

Report No. 13.16 PLANNING - 26.2020.7.1 - Planning Proposal Stage 3 E zone Implementattion Program Submissions report

Directorate: Sustainable Environment and Economy

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File No: I2021/1662

Summary:

10 The implementation of Environmental Zones commenced in 2018 and is being delivered in a number of stages. To date Stages 1 and 2 are complete, Stage 3 is the subject of this report and Stage 4, to commence in 2022, will finalise the application of Environmental Zones.

To date Stages 1-3 have collectively resulted in a **net gain of 1,420ha of E2 Environmental Conservation zones** on private land, when compared to areas previously zoned 7a, 7b, 7k & 7j in Byron LEP 1988.

15 The Stage 3 Planning Proposal (PP) applies environmental and non-environmental zones to over 2,200 private properties in the Shire, which includes approximately 4,960 ha of E2 Environmental Conservation zones and 830 ha of E3 Environmental Management zones. It also amends other LEP 2014 maps such as Minimum Lot Size, Height of Building, Floor Space Ratio, Drinking Water Catchment, Acid Sulfate Soils and Multiple Occupancy & Community Title Maps.

PP 3 was exhibited from 29 March to 30 July 2021. The 335 public submissions received can be categorised as follows:

- Landowner submissions — 'Agreed' E zone and non-E zone properties
- Landowner submissions — 'Not Agreed' E zone properties
- 25 • Government Agency submissions
- Submission from Community Alliance for Byron Shire
- Submission from Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)

30 There are 205 properties where agreement was reached on proposed E zones and non-E zones. Details of these properties, including landowner feedback and proposed LEP map changes, are contained in Attachment 1.

There are thirty-five (35) properties where landowner agreement on proposed E zones could not be reached. Thirteen (13) of these already have an existing environmental zone under LEP 1988 (namely 7a Wetlands, 7b Coastal Habitat and or 7k Habitat).

35 Although proposed E zone areas on many of these properties have already been reduced (based on feedback from landowner), no agreement on the final amended zones could be

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reached. A detailed analysis of these properties, including landowners' reasons for not agreeing and Council's response to these, is contained in Attachment 2.

This report presents:

- 5 • a summary of the submissions received during exhibition of the Stage 3 Planning Proposal; and
- corresponding property specific LEP2014 mapping amendments for adoption.

10 The report recommends that [E zone Stage 3 Planning Proposal](#) be updated to reflect the proposed LEP 2014 zones and other related mapping changes in Attachments 1 and 2 of this report, and forwarded to the Department of Planning, Industry & Environment for finalisation.

It also notes that property owners whose land will be subject to an E zone will be notified in writing of Council's decision and advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property.

NOTE TO COUNCILLORS:

- 15 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a
- 20 Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

RECOMMENDATION:

1. **That Council in relation to Stage 3 E Zones planning proposal adopts:**
 - 25 a) the proposed LEP 2014 map changes for properties identified in Attachment 1; and
 - b) the proposed LEP 2014 zones (environmental and non-environmental) and consequential mapping for the 'not agreed' properties contained in Attachment 2,
- 30 2. **That Council requests that the NSW Department of Planning, Industry and Environment, as the plan-making authority in this instance, make the final LEP for notification on the NSW Government legislation website.**
- 35 3. **That Council notes, post consideration of the submissions and endorsement of the final planning proposal, landowners whose land will be subject to an E zone are to be notified in writing of Council's decision and advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property.**

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Attachments:

- 1 Summary of proposed E Zone Mapping Changes arising from Stage 3 Exhibition (excluding Not Agreed outcomes), E2021/60380
- 5 2 Summary of Not Agreed Landowner submissions, E2021/78307
- 3 Government Agency submissions - Biodiversity & Conservation Division (DPIE) and Local Land Services, E2021/126714
- 4 Response to and submissions from Community Alliance for Byron Shire (CABS), E2021/127168
- 10 5 Bundjalung Byron Bay Aboriginal Corporation (Arakwal) Submission re Lots 332 & 334 Riverside Crescent Brunswick Heads, E2021/126786
- 6 Form of Special Disclosure of Pecuniary Interest, E2012/2815

Background

Council at its 22 March 2018 Ordinary Meeting resolved (**Res 18-188**) to implement the Department's 'Northern Councils E Zone Review Final Recommendations Report' in several stages to deliver more timely and effective outcomes for affected landowners. An overview of the latest staged implementation program is shown in Figure 1 below.

