3 Zone

Approximately 25% of all E3 zoned land inspected in Byron SC contained high conservation value biodiversity assets. There were limited threatened species habitats and vegetated riparian corridors at the sites visited.

The E3 land in Byron SC contained few other 'special' values with 12.5% of sites containing values such as wildlife corridors, important vegetation for ecosystem functioning, restoration potential, very steep land, being located adjacent to a national park or nature reserve, possessing scenic values, or being part of a drinking water catchment.

Camphor laurel formed the dominant vegetation type at 75% of sites inspected within E3 zoned areas visited in Byron SC. This can be expected due to the history of land clearing and widespread planting and colonisation of Camphor laurel in Byron SC.

Mapping errors were apparent in the sites inspected within the E3 Zone in Byron SC. Approximately 87.5% of sites visited were actively farmed rural properties with large expanses of cleared grazing land and/or plantations of fruit or nut trees. Mapping precision was also low with 100% of sites inspected in the E3 Zone not reflecting on ground features. An example of a mapping error in the Byron E3 Zone is provided in Appendix D.

Mapping for scenic amenity purposes has generally been conducted without reference to cadastral boundaries and generally follows the side of the ridge where the area is most visible from a viewpoint. An example of this is the mapping applied to properties fronting Coolamon Scenic Drive where only the E3 Zoning has been applied to land facing the Pacific Highway.

The variety of features contained within the Byron E3 Zone is illustrated in Photos 2.9 and 2.10.

E4 Zone

Two of the four sites visited in the Byron E4 Zone contained high conservation value biodiversity assets in the form of the EEC Coastal Cypress Pine Forest in the NSW North Coast Bioregion which is listed under the *NSW Threatened Species Conservation Act 1995*. However, this community is considerably disturbed as it is present in the front and back yards of houses and surrounded by and interspersed with lawns and planted gardens.

The E4 Zone is applied over entire land parcels and does not attempt to map particular features.

The variety of features contained within the Byron E4 Zones is illustrated in Photos 2.11 and 2.12.



Photo 2.7 High conservation value coastal banksia scrub in the Byron E2 Zone



Photo 2.8 Cleared grazing land in Byron E2 Zone



Photo 2.9 Cleared grazing land in the Byron E3 Zone



Photo 2.10 Camphor laurel dominated vegetation in the Byron E3 Zone



Photo 2.11 House with mown lawn and garden in the Byron E4 Zone



Photo 2.12 Planted garden and house in the Byron E4 Zone

2.1.1.3 Kyogle Council

E2 Zone

Kyogle Council possesses two areas of E2 zoned land, both of which are located on the northern edge of the town at New Park near Fawcetts Creek. The E2 Zone adjacent to the cricket oval (near a caravan park) was inspected during the field survey.

The E2 Zone inspected in Kyogle Council contains high conservation value biodiversity assets in the form of sub-tropical and warm-temperate rainforest which is an EEC listed under the NSW *Threatened Species Conservation Act 1995* and the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The E2 Zone inspected also contains threatened species habitat, over-cleared vegetation communities, and is an important riparian corridor.

The vegetated portion of this E2 Zone is in good condition and is not dominated by exotic vegetation. A local bushcare group has conducted weed control in the rainforest along Fawcetts Creek.

Although this E2 Zone contains a high conservation value patch of rainforest there was a mapping error. The mapping is imprecise and the majority of the E2 Zone has been placed over a playing field. Most of the high conservation value sub-tropical and warm-temperate rainforest along Fawcetts Creek is located outside the E2 Zone. This mapping error is illustrated in Appendix D Figure 5.

The variety of features contained within the Kyogle E2 Zone is illustrated in Photos 2.13 and 2.14.

E3 Zone

All of the sites inspected within the E3 Zone in the Kyogle Council area contained some high conservation value biodiversity assets. Threatened species habitats were prevalent as were EECs, over-cleared vegetation communities, riparian corridors, and rainforests. Generally, the Kyogle E3 Zone contains large expanses of high quality native vegetation that provide habitat for a range of threatened species.

The E3 zoned sites inspected in the Kyogle Council also contained other 'special' values with 37.5% of all sites inspected containing such values as wildlife corridors, important vegetation for ecosystem functioning, restoration potential, very steep land, being located adjacent to a national park or nature reserve, or possessing scenic values.

Camphor laurel was not a dominant species of the vegetation within the vegetation located within EZones of the Kyogle Council area. Only 12.5% of sites inspected within the E3 Zone were dominated by Camphor laurel. However, other exotic species, particularly lantana (*lantana camara*) were prevalent.

Mapping errors relating to accuracy and precision were prevalent in the Kyogle Council EZone areas. Approximately 25% of E3 zoned sites visited contained actively farmed, cleared grazing land. Mapping precision was also low with 100% of sites visited in the E3 Zone inaccurately mapped. The E3 Zones in the Kyogle Council do not follow natural features such as vegetation or high conservation value biodiversity assets and in many cases do not follow specific units of steep slope or ridgelines that would be expected given the origin of the maps. An example of a mapping error in the Kyogle E3 Zone is provided in Appendix D.

The variety of features contained within the Kyogle E3 Zone is illustrated in Photos 2.15 to 2.18.



Photo 2.13 High conservation value rainforest in the Kyogle E2 Zone



Photo 2.14 Mown playing field in the Kyogle E2 Zone



Photo 2.15 Red Gum and Tallowwood forest with Lantana understorey in the Kyogle E3 Zone



Photo 2.16 Red gum, Tallowwood forest in the Kyogle E3 Zone



Photo 2.17 Extensive area of forest on steep land in part of the Kyogle E3 Zone



Photo 2.18 Cleared grazing land on a steep slope in the Kyogle E3 Zone

2.1.1.4 Lismore CC

E2 Zone

The results shows that 100% of the sites inspected that were zoned E2 within Lismore CC contained high conservation value biodiversity assets. This result was largely due to the presence of threatened species habitats and EECs. Over-cleared vegetation communities, wetlands (including SEPP14 Wetlands), and rainforests were also a common feature of the sites inspected within the E2 Zone in Lismore CC. Some high quality native vegetation remnants, including rainforests, eucalypt forests, and swamp forests are scattered throughout Lismore CC.

None of the E2 zoned sites inspected in Lismore CC were dominated by exotic vegetation. A large proportion of the vegetation in Lismore CC is dominated by Camphor laurel forests and these areas have been excluded from the E2 Zone as they are in low condition as defined under the *Native Vegetation Act 2003*.

Mapping accuracy within the E2 zoned sites within Lismore CC was high with 100% of the E2 zoned sites inspected containing high conservation value biodiversity assets. None of the sites zoned E2 inspected contained incorrectly zoned land or features that should not be included within the E2 Zone. However, 40% of all E2 zones inspected contained errors of precision with imprecise mapping of E2 Zone boundaries. An example of a mapping error in the Lismore E2 Zone is provided in Appendix D.

Within Lismore CC, the variety of features contained within the E2 Zone is illustrated in Photos 2.19 to 2.22.

E3 Zone

Approximately 71% of all E3 zoned sites inspected contained high conservation value biodiversity assets. The presence of EECs, threatened species habitats, rainforest, and vegetated riparian corridors contributed most to this result.

The E3 zoned sites in Lismore CC contained a considerable number of other 'special' values with 100% of sites inspected containing 'special' values. Vegetation important for ecosystem functioning, vegetation with restoration potential, and wildlife corridors were apparent in the Lismore E3 Zone.

None of the E3 zoned sites inspected in the Lismore CC were dominated by exotic vegetation. Areas of Camphor laurel dominated vegetation have been excluded from the E3 Zones.

The results show that mapping errors relating to accuracy and precision are present in the E3 Zone in Lismore CC. Regarding accuracy; approximately 29% of the sites visited appear to be actively farmed rural properties with areas of cleared grazing land and/or fruit or nut plantations. Mapping precision was low with approximately 43% of sites in the E3 Zone imprecisely mapped. An example of a mapping error in the Lismore E3 Zone is provided in Appendix D.

The variety of features contained within the Lismore E3 Zones is illustrated in Photos 2.23 and 2.24.



Photo 2.19 High conservation value sub-tropical rainforest in the Lismore E2 Zone



Photo 2.20 Freshwater wetland in the Lismore E2 Zone



Photo 2.21 High conservation value swamp oak flood plain forest in the Lismore E2 Zone



Photo 2.22 High conservation value swamp sclerophyll forest in the Lismore E2 Zone



Photo 2.23 Flooded gum forest in the Lismore E3 Zone



Photo 2.24 Rainforest in the Lismore E3 Zone

2.1.1.5 Tweed SC

E2 Zone

The results show that 100% of the sites inspected with an E2 Zone within Tweed SC contained high conservation value biodiversity assets. This result was largely due to the presence of threatened species habitats and EECs. Over-cleared vegetation communities, wetlands (including SEPP14 Wetlands), and rainforests (including SEPP26 Littoral Rainforests) were a common feature of the sites zoned as E2 in Tweed SC. Some high quality native vegetation remnants are included in the sites zoned E2 in Tweed SC; however, the E2 Zone is restricted predominately to the coastal Zone.

None of the E2 zoned sites inspected in Tweed SC were dominated by exotic vegetation. The application of the Tweed E2 Zone is restricted to high quality native vegetation remnants of the coastal Zone.

Mapping accuracy was high with 100% of E2 Zoned sites inspected containing high conservation value biodiversity assets. None of the sites inspected contained incorrectly zoned land or features that should not be included within an E2 Zone. Mapping precision of the E2 Zone was also high with 100% of all E2 zoned sites visited, possessing precisely mapped Zone boundaries.

The variety of features contained within the Tweed E2 Zones are illustrated in Photos 2.25 and 2.26.

E3 Zone

For the sites zoned E3 in Tweed SC, approximately 87.5% of the site inspected contained high conservation value biodiversity assets. This result was largely due to the presence of threatened species habitats.

Sites zoned E3 in Tweed SC contained a considerable number of other 'special' values. Half of the sites inspected contained 'special' values. Vegetation important for ecosystem functioning, vegetation with restoration potential, and wildlife corridors were prevalent in Tweed SC's E3 Zone.

Approximately 37.5% of sites inspected within an E3 Zone were dominated by exotic vegetation, mostly Camphor laurel and Pine trees. This can be expected due to the history of land clearing and planting and natural colonisation of exotic trees in Tweed SC.

The accuracy of the E3 Zone mapping in Tweed SC was high with 100% of sites visited correctly mapped as an E3 Zone. However, mapping precision was low with 75% of sites inspected observed as imprecisely mapped. The E3 Zone in Tweed SC does not follow natural features such as vegetation or high conservation value biodiversity assets.

Examples of mapping errors in Tweed SC's E3 Zone in the coastal strip and hinterland are provided in Appendix D Figure 10, whilst the variety of features contained within the Tweed E3 Zone is illustrated in Photos 2.27 to 2.30.



Photo 2.25 High conservation value swamp sclerophyll forest in the Tweed E2 Zone



Photo 2.26 High conservation value swamp oak floodplain forest in the Tweed E2 Zone



Photo 2.27 Mixed grey gum, pink bloodwood and brush box forest adjacent to Mt Warning in the Tween E3 Zone



Photo 2.28 Regrowth rainforest on steep land in the Tweed E3 Zone



Photo 2.29 Pine tree plantation in the Tweed E3 Zone



Photo 2.30 High conservation value rainforest in the Tweed E3 Zone

2.1.1.6 Desirable outcomes

In all councils, mapping errors of accuracy and precision are prevalent to varying degrees. A discussion on the desirable outcomes necessary to rectify the issue is presented below. Relevant specific recommendations are presented within Section 4 of this report.

Accuracy

To minimise accuracy errors in EZone mapping, the proposed EZones must be verified in the field as containing the required attributes. Prior to making the decision to designate an area as an EZone, the area must be verified as containing high conservation value biodiversity assets, or 'special' value, through the development of a council-wide biodiversity strategy and/or vegetation management strategy that is supported by targeted on ground surveys. By doing so, features such as cleared grazing land, fruit and nut plantations, mines, and caravan parks, can be excluded from EZones as appropriate.

There are currently too many anomalies with on ground conditions for an effective LEP to be implemented in any of the councils. Clear definitions of what constitutes each EZone must be decided upon so that the EZones are consistently applied and so that their value is not diminished by inappropriate application. Presently, a wide variety of definitions exist as to what constitutes land that should be mapped as an E2 Zone or an E3 Zone. The guidance provided by the DP&I (2009) and in the Far North Coast Regional Conservation Plan (Department of Environment Climate Change and Water 2010b) provides a sufficient pathway to develop EZones that accurately contain appropriate features.

Precision

It is important to recognise that no digital data set is error free. However, where high conservation value features or other 'special' features occur in each council, they should be mapped and zoned appropriately as an EZone.

While some level of imprecision will always be present in a map, 'blanket' zoning of large expanses of land with straight angular lines used to define the edge of an EZone or arbitrary wildlife corridors drawn over areas of vegetation are not appropriate. To achieve the purpose of the EZones, the EZones should reflect actual on ground conditions (e.g. the EZone should follow the edges of important vegetation, the edges of wetlands, etc.). Some errors of mapping precision have arisen from the use of out-dated aerial photography. To correct this, councils should base the EZone mapping off aerial photography that is less than five years old.

Overall, the mapping of EZones should be revised and refined at a finer scale than presented in the LEPs as there are currently too many anomalies with on ground conditions for an effective LEP to be enacted in any of the councils. A quality control system for checking the precision of mapped data must be implemented.

Camphor laurel forests

Camphor laurel (*Cinnamomum camphora*), a large exotic evergreen tree, was introduced to Australia from Asia in the mid nineteenth Century. Camphor laurel is now extensively naturalised in northern NSW and is listed as a Class 4 noxious weed under the *Noxious Weeds Act 1993* in all councils the subject of this review.

Given this classification, the ecological value of Camphor laurel forests is widely misunderstood.

Camphor laurel forests may be worthy of inclusion in a biodiversity overlay in the Far North Coast region as they possess 'special' ecological values. Peer reviewed science demonstrates that in a landscape such as the Far North Coast where most of the native rainforest has been cleared, Camphor laurel forests now play an important ecological role in the landscape (*Kanowski et al. 2008; Neilan et al. 2006*). Further, Camphor laurel forests now provide an important winter food resource for fruit eating birds including threatened species (*Date et al. 1991; Frith 1982; Gilmore 1999; Gosper & Gosper 2008; Kanowski et al. 2008; Stewart 2000*), they provide habitat for other threatened species including the koala, they support a similar number of rainforest animals as planted rainforest restoration areas, contain more biodiversity than timber plantations (*Kanowski et al. 2008*), and in the absence of native vegetation in fragmented agricultural landscapes they provide important functional 'stepping stone' habitat connectivity between patches of native vegetation.

Due to the inherent value of Camphor laurel forests as an important habitat for a range of threatened species in fragmented agricultural landscapes, the inclusion of areas of Camphor laurel in a biodiversity overlay may be justified, particularly where stands of Camphor laurel provide functional 'stepping stone' connectivity between patches of native vegetation. Management needs to be context-specific and consider the multiple ecological functions Camphor laurel may perform in extensively cleared landscapes such as the Northern Rivers (*Neilan et al. 2006*).

Gullies and steep land

While the EZones in the Kyogle LEP are restricted to Class 8 agricultural land (i.e. that land considered unsuitable for agricultural and pastoral production such as cliffs, lakes or swamps) the mapping of these areas for environmental protection and management has some merit. Tweed SC also recognises steep land in its E3 Zone.

The structurally complex vegetation found in steep gullies is known to provide important habitat for a diverse array of vertebrate fauna (Collins *et al.* 2012). Collins *et al.* (2012) suggest that steep gullies may play a critical role in preserving structurally complex stands of vegetation and habitat within a landscape that is subject to frequent burning. The E3 Zone should recognise vegetation on steep land as the ecosystem service provided by this vegetation is critical in terms of protecting against severe erosion and landslides.

Consequently, mapping areas of steep land on the sides of gullies as environmental protection and environmental management zones may be an important step in preserving key habitat features in the landscape. However, an E3 Zone based on steep land should accurately reflect on ground conditions in the extent of vegetation. Steep land that does not possess vegetation should be managed via a local provision and overlay.

2.2 Land use restrictions

A concern raised by the community through drop-in sessions was that an environmental Zone would adversely restrict the way in which land is used. In brief the issues raised included the following:

- Land uses originally permitted, are now prohibited.
- Statutory instruments were ignored, or given less weight when compared with other instruments as part of the plan-making process.
- Land being used for agricultural purposes is subject to an environmental zoning.
- The EZones adversely affect land use rights or the value of the land.

Background material was reviewed as part of this process and this issue was further investigated as part of the site inspections across the five councils. Where appropriate the results of that investigation are shown by the respective council.

2.2.1 Changes to permissible land uses

To establish whether agricultural land uses permitted under a previous LEP are proposed to be prohibited under a SILEP it is necessary to identify:

- how agriculture is defined under the SILEP and the previous LEP
- the permissibility of agriculture as expressed through a land use table (e.g. permitted without consent, permitted with consent, or prohibited) under a SILEP and the previous LEP, and comparing the permissibility in the instances when an EZone is created using a direct translation of zoning in the previous LEP.

Land use definitions

- Previous LEPs only have one definition for agriculture as a land use. The previous LEP for Byron SC, Lismore CC and Tweed SC include a definition of agriculture (there is no defined term in the Ballina LEP 1987).

