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Lestar Manning – Partner  
Mark Baker-Jones  
Madonna Griffin  
Matt Patterson  
Andrew Williams

Michael Neal – Partner  
Tracey White  
Marlies Hobbs  
Clare Farley



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Lestar Manning – Partner

Mark Baker-Jones

Madonna Griffin

Matt Patterson

Andrew Williams

Michael Neal – Partner

Tracey White

Marlies Hobbs

Clare Farley



30 June 2009

Mr Terry Piper  
Chief Operating Officer  
Balkanu Cape York Development Corporation  
PO Box 7573, CAIRNS Q 4870

BY EMAIL: [Terry.piper@balkanu.com.au](mailto:Terry.piper@balkanu.com.au)

Dear Mr Piper

**DEVELOPMENT APPROVAL PROCESSES UNDER THE *WILD RIVERS ACT 2005 (QLD)* AND ASSOCIATED LEGISLATION**

[1] We refer to your instructions of 17 June 2009 and set out our advice below.

**1 Executive Summary**

[2] It is an offence to start assessable development without a development permit. Each of the four developments you have asked us to consider will require development permits.

[3] A general matter for consideration for each of the developments is the lack of cadastral mapping for identification of areas of wetlands, watercourses and high preservation areas. The exact identification of these areas has been litigated in many appeals and evidence is often given to determine the boundaries.

[4] Vegetation clearing operational works is likely to be a consistent trigger and if the declaration of the Wenlock Basin Wild River declaration proposal proceeds it is likely to prevent or at best significantly limit the opportunities for clearing within high preservation areas.

[5] There is an ability to make an application for a property development plan to vary the declaration of the wild river area including a consideration of the high preservation areas. However, a consideration of the decision making criteria suggest that the prospects of achieving a variation are remote.

**1.1 Construction of a permanent camp site including relocatable infrastructure such as safari tents and permanent infrastructure such as ablutions.**

[6] This use is defined as a caravan park in the Cook Shire Council Planning Scheme.

[7] An application is required to Council and will be impact assessable.

- 
- [8] The application can find general support in the planning scheme.
  - [9] Locational restrictions imposed by the planning scheme are designed to protect environmental values of the waterways and wetlands. A specific solution is to set all development back 20m from the waterway or wetland.
  - [10] Any application will be required to be set back from a nominated waterway of a wild river by 200m.
  - [11] As the high preservation area is not specifically defined by cadastre you may not be able to be able to develop a caravan park in the high preservation area once confirmed.

**1.2 Construction of a permanent ecotourism resort.**

- [12] The use is defined as a tourist facility or tourist accommodation under the Cook Shire Council Planning Scheme.
- [13] An impact assessable development application is required.
- [14] The application does not generally find support in the planning scheme. This type of development is to be located next to town centres and preferably Cooktown. There is conflict in the planning scheme between provisions.
- [15] Resorts that are destinations in their own right are sometimes described as footloose and fancy free developments as they are not typically identified in planning schemes and ought to be considered on their merits. The Rural Locality Code would assist with an application for a tourist facility in this context. Also if an indigenous land use agreement for the Land includes this type of development it would gain further support.
- [16] Locational restrictions imposed by the planning scheme are designed to protect environmental values of the waterways and wetlands. A specific solution is to set all development back 20m from the waterway or wetland.
- [17] Any application will be required to be set back from a high preservation area of a wild river by 200m.
- [18] As the high preservation area is not specifically defined by cadastre you may not be able to be able to develop a tourist facility or tourist accommodation in the high preservation area once confirmed.

**1.3 Construction of permanent private residential accommodation.**

- [19] The nature of the use is unclear on the basis of your instructions. We have set out the various and numerous residential developments under the Cook Shire Council Planning Scheme.
- [20] We anticipate that the type of the development will likely require a impact assessable development permit.
- [21] Locational restrictions imposed by the planning scheme are designed to protect environmental values of the waterways and wetlands. A specific solution is to set all development back 20m from the waterway or wetland.
- [22] Any application will be required to be set back from a nominated waterway of a wild river by 200m.
- [23] As the high preservation area is not specifically defined by cadastre you may not be able to be able to develop permanent private residential in the high preservation area once confirmed.

**1.4 Establishment of an agricultural or horticultural operation for commercial purposes including supporting infrastructure such as irrigation and sheds.**

- [24] The nature of the use under the Cook Shire Council Planning Scheme is agriculture.
- [25] The use in the planning scheme is self assessable and must comply with the acceptable solutions of the planning scheme.
- [26] The acceptable solutions require buildings and works to be set back a minimum of 20m from a wetland or watercourse.
- [27] New agricultural activities are prohibited in a high preservation area.

**2 Material Facts**

- [28] The land is described as lot 22 on SP 171852 and is known as Batavia Downs. (the Land)
- [29] The Land is dissected by the Peninsula Development Road.
- [30] In the Cook Shire planning scheme the land is:

contained in the rural zone particularly identified on map 10 attached;  
is dissected by water courses and contains wetlands identified on the water courses  
and wetlands overlay map 20 attached;

- [31] A copy of the regional ecosystem map identifying the Land and showing the regional ecosystems currently applicable is **attached**.
- [32] The developments that you have specified you wish us to particular consider are:
- a. construction of a permanent camp site including relocatable infrastructure such as safari tents and permanent infrastructure such as ablutions;
  - b. construction of a permanent ecotourism resort;
  - c. construction of permanent residential accommodation;
  - d. establishment of an agricultural or horticultural operation for commercial purposes including supporting infrastructure such as irrigation and sheds.

### **3 IPA & IPR**

- [33] As a starting point the *Integrated Planning Act 1997* (IPA) is the framework legislation in which all other legislation dealing with development is to occur.
- [34] IPA sets up the process in chapter 3 described as the IDAS process. IDAS stands for integrated development approval system.
- [35] Under IPA all development is exempt unless it is made self-assessable or assessable development.

#### ***“3.1.2 Development under this Act***

*(1) Under this Act, all development is exempt development unless it is assessable development or self-assessable development.*

*(3) Subject to section 2.5B.9, to the extent a planning scheme is inconsistent with schedule 8 or 9, the planning scheme is of no effect.*

*(4) However, to the extent a planning scheme is inconsistent with schedule 8 because the planning scheme states development is self-assessable, but schedule 8 states the development is assessable-*

*(a) codes in the planning scheme for the development are not applicable codes; but*

*(b) the codes must be complied with.”*

- [36] Development is defined to include material change of use, reconfiguring a lot, operational

works, building works and plumbing works.<sup>1</sup> Each of these aspects would be involved in the specific developments you have asked us to consider.

[37] IPA identifies how development may be made self-assessable or assessable development.

***“3.1.3 Code and impact assessment for assessable development***

*(1) A regulation, a planning scheme or a temporary local planning instrument may require impact or code assessment, or both impact and code assessment, for assessable development.”*

[38] The Integrated Planning Regulations 1998 (IPR) in conjunction with Schedule 8 of the IPA makes various development assessable. Those provisions are set out below.

***“3 Type of assessment and applicable codes, laws and policies for development-Act, s 3.1.3 and sch 8 (schedule 1)***

*(3) For section 3.1.3(1) of the Act-*

*(a) schedule 1, part 3, column 1 identifies an aspect of development requiring code assessment; and*

*(b) schedule 1, part 3, column 2 identifies the codes, laws and policies that may apply for assessing the aspect.”(IPR)*

***“Schedule 1 Type of assessment and applicable codes, laws and policies for particular development Part 3 Code assessment Table 2: Material change of use***

*Certain agricultural or animal husbandry activities in a wild river area*

*7 Agricultural or animal husbandry activities in a wild river area-*

*(a) made assessable under the Act, schedule 8, part 1, table 2, item 11; and*

*(b) for which the chief executive under the Wild Rivers Act 2005 is the assessment manager*

*Wild Rivers Act 2005, section 42 Any applicable code for the development mentioned in the wild river declaration for the wild river area” (IPR)*

***“Schedule 1 Type of assessment and applicable codes, laws and policies for particular development Part 3 Code assessment Table 4: Operational works***

*Certain agricultural or animal husbandry activities in a wild river area*

*9 Agricultural or animal husbandry activities in a wild river area-*

*(a) made assessable under the Act, schedule 8, part 1, table 4, item 10; and*

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<sup>1</sup> s. 1.3 .5 IPA

*(b) for which the chief executive under the Wild Rivers Act 2005 is the assessment manager*

*Wild Rivers Act 2005, section 42 Any applicable code for the development mentioned in the wild river declaration for the wild river area" (IPR)*

### **3.1 IPA Schedule 8 Assessable development and self-assessable development**

IPA, Schedule 8 Assessable Development, Part 1, Table 2, item 11

*"Making a material change of use of premises to the extent the premises is in a wild river area and the proposed use is for agricultural or animal husbandry activities, as defined under the Wild Rivers Act 2005."*

IPA, Schedule 8 Assessable Development, part 1, Table 4, item 10

*"Operational work for agricultural or animal husbandry activities, as defined under the Wild Rivers Act 2005, in a wild river area if the operations are declared, under the wild river declaration for the area, to be assessable development."*

IPA Schedule 8, Part 1, Table 4: Operational works

*"For clearing native vegetation on freehold land and indigenous land*

*1A Operational work that is the clearing of native vegetation on freehold land and indigenous land, unless the clearing is—*

*(a) the clearing of vegetation to which VMA does not apply; or*

*(b) for a forest practice, other than on indigenous land on which the State owns the trees; or*

*(c) to the extent necessary for building on a lot, other than indigenous land, a single residence, and any reasonably associated building or structure, if the building of the residence—*

*(i) is building work for which a development permit for a building development application has been issued; or*

*(ii) is building work mentioned in part 2, table 1, item 1; or*

*(iii) is development to which chapter 5, part 6 applies; or*

*(ca) to the extent necessary for building residences on indigenous land, and any reasonably associated building or structure, for Aboriginal or Torres Strait Islander inhabitants of the land or persons providing educational, health, police or other community services for the inhabitants if the building of the residences—*

*(i) is building work for which a development permit for a building development application has been issued; or*

*(ii) is building work mentioned in part 2, table 1, item 1; or*

*(iii) is development to which chapter 5, part 6 applies; or*



- (d) necessary for essential management; or*
- (e) in an area shown on a property map of assessable vegetation as a category X area; or*
- (f) in an area for which there is no property map of assessable vegetation and the vegetation is not remnant vegetation; or*
- (g) for urban purposes in an urban area that is—*
  - (i) shown on a property map of assessable vegetation as a category 2 area or a category 3 area; or*
  - (ii) if there is no property map of assessable vegetation for the area—a remnant of concern regional ecosystem or a remnant not of concern regional ecosystem; or*
- (ga) for urban purposes in an urban area in a wild river high preservation area and the vegetation is—*
  - (i) a remnant of concern regional ecosystem; or*
  - (ii) a remnant not of concern regional ecosystem; or*
  - (iii) not remnant vegetation; or*
- (h) necessary for routine management in an area of the land—*
  - (i) shown on a property map of assessable vegetation as a category 3 area; or*
  - (ii) for which there is no property map of assessable vegetation and the vegetation is a remnant not of concern regional ecosystem; or*
- (i) on indigenous land, gathering, digging or removing forest products for—*
  - (i) the purpose of improving the land or for use under the Local Government (Aboriginal Lands) Act 1978, section 28; or*
  - (ii) use under the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984, section 62; or*
- (j) for a specified activity; or*
- (k) in an urban development area; or*
- (l) on airport land and the operational work—*
  - (i) is consistent with the land use plan approved under the Airport Assets (Restructuring and Disposal) Act 2008, chapter 3, part 1 for the land; and even though there are (ii) is carried out on land that is not stated, under the land use plan, to remain undeveloped land.”*

[39] A person must not carry out assessable development unless there is an effective development permit for the development.<sup>2</sup>

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<sup>2</sup> s.4.3.1 IPA

- [40] Other offence provisions can apply but this is the basis upon which the majority of enforcement actions are based in relation to development offences. This is the provision that requires your client to obtain a development permit for assessable development.

#### **4 Cook Shire Council planning scheme**

##### **4.1 Definitions**

- [41] The planning scheme defines particular uses and we set out below several uses we consider pertinent to the type of development you have asked us to consider. We have clustered the definitions to deal with tourist uses, residential uses and agricultural uses.

- [42] Relevant tourist uses described in the planning scheme are listed below.

