



13 June 2024

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The Longs Quarter  
203 Margaret Street  
Toowoomba City, Qld 4350

Email: [admin@struxi.com.au](mailto:admin@struxi.com.au)

Dear Owen,

**RE: Category of Development and Assessment for a Dwelling House on various sites within the Northern Peninsula Area Regional Council Area**

Revolution Town Planning has been commissioned to provide expert Town Planning advice on the Category of Development and Assessment for a Dwelling House on multiple sites within the Northern Peninsula Area Regional Council Local Government Area. The advice was requested in response to advice provided by the Department of State Development and Infrastructure stating that a Material Change of Use for a Dwelling House on various sites was assessable development, subject to Code Assessment, generally as a consequence of the sites being affected by an Overlay in the Northern Peninsula Area Council Planning Scheme (the Planning Scheme), namely, the Natural Hazards Overlay – Bushfire and/or the Biodiversity Overlay.

The subject properties and overlay relevant to each property are listed below:

Natural Hazards Overlay – Bushfire

- 141 Pablo Street, Injinoo;
- Lot 303 Injinoo Close, Injinoo;
- 5 Danalgub Street, Seisia;
- 6 Danalgub Street, Seisia; and
- 7 Danalgub, Street, Seisa.

Biodiversity Overlay

- 5 Danalgub Street, Seisia;
- 6 Danalgub Street, Seisia; and
- 7 Danalgub, Street, Seisa.

The relevant Overlay Maps are included in **Attachment 1** and detail the subject sites as relevant.

Schedule 6 Planning Regulation 2017

Schedule 6 of the *Planning Regulation 2017* (the Regulation) prescribes development which a local planning scheme is prohibited from categorizing as assessable development. Schedule 6, Part 2, Section 2 (2) of the *Planning Regulation 2017* includes the following:

- (2) *A material change of use of premises for a dwelling house, if—*
- (a) *the material change of use is for a residential purpose in a residential zone other than a medium density residential zone or high density residential zone; and*
  - (b) *the material change of use does not involve a basement or an underground parking area; and*
  - (c) *1 of the following applies—*
    - (i) *no relevant overlay applies to the premises;*
    - (ii) *only an overlay about bush fire hazards applies to the premises and the premises are less than 2,000m<sup>2</sup>;*
    - (iii) *a relevant overlay applies to the premises and the application of the overlay does not result in the material change of use being categorised as assessable development.*

The term 'residential zone' is defined in Schedule 24 of the Regulation and means '*premises (however described) designated in a local categorising instrument as residential*'.

The subject lots are included with the Township Zone in the Planning Scheme Area. Refer **Attachment 2** Zone Maps.

It is our view, for the Planning Scheme in this instance, the Township Zone must be known as a residential zone, irrespective of the Precincts designated within the zone. This is due to the fact the Planning Scheme designates only five (5) land use zones as follows:

- Emerging Community Zone;
- Environmental Management and Conservation Zone;
- Industry Zone;
- Rural Zone; and
- Township Zone

Of the above, it is only the Township Zone where residential development is preferred. We refer to the Purpose of the Township Zone as reproduced below (emphasis added).

- (1) *The purpose of the Township Zone is to provide for:*
- (a) *small to medium urban areas in a rural or coastal area; and*
  - (b) *a variety of uses and activities to service local residents, including, for example, business, community, education, industrial, open space, recreation, **residential** and retail uses and activities; and*
  - (c) *tourist attractions and short-term accommodation, if appropriate for the area.*

Our conclusion that the Township Zone is residential zone in this instance is based on the legal principle that a Planning Scheme and the provisions within it must be read within the context of the document as a whole. With consideration for the fact the Planning Scheme is divided into only the five zones listed above and that the Township Zone is almost exclusively used to regulate land use and development within the townships in the Local Government Area, we consider this the only reasonable and practical conclusion that can be reached is that the Township Zone is a residential zone. The below advice is provided on this basis.

