

PART 1 ABOUT THE PLANNING SCHEME

1.1 Introduction

- (1) The Douglas Shire Planning Scheme (planning scheme) has been prepared in accordance with the *Sustainable Planning Act 2009* (the Act) as a framework for managing development in a way that advances the purpose of the Act.
- (2) In seeking to achieve this purpose, the planning scheme sets out Douglas Shire Council's intention for the future development in the planning scheme area, over the next 20 years.
- (3) The planning scheme seeks to advance state and regional policies through more detailed local responses, taking into account the local context.
- (4) While the planning scheme has been prepared with a 20 year horizon, it will have implications for the shire that will extend well beyond this timeframe. Therefore, it will be reviewed periodically in accordance with the Act to ensure that it responds appropriately to the changes of the community at a local, regional and state level.
- (5) The planning scheme applies to the planning scheme area of Douglas Shire Council including all premises, roads, internal waterways and local government tidal areas and interrelates with the surrounding local government areas illustrated in Figure 1.1.a.

Editor's note - State legislation may state that the planning scheme does not apply to certain areas, e.g. Strategic port land under the *Transport Infrastructure Act 1994*.

Figure 1.1.a – Local government planning scheme area and context



1.2 Planning scheme components

- (1) The planning scheme comprises the following components:
 - (a) about the planning scheme
 - (b) state planning provisions
 - (c) the strategic framework
 - (d) the local government infrastructure plan
 - (e) tables of assessment
 - (f) the following zones:
 - (i) Centre zone;
 - (ii) Community facilities zone;
 - (iii) Conservation zone;
 - (iv) Environmental management zone;
 - (v) Industry zone;
 - (vi) Low density residential zone;
 - (vii) Low-medium density residential zone;
 - (viii) Medium density residential zone;
 - (ix) Recreation and open space zone;
 - (x) Rural zone;
 - (xi) Rural residential zone;
 - (xii) Special purpose zone;
 - (xiii) Tourism zone;
 - (xiv) Tourist accommodation zone.
 - (g) the following local plans:
 - (i) Cape Tribulation and Daintree Coast local plan code
 - (A) Precinct 1 – General conservation precinct;
 - (B) Precinct 2 – Low impact residential precinct;
 - (C) Precinct 3 – Low impact commercial precinct;
 - (D) Precinct 4 – Low impact community purpose precinct;
 - (E) Precinct 5 – Low impact rural production and tourism enterprise precinct;
 - (F) Precinct 6 – Low impact tourism accommodation precinct.
 - (ii) Coastal communities local plan code
 - (A) Precinct 1 – Wonga Beach rural precinct;
 - (B) Precinct 2 – Wonga Beach low density residential precinct;
 - (C) Precinct 3 – Wonga Beach local centre precinct;
 - (D) Precinct 4 – Wonga Beach rural residential precinct;
 - (E) Precinct 5 – Wonga Beach Lifu Close precinct;
 - (F) Precinct 6 – Newell low density precinct;
 - (G) Precinct 7 – Newell local centre precinct.
 - (iii) Mossman local plan code;
 - (A) Precinct 1 – Mossman North precinct;
 - (B) Precinct 2 – Foxtton Road precinct;
 - (C) Precinct 3 – Junction Road residential precinct;
 - (D) Precinct 4 – Junction Road industry precinct;
 - (E) Precinct 5 – Town Centre precinct;
 - (F) Precinct 6 – Front Street precinct;
 - (G) Precinct 7 – Emerging Community precinct;
 - (H) Precinct 8 – Mossman South industry precinct;
 - (I) Precinct 9 – Mossman Gorge community precinct.
 - (i) Port Douglas / Craiglie local plan code;
 - (A) Precinct 1 – Port Douglas precinct;
 - (B) Precinct 2 – Integrated Resort precinct;
 - (C) Precinct 3 – Craiglie Commercial and Light industry precinct;

