

13.1 PSA-2022-3 - AMENDMENT TO THE KINGBOROUGH INTERIM PLANNING SCHEME 2015 TO UPDATE THE INCORPORATED DOCUMENTS

File Number: PSA-2022-3

Author: Adriaan Stander, Strategic Planner

Authoriser: Tasha Tyler-Moore, Manager Development Services

Application Number: PSA-2022-3

The purpose: The report considers a proposal to amend the *Kingborough Interim Planning Scheme 2015* (KIPS2015) to update the incorporated documents.

Representations: This report is pre-public exhibition, and therefore the proposed amendment has not been advertised.

Recommendation: That Council resolves to initiate Amendment PSA-2022-3 to the *Kingborough Interim Planning Scheme 2015*.

1. INTRODUCTION

- 1.1 The report considers a proposal to amend the *Kingborough Interim Planning Scheme 2015* (KIPS2015) pursuant to Section 34(b) of the former provisions of the *Land Use Planning and Approvals Act 1993* (LUPAA).
- 1.2 The purpose of the amendment is to update a list of supplementary documents (i.e. Incorporated Documents) in Appendix 1 of KIPS2015.
- 1.3 This report recommends the initiation and subsequent certification of the proposed amendment pursuant to the former provisions of Section 32 and 35 of LUPAA.

2. BACKGROUND

- 2.1 The planning scheme currently references several external documents that are relied upon to make planning decisions. One of the benefits of having these documents incorporated into the planning scheme is that they carry 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.
- 2.2 Not all types of documents referred to in the planning scheme need to be formally incorporated. For example, the Building Code of Australia and the Australian Standards have their own statutory standing.
- 2.3 The following two supplementary documents have been reviewed by Council since the last update of the Incorporated Document list in 2019.
 - Kingborough Public Open Space Contribution Policy, Policy 6.3, dated May 2019 (Council revised this policy in November 2021)
 - Kingborough Biodiversity Offset Policy 6.10, dated November 2016 (Council revised this policy in August 2022)
- 2.4 The proposed amendment is to update the reference to the above revised documents in Appendix 1 of KIPS2015 and ensuring these documents are correctly referenced throughout the text in the planning scheme.

3. PROPOSED AMENDMENT

- 3.1 The proposal seeks to update the incorporated documents in the KIPS2015 as follows.

Document title	Description /Purpose	Relevant clause in KIPS2015
Kingborough Public Open Space Contribution Policy, Policy 6.3, November 2021	Provides guidance to the application of monetary contributions in lieu of providing open space. The Kingborough Public Open Space Contribution Policy, Policy 6.3 can be viewed here.	Clauses 10.6.3 P1 (h); 11.5.3 P1 (h); 12.5.3 P2; 13.5.3 P2; 14.5.4 P2; 15.5.1 P6; 16.5.3 (h); 17.5.1 P3 (h); 18.5.1 (h); 19.5.1 P3 (h); 20.5.1 P6; 21.5.1 P6; 22.5.1 P6; 23.5.1 P6; 24.5.1 P6; and 31.5.1 P6
Kingborough Biodiversity Offset Policy 6.1, August 2022	Provides a mechanism to mitigate and compensate for the loss of biodiversity values where it has been established that all opportunities to avoid and mitigate impacts have been exhausted and the impacts will not significantly affect the conservation status of biodiversity value(s). The Kingborough Biodiversity Offset Policy 6.1 can be viewed here.	Clauses E10.7.1 P1 b iv; E10.7.1P1(c)(v); E10.8.1 P1(b)(iv) and E10.8.1 P1(c)(v)

- 3.2 The intent is to update the reference details (namely the date) listed in Appendix 1 of the planning scheme.
- 3.3 The proposal is also to update the reference to these documents in the planning scheme text to include the full, correct and current title and date of the document.

