



Western Australia

## **Swan Valley Planning Act 2020**



# Swan Valley Planning Act 2020

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Western Australia

## Swan Valley Planning Act 2020

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No. 45 of 2020

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**An Act to —**

- **provide for a Swan Valley Planning Scheme that will apply to the Swan Valley for the purposes of the *Planning and Development Act 2005*; and**
  - **provide for the establishment and functions of a Swan Valley Strategic Leadership Group and a Swan Valley Statutory Planning Committee; and**
  - **amend the *Planning and Development Act 2005* in relation to its application in the Swan Valley; and**
  - **repeal the *Swan Valley Planning Act 1995*; and**
  - **make consequential amendments to other Acts,**
- and for related purposes.**

*[Assented to 9 December 2020]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Swan Valley Planning Act 2020*.

### **2. Commencement**

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) sections 53, 54 and 62 —
  - (i) if the *Planning and Development Amendment Act 2020* section 65 comes into operation on or before the day fixed under paragraph (e) — on the day fixed under paragraph (e); or
  - (ii) otherwise — immediately after the day on which the *Planning and Development Amendment Act 2020* section 65 comes into operation;
- (c) sections 55 and 103 —
  - (i) if the *Planning and Development Amendment Act 2020* section 56 comes into operation on or before the day fixed under paragraph (e) — on the day fixed under paragraph (e); or
  - (ii) otherwise — immediately after the *Planning and Development Amendment Act 2020* section 56 comes into operation;
- (d) section 84(2) —
  - (i) if the *Planning and Development Amendment Act 2020* section 18 comes into operation on or before the day fixed under paragraph (e) — on the day fixed under paragraph (e); or
  - (ii) otherwise — immediately after the *Planning and Development Amendment Act 2020* section 18 comes into operation;

- (e) the rest of the Act — on a day fixed by proclamation.
- (2) Despite subsection (1), if the *Planning and Development Amendment Act 2020* Part 6 Division 1 comes into operation before the day fixed under subsection (1)(e), sections 66 and 67 and Part 10 Division 10 of this Act —
  - (a) do not come into operation; and
  - (b) are deleted on the day fixed under subsection (1)(e).
- (3) However, if no day is fixed under subsection (1)(e) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends.

### 3. Terms used

In this Act —

***applicable regulations*** means —

- (a) if there are relevant local planning scheme regulations, as defined in section 40(1), that deal with a matter in relation to local planning schemes that is substantially similar to the matter referred to in the provision in which the term is used — those relevant local planning scheme regulations as they apply for the purposes of this Act under section 40; or
- (b) if there are no relevant local planning scheme regulations of the kind referred to in paragraph (a) — regulations made under section 41 for the purposes of the provision in which the term is used;

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

***Commission*** means the Western Australian Planning Commission established by the *Planning and Development Act 2005* section 7(1);

***Department*** means the department of the Public Service principally assisting in the administration of this Act;

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

***EPA*** means the Environmental Protection Authority continued in existence under the *Environmental Protection Act 1986* section 7(1);

***Heritage Council*** means the Heritage Council of Western Australia established by the *Heritage Act 2018* section 11(1);

***Herne Hill townsite*** means the area in the Swan Valley bounded by the Great Northern Highway to the west, McDonald Street to the north, Railway Crescent to the east and Argyle Street to the south;

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

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

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

***Metropolitan Region Scheme*** has the meaning given in the *Planning and Development Act 2005* section 4(1);

***Minister for Heritage*** means the Minister who administers the *Heritage Act 2018*;

***Minister for the Environment*** means the Minister who administers the *Environmental Protection Act 1986*;

***officer of the Commission*** has the meaning given in the *Planning and Development Act 2005* section 4(1);

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

***State planning policy*** has the meaning given in the *Planning and Development Act 2005* section 4(1);

***State Register of Heritage Places*** means the register established and maintained under the *Heritage Act 2018* section 35(1);

***Swan Valley*** has the meaning given in section 4(1);

**Swan Valley local government** means the local government for the local government district that includes the Swan Valley;

**Swan Valley Planning Scheme** means the Swan Valley Planning Scheme in force under Part 2;

**Swan Valley rural land** means land in the Swan Valley that is used, or is suitable to be used, for horticulture or viticulture;

**Swan Valley Statutory Planning Committee** means the committee established under section 33(1);

**Swan Valley Strategic Leadership Group** means the committee established by section 28(1).

#### **4. Swan Valley**

- (1) For the purposes of this Act, the **Swan Valley** is the area delineated in black on the plan number 0.0731 entitled “Area of the Swan Valley” held at the office of the Commission and certified by the Minister as the plan prepared for the purposes of this section.
- (2) The area delineated in black on the map in Schedule 1 is indicative of the area of the Swan Valley.
- (3) In any proceedings, a plan purporting to be a copy of the plan referred to in subsection (1) showing the boundaries of the Swan Valley is evidence of those boundaries.

#### **5. Objects of Act**

- (1) The objects of this Act are —
  - (a) to protect the Swan Valley as a productive agricultural area within the Perth metropolitan region; and
  - (b) to maintain the rural character and conserve the heritage of the Swan Valley; and
  - (c) to ensure that horticulture, viticulture, hobby farming and equestrian activities remain the principal land uses in the Swan Valley; and

- (d) to discourage land uses in the Swan Valley that are incompatible with its rural character and the principal land uses referred to in paragraph (c); and
  - (e) to ensure that tourism and hospitality in the Swan Valley are consistent with the objects in paragraphs (a) to (d); and
  - (f) other than in the Herne Hill townsite, to prevent new residential development in the Swan Valley except for single houses on single lots in keeping with the rural character of the Swan Valley; and
  - (g) to avoid overstocking, clearing of natural vegetation, activities causing pollution or degradation of the environment, or any other land management practices detrimental to the Swan Valley; and
  - (h) to protect the natural environment of the Swan Valley, including by reducing nutrient levels in the Swan River; and
  - (i) to ensure that, for all development in the Swan Valley, appropriate consideration is given to building setbacks, retention of vegetation, suitable building materials and boundary fencing; and
  - (j) to ensure that new non-rural development of Swan Valley rural land is designed and located so as to reduce any nuisance or other detrimental impacts that could arise from existing or future uses of other Swan Valley rural land for horticulture or viticulture; and
  - (k) to ensure that development and subdivision in the Swan Valley are only permitted if this does not prevent the objects in paragraphs (a) to (j) from being satisfied.
- (2) A person exercising a power or performing a function under this Act, or under the *Planning and Development Act 2005* in relation to the Swan Valley Planning Scheme, must have regard to the objects of this Act.