- (D) Precinct 4 – Old Port Road / Mitre Street precinct;
- (E) Precinct 5 – Very Low Density Residential/ Low Scale Recreation/Low Scale Educational/ Low Scale Entertainment Uses precinct.
- (ii) Return to Country local plan code
 - (A) Precinct 1 – Bulban precinct;
 - (B) Precinct 2 – Dawnvale precinct;
 - (C) Precinct 3 – Buru precinct;
 - (D) Precinct 4 – Zig Zag Yards Camp precinct;
 - (E) Precinct 5 – Degarra precinct;
 - (F) Precinct 6 – Kalkandamal precinct;
 - (G) Precinct 7 – Kaba Kada precinct;
 - (H) Precinct 8 – Daintree precinct.
- (h) the following overlays:
 - (i) Acid sulfate soils overlay;
 - (ii) Bushfire hazard overlay;
 - (iii) Coastal environment overlay;
 - (iv) Flood and storm tide hazard overlay;
 - (v) Hillslopes overlay;
 - (vi) Landscape values overlay;
 - (vii) Natural areas overlay;
 - (viii) Places of significance overlay;
 - (ix) Potential landslide hazard overlay;
 - (x) Transport networks overlay.
- (i) the following development codes:
 - (i) statewide codes:
 - (A) Community residence code;
 - (B) Forestry for wood production code;
 - (C) Reconfiguring a lot (subdividing one lot into two lots) and associated operational work code.
 - (ii) use codes:
 - (A) Animal keeping code;
 - (B) Caretaker's accommodation code;
 - (C) Centre activities code;
 - (D) Child care centre code;
 - (E) Community facilities code;
 - (F) Dual occupancy code;
 - (G) Dwelling house code;
 - (H) Dwelling unit code;
 - (I) Extractive industry code;
 - (J) Home based business code;
 - (K) Industry activities code;
 - (L) Multiple dwelling, short term accommodation code and retirement facility code;
 - (M) Parking station code;
 - (N) Relocatable home park and tourist park code;
 - (O) Rooming accommodation code;
 - (P) Rural activities code;
 - (Q) Sales office code;
 - (R) Service station code;
 - (S) Sport and recreation activities code;
 - (T) Telecommunications facility code.
 - (iii) development codes for the planning scheme:
 - (A) Access, parking and servicing code;

- (B) Advertising devices code;
 - (C) Environmental performance code;
 - (D) Filling and excavation code;
 - (E) Infrastructure works code;
 - (F) Landscaping code;
 - (G) Reconfiguring a lot code;
 - (H) Ship sourced pollutants reception facilities in marinas code;
 - (I) Vegetation management code.
- (j) schedules and appendices.
- (k) The following planning scheme policies support the planning scheme:
- (i) Planning scheme policy 6.2 – Building design and architectural elements;
 - (ii) Planning scheme policy 6.3 – Crime prevention through environmental design;
 - (iii) Planning scheme policy 6.4 – Environmental management plans;
 - (iv) Planning scheme policy 6.5 – FNQROC Regional Development Manual;
 - (v) Planning scheme policy 6.6 – Landscape values;
 - (vi) Planning scheme policy 6.7 – Landscaping;
 - (vii) Planning scheme policy 6.8 – Natural environment;
 - (viii) Planning scheme policy 6.9 – Natural hazards;
 - (ix) Planning scheme policy 6.10 – Parking and access;
 - (x) Planning scheme policy 6.11 – Places of significance;
 - (xi) Planning scheme policy 6.12 – Potential and actual acid sulfate soils
 - (xii) Planning scheme policy 6.13 – Site assessments;
 - (xiii) Planning scheme policy 6.14 – Structure planning.

1.3 Interpretation

1.3.1 Definitions

- (1) A term used in the planning scheme has the meaning assigned to that term by one of the following:
- (a) the Act;
 - (b) the *Sustainable Planning Regulation 2009* (the Regulation);
 - (c) the definitions in Schedule 1 of the planning scheme;
 - (d) the *Acts Interpretation Act 1954*; or
 - (e) the ordinary meaning where that term is not defined in the Act, the Regulation, Schedule 1 of the planning scheme or the *Acts Interpretation Act 1954*.
- (2) In the event a term has been assigned a meaning in more than one of the instruments listed in sub-section 1.3.1(1), the meaning contained in the instrument highest on the list will prevail.
- (3) A reference in the planning scheme to any act includes any regulation or instrument made under it, and where amended or replaced, means the amended or replaced act.
- (4) A reference in the planning scheme to a specific resource document or standard means the latest version of the resource document or standard.
- (5) A reference to a part, section, table or schedule is a reference to a part, section, table or schedule of the planning scheme.

1.3.2 Standard drawings, maps, notes, editor's notes and footnotes

- (1) Standard drawings contained in codes or schedules are part of the planning scheme.

- (2) Maps provide information to support the outcomes and are part of the planning scheme.
- (3) Notes are identified by the title 'note' and are part of the planning scheme.
- (4) Editor's notes and footnotes are extrinsic material, as per the *Acts Interpretation Act 1954*, are identified by the title 'editor's note' and 'footnote' and are provided to assist in the interpretation of the planning scheme; they do not have the force of law.

