

**COUNCILLOR WORKSHOP - TUESDAY 10 JUNE 2014.
RESPONSE FOLLOWING RELEASE OF THE NORTHERN COUNCILS
ENVIRONMENTAL ZONES REVIEW – PARSONS BRINCKERHOFF MAY 2014**

OVERVIEW

The Department of Planning and Environment (DP&E) engaged Parsons Brinckerhoff to undertake an independent review *into the way environmental zones and overlays are being applied to land on the Far North Coast*¹ of NSW covering the Local Government Areas of Ballina, Byron, Kyogle, Lismore and Tweed.

*The environmental zones which were reviewed are E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living*¹.

WHY WAS THE REVIEW INITIATED?

- *The review was initiated to inform planning decisions on applying environmental zoning and environmental overlays in the Far North Coast so that a balance is achieved between allowing agriculture and rural uses to continue while protecting important environmental values.*
- *Concern has been expressed that councils are introducing environmental zones and overlays as they update their LEPs, without evidence of the environmental significance of the land.*
- *In some cases, these zones are being applied to rural and agricultural land which has the potential to limit the use of this land for agricultural purposes*¹.

Following the completion of the Review, the Department of Planning issued its interim response and is summarised below.

- *The Department of Planning & Environment (DP&E) 'in principle' supports:*
 - *the criteria for applying E2 and E3 zoning, as identified by the consultant, so that these zones will only apply where there is validated evidence of significant environmental values.*
 - *allowing extensive agriculture with council's consent on E2 zoned land and without council's consent on E3 zoned land.*
 - *the use of overlay maps and related clauses in LEPs to manage **only** matters of public health, safety, risk and hazard such as drinking water catchment areas, coastal risk areas, flooding and acid sulphate soils.*
 - *councils should assess other environmental attributes such as scenic protection when they determine a development application.*
 - *the removal of aesthetic values from the objectives of the E3 zone.*
- *DP&E does **not** support the use of overlays for matters such as scenic protection and terrestrial biodiversity.*

DP&E's full response to the interim report is available at:

www.planning.nsw.gov.au/proposals¹

¹Department of Planning and Environment FAQ's May 2914

KYOGLE COUNCIL AND THE REVIEW

The Consultants have identified a number of issues associated with the methodology and application of the proposed E2 and E3 zones (deferred matters) under the draft Kyogle Standard Instrument Local Environmental Plan (KLEP).

Contained within *Section 2.3.2 – Consistency of Application of EZones across Councils*, the consultants have identified on page 57 -

Little information is available on the approach taken by Kyogle Council in its development of the E2 Zone in their LEP. The E2 Zone was developed through advice obtained by Kyogle Council from the former Department of Environment, Climate Change and Water. It is unknown whether data sources, such as regional scale vegetation mapping or local biodiversity information, were used.

The Section 68 report ‘Kyogle Local Environmental Plan 2012 – Adoption of Draft Plan’ documents the rationale used to apply the E3 zoning. Kyogle Council have applied the zoning to land which is Class 8 in accordance with the provisions of the Agricultural Suitability classes as defined by the Department of Primary Industries. Class 8 land is characterised by landforms such as cliffs, lakes or swamps and other land unsuitable for agricultural and pastoral production. Internal Advice from staff at Kyogle Council indicates the E3 environmental management Zone is regarded as essentially a ‘rural’ Zone by virtue of the methodology employed by council in implementing rural zones and the E3 Zone.

Due to limited zoning inputs, the E Zone mapping in the Kyogle LEP does not provide an accurate reflection of environmental values across the council area.

Whilst the consultant’s conclusions above are acknowledged, it is important to note that Council through the preparation of the Draft Kyogle LEP were guided by State Government agencies and in particular LEP Practice Note PN-002 issued by the Department of Planning, which provided the guidance for all NSW Council’s in their application of Environmental Zones.

In addition to the Practice Note, advice, guidance and spatial datasets provided by other agencies such as the then Department of Environment and Climate Change (DECC), as outlined in the extract from a letter to Council following the formal notification/referral process guided Council in its application of the E Zones.

As is identified in the Review the use of these datasets has provided similar issues across each of the LGA’s. Where other Council’s who undertook detailed studies and investigations as part of the LEP process, those Council’s were able to validate and embellish the datasets provided by the agencies thus allowing them to identify and zone land accordingly.

Areas of ecological significance

A key interest to the DECC is that the final shire-wide LEP not "go backwards" in terms of its protection of natural resources or environmental outcomes. In regard to biodiversity, the Council's LEP should be drafted so that high biodiversity conservation areas are included in E2 and E3 zones, that there is consistency between councils in terms of the level of protection offered by E2 and E3 zones, and that future urban growth areas are sited to avoid areas of high biodiversity conservation value. Endangered Ecological Communities and threatened species habitats listed under the *Threatened Species Conservation Act 1995* (TSC Act) are recommended to be zoned as either E2 or E3 (Please refer to the attached Guidelines for further detail).

To assist Council in the preparation of its draft LEP, DECC has developed a spatial dataset, the Biodiversity Conservation Lands Mapping and Metadata, which identifies at the landscape level State, regional and locally important areas from a biodiversity perspective. The dataset may be obtained from the DECC by contacting the Northern GIS Support Officer on (02) 6659 8243. The attached DECC data request form may also be used for this purpose.

