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PLANNING SCHEMES

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PLANNING SCHEMES

1.1 What is a planning scheme?

A planning scheme is a statutory document which sets out objectives, policies and provisions relating to the use, development, protection and conservation of land in the area to which it applies. A planning scheme regulates the use and development of land through planning provisions to achieve those objectives and policies.

PEA ss. 4A(2),
6(1), 6(2)

Matters that a planning scheme may provide for are described in section 6 of the *Planning and Environment Act 1987* (the Act).

PEA s. 6(1)

The Act requires that a planning scheme:

- must seek to further the objectives of planning in Victoria within the area covered by the scheme
- must contain a Municipal Strategic Statement (MSS), if the scheme applies to the whole or part of a municipality
- may make any provision which relates to the use, development, protection or conservation of any land in the area (section 3 of the Act defines the meaning of these terms).

1.2 What are the *Victoria Planning Provisions*?

The Act distinguishes between the *Victoria Planning Provisions* (VPP) and a planning scheme. The VPP is a document containing a comprehensive set of planning provisions for Victoria. It is not a planning scheme and does not apply to any land. It is a statewide reference used, as required, to construct a planning scheme. It is a statutory device to ensure that consistent provisions for various matters are maintained across Victoria and that the construction and layout of planning schemes is always the same.

In preparing and maintaining the planning scheme, a council draws from the VPP in two essential ways:

1. It must include provisions which are mandatory in all planning schemes in Victoria. These include the State Planning Policy Framework (SPPF), the 'particular provisions' applying to specified categories of use and development (such as car parking and advertising signs), the 'general provisions' and the 'definitions'.
2. It may include provisions which are relevant to or give effect to its MSS and local planning policies (LPPs). These provisions will include the relevant state standard zones and overlays to be applied in the scheme. Some of these zones and overlays include local provisions as schedules to the zone or overlay.

In the simplest terms, a planning scheme is constructed by taking the VPP as a basic template. Into this is inserted the local vision and policy framework (the MSS and LPPs). The zones and overlays needed to implement these are then selected and appropriate local provisions are written to support the zones and overlays (the schedules).

1.3 What is a zone?

The planning scheme zones land for particular uses, for example, residential, industrial, business or other. The zones are listed in the planning scheme and each zone has a purpose and set of requirements. This information describes if a planning permit is required, and the matters that the council must consider before deciding to grant a permit. A zone may also specify information that must be submitted with a planning permit application. The zone also contains information relating to land uses, subdivision of land, construction of new buildings and other changes to the land.

A zone sets out land use controls in three sections:

- Section 1: Land uses that do not require a planning permit.
- Section 2: Land uses that require a planning permit.
- Section 3: Prohibited uses. Some uses are not allowed on land in a zone because they may conflict with other uses; for example, industry is prohibited in the General Residential Zone.

1.4 What is an overlay?

The planning scheme map may show that a piece of land has an overlay as well as a zone affecting it. Not all land has an overlay. Some land may be affected by more than one overlay. If an overlay applies, the land will have some special feature such as a heritage building, significant vegetation or flood risk. The Heritage Overlay, for example, applies to heritage places of natural or cultural significance and describes the requirements that apply.

The overlay information will indicate if a planning permit is required for the construction of a building or other changes to the land. For example, if a Heritage Overlay applies, a planning permit is required to demolish an existing building. The Heritage Overlay requires council to consider, before it grants the permit, whether the demolition of the building will lessen the significance of the heritage place. An overlay may specify information which must be submitted with an application for a planning permit.

1.5 What do 'use' and 'development' mean?

Use of land refers to using land for a particular purpose (such as a dwelling or a shop) and may not involve building anything.

Development includes the construction, alteration or demolition of a building or works and the subdivision or consolidation of land.

In some zones, the development of land and the proposed new use both require a permit. For example, in the Mixed Use Zone, a permit is required to construct a building and to use a building for industry. In other zones, the use may not require a permit, but a permit may be required to construct the building (the development) for the use. In this situation, council can only consider the effects of the new building (such as height, visual bulk and so on) and not the change in the use of the land.

1.6 Who and what is affected by a planning scheme?

PEA s. 16

Planning schemes may apply to all private and public land in Victoria. A planning scheme is binding on all members of the public, on every Victorian minister, government department, public authority and council.

The land to which a planning scheme may apply includes land covered by water (such as lakes and some coastal waters) and areas above or below ground (such as air rights and excavations).

Exemptions may be provided by a Governor in Council Order published in the *Government Gazette*.

Current exemptions under section 16 of the Act apply to a number of ministers. Exemptions also apply to specific sites and projects, such as parts of Albert Park.

Where they have been exempted from any legal need to comply with planning scheme requirements, as a matter of practice the ministers concerned should consult from an early stage with relevant planning authorities on proposed works. This consultation fosters cooperative involvement of local government in state planning and development matters. Consultation needs to be effective and therefore should be more than the mere circulation of proposals.

Under section 52(i) of the Commonwealth Constitution and the *Commonwealth Places (Administration of Laws) Act 1970* (Vic) and subject to the *Commonwealth Places (Application of Laws) Act 1970* (Cth), the Commonwealth has exclusive legislative power in relation to places acquired by the Commonwealth for a public purpose. Therefore a planning scheme does not apply to a 'Commonwealth place'. Whether a particular Commonwealth agency is considered the Commonwealth may depend on its governing legislation, funding and level of control. For example, bodies such as the Telstra Corporation, Australia Postal Commission and Australian Broadcasting Corporation are subject to a planning scheme.

Any requirement in a planning scheme seeking to regulate the use or development of Commonwealth land is inoperative. Land disposed of by the Commonwealth can only be subject to planning controls if an amendment is prepared and approved after disposal. Commonwealth land is identified as CA on planning scheme maps.

