



Lot 6/230 Pacific Highway

Bangalow, NSW, 2479

28 May 2014

**Re: Northern Councils Environmental Zones Review**

The Byron Rural Action group, on behalf of 650+ rural landholders/farmers who made submissions to the Byron Shire Council Draft 2012 Local Environment Plan (LEP), makes the following submission re the Northern Councils Environmental Review (E Zones Review).

We are grateful that common sense has finally prevailed and that Councils will no longer have the right to simply rezone rural lands to environmental zones (E zones) and overlays based on political agendas 'of the day' and without evidence that meets strict and objective criteria. We support the following:

- Only land with high value vegetation, such as recognised littoral rainforests, wetland areas or Endangered Ecological Communities, will be included in environmental zones
- E zones will only be applied where there is evidence of significant environmental values
- Where land does not have the required environmental significance to be given an E zone, it will be zoned according to its primary use ((source; Dept of Planning and Environment FAQ sheet, May 2014).

For too long, farmers have put good work on hold (i.e. planting tree belts, improving biodiversity through sustainable farming practices) for fear that their rights to continue to manage these lands will be removed through rezoning. The following recommendation is strongly supported and farmers can now get on with the job of improving the land for subsequent generations:

- Where land has been voluntarily revegetated by a landowner, councils will not be able to impose an E2 or E3 zoning, without the agreement of the landowner. This will be stipulated in the Ministerial direction (source; Dept of Planning and Environment FAQ sheet, May 2014).

We support the recommendations in the E Zone Review that ensure long term recognition and protection of 'farmland for food and fibre production' against competing interests (tourism, scenic values, unjustifiable environmental overlays etc):

- Where land does not have the required environmental significance to be given an E zone, it will be zoned according to its primary use
- Cleared land used for agricultural or rural purposes will be given an appropriate rural zones
- Agricultural and rural uses will continue while important environmental values are protected (source; Dept of Planning and Environment FAQ sheet, May 2014).

However, there remain a number of issues for clarification and resolution. Byron Shire Council has a poor track record when it comes to rezoning lands in Byron Shire – no consultation, no evidence,

incompetent identification of environments for protection and no care regarding the social/environmental/economic impacts these changes have on private landholders. Our members have simply lost trust in a Council that continues to abuse its power and find loopholes in any State/National framework that does not suit its agenda. Our members:

- Remain cautious of how Council will apply planning legislation/regulations once endorsed by the Department of Planning and Environment
- Will not 'relax' until such time as Council removes newly applied E zones and overlays to their properties
- Remain concerned that Council will simply engineer the evidence (i.e. aerial photographs rather than ground truthing by independent professionals) required to meet the Ministerial Directive
- Will not be able to challenge decisions made by Council without incurring significant costs and stress. Where mutual agreement cannot be reached, there must be a mechanism that rural landholders can easily access to independently arbitrate such cases (at no cost to the landholder).

The Byron Rural Action Group makes the following recommendations to assist landholders in Byron Shire 'hang onto' what they currently have and give them some further assurance that Council cannot simply repeat past performance:

- E zones and overlays should only apply to **agricultural** land with **landholder consent**. This will protect landholders against potential abuse of the E2 criteria which includes a very broad and open definition of "Areas of Habitat". Alternatively, this criteria must be clearly defined and supported by the overriding principles set out in section 12, Part 3
- Riparian areas must be excluded from E3 criteria and the LEP in general. "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 clearly inappropriate and must be removed
- The criteria used to assess E zones and overlays should include the three pillars of sustainability to ensure a balanced decision: Environmental, Social and Economic criteria should all be considered
- The evidence used to support E zones and overlays must be objective, comprehensive and include more than satellite vegetation mapping assessed by a Council desktop review. We have submitted hundreds of cases where this mapping alone has resulted in the wrong outcomes (entire grazing paddocks can be hidden under a canopy of trees). News is spreading quickly that the Grafton branch of the Department of Planning will accept this evidence...despite its known flaws. This is a cheap and nasty approach used by Councils to provide scientific evidence. On the other hand, Councils will not accept this evidence from landholders and mandate that a suitably qualified expert ground truth the property and guarantee/certify the report (which incurs professional liability). This is beyond the financial reach of most landholders and Council takes advantage of this situation

- It is recommended that where land is to be re-zoned, and landholders do not agree with the rezoning, that landholders can contest the decision via an appeal process which:
  - Is easily accessible to the landholder and funded by the NSW State Government, and
  - Incorporates a mandatory onsite inspection and independent study by an agricultural expert (nominated by the landholder) to challenge the classification, at the consent authority's expense
- Where rezoning occurs without the landholders consent and incurs costs to the landholder (financial, stress, interruptions, property devaluation etc), the Just Terms Compensation Act apply and landholders be compensated for losses. Councils should not burden rural landholders for the claimed benefit of the broader population, at no cost to the latter
- 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.

### **Terrestrial and Biodiversity Overlays**

We fully support the Department of Planning & Environments response **not to support** Terrestrial Biodiversity Overlays due to the following:

Rural Land is fully protected by a raft of existing legislation, regulation, policy and Codes of Conduct, for example:

- Native Vegetation Act
- Threatened Species Conservation Act
- Fisheries Management Act
- Water Management Act
- Certification Programs (e.g. AgriSure, APIQ, NASAA).

Accordingly, the use of an overlay map and clause in the Draft LEP 2012 would duplicate other legislation and approval procedures and is considered overly restrictive on productive agricultural land.

Our members are very concerned that if the E Zone Review recommendation is supported, Council will continue to inappropriately apply Terrestrial and Biodiversity Overlays. The following are just 2 examples of many where Byron Shire Council has proposed completely inappropriate terrestrial and biodiversity overlays on agricultural land, and will continue to do so if not stopped:

- An overlay over a commercial and fully productive 50 Ha macadamia orchard



- Overlay of 1 Ha around a **single Fig Tree** (already protected under existing legislation). The Fig Tree has since died of natural causes. The overlay is now protecting 1 Ha of cleared pasture with no threatened species worthy of legislative protection.



## Summary

The implementation of these recommendations will simply give rural landholders the right to continue farming. Nothing more, nothing less. The status quo will be maintained and farmers can continue to invest in the production of food and fibre, a business that we all depend upon.

Those farmers who practice good environmental management of their properties should be rewarded not penalised.

Future generations will simply not understand how Government **could ever sign over freehold agriculture land to any other competing interests**. Food and water is the foundation of all life...and it is becoming a scarcer resource with every passing generation.

Thank you

On behalf of the Byron Rural Action Group

Rex Harris, Alli Page and Louise Savrda