

Health and Environment Committee Report No. 12, 57th Parliament

Subordinate legislation tabled between 12 May 2021 and 15 June 2021

1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 12 May 2021 and 15 June 2021. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).¹

The report outlines the committee's consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificate tabled with the subordinate legislation.²

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
42	Environmental Protection (Commercial Cropping and Horticulture Activities in Great Barrier Reef Catchment) Amendment Regulation 2021	25 May 2021	13 October 2021
58	Forestry and Other Legislation Amendment Regulation 2021	15 June 2021	27 October 2021

^{*}Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

3 Environmental Protection (Commercial Cropping and Horticulture Activities in Great Barrier Reef Catchment) Amendment Regulation 2021

The stated primary objective of the Environmental Protection (Commercial Cropping and Horticulture Activities in Great Barrier Reef Catchment) Amendment Regulation 2021 (SL No. 42) is to support Reef protection regulations by:

- prescribing an environmentally relevant activity (ERA) standard for commercial cropping and horticulture in the Great Barrier Reef catchment (ERA 13A)
- clarifying the policy intent for certain provisions as a result of consultation on the ERA standard, including simplifying where ERA 13A does not apply.³

The Reef protection regulations include:

• the Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019, and

¹ Legislative Standards Act 1992, Part 4.

² Human Rights Act 2019, s 41.

³ Explanatory notes, p 1.

 the Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Regulation 2019.⁴

The regulation also returns current responsibilities of Banana Shire Council for the administration and enforcement of particular prescribed ERAs under section 133 of the Environmental Protection Regulation 2019 to the State Government.

3.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

3.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

3.3 Human rights considerations

The subordinate legislation is compatible with human rights.

3.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. The certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

4 Forestry and Other Legislation Amendment Regulation 2021

The objectives of the Forestry and Other Legislation Amendment Regulation 2021 (SL No. 58) (Amendment Regulation) are to:

- declare two areas of State forest as State plantation forest
- increase the area of three State forests
- revoke part of two State forests and two State plantation forests
- redescribe one State forest
- redescribe three national parks after the completion of up to date plans
- increase the area of one national park
- increase the area of one conservation park
- · declare three new nature refuges and expand one existing nature refuge, and
- revoke part of and redescribe one nature refuge.⁵

The committee sought more information from the Department of Environment and Science (department) in regard to the Amendment Regulation. The department advised the aim of the Amendment Regulation was to:

- increase the protected area estate to achieve conservation outcomes as guided by the strategic priorities of 'Grow', 'Care' and 'Connect' in Queensland's Protected Area Strategy 2020 2030;
- recognise the contributions of our First Nations partners in the management of protected areas;
- allow for commercial interests, including resource interests and tourism activities; and
- allow for the revocation of parts of the QPWS-managed estate to allow for essential land uses that are
 inconsistent with the protected area and forestry tenure, such as road infrastructure.⁶

⁴ Explanatory notes, p 1

Explanatory notes, p 1.

Department of Environment and Science, correspondence, 8 September 2021, p 1.

The department further advised, in accordance with sections 25, 32, 32A and 97 of the *Forestry Act* 1959 and sections 29, 46, 48, 50 and 175 of the *Nature Conservation Act* 1992, the Amendment Regulation resulted in:

- a net increase of about 2.471 hectares of State plantation forests;
- a net decrease of about 134.1851 hectares of State forests;
- a net increase of about 4,399.6625 hectares of national parks;
- an increase of about 81.6 hectares of conservation parks;
- a net increase of about 144.2021 hectares of nature refuges; and
- other machinery changes to the forestry and protected area estates.⁷

The department provided additional information on size, action to be taken and the location of the national parks and state forests relevant to the Amendment Regulation (at **Appendix A**). It also provided maps of the areas impacted by the amendment regulation (at **Appendix B**).

The department also advised that the description of land areas managed under the Nature Conservation Act 1992 (NC Act) and Forestry Act 1959 (Forestry Act) are listed under subordinate legislation for their respective Acts:

- the description of protected areas under the NC Act are listed in the Nature Conservation (Protected Areas) Regulation 1994 and should accurately reflect the legal lot-on-plan description and area figure for the land area under the Land Act 1994 (Land Act);
- the description of State Forests set apart and declared under the Forestry Act are listed under the Forestry (State Forests) Regulation 1987 and should accurately reflect the lot-on-plan description for the land area under the Land Act; and
- the description of State plantation forests set apart and declared under the Forestry Act are listed under the Forestry Regulation 2015 and should accurately reflect the Plantation License Plan that is developed to define the boundaries of these designated areas.⁸

Additionally, the department provided examples of circumstances necessitating the redescription of the protected area or forestry estates including:

- correcting administrative errors to meet description requirements under the Land Act; and
- periodic updates to the plans that define protected area or State forest boundaries using contemporary spatial and mapping technology. Reasons for these updates include boundary consolidation following tenure actions, reflecting tidal boundary changes and updating plan information to improve clarity, accuracy and transparency.⁹

Regarding the consultation process undertaken, the department advised:

... both statutory and non-statutory consultation occurred with stakeholders that currently have, or are likely to have, an interest in the proposal areas. All government departments that were consulted supported the Amendment Regulation, and consent was received from consulted parties where relevant. ¹⁰

4.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

4.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

Department of Environment and Science, correspondence, 8 September 2021, p 1.

⁸ Department of Environment and Science, correspondence, 20 September 2021, p 3.

⁹ Department of Environment and Science, correspondence, 20 September 2021, p 3.

Department of Environment and Science, correspondence, 8 September 2021, p 3.

4.3 Consideration of human rights compatibility

Section 8 of the HRA provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with Section 13 of that Act.

Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

4.3.1 Freedom of movement

Under section 19 of the HRA, every person lawfully within Queensland has the right to move freely within Queensland and to enter and to leave it.

The regulation prescribes the addition of land to several State forests, national parks and conservation parks. These tenures of land may limit a person's freedom of movement by restricting the use of vehicles and other modes of transport on the land, or by requiring people to only use designated tracks or walkways.

The Minister sets out the limitation on the human right to freedom of movement:

... the action of adding land to State plantation forest, State forest, national park, conservation park and nature refuges will limit the right to freedom of movement as it facilitates the management of this land in [a] way that restricts free movement on the land in certain circumstances. ¹¹

In relation to the purpose of the limitation, the Minister states:

The purpose[s] of the limitations are to protect the natural and cultural values and resources of the land being added to the protected area estate by reducing the damage that can occur to these lands as a result of access by members of the public.¹²

The Minister concludes:

The limitation on the right to the freedom of movement only restricts movement in limited circumstances which can be easily resolved by the relevant person complying with simple requirements, such as using an existing track, alternative path, or less damaging mode of movement (e.g. walking rather than driving) to traverse land and only applies to the land that is being added to the public forestry and protected area estate. As the limitation has a very limited scope, and persons subject to it have the ability to move freely throughout Queensland by complying with simple requirements, the limitation provides for an appropriate balance between the purpose of the limitation and the impact on an affected person and is therefore justified.¹³

The committee is satisfied that the limits on a person's right to freedom of movement are reasonable and demonstrably justified.

