



Coastwatchers

Eurobodalla's Voice for Nature

with *The Nature Coast Alliance – protecting our landscape and heritage*

Coastwatchers Association Inc.
Submission to
The Rural Lands Strategy Planning Proposal
to amend
Eurobodalla Local Environmental Plan 2012

Eurobodalla: “Land of Many Waters” in the local Brinja Yuin dialect

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Coastwatchers Association Inc. submission on the Planning Proposal to amend Eurobodalla Local Environmental Plan 2012

1. Summary List of Objections

1.1 Coastwatchers object to the lack of an extended submission date and continues to request a 90 day period at least from 9 May 2018 so that the community can understand these extensive and highly complex legal documents that will change the environmental, economic and social landscape of this shire.

1.2 Coastwatchers object to the restrictive advertising and the lack of a media campaign to alert the community of the major planning changes about to occur in the Shire.

1.3 Coastwatchers object to the lack of information provided to the community concerning the advice of experts in the field of environmental management (government and non-government) and how the environmental values in the proposed E3 Zone (later Deferred Matters) will be vigorously protected into the future.

2.1 Coastwatchers object to the Eurobodalla Shire Council (ESC) not implementing legislative aims of the ESC LEP to protect biodiversity and environmental values of the Shire's land and waterways in its proposed amendments to the LEP 2012.

2.2 Coastwatchers object to removing environmental management zone E3/DM and the Terrestrial Biodiversity map from the LEP and relying on legally weaker Development Control Plans to protect the validated High Environmental Values identified in E3 Zone in the Shire.

2.3. Coastwatchers object to Council ignoring best practice planning as defined for Local Governments in the amendments to the LEP 2012 including:

- the object of the Environmental Planning and Assessment Act 1979, Objects of the Act 1.3(e): "to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats."*
- the legislative aim of the Eurobodalla Local Environmental Plan 2012 which is in 1.2(g): "to provide measures to protect and manage biodiversity and environmental values of land and waterways."*
- the Ministerial Directions Section 2.1 (1) states "The objective of this direction is to protect and conserve environmentally sensitive areas". The Direction also states in (5) that " a planning proposal that applies to land within an environmental protection zone or land otherwise identified for environmental protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).*
- The South East Tablelands Regional Plan to 2036 Action 14.3 calls for the Council to "Minimise potential impacts arising from development on areas of high environmental value, including groundwater-dependent ecosystems and aquatic habitats, and implement the avoid, minimise and offset' hierarchy.*

- 2.4 *Coastwatchers object to the removal of E3/DM Zone, the removal of Terrestrial Biodiversity map from LEP 2012 and the use Development Control plans for environmental management of E3/DM Zone. These proposed measures will potentially impact the connectivity of intact forests and degrade ecosystems from the catchment areas of the Shire's rivers to the coastal lakes.*
- 2.5 *Coastwatchers object to the removal of protections in the E2 Zone and especially allowing grazing (with or without approval in this zone).*
- 2.6 *Coastwatchers object to the environmental protection zones being inconsistent with s117 Ministerial Directions and the lack of an environmental zoning in the LEP for the Shire's validated Endangered Ecological Communities (EEC). As a minimum for protection, Coastwatchers seek the zoning E2 for these identified EEC areas.*
- 2.7 *Coastwatchers object to amendments to the LEP 2012 that will affect the cultural values on lands of significance to the Traditional owners and seek the Council to consult with the traditional owners within the Shire immediately.*
- 2.8 *Coastwatchers object to proposed amendments that decrease the protection of HCV lands due to larger APZs, increase the number of smaller rural residential blocks in RU1 and RU4 in fire prone areas and increase fire risk to residents and the Rural Fire Service staff and volunteers.*
- 2.9 *Coastwatchers object to the amendments to the LEP 2012 that have not considered mitigation of climate change when deciding zonings.*
- 3.0 *Coastwatchers object to the process used to develop the Rural Lands Strategy and appoint the Rural Lands Strategy Steering Committee and an inadequate process to identify actual or perceived conflicts of interest so as to properly address probity concerns by the community. Coastwatchers objects to the consequent proposed removal of environmental management responsibilities on private rural lands in this Shire through the proposed RLS amendments to LEP2012.*
- 4.0 *Coastwatchers object to the lands specified in this in attachments A and B being zoned RU1 or RU4 without further investigation and representative community consultation.*

1a). Objection to the Public Exhibition Process for the Planning Proposal Amendments of the LEP 2012

1.1 Complex document and limited time frame for submissions

The Eurobodalla Draft Local Environmental Plan 2008 was a visionary document that balances development needs and protection of the environment on private lands, especially rural. The Council is to be commended for this document.

The subsequent Draft LEP 2011 made significant concessions to Draft LEP 2008, particularly Zone E3, but was still an attempt to achieve “balance”.

This legal planning instrument, now LEP 2012, complements the Shire’s world-class national parks and marine parks. It is the most important document for the community to understand and approve. The LEP 2012 was developed by Council using modified principles of best practice environmental management planning and continued the environmental management responsibilities of the LEP 2008 and LEP 1987 to some significant degree.

However, the LEP 2012 is to be amended radically by the Rural Lands Strategy (RLS) Planning Proposal (Proposal). The proposed amendments to LEP 2012 are highly complex and take time to comprehend. Many residents and visitors in the shire are unable to understand, access, and give their informed objections to or support for the proposed changes. The process to amend this LEP has been the subject of much community and state agency concern and angst for the past six years.

The Proposal to amend LEP 2012 was placed on public exhibition on 9 May but without prior notice to the community groups, state agencies or residents. The Council did carry out the minimal statutory notification obligations and gave the rural land holders two weeks’ notice before the exhibition opened.

It appears Council may have failed completely to notify some relevant State agencies and to further advise them further when the submission period was extended from 8 June to 22 June 2012.

On request from two substantial community organisations, Landcare and Coastwatchers, Council granted a two week extension of the exhibition period until 22 June 2018, a total of six weeks only. This is not long enough for review of such a far-reaching planning proposal that is the subject of more than 650 pages of maps and documents. Moreover given the history of the issue there are another 1000 pages of materials including underpinning studies to the current strategy to be reviewed in order to fully appreciate the present proposal.

