

5 June 2014

Our Ref: KIR 08/82 Pt 2

The Secretary
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Sir

**Submission to Northern Council's EZone Review Interim Report
In Relation to Lot 1 DP 1168904 Kirkwood Road, Tweed Heads South**

1.0 INTRODUCTION

On behalf of our client, MCM Group Holdings Trust Pty Ltd, we have reviewed the exhibition material in relation to the Northern Council's EZone Review Interim Report, as a result of which we make the following submission.

1.1 The Subject Land

Our client is the owner of Lot 1 DP 1168904 Kirkwood Road, Tweed Heads South. The subject land is located within the Tweed Shire Local Government Area. It is intended to develop a \$30 Million Tourist Accommodation Development on part of the subject site. The development footprint has been determined based on ecological investigations and mapping of relevant constraints (refer to **Figure 1**).



Figure 1 – Aerial Photograph with Development Footprint

1.2 Zoning of the Subject Land Under Tweed LEP 2000

Under Tweed LEP 2000 the site was zoned mostly 6(b) and partly 2(e) as shown on **Figure 2**.



Figure 2 - Zoning of the Subject Site under Tweed LEP 2000

1.3 Zoning of the Subject Land Under Tweed LEP 2014

Under Tweed LEP 2014 the site has been zoned part RE2 and part Deferred Matter. The deferred area is shown on **Figure 3**. We understand that the deferred area is intended to be zoned E2.

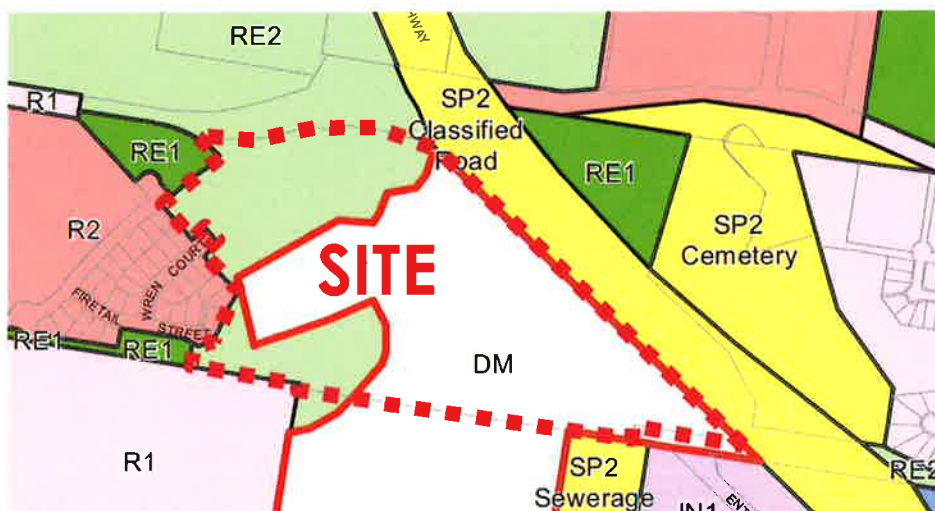


Figure 3 - Zoning of the Subject Site under Tweed LEP 2014

1.4 Existing Ecological Features of the Site

The ecological features of the site have been comprehensively mapped as part of the development application process that has been initiated on the site (see **Figure 4**). The features of the site which have been identified as containing high conservation value are the Swamp Sclerophyll EEC and the mapped SEPP 14 wetland area which is located in the eastern side of the site generally from the western edge of the Mapped Community 5 Low Open Forest. The location of the SEPP 14 wetland is shown on **Figure 5**).

