Appendix A

Review methodology

PARSONS BRINCKERHOFF

A1. Background to the Review

A1.1 Overview

Figure A.1 summarises the project program.

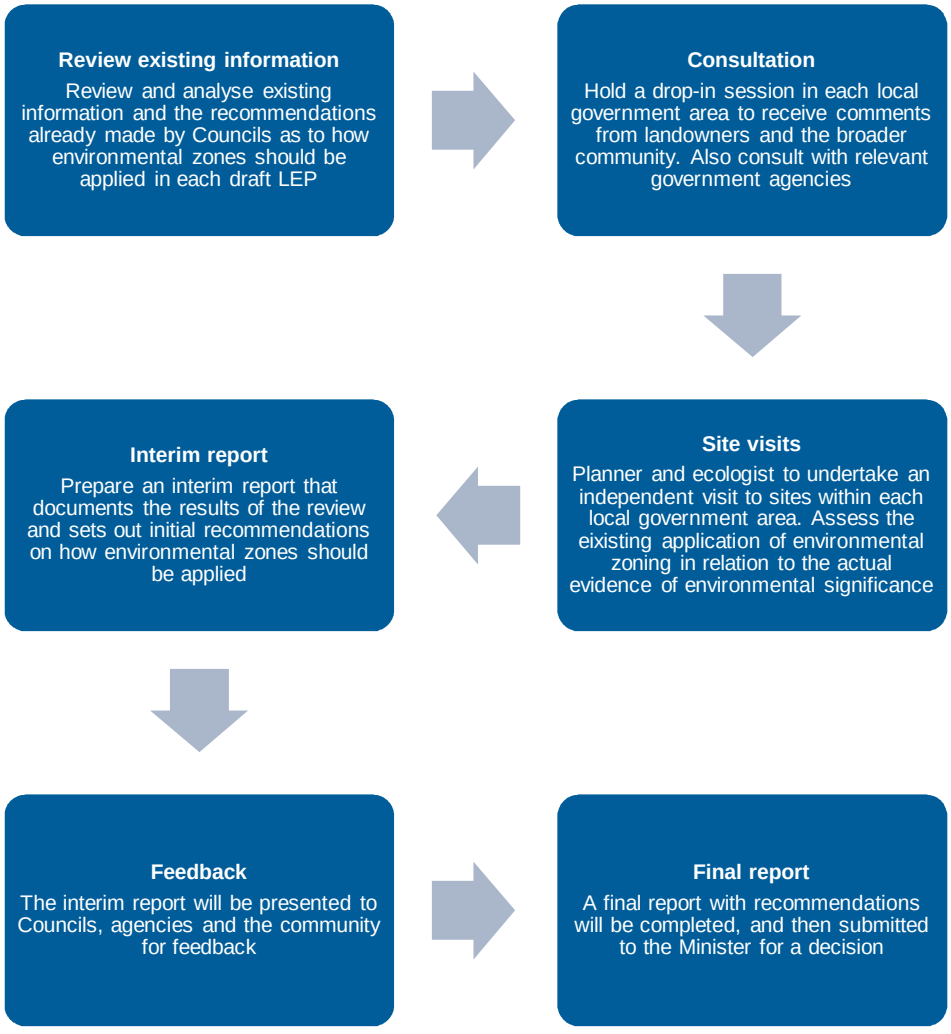


Figure A.1 Project program

To establish a set of key issues relevant to this review, four lines of enquiry were established. These are depicted in Figure A.2.

Figure A.2 Overview of study methodology and procedure

A1.2 Council feedback

The Department of Planning and Infrastructure (DP&I) convened an inception workshop involving representatives from each council, the DP&I, and Parsons Brinckerhoff.

Following the workshop, a meeting with conducted on a one-on-one basis with each council.

Key observations of the meetings are summarised in Community and Stakeholder Engagement Report located in Appendix B.

A1.3 Review of background information

This section of the review is intended to set the background of the study. Sections of this Appendix are intended to:

- document the planning system in NSW, both historically and currently
- document the intended purpose and application of EZones within the Standard Instrument, as articulated by the State
- document the evolution of how and when LEPs were made by each council
- document the broad policy drivers at a State and Commonwealth level that could influence the implementation of EZones.

A1.4 Prior to the Standard Instrument

Legislative background – environmental planning instruments

Planning and development in NSW is carried out under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).

The EP&A Act provides for a number of environmental planning instruments (EPIs) such as State environmental planning policies (SEPPs), regional environmental plans (REPs), section 117 Directions, and local environmental plans (LEPs). LEPs are prepared by councils, guide planning decisions for local government areas, and supervise ways in which land is used through zoning and development controls.

LEPs made prior to the SILEP process are in effect within each council within the study area.

It is worth noting that under the EP&A Act, Kyogle Council's EPIs are 'deemed EPIs', and are the Shire of Kyogle Interim Development Order No 1 1976, and Shire of Terania Interim Development Order No 1 1967. The deemed EPIs apply to those areas identified as deferred matters in the Kyogle Local Environmental Plan 2012.

Although the Interim Development Orders (IDOs) have been the subject of consequential updates over time, Kyogle's deemed EPIs have, in title, been in effect for at least 37 years and reflected the development priorities of the Kyogle Council area at that time.

Designating land – zones

Each LEP or IDO consists of a number of zones. With the exception of Kyogle Council, environmental zones exist within each council EPI. The environmental zones are termed 'environmental protection' or 'environment protection' and protect areas of value. Values currently protected through zonings within a LEP or IDO are summarised in Table A.1.

Table A.1 Values identified in pre-standard instrument LEPs or IDOs

Council	Value identified
Ballina Shire Council (Ballina SC)	Coastal land Habitat Scenic areas and escarpment areas Urban buffers Water catchments Wetlands
Byron Shire Council (Byron SC)	Coastal habitat Coastal land and urban coastal land Habitat Scientific areas of interest Scenic areas and escarpment areas Water catchments Wetlands
Kyogle Council	No specific values identified in IDOs. Non-urban Zone requires consideration of aesthetic appearance
Lismore City Council (Lismore CC)	Habitat Natural vegetation Wetlands
Tweed Shire Council (Tweed SC)	Coastal land Habitat Littoral rainforests Scenic areas and escarpment areas Wetlands

Source: Ballina LEP 1987, Byron LEP 1988, IDO Shire of Kyogle 1976, IDO Shire of Terania 1967, Lismore LEP 2000, Tweed LEP 2000

Agricultural land use permissibility

Agriculture as a land use is currently subject to varying levels of permissibility within environmental zones. Refer to Table 2.1 of the report 'Northern Councils EZone Review' for a detailed breakdown. This table indicates the following broad trends:

- Agriculture is permitted without consent in Kyogle Council's Non-Urban Zone.
- Environmental zones in Ballina SC, Byron SC and Lismore SC permit agriculture (both with and without consent depending on the value being protected).
- Environmental zones in Tweed SC prohibit agriculture.

Where agriculture is permitted with consent, development applications for agriculture must be consistent with the Zone objectives.

A1.5 The Standard Instrument

A1.5.1 LEPs

LEPs guide planning decisions for local government areas. Through zoning and development controls, LEPs allow councils and other consent authorities to manage the ways in which land is used. LEPs are the primary planning tool to shape the future of communities (DP&I, 2013).

On 31 March 2006 the Standard Instrument and Local Environmental Plan program was initiated by the NSW Government, through the Standard Instrument (Local Environmental Plans) Order 2006.

The purpose of the program was to create a common format and content for LEPs, and simplify the plan making system.

The Standard Instrument (Local Environmental Plans) Order 2006 required all councils to prepare a LEP. The Standard Instrument – Principal Local Environmental Plan, Practice Notes and Planning Circulars were released (and in some cases, updated) by the NSW Government between 2006 and 2011, with the intention those notes would guide, or direct councils on the content and structure of a LEP.

A SILEP must comply with the template issued by the DP&I. Mandatory provisions, shown in black, must be provided. Additional local provisions may also be listed by councils and are to be shown in red text.

A1.5.2 Environmental zones

Zones form a fundamental component of a SILEP. A Zone is not defined by the DP&I under any LEP Practice Note, but according to the Macquarie Dictionary, a Zone is 'any continuous tract or area, which differs in some respect, or is distinguished for some purpose, from adjoining tracts or areas, or within which certain distinguishing circumstances exist or are established' (Macmillan Publishers Australia 2013).

Currently the SILEP template provides for 35 zones including four environmental zones that councils can choose from to tailor development to suit local conditions. Environmental Zones are 'specifically for land where the primary focus is the conservation and/or management of environmental values' (NSW Government Department of Planning, 2009).

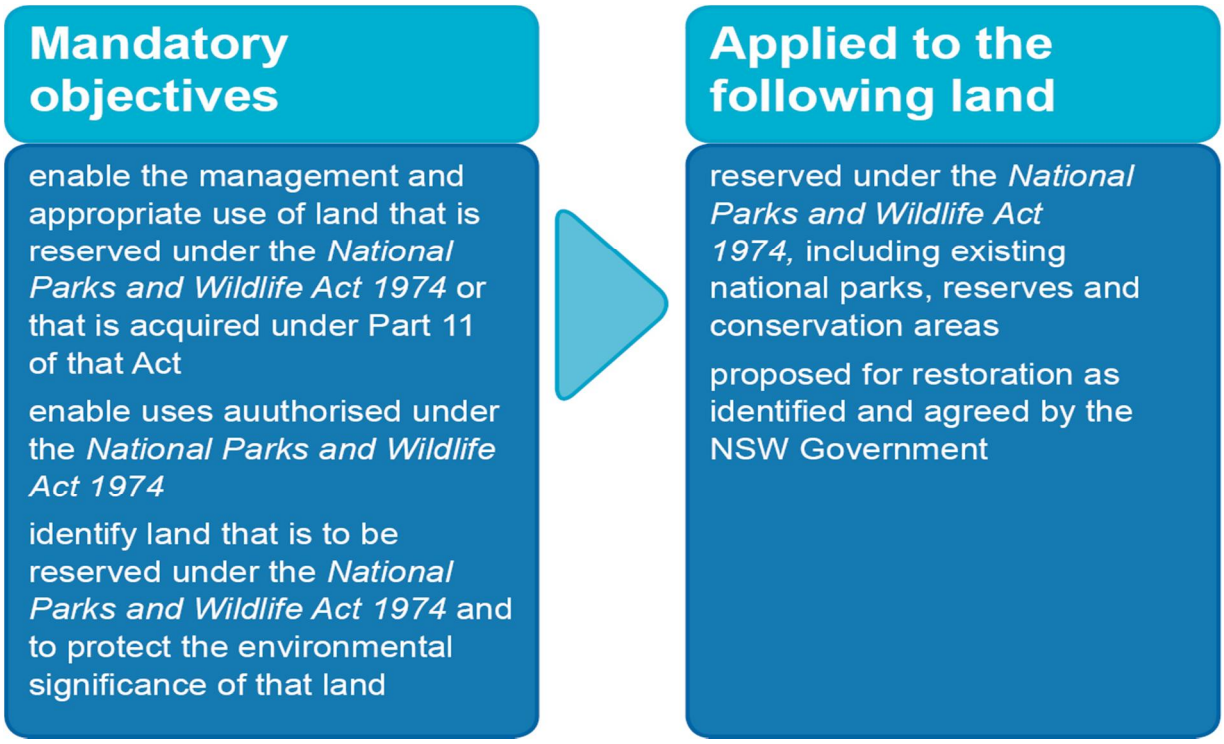
The Department of Planning Practice Note PN 09-002, dated 30 April 2009, provides advice to councils on how environmental zones should be applied.

For the purpose of this study, the E2 Environmental Conservation Zone, E3 Environmental Management Zone, and E4 Environmental Living Zone are collectively referred to as EZones.

The objectives and application of each EZone, and the E1 National Parks and Nature Reserves Zone, as described in the Standard Instrument – Principal LEP, and Practice Note, is described below.

A1.5.2.1 E1 National Parks and Nature Reserves

The mandatory objectives of the E1 National Parks and Nature Reserves Zone, and the Zone's application under Practice Note PN 09-002, are shown in Figure A.3.



Source:NSW Government Department of Planning, 2009

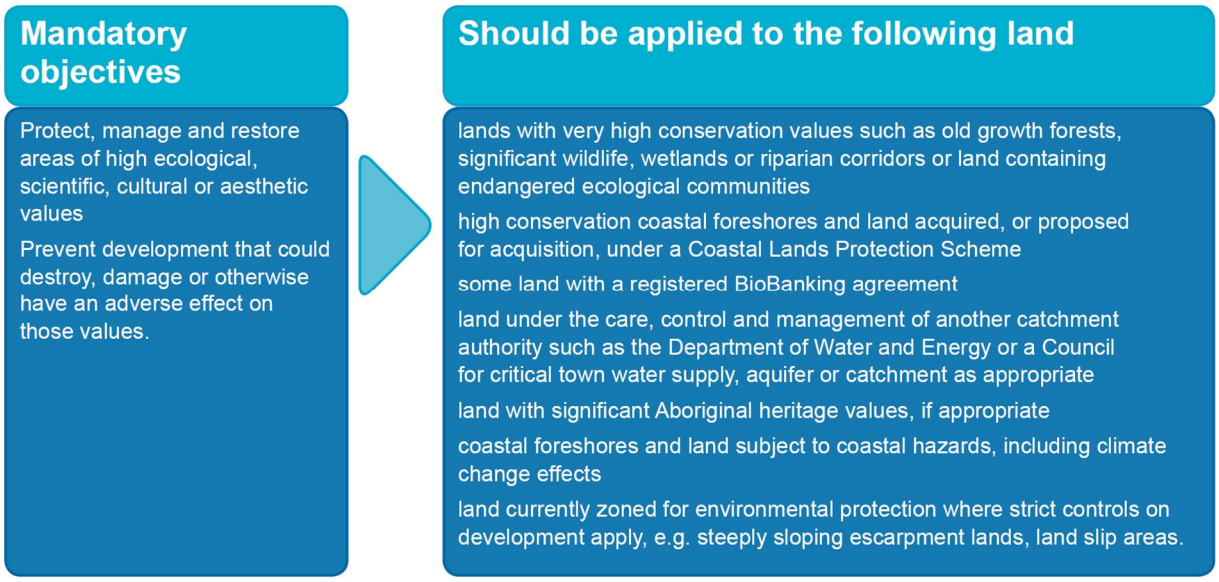
Figure A.3 E1 National Parks and Nature Reserves Zone – mandatory objectives and application

This review does not extend to the review of land within the E1 National Parks and Nature Reserves Zone.

