



DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT

Local Environmental Plan Assessment Tool for water-related clauses

Guidance on the development and use of the
tool, and key findings



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1. Purpose of this document

The 'LEP Assessment Tool' was designed as a resource to help planning bodies and local councils objectively and consistently review the content of water-related clauses in local environmental plans (LEPs).

The target audiences for the LEP Assessment Tool are natural resource managers and strategic planners responsible for the establishment of an LEP. It is assumed that the target audience has subject matter expertise on the content and development of LEPs.

This document describes how the tool was developed, how to use the tool in the context of achieving the goals of our state water quality policy, and the key findings of a detailed analysis of the 573 individual water-related clauses that make up the tool.

The tool is an output of an action under the [NSW Marine Estate Management Strategy 2018–2028 \(PDF 12.3MB\)](#) to improve the management of water quality and waterway health through strengthened provisions in the NSW planning system. As such the tool and findings are limited to the waterways in coastal New South Wales, with a focus on those within the boundaries and/or affecting the marine estate (Figure 1).

The tool and this document are current from May 2020 until the next scheduled review period of five years for LEPs, as required under the [Environmental Planning and Assessment Act 1979](#) (EP&A Act).

2. Context

LEPs are typically made for environmental planning within a local government area (LGA); however, they may also extend to areas of the state outside an LGA boundary, including the coastal waters of New South Wales.

LEPs are based on the [Standard Instrument—Principal Local Environmental Plan](#) (the Standard Instrument), which establishes a common format and clause content for the plans including zoning provisions and clauses governing commercial and development activities. However, variations in content are commonplace, and are reflected in the local provisions and schedules of an LEP. There are also deferred LEPs that have not yet moved across into the Standard Instrument LEP format.

Recent changes to the EP&A Act carry substantial implications for LEPs and other environmental planning instruments. The first of these changes is that all NSW planning instruments are now subject to a five-year review cycle (s.3.21). Under this cycle, planning instruments are reviewed at least once every five years to determine if the instrument still serves the objects of the EP&A Act and reflects local values and priorities, or if the instrument must be updated or replaced.

The second major change is the requirement for councils to develop a Local Strategic Planning Statement (LSPS). The LSPS operates as the 20-year land-use vision for the LGA, establishing the area's unique local characteristics and community values, directing future growth, and facilitating changes to established planning rules such as LEPs and Development Control Plans (DCPs) to support long-term planning objectives.

The LSPS supports the implementation of Regional and Sydney District Plans by integrating relevant regional, district and local goals into a long-term vision for local management. One example of a Regional Plan is the [Greater Sydney Region Plan](#), developed by the Greater Sydney Commission, which separates Sydney into key districts, and incorporates district-specific strategies for infrastructure and collaboration, liveability, productivity and sustainability. The LSPS for LGAs affected by the Greater Sydney Region Plan will need to

incorporate the strategies and priorities of the plan into their own 20-year planning vision, supporting both local and regional planning priorities. Similarly, relevant Regional Plans inform the LSPSs for LGAs outside of Sydney.

Due to these changes, it is important that councils have a full understanding of the content of their LEPs and identify key elements of their LEP from an LSPS or regional planning perspective. To support councils in their review of LEPs, we have developed this 'LEP Assessment Tool' to help identify whether councils have in place LEP clauses and zoning provisions for managing the impacts of urban development and other land-use activities on the health of the state's waterways. We have focused only on water-related clauses as this work is part of the delivery of Action 1.2 of the *Marine Estate Management Strategy 2018–2028*, under the initiative to improve water quality and reduce litter to the marine estate. A key component of this initiative seeks to improve the management of stormwater, which was identified as a priority threat to the way local communities value and use the marine estate. These include intrinsic values such as protecting aquatic ecosystems and biodiversity, aesthetic values and sense of place, primary and secondary contact recreation and primary uses.

3. What is the Local Environmental Plan Assessment Tool and how was it developed?

The LEP Assessment Tool provides immediate access to water-related clauses in LEPs and was developed as a resource for planning bodies and local councils. Our goal was to create an objective, accessible and consistent way to search and assess water-related clauses based on their content and intent (Section 3.2). The LEP Assessment Tool provides for a comparison of internal consistency and comprehensiveness between stated zone objectives and water-related requirements in the clauses themselves.

The LEP Assessment Tool is a Microsoft® Excel® (for Office 365) spreadsheet that contains all water-related clauses for 66 LEPs that were in force across coastal New South Wales, prior to provisions for LSPSs under the EP&A Act (Figure 1).

For the purposes of this exercise, we treated zoning provisions as clauses. For example, a common objective of Zone W1 (Natural Waterways) is to 'prevent development that would have an adverse effect on the natural values of waterways in this zone'.

3.1 Identifying water-related clauses on water quality and waterway health

Water-related clauses were identified through a keyword search of the terms 'water', 'waterway', 'wetland', 'stormwater', 'groundwater', or 'riparian'. Water-related clauses included those whose core objects involve the management of waterways, groundwater ecosystems, wetlands and riparian environments. Clauses with language relating to water were also included (e.g. earthworks), as were water-related zoning clauses (i.e. waterway zones, and zones that integrate water into their objectives).

Clauses that referred to the use or consumption of water, such as those related to drinking water, water bottling operations or consumption-related infrastructure were excluded as their content did not relate to environmental water quality, waterway health or the condition of riparian ecosystems.

