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Part 1 About the planning scheme

1.1 Introduction

- (1) The Whitsunday Regional Council Planning Scheme 2016 (planning scheme) has been prepared in accordance with the *Sustainable Planning Act 2009* (the SP Act) as a framework for managing development in a way that advances the purpose of the SP Act.
- (2) The planning scheme was amended for alignment with the *Planning Act 2016* (the Act) by the Minister's rules under section 293 of the Act on July 3 2017.
- (3) In seeking to achieve this purpose, the planning scheme sets out Whitsunday Regional Council's (WRC) intention for the future development in the planning scheme area, over the next 20 years to 2036.
- (4) The planning scheme seeks to advance state and regional policies through more detailed local responses, taking into account the local context.
- (5) While the planning scheme has been prepared with a 20 year horizon, it will be reviewed periodically in accordance with the Act to ensure that it responds appropriately to the changes of the community at a local, regional and state level.
- (6) The planning scheme applies to the planning scheme area of WRC including all premises, roads, internal waterways and local government tidal areas and interrelates with the surrounding local government areas illustrated in **Schedule 2** (Mapping) Overview map - WRC - 01 (Local government planning scheme area and context).

Editor's note—State legislation may state that the planning scheme does not apply to certain areas, e.g. strategic port land where there is a land use plan only to the extent of any inconsistency. In accordance with the provisions of section 26 of the *Sustainable Ports Development Act 2015* a port overlay for a master planned area prevails over the planning scheme, to the extent of any inconsistency.

1.2 Planning scheme components

- (1) The planning scheme comprises the following components:
- (a) about the planning scheme
 - (b) state planning provisions
 - (c) the strategic framework
 - (d) the local government infrastructure plan
 - (e) tables of assessment
 - (f) the following zones and where applicable, zone precincts specified in Table 1.2.1 (Zones and zone precincts) below:

Table 1.2.1 Zone and zone precincts

Zone and zone precincts
Residential zones category
(a) Low density residential zone (b) Low-medium residential density zone (c) Tourist accommodation zone
Centre zones category
(a) Major centre zone code (b) District centre zone code (c) Local centre zone code (d) Neighbourhood centre zone code
Industry zones category
(a) Low impact industry zone code (b) Medium impact industry zone code (c) High impact industry zone code (d) Special industry zone code (e) Waterfront industry zone code (f) Industry investigation zone code
Recreation zones category
(a) Recreation and open space zone code
Environmental zones category
(a) Environmental management and conservation zone code
Other zones category
(a) Community facilities zone code (b) Emerging community zone code (c) Mixed use zone code (d) Rural zone code (e) Rural residential zone code

- (g) the local plans specified in Table 1.2.2 (Local plans) below:

Table 1.2.2 Local plans

Local plans
(a) Hamilton island local plan

- (h) the overlays specified in Table 1.2.3 (Overlays) below:

Table 1.2.3 Overlays

Overlays
(a) Acid sulfate soils overlay code
(b) Agricultural land overlay code
(c) Airport environs overlay code
(d) Bushfire hazard overlay code
(e) Coastal protection overlay code
(f) Environmental significance overlay code
(g) Extractive resources overlay code
(h) Flood hazard overlay code
(i) Heritage overlay code
(j) Infrastructure overlay code
(k) Landslide hazard overlay code
(l) Waterway and wetlands overlay code

(i) the development codes specified in Table 1.2.4 (Development Codes) below:

Table 1.2.4 Development codes

Development codes
Relevant prescribed codes as specified in the Schedules of the Planning Regulation 2017 (the Regulation)
(a) Community residence code
(b) Forestry for wood production code
(c) Reconfiguring a lot (subdividing one into two lots) and associated operational works code
Use codes
(a) Business activities code
(b) Caretaker's accommodation code
(c) Child care centre code
(d) Dual occupancy code
(e) Dwelling house code
(f) Extractive industry code
(g) Home based business code
(h) Industry activities code
(i) Market code
(j) Multi-unit uses code
(k) Relocatable home park and tourist park code
(l) Residential care facility and retirement facility code
(m) Rural activities code
(n) Sales office code
(o) Service station code
(p) Telecommunications code
Other development codes
(a) Advertising devices code
(b) Construction management code
(c) Excavation and filling code
(d) Infrastructure code
(e) Landscaping code
(f) Reconfiguring a lot code
(g) Transport and parking code

(j) schedules and appendices

(2) The planning scheme policies specified in Table 1.2.5 (Planning scheme policies) below support the planning scheme:

Table 1.2.5 Planning scheme policies

Planning scheme policies	
(a)	Environmental features planning scheme policy
(b)	Heritage planning scheme policy
(c)	Landscaping planning scheme policy
(d)	Natural hazards planning scheme policy
(e)	Third party advice or comment planning scheme policy
(f)	Growth management planning scheme policy
(g)	Whitsunday Regional Council development manual planning scheme policy

1.3 Interpretation

1.3.1 Definitions

- (1) A term used in the planning scheme has the meaning assigned to that term by one of the following:
 - (a) the *Planning Act 2016* (the Act); or
 - (b) the Planning Regulation 2017 (the Regulation), other than the regulated requirements; or
 - (c) the definitions in **Schedule 1 (Definitions)** of the planning scheme; or
 - (d) the Acts Interpretation Act 1954; or
 - (e) the ordinary meaning where that term is not defined in the Act, the Regulation, **Schedule 1 (Definitions)** of the planning scheme or the Acts Interpretation Act 1954.
- (2) In the event a term has been assigned a meaning in more than one of the instruments listed in sub-section 1.3.1(1), the meaning contained in the instrument highest on the list will prevail.
- (3) A reference in the planning scheme to any act includes any regulation or instrument made under it, and where amended or replaced, if the context permits, means the amended or replaced act.
- (4) A reference in the planning scheme to a specific resource document or standard means the latest version of the resource document or standard.
- (5) A reference to a part, section, table or schedule is a reference to a part, section, table or schedule of the planning scheme.

