

### **5.1. REQUEST SUPERSEDED PLANNING SCHEME AQUACULTURE L3 VIXIES RD WONGA BEACH**

<b>REPORT AUTHOR(S)</b>	Jenny Elphinstone, Senior Planning Officer
<b>GENERAL MANAGER</b>	Michael Kriedemann, Acting General Manager Operations
<b>DEPARTMENT</b>	Development Assessment and Coordination
<b>PROPOSAL</b>	Request for assessment against the superseded 2006 Douglas Shire Planning Scheme (as amended) for a Material Change of Use for Aquaculture.
<b>APPLICANT</b>	Daintree Saltwater Barramundi Fish Farm Pty Ltd Lot 3 Vixies Road Wonga Beach QLD 4873
<b>LOCATION OF SITE</b>	Lot 3 Vixies Road, Wonga Beach
<b>PROPERTY</b>	Lot 3 on SP292103
<b>LOCALITY PLAN</b>	



Figure 1 - Locality Plan

<b>LOCAL PLAN</b>	None Applicable
<b>ZONE</b>	Rural
<b>PLANNING SCHEME</b>	2006 Douglas Shire Planning Scheme (as amended)
<b>REFERRAL AGENCIES</b>	None required for determining the request for superseded scheme assessment. Applicable for a subsequent development application.
<b>NUMBER OF SUBMITTERS</b>	Not applicable for determining the request for superseded scheme assessment. Applicable for a subsequent development application.
<b>STATUTORY ASSESSMENT DEADLINE</b>	2 October 2018
<b>DATE OF REQUEST</b>	21 August 2018

### **RECOMMENDATION**

**That Council agrees to the request (lodged on the 21 August 2018 under section 29 of the *Planning Act 2016*) to accept, assess and decide the application for Material Change of Use for Aquaculture, under the Superseded Planning Scheme, being 2006 Douglas Shire Planning Scheme (as amended), over land described as Lot 3 on SP292103, located at Lot 3 Vixies Road, Wonga Beach and advises the applicant the application must be properly made with Council within six (6) months of the decision notice agreeing to the request.**

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### **EXECUTIVE SUMMARY**

The land currently supports a large aquaculture development known as Daintree Saltwater Barramundi Fish Farm. The farm includes a number of production and settlement ponds. The applicant intends to lodge a development application for a material change of use for aquaculture, being the conversion of some of the settlement ponds into production ponds, thereby substantially increasing the scale and intensity of the activity. The application is complex in its detail due to the number of applicable state codes. The application has taken a number of years to prepare having regard to pre-lodgement discussions with the various agencies and preparing detailed technical reports responding to the benchmarks of the relevant codes.

No concern is raised with the request for Council to accept, assess and determine the application under the superseded Planning Scheme. The majority of environmental considerations are addressed under state codes due to the proximity of the land to coastal wetlands and the nature of the use being a non-devolved environmentally relevant activity (ERA) for aquaculture).

The level of assessment does not change by agreeing to the request for assessment against the superseded Planning Scheme and concerns regarding flood hazard remain applicable.

It is recommended that Council agrees to the request.

## **TOWN PLANNING CONSIDERATIONS**

### **Background**

The property is situated at the north-east corner of Mossman-Daintree Road and Vixies Road, Wonga Beach. The production ponds are located at the southern part of the site adjacent to Vixies Road. The land drains northwards to a tributary of the Daintree River and mangrove species dominate the northern part of the land.

The use of the land for the purpose of aquaculture commenced circa March 1988 at a time when the Planning Scheme in effect nominated the use as “as-of-right.” At that time the use was over part of the historical parent title of Lot 1 on RP749715. In 2004 the aquaculture activity utilised some 3.34 hectares and at that time was operated under a license issued by the Department of Primary Industry. The activity has continued since this period under different operators and is currently operated by the applicant.

On the 30 January 2008 a Negotiated Decision Notice was issued by the former Douglas Shire Council for a material change of use for the purposes of a shop, restaurant and farm attraction (TPC 1251). This approval expanded the activities on the land to include tourist focussed land uses in addition to the commercial fish production. In 2011 an application to change the decision was approved by Cairns Regional Council. The currency period was also extended and the approval has now been acted on.