There are local variations to the definition of agriculture, however the definitions of agriculture under each previous LEP include:

- ▶ horticulture, including the growing of fruit, vegetables and flowers
- ▶ production of crops
- ▶ production and breeding of livestock, poultry or bees.

Under the SILEP template, there is also a definition of agriculture, whilst it also includes a number of defined uses.

- The SILEP land use definitions that are closest to how agriculture is defined under the previous LEPs are 'extensive agriculture', and 'horticulture', as follows:
 - ▶ Extensive agriculture means any of the following:
 - The production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes.
 - The grazing of livestock for commercial purposes.
 - Bee keeping.
 - A dairy (pasture-based).
 - ▶ Horticulture means the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include a plant nursery, turf farming or viticulture.

Permissibility of agriculture in the land use table

Table 2.1 compares the permissibility of particular agriculture land use according to the current situation (i.e. under current LEPs) with the proposed permissibility (i.e. under a SILEP). Note that:

- the site inspection process identified land proposed to be an EZone, which is zoned other than environmental in a current LEP (e.g. 1(b) Rural (Secondary Agricultural Land) in Ballina SC). These current zonings are included on a case by case basis
- the site inspection process revealed a small number of sites were used for horticultural activities. This land use is considered on a case by case basis.

Table 2.1 Comparison of agriculture permissibility under LEPs

Zone	Land use	Permissibility	Zone	Land use	Permissibility
Ballina LEP 1987			Draft Ballina LEP 2011		
1(b) Rural (Secondary Agricultural Land)	Agriculture	Permitted without consent	E2	Extensive agriculture	Permitted with consent
			E2	Horticulture	Prohibited
			E3	Extensive agriculture	Permitted without consent
			E3	Horticulture	Permitted without consent
1(e) Rural (Extractive and Mineral Resources)	Agriculture	Permitted without consent	E3	Extensive agriculture	Permitted without consent
7(a) Environmental Protection (Wetlands)	Agriculture	Permitted with consent	E2	Extensive agriculture	Permitted with consent
7(c) Environmental Protection (Water Catchment)	Agriculture	Permitted without consent	E3	Extensive agriculture	Permitted without consent
7(d) Environmental Protection (Scenic/Escarpment)	Agriculture	Permitted without consent	E3	Extensive agriculture	Permitted without consent
7(d1) Environmental Protection (Newrybar Scenic/Escarpment)	Agriculture	Permitted without consent	E3	Extensive agriculture	Permitted without consent
7(f) Environmental Protection (Coastal Lands)	Agriculture	Permitted with consent	E2	Extensive agriculture	Permitted with consent
7(i) Environmental Protection (Urban Buffer)	Agriculture	Permitted without consent	E3	Extensive agriculture	Permitted without consent
				Horticulture	Permitted without consent
7(l) Environmental Protection (Habitat)	Agriculture	Permitted with consent	E2	Extensive agriculture	Permitted with consent
				Horticulture	Prohibited
Byron LEP 1988			Draft Byron LEP 2012		
1(a) General Rural	Agriculture	Permitted without consent	E2	Extensive agriculture	Prohibited
			E2	Horticulture	Prohibited
			E3	Extensive agriculture	Permitted without consent
			E3	Horticulture	Permitted with consent
1(b1) Agricultural Protection	Agriculture	Permitted without consent	E2	Extensive agriculture	Prohibited
			E3	Extensive agriculture	Permitted without consent
7(a) Environmental Protection (Wetlands)	Agriculture	Permitted with consent	E2	Extensive agriculture	Prohibited
7(b) Environmental Protection (Coastal Habitat)	Agriculture	Permitted with consent	E2	Extensive agriculture	Prohibited
7(c) Environmental Protection (Water Catchment)	Agriculture	Permitted without consent	E3	Extensive agriculture	Permitted without consent

Zone	Land use	Permissibility	Zone	Land use	Permissibility
7(d) Environmental Protection (Scenic/Escarpment)	Agriculture	Permitted with consent	E2	Extensive agriculture	Prohibited
			E3	Extensive agriculture	Permitted without consent
7(f1) Environmental Protection (Coastal Land)	Agriculture	Permitted with consent	E2	Extensive agriculture	Prohibited
7(f2) Environmental Protection (Urban Coastal Land)	Agriculture	Permitted with consent	E2	Extensive agriculture	Prohibited
7(j) Environmental Protection (Scientific)	Agriculture	Prohibited	E2	Extensive agriculture	Prohibited
7(k) Environmental Protection (Habitat)	Agriculture	Permitted with consent	E2	Extensive agriculture	Prohibited
Kyogle IDO 1976 & Shire of Terania IDO No. 1			Draft Kyogle LEP 2012		
1(a) Non-urban	Agriculture	Permitted without consent	E3	Extensive agriculture	Permitted without consent
Lismore LEP 2000			Draft Lismore LEP 2012		
1(r) Riverlands	Agriculture	Permitted without consent	E2	Extensive agriculture	Prohibited
			E3	Extensive agriculture	Permitted without consent
7(a) Environment Protection (Natural Vegetation & Wetlands)	Agriculture	Permitted with consent	E3	Extensive agriculture	Permitted without consent
7(b) Environment Protection (Habitat)	Agriculture	Permitted with consent	E3	Extensive agriculture	Permitted without consent
				Horticulture	Prohibited
Tweed LEP 2000			Draft Tweed LEP 2012		
7(a) Environmental Protection (Wetlands and Littoral Rainforests)	Agriculture	Permitted with consent and must satisfy additional clause	E2	Extensive agriculture	Prohibited
7(d) Environmental Protection (Scenic/Escarpment)	Agriculture	Permitted with consent and must satisfy additional clause	E3	Extensive agriculture	Prohibited
7(f) Environmental Protection (Coastal Lands)	Agriculture	Permitted with consent and must satisfy additional clause	E2	Extensive agriculture	Prohibited
7(l1) Environmental Protection (Habitat)	Agriculture	Permitted with consent and must satisfy additional clause	E3	Extensive agriculture	Prohibited
				Horticulture	Prohibited

(1) Within the Ballina LEP, interpretation of the level of assessment for agriculture excludes intensive forms such as feed lots, piggeries and poultry farms, and erection of buildings

(2) Within the Byron LEP, interpretation of the level of assessment for agriculture excludes animal establishments

(3) Within the Lismore LEP, interpretation of the assessment for agriculture excludes animal establishments

Source: Ballina LEP 1987, Draft Ballina LEP 2011, Byron LEP 1988, Draft Byron LEP 2012, Kyogle IDO 1976, Shire of Terania IDO No. 1, Draft Kyogle LEP 2012, Lismore LEP 2000, Draft Lismore LEP 2012, Tweed LEP 2000, Draft Tweed LEP 2012

The results in Table 2.1 indicate extensive agriculture:

- is made prohibited, or requires a development application in the E2 Zone within Ballina SC, Byron SC and Lismore CC
- remains unchanged in the E3 Zone within Ballina SC and Byron SC
- remains unchanged in Kyogle Council and Tweed SC
- remains unchanged, or agricultural land use is now made permitted, in the E3 Environmental Conservation Zone within Lismore CC.

Table 2.2 shows the overall coverage of the E2 Zone, in councils where the permissibility of extensive agriculture has changed in the following circumstances:

- Agriculture is permitted without consent in a previous LEP, and extensive agriculture is proposed to be permitted with consent, or prohibited, in a SILEP.
- Agriculture is permitted with consent in a previous LEP, and extensive agriculture is proposed to be prohibited in a SILEP.

Table 2.2 Coverage of E2 Zone (selected councils)

Council	Environmental planning instrument	Zone	Total area	Coverage of council area
Ballina SC	Ballina LEP 1987	<ul style="list-style-type: none"> 7(a) Environmental Protection (Wetlands) 7(c) Environmental Protection (Water Catchment) 7(d) Environmental Protection (Scenic/Escarpment) 7(d1) Environmental Protection (Newrybar Scenic/Escarpment) 7(f) Environmental Protection (Coastal Lands) 7(i) Environmental Protection (Urban Buffer) 7(l) Environmental Protection (Habitat) 	5,417 ha	11 %
	Draft Ballina LEP 2011	E2 Zone	8,183 ha	16.6 %
Byron SC	Byron LEP 1988	<ul style="list-style-type: none"> 5(b) High Hazard Flood Liable 7(a) Environmental Protection (Wetlands) 7(b) Environmental Protection (Coastal Habitat) 7(c) Environmental Protection (Water Catchment) 7(f1) Environmental Protection (Coastal Land) 7(f2) Environmental Protection (Urban Coastal Land) 7(i) Environmental Protection (Scientific) 7(k) Environmental Protection (Habitat) 	7,807 ha	13.67 %
	Draft Byron LEP 2012	E2 Zone	15,422 ha	27 %
Lismore CC	Lismore LEP 2000	<ul style="list-style-type: none"> 7(a) Environment Protection (Natural Vegetation and Wetlands) 7(b) Environment Protection (Habitat) 	624 ha	0.5 %
	Draft Lismore LEP 2012	E2 Zone	721.88 ha	0.56 %

Source: Ballina SC 2012, Email from Byron SC 14 February 2013, Email from Lismore CC 13 February 2013

Table 2.2 demonstrates there is a significant increase in coverage (greater than 50% and 100%) of the E2 Zone, for Ballina SC and Byron SC respectively.

The objectives of the EP&A Act include the protection and provision of the economic use of land, in addition to other matters including environmental protection. The increase over a local government area for environmental protection purposes may be appropriate from an ecological perspective; however any increase also needs to consider the economic implications of that increase.

Changing the type of agricultural production

Agricultural land use and improved practices can change over time as a consequence of wider commodity market conditions. Community consultation and field inspections identified some conjecture within the community as to whether changes in agricultural practices would be prohibited, or require council's consent.

Case study: Land in the E2 Environmental Conservation Zone (within Ballina SC, Byron SC or Lismore CC) is lawfully used for grazing purposes.

A new Local Environmental Plan is introduced. The E2 Zone makes 'extensive agriculture' (which includes grazing and cropping) a prohibited land use.

Grazing activities are completed and the land owner wants to replace grazing with cropping. Is consent required?

In the absence of legal opinion, the existing use provisions in Part 4 of Division 10 of the EP&A Act should address this circumstance. If an existing lawful use is carried out on land ('agriculture' using the example above), and a new LEP is introduced that makes that land use prohibited ('extensive agriculture' using the example above), nothing in the EP&A Act or an environmental planning instrument (EPI) prevents the continuance of that use.

2.2.2 Disregard of statutory instruments

Concerns were raised that councils ignored certain statutory instruments (e.g. section 117 Directions and State Environmental Planning Policies) as part of the preparation of SILEPs. Two examples are provided as follows.

Example 1 – protection of agricultural production

Section 117 Direction 5.3 – Farmland of State and Regional Significance on the Far North Coast is intended to ensure the best agricultural land will be available to grow food and fibre, provide certainty on the status of the best agricultural land, and reduce land use conflict between agricultural and non-agricultural land use. A precursor to Direction 5.3 was the Northern Rivers Farmland Protection Project Final Recommendations February 2005 (Department of Infrastructure, Planning and Natural Resources (DIPNR), NSW Department of Primary Industries) which includes a series of maps that identifies State and regionally significant farmland within the study area, plus Richmond Valley Council.

Mapping identifying State and regionally significant farmland has been incorporated into the State's Far North Coast Regional Strategy.

In applying the section 117 Direction, Clause (4) of Direction 5.3 requires that a planning proposal must not:

- rezone land identified as 'State Significant Farmland' for urban or rural residential purposes
- rezone land identified as 'Regionally Significant Farmland' for urban or rural residential purposes
- rezone land identified as 'significant non-contiguous farmland' for urban or rural residential purposes.

Note that:

- **clause (4) of Direction 5.3 excludes any reference to prohibiting the rezoning of significant farmland for environmental purposes**
- **inconsistency with the section 117 Direction may be justified to DP&I.**

The DIPNR and NSW Department of Primary Industries (2005) state that significant farmland status does not imply that vegetation and habitat values are secondary to agricultural values, or that land has to be used for agriculture. However, if the environmental protection Zone is to be removed because of an absence of environmental values, the land should then be protected in an agricultural Zone.

As a result, an environmental designation over significant farmland should only be applied where there is a study that identifies that a site contains high environmental values, and those values are verified through an on-ground site inspection.

In making a decision on whether a Zone or a clause (that may include an overlay) should be used to identify areas of high environmental value, regard should be given to Practice Note PN 11-002 (Preparing LEPs using the Standard Instrument: Standard Zones).

During site inspections it was noted that areas considered as containing environmental value were managed in different ways. Some areas were deliberately fenced off (to keep cattle and other livestock out of the area) however other areas of were utilised as part of grazing activities, for example providing shelter for grazing livestock.

Example 2 – caravan parks and manufactured home estates

Section 117 Direction 3.2 – Caravan parks and manufactured home estates is intended to provide for a variety of housing types, and provide opportunities for caravan parks and manufactured home estates. Within the study area, councils have proposed caravan parks to be located within EZones.

Clause (4) of Direction 3.2 requires a planning proposal (including a LEP) to retain:

- zonings of existing caravan parks
- land in accordance with an appropriate Zone under the Standard Instrument (Local Environmental Plan) Order 2006 that would facilitate the retention of an existing caravan park.

Note that inconsistency with the section 117 Direction may be justified to DP&I.

An existing caravan park within Ballina SC is proposed to be zoned E2 – its current zoning under the Ballina LEP 1987 is 7(f) Environmental Protection (Coastal Lands). In applying the principles of Direction 3.2, the zoning should facilitate the retention of the existing caravan park. This could take the form of applying another zoning to the site that permits (with or without consent) a caravan park.

2.2.2.1 Desirable outcomes

In developing LEPs, councils must strive to achieve a balance of environmental, social and economic outcomes. Where there are significant environmental attributes worthy of protection and there is a robust scientific basis for the designation of those areas then protection may be justified. However, as discussed in the preceding section of this report, the site based field investigations indicate there is considerable concern over the mapped accuracy of environmental attributes over the councils. EZones which have the effect of either prohibiting or making agricultural or horticultural uses subject to consent, are proposed over land which is currently being used for agriculture. Where an EZone has the implication that future land uses may be restrictive to agricultural pursuits, councils must ensure that the basis on which they designate land as an EZone can be readily justified.

It is considered suitable to preserve land recognised as containing values considered of importance to the State, for instance significant farmland under the section 117 Direction. Such land should be protected for this purpose unless there is a competent council sanctioned study that identifies areas with significant environmental values. A consistent approach should be applied to recognise these areas in LEPs (whether it is achieved via a zoning, or an overlay).

2.2.3 Balancing agricultural production and environmental protection

A common theme from the Stakeholder engagement component of the review was that EZones have been designated over productive agricultural lands. In some instances the understanding of the designation of these E zones was that it would actively restrict that use from occurring in the future. Subsequent field inspections of representative sites within EZones across four council areas of Kyogle SC, Lismore CC, Byron SC and Ballina SC revealed that land uses consistent with extensive agricultural uses were occurring presently within most of the areas designated as EZones. Within Tweed CC land proposed to be designated as both E2 and E3 zones were predominately undeveloped or in a natural state or used for environmental protection works.

2.2.3.1 Protection of environmental values

The purpose of the E2 zones in each of the five councils is to protect, manage, and restore areas of high ecological, scientific, cultural or aesthetic values. The environmental significance of the land must be the primary consideration. Practice Note PN 09-002 (Environmental Protection Zones) states the E2 Zone should be applied to:

- lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing EECs
- high conservation coastal foreshores and land acquired, or proposed for acquisition, under a Coastal Lands Protection Scheme
- some land with a registered BioBanking agreement
- land under the care, control and management of another catchment authority such as the Department of Water and Energy or a council for critical town water supply, aquifer or catchment as appropriate
- land with significant Aboriginal heritage values, if appropriate
- coastal foreshores and land subject to coastal hazards, including climate change effects
- land currently zoned for environmental protection where strict controls on development apply, e.g. steeply sloping escarpment lands, land slip areas.

Where these features occur in each LGA, they have been mapped and zoned appropriately as an E2 Zone with the exception of Kyogle. Many areas suitable for inclusion in the E2 Zone have been mapped as E3 or RU2 in the Kyogle LEP creating an imbalance between agricultural production and biodiversity conservation. Areas possessing the above features as identified by the DP&I are in most cases unsuitable for agricultural pursuits. As such, where council has placed an E2 Zone on land with high ecological, scientific, cultural or aesthetic values this has not caused an imbalance between agricultural production and biodiversity conservation.

The purpose of the E3 Zone varies significantly between, and in some cases within, LGAs. A wide range of environmental values and other values have been used as justification to apply the E3 Zone. The E3 Zone focuses on protecting, managing and restoring areas with special ecological, scientific, cultural or aesthetic values. The environmental significance of the land is to be the primary consideration when applying the E3 Zone. Practice Note PN 09-002 (Environmental Protection Zones) states that the E3 Zone may be applied to:

- areas of special ecological, scientific, cultural or aesthetic attributes that require management in conjunction with other low impact uses, e.g. scenic protection areas, areas with contiguous native vegetation or forest cover
- as a transition between high conservation value land, e.g. land zoned E1 or E2 and other land such as that zoned rural or residential
- where rehabilitation and restoration of its special environmental qualities are the primary purpose
- highly constrained land where elements such as slope, erodible soils or salinity may have a key impact on water quality within a hydrological catchment.