Coastwatchers object to the lack of an extended submission deadline and request a 90 day period from at least 9 May 2018 so that the community can grapple with these highly complex legal documents that will change the environmental, economic and social landscape of this shire.

1.2 Restrictive advertising and interpretation of the amendments

The Council has only provided limited advertising and interpretation of the amendments for the LEP 2012. For instance, the documents are only on public display in three

locations at Council libraries and there is no standing visible link or profile for the proposed amendments on the Council website home page.

Council has not provided a media or publicity campaign to alert and inform the community. In the past Council has run excellent media campaigns such as Dogs on Beaches and the Open Space and Recreation Strategy. The Council has maintained such a low profile for the exhibition of the amendments to the LEP 2012 to the point that most of the community are still unaware of the proposal being on exhibition. This is unsatisfactory given that the LEP is the Shire's legal planning instrument that is effective for the next five years or more and can radically alter land use on private lands in the shire.

Coastwatchers object to the restrictive advertising and the lack of a media campaign to alert the community of the major changes about to occur in the Shire.

1.3 Limited accessible information regarding E3 Zone/Deferred Matters areas before and after the amendments

The Council have not provided written or verbal assistance for community organisations or members on how they will provide a balance to development and environmental management in the shire.

In the visionary unamended LEP 2012, the E3/DM Zone were defined as agricultural-environmental management zone based on LEP 2008. The Council proposes to excise the E3/DM zone out of the LEP 2012 with no credible rationale for the community or how they intend to manage the environmental values of the excised Zone within LEP 2102.

These amendments will rezone the E3/DM zones to RU1 and some to RU4 which are defined as primary production and other uses with no environmental management requirements.

The Council has sought, received and seems to have ignored advice, from its commissioned consultancies such as the Policy Direction Paper for the Rural Lands Strategy July 2015 and the Discussion paper 6, Managing Biodiversity on Rural Areas as well as submissions from a wide range of expert Government agencies. None of these background documents have been made easily accessible to the community. These commissioned documents and government submissions made many recommendations on the long-term management of these E3/DM values.

The Council has not provided an overview map for the community to illustrate the extent of where the E3/DM areas are or similarly the extent of RU1 areas before and after the proposed rezoning under the RLS. These E3/DM designated areas cover 46.5% of the Shire's private lands, 38,000ha (380sq km). It is critical for the community to understand and be reassured as to how these special ecological and other important values will be managed under the proposed amendments.

Coastwatchers object to the lack of information provided to the community concerning the advice of experts in the field of environmental management (government and non-government) and how the environmental values in the E3/DM will be protected into the future.

2. Objection to the Impact on conservation, heritage and economic capital of the Planning Proposal Amendments of the LEP 2012

2.1 Ignoring Objective 1.29(g) of the LEP 2012

The Eurobodalla Shire is responsible for setting up the legislative planning system to balance development with important environmental values in the Shire and applying best practice management.

The legislative basis is the *Eurobodalla Local Environmental Plan 2012* and the *Environmental Planning and Assessment Act 1979*. The legislative aims of the *Eurobodalla Local Environmental Plan 2012* states in 1.2(g): “to provide measures to protect and manage biodiversity and environmental values of land and waterways.”

The proposed amendments remove many of the environmental management protections especially High Conservation Value (HCV) areas from the LEP 2012 and weakens protection and management of the Shire’s biodiversity and ecosystems services by relying on the weaker legal system of Development Control Plans (DCPs) and a code of practice. The proposed amendments also remove the Terrestrial Biodiversity Map from the LEP2012.

These amendments are a retrograde step for environmental protection in the Eurobodalla Shire. The Proposal states that it is entirely consistent with the Rural Lands Strategy. However, this strategy is critically flawed in that it does not consider environmental management in the Shire, only development issues, contrary to the legal and ethical responsibilities of the Council.

In excising the environmental management zone from the LEP 2012, the Council is not recognising the role of rural land-owners in terms of their stewardship of the land as part of good rural management and a duty of care that protects ecosystems together with the use of improved methods of sustainable agriculture, to achieve profitable outcomes. This is a lost opportunity to view the lands as an asset in perpetuity to be protected and enhanced, sustainably used for rural production and left in better shape for the next generation.

Coastwatchers object to the Council not implementing legislative aims of the LEP 2012 to protect biodiversity and environmental values of the Shire’s land and waterways in its proposed amendments to the LEP 2012.

2.2 Weaker status of DCPs

The Council proposes to protect environmental values in Shire using Development Control Plans (DCPs).

The changes in 2013 to the *Environmental Planning and Assessment Act 1979 (NSW)* have changed the legal status of a Development Control Plan (DCP). These changes weaken a DCP so that it does not have the same legal status or weight as a LEP. A LEP is a planning instrument that is legally binding under the *Environmental Planning and Assessment Act 1979 (NSW)*.

The new section 74BA provides that the 'principal purpose' of DCPs is to 'provide guidance' only on:

- environmental planning instrument such as LEPs
- facilitating permissible development
- achieving the objectives of the relevant land zones.

The replacement of section 74C(1)(a) shifts the focus of DCPs from stipulating 'more detailed provision with respect to development' to a more permissive, flexible and facilitative document intended to enable development notwithstanding the wishes of the community and critical heritage, social and conservation values.

The amendments to section 74C (5) mean a DCP provision now has no effect to the extent that it is 'inconsistent or incompatible with' an Environmental Planning Instrument (e.g. LEP) applying to the same land. The word 'incompatible' has been added to bolster the perceived difficulty in dealing with DCPs that conflict with environmental planning instruments (e.g. LEP).

One of the most important changes is the "flexibility" provision. This mandates that consent authorities (Councils) are required to have a softer approach and to move away from rigidly applying DCPs, which is good news for property owners and developers. It will mean that there will be more options in terms of how, and the extent to which, DCP provisions are applied.

This is a reduction in legal protection and begs the question of why have a Local Environmental Plan legislative zoning system if most of the environmental protections are relying on weaker legal instruments that lie outside the plan.

Coastwatchers object to removing environmental management zone E/DM3 and the Terrestrial Biodiversity map from LEP 2012 and relying on legally weaker Development Control Plans to protect the validated High Environmental Values identified in E3 Zone in the Shire.

