



# North Coast Environmental Zones Reforms

Byron Bay

25 November 2015

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- Community legal centre specialising in public interest environmental law
- Independent from Government
- Services extend to all of NSW – Offices in Sydney & Lismore
  - Legal Advice and Casework
  - Policy & Law Reform
  - Community Legal Education and Outreach
  - Indigenous, Scientific and International programs
- Australian Network of EDOs

## Free initial legal advice, website, fact sheets and updates

- Free Environmental Law Line Monday-Friday  
– 1800 626 239
- Fact sheets and other resources on our website
- Free weekly eBulletin – updates on environmental law, policy and decisions



An independent community legal centre specialising in public interest  
environmental law



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## A community guide to influencing environmental outcomes

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  - Provide legal advice and representation
  - Promote changes to environmental laws
  - Provide community legal education
- Donations over \$2 are tax deductible
- Forms here today
- You can also donate online
  - <http://www.givenow.com.au/edonsw>

## Workshop overview

- Background
- What has changed?
- What do the reforms mean for the community & environment?
- What happens next?
- Questions



## Information, not advice

- The information contained in this workshop is a guide only and is no substitute for legal advice relating to your particular issue.
- If you need legal advice about your particular issue, please call our Environmental Law Line.

**BACKGROUND**

**EDD**

## What are E zones?

- E zones:
  - Zone E1: National Parks & Nature reserves
  - Zone E2: Environmental conservation
  - Zone E3: Environmental management
  - Zone E4: Environmental living
- Far North Coast: Biodiversity hotspot



## Application of E zones placed under review

- Review announced in 2012: Ballina, Byron, Lismore, Kyogle & Tweed Shire
- WHY?
  - Perceived conflicts between agricultural and environmental uses of land
  - Concerns that councils were introducing E zones on rural land without evidence of the environmental significance of the land
  - Provide greater clarity



# Interim Report – May 2014



Planning & Environment

## Draft Plans and Policies

Home > Draft Plans and Policies

- Introduction
- On Exhibition
- Under Consideration
- Made/Finalised

Department of Planning & Infrastructure

## Northern Councils EZone Review Interim Report

Exhibition

We are inviting public comment on an independent consultant's interim report into the way that environmental zones and overlays are being applied to land on the Far North Coast.

### Attachments & Resources

Draft exhibition material (12)

