



BALLINA
DRAFT LOCAL ENVIRONMENTAL PLAN 2010

community forum 5 may 2010

environmental defender's office nsw northern rivers

ballina environment society



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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tonight

1. inform community about standard LEPs + BSC's approach
2. discuss issues of concern regarding environmental protection
3. recommend ways to make your voice heard
4. BES to discuss other concerns + specific locations

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state context

- Environmental Planning + Assessment Act 1979
- North Coast Regional Environmental Plan 1998
- Far North Coast Regional Strategy 2006
- FNC Regional Conservation Plan 2009
- 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

regional strategy

Aims

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

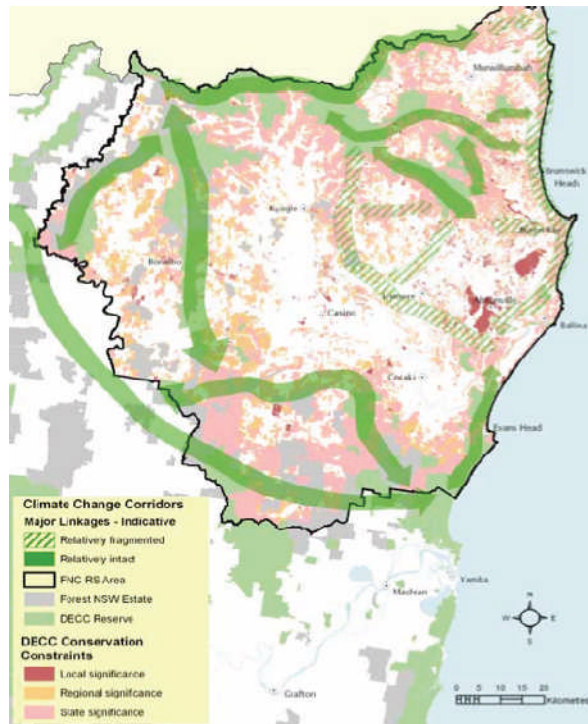
Actions

- 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

regional conservation 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.”



From FNCRCP p 41
 Solid green = relatively intact
 Hatched green = fragmented

what is a local environmental plan?

- legal instrument made under the Environmental Planning & Assessment Act for
 - (a) protecting, improving or utilising, to the best advantage, the environment,
 - (b) controlling (whether by the imposing of development standards or otherwise) development,
 - (c) reserving land for use for ... public purposes...
 - (d) providing, maintaining and retaining, and regulating any matter relating to, affordable housing,
 - (e) protecting or preserving trees or vegetation,
 - (e1) protecting and conserving native animals and plants, including threatened species, populations and ecological communities, and their habitats...

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S26 of EPA Act

how do leps protect the environment?

- **Aims**
 - refer to Ecologically Sustainable Development
- **Maps**
 - zone areas of high conservation value E2 (environmental protection)
 - zone areas of lesser conservation E3 (environmental)
 - zone waterways of high conservation value W1 (natural waterway)
 - include a bushland, native vegetation or similar map overlay
- **Land use tables**
 - prohibit land uses incompatible with environmental protection in E2 + E3 zones
- **Miscellaneous provisions**
 - refer to sea level rise + other climate change impacts in its coastal zone
 - include tree preservation
- **Local provisions**
 - natural areas + habitat (or similar)
 - koala habitat protection

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S26 of EPA Act

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 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 number of local

problems with the template

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

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Note: State Govt has already changed the LEP preparation process since the standard template was introduced in 2006 by introducing the Gateway process in 2009: see http://www.edo.org.au/edonsw/site/factsh/fs02_1_1.php.

ballina council's approach

- comprehensive rather than “like for like”
- in lieu of environmental study relies on
 - People Prosperity Place
 - Discussion Papers
 - Community Policy Forum
 - Rationale and Methodology report
- Combined Development Control Plan under review
- Local Growth Management Strategy in preparation
- maintain status quo re development potential

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ES: See 57 of EPA Act: Preparation of environmental study:

(1) Where a council decides to prepare a draft local environmental plan or is directed to do so by the Minister under section 55, it shall prepare an environmental study of the land to which the draft local environmental plan is intended to apply.