A1.5.2.2 E2 Environmental Conservation

Objectives and application

The mandatory objectives of the E2 Zone, and the Zone's application under Practice Note PN 09-002, are shown in Figure A.4.



Source: NSW Government Department of Planning, 2009

Figure A.4 E2 Environmental Conservation Zone – mandatory objectives and application

Practice Note PN 09-002 states that councils may provide additional objectives that reflect particular local values (for example, the protection of a drinking water catchment).

Practice Note PN 09-002 lists the DP&I expectations on councils' implementation of this Zone, which include:

- the environmental significance of the land is the primary consideration of land within the Zone
- where objectives refer to land use, the wording of the objective should avoid reducing the conservation focus of the Zone
- land uses should not be drawn too restrictively. Depending on the circumstances it may invoke the *Land Acquisition (Just Terms Compensation) Act 1991* and trigger the need for the Minister to designate a relevant acquiring authority.

Key attributes

Figure A.5 illustrates the key attributes expected for land uses within the E2 Zone. It has a clear conservation focus.

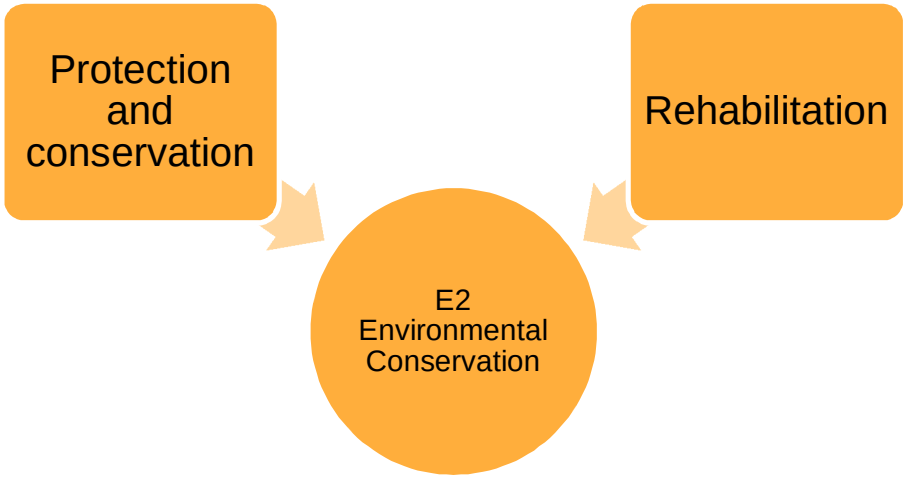


Figure A.5 E2 Zone – key attributes

A1.5.2.3 E3 Environmental Management

Objectives

The mandatory objectives of the E3 Zone, and the Zone's application under Practice Note PN 09-002, are shown in Figure A.6.

Source: NSW Government Department of Planning, 2009

Figure A.6 E3 Zone – mandatory objectives and application

Practice Note PN 09-002 states that councils may provide additional local objectives to suit local conditions where consistent with the mandatory objectives and uses.

Practice Note PN 09-002 lists the DP&I expectations on councils' implementation of this Zone, which:

- the environmental significance of the land is the primary consideration of land within the Zone
- land uses should not be drawn too restrictively. Depending on the circumstances it may invoke the *Land Acquisition (Just Terms Compensation) Act 1991* and trigger the need for the Minister to designate a relevant acquiring authority.

Key attributes

Figure A.7 illustrates the key attributes expected for development within the E3 Zone.

By contrast with the key attributes of the E2 Zone as shown in Figure A.5, the E3 Zone is structured in a more 'open' manner as it is clearly stated that a limited range of development is to be provided for within the Zone.

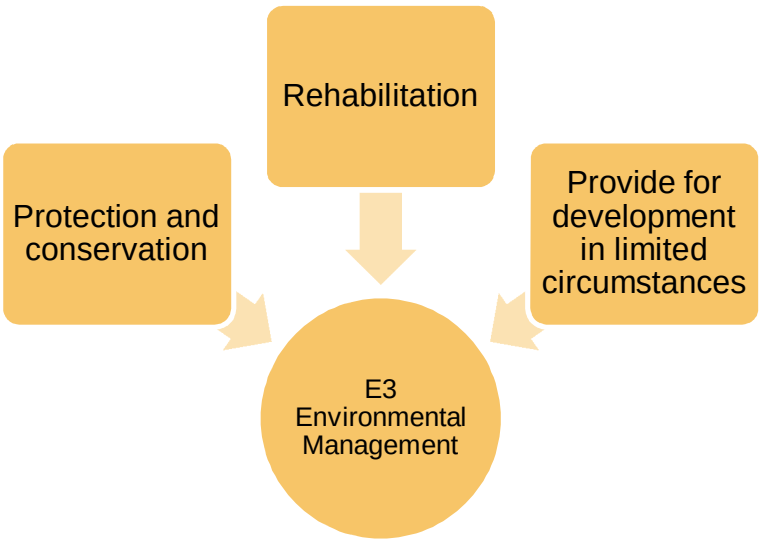
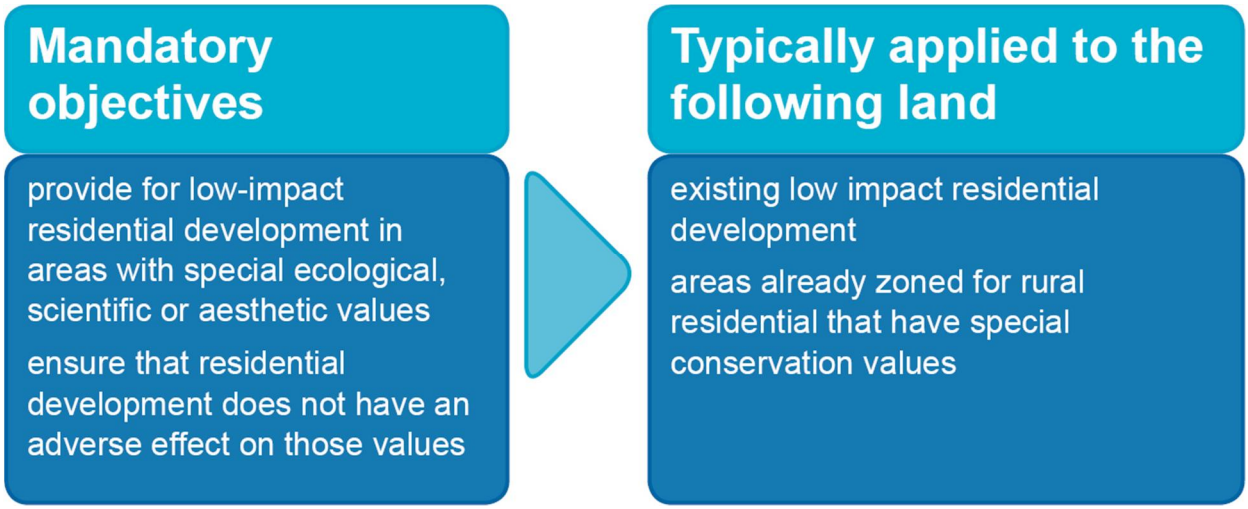


Figure A.7 E3 Zone – key attributes

A1.5.2.4 E4 Environmental Living

Objectives

The mandatory objectives of the E4 Zone, and the Zone's application under Practice Note PN 09-002, are shown in Figure A.8.



Source: NSW Government Department of Planning, 2009

Figure A.8 E4 Zone – mandatory objectives and application

Practice Note PN 09-002 states that councils may provide additional objectives, however those objectives should reflect local characteristics and not duplicate matters within the core objectives.

Practice Note PN 09-002 states where environmental capabilities are the primary concern on land that may be zoned R5 Large Lot Residential, RU4 Rural Small Holdings or E4 Environmental Living, preference should be given to the E4 Environmental Living Zone.

Key attributes

Figure A.9 illustrates the key attributes expected for development within the E4 Environmental Living Zone.

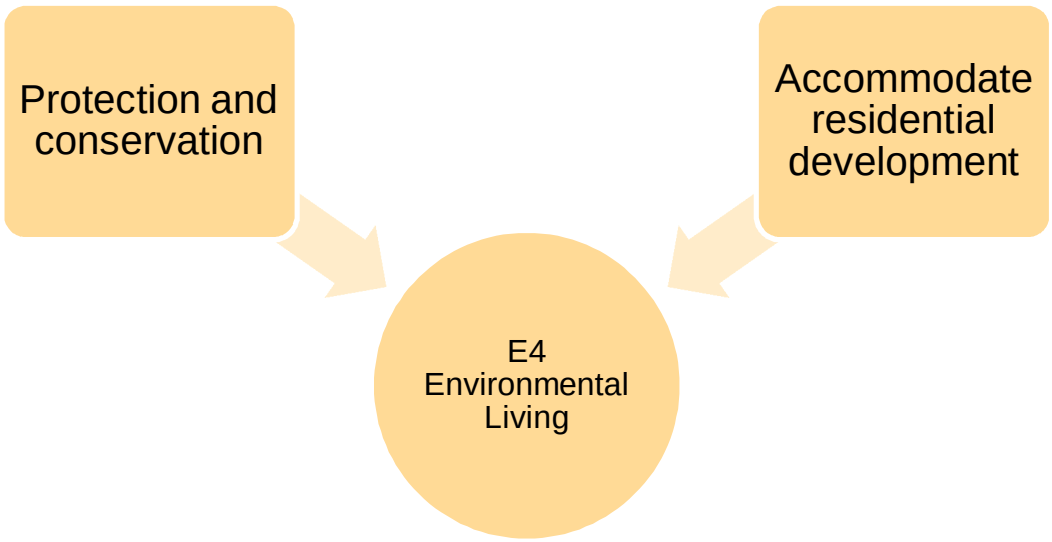


Figure A.9 E4 Environmental Living Zone – key attributes

A1.5.2.5 Potential environmental zones

Between 15 May 2012 and 29 May 2012, the DP&I invited public comment on a draft amendment to the Standard Instrument (Local Environmental Plans) Order 2006. The draft amendment proposed E5 Environmental Protection as a new Zone.

Following exhibition of the draft amendment, the DP&I amended the Zone prefix to E2A (the name remained unchanged), essentially to better reflect the intentions of the proposed Zone.

The proposed objectives of the E2A Environmental Protection Zone are to:

- protect areas of high ecological, scientific, cultural and aesthetic values and
- prevent development that could destroy, damage or otherwise have an adverse effect on those values.

The proposed objectives of the E2A Environmental Protection Zone are almost identical to the mandatory objectives of the E2 Environmental Conservation Zone. The Zone was mostly intended to apply to public or private land that has high ecological value and would normally be protected as public conservation land (such as national parks or nature reserves). The application of this Zone to land in private ownership may, depending on the circumstance, trigger the *Land Acquisition (Just Term Compensation) Act 1991* and the need for the Minister to designate a relevant acquiring authority.

At the time of preparing this review, the E2A Environmental Protection Zone was not in effect.

A1.5.3 Additional local provisions – clauses and maps

A1.5.3.1 About local provisions

The SILEP template enables councils to incorporate local provisions into a SILEP. At a minimum, a local provision consists of a clause within the SILEP, while a local provision may also comprise of a map (generally considered an ‘overlay map’), that enables the clause to be applied to a particular area.

Planning Circular PS 06-008 produced by the-then Department of Planning provides initial direction on how additional local provisions should be applied and are summarised below.

- **Local provisions are a heads of consideration for development, that apply to the zoning of the land.**
- **Local provisions may apply to land that has a particular environmental, hazard or design constraint (flood prone land, wildlife corridor, catchments) which may be in different zones.**
- **Local provisions apply in addition to zoning objectives and land use table.**
- **Local provisions may not alter the mandated permissible or prohibited uses.**
- **Local provisions must be consistent with any relevant State or regional policy guidance.**

It is important to note that local provisions (and maps, if they form part of the local provisions) only apply when development requires consent under the land use table (this is enabled by using the term 'heads of consideration for development'). However, it should be noted that Planning Circular PS 06-008 does not state this.

A1.5.3.2 Benefits of overlays

Sheehan and Boak (2008) reviewed how natural resource management can be incorporated into rural planning instruments in the southern part of NSW. This review discusses the application of 'overlays' in some detail, and lists a number of advantages that an overlay map can provide in respect of balancing environment and development goals, with community expectations. The benefits of overlays include:

The ability to achieve no 'prohibitions'

Applying overlays in a SILEP does not introduce absolute prohibition on land use. Councils can ensure clauses within a SILEP list matters that are to be considered by an applicant in developing a proposal, and by a council in assessing it. In turn, those matters can contribute to a case for councils to refuse a development application where it is appropriate.

The ability to create a common language

Sheehan and Boak note that some current LEPs identify environmentally sensitive areas, but generally the mapping may be based on limited information, without clear criteria, and could simply be a basic topographic map interpretation. They note that where overlays are prepared with clear criteria in mind, on a regional basis, this will be consistent with an overall goal of the NSW Planning Reforms to create a common planning language.

Applying overlay mapping on a regional basis using clear, consistent criteria, also enhances the ability for planning at a regional level to be coordinated, which should aid the delivery of Regional Growth Plans (envisaged as part of the White Paper).

A1.5.3.3 Application to this review – deferral of local provisions

As part of the Ministerial direction and pending the outcome of this review, certain local provisions within each SILEP have been deferred, and these local provisions are summarised in Table A.2.

