

## SCHEDULE 5

Section 19

### DEVELOPMENT PROVISIONS FOR LAKE BENNETT LOCALITY

#### PART 1 – PRELIMINARY

##### 1. Contents of instrument

This instrument contains the development provisions that comprise the Planning Scheme as it applies to the Lake Bennett locality.

##### 2. Definitions

In this instrument, unless the contrary intention appears –

"business sign" means a device using words, letters or images exhibited for the purpose of advertising, announcement or display restricted to the name of the business carried on and the nature of the services or goods available, on the land on which the sign is erected, and includes, if a number of persons are carrying on different businesses on that land, a sign identifying the place;

"caravan" includes –

- (a) a vehicle, registered or eligible for registration, within the meaning of the *Motor Vehicles Act* that is designed or adapted for human habitation; and
- (b) a tent;

"caravan park" means land used for the parking of caravans or the erection or placement and use of tents or cabins for the purpose of providing accommodation;

"car parking" means the parking of motor vehicles other than as an ancillary use of land;

"car parking area" means an area set aside or designated for the parking of 3 or more motor vehicles;

"car parking space" means a space designated for the parking of one motor vehicle;

"clearing of native vegetation" means the removal or destruction, by any means, of native vegetation, other than –

- (a) lopping a tree;

- (b) harvesting native vegetation planted for that purpose;
- (c) removal or destruction that occurs incidentally through the grazing of livestock; or
- (d) clearing firebreaks, fence lines and roads;

"consent" means the consent of the consent authority;

"demountable structure" means a building, including a transport container, that is wholly or substantially prefabricated and that is designed to be transported from site to site, but does not include a caravan or transportable module used in conjunction with an education establishment or as a construction site office;

"dependant unit" means a dwelling ancillary to and constructed on the same site as a single dwelling for the purpose of providing accommodation for a dependant of a resident of the single dwelling;

"domestic livestock" means any of the following:

- (a) a horse or other equine animal;
- (b) an ox, buffalo or other bovine animal;
- (c) a camel;

"dwelling" means a building, or part of a building, designed, constructed or adapted as a self-contained residence;

"floor area", in relation to a building, includes all wall thicknesses of the external walls and all roof areas used as floors, but does not include verandahs, balconies or areas set aside for car parking or access to car parking;

"home occupation" means an occupation or profession that is carried on in a dwelling or on the site of a dwelling, but does not include the use of a site as a medical consulting room;

"hostel" includes boarding houses, guest houses, lodging houses and other premises used to provide board or lodging with communal toilet, ablution, dining or cooking facilities, but does not include bed and breakfast accommodation, hotel or motel;

"hotel" means premises that require a licence under the *Liquor Act* and if, as a principal part of the business, alcoholic beverages are ordinarily sold to the public for consumption on the premises whether or not accommodation is provided for members of the

public and whether or not meals are served, but does not include a motel or restaurant;

"Lake Bennett locality" means the area of land to which this instrument applies under clause 3;

"medical consulting room" means a room or suite of rooms on the site of a single dwelling for use as a medical practitioner, dentist or person associated with health care;

"motel" means premises wholly or principally used for the accommodation of travellers and the vehicles used by them, whether or not the building is also used to provide meals to the travellers or to members of the general public and whether or not the premises are licensed under the *Liquor Act*;

"multiple dwellings" means a building or group of buildings on a site that individually or collectively contain more than one dwelling but does not include a dependant unit;

"net floor area", in relation to a building, includes all the area between internal surfaces of external walls but does not include –

- (a) stairs, cleaners' cupboards, ablution facilities, lift shafts, escalators or tea rooms if tea rooms are provided as a standard facility in the building;
- (b) lobbies between lifts facing other lifts servicing the same floor;
- (c) areas set aside as public space or thoroughfares and not used exclusively by the occupiers of the building;
- (d) areas set aside as plant;
- (e) areas set aside for use of service or delivery vehicles; or
- (f) areas set aside for car parking or access;

"place of worship" means premises used as a church, chapel, mosque, temple, synagogue or place of religious instruction or worship or for the purpose of religious training;

