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at 7 March 1996

WESTERN AUSTRALIA

METROPOLITAN REGION TOWN PLANNING SCHEME ACT 1959

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WESTERN AUSTRALIA

METROPOLITAN REGION TOWN PLANNING SCHEME ACT 1959

AN ACT to provide for and relating to the planning and development of land within the metropolitan region, and to regulate the assessment of a Metropolitan Improvement Tax and for incidental and other purposes.

[Long title amended by No. 92 of 1985 s.12.]

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PART I — PRELIMINARY

Short title

1. This Act may be cited as the *Metropolitan Region Town Planning Scheme Act 1959*¹.

Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation¹.

(2) It shall not be necessary to proclaim that the whole Act shall commence on one day, but the several Parts and sections may be proclaimed to commence on such days as are respectively fixed by proclamation.

Construction

3. This Act shall be construed in conjunction with the Town Planning Act, as if the provisions of this Act were incorporated with and formed part of that Act, but where the provisions of this Act are in conflict or are inconsistent with the provisions of that Act, the provisions of this Act prevail to the extent to which they are so in conflict or inconsistent.

[4. *Repealed by No. 73 of 1982 s.3.*]

Application of this Act

5. (1) The provisions of this Act apply only to the metropolitan region.

(2) The provisions of the Town Planning Act, except as modified by this Act, apply to the metropolitan region.

Interpretation

6. In this Act, unless the context requires otherwise —

“Authority” in sections 30, 31, 32, 33B, 33C and 37A (4a) means the Metropolitan Region Planning Authority in existence under section 7 of this Act before the commencement of Part III of the *Acts Amendment (State Planning Commission) Act 1985*¹;

“Commission” means the Western Australian Planning Commission established by section 4 of the *Western Australian Planning Commission Act 1985*;

“District Planning Committee” means District Planning Committee constituted by or under section 23;

“Fund” means The Metropolitan Region Improvement Fund established under this Act;

“Heritage Council” means the Heritage Council of Western Australia established pursuant to the *Heritage of Western Australia Act 1990*;

“metropolitan region” means the region described in the Third Schedule;

“Metropolitan Region Scheme” or **“Scheme”** means a town planning scheme for the metropolitan region or any part thereof, including the provisions therein for regulating and controlling the use of the land the subject of the Scheme and the purposes for which the land may be used and includes —

- (a) the provisions of the Scheme;
- (b) all maps, plans, specifications and other particulars contained in the Scheme and colourings, markings or legend thereon;

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- (c) the Scheme as varied or amplified by any amendment that has the force of law; and
- (d) a subsequent scheme that has the force of law and any such subsequent scheme as varied or amplified by any amendment that has the force of law;

“order” means an interim development order made under section 7A² of the Town Planning Act;

“planning control area” means a planning control area declared and in force under section 35C;

“Swan Valley” has the same meaning it has in the *Swan Valley Planning Act 1995*¹;

“Swan Valley Planning Committee” has the same meaning as it has in the *Swan Valley Planning Act 1995*¹.

“Town Planning Act” means the *Town Planning and Development Act 1928*.

[Section 6 amended by No. 115 of 1979 s.3; No. 79 of 1981 s.5; No. 73 of 1982 s.4; No. 92 of 1985 s.13; No. 6 of 1986 s.4; No. 97 of 1990 s.24; No. 84 of 1994 ss.43 and 46; No. 31 of 1995 s.27.]

PART II — MISCELLANEOUS

[Heading inserted by No. 92 of 1985 s.14.]

**[7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,
22. Repealed by No. 92 of 1985 s.15.]**

Constitution of District Planning Committees

23. (1) For the purposes of assisting and advising the Commission, the Council of the Municipality of the City of Perth and the groups of local authorities referred to in the First Schedule, shall each appoint from among their mayors, councillors or members, as the case may be, a District Planning Committee as provided in this section.

(2) In the case of the Municipality of the City of Perth, the District Planning Committee for the Municipality is the Town Planning Committee of the Council for the time being.

(3) (a) In the case of the groups of local authorities referred to in subsection (1) each local authority in each group shall from time to time as occasion requires appoint one person as a member of the District Planning Committee to represent that local authority on the District Planning Committee.

(b) Where a local authority fails to make an appointment, the Governor may appoint a person having the necessary qualifications to be a member representing that local authority.

(c) When the members are duly appointed, the District Planning Committee for the group of local authorities is constituted.

(4) Subject to the direction and approval of the Minister, who is hereby authorized to direct and approve from time to time, procedural matters relating to the holding and conduct of meetings of each District Planning Committee, including the

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election of chairman, the appointment of deputies, the constitution and powers of a quorum, are such as each District Planning Committee determines.

[Section 23 amended by No. 80 of 1975 s.3; No. 92 of 1985 ss.16 and 23; No. 6 of 1986 s.5.]

Functions of District Planning Committees

24. (1) Each District Planning Committee may, and at the direction of the Commission shall, within the time stipulated by the direction or within such extended time as the Minister may authorize, make inquiries into and report and formulate recommendations in respect to the Metropolitan Region Scheme so far as it relates to the area or part of the area comprising the districts of the local authorities which the District Planning Committee represents.

(2) Each District Planning Committee shall present its reports and recommendations to the Commission.

(3) Each District Planning Committee shall perform such functions of the Commission as may be delegated to it under section 20 of the *Western Australian Planning Commission Act 1985*.

[Section 24 amended by No. 92 of 1985 ss.17 and 23;
No. 6 of 1986 s.6; No. 84 of 1994 ss.43 and 46.]

[25. *Repealed by No. 92 of 1985 s.18.*]

General provision of Scheme

26. (1) The Commission may make regulations prescribing a set of general provisions or separate sets of general provisions adapted for the whole of, or areas within, the metropolitan region of any special character, for carrying out the general objects of the Metropolitan Region Scheme and in particular for dealing with the matters set out in the First Schedule to the Town

Planning Act, and the general provisions or set of general provisions appropriate to the area for which the Metropolitan Region Scheme is made shall take effect as part of the Scheme.

(2) Regulations may be so made as to impose for a breach of a regulation a maximum penalty of \$500 with or without provision for a maximum daily penalty of \$50 for every day the breach continues.

(3) The court by or before which a person is found guilty of an offence against regulations made under this section may, whether or not it imposes any other punishment, order that the person convicted pay compensation to the Commission for the costs of any repairs rendered necessary or any loss of property suffered or expenses incurred through or by means of the offence, and upon a certified copy of the order under the hand of the officer having the custody of the record of the order being delivered to the Commission and registered by the Commission in the Local Court nearest to the place where the order was made the order may be enforced in the same way as if it had been a judgment of that Local Court.

(4) An order made against a person under subsection (3), or the institution of proceedings or the finding of a person to be guilty under regulations made under this section, does not affect any civil remedy against the person.

(5) In any civil proceedings arising from the same circumstances —

- (a) any sum recovered pursuant to an order made under subsection (3) shall be taken into account in the assessment of any damages awarded; and
- (b) the record of any criminal proceedings under regulations made under this section in relation to an offence shall be admissible as evidence of the matters determined in those criminal proceedings and relevant to the issues.

[Section 26 amended by No. 113 of 1965 s.8; No. 73 of 1982 s.7; No. 92 of 1985 s.23.]

[27, 27A, 28, 29, 29A. Repealed by No. 92 of 1985 s.18.]

PART III — METROPOLITAN REGION SCHEME

Metropolitan Region Scheme

30. (1) The Authority shall make the Metropolitan Region Scheme in accordance with the provisions of this Act, with respect to the whole or any part of the land within the metropolitan region.

(2) The Scheme may be made for all or any of the objects or purposes, provisions, powers or works, referred to in section 6 of the Town Planning Act and may provide for planning, replanning or reconstructing the whole or a part of the metropolitan region.

Procedure for submission and approval of plan

31. The Authority shall adopt the following procedure for submitting and obtaining approval of the Metropolitan Region Scheme —

- (a) The Scheme when formulated by the Authority shall be submitted, together with such reports, surveys and other material as the Authority considers desirable, to the Minister for his preliminary approval.
- (b) If the Minister so approves, the Authority shall deposit copies of the Scheme, for public inspection during ordinary business hours free of charge —

at the office of the Commission;

at the Council Offices of the Municipalities of the Cities of Perth and Fremantle;

in at least 3 other public places situate in the metropolitan region which the Authority considers are most convenient for public inspection of the Scheme.

- (c) As soon as practicable after the deposit of the copies of the Scheme as provided for in paragraph (b), the Authority shall cause to be inserted at least 3 times in each of the following publications —

the *Gazette*;

2 daily newspapers circulating in the metropolitan region; and

one Sunday newspaper circulating in the metropolitan region,

a notice —

stating shortly the purpose of the Scheme;

stating that the Scheme has been deposited and the places and times where it may be inspected free of cost,

and notifying all persons who object to any provisions of the Scheme to lodge written objections on a prescribed form with the Authority at the address stated in the notice.

- (d) Objections to the Scheme may be made at any time within the period prescribed in the notice being not less than 3 months from the date the notice is first published in the *Gazette*.
- (e) The Authority shall take such other steps as it considers necessary to make public the details of the Scheme.
- (f) (i) The Authority shall consider all objections duly lodged and shall not dismiss an objection until the person objecting or his agent has been given the opportunity of being heard on the objection either by the Authority or a sub-committee of the Authority appointed by it for the purpose and which it is hereby authorized to appoint.

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- (ii) Where an objection is made by a group of persons, the group shall appoint one person to represent the group and he only shall be heard on the objection.
- (g) The Authority shall submit the Scheme with or without such modifications as it thinks fit to make after considering the objections, together with a copy of all written objections and a report by the Authority on the objections, to the Minister for presentation to the Governor for his consideration.
- (h) Before presenting the Scheme to the Governor for his consideration, if the Minister is of opinion that any modification made to the Scheme by the Authority is of such a substantial nature as to warrant such action, he may direct the Authority to again deposit the Scheme as so modified or that portion of the Scheme which is so modified, for public inspection at such time and at such places as he directs.
- (i) The Minister may direct the Authority to publish such notices in connection with the Scheme as he deems appropriate.
- (j) The Authority shall comply with the directions.
- (k) A person who objects to any modifications so made by the Authority may notify the Minister in writing on the prescribed form, and the Minister shall direct the Authority to consider and report on the objection to the Minister in accordance with the procedure set out in paragraphs (f) and (g).
- (l) The Minister shall then present the Scheme to the Governor who may approve the Scheme with or without such modifications as he deems necessary to make and which he is hereby authorized to make.

[Section 31 amended by No. 44 of 1962 s.3; No. 84 of 1994 s.46.]

Scheme to be submitted to Parliament

32. (1) When the Governor has approved the Scheme whether with or without modifications —

- (a) the Scheme or the Scheme as so modified but not including any maps, plans or diagrams, shall be published in the *Gazette*, and the maps, plans or diagrams shall be open for public inspection at such times and such places as the Minister determines;
- (b) the Scheme together with the report of the Authority on the objections made to it referred to in section 31 (g) and (k), shall be laid before each House of Parliament within 6 sitting days of the House next following the date of the publication of the Scheme in the *Gazette*.