Table A.2 Deferred local provisions (including maps)

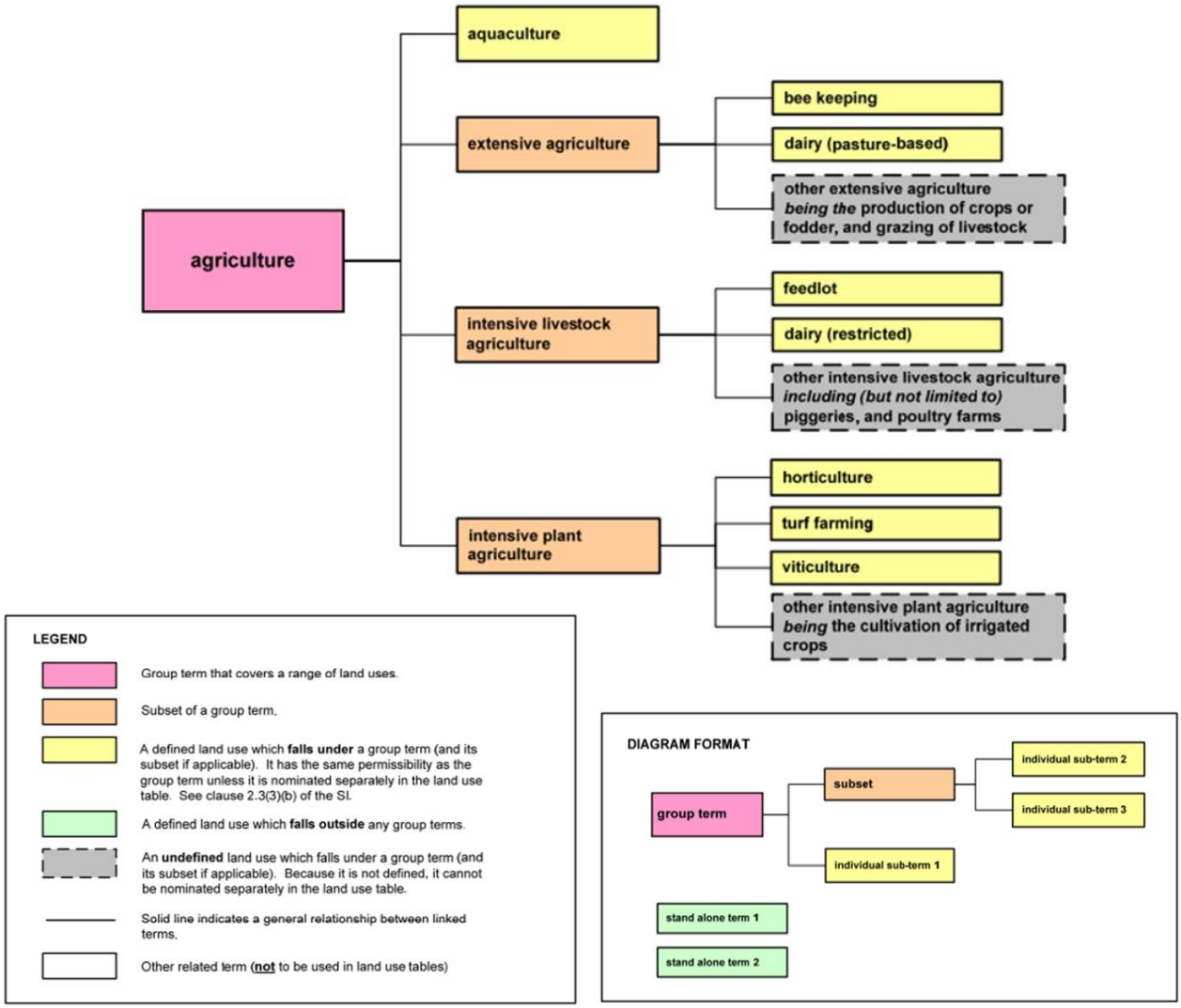
Council	Clause	Title	Does the clause require the use of an additional map?
Ballina SC	7.8	Natural areas and habitat	No
Byron SC	6.14	Biodiversity (terrestrial)	Yes
Kyogle Council	7.2	Natural resources sensitivity – biodiversity (terrestrial)	Yes
	7.3	Natural resources sensitivity – riparian land and waterways	Yes
Tweed SC	7.8	Terrestrial biodiversity	Yes
	7.9	Steep land	Yes

A1.5.4 Definitions

The SILEP template includes a dictionary of standard definitions that define land uses and therefore all SILEPs will therefore use the same definitions. The Department of Planning Practice Note PN 11-003 provides an overview of the definitions used.

Of particular note within the Practice Note is the application of 'group terms'. The Practice Note states the intent of group terms '…*is to minimise the length of Land Use Tables by enabling LEP Land Use Tables or other provisions to easily refer to a number of land uses without needing to list them individually*'.

Figure A.10 demonstrates the agriculture group term in practice.



Source: NSW Government Department of Planning, 2009

Figure A.10 Agriculture group term

In practice, the listing of a group term within a Land Use Table also refers to the subordinates underneath it.

Example: In the draft Ballina LEP 2011, 'extensive agriculture' and 'intensive plant agriculture' are designated as land uses permitted without consent in the E3 Environmental Management Zone Land Use Table. 'Agriculture' is also designated as a land use permitted with consent.

The effect of these designations is:

- **Extensive agriculture and all defined land uses underneath it (bee keeping and dairy (pasture-based)) are permitted without consent.**
- **Intensive plant agriculture and all defined land uses underneath it (horticulture, turf farming and viticulture) are permitted without consent.**
- **Agriculture is permitted with consent, other than subset land uses (extensive agriculture, and intensive plant agriculture) specifically identified in the Land Use Table.**

A1.6 Councils' implementation of the Standard Instrument

A1.6.1 SILEP status

At the time of writing this review the following SILEPs, as principal EPIs, are currently in effect and have been made under the EP&A Act:

- Ballina SC:
  - Ballina Local Environmental Plan 2012 (except for areas identified as deferred matters, such as areas subject to environmental zonings or overlays)
  - Ballina Local Environmental Plan 1987 (for those areas identified as deferred matters in the Ballina Local Environmental Plan 2012).
- Byron SC – Byron Local Environmental Plan 1988.
- Kyogle Council – Kyogle Local Environmental Plan 2012 (except for areas identified as deferred matters, such as areas subject to environmental zonings or overlays).
- Lismore CC:
  - Lismore Local Environmental Plan 2012 (except for areas identified as deferred matters, such as areas subject to environmental zonings or overlays)
  - Lismore Local Environmental Plan 2000 (for those areas identified as deferred matters in the Lismore Local Environmental Plan 2012).
- Tweed SC – Tweed Local Environmental Plan 2000.

In addition, within Kyogle Council, the Interim Development Orders, for Kyogle, and Terania, currently apply to the areas identified as deferred matters.

A1.6.2 Legislated requirements

The making of a SILEP is measured through achieving certain milestones which are legislated under the EP&A Act. Both the relevant council, and DP&I, are responsible for ensuring various milestones are achieved. These milestones and the responsibilities of each entity are listed in Figure A.11.

Figure A.11 SILEP milestones

Public exhibition has been conducted on a second occasion ('re-exhibition') in all councils with the exception of Byron SC.

As at 25 June 2013, 112 SILEPs had been completed across NSW, equating to approximately 74% of all SILEPs.

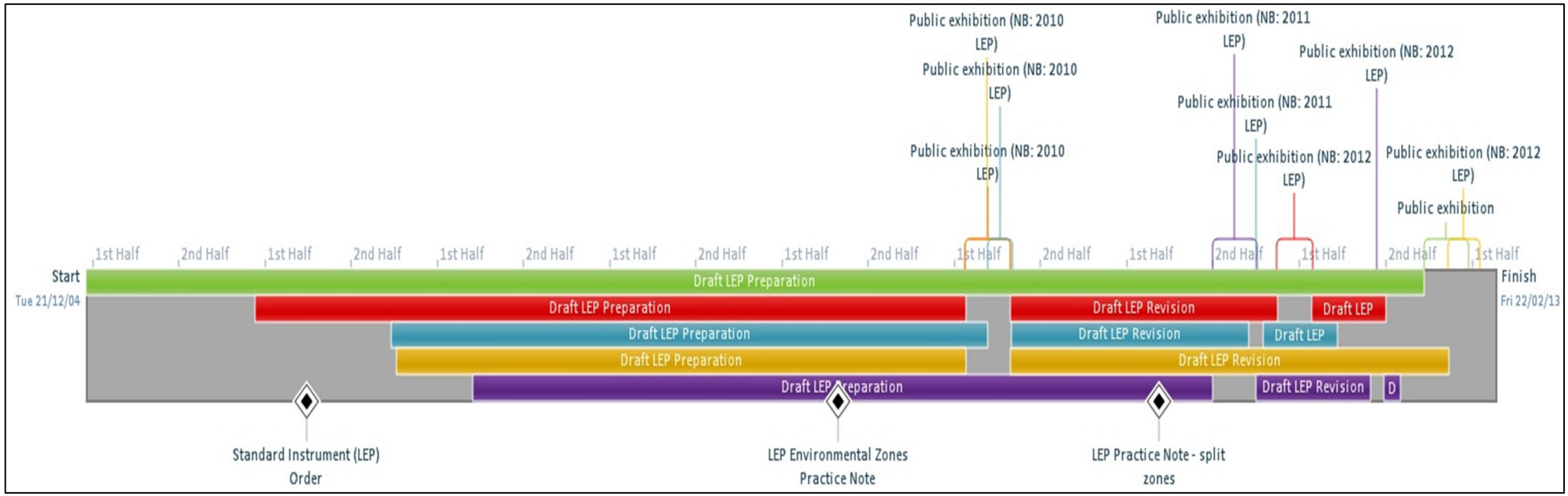
In respect of the required duration for public exhibition, the now-repealed Clause 66 of the EP&A Act required public exhibition of a draft LEP (including a SILEP) for at least a period prescribed under a regulation. That minimum period was 28 days.

The DP&I advised by email on 27 February 2013 that the repealed provisions of the EP&A Act (regarding, for example section 65 certificates) continued to apply for those SILEPs that had been commenced prior to June 2009, that is, where council had made a positive resolution to prepare a SILEP. Therefore, for most SILEPs there is still a section 65 certificates, and the minimum period of 28 days exhibition from the former provisions of the EP&A Act apply.

All councils had made a positive resolution to prepare a SILEP prior to June 2009 and therefore the repealed provisions apply.

A1.6.3 Plan-making process

The actual plan-making process has been ongoing for quite some years, and in two cases, prior to the SILEP Program being implemented. Figure A.12 provides an overview of the program.



Ballina SC

Byron SC

Kyogle Council

Lismore CC

Tweed SC

Figure A.12 Overview of SILEP making program

DP&I guidance on EZones implementation was issued on 30 April 2009 through Practice Note PN 09-002. Figure A.13 demonstrates that all councils were well-into the plan-making process by the time Practice Note PN 09-002 was released, and therefore it is reasonable to observe that all councils may not have had primary regard to how EZones should be applied in their SILEP as directed through the Practice Note.

A1.7 State-wide implementation of environmental zones

In November 2012, DP&I undertook an analysis of E2 and E3-zoned land in 62 gazetted LEPs across NSW, to assess the quantity and range of land uses permitted by councils in those particular EZones.

DP&I identified a wide variation of permissible land uses throughout the different local government areas. A total of 45 different land uses were permissible in E2 zoned land, while a total of 90 different land uses were permissible in E3 zoned land.

The number of land uses being permitted in the E3 Zone, compared to the E2 Zone, has the potential to undermine the objectives and key attributes of the E3 Zone (as discussed in section A1.5.2.3).

DP&I also identified that there was no consistent approach to development permissibility. For example, Narromine Shire Council (Western Region) have a total of 26 different land uses permissible in its E2 Zone and 37 different land uses permissible in its E3 Zone. In contrast, The Hills Shire Council (Sydney Region West) only had a total of four (4) different land uses permissible in its E2 Zone and 4 different land uses in its E3 Zone.

The variation in the number of permissible land uses in EZones is due to:

- facilitating LEPs that match the individual needs of a council
- allowing councils flexibility in regulating land use to achieve consistency with the Zone's intent.

A1.8 Environmental Zone profile

A1.8.1 Ballina SC

A1.8.1.1 Zoning inputs

Appendix Q: LEP Zone Application Criteria – RU, E, W and RE Zones' of the Draft Ballina Local Environmental Plan 2011 – Section 68 Report, documents how EZones were implemented in the draft LEP 2011.

Three environmental protection zonings from the Ballina LEP 1987 were generally transferred into the E2 Zone as shown in Figure A.13.

Figure A.13 Ballina LEP 1987 zoning transfer to draft Ballina LEP 2011 E2 Zone

In addition, other values were incorporated into the E2 Zone as shown in Figure A.14. The values listed represent the ecological profile of the E2 Zone.

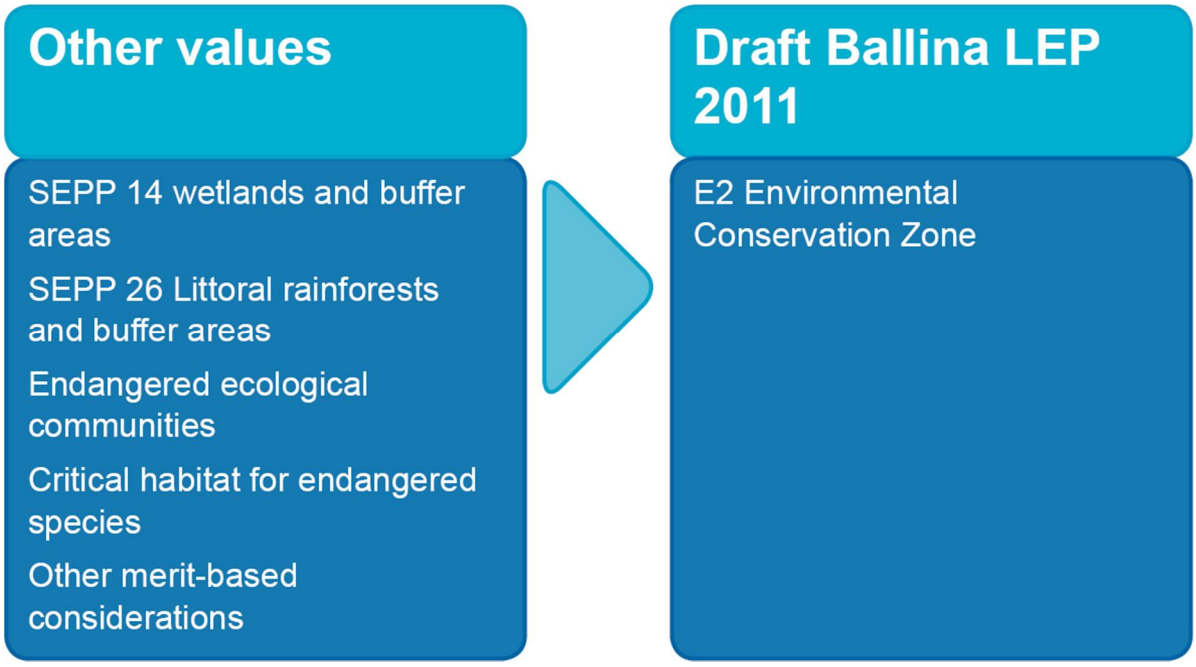


Figure A.14 Transfer of other values to draft Ballina LEP 2011 E2 Zone

The boundaries of SEPP 14 and SEPP 26 mapping were checked for accuracy before translation into the E2 Zone. Other merit-based considerations 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 Ballina SC, field notes from council staff, site specific ecological consultant's reports, and regional survey and mapping projects conducted by the OEH. The Ballina SC 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.