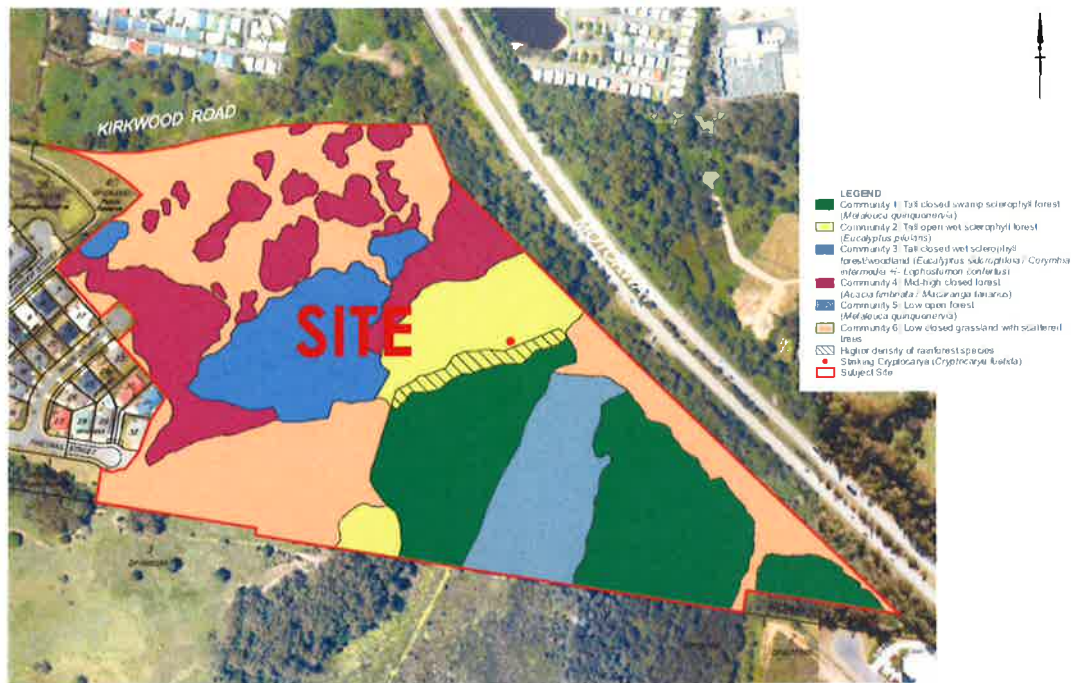


Figure 4 – Vegetation Communities



Figure 5 – SEPP 14 Mapped Area

2.0 SUBMISSION TO THE DRAFT EZONE REPORT

The following issues comprise our submission to the EZone Review Report.

2.1 Inconsistent Proposed Application of the E2 Zone in Tweed Shire

We note the following statements were made in the EZone Report in relation to the review of proposed E2 Zones in the Tweed Shire.

Page 4 of the Report states:

"Tweed SC directly transferred existing environmental zones from the Tweed LEP 2000, despite having developed the Tweed Vegetation Management Strategy 2004 (Kingston et al. 2004) to guide a coordinated approach to the management of biodiversity in Tweed SC. The vegetation mapping for the Tweed Vegetation Management Strategy was updated in 2009. The Revised Environmental Strategy of LEP 2012 (Tweed SC 2012) was prepared to make council's LEP consistent with council and state adopted environmental policy; however the recommendations within the Revised Environmental Strategy of LEP 2012 were not adopted into the Tweed LEP 2012. The Tweed Coast Koala Habitat Study (Biolink Ecological Consultants 2011) outlines important koala habitat in Tweed SC, but was not used to assist the development of the EZones. The EZone mapping in the Tweed LEP 2012 does not appear to reflect the intent of several studies and guiding documents that provide information on environmental values within Tweed SC."

Page 58 of the Report states:

"The E2 Zones focus on the Tweed Coast, public land, and areas that are already protected. Tweed SC employed direct translation of the following previous environmental zones from the 2000 LEP to the E2 Zone in their 2012 LEP:

*7(a) environmental protection (wetlands and littoral rainforests) Zone
7(f) environmental protection (coastal lands) Zone.*

No additional inputs were used to develop the E2 Zone in the 2012 LEP."

Page A29 of Appendix A of the Report states:

"The EZones in the Tweed SILEP were developed via direct translation of former environmental zones from Tweed LEP 2000..."

The draft Tweed LEP process was to "roll over" existing Tweed LEP 2000 zones to equivalent zones under the standard instrument.

As shown in the zoning maps provided in Section 1.2 and 1.3 of this submission, this has not occurred in relation to the subject land.

The subject site did not previously contain any Environmental Protection Zones under Tweed LEP 2000. A direct translation of the previous zoning would have resulted in the site being zoned from the previous 6(b) Recreation zone and 2(e) Residential Tourist zone to mostly RE2 Private Recreation with a small part zoned R3 Medium Density Residential. Given the aircraft noise constraint at the site, it would be appropriate to zone the entire site RE2.

The plans exhibited for Draft Tweed LEP 2012 in December 2012 indicated that the site was to be zoned entirely RE2 Private Recreation.

Post exhibition, and without re-exhibition the zoning of the site under Tweed LEP 2014 now includes a deferred matter (E2).

The proposed E2 zone on the subject site is a clear anomaly, and is inconsistent with recommendations for the implementation of E2 zones under the EZone Review Report.

