

PLANNING & ENVIRONMENT COMMITTEE 8 SEPTEMBER 2010	2
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CAIRNSPLAN AMENDMENT 2010, NO. 4 – HILLSLOPES REVIEW

Peter Boyd :8/27/3-06: #2703826v1

RECOMMENDATION:

That in accordance with the requirement of the *Sustainable Planning Act 2009* Council:

- A. Propose to undertake an amendment to the CairnsPlan to amend the Planning Area and Hillslopes Overlay maps as outlined below.
- B. Write to the Minister to commence the first state interest review and following the review proceed to public notification if the amendment is not subject to any ministerial conditions.

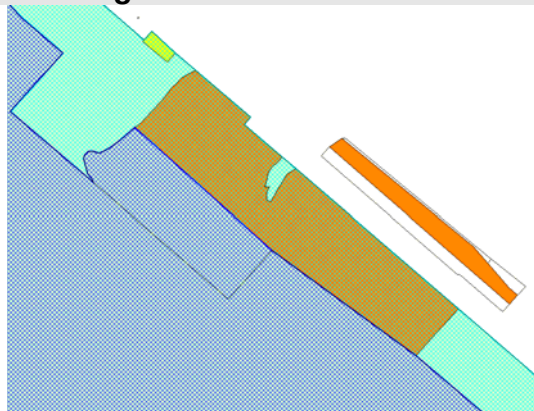
Site 1 – Captain Cook Highway, Ellis Beach

Property Description: Lot 13 on NR5512 & Lot 22 on SP147762

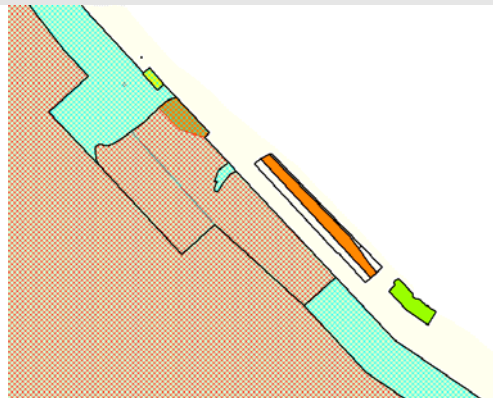
That in relation to land at Captain Cook Highway, Ellis Beach described as Lot 13 on NR5512:

1. That the restaurant component of the site remains in the Tourist and Residential Planning Area and Category 1 Hillslopes Overlay.
2. That the balance of the site be included in the Conservation Planning Area and Category 2 Hillslopes Overlay.

Existing CairnsPlan



Recommendation

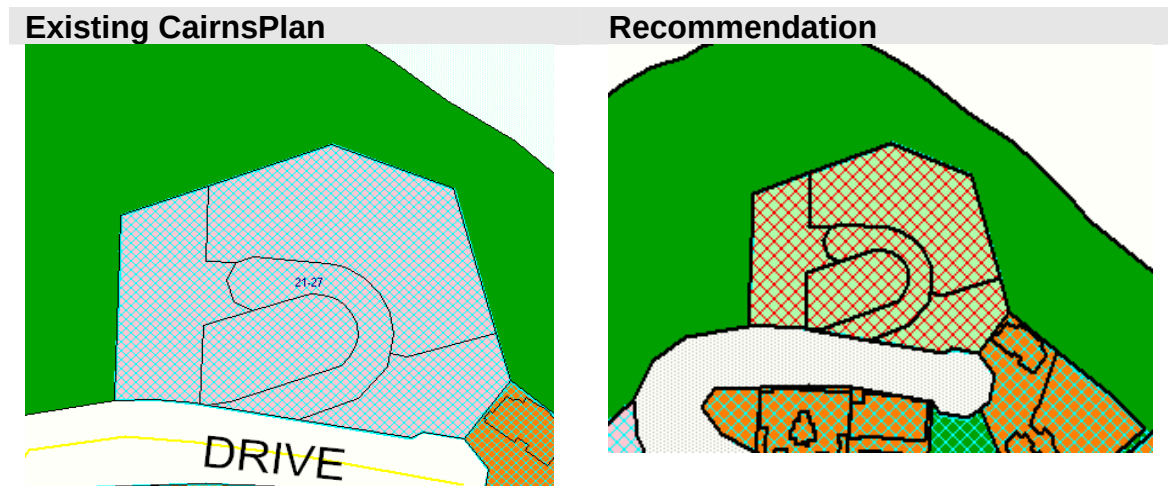


Site 2 – Buchan Point, Palm Cove

Property Description: Lots 38-41 SP162918

That in relation to land at Colonel Cummings Drive, Palm Cove described as Lots 38-41 SP162918:

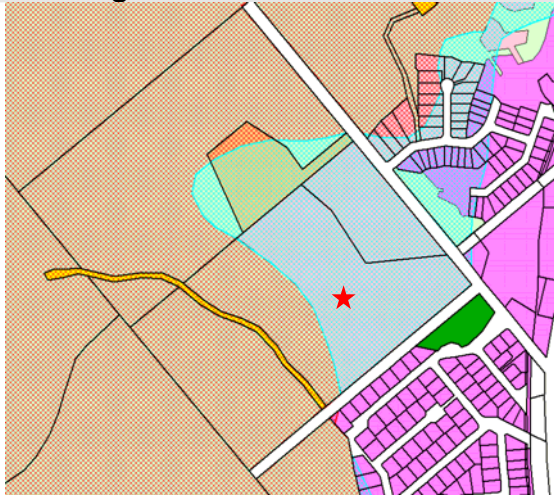
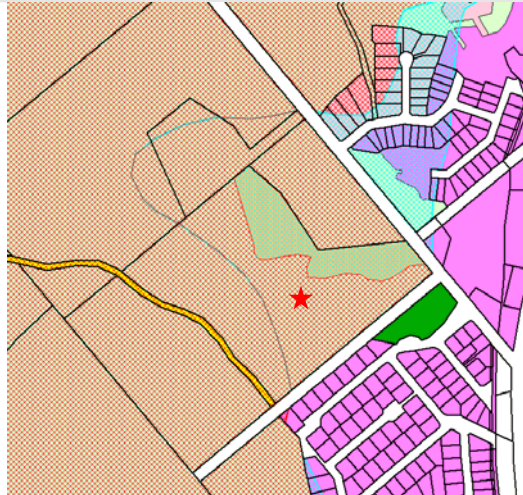
1. The Planning Area be amended to include the subject sites in the Conservation Planning Area.
2. That the Hillslopes Overlay designation change from Category 1 to Category



Site 3 – Foley Rd, Palm Cove

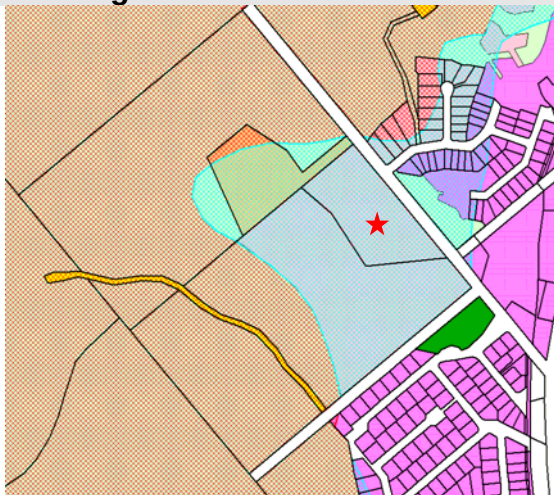
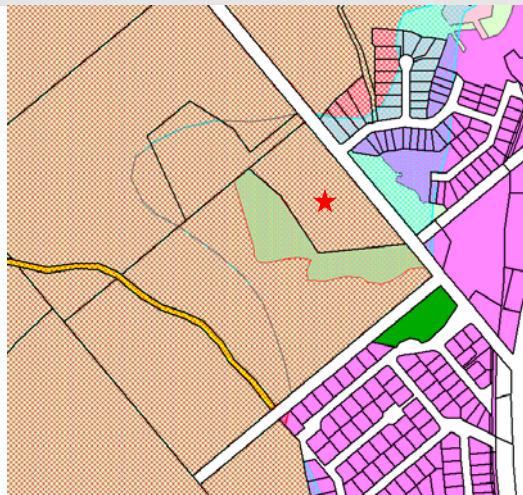
That in relation to land at Foley Road, Palm Cove described as Lot 2 on RP808351:

1. That Lots 10-12 not subject to a statutory covenant area be included in the Low Density Residential Planning Area and the balance of the site be included in the Conservation Planning Area as per lot layout detailed on Proposal Plan 7890PAI-02 dated 9 November 2009.
2. That Lots 10-12 where included in the Low Density Residential Planning Area remain in the Category 1 Hillslopes Overlay with the balance of the site included in Category 2 Hillslopes Overlay as per lot layout detailed on Proposal Plan 7890PAI-02 dated 9 November 2009.

Existing CairnsPlan**Recommendation**

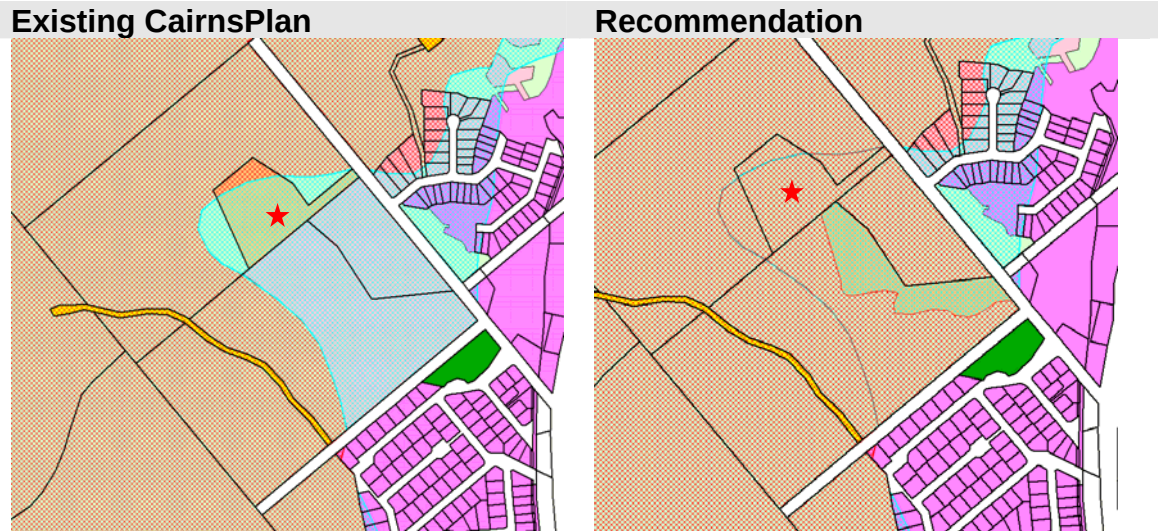
That in relation to land at Foley Road, Palm Cove described as Lot 1 on RP808351:

- 1. That the Planning Area be amended to include the subject site in the Conservation Planning Area.**
- 2. That the Hillslopes Overlay be amended to include the subject site in the Category 2 Hillslopes Overlay.**

Existing CairnsPlan**Recommendation**

That in relation to land at Foley Road, Palm Cove described as Lot 137 on RP744021:

- 1. That the Hillslopes Overlay be amended to include the subject site in the Hillslopes Category 2 Overlay.**



Site 4 – Bokissa Road, Clifton Beach

Property Description: Survey Plan: Lot 27 on SP178693, SP206176

That in relation to land at Bokissa Road, Palm Cove described as SP178693, SP206176:

- 1. There be no change to the Planning Area or Hillslopes Overlay designation over the site.**
- 2. The Cairns Beaches District Special Facilities Map be amended to remove the Special Facilities designation from this site.**
- 3. Section 3.6.2 Schedule of Special Facilities Approvals be amended to remove the Special Facilities designation No. 11 from this site.**

Note: No map provided as there will be no changes to the Planning Area or Overlay mapping.

