

Part 1 About the Planning Scheme

1.1 Introduction

- (1) The Banana Shire Council Planning Scheme (the Planning Scheme) has been prepared in accordance with the *Planning Act 2016* (the Act) as a framework for managing development in a way that advances the purpose of the Act.
- (2) In seeking to achieve this purpose, the Planning Scheme sets out Banana Shire Council's intention for the future development in the planning scheme area, over the next twenty years.
- (3) The Planning Scheme seeks to advance State and regional policies through more detailed local responses, taking into account the local context.
- (4) While the Planning Scheme has been prepared with a twenty year horizon, it will be reviewed periodically in accordance with the Act to ensure that it responds appropriately to the changes of the community at a local, regional and State level.
- (5) The Planning Scheme applies to the planning scheme area of Banana Shire Council including all premises, roads and internal waterways but excluding certain areas identified in State legislation.

1.2 Planning Scheme components

- (1) The Planning Scheme comprises the following components:
 - (a) about the Planning Scheme;
 - (b) State planning provisions;
 - (c) the Strategic Framework;
 - (d) use and administrative definitions;
 - (e) Tables of Assessment;
 - (f) the following zones:
 - (i) General Residential Zone;
 - (A) Multiple Dwelling Precinct (GR1);
 - (ii) Centre Zone;
 - (iii) Recreation and Open Space Zone;
 - (iv) Environmental Management and Conservation Zone;
 - (v) Industry Zone;
 - (vi) Special Industry Zone;
 - (vii) Community Facilities Zone;
 - (A) Precinct 1 – Education (CF1);
 - (B) Precinct 2 – Electricity, Transport and Telecommunications (CF2);
 - (C) Precinct 3 – Government (CF3);
 - (D) Precinct 4 – Hospital (CF4);
 - (E) Precinct 5 – Public Facilities (CF5);
 - (F) Precinct 6 – Utilities (CF6);
 - (viii) Mixed Use Zone;
 - (A) Highway Precinct (MU1);
 - (B) Transition Precinct (MU2);
 - (ix) Rural Zone;
 - (A) Muirs Road (R1);
 - (x) Rural Residential Zone;
 - (xi) Township Zone;
 - (g) the following overlays:
 - (i) Agricultural Land;
 - (ii) Biodiversity;
 - (iii) Bushfire Risk;
 - (iv) Extractive and Mining Resources;
 - (v) Flood Risk;
 - (vi) Heritage;
 - (vii) Historic Subdivisions;
 - (viii) Infrastructure;
 - (ix) Water Resources;
 - (h) the following development codes:
 - (i) use codes:

- (A) Animal Keeping Code;
- (B) Child Care Centre Code;
- (C) Service Station Code;
- (ii) other development codes:
 - (A) Development Design Code;
 - (B) Reconfiguring a Lot Code;
 - (C) Third Party Sign Code;
 - (D) Local Heritage Place Code;
- (i) other plans;
- (j) the Local Government Infrastructure Plan;
- (k) schedules and appendices;
- (2) The following planning scheme policies support the planning scheme:
 - (a) Flood Planning Scheme Policy;
 - (b) Landscaping Planning Scheme Policy;

1.2.1 Overlays

- (1) Overlays identify areas in the Planning Scheme that reflect state and local level interests and that have one or more of the following characteristics:
 - (a) there is a particular sensitivity to the effects of development;
 - (b) there is a constraint on land use or development outcomes;
 - (c) there is the presence of valuable resources;
 - (d) there are particular opportunities for development;
- (2) Overlays are mapped and included in Schedule 1.
- (3) Some overlays may be included for information purposes only and do not result in any additional assessment benchmarks.
- (4) Assessment benchmarks for an overlay are contained in the zone codes;
- (5) Where development is proposed on premises partly affected by an overlay, the assessment benchmarks for the overlay only relate to the part of the premises affected by the overlay.

1.3 Interpretation

1.3.1 Definitions

- (1) A term used in the Planning Scheme has the meaning assigned to that term by one of the following:
 - (a) the Act;
 - (b) the Planning Regulation 2017 (the Regulation);
 - (c) the definitions in Part 4 of the Planning Scheme;
 - (d) the *Acts Interpretation Act 1954*;
 - (e) the ordinary meaning where that term is not defined in any of the above;
- (2) In the event a term has been assigned a meaning in more than one of the instruments listed in subsection 1.3.1(1), the meaning contained in the instrument highest on the list will prevail.
- (3) A reference in the Planning Scheme to any act includes any regulation or instrument made under it, and where amended or replaced, if the context permits, means the amended or replaced act.
- (4) A reference in the Planning Scheme to a specific resource document or standard means the latest version of the resource document or standard.

Editor's note - In accordance with section 16(3) of the Act the regulated requirements apply to this planning scheme to the extent of any inconsistency with the planning scheme.

