



IRF 23/648

Gateway determination report – PP-2023-574

Introduce C2 Environmental Conservation and C3
Environmental Management zones into Tweed Local
Environmental Plan 2014

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal PP23/001 – Council Version 1 for Gateway Determination
Northern Councils E Zone Review – Final Recommendations Report

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Tweed Shire
PPA	Tweed Shire Council
NAME	Introduce C2 Environmental Conservation and C3 Environmental Management zones into Tweed LEP 2014
NUMBER	PP-2023-574
LEP TO BE AMENDED	Tweed LEP 2014
ADDRESS	N/A
DESCRIPTION	N/A
RECEIVED	21/03/2023
FILE NO.	IRF23/648
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to amend the Tweed LEP 2014 to introduce the C2 Environmental Conservation and C3 Environmental Management zones.

The proposal does not propose the spatial application of conservation zones to any land.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Tweed LEP 2014 by including C2 Environmental Conservation and C3 Environmental Management to the list of available land use zones. The proposal also intends to include new land use tables for the C2 Environmental Conservation and C3 Environmental Management zones.

The proposal does not intend to apply conservation zones to any land or amend any associated clauses within the instrument. Council indicates this will occur through a future planning proposal.

Council has proposed to change a required objective for both zones by removing a reference to 'aesthetic values'. Whilst Council's justification is noted, the deletion is unable to be supported as the wording of the zone objective is mandated by the Standard Instrument LEP. A condition has been included on the Gateway determination requiring this be amended prior to consultation.

Council also proposes to include two new objectives for each zone. These changes are considered appropriate to proceed to consultation except for objective 4 of the C2 zone *'to protect, manage and restore environmentally sensitive areas of public land.'* A condition has been included on the Gateway determination requiring this be removed prior to consultation as it is not considered appropriate or necessary as objective 1 already states *'to protect, manage, and restore areas of high ecological, scientific, cultural or aesthetic values'* and as it expected that the C2 zone will be applied to both public and private lands.

All proposed land uses within the land use tables for the zones are considered appropriate for inclusion, based on the requirements of the Standard Instrument LEP or recommendations of the LEP Practice Note Environment Protection Zones (PN 09-002), with the following exceptions outlined in Table 4.

Table 4 Assessment of Proposed Uses in Land Use Table

Zone	Permissibility?	Use	Justification
C3 Environmental Management	Permitted with consent	Forestry	This use is a departure from the recommendations of LEP Practice Note Environment Protection Zones (PN 09-002) and its inclusion is considered to require consultation with Biodiversity Conservation Division to confirm its suitability.
		Water supply systems	This use is a departure from the recommendations of LEP Practice Note Environment Protection Zones (PN 09-002) and its inclusion is considered to require consultation with Biodiversity Conservation Division to confirm its suitability.

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved subject to the above recommended amendments.

1.4 Site description and surrounding area

The proposal reflects a legislative change to the Tweed Local Environmental Plan 2014 to incorporate the C2 Environmental Conservation and C3 Environmental Management zones. The proposal does not comprise the spatial application of conservation zones to any land. As such, the proposal does not apply to a specific site.

Future rezoning proposals will consider the specific impacts of the application of the proposed zones on a specific parcel of land.

1.5 Mapping

The proposal does not comprise the spatial application of conservation zones to any land. As such, the planning proposal does not require any changes to the LEP maps.

2 Need for the planning proposal

The planning proposal seeks to introduce conservation zones in accordance with the recommendations of the Northern Councils E Zone Review – Final Recommendations Report (C Zone Review). This introduction will facilitate their application to spot rezonings and Council's future C Zone implementation program.

The planning proposal is the best way and only way to achieve the objectives of the planning proposal. A land use zone cannot be introduced into the Tweed LEP 2014 through other means.

3 Strategic assessment

3.1 Regional Plan

The planning proposal is broadly consistent with the requirements of the North Coast Regional Plan 2041. The proposal is considered to specifically meet objective 3, which identifies protection of regional biodiversity and areas of high environmental value.

The inclusion of the C2 and C3 conservation zones will allow for the application of zones that identify and provide improved protection to ecologically significant land across the Shire.

3.2 Local

The proposal states that it is consistent with the Tweed Local Strategic Planning Statement 2020 (LSPS) regarding Planning Priorities 1 and 2. Specifically, the proposal is the first step in achieving Action 2.4 which outlines the intention to protect biological and ecological values through the application of appropriate environmental and waterway zones consistent with the C Zone Review.