DCP: “The Combined DCP documents detailed design standards applying to development in the Ballina Local Government Area.” (from policy summary sheet on the DCP).

LGMS:

“Council's Local Growth Management Strategy (LGMS) is currently under preparation and is being designed to complement the new LEP and establish the framework for future growth (residential, commercial and industrial) in the shire over the forthcoming planning period. In this regard, the LGMS is founded on the principles of Council's Sustainability Framework.” (Rationale & Methodology report p 59)

“Maintain status quo re development potential” - see Ballina Council's Rational and Methodology Report, March 2010, Executive Summary, p 4:

“As a generalisation, the new plan has been constructed with a view to maintaining the status quo with respect to "development potential" wherever possible, if there has not been a fundamental shift in the planning principles applied to an issue by Council or the State Government. However, there are many instances where a direct transfer between existing and future provisions has not been possible.”

pros

- **process**
 - good community consultation
 - extensive materials available (with 2 gaps)
- **outcomes**
 - 1.8% net gain in area in environmental zones
 - includes local provision on natural areas and habitat (7.8)

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1.8% net gain: see Rationale & Methodology Report p 34

cons

- process
 - maps not online and comparable with existing LEP
 - veg mapping not available
- outcomes
 - no reference to ESD in Aims
 - E zones may not cover all native veg
 - permissible uses in E2, E3 + W1 zones include some incompatible with environmental values
 - environmental protection local provision (7.8) covers only E and W zones
 - riparian areas not all E zoned

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

Re koalas: SEPP 44 "aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:

- (a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and
- (b) by encouraging the identification of areas of core koala habitat, and
- (c) by encouraging the inclusion of areas of core koala habitat in environment protection zones."

See PMHC DLEP:

"7.4 Core koala habitat [local](1)The objective of this clause is to ensure development is designed to retain preferred koala food trees in core koala habitat.(2)This clause applies to land shown as Core Koala Habitat on the Core Koala Habitat Map.(3)Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development is consistent with relevant provisions of any adopted Koala Plan of Management prepared pursuant to *State Environmental Planning Policy No 44 - Koala Habitat Protection*.(4)The Council must not consent to a subdivision of land to which this clause applies unless it is satisfied that each lot that would be created by the subdivision will contain a sufficient building envelope to enable future development of the lot to comply with subclause (3).**Note:** The land shown as Core Koala Habitat does not identify all core koala

ecologically sustainable development

'... development that meets the needs of present generations while not compromising the needs of future generations to meet their needs.'

- precautionary principle
- inter-generational equity
- conservation of biological diversity
- improved valuation, pricing and incentive mechanisms (polluter pays)
- recognised in
 - international law
 - EPBC Act
 - Local Government Act + Charter
 - Environmental Planning + Assessment Act
 - other Draft LEPs
 - case law

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instead...

The particular aims of this Plan are as follows:

(a) Provide for a sustainable Ballina Shire that recognises and supports community, environmental and economic values through the establishment and maintenance of the following:

- (i) a built environment that contributes to health and wellbeing;
- (ii) a diverse and prosperous economy;
- (iii) a healthy natural environment;
- (iv) diverse and balanced land use;
- (v) healthy, resilient and adaptable communities; and
- (vi) responsible and efficient use of resources.

(b) Provide for development that is consistent with Council's established strategic planning framework for the shire.

(c) Achieve the objectives of the land use zones set out in Part 2 of this Plan.

