

Part 1 About the Planning Scheme

1.1 Introduction

- (1) The *Torres Shire Council Planning Scheme 2020* ('the planning scheme') has been prepared in accordance with the *Planning Act 2016* ('the Act') and the *Planning Regulation 2017* ('the Regulation') as a framework for managing development in a way that advances the purpose of the Act.
- (2) In seeking to achieve this purpose, the planning scheme sets out Torres Shire Council's intention for future development in the planning scheme area, over the next 10 years.
- (3) The planning scheme seeks to advance State and regional policies through more detailed local responses, taking into account the local context.
- (4) While the planning scheme has been prepared with a 10 year 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.
- (5) The planning scheme applies to the local government area of Torres Shire including all land, premises, roads, internal waterways and local government tidal areas.
- (6) Despite sub-section (5), the planning scheme does not apply to Strategic Port Land as identified under the *Transport Infrastructure Act 1994*.
- (7) The *Planning Act 2016* does not apply to development in mining tenements authorised under the *Mineral Resources Act 1989*, other than for administrating the development assessment process for the *Queensland Heritage Act 1992*, in relation to a Queensland heritage place.

Note – Under Section 285 of the *Transport Infrastructure Act 1994*, a port authority is required to prepare a Land Use Plan for Strategic Port Land. Development on Strategic Port Land is to be assessed by the port authority in accordance with their Land Use Plan.

Note – The planning scheme does not regulate Carrying Out Operational Work relating to an advertising device, other than where development occurs on a *State heritage place*, a *Local Indigenous heritage place* or a *Local non-Indigenous heritage place* of the Heritage Overlay shown on **Map OM-701** to **Map OM-705b**. Further detail is provided in Section 3.5.2 of the planning scheme. Advertising devices are otherwise regulated by way of Local Law within the local government area.

Editor's note – The location of mining tenements is available online via GeoResGlobe.

1.2 Planning Scheme Components

- (1) The planning scheme comprises the following parts:
 - (a) Part 1 – About the Planning Scheme;
 - (b) Part 2 – State and Regional Aspects;
 - (c) Part 3 – Categorisation Tables;
 - (d) Part 4 – Strategic Outcomes;
 - (e) Part 5 – Merit Outcomes;
 - (f) Part 6 – Standard Outcomes; and
 - (g) Part 7 – Local Government Infrastructure Plan.
- (2) The planning scheme parts discussed in sub-section (1) are supported by the following schedules and appendices:
 - (a) Schedule 1 – Definitions;
 - (b) Schedule 2 – Mapping;
 - (c) Schedule 3 – Local Government Infrastructure Plan Mapping and Supporting Material;
 - (d) Schedule 4 – Notations required under the *Planning Act 2016*;
 - (e) Schedule 5 – Designation of Premises for Development of Infrastructure;
 - (f) Schedule 6 – Planning Scheme Policies, which contains:
 - (i) Planning Scheme Policy 1 – Torres Shire Design Guideline;
 - (ii) Planning Scheme Policy 2 – Cultural Heritage;

- (g) Appendix 1 – Glossary of Abbreviations and Acronyms; and
 - (h) Appendix 2 – Table of Amendments.
- (3) The planning scheme contains the following zones and zone precincts:
- (a) *Centre Zone*;
 - (b) *Community Facilities Zone*;
 - (i) *Air Services Precinct*;
 - (ii) *Cemetery Precinct*;
 - (iii) *Community Services Precinct*;
 - (iv) *Education Precinct*;
 - (v) *Emergency Services Precinct*;
 - (vi) *Health Care Precinct*;
 - (vii) *Operational and Utility Services Precinct*; and
 - (viii) *Transport Precinct*.
 - (c) *Environmental Management and Conservation Zone*;
 - (d) *Industry Zone*;
 - (i) *Extractive Industry Precinct*;
 - (e) *Low Density Residential Zone*;
 - (f) *Low-Medium Density Residential Zone*;
 - (g) *Recreation and Open Space Zone*;
 - (h) *Rural Zone*; and
 - (i) *Rural Residential Zone*.
- (4) The planning scheme contains the following overlays:
- (a) *Agricultural Land Overlay*;
 - (b) *Airport Environs Overlay*;
 - (c) *Bushfire Hazard Overlay*;
 - (d) *Coastal Hazard Overlay*;
 - (e) *Environmental Significance Overlay*;
 - (f) *Flood Hazard Overlay*;
 - (g) *Heritage Overlay*;
 - (h) *Potential and Actual Acid Sulfate Soils Overlay*; and
 - (i) *Slope Stability Overlay*.

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 Act
 - (b) the Regulation
 - (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 the Act, the Regulation, Schedule 1 of the planning scheme or the *Acts Interpretation Act 1954*.

