

ORDINARY MEETING 23 JUNE 2010	8
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COMBINED APPLICATION - RECONFIGURING 1 LOT INTO 9 GROUP TITLE ALLOTMENTS, COMMON PROPERTY AND COMMON ACCESS ROAD, MATERIAL CHANGE OF USE FOR 8 ADDITIONAL DWELLING HOUSES AND REQUEST TO CHANGE THE LOCATION OF THE DCP (HILLSLOPES B/C LINE) – FOLEY ROAD, PALM COVE – DIVISION 10

S Clarke: 8/30/54-02: #2579278

PROPOSAL: REQUEST TO CHANGE THE LOCATION OF THE DCP HILLSLOPES B/C LINE, RECONFIGURING 1 LOT INTO 9 GROUP TITLE ALLOTMENTS, COMMON PROPERTY AND COMMON ACCESS ROAD AND MATERIAL CHANGE OF USE FOR 8 ADDITIONAL DWELLING HOUSES

APPLICANT: CANAS PTY LTD
C/- PROJEX NORTH PTY LTD
PO BOX 4751
CAIRNS QLD 4870

LOCATION: FOLEY ROAD, PALM COVE

PROPERTY: LOTS 137 AND 138 ON RP744021

PLANNING DISTRICT: CAIRNS BEACHES
(CAIRNSPLAN)

PLANNING AREA (CAIRNSPLAN): CONSERVATION (LOT 138) AND LOW DENSITY RESIDENTIAL (LOT 137)

PLANNING SCHEME: PLANNING SCHEME FOR THE BALANCE OF THE CITY OF CAIRNS

ZONE: RURAL

STRATEGIC PLAN: RURAL CONSTRAINED

DCP: HILLSLOPES CATEGORIES B & C

REFERRAL AGENCIES: WET TROPICS MANAGEMENT AUTHORITY
DEPARTMENT OF ENVIRONMENT AND RESOURCE MANAGEMENT (FORMER DEPARTMENT OF NATURAL RESOURCES & MINES)

<u>NUMBER OF SUBMITTERS:</u>	26
<u>STATUTORY ASSESSMENT DEADLINE:</u>	9 JUNE 2010
<u>APPLICATION DATE:</u>	20 JANUARY 2005
<u>DIVISION:</u>	10
<u>APPENDIX:</u>	<ol style="list-style-type: none"> 1. PROPOSED PLAN(S) & DOCUMENT(S) 2. CONCURRENCE AGENCY CONDITIONS & REQUIREMENTS 3. SUPPORTING INFORMATION TO PLANNING REPORT

LOCALITY PLAN



RECOMMENDATION:

- A. That Council refuses the Development Application for Reconfiguring a Lot (1 Lot into 9 Group Title Allotments, Common Property and Common Access Road), Material Change of Use (8 additional dwellings), and amendment to the Hillslopes Development Control Plan (location of Category B & C areas) over land described as Lots 137 and 138 on SP744021 at Foley Road, Palm Cove, on the following grounds:**
1. The proposed Reconfiguration is not consistent with the intent of Division 3 of the FNQ Regional Plan 2009-2031 State Planning Regulatory Provisions.

2. The proposed Reconfiguration and Material Change of Use is not consistent with the intent of the Regional Landscape and Rural Production Area, contained in the Far North Queensland Regional Plan 2009-2031.
3. The proposed Reconfiguration and Material Change of Use is not consistent with the objectives of the Regional Policy 2.1- Regional landscape values, contained in the Far North Queensland Regional Plan 2009-2031.
4. The proposed Reconfiguration and Material Change of Use is not consistent with the Regional Policy 2.3 Scenic amenity, outdoor recreation and inter-urban breaks, contained in the Far North Queensland Regional Plan 2009-2031.
5. The proposed Reconfiguration is not consistent with the provisions of CairnsPlan 2005 or CairnsPlan 2009, in particular the:
 - a) Conservation Planning Area Code;
 - b) Hillslopes Code;
 - c) Reconfiguring a Lot Code;
 - d) Vegetation Conservation and Waterways of Significance Code;
 - e) Bushfire Management Code;
 - f) Section 3.6.1 - Description and Intent for the Cairns Beaches District.
6. The proposed Reconfiguration conflicts with the Strategic Plan and the Hillslopes Development Control Plan of the Planning Scheme for the Balance of the City of Cairns, and there are not sufficient planning grounds to justify approving the application despite the conflict. In accordance with Section 6.1.29 of the Integrated Planning Act 1997 and the relevant sections of the repealed Local Government (Planning and Environment) Act 1990, Council must refuse the application.
7. The proposed Material Change of Use conflicts with the Strategic Plan and the Hillslopes Development Control Plan of the Planning Scheme for the Balance of the City of Cairns, and there are not sufficient planning grounds to justify approving the application despite the conflict. In accordance with Section 6.1.29 of the Integrated Planning Act 1997 and the relevant sections of the repealed Local Government (Planning and Environment) Act 1990, Council must refuse the application.

EXECUTIVE SUMMARY:

Application has been made for Reconfiguration of a Lot and Material Change of Use (Dwelling Houses) on the site.

The application was lodged in January 2005 under the Transitional Planning Scheme for the Balance of the City of Cairns. The application must therefore be assessed against the provisions of that scheme in accordance with Section 6.1.29 of the *Integrated Planning Act 1997* (Transitional Planning Scheme Assessment Provisions).

Under the Transitional Planning Scheme, the land was zoned Rural. The site was also included in the Category B and Category C Hillslopes. The applicant contends that the delineation between those categories was inaccurate and has requested that the location of the line be amended to reflect the proposed boundary of the house lots.

The site is in the Conservation Planning Area under CairnsPlan 2009 and the Regional Landscape and Rural Production Area of the FNQ Regional Plan.

The proposal is found to be in conflict with the provisions of the Transitional Planning Scheme, CairnsPlan and the intent of the Far North Queensland Regional Plan. As there are not sufficient planning grounds to justify approving the application despite the conflict, refusal of the application is recommended.

TOWN PLANNING CONSIDERATIONS:

Proposal

The development is a combined application to reconfigure one of the existing lots (Lot 138) to provide for a residential development with one house on each new lot (Material Change of Use). As access is achieved through the neighbouring land (Lot 137) the application was made over two existing lots. Lot 137 is currently being developed into nine (9) low density lots with common property access (Development Permit 8/13/1155). Extensive clearing has been undertaken as part of the operational works for that development.

It was initially proposed that eleven (11) new residential lots be created, including lots on the northern part of the land that would have necessitated crossing of a creek system. On the 4 May 2006 the Department of Environment and Resource Management (formerly the Department of Natural Resources), as Concurrence Agency, issued a decision directing the application be refused. The applicant stopped the decision making period and undertook discussions with the Department that culminated in an extensive review and specific mapping of vegetation on the land. The Department has issued an amended decision identifying an area where limited development (construction of housing) could occur and requiring that approximately 10 hectares of the site (including the creek system) be protected in its natural state under a covenant.

The applicant subsequently prepared an amended plan reducing the extent of development, and taking into account the Department of Environment and Resource Management's decision. This plan nominates nine (9) new residential lots each containing an area of suitable size to accommodate a House. Proposed Lot 5 contains the existing house and ancillary structures.

Access to the individual house lots is via an existing track which the applicant proposes to upgrade to a suitable engineering standard. The access road will be a private road which is maintained as part of the common title arrangement. The remainder (approximately 10 hectares) of the 14 hectare site will be maintained as common property and protected in its natural form by a conservation covenant imposed by the Department of Environment and Resource Management.

The house lots will connect to Council's existing reticulated water and sewer services. Access off Foley Road has already been established as part of the subdivision of Lot 137. The applicant also proposes to share some of the infrastructure established for the development of Lot 137 to serve the proposed nine lots.

Under the Transitional Planning Scheme (The Balance Scheme for the City of Cairns), the land is affected by the Hillslopes Development Control Plan. The majority of the area of the site to be developed for new housing was within the Category C area. The applicant has requested that Council amend the B/C boundary to include the developable site in the Category B area.

No specific construction details were submitted for the proposed dwelling houses. An example of the pole frame design the applicant envisages will be used on lots 8 and 9 is attached as Appendix 3.

Planning Scheme for the Balance of the City of Cairns Assessment

Strategic Plan

The Strategic Plan designates the land as Rural Constrained. Areas identified as the Rural Constrained Preferred Dominant Land Use comprise areas that may be subject to the following:

- a. flooding, storm surge, greenhouse effect;
- b. high ecological landscape value;
- c. risk from the Queerah explosive magazine; and
- d. slope or stability problems.

Items (b) and (d) appear to be applicable in this instance.

The Transitional Scheme recognises that the accuracy of the boundaries will depend upon the particular data used to draw these boundaries. It states:

Some areas are defined in other parts of the Planning Scheme such as Development Control Plans and for the purpose of this Planning Scheme are correct. Other areas are less well defined and may need to be verified from detailed site surveys. For this reason, Council when considering development applications for adjoining Preferred Dominant Land Uses, may redefine the boundary in response to fresh data collection subject to other parts of the Strategic Plan.

The Strategic Plan recognises that development is not expected to occur unless in accordance with the Strategic Plan, Development Control Plans or any other part of the Planning Scheme.

It should be noted that some surrounding properties which were also within the Rural Constrained designation have been developed for low density residential housing. Some of the surrounding sites that were contained within Rural Constrained designation have also been designated as Residential 1 Planning Area and Low Density Planning Area under CairnsPlan.

The Preferred Dominant Land Uses are supported by three overarching strategies and objectives within the Strategic Plan:

- 5.2 Natural Resources;
- 5.3 City Image; and
- 5.4 Economic Development.

In accordance with the objectives of Section 5.2 Natural Resources of the Strategic Plan, Council can impose conditions upon this proposal which will prevent and alleviate any conflict with the intent of this Planning Scheme or documents mentioned within it.

The proposal does not conflict with the objectives listed in Section 5.2 Natural Resources.

Section 5.3 Strategic Plan relates to objectives for retaining and consolidating the major components of the landscape which form the distinctive City Image. Of relevance to this proposal is City Objective 2 which seeks to maintain to the maximum extent, views to natural forested hillslopes and forest landscapes which contribute significantly to the City Image. The site is identified as being District 13 Macalister Range.

The following are the implementation strategies for City Image Objective 2.