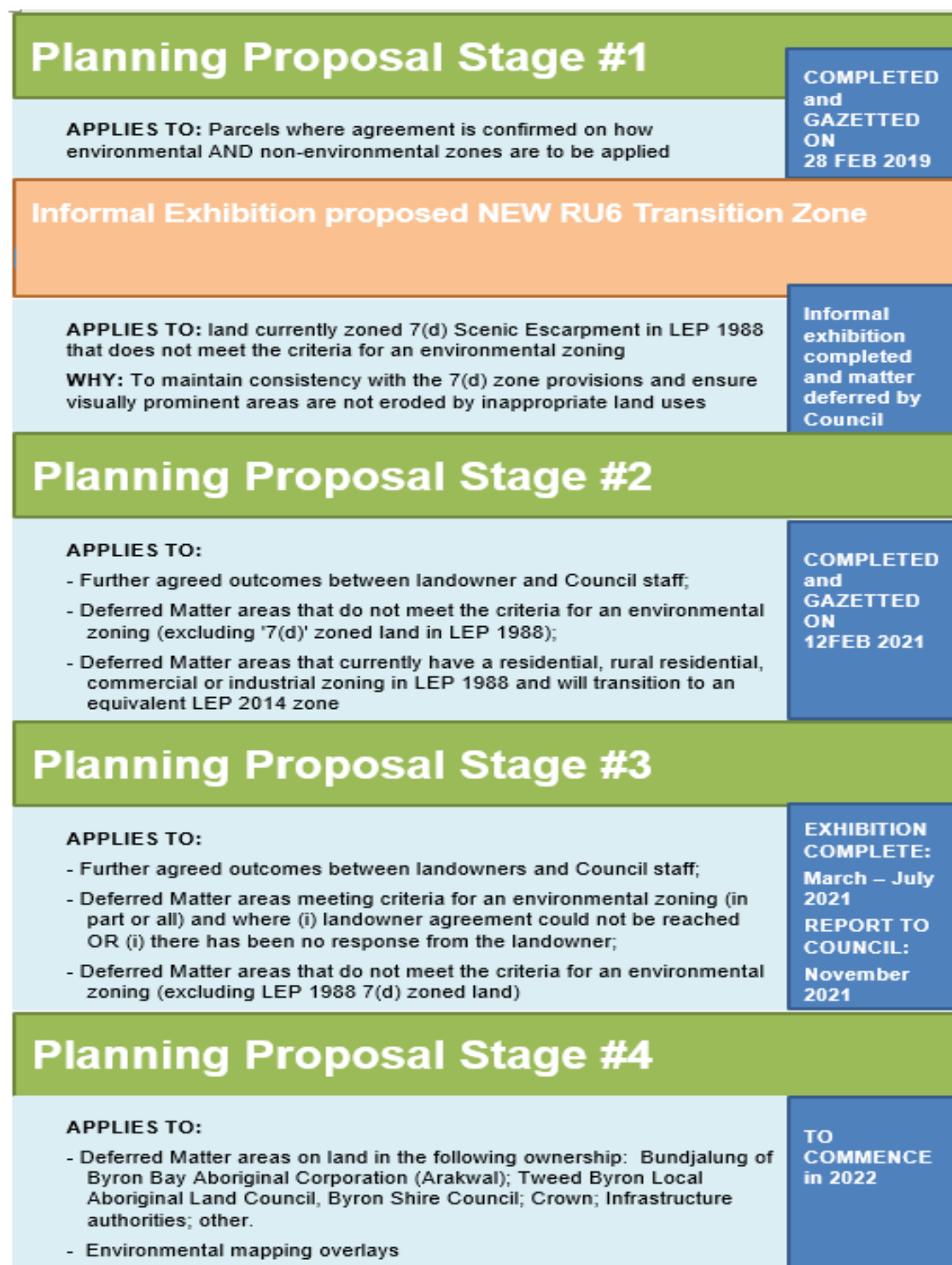


Figure 1: Staging Program to apply environmental and other zones on certain land in Byron LEP 2014

Stage 1 Planning Proposal (PP1)

5 PP1 applied environmental and non-environmental zones to 64 properties in the Shire based on agreed outcomes. This included approximately 340 ha of *E2 Environmental Conservation* zones and 60 ha of *E3 Environmental Management* zones.