Note – Terms defined in Schedule 1 are underlined in the text of the planning scheme.

- (2) In the event a term has been assigned a meaning in more than one of the instruments listed in sub-section(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.

1.3.2 Standard Drawings, Maps, Notes, Editor's Notes and Footnotes

- (1) Standard drawings referenced in this planning scheme are part of the planning scheme.
- (2) Maps provide information to support the outcomes and are part of the planning scheme.

Note – Terms provided in *italicised* text refer to a zone, overlay category or overlay categories that are shown on a map provided in Schedule 2, other than where italicised text is used to refer to the title of legislation, a standard or other document. Certain terms associated with mapping are also defined in Schedule 1 and are denoted by being both *italicised and underlined*.

- (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.

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

Footnote¹ – See example at bottom of page.

1.3.3 Punctuation

- (1) A word followed by ';', ' ; ' and ' or ' is considered to be 'and'
- (2) A word followed by ' ; or ' means either or both options can apply.

1.3.4 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 the road, closed road, waterway or reclaimed land is covered by a zone or zone precinct then that zone or zone precinct applies;
 - (b) where paragraph (a) does not apply, if adjoined on both sides by land in the same zone or zone precinct – the road, closed road, waterway or reclaimed land is in the same zone or zone precinct, as the adjoining land;
 - (c) where paragraph (a) does not apply, if adjoined on one side by land in a zone or zone precinct and adjoined on the other side by land in another zone or zone precinct – the road, closed road, waterway or reclaimed land is in the same zone, zone precinct, local plan or local plan precinct as the adjoining land when measured from a point equidistant from the adjoining boundaries; and
 - (d) where paragraph (a) does not apply, if the road, closed road, waterway or reclaimed land is adjoined on one side only by land in a zone or zone precinct – the entire waterway or reclaimed land is in the same zone or zone precinct as the adjoining land.

Note – The provisions of Section 1.3.4 do not apply to overlays. The extent to which an overlay applies to the local government area is as shown in the mapping contained in Schedule 2.

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 and Assessment

- (1) The Categories of Development under the Act are:
 - (a) Accepted Development;

Editor's note – A Development Permit is not required for Accepted Development.

- (b) Assessable Development; and

Editor's note – A Development Permit is required for Assessable Development.

- (c) Prohibited Development.

¹ Footnote – this is an example of a footnote.

Editor's note – A Development Application cannot be made for Prohibited Development.

- (2) The Categories of Assessment, for Assessable Development, under the Act are:
 - (a) Code Assessment; and
 - (b) Impact Assessment;
- (3) The Act and the Regulation prescribe Categories of Development and Assessment for certain types of development.
- (4) The planning scheme also states the Category of Development and Assessment for certain types of development in the planning scheme area in the categorisation tables in Part 3.

1.5 Hierarchy of Provisions

- (1) Where there is inconsistency between assessment benchmarks in the planning scheme, the following rules apply:
 - (a) the Strategic Outcomes prevail over the Merit Outcomes and the Standard Outcomes, to the extent of the inconsistency;
 - (b) the Merit Outcomes prevail over the Standard Outcomes, to the extent of the inconsistency; and
 - (c) inconsistencies between Standard Outcomes are resolved in accordance with Section 3.1(8) of the planning scheme.
- (2) The purpose statement and local purpose statement of a zone are relevant to assessment to the extent:
 - (a) provided by Section 3.1(10) of the planning scheme; or
 - (b) they are referenced explicitly in an applicable assessment benchmark.

Note – The Strategic Intent is extrinsic material and is not an assessment benchmark for any assessable development under this planning scheme.

Note – The planning scheme contains the following provisions:

- Part 4 contains the Strategic Outcomes of the planning scheme;
- Part 5 contains the Merit Outcomes of the planning scheme; and
- Part 6 contains the Standard Outcomes of the planning scheme.

1.6 Carrying Out Building Work regulated under the Planning Scheme

- (1) Section 17(b) of the Regulation identifies the assessment benchmarks for building work that a local planning instrument must not change the effect of, to the extent the building work is regulated under the building assessment provisions, unless permitted under 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 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 3, 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.

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*. The decision notice must state this.

- (4) The relationship between the *Building Act 1975* and the *Building Regulation 2006* and the planning scheme is further explained in **Table 1.6**.

