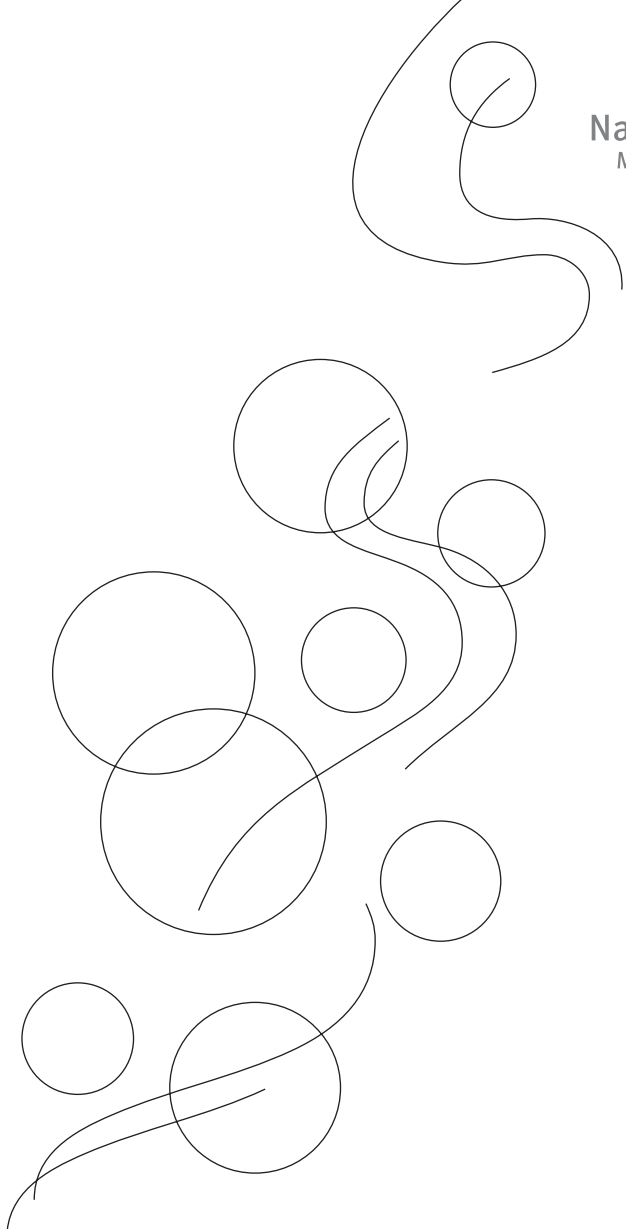




# Hinchinbrook wild river

## declaration 2007



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## Part 1 – Preliminary

### 1 *Short title*

This wild river declaration for the Hinchinbrook Wild River Area may be cited as the *Hinchinbrook Wild River Declaration 2007*.

### 2 *Commencement*

This declaration commences on assent of the *Wild Rivers and Other Legislation Amendment Act 2007*.

### 3 *Definitions*

The dictionary in Schedule 4 defines particular words used in this declaration.

## Part 2 – Areas to which the declaration applies

### 4 *Wild river features*

- (1) The wild rivers for the wild river area are—
  - (a) Boyd’s Creek;
  - (b) North Zoe Creek; and
  - (c) Freshwater Creek.
- (2) The wild rivers mentioned in subsection (1) are as shown on the map in Schedule 1.
- (3) There are no major tributaries for the wild river area.
- (4) The special features of the wild river area are—
  - (a) the Hinchinbrook Channel Wetlands;
  - (b) Missionary Bay Wetlands; and
  - (c) Zoe Bay Wetlands.
- (5) The special features mentioned in subsection (4) are wetlands and floodplain complexes connected to the wild rivers and major tributaries during flood events.
- (6) The special features mentioned in subsection (4) are as shown on the map in Schedule 1.
- (7) Further detail on the special features mentioned in subsection (4) may be obtained from the department.

