

# CREATING A STANDARD PLANNING SCHEME: THE QUEENSLAND PLANNING PROVISIONS

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## Introduction

When the *Integrated Planning Act 1997* (“the IPA”) was introduced, it represented a substantial legislative reform. The IPA replaced a previous planning framework that included inconsistent and non-integrated planning and development assessment systems comprising more than thirty (30) separate pieces of legislation and sixty (60) different approvals regulating development in Queensland. However, despite its fundamental objective of achieving ecological sustainability through an integrated performance-based planning system, the IPA has been plagued by a focus on procedural complexities.

## Context

In February 2006, the Minister for the then Department of Local Government, Planning, Sport and Recreation announced that a review of the IPA would be undertaken with a view to providing a contemporary planning and development system for Queensland. After undertaking an extensive consultation process, two primary issues concerning planning schemes had been identified, namely:

- (i) the widespread inconsistencies in structure, language and application; and
- (ii) the duplication of effort to produce planning schemes.

The State Government subsequently endorsed a reform agenda entitled “*Planning for a Prosperous Queensland – A Reform Agenda for Planning and Development in the Smart State*”, containing eighty specific actions in response to the issues raised during the consultation process. The principal aim of the reform agenda was to facilitate a shift in the planning paradigm, from the current process-driven system towards an outcomes-based system. The introduction of a new Planning Act, along with development of a standardised planning scheme, were identified as actions which were central to achieving the objectives of the reform agenda.

After further engagement with key stakeholders in working groups, the State government’s Planning Reform Implementation Team condensed the outputs into the first draft of the Standard Planning Scheme Provisions in February 2008. That first version has since been developed through numerous iterations by the Planning Reform Implementation Team, in conjunction with specialist reference groups. The draft *Queensland Planning Provisions – Version 0.7* (“the Provisions”) has now been prepared and released as a direct response to Action Number 28 of that reform agenda, which called for the preparation of standard planning scheme provisions. Version 0.7 of the Provisions has been made available to a limited number of referees for comment and submission.

As the Provisions described in this paper require changes to legislation, they are subject to change depending upon the final form of the new Planning Act presented to, and adopted by Parliament. The final draft version of the Provisions is expected to be released in July 2009; however, the commencement of the Provisions is predicated on the commencement of the new Planning Act.

By way of transitional arrangements, the *Explanatory Notes About The Queensland Planning Provisions* propose that any planning scheme made after the forthcoming Planning Act takes effect is drafted in accordance with the Provisions. The Provisions will not apply to the amendment of planning schemes which exist prior to the commencement of the proposed Planning Act. However, at such time as a review of an existing planning scheme is required under the *Integrated Planning Act 1997*, the new planning scheme is to be prepared consistent with the requirements of the Provisions.

## An Introduction To The Queensland Planning Provisions (v.0.7)

The *Queensland Planning Provisions (Version 0.7)* (“the Provisions”) were released for limited consultation on 20 April 2009, having been renamed and amended from the preceding *Draft Standard Planning Scheme Provisions (Version 0.6)* after reference group review.

The Provisions prescribe a mandatory structure for planning schemes that will be consistent across all local government areas in Queensland. The prescription and use of a mandatory scheme structure was seen by the State as a solution to both the widespread inconsistencies in the structure of existing schemes and the duplication of effort and resources that has been a consequence of scheme drafting under the existing IPA framework. The mandatory scheme structure prescribed by Version 0.7 of the Provisions purports to provide:

- (i) a more robust scheme structure with a greater focus on strategic planning and functionality;
- (ii) a structure that will make the use and review of planning schemes more efficient and effective for all users, particularly those dealing with multiple schemes;
- (iii) for State legislation, policy and advice that can more directly relate to the structure and language of planning schemes; and
- (iv) a consistency of language that will improve communication and information management.

These are worthy goals and introduce a key challenge: to what extent can these goals be met by a standard scheme ‘format’, compared to standard scheme ‘content’ (or provisions)?

The mandatory structure comprises three components:

- (i) Mandatory components;
- (ii) Optional components; and
- (iii) Drafting Guidelines.