Table 1.6 – Relationship to Building Assessment Provisions

Column 1 <i>Building Act 1975</i> reference	Column 2 <i>Building Regulation 2006</i> reference	Column 3 Description	Column 4 Planning scheme part
Section 32(c) Section 33(2)	-	Alternatives to the QDC parts MP 1.1 and MP 1.2 <u>site cover</u> and <u>boundary clearance</u> provisions.	Section 6.1.5, SO3 Section 6.1.6, SO3
Section 32(b)	Section 10(2)(b)	Alternatives to specific matters of the QDC parts MP 1.1 and MP 1.2.	Section 6.1.5, SO1 Section 6.1.6, SO1
Section 32(a)	Section 12	Designation of a bushfire prone area for the BCA or the QDC	The <u>bushfire hazard area</u> of the Bushfire Hazard Overlay as shown on Map OM-300 to Map OM-305
Section 32(a)	Section 13	Designation of a flood prone area for the QDC	The <i>Flood Hazard Area</i> of the Flood Hazard Overlay as shown on Map OM-600 to Map OM-605
Section 32(b)	Section 13	Declaration of the defined flood level.	Definition of <u>defined flood level</u> in Schedule 1.
Section 32(b)	Section 13	Declaration of the finished floor level of class 1 buildings in the flood hazard area.	Table 6.4.6b

1.7 Local Government Administrative Matters

1.7.1 Aboriginal and Torres Strait Islander Knowledge, Culture and Tradition

- (1) The following aspects of the planning scheme are considered to specifically advance the purpose of the Act in supporting the valuing, protecting and promoting of Aboriginal and Torres Strait Islander knowledge, culture and tradition, in accordance with Section 5(2)(d) of the Act:
- (a) the Heritage Overlay, insofar as it identifies *Local Indigenous heritage places* and *Indigenous heritage high risk areas*;
 - (b) Strategic Outcome (1);
 - (c) Merit Outcomes MO8.1 to MO8.7, being those relating to the Heritage theme;
 - (d) the Standard Outcomes for the Heritage Overlay, insofar as they relate to land identified as a *Local Indigenous heritage place* and *Indigenous heritage high risk areas*; and
 - (e) Planning Scheme Policy 2 – Cultural Heritage.

1.7.2 Native Title Matters

Torres Shire is a unique Queensland Local Government in that:

- (a) Most of its population resides on islands off the northern tip of mainland Queensland;
- (b) It is the most northerly Australian local government and is geographically close to mainland Papua New Guinea; and
- (c) Its population comprises primarily Indigenous Torres Strait Islanders and Aborigines and approximately 80% of the Shire's land is subject to Native Title grant/claims.

This planning scheme has been prepared under the Act to regulate development in the Shire. Areas that are not within the jurisdiction of the Council of the Shire of Torres are not affected by the provisions of the planning scheme. It is noted that some of these areas will include land subject to tenure arrangements provided by other State legislation.

Council is mindful of both its statutory obligations imposed by Queensland law and its desire to involve the community in the planning process as it relates to development and future growth in the Shire. In this regard, Council acknowledges the following two specific issues.

1.7.2.1 Wasaga Expansion

In relation to the town of Wasaga on Horn Island, consultation with the Native Title holders is acknowledged as particularly important. Expanding the town of Wasaga is critical to providing new land on which to house the Shire's growing population which is one of the outcomes promoted by the planning scheme.

Currently, an Indigenous Land Use Agreement (the ILUA) exists between the Kaurareg people, Council and the Queensland Government. This tri-partite agreement makes provision for the setting aside of areas of land on Horn Island for "future acts". These include the provision of a reticulated sewerage scheme and the development of land beyond the current limits of Wasaga for urban purposes. This planning scheme has been drafted to reflect the current status of consultation between the ILUA parties. Council is committed to ongoing consultation with the Native Title holders to bring the process to fruition.

1.7.2.2 Development Assessment

Under the Act, a decision of Council on a development application that is assessed against this planning scheme is not contingent upon the determination of issues relating to land title or ownership.

The Act sets out requirements for the obtaining of owners consent to support development applications, in certain circumstances. On land where Native Title has been statutorily recognised, this means that the consent of the Native Title holders must be sought and provided by an applicant. A land owner is not obliged to provide owner's consent to an applicant. The right to enter upon and use land depends on the permission of the land's owner(s).

Consequently, this planning scheme is not intended to circumvent or diminish the need for any person to obtain owner's consent and/or separate permission from and respect Native Title holders in relation to the use of their land.

To the extent that this planning scheme seeks to regulate development on land (including land subject to Native Title), Council has sought to consult with the land owners.

Council is required under Section 23.2 of the ILUA to continue to negotiate in good faith with the Native Title Party in reviewing Council's planning scheme in relation to the ILUA area and will continue to meet that requirement.

Council's commitment to consultation with Native Title holders is therefore ongoing.

Additionally, it is Council's policy to encourage potential developers of land, particularly if the land is subject to a Native Title claim, to consult in person with the Native Title claimants at the earliest opportunity. Council continues to assist with this consultative process by providing the relevant contact details and making introductions as appropriate. Planning Scheme Policy 2 – Cultural Heritage, contained in Schedule 6 of this planning scheme, provides specific guidance in this regard.