



STANDARD INSTRUMENT FOR LEPs

Standard zones

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Related	

Environment Protection Zones

The purpose of this practice note is to provide guidance to councils on the environment protection zones in the standard instrument and how they should be applied in the preparation of local environmental plans.

Overview

The standard instrument for principal local environmental plans (LEPs) contains four environment protection zones specifically for land where the primary focus is the conservation and/or management of environmental values. The zones provide for varying levels of environmental protection from zone E1 to E4:

- **E1 National Parks and Nature Reserves**
This zone is for existing national parks, nature reserves and conservation areas and new areas proposed for reservation that have been identified and agreed by the NSW Government.
- **E2 Environmental Conservation**
This zone is for areas with high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. The zone provides the highest level of protection, management and restoration for such lands whilst allowing uses compatible with those values.
It is anticipated that many councils will generally have **limited areas** displaying the characteristics suitable for the application of the E2 zone. Areas where a broader range of uses is required (whilst retaining environmental protection) may be more appropriately zoned E3 Environmental Management.
- **E3 Environmental Management**
This zone is for land where there are special ecological, scientific, cultural or aesthetic attributes or environmental hazards/processes that require careful consideration/management and for uses compatible with these values.
- **E4 Environmental Living**
This zone is for land with special environmental

or scenic values, and accommodates low impact residential development.

As with the E3 zone, any development is to be well located and designed so that it does not have an adverse effect on the environmental qualities of the land.

Additional considerations of each zone are located in Attachment 1.

Application of environment protection zones

The environment protection zone E1 is only to be applied to existing areas identified under the *National Parks and Wildlife Act 1974* or areas identified as proposed for national park or nature reserves agreed by the NSW Government.

The environment protection zones E2 through to E4 are applied where the protection of the environmental significance of the land is the primary consideration. Their importance for visitation, tourism and job creation should also be carefully considered.

Prior to applying the relevant zone, the environmental values of the land should be established, preferably on the basis of a strategy or from an environmental study developed from robust data sources and analysis. This is particularly important where land is identified as exhibiting high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. For example, 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. Under such a strategy or study, zoning would need to be appropriate and land uses would need to be capable of being sustained.

The application of these zones is also to be consistent with relevant legislation, State and regional planning policies and subregional strategies.

The zones are to be applied consistently so that their value is not diminished by inappropriate application or by permitting incompatible uses.

The detailed zone guide attached to this practice note will assist council's application of the environment protection zones. In selecting additional uses, council is supported by the requirement that these be consistent with the mandatory zone objectives and any mandatory uses.

Supplementary detail

Zones E2 to E4 will generally need to be supplemented by detailed provisions in the development control plan. These would most likely cover the design, construction and management of uses in these zones, particularly with respect to eco-tourism, tourist accommodation and dwellings (where permissible).

Identification of areas for future acquisition

Land to be acquired for certain public purposes

Where council is aware of land to be reserved for future acquisition for certain public purposes, such land will be identified according to its intended future public purpose under the *Environmental Planning and Assessment Act 1979*.

The land reserved for future acquisition is to be identified on the Land Reservation Acquisition Map accompanying the principal LEP and the acquiring authority of the State shown in clause 5.1.2 of the principal LEP. Land listed in clause 5.1.2 requires the relevant authority to consent to the listing.

Other circumstances

The range of uses proposed to be permitted in the E zones is a consideration for council in consultation with the Department of Planning. In determining uses, council should be aware that the range of uses should not be drawn too restrictively as they may, depending on circumstances, invoke the *Land Acquisition (Just Terms Compensation) Act 1991* and the need for the Minister to designate a relevant acquiring authority.

Unless a relevant acquisition authority has been nominated and that authority has agreed to the proposed acquisition, council should ensure, wherever possible, that the range of proposed land uses assists in retaining the land in private ownership.

Use of alternative zones

Where the primary focus is not the conservation and/or management of environmental values, a different zone type should be applied.