(2) If either House does not pass a resolution disallowing the Scheme, of which resolution notice was given at any time within 21 sitting days of that House after the Scheme was laid before it, the Scheme has effect, from and after the last day on which the Scheme might have been disallowed, as though its provisions were enacted by this Act, but if the Scheme is disallowed the disallowance does not affect the validity, or cure the invalidity, of anything done or omitted to be done before the disallowance.

Power of amendment restricted

32A. (1) The Scheme shall not be amended under section 33 or 33A in a manner that is contrary to or inconsistent with any provision of Part 5 of the *Swan River Trust Act 1988* or any amendment made to the Scheme by section 14, 15, 16 or 17 of the *Acts Amendment (Swan River Trust) Act 1988*¹.

(2) The Scheme shall not be amended under section 33 or 33A in a manner that is contrary to or inconsistent with any Order made under section 59 of the *Heritage of Western Australia Act 1990*, except in so far as may be ordered on an appeal or referral made under section 60 of that Act to the Town Planning Appeal Tribunal.

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(3) Without limiting section 38 of the *East Perth Redevelopment Act 1991*¹ or section 45 of the *Subiaco Redevelopment Act 1994*¹, the Scheme shall not be amended under section 33 or 33A of this Act to make any provision in respect of land in the redevelopment area under either of those Acts so long as there is in operation in respect of that land a redevelopment scheme under Part 4 of either of those Acts.

*[Section 32A inserted by No. 21 of 1988 s.11; amended
by No. 97 of 1990 s.25; No. 62 of 1991 s.59; No. 35 of
1994 s.67; No. 84 of 1994 s.7.]*

Scheme may be amended

33.^{3,4,5} (1) The Scheme may be varied or amplified by an amendment to the Scheme or revoked by a subsequent Scheme formulated by the Commission submitted and approved in accordance with this section.

(2) Subject to sections 33A and 33B, the Commission shall adopt the procedure set forth in this section for submitting and obtaining approval of any amendment to the Scheme and any revocation of the Scheme by a subsequent Scheme (in this section referred to as "**the amendment**") formulated by the Commission —

- (a) Subject to section 33AA, the amendment when formulated by the Commission shall be submitted, together with such reports, surveys and other material as the Commission considers desirable, to the Minister for his consent to public submissions being sought.
- (b) If the Minister consents to public submissions being sought, the Commission shall deposit copies of the amendment, for public inspection during ordinary business hours free of charge —
 - (i) at the office of the Commission;

- (ii) at the Council Offices of the Municipalities of the City of Perth and City of Fremantle; and
 - (iii) in at least 3 other public places situate in the metropolitan region which the Commission considers are most convenient for public inspection of the amendment.
- (c) As soon as practicable after the deposit of the copies of the amendment as provided for in paragraph (b) the Commission shall cause to be inserted at least 3 times in each of the following publications —
- (i) the *Gazette*;
 - (ii) 2 daily newspapers circulating in the metropolitan region; and
 - (iii) one Sunday newspaper circulating in the metropolitan region,
- a notice stating —
- (iv) in short, the purpose of the amendment; and
 - (v) that the amendment has been deposited and the places and times where it may be inspected free of charge,
- and notifying all persons who desire to make submissions on any provision of the amendment that such submissions may be made to the Commission in writing in the form prescribed by the Commission in the notice.
- (d) Submissions on the amendment may be made at any time within the period prescribed in the notice being not less than 3 months from the date the notice is first published in the *Gazette*.

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- (e) The Commission may take such other steps as it considers necessary to make public the details of the amendment.

- (f)
 - (i) The Commission shall consider all submissions that have been duly lodged and where a submission contains an objection to the amendment the Commission shall not dismiss the objection until the person making the submission or his agent has been given the opportunity of being heard on the objection by the Commission or by a committee of the Commission established under section 19 of the *Western Australian Planning Commission Act 1985*.

 - (ii) The Commission shall not uphold an objection to the amendment until it has given every person who has duly lodged a submission supporting the provision to which the objection relates, or his agent, the opportunity of being heard in support of that provision by the Commission or by a committee of the Commission established under section 19 of the *Western Australian Planning Commission Act 1985*.

 - (iii) Where a submission is made by a group of persons, the group shall appoint one person to represent the group and only he shall be heard under subparagraph (i) or (ii).

- (g) Subject to section 33AB, after considering all submissions that have been duly lodged, the Commission shall submit the amendment to which those submissions relate, with such modifications, if any, as it thinks fit to make, together with a copy of each of those submissions and a report by the Commission on those submissions, to the Minister.

- (gaa) For the purposes of paragraph (g) the Commission may adopt a report by a committee referred to in paragraph (f) and submit it as, or include it in, the report of the Commission.
- (ga) If the report of the Commission, or, in the case of an amendment that would apply to land in the Swan Valley, a report of the Swan Valley Planning Committee under section 33AB (2), submitted with an amendment under paragraph (g) recommends that the amendment should not be proceeded with, the Minister may, instead of presenting the amendment to the Governor for his consideration, withdraw the amendment.
- (h) Before presenting the amendment to the Governor for his consideration, if the Minister is of opinion that any modification made to the amendment by the Commission is of such a substantial nature as to warrant such action, he may direct the Commission to again deposit the amendment as so modified, or that portion of the Scheme which is so modified, for public inspection at such time and at such places as he directs.
- (i) The Minister may direct the Commission to publish such notices in connection with the amendment as he deems appropriate.
- (j) The Commission shall comply with the directions.
- (k) A person who desires to make any submissions on any modifications so made by the Commission may notify the Minister in writing in the form prescribed by the Commission in any notice of the modification published pursuant to paragraph (i), and the Minister shall direct the Commission to consider and report on the submission to the Minister in accordance with the procedure set out in paragraphs (f) and (g).

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- (ka) If the report submitted with an amendment under paragraph (g) as read with paragraph (k) recommends that the amendment should not be proceeded with, the Minister may, instead of presenting the amendment to the Governor for his consideration, withdraw the amendment.
 - (l) The Minister shall then, if he has not withdrawn the amendment under paragraph (ka), present the amendment to the Governor who may approve the amendment with or without such modifications as he deems necessary to make and which he is hereby authorized to make.
 - (m) At any time before the amendment is published in the *Gazette* pursuant to subsection (3), the Governor may revoke the approval given under paragraph (l).
- (3) Except where the approval has, pursuant to subsection (2) (m), been revoked, when the Governor has approved the amendment whether with or without modifications —
- (a) the amendment or the amendment as so modified but not including any maps, plans or diagrams, shall be published in the *Gazette*, and the maps, plans or diagrams shall be open for public inspection at such times and such places as the Minister determines;
 - (b) a copy of the amendment together with a copy of the report of the Commission on the submissions made on the Scheme referred to in subsection (2) (g) and (k), shall be laid before each House of Parliament within 6 sitting days of the House next following the date of the publications of the amendment in the *Gazette*.
- (4) Either House may, by resolution of which resolution notice has been given at any time within 12 sitting days of such House after a copy of the amendment has been laid before it, pass a resolution disallowing the amendment.

(5) As soon as the amendment is no longer subject to disallowance under subsection (4) the amendment shall have effect as though its provisions were enacted by this Act.

(6) If either House of Parliament passes a resolution disallowing the amendment the Commission shall cause notice of the disallowance to be published in the *Gazette* within 21 days of the passing of the resolution.

[(7) *repealed*]

[Section 33 inserted by No. 115 of 1979 s.12; amended by No. 73 of 1982 s.9; No. 92 of 1985 s.23; No. 6 of 1986 s.7; No. 35 of 1993 s.4; No. 84 of 1994 ss.8 and 46; No. 31 of 1995 s.27.]

Referrals to Swan Valley Planning Committee before public submissions

33AA. (1) The Commission shall, before submitting to the Minister under section 33 (2) (a) an amendment that would apply to land in the Swan Valley, refer the amendment to the Swan Valley Planning Committee.

(2) The Committee shall, within 42 days after the day on which it receives the referral, or within such longer period as the Commission allows, give to the Commission its advice in writing on the amendment, including any modifications it thinks should be made to the amendment.

(3) If the Committee fails to give its advice within the time allowed under subsection (2), it shall be taken to have no advice to give on the amendment.

(4) The Minister may, at the request of the Commission, approve of the Commission disregarding the Committee's advice in whole or in part in formulating the amendment.

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(5) Subject to any approval under subsection (4), the Commission shall formulate the amendment in accordance with any advice given by the Committee under this section.

[Section 33AA inserted by No. 31 of 1995 s.27.]

Referrals to Swan Valley Planning Committee after public submissions

33AB. (1) Where, as required by section 33AA (5), an amendment has been formulated in accordance with advice given by the Swan Valley Planning Committee and after considering public submissions on the amendment the Commission has modified it in a way which is not in accordance with that advice, the Commission shall, before submitting that amendment to the Minister under section 33 (2) (g), refer the amendment, with the other documents referred to in that section, back to the Committee for its comment and advice.

(2) Where the Committee has any comment to make, or advice to give, on an amendment or the other documents referred to it under subsection (1) it shall furnish a written report to the Commission and that report shall be submitted to the Minister along with the other documents referred to in section 33 (2) (g).

(3) If the Committee does not report to the Commission within 42 days of the referral under subsection (2) it shall be taken to have no comment to make or advice to give.

[Section 33AB inserted by No. 31 of 1995 s.27.]

Procedure for amendments not constituting substantial alteration to Scheme

33A. ^{4,5,6,7} (1) Notwithstanding section 33, if a proposed amendment does not, in the opinion of the Commission, constitute a substantial alteration to the Scheme, that amendment is not required to be submitted and approved in

accordance with the procedure prescribed in section 33 (2), (3) and (4).

(1a) Despite subsection (1), after the commencement of section 27 of the *Swan Valley Planning Act 1995*¹ an amendment cannot be made to the Scheme under this section to change the zoning of any land in the Swan Valley.

(2) If under subsection (1) a proposed amendment is not required to be submitted and approved in accordance with the procedure prescribed in section 33 (2), (3) and (4), the Commission shall —

- (a) send a copy of that amendment to the Minister;
- (b) publish in the *Gazette* and in a daily newspaper circulating in the metropolitan region —
 - (i) a notice of that amendment describing that amendment, stating where and when that amendment will be available for inspection and notifying all persons who desire to make submissions on any provision of that amendment that those submissions may be made to the Minister in writing in the form set out in that notice; and
 - (ii) a certificate certifying that, in the opinion of the Commission, that amendment does not constitute a substantial alteration to the Scheme;

and

- (c) within 7 days of the publication referred to in paragraph (b), notify in writing the owners of land in the opinion of the Commission directly affected by that amendment of that amendment.

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(3) Submissions may be made on any provision of a proposed amendment at any time within the period specified in the relevant notice published under subsection (2), being a period of not less than 60 days after the day on which that notice was so published.

(4) When a submission is made in accordance with the relevant notice published under subsection (2) by a group of persons, that group shall appoint one person to represent that group for the purposes of the submission.

(5) The Minister shall on receiving any submissions made to him in accordance with the relevant notice published under subsection (2) —

- (a) appoint one or more members of the Appeal Committee to consider, and make a report and recommendation to him on, those submissions; and
- (b) refer those submissions, together with a copy of the proposed amendment to which they relate, to the member or members of the Appeal Committee appointed under this subsection,

and that member or those members shall as soon as practicable thereafter consider, and make a report and recommendation to the Minister on, those submissions.