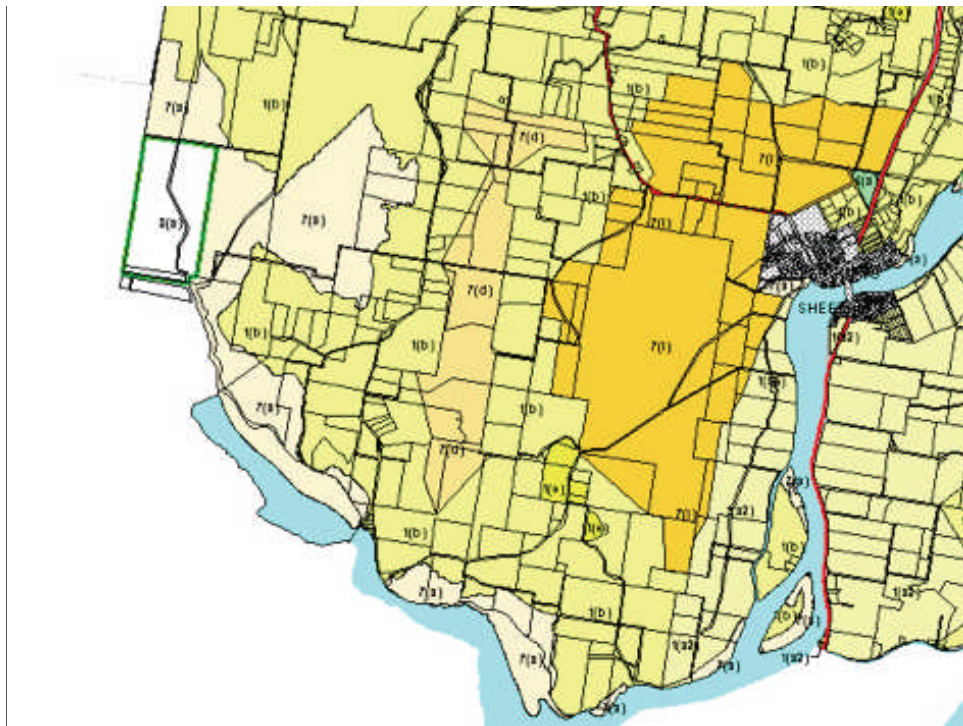
(d) Promote the orderly and efficient use of land having regard for the social and environmental characteristics of the land and the shire.

(e) Provide for the development of public services and infrastructure.

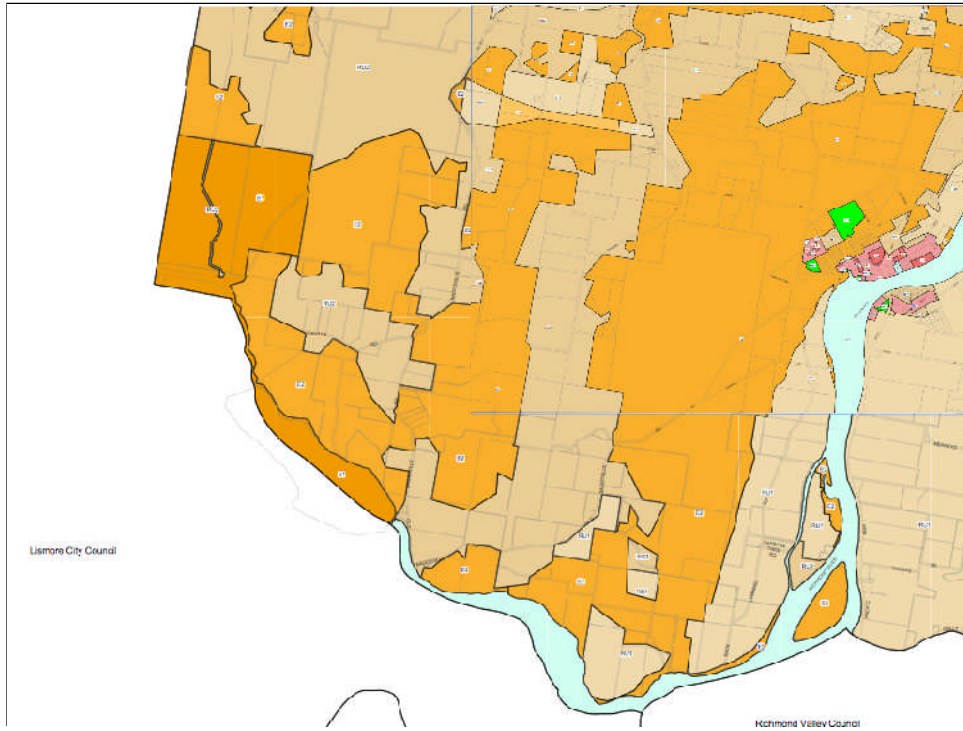
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Google Earth image of roughly the same area as on the zoning map, to compare tree cover and E2 zoned areas