Site 5 – Discovery Drive, Kewarra Beach (Paradise Palms)

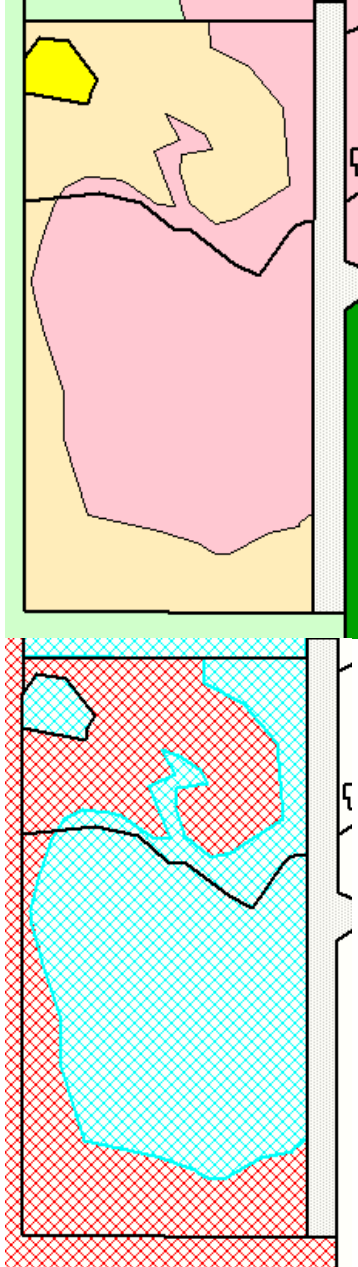
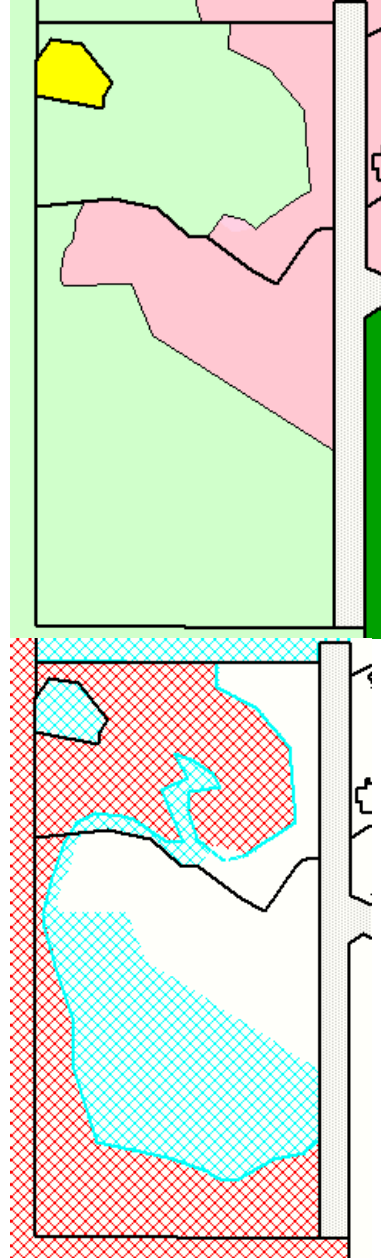
Property Description: Lot 359 on SP214836, Lot 1 on SP214836, Lot 999 on SP105747 (Reservoir)

RECOMMENDATION

That in relation to land at 1 on SP214836, Discovery Drive, Kewarra Beach (Paradise Palms):

- 1. That Lots 2-20 as per lot layout detailed on Proposal Plan 8479-95 and the building footprint for Canyon Lakes unit development (as per lot layout detailed on Proposal Plan: unit building plan 4) be included in the Residential 1 Planning area, and the balance of the site be included in the Conservation Planning Area.**

2. That the land recommended for inclusion in the Residential 1 Planning Area be removed from the Hillslopes Overlay.

Existing CairnsPlan**Recommendation**

Site 6 – Taylor Point, Trinity Beach

Property Description: Lot 10 on RP724040, Lot 3 on RP710728, Lot 1 on RP710728, Lot 4 on RP710728, Lot 5 on RP710728, Lot 1 on RP742848

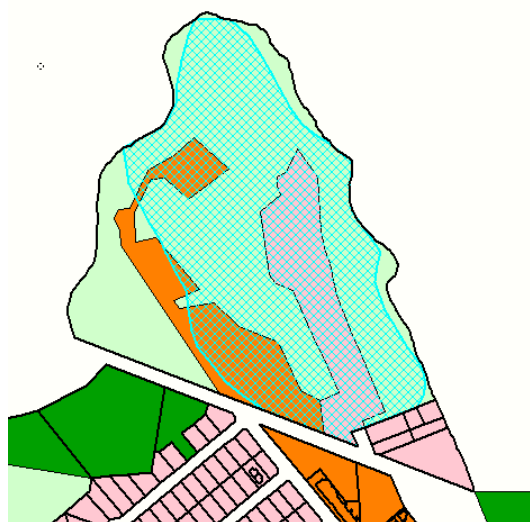
That in relation to land at Lot 10 on RP724040, Taylor's Point, Trinity beach:

1. That the subject site be included in the Conservation Planning area with the area not affected by steep slopes included in the Tourist and Residential Planning Area.
2. That the Hillslopes Overlay be amended to include the subject site in the Hillslopes Category 2 Planning Area where included in the Conservation Planning Area and within the Category 1 Planning Area where included in the Tourist and Residential Planning Area.
3. The Special Facilities Overlay be amended to remove the Special Facilities designation No. 6 from Lot 10 RP724040.
4. Section 3.6.2 Schedule of Special Facilities Approvals be amended to remove the Special Facilities designation No. 6 from Lot 10 RP724040.

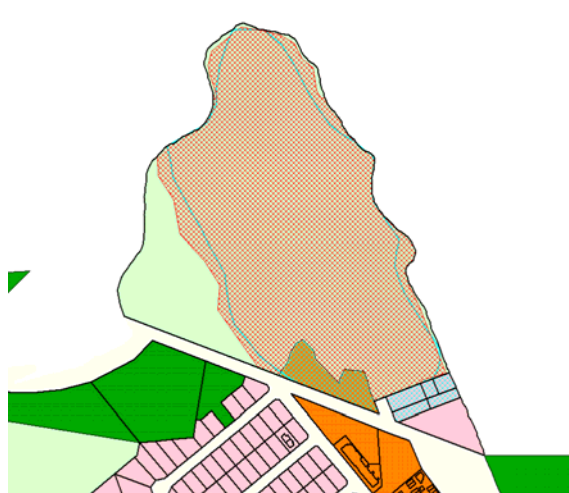
That in relation to land at Lots 1-5 on RP710728, Taylor's Point, Trinity beach:

1. That there be no change to the Planning Area.
2. That the Hillslopes Overlay be amended to included the subject sites in the Category 1 designation.

Existing CairnsPlan



Recommendation

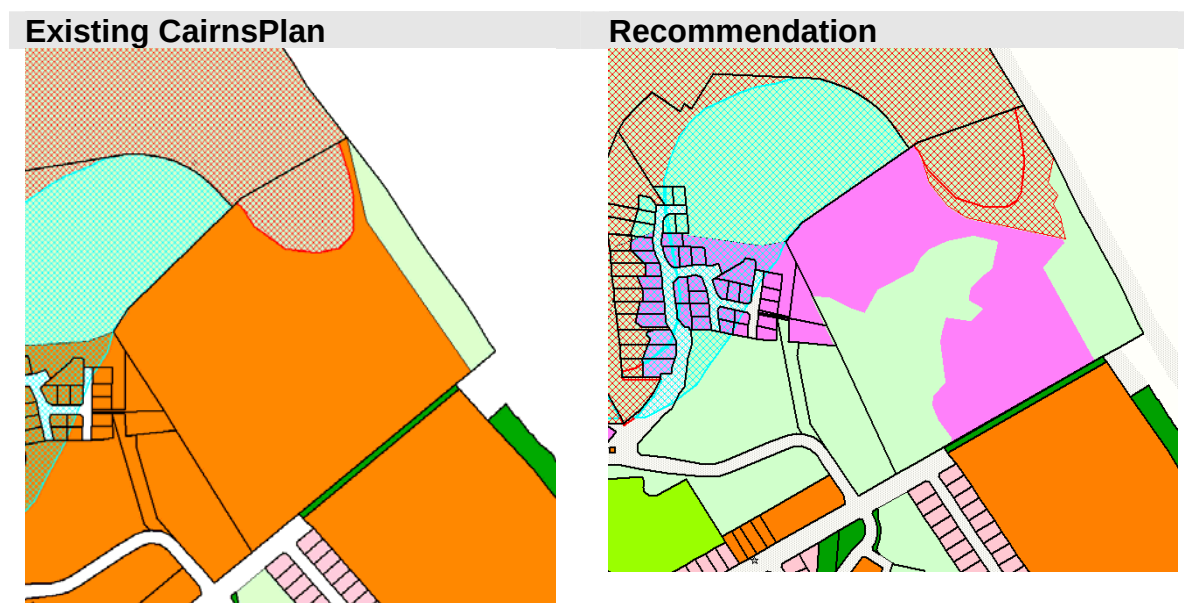


SITE 7 – EARL HILL, TRINITY BEACH

Property Description: Lot 90 on SP129123, Lot 90 on 3SP214833, Lot 202 on SP178664.

That in relation to land at Lot 90 on SP129123, Lot 90 on 3SP214833, Lot 202 on SP178664, Earl Hill, Trinity beach:

- 1. The area of land identified as having slopes of 1:4 or greater as shown below be included in the Conservation Planning Area and Hillslopes Category 2 Overlay.**
- 2. The balance of the site be included in the Residential 2 Planning Area designation.**

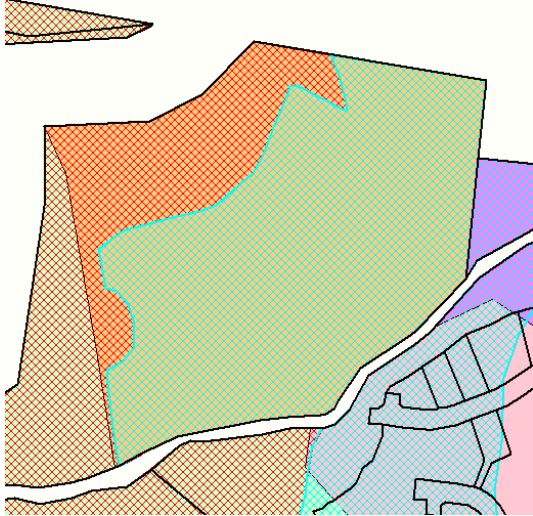
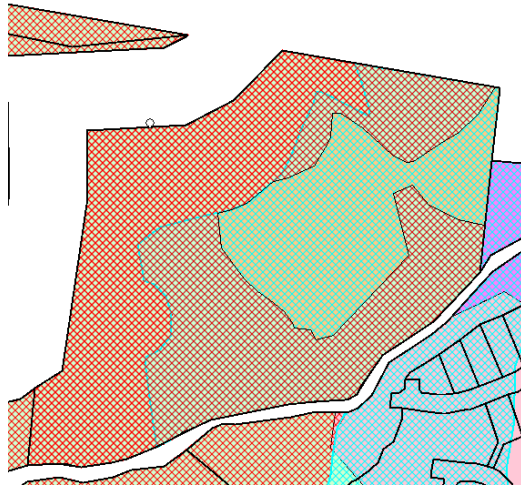


Site 8 – Kennedy Highway, Smithfield

Property Description: Lot 154 on NR6988

That in relation to land at Lot 154 Kennedy Highway, Smithfield, described as Lot 154 on NR6988:

