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Objection to Repeal of North Coast Regional Environmental Plan

NEFA strongly objects to the repeal of the North Coast Regional Environmental Plan (1988) as this would constitute a significant weakening of environmental values and criteria that were used to identify environmental clauses and zones in north coast Local Environmental Plans (LEPs). The principal problem is that the Government intervened to stop Tweed, Byron, Ballina, Kyogle and Lismore Councils from implementing their environmental zones and clauses, relegating them to limbo as “deferred matters”, and now the removal of criteria the Councils used to identify the “deferred” environmental zones and clauses will undermine their justification.

NEFA are concerned that the North Coast REP is being deleted after 27 years of operation, and before the “deferred matters” are resolved, specifically to retrospectively reduce the criteria and undermine the justification for the proposed E Zones and clauses. This appears to be part of a concerted attack by the National Party and DoPE on environmental protection in one of Australia’s and the world’s biodiversity hotspots.

NEFA’s concerns are heightened by the fact that DoPE’s removal of E zones and environmental clauses from the exhibited LEP’s appears to have been illegal.

The North Coast REP needs to be retained in force until after the fate of the “deferred matters” is determined and the E zones and environmental clauses are restored to far north coast LEPs.

Doing Over the North Coast

The North Coast Regional Environmental Plan now only applies to the deferred lands in Tweed, Ballina, Kyogle and Lismore LGAs. These are lands that the local Councils have identified as being of the highest conservation value within their LGAs. Byron LGA also had its environmental protections removed, though also lost coverage of its deferred areas by the North Coast REP.

In September 2012, at the behest of our then National Party representatives, Don Page and Thomas George, the Minister for Planning announced that there would be a six months review of E zones just for Tweed, Byron, Ballina, Kyogle and Lismore LGAs. It took the Government a year to complete the review which supported the protection of high conservation value vegetation in E zones in LEPs. Because the National Party did not like the outcome, one and a half years later E zones are still in limbo.

In accordance with their Minister’s instructions the DoPE removed all environmental zones (E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living zones) from far north coast LEPs. They also removed a variety of clauses aimed at

protecting values such as streams, steep slopes, endangered ecological communities and wildlife corridors, for example removing from Byron's LEP clauses 6.12 Riparian land and watercourses, 6.13 Development near the E2 or E1 zone, and 6.14 Biodiversity (which applied to wildlife corridors and EECs).

The E Zones identified in these LEPs have become "deferred matters" excluded from the new LEPs and governed by the zones and requirements of the old LEPs. This means that areas identified as having the highest conservation values are still allowed to be used for intensive agriculture and other inappropriate activities and developments.

Ballina Council notes:

"The consequence of the review is that the State Government has not allowed Council to apply environmental based zones in the shire through the new local environmental plan. This means that Council has not been able to recognise the significant environmental values, features and assets identified by Council's research, technical studies and broad consultation as being important to the Ballina Shire community in the new plan.

...

The implication of the Parsons Brinkerhoff interim reporting and the Department's interim response is that the Ballina Shire community will have a vastly reduced opportunity to recognise environmental values in its local environmental plan. In particular, the suggested approach arising from the review is that Council will not be able to zone areas of coastal, scenic, urban buffer or water catchment values for environmental protection purposes unless there is an ecological value also associated with the land. The Department has further recommended a reduction in the use of other planning tools to recognise such important values.

The approach suggested by the current E zone review documentation is entirely inconsistent with the historical planning approach in Ballina Shire, which has operated successfully since 1987. The State Government's suggested approach is also inconsistent with the current legal requirements in NSW for local environmental plans to recognise a variety of environmental values in local planning instruments.

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Inability to recognise environmental attributes (inclusive of ecological, scenic amenity, coastal, urban buffer and drinking water catchment attributes) by way of zoning weakens the planning framework for addressing these matters. Moreover, this position weakens the existing structure and function of the planning framework presently applying to environmental areas in Ballina Shire under the Ballina LEP 1987.

The repeal of the North Coast Regional Environmental Plan is intended to further weaken the planning framework for addressing environmental attributes in all far north coast LGAs.

Justice Sheahan's decision to declare the North Lismore Plateau rezoning "*invalid and of no effect*" on the grounds that the exhibited Environmental (E) Zones were removed from the adopted Local Environmental Plan (LEP) amendment pending the outcome of the E zone review, brings into question the legal validity of the LEPs for Tweed, Byron, Ballina, Lismore and Kyogle because they all had their exhibited E zones similarly removed.

Justice Sheahan stated *“It would have been reasonable for the public to assume, on the basis of the exhibited proposal, that the land proposed for environmental zones would be subject to strict controls associated with that zoning. The maintenance of the rural zoning over those lands has significant legal and practical consequences in respect of the uses to which that land may be put, and how it is to be managed”*

In light of Sheahan’s judgement that *“the absence of the environmental zones reflected a very substantial change in the planning regime”* and thus invalidated the LEP amendment, it is evident that all our Council-wide LEP’s are similarly legally invalid.

Getting rid of the North Coast REP is part of this illegal attempt to limit environmental protections on the far north coast of NSW by retrospectively reducing the criteria and justification for the proposed E Zones.

The Need for the North Coast Regional Environmental Plan

The North Coast Regional Environmental Plan specifies objectives and regional policies, for the future planning and development of land within the region, including to guide the preparation of local environmental plans. The North Coast Regional Environmental Plan is identified as one of the key documents underpinning the development of E Zones and environmental clauses by Byron, Lismore and Ballina Councils, and should have been for Tweed and Kyogle Councils.