Editor's note—The regulated requirements do not apply to this planning scheme.

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

- (1) Standard drawings contained in codes or schedules are part of the planning scheme.
- (2) Maps provide information to support the outcomes and are part of the planning scheme.
- (3) Notes are identified by the title 'note' and are part of the planning scheme.

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

Note—This is an example of a note.

Editor's note—This is an example of an editor's note.

Footnote¹—See example at bottom of page.

1.3.3 Punctuation

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

1.3.4 Zones for roads, waterways and reclaimed land

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

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

1.4 Categories of development

- (1) The categories of development under the Act are:

- (a) accepted development;

Editor's note—A development approval is not required for development that is accepted development. Under section 44(6)(a) of the Act, if a categorising instrument does not apply a category of development to a particular development, the development is accepted development. Schedule 7 of the Regulation also prescribes accepted development.

- (b) assessable development
- i. code assessment
 - ii. impact assessment

¹ Footnote—this is an example of a footnote.

Editor's note—A development approval is required for assessable development. Schedules 9, 10 and 12 of the Regulation also prescribe assessable development.

- (c) prohibited development.

Editor's note—A development application may not be made for prohibited development. Schedule 10 of the Regulation prescribes prohibited development.

- (2) The planning scheme states the category of development for certain types of development, and specifies the category of assessment for assessable development in the planning scheme area in **Part 5 (Tables of Assessment)**.

Editor's note—Section 43 of the Act identifies that a categorising instrument categorises development and specifies categories of assessment and may be a regulation or local categorising instrument. A local categorising instrument includes a planning scheme, a TLPI or a variation approval.

1.5 Hierarchy of assessment benchmarks

- (1) Where there is inconsistency between provisions in the planning scheme, the following rules apply:
- (a) the strategic framework prevails over all other components to the extent of the inconsistency for impact assessment;
 - (b) relevant codes as specified in Schedules 6 and 10 of the Regulation prevail over all other components to the extent of the inconsistency;
 - (c) overlays prevail over all other components (other than the matters mentioned in (a) and (b)) to the extent of the inconsistency;
 - (d) local plan codes prevail over zone codes, use codes and other development codes to the extent of the inconsistency;
 - (e) zone codes prevail over use codes and other development codes to the extent of the inconsistency; and
 - (f) provisions of Part 10 (Other plans) may override any of the above.

1.6 Building work regulated under the planning scheme

- (1) Section 17(b) of the Regulation identifies the assessment benchmarks for building work that a local planning instrument must not change the effect to the extent the building work is regulated under the building assessment provisions, unless permitted under the *Building Act 1975*.
- (2) The building assessment provisions are listed in section 30 of the *Building Act 1975*.

Editor's note—The building assessment provisions are stated in section 30 of the Building Act 1975 and are assessment benchmarks for the carrying out of building assessment work or building work that is accepted development subject to any requirements (see also section 31 of the *Building Act 1975*).

- (3) This planning scheme, through Part 5, regulates building work in accordance with sections 32 and 33 of the *Building Act 1975*.

Editor's note—The *Building Act 1975* permits planning schemes to:

- regulate, for the Building Code of Australia (BCA) or the Queensland Development Code (QDC), matters prescribed under a regulation under the *Building Act 1975* (section 32). These include variations to provisions contained in parts MP1.1, MP 1.2 and MP 1.3 of the QDC such as heights of buildings related to

- obstruction and overshadowing, siting and design of buildings to provide visual privacy and adequate sight lines, on-site parking and outdoor living spaces. It may also regulate other matters, such as designating land liable to flooding, designating land as bushfire prone areas and transport noise corridors
- deal with an aspect of, or matter related or incidental to building work prescribed under a regulation under section 32 of the *Building Act 1975*
 - specify alternative boundary clearances and site cover provisions for Class 1 and 10 structures under section 33 of the *Building Act 1975*.

Refer to Schedule 9 of the Regulation to determine assessable development, the type of assessment and any referrals applying to the building work.

- (4) The building assessment provisions are contained in the following parts of this planning scheme.

Table 1.6.1 Building assessment provisions contained in the planning scheme

Building assessment matter addressed in the planning scheme	Relevant section of the planning scheme
Flood hazard	
Identification of part of the planning scheme area as a natural hazard management area (flood)	Schedule 2 Flood hazard overlay maps
Identification of the level to which flood levels of habitable rooms of a building must be built	Section 8.2.8 Flood hazard overlay code
Bushfire hazard	
Designation of part of the planning scheme area as a designated bushfire prone area for the BCA and QDC	Schedule 2 Bushfire hazard overlay maps

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

Editor's note— In a development application the applicant may request preliminary approval for building work. The decision on that development application can also be taken to be a referral agency's response under section 56 of the Act, for building work assessable against the *Building Act 1975*. The decision notice must state this.

1.7 Local government administrative matters

There are no local government administrative matters for the planning scheme.