Note - this is an example of a note.

Editor's note - this is an example of an editor's note.

Footnote 1- see example at bottom of page..

1.3.3 Punctuation

- (1) A word followed by ';' or ', and' is considered to be 'and'.
- (2) A word followed by '; or' means either or both options can apply.

1.3.4 Zones for roads, closed roads, waterways and reclaimed land

- (1) The following applies to a road, closed road, waterway or reclaimed land in the planning scheme area:
 - (a) If adjoined on both sides by land in the same zone - the road, closed road, waterway or reclaimed land is in the same zone as the adjoining land;
 - (b) If adjoined on one side by land in a zone and adjoined on the other side by land in another zone - the road, closed road, waterway or reclaimed land is in the same zone as the adjoining land when measured from a point equidistant from the adjoining boundaries;
 - (c) If the road, closed road, waterway or reclaimed land is adjoined on one side only by land in a zone - the entire waterway or reclaimed land is in the same zone as the adjoining land; or
 - (d) If the road, closed road, waterway or reclaimed land is covered by a zone then that zone applies.

Editor's note — the boundaries of the local government area are described by the maps referred to within the Local Government Regulation 2012.

1.4 Categories of development

- (1) The categories of development under the Act are:
 - (a) **Exempt development**
Note - a development permit is not required for exempt development.
 - (b) **Self-assessable development**
Note - a development permit is not required for self-assessable development.
 - (c) **Development requiring compliance assessment**
Note - a compliance permit is required for development requiring compliance assessment.
 - (d) **Assessable development**
Note - a development permit is required for assessable development.
 - (e) **Prohibited development**
Note - as development application or a request for compliance assessment cannot be made for prohibited development.
- (2) The Act and Regulation prescribe levels of assessment for certain types of development.
- (3) The planning scheme also states the level of assessment for certain types of development in the planning scheme area in Part 1.

1 Footnote – this is an example of a footnote.

1.5 Hierarchy of assessment criteria

- (1) Where there is inconsistency between provisions within the planning scheme, the following rules apply:
 - (a) the strategic framework prevails over all other components to the extent of the inconsistency;
 - (b) statewide codes prevail over all other components (other than the strategic framework) to the extent of the inconsistency;
 - (c) overlays prevail over all other components (other than the strategic framework and statewide codes) to the extent of the inconsistency;
 - (d) local plan codes prevail over zone codes, use codes and other development codes to the extent of the inconsistency;
 - (e) zone codes prevail over use codes and other development codes to the extent of the inconsistency.
 - (f) provisions of Part 10 may override any of the above.

1.6 Building work regulated under the planning scheme

- (1) Section 78A of the Act states that a local planning instrument must not include provisions about building work to the extent the building work is regulated under the building assessment provisions, unless permitted under the *Building Act 1975*.
- (2) The building assessment provisions are listed in section 30 of the *Building Act 1975*.

Editor's note - the building assessment provisions are stated in section 30 of the *Building Act 1975* and are a code for integrated development assessment system for the carrying out of building assessment work or self-assessable work (see also section 31 of the *Building Act 1975*).

- (3) This planning scheme, through Part 1, regulates building work in accordance with sections 32 and 33 of the *Building Act 1975*.

Editor's note - the Building Act 1975 permits planning schemes to:

- regulate, for the Building Code of Australia (BCA) or the Queensland Development Code (QDC), matters prescribed under a regulation under the *Building Act 1975* (section 32). These include variations to provisions contained in parts MP1.1, MP 1.2 and MP 1.3 of the QDC such as heights of buildings related to obstruction and overshadowing, siting and design of buildings to provide visual privacy and adequate sight lines, on-site parking and outdoor living spaces. It may also regulate other matters, such as designating land liable to flooding, designating land as bushfire prone areas and transport noise corridors
- deal with an aspect of, or matter related or incidental to building work prescribed under a regulation under section 32 of the *Building Act 1975*
- specify alternative boundary clearances and site cover provisions for Class 1 and 10 structures under section 33 of the *Building Act 1975*.

Refer to Schedule 3 of the Regulation to determine assessable development and the type of assessment.

- (4) The building assessment provisions are contained in the following parts of this planning scheme:
 - (a) Part 6 Zones;
 - (b) Part 7 Local plans;
 - (c) Part 8 Overlays.

Editor's note - a decision in relation to building work that is assessable development under the planning scheme should only be issued as a preliminary approval. See section 83(b) of the *Building Act 1975*.

