



**Local Laws Review
Local Law 56 – Vegetation Management**

**Iconic Queensland Place of Douglas
- Iconic Values Impact Report**

Iconic Queensland Place of Douglas - Iconic Values Impact Report

1. Background

Cairns Regional Council is required by the *Local Government Reform Implementation Regulation 2008* and the *Local Government Act 2009* to prepare new local laws for the merged local government area. This review and preparation of new Local Laws must be completed by 31 December 2011, in accordance with regulatory requirements.

The Local Laws review will result in the transition of existing Local Laws into new Local Laws for the merged local government area. Council has chosen to utilise the suite of Model Local Laws and Subordinate Local Laws provided for within the Local Government Act. During the review, it has been identified that the provisions of the *Local Government Act 2009* (LGA) prevents Council from introducing Local Laws which establish an alternative development process.

An *alternative development process* is defined as a process that is similar to or duplicates all or part of a process in the Planning Act (*Sustainable Planning Act 2009* SPA). The SPA defines vegetation clearing as a development process, more specifically operational work.

Council has an existing Local Law, Local Law No. 56 (Vegetation Management), which regulates the clearing of vegetation. Additionally this local law has been declared under the *Iconic Queensland Places Act 2008* as a Local Law that protects the Iconic Values for the declared Iconic Queensland Place of Douglas.

As vegetation management is clearly defined as a development process under the SPA, Council can not make a new local law about vegetation management. Vegetation is considered to be a significant resource within the region which should be afforded protection. In the absence of a Local Law providing a regulatory framework for Vegetation Management post-31 December 2011, investigations have been undertaken as to an appropriate way in which to fill this potential regulatory 'gap'.

Following discussions with representatives from the Department of Local Government and Planning, and legislation in regard to vegetation management and development processes, it is recommended that Council resolve to prepare a Temporary Local Planning Instrument regulated vegetation clearing, to be effective from 1 January 2012. It is recommended that Local Law 56 continue in full force and effect until that date.

Pursuant to section 61 of the *Iconic Queensland Places Act 2008*, this report is required. The purpose of the report is to evaluate the effect of repealing Local Law 56 and introducing an alternative means of regulation, a Temporary

Local Planning Instrument, for vegetation clearing will have on the Iconic Values of the Iconic Queensland Place of Douglas. It should be noted that this is not an Iconic Impact Assessment for the proposed Temporary Local Planning Instrument as required by section 21 of the *Iconic Queensland Places Act 2008*. Rather, this is an Iconic Impact Assessment in regard to the proposed repeal of Local Law 56.

2. Declaration and Supporting Information

In 2008, the State Government introduced a number of reforms in local government, including amalgamations significantly reducing the number of Councils state-wide. Prior to the formalisation of amalgamations, Councils including the former Douglas Shire and Noosa Shires sought assurances from the Government that protections enshrined in planning schemes and policies developed with community input would not be undermined via the amalgamation process.

In response to these submissions, the State Government in February 2008 presented the *Iconic Queensland Places Bill 2008*. The Bill, debated in Parliament on 12, 27 and 28 February 2011, was:

*"an important measure in protecting the characteristics and qualities which contribute to Queensland's iconic status. Queensland is renowned for its character and beauty, and it is a priority of this government to ensure that Queensland's distinctive characteristics will remain for future generations."*¹

In regard to the declaration of Local Laws as 'Iconic' for the purposes of the proposed legislation, it was noted that:

*"local laws that are considered to contribute to the iconic nature of the area are identified. To ensure that the iconic values that are protected by those local laws are considered in further local law development, the bill modifies the requirements for changing or extending those identified local laws. If changes are proposed to those local laws, the local government is required to prepare an impact report which evaluates these effects and must consider the effect the changes will have on the place's iconic value."*²

In regard to the iconic values protected by declared local laws for the former Douglas Shire Council area, assistance is provided within the Iconic Values Report: Douglas Shire prepared by Planning Far North (March 2008). In providing clarification as to the basis for declaration of the Planning Scheme and various Local Laws as 'Iconic', PFN notes:

"The local laws deal primarily with process and operational matters. However, many of the local laws identified above, enable Council to control activities which have the potential to detrimentally impact on the Iconic Values of the Shire."

