

Mr Paul Anderson
General Manager
Eurobodalla Shire Council
PO Box 99
MORUYA NSW 2537

16th June 2009

Dear Mr Anderson,

Re: draft Eurobodalla LEP 2009.

The Southern Rivers Catchment Management Authority (Southern Rivers CMA) congratulates Eurobodalla Shire Council on the development and exhibition of the draft Eurobodalla LEP 2009.

Southern Rivers CMA contributed to an earlier joint submission with the Department of Environment and Climate Change (DECC) to the draft LEP, dated 24 September 2008. This submission was addressed to the Regional Director of the Department of Planning, with a copy provided to Council's Manager of Strategic Services. Some of the comments below are repeated from this earlier submission.

Southern Rivers CMA has reviewed the draft LEP and it is, generally, a document that this organisation can support. We congratulate the staff of Eurobodalla Shire Council for the time and effort which has been taken to produce such a quality document.

Southern Rivers CMA has several reservations with the detail of the LEP, particularly in areas that interact with our statutory responsibility, the administration of the *Native Vegetation Act 2003* (NVA).

Southern Rivers CMA's comments on the draft LEP (attachments A-D) are comprehensive; however we take this opportunity to draw your attention to:

- Southern Rivers CMA is concerned by the apparent lack of analysis and consideration given to the potential impact of a change in climate within the Draft LEP. The Southern Rivers CMA considers the natural resource asset protection afforded by the current zonings and overlays available important in maintaining the resilience of landscapes within Eurobodalla to climate change impacts. Southern Rivers CMA is particularly conscious of the risks to rivers, estuaries, coasts, wetlands and vegetation posed by a change in climate. Southern Rivers CMA remains of the view that the LEP should apply an environmental zoning (rather than just an overlay clause) to the margin and buffer along the coastal foreshore and around coastal lakes, estuaries and tidal waterways. Southern Rivers CMA's recommendation for this zone would be E2.
- Re-zoning of concern in the following locations:
 - Malua Bay - Large areas of forested land proposed for development without appropriate environmental investigation.

- Broulee - Area of *Bangalay Sand Forest EEC* zoned RE1, intended for Regional Sports Complex.
- Moruya Industrial Area - Areas of *Lowland Grassy Woodland EEC*, *Freshwater Wetland EEC* and *Riverflat Eucalypt EEC* intended for industrial area expansion
- The conversion of all Crown Land to the RE1 zone, regardless of the environmental significance of that land. The RE1 zone allows a range of land uses (some of which, as at Broulee, provide for clearing and development of that land) that are inappropriate for areas of High Conservation Value, such as coastal or estuary foreshore with natural ecosystems or Endangered Ecological Communities.
- The loss of some areas of land previously zoned Urban Expansion, which currently require consent for the clearing of native vegetation under the NVA by Southern Rivers CMA to zones excluded from the NVA.

The full list of specific recommendations are included in Attachments A, B, C and D.

We would be happy to discuss these matters with you. Please contact Landscape Manager, Snowy South Coast, Brett Miners in the first instance, on 02 6452 1455.

Yours sincerely

Noel Kesby
General Manager

Attachment A: Southern Rivers CMA comments on draft LEP

Attachment B: Summary of comments, by location

Attachment C: Comment on overlays

Attachment D: Specific lots, previously zoned Urban Expansion

Attachment A: Southern Rivers CMA's comments on Eurobodalla draft LEP

Zones and Land Use Table

IN1, IN2 zones

The Industrial zone at North Moruya includes areas of significant native vegetation. There are three different Endangered Ecological Communities (EECs) present on site, including:

- *Freshwater wetlands on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions;*
- *Lowland Grassy Woodland in the South East Corner bioregion; and*
- *River-Flat Eucalypt Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions.*

Southern Rivers CMA considers that this zoning is inappropriate, and that the zone should be more carefully applied to protect the values of these significant areas. Southern Rivers CMA also considers the zoning of IN1 land inappropriate, rather than the lighter industrial IN2 as the land is predominately coastal floodplain.

RE1 zone – Public Recreation

General application:

Southern Rivers CMA notes that this zone has been applied to most, if not all, areas of Crown Land, regardless of the environmental value of that land. Whilst it is appropriate for modified public open space, such as sporting fields and parks, car parks, and intensive day-use areas to be zoned RE1, it is clearly inappropriate to apply to frontages of sensitive coastal lakes and estuaries, or any area with intact native ecosystems and / or EECs. This is because a wide range of land-uses is permitted in RE1, and that many of these are inappropriate for such sensitive areas.

