



Simplifying Planning Schemes

A DISCUSSION PAPER ABOUT
Common Key Elements for Planning Schemes

February 2001

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Foreword

This project to develop common key elements for planning schemes is an initiative of the Premier's Local Government Council. The Premier's Local Government Council considered there was value in planning schemes around the State having a similar look and feel. This would make the development environment simpler for developers and communities to understand. By using some standard provisions, Councils would also benefit by being able to concentrate their efforts on strategic planning when preparing new planning schemes.

This discussion paper identifies key elements in planning schemes and canvasses those that may be suitable for inclusion in a set of common key elements. It has been prepared with the intention of seeking feedback before further progressing development of the common key elements. This will allow project resources to be focussed on those key elements that are of greatest priority.

Your input into the options posed in the discussion paper is vital in setting the direction that further work will take. You are encouraged to become an active participant in this process by making a written submission during the consultation period.

Geoff Davis

Chair, Steering Committee

Executive Summary

There are nearly 70 planning instruments in use across the State with little consistency between each. This is confusing for those wishing to undertake development.

Many planning schemes were also prepared before the introduction of the Resource Management and Planning System in 1994 and have inadequate provisions for development in accordance with the new system.

To address these issues, State and Local government have signed a statewide partnership agreement to develop common key elements to simplify planning schemes. These are to be jointly agreed and implemented on an incremental basis. Engendering a high level of cooperation during the development of the common key elements is recognised as vital to their successful implementation.

This discussion paper aims to stimulate wide input into identifying the key elements of a planning scheme for which a common approach can be developed.

It gives an overview of the context within which planning schemes are prepared, discusses the most commonly used approaches to planning schemes and identifies the key elements of planning schemes. It goes on to identify those key elements which may be 'common' key elements making specific recommendations about the extent to which a common approach is possible. The paper concludes by discussing implementation mechanisms for the common key elements.

Written submissions are invited during a four week consultation period. The submissions will be summarized and presented to a facilitated workshop attended by key stakeholders. The directions and priorities for developing the common key elements over the remaining months of the project will be confirmed at the workshop.

Common key elements for planning schemes

The key elements of a planning scheme are those parts necessary for it to function in a practical and legal sense as a policy making instrument for controlling the use and development of land.

Given all planning schemes share some key elements there is a potential to minimize the extent to which the structure and wording varies from scheme to scheme. This is the purpose of identifying common key elements.

Common key elements should:

- cover processes common to all planning schemes;
- provide the most potential for a common look and feel;
- define terms that relate to administrative requirements that apply in all areas;
- be capable of accommodating both performance and prescriptive approaches;
and
- not impact on local strategic processes.

Standard provisions could be drafted for some of the common key elements. Councils would then choose those that are required to further the municipality's strategic directions when preparing a new planning scheme.

The following is a summary of the recommendations made throughout this report. The recommendations relate to the key elements of a planning scheme and indicate whether there is scope for development of a common approach.

Format and structure of documents and plans

Frequent users of the planning system, would benefit from planning schemes having a common look and feel. Planning schemes would be easier to read once some familiarity with the common format and structure was gained. For example, time would be saved locating particular provisions if they are consistently located in the same sequence in every planning scheme.

Recommendation 1

That the format and structure of the planning scheme document and a specification for the maps/plans is a common key element.

Administration

All planning schemes include provisions that relate to administration and development control processes. There is potential for a number of these to be common key elements. However, administrative matters are broad ranging and in some instances legal and policy issues constrain the extent to which a common approach could readily be pursued. It is therefore proposed that only some administrative provisions be common key elements and of those selected, the extent to which some are covered be limited to core matters.

Recommendation 2

That the following administrative sections could potentially be common key elements:

- The preliminary or foreword to a planning scheme;
- Clauses covering the application and assessment processes including:
 - definitions of the terms that describe the status of applications e.g. 'permitted' and 'discretionary';
 - exemptions (a basic list);
 - information requirements (a basic list),
 - matters for consideration/ consideration of an application (a basic list), and
 - existing use rights.

Spatial Areas

Zones are the most common method used to show spatial areas within the boundary of a planning scheme. The widespread use of zones and familiarity with them lends weight to the continued use of zones over other methods, such as precincts.

Another way of showing spatial areas is through the use of overlays (sometimes called precincts). Overlays are not used in the Model Framework for Planning Schemes, and there has been much discussion over their use. Overlays may be a common key element but further investigation is required, possibly in the next stage of the project.

It is proposed that zones be a common key element. However, a structure that can accommodate a range of strategic planning options is required. This should include a statement of intent for each zone but not the provisions applying to the zone.

Recommendation 3

That zones are a common key element and a structure is developed that is capable of accommodating a variety of strategic planning options and includes a statement of intent for each zone.

Use classes

The majority of planning schemes include a long list of use definitions and a table showing the status of these uses in relation to a particular zone. The Model Framework approach is different and involves grouping uses into categories. Each use is not defined and instead the common or dictionary meaning is used.

Use classes perform a key function in delivering the planning scheme and are proposed to be a common key element. However, it will be necessary to develop a structure that can accommodate both prescriptive and performance approaches.

Recommendation 4

That the definitions of use classes be a common key element and that a structure be developed that can accommodate both prescriptive and performance approaches.

Definitions for planning terms

Each planning scheme defines a number of planning terms, many of which are common to all planning schemes. If commonly used terms were standardised, this would avoid the need to redefine them each time a new scheme was drafted. This in turn would introduce greater consistency from scheme to scheme and make planning schemes easier to use.

Common definitions for planning terms are being pursued at the Commonwealth level by the Development Assessment Forum. This adds weight to their inclusion as a common key element.

Recommendation 5

That definitions for planning terms be a common key element.

Schedules

There is an increasing trend toward use of a number of issue specific schedules or codes at the rear of planning schemes. Schedules typically address matters such as access and parking, heritage and signs. The list of schedules is broadening to include vegetation clearance, wetlands and waterways and so on.

As there is consistent and widespread use of schedules it is proposed to include schedules as a common key element.

Recommendation 6

That schedules be a common key element to the extent of a common list of issues to be covered and a proposed format.

Implementation

Consideration needs to be given to the preferred means of implementing common key elements. There are both formal and cooperative mechanisms.

Maintenance of the common key elements, including the process for adding common key elements, or elaborating or changing existing common key elements, also requires consideration.

Establishing the principles underpinning implementation will assist in developing an implementation proposal as part of the project's outputs.

1. Introduction

Many of Tasmania's 29 Councils administer more than one planning scheme, with nearly 70 planning instruments in use across the State. There is little consistency between schemes, even between those within a single municipal area. This is confusing for people wishing to undertake development.

A large number of schemes are now dated and were prepared before the introduction of the Resource Management and Planning System (RMPS). The reforms brought to the land use planning system by the RMPS are based on the principle of sustainable development. Many of the State's older planning schemes have inadequate provisions for determining proposals in accordance with the objectives of the RMPS (see Appendix).

The Premier's Local Government Council endorsed a State-wide partnership agreement to develop common key elements for introduction to planning schemes in order to produce simplified planning schemes. Under the terms of the partnership agreement, the common key elements will be jointly agreed and incrementally implemented.

This project is being undertaken to further the partnership agreement. The aim of the project is:

to develop common key elements for planning schemes to facilitate a consistent approach to the control of use and development throughout the State in a partnership between state and local government in consultation with all stakeholders.