### 5 *Areas*

- (1) The wild river area contains the following areas -
  - (a) high preservation areas;
  - (b) the preservation area; and
  - (c) floodplain management areas.
- (2) The location of the boundaries of the wild river area and the areas mentioned in subsection (1) are:
  - (a) shown on the map in Schedule 2, which is indicative only; and

- (b) detailed by data in digital electronic form held by the department's Spatial Information Resource which may be inspected at the department's offices, including at -
  - i Townsville; Level 3 State Government Building, 187-209 Stanley Street;
  - ii Cairns; 3<sup>rd</sup> Floor William McCormack Place, 5B Sheridan Street;
  - iii Central Office Brisbane; Level 2 Mineral House, 41 George Street.
- (3) There is no subartesian management area, designated urban area or nominated waterway in the wild river area.

## **Part 3 – Taking of natural resources**

### **6 *Taking of natural resources***

Sections 7 to 11 describe the wild river requirements that must be considered in deciding whether to allow the taking of certain natural resource in the wild river area. These sections deal with the allocation of resources that can be taken, rather than the actual physical taking of the resource which is regulated by Part 4.

### **Division 1 *Taking of water***

#### **7 *Water to which this division applies***

This division applies to the following water in the wild river area—

- (a) water in a watercourse or lake, or water in a spring; and
- (b) overland flow water.

#### **8 *Limitation on taking overland flow water***

A person may not take overland flow water other than—

- (a) for stock or domestic purposes; or
- (b) under an authority under section 9.

#### **9 *Take of water by existing overland flow works authorised***

- (1) This section applies to the owner of land on which existing works for taking overland flow water, other than for stock or domestic purposes, are situated.
- (2) The owner may continue, or start and continue, to take overland flow water, using the works.

#### **10 *Total volume of water to be allocated***

- (1) The chief executive of the department that administers the Water Act 2000 must not make a decision, about the allocation or management of water in a watercourse or lake, or water in a spring in the wild river area that would increase the volume of water that may be taken in the wild river area.

## ***Division 2 Taking of other natural resources***

### ***11 Quarry material allocations***

As part of the criteria listed in section 282 of the *Water Act 2000* (for deciding application for allocation of quarry material), a reasonable distance for subsection (3)(b) is taken to be 3km.

## **Part 4 – Regulating activities**

### ***12 Carrying out of activities***

Sections 13 to 24 describe the wild river requirements that must be considered in deciding whether to allow the carrying out of an activity in the wild river area.

## ***Division 1 Carrying out water works***

### ***13 Taking of overland flow water***

- (1) This section applies in the high preservation area and the floodplain management area.
- (2) The following parts of the *Wild Rivers Code* are an applicable code for the self-assessable and assessable development mentioned in subsections (3) and (4)—
  - (a) Part 6A for operational works that is self-assessable development; and
  - (b) Part 6B for operational works that is assessable development.
- (3) Operational works that allows the taking of overland flow water for stock or domestic purposes and complies with the applicable code mentioned in subsection (2)(a) is self-assessable development for the *Integrated Planning Act 1997*, schedule 8, part 2, table 4, item 1(b).
- (4) Operational works that allows the taking of overland flow water, other than work mentioned in subsection (3) and complies with the applicable code mentioned in subsection (2) (b), is assessable development for the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 3(c)(i).
- (5) An application for the operational works mentioned in subsection (4) in the high preservation area may only be lodged for the following works that allows the taking of overland flow water for stock or domestic purposes.
- (6) Subsection (4) does not apply to—
  - (a) existing overland flow works; or
  - (b) the repair or maintenance of either of the following works if the repair or maintenance does not alter the design of the works—
    - (i) existing overland flow works; or
    - (ii) works constructed under a development permit.

