

## Draft Tweed Local Environmental Plan 2012

### Attachment 2 – Policy position on environmental protection

#### BACKGROUND

Nearly two decades ago (in 1995), in response to its increasing management pressures and responsibilities, Tweed Shire Council initiated the preparation of the Tweed Vegetation Management Plan (TVMP99) with funding from Greening Australia, the Natural Heritage Trust and the NSW Environmental Trust. Council commissioned Ecograph and formed the Vegetation Management Plan Steering Committee to assist council in the preparation of the plan which made a significant number recommendations covering the areas of strategic land use planning, council works and activities, monitoring and research, education and, resourcing. The TVMP99 was publicly exhibited and peer reviewed by the CSIRO Division of Wildlife and Ecology.

At its meeting on 5 September 2001, Council resolved to prepare an environmental study and shire-wide draft Tweed Local Environmental Plan (LEP) on vegetation management. Council also resolved to form a new 21 member Steering Committee representing community interests and State agencies to advise on the preparation of the draft LEP and its integration with existing State- administered natural resources management legislation. This process resulted in the Tweed Vegetation Management Strategy 2004, draft LEP 2000 (Amendment 21 – Vegetation Management) and amendments to DCP 40 (Exempt and Complying Development) supported by an Environmental Study, all of which were publically exhibited in between December 2004 and 25 March 2005. Although the response to public submissions indicated that a number of site specific refinements to the zoning and overlay maps were necessary, the overall scope and direction of the proposed changes were generally supported by the community.

However, as draft LEP 2000 (Amendment 21) was still on foot at the time when the Standard Instrument LEP was introduced by the State Government in 2006 it was considered appropriate to “roll over” its provisions in a new Standard Instrument LEP and Council resolved accordingly at its meeting of 27 January 2009 (Appendix 3). Meanwhile, the Tweed Vegetation Management Strategy 2004 (TVMS) was formally adopted by Council at its meeting on 17 April 2007 *to guide vegetation and biodiversity protection and management within Tweed Shire*. The implementation of the TVMS was identified as a priority project in Council’s Tweed Futures Strategic Plan 04/24 and ongoing funding was provided for under Council’s 7-year Infrastructure Plan. The TVMS now forms the basis for Council’s Biodiversity Program, its aims, and recommendations embedded in Council’s Community Strategic Plan 2013/2023 and Delivery Program.

While substantial progress has been made on the implementation of the TVMS in the areas of landholder incentives, community education and support, research and monitoring and, management of Council’s bushland estate, recommended changes to the LEP have not progressed as expected.

In January 2010, Council exhibited draft LEP 2010 which, as a result of limitations inherent in the LEP Standard Instrument, resulted in a draft LEP that did not clearly articulate Council’s adopted approach to environmental protection. In particular, the translation into the LEP Standard Instrument template led to a major reduction in environmental zones (without alternative provisions to provide improved environmental protection as recommended in the TVMS) and the removal of critical

## Draft Tweed Local Environmental Plan 2012

### Attachment 2 – Policy position on environmental protection

clauses regulating land clearing in remaining environmental protection zones (contrary to the TVMS). Not surprisingly, this drew a strong response from the community (app 450 submissions) most of whom objected to the loss of environmental protection zones with many complaining that that the draft LEP was inconsistent with the intent of the TVMS and relevant State Government policy.

As the issues encountered were largely due to limitations of the Standard Instrument itself, Council officers made a submission to DP&I which was followed by a meeting in Sydney attended by senior Council and DP&I staff on 12 May 2010. In relation to advancing the environmental provisions of Council's draft LEP a number of options were discussed

As similar issues had been encountered by other Councils in the region a submission was considered by the NOROC General Manager's Natural Resource Managers Sub-Group and forwarded on to NOROC for their consideration and subsequent endorsement.

At least partly as a result of these actions, DP&I made changes to the Standard Instrument LEP to allow councils to maintain controls over clearing in environmental protection zones and produced a suite of draft model local LEP clauses which could be used or adapted by local councils to address specific natural resource management issues. Council was advised of these developments at its meeting of 21 September 2010.

These changes essentially meant that it was now possible to produce a draft LEP that reflected the intent of the TVMS and Council's adopted policy position.

