PART 1

Administration

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1. INTRODUCTION

1.1 Purpose of the Planning Scheme

The Hervey Bay Planning Scheme has been prepared in accordance with the provisions of the *Integrated Planning Act 1997* (IPA). The Planning Scheme sets out Council's planning and development intentions and applies to all land in the City of Hervey Bay.

The Planning Scheme establishes the framework for managing development in a way that advances the purposes of the IPA[1] by –

(a) identifying assessable and self-assessable development; and
(b) identifying outcomes sought to be achieved in the local government area as the context for assessing development.

This Planning Scheme functions as part of IDAS[2] and must be read together with the IPA.

2. PLANNING SCHEME STRUCTURE

The Planning Scheme consists of four parts, being:

- Part 1 – Administration;
- Part 2 – Strategic Framework;
- Part 3 – Assessment Requirements; and
- Part 4 – Development Requirements.

2.1 Administration

Part 1 of the Planning Scheme (this part) contains the administrative components of the Scheme. It includes an explanation of the terms used throughout the Planning Scheme, both the land use and development definitions and the administrative terms.

2.2 Strategic Framework

Part 2 – Strategic Framework, outlines the broad outcomes and development intent for the City. It specifies the City wide Desired Environmental Outcomes (DEOs) and the approach taken by the Planning Scheme to achieve the DEOs.

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1 *The purpose of the IPA (Section 1.2.1) is to seek to achieve ecological sustainability by (a) coordinating and integrating planning at the local, regional and State levels; and (b) managing the process by which development occurs; and (c) managing the effects of development on the environment (including managing the use of premises).*

2 *IDAS – is the integrated development assessment system as detained in Chapter 3 of the IPA. The IDAS system integrates State and local government assessment processes for development.*

2.3 Assessment Requirements – Structural Elements

The Planning Scheme divides the City into four localities that cover the entire local government area. These localities are identified on the Planning Scheme Maps and are as follows:

- Urban Locality;
- Coastal Townships Locality;
- Rural Locality; and
- Fraser Island Locality.

2.3.1 Urban Locality

The Urban Locality is divided into the 16 zones that cover the entire locality. These zones are as follows:

- Pialba Business Zone;
- Business Zone;
- Mixed Use Zone;
- Neighbourhood Business Zone;
- High Density Residential Zone;
- Medium Density Residential Zone;
- Low Density Residential Zone;
- Park Residential Zone;
- Emerging Community Zone;
- Industry Zone;
- Services/Trade Zone;
- Rural Residential Zone;
- Special Purposes Zone;
- Open Space Zone;
- Conservation Zone; and
- Particular Development Zone.

The extent of the Urban Locality and the zones are depicted on Planning Scheme Maps – Urban – Maps 7 – 10 and 15 – 17.

2.3.2 Coastal Township Locality

The Coastal Townships Locality is divided into nine (9) zones that cover the entire locality. These zones are as follows:

- Township Zone;
- Medium Density Residential Zone;
- Low Density Residential Zone;
- Park Residential Zone;
- Rural Residential Zone;
- Emerging Community Zone;
- Special Purposes Zone;
- Open Space Zone; and
- Conservation Zone.

The extent of the Coastal Township Locality and the zones are depicted on Planning Scheme Maps – Coastal – Map 2 – 3 and 6 – 7.

2.3.3 Rural Locality

The Rural Locality is divided into 11 zones that cover the entire locality. These zones are as follows:

- Rural Zone;
- Rural Residential Zone;
- Township Zone;
- Industry Zone
- Services/Trade Zone;
- Low Density Residential Zone;
- Park Residential Zone;
- Special Purposes Zone;
- Open Space Zone;
- Conservation Zone; and
- Particular Development Zone.

The extent of the Rural Locality and the zones are depicted on Planning Scheme Maps – Rural – Maps 1 – 8, 11 – 20, 26 and 29 - 31.

2.3.4 Fraser Island Locality

The Fraser Island Locality is divided into seven (7) zones that cover the entire locality. These zones are as follows:

- Township Zone;
- Low Density Residential Zone;
- Park Residential Zone;
- Special Purposes Zone;
- Open Space Zone;
- Conservation Zone; and
- Particular Development Zone.

The extent of the Fraser Island Locality and the zones are depicted on Planning Scheme Maps – Fraser Island – Maps 21 – 24, 27 – 28 and 31 – 32.

