

PLANNING & ENVIRONMENT COMMITTEE**12****12 JUNE 2008**

PRELIMINARY APPROVAL OVER-RIDING THE PLANNING SCHEME FOR A MATERIAL CHANGE OF USE TO VARY THE LEVEL OF ASSESSMENT FOR A HOUSE (FROM IMPACT ASSESSEMENT TO CODE ASSESSMENT) IN THE CONSERVATION PLANNING AREA – PARADISE PALMS DRIVE, KEWARRA BEACH – DIVISION 9

Paul Cohen : 8/8/950 : #1650989

PROPOSAL: PRELIMINARY APPROVAL OVER-RIDING THE PLANNING SCHEME FOR A MATERIAL CHANGE OF USE TO VARY THE LEVEL OF ASSESSMENT FOR A HOUSE (FROM IMPACT ASSESSMENT TO CODE ASSESSMENT) IN THE CONSERVATION PLANNING AREA

APPLICANT: PARADISE PALMS DEVELOPMENTS
C/- C&B GROUP
PO BOX 1949
CAIRNS QLD 4870

LOCATION OF SITE: PARADISE PALMS DRIVE
KEWARRA BEACH QLD 4879

PROPERTY: LOTS 1 – 9 ON SP210221 (CANCELLING PART OF LOT 1 ON SP207017 – FORMERLY DESCRIBED AS PART OF LOT 5 ON CP891005)

PLANNING DISTRICT: CAIRNS BEACHES

PLANNING AREA: RESIDENTIAL 1 / PART CONSERVATION

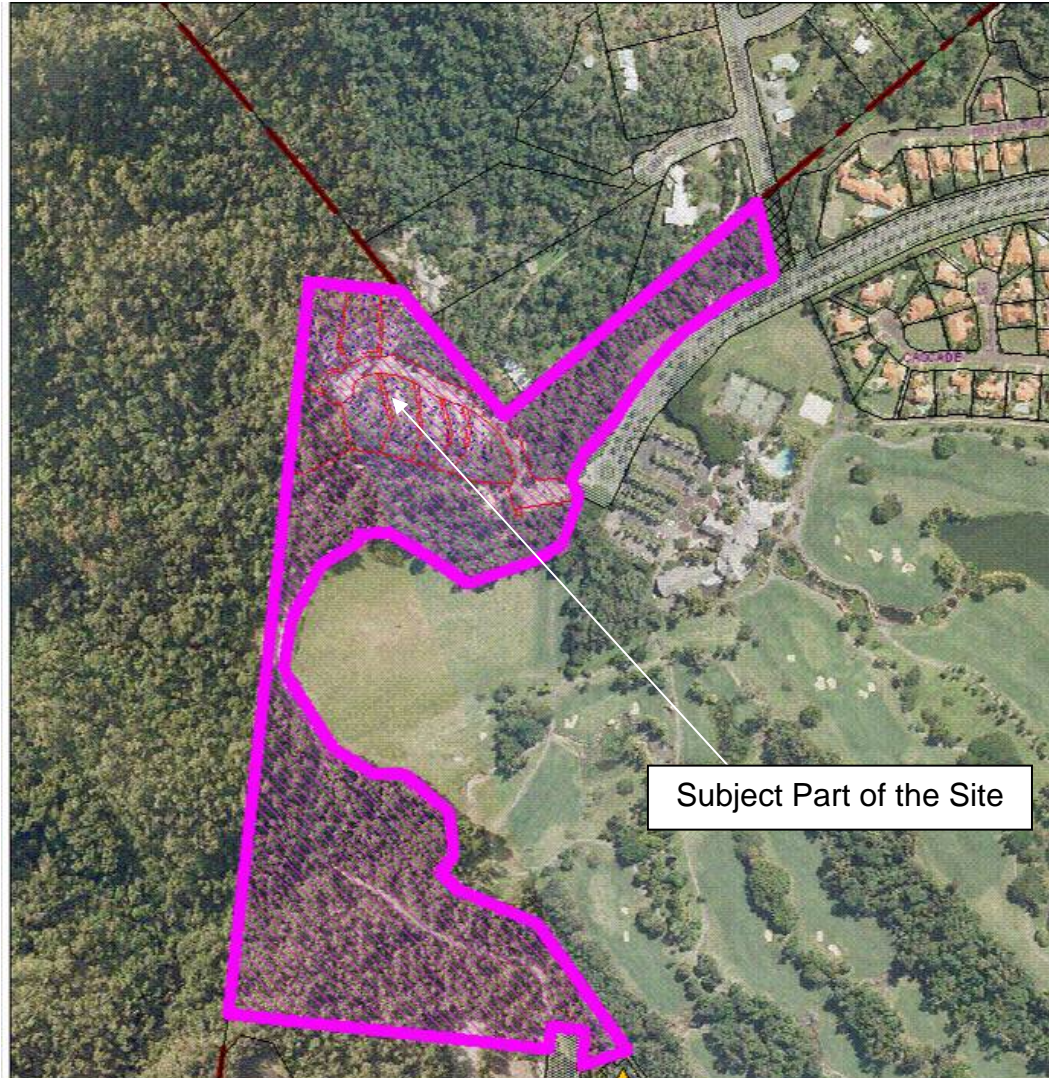
PLANNING SCHEME: CAIRNSPLAN

REFERRAL AGENCIES: ENVIRONMENTAL PROTECTION AGENCY (ADVICE AGENCY);
DEPARTMENT OF INFRASTRUCTURE & PLANNING (ADVICE AGENCY)

NUMBER OF SUBMITTERS: ONE HUNDRED AND FIVE (105)

STATUTORY ASSESSMENT DEADLINE: 29 JUNE 2008

DIVISION: 9

APPENDIX:1. SUPPORTING INFORMATION TO
PLANNING REPORTLOCALITY PLANRECOMMENDATION:

That Council approve the development application for a Preliminary Approval Over-riding CairnsPlan for a Material Change of Use to vary the level of assessment for a House (from impact assessment to code assessment) in the Conservation Planning Area over land described as Lots 1 to 9 on SP210221, cancelling Lot 1 on SP207017, as shown in GHD Drawing No. 42-12373-C001 Rev.1, located at Paradise Palms Drive, Kewarra Beach.