Subsequently, NRM staff commenced work on making the necessary changes to the draft LEP which consisted of:

- Revising the proposed E2 Environmental Conservation zone, objectives, land uses and mapping.
- Revising the proposed Waterways zone, objectives, land uses and mapping.
- Implementing a broad-scale E3 Environmental Management Zone over highly constrained lands
- Revising the bushland overlay mapping and associated local clause
- Implementing and adapting other relevant NRM model clauses and mapping overlays (steep land, riparian lands, drinking water catchment etc).
- Rationalising zonings on Council administered lands particularly between recreation and environmental zones.
- Integrating Tree Preservation provisions.
- Aligning existing zone mapping to property boundaries.
- Reviewing public submissions on natural resource management issues.

Progress and feedback on a revised environmental strategy for the draft LEP was discussed on numerous occasions with Council's Planning Reforms Unit, the Tweed River Committee on 10 August 2011, Council's Executive Management Team on 21 March 2012 and at several workshops with Council and senior staff (23 March 2010, 26 October 2010, 10 May 2011, 12 June 2012).

## COUNCIL'S ADOPTED APPROACH TO ENVIRONMENTAL PROTECTION

### *Tweed Vegetation Management Strategy*

Council's adopted approach to environmental protection and management is reflected in LEP 2000 and draft LEP 2000 (Amendment 21) which sought to implement the Tweed Vegetation Management Strategy 2004 the goals of which are to:

- *Encourage the protection and enhancement of regional and local native biological diversity in the Tweed by promoting ecologically sustainable management practices.*
- *Promote a holistic and co-ordinated planning framework in accordance with the Native Vegetation Act 2003 and the Environmental Planning and Assessment Act 1979 for the management of ecological processes and systems in the Tweed.*
- *Adopt a balanced and equitable approach in developing the framework that takes into account the environmental, economic, social and cultural interests of the State and the Tweed community.*

Consistent with these goals and after extensive community consultations a number of measures to improve Council's approach to biodiversity protection management were proposed under LEP 2000 (Amendment 21) including:

1. A new steep land rural zone with limited consent uses (similar to an environmental protection zone).
2. Strengthening of environmental protection zones areas of high development pressure along the coast.
3. Relaxation of environmental zones in the rural hinterland in favour of the new highly constrained steep land zone and stronger consent provisions.
4. Retention of supporting environmental clauses in LEP 2000
5. Specific biodiversity and environmental considerations for development including the need for buffers and other mitigation measures within bushland areas (overlay map).
6. Improvements and expansion of the Tree Preservation Order.
7. Measures to ensure that the requirements of a biodiversity DCP were linked to the LEP and would therefore be compulsory
8. Measures to allow land clearing to be regulated under the *Native Vegetation Act* in rural areas except in environmental protection zones or where the clearing was ancillary to a consent use.
9. Referral procedures to ensure that overlapping responsibilities involving land clearing were properly addressed.
10. Controls on clearing in bushland areas of vegetation not covered by the *Native Vegetation Act* (e.g. Camphor laurel)
11. Consent for new agriculture in bushland areas.
12. Changes to the Exempt Development schedule to allow certain types of clearing subject to conditions to be removed without consent e.g. noxious weeds, emergency work, exotic species, clearing near buildings etc.

Under the draft LEP 2010 most of these measures were not able to be implemented leaving a weak bushland overlay clause and a much-reduced area under environmental protection (13872 ha under LEP 2000 compared to 6352 ha under draft LEP 2010) without the inclusion of the Rural (1a1) Steep Land/Escarpment zone and other measures to offset these changes. Further, the existing clauses

## Draft Tweed Local Environmental Plan 2012

### Attachment 2 – Policy position on environmental protection

under LEP 2000 which give effect to the environmental zones were not allowed, leaving Council with virtually no way of protecting these important areas from land clearing.

*Table 1 Components of LEP 2000 and LEP 2000 (Amendment 21) included in Draft LEP 2010*

Clauses 25-28 – Environmental Protection Zones	Not permitted
Clause 31 – Development Adjoining Waterbodies	Not permitted
Clause 35 – Acid sulfate soils	Not permitted in a workable form
New Bushland overlay – consent considerations	Permitted but weakened
Link to Biodiversity DCP in LEP	Not permitted
Integrated clearing controls for native vegetation	Not permitted
Controls on clearing in Environmental Protection zones	Not permitted
Consent for new agriculture in Bushland	Not permitted
New Rural Steep Land zone	Not permitted
Strengthening of EP zones along coast	Permitted
Relaxation of EP zones in hinterland	Permitted
Expanded Tree Preservation Order	Urban areas only
Streamlined Exempt Development Schedule	Not permitted

It is important to note that while the proposed Rural (1a1) Steep Land/Escarpment zone was not as restrictive as the Environmental Protection zones under LEP 2000, it permitted only a restricted suite of land uses (similar to an environmental protection zone), covered a much larger area, more accurately and equitably reflected the environmental constraints of the land, and regulated pre-emptive clearing by requiring consent for agriculture where it involved land clearing. Further, the objectives of the zone recognised the obvious constraints of the land, its scenic qualities, the relatively high potential for land degradation, stewardship by rural landholders, and the need to maintain flexibility where on-ground conditions are not always reflected in shire-wide scale mapping.