The fish farm activity has always utilised a drain from the farm to the South Arm of the Daintree River to gain a water resource for the activity. At the time the activity commenced this drain was generally in the historical parent title Lot 1 on RP749715. An approval was issued by delegate authority on the 21 January 2016 (ROL 1110/2015) to realign boundaries of this and a neighbouring lot to enable the aquaculture activities and associated drain to the tributary of the Daintree River to be included in a single lot. The approval was necessary as part of the intended intensification of the fish farming activity on the land.

### **Proposal**

The land has an area of 50.98 hectares and development currently consists of the following:

- 14 Aquaculture ponds;
- 4 settlement ponds;
- 1 office building;
- 1 workshop building; and
- 1 tourism visitor centre and toilets.

A plan of the existing development is included in Attachment 1.

The operator is proposing a farm expansion by converting two of the existing bunded settlement ponds into 13 additional production ponds, together with repurposing two drains and one settlement pond for primary settlement, treatment wetland and final settlement/balancing storage. The applicant has advised, *“The expansion includes a wastewater wetland treatment and recirculation system with almost 50% recirculation and a formal monitored discharge, yielding a net nutrient balance between intake and discharge waters. All development is within previously cleared areas and within bunded existing settlement ponds. During construction specific protection measures for erosion and sediment control, acid sulfate soils and habitat protection are proposed.”*

The construction of the new production ponds will be pursuant to a separate application for a development permit for operational work.

The application must be referred to the State for a number of matters including:

- a. Non-devolved environmentally relevant activity;
- b. Aquaculture;
- c. Removal, destruction or damage of marine plants;
- d. State transport corridor (adjacent to the state-controlled Mossman- Daintree Road);
- e. Tidal works or work in a coastal management district; and
- f. Premises in a wetland protection area.

A plan of the proposed development is included in Attachment 2.

The applicant has requested that the application be assessed against the superseded planning scheme. The request has been made on the basis that the application encompasses the assessment against the state codes and is significantly detailed having been compiled over a lengthy period of time and in consultation with various state government agencies. The compilation of the application was initiated some time ago and had regard to the 2006 Douglas Shire Planning Scheme (as amended).

## **Relevant Matters**

### **Superseded Scheme Request**

Council’s 2018 Planning Scheme came into effect on the 2 January 2018 and under section 29 of the *Planning Act 2016* for a period of 1 year after the new scheme comes into effect, an applicant may request Council to accept, assess and determine an application under the superseded scheme.

Where Council agrees to the request, the assessment and determination is exclusively considered under the superseded planning scheme. The subsequent application must be then lodged with Council within six months following the Council’s decision.

Where Council does not agree to the request, the application is assessed against the current Scheme and opportunity arises, under Division 2 of the *Planning Act 2016* for compensation for an adverse planning change as a consequence of the application being assessed and determined under the current scheme. The agreement to consider and application under a superseded scheme, for this reason, is often referred to the “use it, or lose it principle.”

## State Planning Benchmarks

Under both scheme assessments the application would be considered against the State Planning Policy (SPP). For the 2018 Planning Scheme, the majority of the SPP requirements have been included in the Scheme. For the 2006 Planning Scheme, the SPP sits outside the Scheme but remains applicable.

The Scheme under which the application is assessed does not vary the referrals required to the State agencies and these referrals are undertaken during the assessment stage of the subsequent development application.

## Planning Scheme Considerations

### A. 2006 Douglas Shire Planning Scheme (as amended)

The application needs to address the Desired Environmental Outcomes.

The land is included in the Rural Planning Area of the Rural Areas and Rural Settlement Locality where the use of Aquaculture is impact assessable development.

The application is assessed against the Locality code and the Planning Area code.

The application is also assessed against the following overlay codes:

- a. Acid Sulfate Soils Code; and
- b. Natural Hazards.

The application is assessed against the Aquaculture and Intensive Animal Husbandry land use code that gives consideration to impacts on good quality agricultural land and coastal processes.

The application is also assessed against the following general codes:

- c. Filling and excavation;
- d. Landscaping;
- e. Natural Areas and scenic amenity;
- f. Vehicle parking and access; and
- g. Sustainable development.

### B. 2018 Douglas Shire Planning Scheme

The application needs to address the Strategic Framework elements.

The land is included in the Rural Zone and the use is impact assessable development. The application is assessed against the zone code. The land is not included in a Local Plan.