4.3.2 Cultural rights – Aboriginal and Torres Strait Islander peoples

Section 28 of the HRA recognises the distinct cultural rights of Aboriginal and Torres Strait Islander peoples.

The prescribing of additional land to several State forests, national parks and conservation parks may limit the rights of Aboriginal and Torres Strait Islander peoples through restrictions on the ways in which the land may be accessed and used.

The Minister explains the purpose of the limitation on Aboriginal and Torres Strait Islander peoples' cultural rights, and suggests that, in respect of the cultural right to conserve and protect the

¹¹ Human rights certificate, p 3.

Human rights certificate, p 3.

¹³ Human rights certificate, p 4.

environment and productive capacity of their land, territories, waters, coastal seas and other resources, the limitation protects and promotes the right:

The purpose of the limitation as it relates to the land being added to the protected area estate is to ensure public safety by restricting access only to areas of constructed tracks or roads and to preserve the natural and cultural values and resources of the land in perpetuity by reducing the damage that can occur to these lands as a result of access by members of the public. This limitation therefore promotes and protects the rights under section 28 of the HR Act, namely section 28(2)(e). ¹⁴

The Minister provides this justification:

Restrictions on the ways that the land may be used and accessed as a result of becoming forestry or protected area tenure may limit the ability for Aboriginal peoples and Torres Strait Islander peoples, that have a connection to the land under Aboriginal tradition or Island custom, to maintain and strengthen their distinctive spiritual, material and economic relationship with land in certain circumstances. However, these restrictions help ensure public safety and protect and promote the section 28 cultural rights, through the preservation of land in perpetuity, which helps ensure that Aboriginal peoples and Torres Strait Islander peoples can continue to maintain and strengthen their distinctive relationship with the land in the long-term.

Therefore, the limitations on this right are balanced by the need to ensure the safety of the public, including Aboriginal persons and Torres Strait Islander persons with a connection to the land, when accessing the protected area and forestry lands; and the positive impacts that the permanent reservation of forestry and protected area lands has on the achievement of the section 28(2)(b), (d) and (e) component of the human right.¹⁵

The committee is satisfied that any limitations on the cultural rights of Aboriginal and Torres Strait Islander peoples are reasonable and demonstrably justified.

4.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. The certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

Recommendation

The committee recommends that the Legislative Assembly notes this report.

Aaron Harper MP

Chair

September 2021

Health and Environment Committee

ChairMr Aaron Harper MP, Member for ThuringowaDeputy ChairMr Robert (Rob) Molhoek MP, Member for SouthportMembersMr Stephen (Steve) Andrew MP, Member for Mirani

Ms Ali King MP, Member for Pumicestone Ms Joan Pease MP, Member for Lytton Dr Mark Robinson MP, Member for Oodgeroo

Human rights certificate, p 5.

Human rights certificate, pp 6-7.

Appendix A

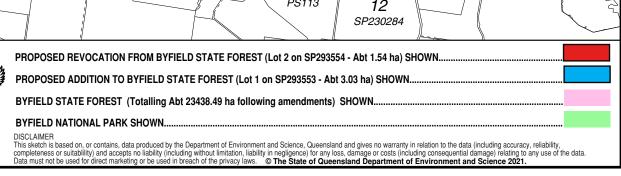
Name	Amendment Purpose	Location
State plantation forest (within Byfield State Forest) (about 15,190.41 hectares)	Action: revocation (partial). Reason: to revoke State plantation forest where part of the Plantation License Area was surrendered to allow for the revocation of part of Byfield State Forest for road purposes.	60 kilometres south of Rockhampton
State plantation forest (within Tuan State Forest) (about 50,022.25 hectares)	Action: revocation (partial). Reason: to revoke State plantation forest where part of the Plantation License Area was surrendered to allow for the revocation of part of Tuan State Forest for road purposes.	34 kilometres south- east of Maryborough
Cordalba State Forest (about 14,663.962 hectares)	Action: redescription. Reason: preparation of a new plan using contemporary mapping technology to consolidate boundaries following a revocation. Area change: overall decrease in area of about 137.5061 hectares (no change in footprint of the estate).	39 kilometres south- west of Bundaberg
Byfield State Forest (about 23,438.49 hectares)	Action: revocation (partial) and addition. Reason: to revoke part of the State forest for road purposes to improve road safety; and to declare a section of closed road as part of the State forest, to facilitate the Corbetts Landing Road upgrade, providing for ongoing management and road safety outcomes. Area change: revocation of about 1.54 hectares and addition of about 3.03 hectares (overall increase of about 1.49 hectares). Significance: The area was added into the Plantation License Area and will be maintained as access for forestry operations.	60 kilometres south of Rockhampton
Tuan State Forest (about 51,889.56 hectares)	Action: revocation (partial) and addition. Reason: to revoke part of the State forest for road purposes and declare a section of closed road as part of the State forest, to facilitate the Tinnanbar Road upgrade, providing for ongoing management and road safety outcomes. Area change: revocation of about 27.44 hectares and addition of about 28 hectares (overall increase of about 0.56 hectares). Significance: The area was added into the Plantation License Area and will be maintained as access for forestry operations.	34 kilometres southeast of Maryborough
Yarraman State Forest (about 6,961.203 hectares)	Action: addition. Reason: to declare an area of closed road as part of the State forest as part of a compensation deed for a previous revocation. Area change: increase of 1.271 hectares. Significance: the amalgamation of the closed road area with the surrounding tenure consolidated boundary management.	75 kilometres north of Toowoomba

Dalrymple National Park (about 1,755.0490 hectares)	Action: redescription. Reason and area change: correction of an erroneous area description for the national park (increase of about 0.0065 hectares); and preparation of a new plan to consolidate boundaries and update the plan using contemporary mapping technology (increase of about 70.7469 hectares).	34 kilometres north- west of Charters Towers
Kondalilla National Park (about 1,569.827 hectares)	Action: redescription. Reason: preparation of a new plan using contemporary mapping technology to consolidate boundaries following a revocation. Area change: overall decrease in area of about 21.0901 hectares, due to a recalculation (no	13 kilometres west of Nambour
Pinnacles National Park (about 5,707 hectares)	change in footprint of the estate). Action: addition. Reason: a departmental protected area acquisition to help consolidate the national park boundary and provide connectivity between	38 kilometres southwest of Townsville
	Pinnacles and Hervey Range habitat areas. Area change: an increase of about 4,370 hectares. Significance: habitat for the endangered star finch (eastern subspecies) and likely habitat for threatened fauna and flora including the Gulbaru	
Tewantin National Park (about 3,514.4351 hectares)	Reason: preparation of a new plan using contemporary mapping technology to consolidate boundaries following a revocation.	12 kilometres west of Tewantin
	Area change: overall decrease of about 19.9943 hectares, due to a recalculation (no change in footprint of the estate).	
Wongaloo Conservation Park (about 1,746.7634 hectares)	Action: addition. Reason: inclusion of suitable unallocated State land parcels into the protected area estate to consolidate park boundaries and management. Area change: increase of about 81.6 hectares. Significance: wetland and grassland habitat that	31 kilometres southeast of Townsville
Merala Nature Refuge (29.9850 hectares)	is part of one of the largest coastal wetlands on Australia's east coast. Action: new declaration.	20 kilometres south of the Gold Coast
(20.0000 1100ta103)	Area change: 29.9850 hectares Significance: habitat for threatened species including the koala, tusked frog, Richmond birdwing butterfly and black-breasted buttonquail.	
Misty Mountain Nature Refuge (about 90.36 hectares)	Action: addition. Area change: increase of about 26.36 hectares. Significance: habitat for endangered species including the southern cassowary, spotted-tail quoll and spectacled flying-fox and provision of	28 kilometres south of Atherton

