



# **Toowoomba Regional Council**

## **Minutes of a Special Meeting of Council**

**held on**

**8 March 2011**

**MINUTES OF A SPECIAL MEETING OF  
TOOWOOMBA REGIONAL COUNCIL**

**TUESDAY, 8 MARCH 2011**

**TABLE OF CONTENTS**

<b>1.0</b>	<b>Opening of Meeting</b>	<b>2</b>
<b>2.0</b>	<b>Attendance Including Apologies and Leave of Absence</b>	<b>2</b>
<b>3.0</b>	<b>Toowoomba Regional Planning Scheme</b>	<b>3</b>

**MINUTES OF A SPECIAL MEETING OF  
TOOWOOMBA REGIONAL COUNCIL  
HELD IN THE COUNCIL CHAMBERS, FIRST FLOOR, CITY HALL,  
541 RUTHVEN STREET, TOOWOOMBA  
ON TUESDAY, 8 MARCH 2011 AT 9.03 A.M.**

**PRESENT:** His Worship the Mayor, Councillor P.M. Taylor (Chairperson)  
Councillor R.P. Antonio  
Councillor W.W. Cahill  
Councillor A.C. Glasheen  
Councillor P.C.T. Marks  
Councillor J.J. McVeigh  
Councillor J. Ramia  
Councillor R.S. Scotney  
Councillor N.L. Strohfel  
Councillor C.E. Taylor  
Councillor M.A. Williams

**IN ATTENDANCE:** Chief Executive Officer Ken Gouldthorp  
Director, Engineering Services Gerard Brennan  
Director, Environmental and  
Community Services Brian Pidgeon  
Director, Finance and Business Strategy Arun Pratap  
Director, Planning and Development Services Stewart Somers  
Director, Water Services Kevin Flanagan

**MINUTES:** Co-ordinator, Council Business Angela O'Neil

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**BUSINESS:**

**1.0 OPENING OF MEETING**

1.1 The meeting was opened at 9.03 a.m.

**2.0 ATTENDANCE INCLUDING APOLOGIES AND LEAVE OF ABSENCE**

2.1 All Councillors were present.

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### 3.0 TOOWOOMBA REGIONAL PLANNING SCHEME

#### Principal Planner Land Use (Heath Martin) - 16 February 2011

#### PURPOSE OF REPORT

The purpose of this report is to present the draft Toowoomba Regional Planning Scheme and seek a resolution to prepare the planning scheme under the Sustainable Planning Act 2009 and refer it to the State Government for the first state interest review.

#### CORPORATE PLAN REFERENCE

3.1. Planning and development for regional growth and change is based on sustainability principles, cultural heritage and community engagement.

#### BACKGROUND

In December 2008 Council resolved to prepare a single planning scheme for the Toowoomba Regional Council area by December 2011, replacing the eight (8) planning schemes currently in place. A three year schedule was subsequently developed with the project divided into three broad stages of approximately 12 months duration:

- |         |  |
|---------|--|
| Stage 1 | Establishing the strategic direction (2009). |
| Stage 2 | Writing the planning scheme (2010).          |
| Stage 3 | State review and public exhibition (2011).   |

Stages 1 and 2 of the project have now been completed and stage 3 is about to commence. This means that a draft planning scheme has now been prepared and is ready to be submitted to the state government for its review.

#### CONSULTATION UNDERTAKEN

Extensive stakeholder consultation has been undertaken during the development of the draft planning scheme and will continue to occur throughout the final stage of the project. Consultation undertaken to date includes:

##### Stage 1 - Strategic Directions

- Internal consultation with technical experts as part of the 15 planning studies.
- Community consultation as part of the Action 2050 project, including a community summit.
- Community consultation on the Strategic Directions document.

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- Six focus groups representing the community (2), developers and major land owners, development industry consultants, Council's Development Assessment Branch and other internal stakeholders.
- Receipt and consideration of issues raised by individuals through the project website.

**Stage 2 - Writing the Planning Scheme**

- Monthly consultation on scheme content as it was drafted with development industry, community and internal stakeholder reference groups.
- Fortnightly briefings with Councillors.
- Monthly discussions with the Department of Infrastructure and Planning.
- Draft scheme made available to the development industry for comment between 24 December, 2010 and 16 February, 2011.

**Stage 3 - State review and public exhibition**

Planning for consultation to be undertaken during the final stage of the project is currently being finalised. These plans currently propose the following:

- Review of the planning scheme by state government agencies before and following public exhibition.
- Public exhibition of the planning scheme for six (6) weeks, which will incorporate:
  - individual written notification given to all land owners;
  - notification of the exhibition through media outlets including radio, newspaper and television.
  - officers available for one on one discussion with members of the public.
  - presentations to interest groups such as Chambers of Commerce, auxiliary clubs and other community groups.

During the public exhibition period the focus will be on ensuring that all TRC residents and absentee landowners are aware of the opportunity to view and make comment on the planning scheme and that they have enough information to determine how they might be affected and to make an informed submission to Council.

**ISSUES AND RESPONSES**

**Peer and Legal Review Issues**

**1. Responding to issues raised through the peer and legal review**

In January 2011 Council commissioned the law firm Norton Rose to undertake a legal review of the draft planning scheme and the planning firm John Gaskell Planning Consultants to undertake a peer review of the planning scheme. These

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reviews identified a number of issues that should be addressed to enable the scheme to be as effective as it can be. These issues will take several months to fully address however the project schedule requires that the planning scheme be submitted to the Department of Infrastructure and Planning by mid March to enable the project deadline to be met. The decision was therefore made to focus on high priority issues in the short term and continue to address other issues while the planning scheme is being reviewed by the state. This approach should not affect the state review process as none of the other issues will affect matters of state interest. The attached document, being the draft *Toowoomba Regional Planning Scheme* incorporates changes made to address high priority issues and is therefore ready for submission to the state government.

