

RESPONSE TO E ZONE REVIEW CARRIED OUT BY PARSONS BRINCKERHOFF

(WITH PARTICULAR REFERENCE TO KYOGLE LGA)

30th MAY, 2014

THIS RESPONSE WAS PREPARED BY KEL GRAHAM IN CONSULTATION WITH NEW SOUTH WALES FARMERS MEMBERS, COO-EE PROPERTY RIGHTS INC, RATEPAYERS ASSOCIATION OF LISMORE INC, RICHMOND RIVER BEEF PRODUCERS ASSOCIATION AND OTHER AGRICULTURAL PROPERTY LANDOWNERS IN THE NORTHERN RIVERS REGION.

PART 1 – List of requests to modify, strengthen and clarify

1. Re-instatement of agricultural land as RU1 – All agricultural land must be re-instated to an RU1 classification. Further, land zoned RU1 must be prohibited from having environmental protection zones and/or environmental overlays.
2. Zoning Environmental E2 or E3 – Agricultural land can only be zoned environmental E2 or E3 if it falls within the relevant criteria (set out in Part 3 below) and it is with landowner consent.
3. Biodiversity offset – Any agricultural land, that with the landowners consent, carries an environmental zoning of E2 or E3, is to be available to the landowner to utilise for the purpose of biodiversity offset areas.
4. Right to appeal – There needs to be a process established for contesting the application of e-zones on agricultural land by landowners in the event that:
 - a) an e-zone is applied to land in the absence of the landowners consent;
 - b) a landowner seeks to challenge the relevance of an environmental zone that was imposed previously; and
 - c) the consent authority/local council applies an environmental zoning that in the opinion of the landowner does not comply with applicable criteria or processes.
5. Defined terms – Terms including “Area of Habitat” need to be clearly defined.
6. Riparian Areas – Riparian Areas must be excluded from E3 criteria in particular and the LEP in general.
7. Environmental Overlay – Environmental overlays must not be used either alone, or in conjunction with environmental zonings, which can restrict agricultural land use or burden agricultural land use management practices.
8. Social and Economic Impact Study – A social and economic impact study must be carried out by the relevant state government consent authority/local council prior to any proposal to rezone agricultural land E2 or E3 to rezone any land to 'E' zones.
9. The term 'Validated Spatial Dataset' must be clarified, and strengthened, to ensure that comprehensive criteria must be met, and comprehensive studies must be undertaken by Councils in their application to rezone any land to 'E' zones.

As a minimum, all of the above points, as detailed herein, should be implemented to protect agricultural land, and the rights of private landowners from 'Environmental Fundamentalism' within Councils and planning departments.

PART 2 – BACKGROUND

1. Prior to Kyogle LEP 2012 all rural land in the LGA was zoned “Non-Urban” & all agricultural activities were permitted.
2. Kyogle Draft LEP 2011 introduced new restrictive zones E2, E3 & RU2 & bio-diversity overlays. Planning Dept guidelines were not adhered to & incorrect mapping was used.
3. After more than 1000 objections some changes were made before Kyogle LEP 2012 was passed, however the restrictive zones & overlays remained.
4. On 20 September 2012 Minister Hazzard, the Minister for Planning on behalf of the NSW Government, made a media release which stated that “...the Government would not endorse the use of E2 and E3 environmental zones, on land that is clearly rural in council local environmental plans (LEP’s) on the Far North Coast” and “...the NSW Government will act to ensure the rights of existing landowners are protected”. Verbal commitments were made by the Minister affirming these statements.
5. In 2012 Minister Hazzard, the Minister for Planning, stated during meetings with landowners on the Far North Coast, that a new LEP was not an opportunity to impose restrictive environmental zonings and overlay maps on agricultural land. The minister also stated that he did not support mixed zonings on agricultural land.
6. In 2012/2013 Parsons Brinckerhoff was appointed by the Department of Planning, to undertake a review of the application and wider implications of the rezoning of agricultural land using environmental zones and environmental overlays. The review was to also eliminate inconsistencies and inaccuracies in the previous LEP, environmental instruments and environmental zonings.
7. In May 2014 Parsons Brinckerhoff released their report (the Report). The Report was accompanied by the Department of Planning and Environment Response – Northern Councils E Zone Review Interim Report.
8. This biased Report was prepared in contradiction with the verbal and written commitments made by the Minister for Planning in his media release, dated 20 September 2012 and meetings with landowners.
9. The intent of the review and Report has been reversed, to strongly favour environmental rezoning, over and above the protection of agricultural lands, agricultural business activities, and the protection of the rights of landowners, ultimately leading to farmers being unable to independently and responsibly manage their agricultural land.

PART 3 – ISSUES

The issues in relation to the Report are set out below.

1. Definitions of land categorised as RU1, E2 and E3

The definitions of land categorised as RU1, E2 and E3 must be amended as set out below.

a) Definition of land to be categorised as RU1

RU1 zoning must be redefined to include the following land:

All land that is used for, or has the potential to be used for agriculture, must be zoned RU1.

