



Submission on the Northern Councils Environmental Zones Review

prepared by

**EDO NSW
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About EDO NSW

EDO NSW is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 25 years' experience in environmental law, EDO NSW has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO NSW is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

EDO NSW is part of a national network of centres that help to protect the environment through law in their states.

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Introduction

EDO NSW welcomes the opportunity to comment on the Northern Councils Environmental Zones Review (**the Review**). We provide comment on the Parsons Brinckerhoff Northern Councils E-Zone Review Interim Report dated 30 September 2013, in relation to three key issues:

- 1) The recommendation criteria for E2 zones are restrictive and will consequently leave important environmental values unprotected in local land use planning.
- 2) The recommendations do not reflect the Department of Planning and Environment (**DPE**) policy as reflected in the mandatory zone objectives in zone E2 and E3 as contained in the Standard Instrument Local Environmental Plan (**SILEP**) and the *Local Environmental Plan Practice Note PN 09-002 – Environment Protection Zones*.
- 3) The recommendations are inconsistent with the dominant practice of coastal Councils in NSW and would have the effect of reducing consistency between Council Local Environment Plans.

1. Criteria relating to identification of 'significant environmental values'

The interim report concludes that E2 (Environmental Conservation) and E3 (Environmental Management) zoning should only be applied where there is proven evidence of significant environmental values. EDO NSW strongly supports the use of E2 and E3 zoning in environmental protection.

Under the recommendations, the presence of significant environmental values is assessed in accordance with specific criteria detailed in the *Northern Councils E Zone Review Interim Report 30 September 2013*. Whilst the criteria is not proposed as a substitute for objectives of E2 and E3 zones, EDO NSW is concerned that application of the restrictive and narrow criteria recommended by the review will in effect undermine the objectives of the E-zones and restrict application of E-zones unduly.

For example, the proposed criteria do not contain a number of criteria that would ensure adequate protection for high conservation values such as any types of rainforest which are not listed under SEPP 26 (Littoral Rainforest); old growth forest, riparian zones, wetlands which are not listed under SEPP 14; or important wildlife corridors. There are a number of documented wildlife corridors in the region that link national parks, conservation areas, and private land. Amongst other benefits, these areas are important for allowing movement of wildlife, protecting nomadic and migratory species, and protecting endangered ecological communities. As such they should be eligible for consideration as E2 zones. Similarly, excluding areas listed under SEPP 44 (Koala Protection) from the E2 criteria potentially risks allowing inadequate protection for Koala populations in the relevant local government areas.

EDO NSW submits that rather than reducing the standard of environmental protection afforded by the LEP process, any criteria used should ensure best practice environmental protection. In terms of adequately supporting the protection of 'significant environmental values' and high conservation land, Byron Council could be considered to reflect best practice. Byron Council in developing their proposed LEP used a clear methodology for determining the conservation value of specific sites. High conservation land that is identified in a robust and considered manner, should be considered as being consistent with the Standard Instrument E2 zoning criteria of high ecological and scientific value.

EDO NSW also notes with concern the recommendation that all data supporting E2 zoning to be *validated spatial data*¹. While EDO NSW supports the use of high quality data in

¹ Parson Brinckerhoff, *Northern Councils Ezones Review Interim Report*, 2013, Recommendation 1 p. 75

environmental mapping, there appears to be a lack of precision as to what constitutes *validated spatial data*. The report offers the following suggestions:

- *That where aerial photography is used for vegetation mapping it should be less than 5 years old.*
- *Biodiversity or vegetation strategies must be supported by on ground surveys and ground truthing.*
- *Mapping accuracy of a minimum 80% should be achieved.²*
- *E Zones should follow the edges of vegetation, wetland etc.³*
- *Overall the mapping should be revised and refined at a finer scale than represented in the LEPs.*

Taken literally Council would be required to buy or commission the very latest aerial photography and have it interpreted and ground truthed with a risk that the information obtained would be out of date before an LEP becomes effective. Without a clear definition of this term and an understanding of the data currently available to Council, there is a significant risk that the LEP development process will be delayed by the need to validate spatial data.