Status: completed and gazetted on 28 February 2020.

Stage 2 Planning Proposal (PP2)

10 PP2 applied environmental and non-environmental zones to 619 properties in the Shire based on agreed outcomes. Approximately 1,485 ha of *E2 Environmental Conservation* zones and 400 ha of *E3 Environmental Management* zones are applied in PP2. It also amends other LEP 2014 maps such as Minimum Lot Size, Height of Building, Drinking Water Catchment and Acid Sulfate Soils Maps.

Status: completed and gazetted on 14 May 2021.

Stage 3 Planning Proposal (PP3) – subject of this report

15 PP3 applies environmental and non-environmental zones to over 2,200 properties in the Shire, which includes approximately 4,960 ha of [*E2 Environmental Conservation*](#) zones and 830 ha of [*E3 Environmental Management*](#) zones.

In relation to the Stage 3 Planning Proposal, Council at its 20 November 2020 Planning Meeting resolved [*Resolution 20-614*] the following:

- 20 1. *Amend the planning proposal contained in Attachment 1 (E2020/85949) to exclude the following land in the 7D Scenic Escarpment Zone, representing ‘non-agreed’ environmental zoning outcomes that can be collectively considered as part of a future strategic review of remaining 7D land in the Shire:*
 - a) *Lot 5 DP 625004, 470 Main Arm Road, Main Arm*
 - 25 b) *PT Lot 22 SP 549688, 139 Bangalow Road, Byron Bay*
 - c) *Lot 21 DP 859004, 83 Walkers Lane, The Pocket*
 - d) *Lot 1 DP 719570, 133 Middle Ridge Road, Upper Main Arm*
 - e) *Lot 5 DP 625004, 470 Main Arm Road, Main Arm*
 - f) *Lot 11 DP 816147, 689 Left Bank Road, Mullumbimby Creek*
 - 30 g) *Lot 285 DP 1198641, 64 Corkwood Cres, Suffolk Park*
 - h) *Lot 4 DP 635176, 526 Broken Head Road, Broken Head*
2. *Submit the amended planning proposal to the NSW Department of Planning, Industry and Environment for Gateway determination;*

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3. *Pending Gateway determination, undertake public exhibition of the planning proposal and consult with government agencies in accordance with the Gateway determination; and*

4. *Receive a report outlining the exhibition outcomes.*

5 In accordance with item '1.' in the above resolution, land in the 7D Scenic Escarpment zone will only have an E Zone applied where agreed by the landowner. Otherwise, all remaining land in the 7D zone will remain 'deferred' and collectively considered as part of a future strategic review of remaining 7D land in the Shire and or until a suitable replacement zone (LEP 2014) is supported by the Department of Planning, Industry and Environment.

The remainder of this report presents a summary of submissions (and other feedback) received during the exhibition of PP3 along with recommended LEP mapping amendments for adoption.

Report

15 PP3 was submitted to Department of Planning & Environment for gateway determination in December 2020. A positive gateway determination was received in February 2021 subject to the following conditions:

- *Consulting with following government agencies (during exhibition):*

- *NSW Rural Fire Service;*
- 20 – *NSW Biodiversity and Conservation Division;*
- *NSW Department of Primary Industries;*
- *the Local Aboriginal Land Council; and*
- *NSW Division of Resources and Geoscience.*

- *Notifying all affected landowners in writing of the planning proposal and the public exhibition arrangements*

- *Amending the planning proposal as follows prior to exhibition:*

- a) *Appendix 1 be altered to note that Direction 4.3 Flood Prone Land does apply to the planning proposal;*
- 30 b) *44 Ti Tree Road, Byron Bay (property ID: 94240) be altered to include an E2 zone over the area of the site mapped as 'Coastal Wetland' under the Coastal Management SEPP;*
- c) *Jones Road, Wooyung (property ID 240048) be altered to be zoned E1 National Parks and Nature Reserves; and*
- d) *Amend Table 5.1 in the planning proposal as follows:*
- 35 i. *include a new column to describe each property's complete zoning;*
- ii. *update the primary land use of 228 Broken Head Road, Suffolk Park to reflect an Env/Urban instead of Urban Res; include a new column to indicate*

whether the property is identified as state and/or regionally significant farmland.”

iii. include a new column to describe each property's complete zoning.

