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Department of Planning & Infrastructure
Re:Submission Northern Councils E zone Review Interim Report

As a landholder in Byron Shire I make this submission in regard to the Northern Councils E zone Review Interim Report.

Valid Ecological Evidence?

Need for Up to Date Statistically Valid Ground Truthed Evidence

Northern Councils E zone Review Interim Report by Parsons Brinkerhoff states a “need for planning decisions to be evidence based.”

The evidence used to map EZones in the Byron LEP is based on old records, old aerial photographs and has been shown to be inaccurate.

The Department of Planning & Environment’s response –Northern Councils E zone Review Interim Report follows the Parsons Brinkerhoff recommendations in TagA and TagB which rely on a “validated spatial data set”. A “validated spatial data set” is not defined, a DP&I staff member was unsure whether Byron Flora and Fauna Study 2007 would be viewed as such.

It is important that the Byron Biodiversity Conservation Strategy (2004) or the Byron Flora and Fauna Study (2007) not be relied upon as “validated ecological evidence” ,“evidence of significant environmental values” or a “validated spatial data set” as they are based on poor mapping and out of date records, most of the data has not been collected systematically.

The Northern Councils EZone Review Interim Report (NCERIR) states that “Approximately 78% of sites inspected within E2 zoning within Byron SC contained high conservation value biodiversity assets.” This means that approximately 22% of land to be zoned E2 contained no high conservation value biodiversity assets, this is a significant failure in mapping. This is not surprising as no ground truthing was conducted. (The report does not state whether the presence of these high conservation value biodiversity assets or their protection would have justified imposition of EZoning).

Byron Biodiversity Conservation Strategy (2004) is based on 1999 aerial photography and old records of biodiversity.

The NCERIR states;

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

“Some errors of mapping precision have arisen from the use of out-dated aerial photography.”

The report later states;

“ councils should base the EZone mapping off aerial photography that is less than five years old.” The Byron LEP is based on 10 year old aerial photography.

There must be an explicit direction that mapping must be based on aerial photography that is less than five years old.

Table 2.4 in the NCERIR states that Byron SC methods and supporting information used to develop EZones did not include ground truthing.

On my property the mapping is inaccurate, there are 7 vegetation types mapped 2 are inaccurate 1 type plantations is not mapped, one type Rainforest is clearly incorrect, another 2 areas are probably incorrectly typed so of 8 vegetation types 2 ,possibly 4 are incorrect giving 25% to 50% error in type, the extent of vegetation cover is less than 70% accurate.

A responsible government body should be looking to establish accuracy of mapping in the range from 97% or greater as is standard practice in industry and science. When I worked doing research for industry 80% accuracy was regarded as having the reliability of a guess. It is important that the highest standards apply as the LEP is dealing with the future of land use over some of the most useful land in the state.

This lack of accuracy is indicative of the poor quality of the document. The Biodiversity Conservation Strategy (2004) must be withdrawn.

Any new environmental zoning must wait until a properly conducted study based on up to date aerial observations, up to date records, systematic surveys and statistically valid ground truthing is produced. Data sets should also be temporally validated as the LEP is dealing with a rapidly changing landscape.

Robust?

The NCERIR states;

“The HCV methodology used to develop the E Zones in the Byron LEP is comprehensive and robust and reflects the range of environmental features across the LGA.” How can a methodology that creates the errors and shortcomings described above be called robust?

Valuable Agricultural Asset

The Department of Planning & Environment’s response –Northern Councils EZone Review Interim Report rightly states “The Far North Coast is the most biologically diverse region in NSW and agriculture is a major contributor to the regional economy. In 2010–11, the total gross value of agricultural production was \$373.5 million. The importance of agriculture to

the region is reinforced through the mapping of State and regional farmland and the recent mapping of the highest quality land – Biophysical Strategic Agricultural Land.”

In Byron Shire there are quite a few properties where there has been considerable investment in agricultural infrastructure that have been zoned E.

On my property there are plantations, shade houses, a bore and farm sheds in areas that were proposed as E2, none of these were mapped or considered in the preparation of the Byron Shire Draft LEP even though many of these features are clearly visible on Google Earth or any aerial observation.

Northern Councils EZone Review Interim Report states that;

“Biodiversity conservation and agricultural production need to be balanced: production needs to be sustainable, while conservation cannot be totally at the expense of agricultural yield. Agricultural areas provide habitat for biodiversity. Agricultural areas are not unsuitable as habitat for native species nor do they serve as an impervious barrier to species movement (Kupfer et al. 2006). Agricultural landscapes should be viewed as functional ecosystems that contain a mix of native vegetation and agricultural components (Fischer et al. 2006; Tschamtker et al. 2012). Having biodiversity on the land is not detrimental to agriculture.”

