

Good planning scheme drafting - overview

Why is good plan-drafting important?

Well drafted planning schemes enhance community confidence in Queensland’s planning framework by clearly articulating the Local governments future land use planning intent for their area. A well-constructed planning scheme will enable an efficient and accountable land use and development assessment system that carefully balances incentives and regulatory measures and maintains the lifestyle advantages that attract people to Queensland.

Plan-drafting guidance for Local governments

The Queensland Government has prepared new technical guidance to assist plan-drafters when making a new or amending an existing planning scheme. This fact sheet provides an overview of that guidance *Drafting a planning scheme - Guidance for local governments*. The guidance aims to deliver outcome-based planning schemes that:

- can respond to changing circumstances over time and embrace innovation and opportunity
- enable development proposals to be made and considered on their merits – assessed against their ability to deliver on and enhance the outcomes intended for the area
- are clear and objective, providing certainty for the community and industry about intended outcomes and what complies and what does not
- are well drafted and clearly articulated as required by the **Minister’s Guidelines and Rules (MGR)**.

The complementary technical guidance document *Integrating building work in planning schemes – Guidance for local governments* is designed to:

- help Local government understand what building matters a planning scheme should or should not deal with, and where a planning scheme has a role in ‘triggering’ building provisions, how to do so correctly
- provide certainty on the role of development and building assessment and avoid the risk of duplication.

Plan-drafting principles

Applying the following approaches to plan-drafting will help a planning scheme deliver on the purpose of the *Planning Act 2016* (the Act) and the *State Planning Policy July 2017* (SPP) guiding principles.

Efficient
Regulate development to the extent necessary to address potential impacts, to create a land use planning and development assessment system that is responsive and not overly restrictive.
Do not duplicate matters regulated outside the land use planning framework.
Limit content to that suited to a statutory instrument that seeks to regulate land use and planning outcomes.
Effective
Use language that tells users what they need to know in a way they will understand and correctly interpret.
Draft to facilitate clear and unambiguous development assessment decision making, considering the decision rules and the relevant matters the assessment must be carried out against or have regard to.
Transparent
Promote confidence in the planning framework through a planning scheme that is clear in its expression of the collective (community, local government and state) forward plan for the area and that enables development applications to be assessed consistently and that supports reasonable, logical and fair development decisions.



Ensure any material to be given weight in development assessment is contained in the planning scheme and located appropriately.

Identify the other legislation / plans that have effect in the local government area to ensure users of the planning scheme are made aware of the provisions applying to land affected by the other plans.

Integrated and coordinated

Section 4 of the Act identifies planning schemes as facilitating the achievement of ecological sustainability through *setting out integrated state, regional and local planning and development assessment policies for all of a local government area*.

As such, section 16 of the Act requires that a planning scheme must *coordinate and integrate the matters dealt with by the planning scheme, including state and regional aspects of the matters*.

Ensure vertical and horizontal alignment of all elements through the planning scheme from the overarching strategic outcomes through to specific provisions.

Ensure the zoning of land reflects and responds to the characteristics of land that constrain its use.

Consider the cumulative impacts of provisions and consider how the elements of the planning scheme connect and relate to each other.

Accountable

Establish a sound evidence base to underpin the land use planning vision and direction.

Advancing the purpose of the Act includes providing opportunities for the community to be involved in making decisions. In the first instance this can be achieved through maximising the community's role in policy setting and plan-making. Refer to the [Community engagement toolkit for planning](#) for guidance on effective community engagement.

Outcome focussed and positive

Clearly and objectively articulate the outcomes intended in relation to the matter. Clear statements that convey exactly what is to be achieved will improve certainty for the community and industry.

Provide a clear solution on how to achieve an outcome - know and clearly state what outcomes look like. Make it clear what complies and what does not.

The greatest opportunity to deliver on these principles is when a Local government is making a new planning scheme. Early communication between the State and Local government is recommended to enable discussions about the approach to the structure and operation of the planning scheme.

While there is less capacity to influence the overarching planning scheme approach when undertaking a planning scheme amendment, an amendment should:

- as a minimum maintain the existing level of transparency and efficiency of the planning scheme and not further complicate its structure and operation
- build in improvements to transparency and efficiency if possible
- always deliver on the required content and function of the planning scheme.

Planning scheme structure and content

There is no mandatory structure or order for inclusion of content in a planning scheme. The structure and approach taken in preparing or amending a planning scheme will be tested against the Act and the SPP principles to deliver an efficient, effective, transparent and integrated planning scheme, that is as easy for users to navigate as possible.