**6. Act binds Crown**

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

## **Part 2 — Swan Valley Planning Scheme**

### **Division 1 — Nature and effect of scheme**

#### **7. Swan Valley Planning Scheme**

- (1) A scheme called the Swan Valley Planning Scheme is to be prepared by the Commission and approved by the Minister in accordance with this Part.
- (2) The Swan Valley Planning Scheme is a planning scheme for the purposes of the *Planning and Development Act 2005*.

#### **8. Scheme has legislative effect**

- (1) The Swan Valley Planning Scheme has legislative effect.
- (2) For the purposes of the *Interpretation Act 1984*, the Swan Valley Planning Scheme is subsidiary legislation made under this Act.
- (3) The *Interpretation Act 1984* section 41 does not apply to the Swan Valley Planning Scheme or to an amendment of the Swan Valley Planning Scheme.

#### **9. Effect of scheme for *Planning and Development Act 2005***

- (1) In this section —  
*relevant planning scheme* means —
  - (a) the Metropolitan Region Scheme; or
  - (b) the local planning scheme that applies to land in the Swan Valley immediately before the scheme start day;  
or
  - (c) any improvement scheme that applies to land in the Swan Valley immediately before the scheme start day;

***scheme start day*** means the day on which the first Swan Valley Planning Scheme comes into operation.

- (2) On and from the scheme start day —
- (a) each relevant planning scheme ceases to apply —
    - (i) to land in the Swan Valley; and
    - (ii) to any development of that land that commenced on or after that day;
  - and
  - (b) the *Planning and Development Act 2005* continues to apply to land and development referred to in paragraph (a), but the planning scheme that applies to that land and development is the Swan Valley Planning Scheme.

## **Division 2 — Contents of scheme**

### **10. Contents of scheme**

- (1) The Swan Valley Planning Scheme must be consistent with the objects of this Act.
- (2) The Swan Valley Planning Scheme may, subject to subsection (1) and sections 12 and 13 —
  - (a) include any provision that the Commission considers will promote the orderly and proper planning, development and management of the Swan Valley; and
  - (b) make provision, in relation to land in the Swan Valley, for all or any of the purposes, provisions, powers or works referred to in the *Planning and Development Act 2005* Schedule 7; and
  - (c) without limiting paragraphs (a) and (b), confer functions on the Commission.

**11. Scheme may incorporate provisions of other planning instruments**

- (1) The Swan Valley Planning Scheme may incorporate, with or without modifications, any of the following —
  - (a) provisions of a State planning policy;
  - (b) provisions of the Metropolitan Region Scheme;
  - (c) model provisions, as defined in the *Planning and Development Act 2005* section 257A(1);
  - (d) deemed provisions, as defined in the *Planning and Development Act 2005* section 257B(1).
- (2) If the Swan Valley Planning Scheme incorporates provisions (the ***incorporated provisions***) referred to in subsection (1) —
  - (a) the scheme is to have effect as if the incorporated provisions, as in force from time to time, or any subsequent provisions by which the incorporated provisions are replaced, were set out in full in the scheme; and
  - (b) the provisions are to have effect as part of the scheme subject to any modifications set out in the scheme.
- (3) Modifications referred to in subsection (2)(b) prevail over any later amendments of the incorporated provisions, or subsequent provisions referred to in subsection (2)(a), that are inconsistent with the modifications.

**12. Planning areas and provisions about subdivision and minimum lot sizes**

- (1) The Swan Valley Planning Scheme must provide for the Swan Valley to be divided into planning areas (the ***Swan Valley planning areas***).
- (2) The Swan Valley Planning Scheme must set out planning objectives for —
  - (a) the whole of the Swan Valley; and

- (b) each of the Swan Valley planning areas.
- (3) The Swan Valley Planning Scheme must, for each of the Swan Valley planning areas, either —
  - (a) provide that subdivision of land is prohibited in that area; or
  - (b) set out a minimum lot size that applies to subdivision of land in that area and provide that land in that area must not be subdivided into lots smaller than that minimum lot size.
- (4) Nothing in this section prevents the Swan Valley Planning Scheme from providing for zones and reserves in the Swan Valley.

**13. Provisions to ensure non-rural development designed to minimise impacts from rural land uses**

- (1) In this section —  
*non-rural development* means residential development, tourism or hospitality development, or any other development, that is not related to horticulture, viticulture, hobby farming or equestrian activities.
- (2) The Swan Valley Planning Scheme must include provisions for the purpose of ensuring that any new non-rural development of Swan Valley rural land is designed and located so as to minimise any nuisance or other detrimental impacts that could arise from existing or possible future uses of other Swan Valley rural land for horticulture or viticulture.
- (3) The provisions referred to in subsection (2) may, without limitation, include provisions relating to setbacks or otherwise dealing with the position of buildings on lots.

## **Division 3 — Making and amending scheme**

### **Subdivision 1 — Preliminary**

#### **14. Term used: proposed scheme or amendment**

In this Division —

***proposed scheme or amendment*** means —

- (a) the first proposed Swan Valley Planning Scheme; or
- (b) a proposed Swan Valley Planning Scheme to replace the existing Swan Valley Planning Scheme; or
- (c) a proposed amendment of the Swan Valley Planning Scheme.

#### **15. First proposed scheme**

The Commission must prepare the first proposed Swan Valley Planning Scheme in accordance with this Part and submit it for approval by the Minister under Subdivision 4 as soon as practicable after the day on which this section comes into operation.

Note for this section:

Under s. 44, the process to be followed in preparing the first proposed Swan Valley Planning Scheme is different from the process that applies under Subdivisions 2 and 3.

#### **16. Replacement or amendment of scheme**

(1) The Swan Valley Planning Scheme may be —

- (a) repealed by a subsequent Swan Valley Planning Scheme prepared by the Commission and approved by the Minister in accordance with this Part; or
- (b) amended by an amendment prepared by the Commission and approved by the Minister in accordance with this Part.

- (2) The Commission may, from time to time, prepare for approval by the Minister —
- (a) a proposed Swan Valley Planning Scheme to replace the existing Swan Valley Planning Scheme; or
  - (b) a proposed amendment of the Swan Valley Planning Scheme.

**Subdivision 2 — Processes to be followed in preparing proposed scheme or amendment**

**17. Matters to which Commission must have regard**

In preparing a proposed scheme or amendment, the Commission must have regard to the following —

- (a) the objects of this Act;
- (b) any State planning policy that affects the Swan Valley;
- (c) any strategic document in force under the *Swan and Canning Rivers Management Act 2006* Part 4 Division 2;
- (d) the views of any person or body consulted under section 18;
- (e) any advice of the Heritage Council on referral under section 19(2).