In order to simplify planning schemes, the following objectives have been identified:

- To bring greater consistency to the structure and key elements in the State's planning schemes.
- To meet the requirements of the *Land Use Planning and Approvals Act 1993* (LUPAA) for planning scheme preparation, including furthering the objectives of Tasmania's Resource Management and Planning System.
- To present planning schemes in a way that is easy to understand.
- To provide for flexible approaches to the control of use and development while allowing for local planning strategies to be implemented.

The project will proceed in two phases. The first phase is dedicated to developing common key elements for planning schemes and will conclude in June 2001. It is likely that wider planning systems issues may arise in the course of developing the common key elements. Although issues of this nature are outside the scope of the project's first phase, they can be highlighted for future consideration, perhaps in the second phase of the project from July 2001 to June 2002.

1.1 About this paper

The main purpose of this paper is to canvas options for common key elements in planning schemes.

It begins by providing an overview of the context within which planning schemes are prepared and follows with a discussion of the most commonly used approaches to

planning schemes. Then the key elements of a planning scheme are identified and recommendations made about those that are 'common' key elements. The paper concludes by canvassing the implementation mechanisms for common key elements.

There will be a four week consultation period during which written submissions are invited. The submissions will be summarised and presented to key stakeholders at a facilitated workshop. The purpose of the workshop is to confirm the directions and priorities for developing the common key elements over the remaining months of the project.

A report documenting the submissions received and the way in which these were addressed will then be released.

There will be further opportunities for input during April, May and June 2001 when those common key elements given highest priority will be further developed. The participation of planners, development professionals and industry will be particularly important during this part of the project. A further consultation process will follow the conclusion of the first phase of the project.

1.2 Making informed input

To assist stakeholders in making submissions the project team and steering committee will be conducting information sessions at stakeholder meetings during the consultation period. Further information is available by contacting the following project team members directly:

Sandra Hogue - Local Government Association of Tasmania

Telephone (03) 6233 3595
Email Sandra.Hogue@dpiwe.tas.gov.au

Marietta Wong - Department of Primary Industries, Water and Environment

Telephone (03) 6233 2410
Email Marietta.Wong@dpiwe.tas.gov.au

Further copies of this paper may be obtained from Service Tasmania outlets and on the Internet on <http://www.dpac.tas.gov.au/divisions/lgo/partnerships/sps.html>

Your comments are being sought on those key elements of a planning scheme that best lend themselves to the development of a common approach.

Post your submission to:

Simplifying Planning Schemes
GPO Box 44A
HOBART 7000

Or fax to (03) 6233 5482 or email to planningschemes@dpiwe.tas.gov.au

The closing date for submissions is 16 March 2001

2. Background

Over the last decade or so, the planning agenda has moved on from the largely physical focus of town and country planning practice to the much broader concept of sustainable development.

In Tasmania the shift in focus was brought by the introduction of the RMPS that established a shared set of legislative objectives based on the principle of sustainable development. They are found in the State's key resource management and planning legislation including the *Land Use Planning and Approvals Act 1993*, *State Policies and Projects Act 1993*, *Environmental Management and Pollution Control Act 1994*, *Marine Farming Planning Act 1995* and so on.

The application of the RMPS places an emphasis on:

- **Strategic planning** – as a rational way of setting directions for government, communities and industry and balancing existing needs against the need to maintain options for future generations.
- **Integrated planning** – consideration of the broader social, environmental and economic dimensions of development.
- **Whole of government approach** – integrating the interests of all spheres of government to deliver more effective land management and planning.
- **Public participation** – sharing the responsibility for resource management and planning by involving the community in the planning and decision making processes.
- **Monitoring performance** – through State of the Environment reporting, the consumption of resources and the impact of resource use can be monitored. This process can inform management practices and planning strategies.

2.1 Model Framework for Planning Schemes

With the RMPS came the need to consider whether planning schemes could deliver the outcomes envisaged by the new system. The then Department of Environment and Land Management engaged consultants Trevor Budge and Associates, to prepare a report titled *Integrated System of Planning Instruments for the Tasmanian RMPS* in 1996. This report identified a preferred option for the format and content of planning schemes – a framework.

Former Liberal Premier, Tony Rundle announced the preparation of a Model Framework for Planning Schemes in his Directions Statement in 1997. The Edwards Report, documenting the findings of an independent committee appointed to review the planning system (also released in 1997), reaffirmed the value of preparing a model framework that would allow planning schemes to better serve the objectives of the RMPS.

The Department then prepared a Model Framework for Planning Schemes. After lengthy consideration of the proposed Model Framework for Planning Schemes, including a hearing process conducted by the Resource Planning and Development Commission it became apparent that not all Councils agreed that the Model Framework was suitable for State-wide application.

The current process to develop jointly agreed common key elements for planning schemes was then initiated by a State-wide partnership agreement between State and Local government. The partnership agreement makes specific provisions for Councils wishing to use the Model Framework for planning schemes to do so, enabling its further evolution.

A number of Councils are using the Model Framework as the basis for draft planning schemes. However, the *Break O'Day Planning Scheme 1996*, a scheme that pre-dates the Model Framework but has similar characteristics, is the only scheme of this type currently in operation.

2.2 Planning documents

The degree to which the format and content of planning schemes are being standardised varies from State to State. Western Australia and Victoria are the only States to prescribe 'templates' which include such matters as common zoning, uses definitions and development standards. New South Wales is currently undertaking a review of plan making and a government white paper is due for release early this year. In South Australia there is no standard format for planning schemes, although there is a guide to preparing plan amendments which provides technical and procedural advice. In Queensland, guidelines have been released on the process for preparing planning schemes under the *Integrated Planning Act 1997* to assist Councils in meeting the need to prepare new planning schemes by 2003. However, the guidelines are about process and principles and no standard format has been devised.

Neither the Western Australia or Victorian approach represent a significant transition from traditional style planning schemes to planning schemes that are outcomes based. The Victorian by comparison with the Western Australian approach is more comprehensive and directive. Clearly considerable resources have been expended in the development and review of the Victorian provisions and it is a useful reference for this project given its wide application and the ability to gather evidence on its operation.

At the Commonwealth level, a Development Assessment Forum was formed in 1998 with the aim of reaching national agreement on ways to improve the processes for development approvals. The Development Assessment Process has interests in development assessment at a systems and best practice level, beyond the content and style of planning schemes, but is broadly interested in gaining consistencies where possible across Australia. Of direct relevance to this project is the recent release of a discussion paper on nationally consistent development assessment definitions. The discussion paper canvasses a core set of definitions for terms such as building height and floor area. Input is being sought from the States and Territories until 23 March 2001.

3. How can we simplify planning schemes?

In order to have an understanding of how planning schemes can be simplified by developing common key elements it is first useful to describe what a planning scheme is and what the key elements of planning schemes are.

3.1 What is a planning scheme?

A planning scheme is a structured set of planning requirements to deliver the strategic intentions for the planning area.

In most cases a planning scheme comprises a text document and plans or maps. These two parts are read in conjunction with each other and are legally binding statutory documents.

The responsibility for preparing and administering planning schemes rests with Councils. Some Councils administer more than one planning scheme, for example the Hobart City Council administers the *Battery Point Planning Scheme 1979*, the *City of Hobart Planning Scheme 1982* and the *Sullivans Cove Planning Scheme 1997*.

LUPAA (refer to Appendix) requires that a planning scheme must:

- seek to further the objectives set out in Schedule 1 of the Act (i.e. the Resource Management and Planning System objectives and planning process objectives);
- be prepared in accordance with State Policies (as provided for in the *State Policies and Projects Act 1993*);
- have regard to the strategic plan of a Council (as referred to in the *Local Government Act 1993*).

