

Swan Valley Planning Legislation Amendment Act 2006

Foreword from the Minister

The long awaited *Swan Valley Planning Legislation Amendment Act 2006* came into operation on Sunday 18 June 2006.

The Act ensures the special character of the Swan Valley will be protected and provide a magnificent recreational asset for all of Perth.

The rural character of the valley will be preserved by the reclassification of the Herne Hill and Middle Swan area D precincts to area C and the deletion of references to rural villages in the Act. The changes will ensure a minimum four-hectare lot size in the Herne Hill and Middle Swan precincts.

The Act implements recommendations of the *Swan Valley Planning Act 1995* review, which involved extensive consultation with stakeholders in the area, including industry groups and the general public.

Clearly, some landowners want further subdivision opportunity but the need to protect the valley was given the highest priority.

The Act will ensure the valley remains a unique historical, viticultural, tourism and recreational resource for Perth.

The role of the Swan Valley Planning Committee has been strengthened and its membership broadened to better represent the diversity of interests in the valley.

I thank the committee for its excellent work, and particularly acknowledge the vision and leadership of immediate past chair, Kate Lamont. Swan Hills MLA Jaye Radisich deserves special recognition for her strong advocacy for protecting the valley.

Long may we all enjoy the treasure that is the Swan Valley.

Alannah MacTiernan MLA
Minister for Planning and
Infrastructure

1 Introduction

The *Swan Valley Planning Legislation Amendment Act 2006* (Amendment Act) received Royal Assent on 19 April 2006. The Act came into operation on a day fixed by proclamation – Sunday 18 June 2006.

The Amendment Act amends the *Swan Valley Planning Act 1995* (SVP Act) to provide a strengthened framework that will protect the rural character of the Swan Valley and ensure it remains as a place of beauty and a recreation destination for current and future generations.

The purpose of this bulletin is to advise stakeholders of the provisions in the Amendment Act. The bulletin explains the changes to the *Swan Valley Planning Act 1995*, the *Planning and Development Act 2005* and the Metropolitan Region Scheme.

There are three appendices. Appendix 1 is a summary of amendments. It details the recommendations of the review and the related provisions of the Amendment Act. Appendix 2 illustrates the changes to the *Planning and Development Act 2005* and describes how these affect applications for subdivision approval in relation to land in the Swan Valley.

Appendix 3 illustrates the changes to the Metropolitan Region Scheme and describes how these affect applications for development approval in relation to land in the Swan Valley.

2 Background: the Swan Valley Planning Act 1995

The SVP Act was enacted in 1995 in response to community concerns regarding the prospect of urbanisation of the Swan Valley.

The SVP Act established the Swan Valley Planning Committee and conferred this expert committee with a role in making recommendations on planning matters.

The SVP Act as introduced established four planning areas, each with specific planning objectives. These four areas were:

- area A: predominantly for rural living purposes with a minimum lot size of one hectare;
- area B: for productive agricultural uses with a minimum lot size of four hectares;
- area C: for rural living with a minimum lot size of four hectares; and
- area D: rural villages with lot sizes of 2000 m² to 4000 m².

3 Review of the Swan Valley Planning Act 1995 – process

Section 26 of the SVP Act requires the Minister to carry out a review of the operation and effectiveness of the Act as soon as is practicable after the expiration of five years from its commencement. The SVP Act became due for review on 25 November 2000.

The review commenced in 2000 and comments were sought by stakeholder consultation and newspaper advertisements on the need for any changes to the SVP Act. The review was held in abeyance

pending the resolution of the future directions for the area D precincts. Following the completion and consideration of various studies on the area D precincts, the review was finalised in 2004.

The review involved an extensive process of consultation. Following which submissions were analysed by the Department for Planning and Infrastructure and the Minister. This analysis resulted in the formulation of draft legislative proposals. A draft report, including draft legislative proposals, was referred to the Swan Valley Planning Committee and representatives of the City of Swan for comment.

The Minister finalised the review in light of comments and submissions received throughout the review process.

