

Northern Councils Environmental Zone Review

Final Recommendations Report & Section 117 Direction

Frequently Asked Questions

March 2016

What are E zones?

- Environmental zones – or ‘E zones’ – are designed to protect land that is of important environmental value.
- Types of E zones include ‘E2’ (environmental conservation), ‘E3’ (environmental management) and ‘E4’ (environmental living).

What is the Northern Councils E Zones Review Final Recommendations Report?

- The *Northern Councils E Zone Review Final Recommendations Report* provides a balanced approach to applying E zones and other mapped planning controls to land on the NSW Far North Coast.
- The Final Report is based on the recommendations made by the independent *Northern Councils E Zone Review Interim Report*.
- The Final Report has taken into account the views expressed by councils, agencies, community organisations, landowners and the general public in more than 400 submissions we received during the public consultation on the interim report in 2014.

What are the recommendations in the report?

- The report achieves a balanced approach that supports farming and protects the environment, by recommending that E zones should only be applied to places on the Far North Coast where the ‘primary use’ of the land is either environmental conservation (‘E2’) or environmental management (‘E3’), and this has been based on validated ecological evidence.
- The ‘primary use’ of the land is the focus when making zoning decisions.
- Where the primary use of the land is agriculture, it will not be appropriate for the land to be zoned E2 or E3. Instead a Vegetation Map (i.e. environmental overlay) may be applied to land that contains important environmental features.
- E4 zones will continue to be applied to low-impact residential developments in areas of special environmental value.
- The recommendations initially apply to the local government areas of Ballina, Byron, Kyogle, Lismore and Tweed.

How is the ‘primary use’ of land defined in the report?

- ‘Primary use’ is defined as the main use for which the land has been used for the last two years.
- The primary use of the land may vary across a particular property, depending on the characteristics of the land. This may result in more than one zone being applied to the land.
- The primary use of land will need to be identified by the Council during the preparation of a rezoning.

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- For the avoidance of doubt a reference to 'primary use of the land' in the context of the Final Recommendations Report is:
 - o The main use of the land is to be determined based on evidence about the nature of the activities and operations occurring on the land over the last two years. If the main use is for rural or farming operations, agricultural practices need to be demonstrated. Specific farming activities (such as grazing) do not need to have occurred in the last two years if the operations on the land (for example keeping paddocks fallow) are part of broader farm management practices.
 - o If the main use is for environmental conservation or management, the environmental values of the land and vegetation need to be demonstrated and the absence of any agricultural or other land use confirmed.
- Determining the primary use will require the use of methodologies such as site visits, property development records, farm management plans, up-to-date air photography, Private Native Forestry or Property Vegetation Plan approvals, conservation records and discussion with landowners.

What are the steps for 'E2 and 'E3' zoning under the recommendations?

- Councils will first consider the primary use of the land. If the primary use is found to be environmental management or environmental conservation, then the Council will need to weigh the ecological evidence to verify whether the area qualifies for E2 or E3 zoning.
- Land can only qualify for an E2 or E3 zone if it is home to rainforests, wetlands, endangered plant species or vegetation that has been over-cleared in other areas, or is a place of cultural significance to the local Aboriginal community.
- If a council determines the primary use of the land is not environmental management or environmental conservation, but the land has important ecological attributes, the Council may instead include the vegetation on a Vegetation Map (i.e. environmental overlay).
- Before an E zone or Vegetation Map can be put in place, evidence of the land's environmental value needs to be verified by tests such as flora and fauna reports, biodiversity field inspections and ground surveys, or Aboriginal heritage field inspections and cultural heritage reports. It will not be sufficient for a Council to rely on one methodology.
- A proposal to apply an E zone to land will be placed on public exhibition and landowners will be able to make a submission to the proposal. As outlined on page four of this document, affected landholders will also have the right of independent review by the Chief Planner.

What is the difference between an E zone and a Vegetation Map?

