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To Whom It May Concern:

Preliminary Draft Submission - Northern Councils EZone Review Interim Report

Please find attached the preliminary draft submission from Byron Council staff on the Northern Councils EZone Review Interim Report. This is not Councils formal adopted submission. Council will be considering this submission at their 26 June 2014 Extraordinary Meeting, after which I will provide Councils adopted response.

Yours sincerely

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Executive Manager Environment and Planning



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THE BUNDJALUNG PEOPLE

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Submission by Byron Shire Council staff on Parson Brinckerhoff's Northern Councils EZone Review Interim Report

(NOTE: this is not Councils formal submission. Councils formal submission will be provided after Council considers this draft at their 26 June Extra Ordinary Meeting.)

Recommendations 1, 2, 6, 7 & 12

Application of E2 Environmental Conservation and E3 Environmental Management zones

Parsons Brinckerhoffs (PB) Interim Report recommends that E2 and E3 zones must only be applied in accordance with criteria and all land not meeting the environmental zoning criteria to be zoned in line with its envisaged primary function.

Environmental Protection - Coastal lands

The SI LEP does not provide compatible zones for many of the existing Environmental Protection Zones such as 7(f1) Environmental Protection – Coastal Lands and 7(f2) Environmental Protection – Urban Coastal Lands.

Council has previously called on the State Government to provide Standard Instrument Local Environmental Plan (SI LEP) zones to appropriately manage coastal hazards. Council staff discussed this matter with the Local Planning Panel on 15 March 2012. The Local Planning Panel made the following recommendations in regards to this request:

The Panel agreed that the consideration of any additional zones should only be undertaken if the zone can be appropriately applied across the State, not simply for individual circumstances, in order to maintain consistency and an appropriate hierarchy of zones.

The Panel discussed the merits of an Environmental Zone designed to cater for areas affected by natural hazards, in certain circumstances such as the presence of a Government policy relating to the issue, e.g. NSW Coastal Planning Guideline: Adapting to Sea Level Rise.

The Panel recommended that the Department develop a new Environmental Zone for inclusion in the SI LEP that caters for land impacted by natural hazards, where such natural hazards have been addressed as part of a Government policy, guideline or similar.

The then Director General of Planning advised Council in a letter received 25 May 2012 that:

I have reviewed the Panel's recommendation and have decided to defer my decision regarding introducing new zones into the SI LEP template pending the review and recommendations of a Ministerial Taskforce on improvements to coastal planning policy. The Department is expecting proposed actions from the Ministerial Taskforce within the next few months and I will be in a position to review this matter later in the year.

Relegating existing coastal zones to an overlay is in opposition to the E2 zoning criteria which proposes that existing 5(b) Rural (High Flood Hazard Liable Zone) be zoned E2. Why would land affected by coastal hazards be treated differently to land affected by flood hazards?

Classifying land, which has for many years been zoned to reflect its inherent coastal hazards, to a residential zone undermines Councils long held planning position and effectively will allow for intensification of development in sensitive coastal areas.

Staff reiterate Councils previous requests for new zones to appropriately manage development within coastal hazard areas and call on the Minister to support the inclusion of coastal hazard zones in the SI LEP as recommended by the Local Planning Panel in 2012. In the interim, until new coastal hazard zones are provided, it is Staffs preference for 7(f1)

Environmental Protection – Coastal Lands and 7(f2) Environmental Protection – Urban Coastal Lands to be included in the E2 zone criteria, and in the absence of this to remain with their current zoning under Byron LEP 1988.

Scenic escarpment

The 7(d) Environmental Protection – Scenic/Escarpment Zone was applied to land irrespective of the presence of vegetation; one of its objectives was to protect and enhance the scenic qualities of the Shire. The 7(d) zone has enabled Council to effectively regulate development that would have otherwise had a visually disruptive effect on the scenic quality and visual amenity of the Shire. The absence of an equivalent zone in the SI LEP erodes the current planning provisions. Managing scenic values via an overlay and clause in the LEP as recommended by PB, although not supported by the Department, further erodes the current planning position. If this was further reduced to only enable councils to regulate development in scenic escarpments via Development Control Plans (DCPs), as recommended by the Department, this would be a substantial loss as DCPs only provide guidance and their provisions are not statutory requirements.