- 5
- *When Council has considered the submissions received during public exhibition and has endorsed the final planning proposal, landowners whose land will be subject to an E zone are to be notified in writing of Council's decision and advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property.*

Public Exhibition

- 10 [E Zones Stage 3 Planning Proposal](#) (PP3) was exhibited from **29 March to 30 July 2021**.

Landowner notification was undertaken in stages due to the large number of properties captured in PP3 (> 2,200) and the need to ensure staff could respond to enquiries in a timely manner.

335 public submissions were received and are categorised as follows:

- 15
- Landowner submissions — ‘Agreed’ E zone and non-E zone properties
 - Landowner submissions — ‘Not Agreed’ E zone properties
 - Government Agency submissions
 - Submission from Community Alliance for Byron Shire
 - Submission from Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)
- 20 There are 215 landowners that Council has not had any response from throughout the E zone engagement process. These properties have been included in PP3 ‘as exhibited’.

Landowner submissions — ‘Agreed’ E zone and non-E zone properties

- 25 There are 205 properties where agreement was reached on proposed E zones and non-E zones. Details of these properties, including landowner feedback and proposed LEP map changes, are contained in Table 1(a) of Attachment 1.

Attachment 1 also contains the following other proposed changes:

- 30
- Table 1(b) – Land parcels to be removed from Planning Proposal 3 (e.g. contains no deferred matter or proposed/exhibited Ezone)
 - Table 1(c) – Land parcels to be updated in LEP 2014 Multiple Occupancy and Community Title Map (as no longer a deferred matter)
 - Table 1(d) – Proposed Changes to certain land parcels previously zoned in E zones PP2 (as a result of submissions on adjoining PP3 land)

RECOMMENDATION: That Council adopts the proposed LEP maps changes in Attachment 1.

Landowner submissions —'Not Agreed' E zone properties

There are thirty-five (35) properties where landowner agreement on proposed E zones could not be reached. Thirteen (13) of these already have an existing environmental zone under LEP 1988 (i.e., *7a Wetlands*, *7b Coastal Habitat* and or *7k Habitat*).

- 5 The proposed E zones largely relate to intact areas of high environmental value vegetation having one or more of the following attributes: Key Threatened Species Habitat; Endangered Ecological Communities; SEPP Coastal Wetlands; Over-cleared vegetation communities and/or riparian and estuarine vegetation on waterfront land.

- 10 Although proposed E zone areas on many of these properties have already been reduced (based on feedback from landowner), no agreement on the final amended zones could be reached. Inevitably there will be a minority of landowners where there's been (i) a change of mind about what was originally agreed to on their land, (ii) a change in ownership since an agreed outcome was reached.

- 15 A detailed analysis of these properties, including landowners' reasons for not agreeing and Council's response to these, is contained in Attachment 2. The analysis of each property considers primary use(s) of the land together with historical aerial photography (mainly back to 1966), current aerial photography (e.g., Nearmaps), feedback from landowners, recent DA approvals, prior zoning, site inspections by Council Ecologist (including photo points) and/or drone footage.

- 20 **RECOMMENDATION: That Council adopts the proposed LEP 2014 zones (environmental and non-environmental) for each of the 'not agreed' properties contained in Attachment 2** (noting that these landowners be notified in writing of Council's decision and advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property).
- 25

Government Agency Submissions

- 30 In accordance with the Gateway Determination issued 8 February 2021, the following public authorities were consulted under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

- NSW Rural Fire Service
- NSW Biodiversity and Conservation Division (of DPIE)
- NSW Department of Primary Industries
- Arakwal Aboriginal Corporation
- 35 - Tweed Byron Aboriginal Land Council
- NSW Division of Resources and Geoscience.

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Two (2) government agency responses were received (Attachment 3). A summary of key issues raised and planning response to these is presented in Table 1 below.

