

Western Australia

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

As at 19 Aug 2010

No. 28 of 2010

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Approvals and Related Reforms (No. 4) (Planning) Act 2010

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Western Australia

Approvals and Related Reforms (No. 4) (Planning) Act 2010

No. 28 of 2010

An Act —

- **to amend the *Planning and Development Act 2005*; and**
- **to consequentially amend various other Acts,
and for related purposes.**

[Assented to 19 August 2010]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary matters

1. Short title

This is the *Approvals and Related Reforms (No. 4) (Planning) Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

**Part 2 — Improvement plans and schemes under
*Planning and Development Act 2005***

Division 1 — *Planning and Development Act 2005* amended

3. Act amended

This Division amends the *Planning and Development Act 2005*.

4. Section 4 amended

- (1) In section 4(1) insert in alphabetical order:

improvement scheme means an improvement scheme that has effect under Part 8 Division 2;

improvement scheme area has the meaning given in section 122A(2);

- (2) In section 4(1) in the definition of *planning scheme* delete “local or region planning scheme” and insert:

local planning scheme, region planning scheme or improvement scheme

- (3) In section 4(1) in the definition of *responsible authority*:

- (a) in paragraph (b) omit “Commission;” and insert:

Commission; and

- (b) after paragraph (b) insert:

- (c) in relation to an improvement scheme, the Commission;

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Division 1 Planning and Development Act 2005 amended

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5. Section 5 amended

After section 5(2) insert:

- (3) An improvement scheme binds the Crown.

6. Section 6 amended

In section 6(1) delete “section 5(2)” and insert:

section 5(2) and (3)

7. Section 14 amended

In section 14:

- (a) after paragraph (h) insert:

(ia) to prepare improvement plans and improvement schemes under Part 8; and

- (b) in paragraph (i) delete “scheme,” and insert:

scheme and improvement scheme,

- (c) in paragraph (i) delete “under Part 4 any amendment of a region planning scheme” and insert:

under Part 4 or 8 any amendment

- (d) in paragraph (j) after “region planning scheme” insert:

or improvement scheme

- (e) in paragraph (l) delete “Act and region planning schemes; and” and insert:

Act, region planning schemes and improvement schemes; and

- (f) after each of paragraphs (a) to (k) insert:

and

8. Section 26 amended

In section 26(4)(b) delete “local”.

9. Part 8 heading replaced

Delete the heading to Part 8 and insert:

Part 8 — Improvement plans and schemes
Division 1 — Improvement plans

10. Section 119 amended

- (1) In section 119(1)(a) delete “land within a part of the State to which a region planning scheme applies —” and insert:

land —

- (2) After section 119(2) insert:

- (3A) The power in subsection (1) cannot be exercised in respect of any land that is —

- (a) the subject of a redevelopment scheme approved under the *East Perth Redevelopment*

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Division 1 Planning and Development Act 2005 amended

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Act 1991, the Subiaco Redevelopment Act 1994, the Midland Redevelopment Act 1999 or the Armadale Redevelopment Act 2001; or

(b) in the redevelopment area as defined in the *Hope Valley-Wattleup Redevelopment Act 2000*; or

(c) in the development control area as defined in the *Swan and Canning Rivers Management Act 2006*.

(3B) Before making a recommendation under subsection (1)(b) in relation to an improvement plan that authorises the making of an improvement scheme to apply to land in the district of a local government, the Commission must consult with the local government.

(3C) An improvement plan that authorises the making of an improvement scheme must set out the objectives of the improvement scheme.

(3) After section 119(4) insert:

(5A) The Minister must, as soon as is practicable after notice in respect of an improvement plan is published under subsection (4), cause a copy of the improvement plan to be laid before each House of Parliament or dealt with under section 268A.

11. Part 8 Division 2 inserted

After section 121 insert:

Division 2 — Improvement schemes

122A. Content of improvement schemes

- (1) Without limiting section 119, an improvement plan may authorise the making of an improvement scheme by the Commission in respect of some or all of the land to which the improvement plan applies.
- (2) An improvement scheme must specify the land to which it applies (the *improvement scheme area*).
- (3) An improvement scheme may, in relation to the whole or any part of the relevant improvement scheme area, provide for all or any of —
 - (a) the matters referred to in section 119(1)(a); and
 - (b) the objects, purposes, provisions, powers and works referred to in section 69(1).

122B. Preparing, approving and reviewing improvement schemes

- (1) Sections 75, 77 and 79 to 95 apply, with such modifications as are necessary, to and in relation to an improvement scheme as if, in each of those provisions —
 - (a) a reference to a local planning scheme were a reference to the improvement scheme; and
 - (b) a reference to a local government were a reference to the Commission; and
 - (c) a reference to a local government district or land in a district were a reference to the improvement scheme area.