1.3.2 Standard drawings, maps, notes and editor's notes

- (1) Standard drawings contained in codes or schedules are part of the Planning Scheme.
- (2) Maps provide information to support the outcomes and are part of the Planning Scheme.
- (3) Notes are identified by the title 'note' and are part of the Planning Scheme.
- (4) Editor's notes are extrinsic material, as per the *Acts Interpretation Act 1954*, and are identified by the title 'editor's note' and are provided to assist in the interpretation of the Planning Scheme; they do not have the force of law.

Note – This is an example of a note.

Editor's note – This is an example of an editor's note.

1.3.3 Zones for roads, closed roads, waterways and reclaimed land

- (1) The following applies to an area of road, closed road, waterway or reclaimed land in the Planning Scheme area:
 - (a) if adjoined on both sides by land in the same zone – the area is in the same zone as the adjoining land;
 - (b) if adjoined on one side by land in a zone and adjoined on the other side by land in another zone – the area is in the same zone as the adjoining land when measured from a point equidistant from the adjoining boundaries;
 - (c) if the area is adjoined on one side only by land in a zone – the entire area is in the same zone as the adjoining land;

1.4 Categories of Development

- (1) The categories of development under the Act are:
 - (a) Accepted development;

Editor's note – A development approval is not required for accepted development. Under section 44(6)(a) of the Act, if the Planning Scheme does not apply a category of development to a particular development, the development is accepted development. Schedule 7 of the Regulation also prescribes accepted development.

- (b) Assessable development:
 - (i) Code Assessment; and
 - (ii) Impact Assessment;

Editor's note – A development permit is required for assessable development. Schedules 9, 10 and 12 of the Regulation also prescribe assessable development.

- (c) Prohibited development.

Editor's note – A development application may not be made for prohibited development. Schedule 10 of the Regulation prescribes prohibited development.

1.5 Level of Assessment

1.5.1 Reading tables of assessment

The tables identify the following:

- (1) development that is prohibited, accepted or requires code or impact assessment in a zone and, where used, a precinct of a zone;
- (2) the assessment benchmarks for assessable development, including:
 - (a) whether a zone code or specific provisions in the zone code apply (shown in the 'Assessment Benchmarks' column);
 - (b) any other applicable code(s) (shown in the 'Assessment Benchmarks' column);
- (3) any variation to the category of assessment (shown as an 'if' in the 'Use' column) that applies to the development;

Note—Development will only be taken to be prohibited development under the planning scheme if it is identified in Schedule 10 of the Regulation.

Editor's note – Examples of a variation to the category of assessment are site or floor area, intensity of use, separation distance, overlay or precinct provisions.

1.5.2 Process for determining the category of assessment

The process for determining a category of assessment is:

- (1) For a material change of use, establish the use by reference to the use definitions in Part 3.
- (2) For all development, identify the following:
 - (a) if the premises is affected by a plan in Part 7;
 - (b) the zone or zone precinct that applies to the premises, by reference to the zone map in Schedule 1;
- (3) Determine if the development is accepted development under Schedule 6 of the Regulation.
- (4) Determine if the development is assessable development under Schedule 10 of the Regulation.
- (5) Determine if the development has a prescribed category of assessment, by reference to the tables in Section 4.1 Prescribed categories of assessment.

- (6) If the development is not listed in the tables in Section 4.1 Prescribed categories of assessment, determine the initial category of assessment by reference to the tables in:
 - (a) Part 7 – Other Plans;
 - (b) Part 5 – Zones;
 - (c) Section 4.2 Categories of Assessment – Reconfiguring a lot;
 - (d) Section 4.3 Categories of Assessment – Operational work;
 - (e) Section 4.4 Categories of Assessment – Building work;
- (7) Prescribed categories of assessment identified in section 4.1, override all other categories of assessment for that development, with the exception of the Act or the Regulation.
- (8) Provisions of Part 7 may override any other category of assessment for development identified in a separate part of the planning scheme, with the exception of section 4.1.
- (9) A precinct of a zone may change the category of assessment and this will be shown in the ‘Use’ column of the tables in Part 5 (for material change of use) or Sections 4.3 to 4.5 for reconfiguring a lot, operational works and building work.
- (10) A material change of use is impact assessable:
 - (a) unless the table of assessment states otherwise;
 - (b) if a use is not listed or defined;
 - (c) unless otherwise prescribed in the Act or the regulation;
- (11) Reconfiguring a lot is code assessable unless the tables of assessment state otherwise or unless otherwise prescribed in the Act or the Regulation.
- (12) Building work and operational work are accepted development, unless the tables of assessment state otherwise or unless otherwise prescribed in the Act or the Regulation.
- (13) Where development is proposed on premises included in more than one zone, the category of assessment is the highest category under each of the applicable zones.