Table 1 – Summary of government agency submissions received and planning response

Agency Name	Issues raised and Planning Response
1. NSW Biodiversity and Conservation Division (Department of Planning, Industry & Environment)	<p>Considers Council's review and application of E zones across the Shire has generally been well implemented, however recommends that prior to finalising the proposed Stage 3 amendments relating to 'Deferred Matter' lands not formerly zoned 7(a), 7(b), 7(j) or 7(k) under BLEP 1988 and Non – Deferred Matter land zoned under BLEP 2014, the council must ensure that:</p> <ol style="list-style-type: none">1. The PP has appropriately determined the primary use of the land.2. Justification is included in the PP of the council's determination of the primary use of each of the relevant parcels.3. The PP has distinguished between environmental conservation and environmental management land uses as follows:<ol style="list-style-type: none">a. In areas of native vegetation where ancillary uses are absent or have not occurred in the last two years, the land use would align with Environmental Conservation.b. In areas of native vegetation where ancillary uses are present or which have occurred the last two years, such as grazing, the land use would align with Environmental Management. <p><u>Planning Response</u></p> <p>Council has determined the primary use of individual land parcels using all relevant information available. This includes the characteristics of the land, its prior zoning, aerial photography, visual inspection, contact with landowners and other property information held by Council (e.g., development approvals; farmland rating status, Private Native Forestry or Property Vegetation Plan approvals).</p> <p>BCD's request to provide more detailed justification of the primary land use(s) identified for <u>each</u> parcel of land would require a significant body of work and resources that go beyond any North Coast council's capacity to implement the</p>

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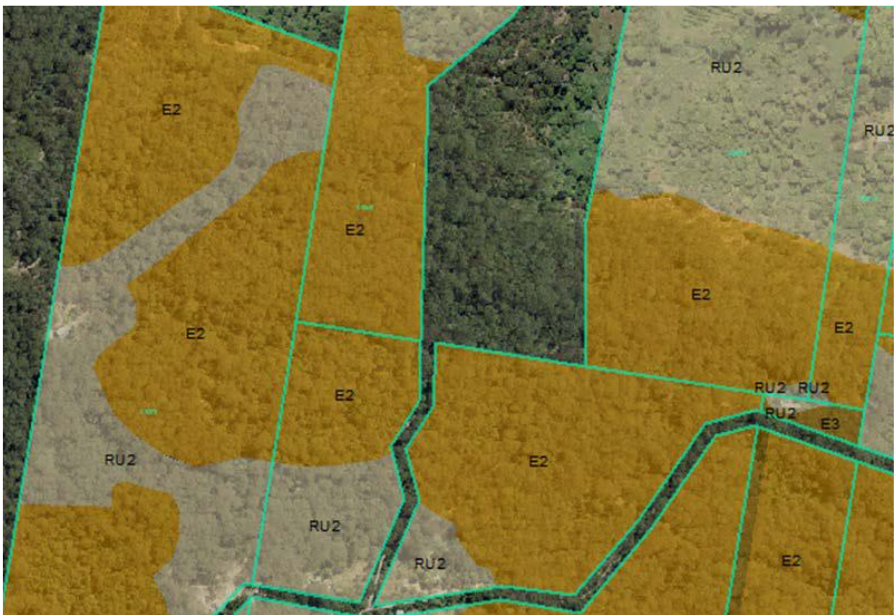
Agency Name	Issues raised and Planning Response
	<p>‘Northern Councils E Zone Review Final Recommendations Report’. Undertaking such a detailed level of investigation on each land parcel is neither practical nor justified, noting that all landowners were given the opportunity to provide feedback on the primary use(s) identified for their land as part of the engagement process since 2017 (i.e. in addition to confirming vegetation accuracy). Where necessary, updates to ‘primary land use’ have been made because of landowner feedback received.</p> <p>4. The E2 zone is applied to land that meets the criteria in Table 1 of the E Zone Review where the land use has been identified as Environmental Conservation as per our recommendation 3.a. above.</p> <p>5. The E3 zone is applied to land that meets the criteria in Table 1 or Table 2 of the E zone Review where the land use has been identified as Environmental Management as per our recommendation 3.b. above.</p> <p><u>Planning Response (4 & 5)</u></p> <p>Noted. There may be instances where agreed zoning outcomes do not align precisely with the primary use(s) of the land but still deliver a better planning result</p> <p>6. Where the primary use of the land is not considered to be environmental conservation or environmental management and the E2 or E3 zone criteria are verified as present on the land, then the land should be zoned E2 or E3 if the landowner agrees to applying either of those zones.</p> <p><u>Planning Response</u></p> <p>Noted. This is substantially consistent with the approach taken throughout the E zone review process.</p> <p>7. Where the primary use of the land is not considered to be environmental conservation or environmental management and the E2 or E3 zone criteria are verified as present on the land, but the landholder does not agree to an E2 or E3 zone, then mapped planning controls should be applied to the land.</p> <p><u>Planning Response</u></p> <p>Noted. This is substantially consistent with the approach taken throughout the E zone review process.</p> <p>8. Where mapped planning controls are required, these should</p>