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Division 1 Planning and Development Act 2005 amended

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- (2) Section 78 applies to and in relation to an improvement scheme —
- (a) in the manner set out in subsection (1); and
 - (b) as if a reference in that section to the City of Swan were a reference to the Commission; and
 - (c) as if subsections (4) and (5) were deleted and the following subsection were inserted:
 - (4) The Commission must have regard to, but is not bound to accept, the advice of the Swan Valley Planning Committee.
- (3A) Before submitting an improvement scheme or amendment to an improvement scheme to the Minister under section 87, the Commission must consult with any affected local government.
- (3B) In subsection (3A) —
- affected local government*** means —
- (a) in the case of an improvement scheme — a local government in the district of which the improvement scheme is proposed to apply; and
 - (b) in the case of an amendment — a local government in the district of which the improvement scheme applies.
- (3) Regulations made under section 258 apply, with such modifications as are necessary, to and in relation to an improvement scheme as if the improvement scheme were a local planning scheme.
- (4) An improvement scheme may be repealed by an instrument of repeal prepared by the Commission, approved by the Minister and published in the *Gazette*.

- (5) Unless otherwise specified in an instrument of repeal, the instrument has effect on the day on which it is published in the *Gazette*.
- (6) The Minister must not approve an amendment to an improvement scheme that removes land from an improvement scheme area, or approve an instrument of repeal under subsection (4), unless satisfied that any other planning scheme, insofar as it will apply to the improvement scheme area on the amendment day or repeal day, does not —
- (a) prevent any development that would be permitted; or
 - (b) allow any development that would not be permitted,

in the improvement scheme area immediately before the amendment day or repeal day.

- (7) In subsection (6) —
- amendment day***, for an improvement scheme, means the day on which the amendment to the scheme has effect;
- repeal day***, for an improvement scheme, means the day on which an instrument of repeal of that scheme has effect.

122C. Effect of improvement scheme on development control

- (1) This Division (other than this section) does not apply to a development that was lawfully being carried out on land immediately before an improvement scheme applied to the land.
- (2) A development referred to in subsection (1) or in respect of which all necessary approvals under the relevant region planning scheme and local planning

scheme were in force immediately before the improvement scheme applied to the land —

- (a) may be lawfully carried out as if this Division had not been enacted; and
- (b) is governed by those schemes despite section 122D.

122D. Effect of improvement scheme on other planning schemes

- (1) In this section —
start day, for an improvement scheme, means the day on which the improvement scheme has effect under section 87(4) as applied by section 122B(1).
- (2) On the start day for an improvement scheme, any other planning scheme that applies to land in the improvement scheme area immediately before that day ceases to apply —
 - (a) to that land; and
 - (b) to any development of that land commenced on or after that day.
- (3) If, after the start day, any land is added to an improvement scheme area by an amendment to the improvement scheme, any other planning scheme that applies to the land area immediately before the amendment comes into operation ceases to apply —
 - (a) to that land; and
 - (b) to any development of that land commenced on or after that time.
- (4) Subsections (2) and (3) do not affect the operation of sections 122I to 122K.
- (5) The *Interpretation Act 1984* section 37 applies in respect of subsections (2) and (3) as if a planning

scheme were an enactment and the subsections repealed the scheme in so far as it applies to the land in the improvement scheme area and development of that land.

- (6) Subsection (5) has effect subject to any provision of an improvement scheme that relates to non-conforming uses.

122E. Effect of removal of land from improvement scheme area or repeal of improvement scheme

- (1) If land is removed from an improvement scheme area by an amendment to an improvement scheme (the *removed land*) —
- (a) the improvement scheme for the area ceases to apply to the removed land; and
 - (b) a planning scheme that, but for section 122D, would apply to the land, applies to the land.
- (2) If an improvement scheme is repealed, a planning scheme that, but for section 122D would apply to the improvement scheme area, applies to the area.

122F. Amended improvement scheme area: transitional provisions

If land is added to or removed from an improvement scheme area by amendment to the improvement scheme, regulations may make provisions of a transitional nature that are expedient to be made, including provisions that save rights existing at the time of the amendment, but subject to any provisions of the improvement scheme relating to non-conforming uses.

122G. Applications for development not finalised when land removed or improvement scheme repealed

- (1) This section applies if —
 - (a) when land is removed from an improvement scheme area by an amendment to an improvement scheme (the *removed land*); or
 - (b) when an improvement scheme is repealed,
an application for approval of development of any of the removed land or of any part of the improvement scheme area under the repealed improvement scheme made under this Act to the Commission —
 - (c) has not been determined by the Commission; or
 - (d) having been so determined, is the subject of an application to the State Administrative Tribunal for a review that has not been finalised.
- (2) This Act continues to apply, and the Commission must continue to perform its functions, in relation to the application for approval and any application for review as if the land had not been removed or the scheme had not been repealed, as the case requires.
- (3) This section applies irrespective of whether or not another planning scheme applies to the land after the land is removed or the improvement scheme is repealed.

122H. Permanent closure of streets

For the purposes of permanently closing a street in an improvement scheme area, the *Land Administration Act 1997* section 58 and regulations made under that Act apply as if each reference to a local government in that section and in those regulations —

- (a) were a reference to the Commission; and

- (b) were not a reference to the local government of the district in which the street is wholly or partly situated.