4 Review of the Swan Valley Planning Act 1995 – recommendations

The review concluded that the SVP Act has functioned effectively in encouraging traditional uses in the Swan Valley; protecting the environment and the rural character of the valley; and promoting tourism. The recommendations chiefly refined the effectiveness of the Act.

There was one exception: the area D precincts. The SVP Act permitted rural villages to be developed at locations designated area D. The inclusion of area D precincts in the SVP Act was a compromise position stemming from initial plans for urban development in the Swan Valley in the early 1990s.

There were three such locations – Herne Hill, Middle Swan and Caversham. The rural village concept was problematic. A ‘rural village’ was not defined in the SVP Act and the SVP Act did not detail the size of or number of rural villages that could be approved for each of the three area D precincts.

The review considered the various studies on the area D precincts and concluded that Herne Hill and Middle Swan area D precincts should be reclassified area C and Caversham area D precinct, with the exception of the south-west corner, should be

removed from the operation of the SVP Act.

The recommendations of the review and the provisions of the Amendment Act described in appendix 1:

- confer a proactive role on the committee in planning for sustainable use and development of land in the Swan Valley;
- strengthen the planning objectives to preserve the Swan Valley for rural and tourist based activities, with the removal of the area D precincts and the refinement of objectives where a more precise meaning is intended;
- modify the composition of the committee and advisory and decision-making processes to better meet the legislative policy undergirding the Act; and
- clarify provisions governing the proceedings of the committee.

The review was tabled before each House of Parliament on 22 September 2004. The review is available on the WAPC website under publications at www.wapc.wa.gov.au.

5 Benefits of the Amendment Act

The Amendment Act has several benefits. First, the Amendment Act ensures the preservation of the rural character of the valley by deleting the area D precincts and references in the SVP Act to rural villages. The existing Herne Hill and Middle Swan area D precincts have been reclassified area C.

It is considered that the development of small settlements at Herne Hill and Middle Swan does not accord with the principles of consolidating urban development in existing centres or the creation of sustainable communities with viable local economic, social and physical infrastructure. This change ensures a minimum four-hectare lot size in the Herne Hill and Middle Swan precincts.

The Caversham area D precinct, with the exception of the south-west corner, is excised from the operation of the SVP Act. This is on the grounds that the majority of the Caversham area D precinct has some

potential for urban development based on the physical attributes of the land and existing land uses, servicing infrastructure requirements and community service requirements. However, there are significant constraints that affect the economic viability and timing of development but these may be properly managed through the ordinary planning process.

The difference is illustrated in the representative plans. The first depicts the former plan of the Swan Valley; the second depicts the plan of the Swan Valley that became effective on 18 June 2006.

The Amendment Act amends the SVP Act to provide for a new plan of the Swan Valley. The plan is held at the office of the WAPC. This plan has been certified by the Minister as being the plan prepared to define area A, area B and area C for the purposes of the SVP Act. Further, the Amendment Act amends the SVP Act to insert a new representative plan of the Swan Valley.

The second benefit of the Amendment Act is that it strengthens the role of the Swan Valley Planning Committee by conferring it with a proactive role in planning for the sustainable use and development of land in the Swan Valley.