**14 Interfering with overland flow water**

- (1) This section applies in the floodplain management area.
- (2) The following parts of the *Wild Rivers Code* are an applicable code for the self-assessable and assessable development mentioned in subsections (3) and (4)—
  - (a) Part 7A for operational works that is self-assessable development; and
  - (b) Part 7B for operational works that is assessable development.
- (3) The following operational works that allows the interfering with overland flow water and complies with the applicable code mentioned in subsection (2)(a) are self-assessable development for the *Integrated Planning Act 1997*, schedule 8, part 2, table 4, item 1(c)—
  - (a) a borrow pit that is equal to, or less than, 500 mm deep;
  - (b) a levee or other solid earth work for a commercial or industrial development or a non-domestic agricultural building that is not any of the following—
    - (i) specified works; or
    - (ii) an off-stream storage for storing water taken from a watercourse, lake, spring or aquifer.
- (4) Operational works that allows the interfering with overland flow water, other than the work mentioned in subsection (3), is assessable development for the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 3(d).
- (5) An application for the operational works mentioned in subsection (4) may only be lodged for the following—
  - (a) specified work;
  - (b) an off-stream storage for storing water taken from a watercourse, lake, spring or aquifer;
  - (c) a levee or other solid earth work for a commercial or industrial development or a non-domestic agricultural building that does not comply with the requirements of the code mentioned in subsection (2)(a).
- (6) Subsections (3) and (4) do not apply to—
  - (a) existing overland flow works;
  - (b) the repair or maintenance of either of the following works if the repair or maintenance does not alter the design of the works—
    - (i) existing overland flow works; or
    - (ii) works constructed under a development permit.
  - (c) a stock yard or fence;
  - (d) an open drain or trench that is on average at a depth of less than 300 mm below ground;
  - (e) work for residential development, that is not any of the following:
    - (i) specified work; or
    - (ii) an off-stream storage for storing water taken from a watercourse, lake, spring or aquifer.

## **Division 2 In-stream works and activities**

### **15 Destroy vegetation, excavate or place fill in a watercourse, lake or spring**

In deciding whether to grant or refuse an application under section 269 of the *Water Act 2000*, the chief executive must consider Part 9 of the *Wild Rivers Code 2007* as criteria under section 268 of the *Water Act 2000*.

### **16 Waterway barriers**

Part 8 of the *Wild Rivers Code* is an applicable code for an application for operational works that is the constructing or raising of a waterway barrier and is assessable development under the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 6.

### **17 Works in a declared fish habitat area**

- (1) Part 4 of the *Wild Rivers Code* is an applicable code for an application for the following works in a declared fish habitat area—
  - (a) building work that is assessable development under the *Integrated Planning Act 1997*, schedule 8, part 1, table 1, item 2; and
  - (b) operational works that is assessable development under the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 7.
- (2) There is no applicable code, for wild river matters, for applications for the following works in a declared fish habitat area—
  - (a) building work that is self-assessable development under the *Integrated Planning Act 1997*, schedule 8, part 2, table 1, item 3; and
  - (b) operational works that is self-assessable development under the *Integrated Planning Act 1997*, schedule 8, part 2, table 4, item 3.

### **18 Riverine quarry material extraction**

Part 10 of the *Wild Rivers Code* is an applicable code for an application for all aspects of removing quarry material from a watercourse or lake that is assessable development under the *Integrated Planning Act 1997*, schedule 8, part 1, table 5, item 1.

## **Division 3 Activities in tidal areas**

### **19 Remove, damage, or destroy marine plants**

- (1) Part 4 of the *Wild Rivers Code* is an applicable code for an application for operational works for the removal, destruction or damage of marine plants that is assessable development under the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 8.
- (2) There is no applicable code, for wild river matters, for applications for operational works for the removal, destruction or damage of marine plants that is self-assessable development under the *Integrated Planning Act 1997*, schedule 8, part 2, table 4, item 4.

**20 Works in a Coastal Management District**

Part 4 of the *Wild Rivers Code* is an applicable code for an application for operational works that is tidal work or work within a coastal management district and is assessable development under the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, item 5.

**Division 4 Other activities**

**21 Commercial fishing**

In deciding whether to refuse or issue an authority under subsection 55(2) of the *Fisheries Act 1994* the chief executive of the department that administers the *Fisheries Act 1994* must consider the impacts the operation may have on the natural values.