### Key dates and other information

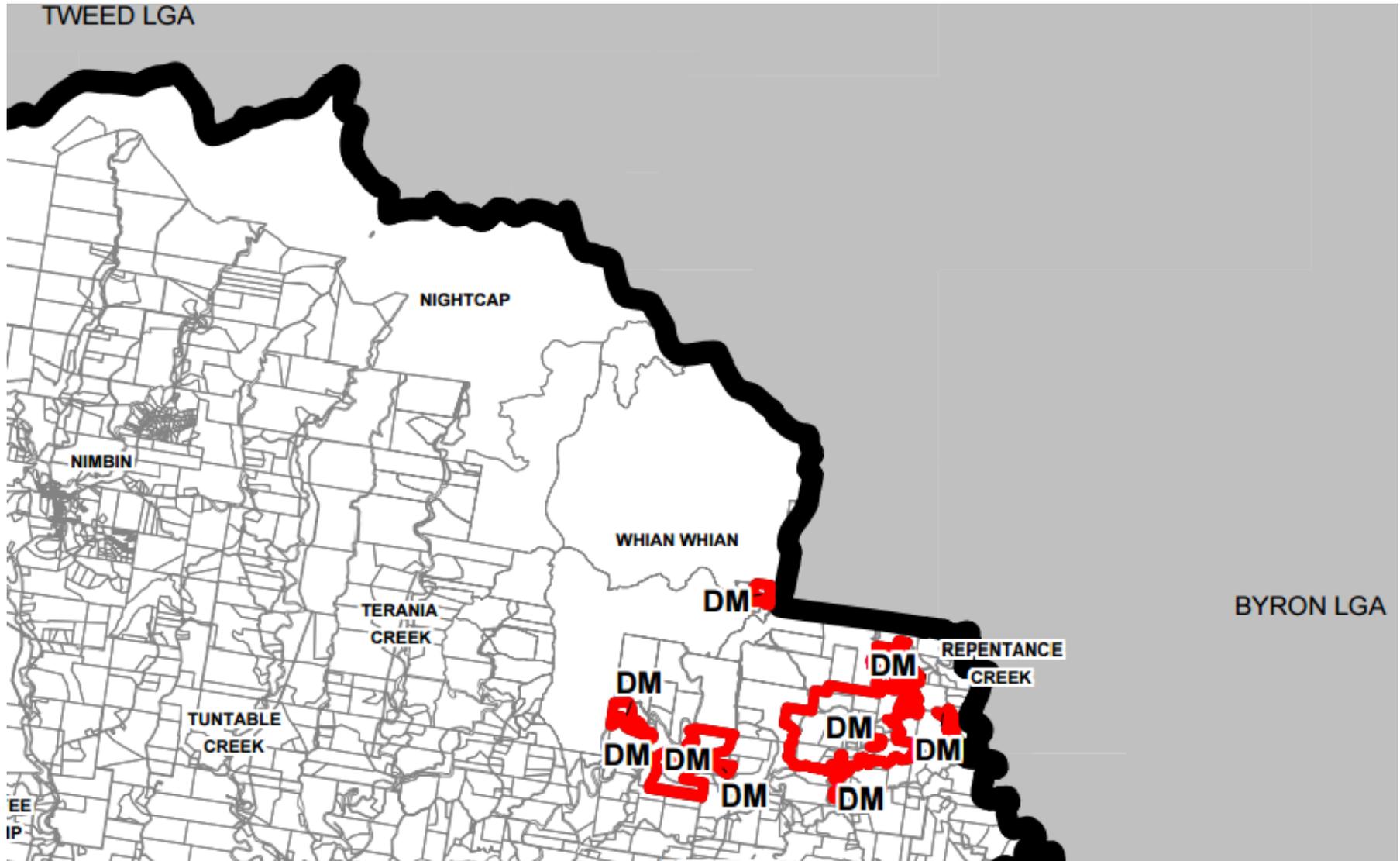
Exhibition Commences	14/05/2014
Exhibition Concludes	05/06/2014
Exhibition Location	23-33 Bridge Street, Sydney, 2003
Exhibiting agency or agencies	Planning & Environment
Type	Policies
Local Government Area	Ballina Shire Council, Byron Shire Council, Kyogle Council, Lismore City Council, Tweed Shire Council
Relevant Hyperlink	<a href="http://www.planning.nsw.gov.au/en-au/developmentproposals/planningreviewsandpanels/environmentalzonesinfarnorthcoast.aspx">http://www.planning.nsw.gov.au/en-au/developmentproposals/planningreviewsandpanels/environmentalzonesinfarnorthcoast.aspx</a>

[Making a submission](#)