ADVICE

1. This approval, granted under the provisions of the *Integrated Planning Act 1997*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of Section 3.5.21 of the *Integrated Planning Act 1997*.
2. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
3. For information relating to the *Integrated Planning Act 1997* log on to www.ipa.qld.gov.au. To access Council's Development Manual, Local Laws and other applicable Policies log on to www.cairns.qld.gov.au.

EXECUTIVE SUMMARY:

Council is in receipt of a development application for a Preliminary Approval Over-riding CairnsPlan for a Material Change of Use such that a House is Code Assessable development in the Conservation Planning Area. It is considered that this is, by its very nature, an inconsistency with the scheme. However, it is considered that the effect of the proposed Preliminary Approval does not compromise the Desired Environmental Outcomes of CairnsPlan as the subdivision, to which the effect of this Preliminary Approval will relate, was approved for residential purposes prior to the introduction of CairnsPlan and the conservation value of the land is diminished. It is therefore recommended that Council approve the application.

TOWN PLANNING CONSIDERATIONS:**Background**

In August 2004 Council approved an application for the reconfiguration of Lot 5 on CP891005 into 9 lots. The application was made under the Transitional Planning Scheme, being the Planning Scheme for the Balance of the City of Cairns, prior to CairnsPlan being adopted and taking effect. Under the previous scheme, the land was contained within the Residential 3 Planning Area and as such the application for residential allotments was approved. Giving consideration to the natural constraints of the land, each allotment was identified as having a suitable building envelope, where future houses and ancillary structures would be constructed, and a surrounding covenant area to preserve the natural vegetation on the site.

The Plan of Survey for this reconfiguration was recently endorsed by Council and registered with the Department of Natural Resources and Water.

Proposal

The application is for a Preliminary Approval Over-riding CairnsPlan for a Material Change of Use such that a House is Code Assessable development in the Conservation Planning Area over land described as Lots 1 to 9 on SP210221, cancelling Lot 1 on SP207017 (which was part of land formerly described as Lot 5 on CP891005), as shown in GHD Drawing No. 42-12373-C001 Rev.1 (Attached as Appendix 1), located at Paradise Palms Drive, Kewarra Beach. No new physical development is proposed in this application.

CairnsPlan Assessment

Development which requires impact assessment under CairnsPlan is to be assessed against the Desired Environmental Outcomes and the applicable Codes.

Desired Environmental Outcomes

A summary of assessment of proposal against the Desired Environmental Outcomes is outlined in the table below.

Desired Environmental Outcome (DEO)	Consistency
<p>2.2.1 Ecological Processes and Biodiversity</p> <p>The biodiversity and nature conservation values of the marine, terrestrial and freshwater ecosystems within the City are conserved and enhanced.</p>	<p>Whilst the land is located in the Conservation Planning Area, the subdivision of the land has already occurred for an urban (residential) purpose. There is now limited ecological or conservation value in this part of the land as the natural areas have been disturbed.</p>
<p>2.2.2 Catchments and Waterways</p> <p>Water quality, in-stream and riparian values and nature based recreation values of natural and modified waterways and wetlands and their catchments within the City are conserved and enhanced.</p>	<p>The change to the level of assessment, as well as future dwellings, will not impact on water quality, in-stream and riparian values and their catchments. All captured stormwater will be directed to drainage infrastructure.</p>
<p>2.2.3 The Tropical Coastline</p> <p>The values of all the coastal systems of the City for coastal stability, ecological processes and nature based recreation are conserved and enhanced.</p>	<p>The development is not situated adjacent to the coast and therefore does not compromise the DEO.</p>
<p>2.2.4 Risk Management</p> <p>The location and design of development minimises the potential risk to the safety and health of the community as a result of:</p> <ol style="list-style-type: none"> 1. Flooding or Storm Surge 2. Slope Instability 3. Bushfire 4. Contaminated Land 5. Reduction in Air Quality 6. Increase in Noise Levels. 	<p>The subdivision has been approved with the acknowledgement that Houses would be constructed on the resulting lots. Risks of landslide and bushfire have been considered in the assessment of the application for the subdivision. Capacity for fire fighting will exist in the water infrastructure, as per the requirements of the FNQROC Development Manual, when a House is constructed. Similarly, landslide risk is a consideration of the Hillslope Code and demonstration of compliance will be required for future Houses where necessary.</p>

<p>2.2.5 The Scenic Landscape</p> <p>The scenic landscape of the City is valued and enjoyed by residents and visitors, and the essential elements of this landscape, the forested hills and foothills, beaches and headlands, streams and rivers, wetlands, open spaces and rural land are conserved and enhanced.</p>	<p>The subdivision has been approved with the acknowledgement that Houses would be constructed on the resulting lots given its previous urban designation. Consideration was made under the Development Control Plans of the Transitional Scheme for the Hillslopes and the impact the proposed development would have on the scenic amenity. Vegetation is retained on the lots under statutory covenant to facilitate a harmony between the natural features and future dwellings on the lots. It is considered that changing the level of assessment a House on these lots will not compromise the achievement of the DEO when assessment against the CairnsPlan Codes is still required.</p>
<p>2.3.1 Primary Production</p> <p>Primary industries, particularly sugar cane production, continue to contribute to the economy of the City and to employment within the City.</p> <p>The effects of urban development on the resource of good quality agricultural land and on the operation of primary industries are minimised.</p> <p>The preferred pattern of development shown on the Structure Plan Map 4 limits the encroachment of urban development on to good quality agricultural land.</p>	<p>The development does not involve any agricultural or rural lands and therefore does not compromise the DEO.</p>
<p>2.3.2 Economic Activity and Employment Centres</p> <p>Business, retail and industrial activities are located in a hierarchy of centres and in designated areas throughout Cairns to encourage continued investment and an increase in the diversity and number of employment opportunities.</p> <p>Sub-regional, District and Local Centres are developed that contribute to a sense of community life and belonging for the people they serve.</p> <p>The Sub-Regional and District centres and the major industrial and employment areas identified on the Structure Plan Map 4, are established and consolidated.</p>	<p>The proposal does not involve any commercial or employment activity and therefore does not compromise the DEO.</p>
<p>2.3.3 Tourism Industry</p> <p>The tourism industry continues to play a major role in the economic growth of the City and the Region. The sustainable use of the resources of the natural environment contributes to the strength of the industry.</p> <p>Development of major tourist accommodation is concentrated in the areas identified on Map 2. The major tourist attractions depicted on Map 2 are maintained and consolidated.</p> <p>The potential conflicts between tourist accommodation, attractions and facilities and local communities are minimised.</p>	<p>The proposal does not involve any tourism activity or the use of the natural environment and therefore does not compromise the DEO.</p>