2.3 Ignoring Best Practice Planning

The proposed amendments do not protect the validated HCV areas in the Shire and so are not consistent with:

- Policy Directions paper 6 for the Rural Lands in Eurobodalla
- Ministerial Directions of the Environmental Planning and Assessment Act 1979 Section 117(2)
- South East Tablelands Regional Plan to 2036
- South Coast Regional Conservation Plan

The principles and policy directions for balanced development were presented to the Rural Lands Strategy (RLS) Steering Committee in 'Policy Directions paper for the Rural Lands in Eurobodalla' in July 2015. The paper states clearly that split zoning would recognise different land uses and landscapes such as high value environmental areas/ cleared grazing areas on one land parcel and that developments of rural areas have minimal impacts on the environmental scenic values to support rural tourism. It also states that it is important to recognise and provide for the sustainable management of high conservation value vegetation and important aquatic values in Eurobodalla. The RLS Steering Committee recommendations ignored this advice and so do the proposed amendments to LEP 2012.

The South East Regional Tablelands Plan to 2036 states clearly that councils will be required to consider how impacts on important environmental values can be managed through planning controls or other environmental management mechanisms. The plan states that the Council has a responsibility to protect the validated High Conservation Value (HCV) lands in local environmental plans (LEPs). It also must minimise potential impacts arising from development on areas of high environmental value, including groundwater-dependent ecosystems and aquatic habitats, and implement the ‘avoid, minimise and offset’ hierarchy. Where it is not possible to avoid impacts, c
Councils will be required to consider how impacts can be managed or offset through planning controls or other environmental management mechanisms.

The proposed amendments ignore this visionary regional plan that supports the environmental management aspects of the 38,000ha (380sqkm or 46.5% of private lands) of E3/DM zone that are labelled HCV and mapped by Council and remove the zone from LEP 2012.

The Council has avoided the legal aspects of the Ministerial Direction Ministerial Directions of the Environmental Planning and Assessment Act 1979 Section 117(2) Environment Protection Zones which are to protect and conserve identified environmentally sensitive areas.

The direction applies when a relevant planning authority prepares a planning proposal such as an LEP. It states that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.

A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). However, 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”. Consequently, the Council RLS amendments are in terms of minimum lot sizes for a dwelling at the expense of environmental protection and are far from best practice planning.

The principles of the South Coast Regional Plan (RCP) were integrated by Council in previous LEPs. The RCP sets out what Local Government should do to legislate and manage their LEPs:

- protect lands of validated high conservation value
- identify important wildlife corridors and connectivity
- to improve or maintain viable examples of terrestrial ecosystems throughout their natural ranges
- to improve or maintain viable populations of the various biological organisms throughout their natural ranges
- to improve or maintain the genetic diversity of the living components of terrestrial ecosystems

The amendments to LEP 2012 by the Proposal have reduced legal environmental protections in the Shire and ignored expert government agencies, commissioned expert consultancies and best practice principles for Local Government in legal planning documents.

Coastwatchers object to Council ignoring best practice planning as defined for Local Governments in the amendments to LEP 2012 including:

- *the object of the Environmental Planning and Assessment Act 1979, Objects of the Act 1.3(e): “to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.”*
- *the legislative aim of the Eurobodalla Local Environmental Plan 2012 which is in 1.2(g): “to provide measures to protect and manage biodiversity and environmental values of land and waterways.”*
- *the Ministerial Directions Section 2.1 (1) states “The objective of this direction is to protect and conserve environmentally sensitive areas”. The Direction also states in (5) that “ a planning proposal that applies to land within an environmental protection zone or land otherwise identified for environmental protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land).*
- *The South East Tablelands Regional Plan to 2036 Action 14.3 calls for the Council to “Minimise potential impacts arising from development on areas of high environmental value, including groundwater-dependent ecosystems and aquatic habitats, and implement the avoid, minimise and offset’ hierarchy.’*
- *the South Coast Regional Conservation Plan (RCP) that provides direction to Local Government on planning and development decision making so that the biodiversity of the South Coast can be maintained or improved. It seeks to ensure that activities complement future development will be guided by the State Government’s South Coast Planning Strategy.*

2.4 Impact on connectivity of the Shire’s forests

There is a need to retain and enhance connectivity of habitat across private landscapes in the Shire. The Council has worked towards this by implementing a range of conservation measures including the recommendations of RCP and the Commission of Inquiry into Coastal lakes, and funding Landcare activities.

However, the proposal to remove environmental management from all private lands in the Shire, currently zoned E3/DM to RU1 (Primary Production) and RU4 (Primary Production smaller lots) will create a patchwork of forested landscape in the Shire over the next decade, reducing intact forest connectivity in water catchments, and risk damaging the wide range of the Shire’s ecosystems.

Native vegetation located in farming areas can provide ecosystem services to farming including: improved water quality and supply; flood mitigation; salinity reduction; erosion control; local microclimate effects; pest control - refuge for predatory insects, bees for pollination and insectivorous birds; improved air quality and carbon storage. For example, a land and water study showed native vegetation can improve predator to prey ratios at the landscape scale locally suppressing certain agricultural pests, thus

contributing to more sustainable crop production systems which are less reliant on the use of chemical pesticides.

The Council has supported financially and in kind the enormous number of Landcare volunteer-work-hours in protecting, maintaining and restoring the biodiversity and ecosystems of this Shire for more than a decade. For example, between 2016 and 2017 Landcare volunteers provided over 10, 000 hours of free work. Some Landcare groups perform their work on private land and some such as Deua River Landcare have been very successful in attracting external grant funding which has greatly enhanced environmental outcomes for the shire.

One amendment proposed is to allow grazing without approval in the E2 zone where much of this Landcare work has occurred. Currently grazing of livestock in E2 requires consent (for existing use rights). Extensive agriculture is currently prohibited as a new activity in the

E2 zone. This is a downgrading of protection of E2 zone that is generally intended to protect land that has high conservation values or sensitive lands at risk from coastal hazards, flooding and the like. This amendment will directly impact on land that Landcare have been managing in riparian works, land and water downstream.