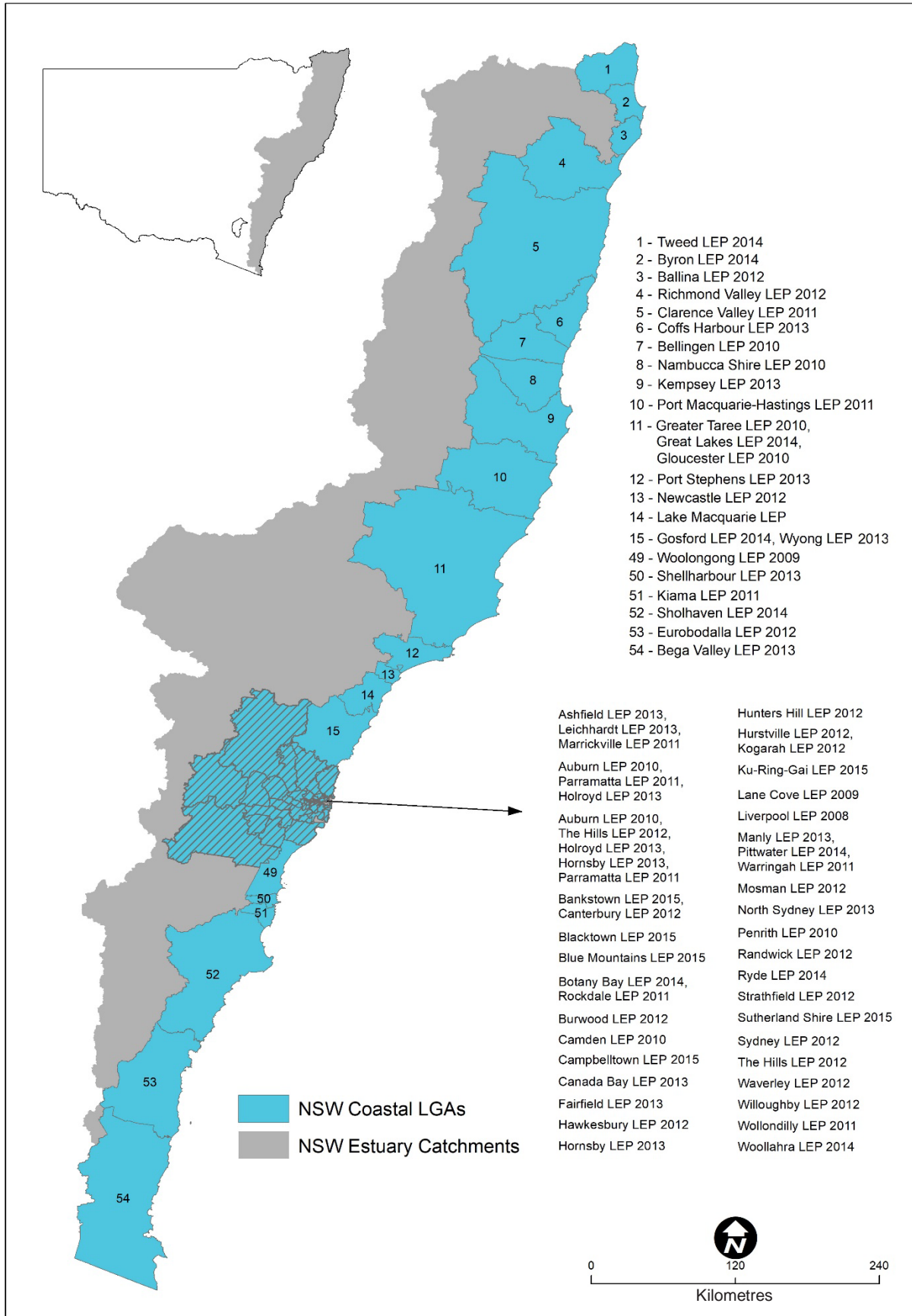


Figure 1 Local Government Areas of the 66 Local Environmental Plans used in the development of the Local Environmental Plan Assessment Tool

3.2 Coding clauses

The content of water-related clauses was coded using nine fields. These fields permit systematic identification and sorting of clauses and permit an impartial analysis of clauses based on their content. For the latter, 'Objective Statement' and 'Value Statement' codes were created to explicitly show how the current clauses and provisions (including terminology) align with the management goals of our state water quality policy. This policy requires that waterways and associated aquatic ecosystems, including riparian corridors, should be protected, maintained or improved depending on whether the community environmental values and uses are being achieved (see [NSW Water Quality Objectives](#)).

The fields used in coding clauses are:

- **Name of Council:** The name of the council to which the LEP applies. For amalgamated councils where multiple LEPs apply, both the name of the amalgamated council and name of the council pre-amalgamation were recorded
- **Clause Number:** The identifying number/designation of the clause. Clauses were identified numerically in the XX.XX format, except for zoning clauses, which are expressed in a Zone-Letter-Number format (e.g. Zone W1)
- **Clause Name:** The name of the clause, based on the heading
- **Clause Content:** Includes the full text of all clauses besides 'zoning provisions', which only include the objectives of the provision and not the full schedule of permitted, consent-dependant or prohibited activities
- **Clause Type:** Indicates the type of clause as determined by its position in the document. For zoning provisions, this also identifies the category of zoning provision (e.g. recreational, industrial, rural, environment protection, special, waterway)
- **Objective Statements:** All management objectives stated or inferred in the content of the clause (not limited to clause objectives) delineated into five possible results:
 - **Maintain:** Used when the text included the term maintain, or specified avoiding, minimising or mitigating the adverse impacts of developments or activities
 - **Protect:** Generally used only when the plan specifically used the term protect. The key exception is in clauses such as 'Development Near Zone Boundaries', where a zoning provision referenced by the clause establishes a Protect objective
 - **Enhance:** Used when a clause clearly establishes a desire to enhance, restore, regenerate, rehabilitate or otherwise improve environmental conditions
 - **Provide Opportunities:** Used when a clause includes utility-related objectives. This type of clause explicitly provides for actions, activities, developments, economic opportunities or recreational use and can provide for multiple opportunities at once
 - **None:** Indicates that the clause did not have any objective statements
- **Values Statements:** All values stated or inferred in the content of the clause delineated into five possible results:
 - **Aesthetic:** Used when the clause identifies specific aesthetic values, scenic values, visual amenity or local character
 - **Cultural:** Used when the clause identifies a cultural value, including Aboriginal, shared and contemporary heritage, or when the provisions of a clause establish protections around a specific element of cultural heritage (e.g. earthwork provisions that establish protections for relics)
 - **Economic:** Used when a clause identifies an economic opportunity or value. This tends to relate to clauses that provide for developments or commercial activities, or that contain language establishing support for the function of local industries

- **Environmental:** Used whenever a clause identifies an environmental or natural value. This includes general statements referring to the environmental or natural values of the area, or specific statements identifying a specific value, such as water quality, waterway health, individual species, specific ecosystems or areas identified under a legislative instrument
- **Recreational:** Used when a clause identifies a recreational value. This includes general values statements and the identification of specific recreational values such as recreational fishing
- **Prohibitions:** Denotes whether a clause establishes a prohibition against development, and if so, whether this prohibition applies only to specific developments. Generally applies only if the clause explicitly prohibits a type of development and does not apply to conditions surrounding development consent
- **Procedural Steps:** Denotes any procedural steps a clause establishes for developments or other commercial activities. These can include a requirement for consent from an official consent authority and a requirement for a consent authority to assess certain aspects of a proposal before providing consent.

4. How to navigate the Local Environmental Plan Assessment Tool

The built-in filter function of Microsoft Excel is used to navigate the LEP Assessment Tool. **Row 1** displays the nine categories you can use for filtering. First, determine the category you want to filter on and then assess whether you need to use a 'simple' or 'complex' filter.

4.1 Simple filter

A simple filter is applied to the categories 'Council Name', 'Clause Number', 'Clause Type', 'Prohibitions' and 'Procedural Steps'. This is because the content of these categories is simple and straightforward.

To perform a simple filter, open the filter menu in Excel by clicking the 'down arrow' button that corresponds to the relevant category. This will open a drop-down menu with all the recorded values for that category. In this menu, first deselect the 'Select All' option to clear all selected values.

Once no values are selected, navigate to the value(s) you want to include, either manually via the alphabetically-ordered drop-down menu, or via the search function. Once you have selected all desired values, click the 'OK' button to apply the filter. This will ensure only entries with the specified value for the chosen category will be selected.

The example in Figure 2 below shows a simple filter based on the category 'Council', and selection 'Ballina'.

