



Fact Sheet 1 - E Zones

FAQ's

Implementing the E Zone Review Report Recommendations: Frequently Asked Questions

Overview

- A number of areas with environmental values throughout the Shire were deferred from being zoned in the *Byron Local Environmental Plan 2014 (LEP 2014)*, pending the outcome of the Department of Planning & Environment's [Northern Councils E Zone Review \(E Zone Review\)](#). The review is now complete and Council has received a Ministerial direction that clarifies how the E Zones are to be applied.
- As part of Council's implementation of the E Zone review recommendations, areas currently identified as a Deferred Matter (DM) under LEP 2014 are being assessed against clear criteria that must be met to rezone land to Environmental Conservation (E2) or Environmental Management (E3), based on the primary land use and the nature of existing vegetation.
- Deferred Matter areas that do not meet the criteria for an E Zone will have an alternative zone applied (most likely a rural zone).
- Coastal 7(f1) and 7(f2) zones will be considered under a separate process and remain as a Deferred Matter until appropriate planning controls are developed in consultation with the State Government.

What are E zones?

E Zones are environmental zones that can be applied under a Local Environmental Plan. In accordance with the criteria contained in the [E Zone Review - Final Recommendations Report](#), the following E Zones can be applied in Byron Shire:

- **E2 – Environmental Conservation;** and
- **E3 – Environmental Management.**

E2 Zone: Environmental Conservation

The **E2 zone** primarily applies to areas of high ecological, scientific or cultural value that should be protected for environmental conservation purposes (including zones 7(a), 7(b), 7(j) and 7(k) under the Byron LEP 1988), and where commercial agricultural activities are not carried out. Examples of high ecological or scientific values can include: littoral rainforest, coastal wetlands, endangered ecological communities, threatened species habitat and over-cleared vegetation communities.

E3 Zone: Environmental Management

The **E3 zone** primarily applies to areas containing special ecological or cultural attributes that require careful consideration/management. This may include land containing riparian / estuarine vegetation, or rare, endangered, and vulnerable forest ecosystems, or where established agricultural activities occur within vegetated areas that meet the E2 criteria. This zone allows for a wider range of land use activities that are compatible with these attributes.

How has council verified land against the E Zone criteria?

The *E Zone Review* requires that areas to be included in an E zone are appropriately verified using one or more of the following methods: field inspection, air photo interpretation and flora/fauna reports less than 5 years old.

The Shirewide Vegetation Mapping Review was recently completed by Council, to improve mapping accuracy and account for changes to vegetation extent and composition over time in the Shire. The first two stages of the review were completed in 2015 and the third and final stage was completed in March 2017. This

review has enabled Council to identify vegetation types that potentially meet the criteria for an E Zone, as well as areas that do not.

A set of high resolution 'Potential E2/E3 Zone' and 'Vegetation' maps are available on Council's website www.byron.nsw.gov.au/environmental-zones-e-zones so that you can view this information at a property scale.

Landowners who disagree with the above mapping can request a re-assessment based on supporting evidence, which may include a site inspection by council staff.

What about 'Primary Land Use'?

The *E Zone Review* defines "**primary use**" of the land as the main use for which the land has been used for the last two (2) years. This period of time will ensure the zone reflects established, lawful land uses.

For land that Council has verified as consistent with the vegetation criteria for an environmental zone, an E2 or E3 zone will generally be applied if the **primary use** of the land is considered to be environmental conservation (E2) or environmental management (E3)

Areas that do not meet the criteria for an E Zone will have an alternative zone applied — most likely a rural zone.

The primary use of the land may vary across a particular property depending on the characteristics of the land. This means that land which is currently zoned rural could continue to have a rural zone, but may have parts of that land which have attributes that meet the criteria for an E2 or E3 zone mapped accordingly.

How is 'primary land use' determined?

The primary land use will be assessed by Council in consultation with affected landowners. For land containing attributes that meet the criteria for an E2 or E3 zone, an initial assessment of primary land use will be undertaken using Council records to identify the following land use categories:

- **ENVIRONMENTAL**: generally applies to land: currently zoned 7(a), 7(b), 7(j) and 7(k) under the Byron LEP 1988; containing attributes that meet the criteria for an E2 or E3 zone; and where commercial agricultural activities are not

carried out. Such areas can be actively or passively managed for environmental purposes.

It is not necessary to determine the primary use of land already within an existing environmental zone such as 7(a), 7(b), 7(j) and 7(k) under the Byron LEP 1988.

- **AGRICULTURE**: applies to that part of land used for commercial agricultural activities including intensive livestock agriculture, intensive plant agriculture and extensive agriculture (e.g. grazing). This mainly includes land with a current commercial farmland rating or land assessed as being eligible for such a rating.

Further assessment may be required to determine if all or part of the land is being used for this purpose (as these areas may be ineligible for an E Zone).

- **OTHER**: remaining areas not covered by the above categories.

What if I disagree with Council's assessment?

Landowners who disagree with Council's preliminary assessment of primary land use on their land can request a re-assessment based on supporting evidence (as supplied by landowner), which may require a site inspection by council staff.