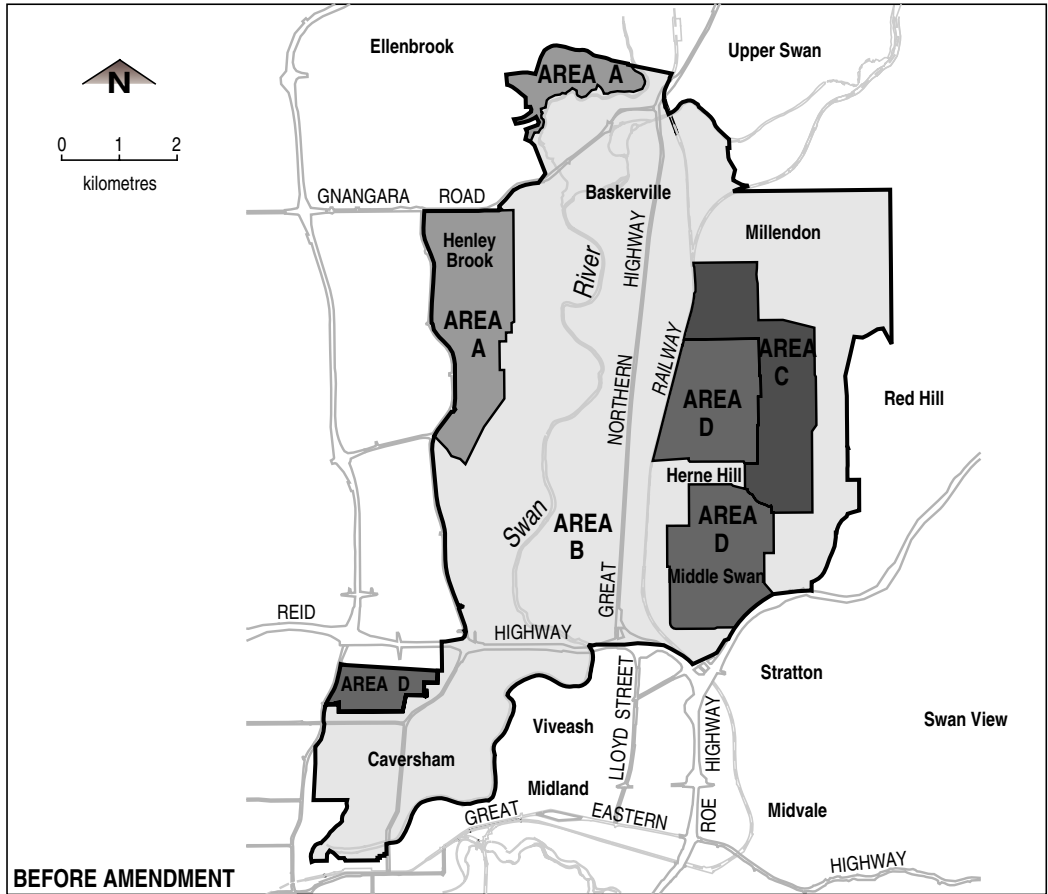
Third, the Amendment Act strengthens the planning objectives in the SVP Act to preserve the Swan Valley for rural and tourist based activities.

Fourth, the Amendment Act expands the membership of the committee to include:

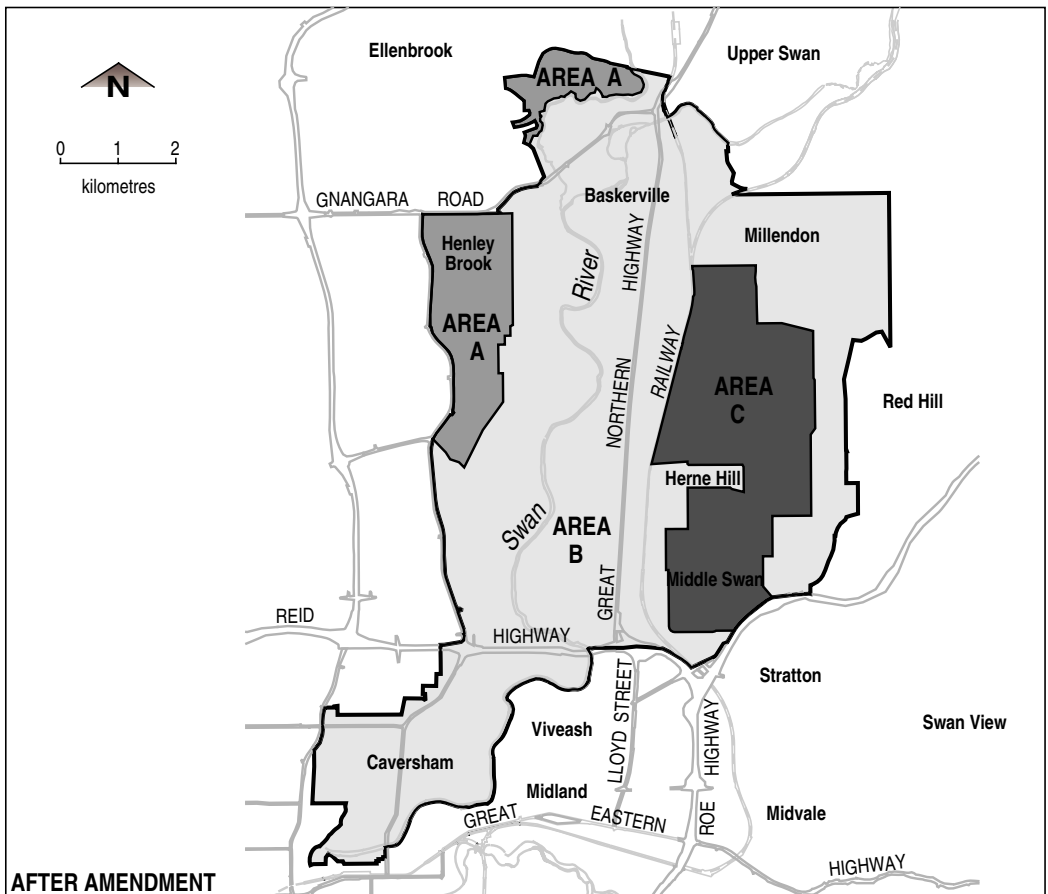
- an additional representative of the City of Swan;
- a person to represent equestrian interests in the Swan Valley; and
- a person who has expertise in the reduction of nutrient levels in the Swan River or other environmental expertise relevant to the Swan Valley.

