

ORDINARY MEETING 30 JANUARY 2013	3
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SUPERSEDED PLANNING SCHEME – BUILDING WORKS ASSESSABLE AGAINST THE PLANNING SCHEME – EXTENSIONS TO AN EXISTING HOUSE – 4/63 FOLEY ROAD PALM COVE – DIVISION 10

C S Garner: 8/35/105 : #3826089

PROPOSAL: REQUEST FOR CONSIDERATION UNDER SUPERSEDED PLANNING SCHEME – BUILDING WORKS – EXTENSIONS TO AN EXISTING HOUSE

APPLICANT: S J O'REILLY
C/- RPS AUSTRALIA EAST L71618
PO BOX 1949
CAIRNS QLD 4870

LOCATION OF SITE: 4/63 FOLEY ROAD PALM COVE

PROPERTY: LOT 4 ON SP213793

PLANNING DISTRICT: CAIRNS BEACHES

PLANNING AREA: LOW DENSITY RESIDENTIAL

PLANNING SCHEME: CAIRNSPLAN 2009 (SUPERSEDED)

REFERRAL AGENCIES: NOT APPLICABLE AT THIS STAGE

APPLICATION DATE: 14 DECEMBER 2012

DIVISION: 10

APPENDIX: 1. PROPOSED PLAN(S) & DOCUMENT(S)

Although the site is visually prominent, making it worthy of Hillslopes 2 (Urban) categorisation, it is already developed for a House and associated earthworks and its characteristics are more like those of a site in the Hillslopes 1 (Urban) category. In this respect, it is considered that an assessment of the proposed development under the Superseded Planning Scheme would not be significantly less vigorous than an assessment made under the current Scheme in this instance and it is recommended that the application be assessed under the Superseded Planning Scheme, CairnsPlan 2009.

Background

On 9 April 2010, Council issued a Development Permit for a Reconfiguration of a Lot (1 Lot into 9 Group Title Lots, Common Property & Easement) over the site to create the subdivision known as 'Serenity'. The entire development is contained within the Low Density Residential Planning Area.

The site has an area of approximately 3,208m² and contains an existing House, constructed driveway and benched areas. The land falls generally to the east and is generally cleared of remnant vegetation.

Proposal

The proposed development is for a Preliminary Approval for Building Works Assessable Against the Planning Scheme for Extensions to an Existing House on the lot. Specific plans and details of the proposed works have not been submitted at this stage but would be required to be submitted as part of a development application.

PLANNING CONSIDERATIONS

Comparison between schemes

CairnsPlan 2009 (superseded)

Under CairnsPlan 2009 (superseded), the entire site is situated within the Hillslopes 1 Overlay (refer to appendix 2). Generally, the desired development outcomes of the Category 1 (Urban) Overlay allow for limited forms of development that are responsive to the constraints of the site, are serviceable and accessible and protect the visual amenity and landscape character of the Hillslopes.

CairnsPlan 2009 (amended)

Under CairnsPlan 2009 (amended), the entire site is contained within the Hillslopes 2 (Urban) Overlay (refer to Appendix 2). Generally, land contained within the Hillslopes 2 (Urban) category is considered to be so constrained in terms of slope stability and access that it is considered unsuitable for development. Council's decision to amend the Hillslopes Overlay category for this site was in response to the requirements of the Regional Plan, with the intention to constrain development of the land in order to protect the visual amenity of the Hillslopes.

The site is contained within a visually prominent location and is included in the Hillslopes 2 (Urban) category largely for this reason even though the site is already substantially benched and developed for a House and has fully constructed vehicular access and services and both Planning Schemes include it within the Low Density Residential Planning Area.

With respect to the above points it is considered that as the site has more in common with a site in the Hillslopes 1 (Urban) category in terms of access, servicing and slope stability, especially considering that the site has already been developed for residential purposes.

Impact on the visual amenity of the Hillslopes would be assessed as vigorously under the Hillslopes 1 (Urban) Overlay under the superseded Planning Scheme as under the Hillslopes 2 (Urban) Overlay of the current Planning Scheme.

The Planning Areas and Vegetation Conservation and Waterway Significance Overlay are consistent between both Schemes and will not be discussed further here. Furthermore, the wording of the Overlay, Planning Area, Land Use and General Codes is the same in both Schemes.

