

ORDINARY COUNCIL MEETING 24 JUNE 2014	5.2
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DOUGLAS PLANNING SCHEME

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RECOMMENDATION:

That Council:

1. **Formally determines to review the Douglas Shire Planning Scheme;**
2. **adopts a two-phase approach to developing the planning scheme consisting of:**
 - (a) **a series of Councillor policy direction workshops to develop a new planning scheme, including informal targeted consultation;**
 - (b) **formal statutory processes as outlined in the *Sustainable Planning Act 2009* following development of the new planning scheme;**
3. **supports the proposed removal of references to the *Iconic Queensland Places Act 2008* from the *Sustainable Planning Act 2009*, and advises the Minister State Development Infrastructure and Planning, accordingly.**

INTRODUCTION:

The purpose of this report is to present to Council the current position with regard to its planning scheme, the process involved in progressing a new planning scheme and an approach with respect to progressing towards a new planning scheme.

BACKGROUND:

Current situation

On 21 August 2006, the former Douglas Shire Council adopted a new planning scheme for Douglas Shire which took effect from 4 September 2006 (the '2006 planning scheme'). Subsequently the former Douglas Shire Council undertook amendments to the 2006 planning scheme, as follows:

- *Amendment 2007 No 1* – (Tighter controls for Multiple dwellings in Residential 1 planning area, plot ratio and architectural controls for Multiple dwellings, and tighter inconsistent use controls).
- *Amendment 2007 No 2* – (Introduction of a Sustainable Development code and various workability corrections).

Following amalgamation with Cairns Regional Council, the following amendments were undertaken by Cairns Regional Council:

- *Amendment 2010 No 4* – (Short-term letting of a house amendment).
- *Amendment 2010 No 1* – (Port Douglas Waterfront amendment).

The existing 2006 planning scheme, incorporating the amendments, remains in force following de-amalgamation from Cairns Regional Council and continues to regulate planning and development for the majority of Douglas Shire. The exception is associated with the Mirage Port Douglas land, which is covered by the *Integrated Resort Development Act 1987* (IRDA). The area encompassed by the IRDA sits outside the jurisdiction of the 2006 planning scheme and will continue to do so, until such time that the legislation is repealed.

During the time of amalgamation, Cairns Regional Council resolved to prepare a single new planning scheme for the whole of the amalgamated local government area (ie including the Douglas 2006 planning scheme). Work progressed on developing the planning scheme with a working planning document released for non-statutory community consultation in October 2013.

However it is important to note that the working planning document has no official status for the following reasons:

- 1) Cairns Regional Council was unable to progress a new planning scheme until after de-amalgamation, as it is not legally possible prepare a planning scheme for part of a local government area.
- 2) Cairns Regional Council was required to recommence the statutory process for preparing a new planning scheme following de-amalgamation.
- 3) On 12 March 2014, Cairns Regional Council resolved to commence a new planning scheme for the Cairns Region local government area only. At the same time, they resolved to refer their draft planning scheme to the Minister Department of State Development, Infrastructure and Planning (DSDIP) requesting State interest review. This draft planning scheme makes no references to Douglas Shire.

Similarly, for Douglas Shire to progress a new planning scheme, it will need to make an independent resolution to prepare a new planning scheme in order to start the formal statutory process involved in preparing a new scheme.

It should be noted that a significant volume of work in the form of planning studies and recommendations were prepared in developing the Cairns working planning document that are

relevant to Douglas. Cairns Regional Council has supplied all of the background studies and recommendations to Douglas, and these will be valuable in assisting Council advance its own independent planning scheme.

Relevant government policy, legislation and rules

At present, the development of a new planning scheme will occur in accordance with the provisions set out in the *Sustainable Planning Act 2009* (SPA). This Act is the primary piece of legislation that regulates making and amending planning schemes in Queensland.

In addition, the following will also need to be considered:

1) State Planning Policy:

The Queensland Government established the State Planning Policy (SPP) in December 2013 to simplify and clarify matters of state interest in land use planning and development. The SPP, which replaced multiple planning policies, is a key component of Queensland's land use planning system.