2.4 Development Requirements

Part 4 – Development Requirements includes the Codes applicable to development.

The Planning Scheme includes Codes for:

- each locality;
- specific uses; and
- other codes.

The Codes applicable to development are identified in the Tables of Assessment (Part 3). The Codes included in this Planning Scheme are as follows:

Locality Codes

- Urban Locality Code;
- Coastal Township Locality Code;
- Rural Locality Code; and
- Fraser Island Locality Code.

Specific Use Codes

- Bed and Breakfast Code;
- Caretaker's Residence Code;
- Caravan and Relocatable Home Park Code;
- Commercial Use Code;
- Community Use Code;
- Display Home Code;
- Duplex Code;
- Home Business/Activity & Family Day Care Code;
- Detached Dwelling Code;
- Industrial Uses Code;
- Intensive Rural Uses Code;
- Multiple Residential Code;
- Retirement Villages Code;
- Roadside Stall Code; and
- Telecommunications Facility Code.

Other Codes

- Acid Sulfate Soils Overlay Code;
- Airport Environs Overlay Code;
- Bushfire Hazard Areas Overlay Code;
- Cultural Heritage Overlay Code;
- Extractive and Mineral Resources Overlay Code;
- Landscaping Code;
- Natural Areas and Vegetation Code;
- Wetlands and Waterways Areas Code;
- Odour Impact Overlay Code;
- Noise Impact Overlay Code;
- Parking and Access Code;
- Reconfiguring of a Lot Code;
- Signs and Advertising Devices Code;
- Structure Planning Code;
- Urban Design Code; and
- Works, Services and Infrastructure Code.

3. PLANNING SCHEME APPROACH

3.1 Determining if Development is assessable or self-assessable

The assessment tables for each zone identify development that is assessable, self-assessable or exempt under the Planning Scheme. The assessment tables also identify assessable development under the Planning Scheme that requires Code Assessment and Impact Assessment. These assessment tables are contained in Part 3. In addition to the assessment tables for each zone, the Planning Scheme also includes a number of overlays, as follows:

- Acid Sulfate Soils Overlay – Table 2.1;
- Airport Environs Code – Table 2.2;
- Bushfire Hazard Overlay – Table 2.3;
- Cultural Heritage Overlay – Table 2.4;
- Extractive and Mineral Resources Overlay – Table 2.5;
- Odour Impact Overlay – Table 2.6;
- Natural Areas Overlay – Table 2.7;
- Wetlands and Waterways Overlay – Table 2.8; and
- Noise Impact Overlay – Table 2.9.

The assessment tables for each overlay also identify development that is assessable, self assessable and exempt. These overlay provisions apply as well as the assessment tables for each zone.

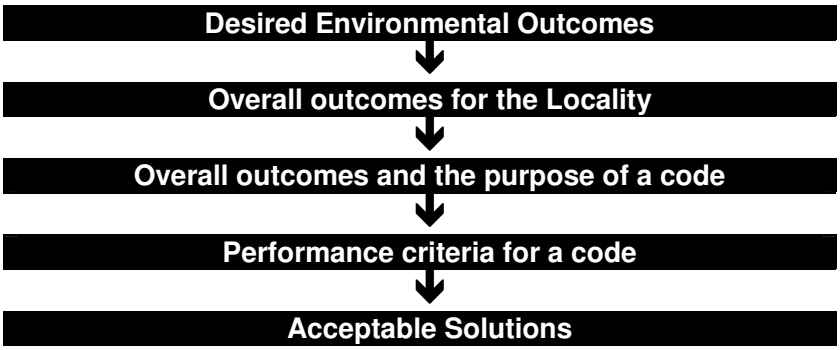
If development is identified as having a different assessment category under a zone than under an overlay, or under different overlays (where more than one overlay is applicable), the highest assessment category applies as follows:

(a) Self-assessment prevails over exempt;
(b) Code assessable prevails over self assessable or exempt; and
(c) Impact assessable prevails over code assessable, self assessable or exempt.