The inclusion of both mandatory and optional components seeks to enable each council to prepare a planning scheme which appropriately responds to the unique local dimensions of that local government area, whilst providing a response to State and regional dimensions consistently across the state. This approach was seen as a better solution to achieving a balance between standard scheme structure and the differing needs of local governments compared to the use of different scheme structures by small and large local governments.

The following sections introduce the standard structure of planning schemes, as prescribed by the Provisions, along with some preliminary observations and analysis.

### Part 1 – About the Planning Scheme

Part One is a mandatory part of the scheme and will contain administrative provisions relevant to construct, scope and function of the planning scheme, including the following key concepts.

#### Documentation of the Planning Horizon

Part One of the planning scheme will document the horizon of the planning scheme, as well as nominating review periods in accordance with the requirements of the forthcoming Planning Act. Importantly, all planning schemes which are prepared under the Provisions will be required to include a Priority Infrastructure Plan. The *Integrated Planning Act 1997*<sup>1</sup> currently requires that the planning horizon for Priority Infrastructure Plans be at least ten, but not more than fifteen years. We therefore await, with interest, the requirements of the new Planning Act in regards to planning scheme review periods. Will the process of review require full scale review or only incremental changes? It will be important that the timing and process for reviewing planning schemes is reconciled with those of the Priority Infrastructure Plan as an individual component.

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<sup>1</sup> By definition of Priority Infrastructure Area under the Integrated Planning Act 1997.

The planning horizons should be aligned to enable the full and proper review of the Priority Infrastructure Plan within the review of the planning scheme, having regard to the scope of work and time involved in associated studies.

#### The Categories of Development

Standard planning schemes will list the categories of development, as prescribed by the new Planning Act. On the basis of the Provisions, that will comprise:

- (i) Exempt Development;
- (ii) Self-Assessable Development;
- (iii) Compliance Assessment;
- (iv) Code Assessable Development;
- (v) Impact Assessable Development; and
- (vi) Prohibited Development.

The familiar categories of Exempt, Self Assessable, Code Assessable and Impact Assessable development remain similar to their current form. Compliance Assessment and Prohibited Development are, of course, new categories of development which may be introduced by the new Planning Act. A short discussion of Compliance Assessment and Prohibited Development is provided later.

#### Summary of Assessment Rules

A summary of the assessment rules for each category of development will also be included at Part One. By doing so, the planning scheme will reflect the assessment rules which will be set down by the Planning Act, and aim to provide a clear summary of the circumstances in which development complies with the planning scheme. The summary of assessment rules by category of development is a positive inclusion that should assist a broad range of users in understanding and using planning schemes. However, the rules as currently expressed are unlikely to operate in practice as cleanly as proposed.

The Provisions seek to specify which of the planning scheme provisions take precedence in the event of a conflict, as follows:

- (i) the Strategic Framework prevails over any other part;
- (ii) overlay provisions prevail over local planning tools, zone, precinct, use and general codes;
- (iii) local planning tool provisions prevail over zone, precinct, use and general codes;
- (iv) precinct provisions prevail over zone, use and general codes; and
- (v) zone provisions prevail over use and general codes.

It would appear the stated relationships between overlay provisions and local planning tool provisions (i.e., that overlay provisions prevail over local planning tools), and between zone provisions and use codes, are contrary to the principle that the specific provisions prevail over more general provisions. It may be the case that the forthcoming Planning Act provides additional guidance.

#### Building Work Regulated Under a Planning Scheme

Part One includes a statement that clarifies the relationship between Building Work under the planning scheme. Notably, the Provisions do not currently incorporate the threshold concept of “minor building work”, which is very important to the practical implementation of many planning schemes in Queensland.

### Relationship to Roads, Waterways, Reclaimed Land and Foreshores

Section 1.2 of Part One helpfully standardises the relationship between the planning scheme and roads, waterways, reclaimed land and foreshores. In some circumstances (such as a foreshore area or bathing reserve), where the planning scheme does not include an area in a particular zone, the Provisions prescribe the inclusion of that land in a particular zone. For example, if a foreshore or bathing reserve is not included in a zone under the planning scheme, the Provisions prescribe that that land is included in the Open Space Zone.

