

1. Introduction

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

One key reform is the expansion of the power under section 119 of the PD Act to create an improvement plan over land that is subject to a region planning scheme. When the amendments in the 2010 Amendment Act come into effect, the Western Australian Planning Committee (WAPC) will have the power to make an improvement plan anywhere in the State. Amendments to the preparation process for improvement plans have been made to improve transparency in the exercise of this power. As such, the WAPC is required to consult with local governments before an improvement plan is made. In addition, the Minister is required to lay a copy of the improvement plan before each House of Parliament following gazettal.

The other key reform in the 2010 Amendment Act is the introduction of a new power, allowing the WAPC to create improvement schemes to give effect to the development control powers of an improvement plan. These new types of schemes will be created by the WAPC as if they are local planning schemes, and will be subject to the same consultation and advertising requirements as local planning schemes are currently subject to. They will override local and region planning schemes over the subject land for the duration of the improvement scheme.

2. Purpose

The purpose of this planning bulletin is to provide a general background to the new provisions on improvement plans and schemes, and identify the factors that the WAPC will take into account when deciding whether to prepare an improvement scheme.

3. Improvement plans

Improvement plans are strategic instruments used to facilitate the development of land in areas identified by the WAPC as requiring special planning.

Section 119 states that the WAPC can recommend to the Minister that an improvement plan is made to deal with land "for the purpose of advancing the planning, development and use" of land. Improvement plans are made when it is recommended that:

- (a) the land should be planned, replanned, designed, redesigned, consolidated, resubdivided, cleared, developed, reconstructed or rehabilitated; or
- (b) provision should be made for the land to be used for such residential, commercial, industrial, public, recreational, institutional, religious, charitable or other uses, buildings, works, improvements or facilities, or spaces for those purposes, as may be appropriate or necessary.

Unlike other strategic instruments, the WAPC is involved in undertaking the development required under an improvement plan. It can do so on land it already holds or land it acquires under the PD Act (i.e. reserved land it compulsorily acquires under Part 11), or by entering into an agreement with a private owner. Prior to the amendments in the 2010 Amendment Act, improvement plans could only be made over land in a region where a region planning scheme applies.

The amendments in the 2010 Amendment Act will not change the status of an improvement plan. Improvement plans still do not have

any statutory effect, as they do not remove the land in question from the overall strategic planning it is subject to under existing region or local planning schemes. As such, development undertaken under an improvement plan is subject to the usual requirements regarding approvals under those schemes.

The 2010 Amendment Act makes several changes to the way improvement plans are prepared:

- (a) **Plans can be made outside a region planning scheme area:**
Section 119 now allows an improvement plan to be made anywhere in the State, regardless of whether a region planning scheme applies. However, section (3A) prevents an improvement plan from being made over land that is:
 - the subject of a redevelopment scheme under the *East Perth Redevelopment Act 1991*, the *Subiaco Redevelopment Act 1994*, the *Midland Redevelopment Act 1999*, the *Armadale Redevelopment Act 2001*; or
 - in the redevelopment area defined in the *Hope Valley-Wattleup Redevelopment Act 2000*; or
 - in the development control area as defined in the *Swan and Canning Rivers Management Act 2006*.
- (b) **Consultation with affected local government is now mandatory:**
Section 119(3B) requires the WAPC to consult with the local government(s) that would be affected by an improvement plan, before the WAPC recommends to the Minister that the improvement plan is made.
- (c) **Plans must be laid before Parliament:** Section 119(5A) states that, following gazettal of a notice regarding the improvement plan, the Minister must lay a copy of the improvement plan before each House of Parliament.

This gives more transparency to the preparation process for improvement plans.

- (d) **Plans can now provide for the making of an improvement scheme:** New section 122A allows an improvement plan to authorise the making of an improvement scheme. Where an improvement plan authorises the making of a scheme, the WAPC has the power to create an improvement scheme over land subject to an improvement plan, for the purpose of guiding development under that plan. The commencement of an improvement scheme has the effect of removing that land from region and local planning schemes.

Improvement plans that pre-date the 2010 Amendment Act will continue to exist; however, they cannot be used to make an improvement scheme, unless the WAPC amends them to authorise the making of an improvement scheme. The new requirements regarding consultation and laying before Parliament would apply to any amendment to an existing improvement plan.

4. Use of improvement schemes

The 2010 Amendment Act does not restrict the use of improvement schemes, other than preventing them from being set up in areas that are subject to redevelopment scheme areas or the development control area in the *Swan and Canning Rivers Management Act 2006* (as discussed under 3(a) above). Nevertheless, it is intended that the WAPC will only use improvement schemes in **limited circumstances**, where the WAPC believed an improvement scheme is the best mechanism available to achieve the objectives for the subject land.

An improvement scheme will not always be the most appropriate instrument to achieve particular project objectives. Examples of where an improvement scheme may be appropriate include:

- where the WAPC is a significant landowner in the improvement plan area or has capacity to acquire land in that area;
- where an improvement plan covers more than 1 local government area and coordinated development of the improvement plan area is required;

- where development in an area is identified by the WAPC and the State Government as a priority area and is required to occur in a specified time period;
- where there is fragmented land ownership in the area, e.g. Crown land, private ownership;
- where that land has particular issues that require coordinated development to address, e.g. heritage, contaminated sites.

