



RICHMOND VALLEY
DRAFT LOCAL ENVIRONMENTAL PLAN
2010
community forum 14 october 2010

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
2. discuss issues of concern in this Draft LEP
3. recommend ways to make your voice heard

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Note caveat: not our plan/area: we're providing context/template for your submissions

what is an lep?

An environmental planning instrument that

- protects the environment
- controls development
- reserves land for public purposes

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See S26, 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 planning instruments in NSW it will reduce the number of instruments from over 5,500 to less than 200.”

Timing:

coastal councils to prepare by 2009

other councils by 2011

process

1. Council prepares local environmental study (LES)
2. LES reviewed by authorities + public
3. First Draft LEP submitted to Dept of Planning
4. DoP issues S65 Certificate to exhibit
5. Council considers submissions
6. Final LEP gazetted by Minister for Planning

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

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Timing:

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state context

- **General**

- Environmental Planning + Assessment Act 1979
- Far North Coast Regional Strategy 2006
- Far North Coast Regional Conservation Plan?
- Section 117 Directions
- State Environmental Planning Policies (SEPPs)
- Department of Planning LEP practice notes

- **Coastal**

- Coastal Protection Act 1979
- Coastline Management Manual 1990
- NSW Coastal Policy 1997
- SEPP 71 - Coastal Protection
- Coastal Design Guidelines 2003
- Coastal Planning Guidelines: Adapting to Sea Level Rise 2010
- Coastal Protection and Other Legislation Amendment Bill 2010

best practice leps

- **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
 - riparian areas

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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")

Quote source: 1987 Brundtland Report

Issues related to native veg and related law can be seen as the result of attempts to balance (or not) conservatin (as embodied in ESD) and the economic value of natural resources, whethe rexploited or in situ (as embodied in ecosystem services)

History

Brundtland Report of World Comm on Env & Dev
Rio Earth Summit/Declaration, CBD, UNFCCC
Aust Nat Strategy for ESD

Now

16 C'th acts inc. objects of EPBC Act, 55 in NSW
PoE Admin Act (EPA)
LG Act
Amendments to EPA Act
+ some LEPs eg N Sydney 2001

eg S 5 of the NSW EPA Act states:

"The objects of this Act are:

(a) to encourage:

- the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - the promotion and co-ordination of the orderly and economic use and development of land,
 - the protection, provision and co-ordination of communication and utility services,
 - the provision of land for public purposes,
 - the provision and co-ordination of community services and facilities, and
 - the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
 - ecologically sustainable development, and
 - the provision and maintenance of affordable housing, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment."

Case law

Anvill Hill

Pain J set aside the Director-General's acceptance of the Environmental Assessment for the Anvil Hill coal mine, on the grounds that it did not include a comprehensive greenhouse gas assessment.

This Decision will have the effect of putting the NSW Government on notice that all future development applications must include the assessment of all greenhouse emissions resulting from Major Projects.

Walker

It was argued that the Minister failed to take into consideration the recommendations and findings of a Commission of Inquiry report, and that the Minister failed to apply the principles of ecologically sustainable development (ESD) when deciding to approve the proposal.

In a detailed judgment, Justice Biscoe reviewed the principles of ESD as well as US and Australian case law on climate change. He found that the Minister for Planning had failed to consider ESD by failing to consider whether the impacts of the proposed development would be compounded by climate change; in particular, by failing to consider whether changed weather patterns would lead to an increased flood risk in connection with the proposed development in circumstances where flooding was identified as a major constraint on development of the site. The Minister for Planning successfully appealed to the NSW Supreme Court, Court of Appeal (ie public interest doesn't necessarily include ESD).

Principles of ESD

Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the **precautionary principle** — namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and (ii) an assessment of the risk-weighted consequences of various options,
- inter-generational equity** — namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
- conservation of biological diversity** and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration, (d) **improved valuation, pricing and incentive mechanisms** — namely, that environmental factors should be included in the valuation of assets and services, such as: (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement. (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of

lep hierarchy

1. zoning map
2. land use tables
3. local provisions
 - “must not grant consent unless...”
 - “must be satisfied that...”
 - “must consider...”
4. development control plans
 - “include controls and standards that are part of [Council’s] statutory considerations when assessing a development application.”