## **Part 2 – State Planning Instruments**

The Provisions prescribe that the mandatory Part 2 will express and reflect State and regional planning instruments such as Regional Plans and State Planning Policies. It is intended that Part 2 will deal specifically with the issue of “appropriately reflecting” State planning instruments in planning schemes, principally by providing a list of State planning instruments which are relevant to the particular local government area, along with Ministerial confirmation that each relevant instrument has been appropriately reflected in the planning scheme.

The concept of ‘appropriately reflecting’ State planning instruments (with the consequence the instrument then has no relevance to development assessment) brings with it a number of practical challenges. Firstly, lengthy planning scheme review cycles make it extremely difficult for planning schemes to remain up to date and appropriately reflect the roll out of State planning instruments, which leads to inconsistencies. Secondly, it is generally unrealistic to suggest that a State planning instrument can be fully reflected within a planning scheme, due to the complex issues addressed by those instruments. Thirdly, it assumes that a planning scheme can foresee all future planning circumstances, so that it can appropriately reflect the State planning instrument in advance of all those planning circumstances. This is flawed. Perhaps the new Planning Act will address this issue.

## **Part 3 – The Strategic Framework**

The Provisions prescribe that all planning schemes include a mandatory Strategic Framework. The Strategic Framework is defined by the Provisions as comprising three main parts:

- (i) a Community Statement (non-statutory) – which puts forward the hopes and aspirations of the community;
- (ii) a Strategic Vision (non-statutory) – a summary of the goals for the planning scheme area over the life of the planning scheme; and
- (iii) a series of Strategic Outcomes – an expression of how the planning scheme will achieve the strategic vision whilst incorporating the State interests.

The Provisions require that the Strategic Framework not only sets the policy direction for the scheme, but that the statutory component also be used in the assessment of Impact Assessable applications, as the ultimate test for development that does not comply with the codes.

Although the inclusion of the Strategic Framework is mandatory, its format is not. However, the Provisions prescribe that, in whatever format it exists, the Strategic Framework at Part 3 of the scheme must clearly articulate:

- (i) a Strategic Outcome statement of one or two sentences;
- (ii) a description of the intent of the statement;
- (iii) a contextual description of how this intention is manifest in the scheme area; and
- (iv) conceptual mapping, which identifies the spatial elements of the Strategic Outcomes.

Under the Provisions, what we have come to know as Desired Environmental Outcomes are superseded by Strategic Outcomes. A series of seven Strategic Outcome themes are

prescribed which, as the highest order provisions in the hierarchy of outcomes, have been developed in an attempt to wed all lower order provisions in the planning scheme directly to the core matters of planning schemes and the purposes of the forthcoming Planning Act. The series of seven Strategic Outcome themes are:

- (i) Settlement Pattern;
- (ii) Natural Environment;
- (iii) Community Identity and Diversity;
- (iv) Natural Resources and Landscape;
- (v) Access and Mobility;
- (vi) Infrastructure and Services; and
- (vii) Economic Development.

The Provisions require that at least one Strategic Outcome is developed under each of the seven Strategic Outcome themes. Whilst the local government has flexibility in drafting Strategic Outcomes under each of the seven prescribed themes, at least one Strategic Outcome must be included under each of the seven themes. The Provisions provide an introductory statement to each Strategic Outcome theme (which are taken to be a mandatory inclusion), along with a list of elements which are to be addressed in the development of the Strategic Outcomes.

The inclusion of a mandatory Strategic Framework in planning schemes is desirable. Likewise, the requirement that the Strategic Framework be used in development assessment is appropriate. The following observations are relevant.

#### *The Implementation of De Facto State Policy*

The prescription of mandatory content in the Strategic Framework allows the course and direction of planning throughout Queensland to be set by the State. The Provisions therefore provide a potential conduit for the implementation of de facto State government policy. This raises the question of whether the government policy that becomes manifest in the prescribed planning scheme provisions will be subject to appropriate levels of consultation and debate.