This land has high fertility, high rainfall, an availability of ground water, has infrastructure, proximity to markets and transport routes and an available workforce, it is simply too valuable to lock up.

Agricultural use should have precedence over EZoning as environmental protection is offered by State and Commonwealth legislation. There should be a bias towards preservation of agricultural potential over environmental protection.

State and Regionally Significant Agricultural Land

Northern Councils EZones Review Summary of consultant’s draft recommendations which apply to Byron states;

“Land that is mapped as ‘State Significant Farmland’ or ‘Regionally Significant Farmland’ on the Northern Rivers Farmland Protection Project – Final Map 2005 and does not contain significant environmental values should be given an appropriate rural zoning.”

This recommendation that State and Regionally Significant Agricultural Land be excluded from EZoning does not adequately protect agriculture. Agricultural use should have precedence over EZoning as environmental values are protected by State and Commonwealth legislation.

Is there a Need for Environmental zoning?

I agree that there is no need to impose EZones over environmental assets that are already protected by State and Federal legislation. A case at point is Koala habitat which is protected by SEPP44.

There is no need for extensive EZoning as the biodiversity of the shire has increased over the last 50 years without extensive environmental zoning.

Uncalled for Regulatory Burden

The reason for prohibition or limiting of activity on agricultural land that is thought to have environmental values must be clearly demonstrated before zoning changes are considered. The environmental, social and economic consequences of such zoning changes must be evaluated and stated.

Having viable agriculture with its infrastructure in the landscape supports environmental works.

A likely outcome of extensive E zoning would be the creation of swathes of neglected land with weed and feral animal infestations.

The Northern Councils EZones Review Summary of consultant's draft recommendations which apply to Byron states;

“Land which was proposed to be zoned E2, E 3 or E4 for biodiversity purposes and does not meet the recommended criteria for E2 or E3 zoning, should be zoned according to its primary use and should be designated as ‘Biodiversity’ on the draft Byron LEP 2014 Natural Resource – Terrestrial biodiversity map.”

Is this an expression of bias towards imposition of regulation?

This contradicts Northern Councils EZones Review Summary of consultant's draft recommendations which apply to Byron which state;

“Before land can be placed in an EZone the environmental values must be rigorously validated and must also be demonstrated that E zoning will function to achieve environmental objectives.”

Why would land that does not meet recommended criteria have a regulatory burden imposed on it?

Need for Ground Truthing on all Properties to be EZoned.

The NCERIR states;

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

The inadequacies of evidence used to develop this LEP have been discussed in an above section.

Table 2.4 in the NCERIR states that Byron SC methods and supporting information used to develop EZones did not include ground truthing.

It is puzzling that a specific requirement for ground truthing is not in the consultant's report summary or the DP&E's response

There must be a clear directive that ground truthing be carried out property by property on all properties where E zones are proposed.

Time For Resolution

This is the third submission that I have prepared, a councillor and others predict that this process will continue for years perhaps requiring at least one or possibly 3 more submissions. This situation is causing a lot of anxiety and stress, preparation of submissions is costly in time and money. There is uncertainty about future land uses, this is inhibiting investment in rural enterprises.

Much of this uncertainty has arisen because of the poor quality of the evidence used in preparation of this LEP.

When are rural land holders going to be allowed to rest secure that they will not have to defend their right to operate without arbitrarily imposed, unjustified regulatory burden?

Summary

- The Byron Draft LEP is based on inaccurate evidence, the NCERIR while it points to this does not offer a satisfactory remedy for this. The DP&E Response does not offer a remedy either. Such a remedy would be to specify that any new environmental zoning must wait until a properly conducted study based on up to date aerial observations, up to date records, systematic surveys and statistically valid ground truthing is produced.
- The NCERIR points out a requirement for ground truthing on any property where EZones may be imposed yet does not recommend it. The DP&E Response does not comment on this. There must a requirement for ground truthing on any property where EZones may be imposed
- The NCERIR points out a requirement for a balance between agricultural potential and environmental protection but does not recommend such a balance. Agricultural potential must have some precedence when EZoning is being considered.
- The NCERIR points out a requirement for a balance between agricultural potential and environmental protection but recommends environmental overlays on land where there is no evidence of environmental assets. Does this expose a bias towards imposition of regulation on the part of Parsons Brinkerhoff?
- The case is not made that EZoning will protect environmental assets.
- This process is costly, disruptive and is creating uncertainty, much of this is because of the poor quality of data used to draft the LEP. Zoning changes in the absence of high quality evidence should not be proposed, agricultural potential must also be considered. Planning on the basis of 80% accuracy (guess work) is not acceptable, planning must be based on high quality data.

Yours sincerely

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