

Applying the Incorporated Plan and Development Plan Overlays

Planning Practice Note 23

September 2022

This practice note:

- explains the functions of the Incorporated Plan Overlay (IPO) and the Development Plan Overlay (DPO)
- provides advice about when these tools should be used
- provides guidance on how to apply these planning tools.

The IPO and DPO are flexible tools that are used to implement a plan to guide the future use and development of land.

The IPO and DPO are the preferred tools to support plans such as detailed development plans or master plans for land.

Operation of the overlays

The IPO and DPO are used to:

- provide certainty about the nature of a use or development proposal for land
- require a plan to be prepared to coordinate proposed use or development, before a permit under the zone can be granted
- guide the content of the plan by specifying that it should contain particular information
- remove notice requirements and third-party review rights from planning permit applications for proposals that conform to a plan
- ensure that permits granted are in general conformity with the plan
- apply permit conditions that help to implement the plan
- provide statutory force to plans.

Requirement for a plan

Both overlays prevent the granting of permits under the zone before a plan has been approved (to the satisfaction of the responsible authority or incorporated in the planning scheme, as the case may be) unless a schedule to the overlay states that a permit may be granted earlier. The purpose of this provision is to allow consideration of use and development of the land until a plan for the area is in place. The plan details the form and conditions that must be met by future use and development of the land.

Provision for use and development

Unlike most overlays, the IPO and DPO enable a plan to make provision for use as well as development. In drawing up a plan, it will almost always be necessary to think about relationships between future uses as well as future development. A plan that controls physical development without considering use may result in incompatible uses becoming established on adjacent sites.



Neither the IPO nor the DPO can change the scope of the discretion provided in the zone applying to the land. They cannot be used to 'schedule in' or 'schedule out' a permit requirement. If a use does not require a permit in the zone, the overlay cannot introduce a permit requirement. If a use is prohibited in the zone, the overlay cannot remove that prohibition.

If the zone prescribes uses that do not require a planning permit or are prohibited and this conflicts with the objectives of the plan, a different zone will be necessary.

Permit requirement

The IPO and DPO do not specify a permit requirement but prevent the granting of a permit until the relevant plan is prepared. However, a schedule to both overlays can allow permits to be granted before a plan is approved so long as the permit includes any conditions or requirements specified in a schedule to the overlay. (More information is provided on this under 'drafting the schedules', below). The zone or other provision still controls the need for a permit, while the overlay can constrain what a permit may be granted for.

Granting a permit

Permits for use and development

Once a plan is approved, both overlays require that all planning permits granted by the responsible authority must be 'generally in accordance' with the plan. To fulfil this requirement, the responsible authority must test each proposal against the use and development requirements of the plan. If it takes the view that a substantial provision of the plan has not been met, a planning permit cannot be granted.

The schedule to the IPO may, however, provide for a permit to be granted that is not generally in accordance with the incorporated plan where decision guidelines have been specified. The responsible authority should not grant a permit that is not 'generally in accordance' with the plan unless the proposal suitably responds to the decision guidelines.

No automatic approval of permits

A permit application under the zone that is generally in accordance with the plan does not mean that a permit should be granted if other relevant planning scheme policies or considerations indicate that it should be refused. The plan may not identify all the relevant planning considerations. For example, it may support residential development on a particular

site and a business use on an adjacent site, while not identifying the residential amenity considerations that may result. However, the responsible authority can still take these relevant issues into account, even if they have not been specifically identified in the plan. If they give rise to valid planning concerns that cannot be remedied by a planning condition or agreement, the responsible authority can refuse a permit application, even if it is generally in accordance with the plan.

Exemption from notice and review

The overlays exempt permit applications from notice and review where:

- **IPO** - an application is generally in accordance with the plan.
- **DPO** - a development plan has been prepared to the satisfaction of the responsible authority.

The overlay schedules cannot include a requirement for consultation. Responsible authorities should not use non-statutory consultation practices to assist in deciding a planning application. Where notice is being served without a basis in the planning scheme or Planning and Environment Act 1987, it is possible that defects in the notice process can be judicially reviewed in the Supreme Court.

Strategic framework

Both overlays should be underpinned by a strategic framework that sets out the desired development outcomes and the overall layout of the land including, if relevant, the design principles for the development, major land uses, transport and open space networks.