2) SPP Interactive Mapping System:

Some state interests have supporting mapping to assist in spatially representing the policy provisions. The SPP Interactive Mapping System contains both statutory and guidance (non-statutory) mapping, which can be varied in certain circumstances. The mapping data provides a trigger for local governments to investigate and consider the relevant interest and does not automatically preclude development. The mapping is amended from time-to-time to ensure the most recent state information is available.

3) Far North Queensland (FNQ) Regional Plan 2009-2036:

The FNQ Regional Plan continues to guide the shape of communities in the FNQ region. The Statutory Regulations that accompanied the FNQ Regional Plan in 2009 have since been repealed providing more flexibility for Council's in developing their planning schemes. However the broad strategic directions from the FNQ Regional Plan still need to be taken into account.

4) *Iconic Queensland Places Act 2008*:

The Iconic Places panel established through the *Iconic Queensland Places Act 2008* continues to protect the Douglas's identified iconic values. Iconic places provisions in the SPA were put in place to assist Councils that were being amalgamated to give some protections to certain matters in their schemes at that time. De-amalgamation and scheme amendments made post-amalgamations makes the need for this special arrangement redundant. Recent correspondence from DSDIP foreshadows amendments to SPA that would effectively remove the Iconic Places legislation. Council's views are being sought on this amendment. It is agreed that it is inappropriate for a third-party agency to continue to have influence over the provisions of a new planning scheme given

Douglas Shire's renewed independence and support for such amendment to SPA is recommended.

5) Queensland Planning Provisions Version 3 (QPP)

The QPP represents the standard planning scheme template to be used by all local governments in Queensland in preparing their planning schemes. It also contains certain standard formatting, provisions and mapping.

6) Statutory Guideline 01/13: Making and Amending Local Planning Instruments:

The purpose of this guideline is to outline the minimum requirements which must be followed by Council in making or amending a planning scheme. The guideline also outlines the role of state agencies in the overall process.

In addition, there are a number of peripheral, yet important, pieces of legislation that will need to be taken into account in preparing a new planning scheme (ie *Fisheries Act 1994*, *Coastal Protection and Management Act 1995*, *Wet Tropics World Heritage Protection and Management Act 1993*, *Nature Conservation Act 1992*, *Queensland Heritage Act*, *Land Act 1994*, and so on).

A new planning scheme will also be prepared against a backdrop of on-going regulatory reform to the planning system in Queensland and further reforms to State planning legislation are anticipated over the next 12 months.

The constraints imposed by the above legislation will need to be considered and incorporated as far as is possible into the provisions of a new Douglas planning scheme.

Background material

The various background documents that form a starting point for the preparation of a new planning scheme for Douglas Shire are as follows:

- 1) The existing Douglas 2006 planning scheme, along with previous iterations of this scheme, most notably the 1996 planning scheme.
- 2) The working planning document prepared by Cairns Regional Council.
- 3) Iconic Values Report for Douglas Shire (March 2008).
- 4) Iconic Values Declaration (1064 QGG No 52 – 20 June 2008), which outlines the protected planning provisions within the 2006 planning scheme.
- 5) Port Douglas Waterfront Master Plan.
- 6) The Daintree Gateway Master Plan.

- 7) Various studies commissioned for the working planning document prepared by Cairns Regional Council that relate to Douglas, including:
- Strategic Directions Paper (2010).
 - Centres, Employment and Transit Oriented Communities Strategy (prepared by SGS Economics and Planning, April 2012).
 - Scenic Amenity Study (prepared by Cardno Chenoweth, March 2013).
 - Housing Needs Assessment (prepared by Flanagan Consulting Group, November 2012).
 - Natural Hazards Study (prepared by GHD, May 2013).
 - Cairns Region Storm Tide Inundation Study (prepared by BMT WBM, January 2013).
 - Douglas Heritage Study (prepared by Converge Heritage and Community, September 2011).
 - Draft Cairns Regional Council (Douglas) Priority Infrastructure Plan (prepared by Integran, May 2010).

In combination, the background documents represent significant progress in advancing the supporting material required for a new Douglas planning scheme, so much so, that there is little need for any further studies of a substantial nature to advance a new planning scheme.