¹ Per Hon Paul Lucas MP Second Reading Speech (Hansard 12 February 2008, p 65)

² Ibid p 66

Most of the local laws have not been updated in recent times (local law 57, being the exception).

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While the ten local laws, above, deal with process and operational matters, many of the operational matters have the potential, if not managed properly by Council, to impact on the Iconic Values of the Shire. The implementation of, and adherence to, these local laws by Council and recognition that they can assist in protecting the Iconic Values of the Shire is therefore, important."

Additional detail in regard to the importance of Local Law 56 in the protection of the Iconic Values of the former Douglas Shire is provided within Section 3.1 below.

3. Impacts of Proposed Repeal of Local Law 56

The following section evaluates the effect of repealing the Local Law No. 56: Vegetation Management and introducing a Temporary Local Planning Instrument as an alternative means of vegetation management on the Iconic Values of the Iconic Queensland Place of Douglas.

3.1 Local Law No. 56 Vegetation Management

The principal purpose of the Local Law is to provide appropriate protection for vegetation, in particular significant, valuable, rare or threatened vegetation or vegetation that provides a habitat for significant fauna. Additionally the Local Law provides protection for vegetation that is important for protecting soil from erosion and degradation, protecting water catchments and important for reducing atmospheric pollution or protecting against ozone depletion.

The Local Law also establishes a framework for Council's to make vegetation protection orders and vegetation protection areas, these identify protected vegetation. The local law also establishes provisions for damage of protected vegetation, in certain circumstances without a permit and establishes a framework for applying for a permit in others.

Within its Report (March 2008), PFN provides the following comment in regard to the importance of Local Law 56:

"This local law was amended in association with the preparation of the 2006 Planning Scheme. It enables Council to protect unprotected vegetation on freehold land and identifies vegetation preservation areas. The Council may also establish a Vegetation Protection Register and issue Permits to damage vegetation.

The implementation of various measures under this local law, allows Council to protect vegetation in the Shire which is not already protected, but which has significant environmental / scenic value....

All the vegetation in the Shire, whether protected under the Vegetation Management Act or not, contributes to the Iconic Values of the Shire."

As previously detailed, Local Law No. 56 (Vegetation Management) will be automatically rescinded under the provisions of the *Local Government Act 2009* on 31 December 2011, if not rescinded and / or replaced by Council before that date. As an interim means of regulating vegetation clearing it is recommended that Council prepare a Temporary Local Planning Instrument. The Temporary Local Planning Instrument will regulate vegetation clearing within the Douglas Shire Planning Scheme Planning Area.

Whilst at this early stage the exact shape and form of the Temporary Local Planning Instrument has not been determined, the Temporary Local Planning Instrument is intended, at a minimum, to continue the existing level of regulation and restrictions upon vegetation clearing as seen within the current Local Law.

3.2 Impact on Declared Iconic Values

The Declared Iconic Values for various features within and around the former Douglas Shire are confirmed within the Gazettal Notification of these values, dated 20 June 2008. Assistance in explaining and describing these values further, particularly in respect to the interaction between specific values and Local Law 56, has been obtained through review and analysis of PFN's Report (March 2008). 'Additional commentary' in regard to these values has been obtained from this Report.

3.2.1 Biodiversity Values

Declared Values

Woodlands, mangrove forests, vegetated sand dunes/swale systems, reefs, foreshore areas, intertidal seagrass beds, estuarine river/creek systems, lowland rainforests and mountain ranges.

Areas of important remnant/riparian habitat and areas of considerable biodiversity value occur along the coastal plain and are subject to considerable development pressure.

Additional Commentary

The diversity of landscape and natural environments within the Shire [many of which are of International Significance]. Ranging from woodlands to mangrove forests, to vegetated sand dunes / swale systems, reefs, foreshore areas, intertidal seagrass beds and estuarine river / creek systems to lowland rainforests and mountain ranges. Some of these areas / systems are located in the WHAs but many are located outside the WHAs and are exposed to development pressure.