1.6 Hierarchy of assessment benchmarks

- (1) Where there is inconsistency between provisions in the Planning Scheme, the following rules apply:
 - (a) provisions of Part 7 may override any of the below;
 - (b) the Strategic Framework prevails over all other components (other than the matters mentioned in (a)) to the extent of the inconsistency;
 - (c) relevant codes as specified in Schedules to the Regulation prevail over all other components (other than the matters mentioned in (a) and (b)) to the extent of the inconsistency;
 - (d) zone codes prevail over use codes and other development codes to the extent of the inconsistency;

1.6.1 Determining the requirements for accepted development and assessment benchmarks

- (1) Accepted development does not require a development approval and is not subject to assessment benchmarks. However, certain requirements may apply to some types of development for it to be accepted development. Where nominated in the tables of assessment, accepted development must comply with the requirements identified as acceptable outcomes in the relevant parts of the applicable code(s) as identified in the relevant table for accepted development.
- (2) Accepted development that does not comply with one or more of the nominated acceptable outcomes in the relevant parts of the applicable code(s) becomes code assessable development unless otherwise specified.
- (3) The following rules apply in determining assessment benchmarks for each category of assessment.
- (4) Code assessable development:
 - (a) is to be assessed against all the assessment benchmarks identified in the Assessment Benchmarks columns;
 - (b) that occurs as a result of development becoming code assessable pursuant to sub-section 1.6.1(2), must be assessed against the assessment benchmarks for the development application, limited to the subject matter of the required acceptable outcomes that were not complied with or were not capable of being complied with under sub-section 1.6.1(2);
 - (c) that complies with the performance outcomes complies with the code;

Editor’s Note – An applicant may choose to comply with the acceptable outcomes for accepted development that correspond to the subject matter of the performance outcomes to demonstrate compliance with the code.

- (d) is to be assessed against any assessment benchmarks for the development identified in Section 26 of the Regulation;

Editor's Note – Section 27 of the Regulation identifies the matters code assessment must have regard to.

- (5) Impact assessable development:
- (a) is to be assessed against the identified assessment benchmarks in the assessment benchmarks column (where relevant)
 - (b) assessment is to have regard to the whole of the Planning Scheme, to the extent relevant
 - (c) is to be assessed against any assessment benchmarks for the development identified in Section 30 of the Regulation

Editor's Note – Section 31 of the Regulation identifies the matters that impact assessment must have regard to.

1.7 Building Work regulated under the Planning Scheme

- (1) Section 17(b) of the Regulation identifies the assessment benchmarks for building work that a local planning instrument must not change the effect of to the extent the building work is regulated under the building assessment provisions, unless permitted under the *Building Act 1975*.
- (2) The building assessment provisions are listed in section 30 of the *Building Act 1975*.

Editor's note – The building assessment provisions are stated in section 30 of the *Building Act 1975* and are assessment benchmarks for the carrying out of building assessment work or building work that is accepted development subject to any requirements (see also section 31 of the *Building Act 1975*).

- (3) This Planning Scheme, through Part 4.5, regulates building work in accordance with sections 32 and 33 of the *Building Act 1975*.

Editor's note – The *Building Act 1975* permits planning schemes to:

- regulate, for the Building Code of Australia (BCA) or the Queensland Development Code (QDC), matters prescribed under a regulation under the *Building Act 1975* (section 32). These include variations to provisions contained in parts MP 1.1, MP 1.2 and MP 1.3 of the QDC such as heights of buildings related to obstruction and overshadowing, siting and design of buildings to provide visual privacy and adequate sight lines, on-site parking and outdoor living spaces. It may also regulate other matters, such as designating land liable to flooding, designating land as bushfire prone areas and transport noise corridors
- deal with an aspect of, or matter related or incidental to building work prescribed under a regulation under section 32 of the *Building Act 1975*
- specify alternative boundary clearances and site cover provisions for Class 1 and 10 structures under section 33 of the *Building Act 1975*.

Refer to Schedule 9 of the Regulation to determine assessable development, the type of assessment and any referrals applying to the building work.

- (4) The building assessment provisions are contained in the following table.

Table 1.7.1 Building assessment provisions	
Building assessment matter addressed in the planning scheme	Relevant section of the planning scheme
Flood hazard	
Identification of part of the planning scheme area as a natural hazard management area (flood)	Schedule 1.4 Flood Hazard Overlay Maps
Identification of the level to which floor levels of habitable rooms of a building must be built	Part 5 The applicable zone code
Bushfire hazard	
Designation of part of the planning scheme area as a designated bushfire prone area for the BCA and the QDC.	Schedule 1.4 Bushfire Hazard Overlay Maps

Editor's note – A decision in relation to building work that is assessable development under the Planning Scheme should only be issued as a preliminary approval. See section 83(b) of the *Building Act 1975*.

Editor's note – In a development application, the applicant may request preliminary approval for building work. The decision on that development application can also be taken to be a referral agency's response under section 56 of the Act, for building work assessable against the *Building Act 1975*. The decision notice must state this.

1.8 Local Government administrative matters

- (1) Some items or sites of Aboriginal cultural heritage are contained in the Aboriginal Cultural Heritage Register which can be accessed on the Department of Aboriginal and Torres Strait Islander Partnerships website.
- (2) Places of local cultural heritage significance are identified in the Banana Shire Local Heritage Register.

Editor's note – Copies of the Banana Shire Local Heritage Register are available on request to Council.