



Western Australia

# **Planning and Development Amendment Act 2020**

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# Planning and Development Amendment Act 2020

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Western Australia

# **Planning and Development Amendment Act 2020**

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**No. 26 of 2020**

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**An Act to amend the *Planning and Development Act 2005*, and to make related amendments to the *Environmental Protection Act 1986* and the *Community Titles Act 2018*.**

*[Assented to 7 July 2020]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Planning and Development Amendment Act 2020*.

### **2. Commencement**

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Parts 3 to 16 — on a day fixed by proclamation, and different days may be fixed for different provisions;
- (c) the rest of the Act — on the day after assent day.

(2) However, if a provision of this Act does not come into operation before the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent, the provision is repealed on the day after that period ends.

## **Part 2 — Special provisions for COVID-19 pandemic**

### **3. Act amended**

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

### **4. Parts 17 and 18 inserted**

After section 268 insert:

## **Part 17 — Special provisions for COVID-19 pandemic relating to development applications**

### **Division 1 — Preliminary**

#### **269. Terms used**

(1) In this Part —

***applicable legal instrument***, in relation to a development application, means a legal instrument under which the application could, apart from this Part, be determined;

***development***, in relation to a development application that is an application for approval under the *Swan and Canning Rivers Management Act 2006* section 72(1) or (4) or to a determination of such an application, has the meaning given in section 3(1) of that Act;

***development application*** —

- (a) means a development application as defined in section 4(1); and
- (b) includes (to avoid doubt) a development application as defined in section 4(1) that is to be determined, or could be determined, by a Development Assessment Panel; and

- (c) includes an application under Part 7 for approval of development in a planning control area; and
- (d) includes an application for approval under the *Swan and Canning Rivers Management Act 2006* section 72(1) or (4);

**Government agreement** has the meaning given in the *Government Agreements Act 1979* section 2;

**legal instrument** means any of the following —

- (a) this Act, other than this Part, any Part 17 regulations and any orders under section 284;
- (b) any of the following enactments —
  - (i) the *Contaminated Sites Act 2003*;
  - (ii) the *Heritage Act 2018*;
  - (iii) the *Swan and Canning Rivers Management Act 2006*;
  - (iv) the *Swan Valley Planning Act 1995*;
  - (v) the *Local Government Act 1995*;
- (c) any enactment, other than the following —
  - (i) this Act;
  - (ii) an enactment covered by paragraph (b);
  - (iii) the EP Act;
- (d) a planning scheme or an interim development order;
- (e) any other scheme, code, policy, plan, local law, by-law, rule, condition, notice or other instrument made under any enactment covered by paragraph (a), (b) or (c);

**mining** has the meaning given in the *Mining Act 1978* section 8(1);

**normal decision-maker**, in relation to a development application, means a person or body who could, apart from this Part, determine the application under an applicable legal instrument;

**Part 17 regulations** means regulations under section 286(1);

**recovery period** means the period of 18 months beginning on the day on which the *Planning and Development Amendment Act 2020* section 4 comes into operation;

**significant development**, subject to subsections (2) and (3), means —

- (a) development that has an estimated cost of —
  - (i) in the case of a development that is wholly or partly in the metropolitan region — \$20 million or more;
  - or
  - (ii) in any other case — \$5 million or more;
- or
- (b) development that is of a class or kind prescribed by Part 17 regulations for the purposes of this paragraph;

**substantially commenced**, subject to subsection (4), has the meaning given in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1 as in force at the beginning of the recovery period;

**warehouse** means a building or outdoor facility, or a part of a building or outdoor facility, used for 1 or both of the following —

- (a) the storage of goods, equipment, plant or materials;
- (b) the display or sale by wholesale of goods.

- (2) Development that is of a class or kind prescribed by Part 17 regulations for the purposes of this subsection —
  - (a) is not to be regarded as significant development or as being part of any significant development; and
  - (b) is not to be taken into account in determining whether any larger development of which the development forms part is significant development.
- (3) Development of a warehouse —
  - (a) is not to be regarded as significant development or as being part of any significant development; and
  - (b) is not to be taken into account in determining whether any larger development of which the development forms part is significant development.
- (4) For the purposes of the definition of *substantially commenced* in subsection (1), the definition of that term in the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2 clause 1 applies as if the reference to a development approved under a planning scheme or under an interim development order were a reference to a development approved by the Commission under section 274.

**270. Effect of Part**

- (1) This Part has effect despite any legal instrument.
- (2) However, this Part does not apply in relation to any of the following —



- (a) land to which an approved redevelopment scheme under the *Metropolitan Redevelopment Authority Act 2011* applies;
  - (b) land in the redevelopment area as defined in the *Hope Valley-Wattleup Redevelopment Act 2000*;
  - (c) land to which a Government agreement applies;
  - (d) mining, or proposed mining, that is, or would be, authorised under the *Mining Act 1978*.
- (3) To avoid doubt, this Part is subject to section 5 of the EP Act.

## **Division 2 — Commission to determine certain development applications**

### **Subdivision 1 — Applications and referrals**

#### **271. Development applications that may be made directly to Commission during recovery period**

During the recovery period, a person may make a development application to the Commission for determination under section 274 if the application is for approval of significant development.

#### **272. Development applications that may be referred to Commission by Premier during recovery period**

- (1) During the recovery period, the prospective applicant in relation to a development application that has not yet been made may notify the Minister that they want the application to be determined under section 274.
- (2) Subsection (3) applies if the Minister —
  - (a) is notified under subsection (1); and

- (b) considers that the development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274.
- (3) During the recovery period, the Premier, on the Minister's recommendation, may refer the development application to the Commission for determination under section 274.
- (4) Subsection (5) applies if —
  - (a) before or during the recovery period, a person makes a development application (otherwise than to the Commission under section 271); and
  - (b) the Minister considers that the development application raises issues of such State or regional importance that it would be appropriate for the application to be determined under section 274.
- (5) During the recovery period, the Premier, on the Minister's recommendation, may —
  - (a) direct any person or body who is dealing with the development application to refer the application to the Commission for determination under section 274; or
  - (b) if the Commission is dealing with the development application — direct the Commission to determine the application under section 274.
- (6) However, the Premier cannot give a direction under subsection (5) if the development application has already been determined, or been taken to be determined, by a normal decision-maker (whether or not the determination is to be reviewed by the State Administrative Tribunal or otherwise challenged).

- (7) The Premier, within 14 days after the day on which a direction is given under subsection (5), must cause a copy of it to be published in the *Gazette* and, as soon as is practicable, must cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.

**273. Supplementary provisions for applications and referrals**

- (1) A development application that is made under section 271 must be made in the manner and form required by the Commission and, without limitation, include any documents or information required by the Commission.
- (2) A notification under section 272(1) must be made in the manner and form required by the Minister and, without limitation, include any documents or information required by the Minister.
- (3) A person or body who is given a direction under section 272(5) to refer a development application to the Commission —
- (a) must refer the development application within the period specified in the direction; and
  - (b) in referring the development application, must provide the Commission with the application and any documents or information that accompanied the application.
- (4) Without limiting section 270(1), in imposing requirements under subsection (1) or (2), the Commission or Minister is not bound or restricted by any legal instrument that would, apart from this Part, regulate, or otherwise apply in relation to, any of the following —
- (a) the making of the development application;

- (b) the development application itself;
- (c) the consideration or determination of the development application.

**Subdivision 2 — Determinations**

**274. Determination of development applications by Commission**

- (1) A development application must be determined under this section (and not any applicable legal instrument) if —
  - (a) the development application is made or referred to the Commission under section 271 or 272(3) or (5); or
  - (b) the Commission is directed under section 272(5) to determine the development application under this section.
- (2) The Commission must consider the development application and determine it by —
  - (a) granting approval for the development without conditions; or
  - (b) granting approval for the development with conditions; or
  - (c) refusing approval for the development.
- (3) The Commission must determine the development application as soon as is reasonably practicable but, subject to that, does not have to determine the application before the end of the recovery period.
- (4) For the purposes of subsection (2)(a) and (b) —
  - (a) approval can be granted —
    - (i) for the development for which approval is sought; or

- (ii) for that development, except for a part or aspect of that development specified in the approval; or
  - (iii) for a part or aspect of that development specified in the approval;
- but
- (b) approval cannot be granted as referred to in paragraph (a)(ii) or (iii) —
  - (i) in the case of a development application made under section 271 — for development that is not significant development; or
  - (ii) in any other case — for development that is substantially different from the development for which approval is sought.
- (5) For the purposes of subsection (2)(b), the Commission may impose any conditions that the Commission considers appropriate, including (without limitation) the following —
  - (a) a condition limiting the time period for which approval is granted;
  - (b) a condition requiring further details of the development specified in the approval to be, before the development is commenced, submitted to, and approved by, the Commission.
- (6) The Commission can impose a condition of the kind referred to in subsection (5)(b) only if the Commission considers that the further details to be approved would not substantially change the approved development.

- (7) When the Commission determines the development application, the Commission must —
  - (a) give the applicant written notice of the determination, including the Commission’s reasons for the determination; and
  - (b) make copies of the determination and reasons publicly available on a website maintained by, or on behalf of, the Commission.