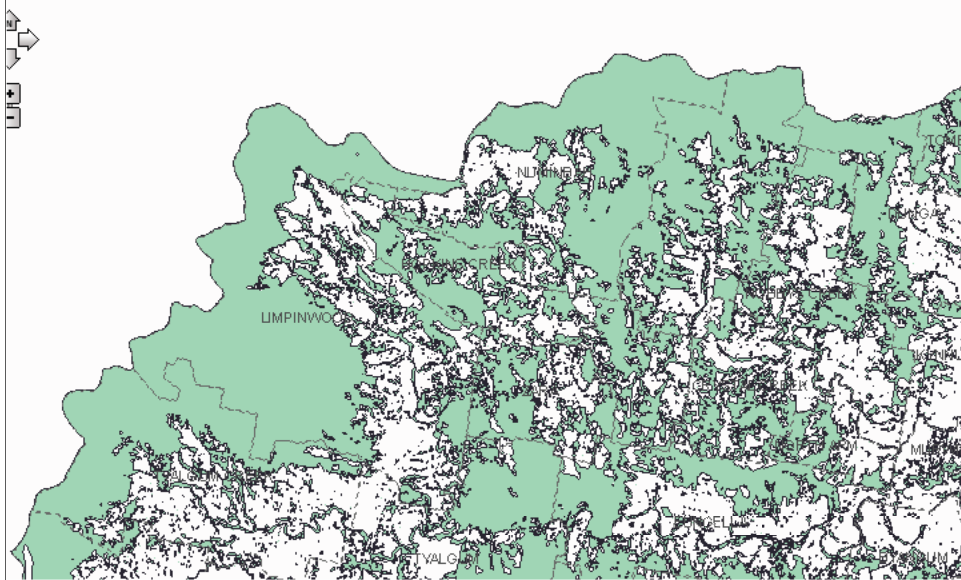


Roughly the same area from the 1987 LEP zoning map - note 7(a), (d) & (l) zones



Zoning of S-W corner of Ballina Shire

tweed's bushland map



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:

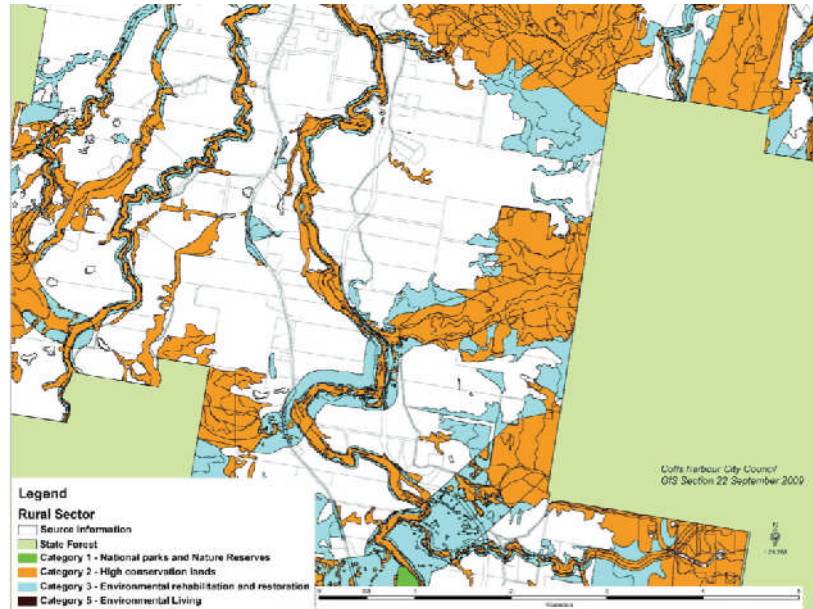
- (a) protecting the biological diversity of native fauna and flora and their habitat, and
- (b) protecting ecological processes necessary for the health of ecosystems, and (c) encouraging the recovery of threatened species, communities, populations and their habitats.

