Part 1 About the planning scheme

1.1 Introduction

(1) The Zenadth Kes Planning Scheme (Planning Scheme for the Torres Strait Regional Island Council Area) has been prepared in accordance with the *Sustainable Planning Act 2009* (the SP Act) as a framework for managing development in a way that advances the purpose of the SP Act.

(2) The planning scheme was amended for alignment with the Planning Act 2016 (the Act) by the Minister's rules under section 293 of the Act on the19th and 20th December 2017.

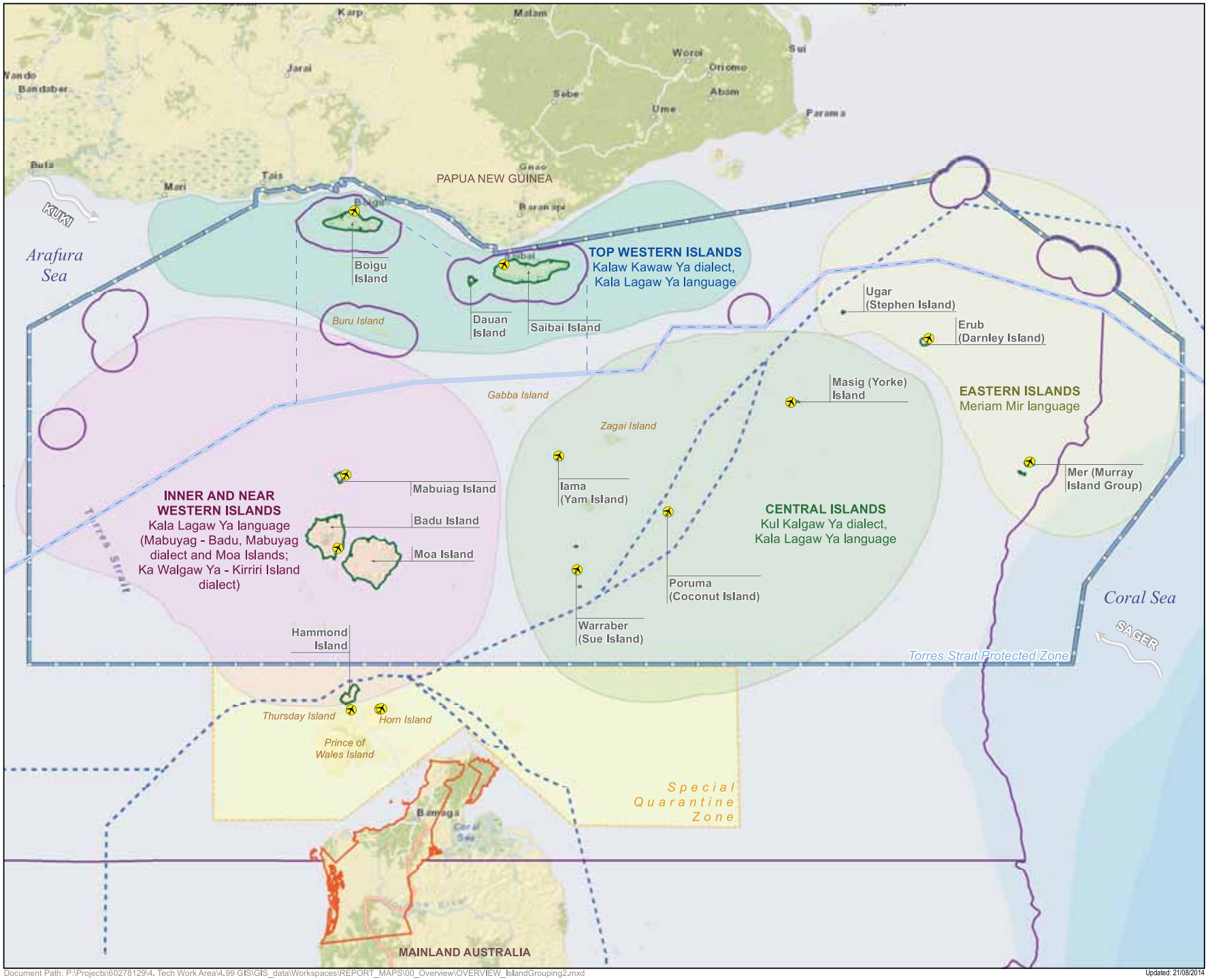
(3) In seeking to achieve this purpose, the planning scheme sets out the Torres Strait Island Regional Council's intention for the future development in the planning scheme area, over the next 25 years.

