

PORT MACQUARIE HASTINGS
DRAFT LOCAL ENVIRONMENTAL
PLAN 2010

seminar 12 april 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

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aims

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

enviro planning instruments

- treaties → Ramsar, CBD
- commonwealth law → EPBC Act
- state law → EPA Act
- local government law ↓ LEPs
↓ DCPs

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LEPs made under □ Part 3, Division 2 of the EPA Act - ie, they are legal documents

Process has changed with introduction of Gateway process in 2009

Note: LEPs cannot deal directly

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)

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.”

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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

problems with the template

- loss of specialised environmental protection zones
- few local provisions allowable
- zone objectives carry less legal weight
- no consent required for land clearing

contents

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

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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?

state policies

- North Coast Regional Environmental Plan 1998
- Mid North Coast Regional Strategy 2006
- MNC Regional Conservation Plan (to come)
- Section 117 Directions
- State Environmental Planning Policies

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s117 directions

“Planning proposals must be consistent with a regional strategy released by the Minister for Planning.”

“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).”

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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), andis 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

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.”

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From NCREP 1998 s29 Plan preparation—natural areas and water catchments

mnc regional strategy

Objectives

- protect high value environments
- accommodate the forecast population increase of 94,000 by 2031
- encourage the growth and redevelopment of the region's 4 main centres
- limit development in places constrained by coastal processes, flooding, wetlands, important primary industry and landscapes of high scenic and conservation value
- protect the cultural and Aboriginal heritage values and visual character of rural and coastal towns and villages

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mnc regional strategy

Actions: LEPs will

- protect and zone land with high environmental, vegetation, habitat, riparian, aquatic, coastal or corridor values for environmental protection
- include provisions to include habitat and corridor establishment

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**NSW Dept of Planning, MNCRS Fact Sheet, March 2009, p 3:
“The proposed Coastal Area with its identified “green breaks” between settlements will link continuously with the equivalent in the Far North Coast Regional Strategy and the Green Corridors in the Lower Hunter Regional Strategy in recognition of the prized coastal environment and resources of the three Regions.”**

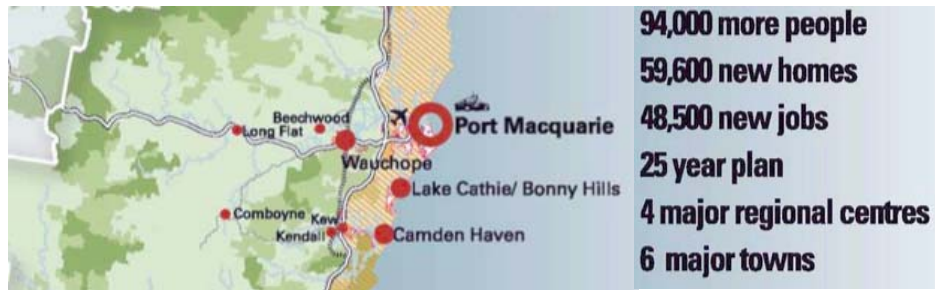
regional biodiversity map



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Partial map, FNCRS 2006, p 16

regional strategy map



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Partial map, MNCRS 2006, p 13

pmh council's approach

- flag as “like for like” application of template
- also exhibit new comprehensive development control plan (DCP)
- include biodiversity strategy in future LEP amendment

local inputs

- Port Macquarie-Hastings Local Environmental Plan 2001
- Port Macquarie Hastings (Area 13 Thrumster) Local Environmental Plan 2008
- State Environmental Planning Policies
- Section 117 Directions and the Standard Instrument
- Legal Considerations provided by Parliamentary Counsel
- Various local Heritage Studies
- Coastal Management Studies
- Port Macquarie-Hastings Foreshore Master Plan 2008
- Settlement City Precinct Structure Plan 2009
- Wauchope Urban Design Framework 2009
- Port Macquarie Airport Master Plan
- Koala Plans of Management (SEPP 44)
- Infrastructure Plans
- Existing Development Control Plans

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pros

- small net gain in area in environmental zones
- innovative DCP

cons?

- no supporting Local Environmental Study
- rationale for new E zones unclear
- some areas that could be zoned E are not
- rationale for W1/W2 zones unclear
- no environmental protection local provision
- no recognition of climate change re coast
- weakening of flood liable land development
- no Comprehensive Koala Plan of Management

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Re E zones: **missed opportunity for protection of some wildlife corridors (community feedback)?**

draft dcp 2010

- Development shall be outside areas of conservation significance, threatened species habitat and riparian corridors.
- An Environmental Management Plan (EMP) is to be prepared for development on or adjacent to E2 and E3 zoned land, on sites of locally rare underrepresented or endemic significant vegetation communities, and endangered ecological communities, and buffer areas and threatened species habitat, habitat corridors and riparian areas.
- Appropriate vegetated buffers are provided to ensure that urban interface edge effects do not compromise the long-term viability for riparian zones, sensitive wetlands (SEPP14), DECCW national park estates, SEPP26 littoral rainforest, endangered ecological communities, locally rare, underrepresented or endemic significant vegetation communities and threatened species habitat.

These are excerpts from the Draft DCP 2010 relevant to environmental protection

what happens next?

- on exhibition until 7 May
- PMHC 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 approval
- publication

how to be heard

- make written submissions
- request a public hearing
- lobby local + state politicians
- note any final LEP can be challenged in court

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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:

(a) a person making a submission so requests, and

(b) the relevant planning authority considers that the issues raised

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

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

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



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Translations

العربية، العربية، العربية

繁體

简体

Español

Français

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