In addition to the requirements above, LUPAA also stipulates that a planning scheme **may** make any provision relating to use, development, protection or conservation of land. This is the head power for planning schemes to contain the provisions most of us are familiar with.

There are certain activities that are not required to comply with a planning scheme, such as forestry operations on a private timber reserve and mining conducted under an exploration licence.

Planning schemes are subject to an exhaustive approval process. The process includes a requirement for public notification and an invitation to make submissions in relation to the draft planning scheme. The Resource Planning and Development Commission then conducts hearings into any submissions received. It is this process that ensures the translation of the strategic intent underpinning a planning scheme into the scheme provisions.

The strategic basis for planning schemes is derived from local strategic planning but also coordinates Commonwealth and State interests at the local level. Many Councils prepare land use or thematic strategies to address key areas such as settlement and economic development when preparing planning schemes. In some instances, more detailed strategic planning occurs where there are particular values to be protected, such as for town centres or heritage.

Although under the *Local Government Act 1993* Councils must prepare strategic plans and LUPAA requires that planning schemes have regard to these plans, they are seldom sufficient basis for the preparation of a planning scheme without undertaking additional strategic planning of the nature described above.

Building a sound strategic basis for a planning scheme requires considerable resources. When preparing planning schemes Councils' resources are divided between strategic planning tasks and drafting of the statutory document. Currently there is no guidance or prescription for the statutory document.

3.2 Approaches to planning schemes

There are many different ways to produce planning schemes. The content and structure will depend on the underlying philosophy and the range of strategies being addressed through state, regional and local strategic planning processes.

Traditionally, planning schemes have been mostly prescriptive. That is, they have relied on numerical standards to determine if and how use and development should occur. The majority of planning schemes in Tasmania use this approach.

The degree to which scheme standards are quantified varies. Some standards require a considerable degree of judgement to determine whether they can be satisfied and others are expressed in readily quantifiable terms. The objectives of the provisions can influence the readiness with which quantifiable standards can be developed. Desired future character statements are examples of qualitative standards and setback and height are quantitative measures.

Where standards are clearly specified, the consequence of not exactly meeting the standard can be significant. It may render a proposal prohibited or trigger the discretionary permit process¹, irrespective of the magnitude of the variation required.

Typically prescriptive schemes have a limited amount of explanation of the objectives behind the development of the standards with the result that sometimes the standards seem arbitrary and there is little basis for the exercise of judgement. However, they do provide 'certainty' by enabling Council and developers to quickly determine whether a use or development would be allowed on a particular site. This saves time and resources at the outset for both Councils and developers.

During the last decade there has been an increasing trend toward performance or outcomes-based planning. In a pure sense performance-based planning is simply the opposite of planning by prescribing controls and standards. Under a performance-based planning scheme an application can be made for virtually any use or development of land and this is then assessed in accordance with qualitative policies, principles and provisions. These policies aim to cover a full range of social, economic, cultural and environmental issues and may be general across a whole Council area, or relate to a specific place or site.

In Tasmania one of the few performance-based regulatory documents is the *State Coastal Policy 1996*. The outcomes in the Policy are generally drafted to be open-ended statements of what is to be achieved. However, the Coastal Policy also

¹ Where Council may or may not grant a permit and must publicly notify the application to provide an opportunity for third parties to have input, including appeal to the Resource Management and Appeal Tribunal.

contains clear statements of control, for example, expansion of shack sites on public land will not be permitted. Due to the performance-based nature of this policy the means or solutions for achieving the outcomes are often unclear when assessing individual development applications. This can lead to considerable debate and confusion.

The main criticisms of the performance approach are that it is expensive for both Councils and developers because of:

- the quantity and nature of the information requirements for drafting the necessary standards and then in assessing applications; and
- that more judgement is required during decision making.

Both these aspects also mean that there may be less certainty of the outcome of a planning application.

Many instruments use a dual approach, that is both prescriptive acceptable solutions as well as performance criteria that state an outcome to be achieved. At a national level, considerable resources have been devoted to developing development assessment codes that use a dual approach of prescription and performance and have a particular format. The Building Code of Australia, the Australian Model Code for Residential Development and the Tasmanian Code for Residential Development are examples. The format uses a two column approach to show performance criteria and prescriptive measures (or acceptable solutions). There are some examples of a similar format and approach being used for planning schemes in Tasmania. It was employed by the Model Framework for Planning Schemes, is used in the residential code in the *City of Hobart Planning Scheme 1982* and in the *Break O'Day Planning Scheme 1996*.

While most do not use this format virtually all other schemes in the State are based on a dual approach as they use both prescriptive measures and performance criteria. A permitted standard is given but when this is not complied with, assessment is made under qualitative objectives. One of the key criticisms of most existing schemes is that the use of the dual approach does not go far enough. For example, these schemes provide no acceptable solutions for uses such as schools or local shops in residential areas, rather the use is simply designated as discretionary and no criteria is given to assess an application. This means that there is considerable uncertainty for both developers and the community as to what would be acceptable.

It is likely that many future planning schemes will employ a dual approach and format in which both acceptable solutions and performance criteria are specified. A key principle is that, wherever possible, acceptable solutions should show how a use and development can be permitted rather than simply making use or development discretionary.

3.3 What are the key elements of a planning scheme?

The key elements of a planning scheme are those parts that are necessary for it to function in a practical and legal sense as a policy making instrument for controlling the use and development of land. These elements appear in all schemes regardless of the approach that is being undertaken. They are necessary to deliver the requirements of LUPAA and to establish administrative processes. Examples are, the sections defining planning terms or administrative provisions that address planning application processes. Given that all planning schemes share some key elements, there is a potential to create a degree of consistency across the state and

reduce the extent to which the structure and wording varies from scheme to scheme. This is the purpose of identifying 'common' key elements.

3.4 What are 'common' key elements?

'Common' key elements are those elements that have a potential for providing a consistent approach across the state. To identify those elements that are common key elements, the following criteria have been used. Common key elements should:

- cover processes common to all planning schemes;
- provide the most potential for a common look and feel;
- define terms that relate to administrative requirements that apply in all areas;
- be capable of accommodating both performance and prescriptive approaches; and
- not impact on local strategic planning processes.

The most likely common key elements are those that relate to procedural matters and are least affected by local strategies such as the format and structure of schemes and provisions and clauses covering processes for making applications for planning permits.

Standard provisions could be drafted for some of the common key elements. Councils would then choose those that are required to further the municipality's strategic directions. Common key elements can be applied with some degree of flexibility. For example, a list of exemptions may include fences. Where a Council did not want to exempt fences, perhaps to protect heritage or streetscape values, it would use the other common exemption provisions but exclude the exemption for fences.

4. Identifying common key elements

The purpose of this part is to discuss the key elements of a planning scheme in order to determine which have most potential for further development as common key elements. After examination of a number of local and interstate schemes, the following key elements have been identified:

- the format and structure of documents and plans;
- administrative provisions including:
 - a preliminary/foreword to the scheme
 - intent/objectives of a planning scheme and
 - clauses covering assessment and application processes
- some form of spatial area (the way that an area is broken up for policy making purposes);
- use classes/groups;
- definitions of planning terms; and
- schedules (covering planning standards by issue).

There may be other key elements suitable for examination. If any have been missed these should be identified in submissions so that an assessment can be made of all the elements suitable for inclusion in this project.

4.1 Format and structure of documents and plans

Virtually every scheme in the state has a different format and structure for the written documents and the plans. Those who frequently use the planning system, such as consultant planners, draftsmen, solicitors, surveyors and architects – would be advantaged by a common look and feel to planning schemes because they could pick up a scheme and quickly find the parts that they are interested in. This would reduce some costs because less unproductive time would be expended in simply navigating a scheme.

