



TWEED DRAFT
LOCAL ENVIRONMENTAL PLAN 2010

seminar
murwillumbah 23 march 2010

environmental defender's office nsw northern rivers



about the edo

“to promote the public interest
and improve environmental outcomes
through the informed use of the law”

- legal advice + litigation
- policy + law reform
- community legal education
- scientific advice



Environmental Defender's Office Northern Rivers



aims

- inform community about standard LEPs + Tweed's approach
- discuss issues of concern
- recommend ways to make your voice heard



Environmental Defender's Office Northern Rivers

Nb not looking at draft Tweed City Centre LEP 2009

what is an lep?

- LEPs are a type of Environmental Planning Instrument (EPI)
- LEPs are usually prepared by local councils and divide the area they cover into zones
- final decision to approve or amend a draft LEP lies with the Minister for Planning



Environmental Defender's Office Northern Rivers

LEPs made under Part 3, Division 2 of the EPA Act - ie, they are legal documents
Note process has changed with introduction of Gateway process in 2009



zones

- an LEP will usually list objectives for each zone
- also lists the types of development within that zone that are
 - permissible without (development) consent
 - permissible with (development) consent
 - prohibited (prohibited development)



Environmental Defender's Office Northern Rivers



why standard leps?

“In response to concerns about the increasingly diverse nature of LEPs that were being prepared and the confusing array of controls and other provisions being adopted, the NSW Government introduced the standard LEP template in 2006 to standardise LEPs across the State.”



Environmental Defender's Office Northern Rivers

Improving the NSW Planning System, DoP discussion paper, 2008, p 27:

“**Standard LEP**

In response to concerns about the increasingly diverse nature of LEPs that were being prepared by councils and the confusing array of controls and other provisions being adopted, the NSW Government introduced the standard LEP template in 2006 to standardise LEPs across the State. All local councils in NSW are now required to prepare a new LEP in accordance with the standard instrument. The first of these new LEPs is expected to be made early in 2008 and by 2011 all 152 councils will have made their standard instrument LEPs.

The standard LEP introduces standard terms and definitions as well as standard zones to all councils within the State. The number of definitions will be reduced from 1,700 to 250 common dictionary planning terms and the number of zones will be reduced from more than 3,100 existing zoning categories to about 40.

It is intended that the standardisation of LEPs will result in less variation between councils and provide for much greater transparency of planning controls to stakeholders across LEPs. This process will reduce the current number of principal LEPs by more than 50 per cent from 391 to 152. In terms of the overall



contents

- aims
- standard definitions
- standard zones (including objectives)
- land use tables
- development standards
- miscellaneous provisions (optional and compulsory)
- urban release areas
- local provisions



Environmental Defender's Office Northern Rivers

Since 31 March 2006, all local councils are required to prepare a new principal LEP for their local government area in accordance with the standard LEP instrument which the NSW Government has issued.

Standard zones: rural, residential, business, industrial, special purpose, recreation, environment protection + waterway

what to look for

- are areas zoned appropriately?
- are particular developments permitted with consent, permitted without consent or prohibited?
- are there other provisions that relate to this land?
- how does the LEP relate to other legislation + policies?



Environmental Defender's Office Northern Rivers





problems

- loss of specialised environmental protection zones
- few local provisions allowable
- no “dual consent” possible for land clearing



Environmental Defender's Office Northern Rivers



other state + local policies

- North Coast Regional Environmental Plan 1998
- Far North Coast Regional Strategy 2006
- FNC Regional Conservation Plan 2009
- Section 117 Directions
- State Environmental Planning Policies
- Tweed Vegetation Management Strategy 2004 + Amendment 21
- Tweed Development Control Plan



Environmental Defender's Office Northern Rivers

FNCRS

Projected population increase from 220,000 in 2006 to ~280,000 in 2031 (~1% pa)

FNCRCP (DECCW, 2009) identifies 2 priority areas in the Tweed LGA for offsetting future development impacts:

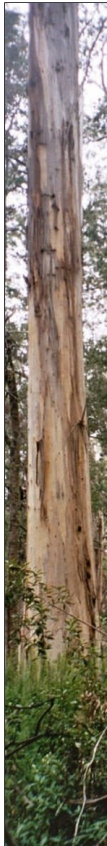
Tweed Estuary

Comprising predominantly estuarine and coastal low-lying wetlands and forests, the Tweed Estuary priority area focuses on high conservation lands around the Cobaki Broadwater, Terranora Broadwater and lower Tweed River. The priority area contains a rich array of fauna including a number of threatened wading birds, the endangered black-necked stork, wallum froglet, koala and the endangered long-nosed potoroo population at Cobaki Lakes and West Tweed. The area is also likely to contain significant Aboriginal heritage values.

