

Department of Planning & Environment
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SYDNEY NSW 2001

Submission to Review of Environmental Zones in Far North Coast

Pittwater Council welcomes the opportunity to comment on the review of Environmental Protection zones on the Far North Coast. It is our understanding that the findings and recommendations of the interim report will have implications for Environmental Protection zones across NSW, however, the nature or extent of those implications is unknown at this point. This submission highlights the potential issues for Pittwater Local Government Area (LGA) if the recommendations of this review are applied across the state.

Scope of the review

Pittwater Council seeks further clarification and justification regarding changes to the scope of the review. It is noted that the original scope focused solely on agricultural and rural land uses, the extension of the scope to incorporate residential uses is of concern. Further clarification about the scope of this review and the implications for recommendations regarding residential properties zoned E3 and E4 across NSW is sought.

The extension of the scope of the review, in January 2013, to incorporate the application of the E4 Environmental Living zone in residential areas has not been widely reflected in the web page information on the Department of Planning and Environment's website. Media Releases and general documentation place a greater emphasis and focus on balancing agricultural and rural uses while protecting important environmental values, while residential land uses are scarcely mentioned, specific reference is made to the *Department of Planning and Environment's Response – Northern Councils E Zone Review Interim Report*. Given the review will establish broader principles for environmental zoning across the state – it is essential that all exhibition material clearly reflects the new extended scope and provides clear advice that the review provides recommendations on LEP practice note – *Preparing LEPs using the Standard Instrument: standard zones* Attachment A - 'overview on the general purpose of the environmental zones (as outlined in Department of Planning Practice Note PN09-002) and new criteria for the application of the E2 Environmental Conservation Zone and E3 Environmental Management Zone

As the scope and final recommendations of the review have not been clearly established at this point, it is imperative that the Department of Planning and Environment undertake additional extensive consultation when the state wide implications of the finalised recommendations become apparent to ensure all Councils across NSW are provided the opportunity to review and consider the proposed recommendations and potential implications.

The aim of applying zones consistently across NSW is difficult to achieve as environmental qualities, ecological and aesthetic values, land uses and development patterns vary considerably across the different regions. What is considered appropriate in the Far North Coast may not be appropriate for metropolitan Sydney. Pittwater Council encourages the Department of Planning and Environment to

consider the differences of regions in NSW when considering the wider implications of this review and its application across the state. Furthermore, additional extensive consultation across the state is required at the completion of this review to enable local governments to consider the Department of Planning and Environment's position on the proposed amendments to Planning Circulars and Practices for LEP making and provide comment on the state wide implications.

Use of Environmental Protection Zones

Across the Pittwater LGA, the Environmental Protection zones have been applied in accordance with the criteria outlined in Practice Note PN09-002 Environmental Protection Zones. The proposed criteria for Zone E2 and E3 are a concern for Pittwater Council, especially the removal of aesthetic values from the criteria. Council during the preparation of its Standard Instrument LEP utilised the E3 and E4 zones in accordance with the criteria established in the Departments Practice Notes to conserve scenic values and limit future residential intensification in areas subject to environmental and infrastructure constraints. The E3 and E4 zones were used in this instance as the Residential Zones did not provided the ability to limit future development and intensification in these areas.

The areas, subject to the E3 and E4 zones were established using an evidence-based approach, which clearly indicated certain types of residential development, such as dual occupancies and secondary dwellings, could not be supported in these areas. The Department's stance on not permitting the use of environmental overlays has consequently lead to land used primarily for residential purposes to not be zoned Residential as the Residential Zones fail to provide adequate protection for important environmental and aesthetic values of these areas. These sites alternatively were zoned E3 or E4 in accordance with the Department's Practice Note.

Criteria for E2 and E3 zones

The creation of criteria for E2 and E3 is a concern for Council as the criteria removes reference to scenic and cultural values. Areas in Pittwater zoned E2 are bushland reserves and headlands identified within Plans of Management as having high conservation values such as species habitat. It is uncertain whether this analysis would be considered a validated data set or evidence-based as the terms are not defined or explained in the exhibition material. Furthermore, concern is raised regarding the ongoing implications of properties zoned E2 if they did not meet the new criteria outlined.

The implications for the E3 zone criteria are also a concern. The criteria established by Parsons Brinkerhoff again do not reference scenic/ cultural values and environmental hazards/processes that require careful consideration/management. Council has established its E3 Zones on this basis. Areas zoned E3 throughout the LGA have infrastructure constraints as well as environmental and aesthetic qualities, being land without road access adjoining the Pittwater waterway and/or Ku-ring-gai Chase National Park. The implications for Council are that if the criteria remove the abovementioned references than these areas may be subject to inappropriate residential intensification.

The application of the established criteria outside of the Far North Coast is uncertain at this point and further clarification is sought on this matter. If the criteria established for the Far North Coast is to apply across the state, additional criteria such environmental hazards and natural processes that require careful consideration and management and the availability of adequately infrastructure (i.e. limited/ restricted as lack of access to road networks, non-reticulated sewage and potable water supply

and scenic value must be added when considering the application of E3 in metropolitan areas.

Removal of aesthetic values as an attribute of E3

Pittwater Council does not support the removal of aesthetic values as an attribute for the E3 zone. We have applied this zone to areas that require careful consideration and management of the natural environment (ecological and aesthetic values). These areas are also highly constrained with limited access to essential infrastructure, as outlined in the above section. Scenic/cultural qualities and the proliferation of native vegetation are highly valued by the Pittwater community.