Staff would prefer that a compatible zone to the current 7(d) is provided in the SI LEP to manage development in scenic escarpments and in the absence of this zone support PBs recommendation that scenic escarpment values be included on an overlay map with an accompanying clause in the LEP.

Threatened Species - Koala

Koalas are listed as a threatened species under both the NSW *Threatened Species Conservation Act 1995*, and State *Environmental Protection and Biodiversity Conservation Act 1999*.

The E2 zone criteria number 4 in the Interim Report states:

Land identified within a validated spatial dataset comprising areas of habitat for threatened species (as listed under the Threatened Species Conservation Act 1995 and/or the Environmental Protection and Biodiversity Conservation Act 1999).

Additional Consideration number 14 in the Interim Report states:

Ballina SC, Byron SC and Tweed SC are currently preparing Koala Plans of Management for the coastal zones within their respective councils. Each council should insert a clause into the relevant SILEP that regulates development in areas of Koala habitat (identified on an accompanying Koala habitat overlay) upon completion of the relevant Koala Plans of Management.

SEPP 44 – Koala Habitat Protection, Part 4, 15 states that councils should:

(b) *make or amend a local environmental plan:*

(i) *to include land identified as a core koala habitat within an environmental protection zone, or*

(ii) *to identify land that is a core koala habitat and apply special provisions to control the development of that land, and*

(c) *give consideration to preparing an appropriate development control plan for land that is or adjoins a core koala habitat*

Clarification is requested that the E2 zone applies to koala habitat (Primary, Secondary A and B) as per the E2 Zone criteria number 4. This position is supported, and if this is not the case, Staff support an alternative that core koala habitat (as identified in a Comprehensive Koala Plan of Management or SEPP44) is zoned E2 and all other koala habitat (using Primary, Secondary A and B definitions) should be included as a criteria for E3.

Riparian Corridors

Council zoned a 20m riparian buffer on either side of most rivers in accordance with Council's high conservation value methodology. This buffer included both cleared and vegetated land irrespective of the environmental significance of the vegetation. Riparian lands are ecological sensitive areas. With highly productive soils they were heavily cleared in the past for agriculture, grazing and irrigation. Riparian lands are very fragile and are a vital part of catchment processes such as improving water quality. They also play an important role in the lifecycle of many native plants and animals by providing corridors for migration and a refuge in times of drought. Under PBs environmental zoning criteria a continuous riparian buffer is not eligible. Only those areas that have validated significant environmental values, and are at a scale that provides for compact and contiguous environmental conservation linkages, will retain an environmental zoning. Small, fragmented and isolated sensitive environmental areas, and only where ecological significant vegetation is present, will be relegated to an overlay. PBs environmental zone methodology gives no regard to sensitive environmental areas at a landscape scale that don't, due to their nature, necessarily have significant vegetation present. This disregard of riparian buffers has the potential to create incongruous management outcomes for sensitive riparian areas.

Staff request that consideration be given to landscape scale biodiversity conservation. PBs overlay and clause methodology is preferred over the Departments, as Staff believe it is important to recognise the significant environmental values riparian areas provide at the landscape scale.

E2 Criteria

Criteria 1 & 2 SEPP14 Wetlands and SEPP 26 Littoral Rainforest are **supported**

Criteria 3, Endangered Ecological Communities is **supported in principle**. However, consideration should be given to applying a condition threshold to remove highly degraded areas. This should be based on appropriate standards, for example as defined in *Environmental Outcomes Assessment Methodology* (Office of Environment and Heritage 2013). Identification of these areas across the LGA, which meet accuracy requirements, will require extensive resources to investigate and undertake field surveys to validate the location, boundaries and condition of these areas.

Criteria 4, Threatened Species Habitat is **supported in principal**. However, this criterion will need further refinement to make it easily translated to a mapping product. In Byron Shire threatened species can occur in most vegetation types including derived vegetation or vegetation dominated by exotic species, therefore without further refinement this could result in an overall increase in Ezones compared with those proposed in the Draft BLEP 2012. Suggested approach is to apply this criterion to mapped areas of native vegetation not in 'low condition' where a verified threatened species record exists. Data sources can include Council's threatened species database, Bionet, Atlas of Living Australia.