Cudgen Coast

Extending from the southern side of the township of Cudgen in the north to Wooyung Nature Reserve in the south (just north of Wooyung township), this priority area adjoins Cudgen Nature Reserve and Wooyung Nature Reserve. The area is contiguous with these reserves and provides high conservation value linkages between existing reserves and adjacent land. The priority area exhibits a range of flora and fauna values of significance, including 167 hectares of Swamp Oak Floodplain Forest EEC and a number of other EECs. A large number and variety of threatened species also inhabit this area and it is likely that the area contains significant Aboriginal heritage values.

Other high conservation areas identified in the FNCRCP include the



nc regional environmental plan

"A draft local environmental plan should:

- (a) retain existing provisions allowing the making of tree preservation orders,
- (b) not alter or remove existing environmental protection, scenic protection or escarpment preservation zonings or controls within them, without undertaking a detailed analysis to determine whether there will be adverse environmental effects resulting from such action,
- (c) include significant areas of natural vegetation including rainforest and littoral rainforest, riparian vegetation, wetlands, wildlife habitat, scenic areas and potential wildlife corridors in environmental protection zones,
- (d) contain provisions which require that development in domestic water catchment areas or on land overlying important groundwater resources does not adversely affect water quality, and
- (e) require consent for the clearing of natural vegetation in environmental protection, scenic protection or escarpment preservation zones."



Environmental Defender's Office Northern Rivers

NCREP 1998 s29 Plan preparation—natural areas and water catchments

- A draft local environmental plan should:
 - (a) retain existing provisions allowing the making of tree preservation orders,
 - (b) not alter or remove existing environmental protection, scenic protection or escarpment preservation zonings or controls within them, without undertaking a detailed analysis to determine whether there will be adverse environmental effects resulting from such action,
 - (c) include significant areas of natural vegetation including rainforest and littoral rainforest, riparian vegetation, wetlands, wildlife habitat, scenic areas and potential wildlife corridors in environmental protection zones,
 - (d) contain provisions which require that development in domestic water catchment areas or on land overlying important groundwater resources does not adversely affect water quality, and
 - (e) require consent for the clearing of natural vegetation in environmental protection, scenic protection or escarpment preservation zones."

fnc regional strategy

Aims

- identify + protect important environmental assets...
- limit development in places constrained by... high... conservation value...
- cater for [an] extra 60,400 people...



Environmental Defender's Office Northern Rivers

Quote from FNCRCS p 1

Includes projected population growth of ~60,000 over 25 years (p 6)

Partial map, FNCRS 2006, p 13



fnc regional strategy

Actions

- LEPs will protect + zone land with State or regional environmental, agricultural, vegetation, habitat, waterway, wetland or coastline values
- LEPs will include provisions to encourage habitat + corridor establishment in future zoning of Environmental Asset + Rural Land area



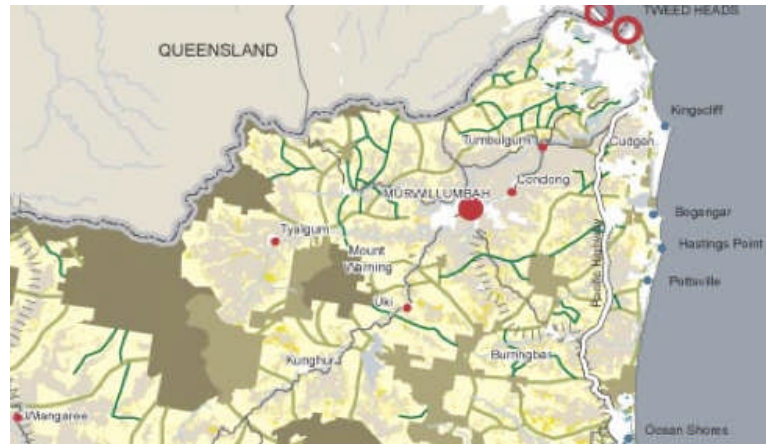
Environmental Defender's Office Northern Rivers