1.6.1 Existing uses

PEA s. 6(3), (4)

A planning scheme cannot prevent the continuation of a lawfully existing use under the Act if the existing use was established before the planning scheme came into operation.

Planning scheme
Cl. 63

Clause 63 of the planning scheme provides that an existing use right is established if any of the following apply:

- the use was lawfully carried out immediately before the approval date
- a permit for the use had been granted immediately before the approval date and the use commences before the permit expires
- a permit for the use had been granted for an alternative use, which does comply with the scheme, and the use commences before the permit expires
- proof of continuous use for 15 years is established
- the use is a lawful continuation by a utility service provider or other private body of a use previously carried on by a minister, government department or public authority, even where the continuation of the use is no longer for a public purpose.

This does not apply to a lawful use of land:

- which has stopped for a continuous period of two years
- which has stopped for two or more periods, which together total two years in any period of three years, or
- in the case of a seasonal use, which does not take place for two years in succession.

For existing use rights established through a use having been lawfully carried out immediately before the approval date, the relevant 'approval date' is:

- the date when the planning scheme commenced operation; or
- the date when an amendment to the planning scheme commenced operation which would have had the effect of restricting or prohibiting the use.

Planning scheme
Cl. 63.11

It is sometimes necessary to trace an existing use back through prior planning schemes or provisions over many years to determine its lawfulness. However, to avoid cumbersome investigations, planning schemes deem an existing use to have been lawfully established if proof of continuous use for 15 years is established in accordance with Clause 63.11 of the planning scheme.

Existing use rights apply to land, not to the owners or others with an interest in the land. It is also important to note that these rights apply only to the use of land, not development. What is allowed to continue is the use that was lawfully carried out immediately prior to the approval date of the amendment or scheme that prohibited the use. In this situation, the use is confined to the same specific use, not by the land use definitions set out in the planning scheme.

The principles of establishing the use to which existing use rights apply are based on those appearing in cases such as *Shire of Perth v O'Keefe (1964) 10 LGRA 147* and *City of Nunawading v Harrington [1985] VR 641*.

PEA s. (6), (4A)

The Act allows planning schemes to require that existing uses comply with a code of practice which has been approved by Parliament. For example, planning schemes currently require the use of land for timber production to comply with the *Code of Practice for Timber Production*.

1.6.2 Who administers the planning scheme?

PEA ss. 13, 14

The administration and enforcement of a planning scheme is the duty of a responsible authority. In most cases this will be a council but it can be the minister administering the Act or any other person whom the planning scheme specifies as a responsible authority for that purpose. For example, in the Melbourne Planning Scheme, the Minister for Planning is the responsible authority for land in a number of areas including the Melbourne Casino Area, Melbourne Docklands Area, Flemington Racecourse and the Royal Melbourne Showgrounds.

A council will usually act as both planning authority and responsible authority.

PEA s. 201A

If the responsible authority for particular land or particular matters changes at any time (for whatever reason), the 'old' responsible authority immediately loses its powers and matters of a continuing nature can be decided (without any need to start again) by the 'new' responsible authority. Relevant documents must be transferred to assist the 'new' responsible authority.

PEA ss. 201A, 201B

If the change is due to an alteration in administrative boundaries, a planning scheme amendment will eventually be needed to transfer the control over affected land to another planning scheme.

1.6.3 Where must a planning scheme be available for inspection?

PEA ss. 40, 42

The Act requires the council and the responsible authority to maintain an up-to-date copy of the planning scheme, incorporating all amendments to it and all documents lodged with those amendments. (In most cases the council is also the responsible authority for the scheme). The planning scheme must be made available free of charge for public inspection during office hours. A similar but more extensive requirement applies to the minister administering the Act, who must make available updated copies of all operative schemes in Victoria. These documents are available online at planningschemes.dpcd.vic.gov.au and (for all schemes that apply in the region) at the department's relevant regional office.

PEA s. 60(1A)(g);
PE Regs r. 25

Regulation 25 requires that before deciding on a permit application the responsible authority must make available for inspection free of charge at its offices a copy of any document which it considers under section 60(1A)(g) of the Act. If the responsible authority is not the council for the municipal district in which the land is located, the responsible authority must give a copy of the document to the council for the purpose of making the document available for inspection free of charge at the council's offices.

Under section 60(1A)(g) of the Act a responsible authority may consider any strategic plan, policy statement, code or guideline which has been adopted by a minister, government department, public authority or council before deciding on an application.

In any case where there is some doubt whether a document comes within the scope of this requirement, the responsible authority should make sure it is available.

1.6.4 When must a planning scheme be reviewed?

PEA s. 12B(1);
12B(2)

A planning authority which is a municipal council must review its planning scheme no later than one year after each date by which it is required to approve a Council Plan under section 125 of the *Local Government Act 1989*; or within such longer period as is determined by the Minister for Planning.

PEA s. 12B(3)

The objective of the review is to enhance the effectiveness and efficiency of the planning scheme in achieving:

- the objectives of planning in Victoria, and
- the objectives of the planning framework established by the Act.

1.6.5 What must the review evaluate?

PEA s. 12B(4)

The review must evaluate the planning scheme to ensure that it:

- is consistent in form and content with the directions or guidelines issued by the Minister under section 7 (see Section 1.7)
- sets out effectively the policy objectives for use and development of land
- makes effective use of state provisions and local provisions to give effect to state and local policy objectives.

PEA s. 12B(5)

When the review is completed, the planning authority must report its findings to the minister without delay.

1.7 What is the Ministerial Direction on the form and content of planning schemes?

PEA s. 7(5)

Under section 7(5) of the Act, the form and content of all planning schemes prepared under Part 3 of the *Planning and Environment (Planning Schemes) Act 1996* and any amendment to a planning scheme must comply with the Ministerial Direction on the Form and Content of Planning Schemes.