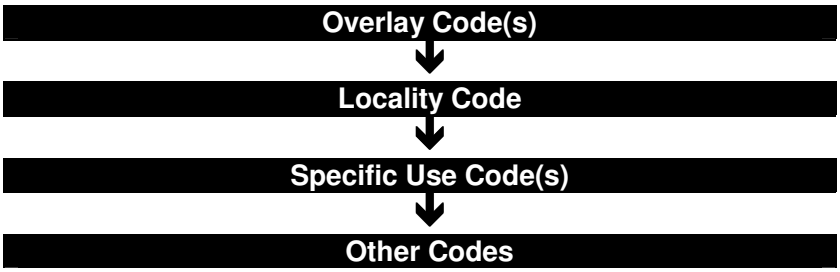
3.2 Achieving Outcomes

The Planning Scheme seeks to achieve outcomes that are identified according to the following levels:

(a) desired environmental outcomes (DEOs);
(b) overall outcomes for the Locality (the purpose of the Locality Code);
(c) overall outcomes for and the purpose of a Code;
(d) performance criteria for a Code; and
(e) the acceptable solution/s for a performance criteria.



It should be noted that a hierarchy of the Codes exists in the Planning Scheme. That is, there are higher order Codes that take precedence over lower order Codes. Where conflict occurs between codes, the provisions of the higher order Code are applied as per the following diagram in descending order of effect –



More specifically, the hierarchy of Codes in the Hervey Bay Planning Scheme are as follows:

a) The requirements of the applicable **Locality Code** is applied;

b) The requirements of the applicable **Overlay Code** are then applied. Where there is an inconsistency between requirements of the applicable Locality Code and the applicable Overlay Code, the requirements of the Overlay Code apply;

c) The requirements of the applicable **Specific Use Code** are then applied. Where there is an inconsistency between the requirements of the applicable Locality Code, the applicable Overlay Code and the applicable Specific Use Code, the requirements of the Overlay Code apply then the requirements of the applicable Locality Code and specific use code in descending order of effect; and

d) The requirements of the remainder of the **Other Codes** (all but Overlay Codes) are then applied. Where there is an inconsistency between the applicable Specific Use Code and the Other Codes (ie. Landscaping, Parking & Access etc.), the requirements of the Specific Use Code apply.

3.3 Acceptable Solutions for Self and Code Assessment

3.3.1 Self Assessment

Self assessable development that is consistent with all relevant acceptable solutions complies with the code.

3.3.2 Code Assessment

(a) Code assessable development that is consistent with the performance criteria complies with the code.

(b) An acceptable solution for a performance criterion provides a guide for achieving a performance criterion in whole or in part, and does not limit the assessment manager's discretion under the IPA[3] to impose conditions on a development approval. Compliance with an acceptable solution does not necessarily mean that the development complies with the code.

3.4 Land not within a zone

If a road, waterway or reclaimed land in the local government area is not shown as being covered by a zone on the zone maps, the following applies:

(a) if the road, waterway or reclaimed land is adjoined on both sides by land in the same zone – the road, waterway or reclaimed land has the same zoning as the adjoining land;

(b) if the road, waterway or reclaimed land is adjoined on one side by land in a zone and adjoined on the other side by land in another zone – the road, waterway or reclaimed land has the same zoning as the adjoining land and the centre line of the road or waterway is the boundary between the two zones; or

(c) if the road, waterway or reclaimed land is adjoined on one side only by land in a zone – the entire road, waterway or reclaimed land has the same zoning as the adjoining zoned land.

To remove any doubt, it is declared that the above requirements also apply to a closed road, if the road is closed after the commencement of the Planning Scheme.

3.5 Code applicability to ongoing uses

A code that is applicable to a material change of use is also applicable to the ongoing uses that result from that change.[4]

3.6 Indigenous Cultural Heritage

Under the *Aboriginal Cultural Heritage Act 2003*, any person who carries out an activity must take all reasonable and practical measures to ensure the activity does not harm Aboriginal Cultural Heritage (the cultural duty of care).

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3 Refer to the IPA, Chapter 3 (Integrated Development Assessment System (IDAS), part 5 (Decision stage), Division 6 (conditions).

4 IPA (Section 2.1.23(3) – Local Planning Instruments have force of law) relates with respect to regulating the use of premises, and also IPA, section 4.3.4 (Compliance with identified code for use of premises) with respect to an offence under the Act.

3.7 Planning Scheme designates land for community infrastructure

Land identified in *Schedule 1 – Community Infrastructure Designations* has been designated for community infrastructure pursuant to the IPA by a Minister or by the local government.

3.8 Planning Scheme identifies alternative provisions and building assessment provisions

(a) Under the Building Regulation 2006 a local government may make a Planning Scheme that identifies or states alternative provisions as well as building assessment provisions.