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4 DCPs quote from NSW Sea Level Rise Policy 2010 p 12

existing use rights

“Nothing in an environmental planning instrument operates so as to require consent to be obtained under this Act for the continuance of a use of a building, work or land for a lawful purpose for which it was being used immediately before the coming into force of the instrument or so as to prevent the continuance of that use except with consent under this Act being obtained.”

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concerns - process

- no public consultation
- vegetation + other mapping not available
 - (acknowledged that veg mapping inadequate)
- no interactive mapping
- many govt agency concerns not incorporated

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veg mapping: see pp 21-22 of LES:

"In 2004 Ecograph Consulting were commissioned to prepare remnant bushland mapping for the Richmond Valley LGA and to identify vegetation communities of high conservation value.

Areas of remnant bushland were mapped to approximately 0.5 ha for the entire Shire (excluding National Parks and State Forests) using aerial

21 Richmond Valley Local Environmental Study 2010 – Explanatory Document for the New Comprehensive Draft LEP

photography. At the time of the most recent aerial photos (June 2004) remnant bushland occupied 51.8% (127180 ha) of the Study Area.

During the process of completing the remnant bushland mapping, aerial photos from 1997 and June 2004 were compared. A total of 522 patches of bushland covering an area of 992 ha appeared to have been cleared during this seven-year period.

Individual vegetation communities were mapped using existing mapping, limited field survey and further aerial photo interpretation. However, due to budgetary constraints, field survey focused on floodplain vegetation communities and it was not possible to assign vegetation community types to a relatively large area of mapped remnant bushland in the south west of the Shire. To account for differences in survey origin and effort, the source and reliability of the vegetation community typing was also mapped. A total of 26 vegetation communities were recognised from alluvial and marine sand substrates while 24 communities were associated with substrates on slopes and ridges.

Conservation status was assigned to individual vegetation communities according to how much of the community remains on the NSW North Coast, how well they are reserved and whether or not they are regarded as Endangered Ecological Communities under the *Threatened Species Conservation Act 1995* (TSC Act).

Over 70% (58058 ha) of the mapped vegetation was found to have *Very High* conservation status. Most of this was associated with floodplain communities, a

concerns - outcomes

- no reference to ESD in aims
- no RU2 zone
- inappropriate permissible uses in RU1, W1 and E3 zones
- some wetlands zones residential (eg Iron Gates)
- no recognition of sea level rise in flood planning provision
- no tree preservation order (TPO)
- no koala protection local provision
- no flood map

concerns – outcomes 2

- DECCW recommendations
 - Steep lands should be zoned E3 (at least) – not RU2 – DECCW even provided example on how simple this would be using old DNR land capability maps
 - Temporary Use of Land should exclude E zones
 - Biodiversity clause in RU1
 - R5 - Large Lot Residential
 - Intensive plant agriculture (permissible without consent) inconsistent with zone objectives
 - Forestry should be prohibited

Regarding Steep Land –

Overlay approach not adequate – should be E3

Land capability maps are recognised, understood and accepted by the rural community and thus the use of zone could be easily justified.

concerns – outcomes 3

- RE1 – Public Recreation
 - Forestry and extensive Ag are permissible with consent and should be prohibited –inconsistent with objectives of the zone
- E2 – environmentally sensitive, vegetated E3 & RU1 lands that share a boundary with E1 lands should be E2
- E3 – only some lands at Evans Head
- Dwelling Houses should not be permissible in Coastal Hazard area – should be E2
- W1 – extractive industries – inconsistent with objectives
- Dual Occupancy & Secondary Dwellings should not be permitted in E3

e zones

- not all high conservation value (HCV) land zoned E
- inappropriate permissible uses in E3 zone