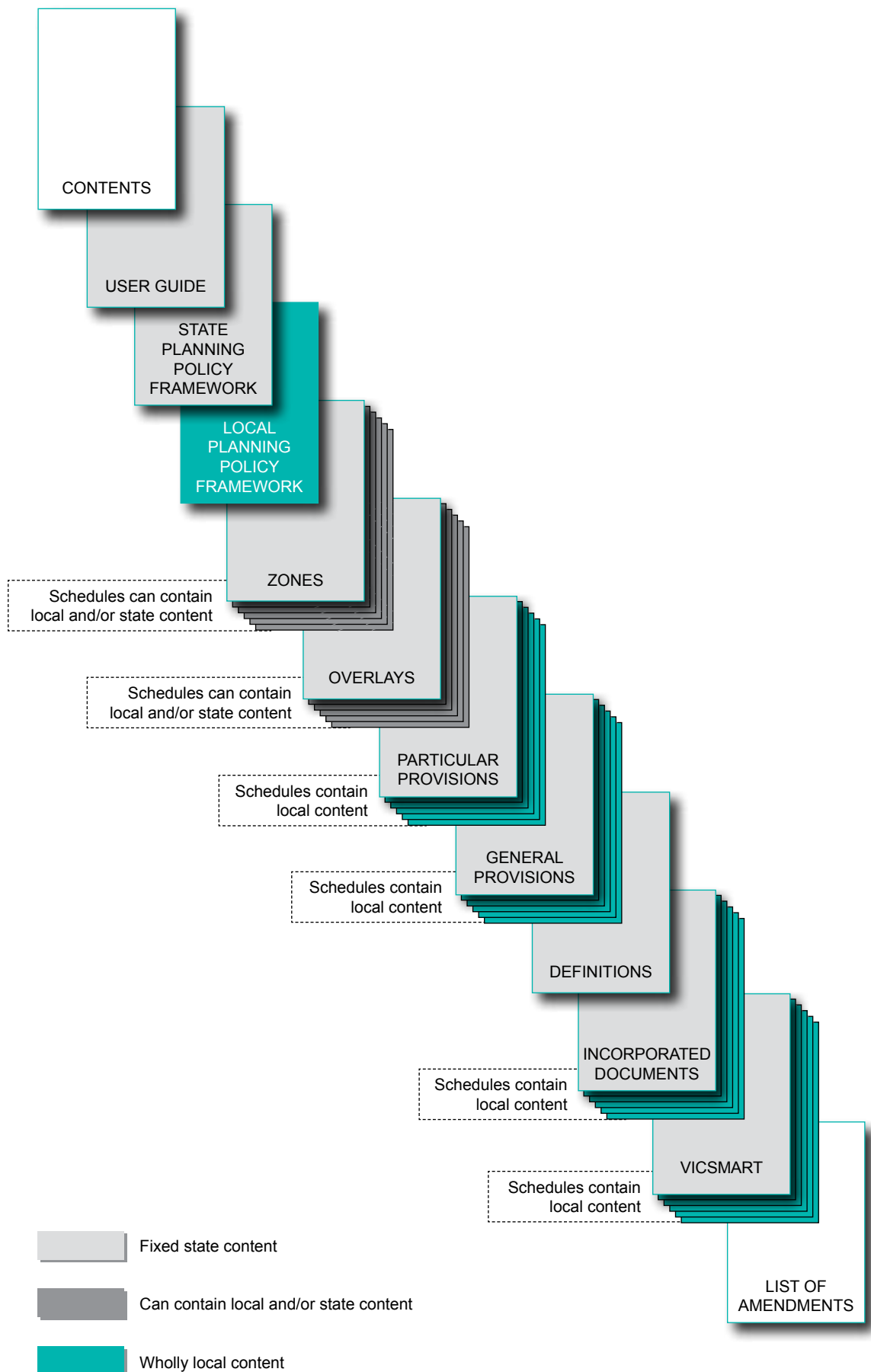
The Ministerial Direction on the Form and Content of Planning Schemes requires that a planning scheme must include the following parts of the VPP in the same order:

- Objectives of planning in Victoria.
- Purposes of this planning scheme.
- User guide.
- SPPF – Clauses 11-19 (inclusive).
- Operation of zones – Clause 31 (if a planning scheme includes a zone clause).
- Operation of overlays – Clause 41 (if a planning scheme includes an overlay clause).
- Particular provisions – Clauses 51-52, 54-57 (inclusive).
- General provisions – Clauses 61-67 (inclusive).
- Definitions – Clauses 71-74 (inclusive).
- Incorporated documents – Clause 81.
- VicSmart – Clauses 90-95 (inclusive).

The Ministerial Direction on the Form and Content of Planning Schemes states that a planning scheme must not include any zone or overlay clause other than a zone or overlay clause selected from the VPP.

1.8 What are the components of a planning scheme?

Figure 1.1: Components of a planning scheme



The strategic foundation of each scheme is made up of two components, the SPPF and the Local Planning Policy Framework (LPPF). The application of zones, overlays and local provisions must have a readily discernible basis in both the state and local planning policy frameworks.

1.8.1 State Planning Policy Framework

Every planning scheme includes the SPPF. The framework comprises general principles for land use and development in Victoria and specific policies dealing with settlement, environment, housing, economic development, infrastructure, and particular uses and development. To ensure integrated decision making, planning authorities and responsible authorities must take account of and give effect to the general principles and the specific policies contained in the SPPF.

1.8.2 Local Planning Policy Framework

The LPPF sets a local and regional strategic policy context for a municipality. It comprises the MSS and specific local planning policies.

