

# Byron Shire E Zone Review Report

July 2022

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# Introduction

This review process by macroplan was conducted on 31 sites identified in a document forwarded by way of an email dated 23 June 2022 from the Department. The Agile Teams review document is attached as part of this report. I have examined the review material in the context of the document entitled the Northern Councils E Zone review report. Further I am familiar with the issues in this part of NSW, having previously held the position of NSW Chief Planner. Noting in the context of this report during consideration of the initial northern Councils E Zone Review Report, there was a recommendation that the review of submissions was to have been made to the then NSW Chief Planner. This in fact did not take place and the review is now taking place in accordance with a different framework.

# 1.0 Agile Planning teams Byron Bay E Zone Review Report

In September 2012, the then Minister for Planning and Infrastructure, announced a review of the application of environmental zones (E zones) and environmental overlays in local government plans (LEP's) on the far North Coast. The review applies to the Local Government Areas (LGA's) of Ballina, Byron, Kyogle, Lismore, and Tweed. The final recommendations report for the Northern Councils E zone review was released in October 2015. The recommendations report included and associated frequently asked questions (FAQ's) that provides an opportunity for the landowners who disagree with Councils proposed E2 or E3 zoning to write to the department requesting a review by the New South Wales Chief Planner, who at the time of the FAQ's being finalized, was appointed by the Minister for Planning to undertake the independent review.

A Department team called the Agile Planning Team, is currently considering the review requests from 31 landowners associated with the Byron Shire Councils E Zone Implementation Programme "Stage 3" Planning Proposal (PP-2020-3915). This Planning Proposal has applied environmental and non-environmental zones to 2,206 properties, which includes approximately 5,350 hectares of C2 zoned land and 730 Hectares of C3 zoned land. The planning proposal is currently with the Department's *Planning and Land Use Strategy* (PLUS) Team for finalisation. Under the Ministerial Direction, the Planning Proposal must apply C2 and C3 zones in line with Criteria in the Northern Councils 2015 recommendations report.

## 1.1 Criteria for E Zone Consideration

The application of Environmental Zones (E Zones) Byron Shire must be consistent with the Northern Councils E Zones Review Final Recommendations Report Section 9.1 Ministers Direction 2.5 to ensure application of zones and controls are consistent with the final recommendations report. The E zone or other map planning controls can be applied to land where the presence of attributes that meet the criteria have been verified by using one or a combination of the following:

- Biodiversity field inspections and ground surveys must be conducted by an appropriately qualified person.
- Flora and Fauna reports conducted by a suitably qualified person (where field work conducted must be less than five years old).
- Review of current (not more than five years old) high resolution digital aerial photography verified by another one of these verification techniques.
- Aboriginal heritage field inspections and ground surveys conducted by an appropriately qualified person or someone with extensive field experience.

- Consultation with Aboriginal cultural knowledge holders in relation to culturally significant lands in accordance with current guidelines.

## **2.0 Review Process**

The Department has received requests from 31 landowners to review Byron Shire Councils proposed rezoning of their land to C2 or C3. The Agile Team has prepared a report which has considered each request against the requirements of the Northern Councils E Zones Recommendations Report. This report prepared by the Agile Team has made recommendations which in turn will be forwarded to the department's northern team, indicating either that they agree with the proposed rezonings which had been in accordance with the requirements of the recommendations report, or the site should be deferred as Council needs to continue additional work to satisfy criteria.

The consideration which is being given to these rezoning proposals is occurring as Part 3 of the planning process. Those planning proposals that are recommended for deferral can be considered again at stage 4, where it is expected that there will have been a response from the Byron Bay Council to the matters raised in the department's report and its recommendations. These responses would need to demonstrate clear alignment Northern Councils E Zone Criteria.

### **2.1 Review Task**

This is a complex exercise not necessarily generated by the logic of having a planning process which allocates and provides protection for land which has environmental value. But the multiplicity of the variables which can exist and come into play across different land parcels, the nature of the country upon which the land is situated, and the way land has been used and influenced environmental value and therefore classification. It is notable that the Land being reviewed varies from pristine untouched vegetated high-country areas, to partially cleared valleys and agricultural areas, up to the urban fabric of the centres like Byron itself.

The task given to the Agile Team has been to assess appropriateness against the criteria which will put in place by the northern Councils to guide the Zone Review Process. The core thread which runs through the criteria which the team has been required to make that assessment is fundamentally around evidence and the ability to demonstrate around how land has been used in tandem with vegetation characteristics on site. Evidence gained by actual site inspections or from expert reports prepared in the last five years has been a crucial determinant in the consideration of submissions consistent with the Northern Councils E Zone Recommendations Report.