Such zones may be applied in conjunction with local environmental provisions and maps in the principal LEP to identify any special considerations.

Local environmental provisions

Local environmental provisions may be applied where zone provisions need to be augmented in order to ensure that special environmental features are considered. For example, rural land that is still principally for agriculture but which contains environmentally sensitive areas may be zoned RU1 or RU2 and the environmental sensitivities managed through a local provision and associated ('overlay') map.

The benefits of this approach include:

- The intended conservation or management outcomes for land can be clearly articulated in the LEP.
- Areas are clearly defined and controls streamlined.
- Sub-zones are not created. (These are not permitted under the standard instrument).

Provisions for environmentally sensitive areas may include multiple natural resource or other features such as acid sulfate soils and riparian land. A local provisions clause may include objectives and, where the sensitivity is a mappable attribute, a map would accompany the provision.

Any local provision will apply in addition to the objectives and land use table for zones. The local provision must be consistent with mandated objectives and permissible or prohibited uses of the relevant zone/s.

Split zone considerations

Where council wishes to acknowledge different land capabilities on a single allotment, council may consider applying more than one zone across the land. For example, this approach may be considered appropriate over an allotment to distinguish between areas of environmental value and areas for agricultural purposes.

In choosing this approach, council needs to consider the implications of such splits. Appropriate minimum lot sizes and development standards are to be selected to support the intent of the zones and identify a suitable scale and intensity of development. Identifying appropriate minimum lot sizes at the same time as zone splitting would reduce the potential for future uncertainty if land is proposed for subdivision at a later stage.

Application of legislation

Council needs to be aware of the following:

- section 117 directions apply, including Direction 1.3—*Mining, petroleum and extractive industries* and Direction 2.1—*Environment protection zones*. Council must check the relevance of all directions and justify any proposed inconsistency
- State and regional environmental planning policies apply and may include other uses that may be permissible in a particular zone. Other uses may be provided in other planning instruments, e.g. State Environmental Planning Policy (Infrastructure) 2007 and State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.

Further information

A copy of this practice note, the standard instrument, and other specific practice notes and planning circulars on using the standard instrument for principal LEPs, can be accessed on the Department's website at <http://www.planning.nsw.gov.au/planningsystem/localplanning.asp>.

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Attachment 1 – Additional zone considerations
Attachment 2 – Frequently asked questions

Important note

This note does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this note.

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E1

National Parks and Nature Reserves



Application

This zone is for land reserved under the *National Parks and Wildlife Act 1974*, including existing national parks, reserves and conservation areas. This zone is also to be applied to new areas proposed for reservation as identified and agreed by the NSW Government.

This zone is not generally intended to apply to Crown land reserved for conservation purposes under the *Crown Lands Act 1989*.

Objectives and uses

It is not necessary to add any additional objectives or uses to this zone, as the relevant matters are already covered by the standard provisions.

Uses currently authorised under the *National Parks and Wildlife Act 1974* are permitted without consent within the zone.

Other considerations

Land reserved for acquisition for future national park should be identified on the Land Reservation Acquisition Map. The approval of the Department of Environment and Climate Change must be obtained for the reservation of such land.

Waterways within a National Park will also be zoned E1.

E2

Environmental Conservation



Application

Use of the zone will depend on land capabilities and the proposed future uses based on environmental protection values and strategic directions.

The use of the E2 zone needs to be supported by an appropriate assessment of the area meeting the zone objectives of high ecological, scientific, cultural or aesthetic values of this zone.

The following are examples of where the E2 zone should also be applied:

- lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing endangered ecological communities
- high conservation coastal foreshores and land acquired, or proposed for acquisition, under a Coastal Lands Protection Scheme
- some land with a registered BioBanking agreement
- land under the care, control and management of another catchment authority such as the Department of Water and Energy or a council for critical town water supply, aquifer or catchment as appropriate
- land with significant Aboriginal heritage values, if appropriate
- coastal foreshores and land subject to coastal hazards, including climate change effects
- land currently zoned for environmental protection where strict controls on development apply, e.g. steeply sloping escarpment lands, land slip areas.