The LPPF must be consistent with the SPPF and should, where possible, demonstrate how broader state planning policies will be achieved or implemented in a local context.

PEA s. 7(4)

If there is an inconsistency between the SPPF and the LPPF, the SPPF prevails.

Municipal Strategic Statement

An MSS is a part of the LPPF and is a statement of the key strategic planning, land use and development objectives for the municipality and the strategies and actions for achieving those objectives. It promotes the objectives of planning in Victoria to the extent that the SPPF is applicable to the municipality and local issues. The MSS establishes the strategic planning framework for the municipality and encapsulates significant planning directions. The SPPF and MSS provide the strategic basis for the application of the zones, overlays and particular provisions in the planning scheme and decision making by the responsible authority.

PEA s. 12A(4)

The MSS provides an opportunity for an integrated approach to planning across all areas of a council's operations and should clearly express links to the council's corporate plan. The MSS is dynamic and enables community involvement in its ongoing review. The MSS should be continually refined as the responsible and planning authority develops and revises its strategic directions in response to the changing needs of the community.

The MSS must be taken into account when preparing amendments to a planning scheme or making decisions under the scheme.

Local Planning Policy

An LPP sets out the guiding principles of the planning scheme and is one of the tools available for implementing objectives and strategies in the MSS.

An LPP is a policy statement of intent or expectation. It states what the responsible authority will do in specified circumstances, or the responsible authority's expectation of what should happen. An LPP gives a planning authority an opportunity to state its view of a planning issue and its intentions for an area. LPPs provide guidance to decision making on a day-to-day basis where this is not achievable in the VPP zones and overlays.

An LPP helps the community to understand how a proposal will be considered and what will influence decision making. Over time, the consistent application of policy should achieve the desired outcome.

LPPs must be taken into account when preparing amendments or making decisions.

1.8.3 Zones

Standard zones for statewide application are included in the VPP. These zones are used in all planning schemes, as required. An important feature of the zones, which is reflected in the first purpose of each zone, is that they are to be administered to implement the SPPF and LPPF, including the MSS and LPPs.

Each planning scheme includes only those zones required to implement its strategy. There is no ability to vary the zones or to introduce local zones. Additional zones can only be introduced by an amendment to the VPP. Some zones have schedules that provide for local circumstances, such as the Mixed Use Zone, the Rural Living Zone and the Public Conservation and Resource Zone. Refer to Section 1.8.12 for a short summary of each zone.

1.8.4 Overlays

In addition to the requirements of the zone, further planning provisions may apply to a site or area through the application of an overlay. Both are equally important. As with the zones, standard overlays for statewide application are included in the VPP. Each planning scheme includes only those overlays required to implement the strategy for that municipality. Generally, overlays apply to a single issue or related set of issues (such as heritage, an environmental concern or flooding). Where more than one issue applies to land, multiple overlays can be used. Overlays must have a strategic justification. Many overlays have schedules to specify local objectives and requirements. Most overlays make requirements about development rather than land use. Overlays do not change the intent of the zone. Refer to Section 1.8.13 for a short summary of each overlay.

1.8.5 Particular provisions

Particular provisions are specific prerequisites or planning provisions for a range of particular uses and developments, such as advertising signs and car parking. They apply consistently across the state and there is no ability to include in planning schemes particular provisions which are not in the VPP. Unless specified otherwise, the particular provisions apply in addition to the requirements of a zone or overlay. Some particular provisions have schedules for local requirements.

1.8.6 General provisions

General provisions are operational requirements which are consistent across the state. The general provisions include matters such as existing use rights, administrative provisions, ancillary activities and referral of planning permit applications. Some general provisions have schedules for local requirements.

1.8.7 Schedules

Schedules are used to identify the needs, circumstances and requirements of individual municipalities in specific circumstances. Together with the LPPF, schedules are the means of including local content in planning schemes. They can be used to supplement or 'fine-tune' the basic provisions of a state-standard clause, zone or overlay in a planning scheme, adapting it to local circumstances and locally defined objectives. This means that schedules are a key tool for implementing objectives and strategies in the MSS.

Schedules can only be included in a planning scheme where allowed by the VPP. They must use the format shown in the Ministerial Direction on the Form and Content of Planning Schemes.

For more information on schedules refer to the *Planning Practice Note 10 – Writing Schedules* and other relevant Planning Practice Notes.

1.8.8 Definitions

A set of definitions is included in the VPP and applies in all planning schemes. Defined terms are separated into general terms, outdoor advertising terms and land use terms.

Local provisions should not create specific local definitions. When writing planning scheme provisions, care should be taken to ensure that the terms used are consistent with their meaning in the Act, the *Interpretation of Legislation Act 1984* and the definitions section of the planning scheme. In situations where a term is not defined in these documents, it will be considered to have its ordinary or common meaning having regard to general principles of legal or statutory interpretation.

Section 3 of the Act also specifies definitions for the function of the planning system.

1.8.9 Incorporated documents

PEA s. 6(2)(j)

Planning schemes may apply, adopt or incorporate any document that relates to the use, development or protection of land. This allows a link between the planning scheme and external documents that may inform the planning scheme, guide decision making or affect the operation of the scheme. This includes a range of codes, strategies, guidelines, plans or similar documents.

An external document that is incorporated into a planning scheme is included in the list of incorporated documents in Clause 81 of the planning scheme. The document then carries the same weight as other parts of the scheme and can only be changed by a planning scheme amendment.

At the local level, planning authorities may wish to incorporate their own documents using the schedule to Clause 81.01. Development guidelines, incorporated plans or restructure plans are common types of incorporated documents.

If an external document is mentioned in a planning scheme, but has not been formally incorporated, it is only regarded as a reference document and carries less weight than if it forms part of the planning scheme.