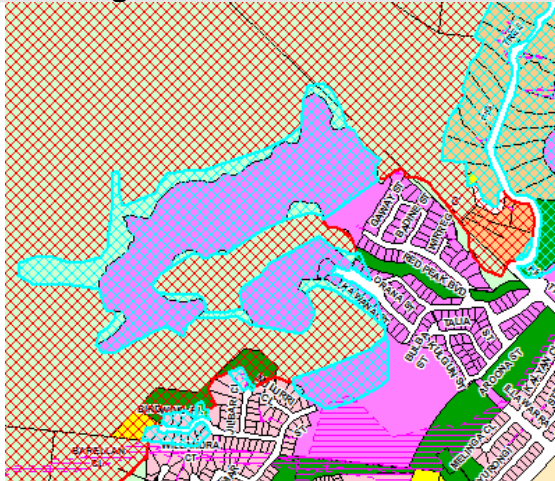
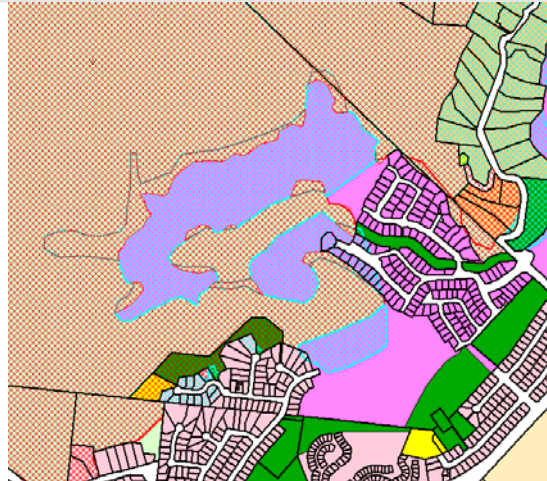
- 1. The Planning Area and Hillslopes Overlay be amended to include the area shown below in the Conservation Planning Area and Category 2 Hillslopes Overlay with the balance of the site remaining in the Low Density Residential Planning Area and Category 1 Hillslopes Overlay.**

Existing CairnsPlan**Recommendation****Site 9 – Red Peak, Caravonica**

Property Description: Lot 900 on SP177996

That in relation to land at Lot 900 on SP177996, Red Peak, Redlynch:

1. That the area included in the Conservation Planning Area be included in the Hillslopes Category 2 designation.

Existing CairnsPlan**Recommendation**

Site 10 – Stoney Creek Road, Kamerunga

Property Description: Lot 19 on RP804194, Lot 1 on RP804194, Lot 5 on RP804193

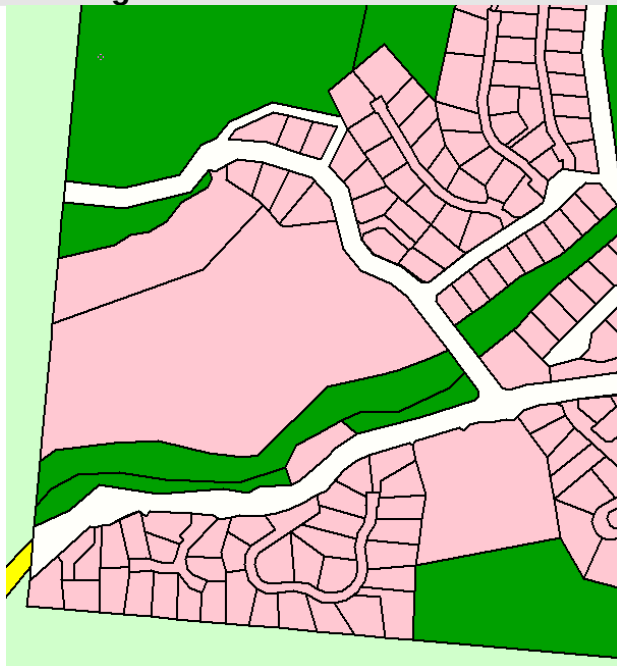
That in relation to land at Stoney Creek Road, Kamerunga described as Lot 19 on RP844191 and Lot 5 on RP804193:

1. The Planning Area be amended to include the subject sites in the Conservation Planning Area.
2. There be no change to the Hillslopes Overlay designation over these sites.

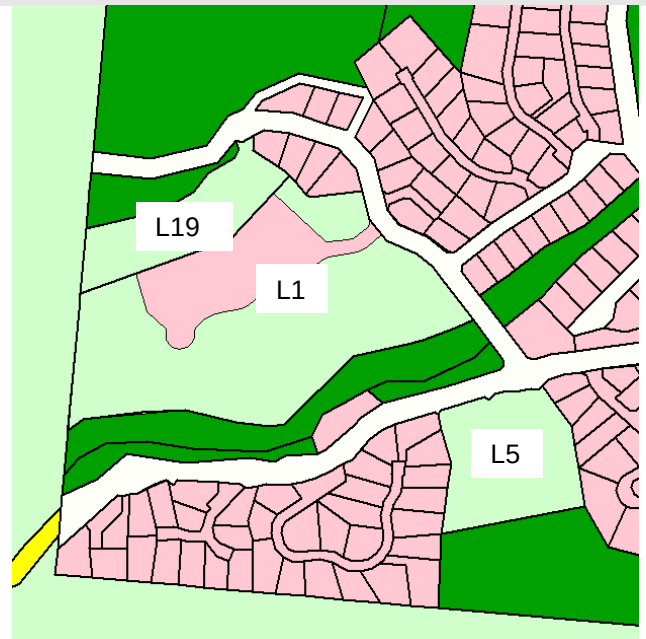
That in relation to land at Stoney Creek Road, Kamerunga described as Lot 1 on RP804194:

1. That proposed Lots 1-8 remain in the Residential 1 Planning Area and the balance of the site be included in the Conservation Planning Area as per lot layout detailed on Proposal Plan Q04025 CO1 P1 dated 28 June 2005.
2. There be no change to the Hillslopes Overlay designation over the subject sites.

Existing CairnsPlan



Recommendation



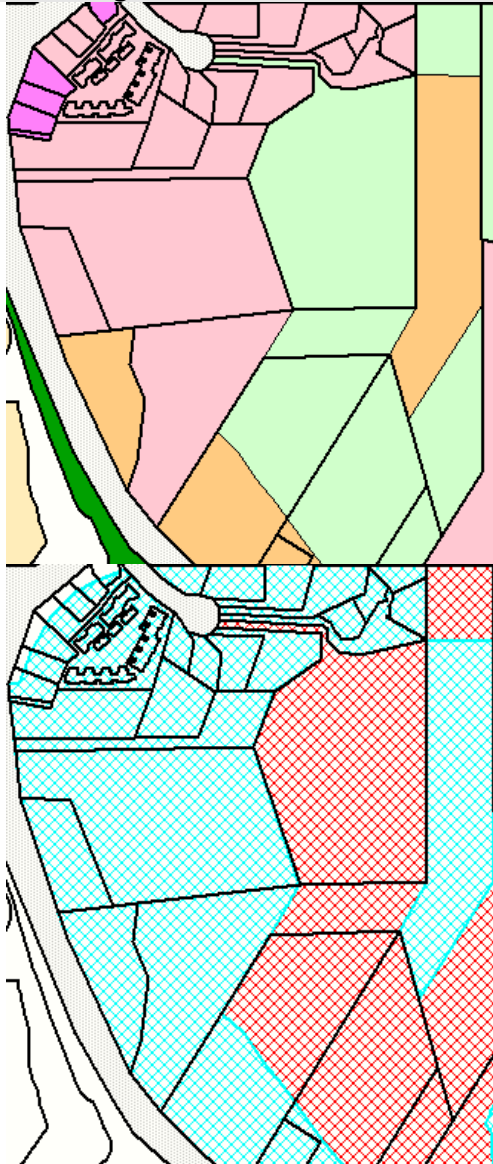
Site 11 – 450 – 454 Brinsmead Road, Freshwater

Property Description: Lot 1 on RP709390, Lot 2 on RP724523 and Lot 2 on RP726694

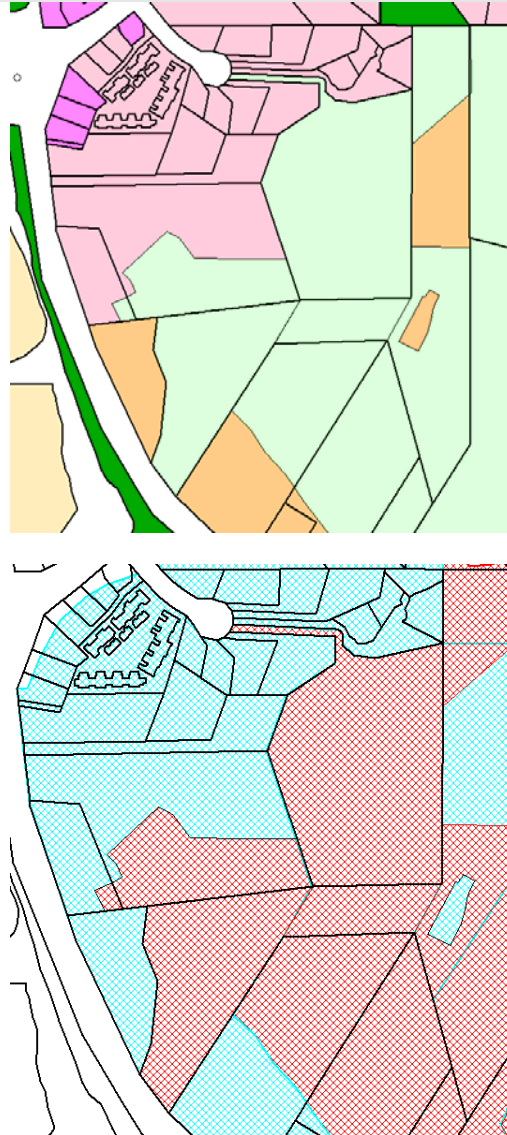
That in relation to land at 450-454 Brinsmead Road, Freshwater described as Lot 2 RP724523, Lot 2 RP726694 and Lot 1 RP709390:

- 1. The Planning Area be amended to include proposed Lots 1-7 and 18-24 in the Residential 1 Planning Area and proposed Lot 27 in the Low Density Residential Planning Area with the balance of the site to be included in the Conservation Planning Area.**
- 2. The Hillslopes Overlay be amended to include proposed Lots 1-7, 18-24 and 27 in the Category 1 Overlay and the balance of the site in the Category 2 designation.**

Existing CairnsPlan



Recommendation



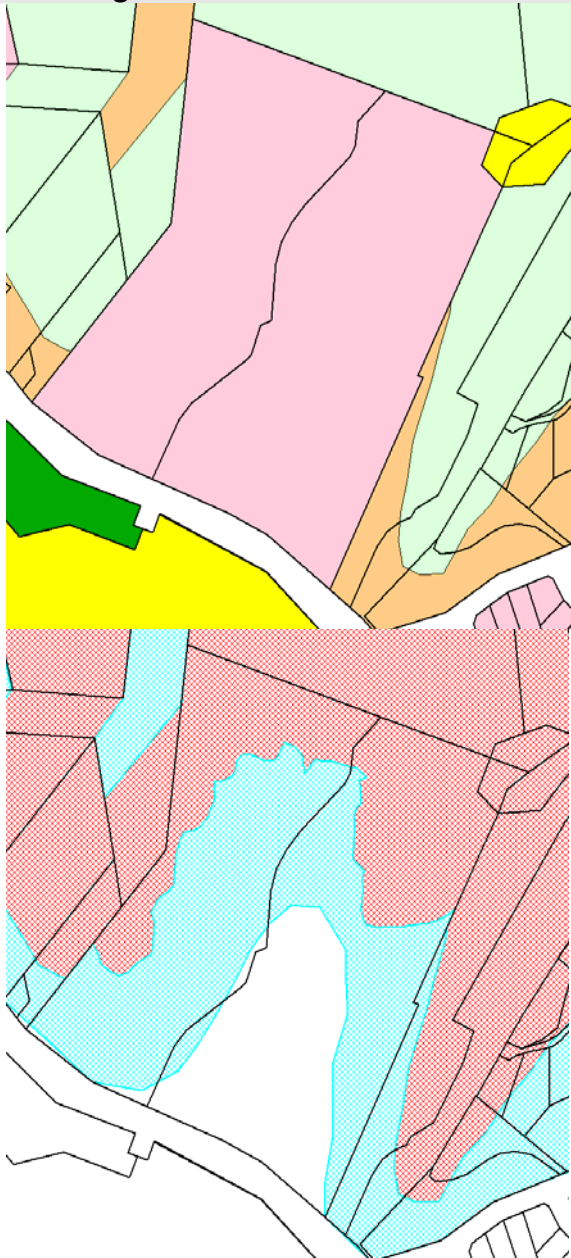
SITE 12 – BRINSMEAD ROAD HILLSLOPES

Property Description: Lot 2 on RP741238, Lot 3 on RP741238, Lot 14 RP895993, Lot 15 RP895993 and Lot 162 SP227920

That in relation to land at Brinsmead Road, Brinsmead described as Lot 2 RP741238, Lot 3 RP741238, Lot 14 RP895993, Lot 15 RP895993 and Lot 162 SP227920:

1. The Planning Area and Hillslopes Overlay be amended to include the area shown below in the Conservation Planning Area and Category 2 Hillslopes Overlay with the balance of the site remaining in the Residential 1 Planning Area.

