

1. Introduction

As part of the Government's commitment to streamlining and improving the planning approvals process in Western Australia, the WA Parliament passed *Approvals and Related Reforms (No. 4) (Planning) Act 2010* (the '2010 Amendment Act'). The 2010 Amendment Act contained a number of amendments to the *Planning and Development Act 2005* (the 'PD Act') that are designed to improve the planning system.

The amendments to section 126 of the PD Act came into effect on 22 November 2010.

2. Purpose

The purpose of this planning bulletin is to provide an update as to the object and operation of concurrent amendments made to both region planning schemes and local planning schemes pursuant to section 126 of the PD Act. This document rescinds previous similar guidance set out in Planning Bulletins 76 and 81.

3. Section 126

The new section 126 provision, as amended by the 2010 Amendment Act, states as follows:

126. Zoning amended by region planning scheme

- (1) If a region planning scheme delineates land comprised in a local planning scheme as a reserve for any public purpose, then the local planning scheme, in so far as it operates in relation to that land, is, by force of this section and without any further action under this Act, amended to such extent (if any) as is necessary to give effect to the reservation under the region planning scheme.
- (2) Notice of any amendment effected under subsection (1) is to be published in the *Gazette*.
- (3) If a region planning scheme delineates, or it is proposed that a region planning scheme delineate,

land comprised in a local planning scheme as land in an Urban zone, the Commission may publish in the *Gazette* a notice amending the local planning scheme, insofar as it operates in relation to that land, so that the land is zoned in the local planning scheme in a manner that is consistent with the objectives of the delineation or proposed delineation under the region planning scheme.

- (4) The Commission must not publish a notice under subsection (3) amending a local planning scheme until the local government that made or adopted the scheme has been consulted.
- (5) An amendment in a notice published under subsection (3) takes effect —
 - (a) if the relevant region planning scheme is in operation on the day on which the notice is published under subsection (3) — on that day;
 - (b) otherwise — on the day on which the relevant region planning scheme comes into operation.
- (6) When an amendment to a local planning scheme takes effect under subsection (5), the local planning scheme is, by force of this subsection and without further action under this Act, amended as set out in the notice.

4. Background and history

Section 126 in effect provides that:

- a) where a region scheme is amended by the reservation of land, the local planning scheme is automatically amended without the need for a separate amendment to the local planning scheme or amendment; and
- b) where a region scheme is amended to include land an Urban zone, the local planning scheme may be automatically amended,

following consultation with local government, by a notice being published by the WAPC.

In both cases, the local planning scheme is updated by publication of a notice in the *Gazette*.

The importance of section 126, and in particular section 126(3), is that it allows for the automatic amendment of a local planning scheme to rezone land to be consistent with the objectives of the delineation or proposed delineation under the region planning scheme, but without the need for a separate local scheme amendment. This in turn avoids a duplication of procedures where structure planning is also taking place, and focuses consultation on the ultimate form of development as shown on a proposed structure plan.

5. How has the 2010 Amendment Act altered section 126?

The 2010 Amendment Act has amended section 126(3) of the PD Act.

As explained in the 2009 *Explanatory Memorandum* to the 2010 Amendment Act:

Section 126 amended: This clause amends Section 126(3) which provides for concurrent amendments to region and local planning schemes. To the extent that a region planning scheme amendment will result in the local planning schemes in the relevant area being inconsistent with the region scheme, automatic amendment to the local planning scheme will occur.

The primary practicable effect of the 2010 Amendment Act is that the previous pre-conditions under subsection (3), for publishing an automatic amendment in the *Gazette*, have been removed. Formerly, publication could only occur upon a request by the relevant local government to the WAPC. Under the new and amended subsection (3), the WAPC initiates the publication of its own notice, although it must still consult with local government under subsection (4).

6. Other frequently asked questions in relation to section 126

6.1 When under section 126(1) a local planning scheme is amended as the result of a region planning scheme or amendment delineating land as a reserve for a public purpose, who is responsible for publishing notice of the amendment in the Gazette under section 126(2)?

When a local planning scheme is automatically amended under section 126(1), subsection (2) requires notice of that amendment be published in the *Gazette*. However, section 126(2) is silent on who is required to publish the notice.

In practice, the WAPC will publish the relevant notice concurrently with the notice on the outcome of the region planning scheme. This is also consistent with subsection (3), which makes it clear that it is the WAPC who is responsible for publishing the notice in the *Gazette*.

6.2 Where an automatic amendment occurs under section 126(3), what type of zone will the relevant area under the local planning scheme be rezoned to?

Where the WAPC automatically amends a local planning scheme under section 126(3), the PD Act is silent on what type of amendment is to be made to the zoning of a local planning scheme. However, in practice, the relevant area will usually be rezoned as 'Urban Development' or an equivalent zone (taking account of different nomenclature), as set out in the local planning scheme's zoning table.