	landscape connectivity between protected areas.	
Mount Elliott Nature Refuge (80.9371	Action: new declaration. Area change: 80.9371 hectares.	24 kilometres south- east of Ipswich
hectares)	Significance: habitat for threatened species including the koala, wallum sedge frog, powerful owl and Boonah tuckeroo.	
Rock of Ages Nature	Action: new declaration.	8 kilometres north-
Refuge (about 11.26	Area: about 11.26 hectares.	west of Nambour
hectares)	Significance: habitat for a number of threatened species including the koala, tusked frog and glossy black-cockatoo and has connectivity to Mapleton National Park.	
Ukikuna Nature Refuge	Action: revocation (partial) and redescription.	30 kilometres west of Kilcoy
(about 86.36 hectares)	Reason: a replacement Conservation Agreement and protected area plan was developed with landholders to remove an area from the nature refuge that no longer held conservation value despite landholder weed management efforts.	
	Area change: decrease of about 4.34 hectares	

Appendix B

$\textbf{Byfield SF}_ \ amendment \ sketch$ 10 Scale - 1:15000 Scale - 1:125000 Kilometres Metres RP898342 **BYFIELD** STATE **FOREST** 865 **BYFIELD STATE FOREST** FTY1975 865 FTY1975 Byfield National Park 130 NPW811 RP898342 CP839293 LN59 CorioBay 20 SP213930 2 PS113 12 SP230284 PROPOSED REVOCATION FROM BYFIELD STATE FOREST (Lot 2 on SP293554 - Abt 1.54 ha) SHOWN......... PROPOSED ADDITION TO BYFIELD STATE FOREST (Lot 1 on SP293553 - Abt 3.03 ha) SHOWN...



Queensland Government

Tuan SF_revocation and addition sketch 150 200 Scale - 1:40000 Kilometres **TUAN STATE FOREST** 915 **TUAN** FTY1775 **STATE FOREST** 915 FTY1775 Scale - 1:400000 Metres **TINNANBAR ROAD** 27 RP221248 PROPOSED REVOCATION FROM TUAN STATE FOREST (Lot 1 on SP314470 - Abt 27.44 Ha) SHOWN....... PROPOSED ADDITION TO TUAN STATE FOREST (Lot 2 on SP314471 - Abt 28 Ha) SHOWN.. TUAN STATE FOREST (Lot 915 on FTY1775 - Totalling Abt 51889.56 ha following amendments) SHOWN. OTHER STATE FORESTS SHOWN.. NATIONAL PARKS SHOWN



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Yarraman SF addition Sketch 125 10 SP305494 Scale - 1:10000 Scale - 1:125000 Kilometres Metres **YARRAMAN STATE FOREST** 11 SP305493 **Tarong** ARONG YARRAMAN ROAD State **Forest 1** SP138386 **289** FTY1859 South Nanango State Forest I **DIAGRAM YARRAMAN** 10 SP305494 **STATE FOREST** Tarong National TARONG YARRAMAN ROAD] 11 Park SP305493 SEE DIAGRAM 289 FTY1859 Pidna State Forest PROPOSED ADDITION TO YARRAMAN STATE FOREST (Lot 101 on SP305492 - 1.271 ha) SHOWN..... YARRAMAN STATE FOREST (Abt 6961.203 ha following addition) SHOWN......SHOWN.....



Government

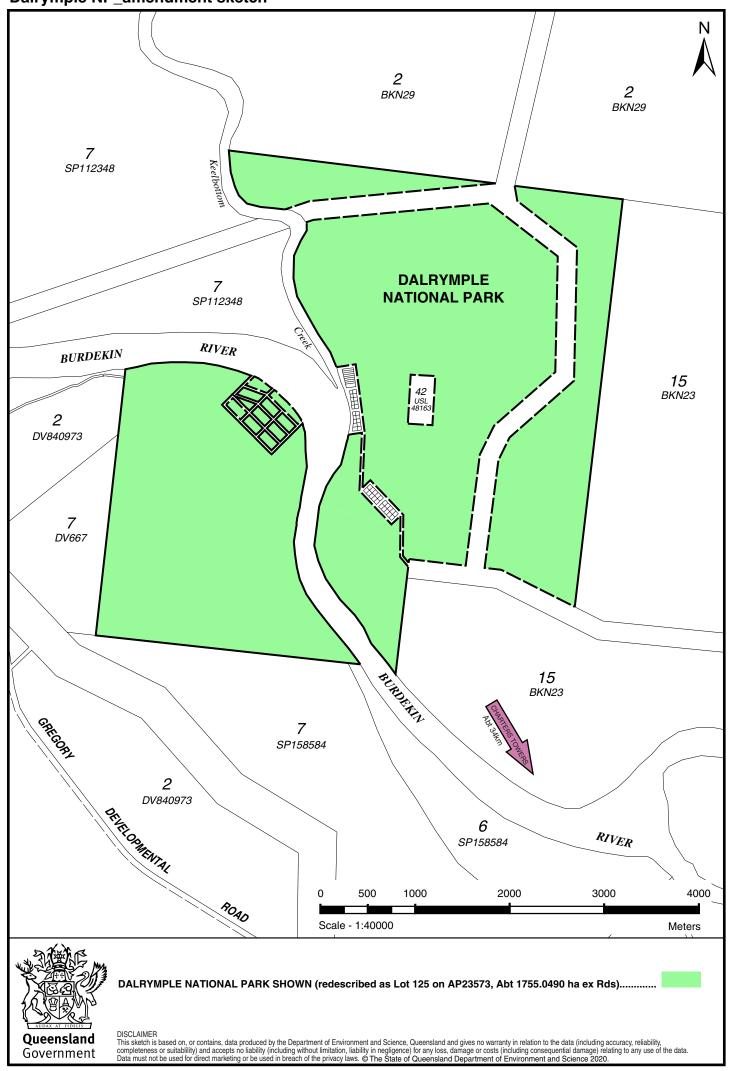
OTHER STATE FORESTS SHOWN..... NATIONAL PARKS SHOWN.....