**275. Application of legal instruments and matters to which Commission must have due regard**

- (1) This section applies if the Commission is required to consider and determine a development application under section 274.
- (2) Subsections (3) and (4) apply in relation to any legal instrument that would, apart from this Part, regulate, or otherwise apply in relation to, any of the following —
  - (a) the making of the development application;
  - (b) the development application itself;
  - (c) the consideration or determination of the development application.
- (3) Without limiting section 270(1), for the purposes of the Commission’s consideration and determination of the development application —
  - (a) the legal instrument does not apply; and
  - (b) the Commission is not otherwise bound or restricted by the legal instrument.
- (4) However, in considering and determining the development application, the Commission may do any of the following —
  - (a) anything that a normal decision-maker, or any other person or body dealing with the

- development application, could, apart from this Part, have done under the legal instrument;
- (b) request any person or body to perform (in whole or in part and with or without modifications) any functions that the person or body would, apart from this Part, have had in relation to the development application under the legal instrument;
  - (c) otherwise involve, or consult, a person or body referred to in paragraph (b);
  - (d) otherwise apply (with or without modifications), or have regard to, the legal instrument.
- (5) Without limiting subsection (3), the Commission —
- (a) in considering and determining the development application, is not limited to planning considerations and may have regard to any other matter affecting the public interest; and
  - (b) may grant approval for development even if —
    - (i) there has been a contravention by any person or body of a legal instrument referred to in subsection (2); or
    - (ii) there would, apart from this Part, have been such a contravention.
- (6) In considering and determining the development application, the Commission must have due regard to —
- (a) the purpose and intent of any planning scheme that has effect in the locality to which the development application relates; and

- (b) the need to ensure the orderly and proper planning, and the preservation of amenity, of that locality; and
- (c) the need to facilitate development in response to the economic effects of the COVID-19 pandemic; and
- (d) any relevant State planning policies and any other relevant policies of the Commission.

**276. Consultation, submissions and other input**

- (1) This section applies for the purposes of the Commission's consideration of a development application under section 274 (but does not limit what the Commission may or must do under section 275).
- (2) The Commission must —
  - (a) consult the Minister; and
  - (b) if required by the Minister — give the Minister a reasonable opportunity to make submissions to the Commission; and
  - (c) have due regard to any submissions made by the Minister.
- (3) The Commission must —
  - (a) consult the CEO (as defined in the *Contaminated Sites Act 2003* section 3(1)) if the development is of land referred to in section 58(1)(a)(i) of that Act in respect of which a memorial is registered under section 58 of that Act; and
  - (b) consult the Heritage Council if the development would, or would be likely to, affect any of the following —
    - (i) a place that is a registered place under the *Heritage Act 2018*;



- (ii) a place that is the subject of a protection order under the *Heritage Act 2018* Part 4 Division 1;
    - (iii) a place that is the subject of a heritage agreement made by the Heritage Council under the *Heritage Act 2018* Part 7;
  - and
  - (c) consult the Swan River Trust if the development —
    - (i) is of land that is wholly or partly in the development control area as defined in the *Swan and Canning Rivers Management Act 2006*; or
    - (ii) is of land that abuts that development control area; or
    - (iii) would, or would be likely to, affect any waters in that development control area;
  - and
  - (d) have due regard to any submission made, or advice given, to the Commission in the course of a consultation under paragraph (a), (b) or (c).
- (4) The Commission must —
- (a) give any local government to whose district the development application relates an opportunity to make submissions to the Commission within a period specified by the Commission; and
  - (b) have due regard to any submissions made by the local government within that period.
- (5) The Commission may require the applicant to do any of the following within a period specified by the Commission —

**s. 4**

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- (a) provide the Commission with any document or information;
  - (b) do anything else that the Commission considers appropriate.
- (6) The Commission must —
  - (a) consult any person or body not referred to in subsections (2) to (5) whom the Commission considers it appropriate to consult; and
  - (b) in the manner the Commission considers appropriate, advertise the development application, inviting submissions from members of the public generally or from a class or group of members of the public that the Commission considers appropriate; and
  - (c) have due regard to any submissions made by members of the public in response to the invitation under paragraph (b).
- (7) The Commission may do anything else that is not covered by subsections (2) to (6) and that the Commission considers it appropriate to do in order to obtain a document, information, an opinion or any other contribution from any person or body.
- (8) If the Commission does anything under subsection (6)(a) or (b) or (7), the Commission must, as it considers appropriate, set a limit on the time within which, as the case requires —
  - (a) a person or body who is being consulted by the Commission may respond to the Commission on any matter; or
  - (b) members of the public may make submissions; or
  - (c) a person or body may provide any document, information, opinion or other contribution.

**277. Effect of Commission determination under s. 274**

- (1) This section applies if the Commission determines a development application under section 274.
- (2) The Commission's determination has effect, and is valid, for all purposes as if it had been made by a normal decision-maker under an applicable legal instrument.

Example for this subsection:

1. If the development application would, apart from this Part, have been determined by a local government for the purposes of a local planning scheme, the Commission's determination has the same effect for the purposes of the local planning scheme as if the determination had been made by the local government.
2. Accordingly, if the determination is to grant approval for development —
  - (a) the development may be commenced and carried out as if the approval had been granted by the local government; and
  - (b) any conditions imposed by the Commission on the approval must be complied with as if they were conditions imposed on the approval by the local government; and
  - (c) section 218(c) applies in relation to a failure to comply with any of those conditions.
- (3) Subsection (2) applies even if the Commission's determination could not have been made by a normal decision-maker under an applicable legal instrument.
- (4) Without limiting subsections (2) and (3), a decision, or other act or omission, of a person or body is not unlawful or invalid just because the Commission's determination could not have been made by a normal decision-maker under an applicable legal instrument.
- (5) Subsections (2) to (4) are subject to sections 278 and 279 and Divisions 3 and 4.

- (6) Subject to Division 3, if the Commission's determination is to grant approval for development, the determination does not affect the operation of any legal instrument that requires the obtaining, in relation to the development, of any other type of approval, consent, licence, permit, registration or other authority (however described).

Examples for this subsection:

1. A consent under the *Aboriginal Heritage Act 1972* section 18.
  2. A building permit or demolition permit under the *Building Act 2011*.
  3. A licence under the *Liquor Control Act 1988*.
- (7) If the Commission's determination is to grant approval for development, references in subsections (2) to (6) to the Commission's determination are to the determination as amended from time to time under section 279 or by an order under section 284.

**278. Substantial commencement of development approved by Commission under s. 274**

- (1) This section applies if the Commission grants approval for development under section 274.
- (2) The development must be substantially commenced —
  - (a) within the period specified in the approval for the purposes of this subsection; or
  - (b) if no period is specified in the approval — within the period of 24 months beginning on the day on which the approval is granted.
- (3) The approval lapses if the development is not substantially commenced within the period referred to in subsection (2).

**279. Amendment or cancellation of approval granted by Commission under s. 274**

- (1) This section applies if the Commission grants approval for development under section 274 in respect of any land.
- (2) An owner of the land, or a person who is of a class or kind prescribed by Part 17 regulations for the purposes of this subsection, may apply to the Commission for the Commission —
  - (a) to amend or remove any of the conditions imposed on the approval; or
  - (b) to amend any part or aspect of the approved development; or
  - (c) to amend the approval in any other way; or
  - (d) to cancel the approval.
- (3) An amendment of the kind referred to in subsection (2)(b) —
  - (a) cannot substantially change the approved development; and
  - (b) in the case of approval granted on a development application made under section 271 — cannot result in the approved development no longer being significant development.
- (4) The Commission cannot do anything under this section that would have the effect of extending the period within which the development must be substantially commenced in accordance with section 278(2).
- (5) The Commission must consider an application made under subsection (2) and determine it by —
  - (a) granting it (with or without conditions); or

- (b) refusing it.
- (6) Sections 273(1), 274(3) and (5) to (7), 275 and 276 apply with any necessary modifications to an application made under subsection (2) as they apply to a development application made under section 271.
- (7) Subject to Division 4, no person or body, apart from the Commission acting under this section, can do any of the following in relation to the approval referred to in subsection (1) —
  - (a) amend or remove any of the conditions imposed on the approval;
  - (b) impose new conditions on the approval;
  - (c) amend any part or aspect of the approved development;
  - (d) amend the approval in any other way;
  - (e) cancel the approval.
- (8) In subsections (2) and (7), references to the conditions imposed on the approval, the approved development or the approval are to the conditions, development or approval as amended from time to time under this section or by an order under section 284.

**Division 3 — Avoiding conflicts with approvals granted by Commission under section 274**

**280. General provisions for Division**

- (1) For the purposes of this Division, the performance of a function *conflicts* with an approval for development granted by the Commission under section 274 if the performance of the function, or the way in which the function is performed —
  - (a) prevents the approved development from proceeding in accordance with the approval; or

- (b) prevents a condition imposed by the Commission on the approval from being complied with; or
- (c) otherwise substantially undermines, or substantially conflicts with, the approval.

Examples for this subsection:

1. An authority refuses to grant a permit under another Act that is necessary for the approved development to proceed in accordance with the Commission's approval.
  2. An authority grants a permit under another Act that is necessary for the approved development to proceed in accordance with the Commission's approval but the permit is granted subject to conditions that prevent the approved development from proceeding in accordance with the Commission's approval.
- (2) In this Division, references to performing a function include references to the following —
- (a) refusing or failing to perform a function or otherwise not performing a function;
  - (b) being taken to perform a function;
  - (c) being taken to refuse or fail to perform a function or otherwise not to perform a function.
- (3) A notification or application to the Minister under section 281 or 282 must be made in the manner and form required by the Minister and, without limitation, include any documents or information required by the Minister.
- (4) The Minister can give a direction under section 281 or 282 only with the agreement of the Premier.
- (5) The performance of a function by a person or body (the *decision-maker*) in compliance with a direction given to the decision-maker under section 281 or 282 has effect, and is valid, for all purposes.