122I. Certain planning schemes affecting improvement scheme area not to operate until repeal day

- (1) A local or region planning scheme, or an amendment to a local or region planning scheme, made after an improvement scheme has effect, insofar as it purports to apply to land in an improvement scheme area, has no effect while the improvement scheme applies to the land.
- (2) Subject to subsection (1) and without limiting sections 122J to 122L, this Division does not prevent a local or region planning scheme or amendment referred to in that subsection being made after an improvement scheme has effect so as to commence when the improvement scheme ceases to apply to the land.

122J. Minister may amend local planning scheme to conform with improvement scheme

- (1) The Minister may, while an improvement scheme is of effect, publish in the *Gazette* a notice amending a local planning scheme so that the local planning scheme is consistent with the improvement scheme in relation to land in the improvement scheme area.
- (2) An amendment published under subsection (1) has effect, by force of this subsection and without further action under this Act, on the day on which the improvement scheme ceases to apply to the land.

122K. Region planning scheme may be amended to conform with improvement scheme

- (1) A region planning scheme may be amended under Part 4 Division 4 while an improvement scheme is of

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Division 1 Planning and Development Act 2005 amended

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effect so that the region planning scheme is consistent with the improvement scheme in relation to land in the improvement scheme area.

- (2) An amendment referred to in subsection (1) has effect on the day on which the improvement scheme ceases to apply to the land.

122L. Other Ministerial powers

Sections 211 and 212 apply in relation to an improvement scheme as if, in each of those sections —

- (a) a reference to a local planning scheme were a reference to the improvement scheme; and
- (b) a reference to a local government were a reference to the Commission.

122M. Fees

The Commission may, in relation to an improvement scheme, impose fees under section 261 as if it were a local government, and that section, and the regulations made under that section, apply accordingly.

12. Part 8 Division 3 heading inserted

Before section 122 insert:

Division 3 — General

13. Section 122 amended

In section 122 delete “Nothing in this Part” and insert:

Except as provided in Division 2, nothing in this Part

14. Part 9 heading replaced

Delete the heading to Part 9 and insert:

Part 9 — Relationship between planning schemes, planning control provisions and written laws

15. Section 170 amended

(1) Before section 170(1) insert:

(1A) In this section —

responsible authority means —

- (a) in relation to land that is subject to a local planning scheme — the local government responsible for the enforcement of the observance of the scheme; and
- (b) in relation to land that is subject to an improvement scheme — the Commission.

(2) In section 170(1) delete “local government —” and insert:

responsible authority —

(3) In section 170(3), (4), (5) and (6) delete “local government” (each occurrence) and insert:

responsible authority

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Division 1 Planning and Development Act 2005 amended

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16. Section 195 amended

In section 195(1) delete “while the relevant region planning scheme has the force of law,”.

17. Section 196 amended

(1) In section 196(1):

(a) after “scheme” (first occurrence) insert:

or improvement plan

(b) in paragraph (a) delete “scheme; or” and insert:

scheme or improvement plan; or

(2) In section 196(2) delete “scheme.” and insert:

scheme or improvement plan.

18. Section 197 amended

(1) In section 197(1):

(a) delete “scheme,” and insert:

scheme or improvement plan,

(b) delete “scheme.” and insert:

scheme or improvement plan.

- (2) In section 197(2) delete “scheme.” and insert:

scheme or improvement plan.

Note: The heading to amended section 197 is to read:

**Governor may declare land to be held and used for region
planning scheme or improvement plan**

19. Section 198 amended

- In section 198(1) delete “Scheme,” and insert:

Scheme and any improvement scheme that has effect in part or all of the metropolitan region,

20. Section 199 amended

- (1) Before section 199(1) insert:

- (1A) In this section —

metropolitan improvement scheme means an improvement scheme that has effect in part or all of the metropolitan region.

- (2) In section 199(1):

- (a) delete “Scheme, including — ” and insert:

Scheme and any metropolitan improvement scheme,
including —

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Division 1 Planning and Development Act 2005 amended

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(b) in paragraph (b)(i) after “the metropolitan region” insert:

or a metropolitan improvement scheme

(c) in paragraph (b)(i) delete “Scheme or regional interim development order;” and insert:

Scheme, regional interim development order or metropolitan improvement scheme; or

(d) in paragraph (b)(ii) delete “Scheme; or” and insert:

Scheme or metropolitan improvement scheme; or

21. Section 218 amended

In section 218(b) after “local planning scheme” insert:

or improvement scheme

22. Section 252 amended

(1) In section 252(1)(a) delete “local planning scheme or a region”.

(2) In section 252(2):

(a) after “a local planning scheme” insert:

or an improvement scheme

(b) in paragraphs (a) and (b) delete “local”.

23. Section 262 amended

- (1) In section 262(4) delete “local planning scheme” (each occurrence) and insert:

planning scheme

- (2) In section 262(5) delete “local”.

Division 2 — Consequential amendments

Subdivision 1 — *Environmental Protection Act 1986* amended

24. Act amended

This Subdivision amends the *Environmental Protection Act 1986*.