**18. Consultation requirements**

Before submitting a proposed scheme or amendment to the Minister, the Commission must —

- (a) consult the Swan Valley Strategic Leadership Group; and
- (b) consult the Swan Valley local government; and
- (c) make reasonable endeavours to consult any public authorities or persons that appear to the Commission to have an interest in the proposed scheme or amendment.

**19. Referral to Heritage Council**

- (1) This section applies to a proposed scheme or amendment that affects or may affect any land or waters in the Swan Valley if —
- (a) the land or waters are the subject of an entry in the State Register of Heritage Places; or
  - (b) the Heritage Council has commenced a review under the *Heritage Act 2018* section 40 in relation to the land or waters, but —
    - (i) the Heritage Council has not yet made a recommendation, and has not yet decided not to make a recommendation, under that section; or
    - (ii) the Heritage Council has made a recommendation under that section but the Minister for Heritage has not yet given a direction under section 41(1) of that Act in relation to that recommendation;
- or
- (c) the land or waters are the subject of an entry in a local heritage survey prepared under the *Heritage Act 2018*.
- (2) As soon as practicable after preparing the proposed scheme or amendment, the Commission must refer the proposed scheme or amendment to the Heritage Council for advice.
- (3) The Commission must not proceed, without the consent of the Minister, with the proposed scheme or amendment unless the advice of the Heritage Council has been received.

**20. Referral to EPA**

As soon as practicable after preparing a proposed scheme or amendment, the Commission must refer the proposed scheme or amendment to the EPA by giving to the EPA —

- (a) a copy of the proposed scheme or amendment; and
- (b) any other written information about the proposed scheme or amendment that is necessary to enable the



EPA to comply with the *Environmental Protection Act 1986* section 48A in relation to the proposed scheme or amendment.

**21. Environmental review to be undertaken if required by EPA**

- (1) This section applies if, for the purposes of assessing a proposed scheme or amendment referred to the EPA under section 20, the EPA has under the *Environmental Protection Act 1986* section 48C(1)(a) —
  - (a) required the Commission, if it wishes the proposed scheme or amendment to proceed, to undertake an environmental review of the proposed scheme or amendment and report on it to the EPA; and
  - (b) issued instructions (the ***review instructions***) concerning the scope and content of that environmental review.
- (2) If the Commission wishes to proceed with the proposed scheme or amendment, the Commission must undertake, or cause under section 22 to be undertaken, an environmental review of the proposed scheme or amendment in accordance with the review instructions.
- (3) The Commission must not advertise the proposed scheme or amendment under section 23 until —
  - (a) the Commission has given the report on the environmental review to the EPA; and
  - (b) either of the following occurs —
    - (i) the EPA advises that the review has been undertaken in accordance with the review instructions;
    - (ii) the period of 30 days beginning on the day on which the report on the review is given to the EPA expires without the EPA having advised whether or not the review has been undertaken in accordance with the review instructions.

- (4) If the EPA advises that the review has not been undertaken in accordance with the review instructions, the Commission may —
  - (a) comply with subsection (2); or
  - (b) request the Minister to consult the Minister for the Environment and, if possible, agree with that Minister on whether or not the review has been undertaken in accordance with those instructions.
- (5) If the Minister complies with a request made under subsection (4)(b) and —
  - (a) agrees with the Minister for the Environment on whether or not the review has been undertaken in accordance with the review instructions — their decision is final and without appeal or review; or
  - (b) cannot agree with the Minister for the Environment on whether or not the review has been undertaken in accordance with the review instructions — the *Environmental Protection Act 1986* section 48J applies.
- (6) The Commission may, in accordance with the applicable regulations, recover the expenses incurred by the Commission in undertaking an environmental review in accordance with the review instructions.

**22. Environmental review to be undertaken by land owner in some circumstances**

- (1) This section applies if —
  - (a) the Commission is required under section 21(2) to undertake an environmental review of a proposed scheme or amendment in accordance with the review instructions referred to in that section; and
  - (b) the proposed scheme or amendment was prepared at the request of an owner of land to which the proposed scheme or amendment relates.

- (2) The Commission may, by written notice served on the owner of land, request the owner to undertake an environmental review of the proposed scheme or amendment in accordance with the review instructions.
- (3) If an owner of land served with a notice under subsection (2) wishes the proposed scheme or amendment to proceed, the owner must undertake the environmental review in accordance with the review instructions and give it to the Commission.

### **Subdivision 3 — Advertising proposed scheme or amendment**

#### **23. Advertising proposed scheme or amendment**

After complying with sections 20 and 21 (if applicable) in relation to a proposed scheme or amendment, the Commission must, in accordance with the applicable regulations —

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

#### **24. Commission's duties if proposed scheme or amendment to be assessed under *Environmental Protection Act 1986***

- (1) This section applies if the Commission has been informed by the EPA under the *Environmental Protection Act 1986* section 48A(1)(b)(i) that a proposed scheme or amendment referred to the EPA under section 20 should be assessed by the EPA under Part IV Division 3 of that Act.
- (2) The Commission must —
  - (a) as soon as practicable, but in any event within 7 days after the expiry of the period during which the proposed scheme or amendment is advertised under section 23, give the EPA a copy of each submission —
    - (i) made during that period; and

- (ii) relating wholly or partly to environmental issues raised by the proposed scheme or amendment;
- and
- (b) within 42 days, or any longer period that the Minister allows, after the expiry of the period referred to in paragraph (a), inform the EPA of its views on and response to the environmental issues raised by the submissions referred to in paragraph (a).

**Subdivision 4 — Approving and publicising scheme or amendment**

**25. Approval of proposed scheme or amendment**

- (1) After complying with the applicable requirements of Subdivisions 2 and 3 in relation to a proposed scheme or amendment, the Commission must submit the proposed scheme or amendment to the Minister.
- (2) If a proposed scheme or amendment is submitted under this section, the Minister may —
  - (a) subject to subsection (3) and section 26, approve the proposed scheme or amendment; or
  - (b) require the Commission to modify the proposed scheme or amendment in any manner that the Minister specifies before the proposed scheme or amendment is resubmitted for the Minister's approval under this subsection; or
  - (c) refuse to approve the proposed scheme or amendment.
- (3) The Minister must not approve a proposed scheme or amendment under subsection (2)(a) unless the Minister is satisfied that the proposed scheme or amendment is consistent with the objects of this Act.
- (4) The Minister must notify the Commission in writing of a decision under subsection (2).