Other Considerations

As a Code Assessable application, under the superseded CairnsPlan 2009 (superseded), the proposal would be assessed and decided against the requirements of s313 and s315 of the *Sustainable Planning Act 2009*. Section 313 requires an application to be assessed against: State Planning Regulatory Provisions; the Regional Plan (to the extent it is not identified in the planning scheme); the applicable codes; and State Planning Policies, amongst other requirements. Section 315 modifies the extent of assessment of an application as if it were an application to which the superseded planning scheme applied; and the existing planning scheme was not in force.

Neither the superseded or amended versions of CairnsPlan 2009 incorporate all requirements of the Far North Queensland Regional Plan 2009-2031 into the scheme. Consequentially if an application were to be lodged under either scheme it would be necessary to assess the application against the requirements of the Regional Plan. Part E of the Regional Plan provides regional policies including, but not limited to *Regional Policy 2.3 Scenic amenity, outdoor recreation and inter-urban breaks*. Under the Regional Plan the site is situated within the Urban Footprint. Amongst other requirements Regional Policy 2.3 requires *“the visual amenity of the regions landscapes [...] is protected and enhanced by assessing proposed developments on landscapes that are vulnerable to visual impact due to their prominence, topography or degree of naturalness”*.

Summary

The main difference between the two Schemes is that the site was previously contained within the Hillslopes 1 (Urban) Overlay under the superseded Scheme is now mostly contained within the Hillslopes 2 (Urban) Overlay under the amended Scheme.

The Regional Plan 2009-2031, which is applicable to both Schemes, has a requirement for development to not impact on the visual amenity of the Hillslopes and this would be the primary consideration in the assessment of a development application on this site where it is likely that the proposed development would be entirely contained within existing benched areas.

It is considered that an assessment against the relevant codes of the superseded CairnsPlan 2009 scheme with due weight given to other relevant statutory instruments, that an appropriate development outcome can be achieved on-site.

The assessment of the application under the superseded CairnsPlan 2009 would result in limitations on the potential for claims for compensation, as detailed by Chapter 9, Part 3 of the *Sustainable Planning Act 2009*.

It is recommended that the request to apply a superseded planning scheme (CairnsPlan 2009) should be supported.

Public Notification / Submissions

If a development application for extensions to an existing House is lodged over the site, no Public Notification would be required because it would constitute code assessable development.

Referrals

No State referrals would be triggered by the proposed development.

HEADWORKS / CONTRIBUTIONS:

The proposed development would not trigger Infrastructure Charges.

Claire Garner
Planning Officer
Action Officer

Kelly Reaston
Acting General Manager Planning & Environment

APPENDIX 1: PROPOSED PLAN(S) & DOCUMENT(S)

**Cairns Office**

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Our Ref: PR116119/EY/AF/L71619
Date: 14 December 2012



Attn: Mr Neil Beck
Chief Executive Officer
Cairns Regional Council
PO Box 359
CAIRNS QLD 4870

Via: Courier

Dear Sir;

RE: REQUEST FOR DEVELOPMENT APPLICATION TO BE ASSESSED UNDER SUPERSEDED PLANNING SCHEME PURSUANT TO SECTION 95 OF THE SUSTAINABLE PLANNING ACT 2009

RPS act on behalf of Mr Stephen O'Reilly in relation to the above matter.

This submission requests that an application for a Preliminary Approval for Building Works (extensions to a 'House' in the Hillslopes Overlay) on land located on land at Foley Road, Palm Cove, described as Lot 4 on SP213793, be assessed under a Superseded Planning Scheme, being CairnsPlan 2009. In support of this request, SPA Form 2 is **attached**, and the following submission is provided.

On 14 December 2011, Council resolved to make a series of amendments to the Planning Area and Hillslopes Overlay maps contained within the CairnsPlan Planning Scheme. The amendments included a change in the Hillslopes Overlay Category of the subject site, from Category 1 to Category 2.

While there is no change to the code provisions of the Hillslopes Code between a site within the Category 1 or Category 2 areas, the 'desired development outcomes' of the code are different in that Category 1 areas are identified as being appropriate for limited forms of development (subject to achieving certain criteria relating to visual amenity, serviceability, etc) while land in the Category 2 area is considered too constrained even for limited forms of development.