Existing CairnsPlan

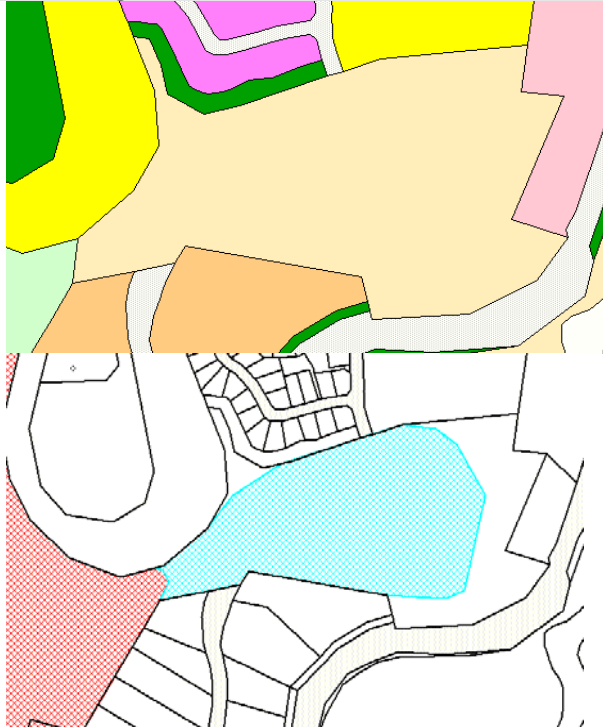
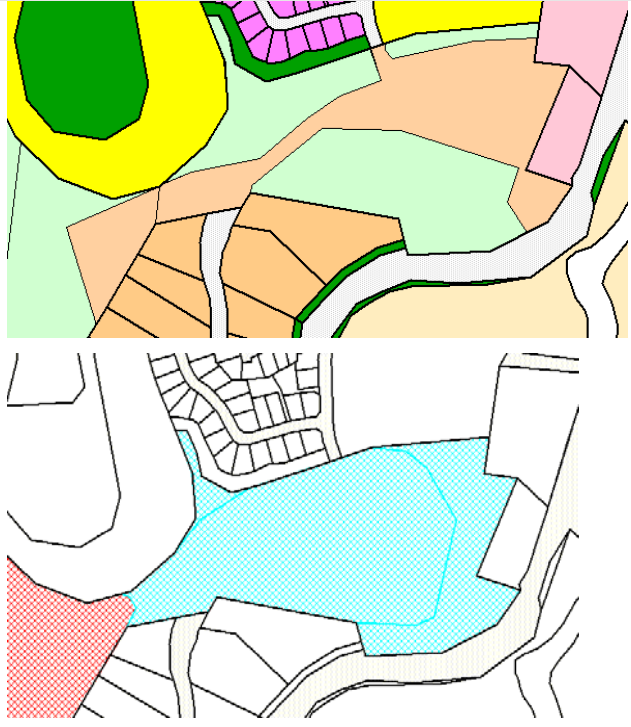


Recommendation



Site 13 – Tognolini's**Property Description: Lot 2 on RP894179****RECOMMENDATION****That for land at Redlynch Intake Road described Lot 2 on RP894179.**

- 1. The area of land to be included in a Statutory Covenant be included in the Conservation with the balance of the site being included in the Low Density Residential Planning Area and Hillslopes Category 1 Overlay generally as per lot layout detailed on Proposal Plan 8372-19.**

Existing CairnsPlan**Recommendation**

Site 14 – Oriana Close, Brinsmead

Property Description: Lot 3 on SP160323, Lot 7 on RP747584, Lot 6 on RP747584

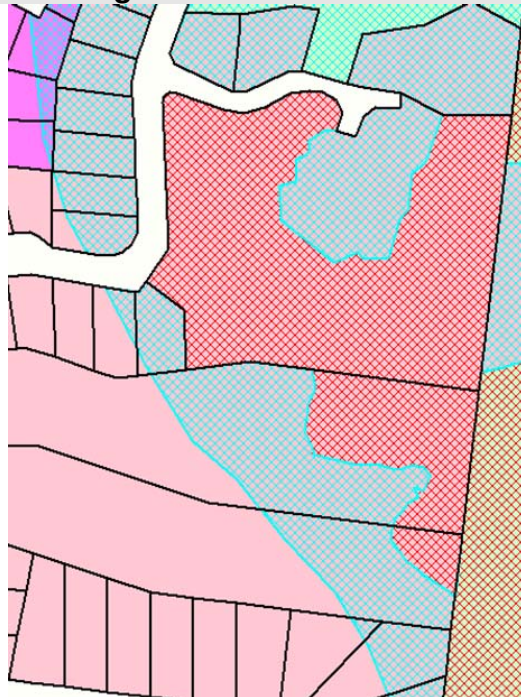
That for Lots 6 & 7 RP747584, Butland Street, Brinsmead:

- 1. The area currently included in the Hillslopes Overlay be included in the Conservation Planning Area with the balance of the site remaining in the Residential 1 Planning Area.**
- 2. That the Hillslopes Overlay designation be changed to Category 2.**

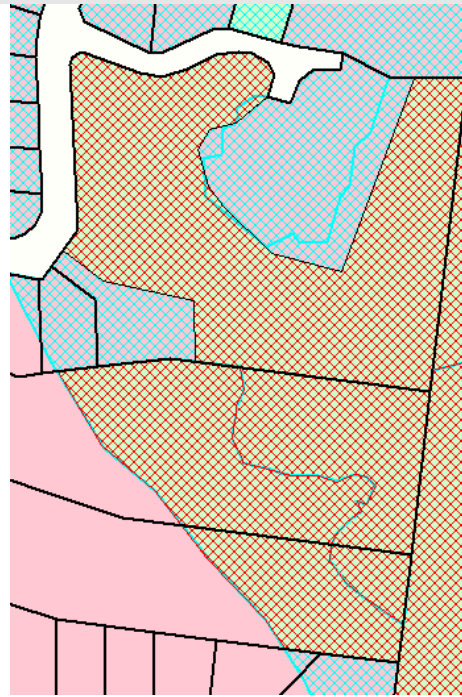
That for Lot 3 SP160323, Oriana Street, Brinsmead:

- 1. That proposed Lot 3 and the area of Proposed Lot 299 not within the building envelope be included in the Conservation Planning area as per lot layout detailed on Proposal Plan 4607-306 dated 27/10/09.**
- 2. That the area of the site to be contained within the Residential 1 Planning Area be included in Category 1 Hillslopes with the area to be included in the Conservation Planning Area be included in the Category 2 designation.**

Existing CairnsPlan

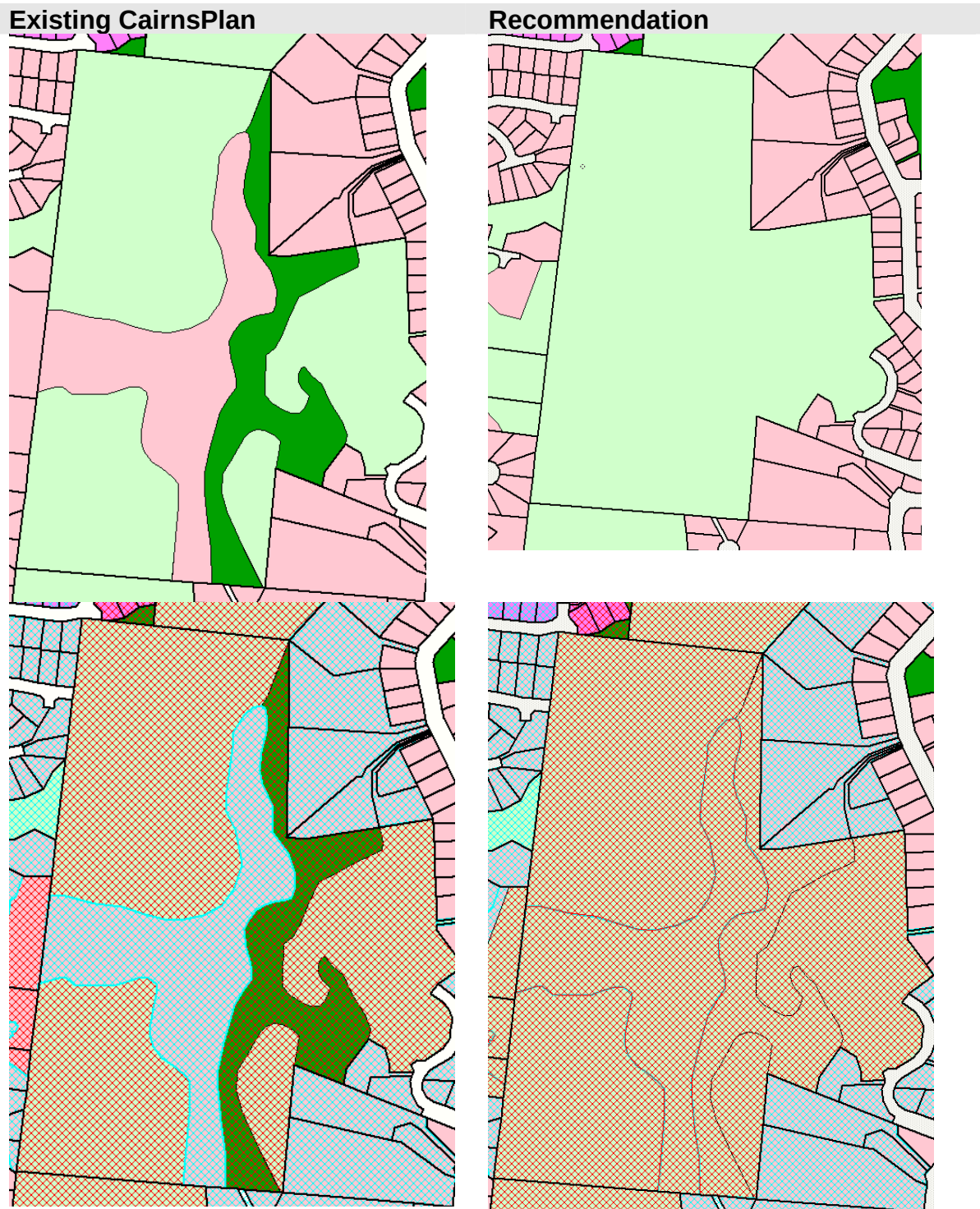


Recommendation



Site 15 – Whitfield Hill**Property Description: Lot 700 on SP178672****That for land at Bel Air Drive Whitfield described as Lot 700 SP178672:**

1. The Planning Area be amended to include the subject site in the Conservation Planning Area.
2. That the Hillslopes Overlay be amended to include the subject site in the Category 2 designation.