# Final Recommendations released October 2015



# E zones deferred during review



# E zones deferred during review

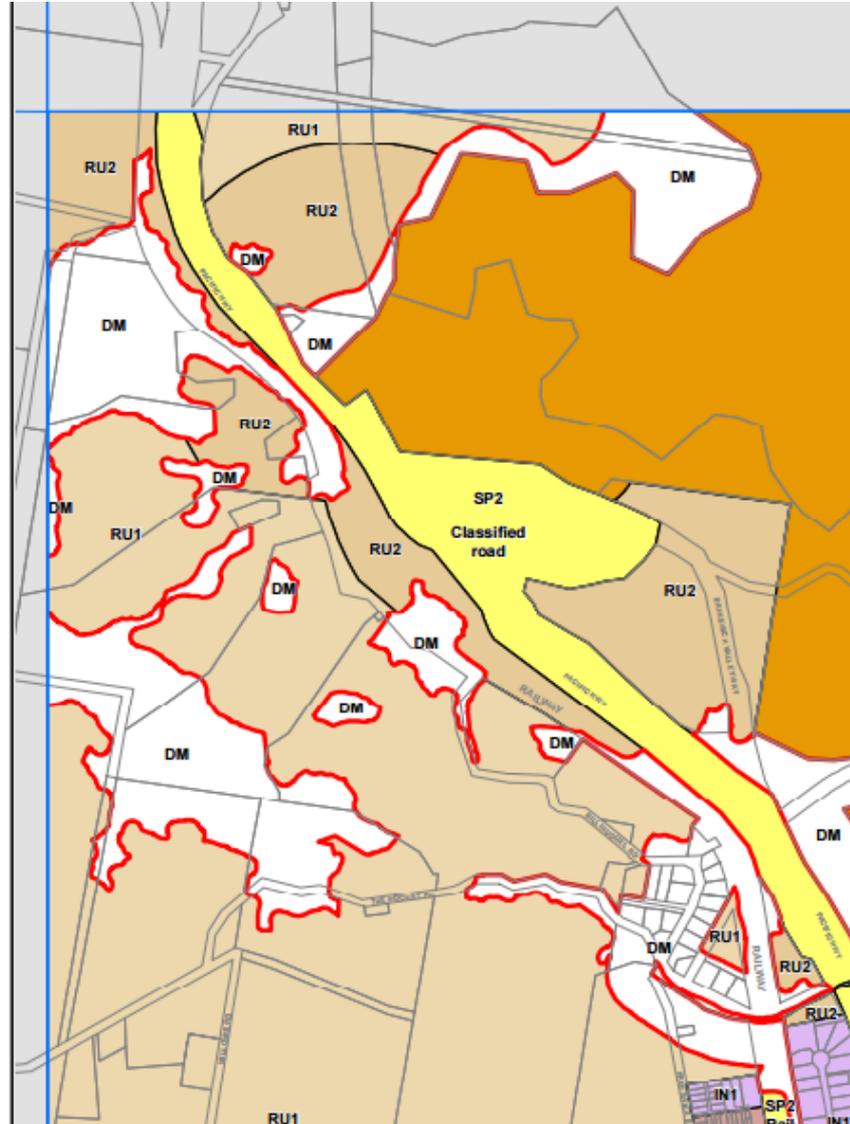


## Byron Local Environmental Plan 2014

Land Zoning Map - Sheet LZN\_002CA

### Zone

- B1 Neighbourhood Centre
- B2 Local Centre
- B4 Mixed Use
- B7 Business Park
- E1 National Parks and Nature Reserves
- IN1 General Industrial
- IN2 Light Industrial
- R2 Low Density Residential
- R3 Medium Density Residential
- R5 Large Lot Residential
- RE1 Public Recreation
- RE2 Private Recreation
- RU1 Primary Production
- RU2 Rural Landscape
- RU5 Village
- SP2 Infrastructure
- SP3 Tourist
- W1 Natural Waterways
- W2 Recreational Waterways
- DM Deferred Matter



## Challenge to LEP made while E zones deferred

- Draft LEP exhibited with E zones
- Final LEP approved without E zones as exhibited
- Challenge to removal of E zones - without E zones, the cultural heritage and environment of the North Lismore Plateau at risk
- Mr Ryan successful in his challenge, LEP invalid



**WHAT HAS CHANGED?**

**EDDO**

## Application of E2 and E3 zones changed

- E zones will only be applied where the ‘primary use’ of the land is either environmental conservation (‘E2’) or environmental management (‘E3’)

AND

- Land contains environmental attributes that meets E2 or E3 zone criteria

AND

- this has been verified by ecological evidence.
- The **primary use** of the land is the first consideration when making zoning decision.