#### Part 5 of the Planning Scheme – Tables of Assessment

Part 5 of the Planning Scheme includes the Tables of Assessment. In regards reading the tables it is important to have regard for Sections 5.1 – 5.3 inclusive as the instructions for interpreting the tables is included in these sections. Of particular relevance to the abovementioned sites is Section 5.3.2 (6) which states:

*'For the purposes of Schedule 6, Part 2 Material change of use section 2(2)(d) of the Regulation, an overlay does not apply to the premises if the development meets the acceptable outcomes that form the requirements for accepted development in the relevant overlay code'.*

With this in mind, we note Table 5.5.5 of the Planning Scheme – Material Change of Use for the Township Zone categorises a Dwelling House as Accepted Development subject to Requirements when in a Residential Precinct and Assessable Development subject to Code Assessment, where in no Precinct. With that in mind, we consider the respective sites below in relation to the respective overlays.

Further, Table 5.10 Overlays states where within a Biodiversity Overlay or the Natural Hazards Overlay - Bushfire Overlay area, a material change of use is assessable development subject to Code Assessment.

#### Biodiversity Overlay

Regardless of whether or not physical development is proposed within an area included within an area of the Biodiversity Overlay mapped area a review of the proposed developments concludes that a Material Change of Use for a Dwelling House on each of the lots at 5, 6 and 7 Danalglub Street, Seisa satisfies the acceptable outcomes of the relevant performance outcomes in the Biodiversity Overlay Code.



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As such. Pursuant to Section 5.3.2 (6) of the Planning Scheme for the purposes of Schedule 6, Part 2 Material change of use section 2(2)(d)\* of the Regulation, the Biodiversity Overlay does not apply to the premises.

*\*Note: The Regulation was amended and Schedule 6, Section 2 only consists of parts (a) – (c), and no longer includes a (d). The requirements of Schedule 6, Section 2 (d) were incorporated into Schedule 6, Section 2 (c) of the Regulation. Pursuant to Section 1.3.1 of the Planning Scheme*

*'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'.*

*As such, Section 5.3.2 (6) of the Planning Scheme continues to have the same effect'.*

## Natural Hazards Overlay – Bushfire

At the outset we wish it noted that we consider it cannot be reasonably argued that the Natural Hazards – Bushfire Overlay affects Lot 303 Injinoo Close, Injinoo. The relevant overlay map certainly does not show with any certainty that the Natural Hazards Bushfire Overlay affect the site. While we acknowledge that the Planning Scheme mapping has incorporated the State Planning Policy Mapping (SPP) and the [SPP online mapping](#) places the site within a Bushfire Prone Land Impact Area, the SPP mapping is not the mapping referenced in Schedule 2 of the Planning Scheme and therefore it cannot be applied to interpret the Planning Scheme or its related maps.

Nevertheless, while the remaining sites at 141 Pablo Street Injinoo and 5, 6 and 7 Danalglub Street, Seisa may be affected by the Natural Hazards – Bushfire Overlay, this is the only overlay that affects any of the subject lots. To this end, it is considered that a material change of use on any of the subject lots satisfies the description for the material change of use per Schedule 6, Section (2) of the Regulation and the Planning Scheme, being the local planning instrument relevant in this instance is prohibited from categorising a Material Change of Use for a Dwelling House as Assessable Development on any of the sites nominated within this letter..

A development permit for a material change of use is not required for a Dwelling House on any of the nominated sites and you may seek building development approval and a permit for plumbing and drainage work as relevant within obtaining a development permit for a material change of use for a Dwelling House.

If you have any questions or you wish to discuss please do not hesitate to contact me.

Regards,

Peter Swan, Director  
Revolution Town Planning.



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## ATTACHMENT 1 – Relevant Overlay Maps and Subject Sites

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NPARC Planning Scheme  
Natural Hazard (Bushfire)  
Overlay Map :  
Five Communities

**Legend**

 Local Government Area

Bushfire Hazard Area

 Very High Potential Bushfire Intensity

 High Potential Bushfire Intensity

 Medium Potential Bushfire Intensity

Potential Bushfire Impact Area

 Potential Bushfire Impact Buffer

**BUSHFIRE RISK ANALYSIS**

Based on and contains data provided by Bushfire.Mapping Public Safety Business Agency (BPA\_LGA\_Smoothed\_30Jun2014) for NPARC LGA

© State of Queensland (PSBA) 2014.