Editor's note - in a development application the applicant may request preliminary approval for building work. The decision on that development application can also be taken to be a referral agency's response under section 271 of the Act, for building work assessable against the *Building Act 1975*. The decision notice must state this.

1.7 Local government administrative matters

1.7.1 Compensation

Compensation paid for loss of development rights under the 2006 Planning Scheme.

- (1) Lots identified in Table 5.6.n have been paid compensation for loss of development rights under the 2006 Planning Scheme.

Table 1.7.1.a - Land where compensation has been paid for loss of development rights under the 2006 Planning Scheme.

Real property description	Property address
Lot 423 RP738673	Cape Tribulation Road, Cow Bay
Lot 442 RP738994	Cape Tribulation Road, Cow Bay
Lot 398 RP739004	Maple Road, Cow Bay
Lot 390 RP739004	Maple Road, Cow Bay
Lot 380 RP739003	Maple Road, Cow Bay
Lot 362 RP739002	Pandanus Road, Cow Bay
Lot 353 RP739002	Hickory Road, Cow Bay
Lot 373 RP739002	Hickory Road, Cow Bay
Lot 125 RP748410	59R Quandong Road, Cow Bay
Lot 106 RP737399	Buchanan Creek Road, Cow Bay
Lot 74 RP737399	Buchanan Creek Road, Cow Bay
Lot 199 RP739767	Cedar Road, Cow Bay
Lot 59 RP738160	Spurwood Road, Cow Bay
Lot 110 RP738161	Quandong Road, Cow Bay
Lot 265 RP738997	Silver Ash Road, Cow Bay
Lot 267 RP738997	55R Kauri Close, Cow Bay
Lot 74 RP739766	Palm Road, Diwan
Lot 237 RP740952	Stonewood Road, Diwan
Lot 237 RP740658	White Beech Road, Cow Bay
Lot 72 RP737399	Buchanan Creek Road, Cow Bay
Lot 150 RP738591	Cape Tribulation Road, Diwan
Lot 318 RP739001	Pandanus Road, Cow Bay
Lot 234 RP740658	White Beech Road, Cow Bay

1.7.2 Native title

- (1) This planning scheme does not regulate Native Title. Nothing in this planning scheme is intended to diminish or extinguish Native Title. Additionally, this planning scheme does not affect or alter any Indigenous Land Use Agreement ('ILUA') in place within Douglas Shire.

1.7.3 Precautionary principle

- (1) Decision making processes associated with this planning scheme apply the precautionary principle to land use and development.
- (2) For the purpose of 1.7.3.(1), the precautionary principle is the principle that lack of scientific certainty should not be a reason for postponing a measure to prevent degradation of the environment if there are threats of serious or irreversible environmental damage.

1.7.4 Declaration of amenity and aesthetic impact referral agency assessment

- (1) For the purpose of Schedule 7 Table 1 Item 17 of the *Sustainable Planning Regulation 2009*, it is declared that building work for a building or structure which is a detached class 1(a)(i) building or a class 10 building or structure within the Hillslopes overlay may:
 - (a) have an extreme adverse effect on the amenity, or the likely amenity, of the locality; or
 - (b) be in extreme conflict with the character of the locality.
- (2) Where building work is triggered by 1.7.4.(1), it must be referred to the local government as a concurrence agency and be assessed against the Hillslopes Overlay Code.

1.7.5 Relationship of the planning scheme to the planning scheme policies

- (1) The planning scheme should be read in conjunction with the planning scheme policies which:
 - (a) provide information that may be required or requested for a development application;
 - (b) contain standards;
 - (c) include guidelines or advice about satisfying assessment criteria in the planning scheme;
- (2) When preparing an application for assessment against the planning scheme or a part of the planning scheme, reference should be made to applicable planning scheme policies.

1.7.6 Film production

- (1) Circumstances for being exempt development if:
 - (a) involving film production carried out solely on private property, or filming for news, current affairs or live to air reporting, where carried out for a period of not more than 3 months.

Note – Despite (a) above, any requirements for buildings or structures will require an application for building works, and any requirements for vegetation damage will require an application for operational works.

Note – A filming permit will be required for the following activities:

- Closing or use of public areas;
- Vehicle access to public areas;
- Using freestanding equipment (e.g. – lighting, tracks and tripods) that may be a danger to the public or may restrict public use;
- Leaving cables on the ground in a public area;
- Using equipment such as catering or changing facilities.

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