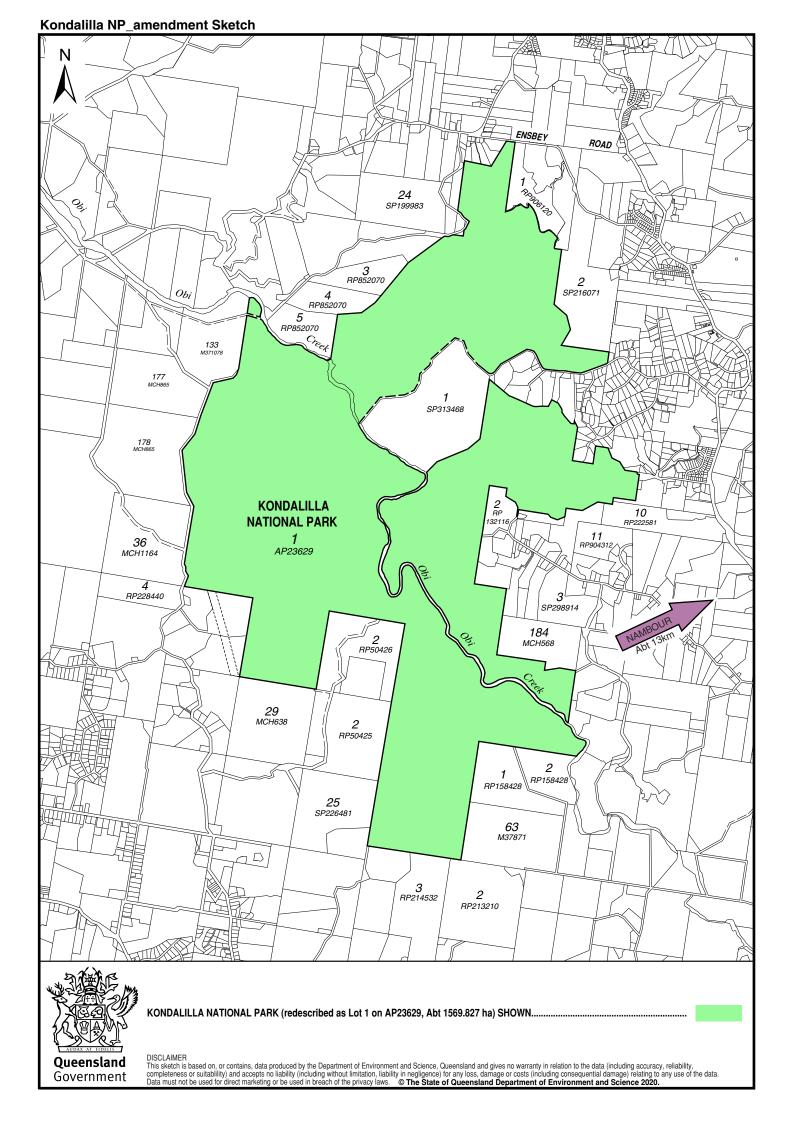
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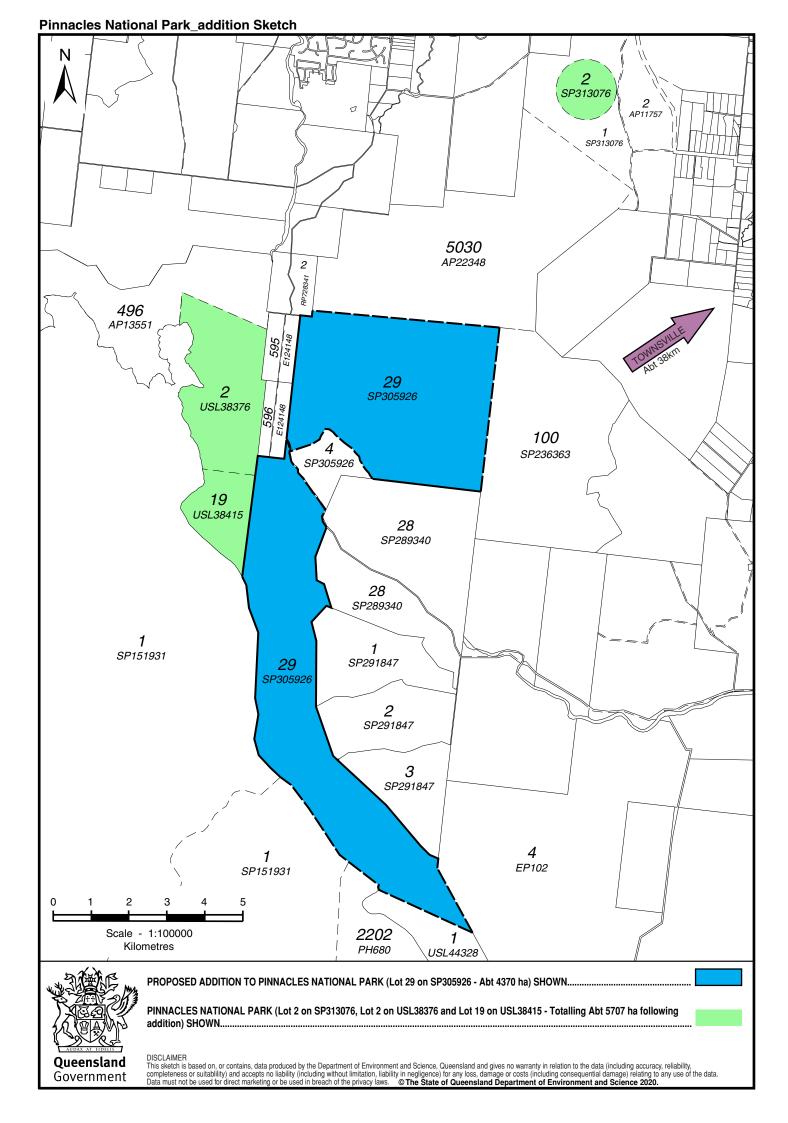
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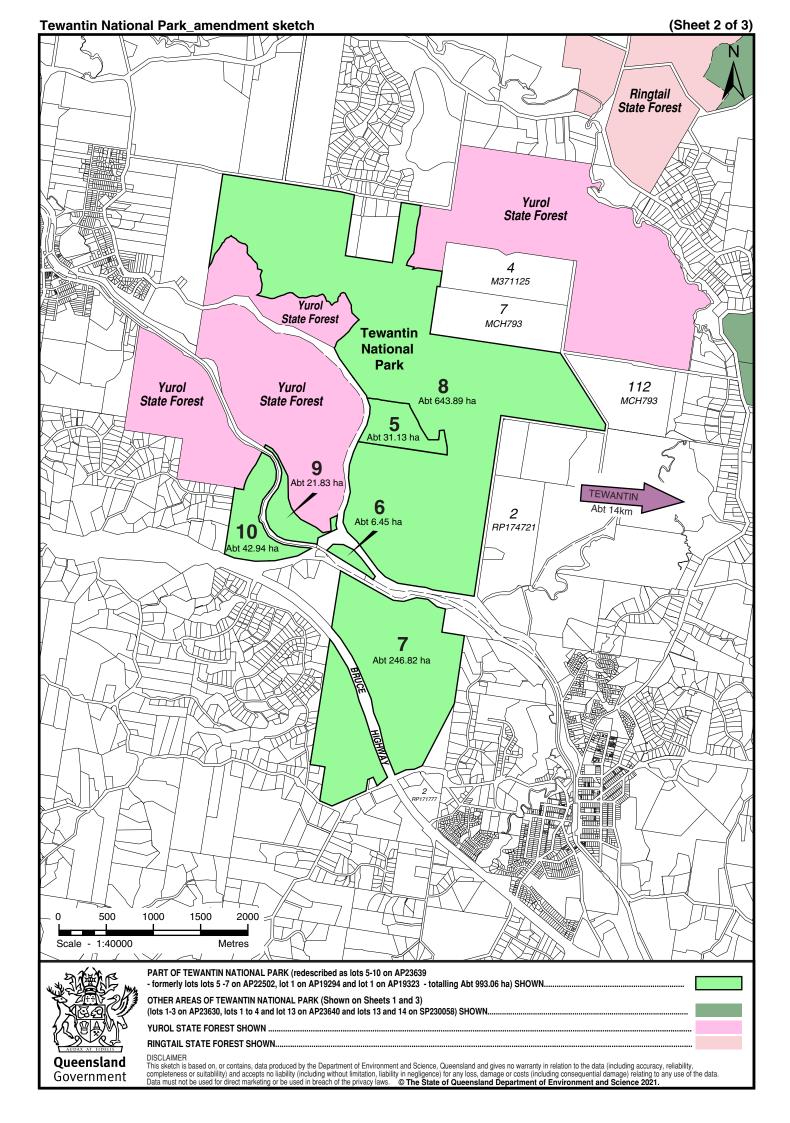
Dalrymple NP_amendment sketch