Given that standard planning schemes will integrate State, regional and local dimensions, distinctions between the policy objectives of State and local governments will be difficult to determine. This may distort, or underplay, the relative policy weight that is intended to apply to various provisions in the planning scheme.

#### *The Impacts of Climate Change*

The Provisions require that climate change be addressed in the Strategic Framework. As standard planning schemes start to incorporate climate change in the Strategic Outcomes (against which development applications will be assessed), it may soon follow that proponents will need to quantify the climate change impacts of individual development proposals. How do we quantify the effects and where do we draw the line? How does a local government draft robust Acceptable Solutions relating to greenhouse gas emissions? How much traffic can a development generate before it is said to compromise a Strategic Outcome dealing with climate change? The issue of climate change has long been a “sleeper” in development assessment and the inclusion of climate change impacts in an assessment provision of planning schemes potentially sets the stage for some very complex planning assessments (and appeals).

#### *The Drafting of Strategic Outcome Statements*

The prescription of Introductory Statements for each of the Strategic Outcome themes potentially provides helpful guidance as to the State policy framework and a consistent strategic basis across the State. This basis, combined with the opportunities which have been afforded local governments to develop supporting Strategic Outcomes that respond to local dimensions, has the potential to allow for the formulation of a well balanced and robust strategic planning framework. But this will, of course, depend on the content of the introductory Strategic Outcome statements.

Given their significance, the drafting of some of the Introductory Statements would benefit from refinement. For example, the Introductory Statement for the Natural Environment Strategic Outcome theme does not appropriately reflect the contribution of the natural environment to non-urban settings, instead stating that “*the natural environment... contributes to the liveability of Queensland by providing a frame for urban development and natural corridors throughout urban places*”. The Introductory Statement for the Infrastructure and Services Strategic Outcome theme has a similar urban prejudice which should be refined in the final review of the Provisions. Others have an emphasis, or bias, that may be appropriate in some local government areas but not others. If after consultation, these Introductory Statements are further ‘dumbed down’ to better fit all circumstances, their utility as mandatory provisions should be questioned.

#### Will the Strategic Framework be Suffocated by its Legal Implications?

The mandatory inclusion of a Strategic Framework in planning schemes is a positive step for planning across Queensland. However, given that the Strategic Framework will form part of the development assessment framework, will concern over the legal robustness of these provisions (manifest as a push for more certainty in their drafting) suffocate their development as truly strategic planning objectives. The devil may well be detail.

### **Part 4 – Tables of Assessment**

The mandatory Part 4 of planning schemes will contain the Tables of Assessment, which will assign the level of assessment for development applications under the planning scheme.

The Provisions provide for six categories of development (or “levels of assessment”), and explicitly prohibit the creation of any alternative assessment categories, such as Notifiable Code Assessment or Impact Assessment (Inconsistent) Non-Preferred Assessment. The elevation of levels of assessment through codes is also specifically prevented.

#### Categories of Development

Under the Provisions, development will be assigned to one of the following six categories of development under the planning scheme.

#### Exempt Development

The category of Exempt Development is preserved from the current framework.

#### Self Assessment

The category of Self Assessable Development is preserved from the current framework.

#### Compliance Assessment

The new category of Compliance Assessment has been designed ‘*to provide a simple and clear process for obtaining a compliance permit*’. Compliance Assessment will be used in both assessing new development and determining the post-approval compliance of works or documentation. The Provisions suggest that the nature of development which would be appropriate for Compliance Assessment would include Building Work, Operational Work and Plumbing and Drainage Work.

The initial step in Compliance Assessment will be to submit a Request for Compliance Assessment. The outcome of the assessment will be a Compliance Permit in the case of both new development and post-approval compliance. The Provisions enable either a local government or another entity prescribed under a regulation or planning instrument to undertake Compliance Assessment.

Will we see the widespread privatisation of Compliance Assessments? If so, who will be the appropriate entities? The Tables of Assessment at Part 4 of each planning scheme will indicate when a request for Compliance Assessment can be made to either the local government or another assessing entity.