Quote from FNCRCS p 1

Includes projected population growth of ~60,000 over 25 years (p 6)

Partial map, FNCRS 2006, p 13

regional biodiversity map



Environmental Defender's Office Northern Rivers

Partial map, FNCRS 2006, p 16

regional strategy map



Environmental Defender's Office Northern Rivers

Partial map, FNCRS 2006, p 13



regional conservation plan

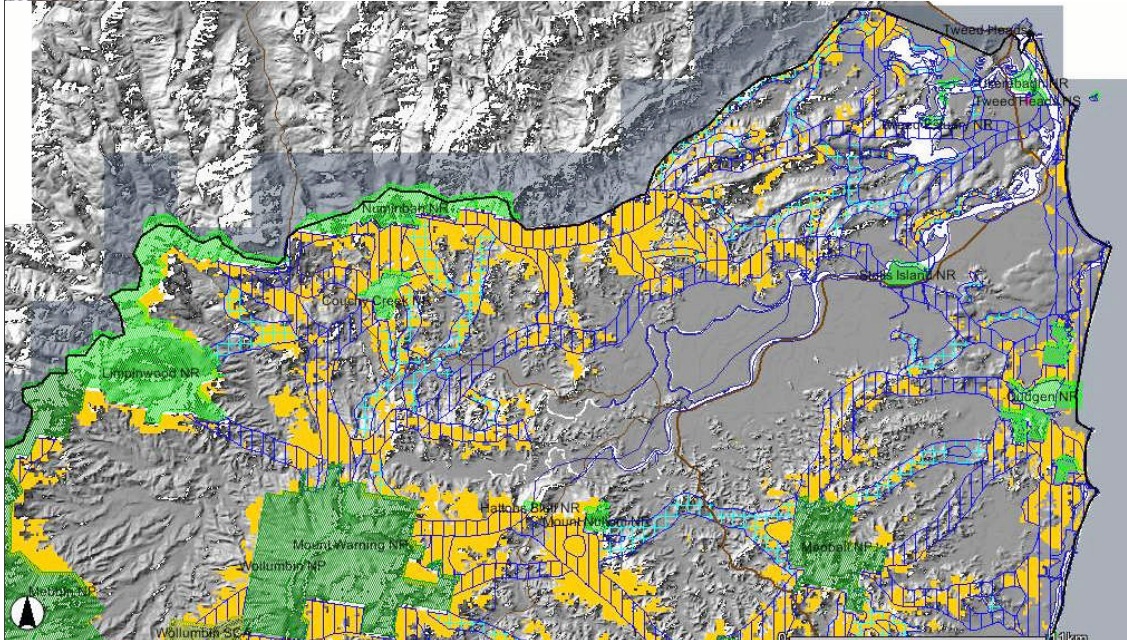
“The companion RCP identifies priority conservation outcomes over the same period. The RCP also provides an offset guide... focusing future offsetting effort to ensure biodiversity values are improved or maintained.”



Environmental Defender's Office Northern Rivers

Quote from FNCRCP p 1

key habitats + corridors



From <http://maps.nationalparks.nsw.gov.au/keyhabs/default.htm>

Orange = key habitats

Horizontal stripes = subregional corridors

Vertical stripes = regional corridors

climate change corridors



From FNCRCP p 41

Solid green = relatively intact

Hatched green = fragmented

s117 directions

“2.1 Environment Protection Zones

(5) A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).”



Environmental Defender's Office Northern Rivers

Issued by the DG of Planning under s117(2) of the EPA Act
Quote from consolidated Local Planning Directions 2.1 to July 2009 - one example of a Direction relevant to the Tweed dLEP
But not clause 6:

“Consistency

(6) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are: (g) justified by a strategy which: (i) (ii) (iii) gives consideration to the objectives of this direction, identifies the land which is the subject of the draft LEP (if the draft LEP relates to a particular site or sites), and is approved by the Director-General of the Department of Planning, or (b) justified by an environmental study prepared in accordance with section 57 of the *Environmental Planning and Assessment Act 1979* which gives consideration to the objectives of this direction, or (c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or (d) is of minor significance.”