The strategic framework should be prepared before the overlay is applied to:

- identify and address opportunities and constraints for the development of the land
- provide direction about development outcomes and the overall form of development
- assist in choosing the appropriate planning tools to achieve the desired development outcomes and form of development
- ensure the schedule to the overlay is drafted to achieve the desired development outcomes and facilitate the development.

The strategic framework should be set out in the planning scheme, usually in the overlay schedule, or form part of the amendment introducing the overlay into the planning scheme.



The development of the strategic framework provides an opportunity to engage property owners, the community and servicing authorities about the desired outcomes for the site or area and the future form of development before the overlay is applied and the plan is approved. Appropriate strategic planning and community consultation from the start also ensures that once the overlays are in place, the council is able to make decisions on planning applications without the need to further consult.

Deciding which overlay to use

Although both overlays have similar purposes, they are different. Before deciding which overlay to use, the key difference between them must be understood.

- If the planning authority uses an IPO, the plan will be an incorporated document, part of the planning scheme. A planning scheme amendment will be needed to introduce or change the plan.
- If the planning authority uses a DPO, the plan will be a development plan. A development plan is not incorporated into the planning scheme. It can be introduced or changed 'to the satisfaction of the responsible authority'. A planning scheme amendment is not needed.

The IPO requirement for a planning scheme amendment to incorporate or change the plan enables third parties to be involved in the process of making or changing the plan. For this reason, the IPO should normally be used for land that is likely to affect third-party interests and land comprising multiple lots in different ownership. Most redevelopment of existing urban land will fall into this category, particularly where the surrounding land use is residential.

Because the DPO has no public approval process for the plan, it should normally be applied to development proposals that are not likely to significantly affect third-party interests, self-contained land where ownership is limited to one or two parties and land that contain no existing residential population and do not adjoin established residential areas.

In some situations, on large self-contained sites, both overlays can be used. The IPO can be used to manage the strategic development framework, and the DPO can be used to specify the conditions and require a plan to specify the form for the detailed development of parts of the site or individual development stages.

The table at Appendix 1 summarises the differences between the overlays.

Drafting the schedules

Both overlays enable the planning authority to draft a schedule that determines:

- whether the responsible authority can consider permit applications before a plan has been introduced
- requirements about the content of the plan
- conditions and requirements for permits.

An amendment is required to introduce or change a schedule. This process provides a good opportunity to establish ground rules for the site in a publicly accountable way. Example IPO and DPO schedules are shown in Appendix 2.

The form and content of the IPO and DPO must be consistent with Ministerial Direction – The Form and Content of Planning Schemes.

Permit applications before the plan is introduced

The IPO and DPO prevent the granting of a permit until a plan has been approved. This has the potential to significantly limit development of land if a plan is not approved or is delayed.

The schedules provide the ability to grant a planning permit before a plan has been approved. The planning authority should consider whether there is a need to provide this ability and whether it should be limited to particular use or development types that would not compromise or prejudice the objectives of the development or incorporated plan. A lack of constraint could frustrate the planning authority's strategic intentions, through the establishment of non-conforming use or development before the plan is finalised.

A responsible authority cannot grant a permit for use or development before the approval of the plan unless the schedule provides a basis to do so.

The content of a plan

Both overlays require that a plan must describe:

- the land to which it applies
- the proposed use and development of each part of the land
- any other matters specified in a schedule.



Plan content is not limited by the schedule unless the schedule specifically restricts what the plan can contain. A plan must meet the schedule requirements.

The schedule provides the planning authority with a valuable opportunity to establish a strategic framework for the content of a plan and provides developers and third parties with certainty about what the plan must contain. This is particularly valuable if the plan is to be introduced after the overlay, and for all DPO plans.

Conditions and requirements for permits

The schedules can set out conditions and requirements that must be applied to all permits or defined classes of permits.

If the plan objectives can be achieved by applying a standard condition to a permit, the schedule can require that the condition is always imposed. For example, a standard condition could require a frontage setback to allow for the construction of a road. Just as a normal permit condition must have a clear and certain meaning if it is to be applied and enforced, conditions contained in a schedule must also be clear and certain.

