

Incorporated and Background Documents

Planning Practice Note 13

SEPTEMBER 2018

This practice note:

- explains the role of external documents in planning schemes
- explains the difference between incorporated documents and background documents
- provides guidance on when a document should be incorporated or be a background document.

The role of incorporated and background documents in the planning scheme

Planning schemes should be transparent and complete in terms of policies and provisions that are relied upon to make decisions about planning matters. Studies, strategies, guidelines and policies that inform the planning scheme, guide decision making or affect the operation of the planning scheme should be part of the planning scheme in some form. This can be achieved by incorporating documents into the planning scheme or using background documents.

The planning authority must carefully consider how different documents are treated in the planning scheme. The document may become an incorporated document or a background document.

The decision to incorporate or refer to a document in the planning scheme should be based on the role the document plays in decision making and the way in which the document will be used or relied upon.

Any document mentioned in the planning scheme must be publicly available.

Incorporated documents

Incorporated documents are essential to the proper functioning of the planning scheme and decision making. Examples of documents incorporated into all planning schemes in the Table to Clause 72.04 include the *Apiary Code of Practice, 2011* and *A Code of Practice for Telecommunications Facilities in Victoria, 2004*. These incorporated documents must be considered by responsible authorities in decision making and can only be amended by the Minister.

At the local level, planning authorities may wish to incorporate their own documents. Development guidelines, incorporated plans or restructure plans are common types of local incorporated documents.

One of the benefits of incorporating documents into the planning scheme is that the document carries the same weight as other parts of the scheme. Being part of the planning scheme, the planning authority can only change an incorporated document by a planning scheme amendment.



When should a document be incorporated?

A document must be incorporated if it:

- is essential to the administration or enforcement of the planning scheme, that is, without the document the scheme cannot be properly understood (the Code of Practice for Timber Production is an example)
- is necessary to determine the extent of a planning control, or whether planning permission is required in a particular case, such as the Code of Practice for Telecommunications Facilities in Victoria (without using this document it is not possible to tell whether a permit is required for a telecommunications facility or not)
- is required to be incorporated under an Act, specific planning provision or Ministerial Direction, such as an incorporated plan under the Incorporated Plan Overlay, and the documents listed in the Ministerial Direction on the Form and Content of Planning Schemes
- will be used to guide the exercise of discretion by the responsible authority (except for a development plan under the Development Plan Overlay, which does not need to be incorporated).

How is a document incorporated into the planning scheme?

A document is only incorporated into the planning scheme if it is specifically listed in Clause 72.04 or in the schedule to the clause. If a document is not listed in Clause 72.04 or its schedule, it is not an incorporated document, even if it is mentioned elsewhere in the planning scheme. Incorporated documents, such as incorporated plans referenced in other clauses in the planning scheme (for example, the Incorporated Plan Overlay and the Heritage Overlay), must be listed in the schedule to Clause 72.04.

Where possible, the best approach is to extract the specific planning policy or decision requirements from a document and include them in the planning scheme as local planning policy or decision guidelines rather than incorporating the document. This is particularly useful when only parts of the document are relevant or where the document is not written in a way that expresses specific requirements for planning decisions.

Some documents may not have been prepared in a format suitable for incorporation. If this is the case, then the relevant sections will need to be extracted and incorporated into the planning scheme or be rewritten in an appropriate form that makes it easy to use in the context of the scheme. If the document is intended to provide guidance on the exercise of

discretion, then it should be prepared and written with this function in mind.

It is important that the planning scheme gives absolute clarity about the role and function of the particular incorporated document. What the document contains and how the document is referred to in the planning scheme will determine how it is used and interpreted. For example, the planning scheme must make it clear whether the document sets out a vision or framework for an area, provides design suggestions or serves some other function.

Background documents

Background documents provide information to assist in understanding the context within which a particular policy or provision has been framed. They are not listed in Clause 72.04 or its schedule. Different types of document may perform this role. They may be wide-ranging in their content and contain information not directly relevant to specific decisions under the planning scheme.

As with incorporated documents, background documents can be mentioned in the planning scheme in a state standard provision, or be introduced through a local provision. Examples of background documents at the state level include the State Environment Protection Policy (Waters of Victoria).

Background documents can be used in a number of ways. They can be used as a basis for preparing the Municipal Planning Strategy (MPS), local planning policies or requirements in the planning scheme, or can be mentioned in the planning scheme as a source of useful background information to a policy or control.

Background documents have only a limited role in decision making as they are not part of the planning scheme. They do not have the status of incorporated documents or carry the same weight.