Overlay Codes affecting the development are:

- a. Acid sulfate soils;
- b. Bushfire Hazard;
- c. Coastal environmental (including referral to the State for being within the Coastal Management District and an erosion prone area);

- d. Flood and storm tide hazard;
- e. Landscape Values;
- f. Natural Areas (excluding the drain which is identified as a High Ecological Significance Wetlands the overlay is mapped as the natural, undeveloped part of the land); and
- g. Transport network overlay.

The majority of the overlay codes were included in the current scheme to address the requirements of the current State Planning Policy.

There is no land use code for aquaculture.

Other development codes are:

- h. Access, parking and servicing;
- i. Environmental performance;
- j. Filling and excavation;
- k. Infrastructure works;
- l. Landscaping; and
- m. Vegetation Management.

### **Summary Considerations**

While the Strategic Framework in the 2018 Scheme considers impact on cane land, the land is not utilised for cane and the new production ponds are achieved from redeveloping existing settlement ponds. The provisions the 2009-2031 Far North Queensland Regional Plan and the current State Planning Policy, with provisions for flood, storm tide, coastal processes and bushfire remain applicable. In both instances the impacts of the development are required to be limited to the land and to not harm the environment.

In this instance the difference between the two schemes is considered minor. Considerable effort has been undertaken by the applicant in preparing the documentation and no concern is raised with the request.

### **Public Notification**

Public notification is not applicable at this stage. If a subsequent development application is lodged over the site, as currently proposed, public notification will be required.

### **ADOPTED INFRASTRUCTURE CHARGES**

The assessment of adopted infrastructure charges is made at the time the subsequent application is determined.

### **COUNCIL'S ROLE**

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The

implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

**Regulator:** Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Planning Act 2016* and the *Planning Regulation 2017*, Council is the assessment manager for the request and the subsequent application.

## **ATTACHMENTS**

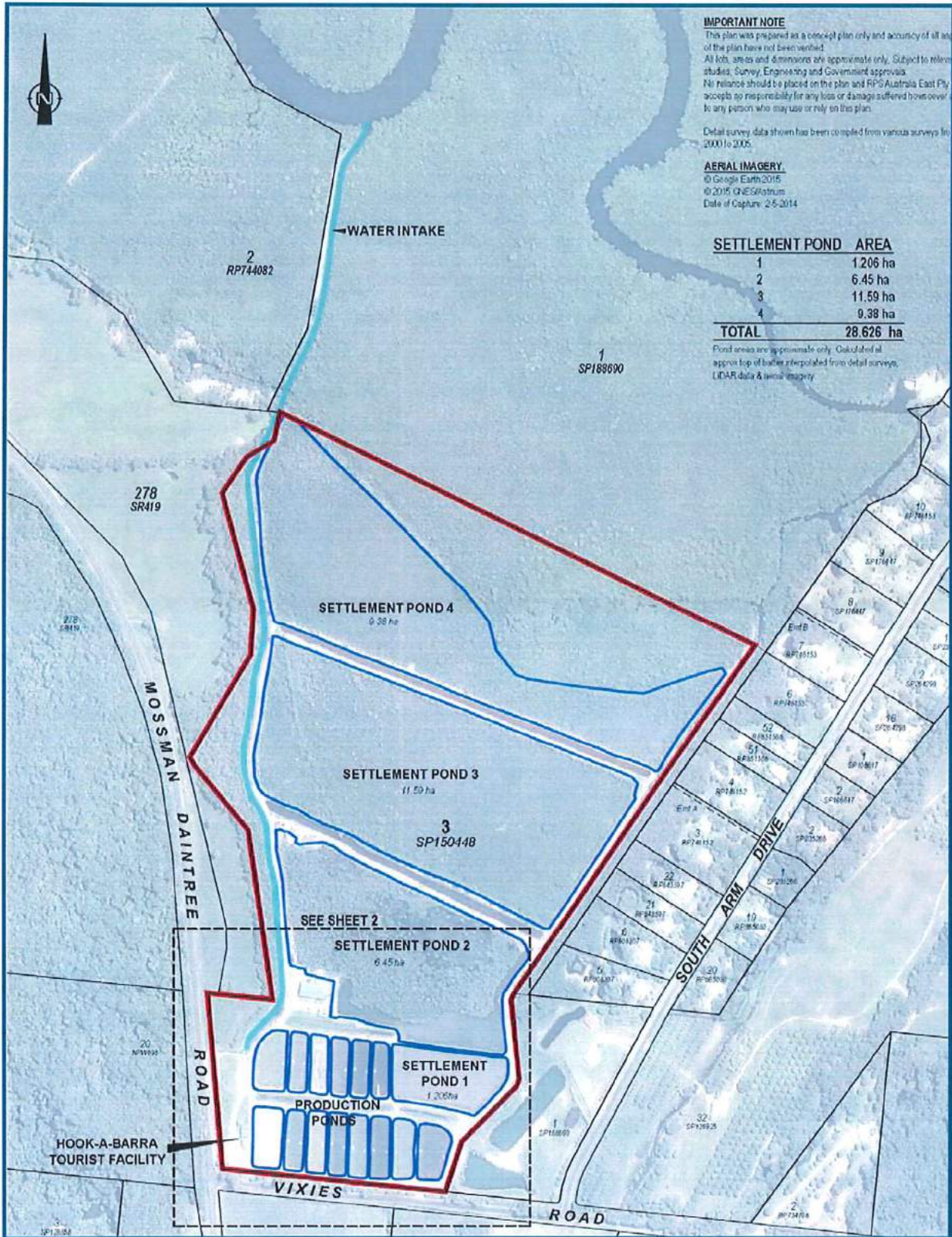
1. Attachment 1 Existing Plans Lot 3 Vixies Rd **[5.1.1]**
2. Attachment 2 Proposed Plan L 3 Vixies Rd **[5.1.2]**