Notwithstanding the above, there is clear evidence that the Kyogle Local Government Area Rural Land Capability Mapping Dataset prepared by the former Soil Conservation Service of NSW were used as the main basis to Map the RU1, RU2 and E3 Zones in the draft KLEP as follows:

Kyogle LEP 2011 (first draft)

RU1 Zone - Rural Land classifications 1, 2 and 3
RU2 Zone – Rural Land classifications 4, 5 and 6
E3 Zone – Rural Land classifications 7 and 8

Kyogle LEP 2012 (second draft)

RU1 Zone - Rural Land classifications 1-6
RU2 Zone – Rural Land classification 7
E3 Zone – Rural Land classification 8

RECOMMENDATIONS

The exhibited documents include the recommendations relating to Kyogle Council which is reproduced below with staff comment/suggested responses after each dot point.

Summary of consultant's draft recommendations which apply to Kyogle

In addition to making general draft recommendations applying to all the Far North Coast councils, the consultant has also made draft recommendations which apply specifically to each of the council areas.

The consultant's general recommendations which apply to land in Kyogle are that:

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

Agree.

Recommendation:
Whilst the Consultants recommend that the DP&E provide assistance to Kyogle Council to undertake a comprehensive biodiversity strategy, Council in its submission advise DP&E that it does not have the resources or capacity to undertake the necessary investigations and validation and urge that the State Government lead this process to ensure that all areas which have " <i>important environmental values</i> " are identified and reflective of the State Government's position and aligns with its commitment to the protection of both agricultural lands and pursuits and environmental values.

- *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.*

Agree.

Recommendation:
That Council indicate that the criteria identified for both E2 and E3 in the <i>Review</i> is supported and as recommended in the first dot point above, the state Government should be the driver and provider of the prerequisite validation and mapping to address the criteria whilst maintaining uniformity and consistency across NSW and in particular the North Coast Council's the subject of this review.

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

Agree.

Recommendation:

Council indicate that clarification and guidance be provided to determine the “primary use” in light of the Rural zones that exist in the KLEP.

Comment:

It is considered that the most appropriate zone would be RU2 as the broader range of permissible land uses are more closely aligned to IDO zone Non-Urban 1A

- *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.*

Agree.

Recommendation:

That Council support the Consultants view that overlays are a useful planning tool to enable consideration of potential impacts of development on ecological values in the situation where a development application is made and the land has a biodiversity overlay.

That Council advise the DP&E that it wishes to apply the biodiversity overlay and associated clauses as originally proposed in the KLEP.

Comment:

Retaining the overlay and associated clauses will assist in refining the work and investigations required where a development application is proposed. Using the overlay will identify the extent and detail required in any accompanying Statement of Environmental Effects (SEE) I.e if the vegetation/biodiversity overlay identifies that the subject land is clear then this can be identified and little work is required. If there is no overlay the applicant would then need to demonstrate this through their SEE to address the requirements of other Environmental Protection Legislation and the Environmental Planning and Assessment Act.

- *extensive agriculture should be permitted with consent on E2 zoned land.*

Disagree.

Recommendation:

That Council does not support permitting extensive agriculture with consent on land zoned E2. If E2 zone is to be applied to land with validated and valuable ecological values as recommended, it is not appropriate to then permit agriculture on this land.

Comment:

Extensive agriculture was prohibited in the E2 zone under draft Kyogle LEP, which was in accordance with the Standard Instrument and Orders provided by the Department of Planning.

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

Agree.

Recommendation:

That Council advise the DP&E that it supports this recommendation.
--

Comment:

Extensive agriculture was permitted without consent in the draft Kyogle LEP.

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

Agree.

Recommendation:

That Council advise DP&E that it supports the consultant's recommendation and that DP&E prepare a guideline on how to identify areas of scenic amenity to enable Councils to identify and map these values consistently.
--

- *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.*

Agree.

Recommendation:

That Council advise the DP&E that all Regionally Significant Farmland has been zoned under the Kyogle LEP as either RU1 or RU2, except for some minor areas which can be corrected.

Comment:

This was the case in the draft Kyogle LEP as rural and E3 zones were based on Rural Lands Capability dataset.

The consultant's draft recommendations which apply specifically to land in Kyogle are as follows:

- *Land proposed to be zoned E2 or E3 under Kyogle LEP 2012 should be transferred to the equivalent zoning of the superseded IDO and the area of the relevant environmental overlay in the Kyogle LEP 2012 should be extended to include that land.*

Agree.

Recommendation:

That Council advise the DP&E that it wishes to apply the biodiversity overlay and associated clauses as originally proposed in the KLEP.

Council reiterate that it considers it the responsibility of the State Government to ensure the overlay mapping is robust and generally reflective of on-ground conditions.

Comment:

The most appropriate zone would be RU2 as the broader range of permissible land uses are more closely aligned to IDO zone Non-Urban 1A. However, any allocation of zoning would be assessed against the current zones over the immediately adjoining land.

This consideration will need to be further considered once the final report and directions are issued by the DP&E.

Additional Staff Recommendations

That Council advise the DP&E that whilst it acknowledges the consultants recommendation that DP&E provide assistance to Kyogle to undertake a biodiversity strategy, it is Council's view that this should be undertaken by the State on a regional basis to ensure consistency across the region and align with the state government position.

That Council seek assistance/resources from DP&E to carry out the planning proposal to deal with the deferred matters.

Where to from Here?

It is recommended Council make a submission to the Department: the comments and recommendations made above are provided to assist Council with its considerations and deliberations. Council could choose to formulate its submission along the lines outlined above or provide alternative wording and statements to enable a submission to be finalised.

The DP&E have indicated that following the exhibition period *the State Government will consider the consultants recommendations and the feedback from councils, agencies and landowners and stakeholders before making any decision whether to adopt, amend or reject the recommendations*¹

¹Department of Planning and Environment FAQ's May 2914

Until the final advice is issued, it is not possible for Council to proceed with the required amendments to the LEP to zone all the deferred areas.