(4) The planning scheme seeks to advance state and regional policies through more detailed local responses, taking into account the local context.

(5) While the planning scheme has been prepared with a 25 year planning horizon, it will be reviewed periodically in accordance with the Act to ensure that it responds appropriately to the changes of the community at a local, regional and state level.

(6) The planning scheme applies to the planning scheme area of Zenadth Kes (Torres Strait Island Regional Council) including all premises, roads, internal and interrelates with the surrounding local government areas illustrated in Map 1.

Editor's Note – State legislation may state that the planning scheme does not apply to certain areas, e.g. priority development areas or strategic port land under the *Transport Infrastructure Act 1994*.



Zenadth Kes
Planning Scheme:
Planning Scheme for
The Torres Strait Island
Regional Council Area

LEGEND

- Air Infrastructure
- Fisheries Jurisdiction Line
- Shipping Channel
- Seabed Jurisdiction Line
- Torres Strait Protected Zone
- Special Quarantine Zone

LGA Boundary

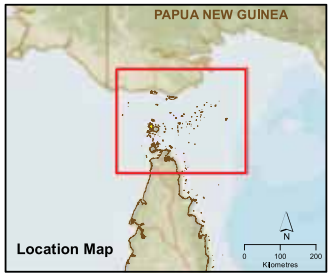
- Torres Strait Island Regional
- Torres Shire
- Northern Peninsula Area Regional
- Kuki (NW Winds - January to April)
- Sager (SE Winds - May to December)

Data Sources:
Unless stated below all landuse, road, or natural feature data shown is from the Strategic Landuse Plan (SLUP) by the RPS Group 2010.
Community Consultation 2013: Local Names, Places and identified facilities
Queensland Dept. Natural Resources and Environment: Imagery, LGA Boundaries, Terrain data and Flooding layers
AECOM: all strategic framework, zoning and local area plan data is modified from the SLUP and DNRM source data.
James Cook University: Coastal Hazard and Coastal Innundation where shown.
Location Map Base Data and LGA map base imagery:
Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, OpenStreetMap contributors, and the GIS User Community

Projection: GCS GDA 1994 **Datum:** GDA 1994

Approx. Scale @A3 1:1,100,000

0 20 40
Kilometers



Planning Scheme Area & Local Context

1.2 Planning scheme components

(1) The planning scheme comprises the following components:

- (a) about the planning scheme
- (b) state planning provisions
- (c) the strategic framework
- (d) the local government infrastructure plan
- (e) tables of assessment
- (f) the following zones:
  - (i) Environmental management and conservation zone
  - (ii) Township zone
    - (A) Township expansion precinct
- (g) the following local plans:
  - (i) Badu Island
  - (ii) Boigu Island
  - (iii) Dauan Island
  - (iv) Erub (Dranley) Island
  - (v) Iama (Yam) Island
  - (vi) Kirriri (Hammond) Island
  - (vii) Kubin (on Moa Island)
  - (viii) Mabuyag Island
  - (ix) Masig (Yorke) Island
  - (x) Mer (Murray) Island
  - (xi) Poruma (Coconut) Island
  - (xii) Saibai Island
  - (xiii) St Pauls (on Moa Island
  - (xiv) Ugar (Stephens) Island
  - (xv) Warraber (Sue) Island
- (h) the following development codes:
  - (i) Infrastructure and works code
  - (ii) Reconfiguring a lot code
  - (iii) Water quality and acid sulfate soils code
- (i) schedules and appendices.

(2) The following planning scheme policies support the planning scheme:

- (a) Cultural heritage planning scheme policy
- (b) Having a say planning scheme policy.

1.3 Interpretation

1.3.1 Definitions

(1) A term used in the planning scheme has the meaning assigned to that term by one of the following:

(a) the Planning Act 2016 (the Act)

(b) the Planning Regulation 2017 (the Regulation), other than the regulated requirements

(c) the definitions in Schedule 1 of the planning scheme

(d) the *Acts Interpretation Act 1954*

(e) the ordinary meaning where that term is not defined in any of hte above.

(2) In the event a term has been assigned a meaning in more than one of the instruments listed in sub-section 1.3.1(1), the meaning contained in the instrument highest on the list will prevail.