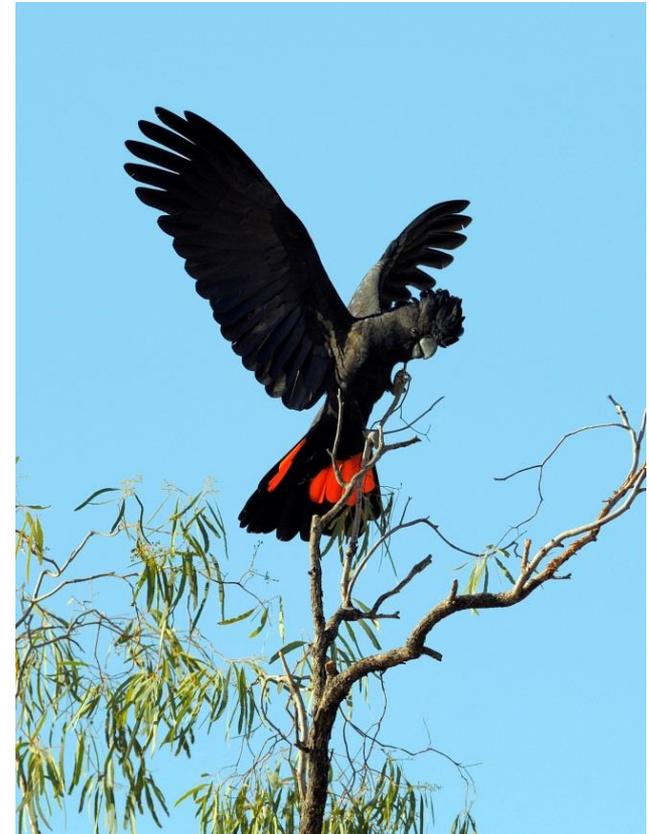
## Primary Use

- Main use for last 2 years
- More than 1 zoning may be applied
- Where the primary use of the land is agriculture, a Vegetation Map (i.e. environmental overlay) can be applied
- Primary use identified by Council



# What is an environmental overlay?

- Mapped planning control e.g. Vegetation map
- Can only be used if land meets E zone criteria but primary use of land is not consistent with E zone
- Does not prohibit land uses like zoning does
- Does not apply to development that can be carried out without consent e.g. extensive agriculture in rural zone
- Cannot be applied to E zoned land



# E2 zone criteria

**Table 1: E2 zone Criteria**

Criteria	Description
SEPP 26 Littoral Rainforests.	Land mapped as littoral rainforest in accordance with the statewide policy for littoral rainforest protection ( <i>State Environmental Planning Policy 26 – Littoral Rainforests</i> ).
SEPP 14 Coastal Wetlands.	Land mapped as coastal wetlands in accordance with the statewide policy for coastal wetland protection ( <i>State Environmental Planning Policy 14 – Coastal Wetlands</i> ).
Endangered Ecological Communities (EECs) listed under the <i>Threatened Species Conservation Act 1995</i> and/ or the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .	<p>Land containing vegetation communities listed as Endangered Ecological Communities under the <i>Threatened Species Conservation Act 1995</i> (TSC)<sup>1</sup> and the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC)<sup>2</sup>.</p> <p>The <i>Far North Coast Regional Conservation Plan</i><sup>3</sup> lists the following vegetation communities as examples of EECs that currently exist on the Far North Coast:</p> <p><i>Byron Bay Dwarf Graminoid Heath Community, Coastal Cypress Pine Forest, Coastal Saltmarsh, Freshwater Wetlands in Coastal Floodplains, Littoral Rainforest, Lowland Rainforest, Lowland Rainforest on Floodplains, Subtropical Coastal Floodplain Forest, Swamp Oak Floodplain Forest, Swamp Sclerophyll Forest on Coastal Floodplains, Themeda grassland on Seaciffs and Coastal Headlands, White Gum Yellow Gum Blakely's Red Gum Woodland, and White Gum Moist Forest.</i></p> <p>Other vegetation communities may be added consistent with these Acts in the future.</p>