If certainty is not possible at the time when the schedule is drafted, then the use of conditions in the schedule should be avoided. It would be better to use the schedule to establish a requirement instead. A requirement provides an obligation for a particular outcome, while a condition sets out the detail for how an outcome should be achieved.

Both the IPO and the DPO schedules can be used to set use or development requirements that address important issues but are less certain or prescriptive than a condition. For example, in a location with a river frontage, the schedule could require that all permit proposals must facilitate views to the river, while leaving the detail of how this is to be achieved to the applicant.

Permits for use or development not 'generally in accordance'

The IPO enables the planning authority, through the schedule, to provide for the consideration of permit applications by the responsible authority that are not 'generally in accordance' with the plan. The planning authority should consider whether the responsible authority needs this power and whether its use should be limited to the granting of permits for particular uses or developments. Its unconstrained use can frustrate

the planning authority's strategic intentions through the establishment of non-conforming uses or developments. If a responsible authority regularly considers permit applications that are not 'generally in accordance' with the plan, the schedule or the plan may need to be reviewed.

The DPO schedule cannot provide for the consideration of permit applications that are not generally in accordance with the plan. This means that there are no circumstances in which such a permit can be granted unless the plan is changed. Because a planning scheme amendment is not needed to change the plan this process is relatively simple. However, before changing the plan to facilitate a permit application, the responsible authority should be clear that the change meets the plan objectives.

Decision guidelines

The schedule to the IPO also offers the planning authority the ability to define decision guidelines for permits that are not generally in accordance with the plan. These decision guidelines operate in addition to the general decision guidelines in Clause 65 of the scheme or any decision guidelines in the zone. Decision guidelines in the schedule should not duplicate the general or zone guidelines. They will most likely relate closely to the particular circumstances or conditions of the site area.

Preparing a development or incorporated plan

Is a plan necessary when amending the scheme?

It is possible to introduce either overlay into the planning scheme before a plan is in place. However, if the overlay is approved without a plan, it is essential that a strategic framework is in place to provide direction and certainty about the future form of development of the land.

If the overlay is approved without a plan, then a proposal for which a permit is required cannot meet the overlay requirement unless the schedule has provided for it. The effect can be to suspend the future use and development of the land until a plan is prepared.

Applying either overlay without a plan can have a significant impact on an individual's ability to use and develop their land. The explanatory report for the amendment introducing an overlay without a plan should explain the effects of not preparing a plan and the justification for taking this step. Care



should be taken to ensure that the effects are understood by landowners.

If necessary, the schedule to either overlay can be used to enable the responsible authority to consider defined classes of permit applications in the period before the plan is introduced. These should be necessary to the ongoing management of the land and should not prejudice the long-term proposed use or development.

For the IPO, not introducing the plan at the same time as the overlay will mean that a second amendment will be required to introduce it; a process that has time and cost implications. The DPO plan is to the satisfaction of the responsible authority and its approval can be left to a later date more easily.

Can a plan be staged?

Both overlays provide for the possibility that the plan can be prepared and implemented in stages (clause 43.03-4 of the IPO and clause 43.04-4 of the DPO).

For the IPO, staged preparation will require a new amendment to incorporate each individual stage of the plan. Again, this has time and cost implications. Alternatively, the IPO plan can provide that certain provisions only come into effect at specified times or when specified conditions have been met.

For the DPO, the flexible plan-approval mechanism supports the implementation of the plan in stages. Where a large area of land is subject to the DPO and the development process is anticipated to take several years, the preparation, implementation and review of the plan in stages may be good practice. Stage 1 of the plan could enable the first phase of subdivision and development to go ahead while other areas are safeguarded. When Stage 1 is nearly complete, a Stage 2 plan can be prepared.

If both the IPO and DPO are used, the IPO plan can provide a broad strategic framework for the future development of a site and deal with major issues such as the location of roads or provision of public open space. The IPO plan remains in place while individual DPO 'stage plans' are prepared to regulate the detailed delivery of each part of the development. If necessary, these can be reviewed or replaced several times within the life of the IPO plan.

Plan form – What should a plan contain?