- [a] Council will protect or enhance the scenic qualities of the hillslopes landscape that are identified as:

 - [i] the natural skyline or ridgeline of the hillslope;*
 - [ii] the full vegetation cover of the higher and more visible hillslopes;*
 - [iii] the vegetation cover and natural character of the lower and less visible hillslopes.**

It is acknowledged that the proposed lots are located well below the ridgeline of the Macalister Range and no development will occur within the higher, more visible sections of the hillslopes. However, the development of the site with eight (8) additional houses and essential infrastructure including municipal water, sewer and access road and driveways will require a certain amount of vegetation removal and earthworks within the lower section of the hillslopes. It is unlikely that conditions of approval could adequately guarantee protection the scenic qualities of the site.

[b] Council will ensure that any proposed development within the hillslopes is subservient to the surrounding landscape and unobtrusive when viewed from any Scenic Route or View-point.

It is well recognised that the forested Macalister Range is a significant landscape feature which needs to be carefully protected to maintain the scenic values of the area. A key mechanism for maintaining the existing visual integrity of the hillslopes is the retention of existing vegetation.

The proposed development will require clearing of vegetation to facilitate the construction of access, infrastructure and the future houses. All proposed vacant lots will require some vegetation clearing in order to accommodate a house.

It is unlikely that conditions of an approval for the reconfiguration of the lot or the houses could guarantee that the natural landscape is not dominated by the development.

[c] Where Council considers, 'having regard to information submitted and other relevant material relating to the assessment to be made in [b] above, that the proposal is likely to adversely impact upon the scenic quality of the area then Council may refuse to approve a development application or place such restrictions on the construction and/or operation of a development as to alleviate visual concerns.

The proposal is likely to adversely impact upon the scenic quality of the area. Furthermore, conditions of approval may not be adequate to alleviate all concerns regarding the likely detrimental impacts on the scenic quality of the area.

[d] Development applications located within the hillslopes and considered by Council to potentially have a visual impact on the hillslopes and forested landscapes shall submit as part of that application a report which addresses the following:

- [i] how the development meets the scenic quality objectives and guidelines for the relevant scenic unit identified in Council's Local Planning Policy - City Image;*
- [ii] whether the proposal detracts from the scenic quality of the landscape when viewed from particular Scenic Routes;*

- [iii] whether the proposal detracts from the scenic quality of the landscape when viewed from particular Scenic View-points. Council when assessing any development application may refuse to approve or require such modifications to the proposal to mitigate any loss of scenic quality if the proposal is likely to have a detrimental impact upon the scenic quality of the hillslopes.*

A search of Council records failed to locate the document "Council's Local Planning Policy - City Image". However, the background studies, undertaken by the former Mulgrave Shire, which appear to have formed the basis of that Policy have been located. Assessment of the development against the quality objectives and guidelines for the relevant scenic units (being 41,42,43) identifies that the proposal may detract from the scenic quality of the landscape when viewed from Scenic Viewpoints and Scenic Route (Captain Cook Highway).

The applicant submitted a visual and landscape impact assessment for the development. The report acknowledges that the views towards the site from the Captain Cook Highway are readily available from middle and foreground and the viewing frequency and access is high/very high. The following excerpts are particularly relevant:

Visibility of the site has been confirmed from a few foregrounds and very few middle ground viewing positions only. One main exception however, is the availability of unobstructed views from the Highway corridor (northbound traffic). Also views over water) although from some distance, are relatively unobstructed.

The works associated with the proposed development consists of two types. Initially the site will be subject to civil works. These works are not anticipated to be exposed to views from afar and are not expected to have any relevant visual impact. Following the site works, the newly created allotments will be developed as residential blocks and dwellings will be constructed. For several allotments there is an expectation that future dwellings will have some exposure to outside views. Views from the highway are most important in this respect. It will be of great importance that for dwellings on these lots optimal ameliorative measures are taken to minimise visual impact. Retention of existing tall vegetation is recommended, to optimally screen any proposed residences.

The house construction will require clearing of house sites, and the erection of structures. Visibility of irregularities in the canopy when observed from short distances (foreground) will be likely. The height of the buildings is according to the DCP not allowed to be more than 7.5m above existing ground level. As the houses are built on sloping land, there is a concern of roof surfaces becoming visible as they may protrude through gaps in the tree canopy. The potential visibility of the dwellings through the canopy needs to be assessed for all individual sites.

Insufficient details have been provided to establish the visibility of future houses from external viewpoints.

- [e] Council when assessing any development application may refuse to approve or require such modifications to the proposal to mitigate any loss of scenic quality if the proposal is likely to have a detrimental impact upon the scenic quality of the hillslopes.*

It is recommended that Council refuse the application to avoid loss of scenic quality. Conditions of approval are unlikely to be adequate to mitigate the loss of the scenic quality of the landscape.

[f] Council may allow the protection of the identified landscape components or views seen from identified Scenic Routes and Scenic Viewpoints, through such appropriate easements or appropriate caveat as may be capable of registration under the Land Title Act 1994 or by voluntary conservation agreements under the Nature Conservation Act 1992.

The Department of Environment and Resource Management requires that a covenant be placed on a large portion of the site (See Appendix 3) to protect the ecological values of the site. The majority of proposed lots are excluded from the covenant area. It is considered that the extent of vegetation clearing and earthworks required to construct infrastructure (water, sewer, power and roads) will have a detrimental impact on the scenic quality of the site. Conservation covenants, building envelopes and/ or easements, which restrict the location of future houses, may not be adequate to protect the existing landscape qualities of the site.

Hillslopes Development Control Plan

The Hillslopes D.C.P has its foundations within the Strategic Plan and provides more detail in the implementation of the broader objective of Natural Resource, City Image and Hazards Strategy. The aim of the Hillslopes D.C.P is:

to protect the landscape character, ecological values and the visual quality of the hillslopes so as to retain the scenic backdrop to the lowland areas and to ensure that where land can be developed without impact on the scenic quality and ecological value, it is developed in a manner that is safe and serviceable for the proposed use.

This aim is achieved through the identification of preferred dominant areas and through a series of objectives which provide implementation details and the basis for considering development applications.

The area of land proposed for development is predominately designated as Category C – Restricted. A small portion is also designated as Category B - Constrained. It is noted that there is no obvious justification for the different designations on the site (e.g. the line does not reflect differences in the contours or level of visibility of the site).

The Category B designation is identified, by various factors, as being constrained to varying degrees for future development. Land designated as Category B may have opportunities for certain forms of development, provided that any such development would meet particular performance standards designed to ensure that the intent of this Development Control Plan is maintained. For development to be approved in this category, the applicant needs to demonstrate to Council that the land can be made safe and serviceable for the proposed use without resorting to, in Council's opinion:

- i. complex engineering solutions to overcome the constraints;*
- ii. the undertaking of anything more than minor earthworks; or*
- iii. the need for controls, to ensure that there is no change to the landscape or scenic value of the area, to be placed upon the land use, in excess of those available in the Planning Scheme or Local Laws.*

The Hillslopes DCP also specifies that the process of determining the extent of land unsuitable for development occurs at the time of a development application or, where applicable, by mutual agreement between the landowner and Council as set out in Objective 9 of the Hillslopes DCP.

The Category C designation identifies land which is either located in the designated urban growth corridors or other areas nominated through mutual agreement with the particular land owner and Council pursuant to Hillslopes Objective 9 and is generally so constrained by various factors, principally landscape and visual quality, slope (generally greater than 1:3) and slope stability, as to be unsuitable for development. The intent of this designation is to retain these areas in their natural state or for these areas to be rehabilitated, where considered necessary by Council.

While the Hillslopes Objective 5 specifies that Council shall not approve development applications on land so designated, it also states that notwithstanding that requirement Council may decide to better define the interface between two categories where:

- i. there is a disparity between the macro analysis undertaken in the mapping of the DCP and a detailed site analysis;*
- ii. there is no significant vegetation or habitat loss;*
- iii. there will be no detrimental visual impact caused by the proposal;*
- iv. the proposal accords with Hillslopes Objective 1; and,*
- v. there has been no clearing of the site since 18 December 1993 being the date of the gazettal of the previous Planning Scheme.*

Any proposal which is consistent with those criteria is required to comply with the requirements for developments in Category B designated land.

In accordance with these provisions the applicant has requested that Council relocate the B/C Hillslopes delineation line to include the proposed lots. The applicant has provided the following documentation to support the proposal:

- slope analysis;
- visual assessment report;
- brief engineering assessment of infrastructure requirements;
- faunal assessment; and
- preliminary geotechnical assessment as the site and the access track.

The proposed amendment to the B/C Hillslopes line is not supported. As the visual impact assessment acknowledges, the views towards the site from the Captain Cook Highway are readily available from middle and foreground and the viewing frequency and access is high/very high. It has not been demonstrated that the construction of houses on the proposed lots will not have a detrimental visual impact. Furthermore the mitigating measures proposed (building envelopes) do not guarantee the protection of visual amenity. The application also acknowledges that vegetation clearing will be required to accommodate future houses.

Hillslopes Objective 1 is to retain the hillslopes in a manner which reflects the City image while conserving areas of ecological value and scenic amenity. The implementation notes for this objective state:

Council when considering development applications shall not approve applications where the proposal:

- [i] is not able to be undertaken in a manner sympathetic and sensitive to the surrounding natural environment;*
- [ii] would be contrary to maintaining the environmental and visual integrity of the hillslopes;*
- [iii] would impact on areas of rainforest or other vegetation communities of ecological importance;*
- [iv] does not acknowledge local constraints and opportunities in its planning; or*
- [v] does not cater for fire hazards which may exist.*

The proposed development does not accord with Hillslopes Objective 1. In addition to impacts already discussed relating to vegetation clearing and visual impacts, the development has not catered for fire hazards which exist on the site.

It has also not been demonstrated that the proposal complies with Hillslopes DCP requirements set out in sections 1.7.1 Proposal and Design Layout, 1.7.2 Access and Parking, 1.7.3 Excavation and Fill, 1.7.4 Siting and Design of Buildings and Outbuildings, 1.7.5 Building Materials, Colours and Textures, 1.7.4 Siting and Design of Buildings and Outbuildings, 1.7.6 Vegetation and 1.7.7 Fencing. Conditions of approval can may not be adequate to ensure compliance of all proposed dwellings.