For further information on incorporated documents refer to *Planning Practice Note 13 – Incorporated and Reference Documents*.

1.8.10 VicSmart

Clauses 90-95 of the scheme comprise the planning assessment provisions for VicSmart – the short permit process designed for simple low-impact planning applications.

The provisions set out the process for and the classes of application that are VicSmart, including state and local VicSmart applications.

1.8.11 List of amendments

The list of amendments at the back of the planning scheme includes all state and local amendments to the planning scheme and includes a brief description of the amendment. It is not a formal part of the planning scheme.

1.8.12 Summary of the zones

The following is a short summary of each of the zones.

RESIDENTIAL ZONES

Planning Practice Note 78 – Applying the Residential Zones explains the purposes and features of each of the residential zones and how to apply them and their schedules.

Low Density Residential Zone (Clause 32.03 and schedule)

This zone is intended for land on the fringe of urban areas and townships where sewerage may not be available. It is applied to areas that are shown to be appropriate for subdivision into lots which are both large enough (in the absence of reticulated sewerage) to contain all wastewater on site and small enough to be maintained without the need for agricultural techniques or equipment. The zone provides a minimum lot size of 0.4 hectare for a lot not connected to reticulated sewerage or 0.2 hectares for a lot connected to reticulated sewerage unless an alternative is specified in a schedule to the zone. The creation of smaller lots is prohibited unless the subdivision is the re-subdivision of existing lots or the creation of a small lot for a utility installation.

Mixed Use Zone (Clause 32.04 and schedule)

This zone provides for a range of residential, commercial, industrial and other uses and is suitable for areas with a mixed use character. A schedule to the zone may specify maximum building heights and local requirements for specified Clause 54 and Clause 55 dwelling standards.

Township Zone (Clause 32.05 and schedule)

This zone is intended to apply to small towns, to provide for residential development and a range of commercial, industrial and other uses. A schedule to the zone can be used to change the permit requirement for a dwelling, based on lot size, and to change certain siting requirements. The schedule can also specify maximum building heights for dwellings or residential buildings and local requirements for specified Clause 54 and Clause 55 dwelling standards.

Residential Growth Zone (Clause 32.07 and schedule)

This zone is intended to be used in locations near activity centres, train stations and other areas suitable for increased housing. The zone encourages medium density residential development to make optimum use of available services and facilities.

A discretionary building height of 13.5 metres applies to a dwelling or residential building and aims to provide a transition between areas of more intensive use and development and areas of restricted housing growth.

A schedule to the zone can be used to specify an alternative maximum building height and local requirements for specified Clause 54 and Clause 55 dwelling standards. A permit cannot be granted to exceed a maximum building height specified in the schedule.

General Residential Zone (Clause 32.07 and schedule)

This is usually the main zone to be applied in new or established residential areas where there are minimal constraints to residential development. It provides for moderate growth and diversity of housing.

Up to 9 metres building height is allowed in this zone for dwellings and residential buildings, unless a schedule to the zone specifies an alternative maximum building height. A permit cannot be granted to exceed any maximum building height if specified in a schedule. Local requirements for specified Clause 54 and Clause 55 dwelling standards can also be set out in the schedule.

Neighbourhood Residential Zone (Clause 32.07 and schedule)

This zone is intended for areas where single dwellings prevail and change is not proposed, such as areas of recognised neighbourhood character or environmental or landscape significance. Up to 8 metres building height is allowed, unless a schedule to the zone specifies an alternative maximum building height. A permit cannot be granted to exceed the maximum building height specified in either the zone or the schedule.

INDUSTRIAL ZONES

Industrial 1 Zone (Clause 33.01 and schedule)

This is the main zone to be applied in most industrial areas. It includes additional requirements for land in proximity to residential areas. A schedule to the zone allows the maximum floor space to be limited for office use.

Industrial 2 Zone (Clause 33.02 and schedule)

This zone is for large industrial areas which have a core more than 1500 metres from residential areas and are of state significance. Note that special requirements apply to the 'core' area of this zone (the area more than 1500 metres from a residential zone) as this area is a resource intended to be reserved for uses which require that degree of separation from residential and similar areas. Each industry in the core area will be considered on its merits depending upon its effect on neighbouring industries and communities. Generally, uses that do not depend on such a location are discouraged in this zone.

A schedule to the zone allows the maximum floor space to be limited for office use.

Industrial 3 Zone (Clause 33.03 and schedule)

This zone is designed to be applied as a buffer between the Industrial 1 Zone or Industrial 2 Zone and residential areas, if necessary. It may also be applied to industrial areas where special consideration is required because of industrial traffic using residential roads, unusual noise or other emission impacts, or to avoid inter-industry conflict. A schedule to the zone allows the maximum floor space to be limited for office use.

The zone provides for some retailing, including convenience shops, small scale supermarkets and associated shops in appropriate locations.

COMMERCIAL ZONES

Commercial 1 Zone (Clause 34.01 and schedule)

This zone is applied in mixed use commercial centres for retail, office, business, residential, entertainment and community uses. It allows a wide range of commercial and accommodation activities without a permit, including a supermarket or shop.

A schedule to the zone allows a maximum leasable floor space to be specified for office or shop only in rural planning schemes (not in metropolitan Melbourne).

Commercial 2 Zone (Clause 34.02 and schedule)

This zone encourages offices and associated business and commercial services together with appropriate industry and retailing. A small scale supermarket (up to 1800 square metres) is allowed without a permit on land located within the City of Greater Geelong or within an urban growth boundary in metropolitan Melbourne. Any supermarket in a rural area requires a permit to ensure the protection of established centres in regional towns. A supermarket and any associated shops must adjoin or have access to a main road.

RURAL ZONES

Planning Practice Note 42 – Applying the Rural Zones explains the purposes and features of the rural zones and how to apply them and their schedules.