*"Bed and Breakfast-means an owner occupied House in which short term accommodation and meals are provided to tourists and travellers."*

*"Caravan Park-means the use of premises for the parking and/or a siting of two or more mobile camper vans, caravans, cabins, relocatable homes or tents for the purpose of providing accommodation. This use may include any manager's office/residence, amenity buildings, recreational and entertainment facilities and shop which cater exclusively for the occupants of the caravan park."*

*"Host Farm-means the use of premises for tourist accommodation in conjunction with a rural use. The term includes accommodation on a rural lots which are not bona fide farms, but which have scenic or wilderness areas or areas of ecological or cultural significance."*

*"Tourist Accommodation-means the use of premises for the short term accommodation of tourists and travellers. The use includes a manager's unit/office as well as dining, conference and other facilities for the guests."*

*"Tourist Facility-means the use of premises for the purpose of providing entertainment, recreation or similar facilities for tourists. This term includes accommodation facilities where they are ancillary to the tourist facility on the same site."*

- [43] Residential uses are variously described in the planning scheme and we have clustered those below.

*"Caretaker's Residence-any single dwelling unit used or intended for use for caretaker or management purposes only, in connection with any industry or other non residential use"*

*conducted on the same site."*

*"House-means the use of premises as a single dwelling unit. No more than one House is located on a single lot."*

*"Multiple Residential-means the residential use of premises for three or more dwelling units on the same lot such as apartments, townhouses, Villa houses and the like. The dwelling units need not be attached."*

*"Other Residential-means the use of premises in the form of rooms and/or dormitories and where communal facilities for the preparation of meals may be provided. The use includes a manager's unit/office as well as entertainment facilities for the guests. This term includes a boarding house, guesthouse, respite care, hostel, serviced rooms, respite home and the like."*

*"Relative's Accommodation-provision of self-contained accommodation on the same lot as a House, where the occupiers of the House and Relative's Accommodation are directly related."*

*"Retirement Village-means the use of premises for residential accommodation by elderly or retired persons where the premises:*

*include dwelling units, and/or rooming units and/or nursing home facilities which provide for independent living, serviced accommodation, residential aged care, and/or high care facilities;*

*provide on-site opportunities for social and recreational pursuits, including communal facilities;*

*are of an integrated design and layout and managed."*

*"Remote Workers' Accommodation-means the use of premises for the accommodation of persons (and their dependents) engaged to assist with rural activities, mining, quarry, forestry, construction and the like, being located on or near the premises where the persons are engaged. The term includes all forms of temporary accommodation (whether or not they are a self-contained) and all ablutions facilities and associated plant and equipment."*

[44] Agricultural is defined in the planning scheme as:

*"Agriculture-means the growing or cultivating of crops, pastures, plants, turf, flowers and the like on a commercial or non-domestic basis, including the growing of produce for sale, barter or exchange. This term includes the ancillary storage, handling, treating, processing and packing of the produce grown on the premises, but does not include a domestic garden."*

[45] From a perusal of the definition it can be ascertained that the construction of a permanent

camp site including relocatable infrastructure such as safari tents and permanent infrastructure such as ablutions is most likely to be considered as a Caravan Park in the definitions contained within the Cook Shire planning scheme.

- [46] The construction of a permanent ecotourism resort, depending upon its operation, is more likely to be described as a Tourist Facility under the planning scheme rather than Tourist Accommodation. However there may be some dispute in relation to this.
- [47] From a perusal of the residential uses it is likely that the type of accommodation does not neatly fit within one of the definitions and may well be varied and partly fit within several of the categories. It may be that any application for permanent private residential accommodation for community should be separately defined through an application to override the planning scheme.

#### 4.2 Table of Assessment for the Rural Zone

- [48] A copy of the table of assessment for the rural zone is **attached**.
- [49] Please note from a perusal of the table that Agriculture is self assessable development subject to the identified acceptable solutions being complied with.
- [50] Please note from a perusal of the table that Bed and Breakfast, Caretaker's Residence, Host Farm, House (where not self assessable), Relatives Accommodation Rural Service Industry and Remote Workers Accommodation are code assessable development subject to the codes identified as applicable codes.
- [51] Please note that all other land uses are impact assessable and these include Caravan Park, Tourist Accommodation, Tourist Facility, Multiple Residential, Other Residential and Retirement Village.
- [52] A self assessable development must comply with all of "specified" acceptable solutions of all applicable codes. No development permit is required. If the development cannot comply with the "specified" acceptable solutions a code assessable planning application must be made to Council.<sup>3</sup>
- [53] A code assessable development application that meets an acceptable solution automatically complies with that aspect of the code. Otherwise it must meet the performance criteria

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<sup>3</sup> Page iii Cook Shire Council Planning Scheme

and/or achieve the overall outcomes for the code.<sup>4</sup>

- [54] An impact assessable development application is assessed against the whole of the planning scheme, including all applicable codes and the Desired Environmental Outcomes.

#### 4.3 Rural Zone Code

- [55] A copy of the Rural Zone Code is **attached**. Please note table 18 identifies both performance criteria and acceptable solutions.
- [56] Compliance with the acceptable solutions will mean compliance with the code. Those parts of the code which have greater application for this consideration are the matters under the heading Land Use and Watercourse Protection.
- [57] PC1 is seeking to maintain uses that are typically associated with rural areas and has as AS1 identified Agriculture and House as acceptable land uses which will satisfy the code for that issue.
- [58] Under the same heading performance criteria PC2 and acceptable solution AS2 provides:  
*"PC2 The land use aspirations in any Indigenous Land Use Agreement (ILUA) are recognised.  
AS2 Development is consistent with any ILUA relating to the land and the relevant provisions of the planning scheme."*
- [59] The overall outcomes for the Rural Zone Code make no special mention of indigenous land use aspirations.
- [60] Performance criteria 8 and acceptable solution 8 deal with watercourse protection and provide:  
*"PC8 Where land uses all works occur adjacent to wetlands and/or watercourses identified on the Watercourses and Wetlands maps, there are no significant adverse effects on:*
  - *water quality;*
  - *ecological and biodiversity values; or*
  - *landscape quality.**AS8 New buildings or works are set back a minimum of 20 m from the wetlands and/or water courses identified on the Watercourses and Wetlands maps and no clearing of vegetation occurs within the setback."*

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<sup>4</sup> ibid

[61] You will recall that the Watercourses and Wetlands maps identify water courses on the Land.

#### 4.4 Specific Use Codes

[62] Please also refer to the specific use codes, Bed and Breakfast Code, Caretakers Residence Code, Dual Occupancy Code, Host Farm Code, Relatives Accommodation Code and Remote Workers Accommodation Code. These codes primarily relate to different types of residential development. A perusal of these codes indicates that they are of little relevance to any community aspiration for outstations or of housing for associated family members. It is worthwhile considering the format of these codes to contemplate suggested future planning scheme amendments which permit of a code appropriate to the community's permanent residential aspirations.

[63] We recommend that consideration be given to drafting a code to meet community aspirations for residential living on the Land.

#### 4.5 Caravan Park Code

[64] Caravan Park Code & Higher Density Accommodation Code relate to the tourist/caravan park uses that you have asked us to consider. A copy of the Caravan Park Code is **attached** and would appear to us to be easily satisfied.

[65] Please note that the first performance criteria about site suitability relates to easy and safe access to travelling public. As a result of the location of the Cape Development Road we consider that this aspect is likely to be satisfied.

[66] The other locational requirements relate to the size of the area and the services and facilities that would be provided and ensuring the land is flood free. We do not anticipate difficulties with the later two provisions.

[67] The other matters that need to be addressed are eminently manageable under the performance criteria.

[68] It should be noted that in the overall outcomes for caravan parks is to provide attractive living environments and additional accommodation choice for both residents and visitors in suitable areas of the Shire.

[69] It should also be noted that native vegetation is to be retained where feasible.

#### 4.6 Higher Density Accommodation Code

- [70] The Higher Density Accommodation Code in the overall outcomes is said to apply to Multiple Residential, Other Residential, Retirement Village, Tourist Accommodation and Tourist Facility uses. (a copy is **attached**)
- [71] The overall out come for the High Density Accommodation also requires that it is located "in close proximity to the township areas and/or community uses such as schools". It also seeks through the overall outcome is to protect the environmental values of the area in which it is to be located.
- [72] Under the heading site suitability in the performance criteria the first locational requirements seeks to have higher density accommodation occur in and around centres and townships (principally Cooktown). This site suitability performance criteria is inconsistent with the development of a Tourist Accommodation or Tourist Facility use on the Land.
- [73] The remaining performance criteria for site suitability do not appear to impinge on the development potential.

#### **4.7 Reconfiguring A Lot Code**

- [74] It should be noted that the minimum lot size for reconfiguring a lot in the rural zone code is 100 ha with a minimum frontage of 100 m and a maximum frontage ratio of 5:1.

#### **4.8 Rural Locality Code**

- [75] This code is unusual in that it only specifies overall outcomes.
- [76] Importantly as one of the purposes of the rural locality code it identifies that "Tourist accommodation and facilities are established to promote aboriginal culture and prehistory (including rock art sites); European and Chinese history and the natural environment and scenery of the locality;"
- [77] This is contradictory to the provisions of the Higher Density Accommodation Code. It specifically recognises the importance of promoting "tourist accommodation and facilities" to promote aboriginal culture and the natural environment within the rural zone. It would clearly add support for the location of a caravan park on the Land that provides those facilities and potentially the purpose of providing "tourist accommodation and facilities" to promote aboriginal culture and the natural environment.
- [78] The apparent conflict between the Rural Locality Code and the Higher Density

Accommodation Code would need to be considered based upon the impacts of any proposal.

#### **4.9 Summary of Planning Scheme Provisions**

- [79] The planning scheme does not provide useful assistance in relation to the aspirations of the community for housing multiple families on the Land. As previously indicated we would recommend that community aspirations be spelt out in a document to form a code for the planning scheme which will permit community residential accommodation on the Land.
- [80] We consider that factors such as separation between dwellings, whether vehicle access is required, whether the community facilities are to be shared or separate, whether only specific language groups may permanently reside, accessibility to appropriate refuse disposal, water supply and effluent disposal should be considered.
- [81] A caravan park does gain support from the planning documents.
- [82] A tourist accommodation and tourist facility is both encouraged and discouraged by the planning scheme.
- [83] Agricultural is encouraged by the planning scheme and are self assessable development generally not requiring an application.

### **5 Wild Rivers Act 2005**

#### **5.1 Purpose**

- [84] The Purpose of the *Wild Rivers Act 2005* (WRA) is to "preserve" the natural values of rivers.<sup>5</sup>
- [85] The term "preserve" has a different meaning to the term "conserve". Preservation does not permit of any changes whilst conservation allows the ongoing management and does contemplate change.
- [86] The purpose of the WRA sets a high bar for assessment against its provisions. Under the *Acts Interpretation Act 1954* and under decisions like the High Court decision of *Project Blue Sky v Australian Broadcasting Commission* and the Planning and Environment Court decision of *SDW Projects Pty Ltd v Gold Coast City Council* the purpose of legislation will be fundamental to a consideration of the application of the legislation.

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<sup>5</sup> s. 3 WRA



## 5.2 Wild Rivers Code

[87] The WRA establishes a code which is termed the Wild Rivers Code.<sup>6</sup> Under section 6E *"If a wild river declaration includes a reference to the wild rivers code or another code, then, in relation to IDAS, the code is a code for IDAS"* This is the direct link back to the IDAS process.