The proposed amendments to LEP 2012 to use Development Control plans for environmental management of E3 zones, allow grazing in E2 and repeal the Terrestrial Biodiversity map along with the NSW State government's far weaker new land clearing laws, will have considerable repercussions on Eurobodalla Shire's Nature Coast landscape and in its land and water ecosystems.

The Deua River is the main water catchment for the Shire but this is not recognised by the objectives of its proposed RU1 zone or the additional land uses that could be approved there and would require clearing of steep land.

Many of the coastal freshwater and marine wetlands (some of which have not been grazed) will be open to this destructive practice which contradicts the proposed E2 Environmental Conservation zoning. Landowners should have to apply to have existing use noted and all other wetlands should be protected.

Riparian zones may be mapped but in most cases do not meet guidelines for vegetated buffers. Relying on education alone to have landowners fence these areas is an inadequate response.

As the Council's estuary management studies and plans have noted there is little protection of estuarine wetlands despite their important role in estuarine health and productivity. Even riparian reserves are not safe. For example, in Tomaga River where the reserves front rural freehold land they are sometimes treated as part of the freehold land holding and there is no fencing to prevent these reserves from being grazed to the water's edge

As a result of the 'Independent Inquiry into Coastal Lakes', the Council conducted land capability assessments for the Shire's lakes so as to assess the capability of the lands in the catchments of Coila, Tuross and Corunna lakes to support further rural residential development. This included assessing potential nutrient loads, risks associated with on site sewage systems, bushfire risks, vulnerable ecosystems and erosion potential.

Yet it appears that these studies and databases have mostly been ignored in the broad scale RLS amendments to LEP 2012. For example, it is proposed to rezone an E3/DM area to RU4, a rural residential development zoning, on the north side of Coila Lake. The residential development on these blocks will require clearing of environmentally sensitive vegetation for resident dwellings, roading, farming and fire management which will eventually affect the nutrient and sediment loads in Coila lake.

The Council has departed from its previous legislative principles for LEPs where these principles were incorporated into E3 and E2 zones with the Terrestrial Biodiversity map attached. They appear to have failed to apply these obligations in the proposed amendments to the LEP 2012.

Coastwatchers object to the removal of E3/DM zone, the removal of Terrestrial Biodiversity map from LEP 2012, and the use Development Control plans for environmental management of E3/DM zone and grazing within the E2 Zone. These proposed measures will potentially impact the connectivity of intact forests and degrade ecosystems from the catchment areas of the Shire's rivers to the coastal lakes.

2.5 Impact on the Shire's rivers, wetlands and economy

The Council is stepping back from its past reputation to one of single minded development in agriculture and other industries at the expense of environmental management of private lands. These amendments will have a flow on negative environmental impact on the estuaries, wetlands, rivers and lakes of the Shire that generate ecological, social and economic benefits enjoyed by the community who live, work or play near them.

Recommendations of the 'Independent Inquiry into Coastal Lakes' emphasised adopting a legal management framework (e.g. LEPs) as the basis for decisions and actions to protect estuaries, wetlands, rivers and lakes of the Shire. The intention of this management framework is to conserve nature and to minimise risks to public health and the local economy such as oyster growing, recreational fishing and nature tourism. Protecting the intact forests of the water catchments also protect water quality to meet requirements for sources of drinking water.

One key issue that is not in the interests of the Shire's wetland and estuary based economies is the proposed amendment to change the management of significant areas of wetland zoned E2 Environmental Conservation on public and private lands, including SEPP 14 wetlands, where the Council proposes a destructive practice, to permit grazing on private lands as an exempt activity. Currently, extensive agriculture is prohibited as a new activity in this E2 zone.

Riparian zones in E2 zone are also not well protected and will be more vulnerable under these amendments. For example, the Tomaga River where the reserves front rural freehold land, some owners treat the riparian zone as part of their freehold land as there is no fencing to prevent these reserves from being grazed to the water's edge. As the Shire's estuary management studies and plans have noted there is little protection of estuarine wetlands despite their important role in estuarine health and productivity.

The Eurobodalla Shire Council has been a leader in managing its highly prized environmental values in the south-east region of NSW. It has a reputation as a Shire that has cared for its biodiversity and ecological services over decades with the result of attracting many residents and investors who want to live and work in the nature coast of this Shire. The Council will be responsible for the loss or severe reduction of this attraction if the Proposal amendments are adopted without incorporating better environmental management zonings.

It is important within the Shire to have a healthy, and diverse economy and this relies on healthy, diverse ecosystems from water catchments to rivers, lakes and wetlands.

Estuaries are one of the most important natural assets in Eurobodalla and support many diverse ecosystems including mangroves, salt marshes and sea grasses. The Shire's estuaries are highly productive and provide nursery areas for fish. The environmental management of these ecosystems are crucial for water and land based local industries: oyster industry, recreational fishing industry, marine and nature-based tourism.

Eurobodalla Oyster cultivation is a world-class aquaculture industry and is renowned for the most environmentally clean oyster growing estuaries in the world. The NSW government is demonstrating confidence in the south coast oyster industry and the high quality of the waterways by investing \$10 million in Australia's Oyster Coast company (AOC). The investment is a combination of a private equity company, ROC Partners and First State Super and Jobs for NSW a NSW Regional investment fund. This investment will enable AOC to significantly increase employment and create more jobs in the region, and is strongly endorsed by government ministers. The NSW state government is also contributing \$2.3 million to further develop the oyster industry with a hatchery near Moruya.

Oysters are an indicator species, in that, if the oysters are healthy and suitable for human consumption, then the estuary is likely to be healthy as well. This has flow on effects for sea grasses, fish and other bird wildlife such as waders and migratory birds.

The Council has a long history of involvement in the NSW Government Estuary Management Program and have completed estuary management plans (EMPs) for all their major estuaries which local industries rely on. For example the recreational fishing industry is extremely valuable to the Shire's local coastal and inland communities and generates about \$300 million of economic activity into the South Coast economy each year. To sustain the industry, the Council must ensure that the marine ecosystems stay healthy and productive. This can only happen if the land based ecosystems are kept intact and healthy and continue to produce the high quality natural services which the Shire relies on for not only for its oyster farming and recreational fishing industries but for grazing and the largest industry of all, tourism and recreation.