Existing LEP Zones	LEP	Area (Ha)	Draft RVLEP Land Zoning	Area (Ha)	Draft RVLEP NRS (Overlay)	Area (Ha)
8(a) - National Parks & Nature Reserves	RR & CP	20030	E1 - National Park and Nature Reserves	35700	NRS - Biodiversity	132680
8(b) - Proposed Future National Park Extension	RR	969	E2 - Environmental Conservation	5493	NRS - Water (overlaps with other NRS areas)	19480
7(a) - Wetland	RR	890	E3 - Environmental Management	690	NRS - Land (overlaps with other NRS areas)	15590
7(b) - Scenic/Escarpment	RR	9066	W1 - Natural Waterway	2335		
7(c) - Flora and Fauna	RR	670				
7(f) - Coastal Land	RR	244				
7(k) - Habitat	CS	447				
Clause 18 - Enviro Sensitive Land (overlaps with other zones)	CS	221				
Comments						
Zone 7(b) (Scenic/Escarpment) has not been zoned as E2 or E3 as the data was inconsistent and inaccurate across the LGA. It has been included as NRS - Land instead.						
Zone 8(b) included within E1 zone						
Zone 7(f) included within E3 Zone						

land use tables - e3

permissable with Council consent

Richmond Valley

Agricultural produce industries; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Boat sheds; Caravan parks; Cellar door premises; Charter and tourism boating facilities; Child care centres; Community facilities; Depots; Dual occupancies (attached); Dwelling houses; Educational establishments; **Electricity generating works;** Emergency services facilities; Environmental facilities; Environmental protection works; **Extensive agriculture; Extractive industries;** Farm buildings; Farm stay accommodation; Flood mitigation works; Food and drink premises; **Forestry; Function centres; Group homes; Highway service centres;** Home businesses; Home-based child care; Home industries; **Hospitals; Hostels; Hotel or motel accommodation; Information and education facilities; Intensive plant agriculture;** Kiosks; Landscape and garden supplies; **Marinas; Mines;** Neighbourhood shops; **Places of public worship;** Recreation areas; Recreation facilities (outdoor); Research stations; Restaurants; Roads; Roadside stalls; Signage; Veterinary hospitals; Water recreation structures; Water recycling facilities; Water reticulation systems; Water storage facilities

Lismore

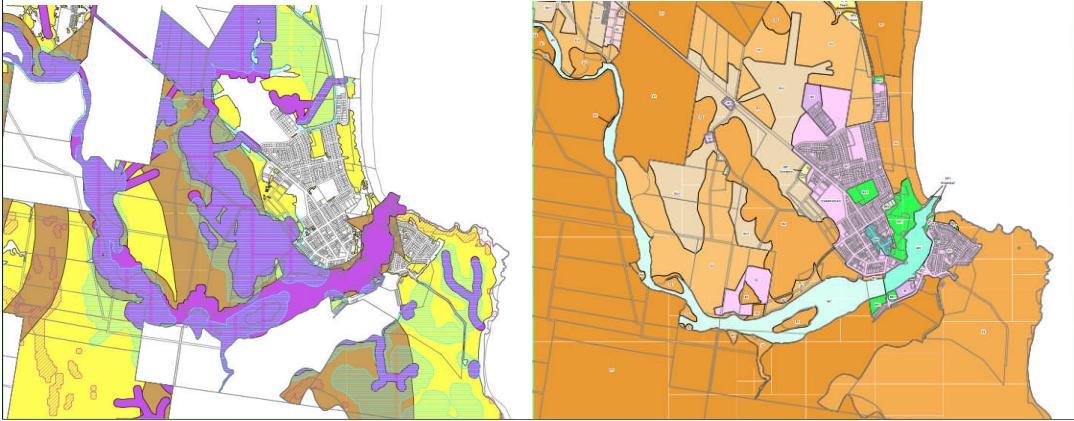
Bed and breakfast accommodation; Caravan park (camping ground only); Community facilities; Dwelling-houses; Emergency services facilities; Environmental facilities; Farm buildings; Farm stay accommodation; Flood mitigation works; Home businesses; Home industries; Information and education facilities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

Bellingen

Building identification signs; Business identification signs; Dwelling houses; Environmental facilities; Environmental protection works; Extensive agriculture; Farm buildings; Flood mitigation works; Forestry; Home businesses; Intensive plant agriculture; Research stations; Roads; Tourist and visitor accommodation; Water recreation structures; Waterbodies (artificial) 17