Four environmental protection zonings from the Ballina LEP 1987 were generally transferred into the E3 Environmental Management Zone as shown in Figure A.15. These environmental protection zonings served the purpose of identifying drinking water catchments, scenic/escarpment zones, and urban buffer zones.

Figure A.15 Ballina LEP 1987 zoning transfer to draft Ballina LEP 2011 E3 Zone

Other merit based considerations included land with environmental values greater than 5 ha in rural areas or 2 ha in urban areas, the value of the area as an urban break or buffer area, the value of the land in contributing to settlement policy, scenic value from population centres, transport corridors and coastline, and the location of the land within a drinking water catchment.

The ecological profile of the E3 Zone in the Ballina SILEP is largely unknown. The E3 Zone is based on scenic and water quality attributes 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)
- previous Urban Buffer Zone in the Ballina LEP 1987.

Biodiversity or environmental values do not appear to be the key criteria for the application of the E3 Zone, 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.

A1.8.1.2 Proposed zoning objectives and attributes

Additional local objectives of the E2 Zone are:

- to protect and conserve areas of wetland, rainforest, key habitat, coastline and wildlife corridors
- to enable development activities that support, manage, enhance and/or protect the ecological, scientific, cultural and aesthetic values of the land
- to promote the restoration and enhancement of the natural environment.

The key attributes of the E2 Zone within the Ballina SILEP are represented in Figure A.16 (local attributes that are in addition to the statewide attributes are represented in black).

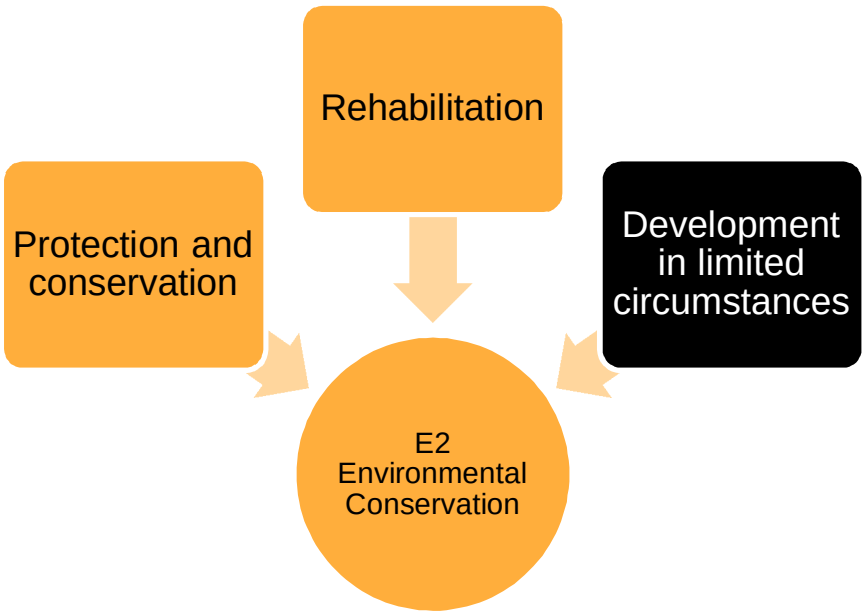


Figure A.16 Ballina E2 Zone – key attributes

Additional objectives of the E3 Zone are:

- to protect and manage areas of scenic and landscape value
- to protect and manage catchment areas that support the supply of drinking water
- to prevent development which would adversely affect the quantity or quality of the urban water supply
- to promote the restoration and enhancement of the natural environment
- to encourage the productive use of land for agricultural purposes and to permit development that is ancillary to agricultural land uses.

The key attributes of the E3 Zone within the Ballina SILEP are represented in Figure A.17 (local attributes that are in addition to the statewide attributes are represented in black).

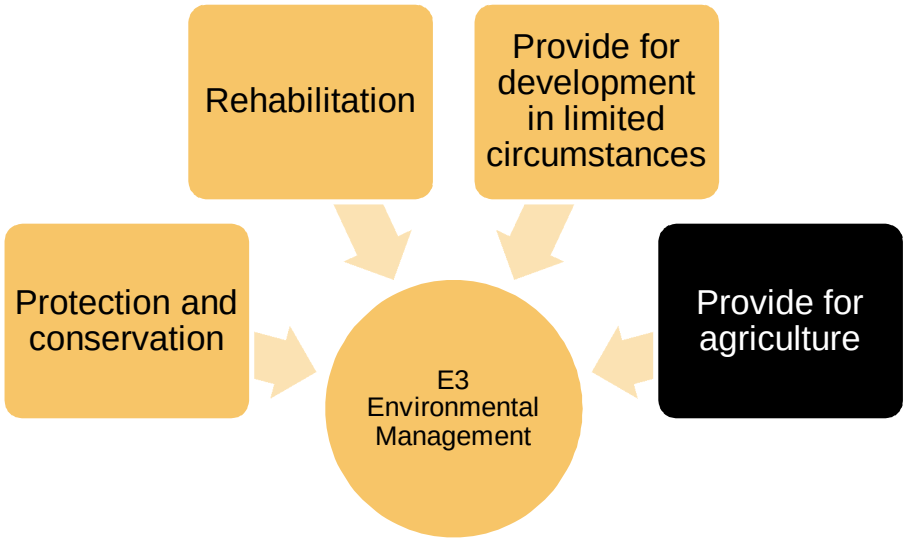


Figure A.17 Ballina E3 Zone – key attributes

A1.8.2 Byron SC

A1.8.2.1 Zoning inputs

The methodology taken by Byron SC to compile environmental zones, but in particular the E2 Zone, relied on the Byron Biodiversity Conservation Strategy 2004. The Byron Biodiversity Conservation Strategy 2004 identifies high conservation value (HCV) vegetation, wildlife corridors and areas to be targeted for environmental repair and enhancement.

The council document 'Methodology for 2012 LEP draft mapping' documents how EZones were implemented in the draft LEP 2012.

One rural Zone and five environmental protection zones from the Byron LEP 1988 were generally transferred into the E2 Zone as shown in Figure A.18.

Figure A.18 Byron LEP 1988 zoning transfer to draft Byron LEP 2012 E2 Zone

In addition to direct transfer of previous environmental protection zones, the E2 Zone was developed through transfer of portions of council's HCV vegetation mapping. The HCV vegetation mapping was developed as part of a biodiversity assessment of the council – the Byron Biodiversity Conservation Strategy 2004, which was updated in 2007.

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 Byron SC 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.

The ecological profile of the E2 Zone is as follows:

- SEPP14 wetlands and buffers
- SEPP26 Littoral Rainforests and buffers
- endangered ecological communities (EECs)
- endangered populations, and threatened species habitats
- areas nominated on the national estate
- lands subject to recovery actions
- riparian lands and buffers
- local, regional and state significant habitats and vegetation
- vegetation important for ecosystem functioning
- wildlife corridors.

Two environmental protection zonings from the Byron LEP 1988 were generally transferred into the E3 Zone as shown in Figure A.19.

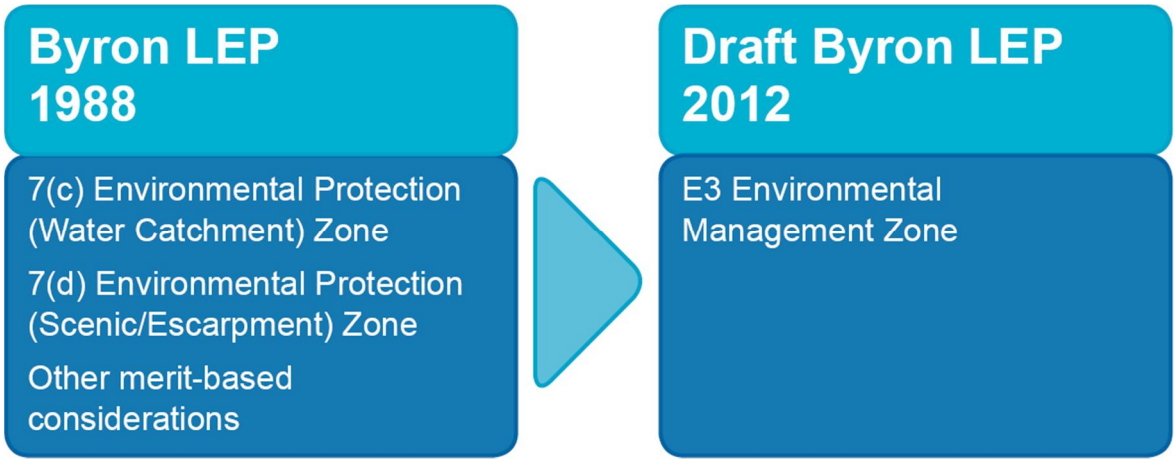


Figure A.19 Byron LEP 1988 zoning transfer to draft Byron LEP 2012 E3 Zone

In addition, other values were incorporated into the E3 Zone as shown in Figure A.20.

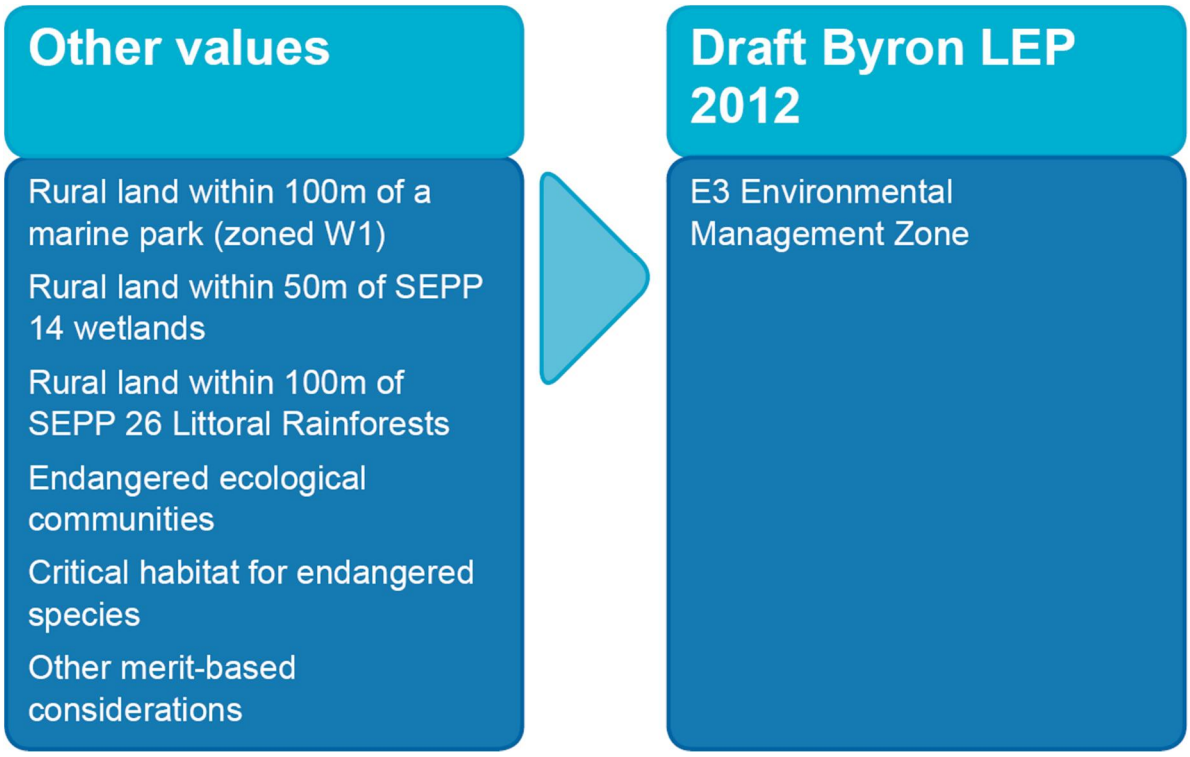


Figure A.20 Transfer of other values to draft Byron LEP 2012 E3 Zone

The ecological profile of the E3 Zone in Byron SC is largely unknown and is likely to be variable. However, the E3 Zone is based on scenic and water quality attributes, and buffer zones to wetlands and rainforest as follows:

- water catchment area (includes previous Water Catchment Zone in the Byron LEP 1988)
- scenic/escarpment area (includes previous scenic/escarpment Zone in the Byron LEP 1988)
- rural land within 100 m of SEPP26 Littoral Rainforests or a marine park
- rural land within 50 m of a SEPP14 coastal wetland.

Various site specific criteria throughout the council were also used to place some land in the E3 Zone on a case by case basis. The inclusion of buffer zones on rural land within 100 m of a SEPP 26 Littoral Rainforest or marine park and within 50 m of a SEPP14 Wetland has resulted in areas of cleared grazing land and/or non-native vegetation being placed in the E3 Zone.

- 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 EZones were not trimmed around houses or their associated cleared areas. Where EZone boundaries were within 28 m of each other the boundary was stylised for map readability. The EZone boundaries were aligned with cadastral boundaries where the Zone ran unevenly along the cadastral boundary.