**26. Approval of scheme or amendment referred to EPA**

- (1) The Minister must not under section 25(2)(a) approve a proposed scheme or amendment referred to the EPA under section 20 if the Minister has reached agreement with the Minister for the Environment under the *Environmental Protection Act 1986* section 48A(2)(b) in relation to the proposed scheme or amendment.
- (2) The Minister must not under section 25(2)(a) approve a proposed scheme or amendment referred to the EPA under section 20 unless —
  - (a) the EPA has informed the Minister under the *Environmental Protection Act 1986* section 48A(1)(a) that the EPA considers that the proposed scheme or amendment should not be assessed by the EPA under Part IV Division 3 of that Act; or
  - (b) the Minister —
    - (i) has received a statement under the *Environmental Protection Act 1986* section 48F(2) in respect of the conditions, if any, to which the proposed scheme or amendment is subject; and
    - (ii) is satisfied that the conditions, if any, have been incorporated into the proposed scheme or amendment;or
- (c) both —
  - (i) a decision has been made under the *Environmental Protection Act 1986* section 48J in respect of the conditions, if any, to which the proposed scheme or amendment is subject; and

- (ii) the Minister is satisfied that the conditions, if any, have been incorporated into the proposed scheme or amendment;

or

- (d) the period of 28 days referred to in the *Environmental Protection Act 1986* section 48A(1)(b)(i) has expired without the EPA having informed the Commission under that section.

**27. Publication, advertisement and commencement of approved scheme or amendment**

- (1) If the Minister approves a Swan Valley Planning Scheme or an amendment of the Swan Valley Planning Scheme (the ***approved scheme or amendment***), the Commission must, as soon as practicable after being notified of the approval —
  - (a) ensure that the approved scheme or amendment is published in the *Gazette*; and
  - (b) advertise the approved scheme or amendment in accordance with the applicable regulations; and
  - (c) ensure that copies of the approved scheme or amendment are made available to the public.
- (2) An approved scheme or amendment comes into operation on the day on which the approved scheme or amendment is published under subsection (1)(a) or on a later day specified in the approved scheme or amendment.
- (3) It is sufficient compliance with subsection (1)(a) if the approved scheme or amendment is published in the *Gazette* without any maps, plans or diagrams that form part of the approved scheme or amendment.

## **Part 3 — Swan Valley Strategic Leadership Group**

### **28. Swan Valley Strategic Leadership Group established**

- (1) A committee called the Swan Valley Strategic Leadership Group is established.
- (2) The Swan Valley Strategic Leadership Group is to consist of the following persons appointed by the Minister —
  - (a) a presiding member;
  - (b) 6 other members.
- (3) The Minister is to ensure that each person appointed under subsection (2)(b) —
  - (a) has practical knowledge or experience that is relevant to the functions of the Swan Valley Strategic Leadership Group; or
  - (b) is otherwise an appropriate person to represent the interests of Swan Valley residents and businesses.
- (4) A person who is a member of the Swan Valley Statutory Planning Committee cannot be appointed under subsection (2).
- (5) The Swan Valley Strategic Leadership Group may establish 1 or more committees to assist it in the performance of its functions.
- (6) Subject to the regulations, the Swan Valley Strategic Leadership Group may determine its own procedures.

### **29. Functions of Swan Valley Strategic Leadership Group**

- (1) The Swan Valley Strategic Leadership Group has the following functions —
  - (a) to give information to the Minister on matters relating to the Swan Valley, including —
    - (i) the protection of the Swan Valley as a productive agricultural region within the Perth metropolitan region; and

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- (ii) the promotion and marketing of horticulture, viticulture, tourism, hospitality, hobby farming and equestrian activities in the Swan Valley; and
    - (iii) the enhancement and protection of the cultural heritage, built heritage, recreation and landscape values of the Swan Valley;
  - (b) to prepare reports or other documents in relation to any of the matters referred to in paragraph (a);
  - (c) to comment on any proposed Swan Valley Planning Scheme or proposed amendment of the Swan Valley Planning Scheme;
  - (d) to comment on any proposed policies, schemes or instruments under the *Planning and Development Act 2005* or another written law that affect the Swan Valley;
  - (e) to provide direction and support to public authorities, industry, commerce and the community in relation to the Swan Valley and furthering the objects of this Act;
  - (f) any other functions given to the Swan Valley Strategic Leadership Group by this Act or another written law.
- (2) It is not a function of the Swan Valley Strategic Leadership Group to provide advice or comments, or to prepare reports or other documents, in relation to particular applications for approval of subdivision or development in the Swan Valley.
- (3) The Swan Valley Strategic Leadership Group may do all things necessary or convenient to be done for or in connection with the performance of its functions.

**30. Remuneration**

A member of the Swan Valley Strategic Leadership Group is entitled to be paid the remuneration and allowances (if any) determined in respect of the member by the Minister on the recommendation of the Public Sector Commissioner.



**31. Use of staff and facilities of public authorities**

- (1) The Swan Valley Strategic Leadership Group may, by arrangement with the relevant employing authority, make use either full-time or part-time of the services of any officer or employee employed —
  - (a) in the Public Service; or
  - (b) in a State agency; or
  - (c) otherwise in the service of the State.
- (2) The Swan Valley Strategic Leadership Group may, by arrangement with a department of the Public Service or a State agency, make use of any facilities of the department or agency.
- (3) An arrangement under subsection (1) or (2) must be made on terms agreed to by the parties.

**32. Regulations about Swan Valley Strategic Leadership Group**

The regulations may make provision for or in relation to the Swan Valley Strategic Leadership Group, including —

- (a) the constitution of the Group, including term of office, vacancies and resignation or termination of members; and
- (b) the procedures of the Group.

## **Part 4 — Swan Valley Statutory Planning Committee**

### **33. Swan Valley Statutory Planning Committee established**

- (1) The Commission must establish a committee of the Commission to be known as the Swan Valley Statutory Planning Committee.
- (2) The Swan Valley Statutory Planning Committee is to consist of —
  - (a) the chairperson or, if another person has been nominated by the chairperson and approved by the Minister under the *Planning and Development Act 2005* Schedule 2 clause 4(2)(a), that person; and
  - (b) 5 other persons appointed by the Commission, with the approval of the Minister, who must be members of the Statutory Planning Committee established under the *Planning and Development Act 2005* Schedule 2 clause 4; and
  - (c) 1 other person appointed by the Commission, with the approval of the Minister, to represent the Swan Valley local government; and
  - (d) 2 other persons appointed by the Commission, with the approval of the Minister, to represent the interests of Swan Valley residents and businesses.
- (3) The Commission is to ensure that each person appointed under subsection (2)(d) —
  - (a) has practical knowledge or experience that is relevant to horticulture, viticulture, cultural heritage, landscape protection, tourism, hospitality, hobby farming or equestrian activities in the Swan Valley; or
  - (b) is otherwise an appropriate person to represent the interests of Swan Valley residents and businesses.
- (4) A person who is a member of the Swan Valley Strategic Leadership Group cannot be appointed under subsection (2)(b), (c) or (d).