The Provisions prescribe that Compliance Assessment may be carried out for development identified as requiring Compliance Assessment by any of the following:

- (i) A regulation under the forthcoming Planning Act;
- (ii) State Regulatory Provisions;
- (iii) Planning Schemes;
- (iv) Temporary Local Planning Instruments;
- (v) Structure Plans;
- (vi) Master Plans;
- (vii) A condition of development approval; or
- (viii) A preliminary approval.

The Provisions are unclear as to the assessment rules that will govern Compliance Assessment and Compliance Permits. What will be the assessment rules? Will there be a right of appeal? The new Planning Act will have the answers.

#### Code Assessment

For the most part, Code Assessment seems to remain a familiar process. The Provisions recommend that development be made Code Assessable (rather than Self Assessable) if subjectivity or discretion is required when assessing the application. The Provisions anticipate development of the following nature to be made Code Assessable in standard planning schemes:

- (i) a use that has low impacts but that requires more regulation than that of Self Assessment;
- (ii) development where the impacts can be regulated in a code; and
- (iii) development where the impacts cannot be assessed entirely against objective criteria.

There is reference in the Provisions to a fundamental change in the rules of Code Assessment that may be delivered by the forthcoming Planning Act. The *Explanatory Notes About The Queensland Planning Provisions*, on a number of occasions, make reference to there being a “presumption in favour of the policy” in Code Assessment. Under the *Integrated Planning Act 1997*, the rules for Code Assessment establish a presumption in favour of approval where Code Assessable development achieves the Acceptable Solutions. Will the new Planning Act, and therefore the Provisions, overturn the presumption of approval and replace it with a presumption in favour of the policy? This could lead to a reduction in certainty when complying with Acceptable Solutions in a Code. If that is the intent, the implications are significant. A planning scheme can provide certainty in only a limited number of ways, a key means being the expression of Acceptable Solutions in Codes. If these are not certain, the balance will move unacceptably towards flexibility to the detriment of an efficient planning system.

#### Impact Assessment

Impact Assessment has been preserved as the highest category of development and will continue to require assessment against the whole of the planning scheme, including the Strategic Framework and the Priority Infrastructure Plan.

As for Code Assessment, the *Explanatory Notes About the Queensland Planning Provisions* make explicit reference to there being a presumption in favour of the policy for impact assessment.

#### Prohibited Development

The Provisions reintroduce prohibited development as a category of development but currently contain no detail as to what development will be prohibited.

Under the Provisions, local governments will have no discretionary power to prohibit development – only development prescribed as prohibited in the Provisions is prohibited development for a planning scheme.

In the absence of the new Planning Act, the procedures for amending the Provisions (to, amongst other things, prohibit particular development) remain unknown. Will the statutory procedures for the preparation and amendment of the Provisions include public advertising requirements and submission opportunities, or could development be prohibited by the Provisions without public consultation?

It is unclear whether prohibitions, determined at the State level, are able to be reasonably and equitably determined. Will prohibition result in the increased use of Ministerial powers for special circumstances?

#### The Format of the Tables of Development

The Provisions strongly focus on achieving a standardised format for planning schemes and this extends to the Tables of Assessment. The standard Tables of Assessment take the format of matrices to simplify the process of establishing the level of assessment for development.

The initial level of assessment is assigned to development by Zone. Overlays and Local Planning Tools, along with Precincts (as a sub-category of Zones) are the only triggers within the scheme which are able to alter the initial level of assessment, by way of Conversion Tables. Conversion Tables, which also take the form of matrices, will be included at Part 4, following the standard Zone Level of Assessment Tables.

The *Explanatory Notes About The Queensland Planning Provisions* provide examples of the construct and methodology for using the Tables of Development.

The only Level of Assessment Tables that will not be contained in Part 4 are those which are specific to Structure Plans that have prepared for Declared Master Plan Areas, which will be contained in Part 9 of planning schemes for local governments in which Declared Master Plan Areas exist. It is unclear how long this is intended to be the case, prior to the incorporation of those areas into the main scheme structure.