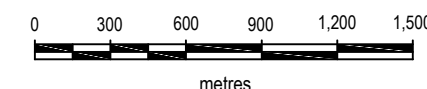
**IMPORTANT NOTE**

This plan was prepared as a planning tool only and accuracy of all aspects of the plan have not been verified. No reliance should be placed on the plan and RPS Australia East Pty Ltd accepts no responsibility for any loss or damage suffered howsoever arising to any person who may use or rely on this plan.

**DIGITAL CADASTRAL DATA BASE - BOUNDARY INFORMATION.**

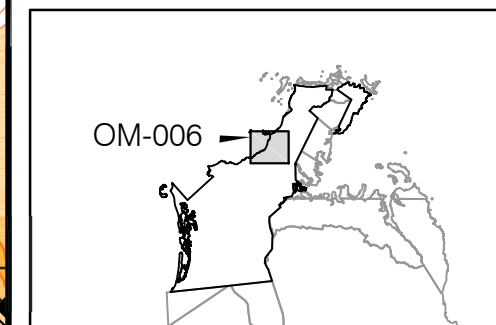
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Geocentric Datum of Australia (GDA94)

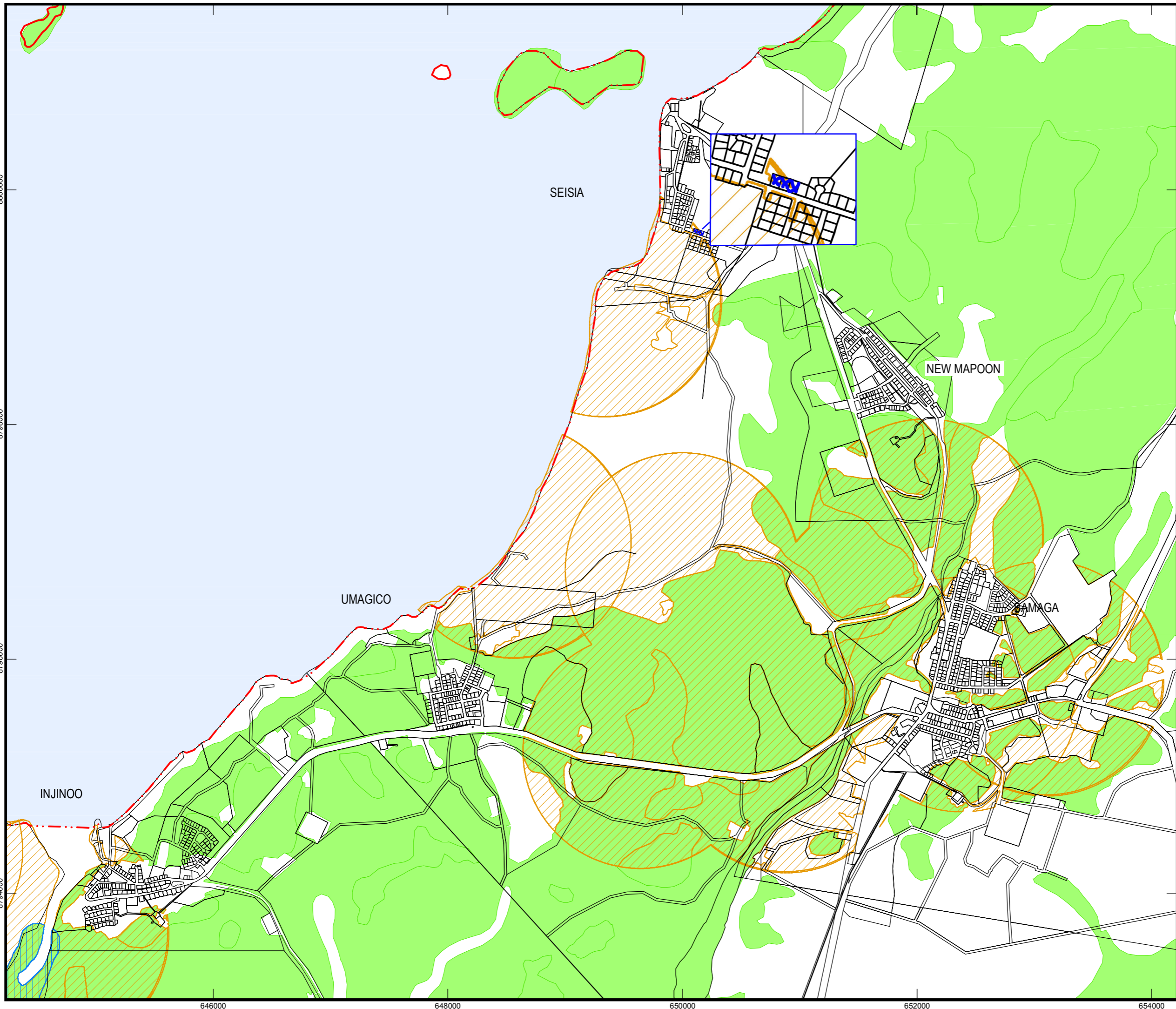



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**OM-004**








**NPARC Planning Scheme  
Biodiversity Overlay Map:  
Five Communities**




**Legend**

 Local Government Area

 MSES  
High Ecological Significance wetlands

 Wildlife habitat

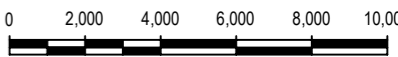
 Regulated vegetation

**Data Source**  
Matters of State Environmental Significance (MSES) version 4.1

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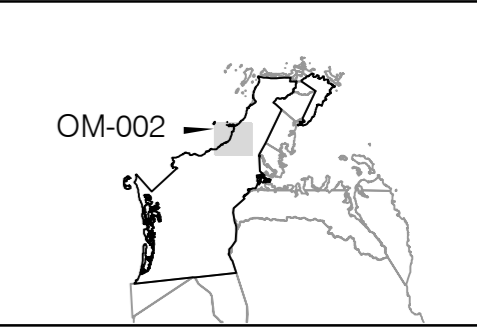
*Geocentric Datum of Australia (GDA94)*