See also Part 2, Environmental Planning and Assessment Regulation 2000



tweed council's approach

- flag as “like for like” transitional document
- 2004 veg strategy included
- emphasise state govt constraints
- focus response on property owners
- adopt biodiversity DCP before gazettal of LEP 2010



Environmental Defender's Office Northern Rivers

All points refer to TSC Draft Tweed LEP 2010 User Guide, especially pp 6, 10 + 23

Point 2 refers to Tweed Vegetation Management Strategy 2004 + the former draft Amendment 21 to the Tweed LEP 2000: see <http://www.tweed.nsw.gov.au/PlanDevBuild/LEP/DraftTweedLEP.aspx#lep>
See User Guide p 23:

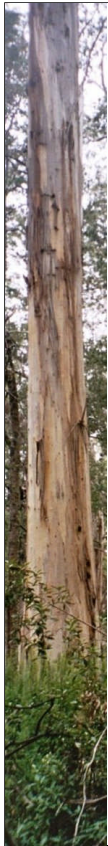
“The intent of the TVMS has now been incorporated into the Draft LEP 2010 and has resulted in the rationalisation of ‘environmental’ zoned land. High quality environmental land has been protected, but where land zoned ‘environmental’ under LEP 2000 was not appropriate, changes have been made. The current Tweed LEP 2000 includes a range of environmental zones. However, the Template permits fewer environmental zones. Therefore, land of environmental significance is now zoned either E1- National Parks and Nature Reserves - [or] E2 - Environmental Conservation. More information can be found in Section 3E - the Draft LEP 2010 Explained - Zones. In addition to the proposed provisions under the Draft LEP 2010, Council is in the process of preparing a new Development Control Plan for biodiversity which will be adopted before gazettal of the Draft LEP 2010.”

Point 3 - see User Guide, p 6

Point 4 - see User Guide, p 13:

“As individuals, the submission period is open for you to express your views and opinions in relation to the draft LEP as they relate to your property.”

Point 5 - see User Guide p 23



issues

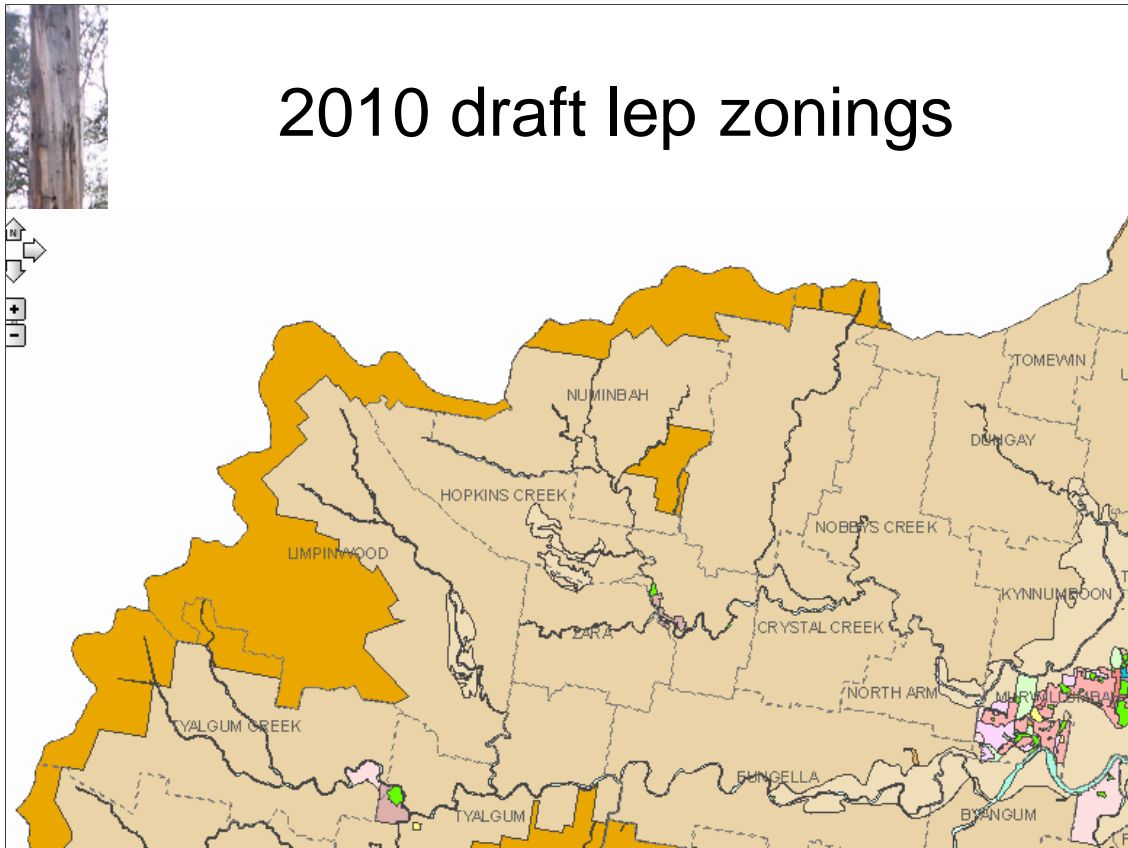
1. 60% net loss of environmental protection zones
 - replacement of 7 with RU zones in hinterland
 - absence of E3 and E4 zones
 - land uses permissible in E and RU zones
2. protection against land clearing
3. waterways zonings
4. increased height limits for housing
5. coastal protection/sea level rise
6. minimum lot sizes in rural zones