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Agency Name	Issues raised and Planning Response
	<p>be developed and incorporated into the PP to ensure E2/E3 zone criteria known to be present are appropriately considered as part of the development application process.</p> <p><u>Planning Response</u></p> <p>Noted. Mapped overlays/planning controls will be considered in the E zones Stage 4 planning proposal.</p> <p>9. Primary Use' test — PP provides no justification for how zone boundaries have been split.</p> <p><u>Planning Response</u></p> <p>Throughout the E zone review process staff have endeavoured to reach agreed outcomes (wherever possible) when applying both environmental and non-environmental zone on private land. The reality is that many of the agreed zoning outcomes do not always align precisely with the primary use(s) of the land. Indeed, there are many examples of E2 zone landowners in Byron shire that have high value open forest with koala habitat but use light grazing as a valuable and essential tool for understorey weed control.</p> <p>There are also examples where primary production activities such as cattle grazing occur throughout an entire property, but the landowner has still agreed to rezone areas containing high environmental value vegetation to <i>E2 Environmental Conservation</i>, even though such areas are not solely managed for this purpose.</p> <p>In the case of split zones in PP3, the BCD submission (p4) cites the example below where lots appear to have similar and contiguous canopy, and which may therefore reflect a similar land use across the two zone types.</p>

Agency Name	Issues raised and Planning Response
	 <p>In this instance the RU2 areas were negotiated with the landowners after confirming that both properties had multiple dwellings and RU2 was required for houses, bushfire APZs and access roads. At the same time key areas of vegetation that met the E2 zone criteria were retained as Ezone while connectivity of Ezone vegetation across the landscape was also a key outcome.</p> <p>Overall, most split zones in PP3 were based on negotiated outcomes with owners, but also informed by the following supporting information where applicable and available:</p> <ul style="list-style-type: none"> • vegetation mapping 2017 (including canopy and condition attributes), • historical aerial photography (mainly back to 1966), • current aerial photography (including 2020 Nearmaps), • site inspections by Council's Ecologist (including photo points), • drone footage • topography (very steep inaccessible terrain not suitable for farming), • DA information, • connectivity with neighbours (e.g., valleys largely cleared for dwellings and roads as per neighbour),

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Agency Name	Issues raised and Planning Response
	<ul style="list-style-type: none">existing infrastructure (houses, sheds, water tanks etc.),future landowner intentions (e.g. restoration plans). <p><u>Conclusion</u></p> <p>Staff have invested a substantial amount of resources into individual parcels by contacting each landowner wherever possible to confirm 'primary land use/s' and vegetation accuracy. BCD's request to provide more detailed justification of the primary land use(s) identified for <u>each</u> parcel of land is neither practical nor justified, noting that the greatest attention in determining 'primary land use' has been focused on the "Not Agreed" E zone properties. This was considered the most practical and efficient approach given the substantially high number of properties included in PP3 (> 2,200).</p> <p>NO CHANGES RECOMMENDED</p>
2. NSW Local Land Services (on behalf of Tweed Byron Local Aboriginal Land Council)	<p>Discussions with Local Land Services and Tweed Byron Local Aboriginal Land Council (TBALC) representatives resulted in a request to defer all land owned or subject to native title claim by TBALC from PP3.</p> <p><u>Planning Response</u></p> <p>Agreed. The deferment of these properties is captured in Attachment 1 and is consistent with treatment of properties owned by Jali LALC and Bundjalung of Byron Bay Aboriginal Corporation (Arakwal).</p>

Note: The adjoining councils of Tweed and Ballina were also given the opportunity to provide comments on the exhibition of PP3, however no response was received.

Submission from Community Alliance for Byron Shire (CABS)

Council received a submission from CABS identifying a number of concerns with PP3, namely that:

- parts of the Cape Byron Marine Park are not being zoned to W1 Natural Waterways, where applicable on certain properties in this planning proposal;
- Council is upzoning wide swathes of the Shire by applying new zones that allow a greater range of permissible land uses compared to what the current LEP 1988 environmental zone/s allow.