The Victorian Planning Provisions specify the structure, type and style (including clause numbering) to be used for all planning schemes in that state. It may not be appropriate to go to these lengths in Tasmania, however, there appear to be some advantages in having at least a common contents page. This should not impact on the approach underpinning the scheme and would ensure that there is some consistency and ease in using planning schemes.

The Victorian Planning Provisions contain specifications for the planning scheme maps, including the scale, appearance of the title block and size of the plans. The benefits are similar to those of having a standardised structure for the written document. Users can gain some expertise in reading the plans and reduce the time needed to find the information that they need. Further, the maps will be easier to read and more readily identifiable as a planning scheme map. Specifying this level of detail will not affect the approach taken nor impact on local strategies.

Given the potential to make planning schemes easier to read, it is proposed that the structure and content of planning schemes and specifications for the planning scheme maps be included as a common key element.

Recommendation 1: Format and structure of documents and plans

That the format and structure of the planning scheme document and a specification for the maps/plans is a common key element.

4.2 Administration

All planning schemes include provisions that relate to its administration and development control processes. Specifically these are:

- a preliminary section or foreword that describes the coverage of the scheme;
- an intent and/or objectives of the planning scheme; and
- a description of the processes for application and assessment of permits.

Nearly all schemes include these provisions in different ways, using a variety of headings, and even locate them in different parts of the scheme. For example, 'Scheme Operation' (Break O'Day Planning Scheme 1996); 'Preliminary and Planning Approvals' (Circular Head Planning Scheme 1995).

4.2.1 Preliminary or foreword to the planning scheme

This element usually covers a description of the planning scheme area and the documents and plans that form part of the scheme.

The preliminary or foreword is often the first section of the scheme, is required for legislative purposes but can also be used to introduce the purpose and content of the planning scheme to non-planners. Despite this, the clauses are often legalistic in drafting style and could be written in plainer English.

As this element is found in all planning schemes and is purely administrative due to its statutory and informative nature, there would be some benefit in the same clauses being used in all schemes. These clauses will not be affected by the local strategies of the Council and can accommodate the different approaches to the scheme. Therefore, it is proposed that the foreword or introductory statement be included as a common key element.

4.2.2 Intent and/or objectives of the planning scheme

An intent and/or the objectives of the planning scheme should be provided toward the front of the document. The wording of these clauses should vary from scheme to scheme as they need to reflect local strategies although there could be some scope to include broad statements of general intent that are applicable to all planning schemes. Given that this section will largely rely on local strategic directions, it is not proposed to include it as a common key element with the exception of a reference to it in any proposed structure and format.

4.2.3 Clauses covering application and assessment processes

A wide variety of terms are used to describe this section of the scheme such as 'Application for Permit'; 'Planning Approvals'; 'Applications for Approval', 'Planning Scheme Operation', and 'Application and Assessment'.

This part(s) usually covers:

- (a) Status of use and development (including use and development in more than one use group/class);
- (b) Exemptions;
- (c) Non conforming/existing use of land;
- (d) Information requirements for assessment of permits (including additional information requirements);
- (e) Consideration of an application/matters for consideration; and
- (f) A range of other provisions such as temporary permits and demolition.

It is likely that some of these will be suitable for consideration as common key elements. However, the extent to which they can be covered may be limited. For example, the detailed provisions for the status of use and development can vary from scheme to scheme depending on the approach taken.

(a) Status of use and development

The provisions of a planning scheme are triggered when there is a proposal for:

- a change in use,
- a development, or
- a combination of a change in use and development.

The terms 'use' and 'development' are defined in LUPAA. Their separate definition enables planning schemes to make provision for them to be dealt with separately. For example, a use may be 'permitted' but the nature of development associated with a particular proposal may render the application 'discretionary' where it does not meet the specified standards but where variation of the standards has been provided for.

Whilst some planning schemes separate use and development, a common approach is to refer to 'use and development' as a catchall. In this way the provisions of the planning scheme that determine the status of a proposed development apply whether or not it is 'use', 'development' or a combination of both.

The status of use or development refers to whether the use and/or development will be allowed or not and the process that will be applicable to assess an application.

The LUPAA describes processes for two types of development application. These are:

- 'Permitted' applications - those that Council must grant a permit for but may attach conditions; and
- 'discretionary' applications – those that Council may grant or refuse to grant a permit for and must be subject to public consultation.

Although LUPAA does not specifically provide for the following, schemes commonly provide for:

- 'prohibited' applications - must be refused or in some cases Council may not even entertain an application; and

- 'permitted as-of-right' (also known as P1) use and development - these may proceed without the need to make an application provided they comply with the standards of the scheme.

The Break O' Day scheme and the Model Framework use an alternative designation for uses - primary and secondary uses. Primary uses are those that are generally in accord with the values and intent of a zone, whereas secondary uses are potentially in accordance with the values of a zone provided they occur in a way and in locations that do not adversely affect the values of the zone. This is an additional mechanism for addressing standards for use and development.

Planning schemes also include a broad list of use and development that is exempt from the requirement for a permit. Normally the provisions which exempt a use or development are drafted in a manner which enables Councils to formally check that the proposed use and development complies with the relevant standards of the scheme. See a further discussion of exemptions following.

All schemes should contain provisions relating to the following key issues:

- the criteria for use and development to be treated as 'permitted';
- the criteria for use and development to be treated as 'discretionary';
- what happens when Council does not have the ability to entertain an application or must refuse an application, i.e. it is 'prohibited'; and
- what type of use and development is exempt.

All Tasmanian schemes provide a table showing the status of use in each zone, that is whether the use is 'permitted', 'permitted as-of-right' (if this status is used), 'discretionary' or 'prohibited' in an area. This approach may not be necessary under a performance approach and if it is used the actual status given to each use will reflect local strategies and community expectations. For example, one Council may permit a number of commercial uses in an industrially zoned area but another may want to keep its industrial areas solely for industrial uses and prohibit commercial uses. For these reasons, this table will not to be included as a common key element as it will vary from scheme to scheme.

As provisions covering the status of use and development are required in all planning schemes, this has potential for being a common key element. However, it may be difficult to provide a range of approaches. For instance, the Model Framework's primary and secondary uses are not in wide use and there is debate about the use of the permitted as-of-right category. As there are policy and legal issues involved in developing standard provisions this will most likely need to be addressed over a time-frame that will exceed the life of this project.

(b) Exemptions

Exemptions refer to those categories of use and development that do not require an application for a permit. This list is important because it will affect anyone undertaking minor development and can have a major impact on the workload of a Council's statutory planning section.

Throughout the State there is some consistency in the type of use and development that is exempt, such as:

- minor domestic rear outbuildings;

- side and rear boundary fences; and
- agricultural buildings (below a certain size) in rural areas.

While the types of use and development are generally the same, the scale at which the development becomes exempt may vary significantly between Councils. For example, a 36 square metre carport may be exempt in one area but not in the adjoining Council area and would require a planning application.

Often there does not appear to be any strategic reason for the variation in exemptions, except that Councils have chosen different cut off points. However, in some cases exemptions do reflect local planning strategies. For instance, front fences are exempt in most planning schemes but not under the *Hobart Planning Scheme 1982* due to strategies concerning streetscape. While Hobart chooses to take applications for front fences to address local character strategies and desired future character statements, most other Councils are not concerned about this issue (except perhaps in heritage areas).

A draft list of exemptions was produced for the Model Framework for Planning Schemes and was subject to debate during the hearing process. The findings of the hearings were that these should be trialed by implementation of the Model Framework. The results of this are yet to be determined.