There are no statutory requirements that govern the form of a plan. However, it is recommended that the plan contains the following elements:

A map

- The map does not have to apply to the whole schedule area. Several maps can be drafted within one schedule area.
- The map should clearly identify the area that the plan applies to.
- The map should clearly identify the proposed use and development of each part of the land to which the plan applies.

An ordinance

- The provisions of the plan should be set out in writing.
- The principles of writing plain English that apply to all statutory drafting should be used.

Objectives

- The plan should set out objectives for the land. If necessary, these should refer to the map.
- The objectives should underpin any use, development or staging provisions set out in the rest of the plan.
- In any case of dispute about the meaning of the plan, the objectives must be clear that they are to be read as providing the key to the meaning of all other plan provisions.

Criteria or performance measures

- The plan can include criteria or performance measures to assist the responsible authority to determine whether the objectives have been met.

Use provisions

- Uses that will be generally in accordance with the plan need to be identified. It may be that all uses not prohibited by the zone are generally in accordance, in which case the plan use provision can simply specify this. However, if a smaller group of uses are supported by the plan, a more sophisticated list may be required. This may be in the form of a table that is similar to a zone table of uses.
- Wherever possible, the table should be drafted with reference to land use terms and nesting diagrams in Clause 73 of the planning scheme.



- Where the future use or development supported by the plan is entirely certain, the table can be drafted exclusively to prevent the consideration of non-complying permits unless the schedule provides otherwise. Where future intentions are less clear, inclusive drafting can be used to ensure that innominate section 2 uses are still generally in accordance. Where this approach is taken, the table can also specify those uses that are not considered to be generally in conformity with the plan.
- If the plan does not intend to affect the consideration of permits for use, the plan should specify that all uses in section 2 of the zone are generally in accordance with the plan.

Buildings and works provisions

- The plan will also need to set out the types of buildings and works that are generally in accordance with it.
- The starting point should always be the permit requirement for buildings and works in the zone and in any other overlays.
- Buildings and works provisions may be expressed as conditions in a plan table of uses. Alternatively, they may be expressed in a table of buildings and works.
- Buildings and works provisions should normally be drafted inclusively, to ensure that proposals not considered in the plan drafting process can still obtain a planning permit if warranted.
- If the plan does not intend to affect the consideration of permits for buildings and works, the table or ordinance should make this clear.

Staging provisions

- The plan may contain staging provisions. If it does so, it should incorporate an objective that the proposed staging is intended to serve.
- Staging can be indicated in several ways. A staging clause can refer to a map of defined development stages. It can provide for the order of commencement of stages or provide defined commencement dates for stages. It can also determine that a particular stage shall not commence until a particular condition or requirement has been met, such as the provision of reticulated water or the construction of a road or public transport link.

Plan content – What should a plan provide for?

Depending on the circumstances for which plan preparation has been proposed, the following subjects may be appropriate for inclusion.

The future distribution of built development

- Location of new buildings.
- Maximum heights or building envelopes.
- Design objectives for the new building envelopes. These may include objectives such as daylight, overlooking, external appearance, materials and finishes.

The future distribution of open space

- Provision of open or landscaped areas and their location.
- Landscape objectives.
- The provision of hard or soft landscaping and performance measures for proposed landscape features.
- Requirement for boundary, screening or security structures.

The development of infrastructure, access and movement corridors

- Reservation of land required for future infrastructure development.
- Access to public transport.
- Vehicular and pedestrian access and movement on site.
- The capacity of vehicular access points and impact on the surrounding road network.
- Parking provision

Retention and development of existing assets

- Existing buildings or features to be retained.
- Identification and retention of historic buildings and Aboriginal cultural heritage places and how they will be accommodated in the future development.
- Significant trees, landscape, vegetation or other natural environment interests and how these will be accommodated in future development.



Social and community issues

- Existing public facilities or features.
- New public facilities required to meet the needs of the development.

This list is not exhaustive. A plan may address more or less issues than those listed above. If it is to address more, it must remain a plan and address issues relevant to land use planning. The plan should:

- be concise and flexible
- not be onerous for the proponent to prepare
- not be overly prescriptive
- contain objectives and performance measures to help the responsible authority determine if a proposal is generally in accordance with the plan.