- (6) Subsection (5) applies even if, apart from this Division, the decision-maker could not have performed the function as required by the direction.
- (7) Without limiting subsections (5) and (6), a decision, or other act or omission, of a person or body is not unlawful or invalid just because the decision-maker could not, apart from this Division, have performed the function as required by the direction.
- (8) This Division does not apply to the performance, or proposed performance, of a function under section 279 or Division 4.

**281. Decision-maker proposing to perform function in conflict with approval**

- (1) This section applies if —
  - (a) the Commission grants approval for development under section 274; and
  - (b) a person or body (the *decision-maker*) proposes to perform a function under a legal instrument; and
  - (c) the performance of the function as proposed would conflict with the approval.
- (2) The decision-maker must not perform the function as proposed unless —
  - (a) the decision-maker has notified the Minister of the proposed performance of the function and the conflict; and
  - (b) either —
    - (i) the decision-maker performs the function in compliance with a direction given to the decision-maker under this section; or



- (ii) the Minister has notified the decision-maker under subsection (8).
- (3) If the Minister is notified under subsection (2)(a), the Minister may give a direction under this section if the Minister considers —
  - (a) that —
    - (i) the approved development is significant development; or
    - (ii) the conflict raises issues of State or regional importance;
  - and
  - (b) that it is appropriate to resolve the conflict.
- (4) A direction under this section is a direction to the decision-maker to do 1 or more of the following for the purpose of resolving the conflict —
  - (a) not perform the function as proposed;
  - (b) perform the function in accordance with the direction;
  - (c) reconsider the performance of the function in accordance with the direction and give effect to the outcome of the reconsideration;
  - (d) take any steps specified in the direction for giving effect to the direction.
- (5) The direction may specify a period within which anything required to be done under the direction must be done.
- (6) The decision-maker must comply with the direction —
  - (a) even if that involves doing something, or omitting to do something, that, apart from this subsection, the decision-maker could not do, or

could not omit to do, under any legal instrument; and

- (b) without limiting paragraph (a), despite any time limit that would, apart from this subsection, apply under any legal instrument in relation to anything to which the direction relates.
- (7) The Minister, within 14 days after the day on which the direction is given, must cause a copy of it to be published in the *Gazette* and, as soon as is practicable, must cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.
- (8) If the Minister decides not to give a direction under this section, the Minister must notify the decision-maker of the Minister's decision.

**282. Owner of land or other prescribed person may apply for direction if performance of function conflicts with approval**

- (1) This section applies if —
  - (a) the Commission grants approval for development under section 274; and
  - (b) a person or body (the *decision-maker*) performs a function under a legal instrument; and
  - (c) the performance of the function has not been the subject of a notification or direction under section 281; and
  - (d) the performance of the function conflicts with the approval.
- (2) An owner of land in respect of which the approval is granted, or a person who is of a class or kind prescribed by Part 17 regulations for the purposes of

this subsection, may apply to the Minister for a direction under this section to resolve the conflict.

- (3) If an application is made under subsection (2), the Minister may give a direction under this section if the Minister considers —
  - (a) that —
    - (i) the approved development is significant development; or
    - (ii) the conflict raises issues of State or regional importance;
  - and
  - (b) that it is appropriate to resolve the conflict.
- (4) A direction under this section is a direction to the decision-maker to do 1 or more of the following for the purpose of resolving the conflict —
  - (a) cancel the performance of the function;
  - (b) perform the function again but in accordance with the direction;
  - (c) reconsider the performance of the function in accordance with the direction and give effect to the outcome of the reconsideration;
  - (d) take any steps specified in the direction for giving effect to the direction.
- (5) The direction may specify a period within which anything required to be done under the direction must be done.
- (6) The decision-maker must comply with the direction —
  - (a) even if that involves doing something, or omitting to do something, that, apart from this subsection, the decision-maker could not do, or

could not omit to do, under any legal instrument; and

- (b) without limiting paragraph (a), despite any time limit that would, apart from this subsection, apply under any legal instrument in relation to anything to which the direction relates.
- (7) The Minister, within 14 days after the day on which the direction is given, must cause a copy of it to be published in the *Gazette* and, as soon as is practicable, must cause a copy of it to be laid before each House of Parliament or dealt with under section 268A.

#### **Division 4 — Oversight of Commission**

##### **283. State Administrative Tribunal**

- (1) This section applies if the Commission determines a development application under section 274 or an application under section 279.
- (2) The applicant may apply to the State Administrative Tribunal (the ***Tribunal***) for a review of the Commission's decision to make the determination.
- (3) For the purposes of the Tribunal's jurisdiction under this section, the member, or at least 1 of the members, who constitute the Tribunal must be a judicial member (as defined in the *State Administrative Tribunal Act 2004* section 3(1)).
- (4) For a review under this section, the Commission is the decision-maker for the purposes of the *State Administrative Tribunal Act 2004*.
- (5) In conducting a review under this section, the Tribunal must give the Minister a reasonable opportunity to make submissions to the Tribunal on any matter relating to the review.

- (6) Sections 242 and 243 apply to a review under this section as they apply to a review in accordance with Part 14.
- (7) Except as set out in this section, the Tribunal has no jurisdiction in relation to anything done under this Part or any Part 17 regulations, including (without limitation) anything done in compliance with a direction under section 281 or 282.

**284. Governor may amend or cancel approval granted by Commission under s. 274**

- (1) This section applies if the Commission grants approval for development under section 274.
- (2) The Governor may, by order, do any of the following —
  - (a) amend or remove any of the conditions imposed on the approval;
  - (b) impose new conditions on the approval;
  - (c) amend any part or aspect of the approved development;
  - (d) amend the approval in any other way;
  - (e) cancel the approval.
- (3) An amendment of the kind referred to in subsection (2)(c) —
  - (a) cannot substantially change the approved development; and
  - (b) in the case of approval granted on a development application made under section 271 — cannot result in the approved development no longer being significant development.

- (4) In subsection (2), references to the conditions imposed on the approval, the approved development or the approval are to the conditions, development or approval as amended from time to time under section 279 or by an order under this section.
- (5) An order under this section may include directions for giving effect to the order.
- (6) The Commission cannot do anything under section 279 that would override, or otherwise be inconsistent with, the provisions of an order under this section.
- (7) An order under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (8) The *Interpretation Act 1984* section 42 applies to an order under this section as if it were a regulation.

### **Division 5 — Final matters**

#### **285. Fees**

- (1) The Minister may, by notice published in the *Gazette* —
  - (a) set fees to be charged in respect of any matter under, or relating to, this Part or any Part 17 regulations; and
  - (b) make provision for determining the persons by whom the fees are payable.
- (2) Despite section 274(3), the Commission is not required to consider or determine a development application, or to do any other thing under this Part or Part 17 regulations, unless any fee relating to the application or other thing has been paid.
- (3) Section 20 does not apply in relation to this Part.

**286. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Part.
- (2) Without limiting subsection (1), Part 17 regulations may prescribe powers, duties, procedures or any other matters for the purposes of, or in relation to —
  - (a) applications, notifications, referrals or directions under this Part; or
  - (b) the consideration or determination of applications or notifications under this Part.

**Part 18 — Extension of time for endorsement of  
diagram or plan of survey due to COVID-19  
pandemic**

**287. Term used: COVID-19 emergency start date**

In this Part —

*COVID-19 emergency start date* means 16 March 2020, being the day on which the state of emergency declaration under the *Emergency Management Act 2005* section 56 in relation to the COVID-19 pandemic came into effect.

**288. Extension of time for endorsement of diagram or plan of survey of approved subdivision**

- (1) This section applies to —
  - (a) a plan of subdivision approved by the Commission under section 143(1)(a) or (c) before the COVID-19 emergency start date if, immediately before that date —

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- (i) the Commission had not endorsed its approval on the diagram or plan of survey of the subdivision under section 145(4); and
    - (ii) the approval of the plan of subdivision had not ceased to have effect under section 145(7);
  - or
  - (b) a plan of subdivision approved by the Commission under section 143(1)(a) or (c) on or after the COVID-19 emergency start date if the application for the Commission's approval of the plan of subdivision was made before that date.
- (2) Despite any provision of Part 10 Division 2, the period within which the person to whom the approval of the plan of subdivision was given under section 143(1)(a) or (c) must submit, and request approval of, a diagram or plan of survey of the subdivision under section 145(1) is, and is taken always to have been —
- (a) in relation to a plan of subdivision creating more than 5 lots — the period of 6 years beginning on the day on which the Commission approved the plan of subdivision; and
  - (b) in any other case — the period of 5 years beginning on the day on which the Commission approved the plan of subdivision.
- (3) The Commission cannot, after the coming into operation of the *Planning and Development Amendment Act 2020* Part 12 Division 1, grant an extension under section 145A in relation to the plan of subdivision.



### **Part 3 — Development assessment panels**

**5. Act amended**

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

**6. Section 4 amended**

- (1) In section 4(1) delete the definitions of:

*JDAP*

*LDAP*

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

*district DAP* has the meaning given in  
section 171C(1)(a);

*special matters DAP* has the meaning given in  
section 171C(1)(b);

- (3) In section 4(1) in the definition of *Development Assessment Panel* or *DAP* delete “JDAP or LDAP;” and insert:

district DAP or special matters DAP;

- (4) In section 4(1) in the definition of *responsible authority* delete “171A(2)(a),” and insert:

171A(2)(a) or (ba),

**7. Section 171A amended**

- (1) In section 171A(1) in the definition of *prescribed development application* paragraph (b) delete “subsection (2)(ba)(i);” and insert:

subsection (2)(ba)(i).