4. STATUTORY REQUIREMENTS

- 4.1 Amendments to the *Land Use Planning and Approvals Act 1993* (LUPAA) came into effect on 17 December 2015. Section 3(2)(b) of Schedule 6 of LUPAA provides for a planning scheme amendment application to the planning instrument (i.e. *Kingborough Interim Planning Scheme 2015*) to be considered under the former provisions of LUPAA.
- 4.2 Pursuant to section 34(1)(b) of the former provisions of LUPAA, a planning authority may initiate to amend a planning scheme administered by it. This report considers the proposed amendment to formally incorporate a list of documents the planning scheme current relies on to make decisions about planning matters.
- 4.3 Pursuant to section 33(2B) of the former provisions of LUPAA, before making a decision as to whether or not to initiate an amendment of the planning scheme, the planning authority must consider –

- (a) *whether the requested amendment is consistent with the requirements of section 32; and*
- (ab) *any representation made under s30I, and any statements in any report under section 30J as to the merit of the representation, that may be relevant to the amendment; and*
- (b) *any advice referred to in section 65 of the Local Government Act 1993 received by it.*

4.4 The above initiation requirements for the proposed scheme amendment have been assessed and is provided under section 6 of this report.

5. DISCUSSION

- 5.1 The proposed planning scheme amendment considers the following matters:
- existing situation under the planning scheme;
 - strategic justification with particular reference to the consistency of the proposal with the *Southern Tasmania Regional Land Use Strategy 2010-2035* and the *Kingborough Land Use Strategy 2019*;
 - consistency with the *Kingborough Council Strategic Plan 2015-2025*; and
 - compliance with the requirements of the former provisions of LUPAA.

Existing situation under the Kingborough Interim Planning Scheme 2015

- 5.2 The planning scheme currently references several other external documents that are essential and relied upon to make planning decisions.
- 5.3 The proposed update of the incorporated documents will provide greater certainty for applicants, assessment officers as well as the general community.

Strategic alignment - Southern Tasmania Regional Land Use Strategy 2010-2035

- 5.4 The *Southern Tasmania Regional Land Use Strategy 2010-2035* (STRLUS) is a broad policy document that will facilitate and manage change, growth, and development within Southern Tasmania over the next 25 years.
- 5.5 The proposed amendment is not directly linked to any of the regional policies; however, the proposal will result in the formal inclusion of incorporated documents which are essential to the proper functioning of the planning scheme and decision making.
- 5.6 The documents that are proposed to be incorporated into the planning scheme will be strategically aligned with STRLUS as follows:

Policy 5 – Biodiversity and Geodiversity	The proposal will assist in maintaining and managing the regions biodiversity. It will provide improved guidance for the application of biodiversity offsets if, at the local level, it is considered appropriate to compensate for the loss of biodiversity values.
Policy 10 – Recreation and Open Space	The proposal will ensure residential areas, open spaces and other

	community destinations are provided to meet the demands of growing communities. It will also provide guidance to the application of monetary contributions in lieu of providing open space where appropriate.
--	---

Strategic alignment - Kingborough Land Use Strategy

- 5.7 The Kingborough Land Use Strategy, dated May 2019 provides justification for the way that land is to be zoned in the planning scheme and provides the necessary background to assist in the assessment of future planning scheme amendments.
- 5.8 While the Kingborough Land Use Strategy serves a number of useful functions in a more general sense, its most important function is to support the draft Kingborough Local Provisions Schedule. It provides the justification for the allocation of zones and the inclusion of other provisions within the ordinance, such as Specific Area Plans. The Strategy also provides information that can be used to support potential changes to the scheme and to identify where more detailed investigations are necessary.
- 5.9 The strategy recommends that *“the planning scheme should be able to provide the necessary degree of certainty for both prospective developers and the Kingborough community. There should be confidence in the fact that the planning scheme contains the necessary land use planning controls to both encourage appropriate development and to prevent inappropriate development. Residents and businesses should be able to establish themselves within the municipality confident in the knowledge that the planning scheme protects their amenity and, to the extent possible, ensures that public infrastructure and services are made available.”*
- 5.10 The proposed planning scheme amendment aims to provide security and greater certainty as per the recommendations of the Kingborough Land Use Strategy and will also assist and provide detailed specialist procedures or requirements for development to supplement the planning scheme.
- 5.11 The proposed amendment is strategically aligned with the Kingborough Land Use Strategy.

Kingborough Council Strategic Plan 2020-2025

- 5.12 The *Kingborough Council Strategic Plan 2020-2025* provides the direction for the delivery of services by Kingborough Council, which influence the quality of life for residents and businesses.
- 5.13 The plan focuses on the unique elements of Kingborough and the challenges it will face in the years to come. The Strategic Plan includes a number of Strategic Outcomes that are listed under Key Priority Areas. Below is the relevant Key Priority Area, Strategic Outcome and Strategy.