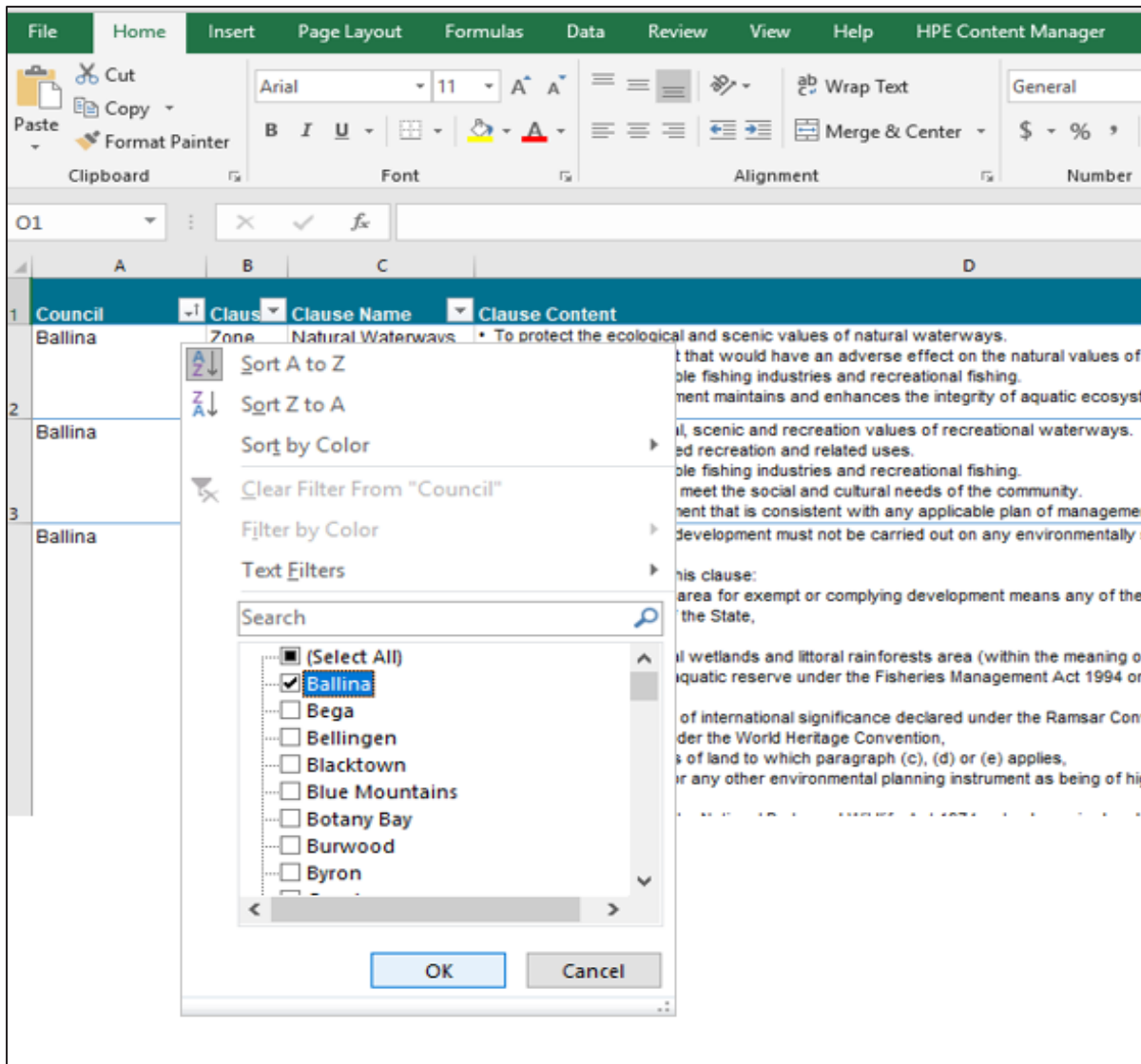


Figure 2 Using a simple filter in the Local Environmental Plan Assessment Tool to extract water-related clauses available in the Ballina Local Environmental Plan

4.2 Complex filter

For categories that have a wide range of values, or extensive content, a complex filter should be applied. Specific examples where a complex filter can be useful are for the categories 'Objective Statement' and 'Values Statement' where multiple values often overlap, or for 'Clause Content'.

Preparations for a complex filter are the same as for a simple filter: select the category to be filtered and uncheck the 'Select All' option. Once this is done, click on the 'Text Filters' button and choose 'Contains'. This will open a dialogue box.

In the dialogue box, enter the term you want to filter for. As an example, if you wanted to search for clauses with an 'Enhance' objective, you would filter using the term 'Enhance' to filter for clauses that included 'Enhance' in the objective statement. If necessary, you can use the dialogue box to add to the query and filter for multiple options occurring concurrently (e.g. 'maintain' and 'provide opportunities'), or to exclude certain results (e.g. 'enhance' without 'provide opportunities').

The complex filter can also be applied to the 'Clause Content' category to identify all clauses that include a specific term. For example, a complex filter using the term 'riparian' identifies all clauses where the word 'riparian' was used (see Figure 3). Similarly, including flood planning clauses while using the term 'stormwater', identifies all clauses and zoning provisions that reference stormwater.

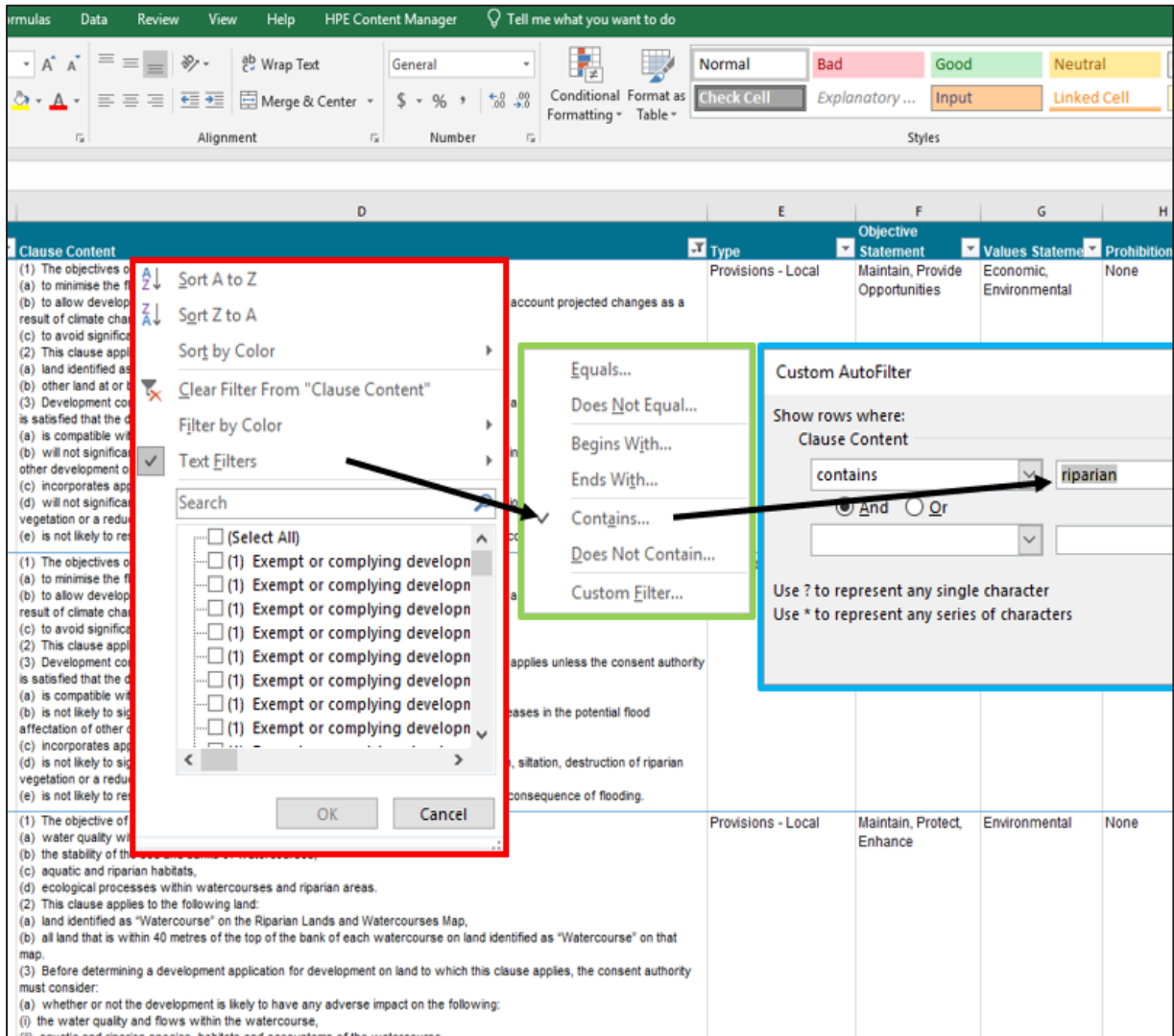


Figure 3 Applying a complex filter to the Clause Content category to find all clauses with the term 'riparian'

5. Using the tool to analyse clause suitability

The 'Objective Statement', 'Values Statement', 'Prohibitions', and 'Procedural Steps' categories are the main output of the LEP Assessment Tool. By interpreting the values in these categories, reviewers can gain insight into the intent of the clause and the protections it puts in place.

The objectives and values statements of a clause should be considered in the context of the council's overall management goals and the current state of waterways within the LGA. It is assumed that management goals have been outlined in the LSPS, and councils have an intent to update their LEPs (including the aims of the LEP) and DCPs to help achieve the goals.