25. Section 3 amended

- (1) In section 3(1) insert in alphabetical order:

improvement scheme has the meaning given in the *Planning and Development Act 2005* section 4(1);

- (2) In section 3(1) in the definition of *assessed scheme*:

(a) after paragraph (b)(iii) insert:

- (iv) which is a local planning scheme or a region planning scheme, or an amendment to a local planning scheme or a region planning scheme, amended under the *Planning and Development Act 2005* section 122J or 122K to the extent, if any, necessary in relation to an improvement scheme, or an amendment to an improvement scheme, which

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Division 2 Consequential amendments

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amendment or scheme is a scheme referred to in paragraph (a) or subparagraph (i) or (ii);

(b) after paragraph (b)(i) and (iii) insert:

or

(3) In section 3(1) in the definition of *final approval*:

(a) after paragraph (e) insert:

(f) an improvement scheme, or an amendment to an improvement scheme, means an approval under the *Planning and Development Act 2005* section 87(2), as read with section 122B(1) of that Act;

(b) after each of paragraphs (a) to (c) and (e) insert:

or

(4) In section 3(1) in the definition of *period of public review*:

(a) after paragraph (e) insert:

(f) an improvement scheme, or an amendment to an improvement scheme, means the period of advertisement for public inspection prescribed for the purposes of the *Planning and Development Act 2005* section 84, as read with section 122B(1) of that Act;

(b) after each of paragraphs (a) to (c) and (e) insert:

or

(5) In section 3(1) in the definition of *responsible authority*:

(a) after paragraph (a)(viii) insert:

(ix) an improvement scheme, or an amendment to an improvement scheme, means the Western Australian Planning Commission;

(b) in paragraph (a) after each of subparagraphs (i) to (vi) and (viii) insert:

or

(6) In section 3(1) in the definition of *scheme*:

(a) after paragraph (h) insert:

(i) an improvement scheme or an amendment to an improvement scheme;

(b) after each of paragraphs (a) to (f) and (h) insert:

or

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26. Section 48C amended

In section 48C(7) in the definition of *public review*:

(a) in paragraph (e) delete “that Act.” and insert:

that Act; or

(b) after paragraph (e) insert:

(f) an improvement scheme, or an amendment to an improvement scheme, means the procedure referred to in the *Planning and Development Act 2005* sections 84 and 87(1) as read with section 122B(1) of that Act.

(c) in each of paragraphs (a) to (e) after “means” insert:

the

(d) after each of paragraphs (a) to (c) insert:

or

Subdivision 2 — Other Acts amended

27. Agricultural Practices (Disputes) Act 1995 amended

(1) This section amends the *Agricultural Practices (Disputes) Act 1995*.

(2) In section 3 in the definition of *rural land* delete “as that term is” and insert:

or an improvement scheme as those terms are

28. *Armadale Redevelopment Act 2001* amended

- (1) This section amends the *Armadale Redevelopment Act 2001*.
 - (2) In section 5(4)(a) after “local planning scheme” insert:
- or improvement scheme
- (3) In section 43(1) in the definition of *planning scheme* paragraph (aa) after “local planning scheme” insert:

or improvement scheme

29. *Control of Vehicles (Off-road Areas) Act 1978* amended

- (1) This section amends the *Control of Vehicles (Off-road Areas) Act 1978*.
- (2) In section 16(5)(d) delete “scheme.” and insert:

scheme or improvement scheme under the
Planning and Development Act 2005.

30. *East Perth Redevelopment Act 1991* amended

- (1) This section amends the *East Perth Redevelopment Act 1991*.
 - (2) In section 5(4)(a) after “local planning scheme” insert:
- or improvement scheme
- (3) In section 38(3) in the definition of *planning schemes* paragraph (aa) after “local planning scheme” insert:

or improvement scheme

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31. *Electricity Corporations Act 2005* amended

- (1) This section amends the *Electricity Corporations Act 2005*.
- (2) In section 60(3):
 - (a) delete “sections 221 and 218,” and insert:

sections 218 and 221,
 - (b) in paragraph (b) delete “scheme,” and insert:

scheme; or
 - (c) after paragraph (b) insert:

(c) an improvement scheme,

32. *Hope Valley-Wattleup Redevelopment Act 2000* amended

- (1) This section amends the *Hope Valley-Wattleup Redevelopment Act 2000*.
- (2) In section 23(3) in the definition of **planning schemes** paragraph (aa) after “local planning scheme” insert:

or improvement scheme

33. *Land Tax Assessment Act 2002* amended

- (1) This section amends the *Land Tax Assessment Act 2002*.
- (2) In section 15(3)(b) delete “scheme.” and insert:

scheme or an improvement scheme.

- (3) In section 28(2)(a) delete “scheme,” and insert:

scheme or an improvement scheme,

- (4) In section 28(7) in the definition of *residential equivalent value* delete “planning scheme” and insert:

planning scheme, improvement scheme

- (5) In the Glossary:

- (a) in clause 1 insert in alphabetical order:

improvement scheme has the meaning given in the *Planning and Development Act 2005* section 4(1);

- (b) in clause 4 delete “scheme.” and insert:

scheme or an improvement scheme.