The broad DP&I definition of what constitutes 'special' ecological, scientific, cultural or aesthetic values has resulted in an imbalance between agricultural production and environmental protection in some areas as the E3 Zone has been interpreted differently across the five LEPs. An example of such imbalances between agricultural production and biodiversity protection occurs in Ballina SC where a broad E3 Zone has been applied to scenic areas, urban buffers and water catchment areas without consideration of agricultural suitability or on ground biodiversity values. The Byron LEP is similar in its application of arbitrary buffer zones in the E3 Zone. An example of under application of E3 Zones occurs in Kyogle Council and Tweed SC where these councils have only applied the E3 Zone to land that is considered unsuitable for agriculture (i.e. very steep land). Environmental protection has been considered less important than agricultural productivity and many other areas of land where an E3 Zone would be suitable to protect a 'special' ecological, scientific, cultural or aesthetic value.

Naming of zones

During the conversations held with landowners over the course of this review it was observed that the terminology of 'Environmental Zones' was not generally well accepted and potentially conjured images that land 'would be locked up and unavailable for use'. As discussed within this report, that may not be the case however the perception remains.

An additional observation is that the area subject to this review has a history of conflict when it comes to primary production versus environmental protection, thus potentially sensitising parts of the community to the use of conservation specific terms.

Agricultural production and environmental protection can successfully co-exist and this situation has been fostered by the NSW Government and rural communities through Landcare and Catchment Management initiatives for the past two decades. In implementing these initiatives, there has been a significant amount of investment in capacity building of local communities to play an active role in environmental management whilst maintaining agricultural productivity.

The term 'Natural Resource Management' is now well entrenched and understood within rural communities and should be considered as a name for a new Zone that encompasses the management of sensitive environmental features whilst ensuring sustainable agricultural uses continue.

2.2.3.2 Desirable outcomes

Use of overlays to achieve environmental protection

Biodiversity conservation and agricultural production need to be balanced: production needs to be sustainable, while conservation cannot be totally at the expense of agricultural yield. Agricultural areas provide habitat for biodiversity. Agricultural areas are not unsuitable as habitat for native species nor do they serve as an impervious barrier to species movement (Kupfer *et al.* 2006). Agricultural landscapes should be viewed as functional ecosystems that contain a mix of native vegetation and agricultural components (Fischer *et al.* 2006; Tschardtke *et al.* 2012). Having biodiversity on the land is not detrimental to agriculture. Maintaining biodiversity in agricultural systems can lead to suppression of pests, enhanced pollination of crops, result in short-term benefits in crop yield or quality, long term benefits for sustainability of the farming system, and also broad societal benefits including aesthetics, recreation, and the conservation of flora and fauna (Gurr *et al.* 2003).

Where the primary focus of the land is not the conservation and/or management of environmental values, a different Zone should be applied. For example, rural land that is still principally used for agriculture but which contains environmentally sensitive areas should be zoned rural (RU1 or RU2 as appropriate) and the environmental sensitivities can be managed through a local provision in the LEP and an associated 'overlay' map. The available science demonstrates that biodiversity can be retained on agricultural land where measures, such as a vegetation or biodiversity overlay, are taken to achieve integration of agriculture and biodiversity conservation. Such measures, particularly overlays, should include objectives including the retention of native vegetation patches, maintenance of structural complexity in farmed areas, maintenance of structural vegetation connectivity, and maintenance of landscape heterogeneity (Fischer *et al.* 2013).

Many features currently included in the E3 Zoned areas cannot be satisfactorily mapped at a regional scale (e.g. riparian zones, steep land). Instead of placing productive agricultural land that contains these features in an E3 Zone, councils should be encouraged to develop local provisions for values requiring protection and management (for example, drinking water catchments, scenic escarpment zones and urban buffer zones) with an accompanying 'overlay' map in the respective LEP. Overlays are relevant and appropriate protective mechanisms for these features where they occur on productive agricultural land that is actively farmed, and may play a key role in integrating agricultural productivity with biodiversity conservation.

An overlay may be more applicable in place of an E3 Zone to manage the following features on actively farmed land:

- drinking water catchments
- scenic/escarpment zones
- steep land (where unvegetated)
- riparian land and buffer zones (where unvegetated)
- buffer zones to wetlands or rainforest (where unvegetated).

In addition, instead of opting for a blanket E4 Zone, the use of a Tree Preservation Order under clause 5.9 of the SILEP to protect sensitive vegetation within urban areas may be a suitable and effective option.

A new Zone?

DP&I should consider the creation of a new Zone named a Natural Resource Management Zone within the SILEP Template. This may or may not replace the E3 Zone. The objectives of the Zone should be such that it provides the transition between the rural zones and the environmental zones. At the very least it would give councils with predominately rural constituents an alternative of designating an environmental Zone over land areas containing sensitive environmental attributes relating to soils, water or vegetation. The intent of the Natural Resource Management Zone should be to promote the sustainable management of areas identified as containing both environmental and agricultural values. These areas should consist of lands where long term, low intensity agricultural production is dependent upon responsible and sustainable management of environmental resources. The name of the Zone also captures a term that has a high degree of social acceptance in the rural community given the history of government/community collaboration in natural resource management programs run by both State and Federal Governments.

Use of incentives

councils have proposed the use of the EZones to ensure protection of environmental values across the area. However, to effectively achieve conservation outcomes it is well established that Governments at all levels need to co-ordinate an integrated approach that includes planning, regulation, education and encouragement of community participation that fosters a partnership between private landholders and governments (Bateson, P. 2001).

Over the course of the past 15 or so years there has been a range of plans and strategies at a variety of levels designed to assist and guide the effective management of biodiversity across the five councils. It is suggested that local government is in an advantageous position to ensure that the most effective of these strategies are implemented. The advantage for local government is the capacity it has as a conduit for those local communities to assist with the cost of management of biodiversity (or other values deemed important to the community) on freehold land through a potential range of incentives. Where a local government has acknowledged the environmental significance or value of land through the imposition of an EZone established through sound principles then it should follow that the particular EZone should attract attention for any such incentive based conservation measure.

At present, the implementation of incentive based programs is haphazard across the councils, with the majority of these type of programs observed in Tweed SC and Byron SC. It is suggested that all Local governments in the area thoroughly investigate the use of incentive based mechanisms and target the use of incentive based programs within areas that have been designated within an EZone.

2.2.4 Impact on existing land use, and land use rights

Perceptions were raised by parts of the community that an EZone and environmental protection overlays would adversely affect land use rights.

Observations from community discussions:

- A property is used for agricultural production. However the property may appear to be abandoned for more than 12 months. Weather impacts (drought or flooding), commodity market conditions at the time, 'spelling' of a paddock to allow it to properly regenerate, are part of the way in which land is used.

Perceived impacts:

- A development application would be required to re-commence that use.
- A development application would be required to do anything further on that land (for example, new sheds or fencing).

The legislation on land use rights

Division 10 of Part 4 of the EP&A Act deals with two scenarios in respect of existing uses, and other lawful uses, when a new LEP is introduced. These scenarios are represented in Figure 2.1. For legislative background, refer to Division 10 of Part 4 of the EP&A Act.

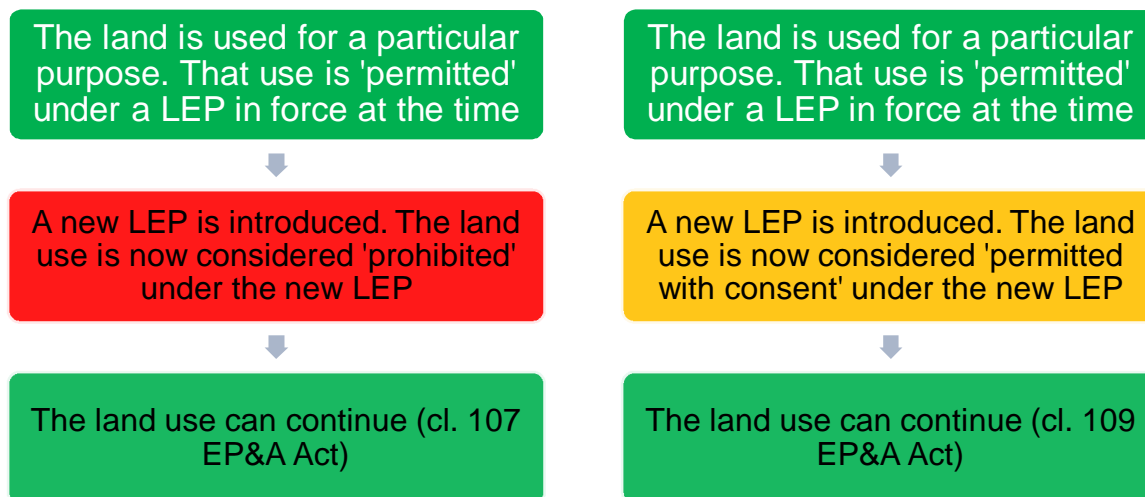


Figure 2.1 Scenarios of existing land use considerations for a new LEP

It is clear from Figure 2.1 that existing land use rights are intended to be maintained in the event of a new LEP. Protection of existing land use rights as a consequence of a new planning instrument is an established planning principle that generally features in planning legislation both in NSW and elsewhere in Australia.

DP&I's and councils' position on land use rights

Planning circular PS 06-007 – Changes to existing use rights (NSW Government Department of Planning, 2006) also articulates the Department's position in terms of applying existing use rights.

Lismore CC has been active in addressing community concerns within its jurisdiction and produced a fact sheet 'Land Use Fact Sheet 1 Existing Use Rights' as part of the consultation process. It documents:

- Council's perspective on whether existing/continuing rights can lapse
- what council will and will not do, when a complaint regarding unlawful use is received by council
- Council's perspective on what landowners should do to demonstrate a land use is continuing
- examples and frequently asked questions about existing land use rights.

Abandonment of land use

Part of clause 107(3) of the EP&A Act states '*Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months*'.

Parts of the community commented that a cessation period of 12 months is inappropriate when considering agricultural land use.

It is conceivable that agricultural land may not appear to be used for over 12 months as a result of events such as paddock 'spelling', or extreme weather events listed earlier in this section.

As noted earlier, legislation in other Australian states protect the ability to carry out lawful development when a new planning instrument is introduced (refer section 201B of the *Planning and Environment Act 1987* (Vic), section 682 of the *Sustainable Planning Act 2009* (Qld), section 56 of the *Planning Act 1982* (SA) and section 122C of the *Planning and Development Act 2005* (WA)). In each example though, no provision is written into the legislation that states the period when a land use is abandoned.

It is reasonable to ensure a mechanism exists in legislation that requires applicants to obtain (or reobtain) the relevant approvals when a land use is abandoned. This process strengthens the integrity of a plan-making system to ensure that the impact of land use is considered according to the aims and objectives of a planning system at that point in time. However, land uses operate in different ways, and as a consequence it is reasonable for the State to utilise non-statutory methods (that is, outside of an Act or Regulation) to provide advice on when land uses are abandoned.

Extreme weather events

It is conceivable that agricultural land may not appear to be used for a considerable period of time as a result of paddock ‘spelling’, or extreme weather events listed earlier in this section. In the absence of legal opinion, ancillary activities associated with agricultural production (such as the activities mentioned in Lismore CC’s Land Use Fact Sheet 1 Existing Use Rights) demonstrate a clear commitment by the land owner to lawfully use the land, and are consistent with the concept of existing use rights.

2.2.4.1 Desirable outcomes

There is currently a review of planning legislation underway in NSW which represents an opportunity to address the legislation that defines the abandonment of a particular use at twelve months. A more effective approach would be to provide a practice note on when a use may be considered abandoned in urban and non-urban scenarios.

Lismore CC has taken the step to communicate the compliance issues associated with existing use rights with their community in the form of a fact sheet. Where other councils have encountered similar concerns from their community, those councils should be encouraged to communicate their views on the application of existing land use rights and how any proposed changes in Zone designations within LEPs will impact on land use rights.

2.2.5 Land valuations and compensation matters

Parts of the community have stated that EZones will cause financial disadvantage. Particular impacts highlighted include a negative effect on land values, an increase in rates payable, impacts upon property financing and superannuation. Conversely, other parts of the community stated they decided to purchase and live on a property that contained an EZone.

Property values, property financing, superannuation, increased liability, impact to insurance, and increase in rates

Perceived impacts of the EZones in respect of the above issues have been raised by some community members; however these issues are outside the scope of this review.

Section 149 certificates

Section 149 certificates advise of the EPIs in effect over land and are commonly requested by potential land owners in the buying or selling of land.

Concerns have been raised that proposed LEPs were not disclosed within these certificates.

The relevant extract from clause 149 of the EP&A Act is listed below:

‘(2) On application made to it under subsection (1), the council shall, as soon as practicable, issue a planning certificate specifying such matters relating to the land to which the certificate relates as may be prescribed (whether arising under or connected with this or any other Act or otherwise)’

Prescribed matters (referred to under clause 2) are listed in Schedule 4 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). Clause 1 in Schedule 4 lists the following prescribed matters:

‘(1) The name of each environmental planning instrument that applies to the carrying out of development on the land.

(2) The name of each proposed environmental planning instrument that will apply to the carrying out of development on the land and that is or has been the subject of community consultation or on public exhibition under the Act (unless the Director-General has notified the council that the making of the proposed instrument has been deferred indefinitely or has not been approved).

(3) The name of each development control plan that applies to the carrying out of development on the land.

(4) in this clause, proposed environmental planning instrument includes a planning proposal for a LEP or a draft environmental planning instrument.’

In respect of concerns as to whether councils are obliged to disclose proposed LEPs and the zonings within them, Subclause 2, above, is the relevant clause. Where a LEP is, or has been, the subject of public exhibition under the EP&A Act, the name of the proposed LEP and the proposed zoning (amongst other prescribed matters) must be provided within the certificate.

Councils can include information within the certificate about proposed LEPs prior to the public exhibition process, however this is not mandatory, and this option is achieved through the following extract (note, the use of the word ‘may’) from Clause 149 of the EP&A Act:

‘(5) A council may, in a planning certificate, include advice on such other relevant matters affecting the land of which it may be aware.’

Although it is up to the individual circumstance of each situation and council, issuing advice on potential zonings prior to public exhibition of a LEP is not recommended. For instance, misleading zoning information could be placed on a certificate, and that zoning may be subject to advice from studies associated with the making of the LEP.

2.2.5.1 Desirable outcomes

An EZone should generally restrict the number and type of land uses permitted to ensure that the attributes critical to an EZone are managed and protected. Conversely, the number and type of land uses in an EZone should not be adversely restrictive to the point that consideration of the *Land Acquisition (Just Terms Compensation) Act 1991* would be required. As a consequence, a balance should be achieved in respect of the coverage of EZones over a council area, and the land uses permitted and prohibited in the relevant Land Use Tables.

Minimising the potential for compensation as a result of implementing an EZone, lends itself to the methodology of applying EZones on an exclusive like-for-like basis. Tweed SC is the only council that has applied EZones on a virtually exclusive like-for-like basis and as a result the percentage of EZones within Tweed SC remains relatively consistent when compared with the extent of the Environmental Protection zones within the Tweed LEP 2000. This methodology should be used where supporting biodiversity studies have not been completed.

Other councils have utilised additional criteria, in addition to a like-for-like basis, in applying EZones within their LEPs. In the case of Ballina SC and Byron SC, the use of additional criteria has likely contributed to a significant increase to the percentage of area designated as an EZone when compared with the current extent of seven (7) zonings. This methodology should be appropriate provided supporting biodiversity studies have been completed and are verified by field validation.

2.2.6 Replication of protection with other legislation

The key pieces of legislation relating to development in NSW are as follows:

- *Environmental Planning and Assessment Act 1979* (EP&A Act)
- *Threatened Species Conservation Act 1995*
- *Fisheries Management Act 1994*
- *Native Vegetation Act 2003*
- *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*.

2.2.6.1 Environmental Planning and Assessment Act 1979

The main law regulating land use in NSW is the EP&A Act. The EP&A Act allows plans to be made (environmental planning) to guide the process of development and to regulate competing land uses. The EP&A Act allows two types of environmental plans to be made:

- Local environmental plans (LEPs)
- State environment planning policies (SEPPs).

Collectively, these plans are EPIs. Where two EPIs are inconsistent (e.g. a LEP is inconsistent with a SEPP), a SEPP prevails over a LEP (unless the EPI documentation states otherwise).

Local environmental plans (LEPs)

LEPs are prepared by local councils and guide planning decisions for local government areas. They do this by allocating 'zones' to different parcels of land. All land is subject to the controls set out in the applicable LEP. LEPs determine the form and location of new development, and provide for the protection of open space and environmentally sensitive areas.

While LEPs are a key planning document, their provisions can be overridden by SEPPs. This is because SEPPs tend to deal with matters of State significance and can override local planning controls in order to deliver State significant development or State planning objectives.

State Environmental Planning Policies (SEPPs)

State Environment Planning Policies (SEPPs) are EPIs which address planning issues within the State. The practical effect of a SEPP is to set state wide controls for development of state significance, in order to prohibit certain types of development in an area or to allow certain types of development even where local controls prohibit it. SEPPs often make the Minister for Planning the decision-maker (consent authority) for the types of development they relate to.

In creating the SILEP, the DP&I sought to minimise duplication between SEPPs and LEPs by incorporating some SEPPs into the SILEP (e.g. SEPP1 – Development Standards, SEPP60 – Exempt and Complying Development). However, the following three SEPPs that relate to environmental factors still override the SILEP:

- SEPP14 – development consent is to be obtained before any clearing, draining, filling or construction of levees can take place on a mapped SEPP14 wetland. These developments will also require an environmental impact statement (EIS) and the concurrence (agreement) of the Director-General of the Office of Environment and Heritage (OEH) before consent can be granted.
- SEPP26 – development consent is required for development in or adjacent to mapped coastal rainforest areas. An EIS and the concurrence (agreement) of the Director-General of DP&I may also be required under this Policy.
- SEPP44 – a koala plan of management is required for all developments in core koala habitat, and councils are encouraged to include core koala habitat in environment protection zones in LEPs.