Southern Rivers CMA considers that Crown land where there are areas of sensitive land, including frontages to lakes and estuaries, the coastal foreshore, or areas with contiguous vegetation cover, should be zoned E2. The inclusion of "environmental facilities" as a permitted activity in the Land Use Table for the E2 zone already provides for passive recreation by the public, and Southern Rivers CMA supports this. Areas that are currently used, or may be required for more intensive public recreation should be identified by exception, and could be zoned RE1.

Southern Rivers CMA is aware that Council intends to undertake an Open Space Review and develop a Biodiversity Strategy. The outcome of these must, in Southern Rivers CMA's view, be that areas of High Conservation Value (as defined in the South Coast Regional Strategy) be zoned E2. Further, Southern Rivers CMA would like to be actively engaged in the review and strategy development process.

Objectives

Southern Rivers CMA advises that to adequately protect these areas of environmentally sensitive land and to reduce the potential for longer term community conflict in the use of these areas, the Open Space Review be completed and incorporated prior to the gazettal of the draft Eurobodalla LEP. Southern Rivers CMA has previously supplied ESC with hard copy maps detailing our recommendations for the protection of these lands. Southern Rivers CMA would consider these maps the minimum default position for the protection of these lands, should Council not complete the proposed Open Space Review prior to the gazettal of the Eurobodalla LEP.

Land Use Table

Southern Rivers CMA considers that the current land use table is inappropriate for the bulk of the areas currently zoned RE1. If the RE1 zone was reviewed, and applied only to areas already used or that are demonstrably required for Public Recreation (beyond what is permitted by "environmental facilities") then it may be appropriate.

E2 zone – Environmental Conservation

General application: Southern Rivers CMA supports the manner in which the E2 zone has been applied, but also considers that its application could also include:

- Foreshore zoning as a way to ensure the level of exposure to flooding or coastal inundation due to climate change is not increased, and to allow for the landward migration of wetlands in response to sea level rise.
- Crown Land likely to have High Conservation Value. This would be expected to be the bulk of what is currently proposed as the RE1 zone. Refer to the discussion under that zone.
- The drafting of a 'protected regrowth' clause for the additional protection of regrowth as defined under the NVA.

E3 zone – Environmental management

General application: Southern Rivers CMA supports the way in which the E3 zone has generally been applied. We note that the minimum lot size map as it applies to E3 zones effectively rules out any further subdivision. However, where lot sizes are 5,000m² or 1 ha, Southern Rivers CMA considers that the E4 zone would be a more appropriate choice.

Objectives

The first objective added by Council appears to be too broad, and potentially conflicts with the mandated objectives. For example, Southern Rivers CMA considers that 'providing for low density development' is not consistent with the mandated objective of 'providing for a limited range of development'.

As the intent of the zone is primarily environmental, however, Southern Rivers CMA recommends that areas of small size (eg ½ to 1 hectare are more appropriately zoned E4 Environmental living to reduce community expectations and avoid conflict in future development. In light of the environmental intent of the zone, Southern Rivers CMA also recommends the drafting of a 'protected regrowth' clause for the additional protection of regrowth as defined under the NVA.

We recommend that in an E3 zoning, the minimum lot size should be 2 hectares or greater or more appropriate cluster developments to retain a level of biodiversity and landscape connectivity in these areas. It has been frequently observed by Southern Rivers CMA staff that lot sizes less than 2 hectares in size result in the removal of the vast majority of native vegetation through the clearing of native vegetation for a dwelling, ancillary structures, Asset Protection Zones and Routine Agricultural Management Activities (RAMAs) as defined under the NVA such as boundary fences, tracks and so forth.

Southern Rivers CMA supports the current E3 zones for areas of previous Urban Expansion 10 (such as South Head Rd, Moruya and areas to the south and west of Moruya) as it assists in maintaining landscape scale connectivity above a 30% fragmentation threshold, reducing the potential future impact on threatened species populations and EEC communities unable to support themselves in a relict landscape. The predicted effects of climate change are profound and current research suggests that a two-tiered risk management approach is required to buffer nature against climate change. First by ensuring that current habitats are as healthy as possible and second, ensuring connectivity and permeability between these habitats. The implementation

of the E3 zoning across Eurobodalla Shire will assist in the buffering of these sensitive communities against climate change.