Criteria 5, 6 and 7, over cleared vegetation communities, Native vegetation in over cleared Mitchell landscapes and culturally significant lands, are **supported**.

E3 Criteria

Criteria 1, Rainforest other than SEPP 26 is **supported**. However it should be noted all rainforest within Byron Shire is listed as an EEC and therefore would be zoned E2.

Criteria 2, Old Growth Forest is **not supported** as an E3 criteria. Given the extremely high conservation value of old growth vegetation it warrants the highest level of protection and should be included as an E2 criterion.

Criteria 3, Riparian, wetland and estuarine other than SEPP 14 is **supported in principle**. However further clarification is required. This criteria appears to only apply to areas of 'vegetation'. Detail should be provided regarding the nature and condition of these areas. Staff would support broadening this criterion so it applies to all land within riparian, wetland and estuaries areas, not just vegetation. This is considered appropriate as it would enable a buffer zone to be applied in order to meet the zone objective to '*protect, manage and restore*', not just provide protection for fragmented vegetation without consideration of broader landscape management issues.

Criteria 4, Rare, endangered and vulnerable forest ecosystems is **supported**

Criteria 5, Native vegetation on coastal foreshores and land subject to coastal hazards is **supported in principle**. However, clarification is required as to how this criteria is interpreted. Does it apply to current Coastal hazard zones ie. 7(f1) and 7(f2)? As described above, Councils preference is for specific zones to manage coastal hazards.

Criteria 6, Land where strict controls on development should apply, is **supported in principal**. However further clarification is required regarding the application of this criteria.

Additional criteria

There should be a mechanism to allow some degree of flexibility to zone an area for environmental protection that does not meet the criteria proposed by PB. This would allow areas to be zoned at Council discretion with Landholders support. Examples may include:

- areas revegetated for conservation purposes, particularly those areas revegetated using public funds from environmental grants.
- areas being restored via assisted regeneration to enhance the biodiversity value, particularly those areas being funded from public funds from environmental grants.
- Council land that is being managed for conservation purposes and is identified in a conservation strategy or vegetation management plan.

Clarification is requested on how to interpret and apply the environmental zone criteria and consideration of including additional criteria as specified above.

Recommendation 14

Application of E4 Environmental Living zone

Council applied E4 zones to existing residential land largely dominated by HCV or other environmental attributes such as where coastal cypress pine an Endangered Ecological Community, is present at Suffolk. PB state that Byron is the only Northern Council to use this zone and recommend that Council replace the E4 zone with an appropriate residential zone. PB also recommend that councils protect sensitive environmental attributes by an overlay map and clause, although this is not supported by the Department.

Staff generally supports the application of a residential zone to the areas proposed to be zoned E4.

Clarification is required if any of the Environmental Zones (E2, E3 and E4) can be applied in urban areas where sensitive environmental attributes are present. If not, zoning urban areas with tangible environmental attributes to an urban residential zone reinforces the need for terrestrial biodiversity overlays to consider the impact of development on these sensitive areas.

Clarification is required that Council would not be excluded from applying environmental zones, particularly E4, to future urban release areas if proposed.

Recommendations 4 & 5

Permissibility of 'extensive agriculture' in EZones

In the draft BLEP 2012 Council prohibited 'extensive agriculture' in the E2 zone and permitted it without consent in the E3 zone. PB recommends that Council permit 'extensive agriculture' with consent in the E2 zone and without consent in the E3 zone. The outcome of PBs environmental zone methodology will mean that only those areas with high conservation value vegetation at a scale that generally doesn't result in isolated disconnected conservation linkages will receive an environmental zoning. This zoning methodology means that Ezones will be more restrictively applied with environmental zoning following the boundary of the significant vegetation.

Given the high standards required to meet the criteria for E2, it is anticipated that these areas would have the highest conservation value, the 'best of the best', and not contain cleared agricultural land. In order to meet the zone objectives, these areas should be managed for conservation purposes and as such allowing 'extensive agriculture' (which allows for: the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes; the grazing of livestock for commercial purposes; bee keeping and dairy (pasture-based)) would be inappropriate and would undermine the ability to meet zone objectives. Therefore, to achieve zone objectives E2 zones should prohibit extensive agriculture or the zone objectives need to be changed. This would not prevent existing use rights applying to areas of E2 that might be currently used, for example, as shelter for livestock in times of flood.