- (2) In section 171A(2):

(a) after paragraph (ba) insert:

- (bb) making provision for determining which DAP is to determine a prescribed development application of a particular class or kind;

(b) in paragraph (h) delete “application.” and insert:

application;

(c) after paragraph (h) insert:

(i) providing for a DAP to give advice to —

- (i) a local government or the Commission in relation to development applications to be determined by the local government or Commission; or

(ii) the Minister in relation to development applications;

(j) providing for the circumstances in which, and the classes or kinds of development application for which, advice is required or permitted to be given by a DAP as referred to in paragraph (i);

- (k) providing for the procedures to be followed by, and powers of, a DAP when preparing and giving advice referred to in paragraph (i);
- (l) providing for the duties and responsibilities of local governments and the Commission in relation to advice referred to in paragraph (i).

**8. Section 171C amended**

(1) Delete section 171C(1) and insert:

- (1) The Minister may, by order published in the *Gazette*, establish —
  - (a) a Development Assessment Panel (a *district DAP*) for 1 or more districts specified in the order; or
  - (b) a Development Assessment Panel (a *special matters DAP*) for 1 or more special matters specified in the order.

(1A) In subsection (1) —

*special matter* means —

- (a) a project, plan or programme for development that the Minister considers to be of State or regional importance; or
- (b) an area, or a class or kind of area, the development of which the Minister considers to be of State or regional importance.

(2) Delete section 171C(3) and (4) and insert:

- (3) A district DAP cannot be established for a district for which another district DAP is established.

- (3) In section 171C(5) delete “JDAP” and insert:

district DAP

- (4) Delete section 171C(7).

**9. Section 171G inserted**

At the end of Part 11A insert:

**171G. Regulations about transitional matters**

The Governor may make regulations making provision for any transitional issues arising because of the repeal or amendment of any regulations made under this Part or the revocation or amendment of an order made under section 171C.

## Part 4 — Public works

### 10. Act amended

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

### 11. Section 4 amended

In section 4(1) delete the definition of *public work* and insert:

*public work* includes the following —

- (a) any public work as defined in the *Public Works Act 1902*;
- (b) development in any area to which a region planning scheme applies if the development is of a class or kind designated as public work under the scheme;
- (c) development in any area to which a local planning scheme applies if the development is of a class or kind designated as public work under the scheme;

### 12. Section 6 amended

(1) In section 6(1):

- (a) delete “section 5(2) and (3) and subsections (2) and (3) of this section,” and insert:

subsections (2) to (4),

- (b) delete “the Government of the State,” and insert:

a public authority,

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- (2) In section 6(2):
  - (a) after “having” insert:

due
  - (b) in paragraph (b) delete “time.” and insert:

time; and
  - (c) after paragraph (b) insert:
    - (c) any advice provided by the responsible authority in the course of the consultation required under subsection (3) in respect of the exercise of the right.
  
- (3) Delete section 6(3) and insert:
  - (3) At the time when a proposal for any public work, or for the taking of land for a public work, is being formulated, the responsible authority is to be consulted as to whether the undertaking, construction or provision of, or the taking of land for, the public work will be consistent with the matters referred to in subsection (2)(a) and (b).
  - (4) This section does not affect —
    - (a) the application of section 5(2) and (3); or
    - (b) the application of a region planning scheme or an improvement scheme in relation to anything done, or proposed to be done, by a public authority that is not an agency of the Crown.

Note: The heading to amended section 6 is to read:

**Act does not interfere with public works**

**13. Schedule 7 amended**

After Schedule 7 clause 5(4) insert:

- (5) The designation of classes or kinds of development as public work.

## **Part 5 — Acquisition of land**

### **14. Act amended**

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

### **15. Section 190 amended**

(1) In section 190 delete “The” and insert:

(1) The

(2) At the end of section 190 insert:

(2) If the land to be purchased under subsection (1) (the *relevant land*) forms only part of a lot, the responsible authority may also purchase under subsection (1) the rest of the lot, or any part of the rest of the lot, for purposes related to the purchase of the relevant land.

(3) Subsection (2) applies whether or not the rest of the lot, or the part of the rest of the lot, is comprised in the planning scheme and whether or not its purchase is for the purpose of the scheme.

Note: The heading to amended section 190 is to read:

**Responsible authority may purchase land for planning scheme**

### **16. Section 191 amended**

(1) In section 191(1) delete “of the responsible authority.” and insert:

of the responsible authority, as if the land were required for a public work (as defined in section 151(1) of that Act).



- (2) After section 191(1) insert:
- (1A) If the land to be taken under subsection (1) (the *relevant land*) forms only part of a lot, the responsible authority may also take under subsection (1) the rest of the lot, or any part of the rest of the lot, for purposes related to the taking of the relevant land.
- (1B) Subsection (1A) applies whether or not the rest of the lot, or the part of the rest of the lot, is comprised in the planning scheme and whether or not the taking of the rest of the lot, or the part of the rest of the lot, is for the purpose of the scheme.

Note: The heading to amended section 191 is to read:

**Compulsory acquisition of land in scheme area**

**17. Section 195 amended**

- (1) In section 195(2) delete “1997, as modified by this section.” and insert:

*1997* as if the land were required for a public work (as defined in section 151(1) of that Act), subject to subsection (3).

- (2) Delete section 195(3) and insert:
- (3) Sections 191(3) and 192 apply with any necessary modifications to the taking of land under subsection (2) as they apply to the taking of land under section 191.
- (3A) For the purposes of subsection (3), in section 192(1)(a), the reference to the relevant planning scheme is to be read as a reference to the improvement plan.

Note: The heading to amended section 195 is to read:

**Commission's powers to acquire land in improvement plan**

**18. Section 196 amended**

After section 196(3) insert:

- (4) In relation to a part of a lot purchased or taken by the Commission in accordance with section 190(2) or 191(1A), in subsection (1), the reference to the purposes of the relevant region planning scheme is a reference to the purposes for which the part of the lot was purchased or taken.

**19. Section 197A inserted**

At the end of Part 11 Division 4 insert:

**197A. Planning control areas**

- (1) In section 187(1), the reference to the provisions of section 174(1) includes those provisions as applied by section 186(2).
- (2) The Commission may purchase any of the following land —
  - (a) land within a proposed planning control area;
  - (b) land that would be brought within a planning control area as a result of a proposed change to the area;
  - (c) land within a planning control area.
- (3) The Commission may compulsorily take any land within a planning control area under and subject to the *Land Administration Act 1997* Part 9 as if the land

- were required for a public work (as defined in section 151(1) of that Act).
- (4) Sections 191(3) and 192 apply with any necessary modifications to the taking of land under subsection (3) as they apply to the taking of land under section 191.
  - (5) For the purposes of subsection (4), in section 192(1)(a), the reference to the relevant planning scheme is to be read as a reference to the declaration of the planning control area under section 112.
  - (6) The Commission —
    - (a) must hold any land acquired by the Commission under this section for the purpose, or for any 1 or more of the purposes, for which the land is required as referred to in section 112(1); and
    - (b) may dispose of or alienate the land —
      - (i) for that purpose or 1 or more of those purposes; or
      - (ii) if the land is no longer required for that purpose or any of those purposes.
  - (7) Land acquired under subsection (3) can be disposed of or alienated under subsection (6)(b)(ii) only with the Governor's consent.
  - (8) Section 196(3) applies to the power to dispose of or alienate land conferred by subsection (6)(b) as it applies to a power conferred by section 196.
  - (9) In section 197, references to the purposes of a region planning scheme include the purposes, or any 1 or more of the purposes, for which land within a planning control area is required as referred to in section 112(1).

## **Part 6 — Matters relating to preparation and approval of planning schemes**

### **Division 1 — *Planning and Development Act 2005* amended**

**20. Act amended**

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

**21. Section 17 amended**

In section 17(7):

- (a) delete “43(5)(b),”;
- (b) after “52(2),” insert:

62A(1),

**22. Part 4 Division 2 heading replaced**

Delete the heading to Part 4 Division 2 and insert:

### **Division 2 — Relevant considerations in preparation or amendment of region planning scheme or amendment and requirement to advertise**

**23. Section 38 replaced**

Delete section 38 and insert:

**38. Referral of proposed scheme or amendment to EPA**

- (1) As soon as practicable after preparing a proposed region planning scheme or a proposed amendment to a region planning scheme, the Commission must refer

the proposed scheme or amendment to the EPA by giving to the EPA —

- (a) a copy of the proposed scheme or amendment; and
  - (b) any other written information about the proposed scheme or amendment that is necessary to enable the EPA to comply with the EP Act section 48A in relation to the proposed scheme or amendment.
- (2) Subsection (1) applies to a proposed amendment to a region planning scheme whether or not the amendment constitutes a substantial alteration to the scheme.
- (3) Despite subsections (1) and (2), a proposed region planning scheme or amendment to a region planning scheme of a class prescribed by regulations under the EP Act section 48AAA(2) is not required to be referred to the EPA.

**24. Section 39 amended**

- (1) In section 39(2) delete “amendment to a region planning scheme,” and insert:

amendment to a region planning scheme referred to the EPA under section 38,

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- (2) In section 39(3) delete “submit a scheme or an amendment referred to in subsection (2) to the Minister under section 42 for consent to public submissions being sought, or act in relation to that scheme under section 58, as the case requires,” and insert:

advertise the proposed region planning scheme or amendment under section 43

Note: The heading to amended section 39 is to read:

**Environmental review of proposed scheme or amendment**

**25. Section 40 amended**

In section 40(1) delete “submitting to the Minister under section 42” and insert:

advertising under section 43

Note: The heading to amended section 40 is to read:

**Consultation with Swan Valley Planning Committee before advertisement of proposed scheme or amendment**

**26. Part 4 Division 3 heading deleted**

Delete the heading to Part 4 Division 3.