In order to achieve compliance with the Hillslopes DCP, any approval would need to be extensively conditioned to include the following minimum requirements:

- Roadways and driveway alignments must, as far as is practicable, follow the natural contours of the land and the flattest gradients to minimise cut and fill requirements.
- All excavation and fill slopes must be revegetated with endemic trees, shrubs and ground cover species immediately following completion of works.
- Large earth fills or cuts to accommodate building construction must not be approved. Future houses must be designed and sited to blend into the landscape with minimal excavation and fill.

- The design and construction of future dwellings must be of post and beam techniques (not slab on ground techniques).
- Buildings and associated roads must generally not be constructed in areas with a slope greater than 1 in 3. Exception to this requirement may be accepted where it is demonstrated that complex engineering solutions will not be required, the site is safe (confirmed by a geotechnical assessment) and there will not be a detrimental visual impact.
- The external colour scheme of future buildings must be designed to reflect the elements of the forest colouration.
- Clearing and disturbance of vegetation along a proposed road reserve, driveway or access must be minimised, removing only the vegetation essentially required for construction of the proposed roadway.
- A geotechnical investigation of each house site must be undertaken to demonstrate that the site is stable and safe.
- A bushfire hazard assessment must be undertaken and the proposal would require amendment to reflect any recommendations.

Concern is raised that even extensive conditioning of an approval could not guarantee that the site would be developed in a manner which maintains the environmental and visual integrity of the hillslopes. The outcomes of development on surrounding sites justify this concern.

Land Zoning & Land Use

The site is within the Rural Zone. The intent of the Rural Zone is to conserve areas of agricultural, open space and scenic significance and to allow for the conduct of a broad range of rural activities. It includes sites which are intended to be protected from urban or other uses because of its importance to the Plan Area's landscape and its steepness. The intent for the Rural zone states:

Development in the Rural Zone is intended to be for the husbandry of plants or animals. The exception to this is where land is located within the Category B or C areas of the Hillslopes Development Control Plan. This land is considered constrained in some manner and therefore the precautionary principle has necessitated the placement of most developments in the Permitted Development Subject to Conditions column.

It is intended that most Rural zoned land will remain in that zone and only land suitable for Urban purposes that is identified as Urban or Low Density Residential Preferred Dominant Land Use on the Strategic Plan Map and satisfies the intents of the Strategic Plan and can be economically converted to Urban purposes, will be excluded from the zone.

The applicant does not propose to alter the zoning of the land. The Material Change of Use component of the application, for a house on each new residential lot, was lodged as a response to the limitations of the Rural zone. However, the application for dwelling houses does not adequately demonstrate that eight additional houses can be accommodated on the site in accordance with the requirements of the Strategic Plan and the Hillslopes DCP.

Proposed lot sizes range from approximately 1800m² to a hectare. Part E Section 2.1.1 Allotment Size and Dimensions requires a minimum lot size of 40 hectares in the Rural Zone. The objective of that Section is:

To ensure that allotments resulting from the subdivision of land have an area and dimensions suited to their intended development.

However, Section 2.1.1 (a) allows Council to modify the provisions for lot size having regard to the following:

- i. the topography of the land;
- ii. the zoning of the land and adjoining land;
- iii. existing vegetation and fauna species;
- iv. the area, dimensions and shape of the proposed allotment;
- v. the suitability of the proposed allotment for its intended development;
- vi. the amount of on-street parking adjacent to the frontage;
- vii. any other matters considered relevant by Council.

The site is not suitable for agriculture or animal husbandry and appears to have been included in the Rural Zone due to the Hillslopes B and C designation.

It has not been demonstrated that the proposed lots are all of adequate size and dimensions to accommodate a dwelling and ancillary outbuildings, the provision of private outdoor space, convenient outdoor vehicle access and parking without having a detrimental impact on visual amenity. Slope and vegetation constraints also make some proposed lots unsuitable for their intended development (houses).

Current Planning Provisions

While the application was lodged on the 20 January 2005, prior to CairnsPlan 2005, CairnsPlan 2009 or the FNQ Regional Plan 2009-2031, Section 3.5.6 (2) of IPA states that:

In assessing the application, the assessment manager may give the weight it is satisfied is appropriate to a code, planning instrument, law or policy that came into effect after the application was made, but—

(a) before the day the decision stage for the application started; or

(b) if the decision stage is stopped—before the day the decision stage is restarted.

The application initially entered Council's Decision Period on the 6 June 2006, following completion of the public notification stage. However on the 8 May 2006, the applicant requested that the decision period be suspended (Section 3.5.9) to enable them to make representation to the Concurrence Agencies response. The amended DERM response was received by Council on the 26 November 2009 and Council's decision period recommenced on that day.

The extent to which Council has regard to CairnsPlan and the Regional Plan in assessing this application is undefined in IPA.

Insufficient design details have been provided to justify Council issuing a development permit for the proposed houses. If the Reconfiguring a Lot component was approved, all future houses on the lots would require an individual development application for Material Change of Use. Under current CairnsPlan 2009 the development of a House is Impact Assessable and requires public notification in accordance with the *Sustainable Planning Act 2009*. Such an application would be subject to the planning provisions applicable at the time of application. It is therefore important that the proposed lots can accommodate a house which is capable of complying with current planning provisions. The following section provides a summary of compliance issues for both the Reconfiguration of a Lot and the House components of this application.

CairnsPlan 2005 and CairnsPlan 2009

CairnsPlan 2005 took effect on the 1 March 2005 and CairnsPlan 2009 took effect on 1 March 2009.

Under both versions of the CairnsPlan the site is affected by the:

- Conservation Planning Area
- Vegetation Conservation – Category 1 and 2
- Waterway of Significance – Category 1 and 2 waterways
- Hillslopes- Majority of the site is Category 2 (Urban) consistent with the B/C line of the Balance Scheme.
- Bushfire – Medium Risk Hazard

Conservation Planning Area Code

The purpose of the Conservation Planning Area Code is to facilitate the achievement of the following desired development Outcomes:

- Areas identified as having significant values for biological diversity, ecological integrity and scenic amenity, as well as declared Fish Habitat Areas, are protected from development or from the effects of development that impact on those values;
- Areas including Hillslopes Category 2 (Urban) which form part of the scenic rim are protected from development or from the effects of development that impact on those values;

- Any recreational use of the significant areas within the Planning Area that are in the control of the Crown or the Council, such as Reserves, National Parks and the Wet Tropics World Heritage Area, is consistent with the management plans of the controlling authority so that the conservation and scenic values of these areas are not affected;
- Any use of land in private ownership in the Planning Area does not affect the conservation or scenic values, is in keeping with the natural characteristics and is not further developed;
- Any low intensity development based on an appreciation of the natural environment or on nature based recreation which may be located within the Planning Area, where a demonstrated community need exists, do not have any detrimental effects on the conservation or scenic values of the area;

The proposed development conflicts with the desired development outcomes for the Conservation Planning Area.

Vegetation Conservation & Waterways of Significance Code

The purpose of this Code is to facilitate the achievement of the following Desired Development Outcomes:

- The protection and enhancement of water quality and conservation values;
- The protection biodiversity;
- Essential ecological processes are maintained;
- The protection of identified conservation values and connectivity of vegetation communities;
- The prevention of fragmentation, alienation or adverse impacts in vegetation communities; and
- The protection of waterways and riparian corridors.

The site contains vegetation with Category 1 and Category 3. Areas with Category 1 vegetation possess very high values for at least two of the conservation attributes and high values for the remaining attributes. Premises within the Vegetation Category 3 designation possess at least one of the conservation attributes.

The site also contains two waterways identified as Category 1 (an unnamed gully) and Category 2 (Bitter Creek). Category 1 waterways are defined as having:

- Riparian areas included in a Vegetation Category 1 area on an overlay; or
- Stream sections that are in close proximity to conservation reserves or areas of high ecological values such as National Parks, World Heritage Areas or Vegetation Category 1 Value areas; or
- Are ranked by the two highest ratings in the FNQ 2010 Regional Environmental Strategy - Key Waterways Report.

Category 2 waterways are defined as having riparian areas located within 200m of a Vegetation Category 1 area on the Overlay; or riparian areas located within 200m of a conservation reserve.

It should be noted that the waterways identified in the Vegetation Conservation / Waterway Significance Overlay are not limited to waterways that may be classified as a “watercourse” for the purposes of the Water Act 2000 or a “waterway” under the FNQ Regional Plan.

The following Performance Criteria are relevant to the development:

- P1 Development must not unnecessarily affect vegetation conservation values.
- P2 Development does not fragment or alienate areas identified as having key or moderate conservation values.
- P3 Development optimises the viability and connectivity of areas identified as having key or moderate conservation values.
- P4 Development does not adversely affect vegetation conservation values in areas identified as having a key or moderate conservation value.
- P5 The riparian corridor adjacent to waterways must be maintained.
- P6 Degraded sections of the riparian corridor must be rehabilitated.
- P7 The riparian corridor adjacent to waterways must be maintained.
- P8 Development of premises adjoining or containing a waterway must not adversely affect the integrity of the waterway or the riparian corridor.
- P9 The ecological values and natural processes of waterways must be protected to maintain or enhance environmental quality and aquatic habitat values.
- P10 No interference with waterways occurs unless necessary to improve channel stability.

It has not been demonstrated that future dwelling houses on the proposed lots can comply with the Code. For example, lots and proposed building envelopes are located within a riparian corridor as defined in CairnsPlan 2009. The riparian corridor for a Category 2 waterway (Bitter Creek and part of the gully which traverses the development area) is defined as 20 meters, to be measured from the shoulder of the high bank to the edge of the vegetation, applicable to both sides of a waterway. Future applications for houses on proposed lots 2, 3, 8 and 9 may not be capable of complying with current CairnsPlan provisions.

Hillslopes Code

The purpose of this Code is to ensure that:

- Development on Hillslopes is safe and serviceable;
- Development maintains the safety of people, property and the environment;
- The ecological values, landscape character and visual quality of the Hillslopes are protected from development so as to retain the scenic backdrop to the City;
- Development on Hillslopes is appropriate, having regard to the topographic constraints and environmental characteristics of the land; and
- To ensure that the desired development outcomes for each category of Hillslopes land are achieved;

Land included in Category 2 (Urban) Hillslopes is generally so constrained for development that it is considered to be unsuitable for development. The desired development outcomes for this land is to retain the land in a natural state or where possible to rehabilitate the land. Development on this land is not a desired outcome because of:

- a. the risk of detrimental impact:
 - i) on slope stability or erosion potential of the land; and
 - ii) on community safety and the protection of property and persons; and
- b. the nature of the constraints of the site (including gradient and slope stability);and
- c. the visual prominence and landscape character of the land; and
- d. the difficulty of servicing such land without the need for substantial engineering solutions that detrimentally impact on the unique characteristics and features of the Hillslopes.