<p>2.3.4 Preservation of Resources</p> <p>Natural resources, such as extractive resources, good quality agricultural land, water and forestry resources within the City, are protected from encroachment by, and the adverse effects of, urban development and are utilised in a sustainable manner.</p> <p>The extractive resource sites identified on Map 3 remain available for the extraction of materials. The extractive industry haul routes identified on Map 3 are, to the extent possible taking account of the established pattern of land use, protected from incompatible development.</p> <p>The preferred pattern of development shown on the Structure Plan, Map 4 limits the encroachment of urban development into areas containing natural resources.</p>	<p>The proposal does not involve any natural resource use and therefore does not compromise the DEO.</p>
<p>2.3.5 Pattern of Urban Development</p> <p>The pattern of urban development recognises the importance of the natural environment, natural resources and quality of life to the viability of Cairns and the wellbeing of its residents.</p> <p>The pattern of urban development provides opportunities for growth and consolidation within the framework established by the Regional Plan and achieves the efficient use of existing and planned infrastructure.</p> <p>The preferred pattern of development shown on the Structure Plan, Map 4 is achieved.</p>	<p>The application is to change the level of assessment for Houses to reflect the existing urban pattern of subdivision. Whether the land is in the Urban designation or not, the subdivision exists and is for an urban purpose. The lot layout preserves vegetation and allows for residential activities. Infrastructure is provided to the subdivision. It is therefore considered that the change to the level of assessment for a House does not compromise the achievement of the DEO.</p>
<p>2.3.6 Physical Infrastructure</p> <p>The pattern of urban development facilitates the efficient use of existing and committed infrastructure.</p> <p>Physical infrastructure is provided in an efficient and equitable manner and to a level necessary to achieve contemporary environmental standards.</p>	<p>Physical infrastructure is provided to each lot approved under the subdivision. Future Houses will have the ability to connect to this infrastructure. It is therefore considered that the change to the level of assessment for a House does not compromise the achievement of the DEO.</p>
<p>2.3.7 Transportation</p> <p>Air, sea and rail transport systems, public transport, road transport and facilities for cyclists and pedestrians are integrated with urban development to facilitate the safe, efficient and effective movement of people and goods locally, nationally and internationally.</p> <p>The establishment and maintenance of the major transport infrastructure of the Cairns International Airport, Cairns Seaport, highways/ arterial roads and railways required to provide for this movement of people and goods, as identified on the Structure Plan, Map 4, is facilitated.</p> <p>The implementation of the Long Term Public Transport Network, shown on Map 5, is facilitated.</p>	<p>The proposal does not involve the implementation of any transport network and therefore does not compromise the DEO.</p>
<p>2.4.1 Liveable, Sustainable, Tropical City</p> <p>The combination of natural features, built environment, and development patterns result in a liveable, sustainable, and tropical city promoting a distinct Cairns style. The essential elements of outdoor living, access to natural areas, good air quality, efficient housing and tropical design are promoted to ensure the Cairns lifestyle is maintained and enhanced.</p>	<p>The proposal seeks only to change the level of assessment for a House. Compliance with Codes which achieve a liveable, sustainable and tropical city with a distinct style, ensures that the proposal will not compromise the achievement of the DEO.</p>

<p>2.4.2 Housing</p> <p>The provision of a diverse choice of housing that is responsive to the climate, landscape and the changing demographic structure of the Cairns population while being affordable and efficient.</p>	<p>The proposal is only to seek a change to the level of assessment for Houses in the approved subdivision. The subdivision caters for a particular demographic. This cannot be altered given the particular nature of the site. It is therefore considered that the change to the level of assessment for a House does not compromise the achievement of the DEO.</p>
<p>2.4.3 Cultural Heritage</p> <p>Places of cultural heritage significance are conserved to retain their significance for the benefit of present and future generations.</p>	<p>The proposal does not involve a place of cultural heritage significance and therefore does not compromise the DEO.</p>
<p>2.4.4 Sense of Community</p> <p>Communities are created with a recognisable character and sense of place and which have a high level of amenity, safety, connectivity and integration between existing and new areas.</p>	<p>It is considered that there is a noted sense of community for members of the public who reside around the Paradise Palms Golf Course. It is important to note that the subdivision creates a pattern of urban development in a context which is consistent to that of the established community in proximity to the Golf Course. It is therefore considered that the change to the level of assessment for a House does not compromise the achievement of the DEO.</p>
<p>2.4.5 Community and Social Facilities</p> <p>Access to a range of community and social facilities for both established and new residential communities is facilitated, with community and social facilities being located so as to be convenient and highly accessible to the individuals, families and communities they serve.</p>	<p>The proposal does not involve the implementation of any community or social facilities. A monetary contribution in lieu of physical dedication of such facilities was made at the time of subdivision. It is therefore considered that the change to the level of assessment for a House does not compromise the achievement of the DEO.</p>
<p>2.4.6 Accessibility and Mobility</p> <p>Accessibility and mobility, for all members of the community, are enhanced through the location of services and facilities in a network of centres; the location of employment nodes in proximity to residential communities; and through integration of the transport systems with residential areas and commercial centres.</p> <p>The implementation of the Long Term Public Transport Network, shown on Map 5, is facilitated</p>	<p>The proposal does not involve the implementation of any transport network which would enhance accessibility and mobility of people and therefore does not compromise the DEO.</p>

In light of the discussions above it is considered that the proposal does not compromise the Desired Environmental Outcomes of CairnsPlan.