**27. Sections 41 to 44 replaced**

Delete sections 41 to 44 and insert:

**43. Advertising proposed scheme or amendment**

After preparing a proposed region planning scheme or a proposed amendment to a region planning scheme, and complying with sections 38 and 39 (if applicable) in relation to the proposed scheme or amendment, the

Commission must, in accordance with the regulations —

- (a) advertise the proposed scheme or amendment for public inspection; and
- (b) consider public submissions made on the proposed scheme or amendment.

**28. Section 45 amended**

In section 45(2):

- (a) delete “the proposed scheme or proposed amendment should” and insert:

a proposed scheme or proposed amendment referred to the EPA under section 38 should

- (b) delete paragraph (a) and insert:

- (a) as soon as practicable, but in any event within 7 days after the expiry of the period during which the proposed scheme or proposed amendment is advertised under section 43, transmit to the EPA a copy of each submission —

- (i) made during that period; and
  - (ii) relating wholly or in part to environmental issues raised by the proposed scheme or proposed amendment;

and

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(c) in paragraph (b) delete “section 44(1),” and insert:

paragraph (a),

**29. Section 46 deleted**

Delete section 46.

**30. Section 47 amended**

Before section 47(1) insert:

(1A) This section does not apply to an amendment of a region planning scheme to be submitted and approved under Division 4.

Note: The heading to amended section 47 is to read:

**Consultation with Swan Valley Planning Committee after public submissions**

**31. Part 4 Division 3 heading inserted**

After section 47 insert:

**Division 3 — Submission and approval of region  
planning schemes or amendments other than minor  
amendments**



**32. Section 47A inserted**

Before section 48 insert:

**47A. Region planning scheme or non-minor amendment to be submitted and approved under this Division**

A proposed region planning scheme, or a proposed amendment to a region planning scheme (other than a proposed amendment to be submitted and approved under Division 4), must be submitted and approved in accordance with this Division.

**33. Sections 48 and 49 replaced**

Delete sections 48 and 49 and insert:

**48. Proposed scheme or amendment and public submissions to be submitted to Minister**

After complying with the applicable requirements of Division 2 in relation to a proposed region planning scheme or a proposed amendment to a region planning scheme, the Commission, unless the proposed scheme or amendment has been withdrawn under section 62A, is to submit to the Minister —

- (a) the proposed scheme or amendment, with the modifications, if any, the Commission thinks fit to make, including as a result of public submissions made under regulations made for the purposes of section 43; and
- (b) a copy of each of those submissions; and
- (c) a report by the Commission on those submissions.

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**Part 6** Matters relating to preparation and approval of planning schemes

**Division 1** Planning and Development Act 2005 amended

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**34. Section 51 amended**

In section 51(1) delete “deposit” and insert:

advertise

**35. Section 52 amended**

(1) In section 52(2) delete “sections 46 and 48.” and insert:

the regulations.

(2) Delete section 52(3).

**36. Section 53 amended**

In section 53(1) delete “49 or 52(3),” and insert:

62A,

**37. Part 4 Division 4 heading replaced**

Delete the heading to Part 4 Division 4 and insert:

**Division 4 — Submission and approval of minor amendments to region planning schemes**

**38. Section 56A inserted**

At the beginning of Part 4 Division 4 insert:

**56A. Term used: minor region planning scheme amendment**

In this Division —

*minor region planning scheme amendment* means an amendment to a region planning scheme that does not, in the opinion of the Commission, constitute a substantial alteration to the region planning scheme.

**39. Section 57 amended**

In section 57(1) delete “If a proposed amendment does not, in the opinion of the Commission, constitute a substantial alteration to a region planning scheme, that amendment —” and insert:

A proposed minor region planning scheme amendment —

Note: The heading to amended section 57 is to read:

**Proposed minor amendment may be submitted and approved under this Division**

**40. Sections 58 to 60 deleted**

Delete sections 58 to 60.

**41. Section 61 amended**

In section 61 delete “proposed amendment to a region planning scheme referred to the EPA under section 60” and insert:

proposed minor region planning scheme amendment referred to the EPA under section 38

**42. Section 62 amended**

(1) Delete section 62(1) and insert:

(1A) After complying with the applicable requirements of Division 2 in relation to a proposed minor region planning scheme amendment, the Commission must, unless the proposed amendment has been withdrawn under section 62A, submit to the Minister —

- (a) the proposed amendment; and
- (b) a report and recommendation on the proposed amendment.

(1) The Minister may, if a proposed minor region planning scheme amendment is submitted under this section —

- (a) approve the amendment; or
- (b) require the Commission to modify the amendment in such manner as the Minister specifies before the amendment is resubmitted for the Minister’s approval under this subsection; or
- (c) refuse to approve the amendment.

- (2) In section 62(2)(a) delete “that amendment or that amendment as modified under subsection (1), as the case requires,” and insert:

that amendment,

- (3) In section 62(3) delete “or the amendment as modified under subsection (1), as the case requires,”.

**43. Part 4 Division 4A inserted**

After Part 4 Division 4 insert:

**Division 4A — Withdrawal of region planning scheme or amendment**

**62A. Minister may withdraw or direct withdrawal of proposed scheme or amendment**

- (1) The Minister may, if the Minister considers it appropriate, withdraw, or direct the Commission to withdraw, a proposed region planning scheme or proposed amendment to a region planning scheme at any time before the proposed scheme or amendment is presented to the Governor under section 53(1) or submitted to the Minister under section 62.
- (2) The Minister must cause notice of the withdrawal of a proposed region planning scheme or amendment under subsection (1) to be published in the *Gazette*.

**44. Section 76 amended**

(1) Delete section 76(1) and insert:

(1A) Subsection (1) applies if the Minister is satisfied on any representation that a local government —

- (a) has failed to prepare a local planning scheme, or an amendment to a local planning scheme, where one ought to be prepared; or
- (b) has failed to adopt a local planning scheme, or an amendment to a local planning scheme, where one ought to be adopted; or
- (c) has failed to take a requisite step for getting approval for a local planning scheme, or an amendment to a local planning scheme, that has been prepared or adopted by the local government where that step ought to be taken; or
- (d) without limiting paragraph (c), has failed to give effect to any decision of the Minister under section 87(2)(b).

(1) The Minister may order the local government, within such time as is specified in the order, as the case requires —

- (a) to prepare and submit to the Minister a local planning scheme or an amendment to a local planning scheme; or
- (b) to adopt and submit to the Minister a local planning scheme or an amendment to a local planning scheme; or
- (c) to take the requisite step referred to in subsection (1A)(c); or

(d) to give effect to the decision referred to in subsection (1A)(d).

(2) In section 76(2) delete “(1)” and insert:

(1A)

**45. Section 81 replaced**

Delete section 81 and insert:

**81. Referral of proposed scheme or amendment to EPA**

- (1) As soon as practicable after preparing, or resolving to adopt, a proposed local planning scheme or a proposed amendment to a local planning scheme, a local government must refer the proposed scheme or amendment to the EPA by giving to the EPA —
- (a) a copy of the proposed scheme or amendment; and
  - (b) any other written information about the proposed scheme or amendment that is necessary to enable the EPA to comply with the EP Act section 48A in relation to the proposed scheme or amendment.
- (2) Despite subsection (1), a proposed local planning scheme or amendment to a local planning scheme of a class prescribed by regulations under the EP Act section 48AAA(2) is not required to be referred to the EPA.

**46. Section 82 amended**

In section 82(1) delete “amendment to a local planning scheme,” and insert:

amendment to a local planning scheme referred to the EPA under section 81,

**47. Section 84 replaced**

Delete section 84 and insert:

**83A. Proposed scheme or amendment to be submitted to Minister for approval to advertise**

- (1) After preparing, or resolving to adopt, a proposed local planning scheme or a proposed amendment to a local planning scheme, and complying with sections 81 and 82 (if applicable) in relation to the proposed scheme or amendment, a local government must submit the proposed scheme or amendment to the Minister.
- (2) The Minister may —
  - (a) approve the proposed scheme or amendment for advertising under section 84; or
  - (b) require the local government to modify the proposed scheme or amendment in such manner as the Minister specifies and to resubmit the proposed scheme or amendment to the Minister under subsection (1); or
  - (c) refuse approval for the proposed scheme or amendment to be advertised under section 84.
- (3) A requirement under subsection (2)(b) may include a requirement that sections 81 and 82 (if applicable) be



complied with again in relation to the modified scheme or amendment.

- (4) If approval is refused under subsection (2)(c), the local government cannot proceed with the proposed scheme or amendment.

**84. Advertising proposed scheme or amendment**

If under section 83A(2)(a) the Minister approves a proposed local planning scheme, or a proposed amendment to a local planning scheme, for advertising under this section, the local government must, in accordance with the regulations —

- (a) advertise the proposed scheme or amendment for public inspection; and
- (b) consider public submissions on the proposed scheme or amendment.

**48. Section 85 amended**

In section 85(1) before “should” insert:

referred to the EPA under section 81

**49. Section 87 amended**

In section 87(1) delete “sections 85 and 86,” and insert:

sections 85 and 86 (if applicable),

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**Division 1** Planning and Development Act 2005 amended

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**50. Section 124 amended**

In section 124(4) delete “scheme as set out in the statement deposited under section 43(1).” and insert:

scheme.