Considerable work needs to be done to refine a list of exemptions with practitioners in local government. Whilst this could be a common key element, it is likely that agreement could only be reached on a basic list that Councils would choose from and then add their own exemptions to reflect local circumstances.

(c) Non-conforming use/existing use rights

LUPAA provides the legal basis for non-conforming use or existing use rights. This gives particular rights to land uses that are normally prohibited in an area but have been in existence prior to a planning scheme coming into effect. Most schemes reproduce the requirements of the legislation but then extend them to cover additional matters such as limiting the area of extension of a use or allowing a change of use to other uses that will have a lesser impact.

This is a matter that is applicable to all types of planning schemes. If it is included as a common key element, these provisions would require careful legal investigation. It may be that a range of clauses could be provided to cover the minimum requirements of the legislation as part of the common key elements and then Councils could extend these to satisfy local needs.

(d) Information requirements

All schemes include a list of information to be submitted with a planning application. This is necessary to ensure that sufficient information is provided to undertake an adequate assessment of a proposal. LUPAA provides for a minimum amount of information such as the signature of the owner of the land. There will be a basic list of information that is applicable to all applications such as minimum requirements for plans, information about the existing condition of a site and information about the changes that result from the use and development. A full list of information requirements will depend on the specific standards of the scheme. These standards in turn depend on the strategies that the scheme is based on. Therefore, a list of information requirements could only be included as a common key element to the

extent of covering a list of minimum requirements and then Councils would need to add to it to reflect local policies and strategies.

(e) Matters for consideration/consideration of an application

This section of a scheme provides a broad list of issues that Councils can consider when assessing a planning application – without every aspect having a detailed standard in the scheme. It is useful when all standards are not provided in the scheme but is also necessary to provide the head power for conditions to be placed on a 'permitted' application. For these types of application, the matter that the condition covers must be specified in the planning scheme. Most schemes in Tasmania include a list of matters for consideration.

The traditional approach has been to provide specific standards for the majority of matters but to retain recourse to a set of broad objectives or 'heads of consideration' that cover a range of issues with no specific standards or criteria given in the scheme. The person undertaking the assessment then uses judgement to determine whether an application satisfies the requirements of the planning scheme.

As with attempting to define all uses, it is not always possible to draft standards for every potential development scenario. The advantage of having an overriding head power to consider a broad range of matters overcomes this difficulty. The development control process could be hampered by the inability for a Council to address relevant matters for which there are no development standards and no overarching head powers.

However, it could be suggested that having broad head powers creates uncertainty for developers and the community. Using the head powers involves judgement and in the absence of standards there is a potential for applications to be treated inconsistently depending on how the head powers are applied on a case by case basis.

The Model Framework for Planning Scheme's approach is based on providing a standard for all issues or objectives covered by the planning scheme. Despite overcoming the problems of consistency of the traditional approach, a criticism of the Model Framework approach is that it is not possible to draft all the necessary standards to cover every matter (which may also increase in number in time). There is a further concern that considerable resources would be required to satisfactorily draft the provisions.

A basic list of matters for consideration could be drafted. Councils using a scheme that does not attempt to cover all aspects by standards could then use the list and remove the matters that have been covered in detail. Given the need for this list to satisfy statutory requirements, it is proposed that a basic list be drafted as part of the common key elements. This list would be augmented by Councils to address other issues that are identified as being of relevance to them during strategic planning processes and for which specific standards are not prepared.

(f) Other administrative provisions

The following provisions are also commonly found in the administrative sections of the planning scheme and are not proposed to be included as common key elements for the reasons described:

- Temporary permits - provisions for 'temporary permits' are not included in all planning schemes. Where they are included they allow a Council to accept an application for a permit for a prohibited use provided it is only for a specified period of time - say a maximum of three years. Normally all development associated with the temporary use is required to be removed at the expiration of the permit. The LUPAA does not specifically provide for temporary permits.

It is not proposed to include 'temporary permits' as a common key element because they are not in common usage and their legality needs further investigation.

- Demolition – this is covered in the definition for development that is included in LUPAA so it is not proposed to cover demolition in any further detail other than if it is investigated as one of the planning terms to be included as a common key element.

In summary, a number of the administrative provisions found in planning schemes could be common key elements. Administrative matters are broad ranging and the extent of coverage is likely to be limited to basic lists and/or clauses and Councils would then use strategic planning processes determine any additional matters that may be needed to address local circumstances.

Recommendation 2: Administration

That the following administrative sections could potentially be common key elements:

- The preliminary or foreword to a planning scheme;
- Clauses covering the application and assessment processes including:
 - definitions of the terms that describe the status of applications e.g. 'permitted' and 'discretionary';
 - exemptions (a basic list);
 - information requirements (a basic list),
 - matters for consideration/ consideration of an application (a basic list), and
 - existing use rights.

4.3 Spatial areas

The majority of planning schemes include a set of maps (plans) that break up the planning area into smaller units that reflect like values. These values are most often described in terms of the predominant current use of the area and usually have names like residential, industrial, commercial, community use or public purposes.

The most common method to show spatial areas in Tasmania is zoning. However, other types of spatial areas such as precincts, planning or policy areas, overlays and resource areas are also used. It is also possible to have no spatial areas defined on the plans and for land use policy to relate to the area as a whole.

A section of the written part of the scheme usually describes the spatial area that is applicable and includes clauses covering the requirements for use and development of land within the respective areas. For instance, if zoning is used there is usually a

section covering each zone e.g. residential, commercial, industrial and so on. Within each zone, provisions will state the type of land use that is allowed and how land can be developed e.g. height of buildings, setbacks from boundaries and minimum area of subdivision, etc.

Following is a more detailed discussion of the different types of spatial areas, illustrating some of their advantages and disadvantages.

4.3.1 Zones

Zoning is “a technical or physical approach to the segregation of incompatible activities such as housing and industry; generally it has been effective in preventing the worst aspects of mixed development in new areas.”²

All planning schemes in this State use some form of zoning. Traditionally, planning schemes have made provision for many zones with the result that there is a large number of different zones in use across the state.

Each zone has different standards for use and development and often the variation is only slight between some. Those using the system must become familiar with a variety of names and the specific requirements in each case. The standards vary from one Council area to another and even within the same Council area in some cases. This makes the planning system very complex. To a certain extent the number of zones can depend on the complexity of the development in the area. In a rural community with small towns, a fewer number of zones tend to be used. However, in an urban area with a mixture of land uses in a small area it is more likely that a broader range of zones will be used.

The number of zones may also be related to the complexity of the Council’s local strategies. For example, some Councils may have identified a hierarchy of commercial centres and different policies for each of these. They may want to show these separately on planning scheme maps and attach different development criteria.

Zones have been criticised for the extent to which they coarsely separate use and development from one area to another. Being based on the predominant existing use of an area they tend to limit the range of future use and development to only those uses compatible with the existing pattern of use.

The major advantage of zones is that the community readily understands them and the way they are described gives an immediate indication of the land use policies for the area. For instance, a ‘residential’ zone usually gives the impression that residential uses have precedence, that there will be an emphasis on protection of residential amenity and that industry and large-scale commercial uses are not generally allowed.

The project brief anticipates that a zone structure will be included as a common key element on the basis that zones are widely used in Tasmania and are generally understood. However, the structure to be developed will need to cater for a variety of strategic planning options and to accommodate performance based and prescriptive approaches to planning schemes.

² Gilpin A, p. 229

4.3.2 Overlays

Overlays are a method used to show an area that is subject to specific development standards in response to issues such as flooding, wetlands, heritage, landslip, high visual values, landscape protection and airports. Sometimes the term 'precinct' can be used interchangeably, for example, where it is used to identify the limits to a town centre to which special provisions apply.