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OM-002

**OM-002**

PR106297-110e.dwg July 2015



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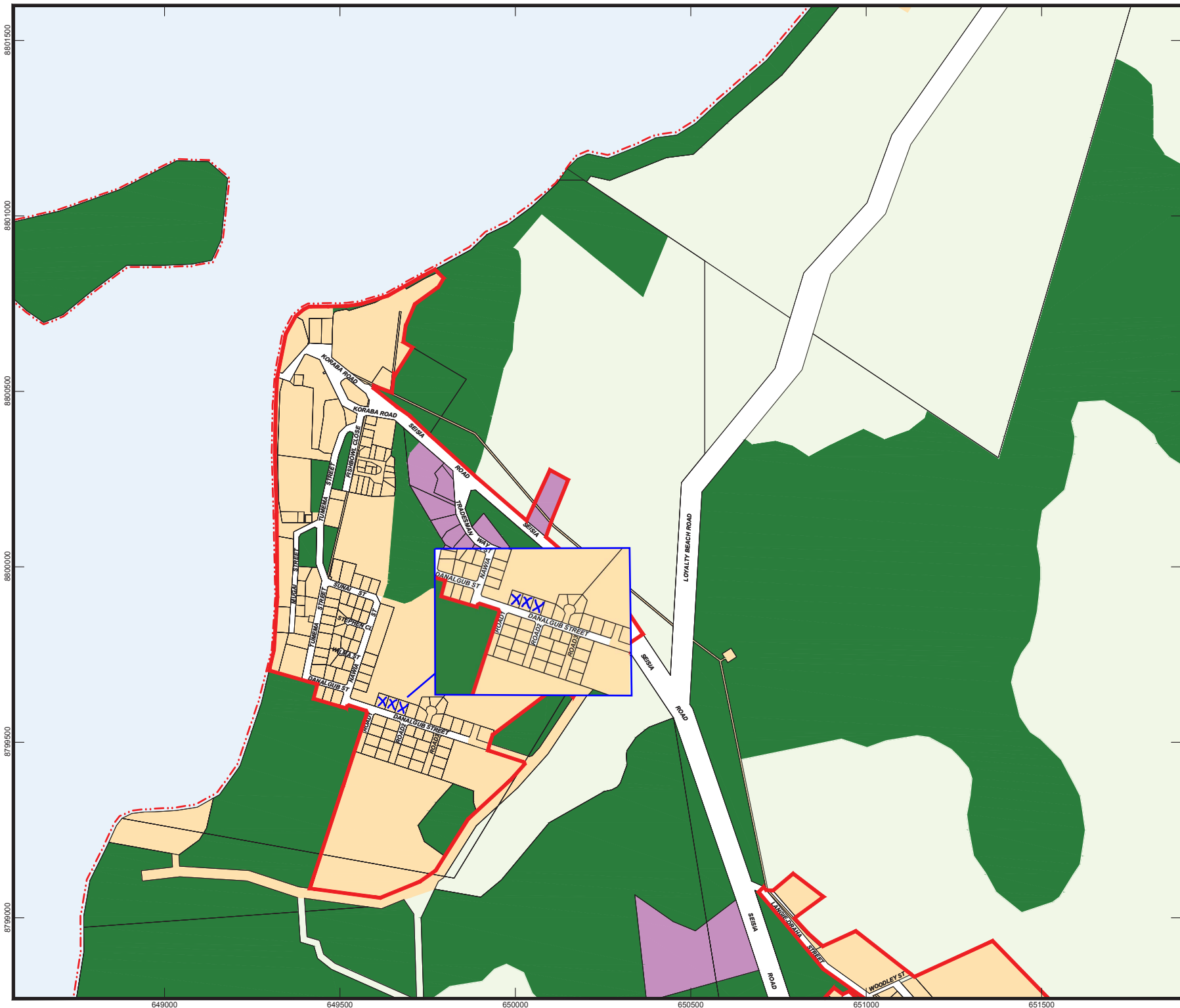
## ATTACHMENT 2 – Relevant Zone Maps and Subject Sites


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**NPARC Planning Scheme**  
**Priority Infrastructure**  
**Area - Seisia**





**LEGEND**


 Priority Infrastructure Area


 Local Government Area


**Zones**

 Township

 Industry

 Rural


 Emerging Community

 Environmental Management & Conservation

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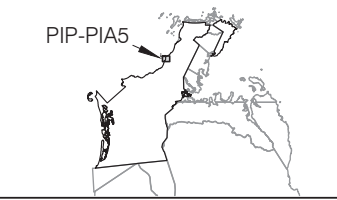
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metres

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PIP-PIA5

**Seisia Priority Infrastructure Plan - PIP-PIA5**

PR106297-114...dwg:1-9-2015



# NPARC Planning Scheme Zoning Plan: Injinoo

## Legend

### Zones

- Local Government Area
- Township
- Industry
- Rural
- Emerging Community
- Environmental Management & Conservation

### Precincts

- Business
- Residential
- Industry - Low Impact
- Industry - Medium Impact
- Industry - High Impact
- Open Space/Recreation
- Special Purpose
- Tourism

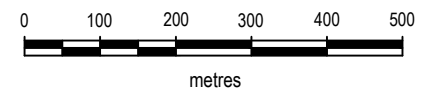
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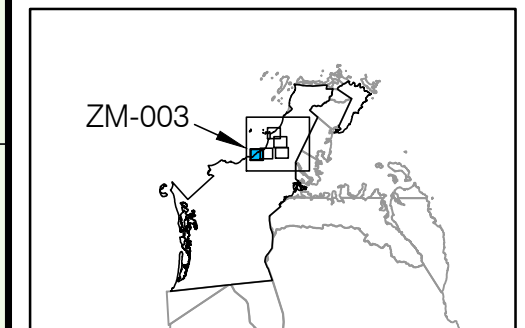
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ZM-003