34. *Local Government Act 1995* amended

- (1) This section amends the *Local Government Act 1995*.
(2) In section 6.33(1)(a) after “planning scheme” insert:

or improvement scheme

35. *Midland Redevelopment Act 1999* amended

- (1) This section amends the *Midland Redevelopment Act 1999*.

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- (2) In section 5(4)(a) after “local planning scheme” insert:

or improvement scheme

- (3) In section 45(3) in the definition of *planning scheme* paragraph (aa) after “local planning scheme” insert:

or improvement scheme

36. *Sale of Land Act 1970* amended

- (1) This section amends the *Sale of Land Act 1970*.

- (2) In section 16 delete “scheme,” and insert:

scheme or improvement scheme,

37. *Strata Titles Act 1985* amended

- (1) This section amends the *Strata Titles Act 1985*.

- (2) In section 21U(3) delete “planning scheme” and insert:

planning scheme or improvement scheme

- (3) In section 21U(5) delete “planning scheme.” and insert:

planning scheme or improvement scheme.

- (4) In section 23(2):
- (a) in paragraph (a) after “local planning scheme” insert:

or improvement scheme
 - (b) in paragraph (b) delete “local”.
- (5) In section 31F(2)(e) after “local planning scheme” insert:

or improvement scheme
- (6) In section 31F(4) delete “scheme.” and insert:

scheme or improvement scheme.

38. Subiaco Redevelopment Act 1994 amended

- (1) This section amends the *Subiaco Redevelopment Act 1994*.
- (2) In section 5(4)(a) after “local planning scheme” insert:

or improvement scheme
- (3) In section 45(3) in the definition of *planning schemes* paragraph (aa) after “local planning scheme” insert:

or improvement scheme

39. Waterways Conservation Act 1976 amended

- (1) This section amends the *Waterways Conservation Act 1976*.

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Part 2 Improvement plans and schemes under Planning and
Development Act 2005

Division 2 Consequential amendments

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(2) After section 36(1)(f)(i) insert:

(ia) an improvement scheme;

Part 3 — Development Assessment Panels: *Planning and Development Act 2005*

40. Act amended

This Part amends the *Planning and Development Act 2005*.

41. Section 4 amended

- (1) In section 4(1) insert in alphabetical order:

Development Assessment Panel* or *DAP means a JDAP or LDAP;

JDAP means a Joint Development Assessment Panel established under section 171C;

LDAP means a Local Development Assessment Panel established under section 171C;

- (2) In section 4(1) in the definition of ***responsible authority*** delete “***responsible authority*** means —” and insert:

responsible authority, except as provided in regulations made under section 171A(2)(a), means —

42. Section 16 amended

After section 16(9) insert:

- (10) This section does not affect the operation of section 171B.

43. Part 11A inserted

After section 170 insert:

**Part 11A — Development Assessment Panels
and development control**

Division 1 — Functions of DAPs

**171A. Prescribed development applications to be
determined by DAP**

(1) In this section —

planning instrument means —

- (a) a planning scheme; or
- (b) an interim development order;

prescribed development application means —

- (a) a development application of a class or kind prescribed for the purposes of subsection (2)(a);
or
- (b) a development application of a class or kind prescribed for the purposes of subsection (2)(ba) in respect of which an applicant has made an election in accordance with regulations made under subsection (2)(ba)(i);

(2) The Governor may make regulations —

- (a) providing that, despite any other provision of this Act or a planning instrument, a development application of a class or kind prescribed for the purposes of this paragraph —
 - (i) must be determined by a DAP as if the DAP were the responsible authority under the relevant planning instrument in relation to the development; and

- (ii) cannot be determined by a local government or the Commission;
- (ba) providing that, despite any other provision of this Act or a planning instrument, if —
 - (i) an applicant for approval of development elects in accordance with the prescribed procedure to have a development application determined by a DAP; and
 - (ii) the development application is of a class or kind prescribed by the regulations for the purposes of this paragraph,
the development application —
 - (iii) must be determined by a DAP as if the DAP were the responsible authority under the relevant planning instrument in relation to the development; and
 - (iv) cannot be determined by a local government or the Commission;
- (b) providing for the duties and responsibilities of local governments and the Commission in relation to prescribed development applications;
- (c) providing for the procedures for dealing with prescribed development applications;
- (d) providing for the application of the provisions of this Act and planning instruments in relation to prescribed development applications;
- (e) providing for the procedures to be followed by, and powers of, a DAP when determining a prescribed development application;
- (f) providing for the effect of a determination of a prescribed development application;

- (g) providing for the notification of a determination of a prescribed development application;
 - (h) providing for the review of a determination of a prescribed development application.
- (3) Unless otherwise provided under regulations made for the purposes of subsection (2) —
- (a) a determination by a DAP of a prescribed development application; and
 - (b) a failure by a DAP to make a determination of a prescribed development application,

is to be regarded as, and has effect as if it were, a determination or failure of the responsible authority to which the application was made.