On the other hand the TVMS advocated for expanded environmental zonings strongly focused on wildlife conservation, maintaining ecological processes and scenic amenity especially on the Tweed Coast where development pressure was high and where detailed mapping was available. Other important criteria for environmental protection zoning included, significant bushland in public ownership, Endangered Ecological Communities and areas already protected by other mechanisms (e.g. SEPP 14 and 26).

In relation to improving the LEP the underlying philosophy of the TVMS was to:

- 1. Strengthen the environmental provisions in areas of high development pressure** (achieved under LEP 2000 A21 by expanded environmental protection zones on the Tweed Coast, retention of LEP 2000 Environmental clauses, new bushland overlay map and clauses);

## Draft Tweed Local Environmental Plan 2012

### Attachment 2 – Policy position on environmental protection

2. **Acknowledge environmental constraints where they exist** (achieved under LEP 2000 A21 by environmental and steep land zone and clause, and bushland overlay map);
3. **Recognise the need for flexibility and merit-based assessment in rural hinterland** (achieved under LEP 2000 A21 by removal of arbitrarily determined and rigid environmental zones replaced by a much more extensive and flexible constrained steep land zone, inclusion of bushland clause, recognition of routine agricultural management activities as exempt development);
4. **Complement natural resource management provisions administered by other levels of government** (e.g. *Native Vegetation Act 2003*, *Threatened Species Conservation Act 1995* etc) (achieved under LEP 2000 A21 by referral procedures and acknowledgment of clearing exemptions under NV Act) and;
5. **Promote better management (not just protection) of the Shire's natural Assets** (achieved under LEP 2000 A21 by consent considerations under the bushland clause and other environmental clauses).

#### *Tweed Coast Comprehensive Koala Plan of Management*

The TVMS also recommended that Council should prepare a Comprehensive Koala Plan of Management for the Tweed Coast and Council unanimously resolved to do so at its meeting of 19 January 2009. Council subsequently set up an advisory committee and commissioned internationally recognised Koala ecologist Dr Steve Philips' firm Biolink to assist in the preparation of the Plan in accordance State Environmental Planning Policy 44 - Koala Habitat Protection.

The first stage of the Koala Plan of Management – the Tweed Coast Koala Habitat Study (<http://www.tweed.nsw.gov.au/YourEnvironment/KoalaManagement.aspx>) was publically released in January 2011 finding that that the koala population on the Tweed Coast has declined dramatically. Over the last three koala generations the total number estimated at approximately 140 animals across three small sub-populations.

The Study stressed that a concerted effort would be needed to prevent the extinction of the species on the Tweed Coast. The second stage, the Koala Plan of Management itself is nearing completion with Council officers, Biolink and the Koala Advisory Group currently working through various draft provisions. In the meantime there have been other related developments that inform Council's policy position on environmental protection and management including the following:

- At its meeting of 15 February 2011 Council unanimously supported the implementation of a Tree Preservation Order (under clause 54 of LEP 2000) over the entire Tweed Coast (app 21000 ha) including adjacent bushland to the west of Pacific Motorway (app 900ha) specifically targeting Koala food trees and Koala habitat.
- In March 2012 Council voted to provide additional ongoing funding for the preparation and implementation of the Tweed Coast Koala Plan of Management.
- In April 2012 the Koala was been listed as Endangered in NSW and Queensland under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*.
- At its meeting of 15 May 2012 Council unanimously supported a nomination prepared under the auspices of the Koala Advisory Group to list the Koala on the

## Draft Tweed Local Environmental Plan 2012

### Attachment 2 – Policy position on environmental protection

Tweed and Brunswick coast as an Endangered Population under the NSW *Threatened Species Conservation Act 1995*.

- In May 2012 Council were advised that they were successful in obtaining a \$2m Federal grant focused on the protection and rehabilitation of koala habitat on the Tweed Byron coast.