The section 117 Direction 5.2—*Sydney drinking water catchments* identifies Special Areas (owned or under the care, control and management of the Sydney Catchment Authority). In the hydrological catchments in this direction, an E2 zone is to be applied to those parts of the Special Areas above the full water supply level.

Objectives

The mandatory zone objectives focus on protecting land with high conservation value and preventing development that could destroy, damage or otherwise have an adverse effect on that value.

Local objectives may reflect the particular types of values in the E2 zone within the council area. For example, an LEP might include an additional objective to identify the protection of drinking water catchment lands.

Objectives referring to land uses need to be carefully worded to avoid reducing the conservation focus of the zone. For example objectives such as 'to provide uses compatible with the high ecological, scientific, cultural or aesthetic values of this zone' may be appropriate under carefully controlled conditions.

Uses

There are no mandatory permitted uses for this zone.

Councils should carefully choose uses that protect the high conservation value of the land and avoid adverse effects in relation to natural hazards.

Additional uses that may be suitable (as permitted with consent) depending on location, include, but are not limited to:

- bed and breakfast accommodation
- eco-tourism¹
- environmental facility
- farm stay accommodation
- Information and education facility (environmental information and education)
- water recreation structure
- wetland rehabilitation.

It is important that councils maintain the integrity of the E zones by including only uses consistent with the zone objectives. As well, **councils should, wherever appropriate, retain existing uses that maintain conservation land capabilities.**

In relation to the standard instrument for principal LEPs the following uses are mandatory prohibited uses: business premises, hotel or motel accommodation, industries, multi dwelling housing; recreation facilities (major), residential flat buildings, retail premises, seniors housing,

¹ The draft definition of 'eco-tourism development' means nature-based tourism development with a primary focus on the education, interpretation, cultural understanding and appreciation of the natural environment that is managed to be ecologically sustainable.

service stations, and warehouse or distribution centres.

Councils should be aware that uses should not be drawn too restrictively as they may, depending on circumstances, invoke the *Land Acquisition (Just Terms Compensation) Act 1991* and the need for the Minister to designate a relevant acquiring authority.

In selecting additional uses, the following are unlikely to be suitable in the E2 zone:

- intensive agriculture
- rural industry
- signage (other than as ancillary to environmental facilities).

Where conservation is not the main objective, another zone series is appropriate, e.g. the residential or rural zone series.

Other considerations

Generally an acquisition authority for E2 land would not be identified unless the land is expressly set aside for a public purpose under section 26(1)(c) of the *Environmental Planning and Assessment Act 1979*, e.g. as public open space or a public reserve.

However, depending on circumstances, if the permitted uses are considered to be drawn too restrictively, a relevant acquiring authority may need to be designated.

E3

Environmental Management

Application

The following are examples of where the E3 zone may be applied:

- areas of special ecological, scientific, cultural or aesthetic attributes that require management in conjunction with other low-impact uses, e.g. scenic protection areas, areas with contiguous native vegetation or forest cover.
- as a transition between high conservation value land, e.g. land zoned E1 or E2 and other land such as that zoned rural or residential.
- where rehabilitation and restoration of its special environmental qualities are the primary purpose.
- highly constrained land where elements such as slope, erodible soils or salinity may have a key impact on water quality within a hydrological catchment.

There are instances where environmentally significant land has been zoned rural in the past but has not been used primarily for agriculture. Such lands should be zoned E3.

However, the zone is generally not intended for cleared lands including land used for intensive agriculture.

Objectives

The mandatory zone objectives focus on protecting, managing and restoring areas with special ecological, scientific, cultural or aesthetic values and to provide for a limited range of development that does not have an adverse effect on those values.