**22 Native vegetation clearing**

- (1) Part 12 of the *Wild Rivers Code* is an applicable code for an application for operational works for clearing native vegetation that is assessable development under the *Integrated Planning Act 1997*, schedule 8, part 1, table 4, items 1A to 1G.
- (2) For the code mentioned in subsection (1) the applicable setbacks and slopes are listed in Schedule 3.

**23 Environmentally relevant activities**

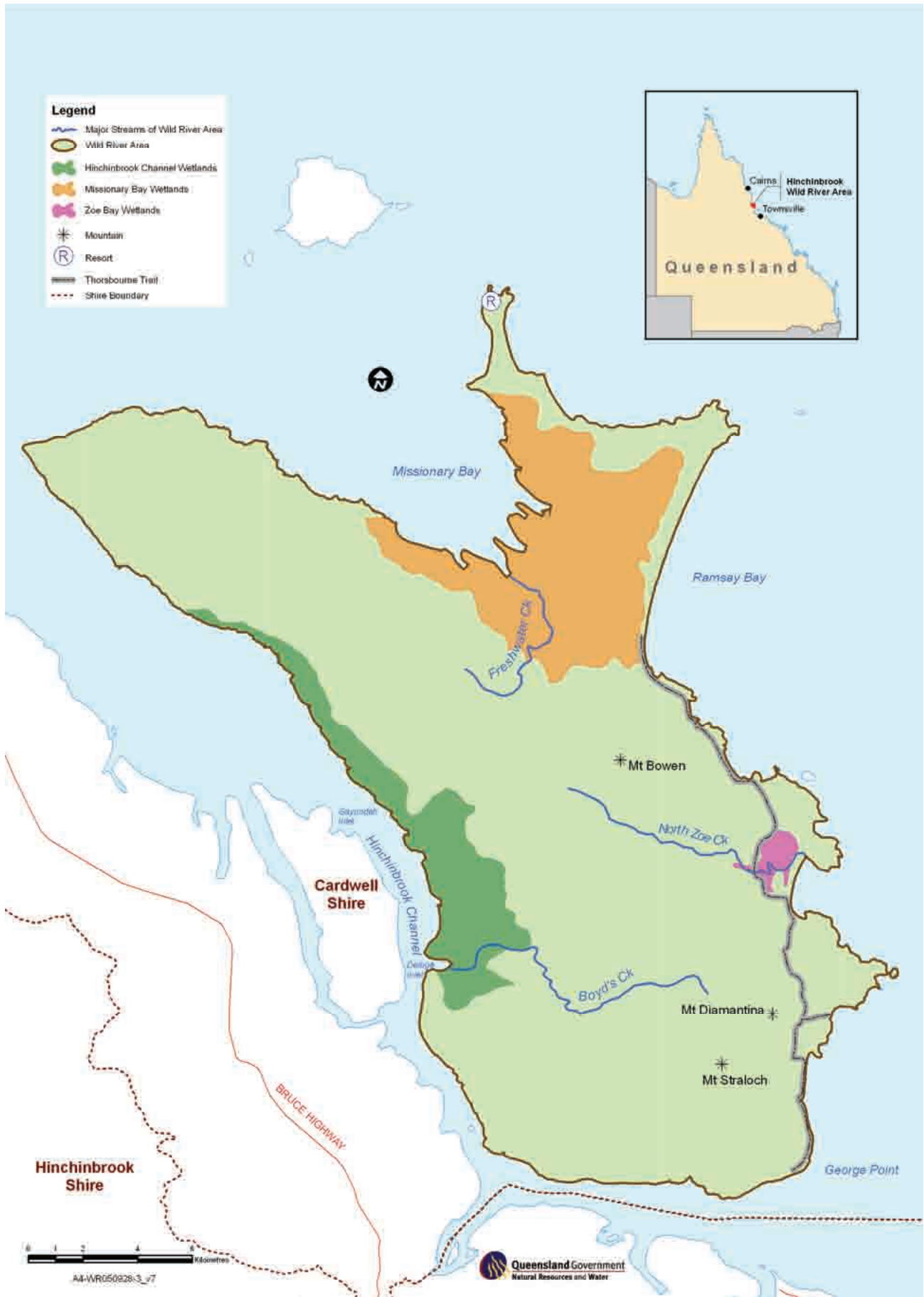
- (1) Assessable development, under the *Integrated Planning Act 1997*, in a wild river area is—
  - (a) material change of use of premises for an environmentally relevant activity (schedule 8, part 1, table 2, item 1); and
  - (b) various aspects of development for an environmentally relevant activity where a code of environmental compliance has been made under the *Environmental Protection Regulation 1998* (schedule 8, part 1, table 5, item 4).
- (2) For an application for the assessable development mentioned in subsection (1), an applicable code is—
  - (a) Part 10 of the *Wild Rivers Code* for environmentally relevant activities 19 and 20 for the purpose of riverine quarry material extraction; and
  - (b) Part 3 of the *Wild Rivers Code* for environmentally relevant activities other than those mentioned in subsection (2) (a).
- (3) For the code mentioned in subsection (2) the applicable setbacks and land slopes are listed in Schedule 3.