**34. Functions of Swan Valley Statutory Planning Committee**

- (1) The Swan Valley Statutory Planning Committee has the function of exercising the powers or duties delegated to it under subsection (2).
- (2) The Commission may, by resolution, delegate to the Swan Valley Statutory Planning Committee any power or duty of the Commission under the *Planning and Development Act 2005*, another provision of this Act or another written law.
- (3) The Commission must ensure that the following are delegated to the Swan Valley Statutory Planning Committee under subsection (2) —
  - (a) the functions of the Commission under Part 2 of this Act;
  - (b) the functions that the Commission has under the *Planning and Development Act 2005* as the responsible authority for the Swan Valley Planning Scheme;
  - (c) the functions of the Commission under the *Swan and Canning Rivers Management Act 2006* Parts 4 and 5;
  - (d) substantially the same functions of the Commission under the *Planning and Development Act 2005* as are delegated to the Statutory Planning Committee established under the *Planning and Development Act 2005* Schedule 2 clause 4, but only to the extent that those functions relate to land and development in the Swan Valley.
- (4) The Commission must not delegate a function referred to in subsection (3)(a) to (c) to another person or body under the *Planning and Development Act 2005* section 16(1).

**35. Subdelegation of functions by Swan Valley Statutory Planning Committee**

- (1) The Swan Valley Statutory Planning Committee may, by resolution, subdelegate any power or duty of the Commission delegated to it under section 34(2).
- (2) A subdelegation under subsection (1) may be made to —
  - (a) a member or associate member (as those terms are defined in the *Planning and Development Act 2005* section 4(1)); or
  - (b) a subcommittee; or
  - (c) an officer of the Commission; or
  - (d) a public authority or a member or officer of a public authority; or
  - (e) the Swan Valley local government; or
  - (f) a committee of the council of the Swan Valley local government; or
  - (g) an employee of the Swan Valley local government.
- (3) A person or committee to whom a function is subdelegated under subsection (1) cannot subdelegate that function.

**36. General provisions about delegation under s. 34 and 35**

- (1) A resolution referred to in section 34(2) or 35(1) takes effect when notice of the resolution is published in the *Gazette*.
- (2) A person or committee exercising or performing a power or duty that has been delegated or subdelegated to the person or committee under section 34 or 35 is taken to do so in accordance with the terms of the delegation or subdelegation unless the contrary is shown.
- (3) Nothing in section 34 or 35 limits the ability of the Commission or the Swan Valley Statutory Planning Committee to perform a function through an officer or agent.

## **Part 5 — Miscellaneous**

### **37. Delegation by Minister**

- (1) The Minister may delegate to a person any power or duty of the Minister under another provision of this Act.
- (2) The delegation must be in writing signed by the Minister.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Minister to perform a function through an officer or agent.

### **38. Protection from liability**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), neither the Commission nor the State nor a local government is relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

**39.        Certain references in written laws to include Swan Valley Planning Scheme or things done under scheme**

- (1) A reference in a written law to a planning scheme or scheme under, or in force under, the *Planning and Development Act 2005* includes, where the context requires, a reference to the Swan Valley Planning Scheme.
- (2) A reference in a written law to approval of development under the *Planning and Development Act 2005* includes, where the context requires, a reference to approval of development under the Swan Valley Planning Scheme.
- (3) A reference in a written law to requirements under the *Planning and Development Act 2005* includes, where the context requires, a reference to requirements under this Act.
- (4) This section does not apply to references in this Act or the *Planning and Development Act 2005*.

**40.        Application of regulations under *Planning and Development Act 2005***

- (1) In this section —  
***relevant local planning scheme regulations*** —
  - (a) means regulations made under the *Planning and Development Act 2005* section 258, 259 or 261; but
  - (b) does not include any regulations or provisions of regulations prescribed for the purposes of this paragraph.
- (2) Relevant local planning scheme regulations apply for the purposes of this Act as if —
  - (a) the Swan Valley Planning Scheme were a local planning scheme; and
  - (b) a reference to a local government were a reference to the Commission.

- (3) Relevant local planning scheme regulations apply under subsection (2) with any modifications prescribed by regulations made for the purposes of this subsection and any other necessary modifications.
- (4) If regulations made under the *Planning and Development Act 2005* section 261 are relevant local planning scheme regulations, the Commission may, in relation to the Swan Valley Planning Scheme, impose fees under those regulations as if it were a local government and that section applies accordingly.

#### **41. Regulations**

- (1) The Governor may make regulations prescribing matters —
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may —
  - (a) make provision for or in relation to the making of applications for the purposes of this Act, including the manner in which applications are to be made and the procedure to be followed; and
  - (b) prescribe forms for the purposes of this Act; and
  - (c) make provision for or in relation to the imposition, collection and recovery of fees and charges for the purposes of this Act; and
  - (d) confer functions on the Commission, the Swan Valley Strategic Leadership Group, the chief executive officer of the Department or any other person; and
  - (e) make provision for or in relation to the Swan Valley Planning Scheme, including —
    - (i) the form of the scheme; and
    - (ii) the matters for which the scheme may or must provide; and

- (iii) the process for the preparation, advertisement, approval and amendment of the scheme; and
  - (iv) review of the scheme; and
  - (v) the interaction of the scheme with any plans or other instruments made under the *Planning and Development Act 2005*;
- and
- (f) make provision with respect to the persons from whom, and the means by which, the Commission may recover expenses incurred by it in undertaking an environmental review required by the *Environmental Protection Act 1986* section 48C(1)(a) in relation to a proposed Swan Valley Planning Scheme or amendment of the Swan Valley Planning Scheme; and
- (g) provide for offences against the regulations and prescribe penalties for those offences not exceeding a fine of \$50 000.

**42. Review of Act**

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review —
  - (a) as soon as practicable after the 5<sup>th</sup> anniversary of the day on which this section comes into operation; and
  - (b) after that, at intervals of not more than 5 years.
- (2) The review must address the following —
  - (a) the effectiveness of —
    - (i) the operations of the Swan Valley Strategic Leadership Group and the Swan Valley Statutory Planning Committee; and
    - (ii) the Swan Valley Planning Scheme;



- (b) the need for the continuation of —
    - (i) the functions of the Swan Valley Strategic Leadership Group and the Swan Valley Statutory Planning Committee; and
    - (ii) the Swan Valley Planning Scheme;
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5<sup>th</sup> anniversary or the expiry of the period of 5 years, as the case may be.
  - (4) If, in the Minister's opinion, a House of Parliament will not sit during the period of 21 days after finalisation of the report, the Minister must send the report to the Clerk of the House.
  - (5) When the report is sent to the Clerk of a House it is taken to have been laid before the House.
  - (6) The laying of the report that is taken to have occurred under subsection (5) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the report.