Permitting 'extensive agriculture' with consent in the E2 zone is inconsistent with the zones objectives:

'To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values'

'To provide for a limited range of development that does not have an adverse effect on those values'

Additionally, PBs rationale for Tweed to continue to prohibit 'extensive agriculture' in the E2 zone is not equitably applied to Byron where it is currently prohibited in 7(j) zone

Staff request that 'extensive agriculture' is prohibited in E2 to allow conservation to remain the focus of land use in these areas and is consistent with current 7(j) zone. If not, the SI LEP objectives for the E2 Environmental Conservation zone should be amended.

Recommendations 10, 16 & 17

Environmental Overlays and associated clauses

Council's exhibited LEP proposed overlays and associated LEP clauses for drinking water catchment, watercourses and terrestrial biodiversity (which included wildlife corridors).

PB recommend that where an environmental value is identified that does not meet the criteria for E2 or E3 zone it is to be protected by an environmental overlay and LEP clause. PB support overlays for drinking water catchment, scenic protection, coastal risk and terrestrial biodiversity. The Department do not support overlays for scenic protection and terrestrial biodiversity. They advise that scenic protection could be addressed in a development control plan and that a range of other legislation

applies to rural areas to protect native vegetation and as such an overlay would duplicate other approval processes and be unnecessarily restrictive unless agreed to by the land owners.

The Departments position of not supporting a terrestrial overlay on the basis that other legislation would apply is inconsistent as the Department supports some criteria used to identify E2 and E3 zones to which other legislation applies including the *Threatened Species Conservation Act*, *Environmental Protection and Biodiversity Conservation Act*, SEPP 14 and 26. In the absence of appropriate zoning, overlays are the most robust option to integrate wildlife corridors into planning considerations. Wildlife corridors are nationally and internationally recognised as being an essential way of managing for landscape scale conservation and the absence of appropriate mechanism will reduce their implementation and effectiveness. An overlay is also considered appropriate when significant environmental values occur in urban areas and no other legislation is in place to consider these, such as development adjoining National Parks, high conservation value vegetation and wetlands.

There is no consideration in the Interim Report of the importance of landscape scale conservation values such as wildlife corridors and riparian buffers that can transect shires providing a vector for fauna and flora movement and colonisation and to focus attention to retain and restore connectivity. The report only considers current static vegetation that has high conservation significance.

Council's wildlife corridors are based on mapping done by National Parks and Wildlife Service (Scotts 2003) and refined by ecologists and botanists involved in the development of Councils Biodiversity Conservation Strategy to reflect detailed knowledge of the Byron Shire landscape and the ecology of local fauna and flora species. Wildlife corridors assist with ensuring the long-term viability of Byron's fauna and flora by providing for movement, migration and colonisation across the landscape. Land within a wildlife corridor can be vegetated with native trees, weeds, or crops such as macadamias and coffee, or it can include cleared land such as pastures. The inability to map wildlife corridors on a terrestrial biodiversity overlay would mean that Council is unable to consider the significant environmental values wildlife corridors provide.

Staff support PBs overlay and clause methodology, as Staff believe it is important to recognise the significant environmental values wildlife corridors and buffers provide at the landscape scale.

As mentioned above, preference is for a natural hazard zone to manage coastal risks, not an overlay, and a zone to manage scenic escarpment, and if not, an overlay and clause.

Recommendation 13

Aesthetic values should be removed as an attribute from the E3 zone

PB propose that the E3 zone should be amended to remove aesthetic values as an attribute to be protected and managed. As mentioned above there is no other SI LEP zone equivalent to current 7(d) Scenic/Escarpment zone and if provisions for its consideration are relegated to a DCP which have been demoted to a non-statutory guideline then there is potential for ad-hoc outcomes at DA stage.

As mentioned above, our preference is for an appropriate zone to protect visually significant escarpment land or an equivalent overlay and clause provision in the LEP.