What about the use of 'Overlays' in LEP 2014?

Council has the option of using mapped planning controls (also known as "overlays") to protect environmental values that do not meet the criteria for an E2 or E3 zone. This may be applied to sensitive riparian areas (ie. land within a certain distance of a watercourse) or other native vegetation that needs to be managed through a local provision and associated "overlay" map in the Byron LEP 2014. In the case of a vegetation overlay map, this will not duplicate E2 or E3 zones.

The overlay map and associated clauses will identify the matters that need to be considered in a development application for proposed land uses that require development consent. Land uses that are permitted without consent, such

as some forms of extensive agriculture in rural zones, will not be subject to map overlay provisions in the LEPs. Also, existing agricultural practices that are currently being undertaken on land will not be subject to the provisions of the map.

What about “agricultural activities” within E Zones

Extensive agriculture can be undertaken without Council approval within the E3 zone, while Council approval will be required within the E2 zone.

Extensive agriculture (as defined in [Byron Local Environmental Plan 2014](#)) includes any of the following activities:

- the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes;
- the grazing of livestock for commercial purposes;
- bee keeping; or
- a dairy (pasture-based).

However landowners can continue any lawful agricultural land use/s that existed prior to the new zones coming into force without having to obtain Council approval. Please see *Fact Sheet 3: E Zones and Existing Use Rights* for more details.

What other activities may be permitted within an E Zone?

The following objectives and permissible land uses are proposed in the E2 and E3 zones:

Zone E2: Environmental Conservation

Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, or cultural values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

Permitted without consent

Environmental protection works.

Permitted with consent

Environmental facilities; Extensive agriculture; Recreation areas; Roads.

Prohibited

Business premises; Hotel or motel accommodation; Industries; Recreation facilities (major); Residential accommodation; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; any other development not specified above.

Zone E3: Environmental Management

Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, or cultural values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To prevent inappropriate development in geologically hazardous areas.
- To encourage passive recreation, environmental education and an understanding of natural systems where these activities will not have a detrimental effect on land within the zone.

Permitted without consent

Extensive agriculture; Environmental protection works; Home-based child care; Home occupations.

Permitted with consent

Bed & breakfast accommodation; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Community facilities; Dual occupancies; Dwelling houses; Ecotourist facilities; Emergency services facilities; Environmental facilities; Farm buildings; Farm stay accommodation; Forestry; Flood mitigation works; Home businesses; Home industries; Horticulture; Jetties; Places of public worship; Recreation areas; Roads; Veterinary hospitals; Wharf or boating facilities.

Prohibited

Industries; Multi dwelling housing; Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified above.

Who may be affected by E Zones?

Areas currently identified as a Deferred Matter (DM) under the Byron LEP 2014, as well as

adjoining areas connected by important vegetation communities, may be affected by an E Zone.

These areas will be assessed against the *E Zone Review* report criteria to determine whether or not to apply an E Zone, generally based on the primary land use and the nature of existing vegetation.

DM areas include the following zones under the *Byron Local Environmental Plan 1988*:

- 1(a) General Rural;
- 1(b1) Agricultural Protection;
- 1(b2) Agricultural Protection;
- 1(c1) Small Holdings;
- 1(c2) Small Holdings;
- 1(d) Investigation;
- 1(e) Extractive Resources;
- 1(f) Forestry;
- 2(a) Residential
- 2(t) Tourist Area
- 2(v) Village
- 4(a) Industrial
- 5(a) Special Uses
- 5(b) High Flood Hazard Liable;
- 7(a) Wetlands*;
- 7(b) Coastal Habitat*;
- 7(c) Water Catchment
- 7(d) Scenic Escarpment
- 7(j) Scientific*;
- 7(k) Habitat*;
- 9(a) Proposed Road Reserve

*Zones 7(a), 7(b), 7(j) and 7(k) will generally be transferred to an E zone if the vegetation is consistent with the E zone criteria.

What if land has been voluntarily revegetated?

Land that has been voluntarily revegetated will not have an E2 or E3 zone applied to it without the landowner's agreement, unless the revegetation was undertaken with grant funding that required ongoing protection of the vegetation.

However, the landowner's agreement is not required if a Vegetation Overlay Map is applied to this revegetated land to identify matters that need to be considered when assessing future development applications on this land.

What happens to 'coastal hazard' environmental zones?

Some coastal areas were also identified as a Deferred Matter under the Byron LEP 2014, pending the outcomes of the State Government's coastal management review and the possible adoption of a new coastal zone. This applies to the following zones under the Byron LEP 1988:

- 7(f1) Coastal lands; and
- 7(f2) Urban Coastal Lands

Such areas will be considered under a separate process and remain as a Deferred Matter under the Byron Local LEP 2014 until appropriate planning controls are developed in consultation with the State Government. These areas will therefore remain subject to the zoning and legislative requirements of the Byron LEP 1988 and the relevant controls in the Byron Development Control Plan (DCP) 2010.

Further information

For further information on E Zones within Byron Shire, please refer to Council's website: www.byron.nsw.gov.au/environmental-zones-e-zones.