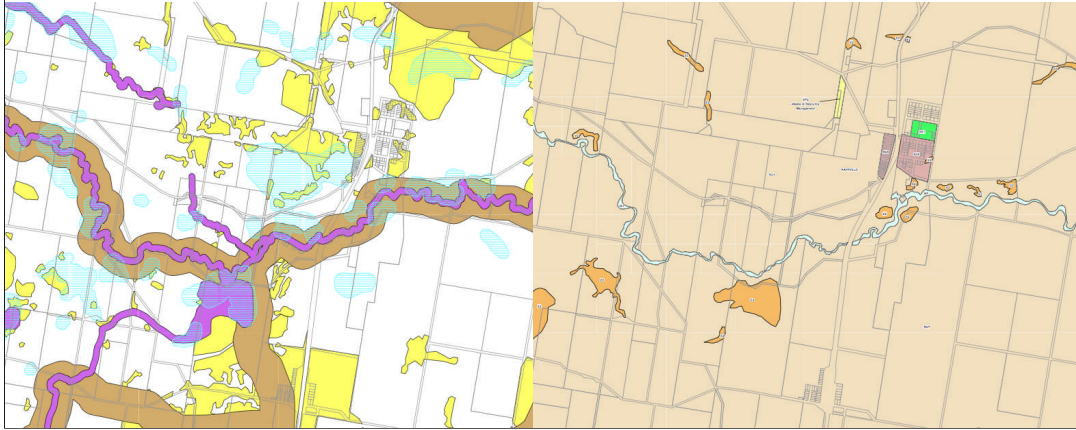
biodiversity overlay v zoning maps evans head

- native vegetation, fish habitat + wildlife corridors not always zoned E2 or E3
- limited protection from inclusion in natural resources sensitivity overlay map



nat res sensitivity overlay on left, zoning map on right

biodiversity overlay v zoning maps rappville



nat res sensitivity overlay on left, zoning
map on right

e zones

“Particular care has been taken within Richmond Valley to only apply Environmental Zoning to land with considerable environmental value **that would not otherwise be suitable for development purposes.**

A restrictive zoning has only been applied to significant wetland areas such as SEPP 14 floodplain wetland communities that constitute Endangered Ecological Communities (EECs) and areas that are currently identified within LEPs as environmental zones 7(a), 7(c) and 7(k).”

“The environmental zones... have been applied very sparingly and only to obvious areas of high environmental value.”

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e zones

LEP Practice Notes:

“The following are examples of where the E2 zone should also be applied:

lands with very high conservation values such as old growth forests, significant wildlife, wetlands or riparian corridors or land containing endangered ecological communities.”

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Quote from DoP LEP Practice Notes

hcv land/e zone criteria

- recognised endangered ecological community (EEC)
- existing 7 zone (where environmental significance is recognised)
- SEPP 14 wetland
- SEPP 26 littoral rainforest
- NPWS key habitats & corridors mapped (or local equivalent)
- koala habitat
- threatened species records

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Existing 7 zones in RV LEps are: 7(a), 7(c) and 7(k): these are are Environmental Protection (Wetlands) Zones within the Copmanhurst, Richmond River and Casino LEps respectively. (source: LEP fact sheet 3)

Points in bold are those recognised as HCV and zoned E2 or E3 in the RV DLEP

improvements?

- include ESD in Aims
- include RU2 zone or reduce permissible uses in RU1
- Steep lands should be zoned E3
- 'Temporary use of land' should exclude E zones
- zone all native veg + wetland areas E2
- national parks should have E2 buffers
- exclude inconsistent uses from R5
- include flood map

23

Existing 7 zones in RV LEps are: 7(a), 7(c) and 7(k): these are Environmental Protection (Wetlands) Zones within the Copmanhurst, Richmond River and Casino LEps respectively. (source: LEP fact sheet 3)

Points in bold are those recognised as HCV and zoned E2 or E3 in the RV DLEP

what happens next?

- on exhibition until 29 October
- RVC 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 (gazettal)

how to be heard

- make written submissions
- request a public hearing
- lobby local + state politicians
- note difficult to challenge final LEP 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, the relevant planning authority is to arrange a public hearing on the issues raised in the submission.

(6) The relevant planning authority may arrange a public hearing on any issue whether or not a person has made a submission concerning the matter.

(7) A report of any public hearing is to be furnished to the relevant planning

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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Defender's Office
New South Wales (Ltd)**

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GreenPower
Renewable Energy Limited
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.



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

Translations

قيرغا، قيرغا وئلا
繁體
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