Urban Development zones are typically used for larger scale comprehensive residential, industrial or commercial developments, which should proceed in accordance with a structure plan prepared under the scheme. The structure plan provides the basis for future subdivision and development.

6.3 Can the WAPC use section 126(3) to amend a local planning scheme to include more than one type of local planning scheme zone in the automatic amendment?

Yes.

Section 126(3) does not prohibit the WAPC from automatically amending a local planning scheme to include more than one type of local planning zone. As a matter of practicable policy and administration, there may be limited occasions following consultation with local government, where it is appropriate to include more than one type of zone, include zoning other than 'Urban Development', or include zoning requiring alternative mechanisms for appropriate planning. In certain circumstances, this may be the best way to achieve consistency between the local planning scheme and the delineation or proposed delineation under the region planning scheme.

6.4 Can the WAPC use section 126(3) to amend a local planning scheme text?

No.

Section 126(3) only refers to automatic amendments to a local planning scheme to change the zoning of the land. It does not extend to text amendments. Thus, a change to zoning only relates to scheme map changes.

6.5 Can the WAPC use section 126(3) to amend a local planning scheme to include an Urban Development Special Control Area?

No.

Local planning schemes generally state that the definition of a 'zone' does not include a special control area. If a special control area, development contribution area or any other additional planning control is desired, it is the responsibility of the relevant local government to initiate an amendment to its local planning scheme.

6.6 Can the WAPC use section 126(3) where land is to be transferred from the Urban Deferred Zone to the Urban Zone, by way of WAPC resolution under a region scheme?

Yes.

The proposal to delineate land in an Urban Zone under a region planning scheme (which in turn may trigger an automatic amendment under section 126(3) in relation to a local planning scheme) can arise:

- as the result of the preparation or amendment of a region planning scheme under Part 4 of the PD Act; or
- by operation of a clause in a region planning scheme, for example clause 27 of the MRS, clause 13 of the PRS and clause 13 of the GBRS, which all allow by resolution of the WAPC, notified in the Government Gazette, for land to be transferred from the Urban Deferred Zone to the Urban Zone.

A resolution by the WAPC can be considered as the carrying into effect of the primary decision entailed in the creation of an Urban Zone. An Urban Deferred Zone is in effect an approved urban zoning which is nonetheless only to operate from a time determined by the WAPC.

6.7 Can the WAPC use section 126(3) to amend a local planning scheme to include land in a local reserve?

No.

Often when land is zoned as Urban under a region scheme, it will simultaneously be classified as a local reserve under a local planning scheme. A common example includes where an area that is zoned Urban under a region scheme is subsequently subdivided, but where a portion of that land is set aside as public open space. In such cases, whilst the public open space remains in an Urban zone as reflected on the region scheme map, it concurrently becomes a reserve as denoted on the local scheme map. Therefore, the issue is whether the WAPC, where it uses an automatic amendment under section 126(3) to amend a local planning scheme to rezone the area as 'Urban Development' at a local level, could instead include the land as a local reserve.

Section 126(3) only refers to 'zoning', not the broader term 'zoning and classification' as used elsewhere in the PD Act. Therefore, it is not appropriate for the WAPC to try and use section 126(3) to amend a local planning scheme to reclassify land as a local reserve.

In order for land to be reclassified as a local reserve, the local government must prepare a scheme amendment in the ordinary way under Parts 5 and 9 of the PD Act. The structure planning process may identify land suitable for reservation, but in such circumstances it would be appropriate for local government, not the WAPC, to initiate a scheme amendment to reserve the identified land.

6.8 Where a local government cannot use the concurrent amendment process under section 126(3), can a parallel local amendment be used to achieve a similar practicable result?

Yes.

Where a local government, through the WAPC, cannot use the concurrent amendment process under section 126(3), for example where it wishes to change the local planning scheme text or include a special control area, it is still open for that local government to initiate its own local scheme amendment and progress it in the usual way, parallel to the region scheme amendment. Although the local amendment cannot be finalised until the region scheme amendment is finalised, in many circumstances, provided there is a sufficient liaison with the WAPC, both amendments can be processed in a corresponding manner.

7. Further information

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As part of its continuing improvements to its service to clients and the public, the Western Australian Planning Commission has an internet site at the following address:

www.planning.wa.gov.au

The site contains a range of information concerning the WAPC, including planning bulletins.

Disclaimer

This planning bulletin is intended as a guide only. It is not intended to be comprehensive or to cover particular circumstances.

Readers are advised to refer to the legislation, which is available from the State Law Publisher, and to seek professional legal advice should they have specific legal questions in relation to their particular circumstances.

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