- The HCV methodology used to develop the EZones in the Byron LEP is comprehensive and robust and reflects the range of environmental features across the council. However, the inevitable cartographic techniques used to enhance map readability, and the inclusion of extensive buffer zones around some features have resulted in an EZone layers that are not restricted to representing the accurate spatial distribution of on ground natural features. Council 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 EZones 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.

A1.8.2.2 Proposed zoning objectives and attributes

An additional objective of the E2 Zone is to identify and protect environmentally sensitive coastal land.

The key attributes of the E2 Zone within the Byron SILEP are represented in Figure A.21.

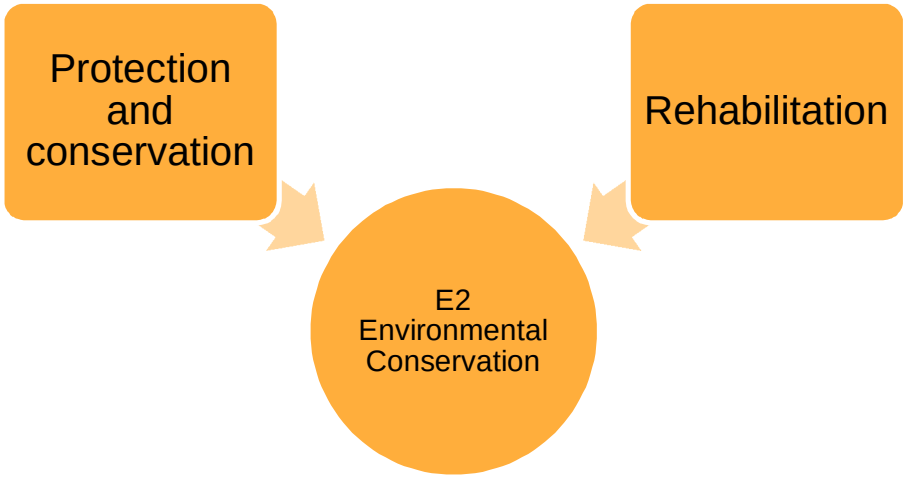


Figure A.21 Byron E2 Zone – key attributes

Additional objectives of the E3 Zone are:

- to prevent inappropriate development in geologically hazardous areas
- to encourage passive recreation, environmental education and an understanding of natural systems where these activities will not have a detrimental effect on land within the Zone.

The key attributes of the E3 Zone within the Byron SILEP are represented in Figure A.22.

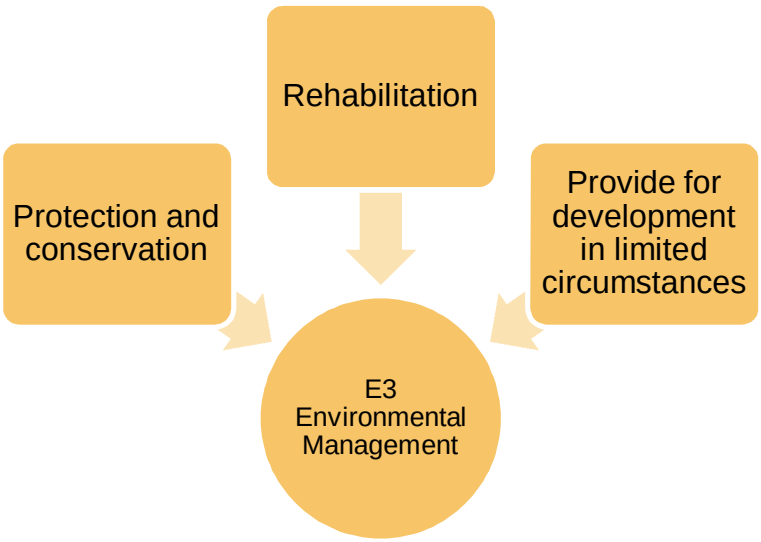


Figure A.22 Byron E3 Zone – key attributes

The SILEP contains no additional objectives of the E4 Zone and as a result the attributes of this Zone are consistent with the attributes expected by DP&I.

A1.8.3 Kyogle Council

A1.8.3.1 Zoning inputs

The E2 Zone potentially contains EECs and threatened species habitats. However, little information is available on the approach taken by Kyogle Council in its development of the E2 Zone. The E2 Zone was developed through advice obtained by Kyogle Council from the former Department of Environment, Climate Change and Water. No other data sources, such as mapping, were used.

The ecological profile of the E2 Zone in the Kyogle Council SILEP is largely unknown but may include:

- EECs
- endangered populations, and threatened species habitats.

The E3 Zone in Kyogle Council was developed in consultation with the Department of Environment, Climate Change and Water, and is considered one of the three predominantly 'rural' zones. The E3 Zone has been applied to the land using agricultural land classification mapping released by the OEH. As such, in the draft 2012 LEP, the E3 Zone was automatically applied to the agricultural classification 8 lands (that land most constrained for agricultural purposes). Consequently, the E3 Zone in Kyogle Council is based on landscape value (scenic and cultural landscapes) and the agricultural limitations of steep land. It is unknown what biodiversity values are present in the E3 Zone as biodiversity value appears not to have been a consideration in the application of the E3 Zone to the land.

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

A1.8.3.2 Proposed zoning objectives and attributes

The SILEP contains no additional objectives of the E2 Zone and as a result the attributes of this Zone are consistent with the attributes expected by DP&I.

Additional objectives of the E3 Zone are:

- to encourage the retention and regeneration of endemic native vegetation in areas of limited land capability
- to promote the preservation, conservation and enhancement of prominent hill slopes and ridge lines
- to minimise soil erosion on escarpment areas and limit development in geologically hazardous areas
- to minimise conflict between land uses within the Zone and land uses within adjoining zones
- to encourage productive use of land for agricultural purposes and permit development that is ancillary to agricultural land uses.

The key attributes of the E3 Zone within the Kyogle SILEP are represented in Figure A.23 (local attributes that are in addition to the statewide attributes are represented in black).

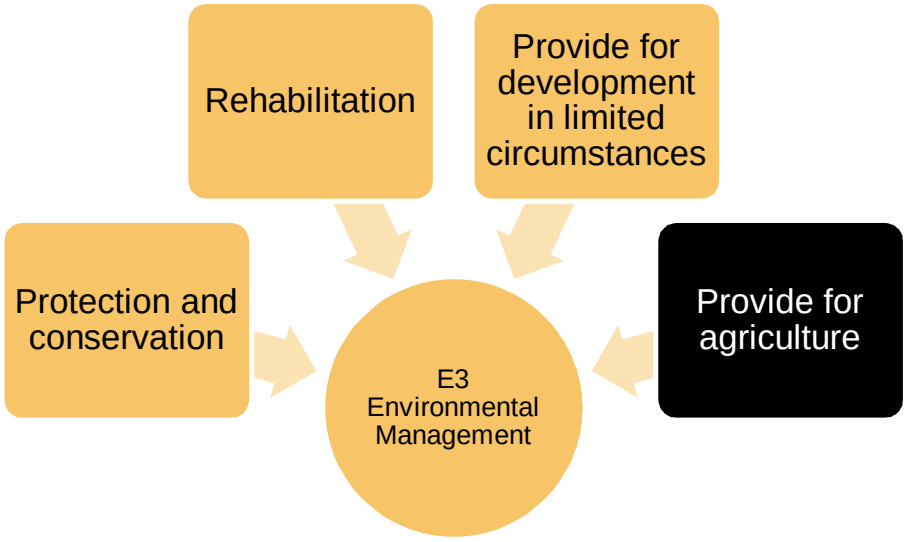


Figure A.23 Kyogle E3 Zone – key attributes

A1.8.4 Lismore CC

A1.8.4.1 Zoning inputs

Sections 2.5.2 and 2.5.3 of the Lismore Local Environmental Study 2010 document how EZones were implemented in the draft LEP 2010:

- Two environmental protection zonings from the Lismore LEP 2000 were generally transferred into the E2 Zone as shown in Figure A.24.

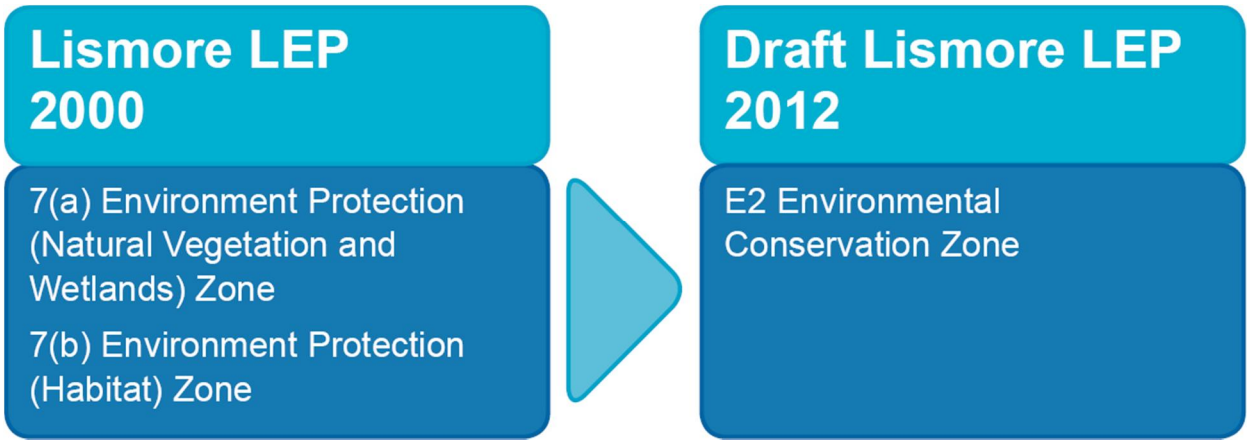


Figure A.24 Lismore LEP 2000 zoning transfer to draft Lismore LEP 2012 E2 Zone

- In addition, other values were incorporated into the E2 Zone as shown in Figure A.25. The values listed represent the ecological profile of the E2 Zone.

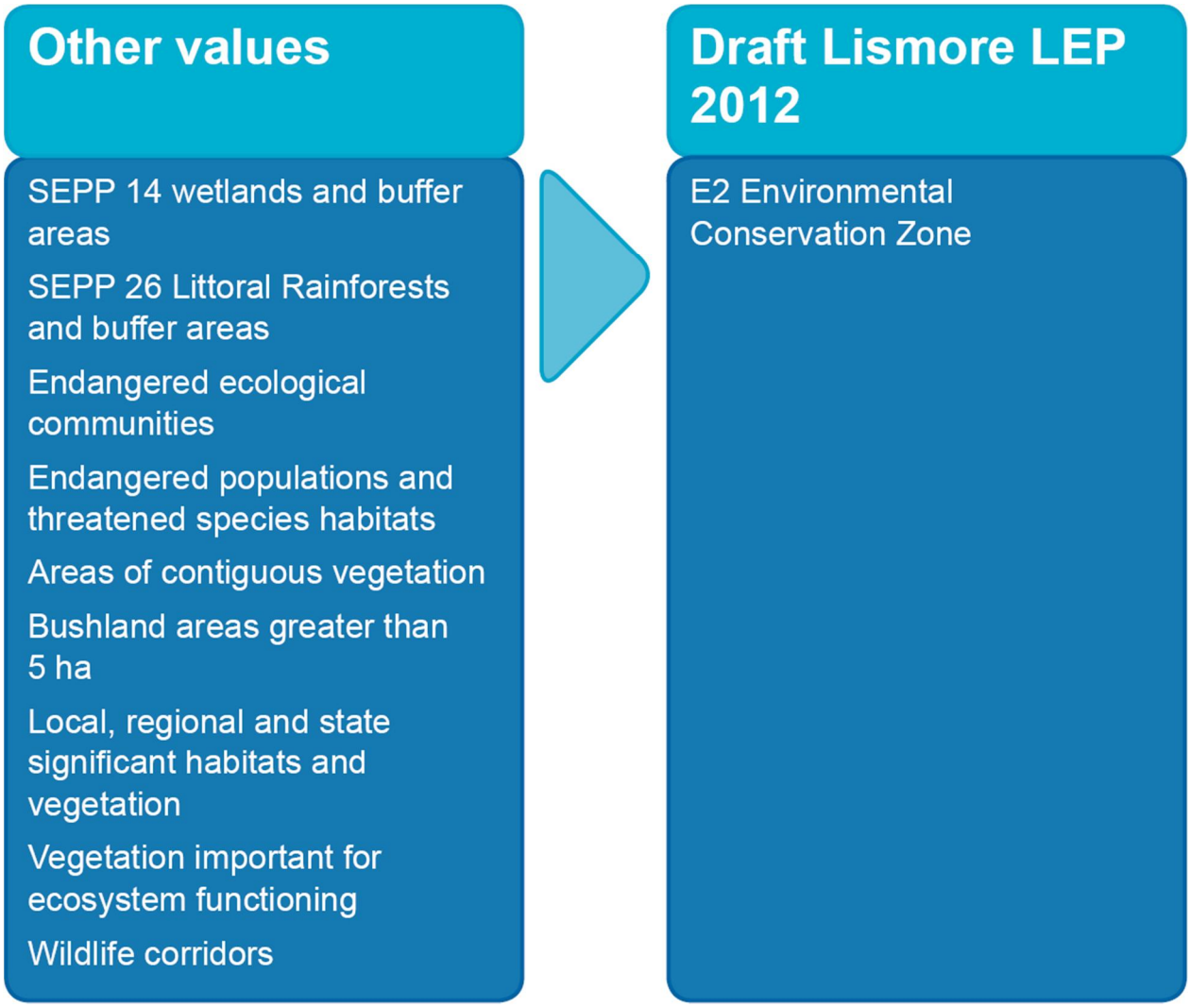


Figure A.25 Transfer of other values to draft Lismore LEP 2012 E2 Zone

The E2 Zone was developed through a biodiversity assessment of the council area (including vegetation mapping and field verification undertaken for the Lismore LES) and direct transfer of existing environmental protection zones. As such, the 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 Lismore CC is proposed to apply to areas of urban bushland, significant riparian areas and land surrounding Rocky Creek Dam. The E3 Zone boundaries were generally determined by the extent of vegetation but were determined by cadastral boundaries in some instances. In some instances, the E3 Zone may be mapped over a larger area than the environmental asset. No quantitative criteria were developed to ensure the E3 Zone was applied to areas of special ecological, scientific, cultural or aesthetic value.