## E2 zone criteria

<p>Key Threatened Species Habitat.</p>	<p>This criterion includes:</p> <ul style="list-style-type: none"> <li>• old-growth forests where the overstorey or canopy trees are in the late mature stage of growth<sup>4</sup>;</li> <li>• areas of predicted high conservation value for forest fauna assemblages, refugia, endemic forest fauna or endemic invertebrates<sup>5</sup>, and</li> <li>• habitats for threatened species or endangered populations that cannot withstand further loss where the threatened species or endangered population is present<sup>6</sup>.</li> </ul>
<p>Over-cleared vegetation communities.</p>	<p>Land comprising:</p> <ol style="list-style-type: none"> <li>1. over-cleared vegetation communities, where more than 70% of the original (pre 1750) extent of the native vegetation type has been cleared<sup>7</sup> and</li> <li>2. native vegetation in over-cleared Mitchell landscapes<sup>8</sup>.</li> </ol> <p>The <i>Far North Coast Regional Conservation Plan</i> lists the following as examples of:</p> <ul style="list-style-type: none"> <li>• Over-cleared vegetation communities on the Far North Coast<sup>9</sup>: <ul style="list-style-type: none"> <li>– Rainforests, Wet sclerophyll forests (shrubby and grassy subformations), Dry sclerophyll forests (shrubby and shrub/grass subformations), Grassy woodlands, Grasslands (Themeda australis sod tussock), Heathlands, Forested wetlands, Freshwater wetlands, Saline wetlands; and</li> </ul> </li> <li>• Over-cleared Mitchell landscapes<sup>9</sup>: <ul style="list-style-type: none"> <li>– Byron–Tweed Alluvial Plains, Byron–Tweed Coastal Barriers, Clarence–Richmond Alluvial Plains and Upper Clarence Channels and Floodplains.</li> </ul> </li> </ul>
<p>Culturally significant lands.</p>	<p>Areas of culturally significant lands such as Aboriginal object sites, Aboriginal places of heritage significance, and other significant objects identified by the local Aboriginal community<sup>10</sup>.</p>

# E3 zone criteria

**Table 2: E3 zone Criteria**

Criteria	Description
Riparian and estuarine vegetation and wetlands.	<p>Land comprising riparian and estuarine vegetation on waterfront land, defined under the NSW Water Management Act 2000, or wetland areas other than those mapped as SEPP 14 Coastal Wetlands.</p> <p>Waterfront land is defined under the NSW Water Management Act 2000 as the bed of any river, lake or estuary and any land within 40 metres of the river banks, lake shore or estuary mean high water mark.</p>
Rare, Endangered and Vulnerable Forest Ecosystems.	<p>Land comprising areas of rare, endangered and vulnerable forest ecosystems as defined by the Joint ANZEC/MCFFA National Forest Policy Statement Implementation sub-committee (JANIS) (Commonwealth of Australia 1997)<sup>1</sup>.</p>
Native vegetation on coastal foreshores.	<p>Native vegetation on land with frontage, or adjoining or adjacent to, a beach, estuary, coastal lake, headland, cliff or rock platform.</p>

## How is E zone criteria verified?

- Biodiversity field inspections and ground surveys
- Supporting flora and fauna reports
- Current aerial photography

For E2 culturally significant lands:

- Aboriginal heritage field inspections and ground surveys
- Supporting cultural heritage reports
- Consultation with Aboriginal cultural knowledge holders



# Transferring current E zones – Byron LEP 1988

- 7(a) Environmental Protection (Wetlands)
- 7(b) Environmental Protection (Coastal Habitat)
- 7(j) Environmental Protection (Scientific)
- 7(k) Environmental Protection (Habitat)
- Can be transferred to E2 or E3 once zone criteria is verified.
- Apply a residential zone to that land where an E4 zone was proposed under the draft Byron LEP

<b>Ballina LEP 1987</b>
7(a) Environmental Protection (Wetlands)
7(l) Environmental Protection (Habitat)
<b>Byron LEP 1988</b>
7(a) Environmental Protection (Wetlands)
7(b) Environmental Protection (Coastal Habitat)
7(j) Environmental Protection (Scientific)
7(k) Environmental Protection (Habitat)
<b>Lismore LEP 2000</b>
7(a) Environment Protection (Natural Vegetation and Wetlands)
7(b) Environment Protection (Habitat)
<b>Tweed LEP 2000</b>
7(a) Environmental Protection (Wetlands and Littoral Rainforests)
7(l) Environmental Protection (Habitat)