2.2 Inappropriate Proposed Application of the E2 Zone Over Low Conservation Value Vegetation

Page 35 of the EZone Review Report describes environmental features of land that should be considered in applying the E2 Zone and references Practice Note PN 09-002 (Environmental Protection Zones), which states, the E2 Zone should be applied to:

- lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing EECs
- high conservation coastal foreshores and land acquired, or proposed for acquisition, under a Coastal Lands Protection Scheme
- some land with a registered BioBanking agreement
- land under the care, control and management of another catchment authority such as the Department of Water and Energy or a council for critical town water supply, aquifer or catchment as appropriate
- land with significant Aboriginal heritage values, if appropriate
- coastal foreshores and land subject to coastal hazards, including climate change effects
- land currently zoned for environmental protection where strict controls on development apply, e.g. steeply sloping escarpment lands, land slip areas

It is acknowledged that the subject site does contain some high conservation value vegetation, including a swamp sclerophyll EEC and a SEPP 14 wetland. However that vegetation is located only on the eastern side of the site. The large area in the centre of the site which has been deferred (proposed E2) does not relate to such vegetation.

The area in the central part of the site which is affected by the propose E2 zone is the part of the site that could most readily be developed and does not contain an EEC or high conservation value vegetation.

The recommendation on Page 7 of the report states:

"An overriding consideration for the development of the recommendations is that EZones should only be applied to those areas containing tangible environmental attributes, and in locations where there is adequate evidence of environmental attributes worthy of the protection afforded by zoning provisions. Where there is uncertainty over the location of these environmental attributes, or the environmental attributes do not satisfy specified criteria, the recommendations require default to previous zonings."

It is concluded that the proposed zoning is not founded on sound ecological assessment and would unreasonably constrain the orderly and economic use of the site. Accordingly, the zoning of the subject land should revert to the equivalent zoning of the previous Tweed LEP 2000. The correct equivalent zone would be RE2 Private Recreation.

4.0 COMMENTS IN RELATION TO SUMMARY RECOMMENDATIONS WHICH APPLY TO TWEED

The following comments are made in relation to the general recommendations of the Report and our client's land:

General Recommendations

- **environmental zones should only be applied to those areas which have important environmental values, based on validated ecological evidence.**

Comment: The Deferred Matter (proposed E2 Zone) in Lot 1 DP 1168904 applies to parts of the site that do not have important environmental values and are not based on ecological evidence. On the basis that other land in the Tweed Shire is to be transferred from existing Environmental Protection Zones, the proposed E2 Zone on Lot 1 DP 1168904 appears to be incorrectly and inconsistently applied.

- **E2 and E3 zoning should only be applied where there is proven evidence of significant environmental values that meet the specific criteria listed by the consultant.**

Comment: The criteria listed for inclusion within an E2 Zone are:

E2 Criteria	
1	Statutory mapping for SEPP 26 Littoral Rainforests
2	Statutory mapping for SEPP 14 Wetlands
3	Land identified in a validated spatial dataset comprising areas of EECs (as listed under the <i>Threatened Species Conservation Act 1995</i> and/or the <i>Environment Protection and Biodiversity Conservation Act 1999</i>)
4	Land identified within a validated spatial dataset comprising areas of habitat for threatened species (as listed under the <i>Threatened Species Conservation Act 1995</i> and/or the <i>Environment Protection and Biodiversity Conservation Act 1999</i>)
5	Land identified within a validated spatial dataset comprising over-cleared vegetation communities where >70% of the original extent has been cleared (vegetation formations as defined by Keith, D 2004, <i>Ocean Shores to Desert Dunes: The Native Vegetation of New South Wales and the ACT</i> , Department of Environment and Conservation, Hurstville.)
6	Land identified within a validated spatial dataset comprising areas of native vegetation in over-cleared Mitchell landscapes (includes native vegetation in the Byron-Tweed Alluvial Plains, Byron-Tweed Coastal Barriers, Clarence-Richmond Alluvial Plains, and Upper Clarence Channels and Floodplains)
7	Where appropriate, land identified within a validated spatial dataset comprising areas of culturally significant lands such as Aboriginal object sites and Aboriginal places and other significant objects and places that are not formally recorded (as identified by the local Aboriginal community)

Comment: Only the eastern part of the site, which contains an EEC and SEPP 14 wetland meet the criteria listed in the Review Report.