The proposal is also consistent with the Tweed Community Strategic Plan 2022-2032 (CSP) Goal 1.1 and 1.2 which aim to guide the protection of the environment and ecologically sustainable development.

3.3 Section 9.1 Ministerial Directions

The planning proposal is broadly consistent with all required section 9.1 Ministerial Directions.

The proposal does not seek to apply the zones under the LEP to any land within the LGA. Consideration will be required as part of future planning proposals that seek to rezone land to a C2 or C3 zone regarding the consistency of that proposal with relevant directions.

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs. Future proposals that seek to rezone land to a C2 or C3 zone will need to reconsider applicable SEPPs and consistency of the proposal with these SEPPs.

4 Site-specific assessment

4.1 Environmental

The proposal is considered to have a positive impact regarding the protection of environmental values within the LGA, as the inclusion of the zones will ensure that land can be appropriately zoned for conservation purposes, in accordance with the C Zone Review.

It is considered that the Biodiversity and Conservation Division should be consulted to provide comment on the specific land uses to be included in the zone.

4.2 Social and economic

The proposal is anticipated to have a generally positive social impact. The inclusion of the C2 and C3 conservation zones in the Tweed LEP 2014 will allow for the application of land with ecological value consistent with the C Zone Review and ensure land zoning protection that meets community expectations.

With regard economic impact, the land use tables within the zone have been developed by Council to allow for land uses that can be applied to privately owned land and support the overall objectives of the zones.

It should be noted that the LEP Practice Note Environment Protection Zones (PN 09-002) states councils should be aware that uses should not be drawn too restrictively as they may, depending on the circumstances, invoke the Land Acquisition (Just Terms Compensation) Act 1991 and the Minister may need to designate a relevant acquiring authority.

Generally, an acquisition authority for C2 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.

It is considered appropriate that public and agency consultation be undertaken to confirm whether adequate uses are being made available with the proposed zones. Also, as Council is not applying the proposed zones to any specific land, it is considered that identifying a possible relevant acquiring authority is not necessary at this stage.

4.3 Infrastructure

Given the proposal does not apply proposed zones to land, it does not generate the requirement for any additional infrastructure.

5 Consultation

5.1 Community

Council does not indicate a proposed community consultation period.

The proposal is a 'standard' planning proposal, as categorised by the LEP Making Guidelines (September 2022). Consistent with these guidelines, it is recommended Council exhibit the proposal for 20 working days.

5.2 Agencies

It is recommended the Biodiversity and Conservation Division be consulted on the planning proposal and given 30 days to comment (consistent with the LEP Making Guidelines).

6 Timeframe

Council proposes a six month time frame to complete the LEP.

A time frame of six months is supported to ensure it is completed in line with the Department's commitment to reduce processing times.

7 Local plan-making authority

Council has not requested delegation to be the Local Plan-Making authority.

Consistent with the former Secretary's letter to Tweed Shire Council of 1 March 2016 regarding the implementation of the C Zone Review, it is recommended that an authorisation to act as the Local Plan-Making authority not to be issued to Council. This is to ensure a consistent approach to the implementation of the C Zone Review.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposal is broadly consistent with the North Coast Regional Plan 2041 and the Department's C Zone Review,
- The proposal is consistent with Tweed Council's LSPS and CSP,
- The proposal will introduce the C2 Environmental Conservation and C3 Environmental Management zones to the Tweed LEP 2014 in accordance with the Final Recommendations of the Northern Councils C Zone Review.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- Include the reference to "aesthetic value" in the mandated objectives for both the C2 Environmental Conservation and C3 Environmental Management zones; and
- Remove proposed objective 4 of the C2 zone 'to protect, manage and restore environmentally sensitive areas of public land.'

9 Recommendation

It is recommended the delegate of the Secretary:

- Note that the proposal is consistent with all relevant section 9.1 Directions.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to agency and community consultation, the planning proposal is to be amended to:
 - Include the reference to "aesthetic value" in the mandated objectives for both the C2 Environmental Conservation and C3 Environmental Management zones; and
 - Remove proposed objective 4 of the C2 zone 'to protect, manage and restore environmentally sensitive areas of public land.'
2. Consultation is required with the Biodiversity and Conservation Division.
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. The timeframe for completing the LEP is to be 6 months from the date of the Gateway determination.
5. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.



24/3/23

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4/3/2023

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