The City of Swan is already represented by the president or nominee. An additional member will be appointed to the committee who is a City of Swan councillor for a ward representing the Swan Valley.

Representative plan 1: former plan of the Swan Valley



Representative plan 2: plan of the Swan Valley effective 18 June 2006



Finally, the Amendment Act clarifies provisions relating to governance of the committee. It also strengthens the role of the committee and it was therefore appropriate that transparency of the committee's procedures was enhanced. The Amendment Act also provides flexibility by including a provision that enables telephone and video meetings, but only where a matter has already been the subject of discussion in a proper committee meeting and subsequently requires further deliberation.

Appendices

The three appendices are:

- Appendix 1 – Summary of amendments;
- Appendix 2 – Changes to the Planning and Development Act 2005; and
- Appendix 3 – Changes to the Metropolitan Region Scheme.

Disclaimer

This planning bulletin provides an overview of the *Swan Valley Planning Legislation Amendment Act 2006* and related legislation. The bulletin is intended as a guide to the operation of the legislation. It is not intended to be comprehensive or to cover particular circumstances. Readers are advised to refer to the specific provisions of 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.

Further information

Copies of the Amendment Act and SVP Act are available from:

State Law Publisher
10 William Street
Perth 6000

Phone: 9321 7688
Fax: 9321 7536
Email: sales@dpc.wa.gov.au

In addition, the Amendment Act and SVP Act are available on line from the State Law Publisher at <http://www.slp.wa.gov.au/statutes/swans.nsf>.

Any correspondence concerning the Amendment Act should be directed to:

Director
Planning Reform
Department for Planning and Infrastructure
Albert Facey House
469 Wellington Street
Perth WA 6000

Please quote file reference 252/2/21/3p9 in all correspondence.

WEBSITE

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

www.wapc.wa.gov.au

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

Appendix 1: Summary of amendments

This appendix summarises recommendations of the *Swan Valley Planning Act 1995* review and the corresponding provisions in the *Swan Valley Planning Legislation Amendment Act 2006*. The numbers in **embolded** text refer to provisions in the Amendment Act.

Note:

- amendment 8 was not a recommendation of the review; rather, the amendment was proposed in Parliament; and
- amendment 15 modifies the original recommendation of the review to enhance the transparency of the committee's procedures.