[88] The Wild Rivers Code usefully summarises its application;<sup>7</sup>  
*"The introductory comments do not form part of the code requirements, which are generally listed in tables.*

*Each part of the code also contains a 'purpose' and a series of required outcomes or performance requirements a proposed development or activity must achieve in order to comply with the code. These outcomes are broadly linked to preserving one or more of the wild river natural values. An application must demonstrate how the intended development or activity will achieve the outcomes. In some cases, the code also specifies mandatory requirements.*

*A probable solution/s is provided for most required outcomes. An application that complies fully with the probable solution/s will satisfy the required outcome. However, if an application does not comply with the probable solution/s or if no probable solution has been provided, it must demonstrate how it will still meet the required outcome."*

*"Any application for a development or activity to which this code applies must comply with this code and the assessing agency's decision must comply with the applicable code mentioned in the wild river declaration."*

[89] Part 1 of the Code deals with agriculture and within the introduction provides:

***"High preservation area***

*New agricultural and animal husbandry activities as defined in the Wild Rivers Act are prohibited within a HPA. Section 42 of the Wild Rivers Act deems an application for such development to be invalid and the assessment manager must refuse to receive the application."*

(a) Part 1 Agriculture

[90] The required outcomes (RO) and probable solutions (PS) of the code are set out below:

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<sup>6</sup> s. 6A WRA

<sup>7</sup> p.4 Wild Rivers Code

***“Part 1-Agriculture and animal husbandry  
Material Change of Use for Agricultural and Animal Husbandry Activities***

***Riparian and wildlife corridor functions and water quality***

*RO.1 Riparian areas and wildlife corridors along nominated waterways are preserved and pollutants from the activity (eg chemical spray drift or contaminated runoff) have a low probability of affecting water quality in adjacent waterways.*

*PS.1 The activity is setback from a nominated waterway by at least the distance detailed in Schedule 3 of the relevant wild river declaration.*

*RO.2 Contaminated wastewater, contaminated agricultural runoff and tailwater do not degrade the quality of any receiving waters (both surface and groundwater).*

*PS.2 No probable solution provided. The application must demonstrate how it meets the required outcome.*

***Geomorphic processes***

*RO.3 The activity will not result in the increased delivery of sediment to adjacent waterways.*

*PS.3 The slope of the land on which the activity occurs is less than the value detailed in Schedule 3 of the relevant wild river declaration.*

***Operational Works for Agricultural Activities***

***Riparian and wildlife corridor functions and water quality***

*RO.1 The escape of moderate risk species into the river system is prevented.*

*PS.1 The activity is setback from a nominated waterway by at least the distance detailed in Schedule 3 of the relevant wild river declaration.*

***Water Quality***

*RO.1 Water quality in watercourses and lakes is not adversely affected, i.e. water quality immediately downstream of the activity is consistent with water quality immediately upstream of the activity.*

*PS.1.1 Wastewater is treated to the quality of the receiving waters prior to discharge; or*

*PS.1.2 Water is reclaimed or reused.”*

- [91] An approval for a material change of use or operational works for agricultural activities will be required to lawfully carry out those activities in a wild river area.
- [92] The distance nominated in schedule 3 of the proposed declaration is generally 200 m.
- [93] Good farming practice may allow each of the required outcomes to be satisfied. Evidence

would be required in any application from a person with suitable agricultural/horticultural skills.

- [94] However, if the proposed declaration proceeds an application will not be able to be made within a high preservation area for agricultural activities.

(b) Part 5 Residential & Commercial Uses

- [95] The required outcomes (RO) and probable solutions (PS) of the code are set out below:

*“Part 5-Residential, commercial and industrial development Section A Material change of use of premises*

*Riparian and wildlife corridor functions*

*RO.1 Riparian areas and wildlife corridors along streams in a HPA or along nominated waterways are preserved.*

*PS.1 Developments are setback from the outer banks of a stream in a HPA, or a nominated waterway by at least the distance detailed in Schedule 3 of the relevant wild river declaration.”*

- [96] As the code requires "preservation" in a high preservation area there is little opportunity for any form of commercial development to occur within area.

- [97] The distance nominated in schedule 3 of the proposed declaration for the Wenlock Basin River for setting back development outside of the outer banks of a stream in a high preservation area is 200 m.

- [98] It is unlikely that any permanent residential or commercial development, caravan park, tourist accommodation or tourist facility, would be approved in accordance with the code within the high preservation area.

## 6 Property Development Plans

- [100] An application for a property development plan may be made by a person who is "the owner" to the Minister.<sup>8</sup>

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<sup>8</sup> s.31A WRA

- [101] A property development plan application will seek to carry out activities or take resources from the Land that would otherwise be prohibited under a wild river declaration.
- [102] The plan will apply for a maximum period of 10 years. under.<sup>9</sup>
- [103] It should be noted that a property development plan is not a development approval under IPA. Consequently no appeal applies in relation to the decision.
- [104] Information required for the application for the property development plan is specified.<sup>10</sup>
- [105] Importantly the framework within which the Minister must make a decision to approve or refuse the plan with or without conditions is provided and the Minister must be satisfied that the activities:<sup>11</sup>
- cannot be carried out without amending the wild river declaration;
  - is likely to be completed within 10 years of the grant of the approval;
  - will not have an adverse impact on the natural values of the wild river;
  - lead to environmental benefits that justify approval of the plan.
- [106] There is no limit on the condition's power. For example there is no requirement that the condition has to be reasonable. See by way of contrast section 3.5.30 of the IPA.
- [107] Bearing in mind the purpose of the legislation the last bullet point is likely to be the biggest constraint in relation to the granting of approvals. Preservation of the environmental values does not permit a change. Environmental benefits necessarily infer a change brought about by an improvement. In any event there is no balancing of social or economic values in the decision-making criteria. Even if preservation were considered to allow for environmental benefit the only criteria that can justify an approval is an improvement to the environment.
- [108] Courts have considered absolute statements where "adverse impacts" are considered and have on occasion qualified that to mean "no unreasonable" adverse impacts. With the purpose of the legislation being to preserve the natural values it is likely that the level of adverse impact that would prevent development will be triggered easily.
- [109] An "activity" under WRA does not easily equate with "development" under IPA. "Activity" is defined in the WRA and means *"in relation to carrying out an activity in a wild river area,*

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<sup>9</sup> s. 31B WRA

<sup>10</sup> s. 31D WRA

<sup>11</sup> s. 31F WRA

*includes the construction of works."*

- [110] If the activity is the construction of the tourist facility that may occur within 10 years. If the activity is the continuance of the use such as a tourist facility then it will continue for more than 10 years. If the activity does include the land use then the Minister could never be satisfied that it would be completed within 10 years as a substantial investment in tourist infrastructure would not occur without a longer term for return on expenditure.
- [111] The decision making criteria appear to be significantly limiting.

## **6.1 IDAS Applications**

- [112] This provision is the gate keeper provisions that effectively prohibits agriculture in a high preservation area.

***"42 Effect of classification on particular development applications***

*(1) This section applies to a development application for-*

*(a) a material change of use of premises for agricultural or animal husbandry activities mentioned in the Integrated Planning Act 1997, schedule 8, part 1, table 2, item 11; or*

*(b) operational work for agricultural or animal husbandry activities mentioned in the Integrated Planning Act 1997, schedule 8, part 1, table 4, item 10.*

*(2) Subsection (3) applies if any part of the application relates to-*

*(a) development in the high preservation area in a wild river area; or*

*(b) development in the preservation area of a wild river area in relation to the production of a high risk species.*

*(3) Despite the Integrated Planning Act 1997, section 3.2.1-*

*(a) the application is taken not to be a properly made application for that Act; and*

*(b) the assessment manager must refuse to receive the application.*

*(4) Subsection (5) applies-*

*(a) to an application not refused under subsection (3); and*

*(b) to the extent the application relates to development in the preservation area in a wild river area; and*

*(c) despite the Integrated Planning Act 1997, chapter 3, part 3, division 4 and sections 3.5.4, 3.5.5, 3.5.13 and 3.5.14.*

*(5) For the application, the assessment manager's and any*

*concurrency agency's decision must comply with the applicable code mentioned in the wild river declaration for the area."*

[113] By treating the application as not properly made and requiring a council not to accept the application there is no application and no decision that can be appealed to a Court.

[114] This provision makes the Wild Rivers Code and the Wenlock Basin River declaration codes to which any application for residential or commercial development must comply.

***"43 Effect of declaration on particular development applications***

*(1) Subsection (2) applies-*

*(a) to a development application for a material change of use of premises, reconfiguring a lot or operational work; and*

*(b) to the extent-*

*(i) the application relates to a wild river area; and*

*(ii) the application is in relation to residential, commercial or industrial development; and*

*(iii) the proposed development is made assessable under-*

*(A) a local government planning scheme; or*

*(B) the Integrated Planning Act 1997, schedule 8, part 1, table 3, item 1 or table 4, item 2; and*

*(c) despite the Integrated Planning Act 1997, sections 3.5.4, 3.5.5, 3.5.13 and 3.5.14.*

*(2) For the application, the assessment manager's decision must comply with the applicable code mentioned in the wild river declaration for the area.*

*(3) This section does not apply to residential, commercial or industrial development in a designated urban area."*

[115] This provision makes any property development plan the paramount legal document controlling development in the Wild River Area over the land to which it applies. It uses the same gate keeper provision identified above with the same consequences. No application, no decision and no appeal rights.

***"43A Effect of property development plan on particular development applications***

*(1) This section applies to a development application that-*

*(a) relates to land to which a property development plan applies; and*

*(b) is for assessable development under any of the following provisions of the Integrated Planning Act 1997, schedule 8, part 1-*

*• table 1, item 2*

*• table 2, items 1, 8 and 11*

*• table 4, items 1A to 1G, 3, 5, 6 to 8 and 10*

*• table 5, items 1 and 4.*

*(2) Despite the Integrated Planning Act 1997, section 3.2.1, unless the application is consistent with the property development plan-*

*(a) the application is taken not to be a properly made application for that Act; and*

*(b) the assessment manager must refuse to receive the application."*

[116] There is a protection within the Wild Rivers Area of existing native title rights.<sup>12</sup>

## 6.2 Definitions

[117] The WRA provides a definition of agriculture that does not prevent own consumption agriculture but does prevent in conjunction with other provisions commercial agriculture in high preservation areas.

*“agricultural activities-*

*1 Agricultural activities means-*

- (a) cultivating soil; or
- (b) planting, gathering or harvesting a crop, including a food or fibre crop; or
- (c) disturbing the soil to establish non-indigenous grasses, legumes or forage cultivars; or
- (d) using the land for horticulture or viticulture.

The term does not include-

(e) producing agricultural products for the domestic needs of the occupants of the land if the maximum area of the land on which the products are produced is the following-

- (i) for fewer than 10 occupants of the land-0.25ha;
- (ii) for 10 or more but fewer than 50 occupants of the land-2ha;
- (iii) for 50 or more but fewer than 100 occupants of the land-4ha;
- (iv) for 100 or more occupants of the land-6ha; or

- (f) baling or cutting pasture; or
- (g) broadcasting seed to establish an improved pasture; or
- (h) planting, gathering or harvesting a crop of pasture or grain species in a preservation area if the pasture or grain species is-
  - (i) only for animal feed; and
  - (ii) neither a high risk species nor a moderate risk species for the wild river area of which the preservation area is a part; or
- (i) improving pasture using low impact soil disturbance if the pasture species is neither a high risk species nor a moderate risk species for the wild river area; or
- (j) forestry activities.

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<sup>12</sup> s. 44 WRA

## 7 Wenlock Basin Wild Rivers Declaration Proposal

- [118] This declaration proposal has not yet been made but has been released for public comment.
- [119] Please note that for the purposes of the VMA, section 22A(2A) the proposed "high preservation area" is taken to be a "high preservation area" for the purpose of this advice.
- [120] Section 7 identifies setback and slope thresholds in Schedule 3 for the purpose of the WRA section 12 (1) (p) as a code for all matters noting that a separate table applies to operational works for native vegetation clearing.
- [121] The minimum setback for a development generally is 200 m as identified in section 1 in schedule 3. In relation to clearing of native vegetation the setback requirement is generally 200 m other than when clearing is occurring for the purpose of clearing vegetation for weed or pest management where there is a gradation required according to stream level.
- [122] Chapter 4 Part 5 is the major part for consideration in relation to the types of development that you have asked us to specifically consider.
- [123] Section 22 commences chapter 4 and provides:  
*"22. Application and scope of this chapter*  
*(1) This Chapter identifies those activities which are regulated within the wild river area.*  
*(2) Regulated activities may be identified as-*  
*(a) assessable development for the Integrated Planning Act 1997; or*  
*(b) self assessable development for the Integrated Planning Act 1997; and/or*  
*(c) having to meet the requirements outlined in this declaration.*  
*(3) For subsection (2) (a) and (b), where a regulated activity is not identified as self assessable then the activity is assessable unless-*  
*(a) an application for the activity is taken not to have been made and/or will be refused; or*  
*(b) the activity is exempted by, or from the effect of, this declaration.*  
*(4) Regulation of the activities in this chapter does not affect the application of any legal requirements under other legislation."*
- [124] It is important to understand that compliance with any one piece of legislation will not typically lead to compliance with other legislation.
- [125] Section 56 deals with both residential and commercial development and provides:  
*"56. Residential, commercial or industrial development under the Wild Rivers Act 2005, s.43*  
*(1) This section applies to-*



*(a) a development application for a material change of use of premises, reconfiguring a lot or operational work; and*

*(b) to the extent-*

*(i) the application relates to the wild river area; and*

*(ii) the application is in relation to residential, commercial or industrial development; and*

*(iii) the proposed development is made assessable under-*

*(A) a local government planning scheme; or*

*(B) the Integrated Planning Act 1997, schedule 8, part 1, table 3, item 1; or*

*(C) the Integrated Planning Act 1997, schedule 8, part 1, table 4, item 2.*

*(2) This section does not apply to residential, commercial or industrial development in a designated urban area.*

*(3) For subsection (1)(b)(iii)(B) there is no applicable codes for wild river matters.*

*(4) For all other applications, under the Wild Rivers Act 2005, section 43 the assessment manager's decision must comply with Part 5 of the Wild Rivers Code."*

- [126] Residential development includes the construction of permanent residential accommodation that the community has aspirations to undertake.
- [127] The reference to commercial development would include a caravan park being the permanent camp site relocatable infrastructure such as safari tents and permanent infrastructure such as ablutions.
- [128] The reference to schedule 8, part 1, table 3, item 1 deals with making a reconfiguration of a lot assessable development unless one of the exception set out in that table is applicable. None appear relevant for present purposes.
- [129] The reference to schedule 8, part 1, table 4, item 2 is a reference to operational work associated with a reconfiguration of a lot which does not appear relevant for present purposes.
- [130] Any development proposed is not in a "designated urban area" and it is therefore not relevant for present purposes.
- [131] Therefore, subsection (4) leads to the requirement to comply with part 5 of the Wild Rivers Code under section 43 of the WRA.
- [132] Section 57 deals with protected area management under the *Nature Conservation Act 1992*.