## **2.2 Review Items**

The following is a review of the recommendations by the Agile Team to 31 sites under consideration following submissions by the landowners.

### **Site Number 1**

Lot 2 DP1218678.Parcel 268240

The Pocket Road,

The Pocket

AGREE with the department's recommendation that the Matter should be deferred, as there is insufficient evidence to meet criteria for C- zone listing.

Noting Departments comment that no site visit occurred, or ecological report was prepared in the last 5 years.

### **Site Number 2**

Lot 1 DP368773 Parcel 84640

201 Skyline Road,

The Pocket

AGREE with the departments recommendation that the matter should be deferred as there is insufficient evidence to meet criteria for C-zone listing.

Noting the departments comment that no site visit occurred, or ecological report was prepared in the last 5 years.

Further, that Council should review the proposed C Zone Boundary in consultation with BCD. Based on updates to field work and mapping confirming the existing dwelling on the site plus and demonstrating a distinction between Camphor Laurel and growth forest.

### **Site Number 3**

Lot 1 DP122589 Parcel 151720, Lot 2 DP536396 Parcel 141850, Lot 4 DP576360 Parcel141960, Lot 12 and Lot 14 DP881230 Parcels 224530 and 224560 and Lot 11 DP 1014197 Parcel 231800.

296 Gulgan Road, Pacific Highway and 15 Eucalypts Lane

Brunswick Heads

AGREE with Departments view that Councils proposed rezoning is supported



Noting that the proposed C -zones were consistent with criteria, requiring site visits by ecologists in last 5 years in March 2018 and March 2019.

#### **Site Number 4**

Lot 152 DP755692 Parcel 89260

146 Tandys Lane

Tyagarah

AGREE with the departments recommendation that the matter should be deferred as there is insufficient evidence to meet criteria for C- zone listing.

Noting that whilst attempts were made to visit the site and the Council have reduced the E Zone that no visit or ecological report was conducted in accordance with Recommendations Report.

#### **Site Number 5**

Lot1 DP 719570 Parcel 52500

133B Middle Ridge Road

Upper Main Arm

AGREE with the departments recommendation that the matter should be deferred as there is insufficient evidence to meet criteria for C-zone listing.

Noting the Departments concerns that the applicant's vegetation mapping is older than that required by the recommendations report. Further it is uncertain as to whether a site visit occurred, comments from owner suggested this was not required and this did not take place.

Further, Council should consult with BCD to review the C Zone Boundary using up to date fieldwork and mapping. In additions a requirement to confirm vegetation mapping that was conducted by the applicant and its status in support of the reduction of the C Zone area.

#### **Site Number 6**

Lot 1 DP 779821 Parcel 96030

80 Vallances Road,

Mullumbimby

AGREE with the departments recommendation that the matter should be deferred as there is insufficient evidence to meet criteria for the C-Zone listing.

Noting that the Departments concerns were that the Council had not satisfied the validation around ecological attributes as no site visit or ecological report had been conducted within the last 5 years. There would also appear to be some uncertainties in Council's dealings around timing and information.

### **Site Number 7**

Lot 2 DP 772174, Parcel 115290  
11 Garrong Road,  
Goonengerry

AGREE with the departments recommendation that the matter should be deferred, there is confusion as to whether the site meets the required approval criteria for multiple occupancy and as mentioned in the department's response Council need to address the area of active consent in conjunction with environmental bushland consideration.

### **Site Numbers 8 ,9 and 10**

Lot 1 DP1046447 Parcel 238615  
Lot 4 DP264149 Parcel 134960  
Lot 5 DP264149 Parcel 14910

These lots are all situated in the same valley location at 73,135 and 159 Coopers Creek Road, Upper Coopers Creek.

The department has dealt with all three applications along this section of Coopers Creek Road in a comparable way. Firstly Defer, as there is insufficient evidence to meet criteria for C-zone listing. Secondly that Council need to undertake field verification or other verification of attributes required. Noting that in relation to sites 8 and 9 whilst attempts had been made to verify aerial observations using neighbouring properties because of site steepness and in relation to site 10 attempts had been made to gain access to verify sites neither validated ecological attributes in accordance with the recommendations report.

AGREED with the department's recommendations that Site Numbers 8, 9 and 10 be deferred.

### **Site Number 11**

Lot 185 DP 755695 Parcel 7600  
Butler Street  
Byron Bay

AGREE with the department's recommendation that the matter be deferred as there is insufficient evidence to meet criteria for C -zone.

Noting the departments comments in relation to errors in documentation in relation to the property and information references as a basis for deferral.