"promotion sign" means a device using words, letters or images exhibited for the purpose of advertising, announcement or display that contains information relating to –

- (a) goods, services or products not provided, produced or sold;  
or

(b) events or activities that are not carried on,

on the land or in the building on which the sign is constructed or erected;

"restaurant" means premises or part of a hotel or motel in which meals are served to the public, whether or not the premises provide a drive-through service or require a licence under the *Liquor Act*;

"shop" means premises used for the display and sale by retail, or for hire, of goods or services, but does not include a restaurant;

"single dwelling" means a building containing one dwelling only;

"site" means an area of land, whether consisting of one lot or more, the subject of an application to the consent authority;

"storey" means that part of a building –

(a) between floor levels; or

(b) if there is no floor above – between the floor level and ceiling.

### **3. Land to which instrument applies**

The development provisions contained in this instrument apply to the area of land shown bounded by a black line on the map attached to this instrument.

### **4. Exceptions**

(1) Unless specified, this instrument does not prevent any of the following:

(a) the use or development of any land –

(i) as a road; or

(ii) for sport and recreation;

(b) the construction, alteration, repair or maintenance of any of the following:

(i) facilities for the reticulation of water, sewage, gas, electricity or the transmission of telecommunications services other than, subject to clause 23, towers, aerials or masts for mobile telephone communications;

(ii) stormwater drains;

- (iii) roads;
- (c) the strengthening or restoration to a safe condition of a building or works;
- (d) the erection or display of a sign that is –
  - (i) a traffic control or driver advisory guide, service or similar device;
  - (ii) displayed by a government or local government agency under a statutory obligation;
  - (iii) on enclosed land or within a building and not readily visible from land outside the enclosure or building;
  - (iv) of a temporary nature used to advertise property that is available for rent, lease, sale, auction or inspection;
  - (v) displayed on or inside a vehicle, other than a vehicle that is adapted and exhibited primarily as an advertising sign;
  - (vi) an interpretive sign used for describing sites or items of historical or educational significance; or
  - (vii) a public safety advisory sign displayed by a government or local government agency;
- (e) the use of land under an extractive mineral permit issued under the *Mining Act* or authorisation under section 178(2) of that Act for a like purpose.
- (2) In subclause (1) –

"sport and recreation" does not include a use that involves commercial transactions, motor sports or activities that, because of the generation of noise or disturbance, will detrimentally affect the amenity of adjoining land.

## **5. Permitted, discretionary and prohibited development**

(1) A use or development of land is permitted without consent if expressly specified in a provision of this instrument and if it complies with the provisions of any relevant clause.

(2) A use or development of land that does not comply with the provisions of one or more of the relevant clauses requires consent.

(3) Except in relation to an ancillary use or development of land, in considering whether to grant consent to a proposed development, the consent authority must consider the proposed use or development in its entirety.

(4) The performance criteria in Part 3 are the minimum standard of development but the consent authority may –

- (a) if it can be shown that there are special circumstances, consent to a use or development at variance with those standards; or
- (b) in consenting to a use or development, if in the opinion of the consent authority it is necessary to do so, require a higher standard than specified by the performance criteria in Part 3.

(5) If a proposed use or development of land is not described in the specific land use controls in Part 2, the use or development is prohibited.

## **6. Ancillary development**

(1) If a use or development of land is permitted without consent, an ancillary use or development that would require consent if proposed as the primary use or development, is also permitted without consent provided it complies with the provisions of any relevant clauses.

(2) If an ancillary use or development of land would be prohibited if proposed as the primary use or development, the ancillary use or development is permitted only with consent.