Clauses with a 'Maintain' objective applying to a narrow set of 'Values' statements may be more effective for local management than broader or more aspirational clauses in some areas. When considering the 'Prohibitions' and 'Procedural Steps' of a clause, the focus should be whether these requirements support the goals established within the clause or identifying where the clause diverges from council goals and/or community values and expectations. For example, consider clause 6.4 of the Ku-ring-gai LEP (Table 1). The objectives of this clause are 'protect' and 'enhance', and the identified clause values are 'aesthetic' and 'environmental'. This is in line with the language in clause 1.2 Aims of Plan (Table 1), which establishes a priority for inter-generational sustainability as well as ongoing improvements to both water quality and catchment condition. The clause does not prohibit any form of development, but establishes a consent requirement, and clear guidelines along which the consent authority must assess a development prior to granting consent. Considering the results in context illustrates how the objectives, values and procedural requirements it establishes complement the language of the clause to support the outcomes identified in the aims of the LEP, making it a good example of this type of clause.

Boxes 1 and 2 below provide examples on how to use the LEP Assessment Tool to search for, and analyse the content of existing clauses that would be suitable for achieving waterway management goals in the Bayside and Northern Beaches LSPSs. The Bayside example highlights a gap in waterway zonings and a need to strengthen the objective statements of clauses by replacing 'maintain' with 'enhance' or 'improve'. The Northern Beaches example highlights clauses in the three LEPs currently in force for the Northern Beaches LGA that could serve as exemplars, and that a multiple lines of management approach for protecting and enhancing waterways can be achieved by incorporating clauses currently in effect with these LEPs. Note that in both examples we developed a systematic approach to analysing clauses to demonstrate how the tool, the detailed clause analysis and exemplars (Appendix B) can be used.

Overall, the current change to the EP&A Act that requires a review of LEPs every five years, means that the clauses can always remain relevant in the context of the current health or condition of the waterways and their riparian corridors.

Table 1 Excerpts from the Ku-ring-gai Local Environmental Plan

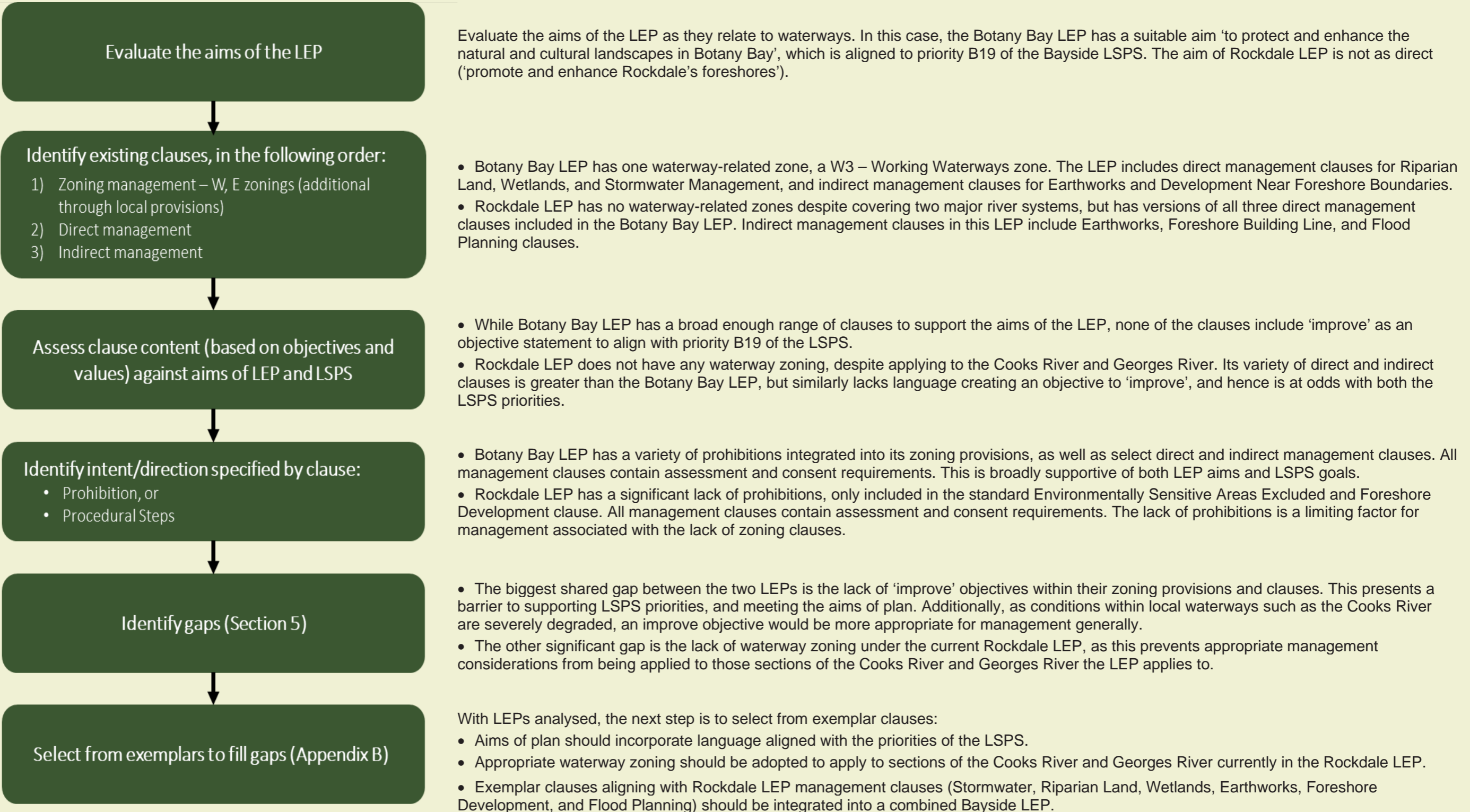
Location in LEP	Excerpt
<p>Part 1 Preliminary 1.2 Aims of Plan</p>	<p>(1) This Plan aims to make local environmental planning provisions for land in Ku-ring-gai in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.</p> <p>(2) The particular aims of this Plan are as follows—</p> <ul style="list-style-type: none"> (a) to guide the future development of land and the management of environmental, social, economic, heritage and cultural resources within Ku-ring-gai, (b) to protect, enhance and sustainably manage the biodiversity, natural ecosystems, scenic values, water resources and ecological processes within the catchments of Ku-ring-gai for the benefit of current and future generations, (c) to maintain and improve water quality within the catchments of Ku-ring-gai, (d) to facilitate adaptation to climate change, (e) to manage risks to the community and the environment in areas subject to natural hazards and risks, (f) to recognize, protect and conserve Ku-ring-gai’s indigenous and non-indigenous cultural heritage, (g) to ensure that development does not conflict with the hierarchy of commercial centres in Ku-ring-gai, (h) to encourage a diversity of employment within Ku-ring-gai, (i) to encourage a variety of housing types within Ku-ring-gai, (j) to achieve land use relationships that promote the efficient use of infrastructure, (k) to facilitate good management of public assets and promote opportunities for social, cultural and community activities, (l) to facilitate development that complements and enhances amenity for residential uses and public spaces.
<p>Part 6 Additional Local Provisions 6.4 Riparian land and adjoining waterways</p>	<p>(1) The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> (a) to protect or improve— <ul style="list-style-type: none"> (i) water quality within waterways, and (ii) the stability of the bed and banks of waterways, and (iii) aquatic and riparian species, communities, populations and habitats, and (iv) ecological processes within waterways and riparian lands, and (v) scenic and cultural heritage values of waterways and riparian lands, (b) where practicable, to provide for the rehabilitation of existing piped or channelised waterways to a near natural state. <p>(2) This clause applies to land identified on the Riparian Lands and Watercourses Map as—</p> <ul style="list-style-type: none"> (a) “Riparian Land Category 1”, or (b) “Riparian Land Category 2”, or (c) “Riparian Land Category 3”, or (d) “Riparian Land Category 3a”.
	<p>Note. Some development types within 40 metres of this land will still require referral to the NSW Office of Water as integrated development.</p>

Location in LEP Excerpt

- (3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider—
 - (a) whether the development is likely to have an adverse impact on the following—
 - (i) the water quality in any waterway,
 - (ii) the natural flow regime, including groundwater flows to any waterway,
 - (iii) aquatic and riparian species, populations, communities, habitats and ecosystems,
 - (iv) the stability of the bed, shore and banks of any waterway,
 - (v) the free passage of native aquatic and terrestrial organisms within or along any waterway and riparian land,
 - (vi) public access to, and use of, any public waterway and its foreshores,
 - (b) any opportunities for rehabilitation or re-creation of any waterway and its riparian areas,
 - (c) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
 - (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—
 - (a) is consistent with the objectives of this clause, and
 - (b) integrates riparian, stormwater and flooding measures, and
 - (c) is designed, sited and will be managed to avoid any potential adverse environmental impacts, and
 - (d) if a potential adverse environmental impact cannot be avoided by adopting feasible alternatives—the development minimises or mitigates any such impact to a satisfactory extent.
-

Box 1: Using the Local Environmental Plan Assessment Tool to identify gaps in Local Environmental Plan clauses

The LEP Assessment Tool was used to assess the two LEPs in force for the Bayside LGA (Botany Bay LEP and Rockdale LEP), in consideration of the local water quality and waterway health conditions, and the goals and priorities for managing waterways in the Bayside LSPS.