Key Priority Area	3.0	Sustaining the natural environment whilst facilitating development for our future
Strategic outcome	3.4	Best practice land use planning systems are in place to manage the current and future impacts of development.

	3.5	Management of environmental assets is based on professional advice and strategic planning.
--	-----	--

5.14 The intent of the proposed planning scheme amendment is to ensure best practice land use planning systems are in place to manage the current and future impact of development. The list of incorporated documents will safeguard proper functioning of the planning scheme, particularly as part of the development assessment processes. The proposed amendment will also ensure that greater certainty is provided to the public in relation to development and protection of the natural environment.

5.15 It is therefore considered that the proposed amendment is consistent with the Strategic Plan.

6. STATUTORY ASSESSMENT

Compliance with section 32(1) of the former provisions of LUPAA

6.1 Pursuant to section 32(1) of the former provisions of LUPAA, *a draft amendment of a planning scheme, and an amendment of a planning scheme, in the opinion of the relevant decision-maker within the meaning of section 20(2A) -*

(a)

(b)

(c)

(d)

(e) *must, as far as practicable, avoid the potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area; and*

(ea) *must not conflict with the requirements of section 300; and*

(f) *must have regard to the impact the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.*

Potential land use conflicts

6.2 Section 32(e) of the former provisions of LUPAA requires that planning scheme amendments must avoid the potential for land use conflicts in adjacent planning scheme areas.

6.3 The proposed amendment provides clarity in the application of several codes in the planning scheme and does not contain any new development standards that may result in land use conflict.

Alignment with the regional land use strategy

6.4 Section 32(ea) of the former provisions of LUPAA requires that planning scheme amendments must not conflict with the requirements of section 300 of the former provisions of LUPAA.

6.5 Section 300 of the former provisions of LUPAA requires that an amendment to an interim planning scheme is as far as practicable, consistent with the regional land use

strategy. Strategic alignment with the Southern Tasmania Regional Land Use Strategy is addressed in section 5 of this report.

- 6.6 It is considered that the proposed amendment is consistent with the regional land use strategy and local land use strategy, and therefore meets the requirements of section 30O and therefore Section 32(ea) of the former provisions of LUPAA.

Impact on the use and development in the region

- 6.7 Section 32(f) of the former provisions of LUPAA also requires of the former provisions of LUPAA requires that planning scheme amendments must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.
- 6.8 It is considered that the proposed amendment meets the requirements of section 32(f) of the former provisions of LUPAA.

Sections 30I and 30J of LUPAA

- 6.9 Section 33(2B)(ab) of the former provisions of LUPAA requires that any representations made under section 30I of the former provisions of LUPAA, and any statements in a report under section 30J of the former provisions of LUPAA as to the merit of a representation, that may be relevant to the amendment application, must be considered.
- 6.10 No representations were received during the exhibition of the Scheme which are relevant to the proposed amendment, therefore sections 30I and 30J of the former provisions of LUPAA have been satisfied.

Objectives of Schedule 1 of LUPAA

- 6.11 LUPAA requires that planning scheme amendments must seek to further the objectives of Schedule 1 of the former provisions of LUPAA.
- 6.12 The objectives of the former provisions of LUPAA require use and development to occur in a fair, orderly and sustainable manner and for the planning process to facilitate economic development in accordance with the other Schedule 1 objectives.

The following table assess the proposed amendment against the objectives of Schedule 1 of the former provisions of LUPAA.

Schedule 1, Part 1 Objectives	Response
<i>(a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity</i>	The planning scheme amendment will support the proper functioning of the planning scheme and will not facilitate any loss of natural values, nor any development of any physical resources. The proposal is considered consistent with this requirement.
<i>(b) to provide for the fair, orderly and sustainable use and development of air, land and water</i>	The proposed planning scheme amendment will improve clarity for the community, for developers and for Council for regulating planning and building matters. The proposal is considered consistent with this requirement.
<i>(c) to encourage public involvement in resource management and planning</i>	Opportunity for public input will be available through the public consultation process of the amendment as outlined in Section 7 of this