Additional local objectives may be applied if they are compatible with the mandatory objectives and uses.

Uses

Mandatory uses

Dwelling houses are a permitted use (with consent) in this zone. Home occupations may be carried out without consent.

In accordance with the direction for this zone, environmental protection works and roads must be permitted with or without consent.



A number of land uses considered to be inappropriate for this zone are listed as mandatory prohibited uses.

Additional uses

Councils can specify additional uses to be permitted in the zone at Items 2 and 3.

Councils may generally (but need not) permit, with consent, home industries, kiosks, cellar door premises, neighbourhood shops and roadside stalls in the zone. All other forms of retail premises and industries are prohibited in the zone.

Councils should choose uses that do not have an adverse effect on the special values of the land. Generally, if intensive forms of agriculture are proposed, a rural zone would be more appropriate (than an E zone). Additional uses that may be suitable (as permitted with consent) depending on location, include, but are not limited to:

- bed and breakfast accommodation
- building/identification signs and business identification signs, e.g. as exempt or complying development
- community facility
- dwelling house
- eco-tourism²
- environmental facility
- farm stay accommodation
- home business, home industry and home-based child care
- information and education facility
- kiosk
- recreation area
- water recreation structure
- wetland rehabilitation.

It is important that councils maintain the integrity of the E zones by including only uses consistent with the zone objectives. As well, **councils should, wherever appropriate, retain existing uses that maintain conservation land capabilities.**

Unless they are existing uses in the zone, the following uses are generally considered to be unsuitable:

² The draft definition of 'eco-tourism development' means nature-based tourism development with a primary focus on the education, interpretation, cultural understanding and appreciation of the natural environment that is managed to be ecologically sustainable.

- intensive plant agriculture and intensive livestock agriculture
- residential accommodation other than detached dwelling houses
- retail premises (excluding neighbourhood shops)
- rural industry
- storage premises.

Councils should be aware that uses should not be drawn too restrictively as they may, depending on circumstances, invoke the *Land Acquisition (Just Terms Compensation) Act 1991* and the need for the Minister to designate a relevant acquiring authority.

Consideration of mining

As part of council's consideration of whether or not to apply the E3 zone, council must take into account the section 117 Direction 1.3—*Mining, petroleum production and extractive industries* in relation to significant resources and Direction 2.1—*Environmental protection zones* and justify any inconsistency.

Under the State Environmental Planning Policy (SEPP) (Mining, Petroleum Production and Extractive Industries) 2007, underground mining can be carried out on any land with development consent. Under this SEPP, surface mining can be carried out with consent on land for which agricultural and industrial uses are permitted (with or without consent).

Where there are mining, petroleum or extractive industries resources identified in a section 117 Direction, and a council proposes to apply the E3 zone, council needs to clarify the permissibility of mining in this zone. Councils are therefore advised to include the following note at the beginning of the E3 land use table:

'Note. State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 may apply to land within this zone.'

E4

Environmental Living



Application

This zone will be typically applied to existing low impact residential development. This may include areas already zoned for rural residential that have special conservation values. Where lands have higher conservation values and fewer intended land uses than the E4 zone, an E2 or E3 zone may be appropriate.

Regional councils should distinguish carefully between the E4 zone, the RU4 Rural Small Holdings and R5 Large Lot Residential zones to address environmental, agricultural and residential land capabilities respectively.

Where small holdings undertake agricultural production such as viticulture or cropping such as growing berries, the RU4 zone should be considered. If there are few environmental considerations, then R5 may be the appropriate zone.

Objectives

The mandatory zone objectives seek to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values and to ensure that residential development does not have an adverse effect on those values.

Any additional objectives should reflect local characteristics and not duplicate the matters covered in the core objectives.

Uses

Mandatory uses

The zone permits dwelling houses (with consent) and home occupations (without consent).

