

# Applying the Incorporated Plan and Development Plan Overlays

## Planning Practice Note 23

November 2018

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 use these planning tools.

The IPO and DPO are flexible tools that can be used to implement a plan to guide the future use and development of the land, such as an outline development plan, detailed development plan or master plan.

The IPO and DPO are the preferred tools for supporting plans.

The overlays have two purposes:

- to identify areas that require the planning of future use or development to be shown on a plan before a permit can be granted
- to exempt a planning permit application from notice and review if it is generally in accordance with an approved plan.

### Operation of the overlays

The IPO and DPO are used to:

- 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 requirements
- provide certainty about the nature of the proposed use or development
- remove notice requirements and third-party review rights from planning permit applications for proposals that conform to plan requirements
- 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, unless a schedule to the zone states that a permit may be granted. The purpose of this provision is to limit or allow consideration of use and development of the land until a plan has been prepared and ensure that future use and development of the land is carried out in accordance with that plan. 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.

### **No change to the scope of discretion**

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 is '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 contains uses that do not require or prohibit a planning permit and this conflicts with the objectives of the plan a different zone will be necessary.

### **Permit requirement**

The IPO and DPO do not set up 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 it is in accordance with the development plan and includes any conditions or requirements specified in a schedule to the overlay. The zone or other provision still controls the need for a permit, while the overlay can constrain what a permit may be granted for.

### **No automatic approval of permit**

A permit application under the zone which is generally in accordance with the plan does not mean that a permit should be granted if other relevant planning policies or considerations indicate that it should be refused. The plan may not identify all of 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.

### **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. The responsible authority should not grant a permit for use or development that is not 'generally in accordance' with the plan unless the schedule provides a clear basis to do so.

### **Exemption from notice and review**

Both overlays exempt permit applications that are generally in accordance with the plan from notice and review.

Responsible authorities should not use non-statutory consultation practices to assist in deciding planning applications. 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.