

Handout for ENVM3103/7123 lecture 2 – the essence of planning schemes

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Planning schemes are always a combination of maps and text. They can be very long and complex (e.g. in Brisbane). The main key to using them to determine what development can occur on a particular parcel of land and how it will be assessed is use the maps to identify what the land you are considering is designated as under the planning scheme (e.g. its zone and whether any local plans or other layers of planning apply to it). Once you have found that information in the maps, you need to read the parts of the text relevant to those designations. The text will provide you will detail on the constraints applying to that land. Consider the following example of extracts of maps and text from the *Brisbane City Plan 2014* relevant to developing land in a low density residential area (Figure 1) as units.

Figure 1: A satellite image compared with part of a planning scheme overlaying the same land showing zones under the *Brisbane City Plan 2014* in the suburbs of Northgate & Banyo.



(Partial) Key for zones in the *Brisbane City Plan 2014*

- | | | |
|--|--|---|
| LDR Low density residential | LI1 Low impact industry | OS Open space |
| CR1 Character residential (Character) | IN1 General industry A | OS1 Open space (Local) |
| CR2 Character residential (Infill housing) | IN2 General industry B | OS2 Open space (District) |
| LMR1 Low-medium density residential (2 storey mix) | IN3 General industry C | OS3 Open space (Metropolitan) |
| LMR2 Low-medium density residential (2 or 3 storey mix) | SI Special industry | EM Environmental management |
| LMR3 Low-medium density residential (Up to 3 storeys) | II Industry investigation | SP3 Special purpose (Transport infrastructure) |
| MDR Medium density residential | SR Sport and recreation | SP4 Special purpose (Utility services) |
| HDR1 High density residential (Up to 8 storeys) | | SP5 Special purpose (Airport) |
| HDR2 High density residential (Up to 15 storeys) | | SP6 Special purpose (Port) |

Extracts from *Brisbane City Plan 2014* available at <http://www.brisbane.qld.gov.au> and <http://eplan.brisbane.qld.gov.au/> showing key constraints in the text of the planning scheme relevant to development of a multi-unit dwelling in a low density residential area.

Brisbane City Plan 2014

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6.2 Zone codes

6.2.1 Residential zones category

6.2.1.1 Low density residential zone code

(1) The purpose of the low density residential zone is to provide for:

- (a) a variety of low density dwelling types, including [dwelling houses](#); and
- (b) [community uses](#), and small-scale services, facilities and infrastructure, to support local residents.

(2) The purpose of the zone will be achieved through overall outcomes for:

- (a) zone role;
- (b) development location and uses;
- (c) development form.

(3) Zone role overall outcomes are:

- (a) Development in the zone supports the implementation of the policy direction set in the Strategic framework, in particular:
 - (i) [Theme 2: Brisbane's outstanding lifestyle, Element 2.1 – Brisbane's identity](#) and [Element 2.2 – Brisbane's housing and accommodation choices](#);
 - (ii) [Theme 5: Brisbane's CityShape](#) and [Element 5.5 – Brisbane's Suburban Living Areas](#).

(4) Development location and uses overall outcomes are:

- (a) Development provides for suburban living in [dwelling houses](#) of predominantly 1 or 2 [storeys](#) in height, on appropriately sized and configured vacant lots, which maintain the low density detached housing suburban identity of the [Low density residential zone](#).
- (b) Development provides for other housing types at a house scale to provide housing diversity offering choice to different [household](#) types and individuals to suit residents through different life-cycle stages.
- (c) [Development, other than a dwelling house, including dual occupancy or a multiple dwelling is not accommodated within this suburban setting unless on a well-located site of over 3,000m²](#).

(5) Development form overall outcomes are:

- (a) Development is of a form and scale that reinforces a distinctive subtropical character of low rise, low density buildings set in green landscaped areas.

Summary of principles for interpreting planning schemes and assessing planning applications

- The same principles which apply to statutory construction generally apply to the construction of planning documents: they should be given their plain meaning read in context and in light of the objects of the Act. This includes being read in a way which is practical, and read as a whole and as intending to achieve balance between outcomes.¹
- Planning schemes are typically complex documents and a proposal can be inconsistent with a planning scheme in many ways; some minor, some major.
- The basic rule for assessing a development application under the *Planning Act 2016* (Qld) (PA) is that it is likely² to be approved if it is consistent with the planning scheme and other layers of government planning.³
- Conversely, the more a development application conflicts with the planning scheme and other layers of government planning, the less likely it is to be approved. This relationship is the core of virtually any planning system, including under the PA.

For example, if (an assessment benchmark) in a planning scheme for a particular area states that buildings not exceed 2 stories in height, an application for a 2 story building is likely to be approved while an application for a 100 story building is likely to be refused.

¹ See *AAD Design Pty Ltd v Brisbane City Council* [2012] QCA 44; [2014] 1 Qd R 1 at [18]-[20], [37], and [43]-[49] and [82]; *Zappala Family Co Pty Ltd v Brisbane City Council* [2014] QCA 147; (2014) 201 LGERA 82; [2014] QPLR 686 at [52]-[58]; and *Gerhardt v Brisbane City Council* [2017] QCA 285 at [31]-[36].

² There are exceptions to this general proposition. For instance, development that is identified as "prohibited development" cannot even be applied for so no grounds or reasons will be able to justify it.

³ See for much more detail on this core issue, *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPEC 16 at [35]-[86] (Williamson QC DCJ).