	report. The proposal is consistent with this requirement.
<i>(d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c)</i>	As stated above, the proposal represents greater clarity for the general community, developer and Council, that in turn will facilitate good economic outcomes whilst avoiding significant environmental impact. The proposal is consistent with this requirement.
<i>(e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State</i>	The approval process requires the support of both Council and the Tasmanian Planning Commission for the planning amendment to become effective. The community and industry will have the opportunity to comment on the proposal once it goes on exhibition. The proposal is considered consistent with this requirement.
Schedule 1, Part 2 Objectives	Response
<i>(a) to require sound strategic planning and co-ordinated action by State and Local Government</i>	As demonstrated throughout this assessment the proposal is strategically aligned and will ensure certainty and improved strategic outcomes both at State and Local Government level. It is considered consistent with this requirement.
<i>(b) to establish a system of planning instruments to be the principal way of setting objectives, policies and controls for the use, development and protection of land</i>	The proposal aims to strengthen specific planning requirements that originate in external documents. Formally incorporating these documents in the planning scheme will ensure that the document carries the same weight as other parts of the scheme. The proposal will therefore support the efficient application of existing codes and requirements. The proposal is consistent with this requirement.
<i>(c) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land</i>	The social and economic benefit will be to improve clarity with respect to existing planning scheme provisions. The proposal is considered consistent with this requirement.
<i>(d) to require land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels;</i>	The proposal is not considered to conflict with any environmental, social, economic, conservation or resource management policies. It aims to provide improved linkage and integration between those policies and requirements of the planning scheme.
<i>(e) to provide for the consolidation of approvals for land use or development and related matters and to co-ordinate planning approvals with related approvals</i>	Formal inclusion of incorporated documents will simply improve the application of existing codes. As discussed above the proposal furthers strategic planning policies and is consistent with this requirement.
<i>(f) to secure a pleasant, efficient and safe working, living and recreational environment for all Tasmanians and visitors to Tasmania</i>	The proposal is not considered to be in conflict of this requirement.
<i>(g) to conserve those buildings, areas or other places which are scientific,</i>	The proposal is not considered to conflict with this requirement

<i>aesthetic, architectural or historical interest, or otherwise of special cultural value</i>	
<i>(h) to protect public infrastructure and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community</i>	The proposal is not considered to conflict with this requirement
<i>(i) to provide a planning framework which fully considers land capability</i>	The proposal will have no significant impact on land capability.

State Policies

6.13 LUPAA requires that planning scheme amendments must be prepared in accordance with State Policies.

6.14 The proposed amendment does not have any implications *State Coastal Policy 1996, State Policy on Water Quality Management 1997 and State Policy on the Protection of Agricultural Land 2009.*

7. PUBLIC CONSULTATION

7.1 If Council initiates the proposed amendment, it must also certify the draft amendment in accordance with section 35 of the former provisions of LUPAA. Section 38 of the former provisions of LUPAA requires that the proposal be advertised for a minimum period 28 days or longer period as agreed to by the Commission.

7.2 Section 37(1) of the former provisions of LUPAA provides an additional mechanism for the Commission to dispense with certain requirements of the amendment process (for example, a reduced exhibition period) where the relevant legislative criteria are met.

It is recommended that Council request the Commission to dispense of the 28-exhibition period under Section 38 completely or a reduced period for the following reasons:

- Section 37(1)(a)(v) allows the Commission to dispense with certain requirements of the amendment process if it involved '*making procedural changes to the planning scheme*'. It is considered that the proposed urgent amendment is consistent with section 37(1)(a)(v) in that the recent changes to the two Council policies reflect administrative and procedure changes.
- Section 37(1)(b) LUPAA requires '*the public interest will not be prejudiced*'. It is considered that the planning scheme amendment is consistent with these criteria in that the proposed amendment does not introduce any new development standards or introduce any further conditions on landowners that was not originally intended. Rather, it will improve the clarity of KIPS 2015 and ensure that the planning scheme functions as intended.

7.3 If the Commission does not agree to Council's request to dispense of the exhibition requirements, the amendment will be exhibited as per the standard requirements for 28 days on the Kingborough Council website and two adverts in a newspaper circulating the area.

8. CRITICAL DATES / TIME FRAMES

8.1 If Council supports the amendment and initiates and certifies the amendment, it must advise the Commission within seven days.

- 8.2 If the Commission agrees to the disposal of the exhibition period and approves the amendment, the amendment takes effect seven days after being signed by the Commission, unless a date is specified.