Codes

CairnsPlan Cairns Beaches Planning District		Code Applicability	Compliance
Planning Area	Residential 1	✓	Complies - See discussion below.
	Conservation	✓	Complies - See discussion below.
Land Use	None Applicable	✗	
Overlays	Hillslopes	✓	Complies – No new physical development
	Vegetation Conservation & Waterway Significance	✓	Complies – No new physical development
	Cultural Heritage	✗	
	Potential or Actual Acid Sulphate Soil Material	✗	
	Bushfire Management	✓	Complies – No new physical development
	Flood Management	✗	
	Height and Impact of Buildings	✗	
	Operational Aspects of the Cairns International Airport	✓	Complies – No new physical development
	Demolition	✗	
General	Excavation and Filling Code	✓	Complies – No new physical development
	Infrastructure Works Code	✓	Complies – No new physical development
	Landscaping Code	✓	Complies – No new physical development
	Parking & Access Code	✗	
	Reconfiguring a Lot Code	✗	
	Development Near Major Transport Corridors & Facilities	✗	

Residential 1 Planning Area Code

Houses are Self-Assessable in the Residential 1 Planning Area, except where an applicable Overlay affects the land. In this instance, houses within the approved reconfiguration, where in the Residential 1 Planning Area (Lot 1 only) will require a Code Assessable application and approval of Council. The application does not affect any future house on Lot 1.

Conservation Planning Area Code

The Conservation Planning Area Code has two parts. Firstly, it identifies the Purpose of the Code, including the Desired Development Outcomes for development in the Conservation Planning Area. Secondly, it identifies the Performance Criteria and Acceptable Measures for which development must comply with. Where a development proposal complies with the Performance Criteria, it is taken to also achieve compliance with the Desired Development Outcomes as they are intricately related.

This development application does not propose physical works as a result of an approval. Therefore compliance with the Conservation Planning Area Code is achieved. Notwithstanding, an exercise has been undertaken to demonstrate that compliance with the Code is able to occur regardless of what level of assessment is given.

Desired Development Outcomes	Ability to Achieve Desired Development Outcome
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;	The land has been developed for an urban purpose in accordance with an existing approval. For the site to have ecological integrity at this stage would be hard to argue in that works have diminished its natural state. Notwithstanding, the lots have conservation covenants to protect natural vegetation and protect the impact that traditional house lots may have on the scenic amenity of the land.
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;	There are no areas of the site included in the Hillslopes Category 2 (Urban) overlay. These areas are those which form the scenic rim.
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;	The proposal does not intend for any recreational use of the significant areas within the Planning Area.
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;	The lots are in private ownership and are for the purpose of containing a house. The establishment of a house on the does not compromise the conservation value of the lot as the covenant areas protect those values. The establishment of a house does not affect the scenic values of the lots where compliance with the Hillslopes Code is demonstrated as it aims to ensure a built form is in keeping with the natural characteristics and constraints of the land. No development with an intensity greater than a house is consistent with the Conservation Planning Area.
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 development is not a form of development or activity which is based on an appreciation of the values of the Conservation Planning Area.
Uses identified as inconsistent uses in the Assessment Table dealing with material change of use for the respective Districts are not established in the Conservation Planning Area.	A House is identified as a consistent use in the Table of Assessment. The establishment of a house is not contrary to the intent or Purpose of the Conservation Planning Area Code.

In light of the discussion above it is considered that a House is consistent with the Conservation Planning Area for the lots created under the subdivision approval.

Public Notification / Submissions

The application went through the Public Notification requirements of the *Integrated Planning Act 1997*. One hundred and five (105) submissions were received during the Public Notification Period.

A summary of the grounds of the submissions received, along with the Officers comments is contained in the table below.

Submission Ground	Officer's Comment
<p><i>The land is coded "Conservation" and any future development should remain impact assessable.</i></p>	<p>The land is contained in the Conservation Planning Area. All development in this Planning Area is Impact Assessable, except for Operational Works and Building Works. All land uses are identified as being inconsistent land uses except for a House. In this capacity, CairnsPlan identifies the development of Houses as being consistent development for freehold land in the Conservation Planning Area, albeit requiring formal assessment, including opportunity for public comment.</p> <p>The subdivision was approved under the Transitional Planning Scheme, being the Planning Scheme for the Balance of the City of Cairns, as the land was contained within the Residential 3 Planning Area. The previous scheme, and its Development Control Plans identified the land as being appropriate for urban development, albeit in a more limited capacity with respect to the Hillslopes. The development aimed to preserve a buffer of vegetation around building envelopes by ensuring statutory covenants to protect the vegetation would be placed on the tenure of the land. Titles for the lots have been given in accordance with the approval with those areas outside of the building envelope being contained within covenant areas.</p> <p>With the introduction of CairnsPlan, the majority of the subject site was placed in the Conservation Planning Area for its physical features. Although this has occurred, the site was developed in accordance with the approval and its urban designation under the previous scheme. The lots include covenant areas for the retention and preservation of vegetation. The land is being retained in the Conservation Planning Area and future development of the land will still be assessed under CairnsPlan, including the Conservation Planning Area, the Hillslopes Code and any other applicable Code. In respect to the change of the level of assessment for Houses, it should be noted that the establishment of a House on the land will comply with the Conservation Planning Area Code because the tenure of the land already includes a significant conservation covenant which will retain all vegetation around the dwelling.</p>
	<p>The lots are all in freehold titles. A House is the highest anticipated use of these lots which were specifically developed as house lots in accordance with its previous designation. As the conservation qualities of the land are being preserved through statutory covenants, it is considered that for the establishment of a House, on a lot that has been specifically designed for a House, incurs an unnecessary level of development assessment under Impact Assessment. Under a Code Assessable application, Council still assesses the application in accordance with the Conservation Planning Area, the Hillslopes Code and any other applicable Code (such as the Vegetation Conservation and Waterways Significance Code). Only for applications for a House, which demonstrate compliance with these Codes will be approved.</p>
<p><i>Building 9 Houses up a narrow ridge behind the golf course will have visual impact on our area of the scenic rim, and the public should be able to have a say in it.</i></p>	<p>The lots were developed in accordance with the Transitional Planning Scheme and its Development Control Plans (including the Hillslopes DCP). Consideration for the visual impact on the scenic amenity of the area was made in assessing the original reconfiguring a lot application. Future Houses will need to be developed in accordance with the Hillslopes Code under CairnsPlan. These considerations do not require further public comment as the development of the Codes also underwent significant public notification.</p>