There are a number of alternative ways to make special provisions, such as special purpose zones where a zone may be customised to suit a particular type of development or a single development proposal with a limited range of potential uses. Site specific development controls are also applied through the use of Master Plans or Development Plans that can be introduced as a separate set of provisions applying to an area defined on the scheme maps.

Sometimes overlays provide the visual reference to the provisions of a schedule in the planning scheme. However, relatively few matters covered by schedules can be mapped.

In principle, the use of overlays is generally accepted where the area to be mapped can be accurately identified and is not subject to change over time. For example, when addressing the conservation of built heritage for an historic township like Richmond or Stanley, this can be illustrated in a mapped form as it can relate to property boundaries and does not change through natural phenomenon. Bushfire prone areas which relate to stands of vegetation are able to be mapped but may be subject to significant change over the life of a planning scheme so are less suited to overlays. Where the boundaries of overlays cannot be easily distinguished, a text description would provide more certainty and may be required in conjunction with the overlay.

Overlays are not used in the Model Framework for Planning Schemes. The main reasons are the difficulty in accurately mapping matters commonly described by overlays and that there may be a need to change the boundaries of an overlay during the life of the planning scheme. Instead of showing overlays on the maps, reference is made to a Geographic Information System that is maintained outside the planning scheme. Use of a Geographic Information System allows data to be readily kept up to date whereas a change to the boundary of an overlay would require a planning scheme amendment.

There is some criticism that the Model Framework approach does not indicate up front where special issues apply, potentially making the process more expensive and uncertain for the proponent.

Despite there being some limitations for the productive use of overlays, this technique provides clear benefits in being able to easily show spatial policy information.

Overlays may be a common key element but further investigation is required, possibly in the next stage of the project.

4.3.3 Other ways to describe spatial areas

Although in Tasmania the majority of planning schemes use zones to describe spatial areas, there are other ways of showing spatial areas in a planning scheme, for example:

- Precincts – cover areas of like character and include the objectives and policies for specific areas without any reference to the predominant use that occurs³. Policies can be tailored for small areas and development strategies and standards that reflect local character. However, this approach is more complex.
- Resource management areas and resource units – are areas that reflect dominant land use types, land capability, land patterns and special natural or other types of resources in the area. These areas are further broken down into sub components called Resource units. This directly attempts to further the objectives of the Resource Management and Planning System by linking resource management more closely with planning.

The *Hobart City Planning Scheme 1982* is the only scheme in which precincts provide comprehensive coverage and the *Dorset Planning Scheme 1996* is the only scheme to use resource management areas and resource units.

In its purest form, performance-based planning does not require any spatial areas. Where policies are developed that relate to a specific geographical area, they are described in the text rather than being shown on plans. In this way policies can relate broadly across the planning area without arbitrary lines defining the limits. This is useful for environmental issues where the effects are usually not contained within property boundaries.

However, this can make the planning scheme more difficult to understand since it removes any visual indication of the spatial area to which a policy applies and gives no indication of the preferred location of uses, unlike zoning where likely suitable uses are inferred by the type of zone.

Further consideration of the other means of showing spatial areas, discussed above, is not proposed.

Recommendation 3: Spatial areas

That zones are a common key element and a structure is developed that is capable of accommodating a variety of strategic planning options and includes a statement of intent for each zone.

4.4 Use classes

Use classes are commonly used in conjunction with zoning to determine where use and development will occur. The majority of planning schemes include a long list of use definitions and a table showing the status of these uses in relation to a particular zone. This approach is used not only in Tasmania but also widely across Australia.

This approach is based on assumptions about the likely impact of a particular type of use as the basis for determining whether a development will be 'prohibited', 'permitted' or 'discretionary' in a given location. The advantage of this system is that

³ Some schemes use precincts to denote spatial areas with special values such as parts of a town with a concentration of heritage values. In this context, precincts are used as overlays and are discussed in section 4.3.2.

it is relatively easy to understand and creates certainty because it can readily be determined if an application would be allowed. For instance, the community has a general understanding that in a residential zone where the use class table prohibits mechanical repair garages, one could not set up next to them.

A disadvantage is that new land uses not anticipated at the time of drafting the planning scheme, such as call centres, are not catered for. An amendment to the planning scheme is required for an application to be entertained. This highlights the difficulty of attempting to define every use. Some planning schemes overcome this issue by including a definition for 'miscellaneous' use. However, there is generally no criteria against which such a potential diversity of proposals could be assessed, making assessment highly subjective.

Another disadvantage is that some uses improve in environmental performance over time or there may be different levels of performance depending on the scale of the development. These uses may be prohibited even though they may not have a detrimental impact in the area because assumptions have been made about their likely impact.

The Model Framework adopts an alternative approach. It makes provision for seven broad use classes each of which suggests the type of uses included but there is no attempt to separately define those uses. Instead, they have their ordinary meanings. Having broad use classes, such as 'Residential' and 'Resource Development' is a significant departure to the traditional approach. It is much more flexible and potentially allows a wider range of uses to be entertained in a given zone. The performance of the use determines whether it is suited to a location rather than an assumption about the impact of the use based on its description.

A criticism of the Model Framework approach is that some uses may not be wanted in some areas, for example, an industry in a residential area. If inappropriate use or development is indicated up front, the resources required to justify a proposal need not be expended. This would provide greater certainty but at the cost of some loss of flexibility.

It is also suggested that broad use categories do not provide enough 'fine grain' planning for specific strategies. For example, a residential use group includes a spectrum of residential uses ranging from a single dwelling to a motel complex. Councils may wish to implement different strategies for uses in different areas.

Another approach is used in the Victorian Planning Provisions. This clusters like uses together but still defines each individually. There are fourteen different broad use groups and a small number of other uses that are not grouped (car park, cemetery/crematorium, home occupation, saleyard, service station and winery). Strategies can relate to the broad use groups or the particular uses defined individually. An example of the broad use group is the Education Centre group that includes Business College, Employment Training Centre, Primary School, Secondary School and Tertiary Institution. An advantage of this approach is that it groups like uses to combine policy directions.

As use classes perform a key function in delivering the planning scheme, it is proposed that these be one of the common key elements and that a structure be developed that can accommodate prescriptive and performance approaches.

Recommendation 4: Use classes

That the definitions of use classes be a common key element and that a structure is developed that can accommodate prescriptive and performance approaches.

4.5 Definitions for planning terms

Each scheme defines a number of planning terms. There will be some difference in the definitions used but often the list will include terms common to all planning schemes. There would be advantages in the definitions of planning terms being standardised. This would enable Councils to focus on strategic issues when producing new planning schemes rather than on redefining common terms. There is also potential to introduce greater consistency from scheme to scheme with the advantage that the meaning of terms can be interpreted and understood across a wide number of planning schemes.

Some examples of the terms that could be standardised are: floor area, height, land, lot/allotment and works. Some definitions will relate to the specific policies and standards of the planning scheme. For example, floor area may be defined differently depending on whether it is used to trigger car parking or site coverage provisions. Therefore, it may not be appropriate to attempt to draft standard definitions for all planning terms.

The difficulty in finding a set of generally agreed definitions has been illustrated by the Resource Planning and Development Commission in its findings about the Model Framework. In its report of December 1998 the Commission found that *“consensus on particular definitions and exemptions is unlikely and that continued amendment will become a circular process.....the best way to test whether or not the definitions and exemptions are practical and workable is to use them in the trial implementation of the model framework”*.⁴

It should be noted that the Development Assessment Forum is currently undertaking work at the national level. Standard definitions have been identified as a key area to improve planning systems and a discussion paper on national development assessment definitions has recently been released for comment and may be relevant to any proposals to standardise planning terms in Tasmanian planning schemes.