## **Part 6 — Transitional provisions**

### **43. Terms used**

In this Part —

*relevant planning scheme* has the meaning given in section 9(1);

*scheme start day* has the meaning given in section 9(1).

### **44. Process for making first Swan Valley Planning Scheme**

- (1) Part 2 Division 3 Subdivisions 2 and 3 do not apply to the first proposed Swan Valley Planning Scheme (the *first proposed scheme*) that the Commission is required under section 15 to prepare and submit to the Minister for approval.
- (2) However, the Commission must not submit the first proposed scheme to the Minister for approval under section 25(1) unless —
  - (a) the Commission has had regard to the matters referred to in section 17(a) to (c); and
  - (b) the Commission has given a draft of the first proposed scheme to the Minister and the Minister has —
    - (i) given the draft to each of the EPA and the Heritage Council; and
    - (ii) requested each of the EPA and the Heritage Council to give advice on the draft;and
  - (c) the Commission has —
    - (i) consulted the Swan Valley local government about the first proposed scheme; and
    - (ii) made reasonable endeavours to consult any public authorities or persons that appear to the Commission to have an interest in the first proposed scheme; and

- (iii) had regard to the views of any person or body consulted under subparagraph (i) or (ii); and
  - (iv) had regard to any advice received by the Minister from the EPA and the Heritage Council in response to the request referred to in paragraph (b)(ii).
- (3) For the purposes of subsection (2), it does not matter whether any consultation was undertaken, or any other thing was done, before, on or after the day on which this section came into operation.

**45. Application of *Interpretation Act 1984***

Except to the extent that this Part expressly provides differently —

- (a) the *Interpretation Act 1984* applies in relation to the repeal of an enactment by Part 7; and
- (b) the *Interpretation Act 1984* applies in relation to section 9(2) as if —
  - (i) each relevant planning scheme were an enactment; and
  - (ii) section 9(2) repealed each relevant planning scheme, to the extent that the scheme applies to the land and development referred to in that section, on the scheme start day.

**46. Existing lawful or approved development**

- (1) Section 9(2) and the Swan Valley Planning Scheme do not apply in relation to a development that was lawfully being carried out in the Swan Valley immediately before the scheme start day.

- (2) A development referred to in subsection (1) or in relation to which all necessary approvals under the relevant planning schemes were in force immediately before the scheme start day —
  - (a) may be lawfully carried out as if section 9(2) and the Swan Valley Planning Scheme were not in operation; and
  - (b) is governed by the relevant planning schemes despite section 9(2).

**47. Applications for approval not finalised on scheme start day**

- (1) This section applies if, on the scheme start day, an application for approval under a relevant planning scheme in relation to land in the Swan Valley has been made but not decided.
- (2) On and after the scheme start day, the application is taken to be made under, and the decision on the application must be made in accordance with, the Swan Valley Planning Scheme rather than the relevant planning scheme.
- (3) If before the scheme start day, under regulations made for the purposes of the *Planning and Development Act 2005* Part 11A, the application was to be determined by a DAP (as defined in section 4(1) of that Act), on and after the scheme start day the application must be decided in accordance with the Swan Valley Planning Scheme by the Commission rather than the DAP.

**48. State Administrative Tribunal review not finalised on scheme start day**

- (1) This section applies if, on the scheme start day —
  - (a) an application to the State Administrative Tribunal under the *Planning and Development Act 2005* Part 14 has been made for a review of a decision (the ***reviewed decision***) under a relevant planning scheme in relation to land in the Swan Valley; and

- (b) the Tribunal has not made a final decision on the application.
- (2) On and after the scheme start day —
  - (a) the reviewed decision is taken to be a decision under the Swan Valley Planning Scheme; and
  - (b) the Tribunal's decision on the application for review is to be made in accordance with the Swan Valley Planning Scheme rather than the relevant planning scheme.

#### **49. Transitional regulations**

- (1) In this section —
  - specified* means specified or described in the regulations;
  - transitional matter* —
    - (a) means a matter or issue of a transitional nature that arises as a result of —
      - (i) the enactment of this Act; or
      - (ii) the repeal of the *Swan Valley Planning Act 1995*;
    - and
    - (b) includes a saving or application matter.
- (2) If there is not sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required, or are necessary or convenient, to be prescribed for dealing with the transitional matter.
- (3) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day on which this section comes into operation, the regulations have effect according to their terms.

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

## **Part 7 — Repeals**

**50. *Swan Valley Planning Act 1995* repealed**

The *Swan Valley Planning Act 1995* is repealed.

**51. *Swan Valley Planning Regulations 1995* repealed**

The *Swan Valley Planning Regulations 1995* are repealed.

**Part 8 — Amendments to this Act commencing on  
later of proclamation and commencement of *Planning  
and Development Amendment Act 2020* provisions**

**52. Act amended**

This Part amends this Act.

**53. Section 3 amended**

In section 3 insert in alphabetical order:

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

**54. Section 11 amended**

In section 11(1)(a) delete “State planning policy;” and insert:

planning code;

**55. Section 20 amended**

(1) In section 20 delete “As soon” and insert:

(1) As soon

(2) At the end of section 20 insert:

(2) Despite subsection (1), a proposed scheme or  
amendment of a class prescribed by regulations under  
the *Environmental Protection Act 1986*  
section 48AAA(2) is not required to be referred to the  
EPA.



## **Part 9 — *Planning and Development Act 2005* amended**

### **56. Act amended**

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

### **57. Section 4 amended**

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

***Swan Valley***

***Swan Valley Planning Committee***

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

***Swan Valley*** has the meaning given in the *Swan Valley Planning Act 2020* section 3;

***Swan Valley Planning Scheme*** has the meaning given in the *Swan Valley Planning Act 2020* section 3;

- (3) In section 4(1) in the definition of ***planning scheme***:

- (a) delete “this Act” and insert:

this Act, or the Swan Valley Planning Scheme that has effect under the *Swan Valley Planning Act 2020*,

- (b) in paragraph (a) delete “the provisions of the scheme” and insert:

in the case of a local planning scheme, region planning scheme or improvement scheme that has effect under this Act — the provisions of the scheme

(c) after paragraph (a) insert:

- (aa) in the case of the Swan Valley Planning Scheme — the provisions of the scheme being —
    - (i) the provisions set out in the scheme; and
    - (ii) any provisions of a kind referred to in the *Swan Valley Planning Act 2020* section 11 that, with any modifications set out in the scheme, have effect under that section as part of the scheme;
- and

- (4) In section 4(1) in the definition of ***responsible authority*** paragraph (c) delete “improvement scheme,” and insert:

improvement scheme or the Swan Valley Planning Scheme,

**58. Section 13 amended**

In section 13 after “Schedule 2” insert:

or the *Swan Valley Planning Act 2020* section 33

**59. Section 14 amended**

In section 14:

- (a) in paragraph (j) delete “scheme or improvement scheme” and insert:

scheme, an improvement scheme or the Swan Valley Planning Scheme

- (b) in paragraph (k) delete “Schedule 2; and” and insert:

Schedule 2 and the *Swan Valley Planning Act 2020*; and

- (c) in paragraph (l) delete “schemes and improvement schemes; and” and insert:

schemes, improvement schemes and the Swan Valley Planning Scheme; and

- (d) in paragraph (m) delete “this or any other written law.” and insert:

this Act, the *Swan Valley Planning Act 2020* or any other written law.