In accordance with the direction for this zone, councils must permit environmental protection works and roads with or without consent in the zone.

Additional uses

Councils can specifically list additional uses to be permitted in the zone at items 2 and 3. The direction for this zone allows home industries to be permitted if desired (they would otherwise be prohibited under the term industries).

Care should be taken to select uses that are in keeping with the special conservation values of the land and complement low impact residential development. Additional uses that may be suitable (as permitted with consent), depending on location, include, but are not limited to:

- bed and breakfast accommodation
- building identification signs and business identification signs
- caravan park
- community facility
- dwelling house
- eco-tourism³
- environmental facility
- home business, home industry and home-based child care
- information and education facility
- kiosk
- recreation area
- secondary dwellings, e.g. attached to the principal dwelling
- tourist and visitor accommodation.

Additional uses that are generally unsuitable in the zone include:

- business premises
- office premises
- residential accommodation (other than dwelling houses and secondary dwellings)
- retail premises
- rural industry
- storage premises.

Other considerations

Where environmental capabilities are the primary concern on land that may be zoned R5 Large Lot Residential, RU4 Rural Small Holdings or E4 Environmental Living, preference should be given to the E4 zone.

³ The draft definition of 'eco-tourism development' means nature-based tourism development with a primary focus on the education, interpretation, cultural understanding and appreciation of the natural environment that is managed to be ecologically sustainable.

Frequently asked questions

Q. How are additional local environmental provisions to be referenced in LEPs?

A. Areas should be mapped and a separate clause included. For example a map identifying scenic protection areas should be referred to as follows:

6.1 Scenic protection

- (1) The objective of this clause is _____.
- (2) This clause applies to land identified as a scenic protection area on the Scenic Protection Map.
- (3) Before granting consent to development to which this clause applies, the consent authority must be satisfied that the development:
 - (a) _____.
 - (b) _____.
- (4) For the purpose of this clause, Scenic Protection Map means the [Name of local government area or other relevant name] Local Environmental Plan [Year] Scenic Protection Map.

It is important that the map clearly identifies 'Scenic protection area' in the legend and is prepared in accordance with the LEP Mapping Requirements.

Q. Is the E2 zone suitable for public open space land that has high conservation value?

A. Public open space principally used for public recreation purposes should be zoned RE1 Public Recreation, as this zone includes the protection of the natural environment among its core objectives. (Where recreational space is to be used for golf courses, registered clubs, caravan parks and the like it should be zoned RE2).

Areas of bushland within a public reserve will be protected under the plan of management required for community land under the *Local Government Act 1993*.

The E2 or E3 zone can be applied to public land such as bushland reserves with very high conservation value if the land meets the criteria for the application of the zone, for example where future land use is restricted for conservation reasons. This may be considered particularly where a bushland park offers recreation on walking trails and in the form of lookouts rather than as sporting fields and children's playgrounds.

Q. How would zone changes affect existing uses?

A. Existing legal land uses will not be affected, providing these remain in use.

Q. Can dwelling houses be prohibited in the E2 zone?

A. Yes, however, this needs to be adequately justified on conservation grounds. Note, if dwelling houses and other uses were previously permitted on this land and uses including dwelling houses are then proposed to be prohibited, the land may be considered to be an acquisition zone if a reasonable range of uses are not permitted.

Q. Council has recent detailed mapping of vegetation that differs from areas identified in SEPP 14 and SEPP 26. Should the new information be used to determine the zone boundaries or should the mapping be based on the SEPP maps?

A. The extent of SEPP lands remains that identified in the relevant SEPP map. Where new information identifies additional land with conservation value assets, these lands may be considered for inclusion in an appropriate environment protection zone, e.g. land including old growth forest.

Q. How should land be zoned which is owned by the Sydney Water Catchment Authority but which lies below the high water mark or is operational land.

A. This land should be zoned SP2 Infrastructure and the uses annotated on the relevant land zone map.