In summary it provides a requirement that, irrespective of a management plan under section 117 of the *Nature Conservation Act 1992*, to the extent that a declaration requires more stringent controls the declaration will prevail. We note that there is a suggestion of a some dealing under the *Nature Conservation Act 1992* applying part of the Land but we are unable to take this matter further without being provided with further information.

[133] Section 58 specifically excludes the ability to prepare a master planned area under section 2.5B.2 of the IPA. This limits and opportunity for expanding urban areas.

[134] Section 62 deals with agricultural activities under the WRA and repeats the definition in the WRA.

*"62. Agricultural activities under the Wild Rivers Act 2005, s.42*

*(1) This section applies to a development application for-*

*(a) making a material change of use of premises that is mentioned in the Integrated Planning Act 1997, schedule 8, part 1, table 2, item 11; and*

*(b) operational work mentioned in the Integrated Planning Act 1997, schedule 8, part one, table 4, item 10.*

*(2) For subsection (1) the Wild Rivers Act 2005 defines agricultural activities as-*

*....*

*(3) Under the Wild Rivers Act 2005, section 42, if any part of the application relates to a development-*

*(a) height preservation area; or*

*(b) preservation area in relation to the production of a high-risk species, subsection*

*(4) applies.*

*(4) Despite the Integrated Planning Act 1997, section 3.2 .1-*

*(a) The application is taken not to be a properly made application; and*

*(b) The assessment manager must refuse to receive the application.*

*(5) For all other applications, under the Wild Rivers Act 2005 section 42, the assessment manager's and any concurrence agency's decision must comply with Part 1 of the Wild Rivers Code."*

[135] The establishment of agricultural or horticultural operations for commercial purposes in the high preservation area. Subsection 62 (2) paragraphs (a)-(d) clearly capture the use that you propose. It is therefore necessary to consider whether the exceptions would apply. A review of those exceptions indicates that they would not make the establishment of commercial agriculture or horticulture an exception.

[136] Subsection 62 (3) & (4) has the effect of a prohibition for commercial agricultural or horticulture in high preservation areas by making any application not properly made and one which an assessment manager must refuse to receive.

## 8 Vegetation Management Act 1999

### 8.1 Purpose

[137] The purpose of this Act is to “conserve” not “preserve” regional ecosystems and declared areas which include the wild rivers area.

***“3 Purpose of Act***

*(1) The purpose of this Act is to regulate the clearing of vegetation in a way that—*

*(a) conserves the following—*

*(i) remnant endangered regional ecosystems;*

*(ii) remnant of concern regional ecosystems;*

*(iii) remnant not of concern regional ecosystems; and*

*(b) conserves vegetation in declared areas; and*

*(c) ensures the clearing does not cause land degradation; and*

*(d) prevents the loss of biodiversity; and*

*(e) maintains ecological processes; and*

*(f) manages the environmental effects of the clearing to achieve the matters mentioned in paragraphs (a) to (e); and*

*(g) reduces greenhouse gas emissions.”*

### 8.2 Declaration

[138] The position of the declaration is made explicit in the following provision of the VMA.

***“17 Making declaration***

*(1) The Governor in Council, by gazette notice, may declare—*

*(a) an area mentioned in section 16(1)(a) to be an area of high nature conservation value; or*

*(b) an area mentioned in section 16(1)(b) to be an area vulnerable to land degradation.*

*(1A) A wild river high preservation area is taken to be declared to be an area of high nature conservation value under subsection (1)(a).*

*(2) The declaration must include a code for the clearing of vegetation in the declared area (a declared area code).*

*(2A) For an area mentioned in subsection (1A), the declared area code is the code identified in the wild river declaration for the wild river area.*

*(3) The chief executive must keep a copy of the declaration available for inspection—*

*(a) at the department’s head office and regional offices at all times when the offices are open for the transaction of public business; and*

*(b) on the department’s web site on the internet.*

(4) On payment of a fee, a person may buy a copy of the declaration.

(5) The fee for the copy of the declaration must not be more than the reasonable cost of publishing the copy.

(6) The declaration is not subordinate legislation.”

### 8.3 Development application involving vegetation clearing

[138] Pursuant to s 22A of the *Vegetation Management Act 1999 (VMA)*, an assessment manager must refuse to receive an application involving vegetation clearing unless it is for one of the relevant purposes listed in that provision. In other words, if the application is not for a ‘relevant purpose’ under the VMA, it does not even get past the assessment manager’s front counter.

#### ‘Relevant purpose’ under the VMA

[139] Some relevant purposes include clearing for thinning, fodder, or to establish a fence, firebreak, road, vehicular track or necessary infrastructure. There are other relevant purposes, but those most crucial to this advice are:

- (i) clearing regrowth on freehold or indigenous land in a wild river high preservation area,<sup>13</sup> but only in an area shown as a registered area of agriculture on a registered area of agriculture map;<sup>14</sup>
- (ii) clearing for a special indigenous purpose under the *Cape York Peninsula Heritage Act 2007 (CYPHA)*,<sup>15</sup> but not in a wild river high preservation area,<sup>16</sup> and not in an area declared to be of high nature conservation value or an area vulnerable to land degradation.<sup>17</sup>

#### ‘Relevant Purpose’ 1

[140] Note that the first relevant purpose above refers only to clearing of regrowth. ‘Regrowth vegetation’ is defined in the VMA to mean vegetation that is not remnant vegetation. In turn, ‘remnant vegetation’ is defined to mean either that mapped on a regional ecosystem or

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<sup>13</sup> VMA, s 2A(2)(k).

<sup>14</sup> VMA, s 2A(2B).

<sup>15</sup> VMA, s 2A(2AA).

<sup>16</sup> VMA, s 2A(2A).

<sup>17</sup> VMA, s 2A(2C); for declared areas, see s 19E.

remnant map; or vegetation which has achieved 50% of the canopy cover that vegetation normally has and 70% of the height of the height to which that vegetation normally grows.<sup>18</sup>

[141] A 'registered area of agriculture map' is defined to mean a map certified by the chief executive as a registered area of agriculture map for wild river areas, and maintained by the department for the purpose of showing, for the wild river areas, registered areas of agriculture (including amendments).<sup>19</sup>

[142] Our search of the website of the Department of Environment and Resource Management (DERM) did not locate a registered area of agriculture map for the subject land. Accordingly, we are not aware whether such a map, in fact, exists.

#### 'Relevant Purpose' 2

[143] The second relevant purpose listed above refers to clearing for a 'special indigenous purpose', a term which is derived from the CYPHA. Under that Act, a vegetation clearing application is for a special indigenous purpose if:

- (iii) the proposed development is on Aboriginal land, Aurukun Shire lease land or DOGIT land in the Cape York Peninsula Region; and
- (iv) does not involve clearing in an Endangered or Of Concern regional ecosystem, or is for the purpose of planting a high risk species or trees to make woodchips for export; and
- (v) the Minister is satisfied the proposed clearing is of a minor nature, and will not have a significant impact on the natural values of the area.<sup>20</sup>

#### *Special Indigenous Purpose*

[144] The term 'special indigenous purpose' also relates to vegetation clearing in an indigenous community use area, but we understand it is not necessary to consider an 'indigenous community use area' for the purpose of this advice. Please let us know if our understanding is incorrect.

[145] 'Aboriginal land' in the CYPHA has the meaning given to that term in the *Aboriginal Land Act 1991 (ALA)*, that is:

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<sup>18</sup> Colloquially known as 'the 50/70 rule': VMA, Schedule.

<sup>19</sup> VMA, s 2A(3).

<sup>20</sup> CYPHA, s 18.

- (a) transferred land (i.e. land that is granted under Part 3 of the ALA without a claim being made under that Act for the land); or
- (b) granted land, that is:
  - (i) claimable land that has been claimed by, and is granted under the ALA to, a group of Aboriginal people; or
  - (ii) claimable land that, under s 67 of the ALA, has been included in a deed of grant or lease.

[146] We are not fully aware of the circumstances of the imminent grant of an estate in fee simple, but understand that Batavia Downs will become Aboriginal land upon issue of the deed of grant.

[147] The first of the three limbs of the 'special indigenous purpose' definition is satisfied if Batavia Downs is Aboriginal land.

[148] As to the second limb of the definition, we have obtained from the Environmental Protection Agency's website a purported regional ecosystem (RE) map for the land. It is not a proper RE map as it does not include polygons showing the numbered REs as required by the VMA. The map does, however, indicate that land to the west of Batavia Downs has been mapped, mostly as Not of Concern REs, with some Of Concern REs irregularly interspersed.

[149] The purported RE map also states that the land is subject to '2003 remnant vegetation cover'. We understand that the whole of Queensland has been captured by aerial photography and satellite imagery for the purposes of plotting vegetation communities. It is, no doubt, only a matter of time before the map is marked up with various polygons indicating the EPA's interpretation of the vegetation status on the land.

[150] When properly mapped, it is likely that the majority of Batavia Downs will be shown to contain vegetation communities similar to those on neighbouring properties. We anticipate update of the mapping may occur about the time of freeholding.

[151] If the majority of the land is mapped as Not of Concern REs, then the second limb of the 'special indigenous purpose' definition is satisfied provided high risk species or trees for export of woodchips are not planted.

[152] The third limb of the definition requires the Minister to be satisfied that the proposed clearing is of a minor nature, and will not have a significant impact on the natural values of the area.

(Note that the Minister may delegate his/her powers under the CYPHA to an 'appropriately qualified public service officer or employee'.<sup>21</sup>)

[153] The only guidance the CYPHA provides as to what might constitute clearing of a 'minor nature' is the clearing of a small area for subsistence farming.<sup>22</sup>

[154] Provided it can be established that any clearing for the proposed developments mentioned in your letter is of a minor nature, the third limb of the 'special indigenous purpose' definition is also satisfied.

#### **Summary: what can be cleared?**

[155] In summary, this means that:

- (vi) prior to declaration of the wild river area, clearing of a minor nature can occur in areas that are not Endangered or Of Concern REs;
- (vii) once the wild river area has been declared:
  - (a) clearing of a minor nature can occur in areas other than high preservation areas, areas declared to be of high nature conservation value or vulnerable to land degradation, or in Endangered or Of Concern REs;
  - (b) the only clearing that can occur in a wild river high preservation area is clearing of regrowth in a mapped registered area of agriculture.

[156] Note that an area cannot be declared to be of high nature conservation value unless the landholder has requested this in writing.<sup>23</sup>

[157] Remembering that establishing whether clearing is for a 'relevant purpose' is merely to satisfy the gatekeeper provisions of s 22A of the VMA which permits the assessment manager (likely to be the Cook Shire Council) to receive the application.

#### **Referral to DERM for assessment of vegetation clearing aspect of application**

[158] An application for a material change of use of the land involving clearing of vegetation triggers referral to the **DERM** as a concurrence agency where:

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<sup>21</sup> CYPHA, s 28.

<sup>22</sup> CYPHA, s 18(1)(c)(i).

<sup>23</sup> CYPHA, s 26.

- (viii) the lot contains category 1, 2 or 3 areas on a property map of assessable vegetation (PMAV); or, where there is no PMAV, contains remnant vegetation; and
- (ix) the existing use is a rural or environmental use; and
- (x) the lot is 2 hectares or larger.<sup>24</sup>

[159] Note that the use of the conjunctive word 'and' in the above definition means that all three criteria have to be met for the application to be referred to the DERM. As discussed above, whilst the current RE mapping is not accurate, it is likely that the land contains remnant vegetation. Given that the existing use is for 'experimental farm' by the Department of Primary Industries, and the land is in a Rural zone in the planning scheme, the existing use is likely to be classified as rural. The land is clearly larger than two hectares. The application will therefore trigger referral to the DERM as a concurrence agency.