edo

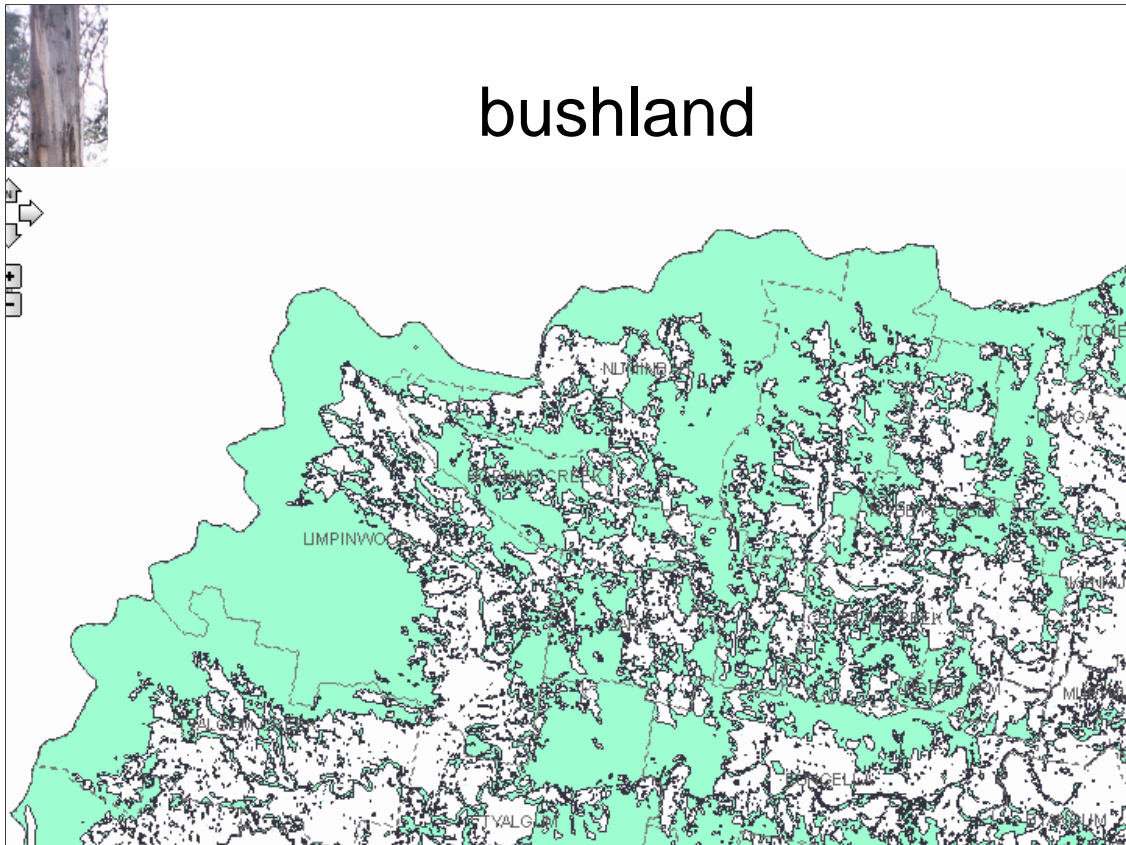
Environmental Defender's Office Northern Rivers