The proposed development is not consistent with the objectives of the Code.

Bushfire Management Code

The site is within the medium risk bushfire area. The application does not address bushfire management issues. In particular, the development proposal fails to demonstrate compliance with the following Performance Criteria:

P2 Development minimises the potential adverse impacts of bushfire on the safety of people, property and the environment by mitigating risk through:

- a) *lot design; and*
- b) *including firebreaks that provides adequate:*
 - i) *setbacks between buildings and structures and hazardous vegetation; and*
 - ii) *access for fire fighting or other emergency vehicles*

and

P3 Adequate road access for fire fighting or other emergency vehicles and safe evacuation is provided to minimise the potential adverse impacts of bushfire on the safety of people, property and the environment.

and

P5 Development does not materially intensify the use of bushfire hazard areas.

In order to comply with the provisions of the Bushfire Management Code, substantial vegetation clearing would likely be required around proposed building envelopes and the access road to create fire breaks. The proposal will materially intensify the use of a bushfire hazard environment without having regard to measures for mitigating the risk.

Reconfiguring a Lot Code

The development does not comply with Performance Criteria P1 which requires that:

P1 Lots are of sufficient area and dimensions to:

- a) accommodate the intended land use; and*
- b) protect environmental features and take account of site constraints.*

The Code does not specify an Acceptable Measure for the minimum lot size for sites within the Conservation Planning Area. The creation of lots for residential houses is not consistent with the desired development outcomes of the Conservation Planning Area. Proposed lot sizes do not adequately protect the environmental features of the site (particularly scenic amenity values).

Cairns Beaches District

The development conflicts with Section 3.6.1 Description and Intent for the Cairns Beaches District which states:

The remaining coastal vegetation, foredunes and swales, together with riparian corridors, should be retained. Similarly, the hillslopes which provide such a dramatic backdrop to the District should be retained in their existing state.

FNQ Regional Plan 2009-2031 and the FNQ Regional Plan 2009-2031 State Planning Regulatory Provisions – Took effect on the 13 February 2009

The FNQ Regional Plan takes precedence over all other planning instruments. In the development assessment process, applying the regional plan's associated regulatory provisions must occur in addition to any matters applying under a planning scheme. If a local government planning scheme materially contradicts the regional plan, the planning scheme must be amended to align with the regional plan.

The site is entirely within the Regional Landscape and Rural Production Area. Division 3.1 of the Regulatory Provisions states that subdivision of the land “may not occur”. However, as the application was lodged prior to the Regional Plan Regulations, these provisions do not apply. No new application for subdivision of the site is possible under the Regulations.

The following Regional Policies and Land Use Policies contained in the FNQ Regional Plan are particularly relevant to this proposal.

1.1.1 Urban development within the regional landscape and rural production area is located outside of areas of high ecological significance.

The site is identified as having High Ecological significance and is within the state and regional conservation corridor. The site also contains areas of High Ecological significance – terrestrial areas.

The Regional Plan acknowledges that areas of high ecological significance may be located within existing urban zoned land. These areas should be managed so that development avoids adversely impacting the ecological values or, where this cannot be practicably avoided, impacts are minimised and any residual impacts are offset.

1.1.3 Urban development adjacent to areas of high ecological significance (see map 3) is located, designed, operated and setback to avoid adverse impacts on the area’s ecological values.

The proposal may be capable of complying with this requirement.

2.1.1 The value of the landscape for nature conservation, primary production, renewable energy resource areas, priority carbon sequestration, cultural heritage, outdoor recreation and scenic amenity is given appropriate recognition in land use planning and development assessment.

It is acknowledged that over 10 hectares of the site would be retained in its natural form under the Department of Environment and Resource Management’s covenant. However, the value of the site for nature conservation and scenic amenity could potentially be compromised by the development.

2.3.1 The visual amenity of the region’s landscapes and seascapes 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.

As discussed in previous sections the development is likely to have a detrimental impact on the visual amenity of the vegetated slope.

2.3.2 On coastal hill slopes and headlands contained between the boundary of the Wet Tropics World Heritage area to the west and the Great Barrier Reef lagoon to the east; and from the Daintree River to the north and Cardwell Gap to the south:

- a) *n/a..*
- b) *in the regional landscape and rural production area, development inconsistent with a Council planning scheme avoids slopes greater than 1:6 or upwards to and including the ridgeline.*
- c) *community consultation is undertaken for development on slopes greater than 1:4 and upward in the urban footprint and rural living area and on slopes greater than 1:6 and upward in the regional landscape and rural production area.*

The proposal is not consistent with this policy as development will occur on slopes which exceed 1:6.

4.1.1 Urban development is contained within the urban footprint.

The Regional Plan recognises that the designation of the urban footprint is an important step in facilitating urban consolidation, compact form, and protection of the region's significant regional landscape values. The proposal is not consistent with this policy as development is located outside the urban footprint.

7.1.4 Urban development, other than for required community infrastructure, is set back from waterways through the adoption of appropriate buffer zones, to maintain water quality and ecological functions and services of waterways.

The Regional Plan defines a waterway as "a natural drainage feature along which surface water flows, including the tidal and non tidal reaches of rivers, creeks and streams and excluding minor drainage features such as gullies and spoon drains. A waterway would be a feature assessed using a stream ordering classification system being order one or greater". Bitter Creek is classified as an order 1 stream. The gully (which CairnsPlan identifies as a waterway) is not a waterway for the purposes of the Regional Plan Policies.

The explanatory notes state that assessment methodologies, together with design and operation of development may be used to determine appropriate setbacks. The Department of Environment and Resource Management has undertaken a detailed assessment of the site in order to establish the vegetation covenant boundaries and has subsequently determined a development free buffer for Bitter Creek.

Public Notification/Submissions

Public notification was undertaken between the 11 May 2006 and 2 June 2006 when the application consisted of its original proposal of 11 new house lots.

Given the applicant agrees with DERM for a reduced development it is considered not necessary to require re-notification of the application.

Twenty-six (26) properly made submissions were received. The following section provides a representative sample of the grounds of the submissions and the planning officer's response.

Submitter grounds	Officer comment
<p>Adverse visual impacts</p> <p>"We are concerned that the proposed development is so large in area (14 hectares plus access roads as we understand it) and is so high up on the hillside. That will place a large scar right in amongst a large pristine sweep of rainforest on the mountain side. It will make it stand out even more clearly as a visual deficit."</p> <p>"Development will be visible for miles"</p> <p>"Development will diminish the scenic backdrop of Palm Cove and impact on tourism"</p> <p>"These hillslopes are beautiful and there are many reasons why they should be preserved in their natural state."</p> <p>"It seems quite impossible that trees could successfully hide another eleven houses above Sapphire Ridge in anything less than half a century."</p> <p>"We reside in Palm Cove. There is a clear view of the face of the McAllister Range and the subject land from all over Palm Cove."</p> <p>"A substantial amount of hill slope development is creeping into the Cairns landscape. It is generally ugly. Not only are the housing structures themselves a significant visual deficit, but the clearing of large amounts of vegetation and the benching of the hill slopes is very ugly and we believe that the development which has taken place so far has seriously degraded the Cairns environment and is the subject of much adverse comment amongst both Cairns residents and also tourists."</p> <p>"The visual assessment provided by the applicant states the development will be visible from the following locations: 'The Coral Sea, and from large sections of the Captain Cook Highway from 3.2 km to 500m'. The report provided by Siteplan does not provide any real proof that this development will not adversely affect the high scenic amenity of this iconic hillslope. Previous visual amenity studies approved by council such as the Redlynch Rise development have proved in hindsight to be totally inadequate. From the photographic studies of similar density developments on similar hillslopes SOS are of the opinion that the proposed development will be highly visible from both the Captain Cook Highway and Coral Sea."</p>	<p>The proposal does not involve the clearing of the whole 14 hectares of land above Sapphire Ridge. Over 10 hectares of the site will be protected under a conservation covenant and will remain undeveloped. Building envelopes are proposed to protect vegetation within lot boundaries.</p> <p>Vegetation clearing is also necessary to upgrade the existing driveway to a suitable access road standard.</p>

<p>Risk of landslide and slope instability</p> <p>“If you would only come to our home and look from our front door you too would see the potential of a land slide caused by council already allowing so much land clearing on the Hillslopes.”</p> <p>“There is also the potential threat of a landslide caused initially by land, rock and vegetation clearing; note the lethal landslide in Philippines on February 17 this year which killed 1500 people and was apparently blamed on clearing by humans. The Macalister Range appears to have the same height and steepness as the Philippine slope. If disturbed in its natural state it is a potential threat to life.”</p>	<p>Site specific geotechnical reports have not been prepared for all new house lots and the access road.</p> <p>Geotechnical reports would be required to indicate the treatments required to ensure that there is a very low or low risk of failure in accordance with AGS Guidelines (2007). It is not guaranteed that the geotechnical classification of all lots would be within these bounds.</p>
<p>Adverse impact on regional ecosystems, flora and fauna</p> <p>“Apart from the obvious risk of landslide which could occur if the soils become saturated in heavy rain events, there will inevitably be significant run-off of silt into local streams. It is a very heavy rainfall area. That will not only have detrimental effects to the drainage systems of Palm Cove but the silt from erosion will inevitably find its way into the ocean and will have detrimental environmental effects in the Great Barrier Reef Marine Park. We believe this is particularly important when you consider that there is a living reef surrounding Double Island and Scout Hat Island just off Palm Cove.”</p> <p>“This development borders, and indeed may form part of the habitat for the Endangered Southern Cassowary and as such should not be developed in this manner.”</p> <p>“In order to protect the listed, threatened species such as the southern cassowary, the national Environment Protection and Biodiversity Conservation Act 2005, can and should be used to ensure that essential habitat is not interfered with and therefore, this application denied on these grounds. “</p>	<p>The site does not abut the Wet Tropics WHA. It is approximately 230m at the closest point.</p> <p>The Department of Environment and Resource Management has undertaken an assessment of the proposal and found that it complies with the State Government requirements. The Department has imposed conditions requiring over 10 hectares of the site be included in a non developable covenant.</p> <p>The application is assessed in accordance with the Integrated Planning Act 1997 for development in Queensland. The Environment Protection and Biodiversity Conservation Act 2005 is an independent legislation implemented by the Federal Government. Under the EPBC Act it is the applicant’s responsibility to refer the proposal for assessment.</p>
<p>Infrastructure</p> <p>“There is no power, road, water or sewer in that area”</p> <p>“There is no way of providing sewage power or water without intruding deeply into any topsoil which may be left after the clearing is finished thereby further weakening the integrity of the hillside”</p> <p>“The proposed development of the site relies on access via Foley Road which has been upgraded by a third party, Hedley Construction Pty Ltd. The proposed development should not be permitted to proceed unless the Council requires the proponent to contribute to the construction of Foley Road to the ultimate standard, including the ultimate standard for the crossings of Sweet Creek and Bitter Creek, and this contribution is reimbursed to Hedley Constructions Pty Ltd for the upgrading of Foley Road.”</p>	<p>The site can be connected to existing water, sewer and power infrastructure.</p> <p>The site contains an existing access track which will require some vegetation clearing and earthworks to upgrade it to a common access road.</p> <p>The infrastructure contributions policy has been adopted to deal with common user network roads and to share the cost of these roads. Other minor roads are constructed by developers as and when it is necessary to provide safe, serviceable access to their projects.</p>