171B. DAP to carry out delegated functions

- (1) In addition to the functions conferred on it by regulations made under section 171A, a DAP is to perform the functions that are delegated to it by a responsible authority in accordance with regulations made under subsection (2).
- (2) The Governor may make regulations —
 - (a) prescribing the functions under this Act or a planning scheme that may be delegated by a responsible authority to a DAP; and
 - (b) making provision in relation to the making and effect of the delegation of functions by a responsible authority to a DAP.

**Division 2 — Development Assessment Panels:
establishment and administration**

171C. Establishment of Development Assessment Panels

- (1) The Minister may, by order published in the *Gazette*, establish —
 - (a) a LDAP for a district;
 - (b) a JDAP for 2 or more districts.
- (2) The order must give the DAP a name.
- (3) A JDAP cannot be established for a district for which a LDAP is established.
- (4) A LDAP cannot be established for a district for which a JDAP is established.
- (5) If a JDAP is established for 2 or more districts, the districts need not be contiguous.
- (6) The Minister may revoke or amend an order made under subsection (1) by further order published in the *Gazette*.
- (7) The regulations may prescribe transitional provisions in relation to the revocation or amendment of an order under this section.

171D. Constitution, procedure and conduct of DAPs

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed, for the establishment and functioning of DAPs.

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- (2) Without limiting subsection (1), regulations may be made about the constitution, procedure and conduct of DAPs, including but not limited to regulations about the following —
- (a) the total number of persons who are to be on a DAP;
 - (b) the qualifications to be held by each person on a DAP;
 - (c) the procedure to be followed for nominating and appointing DAP members;
 - (d) the remuneration and allowances payable to DAP members;
 - (e) the term of office of DAP members;
 - (f) the removal of DAP members;
 - (g) compiling and maintaining a register of persons who are eligible to be DAP members;
 - (h) the paid training of persons appointed to be DAP members;
 - (i) procedures at DAP meetings;
 - (j) the conduct of DAP members.
- (3) The qualifications to be held by a person on a DAP may be specified in the regulations by reference to one or more of these —
- (a) an office or position;
 - (b) an educational qualification;
 - (c) a type or level of knowledge;
 - (d) a type or level of experience.

171E. Administration and costs of DAPs

- (1) The Governor may make regulations about —
- (a) the administration of DAPs; and

- (b) the payment of the costs and expenses of DAPs.
- (2) Without limiting subsection (1), regulations may be made —
 - (a) about the staffing, facilities and services that are to be provided to DAPs by the chief executive officer or by local governments; and
 - (b) about the access of the Minister to information in the possession of a DAP; and
 - (c) about reporting requirements in relation to —
 - (i) directions under the regulations; and
 - (ii) expenditure in relation to DAPs; and
 - (iii) determinations by DAPs; and
 - (iv) any other matter specified in the regulations.
- (3) A local government must comply with a direction given and requirements prescribed under subsection (2).

171F. Review of regulations

- (1) An appropriate Standing Committee of the Legislative Council is to carry out a review of the operation and effectiveness of all regulations made under this Part as soon as practicable after the expiry of 2 years from the day on which regulations made under this Part first come into operation.
- (2) The Standing Committee is to prepare a report based on the review and, as soon as practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

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44. Section 266 amended

- (1) In section 266(1) in the definition of *member*:
 - (a) in paragraph (e) delete “local government.” and insert:

local government;
 - (b) after paragraph (e) insert:

(f) a member of a DAP.

- (2) In section 266(6) delete “Commission.” and insert:

Commission or any other person.

Part 4 — State planning policy amendments: *Planning and Development Act 2005*

45. Act amended

This Part amends the *Planning and Development Act 2005*.

46. Section 77A inserted

At the end of Part 5 Division 2 insert:

77A. Minister may order local government to amend local planning scheme to be consistent with State planning policy

- (1) The Minister may, on the recommendation of the Commission, order a local government to prepare and submit for the approval of the Minister an amendment to a local planning scheme for the purpose of rendering the local planning scheme consistent with a specified State planning policy.
- (2) The order must specify the following —
 - (a) the relevant State planning policy;
 - (b) the amendments that are to be made to the local planning scheme;
 - (c) the time (being sufficient time to allow the local government to comply with its obligations under Divisions 3 and 4) by which the local government must comply with the order.
- (3) The Minister must, as soon as is practicable after the order is given to the local government, cause a copy of the order to be laid before each House of Parliament or dealt with under section 268A.

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- (4) If —
- (a) the Commission makes a recommendation for the purposes of subsection (1); and
 - (b) the Minister decides not to make an order pursuant to the recommendation,
- the Minister must, as soon as is practicable —
- (c) give the Commission written reasons for the Minister's decision; and
 - (d) cause a copy of the reasons to be laid before each House of Parliament or dealt with under section 268A.