The planning scheme structure should balance avoiding repetition, with minimising the number of sections and volume of content a user must work through to understand what level of assessment applies and what is required of their development. Considerations when drafting content include:

Zones

The zoning applied to the land should reflect and respond to the characteristics of the land that determine its suitability for use and development. Avoid setting an expectation through zoning that will not be able to be realised due to other known constraints.

The zoning applied to land should be consistent with the strategic outcomes and strategic mapping and be compatible with the values or constraints identified for protection in locally specific mapping such as overlays. Zone provisions are to refine (while remaining consistent with) the zone purpose statements.

Categories of development and assessment

Keep in mind whether the activity proposed to be regulated constitutes development – temporary or infrequent activities do not constitute development as they do not materially change the use of the premises and are not regulated by the planning system.

Carefully consider the chosen category of development and assessment, as this is a powerful tool affecting the resources, costs and time involved in proposing and assessing development proposals.

The approach to articulating the categories of development and assessment should make it easy for users to work out what applies to them and minimise the number of places users must check.

The proposed categories of assessment and development for each zone need to be drafted to support the achievement of the zone purpose and the planning scheme zone provisions, and likewise, the provisions should be drafted cognisant of what development they are regulating and the category of assessment that will apply.

Overlays and locally specific provisions

A Local government may choose to use overlays or locally specific provisions, such as local plans, to integrate state interests of the SPP, advance regional interests and identify and consider local interests.

Consider how to utilise existing scheme elements (e.g. zones and overlays) to deliver desired local outcomes, before including additional locally specific elements, such as local plans, which have the risk of adding extra layers, complexity, duplication and ambiguity.

The cumulative effect of the categories of development and assessment and the assessment benchmarks applying within an overlay should be considered when allocating land to a zone, to ensure development envisaged by the overlay can apply in a way that is workable and reasonable within the context of the purpose of the zone.

Assessment benchmarks

Ensure it is easy for users to identify all the assessment benchmarks that apply to the proposal.

Ensure assessment benchmarks work in conjunction with strategic outcomes and categories of development and assessment to objectively articulate intended outcomes.

It is imperative that assessment benchmarks are well drafted and constructed. They must be objective, rather than subjective, and have a point of reference from which clear conclusions as to the outcomes intended and compliance can be measured.

Ensure there is a clear connection between the strategic outcomes through to the provisions in the planning scheme that comprise assessment benchmarks. This will ensure that code assessable development is contributing to the delivery of the overarching planning scheme direction.

Rules for plan-drafting

The guidance outlines the mandatory elements and content of a planning scheme, including the regulated requirements. These include:

Section 16(1) of the Act states that a planning scheme must:

- identify **strategic outcomes**
- include **measures** to facilitate the achievement of these strategic outcomes
- **coordinate and integrate** the matters dealt with by the planning scheme, including state and regional aspects of the matters.

Section 43 of the Act provides the head of power for a planning scheme, as a 'categorising instrument' to:

- **categorise development as assessable or accepted** development – under Section 44 of the Act, development is accepted, if a categorising instrument does not categorise it otherwise
- **specify the category of assessment** (code or impact) for assessable development
- set the **assessment benchmarks** development must be assessed against – a planning scheme must not be inconsistent with the assessment benchmarks identified in section 17 of the Regulation

Ensure the categories of development and assessment do not contradict the Regulation:

- Section 18 of the Regulation makes development stated in schedule 7 of the Regulation accepted development (provided the stated requirements are met)
- Section 19 of the Regulation makes development prohibited if stated in schedule 10 – a planning scheme may not prohibit development
- Section 20 of the Regulation makes development assessable if stated in schedule 9 or 10
- Section 16 of the Regulation prohibits a planning scheme from making the development stated in schedule 6 of the Regulation assessable development (provided the stated requirements are met).

Section 55 of the Act gives the head of power for the Regulation to prescribe matters a development application must be assessed against and these are contained in Schedules 9 and 10 of the Regulation – these are often the state development assessment provisions (SDAP). A planning scheme should not duplicate existing legislative requirements such as the SDAP.

Section 16(2) of the Act provides the head of power for a regulation to prescribe regulated requirements for the contents of a planning scheme. Sections 6, 7 and 8 of the Planning Regulation 2017 (the Regulation) identifies the **regulated requirements** that apply to local planning schemes. These include that:

- a planning scheme may only include land in the **zones** identified in schedule 2 of the Regulation and must include the **zone purpose statement** in schedule 2 for each zone used
- a planning scheme may only adopt the **use terms** related to the use of land for development that are contained in schedule 3 of the Regulation
- a planning scheme may include additional **administrative terms**, but only if the term and definition used is consistent with and does not change the effect of, the administrative terms and their definitions in the Regulation.