<p>Failure to comply with current planning provisions</p> <p>“all aspects of this proposal breach present hillslope development guidelines and infringes on the Wet Tropics Management Authorities preservation area.”</p> <p>“We submit that the above development application does not comply with the intent of the Cairns Plan and Wet Tropical Coast Regional Coastal Management Plan. Accordingly this proposal should be refused”</p> <p>“parts of the application involve building envelopes of gradients in excess of 1:3, and if so, these would be contrary to the Hill-slopes Code.”</p>	<p>Comments are noted and reflected in the grounds of refusal.</p>
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Referral Agencies

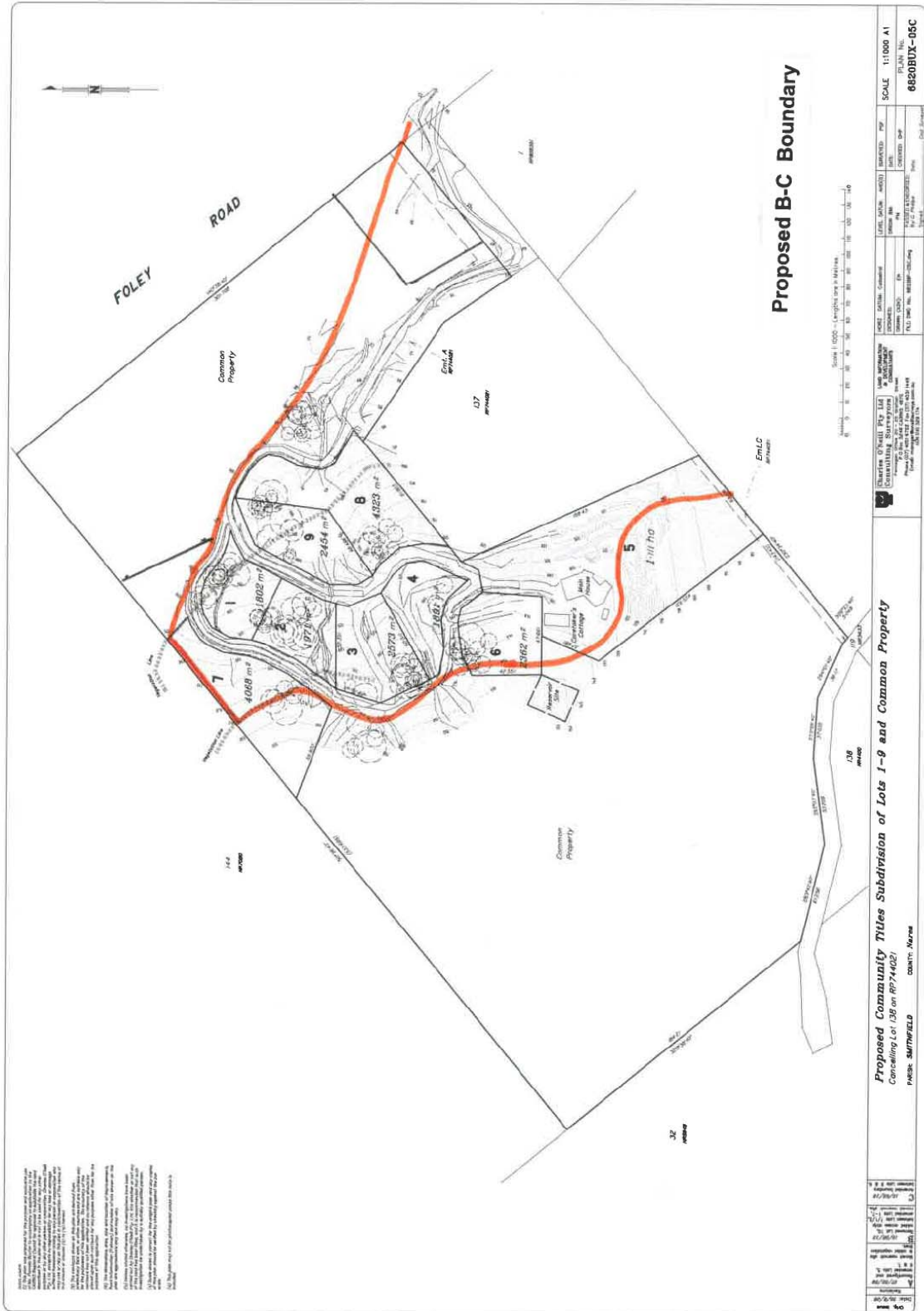
The application was referred to the Department of Natural Resources and Mines Concurrence Agency for Remnant Vegetation. The response is attached as Appendix 2.

The application was referred to the Wet Tropics Management Authority as a Third Party Advice Agency. The response is attached in Appendix 4. Recommendations contained in the response have been reflected in the recommendation of refusal.

Simon Clarke

Manager Development Assessment

6



APPENDIX 2 CONCURRENCE AGENCY CONDITIONS & REQUIREMENTS



Author : Daniel Gillinder
 File / Ref number : 2009/003771
 Recfind No: MBA/000021
 Trackjob No: IC0205TSV0010
 Unit : Vegetation Management

Department of
**Environment and Resource
 Management**

23 November 2009

Chief Executive Officer
 Cairns City Council
 PO Box 359
 Cairns QLD 4870



Attention: Chief Executive Officer

Dear Sir or Madam

Application for Reconfiguring a Lot and Material Change of Use on Lot/s 137,138 RP744021 - Cairns City Council – Amendment Referral Agency Response

The Department of Environment and resource Management (DERM) (acting as a Concurrence Agency), has completed the assessment of the above application against the purposes of the Vegetation Management Act 1999 in accordance with the Concurrence Agency Policy for Reconfiguring a Lot and Material Change of Use (Concurrence).

The Referral Agency Response, prepared pursuant to section 3.3.16(1) of the *Integrated Planning Act 1997*, is enclosed. I look forward to receiving a copy of the decision notice for the application in due course.

Should you have any questions about the above, please contact Daniel Gillinder, Senior Vegetation Management Officer, North region of the department on telephone number 40484730, quoting the above reference number.

Yours sincerely

Daniel Gillinder
Senior Vegetation Management Officer
 North Region

23/11/2009

NRMW Mareeba
 PO Box 1054
 Mareeba
 28 Peters Street
 Mareeba Qld 4880
Telephone (07)40484730
Facsimile (07)40923593
Website www.nrm.qld.gov.au
 ABN 83 705 537 586

Department of Environment and Resource Management – Amended Referral agency response

Given under Section 3.3.17 of the *Integrated Planning Act 1997*

1. Application information

- 1.1. **Applicant's name:** Canas Pty. Ltd.
C/O Peter Robinson (Projexnorth), Simon Danielson (GHD) and Peter James (Pawsey and Prowse)
- 1.2. **Property description:** 137 and 138 RP744021 - Cairns Regional Council
- 1.3. **Assessment Manager/Reference:** 8/30/54 (939517)
- 1.4. **Date application was referred to Department:** 18 February 2005
- 1.5. **Departmental Reference:** eLVAS Case No: 2009/003771, File Ref. No: MBA/000021, Trackjob No: IC0205TSV0010
- 1.6. **Types of development sought by the application:**
 - Material Change of Use and Reconfiguring a Lot

2. Concurrence Agency response:

The Chief Executive of the Department of Environment and Resource Management directs that the following conditions must be imposed on any approval given by the Assessment Manager:

- 2.1. The applicant will, upon Council's approval of the development application, have registered in the land registry, simultaneously with the registration of the survey plan for the reconfiguration of the lot:
 - a) A properly completed plan of survey:
 - Over the areas of which is generally in accordance with the areas identified as Areas A.1, A.2, A.3, A.4 and A.5 on Referral Agency Response Plan 2009/003771 (Attachment 1); and
 - To the standards required by the Registrar of Titles for registration of an instrument of Covenant over part of a lot; and
 - That the Department of Environment and Resource Management agrees in generally in accordance with the area identified as Areas A.1, A.2, A.3, A.4 and A.5 on Referral Agency Response Plan 2009/003771 (Attachment 1); and
 - b. A properly completed instrument of covenant:
 - In the form and including such terms as set out in the Referral Agency Response Plan 2009/003771 (Attachment 1), Form 31 (Attachment 2) and Form 20 (Attachment 3).
- 2.2. State of Queensland, represented by the Department of Environment and Resource Management will not bear any of the costs associated with the lodging and registration of the instrument of covenant including:
 - a) The preparation of any documents; and

IDAS Referral Agency Response

- b) The preparation of a survey plan suitable for registration; and
 - c) Legal fees; and
 - d) Any lodgment fees.
- 2.3. The applicant must comply with the terms of the registered covenant
Clearing not allowed
- 2.4. Clearing of remnant vegetation may not occur on the land subject to this approval until the Department of Environment and Resource Management sights or is provided with a full copy of the Registration Confirmation Statement for the survey plan of the Covenant area and a full copy of the Registration Confirmation Statements for the survey plan and covenant required by condition 2.1.
- 2.5. Clearing of remnant vegetation may not occur on the land except in accordance with terms of the registered covenant required by condition 2.1
- 2.6. The applicant must reconfigure lot 138 RP744021 in a way that is consistent with the applicant's drawing 42-15290.
- 2.7. The survey plan must be consistent with the Covenant Areas A.1 A.2, A.3, A.4 and A.5 as depicted on Referral Agency Response Plan 2009/003771.
- 2.8. The applicant must ensure that services including electricity, reticulated water, reticulated sewerage and telecommunications services are located underground and within the area of the existing vehicular tracks.
- 2.9. Where the existing vehicular track is located within remnant vegetation, the area has been shown on Referral Agency Response Plan 2009/003771 to allow disturbance associated with the maintenance of a vehicular track, to a maximum width of 10 metres, consistent with the provisions of Schedule 8, Part 1, Table 4, Item 1A(d) of the *Integrated Planning Act 1997*.