**51. Section 125 amended**

In section 125(3):

(a) delete “notification” and insert:

advertisement

(b) delete “section 43 or 58.” and insert:

regulations made for the purposes of section 43.

**52. Section 258A inserted**

After section 258 insert:

**258A. Regulations as to procedure and costs for region planning schemes**

(1) The Governor may make regulations for regulating the procedure to be observed —

(a) with respect to the preparation of a region planning scheme; and

(b) with respect to obtaining the approval of the Governor to a region planning scheme so prepared; and

- (c) with respect to the review, amendment or repeal of a region planning scheme; and
  - (d) with respect to any inquiries, reports, notices, or other matters required in connection with the preparation or approval of a region planning scheme, or preliminary to the preparation or approval of the scheme.
- (2) Section 258(2) and (3) apply to regulations made under subsection (1) as if a region planning scheme were a local planning scheme.

**53. Section 263 amended**

In section 263(2)(eb) after “enforcement of” insert:

region planning schemes or

**Division 2 — *Environmental Protection Act 1986* amended**

**54. Act amended**

This Division amends the *Environmental Protection Act 1986*.

**55. Section 3 amended**

- (1) In section 3(1) in the definition of *assessed scheme* before paragraph (b)(i) insert:
- (ia) of a class prescribed by regulations made under section 48AAA(2); or
- (2) In section 3(1) in the definition of *period of public review* paragraph (c) delete “period referred to in section 44(1) or

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58(1)(b), as the case requires, of the *Planning and Development Act 2005*; or” and insert:

period of advertisement for public inspection prescribed for the purposes of the *Planning and Development Act 2005* section 43; or

**56. Section 48AAA inserted**

At the beginning of Part IV Division 3 insert:

**48AAA. Certain schemes not required to be assessed**

- (1) In this section —  
*relevant scheme* means a scheme of a kind referred to in section 3(1) the definition of *scheme* paragraph (f), (g) or (i).
- (2) The Governor may, on the recommendation of the Authority, make regulations prescribing classes of relevant schemes that are not required to be assessed under this Division.
- (3) The Authority must not make a recommendation under subsection (2) unless the Authority is satisfied that the classes of relevant schemes to be prescribed will not have a significant effect on the environment.

**57. Section 48C amended**

In section 48C(7) in the definition of *public review* paragraph (c) delete “sections 43, 44, 46 and 48, or section 58, as the case requires, of the *Planning and Development Act 2005*; or” and insert:

the *Planning and Development Act 2005* section 43; or

## **Part 7 — State planning policies and planning codes**

### **Division 1 — *Planning and Development Act 2005* amended**

#### **58. Act amended**

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

#### **59. Section 4 amended**

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

*planning code* means a planning code approved by the Minister under regulations made under section 32B(1);

- (2) In section 4(1) in the definition of *planning scheme* paragraph (a)(ii) delete “State planning policy” and insert:

planning code

- (3) In section 4(1) in the definition of *State planning policy* delete “approved under section 29;” and insert:

approved by the Governor or Minister, as the case requires, under regulations made under section 28(1);

#### **60. Section 14 amended**

After section 14(g) insert:

- (ga) to prepare and amend planning codes under Part 3A; and

**61. Section 17 amended**

In section 17(7) delete “28(4)(b), 31(1), 31(2),” and insert:

32A(1),

**62. Section 26 amended**

(1) In section 26(1) delete “approval” and insert:

agreement

(2) In section 26(2) delete “governments.” and insert:

governments and public authorities.

Note: The heading to amended section 26 is to read:

**Preparation and content of State planning policy**

**63. Section 27 amended**

In section 27:

(a) in paragraph (g) delete “authorities,” and insert:

authorities; and

(b) after paragraph (g) insert:

(h) risks associated with natural hazards and other hazards,

**64. Sections 28 to 32 replaced**

Delete sections 28 to 32 and insert:

**28. Process for preparation and approval of State planning policy**

- (1) The Governor may make regulations prescribing any matter relating to the preparation, submission, approval, amendment or repeal of State planning policies.
- (2) Without limiting subsection (1), regulations under that subsection may provide for the following —
  - (a) the form and content of a proposed State planning policy or amendment to a State planning policy (*proposed State planning policy or amendment*);
  - (b) a proposed State planning policy or amendment to be approved by —
    - (i) in the case of a proposed State planning policy or amendment to which subparagraph (ii) does not apply — the Governor; and
    - (ii) in the case of a proposed amendment to a State planning policy that the Commission considers does not constitute a substantial alteration — the Minister;
  - (c) requirements for consultation with any person or body in relation to a proposed State planning policy or amendment;
  - (d) requirements for advertisement for public inspection and public submissions in relation to



- a proposed State planning policy or amendment;
  - (e) a process by which the Minister may require the Commission to make modifications to a proposed State planning policy or amendment.
- (3) Regulations made under subsection (1) —
- (a) may provide that the Commission may refer a proposed State planning policy or amendment to the EPA; and
  - (b) must, in relation to a proposed State planning policy or amendment that is referred to the EPA, make provision for —
    - (i) matters relating to the process under the EP Act Part IV; and
    - (ii) advertisement and submissions as referred to in subsection (2)(d).

**29. Persons and bodies performing functions to have due regard to State planning policies**

A person or body performing a function under this Act must have due regard to any State planning policy to the extent that the policy is relevant to the function.

**65. Part 3A inserted**

Before Part 4 insert:

**Part 3A — Planning codes**

**32A. Planning codes**

- (1) The Commission may, with the agreement or on the direction of the Minister, prepare planning codes that

make provision for any matter that may be the subject of a local planning scheme.

- (2) The purpose of a planning code is to set out, in relation to any matter referred to in subsection (1), provisions that may be incorporated into a local planning scheme or improvement scheme.

**32B. Process for preparation and approval of planning code or amendment**

- (1) The Governor may make regulations prescribing any matter relating to the preparation, submission, approval by the Minister, amendment or repeal of planning codes.
- (2) Without limiting subsection (1), regulations made under that subsection may provide for the following —
  - (a) matters to be taken into account in preparing a proposed planning code or amendment to a planning code (*proposed planning code or amendment*);
  - (b) the form and content of a proposed planning code or amendment;
  - (c) requirements for consultation with any person or body in relation to a proposed planning code or amendment;
  - (d) a process by which the Minister may require the Commission to make modifications to a proposed planning code or amendment.
- (3) Regulations made under subsection (1) must provide —
  - (a) for requirements for advertisement for public inspection and public submissions in relation to a proposed planning code or amendment; and

- (b) that the Commission is to refer a proposed planning code or amendment (other than a proposed planning code or amendment of a class prescribed by regulations under the EP Act section 48AAB(1)) to the EPA; and
- (c) for matters relating to the process under the EP Act Part IV in relation to a proposed planning code or amendment referred to the EPA.

**32C. Effect of planning code**

- (1) A planning code approved by the Minister under regulations made under section 32B(1) is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (2) Despite subsection (1), a planning code has effect only to the extent that it is incorporated, with or without modifications —
  - (a) into a local planning scheme by a provision of the scheme under section 77(1)(b); or
  - (b) into an improvement scheme by a provision of the scheme under section 77(1)(b) (as that section applies under section 122B(1)).

**66. Section 77 amended**

- (1) In section 77(1)(b) delete “State planning policy,” and insert:  
  
planning code,

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**Part 7** State planning policies and planning codes

**Division 2** Environmental Protection Act 1986 amended

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- (2) In section 77(2):
- (a) in paragraph (a) delete “State planning policy, as from time to time amended, or any subsequent policy” and insert:
- planning code, as from time to time amended, or any subsequent planning code
- (b) in paragraph (b) delete “State planning policy” and insert:
- planning code
- (3) In section 77(3) delete “State planning policy, or subsequent policy” and insert:

planning code, or subsequent code

Note: The heading to amended section 77 is to read:

**Effect of State planning policies and planning codes on scheme**

**Division 2 — *Environmental Protection Act 1986* amended**

**67. Act amended**

This Division amends the *Environmental Protection Act 1986*.

**68. Section 3 amended**

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

***planning code*** means a planning code prepared under the *Planning and Development Act 2005* Part 3A;

***State planning policy*** means a State planning policy prepared under the *Planning and Development Act 2005* Part 3;

(2) In section 3(1) in the definition of ***final approval*** delete paragraph (e) and insert:

(e) a State planning policy, or an amendment to a State planning policy, to which regulations made under the *Planning and Development Act 2005* section 28(3)(a) apply, means an approval of the policy or amendment by the Governor or responsible Minister under regulations made under section 28(1) of that Act; or

(ea) a planning code or an amendment to a planning code, means an approval of the planning code or amendment by the responsible Minister under regulations made under the *Planning and Development Act 2005* section 32B(1); or

(3) In section 3(1) in the definition of ***period of public review*** delete paragraph (e) and insert:

(e) a State planning policy, or an amendment to a State planning policy, to which regulations made under the *Planning and Development Act 2005* section 28(3)(a) apply, means the period of advertisement for public inspection prescribed under section 28(3)(b)(ii) of that Act; or

- (ea) a planning code or an amendment to a planning code, means the period of advertisement for public inspection prescribed under the *Planning and Development Act 2005* section 32B(3)(a);  
or
  
- (4) In section 3(1) in the definition of **responsible authority** delete paragraph (a)(viii) and insert:
  - (viii) a State planning policy, or an amendment to a State planning policy, to which regulations made under the *Planning and Development Act 2005* section 28(3)(a) apply, means the Western Australian Planning Commission; or
  - (viiiia) a planning code or an amendment to a planning code, means the Western Australian Planning Commission; or
  
- (5) In section 3(1) in the definition of **scheme** delete paragraph (h) and insert:
  - (h) a State planning policy, or an amendment to a State planning policy, to which regulations made under the *Planning and Development Act 2005* section 28(3)(a) apply; or
  - (ha) a planning code or an amendment to a planning code; or

**69. Section 48AAB inserted**

Before section 48A (in Part IV Division 3) insert:

**48AAB. Certain planning codes not required to be assessed**

- (1) The Governor may, on the recommendation of the Authority, make regulations prescribing classes of planning codes, or classes of amendments to planning codes, that are not required to be assessed under this Division.
- (2) The Authority must not make a recommendation under subsection (1) unless the Authority is satisfied that the classes of planning codes or amendments to be prescribed will not have a significant effect on the environment.