(6) The Commission may comment to the member or members of the Appeal Committee appointed under subsection (5) on any submissions being considered by him or them and that member or those members shall in considering those submissions take that comment into account.

(7) On receiving a report and recommendation made to him under subsection (5), the Minister may —

- (a) approve, with such modifications, if any, as he considers it necessary to make; or

(b) decline to approve,

the proposed amendment to which that report and recommendation relate.

(8) When the Minister has approved a proposed amendment under subsection (7) —

(a) the Commission shall cause —

(i) that amendment or that amendment as modified under that subsection, as the case requires, excluding any maps, plans or diagrams forming part of that amendment, to be published in the *Gazette*; and

(ii) any maps, plans or diagrams forming part of that amendment to be open for inspection at such times and places as the Commission determines;

and

(b) that amendment or that amendment as modified under that subsection, as the case requires, shall on publication under this subsection have effect as though its provisions were enacted by this Act.

(9) In subsections (5) and (6) —

“the Appeal Committee” means the Town Planning Appeal Committee established by section 40 of the Town Planning Act.

[Section 33A inserted by No. 6 of 1986 s.8; amended by No. 31 of 1995 s.27.]

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Pending amendment of Scheme

33B. (1) In this section —

“amending Act” means the *Metropolitan Region Town Planning Scheme Act Amendment Act (No. 2) 1979*¹;

“pending amendment” means any proposed amendment to the Scheme that was —

- (a) approved, pursuant to section 31 (a), by the Minister; or
- (b) certified, pursuant to the substituted section, by the Authority as not being a substantial alteration,

before the proclaimed date but which did not have the force of law as though enacted by this Act immediately before the proclaimed date;

“proclaimed date” means the date on which section 12 of the amending Act comes into operation¹;

“Second Schedule” means the Second Schedule as in force immediately before the proclaimed date;

“substituted section” means section 33 as in force immediately before the proclaimed date.

(2) Notwithstanding sections 33 and 33A, but subject to subsection (3) pending amendments shall be continued and dealt with in accordance with the substituted section and the Second Schedule as if those provisions were in force after the proclaimed date.

(3) Section 33 (2) (m) with such modifications as are necessary applies to a pending amendment.

(4) Nothing in subsection (2) affects the operation of the *Interpretation Act 1918*⁸.

[Section 33B inserted by No. 115 of 1979 s.12;
amended by No. 73 of 1982 s.10.]

Validation

33C. (1) The Scheme, or any amendment to the Scheme made before the coming into operation of the *Metropolitan Region Town Planning Scheme Act Amendment Act 1975*¹ or any act or thing done pursuant to the Scheme or such an amendment to the Scheme shall not be regarded as invalid by reason only of one or more of the following reasons, namely —

- (a) that, in the notice of the Scheme or that amendment to the Scheme, as the case may be, the period prescribed for the making of objections was less than the proper period;
- (b) that the Authority did not accept for consideration an objection to the Scheme or that amendment to the Scheme, as the case may be, being an objection that was made within the proper period but was not made within the period prescribed for the making of objections in the notice of the Scheme or that amendment;
- (c) that a form for making objections to the Scheme or any amendment to the Scheme was not prescribed.

(2) In this section —

“notice”, in relation to the Scheme or an amendment to the Scheme, means the notice published pursuant to section 31 (c) in respect of the Scheme or that amendment, as the case may be;

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“**proper period**”, in relation to the Scheme or an amendment to the Scheme, means the period of 3 months from the date the notice of the Scheme or that amendment, as the case may be, was first published in the *Gazette*.

[*Section 33C inserted as section 33A by No. 80 of 1975 s.5; renumbered as section 33C by No. 115 of 1979 s.13.*]

Consolidation of Scheme

33D. (1) Whenever the Minister is of the opinion that it is necessary or desirable to consolidate the Scheme he may direct the Commission to deliver to him a consolidation of the Scheme as in force at the date specified in the direction.

(2) On receipt of a direction under subsection (1) the Commission shall cause to be prepared a consolidation of the Scheme incorporating all amendments to the Scheme in force on the day specified in the direction.

(3) In the preparation of the consolidation there may be included, in addition to or in substitution for any maps, plans and diagrams forming part of the Scheme, such maps, plans or diagrams, prepared on such scale or scales, as, in the opinion of the Commission are necessary to state and represent the scope, effect and details of the Scheme, as amended, in an informative and convenient form, and where such an addition or substitution necessitates the making of any consequential amendment to the text of the Scheme that amendment shall be made in the consolidation.

(4) Without limiting the generality of subsection (3), on the first occasion upon which a consolidation is prepared under this section the maps, plans and diagrams forming part of the Scheme shall be omitted for the purpose of substituting maps, plans and diagrams which have been prepared on a scale or scales consistent with the metric system of measurement as defined in

the *Metric Conversion Act 1972* and which show information in a manner consistent with that system.

(5) Where any addition, substitution or other amendment is effected under subsection (3) or (4) the Scheme shall be deemed to have been amended accordingly on and from the publication of notice of the consolidation under subsection (8) but the provisions of —

- (a) sections 33 and 33A of this Act; and
- (b) the *Metric Conversion Act 1972*,

do not apply to any such addition, substitution or other amendment.

(6) Having prepared the consolidation of the Scheme the Commission shall cause the consolidation to be examined by the Surveyor General in the Department of Land Administration⁹.

(7) If the Surveyor General certifies that the maps, plans and diagrams in the consolidation are correct the Commission shall —

- (a) seal the consolidation and certify thereon that it is a correct statement and representation of the Scheme as in force at the date specified in the direction given by the Minister; and
- (b) deliver the consolidation to the Minister.

(8) If the Minister approves of the consolidation and endorses his signature thereon the Commission shall publish notice of the consolidation in the *Gazette* and as from the publication of the notice the consolidation shall in all courts and by all tribunals, bodies and persons be judicially noticed and shall be deemed to be a correct statement and representation of the Scheme as in force on the date specified in the Minister's direction unless the contrary is shown.

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(9) Where in the opinion of the Minister it is expedient to do so he may instead of directing the Commission to deliver to him a consolidation of the whole Scheme direct the Commission to deliver to him a consolidation of such portion of the Scheme (whether by reference to a map of the Scheme or any other portion thereof) as is specified in his direction and the provisions of this section apply to and in relation to the consolidation of the portion of the Scheme so specified in the direction as though the portion of the Scheme so specified were the whole Scheme.

*[Section 33D inserted by No. 73 of 1980 s.4; amended
by No. 92 of 1985 s.23.]*

[33E. *Repealed by No. 73 of 1980 s.4.]*

**PART IV — LOCAL AUTHORITY TOWN
PLANNING SCHEMES**

**No town planning schemes or by-laws to be made unless
consistent with Scheme**

34. If the Scheme is not disallowed by Parliament under the provisions of section 32 —

a town planning scheme made under the provisions of the Town Planning Act by the Council of the Municipality of the City of Perth or by any local authority referred to in the First Schedule shall not be approved by the Minister to whom the administration of that Act is for the time being committed by the Governor; and

by-laws which if made would affect or be likely to affect the Scheme shall not be made by the local authority,

unless the provisions of the town planning scheme or by-laws, as the case may be, are in accordance with and consistent with the Scheme.

[Section 34 amended by No. 7 of 1965 s.2; No. 80 of 1975 s.6.]

**Local authorities to make town planning schemes
consistent with Metropolitan Region Scheme**

35. (1) Subject to subsections (1a) and (1b), within a period of 3 years from the day the Scheme has the force of law as provided in section 32, the Council of the Municipality of the City of Perth and each local authority referred to in the First Schedule shall —

(a) where on the day the Scheme has the force of law no town planning scheme made under the provisions of the Town Planning Act is operating in its district,

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prepare and submit, under the provisions of that Act, to the Minister to whom the administration of that Act is for the time being committed by the Governor, for approval, a town planning scheme for its district which is in accordance and consistent with the provision of the Scheme;

- (b) where on that day a town planning scheme is operating in its district, take such steps to amend the scheme so that it shall conform with the provisions of the Scheme.

(1a) Where the Council or any local authority referred to in subsection (1) makes application in writing to the Minister to have the period of 3 years, referred to in that subsection, extended, if the application is made at any time being more than one month before the expiration of that period, the Minister may extend the period, in so far as it applies to the applicant, as he thinks fit.

(1b) Where the Minister extends the period pursuant to subsection (1a), subsection (1), so far as it applies to the applicant in respect of which the period is so extended, shall be read and applied as though the reference therein to 3 years, were a reference to the period as so extended.

(2) Where a local authority has not observed the provisions of subsection (1), the Minister may at any time by notice in writing direct the local authority to so comply within a period specified in the notice and being not less than 6 months from the giving of the notice.

(3) (a) If the local authority fails to comply with the direction, the Minister on behalf of the local authority may cause a town planning scheme to be prepared and submitted under the Town Planning Act to the Minister to whom the administration of that Act is so committed for approval and may take all or any of the steps necessary to have the scheme adopted by the local authority.

(b) If the local authority fails to adopt the scheme within 90 days of the delivery of the scheme to the local authority by the Minister, the Minister to whom the administration of the last-mentioned Act is so committed may approve of the scheme and cause it to be published in the *Gazette* and thereupon the scheme has effect as if it were made, published and adopted by the local authority and approved by that Minister under the Town Planning Act.

(4) All costs, charges and expenses incurred by the Minister in the exercise of any of the powers conferred on him by subsection (3) may be recovered from the local authority as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local authority.

[Section 35 amended by No. 7 of 1965 s.3; No. 80 of 1975 s.7.]

Effect of amendment of the Scheme on local authority town planning scheme

35A. (1) If for the time being the Scheme delineates land comprised in a town planning scheme under the Town Planning Act as a reserve for a public purpose the town planning scheme, in so far as it operates in relation to that land, is, by force of this section and without any further action under this Act or the Town Planning Act, amended to such extent (if any) as is necessary to give effect to the Scheme.

(2) Where the Scheme is amended the local authority of the district in which the land directly affected by the amendment is situate or the responsible authority in relation to the land under the Town Planning Act, as the case requires, shall —

- (a) not later than 3 months after the date on which the amendment to the Scheme has the force of law, resolve to prepare in relation to the land a town

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planning scheme, or an amendment to an existing town planning scheme, which —

- (i) is in accordance with and consistent with the Scheme as so amended; and
- (ii) will not impede the implementation of the Scheme;

and

- (b) within such reasonable time after the passing of that resolution as is directed in writing by the Minister, forward to the Minister for approval the town planning scheme or amendment prepared by it.

(2a) The Minister may require the local authority to modify the town planning scheme or amendment to a scheme prepared under subsection (2) in such manner as he may specify in order to ensure that the town planning scheme or amendment complies with paragraphs (a) and (b) of that subsection.

(3) If the local authority or the responsible authority, as the case requires, fails to comply with subsection (2) the Minister, on behalf of the local authority, or the responsible authority, as the case may be, may cause a town planning scheme, or an amendment to an existing town planning scheme, to be prepared and submitted under the Town Planning Act to the Minister to whom the administration of that Act is committed for approval and may take all or any of the steps necessary to have the scheme adopted by the local authority or the responsible authority and if, within a period of 60 days after the scheme is delivered to it by the Minister the local authority or the responsible authority fails to adopt the scheme, or an amendment to an existing town planning scheme, as the case requires, the Minister to whom the administration of the Town Planning Act is committed may approve of the Scheme and cause it to be published in the *Gazette*.