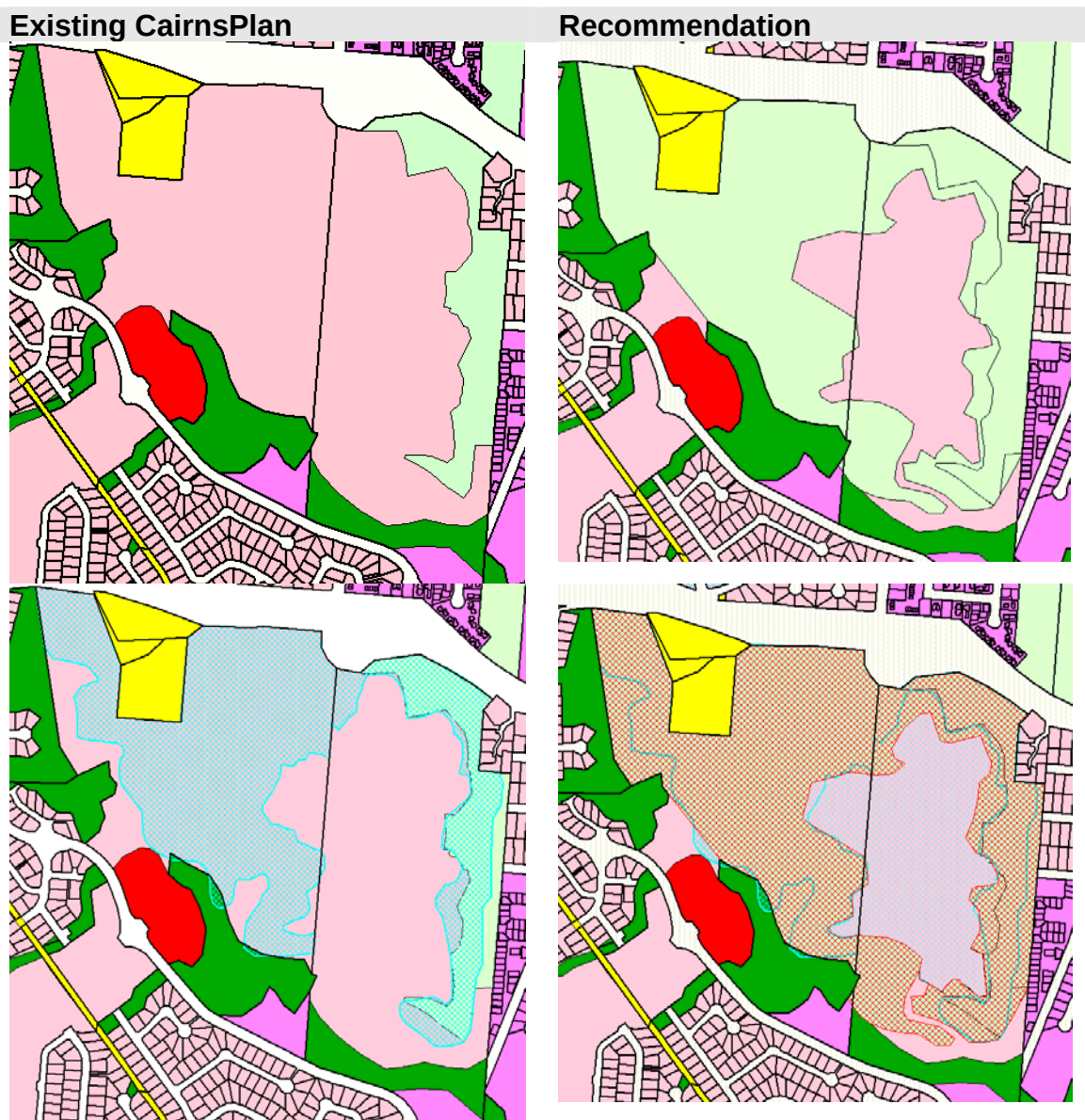
Site 16 – Marino's Quarry

Property Description: Lot 795 on SP222755, 79716, Lot 796 on SP161396

Location:

That land at Ramsay Drive, Kanimbla described as Lot 795 SP178683 and Lot 796 SP161396:

1. That the Hillslopes Overlay designation be amended as shown in the diagram below.
2. That the Planning Area mapping be amended to identify land included within the Category 2 Hillslopes Overlay as shown above in the Conservation Planning Area with the balance of the site remaining in the Residential 1 Planning Area.

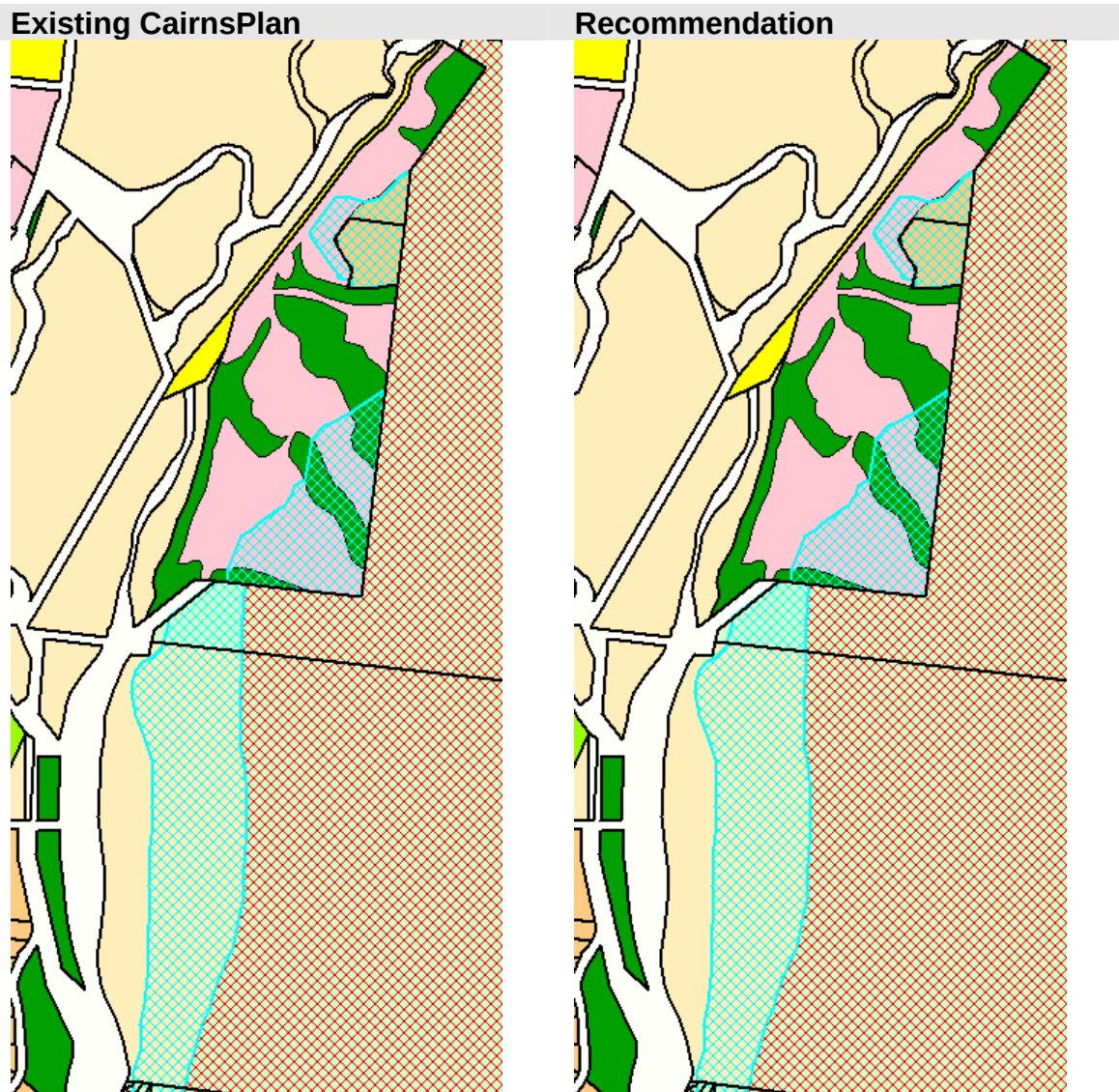


Site 17 – The Rocks, Jenkins Access Road

Property Description: Lot 16 on NR1068, Lot 500 on SP186266, Lot 501 on SP186266

That in relation to land at Jenkins Access, Redlynch described as Lot 16 on NR1068, Lot 500 on SP186266, Lot 501 on SP186266:

1. That there be no change to the Planning Area or Hillslopes Overlay designation.

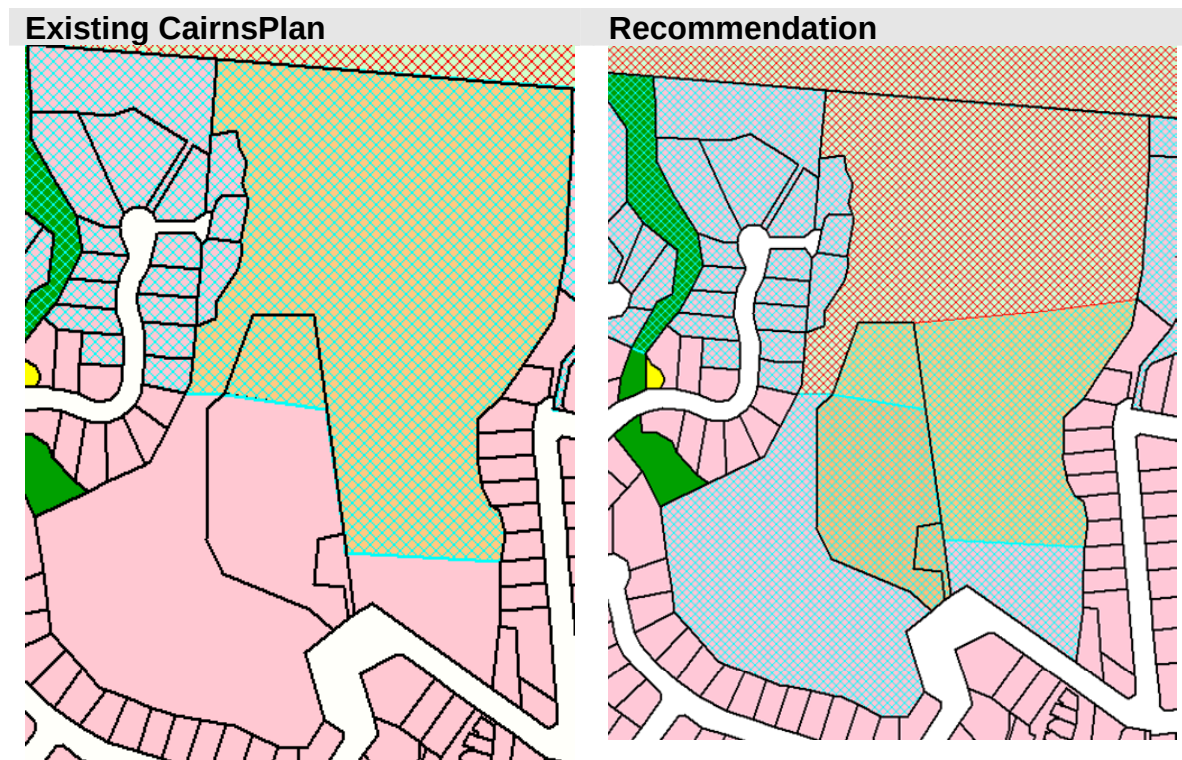


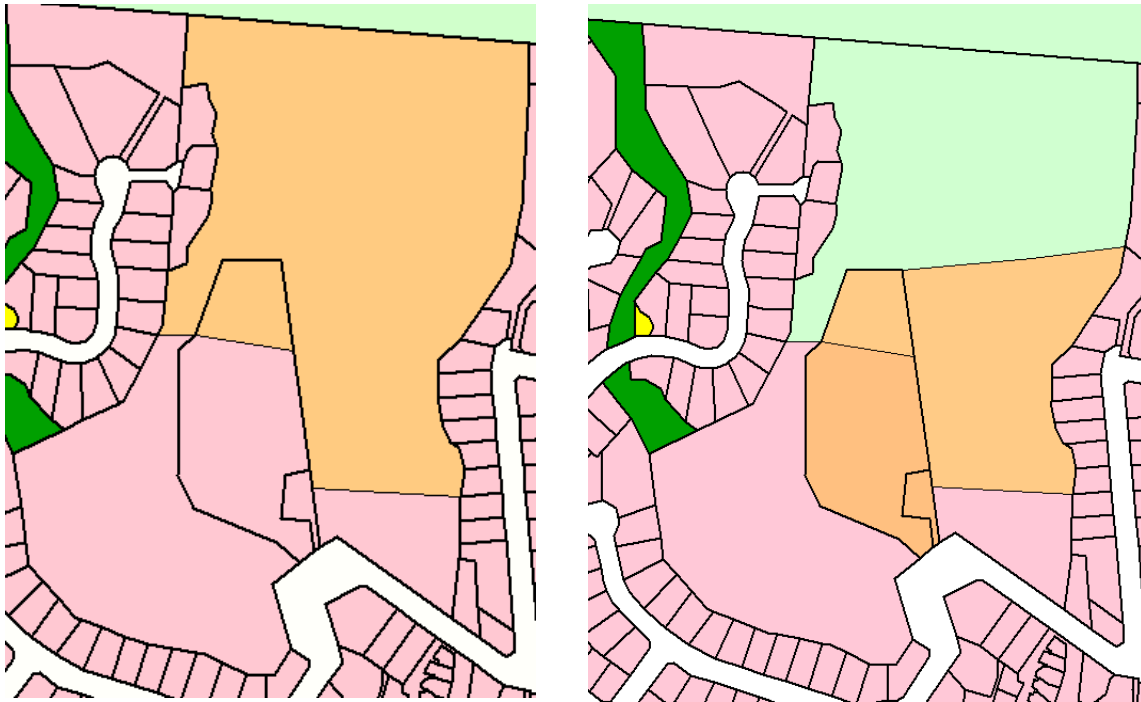
Site 18 – Whitfield, Hillslopes

Property Description: Lot 2 on RP911566, Lot 1 on RP749593

That in relation to land at Heavey Crescent, Whitfield described as Lot 2 RP911566 and Lot 1 RP749593:

1. That the Hillslopes Overlay designation be amended generally as shown in the diagram below:
2. That the Planning Area mapping be amended to identify land included within the Category 2 Hillslopes Overlay in the Conservation Planning Area.
3. That the Planning Area mapping be amended generally as shown below to include Lot 1 in the Low Density Residential Planning Area.