Box 2: Using the Local Environmental Plan Assessment Tool to consolidate three Local Environmental Plans

The LEP Assessment Tool was used to identify exemplar clauses in the three LEPs in force for the Northern Beaches LGA, and how they are combined through a multiple lines of management approach into a single LEP that achieves the goals of the Northern Beaches LSPPS.



6. Key findings

The LEP Assessment Tool was designed as a resource to help planning bodies and local councils objectively and consistently review the content of clauses in LEPs. Using the LEP Assessment Tool, we undertook a detailed analysis of all 584 clauses (Appendix A) and found the following:

1. The LEPs included in the LEP Assessment Tool had major variations in how they addressed water quality and waterway health. At the highest level, these variations are expressed in the adoption of water-related clauses, while at the most granular level they are expressed in the content and wording chosen for water-related clauses.
2. No clauses in the Standard Instrument directly address issues of water quality and waterway health, with the exception of zone objectives.
3. Clauses for addressing water quality and health such as those for riparian land, wetlands, and stormwater management are only present as local provisions, where their adoption rate varies depending on the LEP (see Section A.1 in Appendix A).
4. The adoption rate for riparian land(s), wetlands, and stormwater management clauses can be considered minimal. Riparian land(s) clauses were found in ~33% of LEPs, wetlands clauses in ~12% and stormwater management clauses in ~24% (see Section A.2 in Appendix A).
5. There are several in-force LEPs with clauses in local provisions that could be used as exemplars for protecting and managing waterways, water quality and health, wetlands and riparian ecological communities. These are shown in Appendix B.

Overall, the current LEP structure (Standard Instrument and local provisions) provides a working framework for environmental planning that allows local councils to be responsive to the priorities and issues of their community and areas. Provisions are especially strengthened through the multiple lines of management approach, in which there are provisions for waterways in the aims of the LEP, zonings, direct and indirect clauses, and clauses that outline prohibitions and procedural steps. The content of the 66 LEPs generally followed the content of the Standard Instrument, with the exception of the zone objectives, which many councils expanded on. As expected, the clauses in local provisions varied depending on the character of the local area.

In the context of the outcomes being sought by the water quality initiative of the [NSW Marine Estate Management Strategy 2018–2028 \(PDF 12.3MB\)](#), it is clear that all water-related clauses could be strengthened by specific reference to the NSW Government policy on water quality. The policy requires that waterways (including their riparian corridors) be managed according to the community environmental values and uses, which have been identified for all major waterways in New South Wales and are recorded in the [NSW Water Quality and River Flow Objectives](#).

A typical clause for riparian lands and adjoining waterways is to protect and improve water quality within waterways. This clause can, for example, be strengthened by referring to a standard or level of water quality protection or improvement – specifically, ‘protect and improve water quality *to achieve the community environmental values and uses identified in the NSW Water Quality Objectives*’.

In addition to strengthening the provisions of existing clauses, a higher adoption rate of clauses related to managing stormwater discharges would obviously also support the success of the first initiative of the Marine Estate Management Strategy 2018–2028 to improve water quality and reduce marine litter. The benefits of adopting such a clause have been realised along the mid-north coast of New South Wales, where the former Great Lakes Council updated their LEP in 2014, replacing the *Great Lakes Local Environmental Plan 1996*. This update included replacing the ‘waterways’ clause with specific waterway zonings that provided for the protection of waterways (W1 – Natural Waterways, and W2 – Recreational Waterways), incorporating a discrete stormwater management clause, and

incorporating clauses for riparian lands and watercourses and wetlands to compensate for the discontinued wetlands and littoral forests zone. Through ongoing monitoring, the council has reported incremental improvements in the water quality and health of its waterways since 2014 and explicitly attributes these improvements to reductions in the amount and quality of stormwater discharges. Having explicit provisions for stormwater in the LEP has given effect to associated provisions in the council's DCP and award winning polices on water sensitive urban design (WSUD).

7. Access to the Local Environmental Plan Assessment Tool

The LEP Assessment Tool and associated metadata are available from the [Sharing and Enabling Environmental Data \(SEED\)](#) portal (search term 'LEP Tool').

8. Acknowledgments

We are grateful to the following reviewers for their comments, which improved the content of this report: Rachael Woods, Peter Wright and Stefan Kraus of the former Markets and Water Policy Team at EES, Maria Plytarias and Phoebe Laing of the Planning and Assessment Team of DPIE, John Hudson at the Coastal Council and Sarah Joyce at the Sydney Coastal Council Group.

This project was funded by the NSW Government under the Marine Estate Management Strategy 2018–2028. The 10-year strategy was developed by the NSW Marine Estate Management Authority to coordinate the management of the marine estate.

Appendix A: Detailed analysis of tool outputs

All 584 water-related clauses, which were identified in the 66 LEPs making up the LEP Assessment Tool, were reviewed to: i) determine the prevalence and distribution of water-related clauses, ii) group the Clause Name category and identify variations among clauses within the group, and iii) determine the prevalence, distribution and relationships among the objective and values statements.

A.1 Prevalence and distribution of water-related clauses

We identified the relative prevalence and distribution of water-related clauses across all LEP documents and their distribution by clause type. An example of a clause type is the local provision, and as described above, zoning provisions were identified as a clause type for the purposes of developing the LEP Assessment Tool.

As shown in Figure 4, most water-related clauses were located within local provisions. Of significance is that some clause types, including local provisions, aims of the plan, and development standards were not present in all LEP documents.



Figure 4 Number of water-related clauses by clause type

A.2 Variations of intent within the Clause Name category

The Clause Name category is the name of the clause, based on the heading. For example, the Clause Name extracted from clause 6.7 of the Sutherland Shire LEP is ‘Environmentally sensitive land—riparian land and watercourses’. As shown in the LEP Assessment Tool, there are slight variations in the way councils have named their clauses with similar intent. For example, clauses related to stormwater are named ‘stormwater’, ‘stormwater management’ and ‘stormwater and water sensitive urban design’. To assess the variation of intent within the Clause Name category, we made groupings of clause names, as shown in Table 2. The main variations in the intent of the clause are summarised below, for those clauses that are important for managing waterways, water quality and health, wetlands and riparian ecological communities.

Provisions for zones (e.g. W1, W2, W3) were not included in this analysis because they are established clauses or objectives in the Standard Instrument, and variation in intent would primarily reflect minor changes in wording rather than substantial differences in language or approach.

Stormwater clauses

We identified stormwater clauses in 16 of the 66 LEPs, indicating an adoption rate below 25%. The content of stormwater clauses was generally consistent between LEPs. An example of variation is the *Ku-ring-gai LEP 2015*, which also lays out WSUD principles as part of the stormwater clause. Of councils with LEPs that had stormwater clauses, six did not have designated waterway zones. Similarly, the low prevalence of stormwater clauses illustrates the number of councils that have waterway zones without an established stormwater plan.

Wetlands clauses

We identified clauses relating to wetlands in eight LEPs, indicating an adoption rate of ~12%. These clauses were typically referred to as ‘wetlands’ and all eight clauses followed the same structure and language. The only variation found was in the Hawkesbury LEP 2012, which included additional language to recognise the hydrological cycle of wetlands.