These three SEPPs ultimately impose another level of assessment on top of the assessment required under the SILEP. This is the objective of these particular SEPPs. Placing an EZone on an area that one of these SEPPs applies to will not create a multi layered approval regime as this is what SEPPs are designed to do and how they currently operate in the NSW under the EP&A Act. As such, when developing the LEPs councils have specifically recognised these SEPPs through EZones in the current and draft LEPs.

2.2.6.2 Threatened Species Conservation Act 1995 and Fisheries Management Act 1994

In NSW, threatened species are protected under the following three Acts which operate in conjunction with each other:

- The *Threatened Species Conservation Act 1995* deals with the listing of species, the declaration of critical habitat, recovery plans, threat abatement plans, licencing, biodiversity certification and BioBanking.
- The *National Parks and Wildlife Act 1974* contains additional licencing provisions, and provisions for criminal offences.
- The EP&A Act imposes obligations on developers and consent authorities to assess and consider the impacts of proposed development on threatened species during the development assessment process (e.g. by requiring a species impact statement in some circumstances).

Threatened fish (saltwater and freshwater) and their habitat, and threatened marine vegetation, are protected under the *Fisheries Management Act 1994*.

These laws provide administrative procedures to guide decision-making where threatened species are concerned. Developments that are proposed for land which is critical habitat, or which is likely to significantly affect threatened species, populations or ecological communities, must have a species impact statement (SIS) prepared to accompany the development application. The procedure for these types of developments is as follows:

- The developer must submit a SIS with their development application prepared in accordance with the *Threatened Species Conservation Act 1995*.
- In deciding whether to grant consent, a consent authority must take into account the likely impacts of the development on threatened species and their habitat.
- Development consent cannot be granted without the concurrence of the OEH or, if a Minister is the consent authority, unless the Minister has consulted with the Environment Minister.

This provision does not apply if the applicable EPI has biodiversity certification, or if a BioBanking statement has been issued for the development. Implementation of the EZones will not influence the procedure required for developments that are proposed for land which is critical habitat, or for development which is likely to significantly affect threatened species, populations or ecological communities.

2.2.6.3 Native Vegetation Act 2003

The objectives of the *Native Vegetation Act 2003* include the prevention of broad scale clearing unless environmental outcomes are improved or maintained. Applications to clear native vegetation on rural zoned land under the *Native Vegetation Act 2003* are assessed by a Catchment Management Authority (CMA). The local council does not have an assessment role.

With the exception of Lismore CC, certain vegetation clearing within an EZone will require approval from both a CMA under the *Native Vegetation Act 2003* and from the local council under the EP&A Act. Where there is overlapping jurisdiction (i.e. where a development needs approval from council and the CMA under both Acts) it will be beneficial for councils and CMAs to liaise and develop information-sharing protocols to achieve the best natural resource management outcomes and more efficient administration.

Where there are dual consent requirements, both approvals must be obtained prior to clearing taking place. For example, if council grants consent to clear native vegetation but approval is refused by the CMA under the *Native Vegetation Act 2003*, the vegetation clearing cannot legally take place.

The *Native Vegetation Act 2003* applies to land covered by State Environmental Planning Policies (SEPPs) No 14, 26 and 44. This means that these lands are subject to regulation by both the SEPP and the *Native Vegetation Act 2003*. Developments involving the clearing of native vegetation will require approval from the CMA under the *Native Vegetation Act 2003* and from the local council under the EP&A Act. An EIS and the concurrence (agreement) of the Director-General of the DP&I may also be required if the land to be developed is subject to SEPP14 or SEPP26.

Tree preservation controls under the LEP cannot be applied to clearing that is permitted without consent under the *Native Vegetation Act 2003* to reduce the duplication of statutory roles.

2.2.6.4 Environment Protection and Biodiversity Conservation Act 1999

Commonwealth threatened species law operates in parallel to NSW threatened species law and vegetation clearing regulations. A development or activity may require assessment and approval under both NSW law and Commonwealth law if a development is considered likely to significantly impact on a matter of National Environmental Significance as follows:

- world heritage sites
- national heritage places
- wetlands of international importance (listed under the Ramsar convention)
- listed threatened species and ecological communities
- migratory species protected under international agreements
- Commonwealth marine areas
- The Great Barrier Reef Marine Park
- nuclear actions (including uranium mines)
- a water resource, in relation to coal seam gas development and large coal mining development.

Other matters protected include:

- the environment, where actions proposed are on, or will affect Commonwealth land and the environment
- the environment, where Commonwealth agencies are proposing to take an action.

Where an action has potential to significantly impact on a matter of national environmental significance, it should be referred to the Minister for Sustainability, Environment, Water, Population and Communities to determine whether the development is a controlled action under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). If the Minister determines that the proposed action is controlled under the EPBC Act, a formal assessment process is required. The EZones will not affect the implementation of the EPBC Act as it applies to any Zone under a LEP.

2.2.6.5 Desirable outcomes

Councils and the CMA are key authorities responsible for assessing and approving tree clearing applications. Areas of responsibility for jurisdiction and assessment should be clear to minimise the potential for resource duplication and inconsistency in outcomes between authorities. If a tree clearing application were to be integrated so that only one application is required, it increases the potential for a holistic assessment of matters relevant to tree clearing.

2.3 Consistency of application of EZones

Guidelines released by the Department that provide direction on how EZones should be applied are:

- Practice Note PN 09-002 (Environmental protection zones) – which discusses application and objectives
- Practice Note PN 11-002 (Preparing LEPs using the Standard Instrument: Standard Zones) – which discusses ‘open’ or ‘closed’ zonings, and split zoning considerations.

The purpose of this section is to provide context on how each council has complied with the principles listed in each current Practice Note (listed above) that are relevant to the application of EZones.

2.3.1 Consistency of application with DP&I (SILEP) guidelines

Compliance with EZone application – Practice Note PN 09-002

A detailed analysis of compliance with Practice Note PN 09-002 is contained in section 2.3.2.1.

Open zones or closed zones – Practice Note PN 11-002

The DP&I’s Practice Note PN 11-002 dated 10 March 2011 provides background on whether zones should be considered ‘open’ or ‘closed’.

Practice Note PN 11-002 states that ‘*an open Zone is one where a broad variety of land uses can be considered*’ whereas ‘*a closed Zone is one where the diversity of land uses is more restrictive, meaning development types are chosen primarily from only one or two key ‘group’ terms... this approach should be used in Environment Protection, Special Purpose and Recreation zones*’.

Practice Note PN 11-002 therefore expects that EZones should be a ‘closed’ Zone with limited land uses permitted.

Table 3.3 reviews the permissibility of land uses in general across each EZone in numerical terms. The purpose of Table 3.3 is to indicate the propensity of each EZone being considered 'open' or 'closed' with respect to Practice Note PN 11-002.

By way of context:

- 11 land use 'groups' are available according to Practice Note PN 11-003. These land use groups are agriculture, residential accommodation, tourist and visitor accommodation, commercial premises, commercial premises – retail, industry and rural industry, storage, infrastructure – water and waste, infrastructure – transport, infrastructure – community, and other miscellaneous land uses.
- A lower number of uses, or land use groups is a general indicator that the EZone is a closed Zone, whereas a higher number of uses, or land use groups is a general indicator that the EZone is an open Zone.

Table 2.3 Permissibility of land use in each EZone

Council	Zone	Permitted without consent		Permitted with consent	
		Number of uses	Number of land use groups	Number of uses	Number of land use groups
Ballina SC	E2 Environmental Conservation	1	1	12	7
	E3 Environmental Management	6	3	37	9
Byron SC	E2 Environmental Conservation	2	2	7	4
	E3 Environmental Management	4	3	24	8
	E4 Environmental Living	3	2	11	5
Kyogle Council	E2 Environmental Conservation	0	0	2	1
	E3 Environmental Management	4	3	18	6
Lismore CC	E2 Environmental Conservation	3	1	6	4
	E3 Environmental Management	6	3	21	10
Tweed SC	E2 Environmental Conservation	2	2	13	6
	E3 Environmental Management	3	2	24	10

Table 2.3 demonstrates that most EZones (with the exception of Kyogle Council's E2 Zone) appear 'open' as a large number of land use groups are represented. Prior to permitting the number (or certain types) of land uses within each EZone, councils must consider that the value of that EZone will not be diminished.

Split zonings – Practice Note PN 11-002

The DP&I's LEP Practice Note PN 11-002 dated 10 March 2011 provides background on how split zones should be used, and is summarised below. Note that this Practice Note provided the first written advice from the DP&I to councils on how split zonings should be applied in SILEP.

Split zonings may generally be applied in the following circumstances:

- In urban release areas
- Large non-urban lots, where a significant portion of the lot has been identified, through detailed background assessment as an area of high conservation value.

Split zonings should generally not result in:

- Isolated zonings limited in size that do not provide for compact and contiguous environmental conservation and linkages.

When applying split zonings, Councils should consider:

- The implication of the split zoning, on other planning controls for that lot.

An example of split zoning application that have been applied are provided in Figure 2.3. Areas circled in red on Figure 2.3 represent isolated areas of E2 Environmental Conservation.

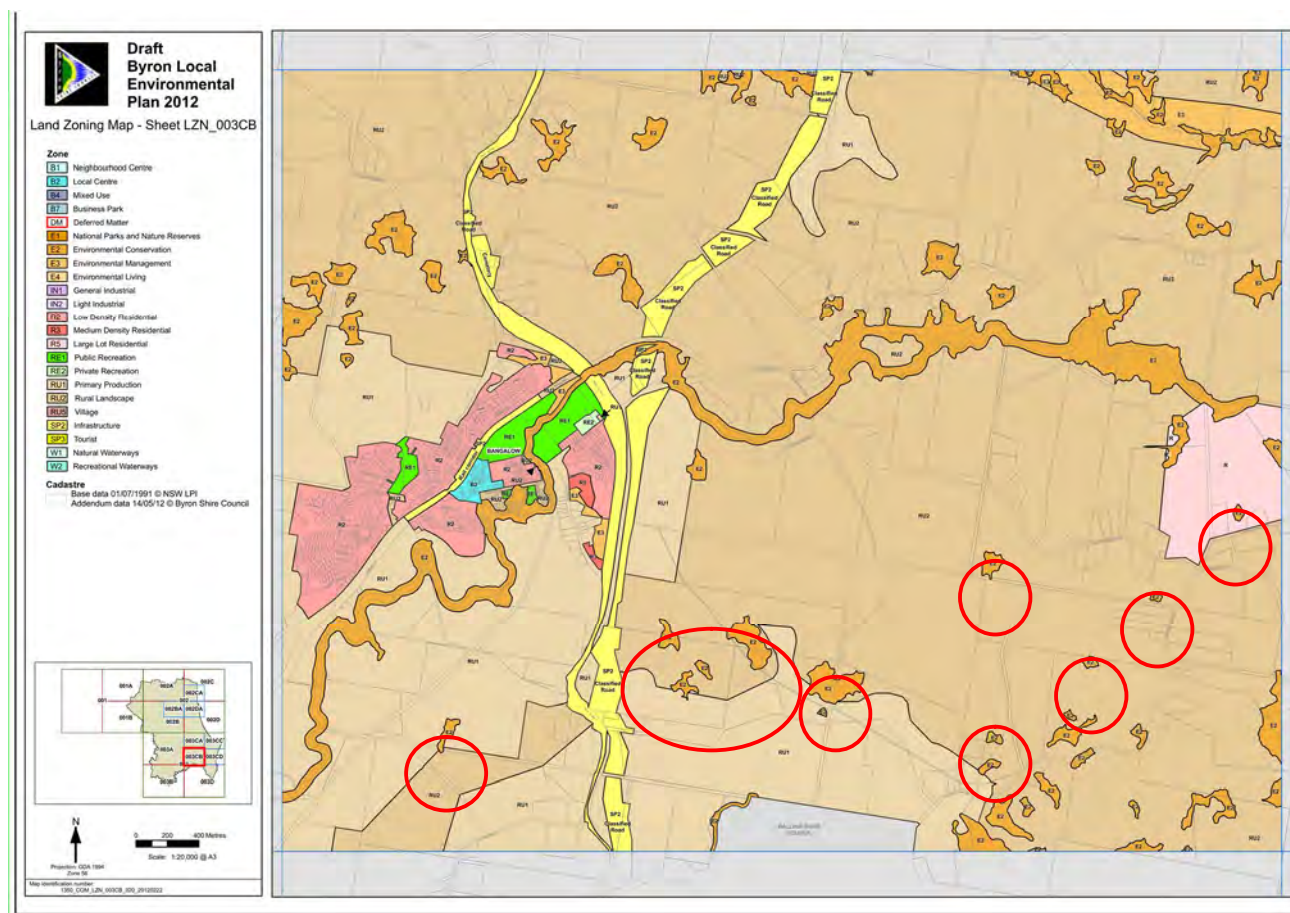


Figure 2.2 demonstrates areas of E2 Environmental Conservation that are relatively small in size and in some cases, isolated. These areas could be more appropriately protected via the use of an overlay. The DP&I's practice note also provides advice on isolated areas that are limited in size. DP&I's advice is to apply a:

- single appropriate non-urban Zone
- relevant natural resource management model clause (for example biodiversity, wetlands, riparian land and waterways). The clause may also include an overlay.

The application of the Practice Note using the advice received by DP&I enables overlays to recognise areas of high conservation value, where that area could be an EZone but otherwise are isolated and limited in size.

The practice note therefore places some onus on the council to only use split zonings in certain locations and instances.

2.3.1.1 Scenic amenity

Background

Scenic amenity is subject to an E3 Environmental Management Zone in the Ballina LEP 2011 and the draft Byron LEP 2012. The 7(d) Environmental Protection (Scenic/Escarpment) Zone in the Ballina LEP) 1987 and Byron LEP 1988 are the primary inputs in determining scenic amenity.

The E3 Environmental Management Zone includes the mandatory objective, to 'protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values'.

What is scenic amenity?

In NSW, limited to no guidance is provided through guidelines that establish what scenic amenity is, and how it should be determined. Therefore regard has been given to the Queensland guideline 'Implementation Guideline No. 8 Identifying and protecting scenic amenity values' which defines scenic amenity as: 'a measure of the relative contribution of each place in the landscape to the collective appreciation of open space as viewed from places that are important to the public'(Queensland Government Department of Infrastructure, 2007).

This Guideline lists the values that comprise scenic amenity (also shown in Figure 2.3), being:

- public viewing locations: publicly accessible outdoor locations such as roads, walkways, beaches, picnic areas, lookouts and viewing platforms. This includes significant and popular viewpoints where people can safely stop and admire the view
- seen landscape areas: natural or built areas such as hills, the ocean, farmlands, waterways, towns, cities or suburbs visible from one or many public viewing locations. This includes areas of high scenic amenity which are highly preferred and seen landscape areas
- view corridors: spaces that connect public viewing locations with seen landscape areas, including important view corridors which connect significant and popular viewpoints, with areas of high scenic amenity.

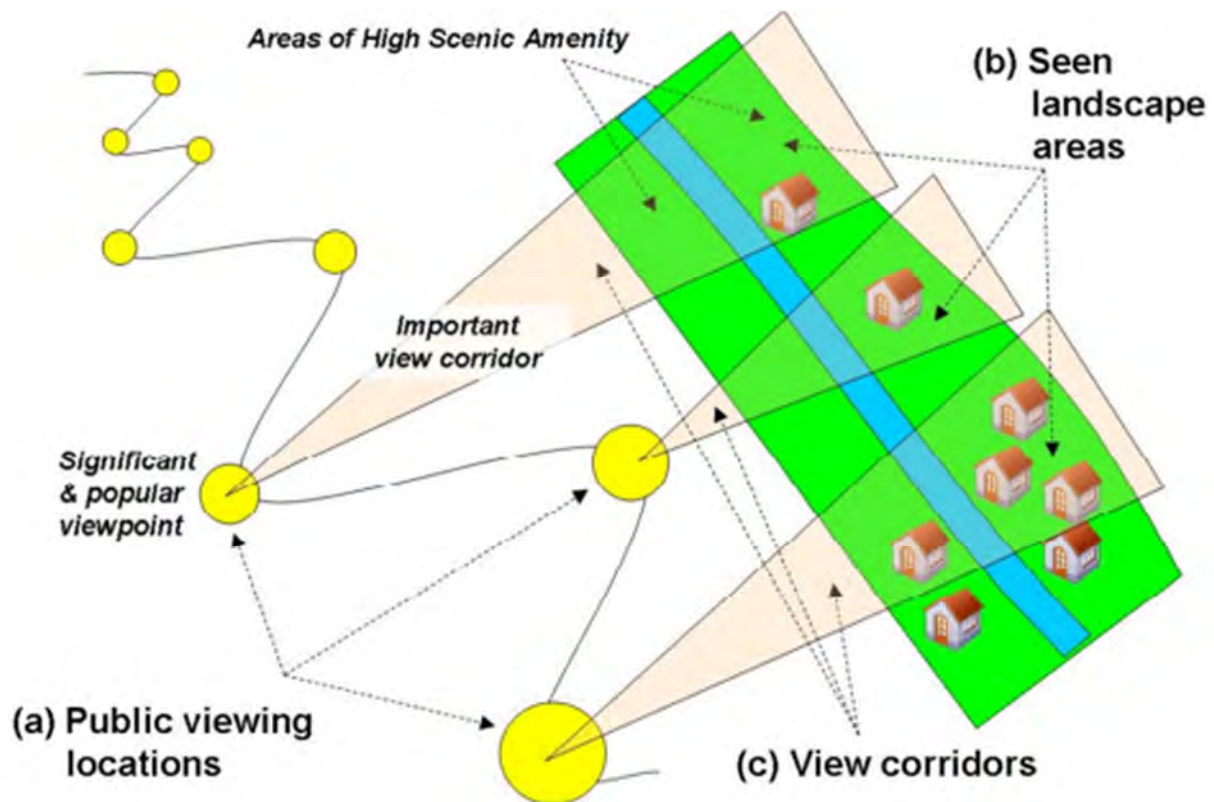


Figure 2.3 Connection of values affecting scenic amenity

Figure 2.3 also implies that the removal or an impact on one or more scenic amenity values will affect scenic amenity. For instance, a landscape area may appear visually appealing, however if that area cannot be seen from a public location, the scenic amenity of that area is decreased.