E4 zone – Environmental living

General application:

Southern Rivers CMA advocates the use of this zone for those parcels where the old LEP zoning created an expectation of development (eg Rural Residential), but where works had not commenced or approvals had not been issued; and, where there are significant environmental assets and constraints. In relation to specific parcels with high environmental assets, this zone can often be agreed as a 'way forward' of balancing environmental, economic and social objectives for these sites, particularly in conjunction with the inclusion of relevant provisions in the DCP.

Southern Rivers CMA considers that this zoning should generally only be used on land previously zoned for rural residential, large-lot or medium density residential but where there are significant environmental constraints. Where lot size is greater than 1 ha, Southern Rivers CMA recommends that the E3 zone be considered.

Notwithstanding this advice, Southern Rivers CMA is particularly supportive of the application of E4 and the lot size provision at Bingie – Congo due to its importance strategic placement with regard to threatened species habitat, important east-west corridors, remnant EEC and also extant native vegetation.

W zones – Waterways

Southern Rivers CMA notes and supports the greater application of the W1 zone compared to earlier drafts of the LEP. The general comments provided on Waterways in DECC/ Southern Rivers CMA's 2008 joint submission remain relevant.

Southern Rivers CMA considers the current zoning as the minimum required to protect the health and quality of waterways in the Eurobodalla into the future and to support the high quality of recreational and commercial fishing industries.

Part 3 – Exempt & Complying

Part 4 – Principal Development Standards

Clause 4.1

A further sub-clause should be added to read "*protect native vegetation, natural watercourses, and habitats for threatened species and populations, and endangered ecological communities*".

Part 5 Miscellaneous provisions

Clause 5.9

Southern Rivers CMA supports the inclusion of this clause, if it applies to all zones where the *Native Vegetation Act 2003* does not apply.

Clause 6.7 Urban release areas.

Southern Rivers CMA objects to the clause as it is currently drafted as some of the underlying zonings appear to pre-empt the outcomes of the investigations that the clause may require.

It is important that sub-clause (5)(c) be amended to clearly state the requirement to identify sites of high conservation value, and for these to be protected in structure plans. Without this requirement, this clause is inconsistent with the South Coast Regional Strategy. Currently, the clause reads as though "remnant vegetation" is to be considered only as part of a "landscaping strategy". In fact, the first task for the structure planning exercise is to define and identify sites of high conservation value, and for the urban design to be responsive to this.

Clause 6.13 Ridgeline protection.

Southern Rivers CMA notes the importance of maintenance of visual amenity and supports it in principle. This clause is particularly relevant in the context of the 'Nature Coast' and in conjunction with negative impacts that increased infrastructure requirements associated with ridgeline development and the interruption to east-west corridors and biodiversity links may have. Southern Rivers CMA takes this opportunity to point out that many of the terms in this clause require tighter definition.

Schedule 2 and 3: Exempt and Complying

- Southern Rivers CMA generally considers that the works listed in Schedules 2, and most of those listed in Schedule 3 should not trigger any of the Clauses 6.3 - 6.7.

Attachment B: Summary of comment for LEP, by location

Batemans Bay/Nelligen: Southern Rivers CMA is generally supportive of the zonings applied to land adjacent to the Clyde River, particularly down stream of Nelligen to the Bridge. These E2, E3 zonings, in addition to the allocation of Riparian Land Category 1 to a vast majority of the Clyde (and important tributaries), will provide a layer of protection.

The Southern Rivers CMA also supports the application of W1 to the majority Clyde, however we do question the application of a W3 zoning to Batemans Bay foreshore (South) when a W2 zoning seems more appropriate given the historical and planned recreational usage of the area and the importance of water quality to the industries associated with the Clyde.

There are areas of *EEC* and other high conservation value vegetation communities around Surfside and Long Beach which have been inappropriately zoned RE1 (See comments in Attachment A).

The classification of important areas of coastal foreshore throughout the entire Eurobodalla as RE1 in the entire location is an issue of concern to the Southern Rivers CMA.