Site 19 – Cairns North

Property Description: Lot 1 on RP710767, Lot 5 on RP731481, Lot 1 on RP724847, Lot 6 on RP731479, Lot 7 on RP731480, Lot 8 on RP731479, Lot 718 on NR5593, Lot 999 on RP866982:

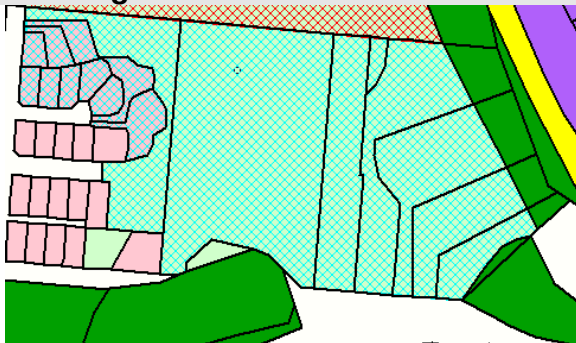
That in relation to land at Edge Hill described as Lot 1 on RP710767, Lot 5 on RP731481, Lot 1 on RP724847, Lot 6 on RP731479, Lot 7 on RP731480, Lot 8 on RP731479, Lot 718 on NR5593, Lot 999 on RP866982:

1. That the Hillslopes Overlay be amended from Category 1 to Category 2.

That in relation to land at Edge Hill described as Lot 1 RP731479, Lot 2 RP731480, Lot 3 RP731479, Lot 4 RP731481:

2. That the Planning Area be amended from Open Space to Conservation.

Existing CairnsPlan



Recommendation

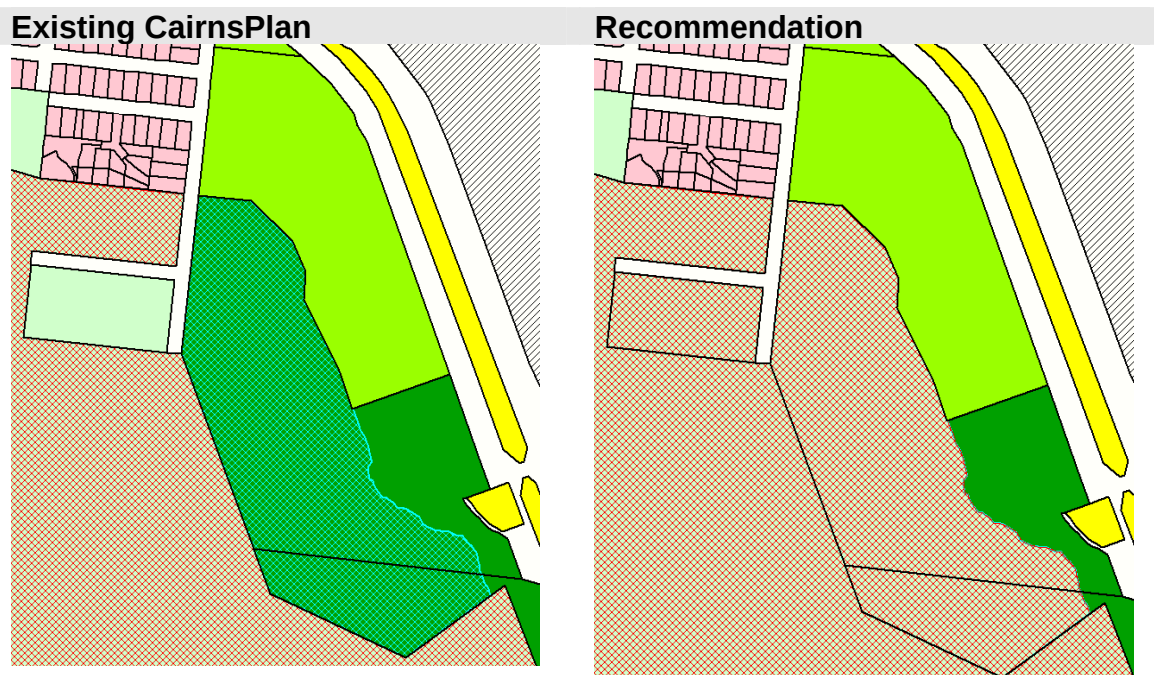


Site 20 – Flying Leap

Property Description: Lot 3 on C19844, Lot 82 on C198327, Lot 21 on USL9331

That in relation to land at North Cairns/ Aeroglen described as Lot 3 on C19844, Lot 82 on C198327, Lot 21 on USL9331:

- 1. That Lot 3 be included in the Category 2 designation of the Hillslopes Overlay.**
- 2. That the areas of Lot 82 and Lot 21 currently included in the Hillslopes Overlay Category 1 be included in the Category 2 designation.**
- 3. That the areas of Lot 3, Lot 82 and Lot 21 to be included in the Hillslopes Category 2 Overlay be included in the Conservation Planning area with the balance of the site remaining in the Open Space designation.**

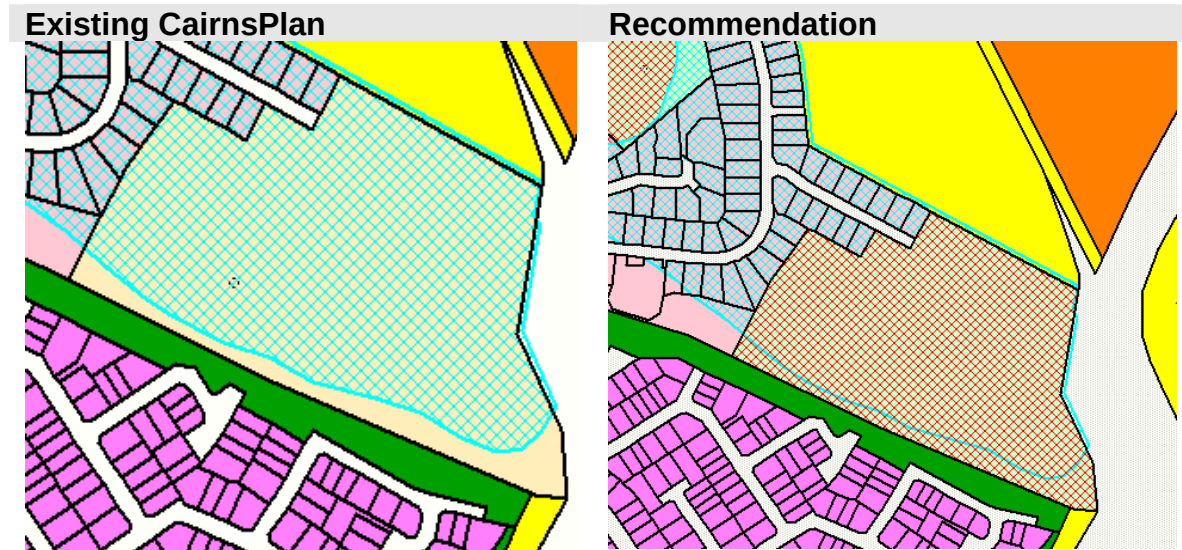


Site 21 – Forest Gardens North

Property Description: Lot 502 on SP129122

That in relation to land at Lot 502 on SP129122, Forest Gardens North:

- 1. That the subject be included in the Conservation Planning Area.**
- 2. That the subject be included in the Category 2 Hillslopes Designation.**

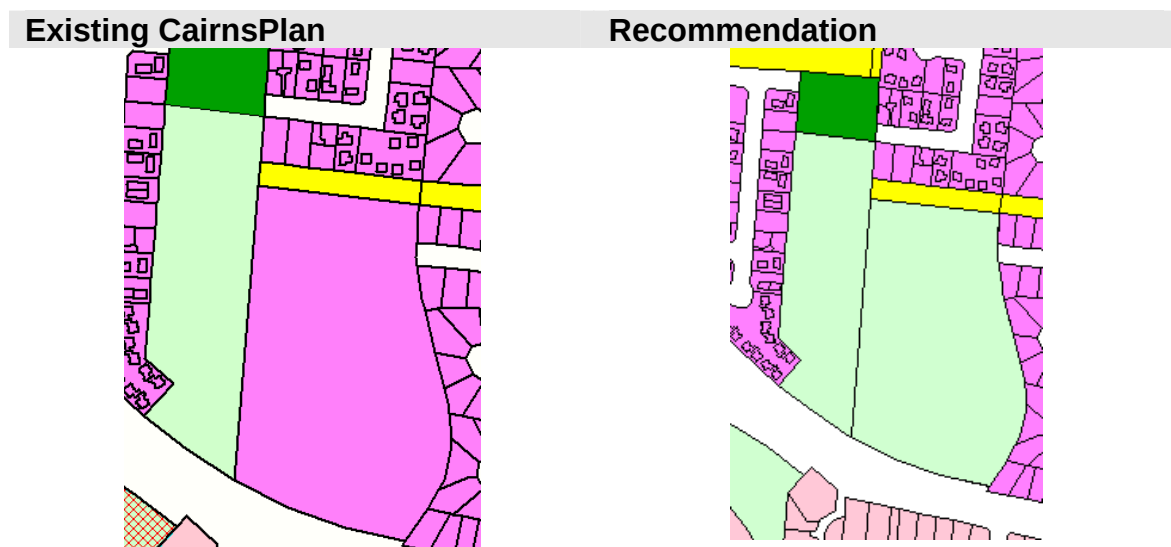


Site 22 – Reservoir Road, Manoora

Property Description: Lot 2 on RP892245

That in relation to land at Reservoir Road, Kamerunga, described as Lot 2 on RP892245:

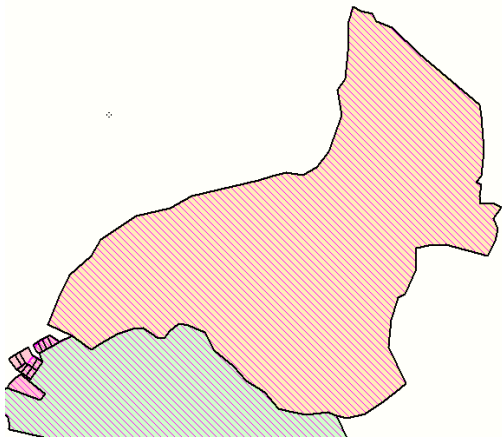
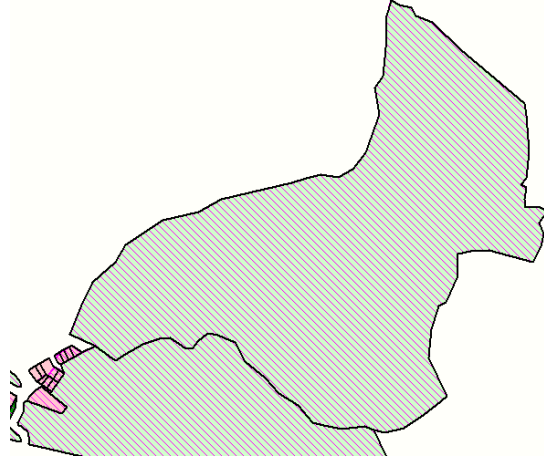
- 1. The subject site be included in the Conservation Planning Area.**