(3) A reference in the planning scheme to any act includes any regulation or instrument made under it, and where amended or replaced, if the context permits, means the amended or replaced act.

(4) A reference in the planning scheme to a specific resource document or standard, means the latest version of the resource document or standard.

(5) A reference to a part, section, table or schedule is a reference to a part, section, table or schedule of the planning scheme.

Editor's Note – The regulated requirements do not apply to this planning scheme.

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

(1) Standard drawings contained in codes or schedules are part of the planning scheme.

(2) Maps provide information to support the outcomes and are part of the planning scheme.

(3) Notes are identified by the title 'note' and are part of the planning scheme.

(4) Editor's notes and footnotes are extrinsic material, as per the *Acts Interpretation Act 1954*, and are identified by the title 'editor's note' and 'footnote' and are provided to assist in the interpretation of the planning scheme; they do not have the force of law.

Note – This is an example of a note.

Footnote – This is an example of a footnote.

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

Editor's notes may also look like the examples below.

Editor's Note –

Gogobithiay (land, sea and sky) is fundamental to the Torres Strait Islander way of life. Gogobithiay cannot be separated into land, sea and sky and it cannot exist without the Torres Strait people.

Editor's Note –

Community Snapshot

Location

- Badu Island is part of the Torres Strait inner and near western group of islands. The Badu community in the largest in the Torres Strait Island Regional Council area and the second largest in the Torres Strait after Thursday Island.

Editor's Note –

Local Story

Long ago at Wakaid there was a man who had four beautiful daughters, Madainab, Mainab, Damanab, and Kotinab.

One day he told them that they would be going that night to hunt for turtle by torchlight.

1.3.3 Punctuation

(1) A word followed by ';' or ', and' is considered to be 'and'

(2) A word followed by '; or' means either or both options can apply.

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

(1) The following applies to a road, closed road, waterway or reclaimed land in the planning scheme area:

(a) if adjoined on both sides by land in the same zone—the road, closed road, waterway or reclaimed land is in the same zone as the adjoining land

(b) if adjoined on one side by land in a zone and adjoined on the other side by land in another zone—the road, closed road, waterway or reclaimed land is in the same zone as the adjoining land when measured from a point equidistant from the adjoining boundaries

(c) if the road, closed road, waterway or reclaimed land is adjoined on one side only by land in a zone—the entire waterway or reclaimed land is in the same zone as the adjoining land

(d) if the road, closed road, waterway or reclaimed land is covered by a zone then that zone applies.

Editor's Note – The boundaries of the local government area are described by the maps referred to in the Local Government Regulation 2012.

1.4 Categories of development

(1) The categories of development under the Act are:

(a) accepted development

(b) assessable development:

(i) code assessment

(ii) impact assessment

Editor's Note – A development approval is required for assessable development. Schedule 9, 10 and 12 of the Regulation also prescribe assessable development.

(c) prohibited development

Editor's Note – A development application may not be made for prohibited development. Schedule 10, part 4 of the Regulation prescribes prohibited development.

(2) The planning scheme states the category of development for certain types of development, and specifies the category of assessment for assessable development in the planning scheme area in part 5.

Editor's Note – Section 43 of the Act identifies that a categorising instrument categorises development and specifies categories of assessment and may be a regulation or local categorising instrument. A local categorising insturment includes a planning scheme, a TLPI or a variation approval.

Accepted: means no planning permit is needed

Accepted subject to requirements: means no planning permit is needed but the proposed development has to comply with all relevant accepted subject to requirements outcomes prescribed in the scheme

Code assessment: means a development permit is needed and the proposed development has to comply with all relevant codes in the planning scheme

Impact assessment: means the proposed development needs to comply with the planning scheme as a whole

Prohibited development: means a development application can not be made as the proposed development is not allowed under the planning scheme

1.5 Hierarchy of assessment benchmarks

(1) Where there is inconsistency between provisions in the planning scheme, the following rules apply:

(a) relevant assessment benchmarks or requirements for accepted development specified in the Planning Regulation prevail over the planning scheme to the extent of any inconsistency

(b) the strategic framework prevails over all other components to the extent of the inconsistency for impact assessment

(c) relevant codes as specified in Schedules 6 and 10 of the Regulation prevail over all other components to the extent of the inconsistency

(d) overlays prevail over all other components (other than the matters mentioned in (a) and (b)) to the extent of the inconsistency

(e) local plan codes prevail over zone codes, use codes and other development codes to the extent of the inconsistency

(f) zone codes prevail over use codes and other development codes to the extent of the inconsistency.