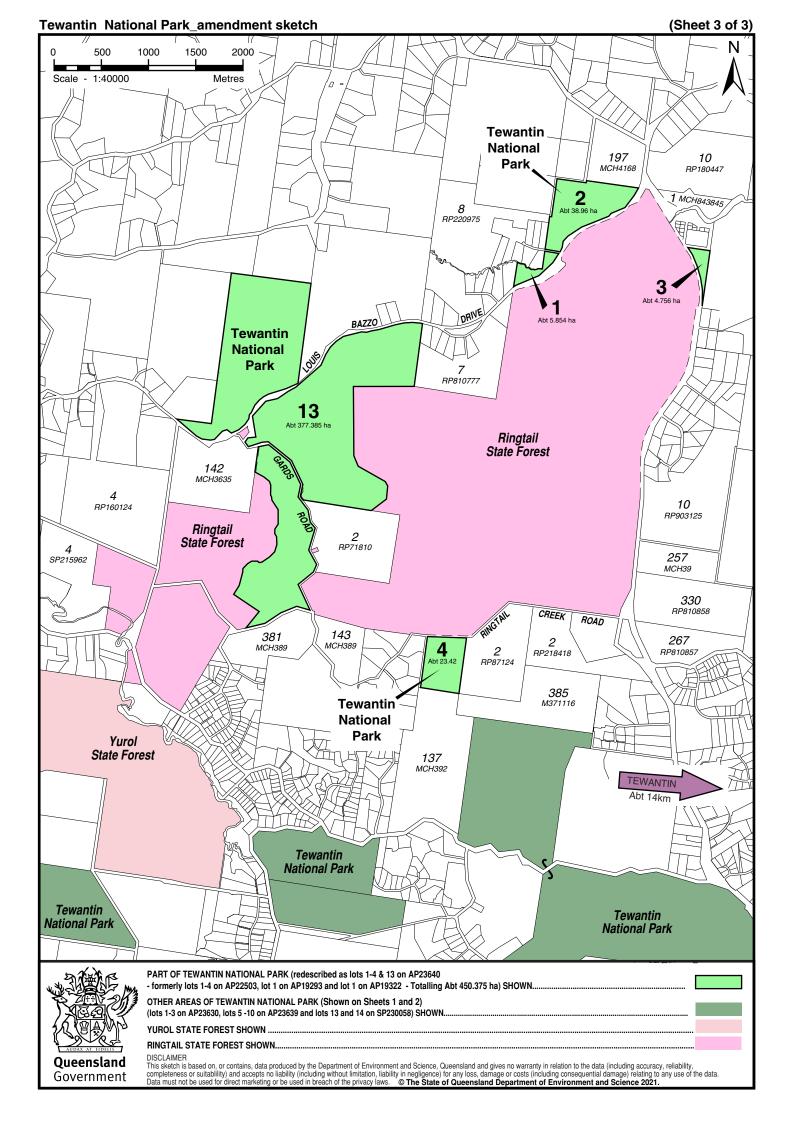






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Wongaloo CP_addition sketch **Bowling Green Bay Conservation Park Bowling Green Bay** National Park **2** SP252518 Abt 36 ha **Bowling Green Bay National Park WONGALOO** CONSERVATION **PARK Bowling Green Bay** Conservation Park USL44296 Abt 45.6 ha 1000 1500 2000 Scale - 1:40000 Metres ADDTION TO WONGALOO CONSERVATION PARK (lot 2 on SP252518 (Abt 36 ha) & lot 4 on plan USL44296 (Abt 45.6 ha) - Totalling Abt 81.6 ha) SHOWN..... WONGALOO CONSERVATION PARK (Totalling Abt 1746.7634 ha after addition) SHOWN..... BOWLING GREEN BAY NATIONAL PARK SHOWN..... **BOWLING GREEN BAY CONSERVATION PARK SHOWN....**