### **Part 5 – Zones and Precincts**

The Provisions bring about a return to the use of the Zone as the basic organising layer of the planning scheme. A standard suite of Zones is prescribed from which a local government must select the Zones it wishes to apply to land within its jurisdiction. The standard suite of Zones includes the following broad categories of zones:

- (i) Residential;
- (ii) Centres;
- (iii) Recreation and Open Space;
- (iv) Industry; and
- (v) Other.

Each of the broad zoning categories contains both Level 1 Zones and Level 2 Zones. Level 1 Zones are general in nature and have been developed to provide smaller local governments with an appropriate range of simplified land use categories. Level 2 Zones provide a greater range of zonings which allow particular land use characteristics or specific development types to be addressed directly. Larger local governments which require greater flexibility and specificity in the classification of land will use Level 2 Zones.

Level 1 and Level 2 Zones will operate independently of each other. For each zoning category (e.g. Residential), if the Level 1 Zone is selected (e.g. General Residential Zone), no Level 2 Zones can be selected for that same zoning category (e.g. Residential High Density Zone or Character Residential Zone). This choice between using Level 1 zones or Level 2 zones is available in each of the respective zoning categories.

It is questionable whether the standard suite of zones will cater for the wide range of circumstances across the state. For example, they appear not to encompass more contemporary urban development forms such as mixed-use development, particularly outside of designated centres.

For each Zone, a mandatory Zone Purpose statement has been prepared and is prescribed for inclusion in planning schemes by the Provisions. The mandatory Zone Purpose can be added to where it is appropriate to do so in order to respond to local circumstances. This opportunity notwithstanding, the mandatory Zone Purpose statements are quite specific in parts, which may be met with some resistance on the part of local governments. For example, the mandatory Zone Purpose for the Residential Low Density Zone (Level 2) requires “*low density residential areas are compromised predominately of detached dwellings, 1 or 2 storeys in height*”.

The Level 2 commercial zoning comprises a hierarchy of four zones – the Primary Business Centre Zone, the District Business Centre Zone, the Local Business Centre Zone and the Convenience Centre Zone. It may be that even the Level 2 commercial zonings are too simplistic to appropriately reflect the network of centres across Queensland. For instance, is it the intention that the Brisbane CBD is the only Primary Business Centre Zone in the Brisbane? There is a coarseness in the categories of commercial zones which is likely to prove difficult to implement in some circumstances, if not impossible.

Development in each Zone will be assessable against a Zone Code, for which a prescribed structure will be provided by the Provisions. The template Zone Code which is included in the Provisions does not currently include a statement in the preamble which confirms that development which achieves compliance with the Acceptable Solutions is taken to comply with the Code. As a concept that is fundamental to determining the compliance of development with planning scheme codes, the omission of a statement to this effect is notable. Perhaps it is a drafting oversight, or perhaps it is a consequence of a policy shift from the presumption of approval to a presumption in favour of the policy?

The standard Code templates which have been included in the Provisions demonstrate some circuitous drafting which appears to attempt to link the purpose of a Zone with the purpose of a Code. The significance of code purpose statements to the decision rules set by the IPA (and, it is assumed, the forthcoming Planning Act) justifies the further refinement of any standard code templates, to ensure that their construct and inter-relationships are functional and efficient.

In addition to Zones, a local government may elect to use Precincts as a sub-category of particular Zones, in order to provide additional detail including altered levels of assessment and additional place-based assessment provisions. The *Explanatory Notes About The Queensland Planning Provisions* specifically state that “*precincts do not override the zone outcomes, rather provide additional and supporting provisions for managing growth in these areas*”. The function of this statement in the event of conflict between the Zone and Precinct provisions is unclear when a Precinct provision is likely to be more specific for development assessment, when compared to a Zone provision.

## **Part 6 – Overlays**

The standard structure prescribed by the Provisions makes allowance for the incorporation of Overlays as a means of identifying and addressing specific state or local interests that may occur in a particular local government area. As is the case for zoning, the Provisions provide a standard suite of overlays, comprising both Level 1 and Level 2 overlays, from which a local government may select those which are relevant for incorporation into the planning scheme.