Rural Living Zone (Clause 35.03 and schedule)

This zone provides for predominantly residential use in a rural environment provided appropriate land management is exercised. This zone should only be used where this type of use exists, or where such a use can be strategically justified. The zone also allows agricultural activities, provided that the amenity of residential living is protected. A schedule to the zone allows the lot size and a number of other matters to be specified.

Green Wedge Zone (Clause 35.04 and schedule)

The purpose of this zone is to recognise and protect non-urban land outside the Urban Growth Boundary in the Melbourne metropolitan area for its agricultural, environmental, historic, landscape or recreational values, or mineral and stone resources. The zone provides a minimum lot size of 40 hectares unless an alternative is specified in a schedule to the zone. The creation of smaller lots is allowed under particular circumstances.

Green Wedge A Zone (Clause 35.05 and schedule)

This zone provides opportunity for most agricultural uses and limits non-rural uses to those that support agriculture or tourism provided that the amenity of residential living is protected. It seeks to protect and enhance the biodiversity, natural resources, scenic landscapes and heritage values and to promote sustainable land management. It also provides opportunity for limited residential development subject to a permit. The zone provides a minimum lot size of 8 hectares unless an alternative is specified in a schedule to the zone. The creation of smaller lots is allowed under particular circumstances.

Rural Conservation Zone (Clause 35.06 and schedule)

This zone is designed to protect and enhance the natural environment for its historic, archaeological, scientific, landscape, faunal habitat and cultural values. Agriculture is allowed, provided it is consistent with the environmental and landscapes values of the area. This zone could also be applied to rural areas degraded by environmental factors such as salinity or erosion. A schedule requires specific conservation values to be stipulated. The zone provides a minimum lot size of 40 hectares unless an alternative is specified in a schedule to the zone. The creation of smaller lots is allowed under particular circumstances.

Farming Zone (Clause 35.07 and schedule)

This zone encourages the retention of productive agricultural land and encourages the retention of employment and population to support rural communities. The zone provides a minimum lot size of 40 hectares unless an alternative is specified in a schedule to the zone. The creation of smaller lots is allowed under particular circumstances.

Rural Activity Zone (Clause 35.08 and schedule)

This zone is designed to be applied to areas where agricultural activities and other land uses can co-exist. A wider range of tourism, commercial and retail uses may be considered in the zone. Agriculture has primacy, but other uses may be established if they are compatible with the agricultural, environmental and landscape qualities of the area. A minimum lot size must be specified in a schedule to the zone. The creation of smaller lots is allowed under particular circumstances.

PUBLIC LAND ZONES

Planning Practice Note 2 – Public Land Zones provides guidance about the appropriate use of the public land zones.

Public Use Zone (Clause 36.01 and schedule)

This zone recognises the use of land for a public purpose and prescribes a number of categories of public use which can be shown on the planning scheme map. This is the main zone for public land used for utility or community service provision. A schedule allows specified uses or managers of public land to be exempted from specified requirements. Alternative advertising sign categories may be specified if required.

Public Park and Recreation Zone (Clause 36.02 and schedule)

This is the main zone for public open space and public recreation areas. A schedule allows specified uses or managers of public land to be exempted from specified requirements. It also allows an exemption for buildings and works specified in an Incorporated Plan. Alternative advertising sign categories may be specified if required.

Public Conservation and Resource Zone (Clause 36.03 and schedule)

This zone provides for places where the primary intention is to conserve and protect the natural environment or resources. It also allows associated educational activities and resource-based uses. A schedule allows specified uses or managers of public land to be exempted from specified requirements. It also allows an exemption for buildings and works specified in an Incorporated plan. Alternative advertising sign categories may be specified if required.

Road Zone (Clause 36.04)

This zone enables declared roads and other important roads or proposed roads to be designated on the planning scheme map. A road designated as a declared road under the *Road Management Act 2004* must be included in a Road Zone – Category 1. Other roads (or proposed roads where the land has been acquired) may be included as Category 1 or Category 2 roads if appropriate. Certain uses, such as car wash and convenience restaurant, may only be permitted if the site abuts a Road Zone. This should be considered when deciding whether or not to include a road in the zone. VicRoads can provide information about declared roads in each municipality.

SPECIAL PURPOSE ZONES

Special Use Zone (Clause 37.01 and schedule)

This zone provides for the use of land for specific purposes. The purposes and the land use requirements are specified in a schedule to the zone. This allows detailed land use requirements to be prescribed for a particular site. Development conditions (where they are necessary) are still set out in a permit rather than the planning scheme. Exemptions from notification and review can be provided in the zone if desired. The Ministerial Direction on the Form and Content of Planning Schemes includes some specific requirements for this zone. *Planning Practice Note 3 – Applying the Special Use Zone* explains the operation of this zone in more detail.

Comprehensive Development Zone (Clause 37.02 and schedule)

This zone is similar to the Special Use Zone but is designed to allow more complex developments in accordance with a comprehensive development plan incorporated in the planning scheme. Generally, only large or complex developments would warrant the use of this zone.

Urban Floodway Zone (Clause 37.03 and schedule)

This zone is applied to urban land where the primary function of the land is to carry or store floodwater. It applies to high hazard areas with high flow velocities, where impediment of flood water can cause significant changes in flood flows and adversely affect flooding in other areas. Where land is subject only to inundation and low velocities, the Land Subject to Inundation Overlay can be used. The views and flooding information of the relevant floodplain management authority must be considered when applying this zone.

Capital City Zone (Clause 37.04 and schedule)

This zone provides for the use and development of land in Melbourne's central city area, recognising its role as the capital of Victoria and as an area of national and international importance. It operates in a similar manner to the Special Use Zone. Detailed requirements are prescribed for a particular site or area through the schedule to the zone. The zone does not specify an advertising category, but requires a permit for all signs unless a schedule specifies otherwise. Exemptions from notice and review can be given if desired.