Review of the plan

It is valuable for all overlays and plans to be reviewed on a regular basis. The purpose of the review is to ensure that the plan is still relevant to and supportive of the proposed use and development of the land. Key review considerations are outlined below:

- If the development has been substantially completed, the plan and the overlay may no longer be necessary. The retention of an overlay and plan in these circumstances can lead to unintended consequences, such as applications for uses that are deemed to be generally in accordance with the plan not being subject to normal notice requirements, which may no longer be appropriate.
- If the overlay was introduced but the plan has not been prepared, it may indicate the overlay is no longer necessary. It is not equitable or fair to a landowner to safeguard land for an intended use or development once it appears that there is no prospect of implementation. If the land was rezoned at the time the overlay was introduced, then the zone will also require a review.
- If the proposal anticipated by the plan is not complete or has not started, the plan and the overlay may need to be amended or removed.

The plan may include a 'sunset clause' that would trigger a review of the plan by providing that it ceases to have effect on a given date. A new plan under the DPO would need to be approved to the satisfaction of the responsible authority, whereas a planning scheme amendment would be needed before a new plan can be introduced into the IPO.

Access to plans

The public must have access to the operational version of any plans supported by the IPO or DPO.

Providing public access to IPO plans is simple. Because they are incorporated documents, the approved plans must be kept available for public inspection by the planning authority.

Because the responsible authority can change DPO plans without a planning scheme amendment, it may be difficult for interested parties to know whether and when any changes have been made to the plan. To avoid uncertainty and conflict about the content and application of DPO plans, the responsible authority should keep a full copy of the current 'endorsed' plan available online or for inspection in person. Any report recommending changes to the plan should include the existing endorsed plan and the proposed changes. It is also useful for the plan to contain a 'record sheet'. Like the list of amendments to a planning scheme, the record sheet would track and summarise changes to the plan by document number, version number and adoption / approval date. If the plan consists of more than one document, each should include a copy of the sheet. It is also good practice for each page to show a version number and an adoption / approval date.



Appendix 1 – IPO and DPO operation

Overlay Function	IPO	DPO
<p>Enables the preparation and approval of a plan to guide use and development of land.</p>	✓	✓
<ul style="list-style-type: none"> Is an amendment needed to approve or change the plan? 	<p>✓</p> <p>An amendment is needed to approve or change the plan.</p> <p>The plan is incorporated into the planning scheme.</p> <p>A new or changed incorporated plan will normally be exhibited. Unresolved submissions will be referred to a panel.</p> <p>The Minister for Planning approves the plan.</p>	<p>✗</p> <p>An amendment is not needed to approve or change the development plan.</p> <p>The development plan is prepared to the 'satisfaction of the responsible authority'.</p> <p>There are no processes for exhibiting the development plan or making submissions.</p> <p>The responsible authority approves the development plan.</p> <p>Note: Although an amendment is not required to approve or change the plan, an amendment is still required to introduce, amend or remove the DPO and the schedule to the overlay.</p>
<ul style="list-style-type: none"> Does the overlay prescribe the content required in a plan? 	<p>✓</p> <p>A plan must describe:</p> <ul style="list-style-type: none"> the land to which it applies the proposed use and development of each part of the land any other matters specified in a schedule. 	<p>✓</p> <p>A plan must describe:</p> <ul style="list-style-type: none"> the land to which it applies the proposed use and development of each part of the land any other matters specified in a schedule.
<p>Prevents planning permits being granted for development proposals until a plan has been approved.</p>	<p>✓</p> <p>An incorporated plan must have been incorporated into this scheme before a permit is granted.</p>	<p>✓</p> <p>A development plan must have been prepared to the satisfaction of the responsible authority before a permit is granted.</p>
<ul style="list-style-type: none"> Can the schedule be drafted to allow a permit to be granted before a plan is approved? 	✓	✓
<p>Requires a planning permit to be determined 'generally in accordance' with an approved plan.</p>	✓	✓
<ul style="list-style-type: none"> Can a permit be granted for a proposal that is not 'generally in accordance' with the plan? 	<p>✓</p> <p>A permit can be granted for a proposal that is not 'generally in accordance' with the plan, where the schedule to the overlay provides for it.</p> <p>Decision guidelines can also be introduced.</p>	<p>✗</p> <p>A permit cannot be granted for a proposal unless it is 'generally in accordance' with the plan.</p> <p>The responsible authority determines what is 'generally in accordance'.</p>