## **7. Planning principles and framework**

A use or development or proposed use or development of land in the Lake Bennett locality should –

- (a) contribute to a built, rural and natural environment supporting the diverse lifestyle and the social, cultural and economic development of the Territory promoting –
  - (i) housing choice;
  - (ii) public infrastructure; and
  - (iii) recreational and cultural opportunities;
- (b) contribute to the sustainable use and development of land and water resources so that the use and development of land is consistent with the principles of sustainable development and avoids or minimises the degradation of the environment or the pollution or over commitment of water resources;

- (c) promote rural building design which is climatically appropriate, energy efficient and contributes to the existing and future character and appearance of an area;
- (d) ensure development does not unreasonably intrude on or compromise the privacy of adjoining residential uses and ensures its own amenity is not prejudiced in the future;
- (e) assist in the conservation of areas and sites of environmental, cultural or heritage value as identified by the Territory;
- (f) facilitate the further development of the tourist industry capitalising on the Territory's aesthetic, natural and cultural heritage;
- (g) consider flood levels to minimise risk to life and property; and
- (h) value unimproved land for its inherent ecosystem functions in protecting native flora, fauna, soil and water resources.

## **PART 2 – SPECIFIC LAND USE CONTROLS**

### **8. Sections 90 to 97, 99 to 110 and 1252 to 1255**

(1) The purpose of this Part is to ensure development around Lake Bennett does not have a detrimental impact on the lake and that the rural character and amenity of the area is maintained.

(2) The use or development of sections 90 to 97(inclusive), 99 to 110 (inclusive) and 1252 to 1255 (inclusive) must be in accordance with the requirements of clauses 9 to 14 (inclusive).

(3) The performance criteria in Part 3 apply to development except for a conflict with a clause in this Part.

(4) In considering a proposed use or development the consent authority must consider –

- (a) any potential detrimental impact on the lake;
- (b) the extent to which the proposed use or development is appropriate to the land, taking into account the physical characteristics of the land including the visual impact of the proposal and the potential environmental impact of the proposal on the lake and water; and
- (c) whether services and infrastructure (including but not limited to water, sewerage, gas, electricity and roads) will be adequate to support the proposed use or development.

## **9. Sections 90 to 92**

(1) Without consent, sections 90, 91 and 92 may be developed with a single dwelling on each section.

(2) With consent, sections 90, 91 and 92 may be developed for any other purpose that is in keeping with the rural character of the Lake Bennett locality.

(3) A use or development for a purpose specified in subclause (1) or (2) is subject to the following conditions:

- (a) all waste water and septic facilities must be sited at least 100 m from the full supply level of the lake, or outside its catchment, and designed so that no effluent flows into the lake;
- (b) domestic livestock must not be kept, exercised or trained on the land within 100 m of the full supply level of the lake;
- (c) the keeping, exercising or training of domestic livestock on the land must not –
  - (i) unreasonably contribute to the erosion or pollution of the land, adjoining land or the lake; or
  - (ii) cause detriment to the amenity of the Lake Bennett locality because of excessive noise, offensive odours, excessive dust or the attraction of flies or vermin.

## **10. Sections 92 to 97, 99 to 110, 1252 to 1255**

(1) The purpose of this clause is to allow each of the owners of the parcels of land receiving the benefit of a recreational easement over section 1255 to have a pontoon on the lake.

(2) Without consent, the owner of each of the following lots may, subject to the terms of the recreational easement, construct one pontoon on or partly on section 1255:

- (a) sections 92 to 97 (inclusive);
- (b) sections 99 to 110 (inclusive);
- (c) an existing or proposed unit on section 1252;
- (d) sections 1253 and 1254.



(3) In this clause –

"recreational easement" means an easement in the terms stated in Schedule 4 to the *Lake Bennett (Land Title) Act*.

## **11. Sections 93 to 97 and 99 to 110**

(1) Without consent, sections 93 to 97 (inclusive) and 99 to 110 (inclusive) may be developed with a single dwelling on each section.

(2) With consent, sections 93 to 97 (inclusive) and 99 to 110 (inclusive) may be developed for the following purposes:

- (a) business sign;
- (b) dependant unit;
- (c) home occupation;
- (d) medical consulting room.