Docklands Zone (Clause 37.05 and schedule)

This zone provides for the use and development of land in Melbourne's Docklands area, in a manner consistent with the development strategy adopted by the Docklands Authority. It operates in a similar manner to the Special Use Zone. Detailed requirements are prescribed for a particular site or area in the schedule to the zone. The schedule specifies car parking requirements. Exemptions from notice and review can be specified if desired.

Priority Development Zone (Clause 37.06 and schedule)

This is a specialised zone designed to implement approved strategies and developments of state or regional significance at specific locations. The zone facilitates the approval and management of complex projects where agreement on the desired form of development has been reached between the responsible authority and the developer. The detailed provisions of the zone are linked to agreed development plans. The zone exempts development that conforms with an agreed incorporated plan from third party reviews unless a right to review is specifically included in the schedule.

Urban Growth Zone (Clause 37.07 and schedule)

This zone sets out the requirements for the development of new residential and employment precincts on previously undeveloped land. It requires the establishment of a precinct structure plan before a growth area can be developed and subdivided. The zone includes provisions to ensure that any new use and development does not prejudice the future urban use and development of the land where a precinct structure plan is yet to be applied.

Where a precinct structure plan is in place, the zone provides for specific zone provisions to be applied by way of a schedule.

Planning Practice Note 47 – Urban Growth Zone explains the operation of the zone and the role and function of precinct structure plans.

Activity Centre Zone (Clause 37.08 and schedule)

The Activity Centre Zone is the preferred tool to guide and facilitate the use and development of land in activity centres. The zone encourages a mix of uses and intensive development including higher density housing. The zone allows for a schedule to specify or vary the land use provisions together with other provisions in the zone. See *Planning Practice Note 56 – Activity Centre Zone* for detailed guidance on the zone.

Port Zone

This zone seeks to ensure that land use and development recognises the significant transport, logistics and prime maritime gateway roles of Victoria’s commercial trading ports. It supports shipping, road and railway access to those ports and uses which derive direct benefit from co-establishing with them. While it provides for the ongoing use and development of Victoria’s commercial trading ports, the zone also seeks to protect uses in adjacent residential zones, the Capital City Zone or the Docklands Zone and any land used for or proposed to be acquired for a hospital or an education centre. An application is exempt from the notice and review provisions of the Act except within 30 metres of such land.

1.8.13 Summary of the overlays

The following is a short summary of each of the overlays in the VPP.

ENVIRONMENT AND LANDSCAPE OVERLAYS

Environmental Significance Overlay (Clause 42.01 and schedule)

This overlay seeks to address areas where the development of land may be affected by environmental constraints such as effects from noise or industrial buffer areas, as well as issues related to the natural environment. The schedule to the zone must clearly set out the environmental significance of the area and the resultant objective of the overlay.

Vegetation Protection Overlay (Clause 42.02 and schedule)

This overlay focuses on the protection of significant vegetation, including native and introduced vegetation. It can be applied to individual trees, stands of trees or areas of significant vegetation. The significance of identifying the vegetation must be stated, together with the intended outcomes of the imposed requirements. *Planning Practice Note 7 – Vegetation Protection in Urban Areas* explains the function of this overlay and other relevant vegetation provisions in more detail.

Significant Landscape Overlay (Clause 42.03 and schedule)

The function of this overlay is to identify, conserve and enhance the character of significant landscapes. The schedule to the zone must explain the significance of the landscape, together with the intended outcomes of imposed requirements. *Planning Practice Note 7 – Vegetation Protection in Urban Areas* explains the function of this overlay and other relevant landscape provisions in more detail.

HERITAGE AND BUILT FORM OVERLAYS

Heritage Overlay (Clause 43.01 and schedule)

Any heritage place with a recognised citation should be included in the schedule to this overlay. In addition, any heritage place identified in local heritage studies can also be included.

A heritage place can have a wide definition and may include a single object or an area.

There should be a rigorous heritage assessment process leading to the identification of the place. The documentation for each place should include a Statement of Significance which establishes the importance of the place. For guidance on applying heritage provisions see *Planning Practice Note 1 – Applying the Heritage Overlay* and the Victorian Heritage Register Criteria and Threshold Guidelines 2012.

Design and Development Overlay (Clause 43.02 and schedule)

This overlay is principally intended to implement requirements based on a demonstrated need to control built form and the built environment. The intended built form outcome must be clearly stated, as must the way in which the imposed requirements will bring this about. Where possible, performance-based requirements should be used rather than prescriptive requirements.

Incorporated Plan Overlay (Clause 43.03 and schedule)

This overlay is used to:

- prescribe a plan for an area to coordinate proposed use or development before a permit can be granted under the zone
- exempt from notice and review any permit applications that are in conformity with the plan.

A plan established by the Incorporated Plan Overlay is incorporated in the planning scheme. It can only be introduced or changed by a planning scheme amendment and will normally be publicly exhibited as part of that process, making it appropriate where a plan is likely to affect third-party interests.

Planning Practice Note 23 – Applying the Incorporated Plan and Development Plan Overlay provides advice on the operation of this overlay.

Development Plan Overlay (Clause 43.04 and schedule)

This overlay is used where the form of development is appropriately controlled by a plan that satisfies the responsible authority as there is no public approval process for the plan.

A planning scheme amendment is not required to amend a plan established by a Development Plan Overlay.

For more information on the operation of this overlay see *Planning Practice Note 23 – Applying the Incorporated Plan and Development Plan Overlay*.

