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Dear Sir

Tweed Shire Council Submission to the E Zones Review Interim Report

Council welcomes the opportunity to provide comment on the recently released Northern Councils E Zones Review Interim Report. The Department and the consultants, Parson Brinckerhoff, are to be congratulated on this initiative which, when finalised is expected to provide consistent, defensible and clear support for Councils in the process of finalising their Local Environmental Plans (LEPs).

In general terms, the review reinforces the approach Tweed Council has been pursuing to address environmental issues relates to the LEP. There are however a number of areas where further clarification is needed. It is hoped the following comments will assist the Department to further refine the guidance they provide Councils on this important issue.

Council's Adopted Approach to Environmental Protection

For over 20 years Council has recognised the need to improve the environmental provisions of its principal land use planning instrument, the Local Environmental Plan (LEP). To achieve this goal, Council has embarked on a number of initiatives such as Tweed Futures, Tweed Vegetation Management Strategy (TVMS), Koala Plan of Management, Estuary and Coastal Zone Management Plans to better understand the issues and develop broadly acceptable responses consistent with community aspirations and contemporary State and Federal government policy.

In the last few years all of these plans have been included in the 10 year Community Strategic Plan 2011/2021 and four year Delivery Program 2011/2015. Extensive community consultation undertaken during the preparation of the Community Strategic Plan found that the community is becoming increasingly concerned about protecting the Shire's unique and significant biodiversity assets. In response, Council has explicitly committed to following through on its adopted strategies to increase protection for biodiversity through the LEP and other processes.

In relation to improving the LEP, the following table summarises the underlying environmental objectives of Council's adopted strategies and identifies the possible mechanisms for implementation under the Standard Instrument LEP.

Environmental Objective	Possible Implementation under SI LEP
Strengthen the environmental provisions in areas of high development pressure particularly along the Tweed Coast.	<ul style="list-style-type: none">• Expanded E2 zones with limited permissible land uses (no dwellings, no agriculture) based on strict criteria (similar to proposed E2 EZone Review criteria plus coastal hazards, public bushland etc)• Terrestrial Biodiversity clause and overlay map• Improved tree preservation provisions (DCP A16)

Environmental Objective	Possible Implementation under SI LEP
	<ul style="list-style-type: none"> • Links to Tweed Coast Koala Plan of Management
Recognise the need for flexibility and merit-based assessment in rural hinterland.	<ul style="list-style-type: none"> • Replacement of the existing arbitrarily determined and rigid environmental zones with an accurately mapped but much more extensive and flexible Environmental Management (E3 zone. This zone would allow extensive agriculture without consent and would therefore not affect agriculture.
Complement natural resource management provisions administered by other levels of government (e.g. Native Vegetation Act 2003)	<ul style="list-style-type: none"> • The LEP would rely entirely on the NV Act to prevent broad-scale land clearing in the rural zones (RU1, RU2) but would maintain some local influence on Threatened Species, EECs and koala food trees via a TPO (DCP A16) in the E3 zone. • Environmental clauses and overlay maps (see below) would ensure that that non-agricultural developments would be subject to provisions similar to those that apply to agriculture under State legislation (eg land clearing, management of steep land and riparian lands.
Acknowledge environmental constraints where they exist.	<ul style="list-style-type: none"> • Environmental clauses and overlay maps such as Terrestrial Biodiversity, Steep Land and Riparian Lands. These clauses clearly identify the issues Council would need to consider prior to granting consent and only apply when a development application is required. Note as extensive agriculture would not require consent in rural and the E3 zone these clauses would not affect agriculture.
Promote better management (not just protection) of the Shire's natural assets	<ul style="list-style-type: none"> • Consent considerations under the Environmental clauses would promote improved environmental management for developments in environmentally sensitive areas. • Note Council already provides considerable incentives for better management (outside of the LEP process) under its Biodiversity and River Health Grant programs.

Environmental Zone Criteria

In general terms the Ezone criteria set out in the review is broadly consistent with Council's approach to environmental protection under the LEP however there are a number of general and specific issues which we believe warrant further consideration.