The definition of planning terms used in planning schemes is a key element that could provide gains by making planning schemes easier to use. However, as the Development Assessment Forum has already begun to look at standardising development assessment definitions it would seem unnecessary to pursue this common key element as part of this project.

Recommendation 5: Definitions for planning terms

That definitions for planning terms be a common key element.

⁴ RPDC, December 1998, p. 23

4.6 Schedules

Standards for use and development can be provided under the relevant zone or in schedules that cover specific types of development that apply across a number of zones.

There is an increasing trend toward use of a number of issue specific schedules or codes at the rear of planning schemes and in Tasmania the term schedule has generally been used in preference to code. There have always been a number of schedules in schemes covering matters such as access and parking, heritage and signs. This list is broadening to include wetlands and waterways, siting and design of buildings, subdivision in bush fire prone areas, vegetation clearance, roads and so on.

As there is a consistent and widespread use of schedules it is proposed to include these as a common key element. However, the specific standards for each of the schedules should relate to the strategies they support and will need to be worked up over time. Therefore, schedules can be included to the extent of drafting a list of those that may be common to all schemes and drafting a standardised format.

Recommendation 6: Schedules

That schedules are a common key element to the extent of a common list of issues to be covered and a proposed format.

5. Implementation

The following part canvasses the issues associated with the implementation of common key elements for planning schemes.

The partnership agreement establishing this process was entered into on the basis that the common key elements would be jointly agreed and implemented on an incremental basis. This is taken to mean that the common key elements will be developed in close consultation between state and local governments and that there would be no requirement for Councils to make changes to their planning schemes 'overnight'. Engendering a high level of cooperation during the development of common key elements is recognised as vital to their successful implementation.

However, there are a number of options for implementation and the way common key elements will be implemented may influence the identification of common key elements for some stakeholders.

The issue of custodianship of the completed common key elements and management of their implementation also requires discussion.

5.1 Formal mechanisms for implementation

Provision has been made in LUPAA for the implementation of a model framework for planning schemes. These provisions were inserted by amendment at the time the preparation of a model framework was first mooted (see Appendix). The intent of these provisions is to **prescribe** a model planning scheme framework for use by Councils. However, the provisions have never been used.

When considering implementation mechanisms, it is important to recognise that the output of common key elements for planning schemes differs from a framework. It will be a set of ready to use elements, not a comprehensive framework or template. It is questionable whether the existing provisions could be used to implement common key elements since they refer specifically to a model framework.

An alternative mechanism to give effect to the common key elements is the use of regulations. LUPAA provides the power to make regulations. However, few regulations have been made. As with legislation, some formality could be expected with the process for the adoption of regulations. It may also be necessary to ascertain whether LUPAA makes suitable provision for a regulation for common key elements.

5.2 Co-operative mechanisms for implementation

It is essential that the implementation mechanisms to be used do not pose any disincentive for Councils to review dated planning schemes. Reducing the number of planning schemes and reviewing dated planning schemes, whether or not they are replaced with planning schemes that have a common style across the State, is a worthwhile objective in its own right.

Informal mechanisms are more flexible and allow for change as issues arise. They offer advantages for the implementation of common key elements initially – allowing early implementation to occur in a trial fashion.

The major disadvantage with cooperative mechanisms for implementation is the likelihood that it will take a considerable period of time for any common key elements to become widely used. A further issue is the inability to ensure obligations are met, such as meeting agreed timeframes for implementation.

There are a number of ways of cooperatively implementing common key elements. For example, the State government is currently providing planning assistance to Councils pursuing the Model Planning Scheme Framework. Partnership agreements have also been used.

Prior to any formal implementation it is essential to trial the common key elements.

The principles underpinning an implementation package for the common key elements require consideration. This will assist the more detailed development of an implementation proposal. For example, should the common key elements be implemented outside any legislative or regulatory framework as a matter of principle?

5.3 Maintaining the common key elements

Clearly the Resource Planning and Development Commission will have an integral role to perform in the implementation of common key elements for planning schemes since the Commission has responsibility for the planning scheme approval process.

In meeting its responsibilities the Commission will be faced with requests from Councils to add to or embellish the common key elements. It will need to consider these proposals on their merits and whether or not the common key elements should be amended to reflect an improved approach or additional element.

This process reflects the way planning schemes typically evolve. However, there is a question of whether specific checks and balances are needed to ensure the integrity of the common key elements developed in partnership with Local government are maintained. Equally there may be an interest in progressing the content of the common key elements to include matters not originally included or earmarked for later development.

It may be appropriate to agree in advance on the process for further evolution of the common key elements and on a process for consultation of proposed changes and additions before formally making a change to the common key elements.

Establishing principles for the way in which the common key elements will be managed and maintained will assist the development of a more detailed implementation proposal.

5.4 Principles for implementation

This discussion paper provides an opportunity to have input into the way the draft common key elements are progressed in the following months and to influence the way in which they will be implemented. Initially comment is sought on the principles to underpin a proposal for implementation. This will direct the further investigation of options and development of a draft implementation proposal as part of the project's outputs.

Extracts from the *Land Use Planning and Approvals Act 1993* - Objectives and sections 19A and 20

Part 1 – Objectives of the Resource Management and Planning System of Tasmania

1. The objectives of the resource management and planning system of Tasmania are -

- (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
- (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
- (c) to encourage public involvement in resource management and planning; and
- (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and
- (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

2. In clause 1(a), "**sustainable development**" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while -

- (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

Part 2 – Objectives of the Planning Process Established by this Act

The objectives of the planning process established by this Act are, in support of the objectives set out in Part 1 of this Schedule -

- (a) to require sound strategic planning and co-ordinated action by State and local government; and
- (b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land; and
- (c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and
- (d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels; and
- (e) to provide for the consolidation of approvals for land use or development and related matters, and to co-ordinate planning approvals with related approvals; and

- (f) to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania; and
- (g) to conserve those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and
- (h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community; and
- (i) to provide a planning framework which fully considers land capability.

Section 19A of the Land Use Planning and Approvals 1993

s. 19A

- (1) The Minister may issue a model framework for the use of planning authorities in the development of planning schemes.
- (2) The model framework may specify the structure and format of planning schemes and definitions and provisions which are to be included in all planning schemes.
- (3) The Minister may direct the Commission to require planning authorities to prepare planning schemes or amend planning schemes in accordance with the model framework referred to in subsection (1).