In addition to the uncertainty of what constitutes *validated spatial data* the Review seems to suggest that no Councils currently hold appropriate data and by implication that no Councils should be permitted to implement E zones. The Review states:

There are currently too many anomalies with on ground condition for an effective LEP to be enacted in any of the Councils.⁴

EDO NSW submits that protection of high value conservation areas should not be delayed indefinitely when Councils have already undertaken a process to identify zones that should be listed as E zones.

2. Consistency with E zone objectives

The mandatory zone objectives included under the SILEP must be compiled with by all local councils in NSW and necessarily included in all LEPs. The Review contains recommendations that extensive agriculture should be permitted with consent in zone E2 and extensive agriculture should be permitted without consent in zone E3. This results in a clear departure from the SILEP objectives of both E2 and E3 zones. The definition of extensive agriculture used in the interim report is:

Extensive agriculture means any of the following:

- *The production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes.*
- *The grazing of livestock for commercial purposes.*
- *Bee keeping.*
- *A dairy (pasture-based).*

The objectives of E2 zone as included under the Standard Instrument are:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values;*

² Parsons Brinkerhoff, op. cit. p.81

³ Parson Brinkerhoff, op. cit p.26

⁴ Parson Brinkerhoff, op. cit p.25

- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

Practice Note 09-002 confirms that E2 has a strong conservation focus that includes, *'protecting land with high conservation value and preventing development that could destroy, damage or otherwise have an adverse effect on that value.'* Permitting extensive agriculture as defined above will not meet these objectives. Practice Note 09-002 also makes it clear that in terms of additional uses both 'intensive agriculture' and 'rural industry' are unlikely to be suitable in an E2 zone.

In relation to E3 zones, the objectives are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values;*
- *To provide for a limited range of development that does not have an adverse effect on those values.*

Similar to E2 zones, permitting extensive agriculture as defined above will not meet these objectives. Practice Note 09-002 states that *'the zone is generally not intended for cleared lands including land used for intensive agriculture.'*

The Review also states that key terms that are included in the objects of the E zones must be defined consistently across the relevant councils. The survey conducted across the councils revealed that the application of criteria in determining areas of high ecological, scientific, cultural or aesthetic values varied. EDO NSW submits that in trying to establish consistency, the councils that used the strongest and most diverse set of environmental values should be the benchmark. Similarly, the interim report says that under E3 for example 'special' must be defined consistently. Whilst consistency is an important aspect of any environmental policy the critical term 'special' must not be defined too narrowly lest the application of 'special ecological, scientific, cultural or aesthetic value' becomes impossible to satisfy and its application is restricted unduly.

Consistency with the dominant practice of coastal Councils in NSW

EDO NSW submits that the approach of the Review is out of step with the SILEP and dominant position adopted by most coastal Councils in NSW. For example, coastal or hinterland Councils with LEPs in which extensive agriculture is not permissible within the E2 Zone include: Coffs Harbour LEP 2011, Kempsey LEP 2013, Kiama LEP 2011, Kur-ring-gai LEP 2012, Nambucca LEP 2010, Bellingen LEP 2010, Bega Valley LEP 2013, Port Stephens LEP 2013, Port Macquarie – Hastings LEP 2011, Great Lakes LEP 2014, Greater Taree LEP 2010, Wyong LEP 2013, Wollondilly LEP 2011, Wingecarribee 2010, Gosford LEP 2014, Eurobodalla LEP 2012, Hawkesbury LEP 2012, Shoalhaven LEP 2014, and Shellharbour LEP 2013.

The Review does suggest amendments to both the Standard Instrument and the Practice Note to, in effect, accommodate the inclusion of extensive agriculture without consent under E3. In particular it proposes that Additional Zone considerations should read *'areas of special ecological, scientific or cultural attributes that require management in conjunction with other low-impact uses, e.g. areas with contiguous native vegetation or forest cover.'* It is submitted that extensive agriculture should not be included under 'other low impact uses.'

Whilst the Review mentions that the NSW Planning Reforms White Paper indicates that the E3 zone will be transferred into a new rural zone that will presumably permit extensive agriculture, it is important to note that the Planning Bill 2013 that contains information

relevant to new zones has been suspended indefinitely and therefore does not represent a reliable guide to potential changes in the use of zones under environmental planning instruments.⁵

⁵ For further analysis of the proposed zoning under the White Paper and Planning Bill 2013, please see EDO submissions, available at: http://www.edonsw.org.au/planning_development_heritage_policy.