Planning context of E2 and E3 zones

The proposed criteria for the E2 and E3 zone appear to reflect a simple difference in the degree of ecological significance but with the exception of agriculture do not clearly reflect their planning purpose or articulate the context in which they should be used. This is a crucial point for Tweed (and perhaps other LGAs) as our proposed E2 and E3 have very different focuses.

In the Tweed, land uses in the proposed E2 are highly restricted (no dwellings or agriculture) and the objectives focus on lands set aside primarily for conservation and coastal erosion and protecting other important habitat from expanding urban settlements viz:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To identify lands set aside primarily for conservation or environmental amenity.*
- *To protect, manage and restore environmentally sensitive areas including lands subject to coastal erosion.*
- *To prevent development that would adversely affect or be adversely affected by coastal processes.*

Much of the proposed E2 is public land and is concentrated along the urban and peri urban coast. This focus is not well reflected in the E2 criteria proposed in the review particularly as it relates to public lands and areas otherwise set aside for conservation. Apart from areas specifically set aside for nature conservation such as environmental parks and areas under long term protective covenants (e.g. Voluntary conservation Agreements under the National Parks and Wildlife Act or Nature Conservation Trust Covenants) there would appear to be very little purpose in applying such a strict zone in rural areas away from development pressure even for otherwise ecologically significant areas where clearing controls are in place and there is minimal risk of loss or damage arising from planning decisions. On the other hand, on the Tweed Coast there are many areas that have been set aside for long-term nature conservation under an existing environmental zone but would not meet the proposed EZone Review criteria for E2. The "Area E" urban development area at Terranora is a good example where there are a number of steep gullies consisting mostly of Camphor Laurel which are zone 7(l) Habitat under LEP 2000 and subject to ongoing restoration as the development proceeds.

In contrast, the proposed E3 zone objectives in the Tweed will have a much more rural focus (e.g. extensive agriculture and horticulture without consent) relying mostly on the NV Act to prevent broad-scale land clearing viz:

- *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.*
- *To encourage sustainable agricultural production compatible with topographical and ecological constraints of the land.*
- *To enable development, including a limited range of tourism and residential development that has adequate protection from natural hazards.*
- *To maintain or improve the natural conservation values of the land, including significant habitat areas and wildlife corridors.*

Non-agricultural land uses however will necessarily be more limited than in the Rural Landscape zone (RU2) in recognition of obvious constraints due to biodiversity, potential for land degradation and other hazards, however the permissible land uses will be much more flexible than the proposed E2 zone. While this agricultural/rural focus is relatively well articulated in the inclusion of areas subject coastal erosion is difficult to comprehend given that there would never be any opportunity for extensive agriculture, dwellings or the other broad range of land uses that may be appropriate in the rural context.

Proposed E2 and E3 criteria are not mutually exclusive

As they are presented, the tables of criteria for the E2 and E3 zones are not mutually exclusive. This arises because some areas meeting an E2 criterion will spatially overlap with one or more E3 criteria and vice versa. For example, rainforest under E3 criterion 1 will also qualify for E2 under E2 Criterion 2 – Endangered Ecological Communities. Similarly almost

all wetland and estuarine areas under E3 criterion 3 will also be captured under E2 criterion 3, 5 and/or 6.

One solution to this is to ensure that the E Zones are determined in sequence such that the E2 zone is determined first then the remaining lands are considered using the E3 criteria.

Proposed E2 criteria

Comments on specific criteria for the E2 zone are provided in the table below.

Consistent with the discussion above all E2 criteria should be subject to the overall planning context in which the zone is to be used. This should be articulated through the zone objectives which no doubt will vary slightly between LGAs. In the case of the Tweed the E2 zone objectives effectively confine the zone to urban and peri urban (non-rural) areas except for lands specifically set aside for nature conservation (bushland reserves, VCAs etc.).

Perhaps the most appropriate way to address this issue is to preface the zone criteria with a statement that any areas included in the zone must meet at least one of the listed criteria AND are consistent with the zone objectives.