For example the North Coast Regional Environmental Plan identifies requirements to:

- retain existing provisions allowing the making of tree preservation orders,
- not alter or remove existing environmental protections without undertaking detailed analyses,
- include significant areas of natural vegetation including rainforest and littoral rainforest, riparian vegetation, wetlands, wildlife habitat, scenic areas and potential wildlife corridors in environmental protection zones,
- include wetlands, fishery habitats and sufficient land to separate adjoining land uses from the wetlands and fishery habitats in an environment protection zones,
- identify any coastal hazard areas, prohibit development that is at immediate risk from coastal processes, and minimise the visual impact of development near the shore,
- locate urban and tourism development on land that is free from flooding, land instability, coastal erosion, acid sulphate soils, bush fire risks, aircraft noise pollution and other environmental hazards.

DoPE’s claims that these requirements are covered by more recent documents is not justified. DoPE’s claim that *“The underlying zones derived from previous LEPs continue to apply in these areas and provide suitable protection consistent with the REP”*, is clearly untrue as the assessments undertaken by Councils identified numerous additional areas needed to satisfy the REP’s criteria that were not previously zoned for protection. When most of the older zones were identified the data available for delineating zones was limited, with little systematic or comprehensive mapped data available on conservation values.

DoPE’s Practice Note PN 09-002 (Environmental Protection Zones) states that *“in most cases, council’s proposal to zone land E2 needs to be supported by a strategy or study that demonstrates the high status of these values”*. The removal of one strategy will reduce the

weight given to particular attributes, and will remove the need to protect other values not captured in other strategies.

The deletion of the North Coast REP is apparently intended to undermine the basis of the E zones and environmental clauses identified for the Tweed, Byron, Ballina, Kyogle and Lismore LGAs. We consider that this SEPP should not have been removed from deferred lands in the Byron LGA and should be re-applied until the zoning of the deferred areas is complete.

Is the Far North Coast of NSW less deserving than Elsewhere?

The forests of the North Coast of NSW have been identified as being of outstanding international, national and state value for threatened biodiversity. They encompass the heart of the Gondwana Rainforests of Australia World Heritage property. They are part of one of the world's 35 biodiversity hotspots because of their exceptional species endemism and the threat of habitat loss. They include the NSW section of one of Australia's 15 recognised biodiversity hotspots, the 'Border Ranges North and South (Queensland and New South Wales)'. They also contain the most plants and animals, including those threatened with extinction, in New South Wales.

Significantly, the E zone review applies only to five council areas in Northern NSW whilst over 130 Council's in the State have been allowed to fully complete their LEPs inclusive of environmental based zones. The decision to stop the far North Coast from protecting its exceptionally high conservation value vegetation was purely political bastardry and was not based on the region's environmental merits, because this region is the most biodiverse in NSW and part of one of the world's biodiversity hotspots.

The Local Government areas of Tweed, Byron, Ballina, Lismore and Kyogle encompass the spectacular volcanic remnants of the Tweed Shield Volcano, centred on Mount Warning, and the Focal Peak Shield Volcano, centred near Mount Barney. The volcanic ranges support rainforests, and the sedimentary soils of the valleys eucalypt forests and wetlands. Heathlands, swamps, melaleuca wetlands, saltmarshes and mangroves characterise coastal vegetation.

The forests of north-east NSW have been identified as part of one of the world's 35 biodiversity hotspots because of their exceptional species endemism (at least 1,500 endemic plant species, i.e., 0.5% of all known species) and habitat loss (70% or more of an area's primary vegetation cleared) (Williams *et.al.* 2011).

These Local Government areas are part of "Border Ranges North and South", one of Australia's 15 outstanding biodiversity hotspots, areas which are rich in biodiversity but also under immediate threat. The supporting information states:

This sub-tropical and temperate hotspot is one of Australia's most diverse areas - and it is the most biologically diverse area in New South Wales and southern Queensland. It has a variety of significant habitats: subtropical rainforest, wet sclerophyll forest, mountain headlands, rocky outcrops and transition zones between forests.

These habitats support a huge variety of bird and macropod species. Many are rare or threatened ...

This region's high population growth, with associated urban and tourist developments along the coast, is a major cause of habitat loss and fragmentation. Although most remaining natural areas are protected, they are under considerable threat from weeds, fire and recreational use.

The rainforests of the area are of international significance as evidenced by the inclusion of many of the National Parks in the World Heritage Gondwana Rainforests of Australia, with more recent national parks identified as qualifying for addition. The Big Scrub once covered 75,000ha and was Australia's largest area of subtropical rainforest. It is estimated that there is now only some 664 ha of the Big Scrub remaining as small fragments scattered across its former distribution.

As well as being identified as one of Australia's biodiversity hotspots, these landscapes have been branded as Australia's Green Cauldron, a centrepiece of national tourism as one of Australia's 15 'National Landscapes' – *"places that capture the essence of our country - our most inspirational environments offering world class natural and cultural experiences"*. Tourism is a major driver of the regional economy.

Too much has already been lost, all remaining native forests, and other ecosystems, on the far North Coast of NSW need to be managed to limit impacts and retain or regain natural processes. There is a need to increase the area of native vegetation, maintain and enhance linkages between remnant areas, and to ensure the retention and enhancement of remnant vegetation.

In accordance with the North Coast REP, it is particularly important to identify the high conservation value vegetation and habitats remaining in the region, along with potential wildlife corridors, and ensure they are appropriately zoned and protected. Getting rid of the North Coast REP will make gaining needed protections harder, not easier.