3. Reasons:

A Statement of Reasons is attached at Schedule 1.

4. Additional comments or information:

5. Authorised Officer Signature:



Mr Daniel Gillinder
Senior Vegetation Management Officer
North Region

Date of Response: 20 November 2009

20/11/2009

Att. Schedule 1 – Statement of Reasons

eLVAS Case No:	2006/012320
File Ref. No:	MBA/000177
Trackjob No:	IR1106ATH0003

Schedule 1
Statement of Reasons
Referral Agency Response
Application for Material Change of Use and Reconfiguring a Lot
 Canas Pty. Ltd.

The following Statement of Reasons is provided pursuant to s. 3.3.18(8) of the *Integrated Planning Act 1997*

Introduction

1. The Department of Environment and Resource Management (DERM) received an application from Canas Pty Ltd. 23 February 2005.
2. The application is for Material Change of Use and Reconfiguring a Lot MCU & RaL (Concurrence-Multiple Issue) on 137 and 138 RP744021.
3. An Information Request was sent by registered post to the applicant on the 26 April 2005. This request sought further information on how the application met the requirements of the Concurrence Agency Policy for Material Change of Use (17 December 2004) and the Concurrence Agency Policy for Reconfiguring a Lot (17 December 2004).
4. The applicant responded to the Information Request on the 6 March 2006.
5. The application was refused on 4 May 2006.
6. The applicant provided additional information on 23 April 2009
7. An Assessment Report was sent to the Delegate of the Chief Executive, Daniel Gillinder, in November 2009.
8. The Delegate determined the Referral Agency Response on 20 November 2009.

Evidence

1. Application dated 23 February 2005.
 - a) Completed IDAS Form 1 Part "J".
 - b) Property Vegetation Management Plan.
2. *Integrated Planning Act 1997 & Integrated Planning Regulation 1998 (Schedule 2)*
3. *Vegetation Management Act 1999*
4. *Department of Natural Resources and Waters Concurrence Agency Policy for Material Change of Use and Reconfiguring a Lot dated 17 December 2004*
5. *State Planning Policy (SPP) 1/03 – Mitigating the Adverse Impacts of Flood, Bushfire, and Landslide.*
6. Additional information received 23 April 2009.
7. The applicants' drawing 42-15290 as per the applicant's submission received 23/04/09.
8. The Regional Ecosystem Description Database (REDD) as found at www.derm.qld.gov.au.
9. Vegetation Information Network database (VIN).
10. A copy of the Northern Beaches Planning Areas Map in the CairnsPlan as at 02/07/09.
11. A copy of a letter sent on 19/01/09 from Bryan Cifuentes (Area Director- Queensland Fire and Rescue Service) to Peter James
12. A copy of the applicant's Form 20.

13. An email from Michael Howe to Kate Cumming.
14. A copy of the draft Referral Agency Response Plan 2009/003771.
15. A copy of a photograph taken on 20/02/09 by Scott Devaney.
16. A copy of an email sent by Simon Danielson (GHD) on 06/07/09 to Scott Devaney.
17. SunMap Topographic Map 7964 at 1:100 000 scale.
18. SIRWEB ATLAS Soils mapping at 1:2 000 000 scale.
19. SIRWEB Queensland Climatic Dataset with the Rainfall Isohyets layer selected.
20. Information Request to applicant dated 26 April 2005.
21. Response to Information Request from applicant dated 4 May 2006.
22. Additional information provided by the applicant 23 April 2009.
23. Assessment Report dated 20 October 2009.

Findings of fact

1. The applicants drawing 42-15290 confirmed the location of allotment boundaries, vehicular tracks and building areas as per a new design developed since the application was previously refused.
2. VIN confirmed that a Property Map of Assessable Vegetation exists on the applicant lot.
3. VIN confirmed the location, extent and type of remnant vegetation on lot 138 RP744021.
4. VIN confirmed the location and extent of essential habitat on lot 138 RP744021.
5. CairnsPlan confirmed that lot 138 RP744021 is zoned Conservation.
6. The REDD confirmed the species composition of regional ecosystems 7.11.49, 7.11.44 and 7.11.7.
7. The letter from Bryan Cifuentes confirmed that fire breaks are not required around infrastructure because the fire hazard on this lot is low.
8. The applicant's Form 20 outlines the conditions relating to the Covenant area.
9. The email from Michael Howe confirms that legal Services are satisfied that the covenant is acceptable.
10. The draft Referral Agency Response Plan 2009/003771 confirms the location of the covenant area.
11. The photograph confirms that vehicular tracks already exist on lot 138 RP744021.
12. The email from Simon Danielson confirms that all services will be constructed underground along the existing vehicular tracks.
13. The Topographic map 7964 confirmed the absence of wetlands, the location of water courses, the slope gradient and the elevation of the applicant lot.
14. ATLAS Soils mapping confirmed that the applicant lot contains Dermosols.
15. The rainfall isohyets layer confirmed that the applicant lot receives approximately 2800 mm of rainfall per year.

Reasons

It is considered by the assessing officer that this application has met all of the requirements of the Concurrence Agency Policy for Reconfiguring a Lot (17 December 2004) and the Concurrence Agency Policy for Material Change of Use (17 December 2004).



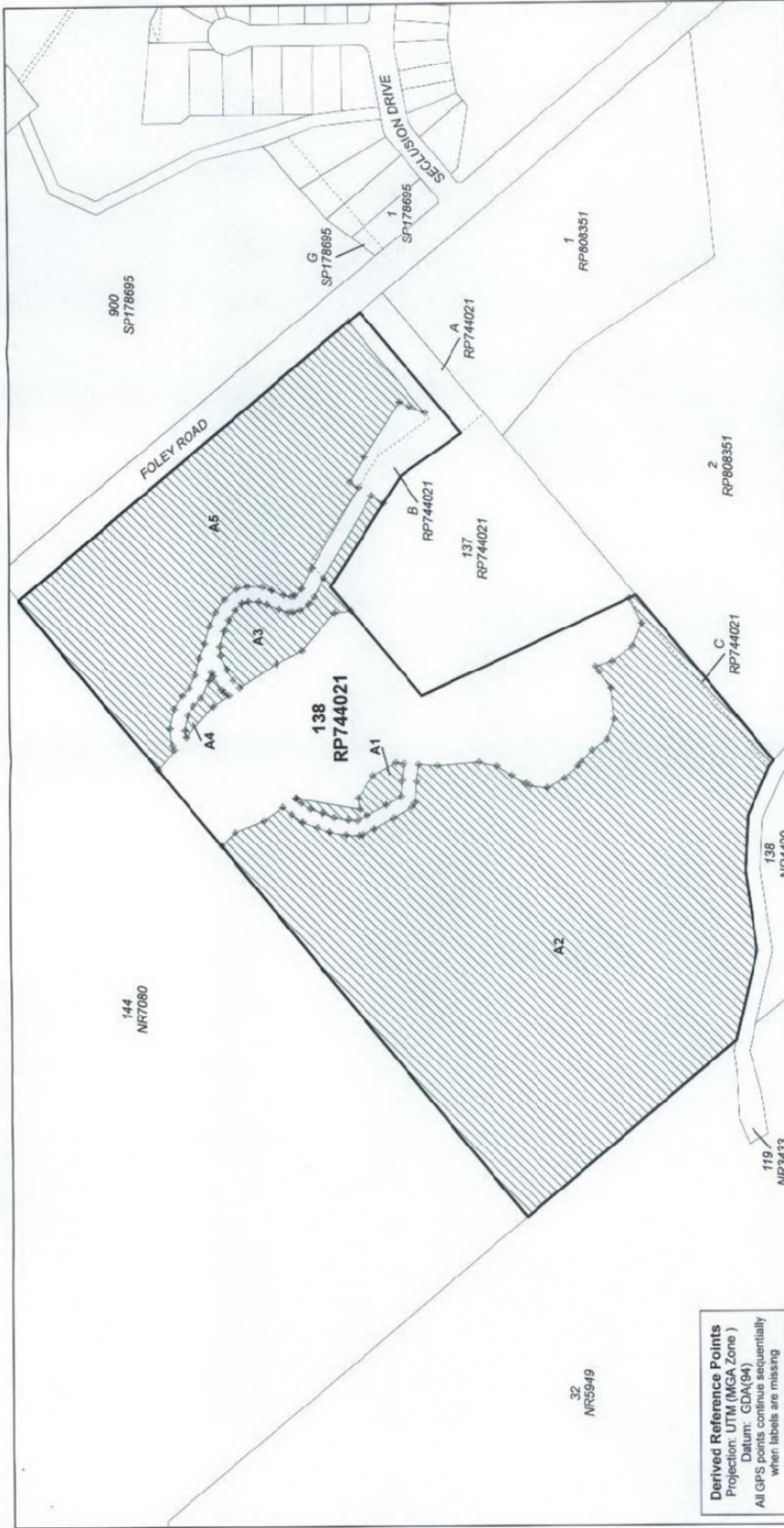
Mr Daniel Gillinder
Senior Vegetation Management Officer
North Region

20/11/2009

Environment and Resource Management- Referral Agency Response

Page 4 of 8

Attachment 1
See attached Referral Agency Response (Vegetation) Plan 2009/003771



Derived Reference Points
 Projection: UTM (MGA Zone 55)
 Datum: GDA94
 All GPS points continue sequentially when labels are missing