The ecological profile of the E3 Zone in Lismore CC 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 Lismore LEP 2000)
- scenic/escarpment area (includes previous scenic/escarpment Zone in the Lismore LEP 2000)
- urban bushland
- koala habitat
- large bushland areas (area >5,000 m^2)
- 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 1:15,000 digital vegetation map for the council area. Site assessments of proposed EZones 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 EZone mapping in the SILEP 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.

A1.8.4.2 Proposed zoning objectives and attributes

An additional objective of the E2 Environmental Conservation Zone is to retain areas of unique natural vegetation, particularly rainforest remnants and ecologically endangered communities.

The key attributes of the E2 Zone within the Lismore SILEP are represented in Figure A.26.

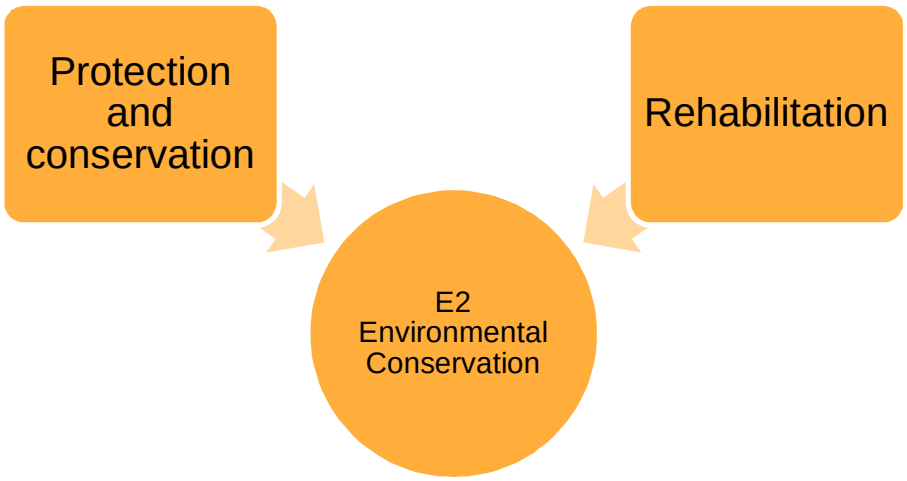


Figure A.26 Lismore E2 Zone – key attributes

An additional objective of the E3 Environmental Management Zone is to encourage the retention of wildlife habitats and associated vegetation and wildlife corridors.

The key attributes of the E3 Zone within the Lismore SILEP are represented in Figure A.27.

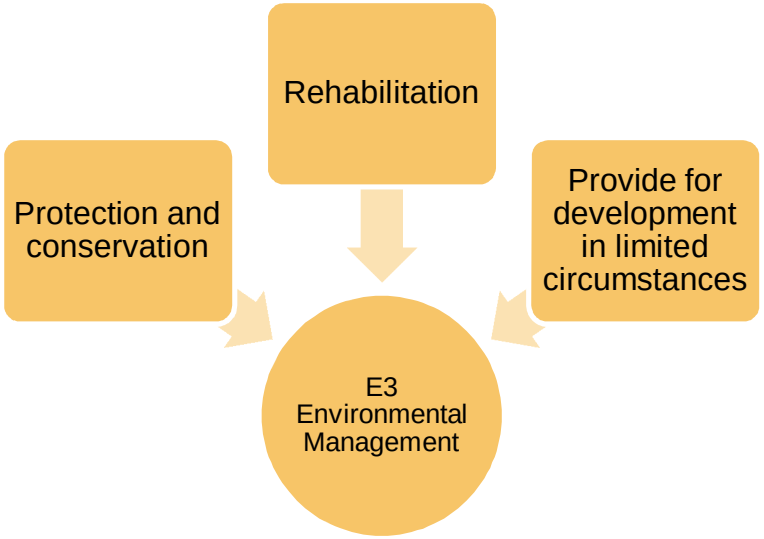


Figure A.27 Lismore E3 Zone – key attributes

A1.8.5 Tweed SC

The E2 Zone focuses on the Tweed Coast, public land, and areas that are already protected.

- Two environmental protection zonings from the Tweed LEP 2000 were generally transferred into the E2 Zone as shown in Figure A.28. Note that the two environmental protection zonings are only mapped over coastal parts of the council area.

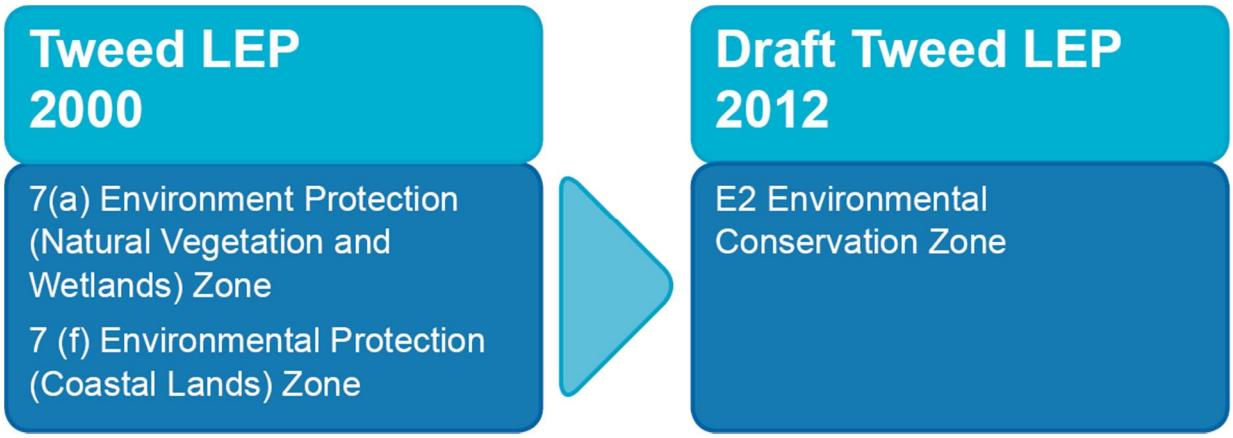


Figure A.28 Tweed LEP 2000 zoning transfer to draft Tweed LEP 2012 E2 Zone

- Two environmental protection zonings from the Tweed LEP 2000 were generally transferred into the E3 Zone as shown in Figure A.29.

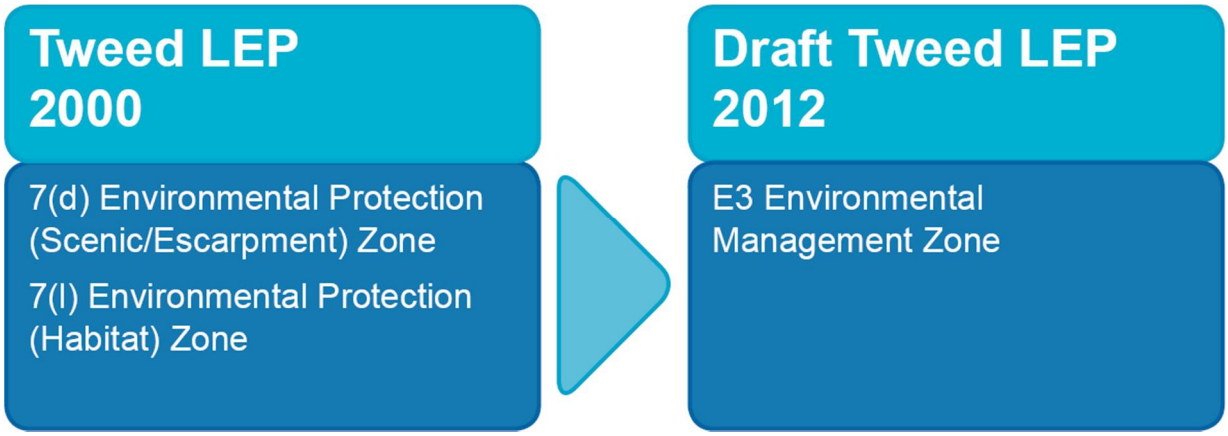


Figure A.29 Tweed LEP 2000 zoning transfer to draft Tweed LEP 2012 E3 Zone

The E3 Zone is 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 Zone is 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 Zone in Tweed SC is based on scenic and water quality attributes and constrained agricultural lands, but also some biodiversity values as follows:

- land in the 7(l) Environmental Protection (Habitat) Zone on the Tweed Coast in the Tweed LEP 2000
- waterway reserves in rural hinterland
- steep land in excess of 18 degrees
- residual large bushland tracts (2 ha min).

The EZones in the Tweed SILEP were developed via direct translation of former environmental zones from the Tweed LEP 2000. This occurred despite council 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. Additionally, council's Natural Resource Management department had advised council of was required to make council's 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 Tweed SC but this was not used to assist 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 in Tweed SC.

A1.8.5.1 Proposed zoning objectives and attributes

Additional objectives of the E2 Zone are:

- to identify lands set aside primarily for conservation or environmental amenity
- to protect, manage and restore environmentally sensitive areas including lands subject to coastal erosion
- to prevent development that would adversely affect or be adversely affected by coastal processes.

The key attributes of the E2 Zone within the Tweed SILEP are represented in Figure A.30.

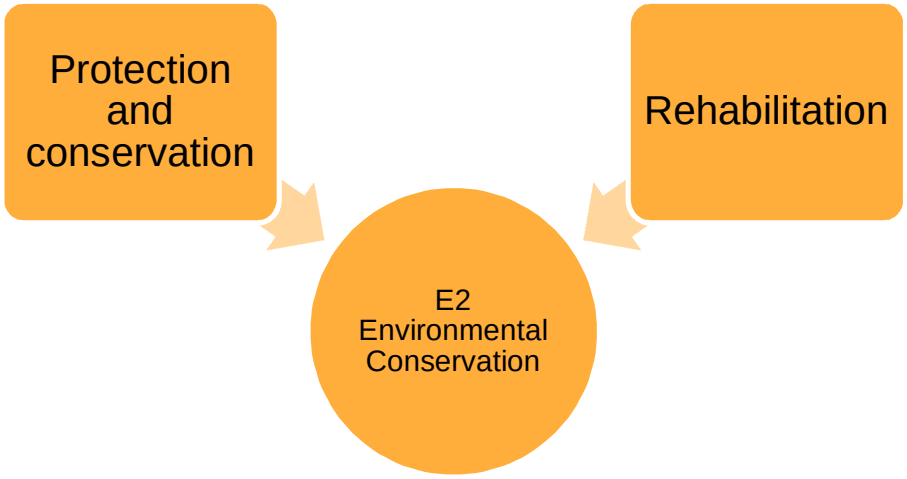


Figure A.30 Tweed E2 Zone – key attributes

Additional objectives of the E3 Zone are:

- to enable development, including a limited range of tourism and residential development that has adequate protection from natural hazards
- to maintain or improve the natural conservation and scenic amenity values of the land, including significant habitat areas and wildlife corridors.

The key attributes of the E3 Zone within the Tweed SILEP are represented in Figure A.31.

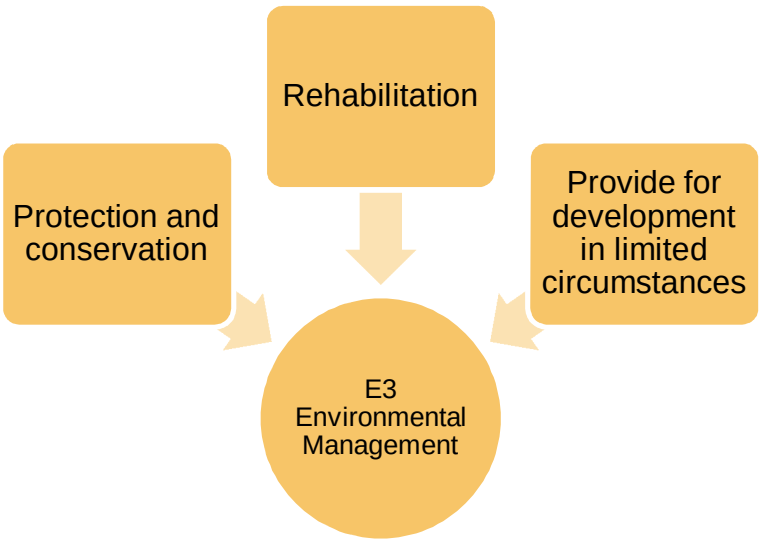


Figure A.31 Tweed E3 Zone – key attributes

A1.9 Preservation of trees or vegetation

A1.9.1 Context

The SILEP template includes a clause (being 5.9 within the template) that governs the removal of trees and other vegetation. Clause 5.9 enables, amongst other issues, the ability for councils to assess certain types of tree clearing work through a permit for clearing.

Clause 5.9 is a mandatory clause that must be inserted into a SILEP, with the exception of 'subclause (9)' which is an optional subclause that can be inserted or removed from a SILEP at councils' discretion.

Subclause 9 is as follows:

(9) Subclause (8) (a) (ii) does not apply in relation to land in Zone R5 Large Lot Residential, E2 Environmental Conservation, E3 Environmental Management or E4 Environmental Living

Subclause (8) (a) (ii) is as follows:

- (8) The clause does not apply to or in respect of:
  - (a) The clearing of native vegetation:
    - (ii) That is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or

A1.9.2 Application

The effect of Division 2 or 3 of Part 3 of the *Native Vegetation Act 2003* is that it enables clearing for particular purposes or activities, without the requirement to obtain the consent of a regulating authority. The particular purposes or activities referred to under division 2 or 3 are:

- regrowth native vegetation (except protected regrowth)
- native vegetation comprising certain groundcovers
- clearing native vegetation for routine agricultural management activities.

Therefore, the effect of subclause 5.9(9) being inserted or removed from a SILEP, when applied to the removal of trees or vegetation on land within an EZone is illustrated in Figure A.32.