The Batemans Bay Marine Park protects the underwater landscape from mining, dredging and trawling along 100kms of coastline and provides a major marine tourism economy for the shire. Its health also depends on the health of estuaries and water catchments on land.

The Council should be upgrading its environmental management zones and practices on private lands to cope with growing residential and economy demands. The population of the Shire is projected to double in the next two decades making it an urgent requirement

for Council to ensure there is an appropriate balance for development and environmental management that will retain the economies that depend on clean water, intact forests and other ecosystem services.

As well many of Eurobodalla's wetlands are listed on Commonwealth Directory of Important Wetlands and Council should have consulted Commonwealth Environment Department as a MNES matter under EPBC Act in respect to the proposed zoning amendments.

In summary, the shire's marine tourism, recreation, fishing and oyster industries are potentially impacted by the downgrading of E2 to allow grazing as an exempt activity and the removal of the environmental management zone, E3, without any corresponding replacement.

Coastwatchers object to the removal of protections in the E2 zone and allowing grazing without approval in this zone.

2.6 Protection of EECs and lack of zoning

The Council has mapped Endangered Ecological Communities (EEC). The EECs are vegetation communities that are naturally limited in the region and/or have been extensively cleared and developed. They are often also poorly represented in conservation reserves and therefore a high priority for conservation. Many EECs are associated with river valleys and floodplains and coastal environments that traditionally have been used for farming and more recently for urban and recreational developments along the coastline.

Only a few of the EECs are located within the Conservation reserves and of the coastal hinterland and escarpment. Without the protection of national parks and nature reserves, these remnant EECs on private and Council-managed lands and on State Forests are vulnerable to the impacts of forestry, development and land use pressures, as well as farming practices, often inadvertently because they are not recognised or given the status they deserve.

Council has excellent validated EEC mapping on their website. As well, the Council's website states that the Council 'works with other agencies and the community to reduce the pressures and threats that impact negatively on these species. This includes work to improve the condition and increase the extent of threatened species habitat and endangered communities where possible.'

The Eurobodalla Shire Council is failing in its responsibilities with its amendments to LEP 2012 by removing E3 zone, degrading E2 zone and neglecting to zone EEC areas as E2. Volume 1 of the proposal states that the environmental protection zones are inconsistent and only partly consistent with the Ministerial Directions (s117directions). As the proposed amendments remove the environmental management zone (E3) that included most of the EEC areas, the Council needs to provide legislative protection in its only remaining environmental zone, E2, unless E3 is reinstated.

Coastwatchers object to the environmental protection zones being inconsistent with s117 Ministerial Directions and the lack of an environmental zoning in the LEP for the Shire's

validated Endangered Ecological Communities (EEC). As a minimum for protection, Coastwatchers seek the zoning E2 for these identified and validated EEC areas in the Shire.

2.7 Impact on the Shire’s Aboriginal heritage

A number of E3/DM areas proposed for amendments in the LEP 2012 have significant Aboriginal cultural heritage.

Council has excellent reports and has listed in Schedule 5 of LEP 2012 areas that have significant Aboriginal Cultural heritage. The Council commissioned the Eurobodalla Aboriginal Heritage Study to improve understandings and protection of Aboriginal cultural heritage in the Shire. Below is a list of the sensitive cultural heritage places that are in the report.

Schedule 5 Part 3 Heritage conservation areas of LEP lists

Description	Identification on Heritage Map	Significance
Hanging Rock	Shown by yellow edging and labelled AH2”	Local
Stoney Creek—Brou Lake	Shown by yellow edging and labelled “AH3”	Local
Bengello Creek	Shown by yellow edging and labelled “AH4”	Local
Najanuka	Shown by yellow edging and labelled “AH5”	Local
Barlings Beach and Island Complex (includes Intertidal Zone and Foreshore)	Shown by yellow edging and labelled “AH6”	Local
Grandfathers Gully and Beach	Shown by yellow edging and labelled “AH7”	Local
Malabar Lagoon	Shown by yellow edging and labelled “AH8”	Local
Pedro Swamp	Shown by yellow edging and labelled “AH10”	Local
Smyth’s Oval	Shown by yellow edging and labelled “AH11”	Local
Cullendulla Creek	Shown by yellow edging and labelled “AH12”	Local
Barlings Beach	Shown by yellow edging and labelled “AH13”	Local

It appears that the proposed amendments do not address these important aboriginal cultural heritage sites in the zoning plan.

In addition, there are a number of blocks that OEH have identified such as one on the edge of Wallaga Lake and one near Little Dromedary. These areas are heavily forested and have steep slopes. They are unsuitable for development as they have areas of steep slopes and are highly significant to the Aboriginal traditional owners. Development of these lands would not be in the interest of traditional owners. Further summary of other blocks with cultural heritage are listed in section 4 of this submission, ‘Objections to amendments for specific places.’

It seems that the Council has failed to engage with traditional owners of this shire and not informed or consulted specifically with them on these proposed amendments to LEP 2012.

Coastwatchers object to amendments to LEP 2012 that will affect the cultural values on lands of significance to the traditional owners and seek the Council to consult with the

traditional owners within the Shire immediately before further considering the present Panning Proposal to amend LEP 2012.

2.8 Increasing the Shire's Fire Risk

The Rural Fire Service (RFS) and Coastwatchers are concerned about the impact of the proposed amendments in areas that are mapped as Bush Fire Prone Land (BFPL). The proposed amendments increase permissible land uses and number of people living in RU1 and RU4 in BFPL areas. These additional uses will increase the number of people exposed to severe bush fire hazards (e.g. new dwellings, educational facilities, function centres or respite day care) and the properties in BFPL lands will require increased bush fires asset protection measures (30-100m in each direction) and access roads to assist with evacuation.

These amendments will allow increased development in areas that are remote, have high risk from bushfire and inadequate road access. Additionally, if detached dual occupancies in RU4 are to be allowed, this could double the potential number of dwellings in bush fire settings that will require additional asset protection and access roads.

The lives of volunteer fire-fighters will be placed at greater risk as well as the lives and property of residents especially where development is in isolated rural settings where fire fighters and residents must travel through bush fire prone vegetation.