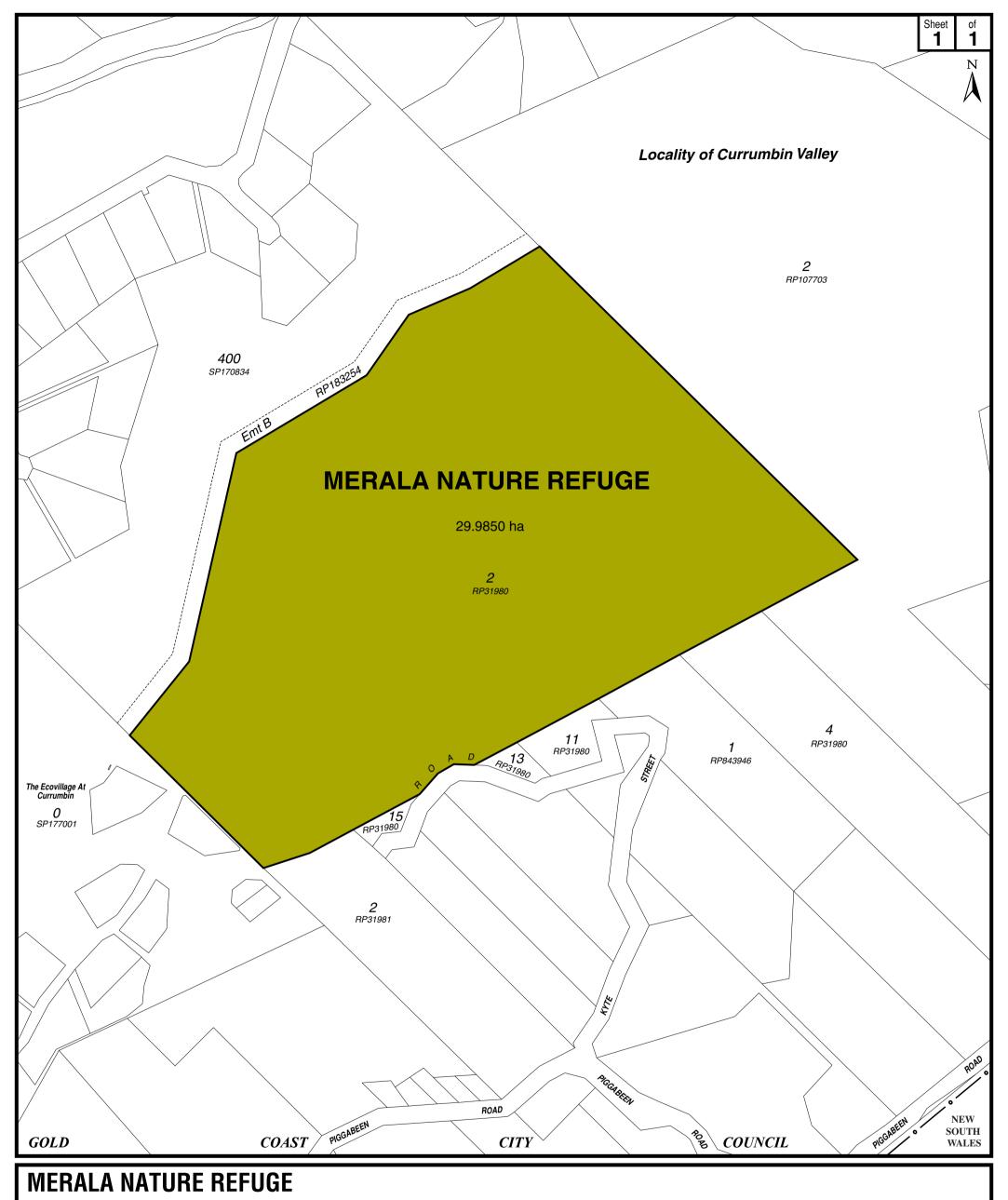


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LOCALITY: CURRUMBIN VALLEY QLD BIOREGION: SOUTH EAST QUEENSLAND

LOCAL GOVT. AREA: GOLD COAST CITY COUNCIL ELECTORATE: CURRUMBIN

Map reference 9541 - 12133 GDA 1994 Zone:56

NATURE REFUGE



0 100 200 300 400 500

Scale - 1:4000 Note: Original size A3 Metres

This Administration Plan is based upon an extraction from the Digital Cadastral Data Base. Date: 15/06/2020

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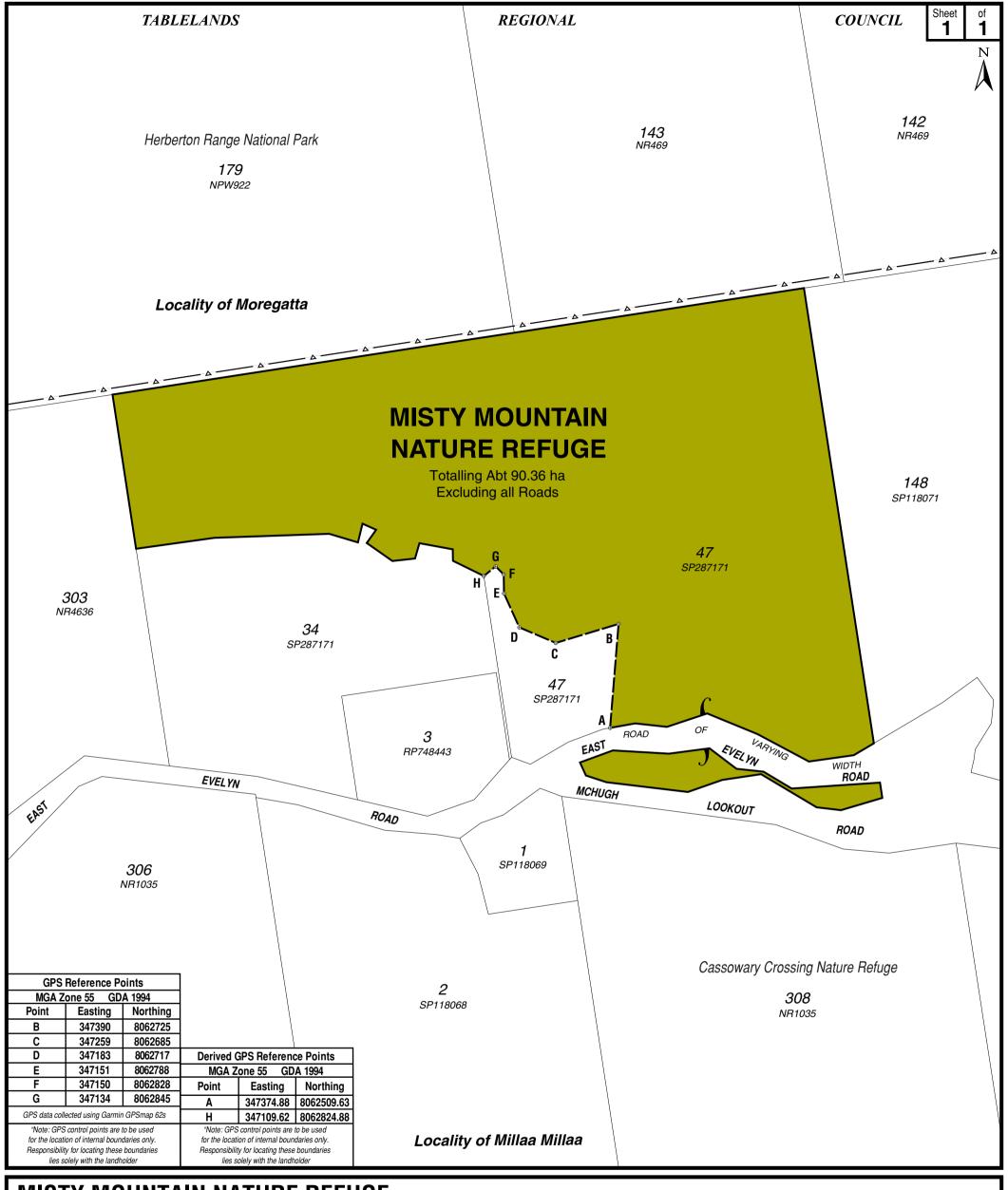
Produced by P. Hanslow, Tenure Services, **DES**

Date: 16/06/2020

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MISTY MOUNTAIN NATURE REFUGE