## **2. IPA Planning Scheme or SPA Planning Scheme?**

One matter that was raised by the legal review was the question of whether Council should continue to prepare the planning scheme under the *Integrated Planning Act 1997* (IPA) or resolve to prepare the planning scheme under the *Sustainable Planning Act 2009* (SPA). When the decision was made to prepare the planning scheme back in December 2008 that decision was made under the IPA. In December 2009 the IPA was replaced by the SPA, which established a new planning framework, including a new approach to the preparation of planning schemes based on standard planning scheme provisions – the Queensland Planning Provisions (QPP). Any planning scheme prepared under the SPA must be fully compliant with the QPP. As the original decision to prepare the planning scheme was made under the IPA Council has the option of continuing to work under the requirements of the IPA or to resolve to prepare the planning scheme under the SPA.

As the QPP is a recent and untested document it is widely accepted that it is not perfect and amendments will be required as Councils start to use it in developing their planning schemes. The QPP has already been amended once and a further amendment is anticipated in the near future. The legal review has identified two issues that Council needs to consider in deciding whether the planning scheme should continue to be prepared under the IPA or to proceed under the SPA:

### **(a) Limited Administrative Definitions**

The QPP has a list of administrative definitions that Council's must choose from when developing their planning schemes under the SPA. The draft Toowoomba Regional Planning Scheme contains a number of terms that could benefit from a definition but which are not defined by the QPP.

### **(b) Decision Making Framework**

The QPP sets up a decision making framework that will require many of the codes in the draft scheme to be rewritten to ensure that they are effective.

Being one of the first Council's in the state to develop a planning scheme under the QPP Council has been working closely with the Department of Infrastructure and Planning and a strong and mutually beneficial working relationship has been developed. Council has been able to keep the Department informed of issues with the QPP as they have arisen and assist with work to develop solutions to those issues. In return the Department has provided resources and advice to assist in the development of the planning

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scheme and have made a commitment to ensure that those parts of the statutory process they are responsible for undertaking are completed within target timeframes.

A decision by Council to prepare the planning scheme under the SPA will confirm its commitment to working with the State however a decision to continue to prepare the planning scheme under the IPA could be interpreted as Council stepping away from that commitment.

Both of the above issues affect the way that the planning scheme is written but do not prevent Council from implementing its policy and strategy intent. The Department of Infrastructure and Planning has advised that it is aware of these issues and is working to put a solution in place.

It is therefore considered appropriate that Council resolve that the Toowoomba Regional Planning Scheme be prepared under the SPA.

### **3. Dual Occupancies**

Early in the process of preparing the planning scheme Council made a clear commitment to adopting a high risk appetite i.e. not trying to have the planning scheme deal with low risk issues, and to avoid duplication between the planning scheme and other statutory instruments, particularly building regulations, e.g. where a matter is adequately dealt with through building regulations don't seek to also deal with that matter through the planning scheme.

When the SPA was introduced in 2009 the accompanying regulations included a provision in Schedule 4, Table 2, Item 2(f) that enabled Council to pass a resolution that dual occupancies in residential areas would be exempt development under the planning scheme in certain circumstances, allowing their development to be controlled through the building regulations.

The draft planning scheme proposes to allow the development of houses in residential areas to be controlled through the building regulations and it is considered appropriate that dual occupancies be dealt with in the same way. It is therefore recommended that Council make a resolution under Schedule 4, Table 2, Item 2(f) of the *Sustainable Planning Regulation 2009* to that effect.

### **RESOURCE IMPLICATIONS**

All resources needed for the completion of the Toowoomba Regional Planning scheme are able to be met within the project budget.

### **CONCLUSION**

A large number of people both within and outside of Council have been working for the last two years to prepare a draft planning scheme for the Toowoomba Regional Planning Scheme area. While some further work is needed to resolve issues raised through recent review processes the draft document is now at the point of being able to be submitted to the state government for the first state interest review.

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When Council originally resolved to prepare the planning scheme that resolution was made under the IPA. Since that time the IPA has been replaced by the SPA, which has introduced a standardised approach to the preparation of planning schemes. Council has been working closely with the state government to assist in the implementation and refinement of that process and it is recommended that as a further indication of Council's commitment to that relationship a resolution be made to prepare the planning scheme under the SPA.

**Recommendation**

1. That Council propose to prepare a new planning scheme in accordance with Part 5, Division 2 of the *Sustainable Planning Act 2009*.
2. That Council endorse the draft *Toowoomba Regional Planning Scheme* and write to the Minister for Infrastructure and Planning requesting a first state interest review of the planning scheme be undertaken.
3. That Council resolves for the purposes of preparing the new planning scheme that Schedule 4, Table 2 will apply.

**MOTION:**

Moved by Cr. Marks, seconded by Cr. Glasheen

1. That Council propose to prepare a new planning scheme in accordance with Part 5, Division 2 of the *Sustainable Planning Act 2009*.
2. That Council endorse the draft *Toowoomba Regional Planning Scheme* and write to the Minister for Infrastructure and Planning requesting a first state interest review of the planning scheme be undertaken.
3. That Council resolves for the purposes of preparing the new planning scheme that Schedule 4, Table 2 will apply.

**Carried**

Meeting concluded: 9.10 a.m.

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**CHAIRPERSON**