Riparian land(s) and watercourses clauses

We identified clauses covering riparian land(s) and/or watercourses/artificial waterbodies in 22 LEPs, indicating an adoption rate of 33%. The titles of these clauses varied significantly, however references to riparian land(s), watercourses, or artificial waterbodies were always present. Likewise, major variations existed in clause content, including how riparian land(s) are identified, the considerations required by the consent authority and the design requirements for development.

While these clauses tend to occur alongside waterway zones, the presence of a waterway zone is not a prerequisite, nor is the presence of a riparian land(s) clause a good predictor of the presence of waterway zones.

Table 2 Groups of clause name categories, and relevance to managing waterways, water quality and health, wetlands and riparian ecological communities

Clause name	Group	Relevance to managing waterways, wetlands and riparian communities
Development for agriculture and animal boarding or training establishments	Agriculture clause	Development clauses were not analysed, as the prevalence of water-related language in these clauses was low, and the subject matter of clauses within this group too varied to support informative analysis.
Horticulture in Zone E3		
Intensive livestock agriculture		
Aims of plan	Aims clause	Aims clauses were not analysed because water-related language generally only made up a single sub-clause, which did not support informative analysis.
Pond-based, tank-based and oyster aquaculture	Aquaculture clause	Aquaculture clauses were not analysed, as there were not enough of these clauses to support informative analysis.
Biodiversity	Biodiversity clause	Biodiversity clauses were not analysed as the low prevalence of these clauses, and their more general focus, limit their ability to support an informative analysis of water-related clauses.
Biodiversity protection		
Natural resource sensitivity–biodiversity		

Clause name	Group	Relevance to managing waterways, wetlands and riparian communities
<p>Complying development</p> <p>Development on land in Zone IN4</p> <p>Erection of dwelling houses in Zone E3</p> <p>Environmental Management</p>	Development clause	Development clauses were not included in the analysis, as the prevalence of water-related language in these clauses was low, and the subject matter of clauses within this group was too varied to support informative analysis.
<p>Drinking water catchments</p> <p>Williams River Catchment</p>	Drinking water catchment clause	Clauses related to drinking water catchments were not prevalent enough within analysed LEPs to support a comparative analysis of clause language. Efforts to aggregate these clauses with other water-related clauses found that language differences between clauses prevented informative analysis.
<p>Earthworks</p>	Earthworks clause	Earthworks clauses were not analysed, as water-related language within these clauses was generally both limited and standardised.
<p>Assessment of certain environmentally sensitive land</p> <p>Environmentally significant land</p> <p>Impact on environmentally sensitive land</p> <p>Protected area—ecological buffer area</p>	Environmentally sensitive land clause	Environmentally sensitive land clauses were not analysed, as there were not enough examples of this clause type to support analysis, and those examples that did exist included significant variations in the objects of their clause.
<p>Environmentally sensitive areas excluded</p>	Exempt development clause	Exempt development clauses were not analysed, as these clauses were all derived from the Standard Instrument, and showed only limited variation, which did not support informative analysis.
<p>Flood planning</p>	Flood planning clause	Flood planning clauses were not analysed in depth, as changes in language between LEPs were not significant enough to support informative analysis.
<p>Development on the foreshores of Port Hacking, Georges River, Woronora River and Port Botany</p> <p>Foreshore building line</p> <p>Limited development on foreshore area</p>	Foreshore development clause	Foreshore development clauses were not analysed, as these clauses contain limited language related to waterway health and would provide only limited support for informative analysis.
<p>Environmentally sensitive land—groundwater vulnerability</p>	Groundwater clause	Clauses related to groundwater were not prevalent enough within analysed LEPs to support a comparative analysis of clause language. Efforts to aggregate these clauses with other water-related clauses found that language differences between clauses prevented informative analysis.

Clause name	Group	Relevance to managing waterways, wetlands and riparian communities
Development on land in karst areas	Karst clause	Karst clauses (clauses related to development on land in areas where karst caves are in evidence) were not analysed, as only one example was found as a water-related clause.
Development on landslide risk land	Landslide clause	Landslide clauses were not analysed, due both to limited presentation as a water-related clause, and the limited prevalence of water-related language within the clause.
Landslide risk		
Protected area-landslide risk		
Protected area-slope constraint area		
Development on natural resources sensitive land	Natural resource development clause	Natural resource development clauses were not analysed, as only one example was found.
Dual occupancies and secondary dwellings in certain rural and environmental zones	Residential development clause	Residential clauses were not analysed, as only one example was found.
Environmentally sensitive land—riparian land and watercourses	Riparian land clause	Riparian land clauses were analysed, as there were sufficient examples to support informative analysis, and both the majority of language and the objects of the clause were of direct relevance for waterway health.
Protected area—riparian land and watercourses		
Riparian land		
Riparian land and adjoining waterways		
Riparian land and watercourses		
Riparian land, watercourses and artificial waterbodies		
Riparian lands		
Development on river front areas	Riverfront development clause	Riverfront development clauses were not included in analysis as there were not enough examples of these clauses to support informative analysis.
Subdivision of land fronting a watercourse		
Development for the purpose of stormwater management systems	Stormwater clause	Stormwater clauses were included in analysis, as there were enough clauses to support analysis, and the language and objects of the clause were of direct relevance to waterway health.
Stormwater		
Stormwater and water sensitive urban design		
Stormwater management		

Clause name	Group	Relevance to managing waterways, wetlands and riparian communities
Additional requirements for subdivision in certain rural, residential and environmental protection zones	Subdivision clause	Subdivision clauses were not included in analysis, as there were not enough examples, and existing examples were too varied in their objects to support informative analysis.
Exceptions to minimum subdivision lot size for Grose Wold		
Minimum subdivision lot size		
Minimum subdivision lot size for strata plan schemes in certain residential, rural and waterway zones		
Eco-tourist facilities	Tourism clause	Tourism clauses were not analysed, as these clauses were all derived from the Standard Instrument, and showed only limited variation, which did not support informative analysis.
Water Water protection	Water protection clause	Clauses related to water protection were not prevalent enough within analysed LEPs to support a comparative analysis of clause language (two examples). Efforts to aggregate these clauses with other water-related clauses found that language differences between clauses prevented informative analysis.
Natural watercourses	Waterway clause	Clauses related to waterways were not prevalent enough within analysed LEPs to support a comparative analysis of clause language (one example). Efforts to aggregate these clauses with other water-related clauses found that language differences between clauses prevented informative analysis.
Wetlands	Wetlands clause	Riparian land clauses were analysed, as there were sufficient examples to support informative analysis, and both the majority of language and the objects of the clause were of direct relevance for waterway health.

A.3 Objective and values statements

The objective and values statements refer to the intent of the management and what is being managed, respectively. We determined the prevalence and distribution of objective and values statements by clause type and then identified relationships between the two to understand how they are applied to achieve the aim of the plan.

Objective statements

The most common objective statement in the LEPs was 'Maintain', which was predominantly found in the local provisions and in almost all clauses with an environmental intent (Figure 5). The next most common objective statement was 'Provide opportunities' which

was again prevalent in the local provisions and also in the zone provisions. The Provide opportunities statement almost invariably occurred alongside other objective statements such as Maintain, Protect or Enhance. This specific clause structure demonstrates a balance between providing opportunities for development while recognising environmental constraints.