#### *Tweed Shire Council Community Strategic Plan 2013/2023*

In 2004, Tweed Shire Council consulted with the community to create a 20-year strategic plan, Tweed Futures 2004/2024 which updated the preceding Tweed 2000+ Strategic Plan. The community's long-term vision in 2004 centred on maintaining quality of life and protecting the environmental values and natural beauty of the Tweed.

In 2010, and 2012 Council again consulted widely on the Draft Tweed Community Strategic Plan 2011/2021 and its updated version 2013/2023. The results of these consultations reinforced many of the priorities identified in the earlier Tweed Futures 2004/2024 although it was clear that objectives such as protecting biodiversity, water management and cycleways have assumed even greater importance to the community in recent years.

The Community Strategic Plan 2013/2023 seeks to meet community aspirations through the following four key themes: Civic leadership, Supporting Community Life, Strengthening the Economy and, Caring for the Environment. The Plan *acknowledges that the management, protection, conservation and restoration of the shire's environmental assets are vitally important, because it is environment that ultimately supports society and the economy.*

### **STATE GOVERNMENT POLICY**

In addition to Council's adopted policy outlined above, the provisions of a draft LEP must be consistent with a number of overarching State Government policies. *SEPP North Coast Regional Environmental Plan and Section 117 Directions* In relation to environmental protection zones, both Clause 29 of the State Environmental Planning Policy (SEPP) - North Coast Regional Environmental Plan and Clause 2.1(4) and (5) of Section 117 Direction 2.1 - Environment Protection Zones instruct councils not to alter environmental protection zones without detailed study and provide guidance on what should be included in environmental protection zones:

- 1) Clause 29 -SEPP North Coast Regional Environmental Plan:

#### **29 Plan preparation—natural areas and water catchments**

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

## Draft Tweed Local Environmental Plan 2012

### Attachment 2 – Policy position on environmental protection

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.

#### 2) Section 117 Direction - Clause 2.1(4) and (5) Environment Protection Zones

##### **What a council must do if this direction applies:**

(4) A draft LEP shall include provisions that facilitate the protection and conservation of environmentally sensitive areas.

(5) A draft LEP that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP shall not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “*Rural Lands*”.

##### *Standard Instrument LEP*

On 31 March 2006 the Standard Instrument Order (Local Environmental Plans) 2006 (“the Order”) took effect. The LEP Standard Instrument provides a consistent format for all new principal LEPs in NSW.

Under the LEP Standard Instrument there are certain restrictions on what a council can and cannot do. For example a council can add local objectives to the core zone objectives, include additional permitted or prohibited land uses for each zone and make use of overlay maps and additional local planning clauses. On the other hand councils cannot add new zones, prohibit uses that are mandated, add local clauses that are inconsistent with mandatory provisions or change the wording of mandatory provisions. Also, the LEP Standard Instrument provides a standard set of land uses which must be used by councils.

These restrictions present certain difficulties for councils embarking on translating their existing LEPs which may have very specific provisions that cannot easily be converted into the LEP Standard Instrument format.

For example under LEP 2000, clauses 25 to 30 support the objectives of the environmental protection zones by requiring consent for clearing of vegetation and ensuring that development proposals address specific “heads of consideration” including plans of management to maintain and improve the biodiversity values of these important areas. At the time when draft LEP 2010 was exhibited it was not possible for councils to require consent for land clearing in environmental protection zones under the LEP Standard Instrument. Despite the fact that councils were required to do so under the SEPP North Coast Regional Environmental Plan and Section 117 Direction 2.1 - Environment Protection Zones (see above), this essentially meant that councils could not implement the stated objectives of the

## Draft Tweed Local Environmental Plan 2012

### Attachment 2 – Policy position on environmental protection

environmental zones. As noted previously this problem has now been remedied by changes to the LEP Standard Template.

Similarly draft LEP 2000 (Amendment 21) proposed the conditional land use; *agriculture (except where it involves clearing vegetation that requires the consent of council under clause 26)* to differentiate between agriculture on existing cleared land and new agriculture that involved land clearing. This was done with the intention of requiring consent for agriculture in steep constrained land that required the land to be cleared of bushland. Under the LEP Standard Instrument such conditional land uses are not allowed and agriculture is redefined hierarchically to include various sub types such as *extensive agriculture, intensive livestock agriculture, intensive plant agriculture and aquaculture*. Councils are thus required to allocate pre-defined land uses to the without consent, consent or prohibited land use categories.