<p><i>The public should retain their right to comment and appeal if they so wish on future development in this environmentally sensitive "conservation" area of the hillslope.</i></p>	<p>As identified above, the lots include covenant areas for the retention and preservation of vegetation.. As the conservation qualities of the land are being preserved through statutory covenants, it is considered that for the establishment of a House, on a lot that has been specifically designed for a House, incurs an unnecessary level of assessment under Impact Assessment. Under a Code Assessable application, Council still assesses the application in accordance with the Conservation Planning Area, the Hillslopes Code and any other applicable Code (such as the Vegetation Conservation and Waterways Significance Code). Only for applications for a House, which demonstrate compliance with these Codes will be approved.</p>
<p><i>As the proposal does not say what is really to be done here in future then all the more reason to allow public rights to remain. The developer's future plans for the site have yet to be openly detailed or declared.</i></p>	<p>The application identifies clearly what the application is for and the effect of the application; i.e. the level of assessment for a House in the Conservation Planning Area will become Code Assessable. The application does not identify "development" in terms of physical construction as no physical development or any plan of development is proposed. There are no requirements for any person to openly declare what they intend to do with their freehold titles. The only requirement is that any development must comply with the Planning Scheme.</p> <p>Notwithstanding, it is anticipated that many people will now be aware of the Paradise Palms master plan currently going through public notification.</p>
<p><i>Permission has already been given for high density residential development in close proximity to the proposed area. Any extension of this type of activity into the area designated "Conservation" would be detrimental to the physical environment.</i></p>	<p>There is no extension of medium density residential development into the Conservation Planning Area.</p>
<p><i>The natural watercourses have already been substantially altered in the last 12 months. This must have some impact on the wildlife in the area.</i></p>	<p>Alteration of watercourses cannot occur without operational works permits and, in most cases, a Riverine Protection Permit or Water Act approval. While the developer had been found to have breached Environment Protection regulations in terms of failures for sediment controls, there has been no alteration to watercourses.</p>
<p><i>James Cook Drive/Moore Road has become noticeably more hazardous for motorists, cyclists and pedestrians since the current building program at the rear of Paradise Palms golf course began in 2007. It is going to be horrendous when all the houses and units that have been approved are occupied. Any further extension of residential activity which could result from this application would have dire traffic implications.</i></p>	<p>Council's Transport Network Plan identifies the necessary improvements to road infrastructure to facilitate a safe and efficient transport network. As part of the Plan, Moore Road, Discovery Drive and Paradise Palms Drive require improvements to a Network Road status. The current application does not trigger the need to improve the road network and until such time as these improvements become essential and are included in a capital works program, Discovery Drive and Paradise Palms Drive (which service the development to which this application relates) are of sufficient size and capacity to service the existing community.</p>

<p><i>Concern is raised that the proposed development will pave the way for developers of the site to proceed with building inappropriate houses/units without proper environmental assessment.</i></p> <p><i>The developer of any Houses will be able to persuade Council to grant dispensations so future development could conflict with CairnsPlan and the public has no more rights to have input into the process, like requesting a review or commencing an appeal in the Planning and Environment Court.</i></p>	<p>The lots already contain an area that has a tenure which prevents any development and vegetation clearing. All houses to be constructed on the lots will still need to comply with the Conservation Planning Area Code and the Hillslopes Code. Council still assesses each development application for a House.</p> <p>Although an Alternative Acceptable Measure (dispensation) may be proposed, the development must comply with the Performance Criteria. It should be noted that the only area of land that can be built on (due to the conservation covenants) ensures that an Alternative Acceptable Measure for setbacks will not be required. Further, there is limited opportunity to propose Alternative Acceptable Measures for height, cutting and filling and appropriate house colours and materials. Conditions of the reconfiguring a lot approval requires Houses be designed having post and beam construction on lots 1, 2, 3 and 9. For the remaining lots, the area in which a House can be constructed is only slightly sloped. Therefore, the possibility of requiring any Alternative Acceptable Measure is limited, and in any case will always have to comply with the Performance Criteria. This would apply regardless of whether submissions were able to be presented to Council for future House applications or not.</p>
<p><i>Concern is raised with possible impacts on the adjacent National Park and Deep Creek.</i></p>	<p>The construction of Houses on the lots is not likely to have detrimental impacts on the adjacent National Park or Deep Creek given the limited scale and domestic nature of the uses.</p>
<p><i>The change in zoning from "Conservation" area would mean any development on this land would not be evaluated in terms of its environmental and social impacts</i></p>	<p>This is incorrect. The Conservation Planning Area Code still applies to any future development on the lots. This application is to determine those impacts and decide whether future applications for Houses require further public comment in light of the impacts of the subdivision which had different considerations at the time of assessing that application as it was assessed under the Transitional Planning Scheme.</p>
<p><i>Further, that as properly recognised in CairnsPlan, Conservation areas offer a buffer between the natural values of National Park and residential or other developments.</i></p>	<p>Land within the Conservation Planning Area does offer a buffer between the natural values of National Park and residential development. However, it must be noted that under the Transitional Planning Scheme, the land was included in a conservation area. Therefore, Council and members of the public must recognise that the level of natural buffer is now limited and the conservation value of the land is already diminished to an extent where Houses (albeit in a limited form) on these lots is already anticipated (hence an approved subdivision for residential lots is granted and near completion).</p>
<p><i>The necessity to respect and keep the rights that the community justly deserves with regard to "Impact Assessable" development applications is much greater than the benefit that a developer will get by having assessment changed from "impact" to "code" assessment.</i></p> <p><i>The proposal will remove the rights of the community and particularly of local residents, to be involved in the decision making process for applications to construct houses on the lots.</i></p>	<p>This application is made by the developer so that members of the public can make submissions to Council now and pursue an appeal in the Planning and Environment Court under this application, as opposed to pursuing 8 other appeals on the same grounds.</p> <p>It is considered, in planning terms only, that submissions and appeals for future Houses (i.e. for each individual application) will not aid an assessment of each application, when compliance with CairnsPlan must still be achieved. The lots have been created for residential purposes and already provide appropriate tenure to preserve the vegetation on the lots. Further notification of applications for a House only, does not provide a clear benefit for the public. This consideration is not to benefit developers, but merely future landowners' in respect to the considerations that have already been given in the approval of the subdivision.</p>