Site 23 – False Cape, East Trinity**Property Description: Lot 108 on RP712063**

That in relation to land at False Cape, East Trinity, described as Lot 108 on RP712063:

1. The subject site be included in the Conservation Planning Area.

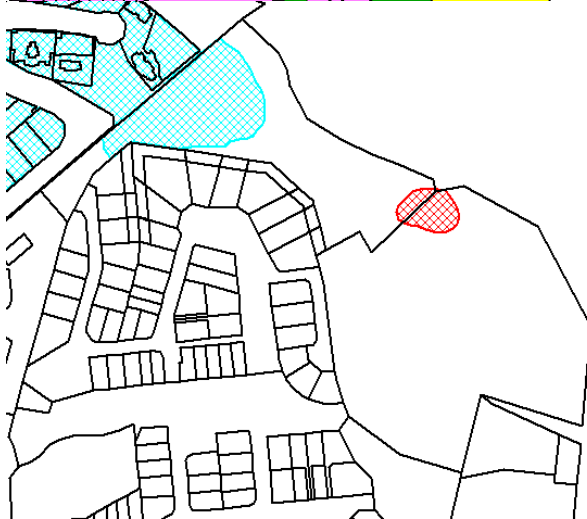
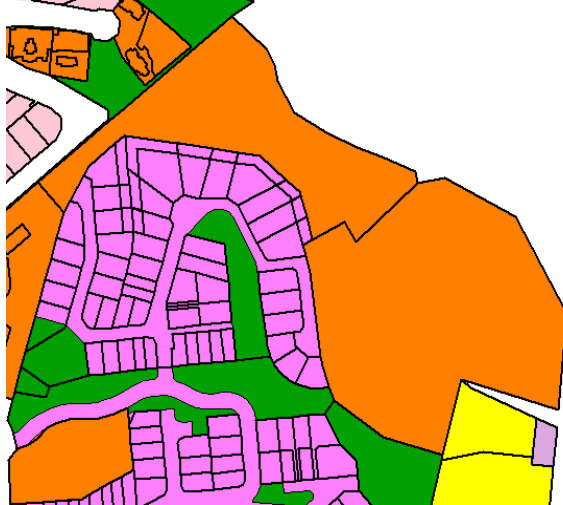
Existing CairnsPlan**Recommendation**

Site 24 – Palm Cove Headland, Palm Cove

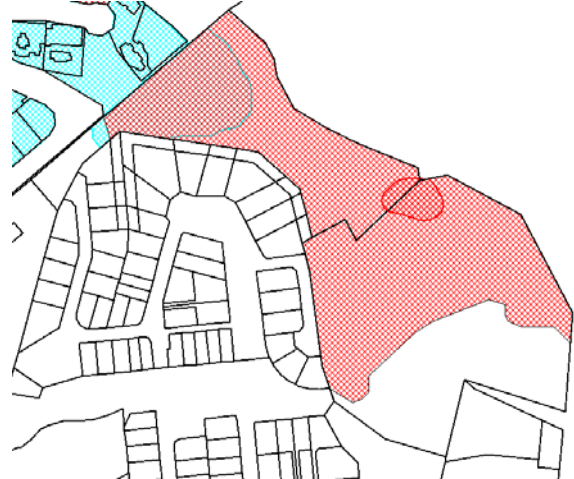
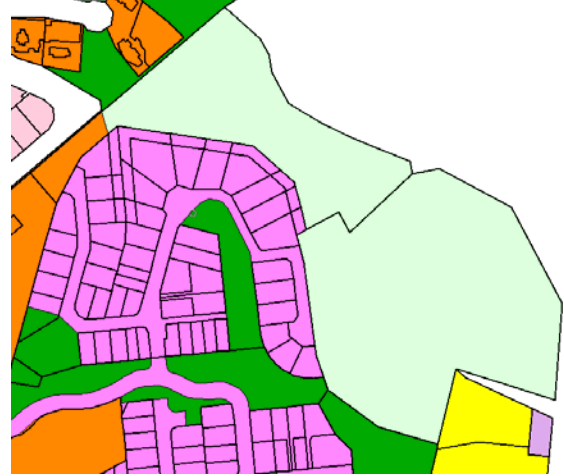
That in relation to land at Lot 2 RP747724 and Lot 1 RP748655 Palm Cove, identified in the mapping below:

1. That the Hillslopes Overlay designation be amended generally as shown in the diagram below.
2. That the Planning Area mapping be amended generally as shown in the diagram below.

Existing CairnsPlan



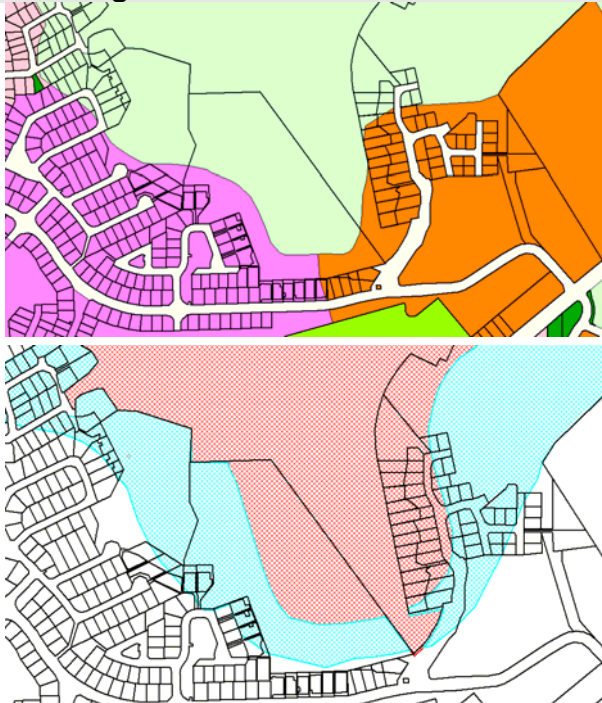
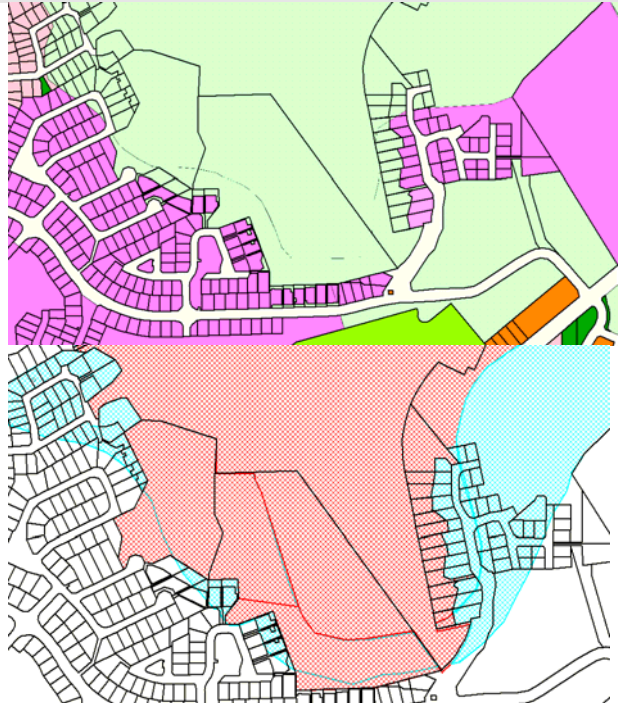
Recommendation



Site 25 – Bluewater Estate, Trinity Beach

That in relation to land at Bluewater Estate, Trinity Beach, identified in the mapping below:

1. Land not subject to further development be included in the Conservation Planning Area.
2. Land within residential lots beyond the building envelope be included in the Conservation Planning Area.
3. Land currently included in the Tourist and Residential Planning Area that has been reconfigured into residential lots be included in the Residential 2 Planning Area.

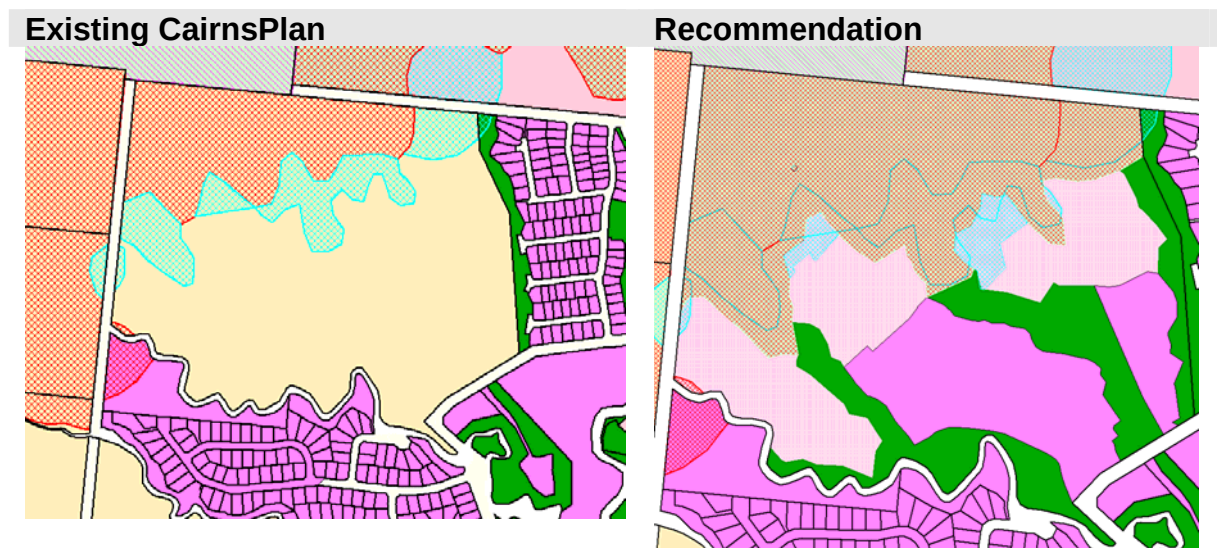
Existing CairnsPlan**Recommendation**

Site 26 – Timberlea Dr, Bentley Park

Property Description: Lot 912 on SP207043

That in relation to land at Timberlea Drive, Bentley Park, described as Lot 912 on SP207043:

1. That the Hillslopes Overlay designation be amended generally as shown in the diagram below subject to proposed residential lots detailed on approved plan 9009-5-Rev E identified in the Hillslopes Overlay below being included in the Category 1 designation.
2. That the Planning Area mapping be amended to identify land included within the Category 2 Hillslopes Overlay in the Conservation Planning Area.
3. That the proposed residential lots, where included within Stages 1 to 4 and 8 as shown on plan 9009-5-Rev E be included in the Residential 2 Planning Area.
4. That the proposed residential lots, where included within Stages 5 to 7, 9 and 10 as shown on plan 9009-5-Rev E be included in the Residential 1 Planning Area.