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Areas of important remnant / riparian habitat and areas of considerable biodiversity value which occur along the coastal plain and are subject to considerable development pressure.

Discussion

The declared Local Law contributes to the protection of the above mentioned declared values. The transition of regulation of vegetation clearing from a Local Laws framework to a Planning framework is considered to ensure that at a minimum a comparable level of protection is provided to the declared values.

3.2.2 Landscape & Scenic Values

Declared Values

Mountainous topography, luxuriant rainforest, wilderness areas, steep escarpments, the coastal plain, scenic coastline.

Diversity in landscape elements – sand dunes, mangrove forests, wetlands, creek and river estuaries, fringing coral reefs and coral islands, sandy beaches, to rugged mountain ranges and broad expanse of agricultural land with smaller areas of cattle grazing and horticulture.

Additional Commentary

Both natural and man-made landscapes, the visually dominant and expansive natural / rural areas which have a distinct and clear boundary / interface with urban / settlement areas. In combination, these landscape elements create a unique landscape mosaic that is Douglas Shire. This landscape mosaic has a low threshold for absorbing visual change or development impacts.

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Scenic foreshores, for example: the foreshore area between Dayman [Rocky Point] Point and the mouth of the Daintree River. These beach foreshore areas constitute the largest area of public land in the Shire managed by the Council.

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Scenic views which cannot be understated, including the panorama of luxuriant rainforest, steep escarpments and wilderness areas, in juxtaposition to the narrow coastal plain, the broad expanse of agricultural land and scattered but contained small urban / settlement areas.

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The majestic Raintrees at Mossman and Mowbray, which are often cited as being important to the streetscape of Mossman just as much as the Mossman Mill, the cane rail line through town and the surrounding mountains and which are also important to the rural amenity of the Mowbray Valley.

The giant Callophyllum trees at Wonga Beach, estimated to be in excess of 200 years old.

The more recent addition of the oil palms that line the entrance to Port Douglas and the waterfront markets at Port Douglas, which are valued not only by tourists but also by local residents.

Discussion

The declared Local Law contributes to the protection of the above mentioned declared values. The transition of regulation of vegetation clearing from a Local Laws framework to a Planning framework is considered to ensure that at a minimum a comparable level of protection is provided to the declared values.

3.2.3 Indigenous Cultural Heritage Significance

Declared Values

Known sacred / spiritual / burial / story / meeting / ceremonial places / sites, which encapsulate the Indigenous cultural / landscape values.

Additional Commentary

Known sacred / spiritual / burial / story / meeting / ceremonial places / sites, which include but are not restricted to Roaring Meg Falls, the CREB track - Upper Daintree to China Camp, Bouncing Stones, Blue Hole in Cooper Creek, Wonga Beach [signified by the planting of Burdekin Plums on the foreshore] Mossman Gorge, Mowbray Valley, Dickson Inlet, Four Mile Beach, Rex Smeale Park - Item 1 [including the mango trees] Flagstaff Hill - Item 7 and the Island Point Light House - Item 2, Battleground Area near Barrier Reef Street / Mitre Street - Item 3, Inlet Street where sugar was loaded - Item 4, Magazine Island and the adjacent waterway - Items 5 and 6, Burial sites within the Sheraton Mirage - Item 9, the area around Sand/Tide/Port and Garrick Streets known as Post Contact Camp - Item 8. Noah Creek, Snapper Island, Low Isles and Cow Bay. In addition, informal paths and tracks connecting sites and places throughout the Shire which are also culturally important.

Discussion

The declared Local Law contributes to the protection of the above mentioned declared values. The transition of regulation of vegetation clearing from a

Local Laws framework to a Planning framework is considered to ensure that at a minimum a comparable level of protection is provided to the declared values.

In addition, it is noted that additional protection for these Values is afforded by the *Aboriginal Cultural Heritage Act* at a State level and the *Environmental Protection and Biodiversity Conservation Act* at a Federal level.

The transition of regulation of vegetation clearing from a Local Laws framework to a Planning framework is anticipated to have minimal, if any, impact on the abovementioned declared values.