In addition to the standard suite of Overlays, a local government may, in exceptional circumstances, propose additional Overlays where it is necessary to reflect particular local circumstances.

Each Overlay that a local government elects to incorporate in its planning scheme must be mapped and may be supported by an Overlay Code, drafted using the standard code structure.

## **Part 7 – Local Planning Tools**

To provide a further opportunity for local governments to adapt the standard structure in response to local dimensions, the Provisions prescribe that Part 7 of planning schemes will, at the discretion of the local government, contain Local Planning Tools. The Administrative definition of a Local Planning Tool set down by the Provisions is:

*“Local Planning Tools – means the planning strategy that provides for the form, type and density of future development specific to an area or sites within a local government scheme area. It includes a local area plan, a structure plan, a master plan, a neighbourhood plan and a development control plan”.*

The Provisions prescribe no requirements as to the format or structure of a Local Planning Tool, save for the requirement that Part 7 of the planning scheme contains only the Local Plan Code. Any associated level of assessment table and any associated mapping, is not to be contained in this part of the planning scheme.

The optional inclusion of Part 7 in planning schemes provides local government with an opportunity to carry through finer grain local planning initiatives within a broader, standardised structure. That said, it may also be necessary for the State to limit the extent to which this part is used to manipulate the intended construct and function of the scheme as a whole.

## **Part 8 – General and Use Codes**

The standard planning scheme structure provides for the inclusion of only two types of Codes at Part 8, General Codes and Use Codes.

General Codes regulate specific aspects of development (such as landscaping, stormwater management, parking and servicing etc.) whereas Use Codes regulate a specific development activity. In the case of Use Codes, the Provisions require that the name of each Use Code corresponds with the Use as it is defined by prescription.

A suite of selected Standard Codes are under preparation for use by local government. As an example in the interim, the Provisions include a draft Standard Telecommunications Code.

## **Part 9 – Priority Infrastructure Plan**

Under the Provisions, Part 9 of each planning scheme will contain the Priority Infrastructure Plan for the local government area. The Priority Infrastructure Plan, as well as informing the calculation of infrastructure contributions, will be used in the assessment of Impact Assessable development applications.

## **Part 10 – Structure Plans for Declared Master Planned Areas**

In instances where a local government area contains a Declared Master Planned Area, any Structure Plan (including associated Master Plans, alternative level of assessment tables and development codes) will be contained within Part 10 of the planning scheme.

It is not clear whether the objectives of structure planning for Declared Master Planned Areas are best served by requiring that the associated Structure Plans are inserted, and remain, in a discrete section of the planning scheme. Why do Structure Plans for Master Planned Areas need to be separated from the planning scheme for the balance of the local government area? Whilst using the discrete Part 10 may serve as a convenient means of expediting the inclusion of Structure Plans within the planning scheme, surely it is more desirable to include the contents of those Structure Plans in the scheme proper at the next planning scheme review so that the planning scheme remains an accurate, effective and usable instrument?

## **Schedules**

The Provisions prescribe that Schedules be used to contain at least:

- (i) Schedule One – Planning Scheme Mapping;
- (ii) Schedule Two – a register of Preliminary Approvals (Overriding The Planning Scheme) and Development Inconsistent With The Planning Scheme; and
- (iii) Planning Scheme Definitions.

#### Schedule One – Planning Scheme Mapping

The prescription of a standard location for planning scheme mapping will assist greatly in the usability of planning schemes for a broad range of users.

#### Schedule Two – Register of Preliminary Approvals (Overriding the Planning Scheme) and Development Inconsistent with the Planning Scheme

Many have been critical of the requirement that planning schemes include a register of Preliminary Approvals (Overriding the Planning Scheme). They ought to be even more sceptical about a register of Development Inconsistent with the Planning Scheme. There are very few, if any, examples where this process has been achieved. Even if partially achieved, it raises false expectations because it is likely to be constantly incomplete.