**Daintree Saltwater Barramundi  
Aquaculture Expansion MCU Application**

**Figure 10: Site Plan with Existing Ponds**



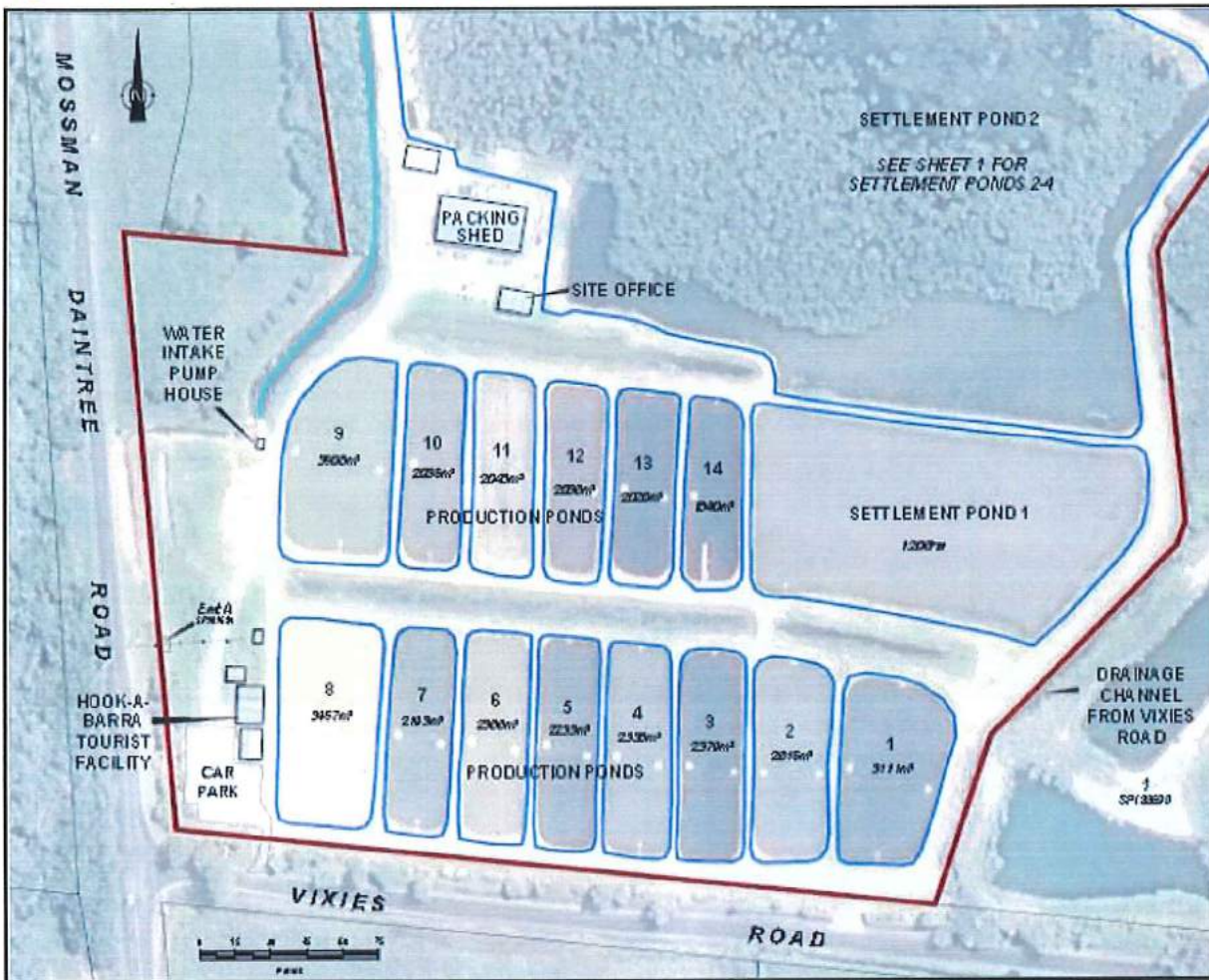
From RPS. NOTE Plan does not show extension of Lot 3 SP150488 (now SP292103) along the drain. See also Plan 2.