3.2.4 Urban Areas

Declared Values

Highly defined urban footprint boundaries contain urban development to designated towns, villages and settlement areas.

Additional Commentary

Achieving a viable balance between the environment, tourism and development to meet the aspirations of local residents.

Discussion

The declared Local Law pertains to vegetation protection and management and does not pertain to the protection of the aforementioned Urban Areas declared values.

The transition of regulation of vegetation clearing from a Local Laws framework to a Planning framework will have nil impact on the abovementioned declared values.

3.2.5 Built Environment

Declared Values

The built environment values are characterised by:

- *low rise buildings (Port Douglas – very select areas limited to 3 storeys);*
- *low scale buildings and visually dominant native/tropical vegetation, surrounded by rural & mountain landscapes;*
- *no major through roads in, no traffic lights and no proliferation of advertising signage;*
- *development of a tropical architectural style, particularly in Port Douglas;*
- *containment of tourist development, primarily in Port Douglas, where it is low key and subservient to the environment;*
- *low rise coastal settings with limited views of urban development along the beachfront at Port Douglas;*

- *historical buildings and monuments in Port Douglas, consolidating the town centre near the harbour, maintaining open space between the Boat Harbour and Wharf Street, maintaining low speed, narrow local roads*

Additional Commentary

The stewardship by local residents of the local environment and in understanding and appreciating the natural / environmental values of the Shire and resident appreciation for local recreational assets, such as areas for boating, fishing and swimming in local creeks and rivers.

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Historic buildings and monuments in Port Douglas, consolidating the town centre near the harbour, maintaining open space between the Boat Harbour and Wharf Street and maintaining low speed, narrow local roads. The dominance of vegetation in the townscape, tree cover on Flagstaff Hill and most importantly the containment of urban development on the Port Douglas peninsula and east of the Captain Cook Highway. The establishment of an inviolable line to development west of the highway at Port Douglas ensuring suburbia (or any form of development) does not flank both sides of the Captain Cook Highway and erode the integrity of the landscape experience.

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The rainforest setting of, and the unique rainforest experience offered to tourists in, the settlement areas and townships north of the Alexandra Range - Forest Creek, Cape Kimberly, Cow Bay, Diwan, Cooper Creek and Cape Tribulation, with access to this area limited to the Daintree Ferry crossing, which provides a sense of arriving in a special place.

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.... low scale buildings and visually dominant native / tropical vegetation in an urban setting, surrounded by an expansive rural landscape and framed by majestic mountains....

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Protecting vistas/views and topographical and coastal features which are important in balancing the competing interests of development and the built environment and maintaining the natural beauty of the Shire. Including limited views of urban development along the beachfront (when viewed from the beaches) at Port Douglas and at beach townships and coastal settlement areas.

Discussion

The declared Local Law contributes to the protection of the above mentioned declared values. The transition of regulation of vegetation clearing from a Local Laws framework to a Planning framework is considered to ensure that at a minimum a comparable level of protection is provided to the declared values.

The transition of regulation of vegetation clearing from a Local Laws framework to a Planning framework is anticipated to have minimal, if any, impact on the abovementioned declared values.

3. Conclusion

This report has been prepared for the purposes of addressing the impacts of the transition of the regulation of vegetation clearing from a Local Laws framework to a Planning framework on the declared iconic values of the Iconic Queensland Place of Douglas.

It has been noted that *"The Iconic Values of the Douglas Shire are best summed up by a statement made by Chenoweth and Associates in 1992 "where the general perception is, that nature dominates human endeavour over most of the Shire."*³

The declared Local Law No. 56 (Vegetation Management) pertains to the protection of vegetation and regulation of vegetation clearing. The Local Law is pertinent to some of the declared values of the Iconic Queensland Place of Douglas. However, the transition of regulation of vegetation clearing to a Planning framework will ensure that the declared values will not be detrimentally impacted upon. The transition will ensure, that at a minimum, the existing level of protection will be afforded.

³ Planning Far North, Iconic Values Report: Douglas Shire (March 2008) p6