Environmental overlays

Council does not support the Department of Planning and Environment's stance on environmental overlays. Although the most 'important' vegetation forms part of the proposed criteria for the E2 and E3 zones, this is not the extent of native vegetation that is worthy of conservation and management. The habitat of native species that are not threatened or endangered should also be conserved and managed where appropriate. For this reason, environmental conservation and management should be viewed as a spectrum where all native flora and fauna are considered and not just limiting it to the most threatened. Environmental overlays allow an additional level of protection to native species and habitats at the development application stage while enabling land to be zoned for its primary purpose and provide a step between the protection offered by Environment Protection zones with their limited range of land uses and relying only on Clause 5.9 to prevent native tree and habitat loss.

Removal of E4 Environmental Living in low impact residential areas

The recommendations regarding the application of the E4 zone is not supported by Council. We are concerned of the potential implications the proposed recommendation will have for other regions in NSW. E4 Zones have been used extensively throughout the LGA to protect sensitive environmental attributes from future inappropriate residential intensification, which cannot be supported in these areas. In general, the scenic and environmental qualities of these sites, such as steep slopes and significant native vegetation, limit the potential for development and in order to manage these qualities the E4 zone was applied rather than a residential zone such as R2 Low Density Residential, as the current suite of residential zones do not provide adequate protection of the sensitive environmental attributes.

In the case of Pittwater LGA, the E3 and E4 zones have been applied to existing areas of residential development to differentiate between areas which can or cannot support certain forms of development due to their environmental, scenic and infrastructure constraints. In the case of dual occupancy development, the R2 zone applies to areas which can support dual occupancy and the E4 zone applies to existing low density residential development which cannot support dual occupancy because of their environmental attributes/constraints. Likewise, those areas which are highly constrained by their ecological value, aesthetic value, lack of essential infrastructure, and geographic isolation can support dwelling houses but cannot support greater intensification of development such as secondary dwellings and dual occupancies. This differentiation can only be achieved by zones as overlays are a mechanism not supported by the Department.

Council seeks advice on the state wide implications of the recommendation to replace E4 in Byron Shire Council with an appropriate residential zone. We are concerned that the scale of residential development permitted within the residential zone is inappropriate and will jeopardise the environmental and aesthetic attributes

and qualities of these areas. While Clause 5.9 may assist in maintaining important native vegetation, different zones are still required to maintain existing development restrictions, limiting the amount of development on sites and therefore limit the potential number of trees removed.

Clarification from the Department is sought as to whether a set of criteria similar to those developed for E2 and E3 will be developed for the E4 zone. Council does not support the establishment of criteria for E4 and considers Practice Note09-002 is appropriate to provide necessary guidance for application of this zone.

It is considered the removal of residential land uses from E3 and E4 is considered inappropriate as the current suite of residential zones under the Standard Instrument are considered to provide an inadequate level of protection for land with special environmental attributes and qualities. Furthermore, zoning such land with a residential zone (with its extended range of permissible uses) creates an expectation that higher densities can be achieved at the development application stage, even though there is evidence to confirm that the land cannot support residential intensification. It is Council's that the planning system needs to be front-loaded, where sound planning decisions are made during the strategic planning process and the LEP preparation stage to ensure land suitable for specific land uses is zoned accordingly. If land is burdened by significant environmental land attributes and constraints, then the zone needs to recognise and reflect these constraints appropriately. It is not considered good planning practice to negotiate and dealing with the constraint issues as they arise at the development application stage.

New Zones

The proposal for a new Natural Resources Management zone is supported for agricultural areas however this should not replace the E3 Environmental Management zone as suggested as the applicability of the E3 zone has not been limited to agricultural land in NSW. E3 land in the Pittwater LGA currently incorporates low impact residential development and a limited range of compatible land uses. When considering the applicability of the recommendation to the broader state context, it is considered inappropriate to remove the E3 zone and replace it with a Natural Resources Management zone.

If the recommendation to remove low density residential land uses from E4 Zones (i.e. Byron Shire Council recommendation) and replace with an appropriate residential zone is applied across NSW, new residential zones will be required to capture areas with sensitive environmental attributes that cannot support further residential intensification. Currently, the limited number of residential zones is considered inadequate to reflect and capture the varying capabilities of residential land with environmental attributes and constraints. The inclusion of a residential zone which recognises areas with environmental and natural attributes (e.g. presence of native vegetation, wildlife corridors, steep slopes) that limit its future development potential of the land, is necessary. It is noted that Zones E3 and E4 identify dwelling houses as mandatory uses, and this along with the Department's Practice Notes and Planning Circulars lead to Council's interpreting the E3 and E4 zones as fulfilling the purpose as outlined above.

Conclusion

Pittwater Council welcomes the opportunity to comment on the Northern Councils E Zone Review Interim Report and recommend the matters raised in this submission be duly considered as part of the process of determining the state wide implications of this review. Council would also welcome the opportunity to provide further

comments on the state wide implications of the review's recommendations when they become apparent and more detail is available.

Given the broader state wide implications of the review, we urge the Department to reconsider the 'next steps' as outlined on the Department's website. Specifically Council seeks the inclusion of an additional exhibition period to seek feedback on the Department's decision to support all or part of the recommendations contained in the final report. This exhibition period also needs to clearly identify and seeks feedback on the potential implementation strategies to incorporate the recommendations into the Standard Instrument.

Should you have any further queries regarding any of the matters raised in the submission, please do not hesitate to contact Anne-Maree Newbery.

Yours sincerely,

Steve Evans

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