<p><i>If this proposal is approved, the Conservation Code in CairnsPlan is meaningless. Council should reject this proposal and uphold the rights of the community, to fulfil its election promises and the expectations of the community.</i></p>	<p>The Conservation Planning Area Code in CairnsPlan is not meaningless if the development application is approved. As identified above, the lots have been created for residential purposes and already provide appropriate tenure to preserve the vegetation on the lots. Submissions and appeals for future Houses (i.e. for each individual application) will not aid an assessment of each application, when compliance with CairnsPlan must still be achieved. It is considered that the expectations of the community are identified through the Codes of CairnsPlan (which ensure compliance with the Desired Environmental Outcomes). Compliance with CairnsPlan Codes would therefore ensure that the expectations of the community are upheld.</p>
<p><i>The impact of building this relatively high density of houses on the hillslopes of our Northern Beaches scenic rim should remain open for public comment.</i></p>	<p>The development is not of a relatively high density of houses on the hillslope when compared to other traditional forms of development which have occurred on hillslopes in the Northern Beaches (e.g. Tari Place, Trinity Beach; Buchan's Point, Palm Cove). Under CairnsPlan, development on hillslopes does not determine whether an application is Impact Assessable or not. It depends solely on the Planning Area development is proposed in.</p>
<p><i>The proposal is contrary to the intent for the Conservation Planning Area and conflicts with the Purpose of the Conservation Planning Area Code. The desired development outcomes place a high degree of emphasis on minimising the extent of development and in ensuring that conservation and/or scenic values are protected from the effects of development.</i></p> <p><i>The proposal will erode the ability of Council to achieve these desired development outcomes by limiting the level of assessment of development applications and by removing the ability of members of the community to review and comment on development applications.</i></p>	<p>The proposal is not contrary to the intent for the Conservation Planning Area, which through its Purpose identifies that low scale development may occur on land in private ownership. Compliance with the Performance Criteria of the Code ensures that compliance with the Purpose of the Code has been achieved. Therefore any development application that achieves this compliance has ensured that the conservation and/or scenic values are protected from the effects of development.</p> <p>This proposal does not erode the ability of Council to achieve the desired development outcomes (the Purpose of the Code) in limiting the level of assessment, nor by removing an ability for the public to make submissions as the lots are already approved and prepared for residential purposes in accordance with the Transitional Planning Scheme under which this development was envisaged.</p>
<p><i>The proposal will result in a bounded or limited assessment of development applications for Houses.</i></p>	<p>Compliance with the Codes in CairnsPlan ensures the Desired Environmental Outcomes are achieved. A limited assessment (i.e. Code Assessment) still accommodates the broader intent of CairnsPlan through its Codes, given the nature and construction of the Planning Scheme.</p>
<p><i>The advertising signage for the DA is in breach of the Integrated Planning Act 1997.</i></p>	<p>A number of submissions and enquiries were made by community members in relation to the manner in which public notification was undertaken and whether compliance with the Act was occurring. In particular, concern was raised in relation to signage being placed on the subject land in accordance with the <i>Integrated Planning Regulation 1998</i> as Lot 5 on CP891005 has a number of street frontages. The applicant asserts that they comply with the provisions of the Act, particularly as the application is made over part of the land only, and a sign was placed on the only street frontage of the subject part of the land.</p> <p>As the Public Notification process is the sole responsibility of the applicant, it is the applicant's risk as to whether compliance is achieved. The applicant has provided a statement of compliance pursuant to the Act. Should any appeal process result from the decision of the application, a decision from the Planning & Environment Court will be made in the first instance whether the notification requirements were met.</p>