**60. Section 19 amended**

In section 19 delete “that Schedule.” and insert:

that Schedule or the *Swan Valley Planning Act 2020* section 33.

**61. Section 20 amended**

In section 20(1) after “this Act” insert:

or the *Swan Valley Planning Act 2020*

**62. Section 32C amended**

In section 32C(2):

- (a) in paragraph (b) delete “122B(1)).” and insert:

122B(1)); or

- (b) after paragraph (b) insert:

- (c) into the Swan Valley Planning Scheme  
under the *Swan Valley Planning Act 2020*  
section 11(1)(a).

**63. Section 36 amended**

In section 36:

- (a) in paragraph (d) delete “Act.” and insert:

Act; or

- (b) after paragraph (d) insert:

- (e) without limiting the *Swan Valley Planning Act 2020* section 9, to make any provision in respect of any land in the Swan Valley once the first Swan Valley Planning Scheme has come into operation under that Act.

**64. Section 40 deleted**

Delete section 40.

**65. Section 47 deleted**

Delete section 47.

**66. Section 48 amended**

In section 48(1) delete “Subject to section 47, after —” and insert:

After —

**67. Section 49 amended**

In section 49 delete the passage that begins with “If — ” and ends with “scheme or amendment under section 48,” and insert:

If the report of the Commission submitted with a scheme or amendment under section 48

**68. Section 57 amended**

Delete section 57(2).

**69. Section 71 amended**

In section 71:

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

that Act; or

(b) after paragraph (b) insert:

(c) without limiting the *Swan Valley Planning Act 2020* section 9, to make any provision in respect of any land in the Swan Valley once the first Swan Valley Planning Scheme has come into operation under that Act.

Note: The heading to amended section 71 is to read:

**Scheme not to apply to redevelopment area or Swan Valley**

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**70. Section 78 deleted**

Delete section 78.

**71. Section 112 amended**

Delete section 112(3).

**72. Section 119 amended**

In section 119(3A):

- (a) in paragraph (c) delete “2006.” and insert:

2006; or

- (b) after paragraph (c) insert:

(d) in the Swan Valley.

**73. Section 122B amended**

Delete section 122B(2).

**74. Section 123 amended**

In section 123(2):

- (a) after “a region planning scheme” insert:

or the Swan Valley Planning Scheme

- (b) delete “scheme.” and insert:

scheme or (if relevant) the Swan Valley Planning Scheme.

Note: The heading to amended section 123 is to read:

**Local planning scheme or local law to be consistent with region  
planning scheme or Swan Valley Planning Scheme**

**75. Section 130 amended**

In section 130:

- (a) in paragraph (c) delete “scheme,” and insert:

scheme; and

- (b) after paragraph (c) insert:

(d) the Swan Valley Planning Scheme,

**76. Section 131 amended**

- (1) In section 131(1) after “local planning scheme” insert:

or the Swan Valley Planning Scheme

- (2) After section 131(2) insert:

- (3) In the exercise of any power conferred on it by the Swan Valley Planning Scheme the Commission is obliged to have regard to any regulations made under the *Building Act 2011*.

**77. Section 131A inserted**

After section 131 insert:

**131A. Relationship between Swan Valley Planning Scheme and other planning schemes or policies**

- (1) The Minister may, by notice published in the *Gazette*, make any amendments to a region planning scheme,

local planning scheme or improvement scheme that are necessary as a result of the *Swan Valley Planning Act 2020* section 9.

- (2) On and after the day on which the first Swan Valley Planning Scheme comes into operation under the *Swan Valley Planning Act 2020*, a State planning policy that applies to land in the Swan Valley has no effect to the extent that it is inconsistent with the Swan Valley Planning Scheme.
- (3) The Minister may, by notice published in the *Gazette*, amend a State planning policy so that the policy is consistent with the Swan Valley Planning Scheme in relation to land in the Swan Valley.
- (4) An amendment in a notice published under subsection (1) or (3) has effect, by force of this subsection and without further action under this Act, on the day on which it is published or a later day stated in the notice (which must not be earlier than the day on which the first Swan Valley Planning Scheme comes into operation under the *Swan Valley Planning Act 2020*).

**78. Section 134 amended**

Delete section 134(3) to (8).

Note: The heading to amended section 134 is to read:

**Relationship of Part to some other laws**



**79. Section 138A inserted**

After section 138 insert:

**138A. Commission's functions when approving subdivision etc. in Swan Valley**

- (1) In this section —  
*scheme start day* means the day on which the first Swan Valley Planning Scheme comes into operation under the *Swan Valley Planning Act 2020*.
- (2) On and after the scheme start day, section 138(2) to (4) do not apply in relation to the Commission giving an approval under section 135 or 136 relating to land in the Swan Valley (a *Swan Valley approval*).
- (3) Subject to subsection (4), in giving a Swan Valley approval on or after the scheme start day, the Commission —
  - (a) must have regard to the provisions of the Swan Valley Planning Scheme; and
  - (b) must not give an approval that conflicts with the provisions of the Swan Valley Planning Scheme.
- (4) The Commission may give a Swan Valley approval that conflicts with the provisions of the Swan Valley Planning Scheme on or after the scheme start day if the approval is given in circumstances set out in the regulations.

**80. Section 170 amended**

- (1) In section 170(1A) in the definition of *responsible authority* paragraph (b) delete “scheme —” and insert:

scheme or the Swan Valley Planning Scheme —

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

responsible authority

**81. Section 171A amended**

After section 171A(2) insert:

- (2A) A development application that relates to land in the Swan Valley cannot be a prescribed development application.

