Department of Planning

Western Australian Planning Commission

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DC Policy 1.9

– Amendment to Region Schemes

Development Control Policy 1.9
– Amendment to Region Scheme

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1. Citation

This is a Development Control Policy prepared under Section 14(b)(ii) of the *Planning and Development Act 2005*.

This policy may be cited as *Development Control Policy 1.9: Amendment to region schemes* (DC 1.9).

2. Policy intent

This policy establishes:

- The range of considerations which the Western Australian Planning Commission (WAPC) or its delegate will take into account when forming an opinion about the substantiality of an amendment to a region planning scheme.

- Procedures and practices for "major" and "minor" amendments.

3. Background

The Planning and Development Act 2005 (P&D Act) provides two procedures by which region planning schemes may be amended (part 4). The first follows the procedures observed when preparing a scheme itself, involving among other things, approval by the Governor and tabling in both Houses of Parliament where motions to disallow the amendment may be passed (section 35). This is referred to as a "substantial" or "major" amendment. The second procedure involves matters which in the opinion of the WAPC do not involve a substantial alteration to the region scheme and are referred to as "non-substantial" or "minor" amendments (section 57). The terms "major" and "minor" will be used in this policy for convenience.

The determination as to whether or not an amendment constitutes a substantial or non-substantial alteration to a region scheme is, according to the P&D Act, at the discretion of the WAPC. The P&D Act requires that the WAPC form an opinion that a particular amendment does not constitute a substantial alteration to the scheme which, if so decided, is treated as a "minor" amendment.

The P&D Act provides no guidance to the WAPC as to what matters should be taken into account when forming those opinions. The difference between "major" and "minor" amendments is essentially a matter of degree in terms of the impact on the region as a whole.

The P&D Act contemplates that amendments may be categorised as "major" and "minor", and it is contrary to the spirit of the legislation to deal with all amendments as if they were substantial. Failing to make the distinction has resource implications for the government and the community. It also leads to unwarranted congestion in the planning system. There are potential benefits to expediting "minor" amendments but expedited timing should not be used as a measure to determine the substantiality of a proposed amendment.

In its decision handed down in *Helena Valley/Boya Association v Minister for Planning* (1992), the Full Court of the Supreme Court referred to matters which it believed the WAPC should consider when forming its opinion about the substantiality of an amendment to the Metropolitan Region Scheme (which was the only scheme in existence at the time). These are included in section 4 of this policy and are matters considered by the WAPC to be relevant to region planning schemes in general.

The fact that the Court saw fit to comment in this way stemmed largely from its observation that the official record did not reveal the considerations which were taken into account when the decision was made to pursue the Helena Valley amendment as a "minor" amendment to the Metropolitan Region Scheme. All such matters were, and continue to be considered when decisions are taken on proposed new amendments.

This policy was originally adopted by the WAPC in November 2003. The policy is amended from time to time to reflect legislative changes.

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4. Principal considerations to be taken into account when determining substantiality

The following considerations are those which, where relevant, will be taken into account when opinions are formed by the WAPC or by its delegate as to the substantiality of amendments to a region scheme:

(a) Present land use and character of the land and its relationship to its immediate setting, to the surrounding district, to the sub-region and to the region as a whole as a prelude to evaluation of the impact of new proposals.

(b) The particular purposes for which the land is to be set aside and the proposal for changes to the zoning and/or reservation of land and the impact on present land use and existing land classifications in the region scheme.

(c) The area of land involved in the rezoning and the scale and purpose of the proposal and its impact on the region scheme.

(d) The likely impact of the proposal on the environment of the affected land and its surroundings.

(e) The history of the land in its setting, the factors which determined the present zoning or reservation of the land and its environs, and the reasons justifying the proposed change to be made.

(f) The future planning needs of the region and the factors justifying changes in the use of land generally and the subject land in particular.

(g) Any other proposals in the same general locality promoted or likely to be promoted for changes to existing land classifications and their combined impact on the region scheme as a whole.

(h) The number of land holdings and land owners likely to be directly affected by the proposals contained in the amendment.

(i) The complexity of the proposal.

(j) The degree to which the proposal reflects any significant changes to the planning strategy for the region.

(k) The relationship of the proposal to any current or proposed strategic plans or policies for the region or sub- regions within that region.

(l) Any other land use, transport, environmental or planning implications associated with the proposal.

(m) For proposals to change the region scheme text, the impact on procedures and the operation of the region scheme as a whole.

These matters were formulated by the Supreme Court in relation to the Metropolitan Region Scheme; however, the WAPC considers that they are generally applicable to all region schemes. Therefore the Court's references to the Metropolitan Region Scheme have been modified to refer to region schemes in general.

5. Procedures for processing major amendments

Under the P&D Act, when the WAPC resolves to proceed with an amendment to a region scheme, it will also decide if the amendment constitutes a substantial alteration to the scheme. In such a case, following referral to the Environmental Protection Authority (EPA), it will recommend to the Minister for Planning that consent to advertise for public submissions be sought. Referral to the Swan Valley Planning Committee may also be required for amendments to the Metropolitan Region Scheme (section 40).