Further, land zoned RU1 must be prohibited from having any environmental protection zones or environmental overlays.

b) Definition of land to be categorised as E2

E2 zoning must be redefined to include only the following land:

Land that is:

- I. not used for agriculture; and
- II. does not have the potential to be used for agriculture,

and which meets the criteria for E2 categorisation, with the consent of the owner of that land, can be rezoned to E2.

c) Definition of land to be categorised as E3

E3 zoning must be redefined to include only the following land:

Land that is:

- I. not used for agriculture; and
- II. does not have the potential to be used for agriculture,

and which meets the criteria for E3 categorisation, with the consent of the owner of that land, can be rezoned to E3.

2. E2 Criteria

Item 4 in the E2 Criteria set out in the Department of Planning and Environment Response – Northern Councils E Zone Review Interim Report, at Page 5 “Areas of Habitat” is far too vague and ambiguous. It does not clarify what constitutes an “Area of Habitat” but rather creates further uncertainty, potential for abuse of power by regulatory bodies and could sterilise agricultural land. It needs to be clearly defined and supported by the overriding principles set out in section 12 in Part 3 of this document. As the Koala is listed on the 'threatened species list', any or all land which contains Koala 'HABITAT' fits the criteria for the rezoning to an 'E2' Environmental zone. Are the NSW State Government going to rezone all State Forests to 'E2' environmental because they fit the criteria? This has the potential to halt private forest management and to stop outright, or to hinder a landowners ability, and right, to utilise their property.

3. Environmental Zones

The areas covered by the E2, E3 zoning in the Kyogle LEP 2012 had been incorrectly and inappropriately zoned. This is evidenced by the fact, that a large portion of these E2, E3 Zonings, encompassed large areas of agricultural land.

There has been no scientific basis/evidence and no specific criteria, to support the imposition of E2, E3 zoning on agricultural land in the Kyogle LEP 2012.

- Primary objective of E2/E3 is “*To protect, manage and restore*”. This is totally at odds with ongoing farming management practices.

In 2012/2013 Parsons Brinckerhoff was appointed by the Department of Planning, to undertake a review of the application, and wider implications of the rezoning of agricultural land to environmental zones. The aim of the review, was to eliminate inconsistencies and inaccuracies in previous environmental instruments and zonings.

The recommendation by Parsons Brinckerhoff was to “transfer all areas proposed as E2 & E3 zones to the equivalent zoning of the superseded IDO” (ie RU1 Primary Production)

As there was no scientific basis/evidence and no specific criteria to support the imposition of E2, E3 zoning on agricultural land in Kyogle LEP 2012 & given the aim of the review was to eliminate inconsistencies and inaccuracies, it makes no sense whatsoever, to reinstate and adopt the indisputable planning mistakes made by Councils in previous LEP’s. Rather, all environmental classifications, must be removed in their entirety, and classified as RU1, and then the subject land be assessed correctly and accurately in accordance with the definitions set out in paragraph 1.b) in Part 3 of this document (in relation to E2) and 1.c) in Part 3 of this document (in relation to E3).

4. Riparian Areas Must be Excluded from E3 Criteria in Particular, and the LEP in General

It is totally inappropriate to apply “Riparian Areas” as criteria for rezoning rural land to environmental E3 zones. “Riparian Areas” is defined to encompass all areas 40 metres from the top of the bank on either side of a water course. Such a definition, would result in the rezoning of thousands of hectares of agricultural land to E3.

Management of watercourses is under the control of the New South Wales Office of Water, not local councils. The inclusion of “Riparian Areas” as a criteria for E3 environmental zoning in particular, and within the LEP in general, is totally unacceptable and unworkable and must be removed.

5. Voluntary Environmental management and contributions by Agricultural Landowners

The Department of Planning and Environment Response – Northern Councils E Zone Review Interim Report, at Page 4, states that “There are many private landowners across the Far North Coast, who manage native vegetation on their land and voluntarily re-vegetate their land. These activities often integrate with agricultural activities on the land, and play an important role in the protection of biodiversity. These approaches, should be encouraged and should not be burdened by the imposition of overlays and environmental protection zones, unless agreed to by the landowner.”