- **land that does not meet the criteria should be zoned according to its primary use.**

Comment: Based on the site features, most of the proposed E2 Zone has been incorrectly applied.

- **where an environmental value is identified which may not warrant an environmental zone, it should be protected through an environmental overlay on the LEP map with an accompanying clause. The consultant considers environmental values which should be managed in this way are drinking water catchment areas, scenic protection areas, coastal risk areas and terrestrial biodiversity.**

Comment: In our opinion environmental overlays of low conservation value features would limit flexibility in the orderly and economic use of the land, creating an artificial and unnecessary constraint. This would be best addressed through normal site specific assessment, which is required to accompany development applications. The environmental features of the site are presently appropriately managed having regard to the other existing environmental conservation legislation including the Environmental Planning and Assessment Act, 1979, State Environmental Planning Policy No.14, The Threatened Species Conservation Act, 1995, The Native Vegetation Act, 2003 and the Environment Protection and Biodiversity Conservation Act, 1999.

- **extensive agriculture should be permitted without consent on E3 zoned land.**

Comment: Not applicable to our client's land.

- **aesthetic values should be removed as an attribute from the E3 Zone.**

Comment: Not applicable to our client's land.

- **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.**

Comment: Not applicable to our client's land.

Specific Recommendations

- **The following environmental protection zones under Tweed LEP 2000:
7(a) Environmental Protection (Wetlands and Littoral Rainforests)
7(l) Environmental Protection (Habitat)
should be transferred directly to the E2 Zone under Tweed LEP 2014.**

Comment: As there are no existing 7(a) or 7(l) Zones under Tweed LEP 2000 on the subject land, the proposed E2 Zone on Lot 1 DP 1168904 appears to be incorrectly and inconsistently applied.

- **If it is demonstrated that the mapped area of the above zones is inaccurate, and that area is subsequently updated in accordance with the recommended criteria, then the E2 Zone should be applied to the updated mapped area.**

Comment: Unless this process of back zoning has been applied across the Shire it would be inconsistent to apply a new E2 Zone on this site without a detailed site specific investigation. The site did not meet the first criteria i.e. it did not contain Environmental Protection Zones under Tweed LEP 2000 to warrant consideration for changes to mapped areas.

- **Extensive Agriculture should be prohibited in the E2 zone under Tweed LEP 2014.**

Comment: No objection to this recommendation on land which meets actual E2 Zone criteria.

- **The land use table under Tweed LEP 2014 should be amended to include Extensive agriculture as a land use permitted without consent in the E3 Zone.**

Comment: Not applicable to our client's land.

- **Tweed LEP 2014 should be amended to include a local clause and related overlay map for Scenic Protection areas. The clause should list the scenic protection matters to be considered before development consent is granted on land identified as scenic protection. Land which was proposed to be zoned E3 for scenic protection purposes and does not meet the recommended criteria for E3 zoning, should be zoned according to its primary use and should be designated as "Scenic Protection" on the Tweed LEP 2014 - Scenic Protection map.**

Comment: Not applicable to our client's land.

- ***Land which was proposed to be zoned E2 or E3 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 Tweed LEP 2014 Terrestrial Biodiversity map.***

Comment: Based on this recommendation and the non-existence of any existing 7(a) or 7(l) zone on the site the land should be correctly zoned RE2 Private Recreation.

5.0 CONCLUSION

As set out in this submission the proposed E2 zoning of our client's land is inconsistent with the stated methodology for implementing SILEP EZones in the Tweed Shire. The stated methodology which effectively relates to transferring existing Environmental Protection Zones to E2 Zones has not been applied.

It is clear that that the proposed E2 Zone on our client's site is inaccurate and has been applied to land which does not meet the recommended criteria for E2 zoning.

The E2 Zone, as currently proposed on the subject site, is considered to inappropriately reflect the site features and would have an adverse impact on the intended development of the site.

The proposed development of the site would provide a superior outcome by way of delivering significant social and economic benefits to the area as well as retaining and enhancing the actual high conservation value vegetation on the site.

In light of the above, a further recommendation of the Review Report should be that prior to implementing the proposed E2 Zones in the Tweed Shire, the mapping in areas beyond land within existing Environmental Protection Zones under Tweed LEP 2000 be removed. Alternatively, that such land be reviewed and ground-truthed to check that it meets the E2 Criteria.

Please do not hesitate to contact Darryl Anderson or Brad Lane should you require any further information in relation to this matter.

Yours faithfully
Darryl Anderson Consulting Pty Ltd



Darryl Anderson
Director