<p><i>The subject land has conservation values that are recognised at all levels of Government. Any development on that land properly requires Impact Assessment to ensure compliance with the intent of all relevant laws and policies.</i></p>	<p>The conservation values of the land are retained through the statutory covenants being placed over the majority of the lots for vegetation protection. Further applications are still required on each individual lot, and referral to the relevant State Agencies is still required. The interest and compliance with the policies of all levels of Government still needs to be achieved before a house can be constructed on each lot.</p>
<p><i>The proponent does not present any explanation of the approvals process and expected outcome, or any detail on the design of the proposed development.</i></p>	<p>The application clearly explains what is to occur from the approval sought. The application is for a Material Change of Use which over-rides CairnsPlan by changing the level of assessment for a House in the Conservation Planning Area on the subject land over which approval 8/13/787 applies. A Code Assessable application will be required for a house on Lots 2 to 9. The subdivision is near complete and the design is presented in the plan of development which was included in the application. This application does not propose any physical development as it is only for a Preliminary Approval to change the level of assessment for future houses on each resulting lot.</p>
<p><i>The proponent does not provide any substantive justification for the proposed change, or any indication as to why the proposed development would fail impact assessment at the existing level.</i></p>	<p>The application justifies the proposed change. It is assumed that the "proposed development" the application is referring to includes Houses. For this purpose it is considered that a House would not fail an impact assessment as the lots are already created for such purpose and have tenure which preserves existing vegetation.</p>
<p><i>The proposed change is contrary to the Desired Environmental Outcomes of CairnsPlan, would result in an inconsistency with CairnsPlan, and would set a precedent which renders the Conservation Planning Area Code of CairnsPlan ineffective.</i></p>	<p>The change is not contrary to the Desired Environmental Outcomes of CairnsPlan. The level of assessment is inconsistent with the Planning Scheme, hence an application is made to over-ride that component of CairnsPlan. It should be noted that Council can approve development which is conflicts with the scheme, but not where it compromises the Desired Environmental Outcomes. As this change does not compromise the Desired Environmental Outcomes, Council can consider the conflict with the scheme. This will not set a precedent which would in effect compromise the Conservation Planning Area Code and suggest that it is an ineffective planning measure.</p>
<p><i>Although the DA seeks downgrading from impact to code assessment, the planned project would not meet code-assessable compliance with Conservation Planning Area Code Performance Criteria even if approved, so logically the lot would have been converted to Residential 1. This has not been explained.</i></p>	<p>A brief review of the whether a House can comply with the Conservation Planning Area Code (particularly) identifies that compliance can be achieved. There is no statement that the application is to place the lots in the Residential 1 Planning Area. The only change is to allow Houses to be constructed without having to go through the Impact Assessment process and minimise the risk of an unnecessary appeal where a House achieves compliance with CairnsPlan.</p>
<p><i>The proponent has a record of disregard for environmental controls at this site, has breached existing codes and caused significant impacts to neighbouring properties. This poor performance record should not be rewarded with a weakening of controls.</i></p>	<p>The proponent's past record for breaches is not a planning consideration. It is unfortunate but not a ground that can be considered against a proposal.</p>
<p><i>Concern is raised that future development of any type will result in the clearing of large trees and thick vegetation which will be quite visible from the highway and ocean and is not in keeping with the adjoining hillslopes.</i></p>	<p>As identified, these lots have statutory covenants for protection of vegetation over the majority of the property. An area in which a house can be constructed is identified on the title and all future physical construction activities must only be contained in that area. Any breach of the covenants will result in action being taken against the landowner.</p>

<p><i>To remove the rights of the individuals to comment in the impact of "house applications" will dilute the purpose of the conservation designation being impact assessable.</i></p>	<p>The purpose of the Conservation Planning Area does not change. It is acknowledged that because of various conservation values land in the Conservation Planning Area has, it is intended that development be subject to an impact assessment process. However in this case the houses are to be constructed on a lot which has been specifically designed and constructed to contain a House, as opposed to a residual parcel of land which has significant vegetation cover and contributes to the scenic and ecological integrity of land in the Planning Area. It is therefore considered that the change to the level of assessment will have little influence on the Purpose of the Conservation Planning Area Code which would detrimentally impact on the intent of the Planning Area.</p>
<p><i>The building of houses on the subdivision cannot be conditioned to guarantee it will comply with the CairnsPlan Hillslopes Code and Vegetation Conservation and Waterways Significance Code in relation to visual amenity.</i></p> <p><i>Local Law 24 – Vegetation Protection, stipulates under Clause 22 'Exemptions' that vegetation within 6m of a building structure may be removed. The buildings will not comply with both Codes. Even if the 6m clearance is not carried out the development will be clearly visible.</i></p>	<p>The subdivision is already approved. Council cannot prohibit development on these lots and landowners will be able to make applications for a House regardless of the process applicable under IDAS. A house is one of the only consistent forms of development in the Conservation Planning Area and these lots have been designed to contain houses (as it was approved under an urban designation) and retain vegetation. Because the vegetation is protected by statutory covenants, the 6m clearing around buildings is not applicable in the exemptions stated under Local Law 24. The subdivision is already approved and constructed in accordance with its previous designation, regardless of whether the lots are clearly visible or not. Future landowners cannot be held responsible for this fact. They must however be aware that the design of Houses are to be responsive to the visual constraints of the property.</p>

Conclusion

The application is primarily made to recognise that the establishment of a House is consistent with the intended form of development on the lots approved under the reconfiguring a lot application, and to identify a level of assessment that was envisaged at the time of the subdivision approval being granted.

The criteria for assessing the proposed variations to the effect of the planning scheme are set out in s3.5.5A of the Integrated Planning Act 1997 and include:

- the common material;
- the result of the assessment of the development under section 3.5.4 or 3.5.5;
- the effect of the variations on any future submitter rights, with particular regard to
- the amount and detail of supporting information for the current application;
- the consistency of the variations with the planning scheme;
- relevant State planning policies and the SEQ regional plan if applicable; and
- matters prescribed under a regulation.

In reviewing all common material, it is considered the development will not compromise the Desired Environmental Outcomes of CairnsPlan as future development must comply with CairnsPlan Codes (which reflect the criteria for assessment to determine compliance with the broader Desired Environmental Outcomes). Further, the application provides sufficient detail in respect to the existing development of the land and the nature and scale resulting from the variation sought from the Planning Scheme. However, the effect from an approval of the application must be considered.

The greatest effect from this application is that the submissions will not be able to be made for applications for Houses over the lots created under approval 8/13/787 which are now situated in the Conservation Planning Area. For members of the community this can be considered a detrimental impact as a result of the application. On the other hand; for future landowners, approval of this application provides an assurance from Council that the subdivided lots, created under an urban designation (under the Transitional Scheme), continue to have a residential purpose (i.e. Council acknowledges that they are for the sole purpose of containing a house). Under an impact assessable application for a house, submitters have the ability to lodge appeals against Council decisions, prolonging a process which may, or may not, be necessary. This may be detrimental to the owners of land which has diminished conservation values due to the impact from the creation of the subdivision.