We strongly support the above principle, which must be reflected as an overriding principle in any plan dealing with proposed environmental zonings of. Imposing environmental protection zones in the absence of consent by the landowner, will result in:

- Landowners ceasing to voluntarily manage native vegetation and regeneration of their land;
- Landowners acting contrary to environmental protection zone objectives as landowners were not listened to during the process and/or resent the arbitrary down zoning of their privately owned freehold investment.
- Landowners rejecting all environmental protection zones and their objectives due to the inappropriate definitions of E2 and E3 zones, the inept re-classification of agricultural land as E2 or E3 and the arbitrary nature of the application of the environmental protection zones to such land. This will engender landowner resentment, resulting in negative long term environmental outcomes.
-

6. Validated Spatial Dataset

The term “Validated Spatial Dataset” may sound impressive, however, if satellite vegetation mapping photography is to be accepted by the Department of Planning, (as has been indicated by the the regional planning office in Grafton), as the criteria to meet the criteria for the rezoning of land to 'E' Zones, then this is totally unacceptable. Satellite vegetation mapping has been proven to be inaccurate and unreliable, e.g. Areas that show on satellite vegetation mapping as enclosed canopy, can in reality, be open forest grazing land, which, among other things provides warm winter grazing country, essential to responsible and reasonable farm management. Satellite vegetation mapping is embraced by all relevant government departments as an easy and relatively cheap method of justifying the imposition of Environmental restrictions on agricultural land and land owners.

This must stop.

All environmental studies must be **comprehensive**, must include 'ground truthing' (with the consent of the landowner), and must be reviewed by an independent agricultural expert.

7. Agricultural Land Should Not be Zoned E3, E2 or RU2

The Department of Planning and Environment Response – Northern Councils E Zone Review Interim Report, at Page 4, acknowledges that where the primary use of the land is agriculture it is not appropriate that the land is zoned E3.

We strongly support this assertion and further commitment to that fact that this should be expanded so that where the primary use of the land is agriculture it is not appropriate that the land is zoned either E3 or E2. Rather, other means can be adopted to ensure the security of agricultural land including allowing the local consent authority to consider the appropriateness of development on the land that is contrary to agricultural purposes.

Parsons Brinckerhoff recommend that “aesthetic values should be removed as an attribute from the E3 zone” this principle should also be applied to the RU2 zone (Rural Landscape) which emphasizes landscape value & downgrades the primary production usage of the land. Furthermore the mapping errors criticised by the consultants in relation to the E zones on the Kyogle LEP 2012 are also prevalent on the RU2 zones where open paddocks of cleared grazing lands are split by RU1/RU2 boundary lines. All agricultural land must be zoned RU1.

8. Biodiversity Offset

Any agricultural land that with the landowners consent carries an environmental zoning of E2 or E3, is to be available to the landowner to utilise for the purpose of biodiversity offset areas.

9. Established Process for Contesting the Application of E-Zones on Agricultural Land

There needs to be a process established for contesting the application of e-zones on agricultural land by landowners. This is relevant in the following situations:

- a) In the event that an e-zone is applied to land in the absence of the landowners consent; and
- b) In the event that a landowner seeks to challenge the relevance an environmental zone that was imposed previously; and
- c) In the event that the consent authority/local council applies an environmental zoning that in the opinion of the landowner does not comply with applicable criteria or processes.

The process needs to incorporate the following:

- Penalties for the consent authority in the event that the e-zone is incorrectly applied over agricultural land;

- The appeal process must be easily accessible to the landowner and funded by the NSW State Government; and
- Incorporate a mandatory onsite inspection and independent study by an agricultural expert to challenge the classification, if so requested by the landowner, at the consent authority's expense.

10. Environmental Overlays

The Department of Planning and Environment Response – Northern Councils E Zone Review Interim Report, at Page 3, does not support the use of overlays to manage scenic protection areas and terrestrial biodiversity.

We strongly support this statement and confirm that where an environmental value is identified on agricultural land that does not meet the criteria for an E2 or E3, zone it must not be protected through an environmental overlay on the LEP map.

11. Social and Economic Impact Study

The relevant state government consent authority/local council must bear the cost of a social and economic impact study on agricultural land prior to any proposal to rezone agricultural land E2 or E3. This study must be prepared in consultation with an independent agricultural expert.

12. Acknowledgement of Overriding Principles to be Included in the Final Plan

In order for the final plan to be consistent with the representations made by the Minister for Planning, on behalf of the NSW Government, namely that "The NSW Government will act to ensure the rights of existing landowners are protected", and to acknowledge the fundamental **fact**, that the theft of private property by any means is immoral, unlawful and totally unacceptable in a civilised society. The final plan must include the following acknowledgements as overriding principles:

- Freehold agriculture land must always be freehold unrestricted agricultural land;
- The plan is to ensure that all zonings are to be based on current and historic usage (ie agriculture for rural zoned land);
- The plan aims to ensure the rights of landowners are respected and protected;
- The plan aims to ensure that there will be no rezoning of agricultural land without the landowners consent;
- The plan must not burden agricultural land owners who represent 1% of the population for the claimed benefit of the balance of the population at no cost to the latter;
- The plan must not promote the 'regulatory taking' of agricultural land, and/or freehold land, by any Government or Government department, either State or Local.

Signed :

Chris G. Gorham

Name :

CHRIS G. GORHAM

Address :

50 WENDER ROAD

COLLINS CREEK.

Dated :

2/06/14.