**70. Section 48C amended**

In section 48C(7) in the definition of *public review* delete paragraph (e) and insert:

- (e) a State planning policy, or an amendment to a State planning policy, to which regulations made under the *Planning and Development Act 2005* section 28(3)(a) apply, means the procedure prescribed under section 28(3)(b)(ii) of that Act; or
- (ea) a planning code or an amendment to a planning code, means the procedure prescribed under the *Planning and Development Act 2005* section 32B(3)(a); or

**71. Section 51O amended**

In section 51O(1) in the definition of *planning instrument* paragraph (b) delete “policy approved under section 29 of the *Planning and Development Act 2005* and published in the *Gazette*; or” and insert:

policy approved under the *Planning and Development Act 2005* Part 3; or



## **Part 8 — Making of subsidiary legislation**

### **72. Act amended**

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

### **73. Part 15 Division 1 heading deleted**

Delete the heading to Part 15 Division 1.

### **74. Section 256 amended**

- (1) In section 256(1) delete “Minister may” and insert:

Governor may, on the recommendation of the Minister,

- (2) In section 256(2) delete “regulations under” and insert:

a recommendation under

Note: The heading to amended section 256 is to read:

**Regulations for content of local planning schemes**

### **75. Section 258 amended**

In section 258(1) delete “Minister may” and insert:

Governor may

Note: The heading to amended section 258 is to read:

**Regulations for procedure and costs for local planning schemes**

**76. Section 259 amended**

In section 259 delete “Minister may” and insert:

Governor may

Note: The heading to amended section 259 is to read:

**Regulations for environmental review expenses**

**77. Section 260 deleted**

Delete section 260.

**78. Part 15 Division 2 heading deleted**

Delete the heading to Part 15 Division 2.

**79. Section 263 amended**

- (1) In section 263(2) delete “Without limiting subsection (1), regulations made under that subsection” and insert:

Without limiting any other provision of this Act, regulations

- (2) In section 263(4) delete “Division 1, the regulation made under Division 1” and insert:

sections 256 to 259, the regulation made under sections 256 to 259

Note: The heading to amended section 263 is to read:

**Regulations: general**

**80. Part 15 Division 3 heading deleted**

Delete the heading to Part 15 Division 3.

## **Part 9 — Signatures and approvals for Crown or State land**

### **81. Act amended**

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

### **82. Section 267A amended**

- (1) In section 267A(1) delete the passage that begins with “may be given by —” and ends with “to do so.” and insert:

must be given by or on behalf of —

- (a) in relation to a managed reserve as defined in the *Land Administration Act 1997* section 3(1) — the management body, as defined in that section, of the reserve; or
- (b) in relation to a road — whichever of the following persons has the care, control and management of the road under a written law —
  - (i) the local government in whose district the road is situated;
  - (ii) the Commissioner of Main Roads;
  - (iii) the Minister as defined in the *Public Works Act 1902* section 2;

or

- (c) in relation to Crown land that is vested in a person or body under a written law other than the *Land Administration Act 1997* — that person or body; or
- (d) in relation to Crown land that is subject to a lease, other than land referred to in paragraph (a), (b) or (c) — the Minister as defined in the *Land Administration Act 1997*

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section 3(1) (the *Minister for Lands*) and the lessee; or

- (e) in relation to any other Crown land or freehold land in the name of the State — the Minister for Lands.

- (2) In section 267A(2) delete “the Minister for Lands to otherwise” and insert:

a Minister referred to in subsection (1) to

Note: The heading to amended section 267A is to read:

**Signatures and approvals for Crown and State land**

**83. Section 267 amended**

In section 267(1)(b) delete “or 267A(1)”.

## **Part 10 — Requirements to set aside land for open space or make payment in lieu**

**84. Act amended**

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

**85. Section 153 replaced**

Delete section 153 and insert:

**153. Setting aside land for open space or payment in lieu**

- (1) The Commission may under section 143(1)(c) impose either of the following conditions on the approval of a plan of subdivision of land —
  - (a) a requirement that a specified portion of the land be set aside and vested in the Crown for parks, recreation grounds or open spaces generally;
  - (b) a requirement that the owner of the land make a payment to the local government in whose district the land is situated of a sum that represents the value of a specified portion of the land in lieu of a requirement to set aside and vest in the Crown that portion of the land for parks, recreation grounds or open spaces generally.
- (2) The Commission must not impose a requirement referred to in subsection (1)(b) unless the local government in whose district the land is situated has been consulted.
- (3) The Commission must not impose a requirement referred to in subsection (1)(b) in respect of a plan of subdivision that creates fewer than 3 lots.

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- (4) If the Commission has imposed a condition referred to in subsection (1)(a) on an approval of a plan of subdivision, the Commission may, with the agreement of the local government in whose district the land is situated, consent to the owner of the land making a payment to the local government of a sum that represents the value of a portion of the land in lieu of setting aside that portion.
- (5) This section does not limit any other condition that the Commission may impose under section 143(1)(c).

**86. Section 154 amended**

In section 154(1) delete “account of the trust fund of the local government established under section 6.9 of the *Local Government Act 1995*.” and insert:

reserve account established and maintained under the *Local Government Act 1995* section 6.11 for the purposes set out in subsection (2)(a) to (d).

## **Part 11 — Community infrastructure**

### **87. Act amended**

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

### **88. Schedule 7 amended**

(1) After Schedule 7 clause 5(2) insert:

(2A) Community infrastructure, including community centres, libraries, schools and other educational facilities, child care centres (including outside school hours care services) and sporting facilities.

(2) After Schedule 7 clause 11(4) insert:

(5) The financial management of any expenses recovered as referred to in subclause (4).

Note: The heading to amended Schedule 7 clause 5 is to read:

**Roads, public works, community infrastructure, reservation of land, provision of facilities**

## **Part 12 — Endorsement of diagram or plan of survey of approved subdivision**

### **Division 1 — *Planning and Development Act 2005* amended**

**89. Act amended**

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

**90. Section 145 amended**

- (1) In section 145(1) delete “prescribed period —” and insert:  
  
period that applies under section 145A —
- (2) Delete section 145(2).
- (3) Delete section 145(4) and insert:
  - (4) Subject to subsection (6), the Commission must endorse its approval on the diagram or plan of survey if the Commission is satisfied that —
    - (a) the diagram or plan of survey is in accordance with the plan of subdivision approved by the Commission; and
    - (b) if that approval was given subject to conditions —
      - (i) the conditions (other than any conditions to which subparagraph (ii) applies) have been complied with; and
      - (ii) any conditions that cannot be complied with until a certificate of title is created or registered will be complied with at that time.



- (4A) In the case of a diagram or plan of survey submitted in relation to a stage of subdivision, the conditions to which subsection (4)(b) applies are the conditions imposed on the approval in relation to that stage of subdivision or that, in the opinion of the Commission, are relevant to that stage of subdivision or the subdivision as a whole.

**91. Section 145A inserted**

After section 145 insert:

**145A. Period for submission of diagram or plan of survey for approval by Commission**

- (1) Subject to any extension granted under subsection (2), the period within which a person to whom approval of a plan of subdivision was given must submit, and request approval of, a diagram or plan of survey of the subdivision under section 145(1) is —
- (a) in relation to a plan of subdivision creating more than 5 lots — the period of 4 years beginning on the day on which the Commission approved the plan of subdivision; and
  - (b) in any other case — the period of 3 years beginning on the day on which the Commission approved the plan of subdivision.
- (2) On the application of a person to whom approval of a plan of subdivision has been given, the Commission may, by written notice, grant an extension of 2 years to the period that would otherwise apply under subsection (1).
- (3) An application under subsection (2) must be made in the manner and form approved by the Commission.

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**Part 12** Endorsement of diagram or plan of survey of approved subdivision

**Division 1** Planning and Development Act 2005 amended

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- (4) The Commission must not grant an extension under subsection (2) unless the Commission is satisfied that —
  - (a) the applicant has done everything that is reasonably practicable to enable the applicant to submit, and request approval of, the diagram or plan of survey in accordance with section 145(1) within the period that would otherwise apply under subsection (1); and
  - (b) since the approval of the plan of subdivision was granted, there have been no significant changes to the requirements that apply under this Act to the area covered by the plan of subdivision.
- (5) The Commission must not grant more than 1 extension under this section in relation to a plan of subdivision.
- (6) The Commission must try to deal with an application under subsection (2) within the period of 30 days after the day on which the application is made or within such longer period after that day as may be agreed in writing between the Commission and the applicant.
- (7) If an extension is granted under subsection (2) after the expiry of the period that would otherwise have applied under subsection (1) (the *original period*), the approval of the plan of subdivision is taken not to have ceased to have effect under section 145(7) at the end of the original period.

**92. Section 251 amended**

After section 251(5) insert:

- (6) An applicant for an extension under section 145A(2) who is aggrieved by the Commission's decision to refuse to grant the extension may apply to the State Administrative Tribunal for a review, in accordance with this Part, of the decision of the Commission.