For Council, the difference in assessment between a code assessable application and an impact assessable application lies only in the process which is undertaken under the Act. Council's assessment under a code assessable application relates to the applicable Codes, which include the Conservation Planning Area Code, Hillslopes Code, Vegetation Conservation and Waterways Significance Code and the Excavation and Filling Code. Council retains the ability to condition any approval for a code assessable application pursuant to the Act.

Council needs to consider whether the variation of the level of assessment will result in development that is detrimental to achieving the particular development outcomes sought under CairnsPlan Codes. In considering the impact of the variation of the level of assessment, Council must note that the houses are being established on lots that have been created for a residential purpose and include areas having statutory protection of vegetation. It must also consider, given the particular circumstances for the request for a change to the level of assessment, whether the need for further public scrutiny of the subsequent house applications is paramount to ensuring a full and rigorous assessment of this form of development. It is considered that the variation to the level of assessment will:

- not compromise the Desired Development Outcomes;
- still provide Council with the ability to rigorously assess and condition applications for houses, and
- acknowledge that the lots created for a residential purpose can continue in such manner;

It is therefore recommended that the application be approved.

Notwithstanding the above, it should be noted that in other circumstances where land is contained in the Conservation Planning Area and does not already bear any physical alterations or improvements, then Council would not entertain any application to remove the impact assessment process.

HEADWORKS / CONTRIBUTIONS:

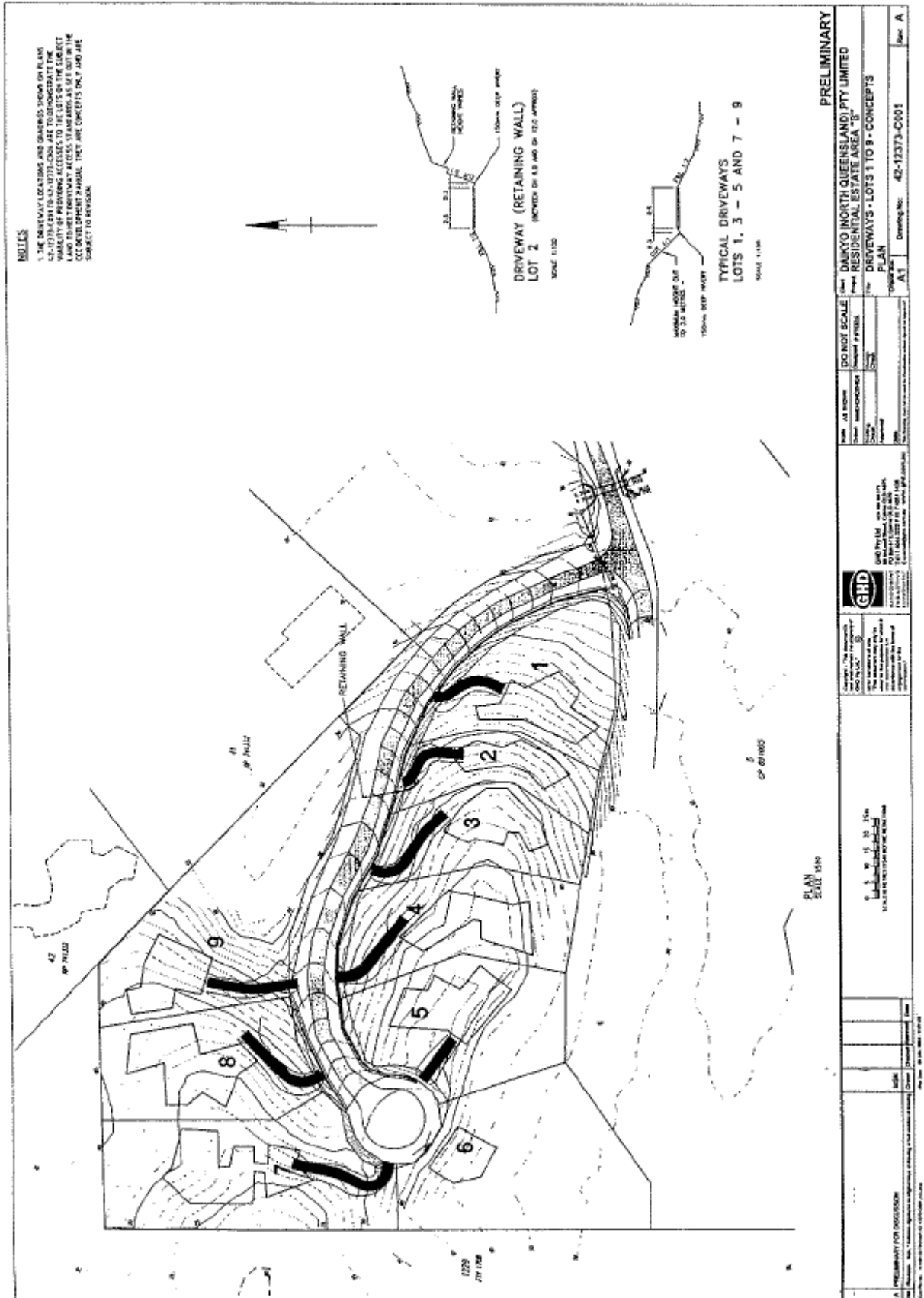
The proposed development does not trigger Developer's Headwork's Contributions. Contributions towards trunk infrastructure were made under the reconfiguration approval.

Paul Cohen
Planning Officer
Action Officer

Simon Clarke
Manager Development Assessment

APPENDIX 1 SUPPORTING INFORMATION TO PLANNING REPORT

Approved Reconfiguration 8/13/787



Planning Areas of Subject Land