Section 20 “What can a planning scheme provide for?”

s. 20 (1) A planning scheme for an area -

- (a) must seek to further the objectives set out in Schedule 1 within the area covered by the scheme; and
 - (b) must be prepared in accordance with State Policies made under section 11 of the *State Policies and Projects Act 1993*; and
 - (c) may make any provision which relates to the use, development, protection or conservation of any land in the area; and
 - (d) must have regard to the strategic plan of a Council referred to in Division 2 of Part 7 of the *Local Government Act 1993* as adopted by the Council at the time the planning scheme is prepared.
- (2) Without limiting subsection (1), a planning scheme may -
- (a) set out policies and specific objectives; and
 - (b) regulate or prohibit the use or development of any land; and
 - (c) designate land as being reserved for public purposes; and
 - (d) state the provisions of the planning scheme which would have applied to land reserved for a public purpose under the planning scheme if it had not been reserved for that purpose; and
 - (e) set out requirements for the provision of public utility services to land; and
 - (f) require specified things to be done to the satisfaction of the Commission, relevant agency or planning authority; and

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- (g) apply, adopt or incorporate any document which relates to the use, development or protection of land; and
 - (h) provide that any use or development of land is conditional on an agreement being entered into under Part 5; and
 - (ha) set out provisions relating to the implementation in stages of uses or developments; and
 - (i) provide for any other matter which this Act refers to as being included in a planning scheme; and
 - (j) provide for an application to be made to a planning authority to bring an existing use of land that does not conform to the scheme into conformity, or greater conformity, with the scheme.
- (3) Subject to subsections (4), (5) and (6), nothing in any planning scheme is to –
- (a) prevent the continuance of the use of any land, upon which buildings or works are not erected, for the purposes for which it was being lawfully used before the coming into operation of the scheme; or
 - (b) prevent the use of any building which was erected before that coming into operation for any purpose for which it was lawfully being used immediately before that coming into operation, or the maintenance or repair of such a building; or
 - (c) prevent the use of any works constructed before that coming into operation for any purpose for which they were being lawfully used immediately before that coming into operation; or
 - (d) prevent the use of any building or works for any purpose for which it was being lawfully erected or carried out immediately before that coming into operation; or
 - (e) require the removal or alteration of any lawfully constructed buildings or works; or
 - (f) prevent a development, which was lawfully commenced but not completed before the coming into operation of the scheme, from being completed within -
 - (i) 3 years of that coming into operation; or
 - (j) any lesser or greater period specified in respect of the completion of that development under the terms of a permit granted before the coming into operation of the scheme.
- (4) Subsection (3) does not apply to a use of land –
- (a) which has stopped for a continuous period of 2 years; or
 - (b) which has stopped for 2 or more periods which together total 2 years in any period of 3 years; or
 - (c) in the case of a use which is seasonal in nature, if the use does not take place for 2 years in succession.
- (5) Subsection (3) does not apply to the extension or transfer from one part of a parcel of land to another of a use previously confined to the first-mentioned part of that parcel of land.
- (6) Subsection (3) does not apply where a use of any land, building or work is substantially intensified.
- (7) Nothing in any planning scheme or special planning order affects –
- (a) forestry operations conducted on land declared as a private timber reserve under the *Forest Practices Act 1985*; or
 - (b) the undertaking of mineral exploration in accordance with an exploration licence, or retention licence, under the *Mining Act 1929*; or

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- (c) fishing; or
- (d) marine farming in State waters.

(7A) In subsection (7)(a), "forestry operations" includes the processes and works connected with -

- (a) the establishment of forests; and
- (b) the growing of timber; and
- (c) the harvesting of timber; and
- (d) land clearing, land preparation, burning off, road construction and associated quarry works conducted in relation to an activity specified in paragraph (a), (b) or (c).

(8) The coming into operation of a planning scheme or a special planning order does not legitimize a use or development which was illegal under a planning scheme or a special planning order in force immediately before that coming into operation.

(9) A planning scheme may require a use to which subsection (3) applies to comply with a code of practice approved or ratified by Parliament under an Act.

(10) A planning scheme is not to prohibit or require a discretionary permit for the use or development of a proclaimed wharf area for port and shipping purposes.

(11) Subsection (7)(d) does not apply in respect of the following:

- (a) any bridge, jetty, wharf, boathouse, shed, pipeline or other structure used in connection with marine farming that is constructed wholly or in part on, or above, the high water mark;
- (b) a use or development on any accretion from the sea.

(12) In this section -

"fishing" means fishing as defined in the *Living Marine Resources Management Act 1995* and conducted in accordance with that Act;

"marine farming" means marine farming as defined in the *Marine Farming Planning Act 1995* and conducted in accordance with that Act and the *Living Marine Resources Management Act 1995*;

"proclaimed wharf area" means the area of a wharf the boundaries of which have been defined, altered or redefined under the *Marine Act 1976* before the commencement of the *Port Companies Act 1997*;

"State waters" means State waters as defined in the *Living Marine Resources Management Act 1995*.

References

Collie Planning and Development Pty Ltd, '*State of Play*' Document: Comparison of Planning Systems in Australian States and Territories, National Office of Local Government, October 1998

(Edwards) Committee for the Review of the State Planning System, *Planning System Review*, April 1997

Department of Communication and Information, Local Government, Planning and Sport (Qld), *IPA Guideline No. 2/00 Draft Process for Preparing Planning Schemes – The Principles*, August 2000

Department of Communication and Information, Local Government, Planning and Sport (Qld), *IPA Guideline No. 3/00 Draft Process for Preparing Planning Schemes – Stage 1: Determining the Strategic Framework*, August 2000

Department of Communication and Information, Local Government, Planning and Sport (Qld), *IPA Guideline No. 4/00 Draft Process for Preparing Planning Schemes – Applying Stage 1 Examples*, August 2000

Department of Environment and Land Management, *Partnerships for Sustainable Development – Performance Based Planning Workshops for governments, developers, professionals and the community*, May-June 1998

Department of Primary Industries, Water and Environment, *Tasmanian Model Framework for Planning Schemes*, July 2000

Department of Primary Industries, Water and Environment, *Tasmanian Model Framework for Planning Schemes – Explanatory Notes, Example Schedules, Background Information*, July 2000

Department of Transport and Regional Service, *Development Assessment Workshops for DTRS and the Development Assessment Forum*, April 2000

Department of Transport and Regional Service, *DAF Workshop Series 2000 – Suggested Implementation Strategy*, June 2000

Department of Transport and Regional Service, *DAF Principles – Agreed Principles of Leading Practice in Development Assessment Processes* (undated).

Department of Urban Affairs and Planning (NSW), *Plan making in NSW – Opportunities for the future – discussion paper*, February 1999

Department of Urban Affairs and Planning (NSW), *Feedback Report*, November 1999

Gilpin, Alan *An Australian Dictionary of Environment and Planning*, Oxford University Press, Melbourne, 1990

Mant, John, *Putting Place Outcomes at the Centre of Planning Law and Administration*, Australian Planner Vol.37, No. 2 2000

Ministry for Planning, Western Australia, *Planning Schemes Manual*, July 2000



Simplifying Planning Schemes

Minister for Planning and Local Government, *Victoria Planning Provisions – Planning Practice Notes*, May 2000

Planning South Australia, *Guide to Preparing Plan Amendments, - A procedural and technical guide to preparing quality Plan amendment reports*, November 1998.

Resource Planning and Development Commission, *A Model Framework for Planning Schemes*, September 1998

Resource Planning and Development Commission, *Report on the review of the Model Framework for Planning Schemes*, December 1998

Resource Planning and Development Commission, *Tasmania's Resource Management and Planning System: Towards Sustainable Development – unpublished paper prepared for Tasmania Together Benchmarking committee on Sustainable Development*

State Government of Victoria, *From Control to Performance: Future directions for the planning system in Victoria*, Victorian Housing and Residential Development Plan – Project No. 7, 1992

TBA Planners Pty Ltd et al, for Department of Environment and Land Management, *Integrated System of Planning Instruments for the Tasmanian Resource Management and Planning System*, August 1996

Western Australian Government, *Town Planning Amendment Regulations 1999*

Planning Schemes

Battery Point Planning Scheme 1979

Break O'Day Planning Scheme 1996

Circular Head Planning Scheme 1995

City of Hobart Planning Scheme 1982

Dorset Planning Scheme 1996

Draft Gold Coast Planning Scheme, June 2000

Draft Kingborough Planning Scheme 2000

Draft Maroochy Planning Scheme

Glenorchy Planning Scheme 1992