47. Section 212 amended

In section 212(1):

- (a) after paragraph (a) insert:
 - (ba) comply with an order made under section 77A;
or
- (b) after each of paragraphs (a) and (b) insert:

or

48. Section 246 amended

In section 246(4) delete “before, or transmitted in accordance with section 248(1) to the Clerk of, each House of Parliament.” and insert:

before each House of Parliament or dealt with under section 268A.

49. Section 248 deleted

Delete section 248.

50. Section 268A inserted

After section 267 insert:

268A. Laying before House of Parliament that is not sitting

- (1) If section 77A(4) or (5), 119(5A) or 246(4) requires the Minister, as soon as is practicable, to cause a copy of an order, improvement plan or direction to be laid before each House of Parliament, or dealt with under this section, and —
 - (a) at the commencement of the period after the day on which the order, improvement plan or direction is given, a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that the House will not sit during the period of 14 days after the order or direction is given,

the Minister is to transmit a copy of the order, improvement plan or direction to the Clerk of that House.

- (2) A copy of an order, improvement plan or direction transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (3) The laying of a copy of an order, improvement plan or direction that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

Part 5 — Other amendments related to *Planning and Development Act 2005*

Division 1 — *Planning and Development Act 2005* amended

51. Act amended

This Division amends the *Planning and Development Act 2005*.

52. Section 4 amended

In section 4(1) in the definition of *planning scheme* delete paragraph (a) and “and” after it and insert:

- (a) the provisions of the scheme being —
 - (i) the provisions set out in the scheme; and
 - (ii) any State planning policy that, with any modifications set out in the scheme, has effect under section 77(2)(b) as part of the scheme; and
 - (iii) any provisions that have effect under section 257B(2) as part of the scheme;
- and

53. Section 68 amended

In section 68(2) delete “Nothing” and insert:

Except as provided in section 257B(3), nothing

54. Section 69 amended

After section 69(2) insert:

- (3) This section applies subject to section 256 and the regulations made under it and sections 257A and 257B.

55. Section 73 amended

- (1) In section 73(1):

- (a) in paragraph (b) delete “local government;” and insert:

local government.

- (b) delete paragraphs (c), (d) and (e).

- (2) After section 73(1) insert:

- (2A) A local planning scheme may —

- (a) supplement provisions prescribed under section 256; and
(b) deal with any special circumstances or contingencies for which adequate provisions are not prescribed under section 256.

56. Section 76 amended

- (1) In section 76(1):

- (a) in paragraph (a) after “local planning scheme” (each occurrence) insert:

or an amendment to a local planning scheme

- (b) insert “or” after paragraph (a);

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Division 1 Planning and Development Act 2005 amended

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(c) in paragraph (b) delete “any scheme” and insert:

a local planning scheme or an amendment to a local planning scheme

(d) in paragraph (b) after “local planning scheme” insert:

or an amendment to a local planning scheme

(e) after “local planning scheme,” (each occurrence) insert:

or an amendment to a local planning scheme

(2) In section 76(2):

(a) delete “a scheme,” and insert:

a local planning scheme or an amendment to a local planning scheme,

(b) delete “the scheme,” and insert:

the scheme or amendment,

(c) delete “proposed scheme” and insert:

proposed scheme or amendment

- (3) In section 76(3) delete “scheme” and insert:

local planning scheme or an amendment

Note: The heading to amended section 76 is to read:

Minister may order local government to prepare or adopt local planning scheme or amendment

- (4) The Minister must, as soon as is practicable after an order is given to the local government under subsection (1), cause a copy of the order to be laid before each House of Parliament or dealt with under section 268A.

57. Section 87 amended

Delete section 87(3) and insert:

- (3) When the Minister notifies the Commission that the Minister has approved a local planning scheme or an amendment to a local planning scheme, the Commission is to cause the scheme or amendment to be published in the *Gazette*.
- (4A) Any costs incurred by the Commission in publishing a scheme or amendment under subsection (3) may be recovered by the Commission from the local government which prepared or adopted the scheme or amendment as a debt due to the Crown.
- (4B) When the Minister has approved a local planning scheme or an amendment to a local planning scheme, the local government which prepared or adopted the scheme or amendment is to —
- (a) advertise the scheme or amendment in accordance with the regulations; and

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Division 1 Planning and Development Act 2005 amended

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- (b) ensure that copies of the scheme or amendment are available to the public.

58. Section 112 amended

- (1) In section 112(1) delete “situated in a region to which a region planning scheme applies”.
- (2) Delete section 112(2) and insert:
 - (2) The power in subsection (1) cannot be exercised in respect of any land that is —
 - (a) the subject of a redevelopment scheme approved under the *East Perth Redevelopment Act 1991*, the *Subiaco Redevelopment Act 1994*, the *Midland Redevelopment Act 1999* or the *Armadale Redevelopment Act 2001*; or
 - (b) in the redevelopment area as defined in the *Hope Valley-Wattleup Redevelopment Act 2000*; or
 - (c) in the development control area as defined in the *Swan and Canning Rivers Management Act 2006*; or
 - (d) in an improvement scheme area.