To assist councils to redraft their LEPs the Department of Planning and Infrastructure has issued a series of LEP Practice Notes and LEP Model clauses which address various aspects of natural resource management. In general, the construction of land zones, additional objectives and the scope of the land uses should be consistent with the practice notes. While the model local clauses are not mandatory and may be adapted to suit local conditions the department is keen to encourage consistency where possible.

#### *Far North Coast Regional Strategy and Conservation Plan*

The Far North Coast is the most biologically diverse region in NSW. It is subject to increasing development pressure and has inherited a legacy of clearing and intensive settlement.

The Department of Planning released the Far North Coast Regional Strategy in December 2006. The strategy, which extends over the Tweed, Byron, Ballina, Kyogle, Lismore and Richmond Valley local government areas and covers the period 2006-2031, predicts a significant increase in development pressure over the next 25 years. In particular, it anticipates a population growth of 60,400 people, requiring 51,000 new houses.

The Far North Coast Regional Conservation Plan was developed by the Department of Environment, Climate Change and Water (DECCW) to complement the Strategy and sets out the regional conservation priorities for the same 25-year period. The plan highlights the conservation mechanisms available for private lands that complement the formal conservation reserve system. It also outlines means to offset unavoidable impacts on biodiversity arising from the implementation of the Regional Strategy. The primary objectives of the Plan are to identify important conservation values, guide offsetting, and assist local councils and other land managers in strategic conservation planning.

The Far North Coast Regional Conservation Plan defines “State” and “Regional biodiversity significance” to include lands with one or more of the following attributes:

#### **State significance:**

- Existing national parks, nature reserves, state conservation areas, Aboriginal Places and State forests



## Draft Tweed Local Environmental Plan 2012

### Attachment 2 – Policy position on environmental protection

- High conservation value crown land areas identified in the regional forest agreements for addition to the conservation reserve system
- Areas identified for protection in State Environmental Planning Policies Nos 14 (Coastal Wetlands) and 26 (Littoral Rainforest)
- Endangered Ecological Communities (TSC Act listed)
- Regional wildlife corridors of Scotts (2003)
- Key wildlife habitats of Scotts (2003)
- Old-growth forest
- JANIS rare and endangered forest ecosystems
- JANIS vulnerable forest ecosystems
- Identified or declared wilderness areas or land of recognised high wilderness quality
- Primary wetlands (forest and non-forest)
- Rainforest
- Centres of endemism
- Primary koala habitat (adapted from Lismore City Council)
- Important shorebird habitats (mangrove and saline estuarine vegetation)
- Threatened flora buffers (50–100m).

#### **Regional significance:**

- Sub-regional wildlife corridors of Scotts (2003)
- Mitchell landscapes, greater than 70% cleared
- Under-target forest ecosystems (less than 15% of original distribution in reserves)
- 100 metre buffer on State Environmental Planning Policy (SEPP) 26
- 50 metre buffer on all state significant lands (except corridors, threatened flora buffers and patches <1 hectare in extent)
- Additional forested and non-forest wetland vegetation
- Secondary koala habitat (adapted from Lismore City Council).

Together these categories of land include a very large proportion (80% +) of the Shire's bushland outside of the National Park estate. Significantly, the criteria used in the TVMS to determine the ecological significance of bushland areas in the Shire were very similar (but more refined) to those listed above and also showed that over 80 percent of all mapped bushland was significant for one reason or another. Thus, to ensure consistency with the Far North Coast Regional Strategy and Conservation Plan, Council's LEP needs to zone and/or otherwise protect a very large proportion of existing bushland.

#### *Other Relevant Biodiversity Plans and Strategies*

In addition to the statutory instruments noted above which have a direct influence on the scope and content of LEPs there are also a number of other government - adopted plans and strategies that reinforce the need to appropriately protect and manage biodiversity values of the region. Prominent among these are the following:

- Border Ranges Rainforest Biodiversity Management Plan 2010
- Northern Rivers Biodiversity Management Plan 2010
- Northern Rivers Catchment Action Plan (2006 – currently under review)

## Draft Tweed Local Environmental Plan 2012

### Attachment 2 – Policy position on environmental protection

- Numerous Threatened Species Recovery Plans (e.g. NSW Koala Recovery Plan 2008)
- Northern Rivers Pest Animal Strategy 2008-2013

The implementation of the Tweed Vegetation Management Strategy and Council's Community Strategic Plan 2011/2021 complements all of these Plans. Indeed, a number of them draw on information gathered for the TVMS.