**24 Residential, commercial or industrial development**

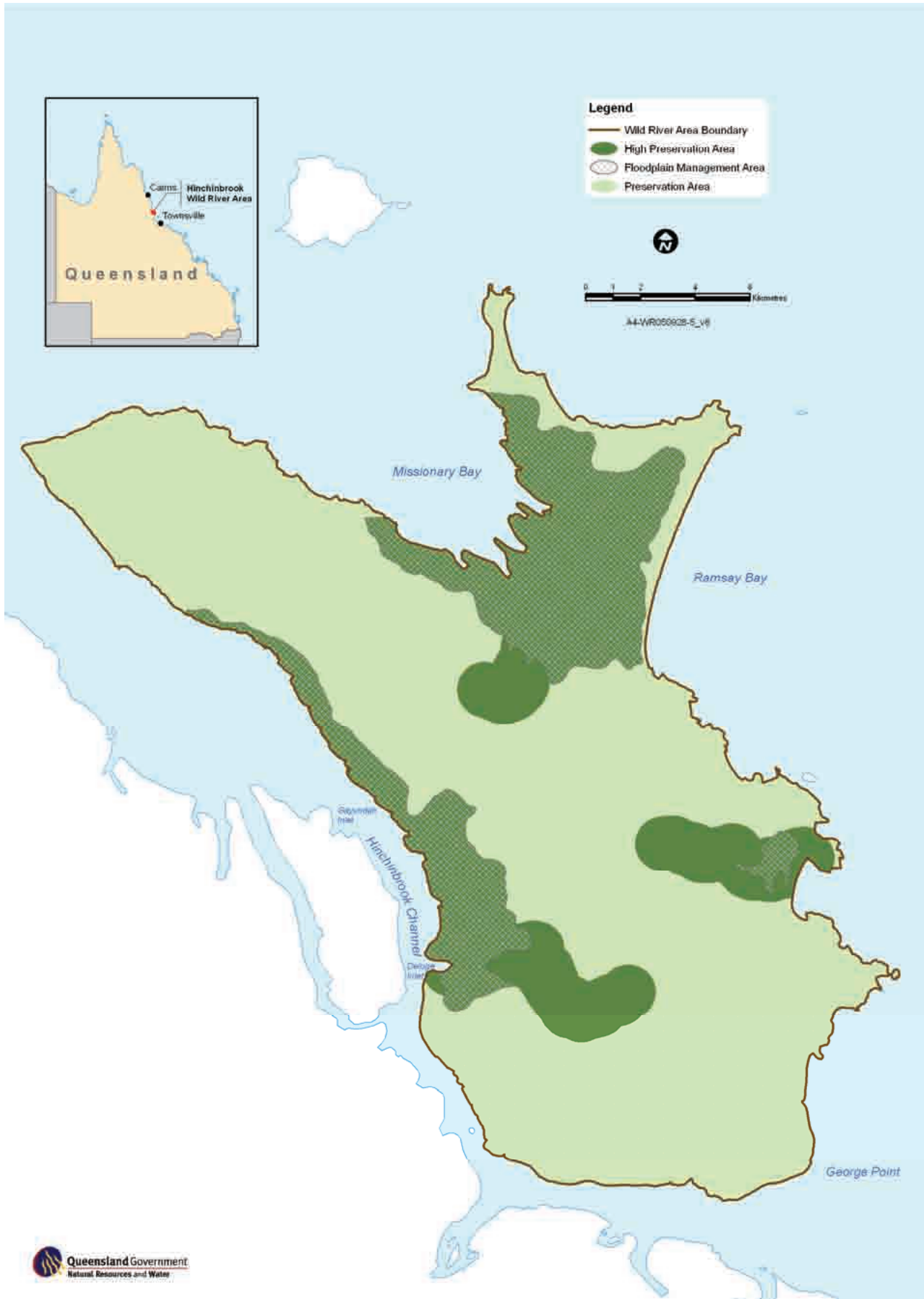
- (1) Part 5 of the *Wild Rivers Code* is an applicable code for an application for a residential, commercial or industrial development that is—