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(4) A town planning scheme, or an amendment to an existing town planning scheme, as the case requires, published in the *Gazette* pursuant to subsection (3) takes effect from the date of such publication and has effect as if it were made, published and adopted by the local authority or the responsible authority and approved under the Town Planning Act by the Minister to whom the administration of that Act is committed.

(5) All costs, charges and expenses incurred by the Minister in the exercise of any powers conferred on him by subsections (3) and (4) may be recovered from the local authority or the responsible authority, as the case requires, as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local authority or the responsible authority.

*[Section 35A inserted by No. 115 of 1979 s.14;
amended by No. 84 of 1994 s.9.]*

PART IVA — PLANNING CONTROL AREAS

Effect of Part IVA

35B. (1) This Part of this Act shall prevail over anything in —

- (a) any other Part of this Act;
- (b) any town planning scheme that has effect under section 7 of the Town Planning Act;
- (c) the Scheme; or
- (d) the Town Planning Act,

to the extent of any inconsistency therewith.

(2) Nothing in this Part affects —

- (a) the continued use of any land in a planning control area for the purpose for which it was lawfully being used; or
- (b) the continuation and completion of the development of any land in a planning control area, including the erection, construction, alteration or carrying out, as the case requires, of any building, excavation or other works on that land, which development was lawfully being carried out,

immediately before the declaration of the planning control area.

(3) The power in section 35C (1) shall not be exercised in respect of any land or waters in the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*.

(4) This Part and the operation of any approval of development granted under this Part shall have effect subject to section 78 of the *Heritage of Western Australia Act 1990*.

(5) A declaration under section 35C (1) that is in force immediately before the commencement of the *Acts Amendment (Swan River Trust) Act 1988*¹ ceases to have any force on that commencement in respect of any land or waters referred to in subsection (3).

[Section 35B inserted by No. 79 of 1981 s.7; amended by No. 21 of 1988 s.12; No. 97 of 1990 s.26; No. 84 of 1994 s.10.]

Declaration of planning control areas

35C. (1) If the Commission considers that any land situated in the metropolitan region may be required for one or more of the purposes specified in the Second Schedule, the Commission may by notice published in the *Gazette* and with the approval of the Minister declare that land to be a planning control area.

(2) The Commission may by notice published in the *Gazette* and with the approval of the Minister amend or revoke a declaration made under subsection (1).

(3) A declaration made under subsection (1) remains in force until —

- (a) the expiry of such period, not exceeding 5 years from the date on which the notice by which that declaration was so made was published in the *Gazette*, as is specified in that notice; or
- (b) revoked under subsection (2),

whichever is the sooner.

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(4) Where any land is comprised within an area to which the Commission considers that this section should apply and is land to which the *Heritage of Western Australia Act 1990* applies, the Commission shall satisfy the Minister before seeking approval to the declaration of that land as a planning control area that full disclosure has been made to, and consultations concluded with, the Heritage Council as to the likely effect of the declaration as regards places to which that Act applies.

(5) Where the Commission considers this section should apply to any land in the Swan Valley it shall, before seeking approval of the declaration —

- (a) inform the Swan Valley Planning Committee and invite that Committee to make submissions on the matter within 42 days; and
- (b) provide the Minister with a copy of any submissions received from the Committee under paragraph (a).

[Section 35C inserted by No. 79 of 1981 s.7; amended by No. 92 of 1985 s.23; No. 97 of 1990 s.27; No. 31 of 1995 s.27.]

No development in planning control areas without prior approval

35D. A person shall not commence and carry out development in a planning control area except —

- (a) with the prior approval of that development obtained under section 35E; and
- (b) in a manner which is in conformity with the approval referred to in paragraph (a) and in accordance with the conditions, if any, subject to which that approval was given.

Penalty: \$2 000 and, in the case of a continuing offence, a further fine of \$200 for each day during which that offence continues.

[Section 35D inserted by No. 79 of 1981 s.7.]

Applications for approval of development in planning control areas

35E. (1) A person who wishes to commence and carry out development in a planning control area shall apply in the prescribed form to the local authority in the district of which the planning control area is situated for approval of that development and submit to that local authority such plans and other information as that local authority may reasonably require.

(2) The local authority to which an application is made under subsection (1) shall, within 30 days of receiving the application, forward the application, together with its recommendation thereon, to the Commission for determination.

(3) After receiving an application and recommendation forwarded to it under subsection (2), the Commission may —

- (a) consult with any authority that in the circumstances it thinks appropriate; and
- (b) having regard to —
 - (i) the purpose for which the land to which that application relates is zoned or reserved under the Scheme;
 - (ii) any special considerations relating to the nature of the planning control area concerned and of the development to which that application relates; and
 - (iii) the orderly and proper planning, and the amenities, of the locality in which the land to which that application relates is situated,

approve, subject to such conditions as it thinks fit, or refuse to approve that application.

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(4) If the Commission approves an application forwarded to it under subsection (2) and the development concerned is carried out in a manner which is not in conformity with that approval, or any conditions subject to which that approval was given are not complied with, the Commission may revoke that approval, but this subsection does not prevent proceedings for an offence against section 35D in respect of that carrying out or non-compliance alleged to have been committed during the subsistence of that approval.

(5) The Commission shall issue in the prescribed form to the applicant its decision on an application forwarded to it under subsection (2).

(6) If the Commission has not within 60 days of receiving an application forwarded to it under subsection (2) issued its decision on that application to the applicant, that application shall be deemed to have been refused.

*[Section 35E inserted by No. 79 of 1981 s.7; amended
by No. 92 of 1985 s.23.]*

Appeals

35F. (1) An applicant whose application has under section 35E been —

- (a) approved subject to conditions which are unacceptable to him; or
- (b) refused,

may, except when that approval or refusal —

- (c) is in accordance with an operative town planning scheme or with the Scheme; or
- (d) relates to land which is reserved under the Scheme for a public purpose,

appeal against that approval or refusal under Part V of the Town Planning Act.

(2) An appeal under subsection (1) in relation to any condition which is imposed in consequence of advice furnished by the Heritage Council or by the operation of section 78 of the *Heritage of Western Australia Act 1990* shall be referred to the Heritage Council for advice, and section 53 (2) of the Town Planning Act applies in relation thereto.

*[Section 35F inserted by No. 79 of 1981 s.7; amended
by No. 97 of 1990 s.28.]*

**PART V — COMPENSATION, BETTERMENT,
ACQUISITION**

**Application of sections 11 and 12 of Town Planning Act to
Scheme**

36. (1) For the purposes of applying the provisions of sections 11 and 12 of the Town Planning Act to the provisions of the Scheme, the former provisions shall be read and construed as if —

- (a) the Commission were the “responsible authority or local authority” wherever referred to in the sections; and
- (b) the passage, “varied, amplified or revoked by the Commission” were substituted for the passage, “altered or revoked by an order of the Minister under this Act” in section 11 (3); and
- (c) those provisions included subsections (3), (3a), (4), (5) and (6).

(2) (a) The Scheme may provide that where compensation for injurious affection is claimed as a result of the operation of the provisions of section 12 (2a) (b) (i) or (ii) of the Town Planning Act the Commission may at its option elect to acquire the land so affected instead of paying compensation.

(b) The Commission shall, within 3 months of the claim for injurious affection being made, or where such a claim is made before the date of the coming into operation of the *Metropolitan Region Town Planning Scheme Act Amendment Act 1968*¹, within 3 months of that date, by notice in writing given to the claimant, either elect to acquire the land or advise that it does not intend to acquire the land.

(2a) Where the Commission elects to acquire the land as provided in subsection (2), if the Commission and the owner of the land are unable to agree as to the price to be paid for the

land by the Commission, the price at which the land may be acquired by the Commission shall be the value of the land as determined in accordance with subsection (2b).

(2b) The value of the land referred to in subsection (2a) shall be the value thereof on the date the Commission elects to acquire the land under that subsection, and that value shall be determined —

(a) by arbitration in accordance with the *Commercial Arbitration Act 1985*¹; or

(b) on the application of the owner of the land, made in the prescribed manner —

(i) by a Local Court, sitting at a place nearest to where the land lies — if the value of the land claimed by the owner thereof is not more than \$1 000; or

(ii) by the Supreme Court — if the value of the land claimed by the owner thereof is more than \$1 000;

or

(c) by some other method agreed upon by the Commission and the owner of the land,

and that value shall be determined without regard to any increase or decrease, if any, in value attributable wholly or in part to the Scheme.

(3) Subject to subsection (4), where under the Scheme any land has been reserved for a public purpose, no compensation is payable by the responsible authority for injurious affection to that land alleged to be due to or arising out of such reservation until —

(a) the land is first sold following the date of the reservation; or

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- (b) the responsible authority refuses an application made under the Scheme for permission to carry out development on the land or grants permission to carry out development on the land subject to conditions that are unacceptable to the applicant.

(3a) Compensation for injurious affection to any land is payable only once under subsection (3) and is so payable —

- (a) under paragraph (a) of that subsection to the person who was the owner of the land at the date of reservation; or
- (b) under paragraph (b) of that subsection to the person who was the owner of the land at the date of application,

referred to in that paragraph, unless after the payment of that compensation further injurious affection to the land results from —

- (c) an alteration of the existing reservation thereof; or
 - (d) the imposition of another reservation thereon.
- (4) Before compensation is payable under subsection (3) —
- (a) where the land is sold, the person lawfully appointed to determine the amount of the compensation shall be satisfied —
 - (i) that the owner of the land has sold the land at a lesser price than he might reasonably have expected to receive had there been no reservation of the land under the Scheme;
 - (ii) that the owner before selling the land gave notice in writing to the responsible authority of his intention to sell the land; and

- (iii) that the owner sold the land in good faith and took reasonable steps to obtain a fair and reasonable price for the land;

or

- (b) where the responsible authority refuses an application made under the Scheme for permission to carry out development on the land or grants permission to carry out development on the land subject to conditions that are unacceptable to the applicant, the person lawfully appointed to determine the amount of compensation shall be satisfied that the application was made in good faith.

(5) A claim for compensation under subsection (3) shall be made at any time within 6 months after the land is sold or the application for permission to carry out development on the land is refused or the permission is granted subject to conditions that are unacceptable to the applicant.

(6) (a) Subject to this section, the compensation payable for injurious affection due to or arising out of the land being reserved under the Scheme for a public purpose, where no part of the land is purchased or acquired by the Commission, shall not exceed the difference between —

- (i) the value of the land as so affected by the existence of such reservation; and
- (ii) the value of the land as not so affected.

(b) The value referred to in paragraph (a) (i) and (ii) shall be assessed as at the date the land is sold as referred to in subsection (3) (a) or the date on which the application for permission to carry out development on the land is refused or the permission is granted subject to conditions that are unacceptable to the applicant.

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(7) Where compensation for injurious affection to any land has been paid under subsection (3), the Commission may lodge with the Registrar of Titles a caveat against the land specifying —

- (a) the date of payment of compensation;
- (b) the amount of compensation so paid; and
- (c) the proportion (expressed as a percentage), which the compensation bears to the unaffected value of the land (as assessed under subsection (6) (b)).