If the WAPC resolves to initiate an amendment to a region scheme, it is required to be referred to the EPA for a decision as to whether an environmental assessment is required before the public advertising period referred to above. If the EPA decides to assess the amendment under section 48A of the *Environmental Protection Act 1986* then an environmental review is required. Submissions on environmental aspects of the scheme are referred to the EPA which reports to the Minister for

the Environment. Any appeals on the EPA report are determined and environmental conditions set by the Minister for the Environment after having reached agreement with the Minister for Planning. The environmental conditions are then incorporated as provisions in the region scheme and are binding on the WAPC.

If the Minister for Planning consents to public submissions being sought, the amendment including a statement as to its purpose, objectives and any other relevant information is advertised for a minimum period of not less than three months, during which any person may lodge submissions. Affected landowners are notified in writing by the WAPC.

All submissions are considered by the WAPC and persons making the submissions are given the opportunity of being heard by either the WAPC or a sub-committee of the WAPC established for the purpose of hearing submissions.

A report is prepared on all submissions and sent to the Minister for Planning with the WAPC's recommendations on those submissions and a final recommendation as to whether the amendment should proceed, proceed with modification or not proceed. If the Minister for Planning agrees to a modified amendment but considers the modification recommended by the WAPC is significant, the amendment as modified may be required to be re-advertised so that further submissions can be made.

If no significant modifications are made requiring re-advertising, the amendment is forwarded for the Governor's approval and notice of approval published in the Government Gazette.

The amendment must be laid before both Houses of Parliament within six sitting days of the date of gazettal and becomes effective after the 12th sitting day if neither House passes a resolution to disallow the amendment.

6. Procedures for processing minor amendments

If the WAPC decides an amendment does not constitute a substantial alteration to a region scheme, the WAPC sends a copy of the amendment to the Minister for Planning and arranges a notice in the Government Gazette and newspapers.

If the WAPC resolves to initiate a "minor" amendment to a region scheme, it also requires referral to the EPA for a decision as to whether an environmental assessment of the amendment is required. If the EPA assesses the amendment under section 48A of the *Environmental Protection Act 1986*, similar procedures follow to those outlined in Part 5.

The WAPC will make reasonable endeavours to notify landowners directly affected by the amendment within seven days. Any person may make a submission to the Minister for Planning on any provision of the amendment within the period specified in the notice (being a period of not less than 60 days after publication of the notice).

Under the P&D Act submissions are lodged with the WAPC which considers, reports and recommends to the Minister for Planning on those submissions.

On receiving a report and recommendations, the Minister for Planning may approve the amendment, with or without modifications. The Minister for Planning may also refuse to approve the amendment.

When the Minister for Planning has approved an amendment, the WAPC publishes a notice to that effect in the Government Gazette. The amendment has effect from that date.

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7. Revisions to practice and procedures for major and minor amendments

7.1 Concurrent amendments

The P&D Act provides that:

- where a region scheme is amended by the reservation of land for any public purpose, the local planning scheme is automatically amended without the need for a separate amendment to the local planning scheme, as provided in section 126(1); and

- where a region scheme is amended to include land in an urban zone the local government scheme may be automatically amended where the local government requests such and is proposing a development zone requiring a local structure plan to be approved prior to subdivision approval and the WAPC agree to the automatic amendment, as provided in section 126 (3). 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.

7.2 Parallel amendments

If the WAPC and the local government decide not to proceed with a concurrent amendment under section 126 (3), it is still an option for the local government to initiate a local scheme amendment and progress in the usual way, parallel to the region scheme amendment. However, in this case the local amendment cannot be finalised until the region scheme amendment is finalised. This will require close liaison between the WAPC and the local government.

7.3 Zoning of land to urban deferred under the region scheme

It is the WAPC's preference that following the resolution of significant planning and environmental issues, land is rezoned to urban.

Rezoning of an area to urban deferred is supported in some instances as an interim measure prior to urban zoning. This represents an acknowledgement that the subject land is suitable for urban development and that the triggers for development are of a temporal nature and can be resolved in a short to medium time period.

Once land is zoned urban deferred, lifting the urban deferred status becomes the role of the WAPC rather than the Minister for Planning and/or Parliament, and the decision is subject to a right of review to the State Administrative Tribunal.

Additional information is provided on the WAPC website through the Guidelines for the Lifting of Urban Deferment (*www.planning.wa.gov.au/State-planning-framework.aspx*).

8. Determination by the WAPC

The legislation places an obligation on the WAPC to consider each proposal to amend a region scheme on its merits and, where the procedures of section 41 and section 57 of the P&D Act are to be observed, to form an opinion that the amendment does not constitute a substantial alteration to a region scheme. Nothing in this policy statement can detract from that statutory obligation and the subject matter and circumstances surrounding each amendment will determine the WAPC's course of action on a case-by-case basis.