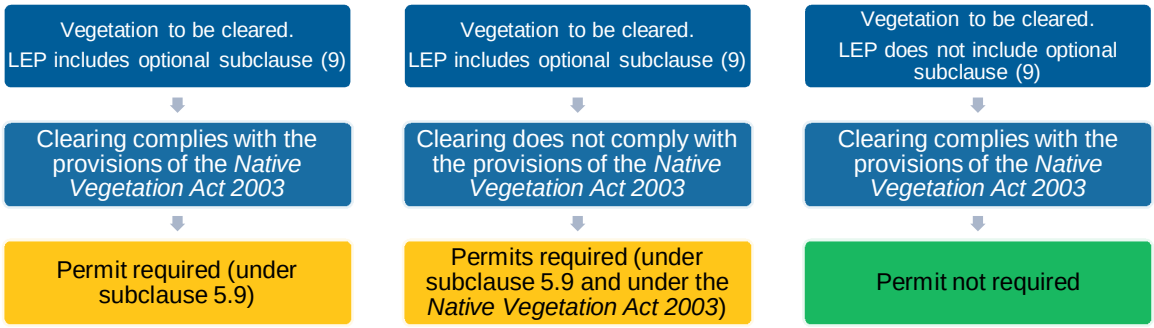


Figure A.32 Application of optional subclause 5.9

Listed below is the proposed application of clause 5.9 for each council.

A1.9.2.1 Ballina SC

Subclause 5.9(9) included in draft LEP? Yes

DCP in effect: Ballina Development Control Plan 2011 Chapter 2a – Vegetation Management

Applies to the following EZone: E2 zone

Vegetation management works affected:

- **Any native vegetation not located within the curtilage of a dwelling house**
- **Any non-native tree not located within the curtilage of a dwelling house with a height of 6m or greater**

Treatment of Camphor laurel:

- **Declared noxious weed under the *Noxious Weeds Act 1993* and exempt under clause 5.9(8)(e)**
- **Broad scale clearing of Camphor laurel – may be considered as forestry – may require a permit**

A1.9.2.2 Byron SC

Subclause 5.9(9) included in draft LEP? Yes

DCP in effect: No. Tree Preservation Order applies

Applies to the following EZones: E2 zone, E3 zone and E4 zone

Vegetation management works affected:

- **Any tree, palm or fern over three metres high**
- **Any native vegetation within heath, mangrove, saltmarsh or sedgeland communities**

Treatment of Camphor laurel:

- **Declared noxious weed under the *Noxious Weeds Act 1993* and exempt under clause 5.9(8)(e)**

A1.9.2.3 Kyogle Council

Subclause 5.9(9) included in draft LEP? Yes

DCP in effect: No

Applies to the following EZones: E2 zone and E3 zone

Vegetation management works affected:

- **Any tree, palm or fern over three metres high**
- **Any native vegetation within heath, mangrove, saltmarsh or sedgeland communities**

Treatment of Camphor laurel:

- **Declared noxious weed under the *Noxious Weeds Act 1993* and exempt under clause 5.9(8)(e)**

A1.9.2.4 Lismore CC

Subclause 5.9(9) included in draft LEP? No

A1.9.2.5 Tweed SC

Subclause 5.9(9) included in draft LEP? Yes

DCP proposed: Tweed Development Control Plan – Section A16 – Tree and Vegetation Preservation Code

Applies to the following EZones: E2 zone and E3 zone

Vegetation management works affected:

- **Within the E2 zone, any native vegetation clearing**
- **Within the E3 zone, any native vegetation clearing of threatened species and ecological communities, and/or potential or core koala habitat**

Treatment of Camphor laurel:

- **Declared noxious weed under the *Noxious Weeds Act 1993* and exempt under clause 5.9(8)(e)**
- **Broad scale clearing of Camphor laurel (defined as greater than 20 trees over three metres high on a single lot) – is considered forestry – may require a permit**

A1.10 New planning systems – the White Paper

On 16 April 2013, the NSW Government released the 'White Paper – A new planning system for NSW' for public exhibition. Public exhibition concluded on 28 June 2013, and over 4,500 submissions were received by the NSW Government.

The White Paper has five key elements:

- community participation
- strategic planning
- delivery culture
- development assessment
- provision of infrastructure.

The following elements of the White Paper are likely to be of direct relevant to the implementation of EZones:

- Chapter 4 (community participation), being an increased emphasis on making planning a more engaging, transparent and planned process for communities.
- Chapter 5 (strategic planning framework), being:
  - A shift to fewer and broader zones. Figure 24 of the White Paper lists the zones under a SILEP with the correlating proposed Zone under the new planning system. Those zones are:
    - E2 – proposed to be incorporated in a new Zone 'Environmental Protection and Hazard Management' (other SILEP zones to be incorporated are E1 National Parks and Nature Reserves, and W1 Natural Waterways)
    - E3 – proposed to be incorporated in a new Zone 'Rural' (other SILEP zones to be incorporated are RU2 Rural Landscape, and RU6 Transition)

  - E4 – proposed to be incorporated in a new Zone 'Residential' (other SILEP zones to be incorporated are R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R5 Large Lot Residential, and RU5 Village)
- The implementation of Regional Growth Plans, to provide the strategic basis for planning across the region.

A1.11 Related Government policy and plans

The Purpose of this section is to describe other Government policy, at a State, Commonwealth, and if appropriate international level, that is related to the issues of environmental protection, ecological sustainability, ESD principles, food security, agricultural land use/practices etc. Land use planning documents including EPIs do play a role in implementing the priorities and plans of Government at all levels. However, the complexity and potential duplication of those instruments and policies needs to be considered for the purpose of this review. The following presents a snapshot of the suite of instruments and policies affecting the EZone concept.

A1.11.1 State

NSW 2021

NSW 2021 is the State's 10 year plan to rebuild the economy, return quality services, renovate infrastructure, restore accountability to government, and strengthen the local environment and communities. It is the NSW Government's strategic business plan (replacing the State Plan). It sets immediate priorities for action and presents 32 goals to be achieved.

Goals relevant to this report are as follows:

- Improve the performance of the NSW economy (goal 1):
  - This goal includes a target (target 1.2.3) of increasing the value of primary industries and mining production by 30% by 2020.
- Protect our natural environment (goal 22):
  - This goal includes two targets (target 22.1) of protecting and restoring priority land, vegetation and water habitats, and protecting and conserving land, biodiversity and native vegetation.
  - Achievement of the target is measured in part through the number of hectares per annum of private land under permanent conservation measures, and private land being improved for conservation.
- Restore confidence and integrity in the planning system (goal 29):
  - This goal includes a target (target 29.1) of implementing a new planning system.

Biodiversity strategies

In 1999 the State released the NSW Biodiversity Strategy 1999–2003. The Biodiversity Strategy was intended to enable stakeholders such as government, the community and research bodies to collaborate and increase knowledge and develop the capacity to conserve biodiversity. Its objectives are to:

- identify and tackle threats to biodiversity
- improve knowledge of the State's biodiversity
- involve landowners and communities in biodiversity conservation
- manage natural resources better for ecologically sustainable development
- protect native species and ecosystems.

The NSW Biodiversity Strategy enabled the implementation of environmental levies for conservation initiatives. The Byron Biodiversity Conservation Strategy 2004 notes that in 2004, Byron SC was successful in obtaining a 2% special variation to the general rate for biodiversity works over four years.

A Draft NSW Biodiversity Strategy 2010–2015 has been prepared by the former Department of Environment, Climate Change and Water (now Office of Environment and Heritage) and Industry and Investment NSW (I&I NSW). The Draft NSW Biodiversity Strategy 2010–2015 is aligned with Australia's Biodiversity Conservation Strategy 2010–2030 which fulfils Australia's obligations under the *International Convention on Biological Diversity 1992*. The Draft NSW Biodiversity Strategy 2010–2015 document aims to provide a framework to coordinate and guide investment in biodiversity conservation in NSW by using the following approaches:

- More effective targeting of existing public and private investment in biodiversity conservation to maximise outcomes through the identification of state scale priority areas for investment.
- Use of existing regional structures and mechanisms to deliver biodiversity outcomes (such as the Catchment Management Authorities (CMAs), local government and other public authorities), avoiding the need for new arrangements.
- Acknowledgment of, and continuing support for, existing programs delivered by many government and non-government partners that result in significant outcomes for biodiversity conservation.
- The importance of partnerships across public and private sectors to deliver biodiversity outcomes based on the best available science.

Preserving coastal wetlands

State Environmental Planning Policy No 14 – Coastal Wetlands is intended to ensure coastal wetlands are preserved and protected in the environmental and economic interests of the State. The areas covered by the SEPP are shown on a series of maps held by the Department of Planning. Over 1,300 coastal wetlands have been mapped under SEPP 14, representing 7% of all coastal wetlands in NSW.

The State Environmental Planning Policy is used as a trigger by which vegetation clearing and certain earthworks, within areas designated on a map as being subject to the State Environmental Planning Policy, must obtain council's approval. Under SEPP 14, a person must not clear land, construct a levee, drain land or fill land which is covered by the SEPP except with the consent of the local council and the concurrence (agreement) of the Director-General of Planning.

Preserving littoral rainforests

State Environmental Planning Policy No 26 – Littoral Rainforests is intended to preserve littoral rainforests in their natural state. A littoral rainforest is a particular type of forest which is adapted to withstand coastal conditions involving harsh, salt-laden, drying winds. The rainforests covered by the SEPP are shown on a series of maps held by the Department of Planning. The SEPP 26 enables councils and the State to consider applications for development that could damage or destroy areas of littoral rainforest. Development consent is required for the following activities in littoral rainforests:

- erecting a building or carrying out a work
- disturbing, altering or changing any landform
- dumping rubbish or chemicals
- using a littoral rainforest for any purpose
- disturbing native flora (clearing).

A development application for the activities listed above must be accompanied by an environmental impact statement (EIS) and be placed on public exhibition. The consent authority for developments applying to SEPP 26 littoral rainforests is the local council. The concurrence of the Director-General of the Department of Planning is also required.

Koala habitat protection

State Environmental Planning Policy No 44 – Koala Habitat Protection is intended to encourage conservation and management of areas of natural vegetation which function as koala habitat. The SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for Koalas to ensure a permanent free-living population over their present range and reverse the current trend of Koala population decline:

- requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat
- encouraging the identification of areas of core koala habitat
- encouraging the inclusion of areas of core koala habitat in environment protection zones.

Before a council may grant consent to an application for consent to carry out development on land to which SEPP 44 applies, it must satisfy itself whether or not the land is a potential Koala habitat or core Koala habitat. If the council is satisfied that the land is not potential or core Koala habitat it may grant consent to a development application. If the council is satisfied that the land is a core koala habitat, there must be a plan of management prepared, according to the guidelines in the SEPP 44 that applies to the land. The council's determination of the development application must not be inconsistent with a Koala plan of management.

Far North Coast Regional Conservation Plan

The *Far North Coast Regional Conservation Plan* (Department of Environment Climate Change and Water 2010) was developed by the Department of Environment, Climate Change and Water (DECCW) to complement the *Far North Coast Regional Strategy* and sets out the regional conservation priorities for a 25-year period. The *Far North Coast Regional Conservation Plan* covers the Tweed, Byron, Ballina, Kyogle, Lismore and Richmond Valley local government areas and is integral to demonstrating the NSW Government's commitment to balanced development and conservation outcomes for NSW.

The *Far North Coast Regional Conservation Plan*, together with the approved multi species recovery plans the *Border Ranges Rainforest Biodiversity Management Plan* (DECCW 2010) and the *Northern Rivers Regional Biodiversity Management Plan* (DECCW 2010d) is intended to guide investment planning and biodiversity management by DECCW, the Northern Rivers CMA, and other environmental managers, non-government organisations, councils and planners.

There are a number of existing pieces of legislation, strategies, policies and plans at various levels of jurisdiction that relate to the *Far North Coast Regional Conservation Plan*. The Plan does not replace these existing strategies or plans, but is consistent with them and complements them by providing a regional context and integrated implementation of biodiversity management. The legislation is as follows:

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

The *Far North Coast Regional Conservation Plan* also contributes to meeting targets outlined in the following key documents:

- *International Convention on Biological Diversity*
- *National Strategy for the Conservation of Australia's Biological Diversity*
- *National Biodiversity and Climate Change Action Plan 2004–2007*
- *NSW State Plan*
- *NSW Biodiversity Strategy*
- *NSW Biodiversity and Climate Change Adaptation Framework*
- *The Natural Resources Commission standards and targets*
- *Northern Rivers CMA Catchment Action Plan*
- *NSW Threatened Species Priorities Action Statement*
- *Federal recovery plans and threat abatement plans*
- *NSW recovery plans, threat abatement plans and statements of intent*
- *The National Local Government Biodiversity Strategy*.

The *Far North Coast Regional Conservation Plan* states that land with State or regionally significant values should be protected and zoned.

Although all biodiversity is important to protect and enhance, several categories of biodiversity values are considered to warrant special priority for conservation through legislation or Government policy. Many of these values are included in the NSW Office of Environment and Heritage (OEH) Biodiversity Conservation Lands (BCL) dataset. As such, the OEH BCL dataset provides a good starting point to identify high conservation value areas in each LGA.

According to the *Far North Coast Regional Conservation Plan*, vegetation types considered of high conservation value for their biodiversity and support of threatened species include the following (unless they are in low condition*):

- EECs
- threatened species habitat, including SEPP 44 koala habitat
- over-cleared vegetation communities
- native vegetation in over-cleared Mitchell landscapes
- all types of rainforest
- old-growth forest
- riparian, wetland (including coastal wetlands) and estuarine vegetation
- rare, endangered and vulnerable forest ecosystems.

Land containing these values should form the basis of the environment zones E2 through to E4 across all five LGAs. The councils in the far north coast area that are subject to the *Far North Coast Regional Conservation Plan* should follow the guidelines above when applying EZones to land in their respective LGAs to achieve a consistent approach.

Facilitating the use of rural land for rural purposes

State Environmental Planning Policy (Rural Lands) 2008 is intended to facilitate, amongst other things, the orderly and economic use and development of rural lands for rural and related purposes.