**93. Section 253 amended**

- (1) In section 253(1) in the definition of *decision period* after paragraph (b) insert:

- (ba) in the case of an application under section 145A(2), the period of 30 days specified in section 145A(6) or any longer period as may be agreed between the Commission and the applicant under section 145A(6); and

- (2) In section 253(2)(a) after "an application" insert:

under section 145A(2) or

Note: The heading to amended section 253 is to read:

**Failure of responsible authority to make decision within decision period**

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**Part 12** Endorsement of diagram or plan of survey of approved subdivision

**Division 2** Community Titles Act 2018 amended

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**Division 2 — *Community Titles Act 2018* amended**

**94. Act amended**

This Division amends the *Community Titles Act 2018*.

**95. Section 30 amended**

In section 30(1)(i) delete “section 145(2) of the Act is to be read as if the prescribed period were defined as” and insert:

section 145A(1) of the Act is to be read as if the period that applies under that section were

## **Part 13 — Improvement plans**

**96. Act amended**

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

**97. Section 119 amended**

(1) After section 119(2) insert:

(2A) A recommendation under subsection (1) may relate to land in 1 or more districts.

(2) Delete section 119(3B) and insert:

(3B) Before making a recommendation under subsection (1) in relation to any land, the Commission must consult with —

- (a) the local government for the district in which the land is situated; or
- (b) if the land is situated in more than 1 district — each of the local governments for those districts.

## Part 14 — Electronic planning maps

**98. Act amended**

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

**99. Sections 267B and 267C inserted**

After section 267A insert:

**267B. Electronic planning maps**

(1) In this section —

*minor modification*, in relation to spatial data,  
means —

- (a) for cadastral data produced by the Authority — a minor modification to that data made by the Authority to reflect updated survey information; or
- (b) for other spatial data produced by the Commission — the replacement of that data with cadastral data produced by the Authority to reflect updated survey information, where the effect of that replacement is minor;

*planning instrument* means —

- (a) a planning scheme; or
- (b) an interim development order; or
- (c) a declaration under section 112 in relation to a planning control area;

*planning markings*, in relation to a map, means the markings on the map that indicate different zones, reserves or other areas or boundaries relevant to planning requirements;

*spatial data* means cadastral data produced by the Authority or other spatial data produced by the Commission.

- (2) A map (the *original map*) that forms part of a planning instrument may be prepared by the Commission as an electronic map (the *electronic planning map*) in a format approved by the Commission.
- (3) The electronic planning map must —
  - (a) replicate the planning markings on the original map in a form defined by reference to spatial data; and
  - (b) include —
    - (i) any key or other information on the original map that is associated with the planning markings and is necessary to interpret the map; and
    - (ii) any other information required by the Commission.
- (4) The electronic planning map is not required to replicate the original map except to the extent required by subsection (3).
- (5) For the purposes of subsection (3)(a), the planning markings on the electronic planning map are taken to replicate the planning marks on the original map even if —
  - (a) 1 or more minor modifications to the spatial data by reference to which the planning markings are defined have occurred since the electronic planning map was first prepared; and
  - (b) the planning markings on the electronic planning map are defined by reference to the spatial data as modified by those modifications.

- (6) The Commission must make the electronic planning map available for public inspection on its website.
- (7) An electronic planning map that is prepared and made available in accordance with this section is taken to be the original map for the purposes of the planning instrument, this Act and any other written law.

**267C. Certified copies of electronic planning maps**

In any proceedings, a copy certified by the Commission of an electronic planning map prepared under section 267B, or part of such a map, is evidence of the contents of the electronic planning map or part of the map.



## **Part 15 — Minister's powers in relation to local governments**

**100. Act amended**

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

**101. Section 212 amended**

- (1) In section 212(1)(d) delete “section 258,” and insert:

this Act,

- (2) After section 212(7) insert:

- (8) The Minister must, as soon as is practicable after a notice is served on a local government under subsection (1) —

- (a) give a copy of the notice to the Commission;  
and
- (b) cause to be laid before each House of Parliament or dealt with under section 268A —
  - (i) a copy of the notice; and
  - (ii) a copy of the reasons for giving the notice.

**Part 16 — Purposes for which land may be required for planning control areas**

**102. Act amended**

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

**103. Schedule 6 amended**

In Schedule 6:

(a) delete item 5 and insert:

5. Highways, important regional roads and other roads that are necessary because of highways or important regional roads

(b) after item 19 insert:

20. Public transport

## Part 17 — Transitional provisions

### 104. Act amended

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

### 105. Part 19 inserted

After section 288 (as inserted by section 4 of this Act) insert:

## Part 19 — Transitional provisions for *Planning and Development Amendment Act 2020*

### 289. LDAP or JDAP continues as district DAP

(1) In this section —

*commencement day* means the day on which the *Planning and Development Amendment Act 2020* Part 3 comes into operation;

*JDAP* has the meaning given in section 4(1) as in force immediately before commencement day;

*LDAP* has the meaning given in section 4(1) as in force immediately before commencement day.

- (2) If, immediately before commencement day, there is an LDAP for a district, the LDAP is taken, on and after commencement day, to be a district DAP established under section 171C(1)(a) for the district.
- (3) If, immediately before commencement day, there is a JDAP for 2 or more districts, the JDAP is taken, on and after commencement day, to be a district DAP established under section 171C(1)(a) for those districts.
- (4) An order establishing an LDAP or a JDAP to which subsection (2) or (3) applies continues to have effect on and after commencement day as if it were an order

establishing a district DAP under section 171C(1)(a) and may be amended or revoked accordingly.

**290. Preparation and approval of planning schemes where process commenced before commencement day**

(1) In this section —

*amended Act* means this Act as amended by the *Planning and Development Amendment Act 2020* Part 6 Division 1;

*commencement day* means the day on which the *Planning and Development Amendment Act 2020* Part 6 Division 1 comes into operation;

*former Act* means this Act as in force immediately before commencement day;

*preparation and approval process*, in relation to a planning scheme or amendment to a planning scheme —

- (a) means the process for the preparation or adoption, submission and approval of the scheme or amendment; and
- (b) includes, without limitation, any consultation, referral, advertisement, hearings, reports and consideration of submissions that occur as part of that process.

(2) The regulations may make provision for how the preparation and approval process for a planning scheme or an amendment to a planning scheme is to be completed if —

- (a) 1 or more steps in the preparation and approval process for the scheme or amendment are taken before commencement day under the former Act; but

- (b) the scheme or amendment is not approved under the former Act before commencement day.
- (3) Without limiting subsection (2), the regulations may provide that any requirement of the preparation and approval process under the amended Act is taken to be satisfied in relation to a planning scheme or amendment referred to in that subsection in circumstances prescribed by the regulations.

**291. R-Codes taken to be planning codes**

- (1) In this section —  
*commencement day* means the day on which the *Planning and Development Amendment Act 2020* section 65 comes into operation;  
*R-Codes* means the Residential Design Codes prepared as a State planning policy under section 26(1), as in force immediately before commencement day.
- (2) On and after commencement day, the R-Codes are taken to be planning codes.
- (3) Subsection (2) does not prevent the R-Codes from being amended or repealed under Part 3A.
- (4) A provision included before commencement day in a local planning scheme under section 77(1)(b), or an improvement scheme under section 77(1)(b) as it applies under section 122B(1), in relation to the R-Codes as State planning policies continues to apply on and after commencement day in relation to the R-Codes as planning codes.

**292. Regulations made by Minister continue in force**

- (1) In this section —  
*commencement day* means the day on which the *Planning and Development Amendment Act 2020* Part 8 comes into operation.
- (2) Regulations made by the Minister under section 256 before commencement day continue to have effect on and after commencement day as if they were made by the Governor under section 256 and may be amended or repealed accordingly.
- (3) Regulations made by the Minister under section 258 before commencement day continue to have effect on and after commencement day as if they were made by the Governor under section 258 and may be amended or repealed accordingly.
- (4) Regulations made by the Minister under section 259 before commencement day continue to have effect on and after commencement day as if they were made by the Governor under section 259 and may be amended or repealed accordingly.

**293. Electronic planning maps prepared before commencement day**

- (1) In this section —  
*commencement day* means the day on which the *Planning and Development Amendment Act 2020* Part 14 comes into operation.
- (2) This section applies if, before commencement day, a map that forms part of a planning instrument (as defined in section 267B(1)) has been prepared as an electronic map.

- (3) The Commission may, in writing, approve the electronic map if the Commission is satisfied that it substantially complies with the requirements for electronic planning maps under section 267B(3) to (5).
- (4) On and after commencement day, a map approved under subsection (3) is taken to be an electronic planning map prepared in accordance with section 267B.
- (5) A reference in subsection (2) or (3) to a subsection of section 267B is, before commencement day, a reference to that subsection as it will be in force on commencement day.

**294. Transitional regulations**

- (1) In this section —
  - specified* means specified or described in the regulations;
  - transitional matter* —
    - (a) means a matter or issue of a transitional nature that arises as a result of any of the amendments to this Act made by the *Planning and Development Amendment Act 2020*; and
    - (b) includes a saving or application matter.
- (2) If there is not sufficient provision in this Act for dealing with a transitional matter, regulations may prescribe all matters that are required, or are necessary or convenient, to be prescribed for dealing with the matter.
- (3) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day on which the

*Planning and Development Amendment Act 2020*  
Part 17 comes into operation, the regulations have effect according to their terms.

- (4) If regulations made under subsection (2) contain a provision of a kind described in subsection (3), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.



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