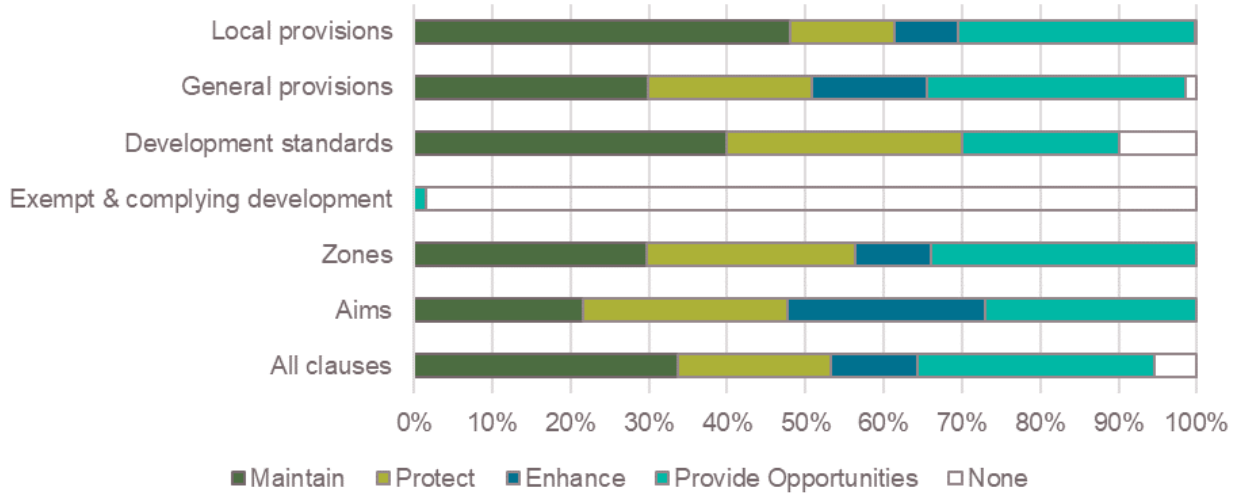


Figure 5 Percentages of objective statements by clause type

Values statements by clause type

The most common values statement was ‘Environmental’, being tied to every clause type (Figure 6), and also generally underpinned one or more additional values. This is significant because it highlights an overall goal of an LEP, which is to ensure that environmental values are considered in all major planning decisions.

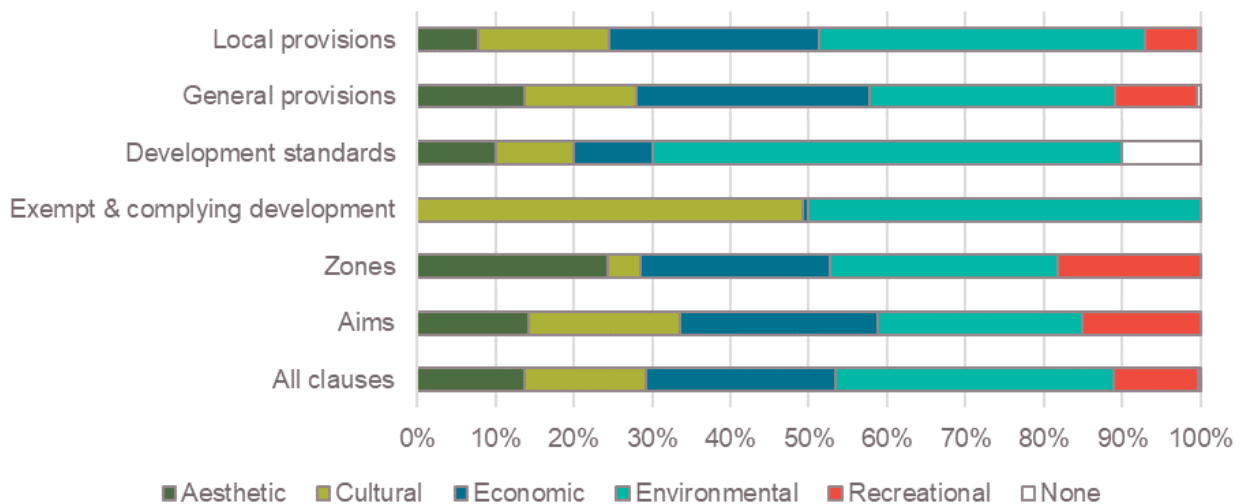


Figure 6 Percentages of values statements by clause type

Appendix B: Exemplar water-related clauses

This appendix provides exemplar clauses for protecting waterways and water dependent ecosystems in New South Wales.

B.1 Wetland clause (Hawkesbury Local Environmental Plan 2012)

- (1) The objective of this clause is to ensure that wetlands are preserved and protected from the impacts of development.
- (2) This clause applies to land identified as “Wetlands” on the Wetlands Map.
- (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider:
 - (a) whether or not the development is likely to have any significant adverse impact on the following:
 - (i) the condition and significance of the existing native fauna and flora on the land,
 - (ii) the provision and quality of habitats on the land for indigenous and migratory species,
 - (iii) the surface and groundwater characteristics of the land, including water quality, natural water flows and salinity,
 - (iv) the growth and survival of native fauna and flora,
 - (v) any wetlands in the vicinity of the development, and
 - (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
- (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

B.2 Riparian Land clause (Ku-ring-gai Local Environmental Plan 2015)

- (1) The objectives of this clause are as follows:
 - (a) to protect or improve:
 - (i) water quality within waterways, and
 - (ii) the stability of the bed and banks of waterways, and
 - (iii) aquatic and riparian species, communities, populations and habitats, and
 - (iv) ecological processes within waterways and riparian lands, and
 - (v) scenic and cultural heritage values of waterways and riparian lands,
 - (b) where practicable, to provide for the rehabilitation of existing piped or channelised waterways to a near natural state.
- (2) This clause applies to land identified on the Riparian Lands and Watercourses Map as:
 - (a) “Riparian Land Category 1”, or
 - (b) “Riparian Land Category 2”, or
 - (c) “Riparian Land Category 3”, or
 - (d) “Riparian Land Category 3a”.

Note. Some development types within 40 metres of this land will still require referral to the NSW Office of Water as integrated development.

- (3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider:
 - (a) whether the development is likely to have an adverse impact on the following:
 - (i) the water quality in any waterway,
 - (ii) the natural flow regime, including groundwater flows to any waterway,
 - (iii) aquatic and riparian species, populations, communities, habitats and ecosystems,
 - (iv) the stability of the bed, shore and banks of any waterway,
 - (v) the free passage of native aquatic and terrestrial organisms within or along any waterway and riparian land,
 - (vi) public access to, and use of, any public waterway and its foreshores,
 - (b) any opportunities for rehabilitation or re-creation of any waterway and its riparian areas,
 - (c) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
- (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:
 - (a) is consistent with the objectives of this clause, and
 - (b) integrates riparian, stormwater and flooding measures, and
 - (c) is designed, sited and will be managed to avoid any potential adverse environmental impacts, and
 - (d) if a potential adverse environmental impact cannot be avoided by adopting feasible alternatives—the development minimises or mitigates any such impact to a satisfactory extent.

B.3 Waterway/Water Protection clause (Parramatta Local Environmental Plan 2011)

- (1) The objective of this clause is to maintain the hydrological functions of riparian land, waterways and aquifers, including protecting the following:
 - (a) water quality,
 - (b) natural water flows,
 - (c) the stability of the bed and banks of waterways,
 - (d) groundwater systems.
- (2) This clause applies to land identified as “Riparian Land and Waterways” on the Natural Resources—Riparian Land and Waterways Map.
- (3) Before determining a development application for development on land to which this clause applies, the consent authority must consider any adverse impact of the proposed development on the following:
 - (a) the water quality of receiving waters,
 - (b) the natural flow regime,
 - (c) the natural flow paths of waterways,
 - (d) the stability of the bed, shore and banks of waterways,
 - (e) the flows, capacity and quality of groundwater systems.
- (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - (a) the development is designed, sited and will be managed to avoid any adverse environmental impact, or
 - (b) if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

B.4 Stormwater Management clause (Blue Mountains Local Environmental Plan 2015)

- (1) The objective of this clause is to avoid the adverse impacts of urban stormwater on land on which development is located and on adjoining properties, native bushland and receiving waters.
- (2) Development consent must not be granted for development unless the consent authority is satisfied that the development:
 - (a) incorporates best practice water sensitive urban design principles, and
 - (b) is designed to maximise the use of water permeable surfaces on the land having regard to groundwater levels and the soil characteristics affecting on-site infiltration of water, and
 - (c) includes, if practicable, on-site stormwater retention for reuse as an alternative supply to mains water, groundwater or river water, and
 - (d) avoids any adverse impacts caused by stormwater runoff on adjoining properties, native bushland and the receiving natural environment by ensuring that:
 - (i) the quality of surface water or groundwater leaving the site is not reduced in the short or long term, and
 - (ii) the quantity and flow characteristics of stormwater leaving the site is not adversely altered, and
 - (iii) stormwater treatment and disposal methods achieve adequate filtration, absorption, dissipation and scour protection, and
 - (e) integrates stormwater management measures into the landscape so as to provide a neutral or beneficial effect on environmental and water quality protection, stormwater retention and detention, flood mitigation, landscaping, public open spaces and recreational and visual amenity.