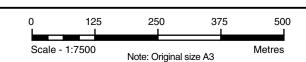
LOCALITY: MILLAA MILLAA QLD BIOREGION: WET TROPICS

LOCAL GOVT. AREA: TABLELANDS REGIONAL COUNCIL ELECTORATE: HILL

Map reference 8062 - 44411 GDA 1994 Zone:55

NATURE REFUGE





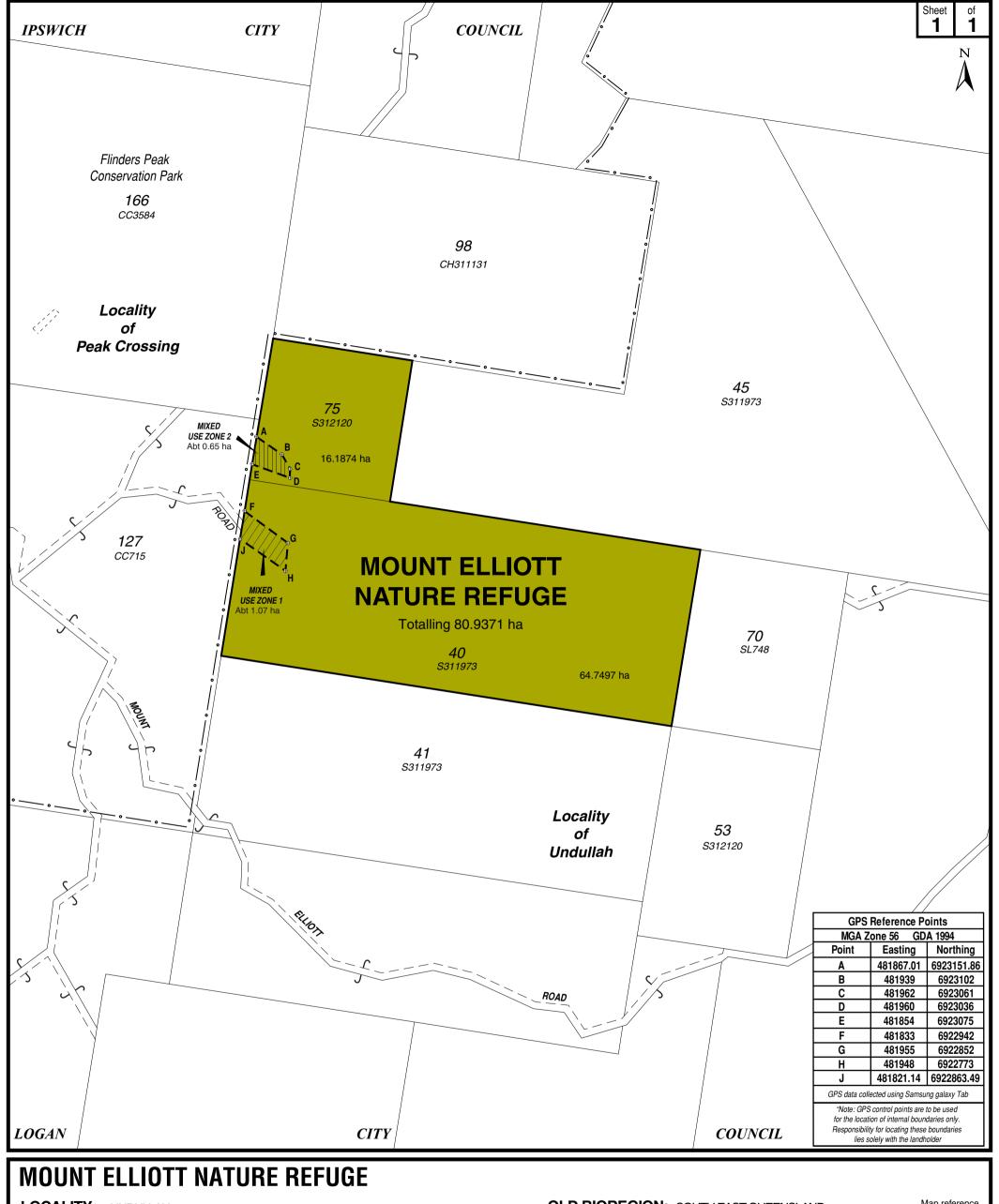
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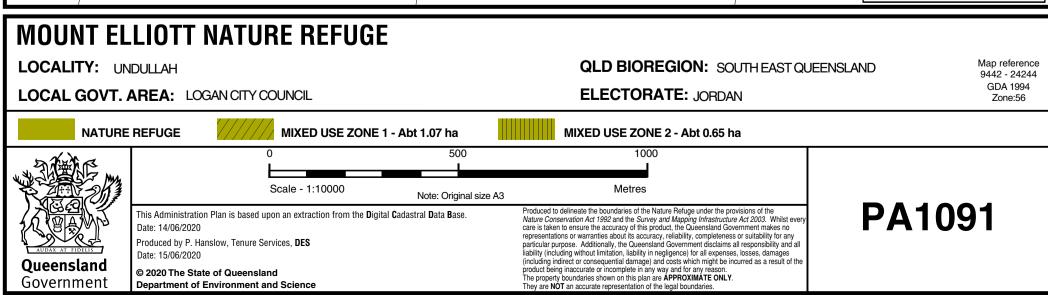
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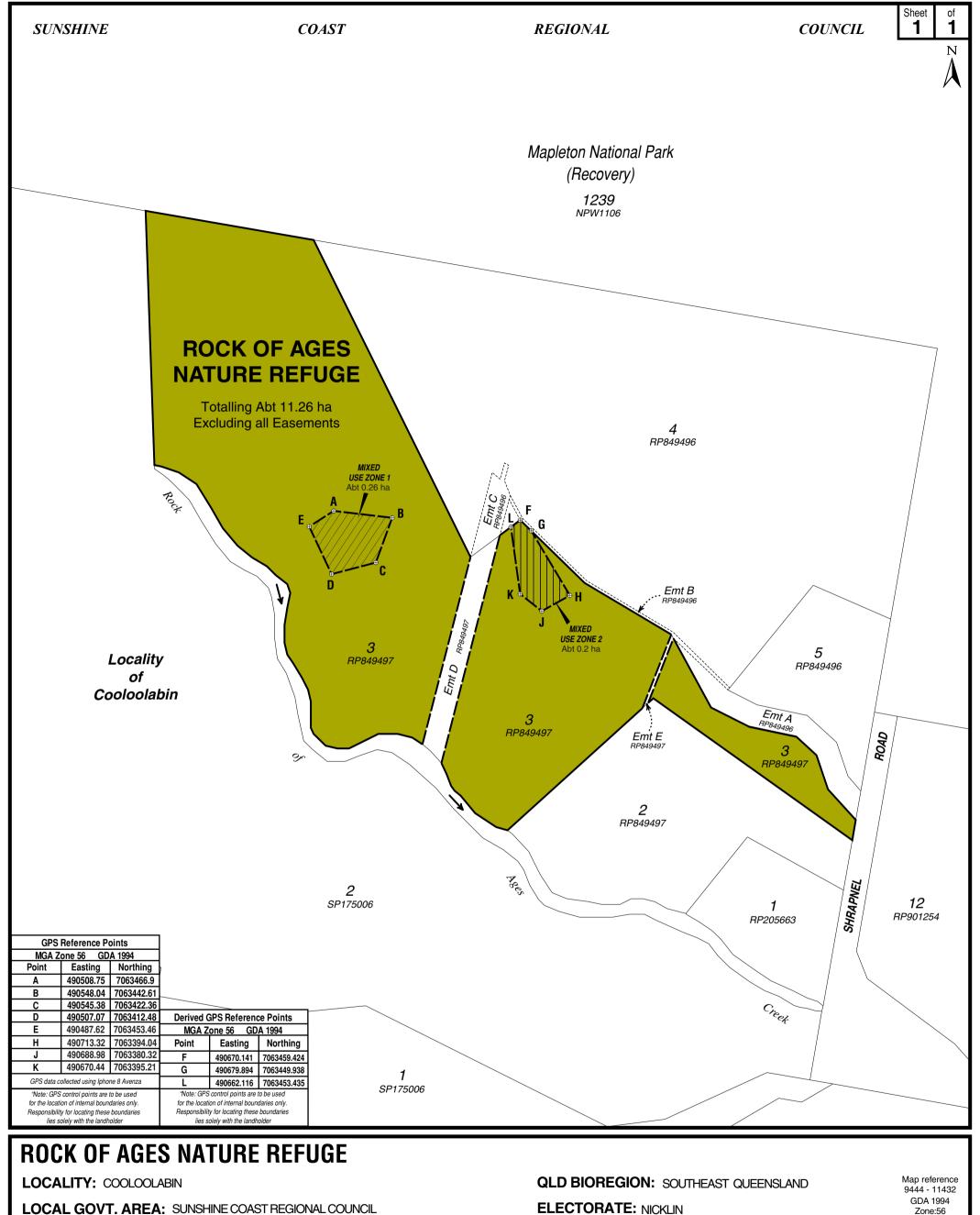
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EGOAL GOVII. ALLEA, COLOR III EGOACI II EGOACI EGOACIA