The WAPC will need to decide whether an improvement scheme will be used to enforce the development control provisions of the proposed improvement plan at the time that the improvement plan is prepared or amended. To determine if an improvement scheme is appropriate, the WAPC will consider why that land requires special planning, and the outcomes that are desired for that land. The WAPC will also consider the objectives and intent of the improvement scheme that will be prepared under that improvement plan. As an improvement scheme will take substantial time to prepare and are only short-term instruments (used to facilitate immediate development), the WAPC will also look at alternative long-term mechanisms to address the issues with the subject land, before making a decision about the course of action it will take.

5. Effect of improvement schemes

New section 122D states that, once it comes into effect, an improvement scheme will have priority over any region planning scheme or local planning scheme that would usually apply to the improvement scheme area. As such, for the duration of the improvement scheme, existing local and region planning schemes will cease to apply to the land identified in the improvement scheme.

The WAPC will be the development control authority for the improvement scheme area, and will have responsibility for determining applications made for development in that area. However, the WAPC may delegate these powers to other bodies, including the relevant local government.

When the improvement scheme is no longer required, the land will once again be subject to the provisions of existing region and local planning schemes. New section 122J allows the

Minister to amend the relevant local planning scheme to make it consistent with the provisions of the improvement scheme. Similarly, section 122K allows for an amendment to be made to a region planning scheme to make it consistent with the requirements of the improvement scheme. Such an amendment will be subject to the same requirements as a minor amendment to a region planning scheme under Part 4, Division 4 of the PD Act.

5. How will a scheme be prepared?

Section 122B of the 2010 Amendment Act requires improvement schemes to be prepared and advertised in the same way as local planning schemes are currently prepared and advertised under Part 5 of the PD Act and under the Town Planning Regulations 1967 (TP Regulations). Specifically, section 122B states that the following provisions are to apply to improvement schemes:

- Section 75: This section deals with the amendment of a scheme.
- Section 77: This section requires the WAPC to have due regard to an SPP when preparing a scheme.
- Section 78: This section requires the WAPC to refer the proposed scheme to the Swan Valley Planning Committee if it relates to land in the Swan Valley.
- Section 79: This section requires the WAPC to refer the proposed scheme to the Heritage Council if it affects land registered under the *Heritage of Western Australia Act 1990*.
- Section 80: This section requires the WAPC to have due regard to any relevant management plan in force under the *Swan River Trust Act 1988*.
- Section 81: This section requires the WAPC to refer the proposed scheme to the EPA.
- Section 82: This section states that, if the Environmental Protection Authority (EPA) has acted under section 48C(1)(a) of the *Environmental Protection Act 1986* (EP Act), the WAPC is to undertake an environmental review of the scheme.

- Section 83: This section states that the WAPC is to make reasonable endeavours to consult with affected public authorities and persons before submitting the scheme to the Minister for final approval.
- Section 84: This section states that advertisement of the scheme is to be undertaken in accordance with the TP Regulations.
- Section 85: This section states that the WAPC is to send submissions made during the advertising period that relate to environmental issues to the EPA.
- Section 86: This section prevents the Minister from approving a scheme until a statement from the EPA has been received regarding conditions to which the scheme will be subject or agreement has been reached with the Minister of the Environment under section 48A(2)(b) of the EP Act.
- Section 87: This section gives the Minister the power to approve the scheme, require the WAPC to modify the scheme, or refuse to approve the scheme. The improvement scheme comes into effect when published in the *Government Gazette*.
- Sections 88-95: These sections deal with the review and consolidation of improvement schemes.

Therefore, improvement schemes will be similar instruments to local planning schemes, as they will contain development control provisions regarding the area subject to the improvement plan, and will be based on the Model Scheme Text.

The Minister is the final authority on a scheme, and has the power to approve or refuse to approve the scheme, or direct the WAPC to make a modification to the improvement scheme before resubmitting the scheme for approval. An improvement scheme will come into effect when it is published in the *Government Gazette*.

6. Will the public still have a say about what happens in their local area?

The WAPC will be required to undertake advertising of the improvement scheme in accordance with the requirements set out under regulation 15 of the TP Regulations including:

- Publish notice of the scheme in the *Government Gazette*;
- Publish notice of the scheme in a newspaper circulating in the area that will be affected by the scheme;
- Display the notice of the scheme in the offices of the WAPC for the duration of the submission period;
- Give written notice of the scheme to each public authority and person that the WAPC is required to consult under section 83 of the PD Act;
- Make a copy of the scheme and other documents available at the office of the WAPC; and
- Invite submissions on the scheme for no less than 3 months.

The WAPC is also required to consider all submissions made regarding the improvement scheme, and consider whether the scheme should be modified according to each submission received. The WAPC must then prepare a Schedule of Submissions and recommendations on each submission, for presentation to the Minister. The Minister will consider all information provided before deciding whether to approve or refuse to approve the improvement scheme.

As such, the provisions of the 2010 Amendment Act and the TP Regulations ensure that residents in the area affected by a proposed improvement scheme will have the same opportunity to raise issues regarding the proposed scheme as they currently have in relation to local planning schemes.

7. Information

Copies of the legislation, including the amended PD Act, can be obtained from the State Law Publisher at:

10 William Street
Perth WA 6000
Phone: 9321 7688
Fax: 9321 7536
Email: sales@dpc.wa.gov.au
Website: www.slp.wa.gov.au

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.

8. Glossary

In this planning bulletin:

2010 Amendment Act means the *Approvals and Related Reforms (No. 4) (Planning) Act 2010*.

EPA means the Environmental Protection Authority.

EP Act means the *Environmental Protection Act 1986*.

PD Act means the *Planning and Development Act 2005*.

TP Regulations means the *Town Planning Regulations 1967*.

WAPC means the Western Australian Planning Commission.

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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