When should a document be mentioned as a background document?

Many documents, while useful, may be too long or complex or cover too wide a subject matter to be suitable for inclusion as an incorporated document in the planning scheme. If they provide useful background information or general advice to applicants, or will assist in understanding the planning scheme, they may be suitable as background documents.

A background document may explain why particular requirements are in the planning scheme,



substantiate a specific issue or provide background to specific decision guidelines in local planning policies or schedules. The substantive planning elements of the background document will have been included in the planning scheme in either the MPS, a local planning policy or a schedule. For example, a flora and fauna study that provides the reason for an Environmental Significance Overlay may be usefully referenced as the basis for the statement of environmental significance.

How is a document made a background document?

A background document is one that is referred to in the planning scheme but has not been incorporated and is therefore not listed in Clause 72.04 or its schedule.

If a background document has directly informed the creation of a provision, then it may be referenced by that provision. An example of this is the *Victorian Floodplain Management Strategy, 2016* referenced in Clause 13.03-1 of the Planning Policy Framework. If a background document has informed several provisions (such as a regional growth plan or a housing strategy) it may be listed in Clause 72.08 or its schedule instead of being repetitively referenced throughout a series of provisions.

Where a background document is referenced directly by a policy or provision it does not also have to be referenced in Clause 72.08 or its schedule.

It is important to be clear about the reason why the document has been included in the planning scheme. Consider how the objectives of the document are reflected in the planning scheme. There is no point in referencing a document on the landscape or aesthetic qualities of an 'Avenue of Honour' if the planning scheme does not contain an objective or requirement that addresses its preservation.

In some planning schemes, documents may have been included as background documents rather than incorporated documents because of concern about the need to amend the planning scheme if the document needs to be changed.

Where this is the case, consideration should be given to how the document will be used or relied upon to ensure that it is given the appropriate weight in decision making or at the Victorian Civil and Administrative Tribunal (VCAT).

The regular review of planning schemes provides an opportunity to incorporate any documents that should have been incorporated initially.

There is no need to refer to a document if the

substantive elements of the document have been included in the planning scheme in either the MPS, a local planning policy or a schedule, unless it contains additional useful information.

How much weight will be given to the different types of external documents?

If a document is incorporated into a planning scheme, its content or strategic basis is less likely to be capable of challenge when using it to make a planning decision. The decision-maker or VCAT is entitled to presume that the strategic basis for the document was considered at the time of its incorporation into the planning scheme and to give it due weight.

Where a document is only referred to as a background document or not mentioned at all, its relevance may be tested. Ministerial directions and legislative documents referenced in a planning scheme however maintain their status.

In practice, the test of how much weight is given to a document that is not incorporated when making a decision under the planning scheme will be based on:

- whether the planning authority has had the opportunity to incorporate the document
- the relationship and relevance between the objectives sought by the planning scheme and the objectives of the document
- the amount of public scrutiny the document has been subject to
- the strategic basis for the document
- the consistency with which the document has been applied in similar matters
- the availability of the document
- the currency of the document and whether it has been superseded by more recent studies or guidelines.

If a document is not mentioned in the planning scheme but is sufficiently advanced in the planning process, it should be given due weight in decision making.

Often, expert material prepared in accordance with application requirements or decision guidelines under the planning scheme will also be relevant to the exercise of discretion in particular matters, as will regulatory instruments which sit outside the planning scheme, such as State Environment Protection Policies.



What happens if a document needs to be changed?

An incorporated document can only be changed by an amendment to the planning scheme. The revised text of the document must be placed on exhibition in addition to any proposed changes to the planning scheme ordinance.

Any reference to a document by name within a planning scheme should be correct and up to date. The planning scheme and the document must remain in conformity.

An amendment is needed if the background document is no longer relevant, is consolidated into another document or its title is changed, even if the change does not result in any change to policy.

An amendment is not needed if the changes only serve to revise or update relevant background material in the light of changed circumstances or new knowledge and have no effect on the content of the planning scheme.

If an amendment to the background document is needed, the new background document should be available to the public so they can understand the basis for the amendment. The explanatory report should make clear that the document is not proposed to be incorporated into the planning scheme.

What are the planning authority's obligations with incorporated and background documents?

Both incorporated and background documents must be publicly available for inspection with the planning scheme. Planning authorities should maintain an indexed 'planning library' of all incorporated documents and background documents. The documents must be accessible on their website..

A list of all statewide incorporated and background documents is available from the department's website, with links to online documents.

Privacy, copyright and accessibility should be considered when preparing an incorporated or background document.

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