(3) A use or development for a purpose specified in subclause (1) or (2) is subject to the following conditions:

- (a) all waste water and septic facilities must be sited at least 100 m from the full supply level of the lake, or outside its catchment, and designed so that no effluent flows into the lake;
- (b) domestic livestock must not be kept, exercised or trained on the land within 100 m of the full supply level of the lake;
- (c) the keeping, exercising or training of domestic livestock on the land must not –
  - (i) unreasonably contribute to the erosion or pollution of the land, adjoining land or the lake; or
  - (ii) cause detriment to the amenity of the Lake Bennett locality because of excessive noise, offensive odours, excessive dust or the attraction of flies or vermin.

## **12. Section 1252**

(1) With consent, section 1252 may be used only for a condominium development for no more than 64 dwellings.

(2) A use or development for a purpose specified in subclause (1) is subject to the following conditions:

- (a) all development must be single storey;

- (b) all waste water and septic facilities must be sited at least 100 m from the full supply level of the lake, or outside its catchment, and designed so that no effluent flows into the lake;
- (c) domestic livestock must not be kept, exercised or trained on the land.

**13. Section 1253**

(1) With consent, section 1253 may be developed for the following purposes:

- (a) business sign;
- (b) caravan park;
- (c) hostel;
- (d) hotel;
- (e) motel;
- (f) multiple dwellings;
- (g) promotion sign;
- (h) restaurant;
- (i) shop.

(2) A use or development for a purpose specified in subclause (1) is subject to the following conditions:

- (a) all waste water and septic facilities must be sited at least 100 m from the full supply level of the lake, or outside its catchment, and designed so that no effluent flows into the lake;
- (b) domestic livestock must not be kept, exercised or trained on the land within 100 m of the full supply level of the lake;
- (c) the keeping, exercising or training of domestic livestock on the land must not –
  - (i) unreasonably contribute to the erosion or pollution of the land, adjoining land or the lake; or
  - (ii) cause detriment to the amenity of the Lake Bennett locality because of excessive noise, offensive odours, excessive dust or the attraction of flies or vermin.

#### **14. Sections 1254 and 1255**

(1) Sections 1254 and 1255 may be used only for recreational purposes but not for any activity that because of the generation of noise or disturbance will detrimentally affect the amenity of adjoining land.

(2) A further development (including using a caravan or camping) is not permitted on section 1254 or 1255 other than a development mentioned in section 23(1) of the *Lake Bennett (Land Title) Act*.

(3) A houseboat is not permitted on the lake.

(4) Domestic livestock must not be kept, exercised or trained on section 1254 or 1255.

### **PART 3 – PERFORMANCE CRITERIA**

#### **15. Subdivision lot sizes**

(1) The purpose of this clause is to ensure lots will be of a size that will preserve the rural character of the Lake Bennett locality.

(2) Subdivision design must provide for lots 8 ha or larger with a minimum of one hectare of unconstrained land.

#### **16. Height control**

(1) The purpose of this clause is to ensure the height of buildings is consistent with development provided for in the Lake Bennett locality.

(2) The height of any point of a building (including a tiered or split level building) must be measured from ground level vertically below that point.

(3) A building, other than a flag pole, lightning rod, aerial or antenna, must not exceed a height of –

(a) for sections 90 to 97 (inclusive) and 99 to 110 (inclusive) and section 1253 – 8.5 m; or

(b) for section 1252 – 5 m.

#### **17. Car parking requirements**

(1) The purpose of this clause is to ensure sufficient off-street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site.

*Note to subsection (1) –*

*For many uses, the Building Code of Australia requires the provision of parking for people with disabilities.*

(2) Subject to clause 18, if a use or development specified in Column 1 of the table to this clause is proposed, the number of car parking spaces (rounded up to the next whole number) required for that use or development must be calculated in accordance with the formula specified opposite in Column 2.

(3) If a use or development is proposed that is not listed in the table but requires consent, the consent authority must determine the number of car parking spaces required for that use or development.