- Councils use E zones to indicate what type of activities can take place when land has important environmental value.
- A Vegetation Map and associated clause in a Local Environmental Plan gives councils extra flexibility to protect and manage places of significance, without needing to zone the surrounding area for environmental conservation or environmental management purposes. Vegetation Maps do not prohibit land uses, but require certain matters to be considered when development approval is required.
- The controls do not apply to development that can be carried out without consent i.e. extensive agriculture in a rural zone.

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Can an E zone be applied to my land if it does not meet the criteria?

- Private land that does not meet the criteria for an E zone can only be zoned for environmental conservation or environmental management if the landowner agrees to this.
- Public land that does not meet the criteria can be zoned 'E2' or 'E3', if the primary use of the land is environmental conservation or environmental management.

If I have revegetated my land can it be E zoned?

- Land that has been actively revegetated by the current landowner and is primarily being used for agriculture will not qualify for environmental zoning unless requested by the owner or is a requirement of any funding agreement.
- A Vegetation Map can be placed over revegetated land only if it has environmental value.

What are the likely outcomes of the final recommendations?

- A clear and consistent way of applying E zones on the Far North Coast.
- Greater certainty for landowners, councils and the community, ensuring that E zones are only applied where environmental conservation or environmental management are the primary use of the land.
- Positive outcomes for farming and the environment alike, with greater certainty for the agriculture sector and greater protection for land that is verified as being of important environmental value.
- The value of E zones is enhanced by ensuring zoning decisions are evidence-based.
- Land that has been verified to meet the criteria for an E2 or E3 zone where the primary use of land is not environmental conservation or environmental management may be included in a Vegetation Map.

Why has the Department's position changed on vegetation mapping?

- The Department's initial response to the Northern Councils E Zone Review Interim Report did not support using terrestrial biodiversity overlays.
- The Department now supports the use of Vegetation Maps and associated clauses in LEPs for significant native vegetation outside of the E zones on the basis that the guiding principle is the land's 'primary use' and the need for evidence based verification of the land's environmental value.
- The Department also supports mapped planning controls for public health, safety, risk and hazard. These planning controls manage matters of public health and safety connected with drinking water catchments, flooding, coastal risk areas and land that needs strict development controls, such as steep land.

How will a mapped planning control, such as a water catchment map, affect what I can do on my land?

- A mapped planning control does not change the zoning of land or prohibit permissible activities. If land is zoned rural for example, the map and associated LEP clause will identify matters that need to be addressed for activities that only require development approval.

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What is the Minister's role in implementing the final recommendations?

- A Ministerial Direction (s117 Direction) has been issued, requiring the five affected councils to use the criteria set out in the Final Recommendations Report when determining whether to apply an environmental conservation or environmental management zone.
- The Ministerial Direction will guide the preparation and assessment of zoning decisions.

Will the recommendations eventually be applied statewide?

- The final recommendations within the report will initially apply only to Ballina Shire, Byron Shire, Kyogle, Lismore City and Tweed Shire. The Department will be consulting with other councils about how the final recommendations for environmental zoning on the Far North Coast can work across all areas of the State.

Will landowners be notified if an E zone is proposed for their land?

- Where an E zone is proposed, Councils will be required to write to each affected land owner unless a letter from the land owner agreeing to the proposed zoning has been provided.

What happens if a landowner disagrees with a proposed E zone?

- In the event that a landholder does not agree that their land meets the primary use or validation criteria for an E zone, the NSW Chief Planner has been appointed by the Minister for Planning to undertake an independent review.
- The Chief Planner will make a decision on the dispute, based on an assessment of the evidence provided by both Council and the landholder.
- Councils will be required to notify landholders once it resolves to adopt an E zone following a review of submissions.
- Landholders will have 28 days from Council's notification of the adoption of the final proposed zones to notify the Department of their request for a review by the Chief Planner.

Where can I find out more?

- Visit our website at planning.nsw.gov.au/environmentalzones
- Call our Information Centre on 1300 305 695. If English isn't your first language, please call 131 450. Ask for an interpreter in your language and then request to be connected to our Information Centre on 1300 305 695.
- Email information@planning.nsw.gov.au