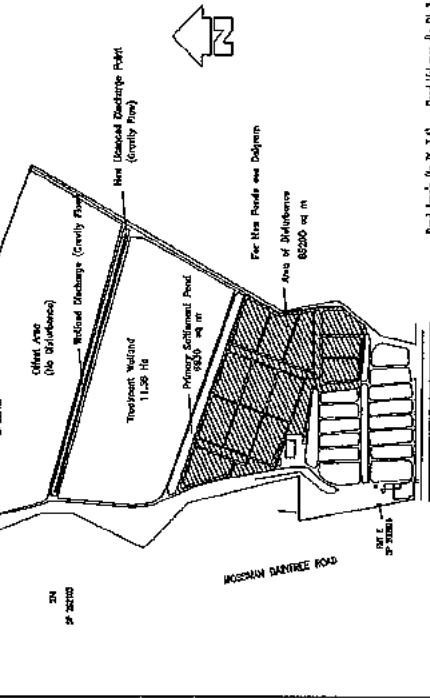
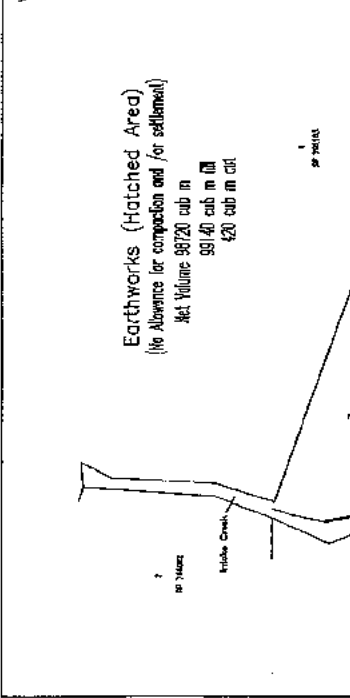
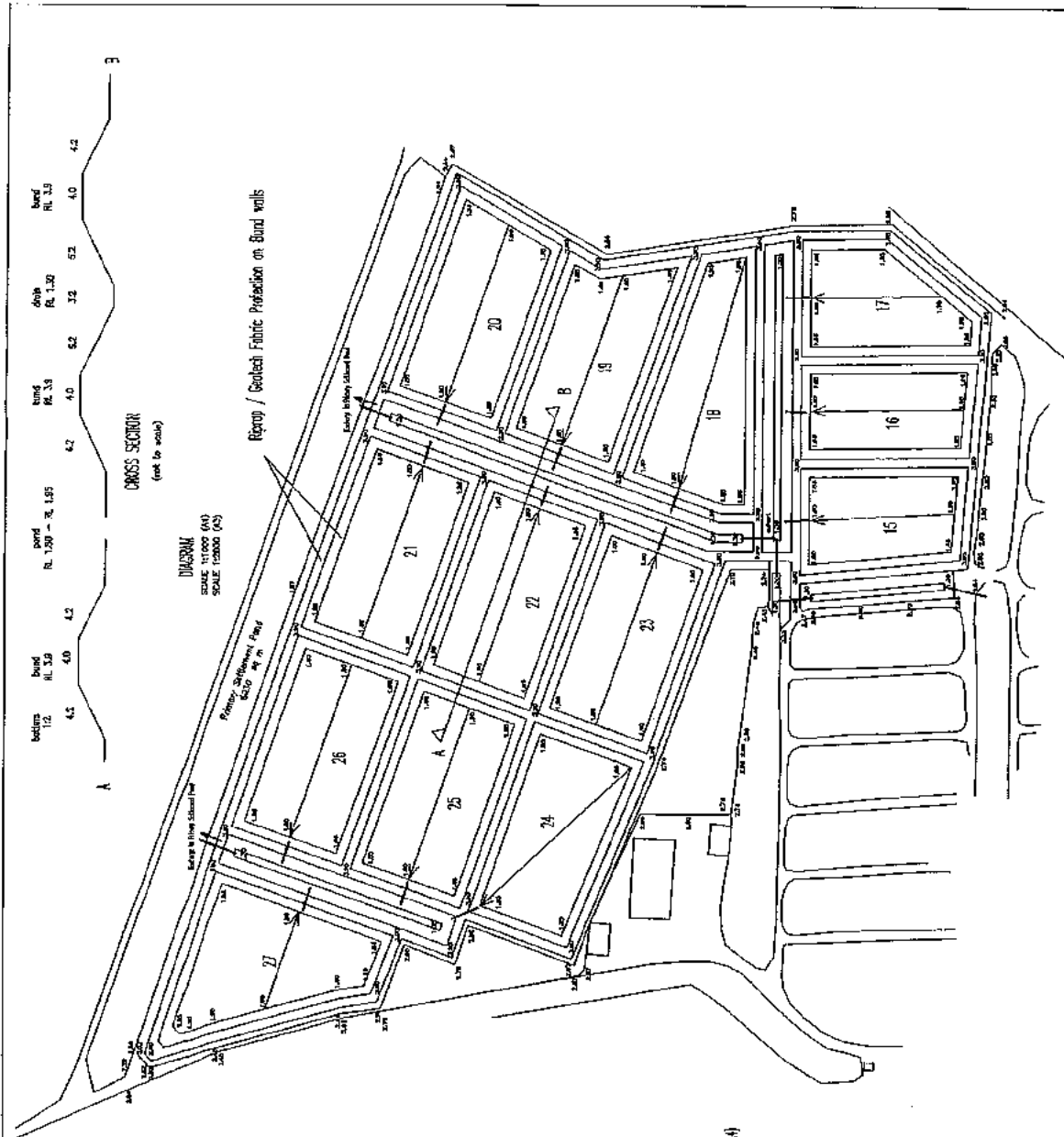