The State Environmental Planning Policy lists rural planning principles, some of which are similar to those described within the above-described Policy 'Maintaining land for agricultural purposes'. Of note, however, are additional principles which are to:

- recognise the changing nature of agriculture and of trends, demands and issues in agriculture
- recognise the significance of rural land use, and rural lifestyle, settlement and housing to the State and rural communities
- balance the social, economic and environmental interests of the community.

Maintaining land for agricultural purposes

The Department of Primary Industries released the Policy 'Maintaining land for agricultural purposes' on 20 May 2011. Principles guiding the Policy's development relate to the limited availability of agricultural land, alienation of agricultural land in restricting its use, and agricultural land's contribution to employment, community identity and food security.

The Policy states that EPIs should be structured to:

- promote the continued use of agricultural land for commercial agricultural purposes, where that form of land use is sustainable in the long term
- avoid land use conflict
- protect natural resources used by agriculture
- protect other values associated with agricultural land that are of importance to local communities, such as heritage and visual amenity
- provide for a diversity of agriculture enterprises, including specialised agricultural developments, through strategically planned locations to enhance the scope for agricultural investment in rural areas
- allow for value adding and integration of agricultural industries into regional economies.

The Policy also notes that where appropriate, the Department of Primary Industries will provide input into planning decisions of a strategic nature that affect agriculture.

A1.11.2 Commonwealth

Environment and heritage protection

The *Environment Protection and Biodiversity Conservation Act 1999* is the Australian Government's central piece of environmental legislation. The key provisions of the *Environment Protection and Biodiversity Conservation Act 1999* are based on the following treaties:

- World Heritage Convention – The Convention for the Protection of the World Cultural and Natural Heritage 1975
- The Ramsar Convention – The Convention on Wetlands of International Importance especially as Waterfowl Habitat 1975
- The Convention on Biological Diversity 1992
- JAMBA – Japan-Australia Migratory Bird Agreement

- CAMBA – China-Australia Migratory Bird Agreement
- Bonn Convention – Convention on the Conservation of Migratory Species of Wild Animals
- CITES – The Convention on International Trade in Endangered Species of Wild Fauna and Flora 1976.

The *Environment Protection and Biodiversity Conservation Act 1999* provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places – defined as matters of national environmental significance as follows:

- world heritage sites
- national heritage places
- wetlands of international importance (listed under the Ramsar convention)
- nationally 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 (SEWPaC) 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 Minister may also decide that an approval is not needed. A controlled action is an action which is likely to have a significant impact on a matter of national environmental significance or Commonwealth land and also includes any action by the Commonwealth (or a Commonwealth agency) which is likely to have a significant impact on the environment.

National food plan – green paper

The National Food Plan green paper 2012 was released by the Department of Agriculture, Fisheries and Forestry. The key outcome of the National Food Plan *'is to ensure Australia has a sustainable, globally competitive, resilient food supply, supporting access to nutritious and affordable food'*.

Planning instruments elsewhere in Australia

Other Australian states have led or followed NSW in implementing standard planning documents across the local government areas within those States, with the objective of ensuring the construction and layout of those documents are consistent. Those initiatives include:

- Victoria – Victoria Planning Provisions (VPPs)
- Queensland – Queensland Planning Provisions (QPPs)
- Tasmania – Planning Directive No. 1.

The VPPs contain two zones which can be used for environmental type zonings – the Rural Conservation Zone and the Public Conservation and Resource Zone. The Rural Conservation Zone seeks to protect and enhance the natural environment and natural processes, and to encourage development which takes into account the conservation values and environmental sensitivity of the locality. Agricultural uses are permitted, with developmental approval in this Zone. The Public Conservation and Resource Zone, while not a pure environmental management zone, does seek to protect and conserve the natural environment and natural processes, however the Zone does not permit agricultural uses. A number of overlays are also contained within the VPPs, including the Environmental Significance Overlay, Vegetation Protection Overlay and the Significant Landscape Overlay. These three overlays, in general, look to conserve and enhance the character of areas of environmental significance.

The QPPs (Version 2) only contain one purely environmental type zoning, the Environmental Management and Conservation zone, which is classified as a Level 1 Zone and sits in the 'Other Zones' category. Level 1 zones are broad scale, general zonings in Queensland. The purpose of this Zone is to provide for areas identified as supporting significant biological diversity and ecological integrity. A number of overlays are included under the Environment category – Biodiversity, Coastal management, Priority species, Vegetation management, Wetlands, and Waterway corridors. However, the proposed amendments to the QPPs (Version 3) seek to create a separate Environmental zones category, which will contain the current Level 1 Zone Environmental Management and Conservation, however will also include two Level 2 zones. These are proposed to be Environmental Management, and Conservation. The new Environmental Management Zone seeks to provide for housing in environmentally sensitive areas, with the Conservation Zone to protect and manage areas identified as supporting significant biological diversity and ecological integrity.

Tasmania is the next state which has a similar situation to Queensland and Victoria. The Planning Directive No. 1 – The Format and Structure of Planning Schemes contains the Environmental Management Zone, which aims to provide for the protection, conservation and management of areas with significant ecological values, amongst others. The Directive does not state any prohibitions or permitted developments within the Zone.

Community feedback

Extensive public consultation incorporating direct consultation efforts were conducted as part of this project. Methods included:

- community drop-in sessions
- phone interviews
- one-to-one meetings
- elected representative meetings.

In addition to direct consultation with the community, additional community consultation was sought through a submission process that enabled the community to provide comments via email or post.

To appropriately inform the Review, a thorough review of feedback received during consultation activities and via consultation contact points was undertaken. The assessment was based on an analysis of data collected during the initial consultation period and took two forms:

Database input – the consolidated filing of consultation data to classify community and stakeholder concerns into overarching issues and track key and emerging issues.

Issues analysis – analysis of reports using data collated in the database falling into six issue groups including:

- environmental
- economic
- social
- property management
- planning process
- department process.

It is important to note the groups are not definitive and there is cross overs between the groups.

A detailed description of the consultation objectives, scope and results, are contained in the report 'Community and stakeholder engagement report' within Appendix B.

A1.11.2.1 Field inspections

Rationale for site identification

To verify on ground conditions and check the application of EZones across the five LGAs, a random sampling regime was developed to ensure the site visits were not biased towards a particular LGA or region within an LGA.

A random sample of properties (a subset of all the available properties) was selected across the five LGAs using a systematic process. A randomisation technique was used to pick the subset of properties from the entire set of properties affected by EZones, thus removing selection bias and other biases. Random sampling removes bias in sample selection since every property with an EZone had an equal chance of being selected for inspection. The basis of the sampling design was as follows:

- Pick a sample of the larger group or affected properties because constraints surrounding time, budget, large size of each LGA, large number of affected properties, and potential a lack of access to properties prohibited a census.
- All individuals have intrinsic biases that will consciously or sub-consciously cause them to influence their selection of properties to sample in a study. Therefore, a randomisation technique was applied to eliminate any individual's ability to bias the selection of properties so that the results were not biased and potentially meaningless.

Stratified random sampling was the technique chosen for this study. This technique:

- divided all affected properties into sub-groups (i.e. by LGA, E2 Zone, E3 Zone, E4 Zone)
- sampled among those sub-groups. Stratified random sampling allowed for each sub-group (i.e. each LGA, E2 Zone, E3 Zone, E4 Zone) to be studied independently and then compared with each other.

The sampling design was divided between sites randomly identified from the LEP mapping (to avoid potential community bias) and those sites randomly chosen from a subset nominated for inspection during the consultation period.

Sites identified from the LEP mapping

To identify sites from the LEP mapping, a grid was placed over the LEP maps to divide the study area into non-overlapping squares. Each square that contained an EZone was identified. Each square segment of the grid that contained an EZone was represented as a potential location for inspection (this formed the 'population' from which to sample). The population was then narrowed by using a random number generator to choose sites at random to form the 'sampling frame'. A list of properties was developed to define the sample. From the sampling frame, a list of properties was identified as potential for inspection via a randomisation technique using Microsoft Excel.

To ensure the sample was randomly selected so that all properties in the sampling frame had an equal chance of being selected a random number generator was used to assign each property a unique number ranging from 0 to 1. Each property was then sorted and the first 20 properties selected in each LGA to form the sample for field investigation. Letters were sent to the identified land owners to request a site visit. Where access was not agreed, the next property from the sampling frame was identified using the randomisation technique. A graphical overview of the sampling technique is provided in Figure A.25.

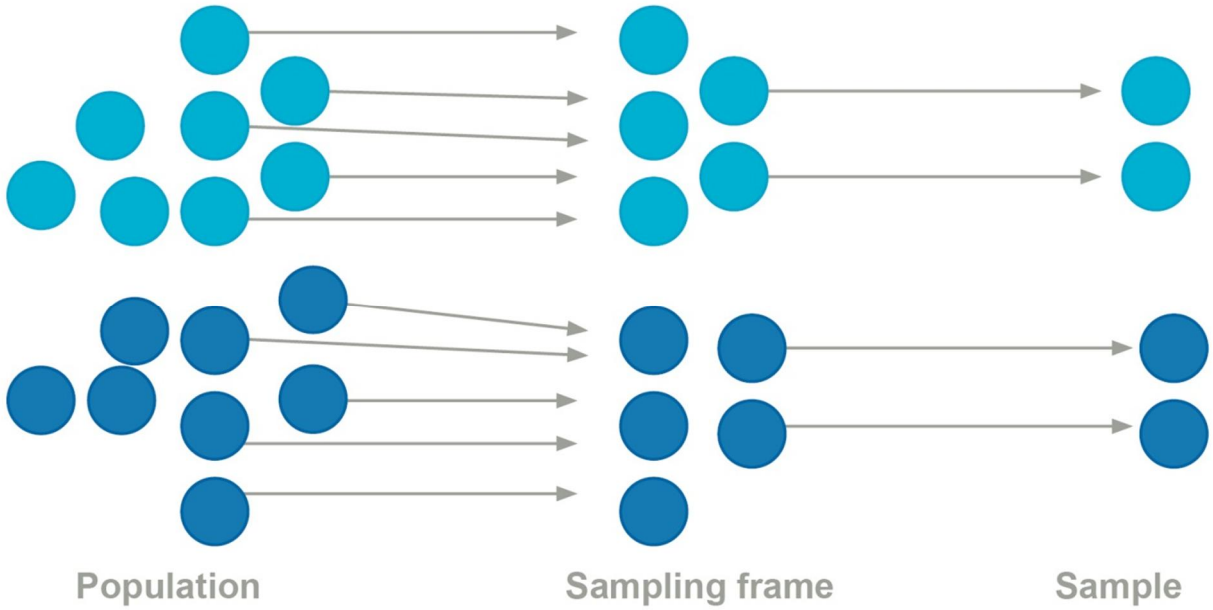


Figure A.25 Graphical representation of the sampling technique

A1.11.3 Sites nominated during the consultation period

Sites were also identified for an inspection from the community consultation sessions. A list of all site visit requests was obtained from the community consultation sessions which formed the sample size 'population'. The entire list of nominated properties was culled via a randomisation technique in Microsoft Excel (see Section 2.5.1.1) to form our 'sampling frame'. From the sampling frame, properties to visit (our 'sample') were selected via running the randomisation technique again in Microsoft Excel. A graphical overview of the sampling technique is provided in Figure A.25.

A1.11.3.1 Field survey effort

Field surveys to support this review were undertaken over a 16 day period from 27 May to 12 June 2013. Two teams (consisting of an ecologist and a planner) visited a total of 82 sites that contained EZones. Table 2.4 outlines the number of sites visited in each LGA. An uneven number of sites were visited in each LGA due to the following reasons:

- the Kyogle LEP only has two areas zoned E2
- Byron is the only LGA that has E4 zoned land in the LEP
- the sample was ultimately restricted to those properties where permission was granted by the land owner to visit.

While the sample size is uneven between councils, a representative sample of EZones across the five councils was still able to be obtained during the field survey.

Table A.4. Number of sites visited per LGA and EZone

Council	E2	E3	E4
Ballina SC	13	10	NA
Byron SC	14	8	4
Kyogle Council	1	8	NA
Lismore CC	5	7	NA
Tweed SC	4	8	NA
Totals	**37**	**41**	**4**

A1.11.3.2 Environmental values

A standard proforma was developed to undertake a rapid assessment of each property to collect the following data across the five councils:

- lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing EECs, specifically high conservation value biodiversity assets including:
  - 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*)
- areas of special ecological, scientific, cultural or aesthetic attributes e.g. scenic protection areas, areas with contiguous native vegetation or forest cover
- location 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.

A1.11.4 Contributors and qualifications

The contributors to the preparation of this review, their qualifications and roles are listed in Table A.5.

Table A.5 Contributors and their roles

Name	Qualification	Role
Brad McDonald	B App Sc (Env. Sc), Grad. Dip, Urban Reg. Planning	Project Manager and Project Lead
David Kretchmann	BRTP	Senior Planner – land use planning and field assessment
Lukas Clews	BSc, GradCertAppSci, MSciStud	Senior Ecologist – environmental field assessment, report preparation
Chris Curtis	B Urban & Env. Planning	Planner – field assessment
Lisa Carter	BSc, MSc, Grad Dip Ecol.	Ecologist – environmental field assessment
Naomi Holmes	BSc, Grad Cert. Env Ed.	Stakeholder Engagement Specialist
Kelly Waltisbuhl	B.Bus, B.PSy	Stakeholder Engagement Specialist

A1.11.5 Limitations

A1.11.5.1 Rapid site inspection

A rapid site inspection was undertaken. As such, no detailed ecological surveys or planning assessments were undertaken on any property. No attempt was made to conduct a comprehensive ecological survey. The conclusions in this report are based upon data acquired for the study area during the field surveys and are, therefore, indicative of the conditions at the time of survey. Additionally, it should be recognised that site conditions, including the presence of threatened species habitats, can change with time.

A1.11.5.2 Sampling design

To remove any bias in selecting properties for field investigation, and to ensure the data that was collected was able to be extrapolated across each LGA and comparable between EZones and between LGAs, stratified random sampling design was used. This allowed for each LGA and EZone to be studied independently and then compared with each other. However, two additional sites were added outside the confines of the random sampling design by the DP&I.

Using the randomisation technique to choose sample sites eliminated bias in selecting properties for field investigation. All properties had an equal chance of being selected in this study.