The proposed amendments will increase the demand for bush fire protection measures and these measures will significantly impact on High Conservation Value (HCV) land on E3 zoned areas. The proposed amendment documents state that Development Control Plans (DCPs) will ensure that there is no increase in risk to people or property in bushfire prone areas and that all bush fire requirements are met and HCV lands will also be protected. The problem is that HCV land protection is not protected in the proposed amendments to the LEP and will inevitably be compromised for protection of people and assets including many developments opposed by the RFS. The RFS have stated they are concerned about excessive loss of HCV lands.

The Council proposes that these two conflicting protections will be dealt with under DCPs. However, DCPs cannot do this if E3 zone is removed from the LEP. DCPs are a weaker form of legal protection for ensuring that development in fire prone areas does not occur and effectively doomed to fail in protecting environmental assets of HCV lands in a zone where there is no provision for environmental protection or even management within that zone under the LEP.

The RFS stated all these matters should be thoroughly studied and addressed in the Plan, not dismissed as the current draft does. They also stated that high conservation value overlays should be kept in the LEP 2012.

Just three of the locations singled out by the RFS as particularly hazardous and where there should be no increase in density are:

- Area 4 Currowan, Benandarah, East Lynne where access is via roads through forest (4 new lots and at least 6 new dwellings proposed)

- Area 16 including Malabar Drive and Percy Davis Drive with dead end roads (up to 6 lots and at least 7 new dwellings proposed)
- Area 34 Eurobodalla Rd, Eurobodalla, Cadgee, Nerrigundah and Tinpot with a dead end road through forest (at least 12 new dwellings proposed.)

Additional areas judged to be at fire risk are listed in Attachment A of this submission.

Coastwatchers object to proposed amendments that remove E3 zone, decrease the protection of HCV lands due to larger APZs, increase the number of smaller rural residential blocks in RU1 and RU4 in fire prone areas and increase fire risk to residents and the Rural Fire Service staff and volunteers.

2.9 Adapting to Climate Change in the Shire

A report to Council's ordinary meeting on 27 August 2013, stated that submissions to the Rural Lands Strategy Steering Committee raised the importance of sustainable agriculture and the intrinsic relationship between the natural environment and agricultural activities. The meeting also noted that climate change will make it even more important to protect local ecosystems while adapting and improving agricultural outcomes.

The Council has mapped fifteen Endangered Ecological Communities in the Shire. The Shire also has a number endangered species listed under legislation at State or Commonwealth government. These listings indicate that the Shire's ecosystems are already under stress. The number of endangered species and communities will inevitably increase with the proposed amendments to LEP 2012.

These amendments will have an effect on carbon emissions in the shire. The 38,000 ha of E3 on forested private land (equivalent to 380sqkm) in the LEP 2012 absorbs 109,000 tonnes of carbon per year and this does not include the huge amount of carbon sequestered in forest trees that are up to 800 years old. If the forested area of Zone E3 is reduced in any way, then the carbon emissions for the Shire will increase by the same proportion. The 109,000 tonnes of carbon is equivalent to 30,000 average household energy emissions, about twice the number of Eurobodalla households.

The Council is proposing planning changes that will further inhibit adaption to the issues confronting the residents and the Shire from climate change.

2.9 Coastwatchers object to the amendments to the LEP 2012 that have not considered mitigation of climate change when deciding zonings.

3. Objection to the Process for Developing the Rural Lands Strategy and the Weakening of LEP 2012

The excising of E3 as an environmental management zone and unrestricted permission for grazing in E2 zone for primary producers, renaming it deferred matters, DM, in the LEP 2012, and the rezoning of E3/DM zone as mainly RU1, a primary production zone with an open table for many other uses, has been a six year process by its advocates. The current proposed amendments have literally wiped the environmental management obligations by landowners from the LEP 2012 thus making a mockery of this legislative planning tool in Local Government. Yet many forward thinking agricultural managers of the 21st century are embracing the ecosystem services provided by intact forest and well managed waterways.

At its Ordinary Meeting held on 20 December 2011, Council resolved inter alia about the new Local Environmental Plan, to ‘undertake a strategic review of the deferred E3 Environmental Management land as part of the Rural Lands Strategy to determine the most appropriate future land use planning policy and controls for the shire’s rural lands with it being noted that terms of reference are to be determined in conjunction with all relevant stakeholders.’ This goal shifted in 2012 and the following years.

In July 2012 the Minister for Planning and Infrastructure, the Hon Brad Hazzard MP approved Eurobodalla Shire to excise E3 zones from the LEP 2012 and rename the zone. This was recommended by the chair of a review committee (the Rural Lands Strategy Committee), Ian Armstrong. The Minister said that ‘I have heard the message loud and clear from local Member Andrew Constance that the environmental zones and environmental overlays have caused a lot of anxiety with farmers.’

The message that excising E3 also caused anxiety with community members and government agencies who were interested in environmental management and conservation was either not conveyed or not heard. This agreement to excise E3 was made before the first Rural Lands Strategy Steering Committee (RLS SC) meeting in August 2012.

The first RLS SC appointees included seven “community members”. Coastwatchers understands that the clear majority or their immediate family had interests as significant land holders in rural land and/or were experienced land developers. This does not seem to represent a reasonable range of community representatives across the broad shire, its population or various social, conservation and economic interests.

In the first meeting the issue of potential conflict of interest for community representatives on the Committee relating to their ownership of rural land and economic interest in rural production was raised. One of the representatives of the Council advised that this is not a conflict of interest in relation to broad policy discussions, however there may be a conflict in relation to any discussions about particular properties. It was suggested that all members declare a potential conflict of interest if there is any concern but no private land holding or developer RLS SC members raised the conflict of interest issues again in the following meeting minutes.

However, the RLS SC minutes of their second meeting show that the Committee wanted to ensure that ‘the Deferred Matter zone and Environmental Overlay maps were dealt

with in an expeditious manner so that they do not take up any undue time.’

Several RLS SC meetings later, one community member had resigned due to the Committee’s approach to environmental matters. It is clear in the minutes that state ‘a rural lands strategy is not about land management, rather it is about establishing a planning framework to enable agricultural outcomes.’ No discussion on balancing environmental outcomes with development outcomes is recorded.