#### Schedule Three – Planning Scheme Definitions

Schedule Three of the Provisions will contain the suite of standard use and administrative definitions for the planning scheme. A number of the standard administrative definitions have been taken from the list of standard definitions released by the National Development Assessment Forum.

In the case of use definitions, a standard suite of definitions is prescribed by the Provisions. It is a requirement of the Provisions that the prescribed use definitions are incorporated without amendment and additional use definitions are only permitted in exceptional circumstances.

Conversely, local governments may exercise discretion in selecting which of the prescribed administrative definitions are included in the planning scheme. Standard administrative definitions may not be amended; however, additional administrative definitions may be added as required by the particular circumstances of each local government.

Whilst, on balance, the standardisation of planning scheme definitions is a positive step, it brings with it some challenges that will need to be confronted. Firstly, despite the comprehensive work which has clearly gone into the development of the standard suite of use definitions, it will remain the case that the suite of definitions may not suit, or allow, all forms of development for which application is made.

Secondly, the suite of prescribed definitions may provide a false expectation of certainty (of interpretation and meaning) if the Provisions are subsequently amended.

Thirdly, even though it is specifically discouraged by the Provisions, the use of flexible administrative definitions to manipulate the meaning and context of prescribed use definitions (such as the incorporation of “minor” and “major” threshold definitions for particular development types) will likely be a challenge; it may be justified although contrary to the intent of standardisation.

Finally, as with any of the standardised provisions, any precedent set by legal challenge in one local government area may have consequences across the State. This, of course, is not to say that the establishment of a broadly applicable precedent is a negative outcome of standardisation, only a potentially challenging new context in which practitioners will need to operate.

## **Conclusions**

The Queensland Planning Provisions (v.0.7), as a standardised planning scheme platform, goes a long way towards achieving its principal objectives. It will largely resolve the widespread inconsistencies in planning scheme structure, language and application across local

governments and it will significantly reduce the amount of duplication in effort that has been required to produce planning schemes under the *Integrated Planning Act 1997*. If the achievement of these principal objectives is taken as the measure of success, then the Provisions demonstrate a great amount of potential.

However, there are a number of other objectives against which the Provisions should be measured.

The expectations of lay persons within the community who use planning schemes will be an interesting test. Greater usability for all users, including general members of the community, has been relied on in justifying the standardisation of planning schemes. Whilst the standard planning scheme structure should improve usability for experienced planners and other professionals, the appearance of standardised planning schemes may give false hope to some user groups. Standard planning schemes will, after all, remain complicated statutory documents. The effect of their component parts will still vary across local government boundaries.

There is no doubt that one, if not the greatest, challenge which faces the standardised approach is to preserve the ability for local governments to produce locally appropriate and responsive planning instruments within the standardised framework. On the basis of this review of version 0.7 of the Provisions, the extent of the opportunities that local governments will have to reflect local content is encouraging. The drafting of Strategic Outcomes, along with the optional inclusion of zoning precincts, overlays and local planning tools, albeit within a standard structure, should provide opportunities to capture and reflect local dimensions of the planning scheme.

Whilst the opportunities the Provisions provide are many, the degree to which zones, precincts, overlays and multiple local planning tools can be reconciled and used efficiently under a standardised scheme remains to be seen. The question of whether the Provisions have provided an accurate and functional suite of standard zones, codes and definitions that can efficiently facilitate development can also only be answered by practical experience.

Similarly, the unintended consequences of standard definitions and zone purpose statements, which are inevitable, will take some time to make themselves apparent. However, those unintended consequences will probably be a price that may ultimately be worth paying, for a planning scheme structure that is consistent across the state.

Perhaps the biggest issue for debate is the extent to which the Provisions ought to mandate the *content* of a planning scheme, as well as its *format*. There are merits to both. But, if the attempts to reconcile multiple policy agendas and operational complexities ultimately lead to a dilution of meaning – in a quest for ‘one size fits all’ - then the intent to mandate content should perhaps be abandoned, in favour of optional components ‘pre-approved’ by DIP. If so, the achievement of at least a standard format for planning schemes across Queensland, will have been a positive outcome of the reform agenda.