Overlay Function	IPO	DPO
Exempts permits from statutory notice and review provisions, where there is an approved plan and where it is appropriate to do so.	<p>✓</p> <p>Applications that are 'generally in accordance' with the plan are exempt from:</p> <ul style="list-style-type: none"> • most notice requirements • third-party review rights. 	<p>✓</p> <p>If a development plan has been prepared to the satisfaction of the responsible authority applications are exempt from:</p> <ul style="list-style-type: none"> • most notice requirements • third-party review rights.
Enables conditions and requirements to be specified that must be applied to any permit granted.	<p>✓</p> <p>Permit conditions and requirements can be specified in the schedule.</p>	<p>✓</p> <p>Permit conditions and requirements can be specified in the schedule.</p>
<ul style="list-style-type: none"> • Can a schedule introduce a new permit requirement for use or development, beyond that specified by the zone? 	<p>✗</p>	<p>✗</p>
<ul style="list-style-type: none"> • Can a schedule prohibit use or development? 	<p>✗</p>	<p>✗</p>
<ul style="list-style-type: none"> • Can a schedule introduce additional decision guidelines for an application? 	<p>✓</p> <p>A schedule to the IPO can be drafted to introduce additional decision guidelines for applications that are not generally in accordance with the incorporated plan.</p>	<p>✗</p> <p>A schedule to the DPO cannot introduce additional decision guidelines. A permit cannot be granted unless the proposal is '<i>generally in accordance</i>' with the development plan.</p>



Appendix 2 – Examples

Example DPO and IPO schedules and Incorporated Plan are provided below.

A. Example schedule to the Development Plan Overlay

GUMNUT PLANNING SCHEME

SCHEDULE 1 TO CLAUSE 43.04 THE DEVELOPMENT PLAN OVERLAY

Shown on the planning scheme map as DPO1

GUMNUT PARK DEVELOPMENT PLAN

The Gumnut Park Development Plan has yet to be approved. The schedule aims to safeguard rural land for future residential development and establish requirements for the future emergence of the development plan.

1.0 Objectives

The schedule identifies the overarching objectives for the plan area. Objectives should underpin any use, development or staging provisions set out in the plan. The plan itself may contain more specific objectives to expand on the overarching objectives.

- To develop Gumnut Park for residential purposes, with a range of residential densities and adequate transport links in accordance with the *Gumnut Strategy Plan*.
- To protect and enhance the natural landscape character of the Wombat Creek corridor.

2.0 Requirements before a permit is granted

Because the Gumnut Park Development Plan has yet to be approved, the schedule prevents the consideration of permit applications for new uses. Permit applications for buildings and works can be considered, but only at the existing Health Centre in the plan area.

A permit may be granted to construct a building or construct or carry out works at the Gumnut Health Centre before a development plan has been prepared to the satisfaction of the responsible authority.

3.0 Conditions and requirements for permits

The planning authority wishes to ensure that new buildings and works at the Health Centre do not affect the residential development potential of surrounding land. Applicants are required to demonstrate this as part of their proposal.

The following conditions and/or requirements apply to permits:

- All proposals to construct a building or construct or carry out works before the Gumnut Park Development Plan has been prepared must be accompanied by a report demonstrating that they will not prejudice the long term future of the land for residential development or give rise to significant residential amenity concerns.

4.0 Requirements for development plan

Because the plan has yet to be drafted, the planning authority has used this opportunity to ensure that the plan meets the overall strategic objectives for the area set out in the Gumnut Strategy Plan.

A development plan must include the following requirements:

- A through traffic route connecting Eaton Way to the Waltham Boulevard – Princes Highway intersection, constructed to a two land sub-arterial standard; and
- A public open space of not less than 15 ha, incorporating existing native vegetation and a frontage to Wombat Creek.



B. Example schedule to the Incorporated Plan Overlay

GUMNUT PLANNING SCHEME

SCHEDULE 1 TO CLAUSE 43.03 INCORPORATED PLAN OVERLAY

Shown on the planning scheme map as IPO1

GUMNUT WATERFRONT INCORPORATED PLAN

The Gumnut Waterfront Incorporated Plan has already been approved and the schedule is designed to support its implementation. There is no 'Requirement before a permit is granted' because the plan is already in place.