### **Site Number 12**

Lot 187 DP 755695 Parcel 10020  
Cemetery Road  
Byron Bay

AGREE with the department's recommendation that the matter be deferred as there is insufficient evidence to meet criteria for C -zone.

Noting that the entire site is mapped under coastal wetlands SEPP . Further that Council should provide comment on landowners suggested C3 option on appropriateness.

### **Site Number 13**

Lot 14 DP 792128 Parcel 60550  
Bangalow Road  
Byron Bay

AGREE with the Departments recommendation to support Council's proposed rezoning in fulfilling recommendations criteria.

Noting Council should investigate issues and the relationship between the SEPP and C Zone and the proximity to the access road.

We note that Council did amend the eastern C2 line in this location following rezoning exhibition.

### **Site Number 14**

Lot 1 DP 879695 Parcel 221850  
368 Broken Head Road  
Broken Head

AGREE with the Departments recommendation to support Councils proposed rezoning in fulfilling recommendations criteria.

Noting that the Department were satisfied in relation to not only 2021/22 aerial photography but also 2019 and 2021 site visits and owner verification.

### **Site Number 15**

Lot 21 DP 1034998 Parcel 238449 and Lot 13 DP 873331 Parcel 242071  
336 Tweed Valley Way,  
Wooyung

AGREE with the Departments recommendation to defer as there is insufficient evidence to meet criteria for C -zone listing. Further that Council need to undertake field verification or other verification of attributes required.

Noting it was the department's view that not enough information was provided in the Council's documents to ascertain whether site visits were made to meet the verification criteria.

### **Site Number 16**

Lot 1 DP 1045498 Parcel 238605 and Lot 162 DP1057874 Parcel 239000  
9 Scotts Wood Grove,  
Mullumbimby  
Creek

AGREE with the department's recommendation to defer as there is insufficient evidence to meet criteria for C- zone listing. Further that Council need to undertake field verification or other verification of attributes required.

Noting it was the department's view that not enough information was provided in the Council's documents to ascertain whether site visits were made to meet the verification criteria.

### **Site Number 17**

Lot 100 DP 1054375 Parcel 238912  
373-391  
Ewingsdale Road  
Byron Bay

AGREE with the department's recommendation to defer as there is insufficient evidence to meet criteria for seasoning listing further the importance of Council needing to undertake field verification or other verification of the attributes.

Noting that this area of remnant vegetation around the edge of the institution buildings is effectively a buffer to cleared residential blocks to the North and West but also provides environmental linkage to adjacent areas to the east. It would be useful in the verification suggested, to include any commentary or management conditions that may have been imposed in relation to the school which gave rise to the buffer's existence.

### **Site Number 18**

Lot 1 and Lot 2 Parcels 173910 and 173920

103 Dudgeons Road

Mullumbimby

AGREE with the department's recommendation to defer as there is insufficient evidence to meet criteria for C-zone listing further, that the Council need to undertake field verification or other verification of attributes is required.

The department also recommended the Council undertakes site verification given the suggestion of there being substantial camphor Laurel coverage around which verification should be sought. In addition to providing further evidence of any forestry agreement raised by the property owner.

### **Site Number 19**

Lot 1 DP 618891 Parcel 14990

401 Coopers Creek Road

Upper Coopers Creek

AGREE with the department's recommendation to support the Councils proposed rezoning. Noting that's aerial photography and environmental mapping conducted in 2021/2022 was later confirmed by qualified ecologist on a visit to the site.

### **Site Number 20**

Lot 1 Parcel 52080

560 Middle Pocket Road

AGREE with the departments recommendation to defer as there is insufficient evidence to meet criteria for C-zone as proposed.

That mapping for the proposed Council zoning appears incorrect as it does not show any RU 2 zone. Further it should review the independent ecologists report and recommendations for the RU2 boundary on this site.

Noting there does not appear to be in a response from Council in relation to the submission made by the landowner. The landowners submitted an independent ecologist report which suggested an increased area for RU2 beyond Council's boundary and that the proposed E2 area should be part of the councils existing HEV mapping layer.

### **Site Number 21**

Lot 5 DP 740203 Parcel 40140  
150 Koonyum Range Road  
Wilsons Creek

AGREE with the departments recommendation to defer as there is insufficient evidence to meet criteria for C-zone proposed.

In addition, Council needs to document which attributes have been verified on the site in accordance with the Recommendations Report requirements. Further that the Council does not appear to have responded to the submission, there is a need for Council to undertake site verification of the area that the owner is asking for consideration which is slightly larger than that which is shown.