[160] The DERM will assess the vegetation clearing aspects of the application against its applicable policies and codes in force at that time.<sup>25</sup> DERM may also give weight to any relevant laws, planning schemes, policies and codes, coming into effect after the application was made, but before the agency's referral day.<sup>26</sup>

[161] As a concurrence agency, the DERM may direct the assessment manager to impose certain conditions upon any approval, approve only part of the development, or to refuse the application.<sup>27</sup> If directed to refuse the development application, the assessment manager is obliged to do so despite any other findings.

#### Applicable codes for DERM assessment

[162] The current applicable code published by the DERM (then the Department of Natural Resources and Water) for assessment of applications in the region is the *Regional Vegetation Management Code for Western Bioregions* dated 20 November 2006. However, this code does not recognise clearing for special indigenous purposes.

[163] We have been provided with a copy of a draft *Code for clearing vegetation for special indigenous purposes* dated 2007. We are not aware of an anticipated commencement date for

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<sup>24</sup> IPA, s 3.8.1; *Integrated Planning Regulation 1998*, s 5 and Sch 2, Table 3, Item 11.

<sup>25</sup> IPA, s 3.3.15(1).

<sup>26</sup> IPA, s 3.3.15(2).

<sup>27</sup> IPA, s 3.3.18.



this code. If an application was made prior to its commencement, it would be likely that the DERM would give it significant weight for instances of clearing for special indigenous purposes.

[164] The draft *Code for clearing vegetation for special indigenous purposes* includes Performance Requirements which must be satisfied for an approval for vegetation clearing. It also contains Acceptable Solutions which, if met, will satisfy the corresponding Performance Requirement. The Acceptable Solutions are, however, only way of satisfying the Performance Requirement – alternative solutions may be advanced by the applicant.<sup>28</sup>

[165] Performance Requirement 1.4 of the draft Code provides for the clearing to be of a minor nature, stating that ‘clearing only occurs where the clearing will maintain the structure and function of regional ecosystems in the area of clearing’. This Performance Requirement has a number of Acceptable Solutions which summarily provide that:

- (xi) clearing does not occur in REs listed in Table 1 of the draft Code; and
- (xii) in REs not listed in Table 1:
  - (a) no more than 5 ha in any 100 ha area can be cleared;
  - (b) clearing is limited to the extent necessary to carry out the development;
  - (c) clearing is not within 200 metres of an existing vegetation clearing authority; and
  - (d) there is no suitable alternative site that does not require clearing.

[167] Other Performance Requirements of the draft Code relate to conserving Endangered and Of Concern REs (PR 1.1), planning high risk species or trees to make woodchips (PR 1.2), essential habitat (PR 1.3), clearing in wetlands (PR 1.5) and around watercourses (PR 1.6), soil erosion (PR 1.7), salinity (PR 1.8), conservation status thresholds (PR 1.9) and acid sulfate soils (PR 1.10).

[168] For PR 1.4, Table 1 lists 44 REs. Until proper RE mapping for the land is available, it is not possible to further speculate as to the prospects of successfully achieving approval for clearing for the purposes mentioned in your letter.

### **Conclusion re vegetation clearing issues**

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<sup>28</sup> Draft *Code for clearing vegetation for special indigenous purposes*, DERM, 2007, s 6.2.


- [169] In our view, however, the most important aspect is to establish that the clearing is of a minor nature and not in high preservation, high nature conservation or 'vulnerable to land degradation' areas, in order to get the application lodged in the first instance.
- [170] When establishing the 'minor' nature of the clearing for lodging the application, regard should be had to the Acceptable Solutions for Performance Requirement 1.4 of the draft Code. While not directly relevant at that time, it should be a clear guidepost as to what might constitute 'minor' clearing.
- [171] The effect of the Wild River declaration is that 'minor' clearing, which could once occur in areas not containing Endangered or Of Concern REs, will now be further limited by the prohibition of any clearing in high preservation areas and other conservation areas.
- [172] The only clearing that can occur in a wild river high preservation area is clearing of regrowth in an area mapped as a registered area of agriculture.

## 9 Conclusion

- [173] This advice is complex and covers the interplay between various pieces of legislation. The executive summary sets out the conclusions in simple terms. Please reconsider the executive summary. In short the imposition of a high preservation area on parts of the Land will significantly limit the ability to develop those parts of the Land.

If you have any queries, please do not hesitate to contact us.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Lestar Manning', written in a cursive style.

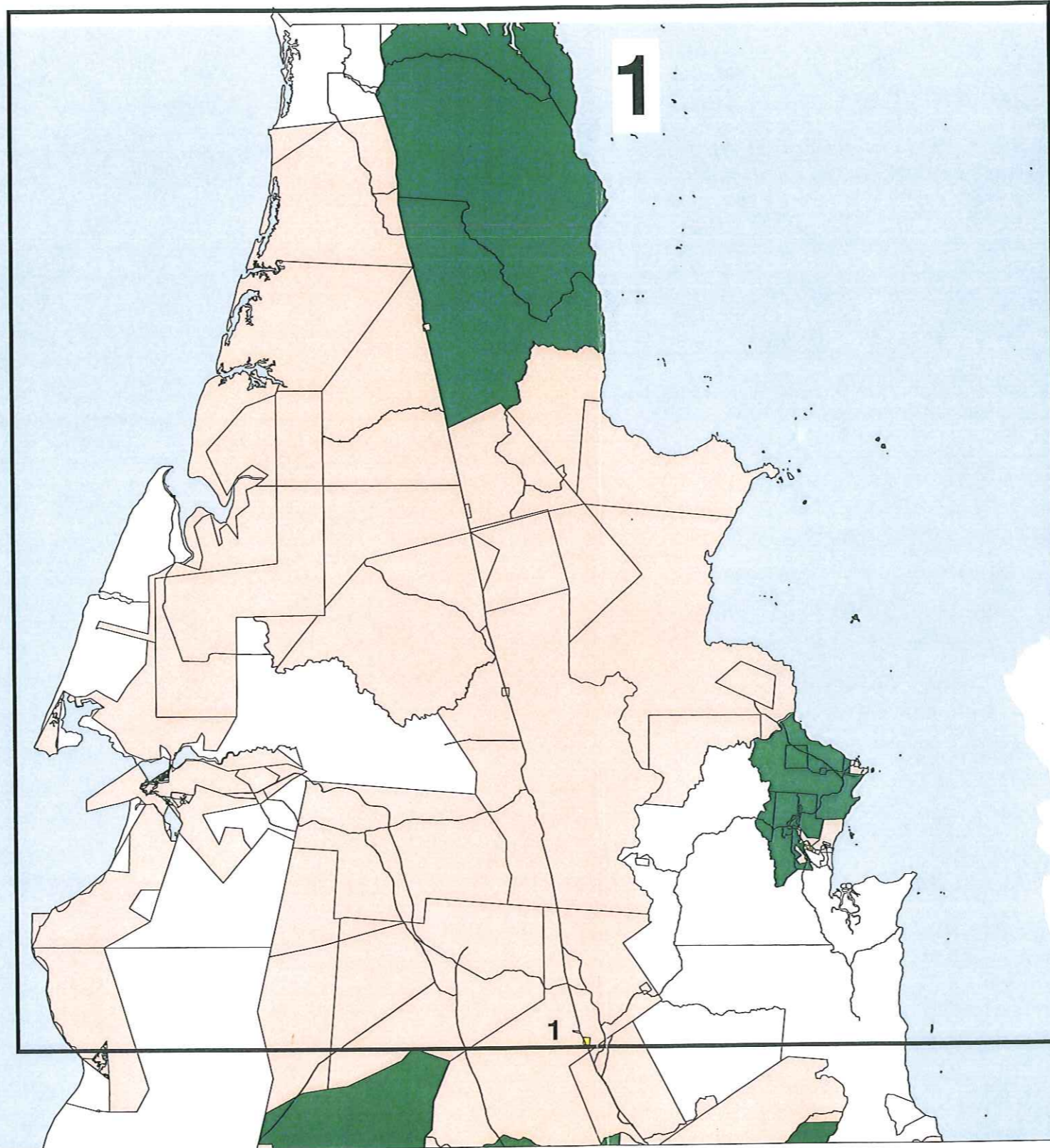
**Lestar Manning** LLB  
Partner - Maroochydore Office  
e lestar@paelaw.com 0  
**Encl.**

**ATTACHMENT 1**

Map 10 – Plan 1 of Rural Locality

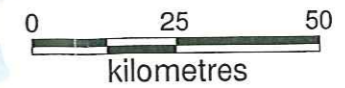
Cook Shire Planning Scheme 2007

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**Legend**

- Business
- Conservation
- Community Uses
- Industrial
- Medium Density Residential
- Mixed Use
- Open Space
- Low Density Residential
- Rural Residential
- Rural
- Village



No:	COMMUNITY USES
1	RESERVE (POST & TELEGRAPH)
2	COEN AERODROME
3	RESERVE (CAMPING & WATER)
4	TOWN RESERVE
5	RESERVE (DEPT & OFFICIAL PURPOSES)



**Cook Shire  
Planning Scheme**



**Plan 1 of 5 Rural Locality**

MAP 10

1 June 2007

DATE:  
24/11/2006

CAD FILE:  
TPS-A3-Rural Loc-  
Plan1-V8.wor

SCALE:  
1:1,250,000

drawn by:  
**Cook Shire  
Survey Office**

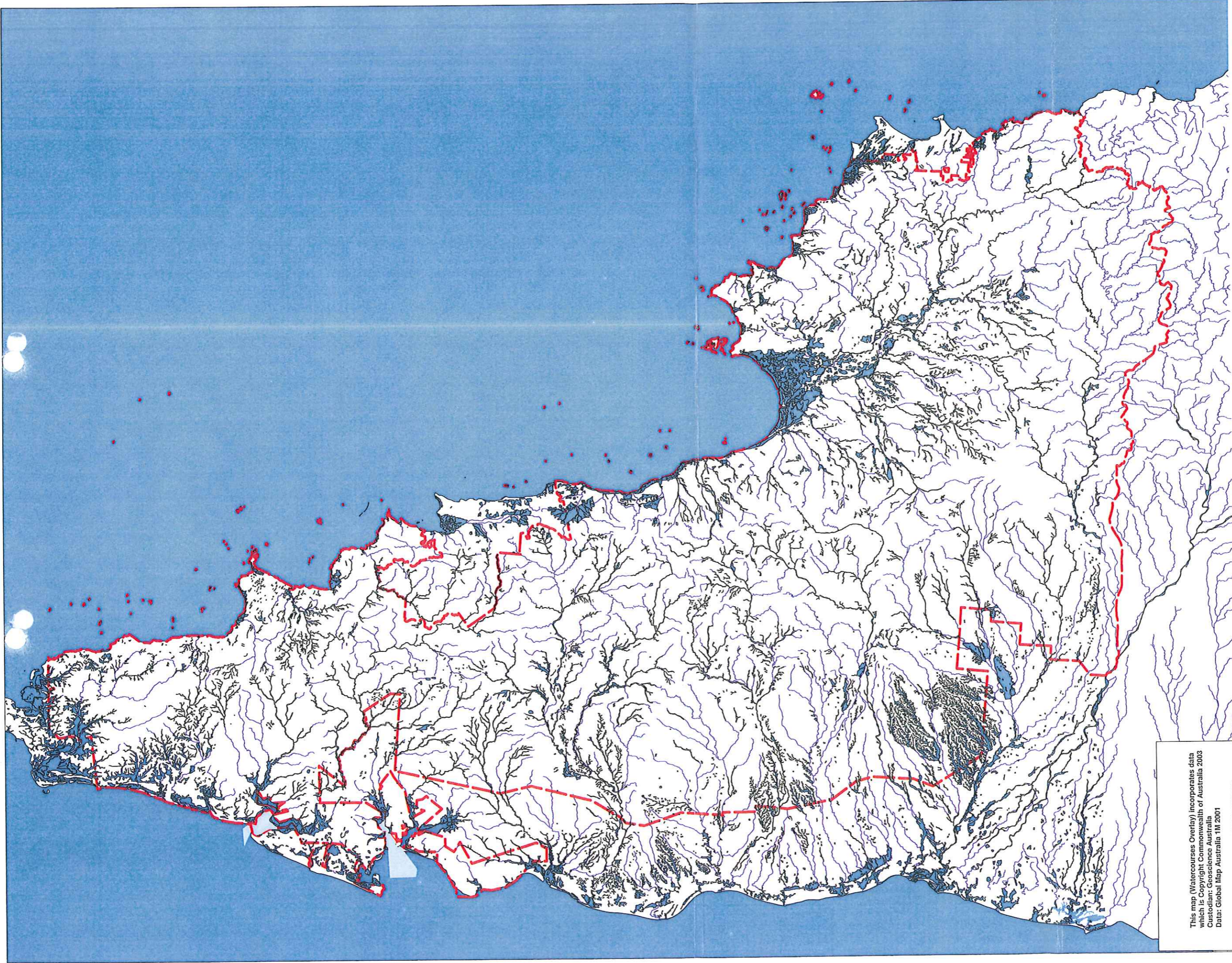
---

**ATTACHMENT 2**

Map 20 – Watercourses and Wetlands Overlay

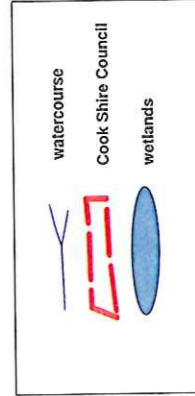
Cook Shire Planning Scheme 2007

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This map (Watercourses Overlay) incorporates data which is Copyright Commonwealth of Australia 2003  
 Custodian: Geoscience Australia  
 Data: Global Map Australia 1M 2001