An additional input in respect of scenic amenity is scenic preference. Scenic preference is defined ‘as a rating of the community’s liking for scenery of open space compared to areas occupied by built structures’ (Queensland Government Department of Infrastructure, 2007). Scenic preference is an important aspect in assessing scenic amenity as it measures how the attributes of views are valued by the community.

Previous studies

Both Ballina SC and Byron SC identified scenic amenity as a value that should be preserved (Ballina SC, 2012 and Byron SC and Parsons Brinckerhoff Australia Pty Limited, 2007).

A review of information provided by both Ballina SC and Byron SC did not indicate any studies completed by either council that assessed scenic amenity values.

Site proofs

Sites were visited as part of the field inspections that were visually prominent, primarily in Teven (within Ballina SC) and Coorabell (within Byron).

Characteristics of these sites within the E3 Environmental Management Zone, exhibiting scenic amenity values were as follows:

- The majority of sites are steep (greater than 15–20%), and are used for grazing.
- The majority of sites contained a single house per lot, plus other ancillary structures such as sheds and fences.
- As the majority of sites are used for grazing, most sites are cleared, but contain various stands of vegetation that function for purposes such as cattle shelter or windbreaks.
- Some sites are visible from a public place, and those sites are generally major roads.

Parts of the escarpment that separate the coastal areas from the hinterland are picturesque. Refer to the following photos.



Photo 2.31 Proposed E3 environmental management Zone site on private land in Teven (Ballina SC) looking west towards Alstonville



Photo 2.32 Proposed environmental management Zone site on private land in Teven (Ballina SC) looking south east towards Ballina



Photo 2.33 View from lookout adjacent to Coolamon Scenic Drive and Pacific Highway, looking north east over proposed E3 environmental management Zone (foreground) and RU1 primary production Zone (background) with Pacific Ocean in background



Photo 2.34 View from Pacific Highway towards proposed E3 environmental management Zone in Coorabell (Byron SC) looking south west towards Coolamon scenic drive at top of the ridge



Photo 2.35 View from Scarrabelotti's lookout (Byron SC) looking east. E3 environmental management in immediate foreground and obscured from view RU1 primary production Zone at bottom of the ridge Pacific Ocean in background

Is an E3 Environmental management Zone appropriate to manage scenic amenity?

The intent of Ballina SC and Byron SC in protecting and managing scenic amenity as a value is valid. Further, the mandatory E3 environmental management Zone objective addresses 'aesthetic values' and as a consequence it is reasonable for councils to determine scenic amenity is an attribute that complies with the Zone's objectives.

Land use contributes towards the composition and perception of a view corridor and places that are considered highly scenic (refer Figure 2.3) and it is also based on people's perceptions of a view. For instance, undulating land used for grazing purposes may be a scenic landscape in the opinion of some parts of the community; however the primary purpose of that land is for agricultural production.

Recognising the land uses that contribute to scenic amenity, applying a zoning that facilitates these land uses, and ensuring scenic amenity is protected and managed through a relevant clause and overlay within the LEP, ensures that both values are protected.

It is inappropriate to remove the E3 Environmental Management Zone from areas of high scenic amenity, where the use of that land is clearly for environmental protection works.

2.3.1.2 Desirable outcomes

The environmental significance of the land is the primary consideration of land within the E2 Zone. As such, the E2 Zone should only be applied to that land listed within Practice Note PN 09-002 as containing:

- lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing EECs
- high conservation coastal foreshores and land acquired, or proposed for acquisition, under a Coastal Lands Protection Scheme
- some land with a registered BioBanking agreement
- land under the care, control and management of another catchment authority such as the Department of Water and Energy or a council for critical town water supply, aquifer or catchment as appropriate
- land with significant Aboriginal heritage values, if appropriate
- coastal foreshores and land subject to coastal hazards, including climate change effects.

The environmental significance of the land is to be the primary consideration when applying the E3 Zone. Criteria for the E3 Zone within a Practice Note should be applied to:

- all types of rainforests and certain old-growth forests
- riparian, wetland and estuarine vegetation
- rare, endangered and vulnerable forest ecosystems
- areas subject to coastal processes
- areas containing native vegetation, where this ecosystem performs a critical function in the management of the surrounding environment.

The envisaged primary function of an area should be a core consideration in applying zoning. This consideration is particularly apparent in considering land currently within the E4 Zone. The zoning of the land should reflect that primary function of the land – in this case, it is residential. A DCP, or additional local clause and overlay map should be used to protect environmental attributes that should be protected over those areas.

The councils should work together with the DP&I to define what features belong in each EZone so that the application of EZones can be consistent with the SILEP definitions.

EZones need to be applied consistently so that their value is not diminished by inappropriate application or by permitting incompatible uses. If the environmental significance of the land is not the primary consideration, then the land should not be an EZone.

Split zonings should only be applied in instances recommended by the DP&I Practice Note. Where areas are identified as being of high conservation value but are limited in size and isolated, an overlay should be considered as an appropriate avenue of recognising these areas.

2.3.2 Consistency of application of EZones across councils

In order to undertake an examination of the application of the EZones across the councils it is first necessary to understand the adopted methodology of the development of those EZones within each council. The purpose of this section is to document the councils' methodology (gathered through the inception meetings and information review process) on how EZones have been applied by each council.

Ballina SC

The objectives of the environmental protection Zone (E2 Zone) in the Ballina LEP 2011 are centred on managing and restoring areas of high ecological, scientific, cultural or aesthetic values. As such, the biodiversity values present in the E2 Zone in Ballina SC are centred on mapped SEPP14 wetlands, SEPP26 Littoral Rainforests, EECs and endangered populations, and threatened species habitats. This has been achieved by:

- direct translation of existing environmental zones (7(a) environmental protection (wetlands) Zone, 7(f) environmental protection (coastal lands) Zone, and 7(l) environmental protection (habitat) Zone)
- inclusion of additional areas of wetland, rainforest and other high conservation value vegetation known to council but not identified in the Ballina LEP 1987.

The boundaries of SEPP 14 and SEPP 26 mapping were checked for accuracy before translation into the E2 Zone and amended as necessary to reflect current on ground conditions.

Other merit-based considerations for inclusion of land into the E2 Zone included contiguous vegetation greater than 2 ha, habitat value for threatened species, significance to local and regional habitat corridors, the extent to which the ecosystem is already reserved in a local and regional context, and the significance of the ecosystem function. These values were gathered from various sources including localised vegetation mapping available for part of the council area, field notes from council staff, site specific ecological consultant's reports, and regional survey and mapping projects conducted by the OEH. The local Ballina LGA specific data sources available for use at the time of developing the LEP were incomplete and were obtained from a range of sources of varying quality. Consequently, due to the incomplete and varying nature of the background data, some areas of E2 Zone in the Ballina LEP are inaccurate.

The E3 Zone in the Ballina LEP is based direct transfer of existing zones that focus on scenic and water quality attributes as follows:

- 7(c) environmental protection (water catchment) Zone
- 7(d) environmental protection (scenic/escarpment) Zone
- 7(d1) environmental protection (Newrybar scenic/escarpment) Zone
- 7(i) environmental protection (urban buffer) Zone.

Biodiversity or environmental values do not appear to be the key criteria for the application of the E3 Zone in the Ballina LEP; however, biodiversity values are protected by default in the water catchment zones, and scenic escarpment zones. As such, the mapping of the E3 Zone in the Ballina LEP is broad scale and is not restricted to representing the accurate spatial distribution of on ground natural features.

Byron SC

Byron SC employed direct translation of the following zones from the Byron LEP 1988 to the E2 Zone in their 2012 LEP:

- 5(b) rural (high hazard flood liable) Zone
- 7(a) environmental protection (wetlands) Zone
- 7(b) environmental protection (coastal habitat) Zone
- 7(f1) environmental protection (coastal lands) Zone
- 7(j) environmental protection (scientific) Zone
- 7(l) environmental protection (habitat) Zone.

Additionally, the E2 Zone also contains mapped SEPP 14 Wetlands and SEPP 26 Littoral Rainforests, and an amended version of the council's High Conservation Value (HCV) mapping layer. The HCV vegetation mapping was developed as part of a biodiversity assessment of the Byron LGA – the Byron Biodiversity Conservation Strategy 2004, which was updated in 2007. The HCV includes ecological data for the Byron LGA including:

- wildlife corridors, key fauna habitats and local corridors (including sites identified for environmental repair and enhancement)
- vegetation and/or habitat mapping (vegetation associations and forest ecosystems – Byron SC and the National Parks and Wildlife Service, as well as DIPNR wetland mapping for the Tweed/Brunswick and the Richmond, and SEPP 14 and SEPP 26 mapping)
- vegetation structure, growth stage and condition
- EECs and threatened species habitats
- regionally and locally significant fauna and flora habitat
- areas nominated on the National Estate (assembled by the State and Commonwealth Governments for the Comprehensive Regional Assessment)
- other sensitive areas such as known and potential Koala habitat, lands subject to recovery actions (as listed in Recovery Plans), water catchments, riparian lands, areas mapped as SEPP 26 and buffers.

The HCV mapping layer was modified for use in the LEP and also included the following features which were transferred into the E2 Zone:

- areas of primary and secondary Koala habitat
- a 20 m buffer around rivers (including a 20 m buffer along the western and southern boundary of the Byron LGA following the river)
- a 20 m buffer around the Cape Byron Marine Park
- areas of seagrass, mangrove and saltmarsh
- native vegetation (or potential native vegetation) adjoining HCV vegetation within wildlife corridors
- roads through national parks

- gaps (approximately 5 m wide) between cadastral boundaries and HCV vegetation
- small areas of vegetation as recommended in the Byron LES.

Some known coastal erosion hazard areas were also included in the E2 Zone. Areas of vegetation around the Tyagarah airport runway were trimmed out of the E2 Zone for infrastructure purposes. Various other areas identified in anomalies, various zones, schools, and Crown Land were also included.

Byron SC employed direct translation of the following existing environmental zones from the 1988 LEP to the E3 Zone in their 2012 LEP:

- 7(c) environmental protection (water catchment) Zone
- 7(d) environmental protection (scenic/escarpment) Zone.

Buffers to features were also included in the E3 Zone, with all rural land within 100m of SEPP26 Littoral Rainforests or a marine park included as well as all rural land within 50m of a SEPP14 coastal wetland mapped in the E3 Zone. Various site specific criteria throughout the council were also used to place land in the E3 Zone on a case by case basis.

Cartographic techniques including smoothing and generalisation were used to make stylistic amendments to the E Zone mapping to enhance map readability. A GIS model was created to make amendments that included infilling cleared gaps and holes in vegetation less than 40 m wide, excluding small patches of vegetation at various size limits (e.g. <0.05 ha, <0.1 ha, <1 ha) in certain instances, and including areas within certain buffer distances from features such as wetlands and rivers. The E Zones were not trimmed around houses or their associated cleared areas. Where E Zone boundaries were within 28 m of each other the boundary was stylised for map readability. The E Zone boundaries were aligned with cadastral boundaries where the Zone ran unevenly along the cadastral boundary.

The HCV methodology used to develop the E Zones in the Byron LEP is comprehensive and robust and reflects the range of environmental features across the LGA. However, the inevitable cartographic techniques used to enhance map readability, and the inclusion of extensive buffer zones around some features have resulted in an E Zone layers that are not restricted to representing the accurate spatial distribution of on ground natural features. Byron SC acknowledges the limitations and inaccuracies in the source of information and potential changes to on ground conditions since the information used to compile the HCV layer and E Zones was gathered.

The methodology taken by Byron SC to compile the E4 Zone included:

- transfer of some residential areas including Residential 2A in the Lilli Pilli subdivision and the adjoining 1A, 7A and 1D Zone
- transfer of residential properties in Suffolk Park that contained Coastal Cypress Pine (however lots where Cypress Pine entered <2 m into the lot were not included)
- transfer of residential properties at the southern end of Suffolk Park currently zoned 2A due to the presence of HCV vegetation on the property
- transfer of current 2A area affected by HCV at Bayside Brun
- transfer of properties at the western area of New Brighton due to presence of HCV vegetation, SEPP 14 wetland and close proximity to Marine Park and National Park.

In most instances, whole lots were zoned E4. The E4 Zone has been applied to certain residential land on a case by case basis in the Byron LGA with no regular methodology.

Kyogle Council

Little information is available on the approach taken by Kyogle Council in its development of the E2 Zone in their LEP. The E2 Zone was developed through advice obtained by Kyogle Council from the former Department of Environment, Climate Change and Water. It is unknown whether data sources, such as regional scale vegetation mapping or local biodiversity information, were used.

The Section 68 report 'Kyogle Local Environmental Plan 2012 – Adoption of Draft Plan' documents the rationale used to apply the E3 zoning. Kyogle Council have applied the zoning to land which is Class 8 in accordance with the provisions of the Agricultural Suitability classes as defined by the Department of Primary Industries. Class 8 land is characterised by landforms such as cliffs, lakes or swamps and other land unsuitable for agricultural and pastoral production. Internal Advice from staff at Kyogle Council indicates the E3 environmental management Zone is regarded as essentially a 'rural' Zone by virtue of the methodology employed by council in implementing rural zones and the E3 Zone.

Due to limited zoning inputs, the E Zone mapping in the Kyogle LEP does not provide an accurate reflection of environmental values across the council area.

Lismore CC

Lismore CC employed direct translation of the following previous environmental zones from the 2000 LEP to the E2 Zone in their 2012 LEP:

- 7(a) environmental protection (natural vegetation and wetlands) Zone
- 7(b) environmental protection (habitat) Zone.

Some additional areas were included in the E2 Zone as identified through a biodiversity assessment of the LGA (including vegetation mapping and field verification undertaken for the Lismore LES). As such, the E2 Zone is focused on managing and restoring known areas of high ecological, scientific, cultural or aesthetic values. The E2 Zone does not follow cadastral boundaries and follows the extent of the significant vegetation or area.

The E3 Zone in the Lismore LGA applies to areas of urban bushland, significant riparian areas and land surrounding Rocky Creek Dam. The E3 Zone boundaries were determined by the extent of vegetation but also followed cadastral boundaries in some instances. In some cases, the E3 Zone may be mapped over a larger area than the environmental asset. No quantitative criteria were developed to ensure E3 zones applied to areas of special ecological, scientific, cultural or aesthetic value. The ecological profile of the E3 Zone in the Lismore LGA is based on scenic and water quality attributes, but also some biodiversity values as follows:

- water catchment area (includes previous Water Catchment Zone in the old LEP)
- scenic/escarpment area (includes previous scenic/escarpment Zone in the old LEP)
- urban bushland
- koala habitat
- large bushland areas (area >5,000 m²)
- potential for environmental regeneration and rehabilitation.

To identify land with high State or regional environmental, vegetation, habitat, waterway or wetlands values at the local scale, Council obtained funding from the DP&I to produce an accurate 1:15000 digital vegetation map for the Lismore LGA. Site assessments of proposed E zones were also undertaken by an ecologist to refine the extent of E2 and E3 zones to ensure the mapping reflected the extent of the vegetation of significance and ensure consistency with application of the criteria described in the Lismore LES. Additional land was also included in the E2 and E3 zones where requested by landowners and where the vegetation satisfied the criteria in the Lismore LES.

The E Zone mapping in the Lismore LEP provides an accurate reflection of environmental values. The E2 Zone represents the accurate spatial distribution of high conservation value on ground natural features. The E3 Zone is largely based on scenic and water quality attributes and protecting urban bushland. Council states that further land may be proposed for environmental protection zoning through council's Biodiversity Management Strategy which is currently in preparation.

Tweed SC

The E2 Zones focus on the Tweed Coast, public land, and areas that are already protected. Tweed SC employed direct translation of the following previous environmental zones from the 2000 LEP to the E2 Zone in their 2012 LEP:

- 7(a) environmental protection (wetlands and littoral rainforests) Zone
- 7(f) environmental protection (coastal lands) Zone.

No additional inputs were used to develop the E2 Zone in the 2012 LEP.

Tweed SC employed direct translation of the following previous environmental zones from the 2000 LEP to the E3 Zone in their 2012 LEP:

- 7(d) environmental protection (scenic/escarpment) Zone
- 7(l) environmental protection (habitat) Zone.