1:2500 @ A3 size
 0 50 100 150 200 250 m
Projection: UTM (MGA Zone 55) Datum: GDA94
 Note: Derived Reference Points are provided to assist in the location of the Referral Agency Response boundaries. Responsibility for locating these boundaries lies solely with the landholder and delegated contractor(s).
 The property boundaries shown on this plan are **APPROXIMATE ONLY**. They are **NOT** an accurate representation of the legal boundaries.
Note: This plan must be read in conjunction with the Referral Agency Response 2009/003771

LEGEND
 ◆ Derived Reference Points for GPS
 □ Subject Lot(s)
 ▨ Areas A1 - A5

Referral Agency Response (Vegetation) Plan
Plan of Areas A1 - A5 in Lot 138 on RP744021
 REGION: NORTH
 LOCAL GOVT: CAIRNS
 CENTRE: MAREEBA
 LOCALITY OF PALM COVE
 Map Reference: 8664
 File Reference: MBA000021
 Compiled from: DCDB, P/IMP & VMO Notes
 Prepared by: Jason Allen J4719 Date: 27 October 2009

Queensland Government



RARP
2009/003771
 Sheet 1 of 2

Parcel ID	Unique ID	Easting	Northing	Parcel ID	Unique ID	Easting	Northing	Parcel ID	Unique ID	Easting	Northing	Parcel ID	Unique ID	Easting	Northing
A1	1	356679	8147904	A2	32	356663	8147900	A3	63	356804	8147905	A5	94	356997	8147867
A1	2	356672	8147861	A2	33	356660	8147890	A3	64	356805	8147901	A5	95	356936	8147816
A1	3	356679	8147862	A2	34	356657	8147882	A3	65	356809	8147895	A5	96	356940	8147827
A1	4	356694	8147853	A2	35	356654	8147871	A3	66	356814	8147891	A5	97	356943	8147833
A1	5	356703	8147837	A2	36	356654	8147862	A3	67	356826	8147885	A5	98	356906	8147857
A1	6	356703	8147832	A2	37	356655	8147859	A3	68	356881	8147852	A5	99	356890	8147867
A1	7	356691	8147833	A2	38	356659	8147852	A3	69	356876	8147844	A5	100	356886	8147861
A1	8	356680	8147834	A2	39	356666	8147839	A3	70	356804	8147867	A5	101	356833	8147893
A1	9	356674	8147844	A2	40	356673	8147826	A3	71	356803	8147878	A5	102	356819	8147900
A1	10	356667	8147856	A2	41	356676	8147824	A3	72	356778	8147899	A5	103	356814	8147904
A1	11	356664	8147863	A2	42	356690	8147823	A3	73	356769	8147917	A5	104	356815	8147907
A1	12	356664	8147869	A2	43	356702	8147822	A3	74	356753	8147941	A5	105	356815	8147912
A1	13	356666	8147879	A2	44	356701	8147809	A3	75	356758	8147946	A5	106	356818	8147920
A1	14	356669	8147886	A2	45	356703	8147781	A3	76	356766	8147950	A5	107	356820	8147926
A1	15	356672	8147895	A2	46	356700	8147769	A3	77	356775	8147954	A5	108	356821	8147936
A1	16	356676	8147901	A2	47	356684	8147759	A3	78	356781	8147955	A5	109	356819	8147943
A1	17	356679	8147904	A2	48	356689	8147750	A3	79	356791	8147952	A5	110	356812	8147952
A2	18	356718	8147695	A2	49	356687	8147747	A3	80	356799	8147949	A5	111	356804	8147957
A2	19	356731	8147690	A2	50	356686	8147735	A3	81	356805	8147944	A5	112	356795	8147961
A2	20	356752	8147693	A2	51	356692	8147724	A4	82	356750	8147952	A5	113	356783	8147965
A2	21	356763	8147700	A2	52	356703	8147715	A4	83	356748	8147948	A5	114	356773	8147968
A2	22	356767	8147703	A2	53	356703	8147712	A4	84	356741	8147959	A5	115	356762	8147971
A2	23	356770	8147692	A2	54	356711	8147705	A4	85	356721	8147977	A5	116	356753	8147975
A2	24	356780	8147678	A2	55	356718	8147695	A4	86	356725	8147978	A5	117	356748	8147980
A2	25	356795	8147671	A3	56	356805	8147944	A4	87	356735	8147976	A5	118	356740	8147985
A2	26	356812	8147680	A3	57	356810	8147939	A4	88	356742	8147972	A5	119	356726	8147988
A2	27	356647	8147954	A3	58	356811	8147935	A4	89	356747	8147967	A5	120	356715	8147987
A2	28	356656	8147945	A3	59	356811	8147929	A4	90	356758	8147962	A5	121	356712	8147986
A2	29	356664	8147925	A3	60	356809	8147923	A4	91	356764	8147960	A5	122	356699	8147996
A2	30	356673	8147912	A3	61	356806	8147915	A4	92	356761	8147959	A5	123	356697	8147867
A2	31	356668	8147907	A3	62	356804	8147908	A4	93	356752	8147954				

Projection: UTM (MGA Zone 55) Datum: GDA94
 Note: Derived Reference Points are provided to assist in the location of the Referral Agency Response boundaries.
 Responsibility for locating these boundaries lies solely with the landholder and delegated contractor(s).
 The property boundaries shown on this plan are APPROXIMATE ONLY.
 They are NOT an accurate representation of the legal boundaries.
Note: This plan must be read in conjunction with the Referral Agency Response 2009/003771

LEGEND

Derived Reference Points
 Projection: UTM (MGA Zone)
 Datum: GDA(94)
 All GPS points continue sequentially when labels are missing

Referral Agency Response (Vegetation) Plan
Plan of Areas A1 - A5 in Lot 138 on RP744021

<p>CENTRE: MAREEBA LOCALITY OF PALM COVE Map Reference: 8064 File Reference: MBA000021</p>	<p>REGION: NORTH LOCAL GOVT: CAIRNS RARP 2009/003771 Sheet 2 of 2</p>
Compiled from: DCCB, P/IMP & VMO Notes Prepared by: Jason Allen J4779 Date: 27 October 2008	

**Attachment 2
Agreed Covenant (draft only)
Form 31**

QUEENSLAND LAND REGISTRY
Land Title Act 1994 and Land Act 1994

COVENANT

FORM 31 Version 3
Page 1 of 1

Dealing Number

Lodger (Name, address & phone number)

Lodger Code



OFFICE USE ONLY

Privacy Statement
Collection of the information is authorised by the Land Title Act 1994 and the Land Act 1994 and is used to maintain the publicly searchable registers in the Land Registry. For more information about privacy, please visit <http://www.lra.qld.gov.au/privacy/privacyinfo.html>.

1. Covenantor

Parrula Buxton

2. Description of Covenant / Lot on Plan	County	Parish	Title Reference
--	--------	--------	-----------------

3. Covenantee

THE STATE OF QUEENSLAND (Represented by Department of Environment and Resource Management)

4. Description of Covenant (include reference to relevant section of legislation)

Pursuant to Section 97A (3)(b)(i) of the Land Title Act 1994 and the terms of the attached schedule A to preserve the vegetation in the Covenant Area.

5. Execution

The Covenantor being the registered owner of the lot described in item 2 covenants with the Covenantee in respect of the covenant described in item 4 and the attached schedule A.

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C.Dem.)

Execution Date

Covenantor's Signature

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C.Dem.)

Execution Date

Covenantee's Signature

**Attachment 3
Agreed Covenant (draft only)
Form 20**

QUEENSLAND LAND REGISTRY
Land Titles Act 1994, Land Act 1964 and Water Act 2001

SCHEDULE A

Form 20 Version 2
Page 1 of 2

Title Reference <insert Number>

This is Schedule A referred to in Covenant dated <insert date>

1. Definitions

Unless the context otherwise requires or the contrary intention appears, the following terms shall have the meanings respectively assigned to them -

'Clearing' - as defined in the Vegetation Management Act 1999 and as amended from time to time.

'Council' means Cairns City Council together with its assigns and successors and includes all persons authorised by the Council.

'Covenant' means the Form 31 entered into between the landholder and the State and the Form 20 which contains those terms and conditions.

'Covenant Area' means the area referred to in item 2 of the Form 31.

'Covenantee' means the State of Queensland (represented by Department of Environment and Resource Management) including any delegate or authorised officer.

'Covenantor' means the person or persons named in item 1 of the Form 31 and their and each of their successors in title, transferees and assigns.

'Covenantor's obligations' means the obligations set out in clause 3 (Covenantor's Obligations).

'Development approval' - means the approval given by the Cairns City Council (A/30054 (939517)).

'Fence' means a structure of posts and boards, palings, rails, galvanised iron, metal, or wire, or a wall, ditch, or embankment, or a combination of any of these, enclosing or bounding land, and includes any foundation, foundation wall, or support reasonably necessary for the support and maintenance of the fence, but does not include a wall which is part of a house or other building.

'Infrastructure' - includes roads and excavation for civil works and other fixtures.

'Structures' - includes any building, shed, pergola, gazebo, wall, fence, pillar, post and pool.

'the Land' - means the lots specified in item 2 of the Form 31 and any land created in lieu of the lots mentioned in item 2 of the Form 31 by registration of any other plan and howsoever described.

'Vegetation' - as defined in the Vegetation Management Act 1999 and as amended from time to time.

2. Description of Covenant

This Covenant is for the purpose of preserving the vegetation in the Covenant Area.