(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.”

coffs habitats + corridors map



e2 zone objectives

Ballina Draft LEP 2010

To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.

To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

To protect and conserve areas of wetland, rainforest, key habitat, coastline and wildlife corridors.

To enable development activities that support, share, manage, enhance and/or protect the ecological, scientific, cultural and aesthetic values of the land.

To promote the restoration and enhancement of the natural environment.

Lismore Draft LEP 2010

To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.

To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

To retain areas of unique natural vegetation, particularly rainforest remnants and ecologically endangered communities.

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e2 land use tables

**Ballina LEP 1987 (current)
Zone 7(I) Environmental
Protection (Habitat)
Permissable with consent**

Agriculture; bed and breakfast establishments; bush fire hazard reduction; camping grounds; community buildings; dwelling-houses; environmental educational facilities; environmental protection works; forestry; home industries; open space; roads; telecommunications facilities; utility installations.

**Ballina Draft LEP 2010
Zone E2**

Permitted with consent

Bed and breakfast accommodation; Caravan park; Car park; Cemetery; Community facility; Dairy (pasture-based); Drainage; Dual occupancy [attached]; Dwelling house; Earthworks; Emergency services facility; Environmental facility; Environmental protection works; Extensive agriculture; Extractive industry; Farm building; Farm stay; Flood mitigation work; Forestry; Funeral chapel; Group home; Helipad; Home industry; Horticulture; Information and education facility; Kiosk; Mine; Mooring; Natural water-based aquaculture; Research station; Roads; Rural worker's dwelling; Sewerage reticulation system; Signage; Temporary structure; Water recreation structure; Water supply system.

**Lismore Draft LEP 2010
Zone E2**

Permitted with consent

Environmental facilities; Flood mitigation works; Research stations; Roads; Water recreation structures; Water reticulation systems

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e3 zone objectives

Ballina Draft LEP 2010

To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.

To provide for a limited range of development that does not have an adverse effect on those values.

To protect and manage areas of scenic and landscape value.

To protect and manage catchment areas that support the supply of drinking water.

To promote the restoration and enhancement of the natural environment.

Lismore Draft LEP 2010

To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.

To provide for a limited range of development that does not have an adverse effect on those values.

To encourage the retention of wildlife habitats and associated vegetation and wildlife corridors.

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e3 land use tables

Ballina Draft LEP 2010 Zone E3 Environmental Management Permitted with consent

Agriculture; Airstrip; Boat shed; Caravan park; Car park; Cellar door premises; Cemetery; Charter and tourism boating facility; Community facility; Drainage; Dual occupancy [attached]; Dwelling houses; Earthworks; Educational establishment; Electricity generating works; Emergency services facility; Environmental facility; Environmental protection works; Extractive industry; Farm building; Flood mitigation work; Forestry; Funeral chapel; Group home; Helipad; Home business; Home industry; Home occupation (sex services); Information and education facility; Kiosk; Market; Mine; Mooring; Recreation area; Recreation facility (outdoor); Research station; Restaurant; Roads; Roadside stall; Rural industry; Rural supplies; Rural worker's dwelling; Sewerage system; Signage; Temporary structure; Tourist and visitor accommodation; Turf farming; Water recreation structure; Water supply system.