- (a) operational works for the reconfiguring of a lot where it is assessable development under the *Integrated Planning Act 1997*, schedule 8, part 1, table 4; item 2; and
  - (b) a material change of use of premises where it is assessable under a local government planning scheme.
- (2) For the code mentioned in subsection (1) the applicable setbacks and land slopes are listed in Schedule 3.
- (3) There is no applicable code for wild rivers matters for reconfiguring a lot where it is assessable development under the *Integrated Planning Act 1997*, schedule 8, part 1, table 3; item 1.

## Schedule 1 – Wild river features



## Schedule 2 – Areas



## Schedule 3 – Setbacks and slopes

### *Part 1 Wild River Code requirements for development activities other than vegetation clearing*

#### **1**     ***Setbacks***

The minimum setback distance for probable solutions, for the *Wild Rivers Code*, other than for Part 12, is 200 metres.

#### **2**     ***Slopes and soil stability***

The maximum slope value for probable solutions, for the *Wild Rivers Code*, other than for part 12, is outlined in table 1.

Table 1

| <b>Soil stability class*</b> | <b>Soil characteristics</b>   | <b>Slope of Land</b> |
|------------------------------|---|----------------------|
| Very Stable                  | Soils that are Ferrosols (Krasnozems, Euchrozems and Xanthozems).   | N/A                  |
| Stable                       | Soils other than very stable soils, unstable soils or very unstable soils.  | 10%                  |
| Unstable                     | Soils that are Chromosols, Hydrosols, Kurosols, and Sodosols that do not have a hard-setting, fine sandy loam to silty clay loam surface (Soloths, Solodic soils and Solonchaks);<br>OR<br>Soils with a clear or abrupt textural B horizon and<br>a) an A horizon at least 30 centimetres thick; or<br>b) a B horizon that is not dispersible and the soil does not exhibit hard-setting characteristics. | 3%                   |
| Very Unstable                | Soils that are Sodosols with hard-setting, fine sandy loam to silty clay loam surfaces (Solodic soils, Solodized solonetz and Solonetz);<br>OR<br>Soils with an A horizon less than 30 centimetres thick and<br>a) the B horizon is dispersible; or<br>b) the soil exhibits hard-setting characteristics.   | 1%                   |

\* Where a soil meets the characteristics of two soil stability classes then the less stable class must be used.

**Part 2 Wild River Code requirements for vegetation clearing activities**

**3 Acceptable Solutions for Part 12 of the Wild Rivers Code**

- (1) The minimum setback distance for acceptable solutions for Part 12, section W of the *Wild Rivers Code* are—
  - (a) stream order 5 or greater – 50 metres;
  - (b) stream order 3 or 4 – 25 metres; and
  - (c) stream order 1 or 2 – 10 metres.
- (2) The minimum setback distance for acceptable solutions for Part 12, other than section W, of the *Wild Rivers Code* is 200 metres.
- (3) The maximum slope value for acceptable solutions for Part 12 of the *Wild Rivers Code* are—
  - (a) for section P—
    - (i) stable soils is 30%;
    - (ii) unstable soils is 10%; and
    - (iii) very unstable soils is 1%.
  - (b) for section R—
    - (i) stable soils is 32%;
    - (ii) unstable soils is 10%; and
    - (iii) very unstable soils is 1%.
  - (c) for section W—
    - (i) stable soils is 32%;
    - (ii) unstable soils is 10%; and
    - (iii) very unstable soils is 1%.
  - (d) There are no maximum slope values for section E.