It is our view that the latter designation (i.e. Category 2) is inappropriate and not relevant to the subject site as the land is very clearly suited to, and intended for, development. Grounds in support of this position are provided as follows:

- The subject site has been retained in the 'Low Density Residential' Planning Area as part of the recent scheme amendments, making the change in hillslopes designation a clear contradiction of the intent of the land; and
- The land has been developed and titled in recent years as part of an approved subdivision and contains an existing house which is serviced by a constructed access and sewer, water, electricity and telecommunications infrastructure.

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Given the above, the land clearly does not fit the description of the Category 2 designation, and the recent change is considered to impose an unreasonable disadvantage in the assessment of a development application over the land, be it by Council, or the Planning and Environment Court in the ultimate event of appeal proceedings. For this reason, the applicant is seeking to exercise their rights under Section 95 of the Sustainable Planning Act 2009 to have a development application assessed under the previous, more suitable Category 1 Hillslopes designation.

Under the Sustainable Planning Act 2009, we understand that Council must decide this request before a development application under the Superseded Planning Scheme can be lodged.

We trust this information is sufficient for your purposes and look forward to a favourable response in due course; however should you require any further details or clarification, please do not hesitate to contact the undersigned.

Yours sincerely
RPS

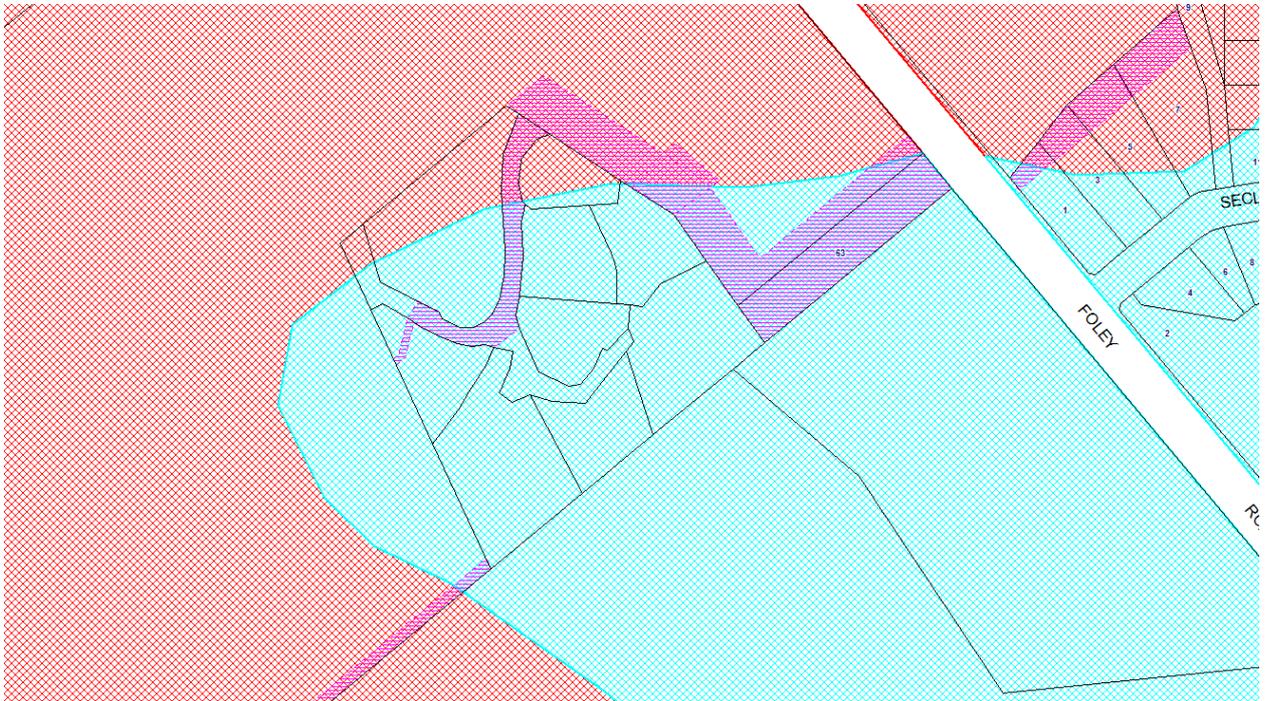
A handwritten signature in black ink, appearing to read 'Evan Yelavich', written over a horizontal line.

Evan Yelavich
Senior Planner

enc: SPA Form 2

APPENDIX 2: SUPPORTING INFORMATION

CairnsPlan, 2009 (superseded) Hillslopes Overlay Mapping



CairnsPlan, 2009 (amended) Hillslopes Overlay Mapping