B.5 Stormwater Management and Water Sensitive Urban Design (WSUD) clause (Ku-ring-gai Local Environmental Plan 2015)

- (1) The objective of this clause is to avoid or minimise the adverse impacts of urban stormwater on the land on which development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems.
- (2) Before granting development consent to development on any land to which this Plan applies, the consent authority must be satisfied that:
 - (a) water sensitive urban design principles are incorporated into the design of the development, and
 - (b) riparian, stormwater and flooding measures are integrated, and
 - (c) the stormwater management system includes all reasonable management actions to avoid any adverse impacts on the land to which the development is to be carried out, adjoining properties, native bushland, waterways and groundwater systems, and
 - (d) if a potential adverse environmental impact cannot be feasibly avoided, the development minimises and mitigates the adverse impacts of stormwater runoff on adjoining properties, native bushland, waterways and groundwater systems.
- (3) For the purposes of subclause (2) (a), the water sensitive urban design principles are:
 - (a) protection and enhancement of water quality, by improving the quality of stormwater runoff from urban catchments,
 - (b) minimisation of harmful impacts of urban development on water balance and on surface and groundwater flow regimes,
 - (c) integration of stormwater management systems into the landscape in a manner that provides multiple benefits, including water quality protection, stormwater retention and detention, public open space, and recreational and visual amenity,
 - (d) retention, where practical, of on-site stormwater for use as an alternative supply to mains water, groundwater or river water.

B.6 Zone classification clauses

IN2 – Light Industrial (Willoughby Local Environmental Plan 2012)

- To provide a wide range of light industrial, warehouse and related land uses.
- To encourage employment opportunities and to support the viability of centres.
- To minimise any adverse effect of industry on other land uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To support and protect industrial land for industrial uses.
- To identify and preserve industrial land to meet the current and future light industrial needs of Willoughby and the wider region.
- To accommodate industrial development that provides employment and a range of goods and services without adversely affecting the amenity, health or safety of residents in adjacent areas.
- To protect the viability of business zones in Willoughby by enabling development for the purposes of offices if they are used in conjunction with industrial, manufacturing, warehousing or other permitted uses on the same land.
- To improve the environmental quality of Willoughby by ensuring that land uses conform to land, air and water quality pollution standards and environmental and hazard reduction guidelines.
- To accommodate uses that, because of demonstrated special building or site requirements or operational characteristics, cannot be or are inappropriate to be located in other zones.

IN4 – Working Waterfront (Lake Macquarie Local Environmental Plan 2014)

- To retain and encourage waterfront industrial and maritime activities.
- To identify sites for maritime purposes and for activities that require direct waterfront access.
- To ensure that development does not have an adverse impact on the environmental and visual qualities of the foreshore.
- To encourage employment opportunities.
- To minimise any adverse effect of development on land uses in other zones.
- To recognise the contribution that marinas make to the recreational needs of the community.
- To ensure development does not adversely affect the ecology, scenic values or navigability of Lake Macquarie or its waterways.
- To encourage tourism development that is sensitively designed to enhance and complement its location and avoid unacceptable adverse impacts on the environment.

E2 – Environmental Conservation (Eurobodalla Local Environmental Plan 2012)

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To identify sensitive coastal lakes, estuaries, wetlands, overland flow paths and riparian zones and those areas at risk from coastline hazards, including sea level rise.
- To protect and improve water quality.
- To protect and enhance the natural environment for recreation purposes.
- To manage items, places and landscapes of Aboriginal cultural heritage significance into the future in collaboration with the local Aboriginal community.

E2 – Environmental Conservation (Penrith Local Environmental Plan 2010)

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, wetlands, groundwater resources, biodiversity corridors, areas of remnant indigenous vegetation and dependent ecosystems.
- To allow for low impact passive recreational and ancillary land uses that are consistent with the retention of the natural ecological significance.

E3 – Environmental Management (Campbelltown Local Environmental Plan 2015)

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To enable development for purposes other than rural-residential only if that development is compatible and complementary, in terms of design, size and scale, with the character of land in the zone.
- To allow cellar door premises, restaurants and cafes only where they are directly associated with the agricultural use of the land.
- To protect, and maintain the environmental, ecological and visual amenity of, the Scenic Hills, the Wedderburn Plateau and environmentally sensitive lands in the vicinity of the Georges River from inappropriate development.
- To preserve the rural heritage landscape character of the Scenic Hills.
- To protect and enhance areas of scenic value and the visual amenity of prominent ridgelines.
- To protect bushland, wildlife corridors and natural habitat, including waterways and riparian lands.
- To ensure the preservation and maintenance of environmentally significant and environmentally sensitive land.

E4 – Environmental Living (Hawkesbury Local Environmental Plan 2012)

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To restrict development on land that is inappropriate for development because of its physical characteristics or bushfire risk.
- To ensure that land uses are compatible with existing infrastructure, services and facilities and with the environmental capabilities of the land.
- To encourage existing sustainable agricultural activities.
- To ensure that development does not create or contribute to rural land-use conflicts.
- To promote the conservation and enhancement of local native vegetation, including the habitat of threatened species, populations and ecological communities by encouraging development to occur in areas already cleared of vegetation.
- To ensure that development occurs in a way that does not have a significant adverse effect on water catchments, including surface and groundwater quality and flows, land surface conditions and important ecosystems such as waterways.

RE1 – Public Recreation (Campbelltown Local Environmental Plan 2015)

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To provide for land uses compatible with the ecological, scientific, cultural or aesthetic values of land in the zone.
- To facilitate the multiple use of certain open space areas.
- To facilitate development that is ancillary or incidental to the special land uses provided for in this zone.
- To provide for the sufficient and equitable distribution of public open space to meet the needs of the local community.
- To preserve and rehabilitate bushland, wildlife corridors and natural habitat, including waterways and riparian lands, and facilitate public enjoyment of these areas.
- To provide for the retention and creation of view corridors.
- To protect and enhance areas of scenic value and the visual amenity of prominent ridgelines.
- To preserve land that is required for public open space or recreational purposes.

RE2 – Private Recreation (Eurobodalla Local Environmental Plan 2012)

- To enable land to be used for private open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To conserve the scenic and environmental resources of the land including the protection of environmental assets such as remnant vegetation, waterways and wetlands, and habitats for threatened species, populations and communities.

W1 – Natural Waterways (Ku-Ring-Gai Local Environmental Plan 2015)

- To protect the ecological and scenic values of natural waterways.
- To prevent development that would have an adverse effect on the natural values of waterways in this zone.
- To provide for sustainable fishing industries and recreational fishing.
- To prevent development that would have an adverse effect on the recreational enjoyment of the natural environment.
- To ensure that development maintains and enhances the health of waterways.

W2 – Recreational Waterways (Marrickville Local Environmental Plan 2011)

- To protect the ecological, scenic and recreation values of recreational waterways.
- To allow for water-based recreation and related uses.
- To provide for sustainable fishing industries and recreational fishing.
- To provide for development that supports or does not undermine restoration of the waterway and its foreshores.

W3 – Working Waterways (Botany Bay Local Environmental Plan 2011)

- To enable the efficient movement and operation of commercial shipping, water-based transport and maritime industries.
- To promote the equitable use of waterways, including appropriate recreational uses.
- To minimise impacts on ecological values arising from the active use of waterways.
- To provide for sustainable fishing industries.