Neighbourhood Character Overlay (Clause 43.05 and schedule)

This overlay identifies areas of existing or preferred neighbourhood character. It requires a planning permit for buildings and works and the demolition or removal of a building or tree if specified in a schedule to the overlay. A schedule to the overlay can be used to modify certain standards of Clause 54 or Clause 55 of the planning scheme.

LAND MANAGEMENT OVERLAYS

Erosion Management Overlay (Clause 44.01 and schedule)

This overlay identifies land subject to significant erosion. There should be appropriate technical justification to support the application of this overlay.

Salinity Management Overlay (Clause 44.02 and schedule)

This overlay identifies land subject to significant salinity. It requires a planning permit for buildings and works, subdivision and the removal of vegetation in areas affected by salinity. All applications are referred to the relevant state environment department. There should be appropriate technical justification to support the application of this overlay.

Floodway Overlay (Clause 44.03 and schedule)

This overlay is applied to urban and rural land identified as part of an active floodway, or to a high hazard area with high flow velocities, where impediment of flood water can cause significant changes in flood flows and adversely affect other areas. The identification of these areas should be established in consultation with the relevant floodplain management authority. *Planning Practice Note 12 – Applying the flood provisions in planning schemes* explains the function of this overlay and other relevant flood provisions in more detail.

Land Subject to Inundation Overlay (Clause 44.04 and schedule)

This overlay applies to land in either rural or urban areas that is subject to inundation, but is not part of the primary floodway. The identification of these areas should be established in consultation with the relevant floodplain management authority. *Planning Practice Note 12 – Applying the flood provisions in planning schemes* explains this overlay and other relevant flood provisions in more detail.

Special Building Overlay (Clause 44.05 and schedule)

This overlay applies to urban land that is subject to overland flow resulting from stormwater flooding where the capacity of the drainage system is exceeded during heavy rainfall. This land is not part of a primary floodway from a river or stream. *Planning Practice Note 12 – Applying the flood provisions in planning schemes* explains the operation of this overlay and other relevant flood provisions in more detail.

Bushfire Management Overlay (Clause 44.06 and schedule)

This overlay is applied to areas identified as having high bushfire hazard. Together with the planning requirements for bushfire protection in Clause 52.47, this overlay controls development in order to mitigate risk to life, property and community infrastructure. *Planning Practice Note 64 – Local Planning for Bushfire Protection* explains the use of this overlay in more detail.

State Resource Overlay (Clause 44.07 and schedule)

This overlay is applied to protect areas of mineral, stone and other resources, identified as being of state significance, from development that would prejudice the current or future productive use of the resource.

OTHER OVERLAYS

Public Acquisition Overlay (Clause 45.01 and schedule)

This overlay identifies land that is proposed to be acquired for a public purpose. It has the effect of reserving the land under the *Land Acquisition and Compensation Act 1986*. The authority acquiring the land and the purpose of the acquisition must be set out in the schedule. Once land is acquired by a public authority, it should be rezoned to an appropriate zone.

Airport Environs Overlay (Clause 45.02 and schedules)

This overlay is applied to land that is subject to high levels of aircraft noise and sets out requirements to respond to those noise conditions. The *Australian Noise Exposure Forecast (ANEF)* defines areas of high aircraft noise levels. Where ANEF contours do not exist, Australian Standard AS2021 – 2000, *Acoustics – Aircraft Noise Intrusion – Building Siting and Construction*, gives guidance for determining an appropriate boundary.

Schedule 1 identifies uses which are prohibited, uses for which a permit required and associated application referral requirements. It is based on the 25 ANEF contour.

Schedule 2 identifies noise sensitive uses which require a permit and associated application referral requirements. It is based on the 20 ANEF contour.

Environmental Audit Overlay (Clause 45.03)

This overlay is applied to land identified, known or reasonably suspected of being contaminated for which certain obligations under the *Environment Protection Act 1970* have not been met. Refer to *Ministerial Direction No 1 – Potentially Contaminated Land* for further direction on how the overlay is applied.

Planning Practice Note 30 – Potentially Contaminated Land provides further direction on addressing contamination and applying the Environmental Audit Overlay.

Road Closure Overlay (Clause 45.04)

This overlay is used to identify a road that is closed by an amendment to a planning scheme.

Restructure Overlay (Clause 45.05 and schedule)

This overlay applies a restructure plan to old and inappropriate subdivisions as a condition of development approval. The restructure plan should be an incorporated document, because it controls whether or not a permit can be considered.

Development Contributions Plan Overlay (Clause 45.06 and schedule)

This overlay identifies areas where a development contributions plan is in place. The schedule to the overlay summarises the development contributions required. A more detailed incorporated document and local planning policy will usually be associated with the overlay.

City Link Project Overlay (Clause 45.07)

This overlay exempts specified use and development associated with certain projects from any requirement of the planning scheme. The overlay includes permit exemptions and requirements for certain advertising signs.

Melbourne Airport Environs Overlay (Clause 45.08 and schedules)

This overlay seeks to ensure that land use and development in the vicinity of Melbourne Airport is compatible with the operation of the airport and that exposure of new dwellings and other noise-sensitive buildings to aircraft noise is minimised through appropriate noise attenuation measures.

The overlay controls restrict development or require special consideration to be given to particular uses that may be sensitive to noise in areas that are forecast to be affected by moderate to high levels of aircraft noise.

Schedule 1 identifies area that will be subject to high levels of aircraft noise and is based on the 25 ANEF contour.

Schedule 2 identifies areas that will be subject to moderate levels of aircraft noise and is based on the 20 ANEF contour.

Parking Overlay (Clause 45.09 and schedule)

This overlay is used to manage car parking in a precinct where local parking issues are identified and a common strategy can be adopted to respond to the issues. *Planning Practice Note 57 – The Parking Overlay* provides guidance on the preparation and application of the overlay.