COMMENTARY:

An independent planning scheme

In gaining its independence from Cairns Regional Council on 1 January 2014, Douglas Shire did not inherit any planning legacy from its time as an amalgamated Council. It now has the ability to reassess its position with respect to the development of a new planning scheme given that many of the detailed provisions contained in the Cairns working planning document are either superfluous or irrelevant to the needs of the Douglas community.

Improvements

In giving consideration to the 2006 Planning Scheme and the Cairns working planning document, the following major improvements could be considered for incorporation into a new Douglas Scheme:

- 1) Revival of a strategic focus:

Both the 2006 planning scheme and the Cairns working planning document, lack strategic focus. This is not surprising as the planning legislation that preceded the *Sustainable Planning Act 2009*, in the form of the *Integrated Planning Act 1997*, removed former requirements to develop strategic plans and directions. An emphasis was placed on planning codes and

acceptable outcomes with no clear link to the 'bigger picture' strategic future of communities. The *Sustainable Planning Act* 2009 was developed to rectify this lack of future focus.

In this specific regard, the 1996 Douglas planning scheme contains valuable material that delivers properly developed strategic outcomes: many of which remain valid today. This document, in tandem with the 2006 planning scheme forms a sound basis to develop as a strong strategic focus for a new Douglas planning scheme.

In terms of strategic focus, this takes the format of developing a Douglas profile (examining regional context, physical setting, history, people and settlement, and economy), examining the key local drivers of change, and then developing planning strategies that are oriented toward delivering community outcomes.

2) Localised context:

The preparation of a new planning scheme for Douglas Shire represents an opportunity to develop a more localised regulatory framework to address existing and emerging environmental, economic and social issues and to further implement Council's vision for the Douglas community. The Cairns working planning document significantly homogenised many of the existing local Douglas planning provisions.

In this regard, a simpler, more localised set of planning zones in tandem with the development of local plans for each of the significant localities in Douglas (Port Douglas, Mossman, Wonga and Daintree-Bloomfield) is one way to re-introduce local context in a similar way that was initiated under the 1996 Douglas planning scheme.

3) Strengthening identity:

The de-amalgamation process highlighted the strong bonds that many in the Douglas community feel for the Shire. Alongside many of the standard desirable planning objectives, a need to preserve and build upon the unique sense of identity and place that gives each community its strong sense of spirit is one of the most important planning goals for Douglas. The development of local plans will assist in strengthening sense of identity and assist in tailoring planning provisions that specifically suit Douglas Shire's needs.

4) Consultation:

A balanced approach to development in Douglas Shire should identify the community's aspirations for its future and how that may best be achieved. This includes an understanding of the drivers of change that underpin Douglas Shire and the need to protect and enhance those drivers.

Community involvement in plan making will assist in the development of a cohesive identity for Douglas, taking into account varying economic, social and environmental issues and drivers. In addition, development of the new Douglas scheme will increase the community's understanding of the role of land use planning in achieving these economic, social and environmental objectives. A Community Engagement Strategy will need to be developed to support community involvement in scheme preparation. However it is recommended to Council that informal, targeted consultation occur in the initial phase of developing the scheme, prior to formal statutory processes commencing.

Approach

Table 1 highlights a two-phase approach to developing a new planning scheme. A two-stage approach is recommended to separate the mandatory steps outlined in the SPA legislation and Council's own review and development of a scheme.

This approach will allow Council a greater degree of flexibility in developing a new scheme through policy direction workshops and allows for targeted informal consultation prior to proceeding with the statutory timeline set out in the legislation.