In relation to the first point above, properties in PP3 that contain Cape Byron Marine Park have been updated to include the gazetted *W1 Natural Waterways zone*, except where infrastructure overlaps with the proposed W1 zone. These updates are captured in Table 1(a) of Attachment 1.

- 5 In relation to the second point above, CABS position is that any land currently zoned 6(a), 6(b), 7(a), 7(b), 7(d), 7(f1), 7(f2), 7(j), 7(k), 8(a) in LEP 1988 should not be rezoned to anything other than *E1 National Parks*, *E2 Environmental Conservation* or *W1 Natural Waterways*. Conversely, if the exhibited PP3 maps show land that is currently zoned as listed above being re-zoned to RU1, RU2, RU5, R5, E3, R2, R3, RE1, RE2, SP1, SP2, 10 SP3 then that land (not the entire land parcel) is to be removed from the Planning Proposal and the existing zoning under the Byron LEP 1988 should remain in place.

Planning Response (in relation to second point above)

- 15 CABS' request to defer any land currently zoned 6(a), 6(b), 7(a), 7(b), 7(d), 7(f1), 7(f2), 7(j), 7(k), 8(a) in LEP 1988 and that has not been rezoned to anything other than *E1 National Parks*, *E2 Environmental Conservation* or *W1 Natural Waterways* is not supported for the following reasons:

- The E zone engagement process to date has been robust, constructive, and well received by the majority of those affected. This is demonstrated by nearly 1,200 agreed outcomes to date and the fact that Stages 1-3 have collectively resulted in a 20 **net gain of 1,420ha of E2 Environmental Conservation zones** on private land, when compared to areas previously zoned 7A, 7B, 7k & 7J in Byron LEP 1988.
- In the absence of agreed outcomes, all Far North Coast councils must be consistent with the Northern Councils E Zone Review Final Recommendations report when applying E zones (i.e.. satisfy E zone criteria and primary land use).
- 25 • 8(a) National Parks and Nature Reserve Zones. This 'deferred matter' zone totals 2.7 Ha in Byron Shire and is made up of road reserves within National Parks or small areas of Crown Land. They are not included in Planning Proposal 3 as this applies primarily to private land. (Note: All land administered by National Parks & Wildlife Service is zoned *E1 National Parks*).
- 30 • 7(f1) Coastal lands and 7(f2) Urban Coastal Lands will be "*considered under a separate process and remain as a Deferred Matter under the Byron Local LEP 2014 until appropriate planning controls are developed in consultation with the State Government*" ([Fact Sheet 1 – EZones FAQs](#)).
- The only PP3 properties where 7(d) Scenic Escarpment land has been zoned E3 are 35 small areas over internal roads.
- Five (5) parcels zoned 6(a) Open Space Zone and 6(b) Private Open Space Zone have been included in Planning Proposal 3, as follows:

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Property Number	Current LEP 1988 Zone (s)	Proposed LEP 2014 Zone(s)	Change in zoning summary
157230	6(a) (Open Space Zone)	RE1 Public Recreation and E2 Environmental Conservation	Eureka Public Recreation Reserve. Increase of 2,395 sqm of land to be zoned E2.
211460	6(b) (Private Open Space Zone)	RE2 Private Recreation	Mullumbimby Ex-services Club. No change in permissible uses.
90190, 213940, 213500, 170560	6(b) (Private Open Space Zone), 1(d) (Investigation Zone)	RE2 Private Recreation and E2 Environmental Conservation	Ocean Shores Country Club. 5,983 sqm now in E2. Remaining RE2 is consistent with the primary land use.
111970, 267456, 170950	6(b) (Private Open Space Zone) and 7(b) (Coastal Habitat Zone)	RE2 Private Recreation and E2 Environmental Conservation	Byron Bay Golf Club. Increase of 29,924 sqm (3ha) of Environmentally protected area (E2).

A copy of the CABS submissions and detailed response to the property-specific matters raised is contained in Attachment 4.

Submission from Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)

- 5 The submission refers to two privately owned lots that are accessed via Crown land from Riverside Crescent in Brunswick Heads (Lots 332 & 334 in DP755692). PP3 proposes to apply an E3 Environmental Conservation zone to both lots which are currently zoned *7B Coastal Habitat* and have a collective area of 1,438 sqm. Neither parcel has a dwelling entitlement, and both are mapped as “intermediate flood hazard”.
- 10 The submission recommends that an *E2 Environmental Conservation Zone* should be applied for the reasons cited below:

- both lots contain conservation vegetation and are within a surrounding wildlife corridor;
- both lots do not contain a constructed road frontage;
- the land is also flood and bushfire prone and contains high wetland vegetation, cultural landscape, and coastal habitat areas.