Proposed E2 Criterion	Comments
1. SEPP 14 – Coastal Wetlands	Supported although zoning boundaries will need refinement to address numerous SEPP mapping anomalies
2. SEPP 26 – Littoral Rainforest	Supported although zoning boundaries will need refinement to address numerous SEPP mapping anomalies
3. Endangered Ecological Communities (EEC)	Supported in urban, peri-urban and coastal contexts but not necessarily in the rural hinterland where mapping is less accurate and it can be adequately protected using E3 zoning supported by TPO (DCP A16)
4. Habitat for Threatened Species	Not practical as most bushland in the Tweed would be included. In the E2 planning context it should be considered as a supplementary criterion where there are <u>known</u> Threatened Species records. Would be better to call it “Habitat for Threatened Species with Known Records”. Recommended for inclusion in the E3 criteria in the more general form “Habitat for Threatened Species”.
5. Overcleared Vegetation Communities	Supported as all relevant vegetation communities are located in coastal and urban areas (in Tweed). Note the reference to Keith 2004 is incorrect. See Biometric Vegetation Types Database at http://www.environment.nsw.gov.au/biobanking/vegtypedatabase.htm
6. Overcleared Mitchell Landscapes	Supported as all relevant vegetation communities are located in coastal and urban areas (in Tweed).
7. Culturally Significant Lands	Supported where considered appropriate. Other mechanisms are preferred to more comprehensively address this issue.

Other recommended E2 criteria include the following:

- Known Core Koala Habitat consistent with SEPP 44. Note, in the rural planning context, this would default to the E3 zone.
- Public bushland reserves and other natural areas
- Bushland and other habitat set aside by negotiations
- Areas subject to coastal erosion (mostly public land). These currently proposed for E3 but are not appropriate given the rural interface objectives and wide range of permissible landuses in the E3 zone
- Areas under long term conservation covenants (subject to owners consent)

- Estuarine and wetland areas. These areas are currently proposed for E3 but almost all will be effectively captured by public land, EECs, over cleared vegetation types, and/or Mitchell landscapes criteria.
- Shallow and minor waterway reserves within and adjacent to National Parks/ Nature Reserves. Current waterway permissible uses are not appropriate for these areas.
- Unmade road reserves within and adjacent to National Parks/ Nature Reserves

Proposed E3 criteria

Comments on specific criteria for the E3 zone are provided in the table below.

As recommended in the case of the E2 zone, all E3 criteria should be subject to the overall planning context in which the zone is to be used. In the case of the Tweed, the zone objectives effectively confine it to rural parts of the landscape.

It is also presumed that E2 is determined first and the E3 criteria are applied to the remainder.

Proposed E3 Criterion	Comments
1. Rainforest other than SEPP 26	Note all rainforest is EEC! However, supported in the rural hinterland where mapping is less accurate, and it can be adequately protected using E3 zoning supported by TPO (DCP A16)
2. Old Growth	Supported as all outside National Parks is in rural hinterland – however mapping is very coarse-scale (1:250K) – needs to be clipped by detailed extant bushland mapping.
3. Riparian, wetland and estuarine areas	Supported in rural context however in Tweed almost all wetland and estuarine areas will be captured under E2. Riparian supported in the rural hinterland.
4. “Rare”, “endangered”, “vulnerable” CRA Forest Ecosystems	Supported.
Areas subject to coastal erosion	Not supported. Out of context given the rural interface objectives and wide range of permissible landuses in the E3 zone. Recommended for inclusion in E2
6. Areas where strict controls on: development should apply (steep land, watershed protection etc)	This criterion is not very clear. Does it include bushfire hazards? Recommend that it include Vulnerable Land - Category A (Steep land, generally > 18 degrees) and Category C (Mass movement) as per the NV Act. Formally known as State Protected Land these classifications are well accepted and used to regulate clearing under the NV Act. Their use for broader planning purposes will ensure consistency. Note, Category B Riparian land is already covered under criterion 3

Other suggested E3 criteria include the following:

- Areas that meet E2 criteria but occur in a rural planning context (e.g. Core Koala Habitat)
- Habitat for Threatened Species (currently proposed under E2 criteria)
- Residual tracts of bushland (2ha min, cleared 0.5ha min) not captured by other E3 criteria – While both the E2 and E3 criteria focus on areas of “special” ecological value very little attention has been given to attributes such as remnant area and connectivity that contribute to ecological function at the landscape scale. In Tweed over 80% of bushland is > 18 degrees and will be captured in E3. More will be captured under

other E3 criteria. It would be potentially very messy to leave residual patches out of E3 zone in these circumstances.

