



**Resource Planning and Development Commission**

## **Planning Advisory Note 16**

**Subject: Application, Adoption and Incorporation of External Documents by a Planning Scheme.**

**Purpose: To advise on the incorporation of external documents into planning schemes.**

### **Background**

Section 20(2)(g) of the *Land Use Planning and Approvals Act 1993* (the Act) states that a planning scheme may 'apply, adopt or incorporate any document which relates to the use, development or protection of land'. Objective 2(d) of Schedule 1 of the Act requires land use and development planning and policy to be 'easily integrated with environmental, social, economic, conservation and resource management policies at the State, regional and municipal levels'.

A planning scheme sets out the requirements that apply to new use and development of land and is a critical mechanism for the delivery of sustainable development. Thus a planning scheme is one mechanism to implement a range of land use strategies and policies.

Similarly, s. 44 of the Act requires a planning authority to keep its planning scheme(s) under regular and periodic review to ensure the Objectives of Schedule 1 of the Act are being achieved to the maximum extent possible. The Act therefore anticipates that planning schemes will require regular review in light of changing circumstances.

External documents prepared by a planning authority and other parties may provide a rationale for review of a planning scheme. The process described in Division 2 of Part 3 of the Act for amending a planning scheme is the primary mechanism to implement this review.

### **Incorporation, adoption and application**

There are two broad ways in which a planning scheme may 'apply, adopt or incorporate' a relevant document:

1. drafting the planning scheme so that the planning scheme itself delivers the required outcome; or
2. citing the relevant parts of, or the entire document, within the planning scheme itself.

Ideally, a planning scheme would implement an external document by extracting the specific planning requirements from that document and stating them in the planning scheme as standards, zonings, overlays, etc.

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However, in some instances it may be appropriate to incorporate a document. An incorporated document is one that is directly referenced or cited within the planning scheme. This is a valid approach when the document to be incorporated is clear, readily accessible, and there is no uncertainty as to what material is being incorporated.

Both approaches subject relevant parts of the external document to public review and assessment by the Resource Planning and Development Commission (the Commission) through either the draft planning scheme or amendment processes of the Act.

### **Extraction of specific requirements**

Preference should be given to extracting the specific planning requirements from a complex background document and stating them in the planning scheme as appropriate standards, zonings, overlays etc. Ideally, the findings or recommendations of a relevant document or study are translated into appropriate provisions of the planning scheme (i.e. standards, statements of purpose or intent etc.).

This approach is preferred as it ensures that all relevant information for the use or development of land is contained within the planning scheme.

For example, a planning authority may wish to implement the On-Site Parking and Access provisions as detailed in Element 3.7 of The Tasmanian Code for Residential Development (TASCORD) within its Residential zone.

To do so, the planning authority may extract or copy Element 3.7 of TASCORD and draft or amend a development standard within the planning scheme accordingly.

Thus the TASCORD element becomes the basis for the standard and, if necessary, may be redrafted to suit the local situation.

### **Incorporated document**

An alternative approach is to reference the external document within the planning scheme itself. Under this approach the external document is an 'incorporated document' and becomes part of the planning scheme.

Care must be taken with this approach, as it is a shorthand method of bringing additional detail into a planning scheme that expands the planning scheme.

It is the planning scheme, not the planning authority that incorporates a document; therefore, the planning scheme itself must clearly identify any incorporated documents.

Section 20(2)(g) does not empower a planning authority to adopt a document, which was not included as part of the scheme or specified in the scheme. Clauses such as 'for the purposes of implementing the provisions of this scheme Council may adopt special plans, designs, guidelines, codes or standards relating to any aspect of the planning scheme' are invalid.

Returning to the example of TASCORD discussed above, this alternative approach requires the planning scheme to include a direct reference to the relevant component of TASCORD (i.e. On-site parking and access will satisfy Element 3.7 of Douglas, J (1997): *The Tasmanian Code for Residential Development (TASCORD)*, Environment and Planning Division, Departmental of Environment and Land Management, Tasmania. It would be unsatisfactory to simply refer to TASCORD as this would incorporate the entire TASCORD document within the planning scheme.

## Notes

The following principles should be followed when considering the incorporation of a document into a planning scheme:

- Only the relevant parts of an incorporated document should be identified in the planning scheme, those parts of an incorporated document that are irrelevant (and not intended to be incorporated) may create ambiguity in the application of the planning scheme.
- An incorporated document can be interpreted as a document as it stands from time to time provided it is clear from the planning scheme that is what is intended.
- As a an incorporated document must be operational and relevant to the use, development or protection of land.
- Consideration must be given as to whether it is better to incorporate a document or simply extract the relevant provisions from that document and state them within a planning scheme.
- An incorporated document must be identifiable and accessible, any incorporated Document must be exhibited with the planning scheme or draft amendment to a planning scheme as it is part of the planning scheme or amendment.
- Document as it stands from time to time provided it is clear from the planning scheme that this it is what is intended, such a document should be the product of a recognised body that subjects its documents to an external review process.
- Legislative documents do not need to be incorporated as they apply by their own force, or by force of statute.

## Further Information

Relevant legislation may be viewed at <http://www.thelaw.tas.gov.au>.

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