Wetlands data supplied by EPA (24/2/2006)



**Cook Shire  
 Planning Scheme**

**Watercourses and Wetlands  
 Overlay**

MAP 20

DATE:  
 20/4/2006

SCALE:  
 1:1,750,000

CAD FILE:  
 TPS-A3-Watercourse  
 Overlay-V2.wor

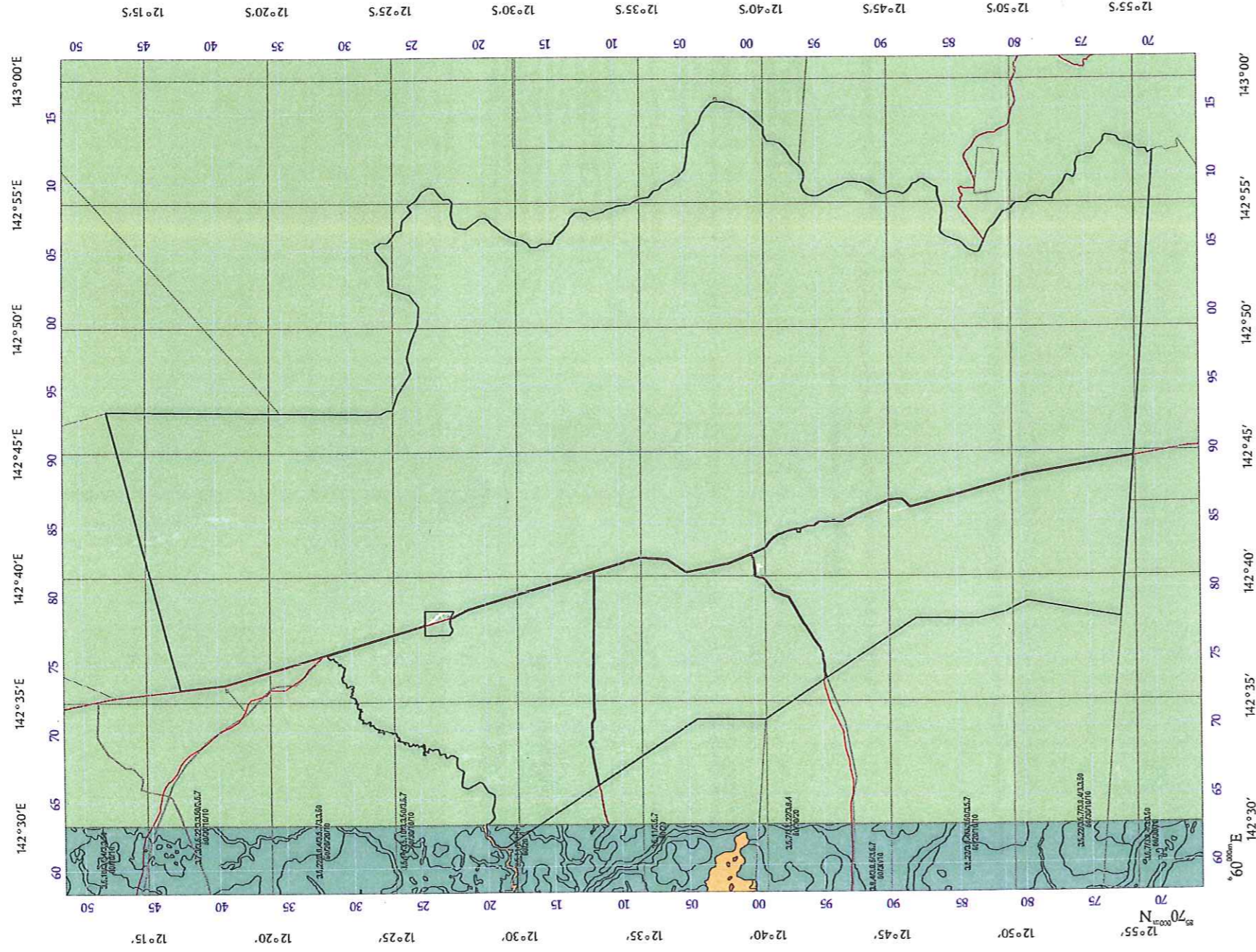
drawn by:  
 Cook Shire  
 Survey Office

1 June 2007

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**ATTACHMENT 3**

Map – Regional Ecosystems 2003



## 2003 REGIONAL ECOSYSTEM MAP



Based on 2003 Landsat TM imagery

Requested By: MADONNA@PAELAW.COM  
Date: 25 Jun 09 Time: 10.04.06



Centered on Lot on Plan:  
22 SP171852

This is a copy of the certified regional ecosystem map defined by the map extent for the purpose of the *Vegetation Management Act 1999*. Areas of property maps of assessable vegetation (PMAVs) are not shown on this map.

### 2003 Remnant endangered regional ecosystem

-  Dominant
-  Sub-dominant

### 2003 Remnant of concern regional ecosystem

-  Dominant
-  Sub-dominant

### 2003 Remnant not of concern regional ecosystem

-  Non-remnant
-  Plantation Forest
-  Dam or Reservoir

### 2003 Remnant Vegetation Cover (RVC)

- 


Vegetation Management Act Essential Habitat  
Area identified as essential habitat by the EPA for a species of wildlife listed as endangered, vulnerable, near threatened or rare under the *Nature Conservation Act 1992*.

For further information on VMA Essential Habitat, please see the attached VMA Essential Habitat map.


### Subject Lot

- 


### Certified Map Amendment area

- 


### Roads

- 

### MapInfo Australia Pty Ltd 2006

- 

### Bioregion boundary

- 

### National Park, Conservation Area State Forest and other reserves

- 

### Cadastral line

- 

The maximum spatial error of parcels extracted for this map from the Digital Cadastral Data Base (DCDB) range from: 14m to 251m at a 95% confidence level. Property boundaries shown are provided as a locational aid only.

### Towns

- 



Queensland Government



LOCALITY DIAGRAM



7800 0 7800 m

Defined map areas are labelled with the regional ecosystem (RE) code along with the percentage breakdown if more than one RE occurs within the area. Detailed definitions of regional ecosystems are available from [www.epa.qld.gov.au/REDD](http://www.epa.qld.gov.au/REDD). Defined map areas smaller than 5ha may not be labelled.

Regional ecosystem linework has been compiled at a scale of 1:100 000, except in designated areas where a compilation scale of 1:50 000 is available. Linework should be used as a guide only. The positional accuracy of RE data mapped at a scale of 1:100 000 is +/-100 metres. The extent of remnant regional ecosystems as of 2003, depicted on this map is based on rectified 2003 Landsat TM imagery (supplied by SLATS, Department of Natural Resources and Water).

### Disclaimer:

While every care is taken to ensure the accuracy of this product, the Department of Natural Resources and Water, the Environmental Protection Agency and MapInfo Australia Pty Ltd, makes no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which you might incur as a result of the product being inaccurate or incomplete in any way and for any reason.

All datasets are updated as they become available to provide the most current information as of the date shown on this map.

Additional information is required for the purposes of land clearing or assessment of a regional ecosystem map or PMAV applications. For further information go to the web site: [www.nrw.qld.gov.au/vegetation](http://www.nrw.qld.gov.au/vegetation) or contact the Department of Natural Resources and Water.

Digital regional ecosystem data is available in shapefile format, for Lot on Plans from [www.epa.qld.gov.au/REDDATA](http://www.epa.qld.gov.au/REDDATA) or from the Queensland Herbarium for larger areas.

Email: [regional.ecosystem@epa.qld.gov.au](mailto:regional.ecosystem@epa.qld.gov.au)



**ATTACHMENT 4**

**4.1.17 Table of Assessment for the Rural Zone**

**Cook Shire Planning Scheme 2007**

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#### 4.1.17 Table of Assessment for the Rural Zone

Part A of the table below specifies the level of assessment for a Material Change of Use. Part B of the Table specifies the level of assessment for all other types of development.

Table 17

Type of Development	Applicable Codes and Acceptable Solutions (AS) for Self-assessable Development
<b>Part A – Material Change of Use</b>	
<b>Exempt Uses</b>	
Minor Public Utility	Nil
Park Facilities	Nil
<b>Self-assessable Uses</b>	
Agriculture	<ul style="list-style-type: none"> <li>▶ <input type="checkbox"/> Rural Zone Code (AS 1; 3.2; 4.1)</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code (AS 1.1)</li> <li>▶ <input type="checkbox"/> Natural Hazards Code (AS 2; 5 &amp; 8)</li> </ul>
Animal Keeping	<ul style="list-style-type: none"> <li>▶ <input type="checkbox"/> Rural Zone Code (AS 1; 3.2; 4.1)</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code (AS 1.1)</li> <li>▶ <input type="checkbox"/> Natural Hazards Code (AS 2; 5 &amp; 8)</li> </ul>
Forestry	<ul style="list-style-type: none"> <li>▶ Rural Zone Code (AS 1; 3.2; 4.1)</li> <li>▶ Aviation Facilities &amp; Operational Airspace Overlay Code (AS 1.1)</li> <li>▶ Natural Hazards Code (AS 2; 5 &amp; 8)</li> </ul>

Type of Development	Applicable Codes and Acceptable Solutions (AS) for Self-assessable Development
House (where not on a lot intersected by or located above the 30 m contour on the Hillslopes Overlay Map)	<ul style="list-style-type: none"> <li>▶ <input type="checkbox"/> Parking &amp; Access Code (AS 1)</li> <li>▶ <input type="checkbox"/> Rural Zone Code (AS 1; 3.1; 3.2; 4.1)</li> <li>▶ <input type="checkbox"/> Works, Services &amp; Infrastructure Code (AS 1.1; 1.2; 3.1; 3.2; 5; 6; 9; 11.1; 11.2; 11.3; 11.4; 11.5; 12.1; 12.2; 12.3; 12.4; 13.1; 13.2 &amp; 15)</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code (AS 1.1)</li> <li>▶ <input type="checkbox"/> Natural Hazards Code (AS 2; 5 &amp; 8)</li> </ul>
Code Assessable Uses	
Bed and Breakfast	<ul style="list-style-type: none"> <li>▶ Bed and Breakfast Code</li> <li>▶ Cultural Features Code</li> <li>▶ Parking &amp; Access Code</li> <li>▶ Rural Zone Code</li> <li>▶ Works, Services &amp; Infrastructure Code</li> <li>▶ <input type="checkbox"/> Natural Hazards Code</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li> <li>▶ Hillslopes Overlay Code</li> </ul>
Caretaker's Residence	<ul style="list-style-type: none"> <li>▶ Caretaker's Residence Code</li> <li>▶ Cultural Features Code</li> <li>▶ Parking &amp; Access Code</li> <li>▶ Rural Zone Code</li> <li>▶ Works, Services &amp; Infrastructure Code</li> <li>▶ <input type="checkbox"/> Natural Hazards Code</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li> <li>▶ Hillslopes Overlay Code</li> </ul>



Type of Development	Applicable Codes and Acceptable Solutions (AS) for Self-assessable Development
Home Business	<ul style="list-style-type: none"> <li>▶ Cultural Features Code</li> <li>▶ Parking &amp; Access Code</li> <li>▶ Rural Zone Code</li> <li>▶ Home Business Code</li> <li>▶ Works, Services &amp; Infrastructure Code</li> <li>▶ <input type="checkbox"/> Natural Hazards Code</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li> <li>▶ Hillslopes Overlay Code</li> </ul>
Host Farm	<ul style="list-style-type: none"> <li>▶ Cultural Features Code</li> <li>▶ Parking &amp; Access Code</li> <li>▶ Rural Zone Code</li> <li>▶ Host Farm Code</li> <li>▶ Works, Services &amp; Infrastructure Code</li> <li>▶ <input type="checkbox"/> Natural Hazards Code</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li> <li>▶ Hillslopes Overlay Code</li> </ul>
House (where not self-assessable)	<ul style="list-style-type: none"> <li>▶ Rural Zone Code</li> <li>▶ Parking &amp; Access Code</li> <li>▶ Works, Services &amp; Infrastructure Code</li> <li>▶ Natural Hazards Code</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li> <li>▶ Hillslopes Overlay Code</li> </ul>