- Waterway reserves (public land) on running water non-navigable streams in rural hinterland. These are currently W1 but permissible uses are not appropriate

Provision should also be made under the criteria for both E2 and E3 zones for smoothing and infilling of small areas and snapping to cadastral boundaries to ensure that zone boundaries are practical.

While the E2 zones may contain some very small patches of highly significant bushland (e.g. Littoral Rainforest) it is recommended that the E3 zone should not apply to private land less than 0.5 ha unless in the same ownership with a total area of 0.5ha or greater.

E4 Zone

Further clarification is requested on the potential application of the E4 zone

Proposed Natural Resource Management Zone

The recommendation in the review to create a new "Natural Resource Management Zone" is supported. It is likely that this terminology would be more broadly accepted by the community even if it effectively replaced the E3 zone as it is currently constructed.

Scenic Protection

The recommendation to remove scenic amenity considerations from the E2 and E3 zones is accepted. Due to difficulties in defining these areas and it is acknowledged that other mechanisms, such as overlay maps and clauses or DCP provisions are likely to be more effective in preventing unsightly development.

Permissibility of Agriculture in E zones

The recommendation for agriculture to remain prohibited in the E2 and be permitted without consent in the E3 zone is supported.

Considering that the permissibility of agriculture land use in the E3 zone, triggers provisions of the Mining SEPP it is recommended that the Department to consider excluding the E zones from the Mining SEPP application area.

Environmental Clauses and Overlays

The consultant's recommendation for a Terrestrial Biodiversity overlay map and associated LEP clause is strongly supported although it is noted that the Department is presently not supporting this recommendation on the basis that (1) the E zones themselves will identify sensitive areas (2) there is other legislation that protect important environmental values and (3) "is considered overly restrictive on productive agricultural land".

Unfortunately this reasoning misrepresents the purpose and operation of environmental clauses and overlays. Environmental clauses and overlays do not infer greater protection at all, or duplicate other legislation, they simply detail the sorts of information needed to justify a development application in a particular part of the landscape. In the experience of Council officers the simple reliance on section 79C of the EP&A Act does not provide sufficient guidance on the critical issues that Council officers need to consider. Without clear guidance proponents routinely fail to adequately justify their proposals which are regularly delayed while Council requests further information. Providing these "heads of consideration" up front is considered a much more efficient and transparent process for both the proponent, Council and the community.

In relation to restricting agricultural production, it must be remembered that any overlay clause will only be triggered by the need to submit a development application. If agriculture is to be without consent as proposed in rural and E3 zones no development application will be triggered and consequently any environmental overlay will have no effect whatsoever on agricultural operations.

In addition to the Terrestrial Biodiversity LEP clause and consistent with LEP 2000 and the pre-gazettal version of Tweed LEP 2014 Council staff remain of the view that similar environmental clauses are required to ensure that the relevant issues are addressed for other environmentally sensitive areas such as steep land and riparian lands.

Revegetation by Landholders

The Department's Frequently Asked Questions document indicates that land that has been voluntarily revegetated Council's will not be able to impose an E2 or E3 zone without the consent of the landholder.

This recommendation is supported in principal on the basis that these areas would not otherwise be included in an E zone under one or more of the Ezone criteria. However, if for example, the revegetation was on steep land or land subject to mass movement it would be reasonable to zone the area E3 irrespective of any voluntary revegetation. An E zoning would also appear to be reasonable once the revegetation was established as the dominant use in the landscape for a time sufficient to meet one or more of the E zone criteria. In the case of forest communities this would normally be of the order of twenty years.

There are also some practical considerations here. It should be clear that such revegetation must be "active" and not a predominantly result of natural regrowth. Consideration should be given to limiting such a provision to the landholder that initiated work rather than a subsequent land holder. Also, revegetation for the purpose of nature conservation funded from public monies should be excluded.

Extension of The Public Exhibition Period

Tweed Shire Council would like to seek an extension of the public exhibition period to allow more time for consultations and preparation of the submissions in response to the Interim Report. In the same time, we would like to offer further assistance in preparation of the final recommendations to facilitate the process of finalising the Standard Instrument LEP.

Please accept this letter as an interim submission which will be followed by the formal ratification of the Council.

Yours faithfully



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Tweed Shire Council