(8) On receipt of the caveat from the Commission, the Registrar of Titles shall enter it in the Register Book.

(9) Where —

- (a) compensation for injurious affection to land (the **“original compensation”**) has been paid to an owner of the land in the circumstances set out in subsection (3); and
- (b) as a result of the Scheme being amended or revoked the reservation of the land for a public purpose is revoked or the area of the land the subject of the reservation is reduced,

the Commission is entitled to recover from the owner of the land at the date of the revocation or reduction of the reservation an amount (**“the refund”**) which is determined by calculating the relevant proportion (as determined under subsections (12) to (15)) of the value of the land as at the date on which the refund becomes payable under subsection (10).

(10) The refund is not payable by the owner of the land until the land is first sold or subdivided following the date of the revocation or reduction referred to in subsection (9) (b) unless otherwise agreed by the owner and the Commission.

(11) If the land is owned by 2 or more people they are jointly and severally liable to pay the refund.

(12) Where the reservation has been revoked the relevant proportion for the purposes of subsection (9) is the same as the proportion referred to in subsection (7) (c) in relation to the original compensation.

(13) Where the area of the reservation has been reduced the relevant proportion for the purposes of subsection (9) shall be determined as follows —

- (a) a notional amount of compensation is determined under subsections (3) and (6) as if —
 - (i) the reservation had never occurred;
 - (ii) a reservation of the reduced area had occurred when the reduction occurred; and
 - (iii) the land were being sold;
- (b) the proportion (expressed as a percentage) which that notional amount of compensation bears to the current value of the land (unaffected by the existence of the reservation) is calculated; and
- (c) the relevant proportion is then determined by deducting the proportion calculated under paragraph (b) from the proportion referred to in subsection (7) (c) in relation to the original compensation.

Example: Original compensation proportion	25%
less	
Notional compensation proportion	<u>15%</u>
Relevant proportion =	10%

(14) Despite subsection (12), where the reservation is revoked after an amount has been recovered under subsection (10) in respect of a previous reduction of the reservation, the relevant proportion is the same as the notional compensation proportion calculated under subsection (13) (a) and (b) in respect of the previous reduction.

(15) Despite subsection (13), where the reservation is reduced after an amount has been recovered under subsection (10) in respect of a previous reduction of the reservation, the relevant proportion shall be determined as follows —

- (a) a notional compensation proportion is calculated under subsection (13) (a) and (b) in respect of the subsequent reduction; and
- (b) the relevant proportion is then determined by deducting the proportion referred to in paragraph (a) from the notional compensation proportion calculated under subsection (13) (a) and (b) in respect of the previous reduction.

Example: Notional compensation proportion calculated under subsection (13) (a) and (b) on previous reduction	15%
less	
Notional compensation proportion calculated under subsection (13) (a) and (b) on subsequent reduction	<u>8%</u>
Relevant proportion on subsequent reduction	= 7%

(16) For the purposes of subsections (9) and (13) (b) the value of the land shall be determined by one of the methods set out in subsection (2b) (a), (b) or (c), but that value is to be determined without regard to any increase in value attributable to factors unrelated to the reservation or to its revocation or reduction.

(17) When the Commission has an entitlement to recover an amount under subsection (9) it has an interest in the land and may lodge with the Registrar of Titles a caveat against the land giving notice of the existence of that interest, and may withdraw any caveat so lodged.

(18) On receipt of the caveat from the Commission, the Registrar of Titles shall enter it in the Register Book.

(19) Before selling or subdividing land against which a caveat is lodged under subsection (17), the owner of the land shall give notice in writing to the Commission, in accordance with the regulations, of the owner's intention to sell or subdivide the land.

(20) Where a caveat is lodged under subsection (17) the Registrar shall not register a transfer of the land without the consent of the Commission.

(21) Subsection (9) has effect whether the reservation of the land occurred before the commencement of the amending section or occurs after that commencement.

(22) Where the reservation of the land occurred before the commencement of the amending section, subsection (9) does not have effect if —

- (a) the revocation or reduction of the reservation occurred before 1 July 1988; or
- (b) the sale or subdivision referred to in subsection (10) occurred before the commencement of the amending section,

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but otherwise has effect whether the revocation or reduction occurred before the commencement of the amending section or occurs after that commencement.

(23) In subsections (21) and (22) “**amending section**” means section 11 of the *Planning Legislation Amendment Act (No. 2) 1994*¹.

[Section 36 amended by No. 44 of 1962 s.5; No. 29 of 1963 s.2; No. 62 of 1968 s.3; No. 104 of 1969 s.2; No. 92 of 1985 s.23; No. 109 of 1985 s.3; No. 6 of 1986 s.9; No. 84 of 1994 s.11.]

Compensation in relation to planning control areas

36A. (1) Compensation is payable in respect of land injuriously affected by the declaration, or by the amendment of the declaration, of a planning control area, and land so affected may be acquired by the Commission, in the same circumstances and to the same extent as if the land in the planning control area, instead of being in a planning control area, had been reserved under the Scheme for a public purpose.

(2) Section 36 applies to compensation payable under this section as if a reference in that section to compensation for injurious affection to any land were a reference to compensation under this section for injurious affection as a result of the declaration, or the amendment to the declaration, of a planning control area under section 35C.

[Section 36A inserted by No. 79 of 1981 s.10; amended by No. 92 of 1985 s.23; No. 84 of 1994 s.12.]

Effect of payment of compensation

36AA. Where compensation has been paid under section 36 or 36A in relation to a matter no further compensation shall be payable under any other provision of this Act as a result of the same matter.

[Section 36AA inserted by No. 84 of 1994 s.13.]

Board of Valuers

36B. (1) A Board of Valuers (in this section and in succeeding sections of this Act called "**the Board**") is established.

(2) The Board shall consist of 4 members, including the Chairman, appointed by the Governor, each to hold office for 2 years and to be eligible for re-appointment.

(3) Each of the persons appointed to the Board shall be an Associate or a Fellow of the Australian Institute of Valuers Incorporated, an association incorporated under the laws of South Australia, and, of those persons —

- (a) one, who shall be Chairman, shall be nominated by the Commission; and
- (b) 3 shall be nominated by the body known as The Real Estate Institute of Western Australia, incorporated pursuant to the *Associations Incorporation Act 1895*¹⁰.

(4) The Board is constituted by the Chairman and any 2 members and may meet notwithstanding there being a vacancy on the Board.

(5) A vacancy on the Board occurs where a member dies, resigns or is removed by the Governor on the ground of his inefficiency, incapacity or misconduct.

(6) The members of the Board are entitled to such fees and expenses, in respect of attendances at meetings of, or while engaged in the business of, the Board, as the Governor may from time to time determine.

(6a) In determining under subsection (6) any fees to which the members of the Board are entitled while engaged in the business of the Board, the Governor may adopt —

- (a) wholly or in part; and

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(b) with or without alteration,

all or any of the maximum amounts of remuneration fixed under section 25 of the *Land Valuers Licensing Act 1978* for the various kinds of services rendered by licensed valuers and those maximum amounts of remuneration, if so adopted, shall be deemed to be fees determined under that subsection as fees to which the members of the Board are entitled while engaged in the business of the Board.

(6b) An adoption made under subsection (6a) may be made by reference to the citation of the relevant notice published in the *Gazette* under section 25 of the *Land Valuers Licensing Act 1978* and to any provisions of that notice, and it shall not be necessary to set out in the relevant determination made under subsection (6) the full text of that notice or of any provision thereof.

(7) Judicial notice shall be taken of the signature of the Chairman subscribed to any finding of the Board.

[Section 36B inserted by No. 84 of 1966 s.4 as section 36A; renumbered as section 36B by No. 79 of 1981 s.8; amended by No. 92 of 1985 s.23; No. 6 of 1986 s.10.]

Valuations by the Board

36C. (1) The owner of land that is subjected to injurious affection due to, or arising out of, the land being reserved under the Scheme for a public purpose who gives notice of his intention to sell the land and claim compensation shall, unless the Commission waives the requirement apply to the Board, in the prescribed manner, for a valuation of the land as not so affected and the Board shall thereupon make such a valuation.

(2) Subject to subsection (3a), a valuation made by the Board pursuant to subsection (1) shall be communicated to the applicant and to the Commission and, for the purposes of section 36, a valuation so made is final.

(3) Upon receipt of a valuation made by the Board under this section, the Commission shall advise the owner of the subject land of the minimum price at which the land may be sold without affecting the amount of compensation (if any) payable to him under section 36.

(3a) Where any land with respect to which a valuation has been made under this section is not sold within a period of one year from the making of the valuation, the Board may, at the request of the owner of the land, if in the circumstances of the case it thinks it just to do, review the valuation and either confirm the valuation or vary it.

(3b) Where the Board reviews a valuation pursuant to subsection (3a), it shall notify the owner of the land and the Commission accordingly and thereupon subsection (3), with such modification as circumstances require, applies to the valuation as reviewed by the Board.

(4) The Governor may make regulations prescribing procedures for, and the fees payable on, applications to the Board and those regulations may make provision for the applicant to be heard and for his submissions to be supported by statutory declarations made under, and by virtue of, section 106 of the *Evidence Act 1906*.

(5) In making under subsection (4) any regulations prescribing the fees payable on applications to the Board, the Governor may adopt —

- (a) wholly or in part; and
- (b) with or without alteration,

all or any of the maximum amounts of remuneration fixed under section 25 of the *Land Valuers Licensing Act 1978* for the various kinds of services rendered by licensed valuers and those maximum amounts of remuneration, if so adopted, shall be deemed to be fees prescribed by regulations made under that subsection as fees payable on applications to the Board.

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(6) An adoption made under subsection (5) may be made by reference to the citation of the relevant notice published in the *Gazette* under section 25 of the *Land Valuers Licensing Act 1978* and to any provisions of that notice, and it shall not be necessary to set out in the relevant regulations made under subsection (4) the full text of that notice or of any provision thereof.

[Section 36C inserted by No. 84 of 1966 s.5 as section 36B; amended by No. 62 of 1968 s.4; renumbered as section 36C by No. 79 of 1981 s.9; amended by No. 92 of 1985 s.23; No. 6 of 1986 s.11.]

Commission is responsible authority

37. (1) For the purposes of this Act and the Town Planning Act in relation to a Scheme, the Commission shall be deemed to be the responsible authority and has all the powers, rights, duties and authority conferred or imposed on a responsible authority.

(2) Any purchase moneys or rents or profits or other money received by the Commission from land acquired by it or arising out of the use or occupation of the land by the Commission shall be paid into the Fund.

(3) If before the Scheme, or an amendment to the Scheme, has the force of law the Commission is satisfied that any land is or is likely to be comprised in the Scheme, it may purchase the land.

(4) After the Commission is appointed to administer and carry out any order as provided in section 25, it becomes the public authority responsible for the payment of compensation or the cost of purchasing any land under the provisions of section 7A (12) (b)² of the Town Planning Act.