### **Site Number 22**

Lot 1 DP 1210346 Parcel 261020  
376 Upper Wilson Creek Road  
Wilsons Creek

AGREE with the departments recommendation to support the proposed rezoning.

Council has met criteria for C2 zone and demonstrates reasonable discussions and compromise with the landowner.

Noting that a site visit was undertaken end zone areas reduced therefore further that there's no justification by the landowner for further changes.

### **Site Number 23**

Lot 8 DP 840653 Parcel 200460  
865 Broken Head Road  
Broken Head

AGREE with department's recommendation to defer as there is insufficient evidence to meet criteria for C zone proposed.

Council need to document which attributes have been verified on the site in accordance with the recommendations report requirements. Further that council resolve the removal of C zone areas which conflict with the approved dwelling and APZ at the northern end of the property.

Noting that the department has acknowledged the Council have already taken it account the concerns raised by the owner to reduce the C zone along the northern boundary area in response to the approved dwelling location. But point out there is a discrepancy between actual property boundary and fence line on the northern boundary.

### **Site Number 24**

Lot 1 DP 260297 Parcel 107340

Boogarem Road

Koonyum Range

AGREE with the department's recommendation to support Councils proposed rezoning, outlining that Council has met the criteria for the C2 zone and demonstrates reasonable discussions and compromise with the landowner as part of this process.

### **Site Number 25**

Lot 11 DP 1044288 Parcel 238534

Blindmouth Road

AGREE with the departments recommendation to be defer as insufficient evidence to meet criteria for C zone listing. Further that Council need to undertake field verification of attributes required.

Noting that the Department considered Councils proposal to be reasonable, however there was no indication that field visits had taken place as required by the Recommendations criteria. Further that there were other issues which complicated issues for the owner around dwelling entitlement's which were a separate matter.

### **Site Number 26**

Lot 2 DP 577017 Parcel 15490

46 Coopers South Lane

Main Arm

AGREE with the departments view to defer the matter as further advice is required from council on whether they wish to pursue the proposed C2 zone and how much of the existing vegetation has been regenerated by the owner.

Noting that the department outlined that given the landowner has requested the review objecting to the zoning, and if the landowner revegetated the land, then a C2 zone should not be applied, and a vegetation map should be provided for its management.

### **Site Number 27**

Lot 266 DP 755687 Parcel 51800  
259 Upper Middle Pocket Road  
Middle Pocket

AGREE with the departments recommendation to Support Councils proposed rezoning.

Noting that the department is satisfied that Council has investigated and satisfactorily negotiated, communicated and compromise with the owner retaining appropriate areas for continued farm use.

### **Site Number 28**

Lot 1 DP 124874 DP 124874 and DP 1178654  
Parcel 211480  
170 Dudgeons Road  
Mullumbimby

AGREE with the departments recommendation to defer as there is insufficient evidence to meet criteria for C-zone listing.

Further Council need to document which attributes have been verified on the site in accordance with the recommendations report requirements.

Further Council need to adjust map to show removal of small proposed C2 zone on the eastern boundary.

### **Site Number 29**

Lot 285 DP 1198641  
64 Corkwood Crescent  
Suffolk Park



Noting that no C zones are proposed in this instance, and the Department acknowledges this pending review of other zones across the Shire.

### **Site Number 30**

Lot 5 DP 732108 Parcel 5340  
160 Koonyum Range Road  
Wilsons Creek

Noting that this is a request from an adjoining neighbour not the Landowner.

### **Site Number 31**

Lot 1 DP 394061 Parcel 81800  
512 Seven Mile Beach Road  
Byron Bay

AGREE with the departments recommendation to defer as there is insufficient evidence to meet criteria for C-zone listing.

Further Council need to undertake field verification or other verification of attributes required.

Noting the key issues for the departments concern is that there is no indication that Council has undertaken any site or field verification as required.

# Conclusion

I have reviewed the material above which was presented to me and I am satisfied with the recommendations which have been made across the 31 items contained in the Departments review and assessment.

This review has focused around the process needing to align to the considerations outlined in the Northern Council's E Zone Review Report. I am satisfied that work undertaken by the Department has been consistent with the requirements of the report.

Whilst there are obvious planning considerations which might need to be examined in the future around the conservation of land as part of the overall planning process, it should be noted that this was not part of the task conducted or considered in this review report.

I am however of the opinion that the notion of being able to visit sites for verification purposes or other acceptable evidence gathering might need additional considerations. For instance if a land owner contesting the consideration of land being allocated in a particular way as part of the Planning Process does not allow fair and reasonable verification visits. It is evident from the report that a great deal of effort and work is being generated because there is not a process which facilitates evidence gathering or visitation if the owner does not agree to a visit.

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