Daintree Saltwater Barramundi  
Aquaculture Expansion MCU Application

Figure 11: Existing Production Ponds



From RPS. Lot 3 SP150488 now SP292103. See also Plan 3.



Pool Volumes (to R. 3.4)

Pool No.	Volume (cu m)
15	3010
16	4018
17	4060
18	4223
19	6150
20	6255
21	6110
22	6275
23	6275
24	5765
25	6275
26	6110
27	5780

Pool Volumes (to R. 3.4)

Pool No.	Volume (cu m)
15	3010
16	2915
17	3135
18	4600
19	4470
20	4540
21	4445
22	4405
23	4465
24	4185
25	4405
26	4445
27	4285

LOCATION PLAN  
SCALE 1:5000 (A3)  
SCALE 1:10000 (A3)

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<p>DATE: 18/03/11</p> <p>SCALE: 1:5000 (A3)</p> <p>SCALE: 1:10000 (A3)</p>		<p>PROJECT: Proposed Pond Layout Lot 3 on SP 792103</p> <p>CLIENT: MISSOURI GARDNER ROAD BOTCH BOTCH</p>		<p>DESIGNER: GARY I. POZEL</p> <p>CONTACT: GARDNER SUBMITTER</p>	
<p>PROJECT: MISSOURI GARDNER ROAD BOTCH BOTCH</p> <p>PROJECT NO: 11118</p>		<p>DATE: 18/03/11</p> <p>SCALE: 1:5000 (A3)</p> <p>SCALE: 1:10000 (A3)</p>		<p>PROJECT: MISSOURI GARDNER ROAD BOTCH BOTCH</p> <p>PROJECT NO: 11118</p>	
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