A copy of the Arakwal submission is contained in Attachment 5.

Planning Response

The proposed zoning of both lots was further considered in relation to matters raised in the Arakwal submission. This included a site visit undertaken by Council's Ezone Ecologist, which identified mostly weeds and fruit trees on the land and hence not meeting the criteria for E2 zoning. However, as both properties are within 40m of the Brunswick River, Cape Byron Marine Park and flood affected ('intermediate' flood hazard), they do meet the E3 criteria for 'Riparian and estuarine vegetation and wetlands. Therefore, no change is recommended to the proposed E3 zone on both lots.

Other consultation with Arakwal

Staff also met with Arakwal representatives in June 2021 to discuss future zoning of the following (Deferred Matter) properties in their ownership:

Property description	Current zoning in BLEP 1988
10 Ironbark Ave, Byron Bay	<i>7b Coastal Habitat</i>
Lot 438 DP 729107, Bangalow Rd, Byron Bay	<i>1d Investigation</i>

Following this meeting it was decided to defer these properties from Planning Proposal 3 to allow time for further discussions with Arakwal representatives and internal staff. This is consistent with treatment of properties owned by Jali LALC and Tweed Byron LALC in the E zone review program.

Conclusion

This report presents a summary of submissions (and other feedback) received during the exhibition of PP3 along with recommended LEP mapping amendments for adoption.

Collectively Stages 1-3 of Council's E zone implementation program have resulted in a net gain of **1,420ha** of *E2 Environmental Conservation* zones on private land, when compared to areas previously zoned 7A, 7B, 7k & 7J in Byron LEP 1988. This figure is expected to increase when the E zones Stage 4 planning proposal is prepared in 2022.

It's worth noting that Council's E zone implementation program was the NSW runner-up in the 2020 Planning Institute of Australia Awards for 'Public Engagement and Community Planning'.

It's also worth noting that to date Byron Shire Council is the only Far North Coast council to have undertaken (and substantially completed) the application of E zones on private land. This has been largely achieved through our 'up front' engagement with landowners combined with a robust, collaborative, and flexible approach to achieving "agreed outcomes" wherever possible, as well as through the local community's strong support for the E zone planning process.

The Stage 3 Planning Proposal represents the most significant of the E zone review stages for Council to adopt prior to finishing its term.

Recommendation

- 10 It is recommended that [E zone Stage 3 Planning Proposal](#) be updated to reflect the proposed LEP 2014 zones and other related mapping changes in Attachments 1 and 2 of this report, and forwarded to the Department of Planning, Industry & Environment for finalisation.

Strategic Considerations

15 Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.1: Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.1: Protect and enhance our natural environment and biodiversity	3.1.1.5	Continue the E zone review (Action No.9 from Rural Land Use Strategy)

Recent Resolutions

- [20-614](#)

Legal/Statutory/Policy Considerations

- 20 The process of applying E zones and mapped overlays in Byron LEP 2014 is being undertaken in accordance with Section 117 Direction 2.5 – *Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs*. This direction specifically requires that a planning proposal that introduces or alters an *E2 Environmental Conservation* or *E3 Environmental Management Zone*, or an overlay and associated clause must be consistent with the *Northern Councils E Zone Review Final Recommendations*.

25 Financial Considerations

The remaining 2021/22 budget for the E zone Implementation program will most likely be exhausted before Stage 4 is completed in 2022. If so, a separate report will be presented to Council detailing the additional 2021/22 budget requirements to enable completion of a

Stage 4 planning proposal. Stage 4 will include Council, public authority, and Aboriginal owned lands as well as LEP mapping overlays and will be the final stage of the E zone Implementation program.

Consultation and Engagement

- 5 Consultation was undertaken as per the planning proposal Gateway determination [conditions](#). Due to the large number of properties, landowner notification was undertaken in stages requesting feedback by one or more of the following options: calling a designated 'hotline' phone number; emailing to our Ezones inbox, scheduling a phone back or face to face meeting using our online booking calendar. This resulted in more than 400 contacts
- 10 with landowners and or consultants.