(5) (a) Notwithstanding anything contained in the *Public Works Act 1902*¹³, the value of any land or improvements thereon which is compulsorily acquired by the Commission under

this section or section 13 of the Town Planning Act shall for the purpose of assessing the amount of compensation to be paid for the land and improvements, be assessed without regard to any increase or decrease in value attributed wholly or in part to any of the provisions contained in, or to the operation or effect of, the Scheme and having regard to values current at the time of acquisition but in assessing the amount of compensation regard shall be had to any amounts of compensation already paid or payable in respect of the land under section 36.

(b) Where compensation has been paid, or is payable, in respect of land pursuant to section 36, then, subject to the succeeding provisions of this subsection, there shall be deducted from the compensation assessed pursuant to paragraph (a) an amount that bears the same ratio to the compensation so assessed as the compensation paid or payable pursuant to that section bears to the unaffected value of the land, as determined under this Act.

(c) In assessing the amount to be deducted from compensation under the provisions of paragraph (b), the person lawfully appointed to determine the amount of compensation shall have regard to —

- (i) any improvements or demolitions lawfully made to or on the land, subsequently to the determination of the unaffected value of the land; and
- (ii) to the earlier termination of the tenure of the land, where the compensation might otherwise have been affected by an assurance given by the Commission, and which the Commission is authorized by this subparagraph to give, that the tenure was to be of a greater period.

(6) (a) The Commission shall hold for the purposes of the Scheme any land acquired by it under this Act or the Town Planning Act, including land purchased under section 36A

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or subsection (3), and may, subject to paragraphs (b) and (c), dispose of or alienate that land —

- (i) for or in furtherance of the provisions or likely provisions of the Scheme; or
- (ii) if that land is no longer required by the Commission.

(b) Subject to paragraph (c), the Commission shall not except with the consent of the Governor dispose of or alienate any land compulsorily acquired by it other than for or in furtherance of the provisions or likely provisions of the Scheme.

(c) In exercising a power to dispose of or alienate land conferred by this subsection, the Commission shall have regard to the general principle that in such cases land acquired by the Commission should, if in the opinion of the Minister it is practicable and appropriate to do so, be first offered for sale at a reasonable price determined by the Minister to the person from whom that land was so acquired.

(7) (a) Where any land held, taken, resumed or otherwise acquired under the *Public Works Act 1902*¹³ or any other Act, for any public work, is in the opinion of the Governor not required for that work and is required for the purposes or likely purposes of the Scheme, the Governor notwithstanding the provisions of section 29 of the first-mentioned Act, may declare by notice published in the *Gazette*, that the land shall be held and may be used for the purposes of the Scheme.

(b) From the date of the publication of the notice the land described therein, by force of this subsection, vests in the Commission for the purposes of the Scheme.

[Section 37 amended by No. 29 of 1963 s.3; No. 95 of 1965 s.2; No. 84 of 1966 s.6; No. 115 of 1979 s.15; No. 79 of 1981 s.11; No. 92 of 1985 s.23.]

Power of Commission to acquire certain land

37A. (1) Where the Commission certifies in writing to the Minister that for the purpose of advancing the planning, development and use of any land within the metropolitan region —

- (a) the land should be dealt with in all or any of the following ways, namely — planned, replanned, designed, redesigned, consolidated, resubdivided, cleared, developed, reconstructed or rehabilitated; or
- (b) provision should be made for the land to be used for such residential, commercial, industrial, public, recreational, institutional, religious, charitable or other uses, buildings, works, improvements or facilities, or spaces therefor, as may be appropriate or necessary,

and recommends to the Minister that the land should be so dealt with or used for that purpose and made the subject of an improvement plan (a copy of which shall accompany the recommendation together with such supporting maps and texts as the Minister may require) the Minister shall, if he accepts the recommendation of the Commission, forward the recommendation as soon as practicable after such acceptance to the Governor.

(2) If the Governor accepts the recommendation of the Commission, the Commission may while the Scheme has the force of law as provided in this Act, purchase or otherwise acquire any land included in the improvement plan by agreement with the owner thereof or in default of such agreement, the Commission may acquire the land compulsorily under and subject to the *Public Works Act 1902*¹³, as modified by this section.

(2a) The Commission may —

- (a) amend an improvement plan by notice of amendment;
or

(b) revoke an improvement plan by a notice of revocation, and subsection (1) applies to a notice of amendment or revocation under paragraph (a) or (b) as if it were an improvement plan.

(3) Subject to this section, the provisions of the *Public Works Act 1902*¹³, apply to the taking of any land compulsorily under this section, with such modifications as circumstances require and in so applying those provisions any reference to the Minister for Works shall be read as a reference to the Minister for Town Planning.

(4) For the purpose of advancing the development of land in the metropolitan region in accordance with an improvement plan referred to in subsection (1) the Commission with the approval of the Governor, may —

- (a) construct, repair, rehabilitate or improve buildings, works, improvements or facilities on land acquired or held by it under this Act;
- (b) return, sell, lease, exchange or otherwise dispose of any buildings, works, improvements or facilities and the land appurtenant thereto and any land howsoever acquired by the Commission under this Act, to any person, or public authority upon such terms and conditions as the Commission with the approval of the Governor thinks fit; and particulars of any return, sale, lease, exchange or disposal to any person shall within one month of the Governor's approval be notified by the Commission in the *Government Gazette*;
- (c) in respect of the land included in an improvement plan but not acquired or held by it under this Act, enter into an agreement with any owner of the land relating to —
 - (i) the planning, replanning, design, redesign, consolidation, resubdivision, clearing, development, reconstruction or rehabilitation of the land;

- (ii) the construction, repair, rehabilitation or improvement of any buildings, works, services, improvements or facilities on the land;
 - (iii) the sale, purchase, exchange, surrender, vesting, allocation or other disposal of the land, the adjustment or alteration of the boundaries of the land, the pooling of the lands of several owners, the adjustment of rights between owners of the land or other persons interested in the land whether by payments of money or transfers or exchanges of land or otherwise, the valuation of the land and the provision of land for any public open space, public work as defined by the *Public Works Act 1902*¹³ or any other public purpose;
 - (iv) the payment, satisfaction or recovery of costs incurred in implementing the agreement; and
 - (v) such other acts, matters or things as are or may be necessary to give effect to the improvement plan;
- (d) do any act, matter or thing for the purpose of carrying out any agreement entered into pursuant to paragraph (c).

(4a) The validity of any agreement entered into by the Authority before the date of the coming into operation of the *Metropolitan Region Town Planning Scheme Act Amendment Act 1975*¹, pursuant to this section as in force before that date or of any act, matter or thing done pursuant to such an agreement shall not be challenged or called in question in any court by reason only that this section did not at the time that the agreement was entered into confer power on the Authority to enter into such an agreement.

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(5) Nothing in this section shall be construed as taking away or in any way derogating from or diminishing any power otherwise conferred by this or any other Act upon the Commission or any other authority or body or person.

[Section 37A inserted by No. 95 of 1965 s.3; amended by No. 84 of 1966 s.7; No. 7 of 1970 s.2; No. 80 of 1975 s.8; No. 92 of 1985 s.23; No. 84 of 1994 s.14.]

PART VI — FINANCE

The Metropolitan Region Improvement Fund

38. (1) (a) For the purpose of making, carrying out and giving effect to the Scheme, a fund called The Metropolitan Region Improvement Fund is established at the Treasury.

(b) The Commission shall control the Fund and the Fund may be operated upon for the purpose in such manner as from time to time the Treasurer approves and is hereby authorized to approve.

(2) The Commission shall pay or cause to be paid to the Fund —

- (a) moneys appropriated to the Metropolitan Region Improvement Fund under section 41AA (2);
- (b) money borrowed by the Commission for the purpose of the performance of any function referred to in section 18 (1) (e) of the *Western Australian Planning Commission Act 1985*; and
- (c) any other payments made to the Commission in connection with the performance of any such function.

(3) The Commission is authorized to apply money represented in the Fund to payment of all expenditure incurred by it for the purpose of formulating, promulgating, carrying out and giving effect to the Scheme, including without limiting the generality of that authorization —

- (a) payment of capital expenditure, costs and other expenses incurred by the Commission in and in connection with, the acquisition, whether by agreement or compulsorily, of any property under any provisions of this Act; and

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- (b) all expenses incurred by the Commission in or in connection with the Scheme or an order or the establishment and maintenance of any works in connection with the Scheme or order or the development, maintenance and management of any land held by the Commission that is reserved under the Scheme or the carrying out of any works, including the provision of facilities thereon, incidental to such development, maintenance and management or conducive to the use of such land for any purpose for which it is reserved.

(4) The Commission is also authorized to apply money in the Fund to payment of expenditure required for the purpose of carrying out the *East Perth Redevelopment Act 1991*¹ or the *Subiaco Redevelopment Act 1994*¹.

[Section 38 amended by No. 95 of 1965 s.4; No. 115 of 1979 s.16; No. 73 of 1982 s.11; No. 92 of 1985 ss.19 and 23; No. 98 of 1985 s.3 (amended by No. 4 of 1986 s.3); No. 62 of 1991 s.59; No. 6 of 1993 s.5; No. 35 of 1994 s.67; No. 84 of 1994 ss.43 and 46.]

[39, 40. Repealed by No. 92 of 1985 s.20.]

PART VII — ADMINISTRATION, PENALTIES

Owners' liability to pay Metropolitan Region Improvement Tax

41. (1) Subject to the provisions of subsection (2), every person who, at midnight on 30 June 1959, and at that time in each year thereafter, is the owner of land situate within the metropolitan region shall in accordance with the provisions of this Act pay Metropolitan Region Improvement Tax on the land which is hereby chargeable with the tax imposed by and at the rate imposed by section 2 of the *Metropolitan Region Improvement Tax Act 1959*, for the then current financial year.

(1a) An owner of land situate within the metropolitan region is also liable to pay Metropolitan Region Improvement Tax in accordance with section 15A of the *Land Tax Assessment Act 1976* and, for that purpose, the said section shall apply as if references therein to land tax and the *Land Tax Act 1976* were respectively references to Metropolitan Region Improvement Tax and the *Metropolitan Region Improvement Tax Act 1959*.

(2) For the purposes of this Act the provisions of the *Land Tax Assessment Act 1976*, relating to land tax and land so far as they can be made applicable with all necessary modifications or adaptations apply to the Metropolitan Region Improvement Tax and land situate within the metropolitan region.

[(3) *repealed*]

(4) Notwithstanding anything contained in any other law, the amount of the tax which the Commissioner of State Taxation shall treat as having come into his possession under this Act in each financial year commencing with the financial year that commenced on 1 July 1959, shall be the amount of the tax which becomes payable in that financial year.

[Section 41 amended by No. 21 of 1970 s.21; No. 8 of 1976 s.3; No. 30 of 1980 s.2.]

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How tax collections are dealt with

41AA. (1) The proceeds of the Metropolitan Region Improvement Tax referred to in section 41 shall be credited to the Consolidated Fund.

(2) An amount equal to the amount credited to the Consolidated Fund under subsection (1) shall be credited to the Metropolitan Region Improvement Fund and charged to the Consolidated Fund, and this subsection appropriates the Consolidated Fund accordingly.

[Section 41AA inserted by No. 6 of 1993 s.5.]

Land of Commission not subject to rates etc.