There was also controversial discussion about removal of the phrase ‘recognition of rural land owner stewardship’ and replacement with the word ‘management’. The outcome of the Rural Lands Strategy process has been to remove the “stewardship of land concept” and anything substantial on environment management outcomes. This is not a balanced strategy that protects significant environmental values with significant, responsible development outcomes.

There was also a discussion in the RLS SC meeting about trying to ‘meet with local bank managers, accountants, surveyors and valuers to hear their views’ and no discussion about meeting with the specific community organisations who were concerned about sustainable agricultural development and responsible environmental outcomes.

Coastwatchers object to the process used to develop the Rural Lands Strategy and appoint the Rural Lands Strategy Steering Committee and an inadequate process to identify actual or perceived conflicts of interest so as to properly address probity concerns by the community. Coastwatchers objects to the consequent proposed removal of environmental management responsibilities on private rural lands in this Shire through the proposed RLS amendments to LEP2012.

4. Objections to amendments for specific places and unilateral additions to DM/RU! & RU4 Zones

On reviewing the maps for areas of E3/DM there are six categories of concern that agencies or locals have raised. These areas are High Fire risks, Water Catchments at risk, Aboriginal cultural heritage at risk, Oyster industry at risk, many sensitive catchment areas adjacent to lakes rivers and creeks, HCV Forest including Old Growth Forest. Most of these areas apparently will be rezoned primary production RU1 and RU4 with an Open land Use Table.

Coastwatchers attention has been drawn to more than twenty specific areas or parcels that fall within these categories and they specified in Attachment A.

In addition there appear to be a considerable number of land parcels that were not originally part of the E3/DM zone but appear to have been added subsequently to the Proposal unilaterally by Council. Some of these are specified in Attachment B.

The details and areas/properties under Attachment A and B are far from complete and lack editing which undoubtedly reflects the lack of promotion of the Proposal by Council, the inadequate time allowed for public submissions and the scale and complexity of the documents and maps exhibited by Council.

**Noel Plumb
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The Coastwatchers Association Inc.
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22 June 2018

ATTACHMENT A - Coastwatchers submission on the Planning Proposal to amend Eurobodalla Local Environmental Plan 2012

High Fire Risks

Area 33

LOCATION Reedy Creek Road Dignams Creek

COMMENTS Long way west of the Hwy.

Surrounded by heavily forested Nat Pks.

OEH Not suitable - should be zoned environmental. High fire risk.

Area 34 Nth & Sth RU1 100 ha

LOCATION West of the Hwy.

All the way up the Tuross Rvr to Belowra and beyond...

COMMENTS Land straddles the Tuross Rvr and is surrounded by Dampier and Bodalla SF, and Kooraban and Wadbilliga Nat Pks on all sides.

OEH Isolated lots, portions of steep heavily vegetated land, high fire risk, - not suitable. Part of Gulaga Aboriginal significant landscape

Water Catchment at Risk

Area's 36 Nth and Sth Prev 1a1

RU1 500ha

These blocks are on the most western edge of Eurobodalla Shire, the uppermost reaches of the Araluen Valley and surround the Duea Rvr.

OEH Current subdivision minimum hectares should be retained 1000 ha Not suitable for increased subdivision/dwellings object.

HCV: Yes **high** with EEC Threatened species: Yes known records, significant EEC vegetation Protected Catchment: Yes **water supply catchment protection SC regional strategy** Land Category: Protected steep land and class VII and VIII land **some steepest land in LGA**

Area 37a, 37b, 37c All converted from 1a1 to RU1 40ha

Location: Along the Araluen Rd from Wamban Rd, up to Larry's Mtn Rd and much further.

Comments: these is **prime catchment area - right on the Duea Rvr - Moruya Rvr!** Some steep land too.

OEH: Adjacent to protected catchment/river on the east of each block. Not suitable for increased subdivision – recommended environmental zone, especially on wholly vegetated blocks. Steep: 7.

Aboriginal Heritage at risk

Wallaga Lk Area 32 Sth RU1 100ha lots

Large significant DM block on the very edge of Wallaga Lake - North of Couria Bay - along Bermagui Drive. It's heavily forested and looks steep. This block abuts Wallaga Lake NP.

Also - **Little Dromedary** is currently DM and is proposed to be rezoned RU1 100ha. On the western side of Area 32 Sth the lots adjoin or a close to SF, Goura Nature Reserve and Dignams Swamp.

To the north some of the DM lots seem to surround the Bermagui Water Supply Dam. All the DM blocks are all heavily forested with intact native vegetation. OEH Highly significant Aboriginal cultural areas across this area. No objection if development is confined to cleared areas on northern lot (note, threatened plant exists in the vegetation on the north of this lot). Objects have been recorded within this parcel of land. Places of Aboriginal significance also exists adjacent to the northern boundary. Part of Gulaga Aboriginal significant landscape

Oysters Industry at risk

The RLS proposes rezoning a substantial amount of land around the Clyde Rvr, west of Batemans Bay.

The rezoning would see land *right down to the edge of the Clyde* amended to RU1.

Over one third of all the oysters grown in NSW come from the Sth Coast.

This valuable industry is at risk from any degradation in water quality and can be adversely affected by increased run off from clearing.

Area 5 - Lattas Point Rd. Clyde Rvr

Low lying and swampy, adjacent to the Clyde, bordering E2 and river.

New zoning proposed - RU1

Borders NP and NR.

Area 29 North

Location Straddles Wagonga Scenic Drv, and goes down to the edge of the inlet.(Hobbs Bay?)

Includes all the land, all the way along the inlet right up to the Nthn most corner.

(the skinny nth western arm of Wagonga)

Alert

Looks like E2 removed around Hobbs Bay

Lot size reduced to 40 ha along the southern side of the inlet

Area 38 Nth Location Immediately West of the Clyde Rvr / Sth of Nelligen.

Comments Immediately adjacent to the oyster growing area of Batemans Bay. Big area!

Adjacent to the Clyde rvr.

Many sensitive catchment areas adjacent to lakes, rivers and creeks are proposed to be rezoned to Primary Production RU1 & RU4

Coila Lke Area 21- nthn edge of Lake. Bingi area RU4 20ha

One portion HCV (EEC) adjacent to lake edge

OEH Field verified. Validated HCV. State and Regional habitat corridor. Threatened Species Records. Known aboriginal cultural heritage.

