

This fact sheet explains the object and operation of concurrent amendments made to both region planning schemes and local planning schemes pursuant to section 126 of the *Planning and Development Act 2005*.

What is section 126?

Section 126 of the *Planning and Development Act 2005* 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 Government Gazette (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 WAPC 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.

Planning context

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
- (b) where a region scheme is amended to include land in the Urban zone, the local planning scheme may be automatically amended, following consultation with local government, by a notice published by the Western Australian Planning Commission (WAPC).

When initiating a region scheme amendment, the WAPC will identify that a concurrent scheme amendment to a local scheme, in accordance with s126 is also proposed. A determination on whether the concurrent local scheme amendment is finalised will be made following advertising of the region scheme amendment, including consideration of submissions and advice from the local government and the Environmental Protection Authority.

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

The importance of section 126, and section 126(3), is that it allows for the automatic amendment of a local planning scheme to rezone land to be consistent with region planning scheme objectives but without the need for a separate local scheme amendment. Section

126(3) provides for concurrent amendments to region and local planning schemes. Automatic amendment to the local planning scheme will occur if a region planning scheme amendment results in the relevant local planning scheme being inconsistent with the region scheme.

Frequently asked questions about section 126

Who is responsible for publishing notice of the amendment in the Gazette when under section 126(1) a local planning scheme is amended following a region planning scheme or amendment delineating land reserved for a public purpose?

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 which is responsible for publishing the notice in the Gazette.

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

Where the WAPC automatically amends a local planning scheme under section 126(3), the Planning and Development Act 2005 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 (considering different nomenclature between schemes), 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. Structure plans outline the zones, land use and general subdivision layout which will occur on land. Where a structure plan is required, not having to undertake a scheme amendment, allows the focus of consultation to be on the structure plan itself.

Additional information on the structure plan framework can be found on the Department of Planning, Lands and Heritage [website](#).

Can the WAPC use section 126(3) to amend a local planning scheme to include more than one 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 local planning zone. There may be occasions following consultation with local government, where it is appropriate to include more than one 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 under the region planning scheme.

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, so a change to zoning only relates to scheme map changes.

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 required, it is the responsibility of the relevant local government to initiate an amendment to its local planning scheme.

SECTION 126 - Zoning amended by Region Planning Schemes

Can the WAPC use section 126(3) where land is to be transferred from the Urban Deferred zone to the Urban zone, through a WAPC resolution under a region scheme?

Yes. The proposal to delineate land in an Urban zone under a region planning scheme (which 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 *Planning and Development Act 2005*
- by operation of a clause in a region planning scheme, for example clause 27 of the Metropolitan Region Scheme, clause 13 of the Peel Region Scheme and clause 13 of the Greater Bunbury Region Scheme, which all allow by resolution of the WAPC, notified in the Gazette, for land to be transferred from the Urban Deferred zone to the Urban zone.

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

No. Section 126(3) only refers to 'zoning', not the broader term 'zoning and classification' as used elsewhere in the *Planning and Development Act 2005*. Therefore, it is not appropriate for the WAPC to use section 126(3) to amend a local planning scheme to reclassify land as a local reserve.

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 *Planning and Development Act 2005*. 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.

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. If a local government wishes to change the local planning scheme text or include a special control area, it can 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, provided there is a sufficient liaison with the WAPC, both amendments can be processed in a corresponding manner.