Malua Bay: The proposed zoning at Malua Bay has changed significantly from the previous version of the draft LEP. One area that was originally proposed for R2 zoning is now proposed for E3 zone, which Southern Rivers CMA supports given that the site forms an important north-south habitat corridor. However, areas previously proposed for E3 zoning are now proposed for R2 zoning. It appears to be densely forested land, and Southern Rivers CMA does not support such a zoning change without consideration of environmental impacts.

Rosedale: There are areas of EECs within the proposed Urban Release areas near Rosedale. Southern Rivers CMA is not supportive of the small lots sizes proposed for the majority of this area as they are considered to pose an unreasonable risk to the '*Freshwater Wetland EEC*' and '*Eucalypt Forest of Coastal Floodplain EEC*'.

Broulee: Generally Southern Rivers CMA is very supportive of the zonings in the Broulee area, and in particular the application of the E2 and E3 zones south and west of the town which protect some of the largest areas of *Bangalay Sand Forest EEC* in the State. However, the RE1 zone at Broulee (proposed sports ground) is also covered in this EEC, and Southern Rivers CMA objects to this zoning on the basis of *Bangalay Sand Forest EEC* - the predicted habitat for 38 threatened species.

Southern Rivers CMA considers the RE1 Zoning along the coastal foreshore south of Broulee to North Head as inappropriate. An E2 zoning would be more appropriate and complementary to proposed zoning for most of the area (with exception of the airport) for the protection of environmental and biodiversity values.

Moruya Industrial Area: The IN1 zone at North Moruya includes some areas of high conservation value, including three separate EEC's (*Freshwater wetlands on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions, Lowland Grassy Woodland in the South East Corner bioregion; and River-Flat Eucalypt Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions*)

Southern Rivers CMA recommends that the boundary of this zone be re-considered. Southern Rivers CMA does not support the application of the IN1 zoning, rather than the IN2 zoning in this sensitive area.

Moruya South: There are extensive areas of *Lowland Grassy Woodland EEC* in the Urban Release Area at Moruya South. Southern Rivers CMA does not support such a zoning change (if not to E3) without consideration of environmental impacts upon this community.

Bingie – Congo area: Southern Rivers CMA congratulates the Council on the planning outcome here for the previously 1(c) zoned lands, including the application of the Corridors and Biodiversity Overlays, the choice of E4 zone, and a minimum lot size that will effectively prevent further fragmentation. Southern Rivers CMA notes that this level of protection will only be maintained with the existing proposed minimum lot sizes. Other areas are appropriately zoned E3 or E2.

Tuross: Southern Rivers CMA provides in principle support for the application of W1 and Riparian Land Category 1, with the exception of the RE1 zoning around Tuross and the potential for land of conservation value not to be protected through E2 zoning. Southern Rivers CMA query why the riparian areas around the Island zoned RE2 have not been allocated a Riparian Land Category.

Dalmeny: The Urban Release Area at Dalmeny is large and covered in regrowth forest. Whilst the Ecological (2007) report noted that there are few hollow-bearing trees on site, some areas of EECs exist on site which should be excluded from the R2 zoning. These EECs are also not shown on the Biodiversity map. Southern Rivers CMA is concerned that this area will no longer require consent prior to the clearing of native vegetation under the NVA. All clearing should be subject to an environmental investigation prior to re-zoning, and certainly prior to development approval.

Narooma/Wagonga Inlet: Southern Rivers CMA supports the application of W1 zoning to Wagonga Inlet and the areas zoned Riparian Lands Category 1.

The RE1 areas on the southern side of the inlet contain important foreshore areas to be protected potentially thorough an E2 Zoning. While no further subdivision would be the preferred option, the adjacent area zoned E4, has a minimum 2ha lot size which may act to prevent further fragmentation and limit future impacts on water quality.

West Kianga: This site should be subject to an environmental investigation prior to re-zoning, and certainly prior to development approval, giving due consideration to the remnant native vegetation on steep slopes.

South Narooma: Southern Rivers CMA notes and supports that the urban expansion area has been limited to west of the Princes Highway.

West Corunna Lake: Southern Rivers CMA notes and supports the 20ha lot sizes proposed for this area and flags the important East-West corridor linkage present in this area. Any reduction in this lot sizes would not be compatible with maintaining the corridor linkage.

Tilba: Southern Rivers CMA notes and supports the Wildlife Corridor overlay applying to the RU4 zone at Tilba.