The E3 Zones are also based on the Tweed LEP 2000 Zone Rural 1(a1) Steep Land/Escarpment (i.e. highly constrained lands). These are steep lands subject to degradation and present considerable constraints to agricultural development. The E3 zones are not applied to private land <0.5 ha in size unless there is land in the same contiguous ownership with an area >0.5 ha. The ecological profile of the E3 Zones in the Tweed LGA is based on scenic and water quality attributes and constrained agricultural lands, but also some biodiversity values as follows:

- waterway reserves in rural hinterland
- steep land in excess of 18 degrees
- residual large bushland tracts (2 ha min).

The E Zones in the Tweed LEP 2012 were developed via direct translation of former environmental zones from the Tweed LEP 2000. This occurred despite Tweed SC having developed the Tweed Vegetation Management Strategy 2004 (Kingston *et al.* 2004) which contained detailed vegetation mapping to guide a coordinated approach to the management of biodiversity in Tweed Shire. Additionally, council's Natural Resource Management Department had recommended that council was required to make the 2012 LEP consistent with council and State adopted environmental policy (Tweed SC 2012); however the recommendations within this memo were not adopted. The Tweed Coast Koala Habitat Study (Biolink Ecological Consultants 2011) outlines important koala habitat in the Tweed LGA but this was not used to assist development of the E Zones. The E Zone mapping in the Tweed LEP 2012 does not appear to reflect the content of several studies and guiding documents that provide information on environmental values in the Tweed LGA. The mapping of the E Zones in the Tweed LEP does not accurately represent the spatial distribution of on ground natural features.

2.3.2.1 EZone application

For a consistent application of EZones to occur, the methodology used to develop the EZones across the five LGAs should be consistent. However, the results of this review suggest that the methodologies and supporting information used to develop the EZones varies between councils.

A range of background documents, supporting information and studies are available to assist councils to implement EZones in an LEP including:

- the Far North Coast Regional Strategy
- Section 117 Directions
- SEPP14 and SEPP26
- the North Coast Regional Environmental Plan 1988
- the NSW Coastal Policy
- environmental zonings in existing LEPs
- the Northern Rivers Catchment Action Plan
- Local Environment Strategies and/or studies
- LGA wide biodiversity strategies and/or vegetation management strategies
- technical biodiversity reports
- detailed LGA wide vegetation mapping
- ground truthing of EZones to specifically verify LEP mapping
- advice provided by the NSW OEH
- the OEH Biodiversity Conservation Lands (BCL) GIS dataset.

A variety of methods and supporting information was used between councils to implement the EZones in their respective LEPs. Table 2.3 provides an overview and comparison of the supporting information and methodologies used by each council.

With the exception of Kyogle Council and Tweed SC, a consistent approach has been taken to the use of supporting documents and information to guide development of the LEPs. Byron SC was the only council to base the EZones off a detailed LGA wide biodiversity strategy. Ballina SC and Lismore CC are preparing biodiversity strategies at the time of this review. Lismore CC was the only council to explicitly ground truth mapped EZones for their LEP. Kyogle Council appear to have based the EZones in their LEP off advice provided by the OEH. Tweed SC performed a straight translation of pre-existing environmental zones into EZones.

A consistent methodology and evidence base needs to be used across the five councils for the consistent application of EZones between LEPs.

Table 2.4 Overview and comparison of the supporting information and methodologies

Methods and supporting information used to develop EZones	Local Government				
	Ballina SC	Byron SC	Kyogle Council	Lismore CC	Tweed SC
Guided by the Far North Coast Regional Strategy	✓	✓	X	✓	X
Guided by Section 117 directions	✓	?	X	?	X
Guided by SEPP 14 (Coastal Wetlands) and SEPP 26 (Littoral Rainforest)	✓	✓	NA	✓	✓
Guided by the North Coast Regional Environmental Plan 1988	✓	✓	X	✓	X
Guided by the NSW Coastal Policy	✓	✓	NA	NA	X
Guided by environmental zonings in existing LEP	✓	✓	NA	✓	✓
Guided by the Northern Rivers Catchment Action Plan	✓	✓	X	✓	X
Guided by a Local Environment Strategy or study	✓	✓	X	✓	X
Based on an LGA wide biodiversity strategy or vegetation management strategy	X	✓	X	X	X
Technical biodiversity reports	X	✓	X	✓	X
EZones based on detailed LGA wide vegetation mapping	X	✓	X	✓	X
EZones ground truthed to specifically verify LEP mapping	X	X	X	✓	X
Guidance from the NSW Office of Environment and Heritage	✓	✓	✓	✓	X
Based on the OEH BCL GIS dataset	X	✓	in part	✓	X
Identifying land most constrained for agriculture (eg. steep land)	X	X	✓	X	✓
Community plans (People Place Prosperity: A framework for a more sustainable Ballina Shire 2025)	✓	NA	NA	NA	NA

2.3.2.2 Environmental values contained within EZones

The environmental zones E2, E3 and E4 need to be applied consistently so that their value is not diminished by inappropriate application or by permitting incompatible uses. However, the results of this review suggest that the EZones have not been applied consistently throughout the five LGAs or in some cases within LGAs.

E2 Zone

Overall, the E2 Zones in each of the five LGAs should achieve the objective to protect manage and restore areas of high ecological, scientific, cultural or aesthetic values. Importantly, the E2 Zones as currently mapped in all five LEPs contain high conservation value biodiversity assets.

However, the extent of application varies between councils and the definition of what constitutes a high conservation value biodiversity asset varies between LEPs. Ballina SC, Byron SC and Tweed SC have large areas of E2 Zone while Lismore CC and Kyogle Council have few areas mapped in the E2 Zone. While each council is unique, the discrepancy in applying the E2 Zone between councils is large. Ballina SC, Byron SC, Lismore CC and Tweed SC define high conservation value biodiversity assets similarly. However, no definition is provided by Kyogle Council, and at the time of this review it was unclear how the E2 Zones were developed for the Kyogle LEP.

The environmental significance of the land is the primary consideration of land within the E2 Zone. The NSW DP&I (2009) states the E2 Zone should be applied to:

- lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing EECs
- high conservation coastal foreshores and land acquired, or proposed for acquisition, under a Coastal Lands Protection Scheme
- some land with a registered BioBanking agreement
- land under the care, control and management of another catchment authority such as the Department of Water and Energy or a council for critical town water supply, aquifer or catchment as appropriate
- land with significant Aboriginal heritage values, if appropriate
- coastal foreshores and land subject to coastal hazards, including climate change effects
- land currently zoned for environmental protection where strict controls on development apply, e.g. steeply sloping escarpment lands, land slip areas.

In further defining lands with high conservation values, the Far North Coast Regional Conservation Plan (Department of Environment Climate Change and Water 2010b) outlines the following features as being high conservation value biodiversity assets:

- EECs listed under the NSW *Threatened Species Conservation Act 1995* and/or the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (not in low condition as defined under the *Native Vegetation Act 2003*)
- threatened species habitats (including SEPP44 Koala habitat)
- over-cleared vegetation communities (not in low condition as defined under the *Native Vegetation Act 2003*)
- native vegetation in over-cleared Mitchell landscapes (not in low condition as defined under the *Native Vegetation Act 2003*). Generally, this includes is all vegetation on the alluvial flats of the major rivers and fertile basalt-derived soils
- all types of rainforest (including SEPP 26 Littoral Rainforests)
- old-growth forest
- riparian, wetland (including SEPP14 coastal wetlands), and estuarine vegetation
- rare, endangered, and vulnerable forest ecosystems (not in low condition as defined under the *Native Vegetation Act 2003*).

The current application of the E2 Zones across the five councils is outlined in Table 2.4 to demonstrate the consistencies and inconsistencies between the approaches used. Direct transfer of existing environmental zones between LEPs has occurred and a consistent approach to placing SEPP14 Wetlands and SEPP26 Littoral Rainforests in the E2 Zone has been taken. However, a range of other values have also been used in each council. A consistent approach to identifying and mapping areas of high ecological, scientific, cultural or aesthetic values as E2 Zones needs to be developed and implemented across the five councils.

Table 2.5 Comparison of criteria used to define E2 Zone between councils

Criteria used to develop E2 Zones	Local Government				
	Ballina SC		Byron SC		Tweed SC
Wetland Zone in previous LEP	✓		✓		✓
Coastal Land Zone in previous LEP	✓		✓		✓
Habitat Zone in previous LEP	✓		✓		✓
Coastal Habitat Zone in previous LEP	X		✓		X
High Hazard Flood Liable Zone in previous LEP	X		✓		X
Environmental Protection scientific Zone in previous LEP	X		✓		X
Vegetated areas mapped under SEPP 14 Coastal Wetlands	✓		✓		✓
Vegetated areas mapped under SEPP 26 Littoral Rainforest	✓		✓		✓
Vegetated areas identified as EECs or critical habitat for endangered species/Vegetated areas identified as EECs and remnant rainforest	✓		✓		✓
Contiguous vegetation greater than 2 ha	✓		X		X
Habitat value for threatened species/Vegetated areas identified as critical habitat or koala habitat.	✓		✓		X
Significance to local and regional habitat corridors/Contribution to wildlife corridors	✓		X		X
Extent to which ecosystem already reserved in local and regional context	✓		X		X
Significance of ecosystem function/Importance to ecosystem function	✓		X		X
Coastal erosion hazard areas 1 and 2 (except areas adjoining coastal land in the Byron town centre)	NA		✓		NA
High conservation vegetation, amended for the LEP	X		✓		X
Part of the area around Tyagarah Airport (particularly around the runway)	NA		✓		NA
Area of high environmental value	X		X		X
Area of contiguous vegetation	X		X		X

Criteria used to develop E2 Zones	Local Government				
	Ballina SC	Byron SC	Kyogle Council*	Lismore CC	Tweed SC
Size of area (area greater than 5 ha)	X	X	X	✓	X
Significance in local, regional and state context	X	X	X	✓	X
Vegetation growth stage, structure and condition	X	X	X	✓	X
Bushland in identified urban release areas where other criteria met	X	X	X	X	✓
Bushland previously set aside by negotiation	X	X	X	X	✓
Shallow and minor waterway reserves	X	X	X	X	✓
NSW DP&I definition of an E2 Zone					
Lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing EECs.	✓	✓	X	✓	✓
High conservation coastal foreshores and land acquired, or proposed for acquisition, under a Coastal Lands Protection Scheme.	✓	✓	NA	NA	✓
Some land with a registered BioBanking agreement.	NA	NA	NA	NA	NA
Land under the care, control and management of another catchment authority such as the Department of Water and Energy or a council for critical town water supply, aquifer or catchment as appropriate.	Unknown	Unknown	Unknown	Unknown	Unknown
Land with significant Aboriginal heritage values, if appropriate.	Unknown	Unknown	Unknown	Unknown	Unknown
Coastal foreshores and land subject to coastal hazards, including climate change effects.	✓	✓	NA	NA	✓
Land currently zoned for environmental protection where strict controls on development apply, e.g. steeply sloping escarpment lands, land slip areas.	X	✓	X	X	X

* The criteria used by Kyogle Council to determine E2 Zones is unknown.

E3 Zone

The results of this review suggest that each council has used a different approach to define and map the E3 Zones. Consequently, the E3 Zones across the five LGAs are inconsistently applied. The E3 Zones vary significantly between, and in some cases within, LGAs and a wide range of environmental values and other values have been used to apply the E3 zones. By definition, the E3 zones are to focus on protecting, managing and restoring areas with special ecological, scientific, cultural or aesthetic values and to provide for a limited range of development that does not have an adverse effect on those values. A consistent definition of what constitutes a 'special' ecological, scientific, cultural or aesthetic value must be developed for application across the Ballina, Byron, Kyogle, Lismore and Tweed SCs if the application of the E3 Zone is to be successful and appropriate.

The environmental significance of the land is to be the primary consideration when applying the E3 Zone. The NSW DP&I (2009) states that the E3 Zone may be applied to:

- areas of special ecological, scientific, cultural or aesthetic attributes that require management in conjunction with other low impact uses, e.g. scenic protection areas, areas with contiguous native vegetation or forest cover
- as a transition between high conservation value land, e.g. land zoned E1 or E2 and other land such as that zoned rural or residential
- where rehabilitation and restoration of its special environmental qualities are the primary purpose
- highly constrained land where elements such as slope, erodible soils or salinity may have a key impact on water quality within a hydrological catchment.

The current application of the E3 Zone across the five councils is outlined in Table 2.5 to demonstrate the inconsistencies between the approaches used. Land in drinking water catchments and land with scenic qualities were the common drivers of the E3 Zone in the Ballina, Byron, Lismore and Tweed. However, the mapping of these features varies considerably between councils. Constrained agricultural lands are the only basis of the Kyogle E3 Zone which is inconsistent with the other councils E3 Zone implementation and the NSW DP&I criteria. A consistent approach to identifying and mapping areas of special ecological, scientific, cultural or aesthetic values as E3 Zones needs to be developed and implemented across the five councils.

Table 2.6 Comparison of criteria used to define E3 Zone between councils

Criteria used to develop E3 Zones	Local Government				
	Ballina	Byron	Kyogle	Lismore	Tweed
Drinking water catchment Zone in previous LEP	✓	✓	X	✓	✓
Scenic amenity Zone in previous LEP	✓	✓	X	X	✓
Urban buffer Zone in previous LEP	✓	X	X	X	X
Rural land within 100m of a marine park	X	✓	X	X	X
Rural land within 50m of SEPP 14 wetlands	X	✓	X	X	X
Rural land within 100m of SEPP 26 Littoral Rainforests	X	✓	X	X	X
Agricultural classification 8 lands (steep land, cliffs, etc.)	X	X	✓	X	X
Bushland areas greater than 5,000 m ²	X	X	X	✓	X
Wildlife corridors	X	✓	X	X	X
Waterway reserves in rural hinterland.	X	X	X	X	✓
Steep land in excess of 18 degrees.	X	X	X	X	✓
Residual large bushland tracts (2 ha min).	X	X	X	X	✓
Land with environmental values greater than 5 ha in rural areas, or 2 ha in urban area	✓	X	X	X	X
Area with environmental values	X	X	X	✓	X
Koala habitat	X	X	X	✓	X
Potential for environmental regeneration and rehabilitation	X	X	X	✓	X
Other LGA specific merit based considerations	✓	✓	X	X	X
NSW DP&I definition of an E3 Zone					
Areas of special ecological, scientific, cultural or aesthetic attributes that require management in conjunction with other low impact uses, e.g. scenic protection areas, areas with contiguous native vegetation or forest cover	✓	✓	X	✓	✓
As a transition between high conservation value land, e.g. land zoned E1 or E2 and other land such as that zoned rural or residential	X	✓	X	X	X
Where rehabilitation and restoration of its special environmental qualities are the primary purpose	X	X	X	✓	X
Highly constrained land where elements such as slope, erodible soils or salinity may have a key impact on water quality within a hydrological catchment	X	X	X	X	✓

E4 Zone

The E4 Zone has only been applied in the Byron LEP so comparison between LGAs on the application of E4 Zones cannot be made. Whole properties were zoned as E4.

The DP&I (2009) state that the E4 Zone will be typically applied to existing low impact residential development. This is what has occurred in the Byron SC with the application of the E4 Zone to existing low impact residential development where development has been undertaken to be sensitive to threatened species habitat. Some properties have been zoned as E4 due to the presence of the Coastal Cypress Pine EEC. In these E4 Zones, this EEC is heavily disturbed and as such an E2 Zone would not be appropriate.

The aim of the E4 Zone in Byron SC is to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values and to ensure that residential development does not have an adverse effect on those values.

2.3.2.3 Desirable outcomes

A consistent methodology across all councils in identifying and mapping areas of high conservation value suitable for an E2 Zone should be achieved. These areas should be validated through on-site field investigation.

Where land is to be zoned E3, the environmental significance of the land must be the primary consideration. A consistent methodology across all councils in identifying and areas of special ecological, scientific or cultural values needs to be developed and implemented across the five councils. These areas should be validated through on-site field investigations.

The E4 Zone has only been applied in the Byron LEP, and therefore comparison between councils the subject of this review, on the application of the E4 Zone cannot be made.

To develop a sufficient evidence base for the implementation of EZones, Kyogle Council and Ballina SC should adopt the objectives of the Far North Coast Regional Conservation Plan (FNCRCPP) (Department of Environment Climate Change and Water 2010b), the Border Ranges Rainforest Biodiversity Management Plan (Department of Environment Climate Change and Water 2010a) and the Northern Rivers Regional Biodiversity Management Plan (Department of Environment Climate Change and Water 2010c) through development of a LGA wide biodiversity strategy or vegetation management strategy. This strategy can then be used to make an informed decision on zoning in the LEPs. Development of a biodiversity strategy will involve considerable investment in detailed vegetation, flora and fauna survey and assessment. However, this investment is required if the LEP is to be based on robust data sources and analysis. While in many cases councils do not legally have to prepare an environmental study, it is considered best practice to do so.

Where a council has made the investment in developing a detailed LGA wide biodiversity strategy or vegetation management strategy (i.e. Byron SC, Lismore CC and Tweed SC), the recommendations and mapping (i.e. vegetation mapping, threatened species habitat mapping, etc.) contained within the strategy and supporting documents must be implemented in the LEP. The biodiversity strategy or vegetation management strategy will provide a robust evidence base for application of the EZones. As new information on biodiversity or other environmental values is gathered from council specific studies (e.g. Koala Plans of Management), this information should be incorporated into the LEP as appropriate.