# Transferring current E zones – Ballina & Kyogle

## Ballina

- 7(a) Environmental Protection (Wetlands)
- 7(l) Environmental Protection (Habitat)
- Can be transferred to E2 or E3 once zone criteria is verified

## Kyogle

- Apply a rural zone for now

<b>Ballina LEP 1987</b>
7(a) Environmental Protection (Wetlands)
7(l) Environmental Protection (Habitat)
<b>Byron LEP 1988</b>
7(a) Environmental Protection (Wetlands)
7(b) Environmental Protection (Coastal Habitat)
7(j) Environmental Protection (Scientific)
7(k) Environmental Protection (Habitat)
<b>Lismore LEP 2000</b>
7(a) Environment Protection (Natural Vegetation and Wetlands)
7(b) Environment Protection (Habitat)
<b>Tweed LEP 2000</b>
7(a) Environmental Protection (Wetlands and Littoral Rainforests)
7(l) Environmental Protection (Habitat)

## Public Land

- Public land that does not meet the criteria can be zoned 'E2' or 'E3' if the primary use of the land is environmental conservation or environmental management.



## Private Land

- Can be zoned E2 or E3 despite being inconsistent with the criteria only if:
  - it is consistent with a negotiated development outcome (master plan, rezoning, development consent, designated offset areas) or
  - at the request of the landowner.



## Voluntarily revegetated land

- Revegetated land can only qualify for E2 or E3 zoning or vegetation mapping if:
    - the primary use is environmental consistent with E zoning and
    - zone criteria is verified.
  - No E zone applied to revegetated land where:
    - Revegetation actively undertaken (not natural regrowth) and
    - primary use of land is agriculture
- UNLESS
- unless landholder requests or agrees or
  - it's a requirement of a funding agreement.

## Steps for zoning E2 and E3

1

- Primary Use of the land is environmental conservation or environmental management

2

- Land meets E zone criteria & this has been verified

3

- Private land: consistent with a negotiated development outcome or permission of landholder

4

- Proposal to apply E zone is publicly exhibited

## Environmental living zone (E4)

- Applied to land with special environmental values
- Accommodates low impact residential developments
- Development is to be located and designed to avoid an adverse effect on the environmental qualities of the land
- Byron Shire to replace E4 zone with a residential zone



## Exceptions

- No guarantee of an E zone if the Council believes an E zone should not be applied
- No buffers to the vegetation attributes that meet the E zone criteria
- No more E zones or mapped planning controls for aesthetic scenic values
- Mapped planning controls



## Extensive agriculture permitted

- To be permissible with consent in E2 zone
- To be permissible without consent in E3 zone
- Extensive Agriculture includes:
  - production of crops or fodder for commercial purposes
  - grazing of livestock for commercial purposes
  - Bee keeping
  - Pasture-based dairy farming.