Recommendation 15

Application of rural zone

PB recommends that Councils apply a relevant rural zone if used for agricultural production (confirmed via onsite investigation) and it is shown as containing mapped State or Regionally Significant Farmland. PB also recommend that Ezones will only be applied to rural lands where their designation is supported by a council wide biodiversity/vegetation study and verified on ground. In cases where a paddock used for grazing purposes may contain a reasonable sized portion of high conservation value vegetation that clearly meets the Ezone mapping criteria, but this area is open to grazing animals that may use this area from time to time (eg. shelter, winter grazing), it is unclear as to which recommendation overrides the other.

Staff are supportive of applying a relevant rural zone if used for agricultural production (confirmed via onsite investigation) and it is shown as containing mapped State or Regionally Significant Farmland.

Staff seek clarification as to which mapping methodology is applied in the first instance. For example, E2 and E3 zone criteria are applied first, then, where land that was proposed to be zoned environmental but it doesn't meet the Ezone criteria, it is zoned according to the envisaged primary use of the land as per recommendation 15.

Additional Considerations

1: Consider introduction of a new Natural Resource Management Zone for continuation of sustainable agriculture whilst conserving environmental values

Staff support the provision of such a zone and reiterate Councils request for appropriate zones to manage coastal hazards.

2&3: Vegetation mapping to use aerial photos <5yrs old

Council is currently undertaking a review of their vegetation mapping which will use the most recent available imagery <5 years old. The review approach will maximise ground truthing and grid the Shire into priority areas. Accuracy will be limited by resources. Additional resources are required to verify the environmental sensitive areas recommended for EZones to ensure 80% accuracy.

Staff seek financial assistance from the Department to ensure that Councils current vegetation mapping review methodology is robust and complies with the Interim Reports direction for 80% accuracy.

5: Acknowledge regional and local government environmental attribute mapping in the Regional Growth Plan

Staff support the inclusion of Councils environmental attribute mapping in the Regional Growth Plan.

6 & 7: Provide incentives and support mechanisms to manage biodiversity on private land

Previously, Council employed a Biodiversity Extension Officer who fulfilled this role by providing advice to landholders, assisting with grant applications, delivering the Land for Wildlife Program etc. Council currently has an environmental levy.

10: Provide information on existing use rights

A fact sheet was developed for the draft LEP exhibition.

11: Streamline assessment of permits for clearing native veg

This was considered during the recent review of Native Vegetation Regulations.

13: Create an environmental management group under NOROC

This group already exists - NOROC NRM Manager Group.

14: Insert clause and overlay into LEP on completion of KPOM

This recommendation is contrary to DPE position of not supporting overlay. Koalas are a threatened species and therefore their habitat should be zoned E2 in accordance with PB methodology. Clarification required as requested above.

General Comments

There are some inaccuracies in Table 2.5 on page 62 of the interim report. Byron used the following criteria from the table to apply E zones which is not accurately presented in the table:

- Significance to local and regional habitat corridors/ contribution to wildlife corridors (Considered in ecological criteria 8, in Byron Biodiversity Conservation Strategy – Relative Ecological Value Matrix.)
- Extent to which ecosystem already reserved in local and regional context (Considered in ecological criteria 4 and 7, in Byron Biodiversity Conservation Strategy – Relative Ecological Value Matrix)
- Vegetation growth stage, structure condition (Considered in ecological criteria 1, in Byron Biodiversity Conservation Strategy – Relative Ecological Value Matrix)

Representative sample size for site investigations

The section in the Interim Report that discusses the findings of the field assessment should acknowledge that the sample is not representative of all areas across the Shire due to the highly limited sample size used, and in part, sampling lots with known mapping issues. While the results illustrate issues with the mapping methodology applied (ie. smoothing/rounding of zone boundaries, infilling cleared areas between vegetation less than 40m wide etc, thereby zone boundaries not aligning to vegetation boundaries), in the absence of a representative sample and robust site selection methodology, these results should not be extrapolated over the entire Shire.

Ref:

Scotts, D., 2003 *Key habitat and Corridors for forest fauna: A framework for Conservation in North-east New South Wales*, NSW NPWS Occasional paper 32, National parks and Wildlife Service, Sydney.