TABLE

Column 1	Column 2
Use or development	Minimum number of car parking spaces required
Caravan park	1.1 for each caravan, cabin mobile home or tent site.
Hostel	1 plus – (a) 1 for each 5, or part of 5, guests; and (b) 1 for each staff member.
Hotel	(a) 16 for each 100 m <sup>2</sup> , or part of 100 m <sup>2</sup> , of net floor area used as a lounge bar or beer garden; (b) 50 for each 100 m <sup>2</sup> , or part of 100 m <sup>2</sup> , net floor area used as another bar; (c) 10 for a drive-in bottle shop for serving cars; (d) 1 for each guest suite or bedroom; and (e) 3 for each 100 m <sup>2</sup> , or part of 100 m <sup>2</sup> , used for dining.
Medical consulting rooms	1 (in addition to the 2 spaces required for the dwelling in which the rooms are located) plus 3 for each consulting room.
Motel	(a) 1 for each guest suite or bedroom; (b) 16 for each 100 m <sup>2</sup> , or part of 100 m <sup>2</sup> , of net floor area used as a lounge bar or beer garden; and (c) 3 for each 100 m <sup>2</sup> , or part of 100 m <sup>2</sup> , used for dining.
Multiple dwellings	(a) 2 for each dwelling; and (b) 1 for each 5, or part of 5, dwellings.

Restaurant	(a) 6 for each 100 m <sup>2</sup> , or part of 100 m <sup>2</sup> , of net floor area (including alfresco dining areas); and (b) 10 for each drive-through for serving cars.
Shop	6 for each 100 m <sup>2</sup> , or part of 100 m <sup>2</sup> , of net floor area.
Single dwelling	2

## 18. Car parking area layout

(1) The purpose of this clause is to ensure a car parking area is appropriately designed, constructed and maintained to service the proposed use of a site.

(2) A car parking area must be established, used and maintained for the purpose of parking vehicles only.

(3) A car parking area must –

- (a) be of a suitable gradient for safe and convenient parking;
- (b) be dust-suppressed or sealed and well drained;
- (c) be of functional design and provide separate access to every car parking space;
- (d) limit the number of access points to the road;
- (e) allow a vehicle to enter from and exit to a road in a forward gear;
- (f) maximise the sight lines for drivers entering or exiting the car parking area;
- (g) be not less than 3 m from a road, and the area between the car parking area and the road must be landscaped with suitable planting; and
- (h) have driveways with a minimum width of 6 m for two-way traffic flow or 3.5 m for one-way traffic flow.

## 19. Signs

(1) The purpose of this clause is to ensure business signs and promotion signs are of a size and location that minimises detriment to the amenity of the area.

- (2) A business sign or promotion sign on a site must not –
  - (a) exceed 3 m<sup>2</sup> in area; or
  - (b) the height of a building on the site.

## **20. Demountable structures**

(1) The purpose of this clause is to ensure demountable structures do not detract from the visual amenity of an area.

- (2) Placement of a demountable structure on land requires consent.

## **21. Set back of buildings**

(1) The purpose of this clause is to ensure buildings, including sheds, on certain land are sited so they do not detract from the streetscape or amenity of adjoining land.

(2) A building on land, other than on section 1252, must be set back at least 10 m from all boundaries.

## **22. Pontoons**

(1) The purpose of this clause is to ensure pontoons are appropriately designed and constructed.

- (2) A pontoon must –
  - (a) not be larger than 4 m by 8 m with a ramp not exceeding 20 m; and
  - (b) be moored by way of a ramp that is permanently and securely fixed to land or a dwelling above the high water mark.

(3) The highest point of the pontoon must be no more than 600 mm above the water.

## **23. Mobile telephone telecommunications towers and infrastructure**

(1) The purpose of this clause is to ensure the erection of mobile telecommunication towers and infrastructure does not unreasonably detract from the amenity of the Lake Bennett locality.

(2) Despite anything to the contrary in this instrument, towers, aerials or masts for mobile telephone telecommunications may be developed only with consent.

## **24. Caravans**

(1) The purpose of this clause is to restrict the use of caravans on certain land.

(2) Land, other than sections 1253, 1254 and 1255, may be used to provide accommodation in a caravan only if that caravan is the only caravan used as a residence on the site and is used –

- (a) as a temporary residence by the owner of the site;
- (b) by a dependant of a person occupying a single dwelling on the site;
- (c) temporarily by a bona fide visitor; or
- (d) by a bona fide caretaker of the land.