(b) Any alternative provisions in this Planning Scheme are identified through the following phrase following the provision “BR alternative provision”.

(c) Any building assessment provisions in this Planning Scheme are identified through the following phrase following the provision “BR building assessment provision”.

Non Statutory Notes – Levels of Assessment

General

Under the IPA all development is exempt unless it is assessable or self-assessable. Schedule 8 of the IPA identifies development that, for the purpose of the Act is:

- exempt;
- self assessable; or
- assessable.

In addition to the Act, this Plan also identifies development that is:

- self assessable; or
- assessable (subject to either code or impact assessment).

To determine whether an application is required prior to carrying out development, both Schedule 8 of the IPA and the Planning Scheme must be considered.

Exempt Development

Where development is identified as exempt development it requires no application and need not comply with the Codes or other requirements of this Planning Scheme. The IPA also includes and specifies development that is exempt.

Self Assessment

For self-assessable development no application is required, although the proposal must comply with **all** applicable acceptable solutions in all relevant codes. Where development does not comply with these acceptable solutions it becomes Code Assessable.

Code Assessment

For code assessable development an application and development permit is required before development can start. Code assessable development is assessed against the applicable Locality Code, Specific Use Code (if any) and the Other Codes relevant to the application.

For code assessment, the acceptable solutions in the relevant codes provide a guide to meeting the performance criteria. However, compliance with an acceptable solution does not necessarily mean that the development complies with the code. There may be other ways of complying with the performance criteria while still meeting the code's purpose. Code assessable development must demonstrate compliance with the applicable performance criteria and purpose of the code.

Impact Assessment

Impact assessable development requires an application and development permit before development can start. Impact assessable development will be assessed against the whole Planning Scheme including the DEOs for the City, the purpose and requirements for the particular zone and all relevant codes.

Note: Impact Assessment requires public notification as per the IPA.

Non Statutory Notes – Using the Planning Scheme to Determine the Level of Assessment for Development

As outlined in Part 1, the City is divided into four Localities, with all land in the localities included within a specific zone. Part 3 – Localities includes assessment tables for each zone. It is these assessment tables which identify the level of assessment required for both a material change of use and all other aspects of development.

The steps required to determine the level of assessment for a particular development are as follows –

Material Change of Use

Step 1 →

Define the Use
Part 1 (this part) includes definitions for all land uses. The proposed use must fall within one of the uses defined in section 4.2 – Use Definitions.

Step 2 →

Identify the Locality
The next step is to determine which Locality the site is included within (refer to Planning Scheme maps).

Step 3 →

Identify the Zone of the Land
Within each Locality, all land is included within a zone (refer to Planning Scheme maps).

Step 4 →

Identify applicable Overlays
Land may be affected by overlays (refer to the Planning Scheme maps).

Step 5 →

Determine the Level of Assessment
Each zone and overlay includes a Table of Assessment outlining the level of assessment that is required for a specific development. The land use (step 1) is included in the left-hand column with the level of assessment specified in the middle column. This table also specifies the codes that are applicable in the assessment of the proposed development.

Other Aspects of Development

Step 1 →

Identify the Locality
For all other aspects of development, the first step is to determine which Locality the site is included within.

Step 2 →

Identify the Zone of the Land
Within each Locality, all land is included within a zone (refer to Planning Scheme maps).

Planning Scheme Approach

Step 3 →

Identify applicable Overlays

Land may be affected by overlays (refer to the Planning Scheme Maps).

Step 4 →

Determine the Level of Assessment

Each zone and overlay includes a Table of Assessment outlining the level of assessment that applies for all other aspects of development. The aspect of development (eg. filling and excavation) is included in the left-hand column with the level of assessment specified in the middle column. This table also specifies the codes that are applicable in the assessment of the proposed development.

4. INTERPRETATION

This section defines key terms used throughout the scheme - both use definitions and administrative terms.

Where any term is defined in the IPA, the term has the same meaning as that in the IPA.

Undefined Terms
Any undefined terms used in this Planning Scheme are intended to have the meaning assigned to them in common usage, unless the context otherwise indicates or requires. For undefined terms, a common reference that will be used by the City of Hervey Bay is the latest edition of the Macquarie Australian Dictionary.

Any question as to whether a use or proposed use is contained within a definition, or a class of use, shall be determined by Council or its delegate.

Development containing Multiple Uses
Every use of a site which is not ancillary to a principal use on that site must be categorised as a separately defined use.