Lismore Draft LEP 2010 Zone E3 Environmental Management Permitted with consent

Bed and breakfast accommodation; Caravan park (camping ground only); Community facilities; Dwelling-houses; Emergency services facilities; Environmental facilities; Farm buildings; Farm stay accommodation; Flood mitigation works; Home businesses; Home industries; Information and education facilities (Environmental information and education); Kiosks; Neighbourhood shops; Recreation areas; Research stations; Roads; Roadside stalls; Water recreation structures; Water reticulation systems

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wI zone objectives

Ballina Draft LEP 2010

To protect the ecological and scenic values of natural waterways.

To prevent development that would have an adverse effect on the natural values of waterways in this zone. To provide for sustainable fishing industries and recreational fishing.

To provide for development consistent with any applicable plan of management.

Lismore Draft LEP 2010

To protect the ecological and scenic values of natural waterways.

To prevent development that would have an adverse effect on the natural values of waterways in this zone. To provide for sustainable fishing industries and recreational fishing.

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wI land use tables

Ballina Draft LEP 2010 Permitted with consent

Agriculture; Boat repair facility; Boat shed; Car park; Charter and tourism boating facility; Dairy (pasture-based); Drainage; Earthworks; Electricity generating works; Emergency services facility; Environmental facility; Environmental protection works; Flood mitigation work; Information and education facility; Mooring, Research station; Roads; Sewerage reticulation system; Signage; Temporary structure; Water recreation structure; Water reticulation system.

Lismore Draft LEP 2010 Permitted with consent

Aquaculture; Boat sheds; Emergency services facilities; Environmental facilities; Flood mitigation works; Information and education facilities; Moorings; Recreation areas; Research stations; Roads; Water recreation structures; Water supply systems

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local provision re natural areas

Natural areas and habitat [local]

(1)The objective of this clause is to provide protection to the ecological, social and economic values of natural areas.

(2)In determining whether to grant consent in relation to an application to carry out development for any purpose within or adjoining land or water zoned E1, E2, E3, W1 or W2, the consent authority must take into account the impacts of the development in relation to the following matters:

- (a)water quality and quantity affecting the land and the water table, and
- (b)terrestrial and aquatic flora and fauna, and
- (c)ecological and biodiversity values, and
- (d)loss or fragmentation of habitat and habitat corridors, and
- (e)access to public land, and
- (f)declared aquatic reserves, marine parks, national parks or nature reserves, and
- (g)soil erosion and sedimentation.

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Local provision 7.8

what happens next?

- on exhibition until 4 June
- BSC 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

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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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Re public hearing, see:

Former (repealed) S57 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 in a submission are of such significance that they should be the subject of a hearing,

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

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The screenshot shows the homepage of the Environmental Defender's Office (EDO) New South Wales. The header features the EDO logo and navigation tabs: ADVICE, CASEWORK, POLICY, FACT SHEETS, PUBLICATIONS, WORKSHOPS, and CONTACT US. The main content area includes a description of the EDO as a not-for-profit community legal centre, its role in public interest environmental law, and its status as part of a national network. It lists services such as case work, scientific assessment, education, and law reform. A 'Mission' section states the goal of promoting public interest and improving environmental outcomes through the informed use of the law. A 'Strategic Approach' section lists five key strategies: using a multidisciplinary approach, promoting public participation, increasing access to justice, designing indigenous programs, and engaging early in decision-making processes. The footer contains a search bar, a 'GreenPower' logo, and social media links for Facebook and Twitter.

Environmental Defender's Office New South Wales (Ltd)

ADVICE | CASEWORK | POLICY | FACT SHEETS | PUBLICATIONS | WORKSHOPS | CONTACT US

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:

- case work,
- 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:

- donating,
- 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 address real environmental concerns through the informed use of the law.
- Increasing access to justice by working with diverse groups across the community, and providing equitable access to services throughout New South Wales.
- Designing the effectiveness of indigenous programs and the protection of the environment.
- Conducting in national and international work to address positive environmental outcomes through the law, within the limits imposed by funding.
- Engaging early in environmental decision-making processes.
- Maximising the best combination of staff resources and services to the most urgent needs.

Take Action Join Us

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

Translations

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