1. These were the issues raised by the public which the EDO has been made aware of; we are concentrating on 1 + 2.
2. Flagged in "A New Approach to Bushland Management in Tweed Shire" (2004?), where it says on p 8:
"The focus of the [then planned] 7(a) significant natural areas/wildlife habitat zone mapping will be on the Tweed coastal area where council has more detailed vegetation, wildlife habitat data and where Tweed is experiencing higher pressure for development. This will result in a substantial decrease in the area of land zoned environmental protection under Tweed LEP 2000, particularly in the western parts of Tweed Shire, from approximately 13,600 hectares to 5,600 hectares."
Discussed later.
- 2 Discussed later
- 3 Previously unzoned waterways now mostly zoned W2 (except minor streams), potentially not reflecting environmental values
- 4 Refer to correspondence from Henry James
- 5 While the dLEP reflects the requirements of the s117 Directions, it does not take into account recent NSW Government initiatives in regard to coastal erosion + sea level rise; this may be justified on the basis of the LEP's transitional nature, although other important changes have been incorporated in the dLEP 2010 (see User Guide part 3C, pp 23-24)
- 6 Mostly unchanged with a 40 ha minimum subdivision size in rural areas; apparently of concern to some rural landowners but supported on environmental grounds

2010 draft lep zonings



Downloaded from www.tweed.nsw.gov.au
Shows north-west corner of Tweed Shire
Note removal of 7(l) zone from wildlife corridors



Downloaded from www.tweed.nsw.gov.au

Refers to areas covered by clause 7.9 of the Tweed 2010 draft LEP:

“Environmentally sensitive land— bushland [local]

- (1)The objective of this clause is to protect, maintain and improve the integrity of identified areas of environmental significance, by:
 - (a)protecting the biological diversity of native fauna and flora and their habitat, and
 - (b)protecting ecological processes necessary for the health of ecosystems, and (c)encouraging the recovery of threatened species, communities, populations and their habitats.
- (2)This clause applies to land shown as “bushland” on the Bushland Map.
- (3)Despite any other provision of this Plan, development consent must not be granted for development on land to which this clause applies unless the consent authority: (a)has considered the impact of the development on:
 - (i) native terrestrial flora and fauna and its habitat, and
 - (ii) native aquatic flora and fauna and its habitat, and
 - (iii) the ecology of the land, waterways, riparian land or wetland, and
 - (iv) threatened species, communities, populations and their habitats, and
 (b)is satisfied that the development is designed and will be located and managed to avoid any potential adverse environmental impact, or if a potential adverse environmental impact cannot be avoided, the development:
 - (i)is designed and located so as to have minimum adverse impact, and
 - (ii)incorporates effective measures to remedy or mitigate any adverse impact caused.”



tvms/amendment 21 2004

“The intent of the TVMS has now been incorporated into the Draft LEP 2010 and has resulted in the rationalisation of ‘environmental’ zoned land. High quality environmental land has been protected, but where land zoned ‘environmental’ under LEP 2000 was not appropriate, changes have been made. The current Tweed LEP 2000 includes a range of environmental zones. However, the Template permits fewer environmental zones. Therefore, land of environmental significance is now zoned either E1- National Parks and Nature Reserves - [or] E2 - Environmental Conservation. More information can be found in Section 3E - the Draft LEP 2010 Explained - Zones. In addition to the proposed provisions under the Draft LEP 2010, Council is in the process of preparing a new Development Control Plan for biodiversity which will be adopted before gazettal of the Draft LEP 2010.”



Environmental Defender's Office Northern Rivers

Quote from User Guide p 23



land clearing

- protection in Tweed LEP 2000 via “7” zones
- “dual consent” for land clearing not permitted in new LEPs
- reliance on Native Vegetation Act 2003 to control clearing recognised by TSC since 2004
- numerous loopholes + compliance problems with NV Act
- bushland overlay an attempt to regain some control?