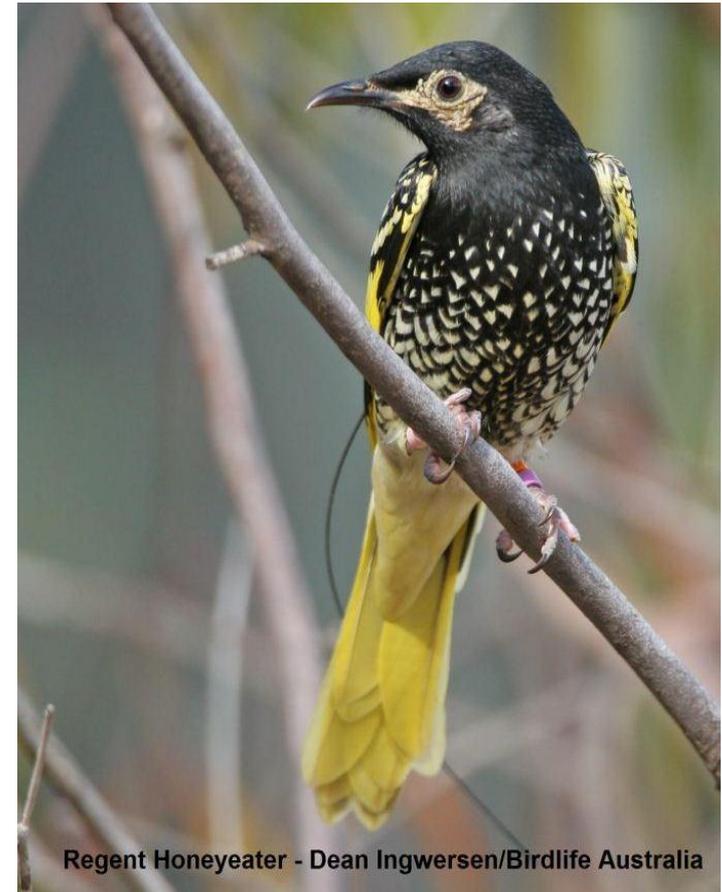


**WHAT THIS MEANS  
FOR THE COMMUNITY  
& ENVIRONMENT**

**EDDO**

## In a nutshell

- Council can only apply E zones to land with very high conservation value
- All about the 'primary use' of the land
- Create clarity and consistent application of E zones
- Not mandatory to apply E2 or E3 zone
- In most cases, E zone on privately owned land requires permission

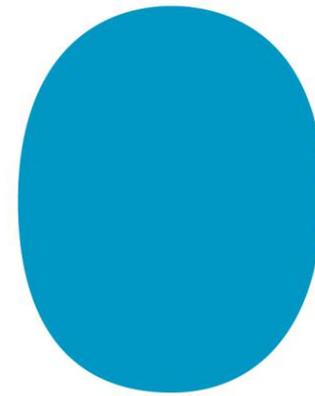
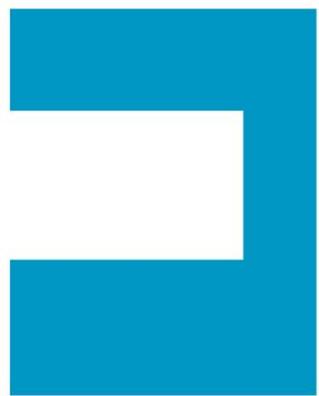


## State-wide implications

- Final recommendations can be used for other Councils
- Department of Planning is considering removing 'aesthetic values' from E zone objectives
- Possible amendments to remove or extend existing use rights for extensive agriculture.



**WHAT HAPPENS NEXT?**



# Implementation

1. Ministerial Direction to Councils in the coming weeks
2. Councils assess the land that was deferred and propose zones based on the final criteria
3. Exhibit the proposed zonings for public comment – this will be your change to make a submission

## Environmental Planning and Assessment Act 1979 No 203

Current version for 30 September 2015 to date (accessed 17 November 2015 at 16:24)

[Part 6](#) > [Division 1](#) > [Section 117](#)

<< page :

### 117 Directions by the Minister

- (1) The Minister may direct a public authority or person having functions under this Act or an environmental planning instrument to exercise those functions at or within such times as are specified in the direction.
- (2) In addition to any direction which may be given under subsection (1), the Minister may direct a council:

# Preparing or Amending an LEP

- Standard Instrument LEP prescribes the form & content

## Gateway process

1. Planning proposal prepared and submitted to Minister
2. Minister makes gateway determination
3. **Community consultation**
4. Public hearing
5. Threatened species consultation with OEH
6. Minister can ask PAC to review
7. LEP is drafted
8. Minister makes final decision on LEP

# Summary

- Keep on top of opportunities to have a say by signing up to receive the EDO's weekly e-bulletin
- Use the Have Your Say tool on our website to navigate to opportunities to have your say and find information and tips on how to be effective



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