Lots on the eastern side with extensive native vegetation are not suitable for further subdivision. E zone recommended for vegetated patch. Important to protect adjoining Coila Lake.

Coila Crk Area 22- adjacent to Coila Crk RU1 20ha
 OEH Protected Catchment. Steep - 7. Known aboriginal cultural heritage.
 Not suitable for further subdivision in this sensitive catchment area adjacent to Coila Lake.

Tuross Lake Area 22a,22b,22c - Western edge of lake RU1 20ha
 22b previously Public Open Space! Now RU1 !
 Mostly cleared. One significant plot of intact native veg between Forest Lake Close & Highway, adjacent to lakes edge and Oyster leases.
 22c is currently intact native vegetation.

Brou Lake Area 24 - Sth West edge of Lk. RU1 100 ha
 Abuts NP. Straddles Whitakers & Stony Crks - catchment for Lake Brou
 OEH: Field verified. Validated HCV. State and Regional habitat corridor. Threatened Species Records. Protected Catchment. Known aboriginal cultural heritage. High Fire Risk

Tarouga Lagoon Area 23 Sth of Potato Pt Rd RU1 40ha
 The eastern most lot surrounds and abuts Nat Pk and Torouga Lagoon. Intact native vegetation, heavily forested.
 OEH: Field verified. Validated HCV. State and Regional habitat corridor. Threatened Species Records. Protected Catchment. Known aboriginal cultural heritage.

Brunderee Lk Area 25 Nth of Potato Pt Rd, Sth of Tuross Lke RU1 40ha
 These lots are 100% intact native vegetation and go all the way to the Sthn edge of Tuross Lke. The eastern most blocks border Lake Brunderee.
 OEH Field verified. Validated HCV. Protected Catchment. Objection – high fire risk and intact native vegetation across whole lot.

Lake Borang, western side. Area 25 also RU1 40ha
 50% of this land is Intact native vegetation, heavily forested bordering the lake's edge.
 OEH Field verified. Validated HCV. Threatened Species Records. Protected Catchment. Known aboriginal cultural heritage. Objection – **biodiversity hotspot** with protected catchment. Environmental zoning recommended. Lots are intact native vegetation not suitable for number of additional dwellings as proposed.

Tuross/Coopers Island Area 25a Sth West part of Tuross RU1 40 & 20ha
 Currently 80 / 90% intact native vegetation.
 This area borders Borang Lk to the west, Tuross Lk to the Nth - right up to the edge of the lakes.
 OEH: Field verified. Validated HCV. State and Regional habitat corridor. Threatened Species Records. Protected Catchment. Known aboriginal cultural heritage. High Fire Risk

Bumbo Lake / Trunkatabella Lagoon/ Area 26 Nth RU1 200ha

70 to 80% of the DM area's are Intact native vegetation, heavily forested and are adjacent to both waterways. In the case of Bumbo Lk, the existing native vegetation covers 50% of the western shore of the lake

Wagonga Inlet Area 27 (Big Area) North Narooma & Kianga RU1 40ha

Northern most portion West of Lk Mummuga / Dalmeny.

Drains into the lake. Heavily vegetated, almost entirely intact.

Middle Portion: Dalmeny Drive Kianga - Right on the coast. Surrounding and borders Kianga Lake. Heavily vegetated, almost entirely intact.

OEH : Objection – biodiversity hotspot with protected catchment. Environmental zoning recommended.

Southern most portion: NW edge of Wagonga Inlet: Big area borders the lake. Steep on the nth side of the skinny, western most part of the inlet where the oyster beds are.

Note: Public Open Space (Paradise Pt/Freshwater Bay) being rezoned to RU1 on nth side of inlet. All of the above area's are protected catchment

Wagonga Inlet Area 29 North RU1 40ha

70 / 80 % intact native vegetation.

Straddles Wagonga Scenic Drv, and goes right down to the edge of the inlet, (Hobbs Bay?) all the way up the southern side of the inlet. This inlet has a lot of oysters. Has E2 been removed

Corunna Lk Area 32 Nth

DM, 50% intact native veg, rezoned to RU1 100 ha

2 significant DM block immediately adjacent to/ on the western edge of Corunna Lk are 100% intact native vegetation

Wallaga Lk Area 32 Sth RU1 100ha lots

There's one big significant DM block on the very edge of Wallaga Lake - North of Couria Bay - along Bermagui Drive. It's heavily forested and looks steep. This block abuts Wallaga Lake NP.

On the western side of Area 32 Sth the lots adjoin or a close to SF, Goura Nature Reserve and Dignams Swamp.

To the north some of the DM lots seem to surround the Bermagui Water Supply Dam.

All the DM blocks are all heavily forested with intact native vegetation.

Note also: Little Droedary is currently DM and is proposed to be rezone RU1 100ha.

OEH Highly significant Aboriginal cultural areas across this area.

No objection if development is confined to cleared areas on northern lot (note, threatened plant exists in the vegetation on the north of this lot). Objects have been recorded within this parcel of land. Places of Aboriginal significance also exists adjacent to the northern boundary. Part of Gulaga Aboriginal significant landscape.

ATTACHMENT B - Coastwatchers submission on the Planning Proposal to amend Eurobodalla Local Environmental Plan 2012

Extra lots added to amendments

These lots do not appear in previous Governmental submissions and are now in the amendments to the LEP2012.

Have they been approved by Council in other processes and if so how?

- Area 22a, 22b - right beside Coila and Tuross Lke.
- Area 23 contains more blocks on the ESC maps than shown on the OEH maps.
- Area 24 also. (bit confusing)
- Area 25 OEH only shows one block.
- ESC shows approx 4x as much area - blocks proposed for rezoning right beside Brunderee Lake, and up to the edge of Tuross Lke.
- Area 25a OEH map doesn't go all the way to the edge of Cooper Creek as the ESC map does
- Area 26 is not mentioned at all - which is strange because parts of it touch upon Bumbo and Borang Lake
- Area 33 on OEH submission, there is only one block. On ESC there's much more land under review
- Area 36 on ESC has a Sth and Nth portion. On OEH, submission, there's only one portion.