Environmental Defender's Office Northern Rivers

Point 1: See review of Draft LEP by Henry James

Point 2: DoP policy only - not in s117 Direction

Point 3: see A New Approach to Bushland Management in Tweed Shire (2004?) p 9

Point 4: especially RAMAs, large areas approved for clearing + PNF PVPs, lack of monitoring

Point 5: see Draft Tweed Lep clause 7.9 - but only requires consideration of impact of proposed development on flora, fauna, ecology + threatened species, + attempts made to minimise, remedy or mitigate adverse impacts; + doesn't cover any new bushland or regrowth

what happens next?

- on exhibition until 30 April
- TSC considers submissions, including whether a second exhibition period or public hearing required
- report to Council
- report to Dept of Planning including recommended changes
- report to Minister seeking gazettal



Environmental Defender's Office Northern Rivers



how to be heard

- make written submissions
- request a public hearing
- lobby local + state politicians
- challenge the final LEP in court



Environmental Defender's Office Northern Rivers

Section 57 of EPA Act:

“57 Community consultation

(1) Before consideration is given to the making of a local environmental plan, the relevant planning authority must consult the community in accordance with the community consultation requirements for the proposed instrument.

(2) The planning proposal (as revised to comply with the determination under section 56 and in a form approved by the Director-General) is to be made publicly available during the period of community consultation. Detailed provisions may be summarised instead of being set out in full if the Director-General is satisfied that the summary provides sufficient details for community consultation.

(3) During the period of community consultation, any person may make a written submission to the relevant planning authority concerning the matter (other than any matter that is mandatory under an applicable standard instrument under section 33A).

(4) The relevant planning authority may (but need not) make publicly available, in accordance with the community consultation requirements, the submissions made concerning a matter (or a summary of or report on any such submissions).

(5) If:

submissions

- identify matters to be taken into account in the decision making process
- clearly identify the issue/s, area/s or land you are concerned about
- refer to reports + expert views where available
- suggest alternative solutions where possible
- make your submission as clear and concise as possible
- avoid using emotive or abusive language
- include headings, subheadings and page numbers
- include your name and contact details and date the submission



Environmental Defender's Office Northern Rivers





Environmental Defender's Office New South Wales (Ltd)



[ADVICE](#) | [CASEWORK](#) | [POLICY](#) | [FACT SHEETS](#) | [PUBLICATIONS](#) | [WORKSHOPS](#) | [CONTACT US](#)

- About Us
- Our Work
- Resources
- Events
- Jobs/Volunteers



EDO NSW site

The EDO supports the renewable energy industry by being a Green Power customer.

[Staff Login](#)

The Environmental Defender's Office Ltd, (EDO), is a not-for-profit community legal centre specialising in public interest environmental law. We help individuals and community groups who are working to protect the natural and built environment.

The EDO is part of a national network of centres that help to protect the environment through law in their States.

The EDO has an active program of:

- casework,
- scientific assessment and advice,
- education and
- law reform.

In addition, we provide free initial legal advice to the community.

Public donations and support are also vital in enabling us to do the work we do. You can help support the EDO by:

- a donation,
- becoming a Friend of the EDO or
- volunteering.

Mission

The EDO's mission is to promote the public interest and improve environmental outcomes through the informed use of the law.

Strategic Approach

The EDO seeks to achieve its mission using the following strategies:

- Using a multidisciplinary approach which incorporates legal and scientific advice and representation; contributing to law reform and the development of public policy; and providing education and information to the community
- Promoting the value of public participation in environmental decision making and empowering the community to achieve better environmental outcomes through the informed use of the law
- Increasing access to justice by working with diverse groups within the community, and providing equitable access to services throughout New South Wales
- Recognising the importance of indigenous involvement in the protection of the environment
- Contributing to national and international work to achieve positive environmental outcomes through the law, within the limits imposed by funding
- Engaging early in environmental decision-making processes
- Managing the legal complexities of client campaigns and issues to the fullest extent possible
- Focusing on the merits of cases, both through contributions prior to decisions being made and as an adjunct to judicial review.

Acknowledgments



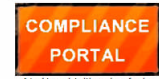
Become a Friend of the EDO, make a donation or a bequest...

Translations

العربية
繁體
简体
Español
Français

Follow us on

[twitter](#)



A tool to assist citizens in enforcing