3. Covenantor's Obligations

The Covenantor covenants, and agrees with the Covenantees, that:

- 3.1 Infrastructure and structures including Fences are not permitted in the Covenant Area as depicted on Referral Agency Response Plan 2009/003771.
- 3.2 Except as provided in clause 3.4, clearing of vegetation is not authorised in the Covenant for any purpose, including clearing for fences and fire breaks.
- 3.4 Clearing of vegetation in the Covenant Area is allowed:
 - (a) by fire under the Fire and Rescue Services Act 1999 to reduce hazardous fuel loads or an activity under the Fire and Rescue Services Act 1999, section 53, 68 or 69; or

Title Reference <Insert Number>

- (b) where it is necessary to remove or reduce the imminent risk that the vegetation poses to serious personal injury or damage to property and where the threat cannot be mitigated by trimming or topping vegetation; or
- (c) to give effect to any subsequent development approvals for operational works that is the clearing of native vegetation.
- 3.6 Subject to the conditions of the development approval, nothing prevents the Covenantor from using the Covenant Area, provided such use is consistent with the obligations imposed by this covenant.
- 4. Rights of Access**
The Covenantor covenants, and agrees with the Covenantee, that:
- 4.1 The Covenantee or the Council may inspect the vegetation within the Covenant Area at any reasonable time after the giving of notice.
- 4.2 Representatives of the Queensland Fire and Rescue Service (or any successor to that body), may at any reasonable time after giving notice enter, re-enter and traverse the covenant area each year to assess the bushfire hazard risk of the Covenant Area.
- 5. Release and Indemnity**
- 5.1 The Covenantor irrevocably releases the Covenantee from, and waives, any claim, right, remedy, action, cause of action, loss, damage, expense or liability which the Covenantor may have against the Covenantee in respect of this Covenant or its performance or breach.
- 5.2 The Covenantor indemnifies and holds the Covenantee harmless from and against any claim, right, remedy, action, cause of action, loss, damage, expense or liability incurred, suffered or asserted by any person in connection with the performance of this Covenant by the Covenantor or its breach by the Covenantor or connected with any negligence or other legal wrong of the Covenantor.
- 6. No Obligations on Covenantee**
- 6.1 The rights given to the Covenantee by this covenant are permissive only and nothing in this Covenant imposes any duty of any kind on the Covenantee to anyone or obliges the Covenantee to perform any act or to incur any expense for any of the purposes set out in this Covenant.
- 7. No Effect on Rates and Charges**
- 7.1 Nothing in this Covenant of itself affects any obligations of the Covenantor to pay all taxes, rates, charges and levies lawfully imposed in respect of the Land.
- 8. Registration**
- 8.1 The Covenantor agrees to do everything necessary at the Covenantor's expense to ensure that this Covenant is registered against the title to the Covenant Area.
- 9. Waiver**
- 9.1 Any alleged waiver of any breach of this Covenant is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Covenant does not operate as a waiver of any other breach of this Covenant.
- 10. Severance**
- 10.1 If any part of this Covenant is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Covenant and the rest of this Covenant remains in force unaffected by that holding or by the severance of that part.
- 11. Enurement**
- 11.1 This Covenant binds the parties to it and their respective successors, heirs, executors and administrators.

APPENDIX 3 SUPPORTING INFORMATION TO PLANNING REPORT

Third Party Advice Agency Response



WET TROPICS MANAGEMENT AUTHORITY

Your Ref: 8/30/54

Enquiries To: Bruce Jennison

Our Ref: 05/372 : WTM1054

Telephone: 4052 0540

6 April 2005

Mr Neil Beck
Acting Manager City Assessment
Cairns City Council
PO Box 359
Cairns QLD 4870



Dear Mr Beck

**Development Application – 8/30/54
Foley Road, Palm Cove**

The Authority has reviewed a copy of the above application received from Mr Peter Robinson on 21 February 2005. A copy of Cairns City Council's Acknowledgement Notice and Information Request was attached. This property adjoins the Wet Tropics World Heritage Area (WHA) to the west (see attached map).

The Authority considers that the viewscape associated with this property and its surrounds is arguably one of the most significant mountain landscapes in the Cairns region. It forms the scenic back drop to the tourist destination of Palm Cove and is significant as the entrance to the iconic tourist drive north along the Wangetti coast. It is important to note that the WHA is listed for areas of exceptional beauty and aesthetic importance. In this case the scenic landscape values associated with the WHA are integral to and contiguous with those of the adjoining hillslopes. Given the proximity of the property to the WHA, the Authority believes that the proposed development has the potential to adversely impact on these very important scenic landscape values.

I note the development is proposed on land classified as Category 2 (Urban) under the Hillslopes Code detailed in the Cairns Plan. Land included in this category is generally so constrained for development that it is considered to be unsuitable for development and the desired development outcome is to retain the land in a natural state or to rehabilitate the land. I understand Cairns City Council has requested further information to support the development application. The Authority would expect this information to demonstrate that the development is suitable for the sensitive hillslope location and would be unlikely to have significant environmental impact, particularly on the scenic values associated with the property and the surrounding landscape.

If any development on the site is approved, it is important to ensure that vegetation on the site is retained as much as possible to mitigate the adverse impacts of clearing on native flora and fauna and to help to retain slope stability and protect water quality. Additionally, to minimise the scenic impact of buildings and associated infrastructure, the Authority would expect Cairns City Council to place appropriate conditions on any development approval in relation to matters such as the height of buildings, their external lighting, finishes, colours and claddings.

Level 1, Cairns Corporate Tower, 15 Lake Street, Cairns Qld 4870 PO Box 2050, Cairns Qld 4870

Telephone: (07) 4052 0555 Facsimile: (07) 4031 1364

Website: www.wettropics.gov.au

E-mail: WTMA.records@env.qld.gov.au

ABN 50 264 108 752

Printed on 100% Recycled Paper

The Authority notes that a number of development applications have been, or are being, considered for hillslope locations in the Cairns area, particularly on the foothills of the Macalister Range north of Smithfield. The Authority is increasingly concerned that the level of development on the foothills of this Range is having a cumulative and negative impact on the scenic values of this landscape and, as a consequence of its close proximity, on the WHA. The Authority believes that it is essential that the aesthetic amenity of this mountain landscape be protected and that Council have due regard to the scenic values of the landscape as a whole when assessing individual development applications.

The Authority reiterates its concern about the mounting pressure on natural habitats from the increasing populations of domestic/feral animals that are associated with housing subdivisions bordering the adjacent WHA. The Authority encourages Cairns City Council staff to explore strategies that increase the level of protection afforded to wildlife from the impact of domestic animals in these subdivisions.

Should you wish to discuss this matter further please do not hesitate to contact Alicia Hill on 4052 0543.

Yours sincerely



Bruce Jennison
A/Manager
Area Conservation

Lots 137 and 138 on RP744021

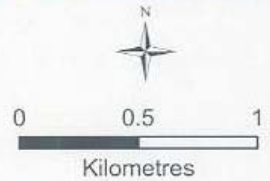


Legend

 137/138 RP744021

 WHA

Date Printed: 8/04/05
Map Prepared by: AH



 WET TROPICS
MANAGEMENT AUTHORITY

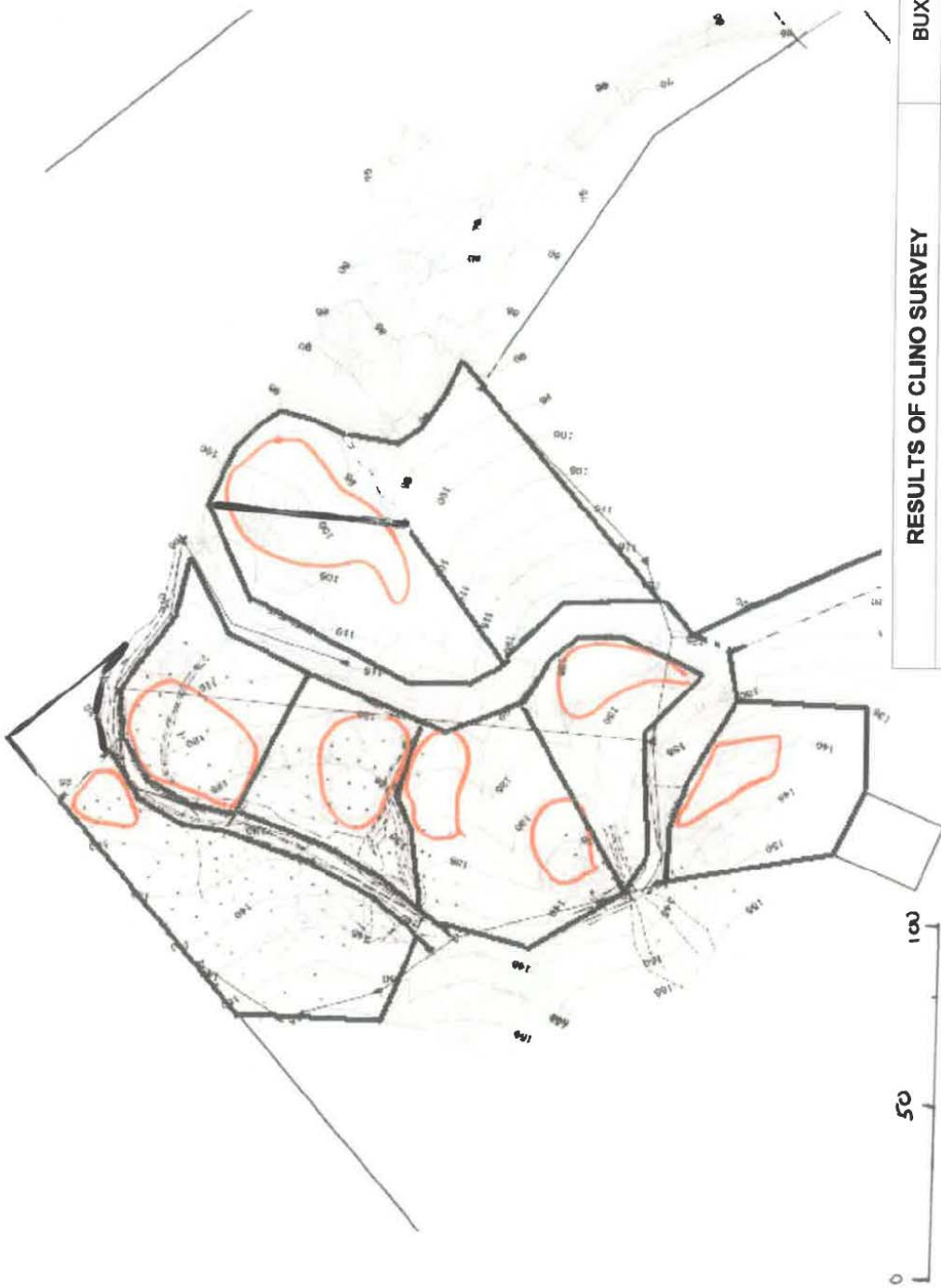
The compiled sketch reflects property boundary data in the vicinity of the World Heritage Area. The World Heritage Area boundary shown on the sketch has been adjusted to conform to property boundaries.

For legal purposes please refer to original source material. The Wet Tropics Management Authority makes no warranty to the accuracy or currency of data presented and recommends users to notify it of any errors or omissions.

Applicant's concept for proposed pole frame houses on the Lots 8 & 9



0.7



RESULTS OF CLINO SURVEY	BUX - 1021
PROPOSED SUBDIVISION - BUXTON FOLEY RD -- PALM COVE	22/1/2010

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