Type of Development	Applicable Codes and Acceptable Solutions (AS) for Self-assessable Development
Public Utility	<ul style="list-style-type: none"> <li>▶ Cultural Features Code</li> <li>▶ Parking &amp; Access Code</li> <li>▶ Rural Zone Code</li> <li>▶ Works, Services &amp; Infrastructure Code</li> <li>▶ <input type="checkbox"/> Natural Hazards Code</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li> <li>▶ Hillslopes Overlay Code</li> </ul>
Relative's Accommodation	<ul style="list-style-type: none"> <li>▶ Cultural Features Code</li> <li>▶ Parking &amp; Access Code</li> <li>▶ Relative's Accommodation Code</li> <li>▶ Rural Zone Code</li> <li>▶ Works, Services &amp; Infrastructure Code</li> <li>▶ Natural Hazards Code</li> <li>▶ Aviation Facilities &amp; Operational Airspace Overlay Code</li> <li>▶ Hillslopes Overlay Code</li> </ul>
Roadside Stall	<ul style="list-style-type: none"> <li>▶ Cultural Features Code</li> <li>▶ Rural Zone Code</li> <li>▶ Roadside Stall Code</li> <li>▶ <input type="checkbox"/> Natural Hazards Code</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li> <li>▶ Hillslopes Overlay Code</li> </ul>
Rural Service Industry	<ul style="list-style-type: none"> <li>▶ Cultural Features Code</li> <li>▶ Parking &amp; Access Code</li> <li>▶ Rural Zone Code</li> <li>▶ Works, Services &amp; Infrastructure Code</li> <li>▶ <input type="checkbox"/> Natural Hazards Code</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li> <li>▶ Hillslopes Overlay Code</li> </ul>



Type of Development	Applicable Codes and Acceptable Solutions (AS) for Self-assessable Development
Remote Workers' Accommodation	<ul style="list-style-type: none"><li>▶ Cultural Features Code</li><li>▶ Parking &amp; Access Code</li><li>▶ Rural Zone Code</li><li>▶ Remote Workers' Accommodation Code</li><li>▶ Works, Services &amp; Infrastructure Code</li><li>▶ <input type="checkbox"/> Natural Hazards Code</li><li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li><li>▶ Hillslopes Overlay Code</li></ul>
Veterinary Facility	<ul style="list-style-type: none"><li>▶ Cultural Features Code</li><li>▶ Parking &amp; Access Code</li><li>▶ Rural Zone Code</li><li>▶ Works, Services &amp; Infrastructure Code</li><li>▶ <input type="checkbox"/> Natural Hazards Code</li><li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li><li>▶ Hillslopes Overlay Code</li></ul>
<b>Impact Assessable Uses</b>	
All other land uses (including undefined uses).	

Type of Development	Applicable Codes and Acceptable Solutions (AS) for Self-assessable Development
---------------------	--

**Part B - Other Development**

**Exempt Development**

All development not listed below.	Nil
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**Self-assessable Development**

Building Work not associated with a Material Change of Use	<ul style="list-style-type: none"> <li>▶ <input type="checkbox"/> Rural Zone Code (AS 3.2; 4.1; 4.2; 4.3 &amp; 4.4)</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code (AS 1.1)</li> <li>▶ <input type="checkbox"/> Natural Hazards Code (AS 2; 5 &amp; 8)</li> </ul>
--	--

**Code Assessable Development**

Filling or excavation where involving:	<ul style="list-style-type: none"> <li>▶ <input type="checkbox"/> Cultural Features Code</li> <li>▶ <input type="checkbox"/> Hillslopes Overlay Code</li> </ul>
a) >10 m <sup>3</sup> of material; or	<ul style="list-style-type: none"> <li>▶ <input type="checkbox"/> Rural Zone Code</li> <li>▶ <input type="checkbox"/> Works, Services &amp; Infrastructure Code</li> <li>▶ <input type="checkbox"/> Natural Hazards Code</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li> </ul>
b) On a slope with a gradient of 15% or greater	

Reconfiguring a Lot	<ul style="list-style-type: none"> <li>▶ Cultural Features Code</li> <li>▶ Rural Zone Code</li> <li>▶ Reconfiguring a Lot Code</li> <li>▶ Works, Services &amp; Infrastructure Code</li> <li>▶ <input type="checkbox"/> Natural Hazards Code</li> <li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li> <li>▶ Hillslopes Overlay Code</li> </ul>
---------------------	--



Type of Development	Applicable Codes and Acceptable Solutions (AS) for Self-assessable Development
Operational Work (where associated with Reconfiguring a Lot)	<ul style="list-style-type: none"><li>▶ Rural Zone Code</li><li>▶ Works, Services &amp; Infrastructure Code</li><li>▶ <input type="checkbox"/> Natural Hazards Code</li><li>▶ <input type="checkbox"/> Aviation Facilities &amp; Operational Airspace Overlay Code</li><li>▶ Hillslopes Overlay Code</li></ul>



#### 4.1.18 Rural Zone Code

##### 4.1.18.1 Overall Outcomes

The purpose of this code is to achieve the following overall outcomes for the Rural Zone:<sup>3</sup>

- ▶ □ The Rural Zone incorporates a range of agricultural, animal husbandry, forestry, aquaculture and supporting uses which strengthen the rural economy and service the rural community while preserving the amenity and character of rural land;
- ▶ Good Quality Agricultural Land is protected and is not alienated or fragmented;
- ▶ □ Rural zoned land identified as Future Urban Land provides for the long-term expansion of the township and is protected from inappropriate subdivision or changes of use, which could jeopardise its functionality as Future Urban Land. Subdivision of Future Urban Land for urban purposes only occurs where there is a demonstrated community need;
- ▶ □ The rural economy and community is serviced by adequate infrastructure (particularly roads);
- ▶ □ Intensive rural activities are located away from sensitive land uses and do not have a detrimental impact on the amenity of adjoining land;
- ▶ □ Scenic landscape values and the rural character of the land is preserved for enjoyment of residents, visitors and tourists;
- ▶ □ New extractive industry operations utilise significant local resources and are appropriately located and designed to mitigate any significant environmental impacts; and
- ▶ □ Existing extractive industry operations and known resource bodies are protected from the encroachment of incompatible land uses.

##### 4.1.18.2 Development Requirements

Table 18

Performance Criteria	Acceptable Solutions
Land Use	
PC 1 Land use is primarily rural in nature. A range of non-rural uses are also located in this zone where they are complementary to the primary rural use (eg Roadside Stall) or where they have a direct and necessary connection to the wider rural community (eg. Veterinary Facility).	AS 1 Land is used for a: <ul style="list-style-type: none"> <li>▶ Animal Keeping;</li> <li>▶ Agriculture;</li> <li>▶ Forestry; and/or</li> <li>▶ House.</li> </ul>

<sup>3</sup> Some Rural zoned properties are currently held in trust for environmental purposes and are the subject of native title negotiations which may result in tenure/zoning changes in the future.

**ATTACHMENT 5**

4.1.18 Rural Zone Code

Cook Shire Planning Scheme 2007

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#### 4.1.18 Rural Zone Code

##### 4.1.18.1 Overall Outcomes

The purpose of this code is to achieve the following overall outcomes for the Rural Zone:<sup>3</sup>

- ▶ □ The Rural Zone incorporates a range of agricultural, animal husbandry, forestry, aquaculture and supporting uses which strengthen the rural economy and service the rural community while preserving the amenity and character of rural land;
- ▶ Good Quality Agricultural Land is protected and is not alienated or fragmented;
- ▶ □ Rural zoned land identified as Future Urban Land provides for the long-term expansion of the township and is protected from inappropriate subdivision or changes of use, which could jeopardise its functionality as Future Urban Land. Subdivision of Future Urban Land for urban purposes only occurs where there is a demonstrated community need;
- ▶ □ The rural economy and community is serviced by adequate infrastructure (particularly roads);
- ▶ □ Intensive rural activities are located away from sensitive land uses and do not have a detrimental impact on the amenity of adjoining land;
- ▶ □ Scenic landscape values and the rural character of the land is preserved for enjoyment of residents, visitors and tourists;
- ▶ □ New extractive industry operations utilise significant local resources and are appropriately located and designed to mitigate any significant environmental impacts; and
- ▶ □ Existing extractive industry operations and known resource bodies are protected from the encroachment of incompatible land uses.

##### 4.1.18.2 Development Requirements

**Table 18**

Performance Criteria	Acceptable Solutions
Land Use	
PC 1 Land use is primarily rural in nature. A range of non-rural uses are also located in this zone where they are complementary to the primary rural use (eg Roadside Stall) or where they have a direct and necessary connection to the wider rural community (eg. Veterinary Facility).	AS 1 Land is used for a: <ul style="list-style-type: none"> <li>▶ Animal Keeping;</li> <li>▶ Agriculture;</li> <li>▶ Forestry; and/or</li> <li>▶ House.</li> </ul>

<sup>3</sup> Some Rural zoned properties are currently held in trust for environmental purposes and are the subject of native title negotiations which may result in tenure/zoning changes in the future.



Performance Criteria	Acceptable Solutions
<p><b>PC 2</b> The land use aspirations in any Indigenous Land Use Agreement (ILUA) are recognised.</p>	<p><b>AS 2</b> Development is consistent with any ILUA relating to the land and the relevant provisions of the planning scheme.</p>
<p><b>Scale and Density</b></p>	
<p><b>PC 3</b> Buildings are of a scale and design that is appropriate for a rural area.</p>	<p><b>AS 3.1</b> No more than one House on a single lot.</p> <p><b>AS 3.2</b> Buildings and structures do not exceed 8.5 m in height above existing ground level.</p> <p><b>AS 3.3</b> Advertising Devices do not exceed 6 m<sup>2</sup> in area and no more than one Advertising Device occurs per lot.</p>
<p><b>Amenity and Setbacks</b></p>	
<p><b>PC 4</b> Buildings and structures are setback from road frontages and adjoining sensitive uses and landscaping and other measures (eg earth mounds and solid fences) are provided within this setback to:</p> <ul style="list-style-type: none"> <li>▶ Complement the character of the area;</li> <li>▶ ☐ Minimise adverse impacts on roads and adjoining properties; and</li> <li>▶ ☐ Minimise the impact of dust on residents of the rural lot.</li> </ul>	<p><b>AS 4.1</b> For uses other than Rural Service Industry, Intensive Animal Keeping and Advertising Device:</p> <ul style="list-style-type: none"> <li>▶ ☐ Where access is from a sealed road, buildings and structures are setback a minimum of 50 m from this road frontage and a minimum of 6 m from all other boundaries; or</li> <li>▶ ☐ Where access is from an unsealed road, buildings and structures are setback a minimum of 100 m from this road frontage and a minimum of 6 m from all other boundaries.</li> </ul> <p><b>AS 4.2</b> For Rural Service Industry:</p> <ul style="list-style-type: none"> <li>▶ ☐ Where access is from a sealed road, buildings and structures are setback a minimum of 6 m from all boundaries; a minimum of 200 m from any dwelling on adjacent land and a minimum of 200 m from any land in the Low Density Residential, Village and Rural Residential Zones; or</li> <li>▶ ☐ Where access is from an unsealed road, buildings and structures are setback a minimum of 20 m from this road frontage; a minimum of 6 m from all other boundaries; a minimum of 200 m</li> </ul>

Performance Criteria	Acceptable Solutions
	<p>from any dwelling on adjacent land and a minimum of 200 m from any land in the Low Density Residential, Village and Rural Residential Zones.</p> <p><b>AS 4.3</b> For Intensive Animal Keeping uses in Schedule 1 of this code, buildings and structures are setback in accordance with the minimum requirements of that Schedule.</p> <p><b>AS 4.4</b> For Intensive Animal Keeping uses not in Schedule 1 of this code, no Acceptable Solution is specified.</p> <p><b>AS 4.5</b> Advertising Devices are set back a minimum of 6 m from the road frontage and a minimum of 50 m from any other boundary.</p>
<b>Design</b>	
<p><b>PC 5</b> Advertising Devices:</p> <ul style="list-style-type: none"> <li>▶ <input type="checkbox"/> Consist of a single flat panel mounted on posts; and</li> <li>▶ Are well maintained; and</li> <li>▶ Do not create visual clutter; and</li> <li>▶ <input type="checkbox"/> Are designed so as not to impact on the amenity of the locality; and</li> <li>▶ <input type="checkbox"/> Are designed so as not to detract from the character and amenity of the locality or to create a traffic hazard.</li> </ul>	<p><b>AS 5</b> No Acceptable Solution specified.</p>
<b>Protection of Extractive Resources</b>	
<p><b>PC 6</b> Existing extractive industry operations and known resource bodies are protected from the encroachment of incompatible land uses.</p>	<p><b>AS 6</b> No Acceptable Solution specified.</p>
<b>Erosion Prone Land</b>	
<p><b>PC 7</b> In an Erosion Prone Area, there are no adverse impacts on habitat, soil cover or water quality and no significant threats to public safety, infrastructure integrity or the economic value of the Erosion Prone Area.</p>	<p><b>AS 7.1</b> Erosion Prone Areas to remain free of development apart from temporary or relocatable structures for safety and recreational purposes and the area is managed to avoid adverse impacts on habitat and soil cover.</p> <p><b>AS 7.2</b> In areas with existing structures and uses, there is no increase in intensity of use.</p>