MIXED USE ZONE 1 - Abt 0.26 ha

Queensland

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NATURE REFUGE

0 75 150 225 300 Scale - 1:3000 Note: Original size A3 Metres

This Administration Plan is based upon an extraction from the Digital Cadastral Data Base. Date: 14/06/2020

Date: 15/06/2020

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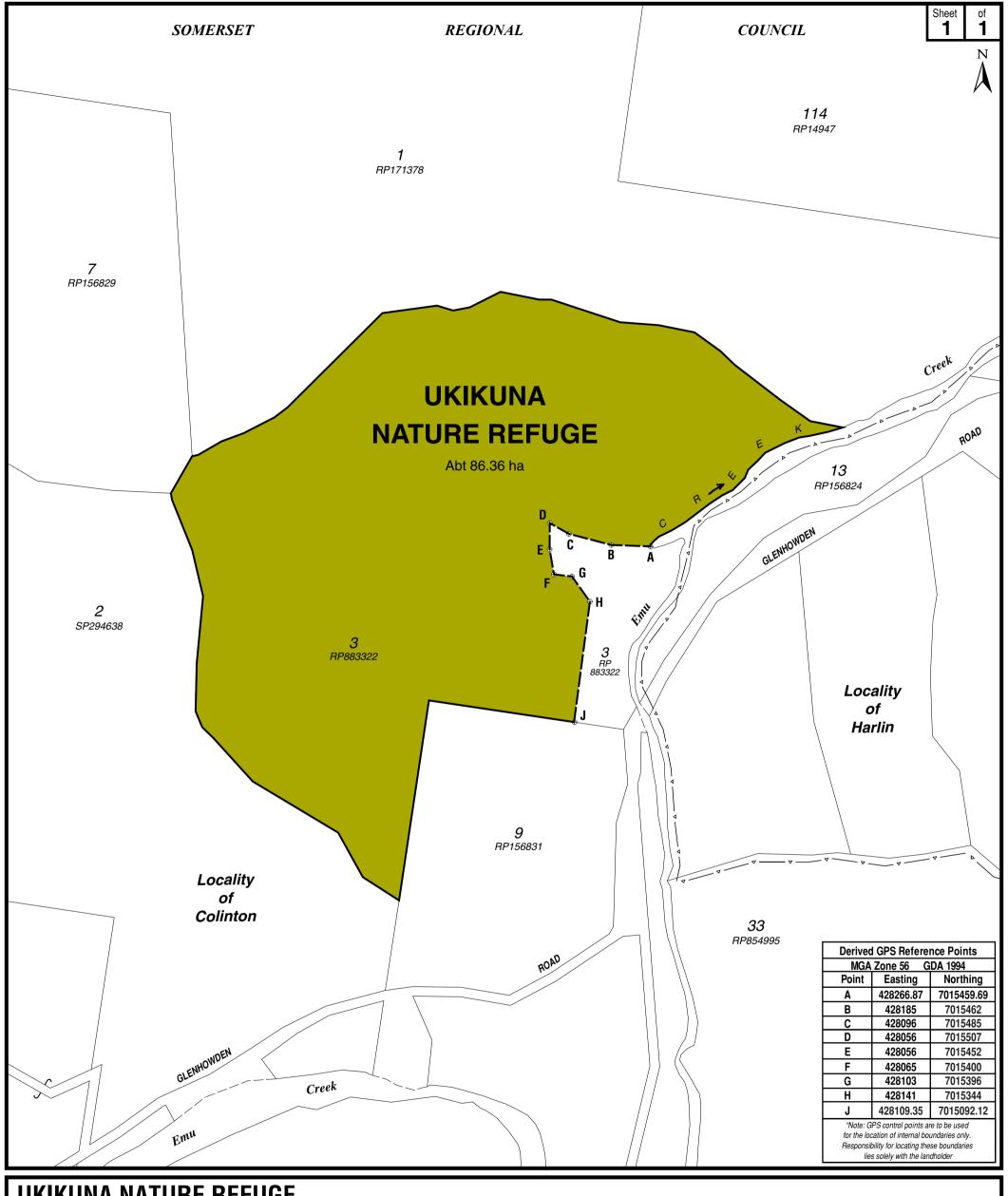
Produced by G. Dodds, Tenure Services, DES

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MIXED USE ZONE 2 - Abt 0.2 ha



UKIKUNA NATURE REFUGE

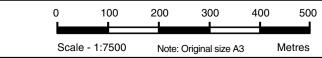
LOCALITY: COLINTON QLD BIOREGION: SOUTH EAST QUEENSLAND

LOCAL GOVT. AREA: SOMERSET REGIONAL COUNCIL **ELECTORATE: NANANGO** Map reference 9344 - 23331 GDA 1994 Zone:56



NATURE REFUGE





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