41A. No rate, tax, or assessment shall be imposed, levied, charged or made upon any land acquired by the Commission under and for the purposes of this Act while the Commission is the owner of the land, but if any such land is leased by the Commission, the Commission shall pay in respect thereof out of the rent received therefrom by the Commission, the whole or such portion of the amount of any rate, tax, or assessment that would but for this section have been imposed, levied, charged or made on the land so leased, as the Commission certifies in writing to be available for the purpose.

*[Section 41A inserted by No. 69 of 1968 s.3; amended
by No. 92 of 1985 s.23.]*

Offences and penalties

42. A person who —

- (a) after the Scheme has the force of law commences or continues to carry out any development in any part of the metropolitan region the subject of the Scheme otherwise than in accordance with the provisions of

the Scheme or commences or continues to carry out any such development otherwise than in accordance with any condition imposed by the Commission or a local authority pursuant to this Act with respect to the development or otherwise fails to comply with any such condition; or

(b) at any time contravenes the provisions of this Act,

commits an offence.

Penalty: \$50 000 and in the case of a continuing offence, a further fine of \$5 000 for each day during which the offence continues.

[Section 42 amended by No. 113 of 1965 s.8; No. 115 of 1979 s.16; No. 92 of 1985 s.23; No. 84 of 1994 s.15.]

Power to Commission to direct removal, etc. of development contrary to Scheme

43. (1) The Commission or a local authority exercising the powers of the Commission, may by notice in writing served on the owner of any land situate in the metropolitan region direct him within such period, being not less than 40 days after the service of the notice, as is specified in the notice, to remove, pull down, take up, or alter any building or work or cease any development commenced, continued or carried out on the land in contravention of the Scheme.

(2) The Commission may by notice in writing served on the owner of any land situated in a planning control area direct him within such period, being not less than 40 days after the service of that notice, as is specified in that notice to cease any development carried out on that land in contravention of section 35D.

(3) The owner on whom a notice is so served may, within the period specified in the notice, appeal in the manner prescribed to the Minister against any direction contained therein, and the Minister after considering the appeal may confirm, vary or cancel

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the direction and the Minister may, where he confirms or varies the direction, by written notice, direct that the owner shall comply with the direction as so confirmed or varied, as the case requires, within such period, being not less than 40 days after the service of the notice, as is specified in the notice.

(4) Where the direction appealed against is confirmed or varied, the owner to whom the direction was given shall comply with it to the extent to which it is so confirmed or varied and within the time specified in the notice giving the direction.

(5) Where —

(a) a notice is served pursuant to subsection (1) on an owner of any land directing him to carry out such work as is specified therein and the owner fails to —

(i) carry out the directions; or

(ii) appeal against the direction pursuant to subsection (3),

within the time specified in the notice; or

(b) on appeal by an owner of any land a direction specified in a notice served on him under subsection (1) is confirmed or varied pursuant to subsection (3) and the owner fails to carry out the direction as confirmed or varied pursuant to that subsection within the time specified by the Minister in the notice given under subsection (3),

the Commission or local authority, as the case requires, may itself remove, pull down, take up or alter the building, work or development accordingly and may recover the costs incurred by it in carrying out such work in any court of competent jurisdiction.

[Section 43 amended by No. 115 of 1979 s.18; No. 79 of 1981 s.12; No. 92 of 1985 s.23; No. 73 of 1994 s.4.]

Injunction

43A. (1) Without prejudice to any proceedings for an offence against this Act, where —

- (a) a person contravenes a provision of this Act or the Scheme; or
- (b) the Commission or a local authority exercising the powers delegated to it by the Commission grants any application for approval to commence or carry out development subject to conditions and the development is commenced, continued or completed contrary to or otherwise than in accordance with any condition imposed with respect to the development by the Commission or the local authority pursuant to this Act,

the Supreme Court may, on application by the Commission or the local authority, as the case requires, grant an injunction —

- (c) where the application is with respect to a contravention of the Act or the Scheme, restraining the person from engaging in any conduct or doing any act, that constitutes or is likely to constitute a contravention of this Act or the Scheme; or
- (d) where the application is with respect to the commencement, continuation or completion of a development contrary to or otherwise than in accordance with any condition imposed by the Commission or the local authority with respect to the development —
 - (i) in the case where the development is commenced but not completed, restraining the continuation or completion of the development or any use thereof;

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- (ii) in the case where the development is completed, restraining the use of the development,

until the condition is complied with.

(2) An injunction granted under subsection (1) —

- (a) shall have effect for such period specified therein or until further order of the Court;
- (b) may be varied or rescinded by the Court.

[Section 43A inserted by No. 115 of 1979 s.19; amended by No. 79 of 1981 s.13; No. 92 of 1985 s.21; No. 84 of 1994 s.43.]

Power of Governor to make regulations

44. The Governor may make regulations prescribing forms, fees and matters which by this Act are contemplated, required or permitted to be prescribed or which appear to him necessary, convenient or desirable to be prescribed for the purpose of effectually carrying out the provisions of this Act and the regulations may impose a penalty not exceeding \$50 000 for a breach of any of the regulations.

[Section 44 amended by No. 115 of 1979 s.20; No. 84 of 1994 s.16.]

Crown bound

45. The Scheme binds the Crown.

[Section 45 inserted by No. 115 of 1979 s.2.]

[46. *Repealed by No. 39 of 1960 s.2.]*

FIRST SCHEDULE

[section 23]

1. SOUTH-WEST GROUP:

Councils of the —

City of Cockburn
City of Fremantle
City of Melville
City of Rockingham
Town of East Fremantle
Town of Kwinana.

2. WESTERN SUBURBS GROUP:

Councils of the —

City of Nedlands
City of Subiaco
Town of Cambridge
Town of Claremont
Town of Cottesloe
Town of Mosman Park
Shire of Peppermint Grove.

3. NORTH-WEST GROUP:

Councils of the —

City of Stirling
City of Wanneroo
Town of Vincent.

4. SOUTH-EAST GROUP:

Councils of the —

City of Armadale
City of Belmont
City of Canning
City of Gosnells
City of South Perth
Town of Shepperton
Shire of Serpentine-Jarrahdale.

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5. EASTERN GROUP:

Councils of the —

City of Bayswater
Town of Bassendean
Shire of Kalamunda
Shire of Mundaring
Shire of Swan.

[*FIRST SCHEDULE inserted by No. 38 of 1993 s.34 (1).*]

SECOND SCHEDULE

[Section 35C]

PURPOSES FOR WHICH LAND MAY BE REQUIRED

Item Purpose

1. Car parks.
2. Civic and cultural amenities.
3. Commonwealth Government.
4. Highways and important regional roads.
5. Hospitals.
6. Water Services, including sewerage and drainage.
7. Parks and recreation areas.
8. Port installations.
9. Prisons.
10. Railways.
11. Schools.
12. Special uses.
13. Electricity Corporation.
- 13A. Gas Corporation.
14. State forests.
15. Universities.
16. Water catchments.
17. Waterways.
18. Cultural heritage conservation.

[*Second Schedule inserted by No. 79 of 1981 s.14; amended by No. 97 of 1990 s.30; No. 89 of 1994 s.109; No. 73 of 1995 s.188.*]

THIRD SCHEDULE

[Section 6]

DESCRIPTION OF METROPOLITAN REGION

All that portion of the State bounded by a line starting from the southwestern corner of Swan Location 2745 (South Latitude 31 degrees 27 minutes 23.105 seconds, East Longitude 115 degrees 33 minutes 35.604 seconds), being a point on the northernmost northern boundary of the district of the Shire of Wanneroo, and extending easterly, generally southerly, again easterly, again generally southerly and again easterly along the boundaries of that district to the intersection of the prolongation northerly of the eastern boundary of Location 1584 with the prolongation westerly of the northern boundary of Location 2478, being a north-western corner of the district of the Shire of Swan; thence generally easterly, generally northerly, generally easterly, southerly, easterly and again southerly along the boundaries of that district to the easternmost southeastern corner of Location 1817, being a point on the northernmost northern boundary of the district of the Shire of Mundaring; thence easterly, generally southerly, again easterly, again generally southerly, generally westerly, again southerly, again easterly, again southerly and again westerly and generally north-westerly along boundaries of the district of the Shire of Mundaring to the intersection of the left bank of the Darkin River with the prolongation northerly of the western boundary of late pre-emptive Poison Right 8/228, being the easternmost northeastern corner of the district of the Shire of a Kalamunda; thence southerly along the easternmost eastern boundary of the district of the Shire of Kalamunda to the prolongation east of the southern boundary of Canning Location 710, being a northeastern corner of the district of the Town of Armadale; thence generally southerly, generally southeasterly, westerly and southwesterly along the boundaries of the district of the Town of Armadale to the 33 Mile Post on the northeastern side of Albany Highway, being a northeastern corner of the district of the Shire of Serpentine-Jarrahdale; thence generally southeasterly, southerly, generally westerly and northerly along boundaries of the district of the Shire of Serpentine-Jarrahdale to the northeastern corner of Lot 3 of Cockburn Sound Location 16, as shown on Land Titles Office Diagram 2909, being a southeastern corner of the district of the Shire of Rockingham; thence generally westerly along the boundaries of the district of the Shire of Rockingham to the southwestern corner of Lot 236 as shown on Land Titles Office Plan 7931 (2), (South Latitude 32 degrees 27 minutes 24.586 seconds, East Longitude 115 degrees 44 minutes 52.324 seconds); thence west 17 820.4 metres to East Longitude 115 degrees 33 minutes 30 seconds; thence north 110 932.1 metres to South Latitude 31 degrees 27 minutes 23.105 seconds and thence east 148 metres to the starting point.

[Third Schedule inserted by No. 73 of 1982 s.13.]