9. CONCLUSION

- 9.1 The proposed amendment does not introduce new development standards or policies, but rather to update the list of supplementary documents in Appendix 1 in the KIPS2015 to reflect Council's Public Open Space Contribution Policy, Policy 6.3, dated November 2021 and Biodiversity Offset Policy 6.1 dated August 2022. The proposal also seeks to ensure that these documents are correctly referenced throughout the text in the planning scheme.
- 9.2 The above assessment demonstrates that the proposed amendment meets all statutory requirements and is a logical amendment to the planning scheme to improve the application of existing provisions of the planning scheme.

RECOMMENDATION

That Council resolves that the report of the Manager Development Services be received and that:

- (a) Pursuant to section 34(1)(b) of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council resolve to initiate Amendment PSA-2022-3 to the *Kingborough Interim Planning Scheme 2015*;
- (b) Pursuant to section 35 of the former provisions of the *Land Use Planning and Approvals Act 1993*, Council certify that Amendment PSA-2022-3 to the *Kingborough Interim Planning Scheme 2015* meets the requirements of section 32 of the former provisions of the *Land Use Planning and Approvals Act 1993* and authorise the General Manager to sign the Instrument of Certification; and
- (c) Pursuant to section 37 of the former provisions of the *Land Use Planning and Approvals Act 1993*, request the Commission to dispense of the exhibition requirements under section 38 completely or a shorter exhibition period.

ATTACHMENTS

- 1. Instrument of Certification
- 2. Proposed Amendment



Kingborough Interim Planning Scheme 2015

INSTRUMENT OF CERTIFICATION

PSA-2022-3

It is hereby certified that draft Amendment PSA-2022-3 to the *Kingborough Interim Planning Scheme 2015* meeting the requirements in section 32 of the former provisions of the *Land Use Planning and Approvals Act 1993*.

The Common Seal of the Kingborough Council is affixed hereto, pursuant to the Council's resolution on 19 September 2022, in the presence of:

..... Councillor

..... General Manager

..... Date



Kingborough Interim Planning Scheme 2015

PSA-2022-3

The Kingborough Interim Planning Scheme 2015 is amended as follows:

1. Update the list of documents in *Appendix 1 – Reference and Incorporated Documents as follows*

Document Title	Description	Date
Margate Marina Master Plan	prepared by Smartgrowth, Integrated Architecture & Urban Design	July, 2004
Wellington Park Management Plan 2013	published by Wellington Park Management Trust	December, 2013
Kingborough Public Open Space Contribution Policy, Policy 6.3	Prepared by Kingborough Council	November, 2021
Kingborough Biodiversity Offset Policy 6.10	Prepared by Kingborough Council	August, 2022
Guidelines for the Use of Biodiversity Offsets in the Local Planning Approval Process	Prepared by Southern Tasmanian Councils Authority	April, 2013
Tasmanian Noise Measurement Procedures Manual, second edition.	Prepared by the Department of Environment, Park Heritage and the Arts	July, 2008
Tasmanian Coastal Works Manual	Prepared by the Department of Primary Industries, Park, Water and Environment	December, 2010
Waterways and Wetlands Works Manual	Prepared by the Department of Primary Industries, Water and Environment	December, 200



Draft amendment
KIN-PSA-2022-3

2. Amend the reference to the following incorporated documents in the text of the planning scheme.

Relevant clause in KIPS2015 to be amended	Amend text reference to the following documents
Clauses 10.6.3 P1 (h); 11.5.3 P1 (h); 12.5.3 P2; 13.5.3 P2; 13.5.3 P2; 14.5.4 P2; 15.5.1 P6; 16.5.3 (h); 17.5.1 P3 (h); 18.5.1 (h); 19.5.1 P3 (h); 20.5.1 P6; 21.5.1 P6; 22.5.1 P6; 23.5.1 P6; 24.5.1 P6; and 31.5.1 P6	Kingborough Public Open Space Contribution Policy, Policy 6.3, November 2021
Clauses E10.7.1 P1 b iv; E10.7.1P1(c)(v); E10.8.1 P1(b)(iv) and E10.8.1 P1(c)(v)	Kingborough Biodiversity Offset Policy 6.1, August 2022

The Common Seal of the Kingborough Council is affixed hereto, pursuant to the Council's resolution on 19 September 2022, in the presence of:

..... Councillor

..... General Manager

..... Date