Functions of committee – advice to City of Swan and WAPC

- 1 Amend s 134 of the Planning and Development Act 2005 to provide that the WAPC is required to have due regard to the advice of the committee but may determine an application for subdivision approval otherwise than in accordance with that advice (refer appendix 2). [**Sched 1, Div 2, cl 2**]
- 2 Amend cl 30B of the Metropolitan Region Scheme to provide that, where the WAPC is the responsible authority in respect of an application for development approval, the WAPC is required to have due regard to the advice of the committee but may determine an application otherwise than in accordance with that advice (refer appendix 3). [**Sched 1, Div 3, cl 4**]

Functions of committee – advice on development applications

- 3 Amend cl 26 and cl 30B of the Metropolitan Region Scheme to provide that, in respect of applications for approval to develop land in the Swan Valley:
 - (a) Where the advice of the committee is accepted by the City of Swan, the determination of the City of Swan under the local planning scheme is deemed to also be a determination under the Metropolitan Region Scheme.
 - (b) Where the advice of the committee is not accepted by the City of Swan, the City of Swan is required to refer the application, together with the recommendations provided by all bodies consulted and the reasons why the advice of the committee is not accepted, to the WAPC for determination pursuant to the Metropolitan Region Scheme (refer appendix 3). [**Sched 1, Div 3, cl 4**]

Functions of committee – a pro-active role in planning for sustainable development

- 4 Amend the SVP Act to provide that the functions of the committee include:
 - (a) to advise the Minister on the coordination and promotion of land use and land development in the Swan Valley in a sustainable manner;
 - (b) to provide advice to the City of Swan in relation to the local planning scheme and policies of the City of Swan and the planning and development functions of the City of Swan; and
 - (c) to provide advice and assistance to any body or person on sustainable land use and sustainable land development in the Swan Valley. [**s 12**]

Functions of committee – advice to utility service providers

- 5 Amend s 13(1) of the SVP Act to enable all utility service providers to refer any matter relating to the Swan Valley to the committee for advice. [**s 12**]

Composition of committee – increasing representation of City of Swan

- 6 Amend s 11(2) of the SVP Act to include a councillor representing the interests of the ward generally covering the Swan Valley, as nominated by the City of Swan, as a member of the committee. [**s 11**]

Composition of committee – representation of equestrian interests

- 7 Amend s 11(2)(e) of the SVP Act to require the Minister to appoint a person who is suitable to represent equestrian interests. [**s 11**]

Composition of committee – representation of environmental interests

- 8 Amend s 11(2)(e) of the SVP Act to require the Minister to appoint a person who has expertise on the reduction of nutrient levels in the Swan River or other environmental expertise relevant to the implementation of the SVP Act. [s 11]

Area D precincts – classification of former area D precincts

- 9 Amend the SVP Act to:
- (a) delete references to area D and the planning objectives for area D; [s 10]
 - (b) reclassify Herne Hill and Middle Swan area D precincts to area C; and
 - (c) reclassify the south-west corner of Caversham area D precinct to area B, with the remainder to be removed from the operation of the SVP Act. [s 5]

Planning objectives – traditional activities of the Swan Valley

- 10 Amend s 6 and s 8(4) of the SVP Act to confirm that traditional uses and traditional activities, respectively, are limited to those that complement the rural character of the Swan Valley. [ss 7, 9]

Planning objectives – promotion and encouragement of tourism

- 11 Amend s 6 and s 7(3) of the SVP Act to refer to the promotion and encouragement of tourism, respectively, that complements the rural character of the Swan Valley. [s 7, 8]

Planning objectives – prevailing lot size in area A

- 12 Amend s 7(6) of the SVP Act to refer to the discouragement of subdivision into proposed lots of less than two hectares where inconsistent with the objectives set out in s 7 of the SVP Act or where the size of the proposed lots would be substantially different from prevailing lot sizes in the area. [s 8]

Planning objectives – retail and community facilities in area B

- 13 Amend s 8(5) of the SVP Act to refer to:
- (a) the encouragement of the consolidation of retail and community facilities at Herne Hill, Caversham and West Swan; and
 - (b) the limited expansion of existing retail and community facilities where such facilities are required to service the local community and will not detract from the rural character of the area. [s 9]

Proceedings of committee – disclosure of information

- 14 Amend s 22 of the SVP Act to confirm that members:
- (a) may convey advice and decisions of the committee to the public; and
 - (b) must not convey information relating to the deliberations of the committee. [s 14]