Mystery Bay: Southern Rivers CMA considers the R2 zone as inappropriate given that the site is forested and may contain features of high conservation value. Southern Rivers CMA is not aware of any environmental study in relation to this site that supports the proposed re-zoning.

Attachment C: Summary of comment for overlays

Southern Rivers CMA recognises the significant value delivered by the 'Habitat Corridor' and 'Biodiversity' layers providing strategic guidance and biodiversity protection into the future. It builds on the extensive High Conservation Value (HCV) vegetation mapping and ground-truthing undertaken in the partnership between ESC, Southern Rivers CMA and DECC.

These layers support the significant public investment (exceeding \$700 000) through the current Eurobodalla Shire Biodiversity program which has successfully engaged and enabled landholders to identify, maintain and protect HCV vegetation communities. The corridor overlay also closely aligns with the broader strategic intent of the corridor analysis and mapping undertaken by Southern Rivers CMA/DECC which has identified important corridors across the Southern Rivers region. These corridors are considered critical for the maintaining landscape connectivity, genetic diversity and enabling broad scale migration of species and communities as a response to climate change. It also closely aligns and supports the approach of integrated NRM being sought to be delivered through the Eurobodalla Draft Natural Resource Management Plan which has had extensive input from ESC and community groups.

Southern Rivers CMA is concerned by the apparent lack of analysis and consideration given to the potential impact of a change in climate within the Draft LEP. The Southern Rivers CMA considers the natural resource asset protection afforded by the current zonings and overlays important in maintaining the resilience of landscapes within Eurobodalla to climate change impacts.

Southern Rivers CMA recommends that linkages between large areas of vegetation, such as State Forests, National Parks or Crown Land are confirmed with the application of the Habitat and Biodiversity Corridor overlays. Southern Rivers CMA is particularly conscious of the risks to rivers, estuaries, coasts, wetlands and vegetation posed by a change in climate.

Recommendations:

1. A maximum gap of 40 metres and if there are breaks in linkages and support the zoning of E3 to these areas to further protect landscape resilience into the future.
2. Should Council be considering any reductions to the environmental protection provided by overlays, zonings and clauses a careful analysis of the implications/consequence for reducing resilience of local landscapes should be an important consideration before these changes are made.

Attachment D: Specific lots, previously zoned Urban Expansion

Lots previously zoned Urban Expansion 10 were captured under the NVA, requiring consent for the clearing of native vegetation from Southern Rivers CMA. The majority of these lots have been removed from the statutory obligation of Southern Rivers CMA via Urban Release under the draft LEP. Southern Rivers CMA would like to raise their concern for the loss of this consent role, particularly in areas which have remnant EEC present, specifically

Lot	Section	DP
Rosedale		
12		755902
1		403372
1		511266
122		755902
Malua Bay		
4		251896
Mystery Bay		
310		752155
Narooma		
10		1040151
2		778737
3		778737
21		1077474
Dalmeny		
54		735157
21		264293
Moruya Industrial Area		
82		632752
1		723567
2		860468
1		972523
2		1031269
59		755963
Moruya		
B		388968
1		807497
1		554792
322		752151
321		752151
158		752151
157		752151
3203		836723
8204		836723
3202		790984
219		752151
236		752151
1		1004928
2		1004928
6		1121761
1		529774
2		529774
339		752151
1		817780

Moruya		
2		817780
42		1041095
31		815231
41		1041095
1		121271
32		815231
B		392965
11		858343
121		874829
122		874829
2		851350
3		851350
13		863751
141		1129785
142		1129785
15		863751
100		594848
6		1111121
7		1111121
8		1111121
6		1114804
1		1114804
2		1114804
3		1114804
4		1114804
5		1114804
4	38	758710
3	38	758710
5	38	758710
11		868838
12		868838
2	38	758710
4	49	758710
32		776830
31		776830
5	49	758710
1	49	758710
2	49	758710
62		559287
2		1010316
1		1010316
32		830224
1		1066663
2		1066663
31		1093486
30		1093486
33		830224
11		1007973
13		1021469
14		1021469
22		817475
21		817475
121		1110966

Moruya		
122		1110966
120		1110966
1	52	758710
10		1008755
11		1008755
451		821745
453		821475
1	54	758710
1		1009794
2		1009794
3		1009794
4		1009794
1		505391
2		505391
3		505391
4		505391
2		500858
1		500858
1		125174
1		774544
1		125321
9		1099940