

## IDAS IMPLEMENTATION NOTES

*Note 24*

# Development inconsistent with a planning scheme

Under the *Integrated Planning Act (IPA)*, it is **not** possible for an application to be made seeking the amendment of a planning scheme by rezoning land. However, most *Local Government (Planning and Environment) Act 1990 (P&E Act)* planning schemes were structured to facilitate or require rezoning applications to enable a change of use. These applications were either required under the scheme as a “first stage” approval, or were sought by applicants to achieve types or combinations of development that would otherwise have been prohibited. These applications also often acted as a basis for the local government to obtain funding or capital works for infrastructure for the site.

Consequently, while operating under transitional planning schemes, many applicants and local governments are continuing to seek “rezoning” as previously provided for by the provisions of the repealed P&E Act. While the IPA does not provide for rezoning, it does contain mechanisms for achieving all of the outcomes for which rezoning applications were formerly used.

## 1.0 The transitional arrangements [s6.1.28 & 29 of the IPA]

Under a P&E Act planning scheme, the achievement of some development outcomes may have first required the amendment of the planning scheme. The IPA provides for these outcomes to be sought directly through a development application. The transitional provisions of the IPA state that the application must be processed using the impact assessment process and assessed against the same matters for assessment as under the P&E Act.

For example, an applicant proposes to develop rural zoned land (shown on the Strategic Plan as forming part of a future urban growth corridor) for a residential estate. Under the P&E Act the proposal would first have required a rezoning of the land to a residential zone to facilitate the proposed lot sizes. Under the transitional planning scheme, the applicant may make an application for material change of use, reconfiguring a lot and any associated operational works. The application will need to clearly identify the nature of the proposal (i.e. the activities as defined under the planning scheme and the proposed development density) and will follow the impact assessment process.

### *Amending the planning scheme to reflect the approval*

While operating under the transitional arrangements, the local government has the option of amending the planning scheme to reflect an IDAS approval. To amend the scheme under this provision, the local government, by resolution and within **20 business days** after the day the approval takes effect, adopts an amendment of the scheme zoning maps to reflect the approval [s6.1.34 of the IPA].

When amending the scheme, the local government must determine the most appropriate zone in which to include the land. This new zone may be -

- general - eg. Residential Zone, Commercial Zone Industrial Zone; or
- specific - eg. Special Development (Shop) Zone, Particular Development (Office with a maximum of 120 m<sup>2</sup> of gross floor area) Zone.

If the zoning is general the new zone may give unintended use rights beyond those that were considered as part of the original application including -

- the table of development for the new zone may specify certain other uses as self-assessable or exempt in that zone;

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**Note:**

- using s6.1.34 to amend the zone of the land to reflect the approval is at the assessment manager's discretion
- if s6.1.34 is used, the assessment manager must choose the most appropriate zone in which to include the land
- using s6.1.34 entrenches the approval as the new zone remains in place until a further amendment is made to the planning scheme.

**Note:**

- the approval will lapse at the end of the relevant period if the approval has not been acted on
- any subsequent application (eg. extensions which constitute a further material change of use) would also trigger impact assessment and the assessment criteria for rezoning under the repealed P&E Act.

- the table of development for the new zone may also change the level of assessment and the assessment criteria for a subsequent application for the same use as was considered in the original application. For example, in the existing zone an office building may be inconsistent with the planning scheme (*previously designated as prohibited development*) and therefore require impact assessment while in the new zone an office building may be code assessable. Therefore any future extensions to the use (*which may in fact double the intensity of the development*) would be code rather than impact assessable development.

However it may be appropriate to include land in a general zone when the land is in a holding zone and a general zone can reflect the future intended development pattern for the area. For example where land is included in the Future Urban Zone and the approval is for 50 new residential lots for single detached dwellings it may be appropriate to include the land in a general zone such as the Low Density Residential Zone which in the planning scheme provides for the new residential lots and also accommodates those other uses which are appropriate in the zone to support the new residential development in the area.

It also is important to remember that amending the scheme will entrench the approval unless the approval is worded in such a way that renders the provision ineffective if the approval lapses.

#### ***Making a notation on the planning scheme to reflect the approval***

- If the local government chooses not to amend the planning scheme under section 6.1.34 of the IPA, the inconsistent development approval **must** be noted on its planning scheme [*s 3.5.27 of the IPA*]. The notation on the planning scheme is not an amendment of the planning scheme and therefore **does not change the scheme zoning maps**.

### **2.0 Preliminary approval overriding the planning scheme**

The IPA enables an applicant to seek a preliminary approval overriding the planning scheme if the application involves a material change of use and is impact assessable development [*s 3.1.6 of the IPA*]. The application may seek to:

- establish the level of assessment for any further development on the site; and
- identify the codes against which subsequent development will be assessed.

If approved, the preliminary approval establishes specific use rights for the land. All s.3.1.6 preliminary approval applications in the first instance, require Referral Coordination (refer to *Implementation Note 6*).

#### ***Reflecting the approval in the transitional planning scheme***

If operating under a transitional planning scheme, the local government has the option of amending the planning scheme to reflect the approval if the approval is for development that would, under the repealed P&E Act, have first required a zoning [*s 6.1.34 of the IPA*].

Otherwise, the local government **must** make a notation on the planning scheme to reflect the inconsistent approval [*s 3.5.27 of the IPA*]. In this instance, the approval will no longer apply to the land when the development is completed or when the time limit for completing the development ends [*s 3.1.6(7) of the IPA*].

### **3.0 Development inconsistent with IPA planning schemes**

Instead of relying on the use of the rezoning process, IPA planning schemes should indicate preferred future use patterns. However, the IPA does provide for an application which seeks approval for development in a locality in which the development is not envisaged (eg. material change of use for "shop" in an industrial zone or for material change of use and reconfiguring a lot to subdivide land to a density in excess of that provided for in the locality). In such cases, the planning scheme remains the key determinant of the application, and approval may only be given if the applicant can establish good planning grounds for the departure from the scheme.

#### ***Reflecting the approval on an IPA planning scheme***

If an approval is given and the development is considered by the local government to be inconsistent with the planning scheme, the local government **must** note the inconsistency on its planning scheme [*s 3.5.27 of the IPA*].

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