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NOTES

¹. This reprint is a compilation as at 7 March 1996 of the *Metropolitan Region Town Planning Scheme Act 1959* and includes the amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Metropolitan Region Town Planning Scheme Act 1959</i>	78 of 1959	14 December 1959	19 February 1960 (see section 2 and <i>Gazette</i> 19 February 1960 p.412)	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1960</i>	39 of 1960	3 November 1960	3 November 1960	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1962</i>	44 of 1962	1 November 1962	16 August 1963 (see section 2 and <i>Gazette</i> 16 August 1963 p.2377)	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1963</i>	29 of 1963	13 November 1963	13 November 1963	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1965</i>	7 of 1965	15 September 1965	15 September 1965	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act (No. 2) 1965</i>	95 of 1965	8 December 1965	8 December 1965	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see section 2 (2)); balance: 21 December 1965	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1966</i>	84 of 1966	12 December 1966	Section 3: 19 June 1967 (see section 2); balance: 31 March 1967 (see <i>Gazette</i> 31 March 1967 p.829)	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1968</i>	62 of 1968	13 November 1968	17 January 1969 (see <i>Gazette</i> 17 January 1969 p.154)	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act (No. 2) 1968</i>	69 of 1968	18 November 1968	Deemed operative 19 February 1960 (see section 2)	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1969</i>	104 of 1969	25 November 1969	25 November 1969	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1970</i>	7 of 1970	29 April 1970	29 April 1970	
<i>Acts Amendment (Commissioner of State Taxation) Act 1970, Part IV</i>	21 of 1970	8 May 1970	1 July 1970 (see <i>Gazette</i> 26 June 1970 p.1831)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1973</i>	103 of 1973	28 December 1973	28 December 1973	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1974</i>	12 of 1974	27 September 1974	27 September 1974	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1975</i>	80 of 1975	17 November 1975	17 November 1975	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act 1976</i>	8 of 1976	27 May 1976	Deemed operative 1 July 1976 (see section 2)	
<i>Metropolitan Region Town Planning Scheme Act Amendment Act (No. 2) 1979</i>	115 of 1979	21 December 1979	15 February 1980 (see <i>Gazette</i> 15 February 1980 p.457)	
<i>Metropolitan Region Town Planning Scheme Amendment Act 1980</i>	30 of 1980	28 October 1980	28 October 1980	
<i>Metropolitan Region Town Planning Scheme Amendment Act (No. 2) 1980</i>	73 of 1980	26 November 1980	26 November 1980	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Environmental Protection Amendment Act 1980, section 26</i>	78 of 1980	5 December 1980	30 January 1981 (see <i>Gazette</i> 30 January 1981 p.441)	
<i>Acts Amendment (Land Use Planning) Act 1981, Part II</i>	79 of 1981	9 November 1981	18 December 1981 (see <i>Gazette</i> 18 December 1981 p.5166)	
<i>Acts Amendment (Metropolitan Region Town Planning Scheme) Act 1982, Part II</i>	73 of 1982	29 October 1982	29 October 1982	
<i>Acts Amendment and Repeal (Transport Co-ordination) Act 1985 section 59</i>	54 of 1985	28 October 1985	1 January 1986 (see <i>Gazette</i> 20 December 1985 p.4822)	
<i>Acts Amendment (State Planning Commission) Act 1985, Part III</i>	92 of 1985	4 December 1985	6 December 1985 (see section 2 and <i>Gazette</i> 6 December 1985 p.4591)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see <i>Gazette</i> 30 June 1986 p.2255)	(as amended by Act No. 4 of 1986)
<i>Commercial Arbitration Act 1985, section 3</i>	109 of 1985	7 January 1986	1 April 1986 (see section 2 and <i>Gazette</i> 28 February 1986 p.605)	
<i>Metropolitan Region Town Planning Scheme Amendment Act 1986</i>	6 of 1986	15 July 1986	15 July 1986	Transitional ^{3, 6}

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Swan River Trust) Act 1988, Part 6</i>	21 of 1988	5 October 1988	1 March 1989 (see section 2 and <i>Gazette</i> 27 January 1989 p.264)	
<i>Acts Amendment (Heritage Council) Act 1990, Part 2, Division 5</i>	97 of 1990	22 December 1990	25 February 1991 (see section 2 and <i>Gazette</i> 22 February 1991 p.868)	
<i>East Perth Redevelopment Act 1991, section 59</i>	62 of 1991	30 December 1991	1 July 1992 (see section 2 and <i>Gazette</i> 1 July 1992 p.2945)	
<i>Financial Administration Legislation Amendment Act 1993, section 5</i>	6 of 1993	27 August 1993	27 August 1993	
<i>Planning Legislation Amendment Act 1993, Part 2</i>	35 of 1993	16 December 1993	16 December 1993	
<i>City of Perth Restructuring Act 1993, section 34, (Sch 7)</i>	38 of 1993	20 December 1993	1 July 1994 (see sections 3 (1) and 34 (2))	
<i>Subiaco Redevelopment Act 1994, section 67</i>	35 of 1994	8 July 1994	24 August 1994 (see section 2 and <i>Gazette</i> 23 August 1994 p.6364)	
<i>Statutes (Repeals and Minor Amendments) Act 1994, section 4</i>	73 of 1994	9 December 1994	9 December 1994	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Planning Legislation Amendment Act (No. 2) 1994, Part 3 and sections 43 and 46</i>	84 of 1994	13 January 1995	1 March 1995 (see section 2 and <i>Gazette</i> 21 February 1995 p.567)	
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994, section 109</i>	89 of 1994	15 December 1994	1 January 1995 (see section 2 (2) and <i>Gazette</i> 23 December 1994 p.7069)	
<i>Swans Valley Planning Act 1995, section 27</i>	31 of 1995	18 September 1995	25 November 1995 (see section 2 and <i>Gazette</i> 24 November 1995 p.5389)	Transitional ¹³
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995, section 188</i>	73 of 1995	27 December 1995	1 January 1996 (see section 2 and <i>Gazette</i> 29 December 1995 p.6291)	

N.B. The *Metropolitan Region Town Planning Scheme Act 1959* is affected by the *Public Works Act 1902*¹³ and the *State Planning Commission (Amendment and Validation) Act 1990* and was affected by the *Industrial Lands Development Authority Act 1966* which was repealed by Act No. 35 of 1992.

² Repealed by Act the *Town Planning and Development Amendment Act 1982* (Act No. 120 of 1982 section 5).

³ Section 7 (2) of the *Metropolitan Region Town Planning Scheme Amendment Act 1986* (Act No. 6 of 1986) reads as follows —

“ (2) Any proposed amendment to or revocation of the Metropolitan Region Scheme which was immediately before the coming into operation of this Act being dealt with under the procedure set forth in section 33 of the principal Act shall on that coming into operation continue to be dealt with under that procedure as if the amendment of that section by subsection (1) had not taken place. ”

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⁴ Section 6 of Act the *State Planning Commission (Amendment and Validation) Act 1990* (Act No. 7 of 1990) reads as follows —

“ **Validation of certain amendments to Scheme**

6. (1) An amendment to the Metropolitan Region Scheme published in the *Government Gazette* under section 33A (8) of the Metropolitan Scheme Act after the commencement of the principal Act and before the commencement of this Act and every act or omission done or made, or purporting to have been done or made, under or for the purposes of or in reliance on that amendment or that Scheme as so amended —

- (a) is and always has been valid notwithstanding the matters set out in subsection (2); and
- (b) is not to be held in any proceedings to be, or ever to have been, invalid by reason only of any of those matters.

(2) The matters referred to in subsection (1) are —

- (a) any failure by the Commission, either itself or through a person acting or purporting to act on its behalf, to comply with subsection (1) of section 33A of the Metropolitan Scheme Act in respect of the formation of an opinion under that subsection that the amendment did not constitute a substantial alteration to the Scheme; or
- (b) the terms of any delegation or supposed delegation by the Commission of its functions under section 33 or 33A of that Act.

(3) Section 7 (1) (a), (b) and (c) applies to an amendment referred to in subsection (1) in the same way as it applies to a pending amendment under that section. ”

⁵ Section 7 of the *State Planning Commission (Amendment and Validation) Act 1990* (Act No. 7 of 1990) reads as follows —

“ **Amendments in progress**

7. (1) For the purposes of the Metropolitan Scheme Act and any pending amendment of the Metropolitan Region Scheme —

- (a) the Commission is to be taken to have properly and effectually formed the opinion under section 33A (1) of that Act that the pending amendment does not constitute a substantial alteration to that Scheme;

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- (b) without limiting paragraph (a), the Commission is to be taken to have properly and effectually delegated to the Council as from the commencement of the principal Act all of its functions, powers, privileges, authorities, discretions, duties and responsibilities under sections 33 and 33A of that Act; and
- (c) effect is to be given accordingly to every notice and certificate under section 33A (2) of that Act relating to any pending amendment that has appeared in the *Government Gazette* and to all things done or remaining to be done in respect of the pending amendment in order to comply with that section.

(2) In subsection (1) "**pending amendment**" means an amendment in respect of which a notice and certificate have appeared in the *Government Gazette* for the purposes of subsection (2) of section 33A of the Metropolitan Scheme Act but which has not taken effect under subsection (8) of that section before the commencement of this Act.

⁶ Section 8 (2) of the *Metropolitan Town Planning Scheme Amendment Act 1986* (Act No. 6 of 1986) reads as follows —

" (2) Any proposed amendment to the Scheme which was immediately before the coming into operation of this Act being dealt with under the procedure set forth in section 33A of the principal Act shall on that coming into operation continue to be dealt with under that procedure as if the repeal and substitution of that section by subsection (1) had not taken place.

⁷ Section 4 of the *State Planning Commission (Amendment and Validation) Act 1990* (Act No. 7 of 1990) reads as follows —

" **Application of sections 6 and 7**

4. (1) Subject to this section, sections 6 and 7 have effect notwithstanding any judgment or order in any proceedings before a court or any writ or other relief, or an entitlement to the issue of any writ or the grant of other relief, in those proceedings.

(2) Section 7 does not make good any error or insufficiency held by a court to have occurred in relation to Metropolitan Region Scheme Amendment No. 774/33A affecting certain land in Helena Valley being the proposed amendment in respect of which notice under section 33A (2) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 12 May 1989 at page 1453.

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(3) Section 6 does not apply to the following amendments —

- (a) Metropolitan Region Scheme Amendment No. 696/33A affecting certain land in Padbury known as Hepburn Heights being the amendment in respect of which notice under section 33A (8) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 10th March 1989 at page 715; and
- (b) Metropolitan Region Scheme Amendment No. 692/33A affecting certain land known as the old Swan Brewery site being the amendment in respect of which notice under section 33A (8) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 30th October 1987 at page 4010.

(4) Section 7 does not apply to Metropolitan Region Scheme Amendment No. 776/33A affecting certain land in Leda near Kwinana being the proposed amendment in respect of which notice under section 33A (2) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 30th June 1989 at page 1950.

(5) Sections 6 and 7 have effect subject to any judgment or order, relating to an amendment to the Metropolitan Region Scheme, that is consequential on a finding by a court to the effect that an opinion under subsection (1) of section 33A of the Metropolitan Scheme Act that the amendment did not constitute a substantial alteration to that Scheme was not one that could reasonably have been held for the purposes of that subsection.

(6) For the purposes of reaching a finding referred to in subsection (5) a court shall not assume that the absence of any proper record of the basis for forming the opinion indicates any failure to —

- (a) give proper consideration to relevant matters; or
- (b) exclude consideration of irrelevant matters,

nor shall it reach or base such a finding on the ground of the absence of a proper record.

(7) Subsection (5) applies to a judgment or order whether it is given or made before or after the commencement of this Act.

⁸ Now see *Interpretation Act 1984*.

⁹ Title amended under *Reprints Act 1984* section 7 (3) (h).

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- ¹⁰ Now see *Associations Incorporation Act 1987*.
- ¹¹ The names of the bodies originally contained in this Schedule have been varied to the names set out in the First Schedule as printed above to accord with the changes in the names or status of certain of these bodies effected by Orders in Council made under the *Local Government Act 1960*, as amended. See *Government Gazettes* 1961, pp.195 and 3086; 1962, pp.221 and 2680; 1968, p.1245; 1970, pp.477, 3346, 3707 and 3842; 1975, p.1152; 1977, pp.471 and 1821; 1978, pp.3295 and 3746.
- ¹² Clause 4 (2) and (3) of Schedule 2 of the *Swan Valley Planning Act 1995* (Act No. 31 of 1995) reads as follows —
- “ (2) The provisions inserted by subclause (1) do not apply to any amendments to a scheme submitted to the Minister under section 33 (2) (a) of the *Metropolitan Region Town Planning Scheme Act 1959* before the commencement of section 27 of this Act.
- (3) In subsection (2) “**scheme**” means the Metropolitan Region Scheme as defined by the *Metropolitan Region Town Planning Scheme Act 1959*. ”.
- ¹³ Now known as the *Land Acquisition and Public Works Act 1902*.