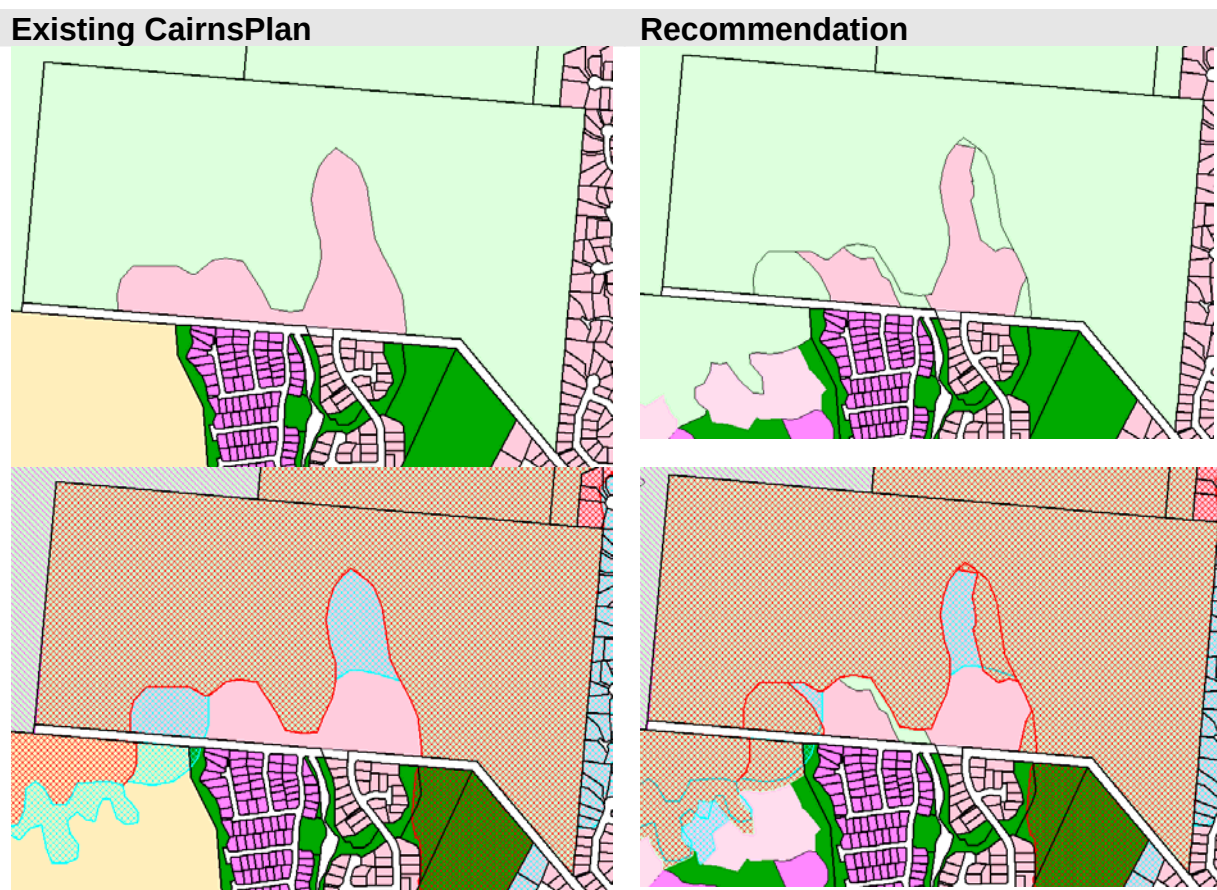


Site 27 – Goodsell Drive, Bentley Park

Property Description: Lot 250 on SP215425

That in relation to land at Goodsell Drive, Bentley Park, described as Lot 250 on SP215425:

1. That the Hillslopes Overlay designation be amended generally as shown in the s 2 Hillslopes Overlay in the Conservation Planning Area generally as shown in the diagram below.



INTRODUCTION:

As part of the CairnsPlan Amendment 2007 No. 1, a submission was received from Save Our Slopes Inc (SOS). The contents of this submission were addressed during a special meeting of Council and resulted in a number of amendments to CairnsPlan. This submission was re-submitted to Council in 2009 and was subsequently amended to reflect changes to CairnsPlan that commenced in March 2009. The SOS submission relates to the former Cairns City Council area and references slopes from Ellis Beach to Woree. To ensure all slopes that are included within CairnsPlan are addressed, Council officers have included additional sites for consideration.

This Council report should be read in conjunction with the *Hillslopes Overlay Review – March 2010* which provides further information on each of the sites.

BACKGROUND:

A report was presented to the Planning and Environment Committee meeting in May 2010. The item was deferred pending a workshop with Councillors which has now occurred. Submissions were received from some landowners of sites contained in the report that was presented to Council despite there being no formal notification to landowners at this stage. Land owners of each site will be advised of the amendment prior to the public notification occurring.

The following sites have been reviewed since the report was previously presented to Council:

Site 8 – Kennedy Highway, Smithfield
 Site 11 – 450 – 454 Brinsmead Road, Freshwater
 Site 12 – Brinsmead Road Hillslopes 15
 Site 18 – Whitfield, Hillslopes
 Site 22 – Reservoir Road, Manoora
 Site 24 – Palm Cove Headland, Palm Cove
 Site 26 – Timberlea Dr, Bentley Park
 Site 27 – Goodsell Drive, Bentley Park

The forested hillslopes above the coastal plain and river valleys are landscape features representative of, and uniquely characteristic of Cairns and the Far North Queensland region. They are features that make the region attractive to both residents and tourists and contribute to distinguishing the region from other areas. The hillslopes are also an important habitat and form a link between the coastal lowlands and mountain ranges.

To ensure protection of these characteristics, this report recommends the removal of sites affected by steep hillslopes and 'island' parcels that are constrained by surrounding steep slopes or areas of conservation significance from urban designations within CairnsPlan. By avoiding opportunities for inappropriate development, the outstanding scenic, environmental and recreational values of the region can be better protected from inappropriate development.

The submission received from SOS contains terrain mapping and aerial photos combined with contour mapping and outlines desired changes to the CairnsPlan Hillslopes Overlay and Planning Area mapping. To verify the terrain mapping provided by SOS, Council commissioned a Digital Elevation Model (DEM) which largely correlates with the SOS submission. The Council DEM identifies slopes greater than 1:3 as per superseded planning schemes and slopes greater than 1:4 slopes as identified in CairnsPlan 2009 and the FNQ Regional Plan 2009-2031.

COMMENT:**Far North Queensland Regional Plan 2009-2031**

The Far North Queensland Regional Plan 2009-2031 (the Regional Plan) commenced in February 2009. The Regional Plan aims to manage growth and maintain strong, sustainable and liveable communities. It includes an urban footprint across the region that determines the extent of urban development. The Urban Footprint, 0.5 per cent of the region, provides a 20 year land supply for the region. The balance of the region is designated as a Regional Landscape and Rural Production Area, protecting areas of significant environmental value (such as the World Heritage Areas) and natural resources for primary production, tourism, resource extraction and mining.

Of relevance to the preparation of this report is Section 2.3 of the Regional Plan, relating to scenic amenity, outdoor recreation and inter-urban breaks. The Regional Plan states that "Inappropriate subdivision on hill slopes has affected visual amenity..." and that "this type of development will no longer be permitted in the urban footprint and rural living areas unless the area has a gradient less than 1:4..." Given this direction from the Regional Plan, it is recommended that changes be made to the CairnsPlan to reflect this intended objective.

The Regional Plan further states in section 2.3.2(c) that community consultation is to be undertaken for development on slopes greater than 1:4 and upward. This direction is consistent with the inclusion of such slopes in the Conservation Planning Area which requires public notification for development applications.

Compensation provisions under the Sustainable Planning Act 2009

Following the commencement of the Sustainable Planning Act 2009 in December, Council sought legal opinion in relation to the ability for a landowner to claim compensation where an amendment to the planning scheme is undertaken to ensure consistency with the Far North Queensland Regional Plan 2009-2031.

A summary of the conclusions and recommendations of the opinion are:

1. *The Plan is a statutory instrument.*
2. *Elements of the Regional Plan such as introductory statements, explanatory notes and comments are part of the Plan, and are therefore part of that statutory instrument.*
3. *Pursuant to section 706(1)(a) of the SPA, the Council is exempt from liability for compensation payable under section 704 and 705 of the SPA, provided the amendments of the Council's planning scheme or the creation of a new planning scheme, to incorporate the Plan, have the same "effect" as the Regional Plan.*

4. *To determine the “effect” of the regional Plan, principles of statutory interpretation should be considered. Generally, the Regional Plan should be read in a literal sense, unless that interpretation would lead to absurdity or inconsistency. In that event, those parts of the Plan should be considered in light of the objectives and purposes of the Plan.*

Following the commencement of an amendment to a planning scheme, a landowner can request that an application be determined under a superseded planning scheme. Should Council determine that an application not be assessed under the superseded planning scheme, an applicant can claim for compensation for diminished value in land.

CONSIDERATIONS:

Corporate and Operational Plans:

The preparation of a new Planning Scheme is aligned with following elements of the Corporate Plan:

Goal 1 – Caring for the Environment

Objective: To ensure that the natural and built environments are managed and protected in a sustainable manner.

- 1.1 Deliver improved management of the region's natural resources and biological diversity for sustainability and ecosystem health.
- 1.2 Achieve greater recognition of the natural environment as an integral part of the region's identity and fundamental to quality of life.

Goal 2 – Building Vibrant Communities

Objective: To build more creative, innovative and self reliant communities where participation in community life is enabled and encouraged.

- 2.1 Improve the quality and opportunities for use of public space across the region.

Goal 3 – Delivering Integrated Planning

Objective: To take an integrated planning approach to development that creates a sustainable region reflective of our uniqueness and tropical lifestyle.

- 3.1 Implement an integrated approach to planning by Council and stakeholders.
- 3.2 Deliver integrated provision of physical and social infrastructure in existing and future parts of the region.
- 3.3 Effectively plan and respond to significant changes in the demographic profile of the region.

- 3.4 Protect and manage the heritage and culture of the region.
- 3.5 Plan for the impacts of climate change, including mitigation and adaptation measures.
- 3.6 Prepare integrated local area plans across the region using a place based planning approach.
- 3.7 Promote good urban design outcomes which are responsive to the region's tropical environment and unique character.

Goal 5 – Creating a Prosperous Region

Objective: To increase the region's capacity for long-term economic growth by supporting opportunities for local businesses and local employment.

- 5.1 Plan and make financial and capital decisions with the state of the local economy in mind.
- 5.2 Encourage self containment of communities through the integration and co-location of employment opportunities with residential development and public transport.

Goal 6 – Striving for Organisational Excellence

Objective: To ensure that Council is open, accountable, ethical and financially responsible. Recognise that Council plays a leadership role for our immediate communities and for the wider region and will strive to represent our community's needs and expectations.

- 6.1 Collect, interpret, manage and capture data and information to inform good decision making.
- 6.2 Be innovative and work in collaboration with key stakeholders, suppliers, partners and in collaboration with Council Boards and Reference Groups.
- 6.3 Consistently perform better, deliver on our objectives and operate sustainably.

The preparation of a New Planning Scheme for the Cairns Region is not contained in the 2009/10 Operational Plan.

Statutory:

The amendment will be undertaken in accordance with the provisions of the Sustainable Planning Act 2009.

Policy:

CairnsPlan is a statutory land use plan regulating development in the former Cairns City area. The amendments seek to align CairnsPlan with the FNQ Regional Plan 2009-2031.

Financial and Risk:

Following the commencement of an amendment to a planning scheme, a landowner can request that an application be determined under a superseded planning scheme. Should Council determine that an application not be assessed under the superseded planning scheme, an applicant can claim for compensation for diminished value in land.

Due to the changes in legislation following the commencement of the Sustainable Planning Act 2009 in December, Council sought legal opinion in relation to the ability for a landowner to claim compensation where an amendment to the planning scheme is undertaken to ensure consistency with the Far North Queensland Regional Plan 2009-2031.

A summary of the conclusions and recommendations of the opinion are:

1. *The Plan is a statutory instrument.*
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4. *To determine the "effect" of the regional Plan, principles of statutory interpretation should be considered. Generally, the Regional Plan should be read in a literal sense, unless that interpretation would lead to absurdity or inconsistency. In that event, those parts of the Plan should be considered in light of the objectives and purposes of the Plan.*

Sustainability:

The proposed amendments to the CairnsPlan will assist in maintaining the forested hillslopes that are representative of and uniquely characteristic of Cairns and the Far North Queensland region, providing a habitat function and contribute to visual amenity, making the region attractive to both residents and tourists.

CONSULTATION:

Internal consultation regarding the proposed project has been undertaken with officers within Planning and Environment. Public consultation will be undertaken in accordance with the Sustainable Planning Act 2009. Each property owner will be advised of the amendment prior to public consultation occurring.

OPTIONS:

The following options are available to Council:

1. That Council proceed with the amendment as outlined in the recommendation.
2. That Council proceed with the amendment subject to modifications.
3. That Council not proceed with the amendment.

CONCLUSION:

The report presented to Council recommends a number of changes to the Planning Area and Hillslopes Overlay mapping, some of which have been presented to Council in the past. The commencement of the Far North Queensland Regional Plan 2009-2031 has raised the profile of development on hillsides no longer being considered acceptable.

ATTACHMENTS:

Hillslopes Overlay Report – July 2010 (Separate Attachment #2484364)

Peter Boyd
Manager Planning Strategies

Peter Tabulo
General Manager Planning and Environment