Table 1: Developing a new Douglas Planning Scheme

Phase	Stage	Steps	Timing
Phase 1: Informal Scheme Development	1. Review of 2006 planning scheme.	1. Review 2006 planning scheme, including material supplied by Cairns in developing their working planning document.	May-November 2014
		2. Conduct Council workshops on key planning policy issues and strategic direction.	June – November 2014
		3. Undertake informal, targeted consultation on draft planning scheme	October 2014
Phase 2: Formal statutory scheme development (in accordance with MALPI)	2. Planning and preparation	1. Local Government decides to make a planning scheme (formal resolution).	November 2014
		2. Local Government advises Minister of decision.	November 2014
		3. Local government prepares planning scheme and adopts draft scheme for referral to Minister for State Interest Review.	December 2014
		4. Local government ensures iconic values are protected through the preparation of an impact report and referral to the advisory panel for review. **	December 2014
		5. Local government prepares material for State interest review.	December 2014
	3. State interest review	6. Minister decides how to proceed.	February 2014

	4. Public consultation	7. Local government commences formal public consultation.	March-May 2015
		8. Local government reviews submissions and decides how to proceed (includes writing to the Minister seeking approval to adopt the planning scheme).	June 2015
		9. Minister advises how to proceed (ie adopt scheme, adopt with conditions, not adopt etc...).	July 2015
	5. Adoption	10. Local government decides to adopt the scheme.	August 2015

** Subject to the State's Planning Reform agenda

The timetable represents at least a 12-month timeline for completion of a new scheme, which proposes front-loading Council's planning input, with a view to achieving a more stream-lined State-directed statutory phase.

Given the abundance of background material already commissioned and finalised for the Cairns working planning document that is of relevance to a new Douglas planning scheme, it is expected that a new planning scheme can be drafted relatively quickly. The 'in-house' resources of Council will be used to the greatest extent possible. Beyond the planning team, input / review by other Council departments will be required on an 'as-needed' basis.

This approach will increase the exposure of the planning staff to the overall project and provide for staff to share in the ownership of, and responsibility for, the new planning scheme.

Next step

It is a legal requirement of the FNQ Regional Plan that each local government amend their planning schemes to align with the regional plan. As such Council is obliged to make changes to its 2006 planning scheme. It has two options:

- Amend the current 2006 planning scheme;
- Prepare a new planning scheme.

In terms of these options, it should be noted that the *Sustainable Planning Act 2009* incorporates a requirement for a more standardised approach to planning scheme drafting within Queensland, to be achieved through the use and implementation of the QPP. The 2006 planning scheme does not resemble the QPP in format or structure. As such, the option to amend the current 2006 planning scheme is not viable. In addition there is neither time nor cost savings to be achieved by following this option.

Council's next step is to formally review the 2006 planning scheme and develop a new planning scheme through a series of policy directed workshops. Ultimately this will lead to a resolution to proceed with a new planning scheme under the legislation foreshadowed for late 2014. However in the meantime Council retains the flexibility in its approach to developing the planning scheme unconstrained by State directed timeframes.

CONSIDERATIONS:

Corporate and Operational Plans:

The preparation of the new planning scheme is aligned with the strategic goals in relation to the community, environment and economy.

Policy:

Existing planning scheme policies will be reviewed to ensure consistency with a new scheme. New planning scheme policies are likely to be developed during the preparation of a new planning scheme.

Financial and risk:

Allocation has been sought in the 2013/14 financial year to commence preparation of the new scheme. Expenditure into 2014/15 will be required in order to complete the planning scheme.

At this stage there are no risks of a substantial nature with respect to the preparation of a new planning scheme. A risk management plan will be developed to support the project plan as risks are identified.

Consultation:

The *Sustainable Planning Act 2009* requires formal consultation on the new planning scheme following drafting and State Interest Review. It is not likely that formal public consultation on the new planning scheme will occur until 2015. It is recommended that earlier informal consultation of a targeted nature occurs as the planning scheme is developed.

CONCLUSION:

Council is legally obliged to undertake a review of the 2006 Planning Scheme. The *Sustainable Planning Act 2009* mandates processes involved in developing a new scheme.

A two-phase approach in developing a new planning scheme is recommended to Council consisting of continued review of the scheme and on-going policy direction workshops to develop a new scheme, followed by the formal statutory processes directed by the State.

In addition, the role of the Douglas Iconic Places Panel in protecting the iconic values of Douglas Shire would now appear to be redundant given Douglas Shire's renewed independence. The State has recognised this and is proposing to amend legislation to remove the role of the panel. Council should support the proposal.