1.0 Requirement before a permit is granted

Permit requirement before plan incorporated - None specified

2.0 Permits not generally in accordance with incorporated plan

The Gumnut Waterfront Incorporated Plan strictly applies use provisions. However, buildings and works provisions are flexible. While the incorporated plan includes height, siting and design provisions, the planning authority recognises that these may not apply in all circumstances. Permit applications that do not meet these provisions may be considered.

A permit granted for the construction or carrying out of buildings and works is not required to be generally in accordance with the incorporated plan.

3.0 Conditions and requirements for permits

The incorporated plan contains an objective to widen Albert Street. This clause contains standard conditions to be applied to permits and a requirement.

Conditions

The first condition requires a setback to safeguard land for the future widening. The second requires a landscape scheme to support streetscape objectives for Albert Street.

All permits to construct a building or construct or carry out works on the north side of Albert Street between Baker Crescent and Claremont Court must include a condition providing for:

- a setback of 15 metres from the front boundary of the lot to enable the future widening of Albert Street, and
- the submission of a landscape scheme showing native tree planting to the satisfaction of the responsible authority.

Requirement

The incorporated plan has an objective that all buildings and works maintain a view from The Esplanade to the Gumnut Marina. The requirement is included because the incorporated plan does not contain enough information to enable an appropriate permit condition to be imposed.

Ensure all development in Area A maintains a view from The Esplanade to the Gumnut Marina.

4.0 Decision guidelines

This clause requires the responsible authority to seek a design enhancement when considering permits for buildings and works that are not generally in accordance with the plan.

The following decision guidelines apply to an application for a permit under Clause 43.03 which is not generally in accordance with the incorporated plan, in addition to those specified in Clause 43.03 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- Whether the proposed building or works will make a significant positive contribution to the existing or proposed streetscape.

5.0 Preparation of the incorporated plan

None specified



C. Example Incorporated Plan

GUMNUT PLANNING SCHEME

GUMNUT MARINA INCORPORATED PLAN

THE LAND

It is important that the incorporated plan clearly outlines the area covered by the plan using a map or description. A map is often clearer, especially where it applies to a broad area affecting many land parcels. Otherwise, there may be disputes about which land or uses and development are affected by the plan.

The *Gumnut Marina Incorporated Plan* applies to land at 2 Beach Street, Gumnut, described as Lots A and S2 on plan of subdivision no 999999X, the foreshore and pier (shown on the *Gumnut Marina Framework Plan*). The land is located on the north east corner of the Beach Street and Sandy Point Road intersection.

THE PLAN

The *Gumnut Marina Incorporated Plan* consists of this ordinance and the attached *Gumnut Marina Framework Plan* (Ref. No. 999/9999 October 2014).

OBJECTIVES

The objectives should be drafted with care, as they are the key to the interpretation and application of the requirements of any use, development or staging provisions set out in the rest of the plan.

Use, buildings and works and subdivision

- To support the use and development of the land for a marina, with associated residential and business uses.
- To achieve a vibrant and attractive activity centre node on the north east corner of the Beach Street and Sandy Point Road intersection (Area A on the *Gumnut Marina Framework Plan*) with active ground floor retail frontages.
- To achieve refurbishment and extension of the Old Pier and breakwater in association with the development of a marina (Area B on the *Gumnut Marina Framework Plan*).
- To achieve a mix of dwellings on the land.

Design and appearance

- To develop the land in a way that is visually compatible with the surrounding beach environment.
- To protect strategic views from Gumnut City Centre to the foreshore.
- To develop attractive local views of the foreshore and marina within the land.

Residential amenity

- To achieve acceptable standards of private open space, daylight, visual and acoustic privacy for residents of dwellings on the site.
- To minimise any adverse impacts on adjoining residential properties.

Infrastructure and facilities

- To establish a network of open spaces and pedestrian and cycle paths on the land offering views to the sea.

Staging

- Proposals for use or development near the 'Old Pier' (in Area A on the *Gumnut Marina Framework Plan*) should await the approval of the redevelopment plan for the 'Old Pier' so that they may be designed to complement the redevelopment.