Performance Criteria	Acceptable Solutions
<b>Watercourse Protection</b>	
<p><b>PC 8</b> Where land uses or works occur adjacent to wetlands and/or watercourses identified on the Watercourses and Wetlands maps, there are no significant adverse effects on:</p> <ul style="list-style-type: none"> <li>▶ Water quality;</li> <li>▶ Ecological and biodiversity values; or</li> <li>▶ Landscape quality.</li> </ul>	<p><b>AS 8</b> New buildings or works are setback a minimum of 20 m from the wetlands and/or watercourses identified on the Watercourses and Wetlands maps and no clearing of vegetation occurs within this setback.</p>
<b>Acid Sulfate Soils</b>	
<p><b>PC 9</b> Natural or built environments and human health are not harmed by the production of acid leachate resulting from disturbance of potential and/or actual acid sulfate soil by:</p> <ul style="list-style-type: none"> <li>▶ Avoiding disturbance of such areas; or</li> <li>▶ <input type="checkbox"/> Treating and managing the disturbance to minimise the volume of acidic leachate within manageable levels, and</li> <li>▶ <input type="checkbox"/> Treating and managing surface and groundwater flows from areas of acid sulfate soils to minimise environmental harm.</li> </ul>	<p><b>AS 9</b> No Acceptable Solution specified.</p>
<b>Pest Management</b>	
<p><b>PC 10</b> Movement of State Declared or environmental pest plants and pest animals is prevented by:</p> <ul style="list-style-type: none"> <li>▶ <input type="checkbox"/> Not introducing any new declared or environmental pest plants or animals on to the property; and</li> <li>▶ <input type="checkbox"/> Not allowing seed or plant parts of declared or environmental pest plants to leave the property.</li> </ul>	<p><b>AS 10</b> No Acceptable Solution specified.</p>

#### 4.1.18.3 Schedule 1

##### Minimum setback distances for certain types of Intensive Animal Keeping

<b>Building setback from:</b>	<b>Abattoir, piggery or feedlot</b>	<b>Poultry farm or processing plant</b>	<b>Cattery or kennel</b>	<b>Aquaculture</b>
Road frontage	200 m	60 m	50 m	50 m
Natural waterway, wetlands or declared fish habitat area	100 m	50 m	50 m	100 m
Side or rear boundary	15 m	15 m	15 m	15 m
Any House on surrounding land	500 m	400 m	200 m	100 m

**ATTACHMENT 6**

4.2.2 Caravan Park Code

Cook Shire Planning Scheme 2007

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## 4.2.2 Caravan Park Code

### 4.2.2.1 Overall Outcomes

The purpose of this code is to achieve the following overall outcomes for Caravan Parks:

- ▶ □ Caravan Parks are designed to provide an attractive living environment and an additional accommodation choice for both residents and visitors in suitable areas of the Shire;
- ▶ □ A high standard of amenity is provided for on-site residents and there are no detrimental impacts on the surrounding area; and
- ▶ Native vegetation is retained where feasible.

### 4.2.2.2 Development Requirements

**Table 24**

Performance Criteria	Acceptable Solution
<b>Site Suitability</b>	
<b>PC 1</b> Caravan Parks are located so as to be easily and safely accessible to the travelling public.	<b>AS 1</b> The Caravan Park has access to a sealed road of minimum 20 m reserve width.
<b>PC 2</b> Caravan Parks have sufficient area for all individual sites, services and facilities, landscaping and vehicle manoeuvring and parking.	<b>AS 2</b> The minimum Caravan Park area is 1 ha.
<b>PC 3</b> Caravan Parks are well drained and flood free.	<b>AS 3</b> No Acceptable Solution specified.
<b>Vehicle Access and Manoeuvring</b>	
<b>PC 4</b> Safe and efficient vehicle movements are facilitated.	<b>AS 4.1</b> Caravan Parks shall be designed such that vehicles towing caravans are able to enter and leave the site in the forward gear. <b>AS 4.2</b> Internal roads have a minimum width of 4 m.
<b>PC 5</b> Off-street parking for guest check-in/check-out is provided adjacent the office or caretaker's residence.	<b>AS 5</b> No Acceptable Solution specified.
<b>Design</b>	
<b>PC 6</b> Buildings and structures for the purpose of providing recreation for guests are designed and located so as not to adversely impact on the amenity of guests or adjoining properties.	<b>AS 6</b> No Acceptable Solution specified.



Performance Criteria	Acceptable Solution
<p><b>PC 7</b> Waste material is stored so as not to be unsightly and so as to be conveniently collected.</p>	<p><b>AS 7</b> A commercial waste bin storage area is to be provided at the front of the Caravan Park (i.e. between buildings and the street frontage) and screened from the street frontage and side boundaries with a 1.8 m high fence (for example timber paling, masonry, brick, metal cladding with neutral finishes) that is 100% impervious.</p>
<p><b>PC 8</b> Buildings and facilities, individual sites and internal roads are designed and located to minimise the need to remove native vegetation.</p>	<p><b>AS 8</b> No Acceptable Solution specified.</p>
<p><b>Individual Sites</b></p>	
<p><b>PC 9</b> Individual sites have adequate area for the comfort of guests.</p>	<p><b>AS 9</b> Minimum individual site area is as follows:</p> <ul style="list-style-type: none"> <li>▶ Caravan – 90 m<sup>2</sup>;</li> <li>▶ Campervan – 60 m<sup>2</sup>;</li> <li>▶ Tent - 60 m<sup>2</sup>;</li> <li>▶ Relocatable homes – 120 m<sup>2</sup>;</li> <li>▶ Cabins – 120 m<sup>2</sup>.</li> </ul>
<p><b>PC 10</b> Individual sites have direct access to an internal road and are delineated on at least two sides by use of fencing or landscaping.</p>	<p><b>AS 10</b> No Acceptable Solution specified.</p>
<p><b>PC 11</b> Adequate separation is maintained between individual sites and facilities to provide privacy and comfort to guests.</p>	<p><b>AS 11.1</b> No caravan, campervan, tent, relocatable home or cabin is placed within 3 m of another such accommodation structure.</p> <p><b>AS 11.2</b> No caravan, campervan, tent, relocatable home or cabin is placed within 6 m of any amenities or ablution building.</p>
<p><b>Open Space</b></p>	
<p><b>PC 12</b> Sufficient open space is provided for guests' comfort.</p>	<p><b>AS 12</b> A minimum 7% of site area (exclusive of boundary setback landscaping) is provided for communal open space and recreation. Such space has a length to width ratio no greater than 1:3.</p>

Performance Criteria	Acceptable Solution
<b>Landscaping</b>	
<p><b>PC 13 Landscaping:</b></p> <ul style="list-style-type: none"> <li>▶ <input type="checkbox"/> Provides a pleasant visual presentation to the street frontage;</li> <li>▶ <input type="checkbox"/> Reduces impacts on adjoining properties through the extensive use of boundary plantings;</li> <li>▶ <input type="checkbox"/> Makes use of (and/or supplements) existing native vegetation wherever possible; and</li> <li>▶ Provides shade to guests.</li> </ul>	<p><b>AS 13</b> A landscaped strip of minimum 6 m width (excluding vehicle access and egress points) is provided along the street frontage and a minimum 3 m wide strip is provided along all other boundaries. Such landscaping to be provided to the standard nominated in the Landscaping Planning Scheme Policy.</p>

**ATTACHMENT 7**

4.2.6 Higher Density Accommodation Code

Cook Shire Planning Scheme 2007

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## 4.2.6 Higher Density Accommodation Code

### 4.2.6.1 Overall Outcomes

The purpose of this code is to achieve the following overall outcomes for Multiple Residential, Other Residential, Retirement Village, Tourist Accommodation and Tourist Facility uses:

- ▶ □ A mix of residential types, styles and densities provides choice in housing and accommodation for residents, visitors and tourists;
- ▶ □ Higher density accommodation is located in close proximity to the township areas and/or community uses such as schools;
- ▶ □ Buildings are designed and located so that the amenity of adjoining residents and the neighbourhood is not detrimentally affected;
- ▶ Environmental values of the area are maintained; and
- ▶ Adequate infrastructure and services are provided.

### 4.2.6.2 Development Requirements

**Table 28**

Performance Criteria	Acceptable Solution
<b>Site Suitability</b>	
<b>PC 1</b> Higher density accommodation uses occur in and around the centres of townships (principally Cooktown).	<b>AS 1</b> No Acceptable Solution specified.
<b>PC 2</b> Higher density accommodation uses do not occur where they will have significant adverse effects on the amenity of adjoining uses or where they will be subject to significant loss of amenity from adjoining uses.	<b>AS 2</b> No Acceptable Solution specified.
<b>PC 3</b> The site has adequate area to accommodate buildings and structures, car parking, landscaping and communal and private open space.	<b>AS 3</b> Site has a minimum area of 800 m <sup>2</sup> and a minimum 20 m frontage.
<b>Access for the Disabled</b>	
<b>PC 4</b> Accommodation, services and facilities located on the ground floor level of new buildings are accessible to the disabled.	<b>AS 4</b> No Acceptable Solution specified.



Performance Criteria	Acceptable Solution
<b>Open Space</b>	
<p><b>PC 5</b> Sufficient private and communal open space is provided for residents' needs.</p>	<p><b>AS 5.1</b> A minimum of 35% of site area (not including driveways, parking and service areas) is provided for communal open space for Other Residential, Tourist Accommodation and Tourist Facility uses. This shall include at least one whole area of minimum 50 m<sup>2</sup> with a minimum dimension of 5 m. Swimming pools and communal recreation buildings may account for up to 40% of this area.</p> <p><b>AS 5.2</b> A minimum area of private open space is provided for each dwelling unit located wholly or partly on the ground floor for Multiple Residential and Retirement Village uses as follows:</p> <ul style="list-style-type: none"> <li>▶ For one bedroom units – 30 m<sup>2</sup>;</li> <li>▶ For two bedroom units – 40 m<sup>2</sup>;</li> <li>▶ For three or more bedrooms – 50 m<sup>2</sup>.</li> </ul> <p><b>AS 5.3</b> For each unit located wholly above ground floor level in Multiple Residential and Retirement Village uses, a balcony with minimum area of 8 m<sup>2</sup> and minimum dimension of 2 m is provided.</p>
<b>Landscaping</b>	
<p><b>PC 6</b> Landscaping provides:</p> <ul style="list-style-type: none"> <li>▶ □ A pleasant visual presentation to the street frontage; and</li> <li>▶ □ Reduces negative impacts on the amenity of adjoining properties.</li> </ul>	<p><b>AS 6</b> No Acceptable Solution specified.</p>
<b>Design</b>	
<p><b>PC 7</b> Windows and balconies are located so as to avoid overlooking and loss of privacy to occupants of other units on the same or adjacent sites.</p>	<p><b>AS 7</b> No Acceptable Solution specified.</p>
<p><b>PC 8</b> Car parking areas are functional and do not detract from the visual presentation of the site.</p>	<p><b>AS 8.1</b> Car parking is not located between the building(s) and the street frontage.</p> <p><b>AS 8.2</b> Car parking is covered for weather protection (open-sided shade structures are acceptable).</p>

Performance Criteria	Acceptable Solution
<p><b>PC 9</b> Fences and walls do not prevent visibility from the street.</p>	<p><b>AS 9</b> Fences or walls along the street frontage may be built up to 1.8 m above existing ground level, where they have regular openings providing at least 50% transparency. Otherwise, they are no more than 1.2 m in height above existing ground level.</p>
<p><b>PC 10</b> Air-conditioning units and plant are:</p> <ul style="list-style-type: none"> <li>▶ Not obtrusive when viewed from the public street; and</li> <li>▶ Are acoustically screened where located in proximity to other dwelling units.</li> </ul>	<p><b>AS 10</b> No Acceptable Solution specified.</p>