2.4 Consultation processes

2.4.1 Consultation between DP&I and Local Government

Compliance with strategic plans and policy – March and April 2006

The SILEP Program was released on 31 March 2006. Between March 2006 and April 2009, the direction provided to councils through a Planning Circular required SILEPs to be consistent with the following policies and strategies:

- various State Environmental Planning Policies
- various section 117 directions
- North Coast Regional Environmental Plan
- Far North Coast Regional Strategy.

Practice Note PN 06-002 dated 12 April 2006 provided the first advice on the intent of each Zone (including all EZones).

Specific EZone advice – April 2009

Practice Note PN 09-002 dated 30 April 2009 provided the first specific advice on how EZones should be applied. Detailed provisions were included in the practice note, for EZone application, objectives and potential land uses.

The Practice Note also provided the first indication that the application of EZones should be based on a strategy or an environmental study, developed from robust data and sources.

Compared to previous advice, additions to the Practice Note specific to each EZone included:

- E2 Zone and E3 Zone – reference to specific values (ecological, scientific, cultural or aesthetic values)
- E4 Zone – development should be well located and designed so that it does not have an adverse effect on the qualities of the land.

Open or closed, and split or not to split – March 2011

Practice Note PN 11-002 dated 10 March 2011 provided the first indication on:

- the variety of land uses intended in a Land Use Table, by using the terms 'open Zone' and 'closed Zone'. The practice note provided an expectation that an EZone should be a 'closed Zone'
- how different development potential of a lot should be treated, by issuing advice on applying split zonings.

Compared to Practice Notes PN 09-002 and PN 11-002, additions to Practice Note 11-002 specific to each EZone included:

- E2 Zone – the use of the Zone needing to be justified by appropriate evaluation of the area in terms of meeting the core Zone objectives
- E4 Zone – the use of the Zone may be applicable to areas with existing residential development in a rural setting, which still has some special conservation values. Where lands have higher conservation values, with more restrictive land use permissibility, an E2 or E3 Zone may be more suitable than the E4 Zone.

No significant changes were provided in respect of the E3 Zone.

Overall comments

Discussions with councils at the inception stage of this project revealed perceptions that the Department shifted its position in terms of the purpose and application of EZones.

The practice notes tend to indicate that the basic purpose of each EZone has remained relatively consistent. For example:

- the purpose of the E2 Zone in 2006 was to 'protect land that has high conservation value', whereas its purpose in 2011 is to 'protect land that has high conservation values outside the national parks and nature reserve system'
- the purpose of the E3 Zone in 2006 was to apply '*...to land that has environmental or scenic values or hazard risk, but where a limited range of development...could be permitted*', whereas its purpose in 2011 is to apply 'to land that has special ecological, scientific, cultural or aesthetic attributes, or land highly constrained by geotechnical or other hazards'
- the intent of the E4 Zone in 2006 was 'for land with special environmental or scenic values where residential development could be accommodated', whereas its intent in 2011 is 'for land with special environmental or scenic values, and accommodates low impact residential development'.

However, what is evident in reviewing the practice notes relevant to EZones from 2009, is a shift in how councils should implement EZones within a LEP. All councils had made a positive resolution to prepare a new LEP by March 2007 (and in two cases, as early as 2004) and therefore the preparation of LEPs would have been well-advanced by April 2009. From the councils' perspective, if LEPs were to be continually modified to comply with updated practice notes, there are a range of probable downstream impacts on councils including changes in policy position (which may have been previously agreed through the council meeting process), and financial, resourcing and timing implications in respect of completing the LEP.

On the contrary, councils should appreciate that a new planning system will evolve over time to consider emerging trends in planning and lessons learnt in its implementation. Ideally the planning instrument (in this instance the LEP) should be flexible enough to accommodate change.

2.4.1.1 Desirable outcomes

Open, constructive and timely consultation between the DP&I and councils is an essential component of making the LEPs.

On 26 October 2009, the Minister for Planning, the Presidents of the Local Government and Shires Associations and the Director-General of the Department of Planning signed an agreed communications and consultation protocol. This protocol is intended to enable the Local Government and Shires Associations to offer comment on matters that can have major planning, financial, policy or operational implications for councils. Constructive and practical feedback from councils on any recommended changes to the application of EZones is essential, and it should be incumbent upon both the DP&I and councils to act in accordance with this agreement.

In preparing a LEP, councils and relevant council staff should ensure they are operating according to the latest changes to the plan making system and implement these changes in a LEP wherever possible.

The DP&I should commit to facilitating the provision of timely, relevant and consistent interpretation of the plan making process where councils require such advice to support the preparation of a LEP.

2.4.2 Consultation between LGA and community

2.4.2.1 Consultation of a new LEP

A common theme raised by the community through ‘drop-in sessions’ was the process of undertaking consultation with the community. Although key concerns varied between councils, the concerns generally related to perceptions on:

- the duration of exhibition – parts of the community believed a longer period was required
- the process of exhibition – parts of the community (particularly property owners that had an EZone proposed over their land) stated that they were not made aware of the zoning.

The duration of exhibition

The repealed clause 66(2) of the EP&A Act required all councils to publicly exhibit a draft LEP for a minimum of a prescribed period. In this instance, the prescribed period is 28 days.

Table 2.7 lists the duration of the public exhibition undertaken by each council.

Table 2.7 Public exhibition undertaken by councils

Council	LEP version	Public exhibition period	Number of days	Complies with repealed clause 66 EP&A Act
Ballina SC	Draft LEP 2010	15 March 2010 to 4 May 2010	51	Yes
	Draft LEP 2011	19 September 2011 to 19 October 2011	31	Yes
Byron SC	Draft LEP 2012	24 September 2012 to 24 December 2012	92	Yes
Kyogle Council	Draft LEP 2011	4 July 2011 to 4 October 2011	93	Yes
	Draft LEP 2012	1 June 2012 to 1 July 2012	31	Yes
Lismore CC	Draft LEP 2010	27 January 2010 to 30 April 2010	94	Yes
	Draft LEP 2012	17 November 2011 to 30 January 2012	75	Yes
Tweed SC	Draft LEP 2010	27 January 2010 to 30 April 2010	94	Yes
	Draft LEP 2012	14 November 2012 to 18 January 2013	66	Yes

Table 2.6 demonstrates that all councils exhibited their LEP for more than the required period. Three consultation periods (for the Byron draft LEP 2012, Lismore LEP 2012, and Tweed draft LEP 2012) coincide with the Christmas and New Year holiday period and it should be noted that the exhibition period significantly exceeds the minimum period in those circumstances.

The process for exhibition

The repealed clause 66(2) of the EP&A Act required all councils to provide public notice of a LEP. Public notice is defined as a public notice in a local newspaper. All councils complied with the minimum requirement of placing a notice in a local newspaper.

Most councils provided information to demonstrate how consultation was undertaken however there was some variation in the numbers and types of techniques used. For example:

- Ballina SC made the draft LEP available on its website, a hard copy available at council's customer service centre, established a dedicated project counter and phone number, prepared supporting explanatory material, undertook interviews with local media outlets, and undertook targeted stakeholder group briefings (Ballina SC, 2012).
- Lismore CC made the draft LEP available on its website (Lismore CC and a hard copy available at council's corporate centre, and additional weekly advertising was undertaken in the Lismore Echo and in later stages, the Northern Star (Lismore CC, 2012).
- Kyogle Council made the draft LEP available on its website, provided a hard copy at council's administration centre and three post offices within the Council area and undertook a number of public consultation sessions in Kyogle and Bonalbo (Kyogle Shire Council, 2012).

From the above, two things are evident:

- The councils identified in the examples above have undertaken additional consultation to what is required under the legislation. Some consultation techniques listed above are also resource intensive.
- The consultation methods listed above do not result in effective engagement across all sectors of the community, as feedback from the drop in sessions and field investigations indicated a general lack of awareness of a proposed LEP.

2.4.2.2 Perceptions regarding public consultation on the Draft LEPs

General

Submissions received though the comment period provided feedback regarding the LEP consultation process. Across the Far North Coast 152 participants' detailed concerns about a lack of consultation in regards to the LEP and 55 noted a lack of formal notification to landowners of the proposed EZones. Whereas 19 participants indicated the consultation process was satisfactory during the draft LEPs. There were a broad range of specific issues raised of which the most frequent concerns were:

- a lack of communication (73)
- a lack of factual information (53)
- a lack of concise information on the impacts the LEP will have on individual properties (47)
- a lack of information about EZones and what they mean (46)
- misleading information (21)
- complexity of the Draft LEP document, noting it was lengthy and hard to understand (32)
- a lack of advertising of the public comment period resulting in insufficient time to respond to the draft LEP (18).

Lastly, there is a general perception council is being deceptive (60) and 46 participants indicated objections and concerns are not being listened to or addressed.

Specific concerns by LGA

Community perceptions relating to consultation from the respective councils across the Far North Coast was fairly similar, the below sections detail specific consultation feedback from each LGA.

Twelve participants from Kyogle Council informed there was a lack of consultation and eight indicated a lack of communication from council during the draft LEP. Further, seven were dissatisfied with the landowner notification process.

In the submissions from Lismore CC, 22 noted a lack of consultation during the draft LEP and 10 indicated a lack of communication from council. Additionally, four participants indicated they were dissatisfied with the landowner notification process. One participant noted satisfaction with consultation during the draft LEP.

Ballina SC submissions revealed 35 comments highlighting poor consultation during the draft LEP and 18 indicated a lack of communication from council. Also, dissatisfaction with the landowner notification process was raised in 20 submissions. Conversely, six participants were satisfied with consultation.

Submissions in Byron SC highlighted a lack of consultation during the draft LEP (58). Additionally, it was indicated by 27 participants an absence of communication from council and 15 were dissatisfied with the landowner notification process. Three submissions indicated satisfaction with the level of consultation during the Draft LEP.

A lack of consultation during the draft LEP was recorded in Tweed SC area by 23 participants and 9 indicated a lack of communication from council. A further eight submissions noted dissatisfaction with the landowner notification process. On the other hand eight participants were satisfied with the level of consultation during the draft LEP.

For additional information on issues and concerns raised across the five councils of the Far North Coast and per LGA refer to Appendix B, Community and stakeholder engagement report, Section 7.

2.4.2.3 Desirable outcomes

Communication and information sharing should be accurate, clear, consistent and timely. Communication strategies should support early announcement and regular updates to stakeholders further they should promote two-way information flow and encourage open and honest discussions to discuss any concerns and ask questions.

Consideration of engagement activities should occur to ensure engagement activities, methods, and techniques reach and encourage stakeholders and community involvement and complement the LEP process. Activities should help to manage community and stakeholder issues and concerns and capture ongoing feedback.

There is a need for inclusiveness within communities however the issues gathered identify a general consensus of not being involved or of individual concerns not being addressed during the draft LEP process. Ideally, consultation should ensure all stakeholders are adequately engaged and have involvement in the LEP process. Collaboration between landowners, the community and council during development of the draft LEP to ensure individual needs are considered and reflected will result in mutually beneficial outcomes for all involved.

Communication regarding the LEP should contain concise and factual information written in plain English to encourage understanding and trust. Furthermore, channels used to communicate information should reach all members of the community to ensure stakeholders are informed and aware of the LEP process. Early and effective communication outlining consultation dates throughout the LEP process to foster a no-surprises approach will allow adequate time to comprehend information and actively participate.

2.4.3 Community perceptions generally

During the public comment period many submissions were received from concerned community members throughout the Far North Coast. A wide range of issues were raised regarding the perceived positive and negative impacts that EZones and overlays could have on both individual landowners and the wider community. To inform the review the issue groups were defined or grouped into core areas reflecting the area of concern. Each of those groups is discussed below. For a further more detailed analysis of the findings refer to Appendix B, Community and stakeholder engagement report, Section 7.

2.4.3.1 Planning process

Feedback from participants indicates the perception that the LEP compilation process was not run well (38) moreover some relayed that they are unhappy with their respective LEP or mentioned that it is flawed due to the lack of formal processes (40). On the contrary, 5 participants support their respective LEP and 10 made comment that they were in favour of the LEP process.

Participants' comments highlighted the standard template lacks equivalent zones to the ones currently in place (18). Alternatively, a total of 81 submissions indicated council's incorrect application and interpretation of the Standard template and the Department of Planning guidelines (41). Similarly, 60 participants specified that a transfer to a standard template should be 'like for like'. This issue is discussed in Appendix B of this report.

There is a general concern for consistency of the EZone application across each LGA, Region and the State (88). This is potentially caused by the comments noted in submissions regarding variances in terminology and definitions (28) and absences of alignment with other government initiatives and legislation (53). Each of these issues are discussed in Appendix B of this report.

Many submissions highlighted individuals perceive a lack of methodology during the zoning process (38), with no justification or criteria being presented (68). Perceptions supporting this include:

- insufficient background studies and expertise (64)
- lack of ground-truthing or field surveys (103)
- issues with mapping – inaccurate (69), incorrect (40), old (26), aerial photographs(49), quality and standards (22, incorrect flood mapping (9) and creek mapping (31).

This issue is addressed in Section 2.1 of this report.

Concerns relating to regulations and property rights under EZones were raised, 28 submissions indicated the LEP negates the States intention of standardising and simplify local planning by overcomplicating them with restrictions adding complexity and confusion. Specific concerns include:

- the duplication in legislation between EZones and State and Federal laws (69)
- agriculture being permitted with consent of council under EZones (44)
- horticulture being exempt under watercourse zones (44)
- reduction in floor space ratio under E4 Zones (12).

This issue is addressed in Section 2.2.4 of this report.

2.4.3.2 Property management

Several key issues were highlighted regarding general property management. Concerns generally revolve around landowner rights and land use restriction changes associated with land under EZones. Participants specifically indicated:

- landowners will have their existing rights restricted if land is classified with an EZone (147)
- removal of rights such as existing use rights (66) and continuation of and reliance on existing property use rights (101)
- additional approvals and permits will be required under EZones due to changes in land use (75)
- ability to continue to conduct current property management practices on land under EZones; such as slash, remove dead vegetation or complete Routine Agricultural Management Activities (RAMAs) and general agricultural activities (40); particularly weed management (78)

- the ability to graze cattle or horses on land located under EZones (77) and concern for a loss of prime agricultural land (48)
- ability to subdivide or have multiple dwellings (48)
- ability to continue to run home business (11) under EZones.

These issues are addressed in section variously in Section 3 of this report.

2.4.3.3 Environmental

Community perception ranges widely regarding the application of EZones and overlays. With 22 participants stating EZones are correct, and a further 27 agreed that environmental significant areas are located within them; additionally 50 participants noted support for specific elements of the draft LEP. On the contrary, 121 participants highlighted that EZones have been wrongly applied to non-environmentally significant land.

Further, 77 participants noted disquiet toward the removal or downgrading of EZones and concern that for areas of significant environmental value have been overlooked (36) hence EZones should be extended further (54).

The perceived effects of EZones indicated by 22 participants is they will result in positive impacts to conservation. Other positive outcomes highlighted in submissions noted they will:

- protect native vegetation, wildlife corridors, lands adjacent to waterways, habitat the (85)
- help the region retain its natural biodiversity (65)
- ensure development is considered and assessed through more stringent approvals (25)
- help manage environmentally significant areas, on both private and public land (21).

Conversely, 53 participants perceived EZones will have a negative impact on conservation and 8 noted there would be little or no environmental gain. Specific comments include:

- management restriction on landowner may result in mass land neglect (43)
- protected land is not looked after (32)
- there are no management plans to support EZones, thus adversely affecting conservation (10).

These issues are addressed in Appendix B of this report.

2.4.3.4 Economic

Submissions highlighted both negative and positive economic impacts. These perceptions were classified into three categories each outlined in the sections below.

Individual economic issues largely identified concerns relating to reduced land values as a result of lower demand (137), decreased income or livelihood (77), and other follow on affects as a result of EZones being applied to freehold land. There were also economic impacts associated with increased landowner expenses, noting perceived loss of viability to maintain land with EZones as there is no return on investment (77) and perceived increased costs connected to additional approvals and permits required (75) and the need to prove existing use rights (41).

The main community economic concern is the loss of tourism as a result of EZones (35). Two perceptions were highlighted; firstly appropriate EZones need to be applied to protect the renowned natural environment that attracts tourist to the Far North Coast. Alternatively, EZones should not be applied to prime agricultural land as this would result in a loss of agri-tourism and food tourism.

There were 76 participants that made comment about compensation and gaining landowner consent to implement EZones over private land. Submissions report on the need for funding to support and maintain EZones (46). Suggestions include rate discounts, access to CMAs funding or community levy.

These issues are discussed variously within the Section 2 of the report.

2.4.3.5 Department process

The main issues were toward DP&I's Review of the LEPs and the deferral of EZones. Specific issues indicated were:

- State government does not have the right to defer and potentially remove EZones from the LEP (19)
- State government is over ruling local government planning decisions (17)
- State government are removing control of local development (15).

These issues could potentially be the result of a lack of communication regarding the LEP Review (12). Additionally, submissions noted a lack of information (12) and mixed information (9) from DP&I.

Other feedback was also provided regarding DP&I's consultation throughout the Review to date which is detailed in Appendix B, Community and stakeholder engagement report, Section 7.

2.4.3.6 Social

Consultation feedback identified several social impacts that could eventuate as a result of EZones being removed or implemented. The following paragraphs summarise the key social issues raised.

There is a general issue with EZones applied to rural properties; this is seen as a potential loss of prime agricultural lands hence a concern for future food security (29).

There are two perspectives regarding EZone impacts to lifestyle. Firstly, there is concern EZones will restrict landowners to continue how they go about their daily activities (26). Secondly, people that have chosen to live in the area due to its natural surroundings perceive that without the protection afforded by appropriate EZones that the areas will change negatively, thereby affecting their lifestyle.