1.6 Building work regulated under the planning scheme

(1) Section 17(b) of the Regulation identifies that a local planning instrument must not be inconsistent with the effect of the building assessment provisions stated in the *Building Act 1975*.

(2) The building assessment provisions are listed in section 30 of the *Building Act 1975*.

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

(3) This planning scheme, through part 5, regulates building work in accordance with sections 32 and 33 of the *Building Act 1975*.

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

- Regulate, for the Building Code of Australia (BCA) or the Queensland Development Code (QDC), matters prescribed under a regulation under the *Building Act 1975* (section 32). These include variations to provisions contained in parts MP1.1, MP 1.2 and MP 1.3 of the QDC such as heights of buildings related to obstruction and overshadowing, siting and design of buildings to provide visual privacy and adequate sight lines, on-site parking and outdoor living spaces. It may also regulate other matters, such as designating land liable to flooding, designating land as bushfire prone areas and transport noise corridors
- Deal with an aspect of, or matter related or incidental to, building work prescribed under a regulation under section 32 of the *Building Act 1975*.
- Specify alternative boundary clearances and site cover provisions for Class 1 and 10 structures under section 33 of the *Building Act 1975*.

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

(4) There are no building assessment provisions in this planning scheme. However, this planning scheme designates bushfire prone areas, flood hazard and storm tide hazard areas. It also declares a defined flood level.

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

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

1.7 Local government administrative matters

(1) Applicants are asked to commence discussions with TSIRC and the relevant Prescribed Body Corporate (PBC) prior to lodging a development application, wherever possible. This is important so that local knowledge, including matters relating to cultural heritage and ailan kastom, can be incorporated into the proposed development.

(2) The Cultural Heritage Planning Scheme Policy in schedule 5.2 provides further information about the role of Traditional Owners and PBCs and how this information needs to be incorporated into the development application process.

(3) The Having a Say Planning Scheme Policy in schedule 5.3 outlines a process that TSIRC may choose to follow to seek additional advice from Traditional Owners and PBCs (and other individuals and organisations) if information provided by the applicant is considered to be insufficient.

(4) The following editor's notes (see overleaf) relate to native title and land tenure. The information is provided for information purposes only and is extrinsic material to the planning scheme.

Editor's Note – Native title rights are recognised over the majority of TSIRC land and waters. In addition, some native title claims have been registered with, and are still being considered by, the National Native Title Tribunal.

Applicants of development proposals need to be aware of their obligations under the *Native Title Act 1993*. The *Native Title Act 1993* provides a system or a process to facilitate dealings that may affect native title, during the native title claim process and after native title has been recognised. The purpose of the act is to recognise and protect native title; provide a process for the recognition of native title; render valid certain past acts; provide certainty in the extinguishment of native title in some cases; and provide for certain future acts to be done validly.

If a proposed development affects native title, consent in the form of an Indigenous Land Use Agreement (ILUA) may be required before development can take place. This process is separate to any approvals required under this planning scheme.

ILUAs are negotiated with the Registered Native Title Body Corporate (RNTBC) (also sometimes referred to as a Prescribed Body Corporate (PBC)), which is responsible for consulting with the people listed on the native title claim and their descendents (i.e. the Traditional Owners of the land) and doing business on their behalf.

To ensure that applicant's obligations under the *Native Title Act 1993* are met, applicants should make initial contact with the Torres Strait Island Regional Council (TSIRC) prior to preparing a development application. The TSIRC will be able to assist with identifying the correct RNTBC contact with which to make further enquiries.

For further information about existing native title determinations, claims and ILUAs refer to the National Native Title Tribunal (www.nntt.gov.au).

Editor's Note – The majority of islands in the TSIRC area are DOGIT land (deed of grant in trust) held in trustee by the Torres Strait Island Regional Council, which acts on behalf of the community.

On a number of islands, this situation has changed, with the land being transferred to Torres Strait Islander Freehold under recent changes to the *Torres Strait Islander Land Act 1991*. At the time of writing, this has occurred on Mer Island and Badu Island, with discussions commencing on Kirriri Island.

Applicants will need to be aware of the status of land ownership, which may have implications for who is the rightful signatory on owner's consent forms, among other things.

For further information and to make initial enquiries, applicants should contact the Torres Strait Island Regional Council.