59. Section 116 amended

In section 116(1)(b):

- (a) in subparagraph (i) delete “policy;” and insert:

policy; and

- (b) in subparagraph (ii) delete “a region planning scheme;” and insert:

any planning scheme; and

60. Section 126 amended

Delete section 126(3) and insert:

- (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.

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Part 5 Other amendments related to Planning and Development Act 2005

Division 1 Planning and Development Act 2005 amended

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61. Section 133 amended

In section 133(1) after “this Part” insert:

(other than Division 5)

62. Section 136 amended

(1) After section 136(2) insert:

(3A) Subsection (1) does not affect the operation of the *Strata Titles Act 1985* section 25(5).

(2) In section 136(3) insert in alphabetical order:

lot includes —

- (a) a lot, in relation to a strata scheme, as defined in the *Strata Titles Act 1985* section 3(1); and
- (b) a lot, in relation to a survey-strata scheme, as defined in the *Strata Titles Act 1985* section 3(1).

(3) In section 136(3) in the definition of *licence to use or occupy* delete “easement.” and insert:

easement;

63. Section 181 amended

In section 181(15)(a) delete “1998; or” and insert:

1988; or

64. Section 256 replaced

Delete section 256 and insert:

256. Provisions that operate as part of, or are required to be included in, a local planning scheme

- (1) The Minister may make regulations prescribing provisions that deal with any or all of the following —
 - (a) carrying out the general objects of local planning schemes;
 - (b) any matter set out in Schedule 7.
- (2) Before making regulations under subsection (1) the Minister —
 - (a) must consult with the EPA and local governments; and
 - (b) may consult with any other public authority or person the Minister considers is likely to be affected by the proposed regulations; and
 - (c) must have regard to any submissions made pursuant to consultation under paragraphs (a) and (b).
- (3) Consultation under subsection (2) may be undertaken in any way and within such period as the Minister considers appropriate in the circumstances.
- (4) Unless the regulations otherwise provide, provisions prescribed under subsection (1) apply to all local planning schemes.
- (5) The regulations must designate each provision prescribed under subsection (1) as —
 - (a) a model provision, being a provision to which section 257A applies; or

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Part 5 Other amendments related to Planning and Development Act 2005

Division 1 Planning and Development Act 2005 amended

s. 64

- (b) a deemed provision, being a provision to which section 257B applies.
- (6) The regulations may include provisions of a savings or transitional nature that are necessary or convenient to be made for the purpose of dealing with matters that are incidental to or consequential on the prescribing of a model provision or a deemed provision under this section.
- (7) Without limiting subsection (6), regulations made under that subsection may provide that specified model provisions or deemed provisions of a local planning scheme —
 - (a) do not apply; or
 - (b) apply with specified modifications,to or in relation to any matter.

257A. Effect of model provisions

- (1) In this section —
model provision means a provision designated as a model provision under section 256(5)(a).
- (2) Subject to subsection (3), a local planning scheme prepared or adopted by a local government must include any model provisions that —
 - (a) are prescribed by regulations in force at the time the scheme is approved under section 87; and
 - (b) apply to the scheme.
- (3) When approving a local planning scheme under section 87, the Minister may approve the exclusion from, or variation in, the scheme of a model provision.

257B. Effect of deemed provisions

- (1) In this section —
deemed provision means a provision designated as a deemed provision under section 256(5)(b).
- (2) Deemed provisions, as amended from time to time, have effect and may be enforced as part of each local planning scheme to which they apply, whether they are prescribed before or after the scheme comes into force.
- (3) If a deemed provision that has effect as part of a local planning scheme is inconsistent with another provision of the scheme, the deemed provision prevails and the other provision is to the extent of the inconsistency of no effect.
- (4) It is sufficient compliance with section 54(a), 87(3)(a), 91(1) or 92(2)(b) if a local planning scheme is published under that provision without the deemed provisions.
- (5) Each local government, in preparing a local planning scheme or a consolidation of a local planning scheme, must ensure that the scheme is consistent with any deemed provision that applies to the scheme.

65. Section 257 deleted

Delete section 257.

66. Section 258 amended

- (1) In section 258(1):
 - (a) in paragraph (d) delete “scheme; and” and insert:

scheme.
 - (b) delete paragraph (e).

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Part 5 Other amendments related to Planning and Development Act 2005

Division 2 Local Government Act 1995 amended

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67. Section 263 amended

After section 263(2)(d) insert:

- (ea) provide for and regulate reporting by local governments in relation to planning matters;
- (eb) regulate procedures in relation to the carrying out and enforcement of local planning schemes;

68. Schedule 7 amended

(1) After Schedule 7 clause 13(3) insert:

- (4) Requiring the preparation and approval of documents ancillary to the carrying out of a scheme.

Division 2 — Local Government Act 1995 amended

69. Act amended

This Division amends the *Local Government Act 1995*.

70. Section 5.42 amended

In section 5.42(1) delete “duties under this Act other than those referred to in section 5.43.” and insert:

duties under —

- (a) this Act other than those referred to in section 5.43; or
- (b) the *Planning and Development Act 2005* section 214(2), (3) or (5).

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