## Schedule 4 – Dictionary

**contaminated agricultural runoff water** – means overland flow water that contains, or is likely to contain, excess nutrients or farm chemicals at levels potentially harmful to the quality of water in a watercourse.

**department**, is the department that administers the *Wild Rivers Act 2005*, unless otherwise stated in this declaration.

**domestic purposes**, as defined under the *Water Act 2000*.

**existing overland flow works** means—

- (a) for works that allow the taking of, or interfering with overland flow water that—
  - (i) were in existence on the date this declaration has commenced; or
  - (ii) were lawfully **started** by the date this declaration has commenced.
- (b) for works interfering with overland flow water, works that—
  - (i) were in existence on the date this declaration has commenced has effect: or
  - (ii) were lawfully started by the date this declaration commenced

**lake**, as defined under the *Water Act 2000*.

**natural values** mean the following—

- (a) hydrological processes include the natural flow of water, including subartesian water, in a catchment and its river system to the sea, wetlands or adjacent floodplains. These processes include hydrological connectivity between the river system, aquifers and adjacent floodplains;
- (b) geomorphic processes are the natural erosion, transport and deposition of sediments by water along a river system to its estuary or terminal wetland. Natural geomorphic processes contribute to the physical integrity of a river system, including bed and bank stability and channel alignment;
- (c) riparian function includes the provision of physical integrity, aquatic habitat, pollution control, food sources for water and land-based fauna and links between in-stream and land-based ecosystems. Most riparian function is provided by vegetation, which includes trees, shrubs, grasses, and sedges;
- (d) wildlife corridor function includes sufficient areas of natural habitat within and along the river system to allow native fauna to safely migrate within their natural ranges. These habitat areas may be deep pools connected by low water flows or riparian vegetation; and
- (e) water quality is the physical, chemical and biological attributes of water that affect its ability to support certain values and uses.

**operational works that allows the interfering with overland flow water** includes works for a purpose other than taking overland flow water that—

- (a) incidentally result in a minor increase in the infiltration of water; or
- (b) where there is no benefit to a landholder in terms of additional water taken (for example, where a road or a flood-mitigation levee alters flow paths or small volumes of water captured by contour banks constructed for soil conservation purposes).

It also does not include works used solely to take water from a storage to pump or divert the water on to land for irrigation purposes.

**operational works that allows the taking of overland flow water** includes—

- (a) storages, sumps, drains, embankments, channels and pumps for taking, or that can be used for taking, overland flow water; and
- (b) storages that are connected to the works mentioned in paragraph (a); and
- (c) works that make, or that can be used to make, the original connection between the storages mentioned in paragraph (b) and the works mentioned in paragraph (a).

**overland flow water**, as defined under the *Water Act 2000*.

**owner of land**, as defined under the *Water Act 2000*.

**spring**, as defined under the *Water Act 2000*.

**started**, for existing overland flow works, means—

- (a) construction of the works had physically begun or, if construction had not physically begun, a contract had been entered into to begin construction; and
- (b) an independently verifiable construction program existed for progressive construction towards completion of the works; and
- (c) detailed design plans existed showing, among other things, the extent of the works; and
- (d) if a permit under the *Local Government Act 1993*, section 940 was required for the works—the permit had been issued; and
- (e) if a development permit was required for the works—the permit had been given.

**stock purposes**, as defined under the *Water Act 2000*.

**stream order**, as defined in the *Regional Vegetation Management Codes* approved under the *Vegetation Management Act 1999*.

**watercourse**, as defined under the *Water Act 2000*.

**water in a watercourse or lake**, as defined under the *Water Act 2000*.