PERFORMANCE MEASURES

Any performance measures should flow logically from the objectives of the plan. They should be precise and unambiguous, so it is clear what is needed to meet them. While in draft they should be tested against several possible development options to satisfy the planning authority that they can accommodate the desired range of appropriate responses to the plan objectives.

Use, buildings and works and subdivision

- The provisions of Table 1 will be applied to determine whether a permit application for a proposed use is generally in accordance with this plan.
- The provisions of Table 2 will be applied to determine whether a permit application for buildings and works is generally in accordance with this plan.
- The provisions of Table 3 will be applied to determine whether a permit application for subdivision is generally in accordance with this plan.

Design and appearance

- The development should encourage the establishment of a high-quality new beachfront through the application of innovative contemporary urban design and architecture.
- Development adjacent to existing built areas should respond positively to the location, height, materials and external appearance of existing development.
- Development should include the following elements in its design:
 - Timber or natural materials in preference to brick veneer.
 - Imaginative textures, colour combination and sculptural forms.
 - Shapes that convey images of natural features such as rolling waves, sand dunes, rugged cliff faces, rather than expanses of smooth walls and straight lines.
 - Disaggregated or discrete structure with interesting spaces and projections rather than solid bulky structures and blank walls.
 - Roof lines, proportions and architectural forms that are simple and distinctive without fussy detail and decoration.
- The activity centre on the north east corner of the Beach Street and Sandy Point Road intersection should be designed to create vibrant streetscapes, including through bright and vibrant colours, active frontages and design features that convey a feeling of beaches, sand, water and activity.

TABLE 1: USE

The Gumnut Marina Incorporated Plan is very specific about use. The table sets out the parameters by which uses allowed under the zone are able to be considered.

USE	REQUIREMENT
Industry	Must be located in area B on the Gumnut Marina Framework Plan. Must not occupy more than 2,000 square metres. Must be reasonably associated with the operation of a Pleasure boat facility on the land.
Office	Must be located in area A on the Gumnut Marina Framework Plan. Must not be located on the ground floor of a building unless reasonably associated with the incorporated plan.
Shop	The use is generally in accordance with the incorporated plan.
Trade	Must be located in area B on the Gumnut Marina Framework Plan. Must not occupy more than 2,000 square metres net floor area. Must be reasonably associated with the operation of a Pleasure boat facility on the land.

**TABLE 2: BUILDINGS AND WORKS**

BUILDINGS AND WORKS	REQUIREMENT
Buildings and works in area A on the <i>Gumnut Marina Framework Plan</i>	<p>Buildings and works should not exceed 25 metres in height.</p> <p>Buildings and works must be set back at least 3 metres from the elevation of any dwelling existing on the land or adjacent to the land before the approval of this plan.</p> <p>Buildings and works must be set back at least 15 metres from the most northerly elevation of any dwelling existing on the land or adjacent to the land before the approval of this plan.</p>
Buildings and works in area B on the <i>Gumnut Marina Framework Plan</i>	<p>Buildings and works should not exceed 6 metres in height.</p>
Tower in area B on the <i>Gumnut Marina Framework Plan</i>	<p>Building should be located within the 'Old Pier Gateway Area' shown on the <i>Gumnut Marina Framework Plan</i>.</p> <p>Building should not exceed 6 metres in height.</p>
All buildings and works	<p>Buildings and works must not be constructed within the strategic view corridors shown on the <i>Gumnut Marina Framework Plan</i>.</p> <p>Buildings should have elevations externally finished in treated or painted timber and roofs externally finished in galvanised corrugated iron.</p> <p>Buildings should conform to any building envelope defined on the <i>Gumnut Marina Framework Plan</i>.</p>

TABLE 3: SUBDIVISION

SUBDIVISION	REQUIREMENT
All subdivision	<p>The subdivision must conform to the <i>Gumnut Marina Framework Plan</i>.</p>

TABLE 4: STAGING

STAGE	REQUIREMENT
Use or development in Area A on the <i>Gumnut Marina Framework Plan</i>	<p>A permit must not be issued until a redevelopment plan for the 'Old Pier' has been approved.</p>



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