Proceedings of committee – resolutions without meeting

- 15 Amend Sched 1 of the SVP Act to enhance the transparency of the procedures of the committee by providing:
- (a) the committee may only meet by means of instantaneous telephone and audiovisual communication where the subject matter under consideration is not being considered for the first time; and
 - (b) greater procedural formality, consistent with contemporary legislative drafting practice, to the existing provision that the committee may only pass a resolution without a meeting where the resolution is assented to by all members. [s 16]

Functions of City of Swan – implementing the Act

- 16 Amend s 23 of the SVP Act to require the City of Swan to:
- (a) ensure its local planning scheme and any policies made thereunder are consistent with the planning objectives; and
 - (b) ensure any policies made under its local planning scheme include guidelines, where relevant, in accordance with the planning objectives. [s 15]

Appendix 2: Changes to the Planning and Development Act 2005

Part 10 of the *Planning and Development Act 2005* sets out provisions governing the requirement for subdivision approval. Section 134 describes how the Part applies in relation to certain other written laws.

A special procedure ordinarily applies in respect of an application to subdivide land in the Swan Valley. The WAPC is to give full particulars of any such application to the Swan Valley Planning Committee. The committee is to consider the application and provide the WAPC with advice on how the application should be determined.

The former section provided that the WAPC was to determine the application in accordance with the advice of the committee but with the approval of the Minister could disregard the committee's advice in whole or in part.

The relevant subsections are (6) and (7). They provide:

- (6) The Minister may, at the request of the WAPC, approve of the WAPC disregarding the committee's advice in whole or in part in determining the application.
- (7) Subject to any approval under subsection (6) the WAPC is to determine the application in accordance with the advice of the Swan Valley Planning Committee.

The former subsection (7) has been deleted and the following section inserted:

- (7) Subject to any approval under subsection (6), the WAPC is to determine the application after having due regard to the advice of the committee, but may determine that application otherwise than in accordance with that advice.

The WAPC must now determine an application after having due regard to the advice of the committee but may determine an application otherwise than in accordance with the advice of the committee with the approval of the Minister.

Appendix 3: Changes to the Metropolitan Region Scheme

The Metropolitan Region Scheme sets out provisions governing the requirement for development approval in the metropolitan region.

A special procedure ordinarily applies in respect of an application to develop land in the Swan Valley. The responsible authority, either the WAPC or the City of Swan, is to give full particulars of any such application to the Swan Valley Planning Committee. The committee is to consider the application and provide the WAPC with advice on how the application should be determined.

The former clauses 30B(4) and (5) provided that the WAPC was to determine the application in accordance with the advice of the committee but with the approval of the Minister could disregard the committee's advice in whole or in part. The City of Swan, on the other hand, was to have due regard to the advice of the committee but could determine an application otherwise than in accordance with the advice.

Subclauses (4) and (5) have been amended to provide:

- (4) Where the responsible authority is the WAPC, the WAPC is required to have due regard to the advice of the committee, but may determine the application otherwise than in accordance with that advice.
- (5) Where the responsible authority is the City of Swan, the City is to have due regard to the advice of the committee but if the City of Swan does not accept that advice, the City of Swan is to refer the application, together with any recommendations provided by all bodies consulted, and the reasons why the advice of the committee was not accepted, to the WAPC for determination.

The WAPC must now determine an application after having due regard to the advice of the committee but may determine an application otherwise than in accordance with the advice. The City of Swan, on the other hand, may only determine applications in accordance with the advice of the committee. If the City does not accept the advice of the committee, the application is referred to the WAPC for determination.

The Amendment Act also amends clause 26 of the Metropolitan Region Scheme. Clause 26 sets out the circumstances where an approval given by a local government under a local planning scheme is deemed to be an approval under the Metropolitan Region Scheme. In accordance with the amendments to clause 30B, the City of Swan's approval to develop land in the Swan Valley is only deemed to be an approval under the Metropolitan Region Scheme in circumstances where such approval is in accordance with the advice of the committee.