## **25. Dependant units**

(1) The purpose of this clause is to ensure a dependant unit is ancillary to the single dwelling on a site.

(2) A building or part of a building may be used, constructed or modified for use as a dependant unit if –

- (a) the floor area of the dependant unit does not or will not exceed 50 m<sup>2</sup>;
- (b) it shares public utility services and an effluent disposal system with the single dwelling; and
- (c) there is or will be only one dependant unit on the site.

## **26. Home occupation**

(1) The purpose of this clause is to ensure home occupations are established and operated in a manner that does not detract from the amenity of the Lake Bennett locality.

(2) A dwelling may be used for home occupation only if –

- (a) the occupation or profession is carried out only by persons residing in the dwelling;
- (b) the total of the floor area of the dwelling plus the other areas of the site that are used for the home occupation (including areas used temporarily) does not exceed 30 m<sup>2</sup>;

- (c) no greater demand or load is imposed on the services provided by a service authority than that ordinarily required in the Lake Bennett locality;
- (d) no sign is displayed, other than a business sign, that is not more than 0.5 m<sup>2</sup>;
- (e) no goods or equipment are visible from outside the site; and
- (f) not more than one vehicle kept on the site is used for the purposes of the home occupation.

(3) In this clause –

"home occupation" includes the care of up to 5 children in a dwelling including children who reside in the dwelling.

## **27. Medical consulting rooms**

(1) The purpose of this clause is to ensure medical consulting rooms are established and operated in a manner that does not detract from the amenity of the Lake Bennett locality.

(2) A medical consulting room may be established and operated only if –

- (a) the service is carried out only by persons residing in the dwelling and not more than one person who does not reside in the dwelling;
- (b) the total area used for the medical consulting room (including areas used temporarily) does not exceed 30 m<sup>2</sup>;
- (c) no greater demand or load is imposed on the services provided by a service authority than that ordinarily required in the Lake Bennett locality; and
- (d) no sign is displayed other than a business sign that is not more than 0.5 m<sup>2</sup>.

## **28. Clearing of native vegetation**

(1) The purpose of this clause is to ensure clearing of native vegetation does not unreasonably contribute to environmental degradation of the Lake Bennett locality.

(2) This clause does not apply to the clearing of native vegetation required or controlled under an Act of the Commonwealth or the Territory.



- (3) The clearing of native vegetation must –
  - (a) avoid impacts on environmentally significant or sensitive vegetation;
  - (b) be based on land capability and suitability for the intended use;
  - (c) avoid impacts on waterways;
  - (d) avoid habitat fragmentation and impacts on native wildlife corridors; and
  - (e) avoid impacts on soils highly prone to erosion.
- (4) The clearing of native vegetation requires consent if more than one hectare in total is to be cleared, including a previously cleared area.
- (5) An application for the clearing of native vegetation must demonstrate consideration of the following:
  - (a) the presence of sensitive or significant vegetation communities including rainforest, vine thicket and close forest;
  - (b) the presence of an area of essential habitat within the meaning of the *Territory Parks and Wildlife Conservation Act*;
  - (c) the impact of the clearing on regional biodiversity;
  - (d) whether the clearing is necessary for the intended use;
  - (e) whether there is sufficient water for the intended use;
  - (f) whether the soils are suitable for the intended use;
  - (g) whether the slope is suitable for the intended use;
  - (h) the presence of permanent and seasonal water features, including billabongs and swamps;
  - (i) the retention of native vegetation adjacent to waterways;
  - (j) the retention of native vegetation buffers along boundaries;
  - (k) the retention of native vegetation corridors between remnant native vegetation;
  - (l) the presence of a heritage object, heritage place, archaeological object or archaeological site within the meaning of the *Heritage Conservation Act*.

(6) In assessing an application for the clearing of native vegetation, the matters mentioned in subclause (5) must be taken into account.

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# LAKE BENNETT LOCALITY

Clause 3