Concern for the future of the land comprises apprehensions for future generations to continue the family farm as a result of EZone application (18). Alternatively EZones will assist in preserving the natural environment for future generations to enjoy (14).

Lastly, comments highlighted EZones have the potential to restrict provisions for affordable housing thus limiting population growth (11). This concern is largely to do with the changes in floor space ratio, multiple dwelling and subdivision under the respective draft LEP.

2.4.3.7 Desirable outcomes

Councils should ensure that current zones are accurately transferred to the LEP Standard template, resulting in like for like. Further planning guidelines need to be followed and assistance provided to councils to ensure accurate interpretation of the standard template and maintain consistency within each council and across the State.

Land should be accurately zoned in the LEP according to thorough assessment, which will conserve genuine environmentally significant land and support activities on rural properties. Further, the LEP will align with other planning strategies and programs and take into account both individual and community social and economic concerns.

3. Recommendations

E2 Zone

Advice note: The NSW Government's White Paper provides a list of indicative new zones to be used in future Local Plans. The White Paper indicates the E2 Zone will transfer to a new Environmental Protection & Hazard Management Zone.

1. Ballina SC, Byron SC, Lismore CC and Tweed SC should include Environmentally Sensitive Areas into the E2 Zone on the basis of those areas meeting any of the following criteria stated in the table below.

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

2. Where Environmental Protection Zones exist within previous LEPs, Ballina SC, Byron SC, Lismore CC and Tweed SC should transfer those zones stated in the table below, directly to the E2 Zone.

Ballina LEP 1987
7(a) Environmental Protection (Wetlands)
7(l) Environmental Protection (Habitat)
Byron LEP 1988
5(b) Rural (High Flood Hazard Liable)
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)

Where councils have demonstrated to the DP&I that the spatial dataset of an environmental protection Zone stated in the table above is inaccurate, and the spatial inaccuracy has been amended using any of the criteria listed in Recommendation 1, the amended spatial dataset should prevail.

3. Kyogle Council should transfer the areas proposed for the E2 Zone to the equivalent zoning of the superseded IDO and extend the coverage of the relevant proposed overlay and clauses within its existing SILEP.
4. Byron SC and Lismore CC should amend their respective Land Use table relating to the following agriculture land use within the E2 Zone in each SI LEP in accordance with the following table:

Land use	Permissibility
E2 Zone	
Extensive Agriculture	Permitted with consent

Advice notes:

- Extensive Agriculture is proposed to be listed as Permitted with Consent in the E2 Zone Land Use table within the Ballina SILEP, and agriculture is currently permitted with consent within environmental protection zones 7(a), 7(f) and 7(l) within the Ballina LEP 1987.
 - Extensive Agriculture is not listed in the E2 Zone Land Use table within the Byron SILEP and Lismore SILEP (and is proposed to be a prohibited use), however:
 - Agriculture is currently permitted with consent within environmental protection zones 5(b), 7(a), 7(b), 7(f1) and 7(k) within the Byron LEP 1988, and 7(a) and 7(b) within the Lismore LEP 2000.
 - Agriculture is currently prohibited within environmental protection zone 7(j) within the Byron LEP 1988.
 - Extensive Agriculture is not listed in the E2 Zone Land Use table within the Tweed SILEP (and is proposed to be a prohibited use) and is not listed as a permitted use within Environmental Protection Zones 7(a) and 7(f) (and is therefore a prohibited use) within the Tweed LEP 2000.
5. Byron SC and Lismore CC should amend Part 7 of their SILEPs to include an additional local provision (i.e. clause). The additional local provision should require extensive agriculture within the E2 Zone to identify and manage the potential impacts of that land use on the environment.

Advice note: Potential impacts should include, but not be limited to:

- a) potential impacts to flora or fauna habitat
- b) disturbance of soils or increased risk of erosion
- c) discharge of waste or excess nutrients into surrounding ecosystems (for example, waterways or wetlands)
- d) changing of existing ground levels and overland flow paths
- e) clearing of vegetation
- f) introduction of pest and weed species.

6. All councils should allocate zonings to the residual lands not meeting the directions in these recommendations to a zoning that is consistent with the envisaged primary function of the area.

Advice note: The White Paper expects that future Local Plans will zone land according to the envisaged primary function of an area (for example, residential, industrial and commercial).

E3 Zone

Advice note: The NSW Government's White Paper provides a list of indicative new zones to be used in future local plans. The White Paper indicates the E3 Zone will transfer to a new rural Zone.

7. Ballina SC, Byron SC, Lismore CC and Tweed SC should include Environmentally Sensitive Areas into the E3 Zone on the basis of those areas meeting any of the following criteria stated in the table below.

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

8. Kyogle Council should transfer the areas proposed for the E3 Zone to the equivalent zoning of the superseded IDO and extend the coverage of the relevant proposed overlay and clauses to these areas within its SILEP.

9. Tweed SC should amend their respective Land Use table relating to the following agriculture land use within the E3 Zone in its SILEP in accordance with the following table:

Land use	Permissibility
E3 Zone	
Extensive Agriculture	Permitted without consent

10. Ballina SC, Byron SC and Lismore CC should review, and amend if required, the following matters in relation to drinking water:
- Existing mapping:
 - Drinking Water Catchments Map (Ballina SILEP)
 - Drinking Water Catchment Map (Byron SILEP)
 - Water Supply Protection Map (Lismore SILEP)
 - Each council should ensure land that was proposed to be zoned E3 due to it being located within a drinking water catchment, is designated as:
 - ‘Drinking Water Catchment’ on the Drinking Water Catchments Map (Ballina SILEP)
 - ‘Drinking Water Catchment’ on the Natural Resource –Drinking Water Catchment Map (Byron SILEP)
 - The relevant ‘Water Catchment’ on the Water Supply Protection Map (Lismore SILEP).
 - Existing clauses:
 - Clause 7.5 (Ballina SILEP)
 - Clause 6.11 (Byron SILEP)
 - Clause 7.6 (Lismore SILEP)
 - Each council should ensure the clause contains appropriate considerations addressing the risk of development within a drinking water catchment, before development consent is granted.
11. Ballina SC and Tweed SC should amend their SILEPs to:
- provide a Scenic Protection map
 - ensure land that was proposed to be zoned E3 for scenic protection purposes, are designated as ‘Scenic Protection’
 - provide a clause that contains appropriate considerations for assessing scenic protection matters, before development consent is granted.

Advice note: The Byron SILEP already has a clause (clause 6.10) that requires the council to consider scenic protection matters for development subject to consent.

12. All councils should allocate zonings to the residual lands not meeting the directions in these recommendations to a zoning that is consistent with the envisaged primary function of an area.

Advice note: The White Paper expects that future Local Plans will Zone land according to the envisaged primary function of an area (for example, residential, industrial and commercial).

13. The DP&I should remove aesthetic values as a relevant attribute from the E3 Zone. Therefore the following should be amended:
 - a) The E3 Zone Land Use Table within the Standard Instrument (Local Environmental Plans) Order 2006. The first objective of the Zone should state *'To protect, manage and restore areas with special ecological, scientific or cultural values.'*
 - b) Practice Note PN 09–002:
 - i) The overview of the Zone should state *'This Zone is for land where there are special ecological, scientific or cultural attributes that require careful consideration/management and for uses compatible with these values.'*
 - ii) The E3 Zone application within Attachment 1 – Additional Zone considerations. The first application of the Zone should state *'areas of special ecological, scientific or cultural attributes that require management in conjunction with other low-impact uses, e.g. areas with contiguous native vegetation or forest cover.'*

E4 Zone

Advice note: The NSW Government's White Paper provides a list of indicative new zones to be used in future local plans. The White Paper indicates the E4 Zone will transfer to a new Residential Zone.

14. Byron SC should remove the proposed E4 Zone within its SILEP and replace it with a suitable residential Zone.

Overlays and associated clauses (non EZone specific)

Advice note: Overlays and associated clauses are triggered only when development requiring consent is proposed. In circumstances where development is proposed that does not require consent, or if no development is proposed, overlays and associated clauses are of no effect.

15. All councils should give consideration to applying a relevant rural Zone to land if it is used for agricultural production (as confirmed via on-site investigation) and it is shown as containing 'State Significant Farmland' or 'Regionally Significant Farmland' on the Northern Rivers Farmland Protection Project – Final Map 2005.
16. Ballina SC and Byron SC should amend their SILEPs to address the following matters in relation to coastal risk planning:
 - a) Provide a Coastal Risk map and relevant clause.
 - b) Ensure land that was proposed to be zoned for coastal risk purposes, are designated as 'Coastal Risk'.
 - c) Ensure the clause contains appropriate considerations for assessing the risk of development on coastal protection matters, before development consent is granted.

Advice note: The DP&I have developed a model clause for coastal risk planning.

17. Byron SC and Tweed SC should review, and amend if required, the following matters in relation to terrestrial biodiversity:
 - a) Existing mapping:
 - i) Natural Resource – Terrestrial Biodiversity Map (Byron SILEP)
 - ii) Terrestrial Biodiversity Map (Tweed SILEP)
 - iii) Each council should ensure that land that was proposed to be zoned E2, E3 or E4 for terrestrial biodiversity purposes, and is proposed to be subject to a zoning other than E2, E3 or E4, is designated:

- ‘Biodiversity’ on the Natural Resource – Terrestrial Biodiversity Map (Byron SILEP)
 - ‘Biodiversity as per clause 7.8’ on the Terrestrial Biodiversity map (Tweed SILEP)
- b) Existing clauses
- i) Clause 6.14 (Byron SILEP)
 - ii) Clause 7.6 (Tweed SILEP)
 - iii) Each council should ensure the clause contains appropriate considerations for assessing terrestrial biodiversity matters, before development consent is granted.

Advice note: The terrestrial biodiversity clause should have the objective to maintain terrestrial biodiversity by protecting native fauna and flora, protecting the ecological processes necessary for their continued existence and encouraging the conservation and recovery of native fauna and flora and their habitats. The terrestrial biodiversity clause will apply to all land on the Terrestrial Biodiversity map.

18. Ballina SC and Lismore CC should amend their SILEPs to:

- a) provide a Terrestrial Biodiversity map
- b) ensure land that was proposed to be zoned E2 or E3 for terrestrial biodiversity purposes, are designated as ‘Biodiversity’
- c) provide a clause that contains appropriate considerations for assessing terrestrial biodiversity matters, before development consent is granted.

Advice note: The DP&I have developed a model clause for terrestrial biodiversity.

4. Additional considerations

The considerations listed below are outside of the scope of this review; however these considerations are salient issues that were identified during the four lines of enquiry associated with the review process. As such it is recommended that the Minister have regard to the following considerations:

1. Consideration by the DP&I of the introduction of a new category of Zone defined as a Natural Resource Management Zone specifically for land where the objective is for the continuation of sustainable agricultural activities whilst conserving environmental values.
2. Where a council has not adopted a biodiversity strategy or vegetation management strategy (or has not conducted any other investigation into environmental values of the LGA), a study to determine the environmental value of the land should be undertaken. A geographic information system (GIS) containing up to date (<5 years old) orthorectified high resolution aerial photography should be developed to facilitate the mapping project. This procedure should be supplemented with ground truthing of mapped vegetation to assess mapping accuracy and value. A minimum mapping accuracy of 80% should be achieved.
3. All councils should ensure that where aerial photography is used to prepare LEP mapping, the aerial photography is no more than 5 years in age.
4. The DP&I should consider providing assistance to Kyogle Council to undertake a comprehensive biodiversity strategy.
5. The DP&I should ensure that when a Regional Growth Plan (required under the White Paper) is prepared over the Far North Coast area, acknowledgement should be given to both regional and local government environmental attribute mapping to ensure consistency in data.
6. Councils should consider the adoption and implementation of a range of incentives available to councils for the management of biodiversity on private land. All land designated within an EZone should be a priority area for the application of such incentive based mechanisms. The list of incentives considered should include:
 - a) financial incentives:
 - i) rate rebates
 - ii) grants or payments to individuals or groups to foster effective management
 - iii) management agreements established under LEPs
 - b) non-financial motivational incentives:
 - i) local award schemes
 - ii) advice for property management planning
 - iii) provision of materials and use of machinery
7. Councils should consider adopting the following supporting mechanisms to facilitate conservation measures within the areas designated as EZones:
 - a) Development:
 - i) tradable or transferrable development rights
 - ii) developer contributions.
 - b) Agreements:
 - i) voluntary conservation agreements
 - ii) environmental covenants over land title.

- c) Environmental levies:
 - i) environmental levy to fund local incentives and land purchase.
- 8. The DP&I should consider the feasibility of removing the legislative definition of abandonment of use at 12 months as part of the development of any new planning legislation, and should produce a practice note providing guidance on when a use is abandoned for urban and non-urban scenarios.
- 9. The DP&I should consider the preparation of a guideline that assists councils to identify areas of scenic amenity.
- 10. Councils should prepare and publicly release information that documents how existing use rights are protected where an immediate community concern is that a LEP will impact land use rights.
- 11. Councils and the Northern Rivers CMA should work to streamline the assessment of permits for clearing of native vegetation development applications that involve duplicate approval processes.
- 12. The DP&I should produce of a series of plain English guidelines that illustrate the application of planning legislation for rural communities.
- 13. Consideration should be given to the creation of an environmental management group under the banner of NOROC. The group should be established to address common regional environmental issues and to foster coordination across Council boundaries.
- 14. Ballina SC, Byron SC and Tweed SC are currently preparing Koala Plans of Management for the coastal zones within their respective councils. Each council should insert a clause into the relevant SILEP that regulates development in areas of Koala habitat (identified on an accompanying Koala habitat overlay) upon completion of the relevant Koala Plans of Management.
- 15. When making significant changes to planning legislation or policy, prior to making these changes the DP&I must commit to open consultation with councils through entities such as peak local government bodies, or regional entities such as NOROC, and honour the agreed communications and consultation protocol (dated 26 October 2009).
- 16. The DP&I should commit to facilitating the provision of timely, relevant and consistent legal advice where councils require such advice to support the preparation of a LEP.
- 17. The DP&I's White Paper: A New Planning System for NSW, Chapter 4 Community Participation, is focussed on making planning a more engaging, transparent and planned process for communities. Key aspects of the proposed planning changes can be directly applied to the LEP process and will ensure communities have more opportunity to actually participate in planning from the very early stages. Key elements of the White Paper that can align with and in most cases lead the LEP process include:
 - a) use visioning and articulate key challenges early in the participation process
 - b) use and adhere to a Community Participation Charter that will be provided by the Department. This Charter will focus on partnerships, accessibility, early involvement, the right to be informed, ensuring community involvement is proportionate to the level of impact, inclusiveness and transparency
 - c) prepare and implement Community Participation Plans to engage more community members in the plan-making process. The plan should include processes for participation, how and when the community can participate and how information can be accessed
 - d) clearly define the community of interest and what their expectations for involvement are
 - e) identify and use good examples of information and participation processes
 - f) use social media and eplanning and where these tools are not accessible, clear and accessible information and feedback mechanisms
 - g) focus on resourcing and funding participation processes to help reduce time and cost at the back end of the planning process.

18. In this case it is also recommended the DP&I assist councils in facilitating participatory engagement. This assistance would include developing issues and risk assessments, plan templates and plain English materials and evaluation techniques.
19. DP&I should also work with councils to address budget and time constraints and generate management strategies that can assist councils and their communities' in moving to a more participatory approach in planning.
20. The DP&I should encourage and support councils to engage and communicate with their community, through the establishment of a specific fund for consultation activities associated with a draft LEP.

5. Applicability of findings

The review follows four lines of enquiry (feedback from councils/local members, review of background information, community drop in sessions, field inspections) and recommendations have been developed to address findings relating to the review's scope of works.

The results of the review indicated four main areas of concern in relation to the EZones within the study area:

- the mapping of EZones within LEPs
- the extent of land use restrictions
- the consistency of the application of EZones and overlays
- the consultation processes throughout the LEP preparation phase

In response to the findings covering the four areas of concern, recommendations have been established that seek to address the issues identified throughout the review process. The recommendations are designed to be:

- clear
- concise
- timely, by having a reasonable timeframe for implementation
- seeking a balance between agricultural production and environmental protection.

Table 5.1 identifies the respective findings of the review and correlates them with the relevant recommendations outlined in the following section.

Table 5.1 Referencing findings and recommendations

Finding	Relevant recommendation number
Section 2.1 Mapping Accuracy and precision	
Lack of valid evidence base for application of EZones	Recommendations 1, 6, 7, 12 and 18 Additional considerations 3, 4, 14
Section 2.2 Land use restrictions	
Changes to permissible land uses	Recommendations 4 and 9
Disregard of statutory instruments	Recommendation 5
Balancing agricultural production and environmental protection	Recommendations 5, 10, 11, 13, 16, 17 and 18 Additional consideration 1
Impact on existing land use, and land use rights	Additional considerations 9 and 11
Land valuations and compensation matters	None
Replication of protection with other legislation	Additional consideration 12
Section 2.3: Consistency of application of EZones	
Consistency of application with DP&I (SILEP) guidelines	Recommendations 2, 6 and 11
Consistency of application of EZones across councils	Recommendations 1, 2, 7, 9 and 14
Section 2.4: Consultation processes	
Consultation between councils and DP&I	Additional considerations 15, 16, 19 and 20
Consultation between councils and the community	Additional considerations 12, 17, 18 and 20
Community perceptions generally	Additional consideration 20

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