**82. Section 175 amended**

- (1) In section 175 delete “When” and insert:

(1) When

- (2) At the end of section 175 insert:

- (2) When land is alleged to be injuriously affected by the making of the first Swan Valley Planning Scheme, no compensation is payable in respect of the injurious affection if or so far as the relevant provisions of the Swan Valley Planning Scheme were also contained in a relevant planning scheme (as defined in the *Swan*

*Valley Planning Act 2020* section 9) that applied to the Swan Valley before the scheme start day referred to in that section.

- (3) A reference in this section to provisions includes a reference to maps, plans and diagrams.

**83. Section 181 amended**

After section 181(16) insert:

- (16A) The reference in subsection (1)(b) to the planning scheme being amended or revoked includes, in relation to land in the Swan Valley for which compensation for injurious affection was paid before the scheme start day referred to in the *Swan Valley Planning Act 2020* section 9 —
- (a) a reference to that planning scheme ceasing to apply, and the first Swan Valley Planning Scheme beginning to apply instead, under the *Swan Valley Planning Act 2020* section 9; and
  - (b) a reference to the making of a subsequent Swan Valley Planning Scheme or the amendment of the Swan Valley Planning Scheme.

**84. Section 196 amended**

- (1) In section 196(1) and (2) delete “scheme” (each occurrence) and insert:

scheme, Swan Valley Planning Scheme

- (2) In section 196(4) after “region planning scheme” insert:

or the Swan Valley Planning Scheme

**85. Section 197 amended**

- (1) In section 197(1):

- (a) delete “scheme or” (1<sup>st</sup> occurrence) and insert:

scheme, the Swan Valley Planning Scheme or an

- (b) delete “scheme or” (2<sup>nd</sup> occurrence) and insert:

scheme, Swan Valley Planning Scheme or

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

scheme, Swan Valley Planning Scheme or

**86. Section 198 amended**

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

Scheme, the Swan Valley Planning Scheme

**87. Section 199 amended**

(1) In section 199(1):

- (a) delete “effect to the Metropolitan Region Scheme” and insert:

effect to the Metropolitan Region Scheme, the Swan Valley Planning Scheme

- (b) in paragraph (b)(i) after “Scheme,” (1<sup>st</sup> occurrence) insert:

the Swan Valley Planning Scheme,

- (c) in paragraph (b)(i) after “Scheme,” (2<sup>nd</sup> occurrence) insert:

Swan Valley Planning Scheme,

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

Scheme, Swan Valley Planning Scheme

(2) In section 199(2) delete “2011 or the *Hope Valley-Wattleup Redevelopment Act 2000*.” and insert:

*2011, the Hope Valley-Wattleup Redevelopment Act 2000 or the Swan Valley Planning Act 2020.*

**88. Section 217 amended**

After section 217(5) insert:

- (6) If the assessed scheme to which this section applies is the Swan Valley Planning Scheme or an amendment to that scheme, a reference in this section to the Minister is to be read as a reference to the Minister responsible for the administration of the *Swan Valley Planning Act 2020*.

**89. Section 218 amended**

In section 218(b) delete “scheme or improvement scheme” and insert:

scheme, an improvement scheme or the Swan Valley Planning Scheme

**90. Section 241 amended**

In section 241(1):

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

application; and

- (b) after paragraph (b) insert:

- (c) in the case of an application that relates to the Swan Valley Planning Scheme — the objects set out in the *Swan Valley Planning Act 2020* section 5.

**91. Section 252 amended**

In section 252(2) delete “scheme or an improvement scheme” and insert:

scheme, an improvement scheme or the Swan Valley Planning Scheme

**92. Section 266 amended**

- (1) In section 266(1) in the definition of **function** delete “this Act;” and insert:

this Act or the *Swan Valley Planning Act 2020*;

- (2) In section 266(1) in the definition of **meeting** delete “this Act;” and insert:

this Act or the *Swan Valley Planning Act 2020*;

- (3) In section 266(1) in the definition of **member** paragraph (c) delete “Schedule 2;” and insert:

Schedule 2 or the *Swan Valley Planning Act 2020* section 33;

- (4) In section 266(5)(a) and (b) after “this Act” insert:

or the *Swan Valley Planning Act 2020*

Note: The heading to amended section 266 is to read:

**Duties and liabilities of persons performing functions under  
this Act or *Swan Valley Planning Act 2020***

**93. Section 269 amended**

In section 269(1) in the definition of *legal instrument* delete paragraph (b)(iv) and insert:

(iv) the *Swan Valley Planning Act 2020*;

**94. Schedule 2 clause 1 amended**

- (1) In Schedule 2 clause 1(1) delete “to 9,” and insert:

to 9 and the *Swan Valley Planning Act 2020* section 33,

- (2) In Schedule 2 clause 1(2) delete “Schedule,” and insert:

Schedule and the *Swan Valley Planning Act 2020*,

- (3) In Schedule 2 clause 1(6) delete “section 16,” and insert:

section 16 or the *Swan Valley Planning Act 2020* section 34,

**95. Schedule 2 clause 2 amended**

In Schedule 2 clause 2(1) delete “7(2)(h), (i) or 8(2)(d).” and insert:

7(2)(h) or (i) or 8(2)(d) or under the *Swan Valley Planning Act 2020* section 33(2)(c).



## **Part 10 — Other Acts amended**

### **Division 1 — *Control of Vehicles (Off-road Areas) Act 1978* amended**

**96. Act amended**

This Division amends the *Control of Vehicles (Off-road Areas) Act 1978*.

**97. Section 16 amended**

In section 16(5)(d) delete “2005.” and insert:

*2005* or the Swan Valley Planning Scheme in force under the *Swan Valley Planning Act 2020*.

**98. Section 47 amended**

In section 47(1) delete “2005” and insert:

*2005*, or the Swan Valley Planning Scheme has been or is made under the *Swan Valley Planning Act 2020*,

### **Division 2 — *Electricity Corporations Act 2005* amended**

**99. Act amended**

This Division amends the *Electricity Corporations Act 2005*.

**100. Section 60 amended**

In section 60(3):

- (a) in paragraph (c) delete “scheme,” and insert:

scheme; or

- (b) after paragraph (c) insert:

(d) the Swan Valley Planning Scheme,

- (c) delete “in force under that Act” and insert:

as defined in section 4(1) of that Act

**Division 3 — *Environmental Protection Act 1986* amended**

**101. Act amended**

This Division amends the *Environmental Protection Act 1986*.

**102. Section 3 amended**

- (1) In section 3(1) in the definition of ***assessed scheme*** after paragraph (a) insert:

- (aa) includes the first Swan Valley Planning Scheme submitted in accordance with the *Swan Valley Planning Act 2020* section 44 and approved under section 25(2)(a) of that Act;

- (2) In section 3(1) in the definition of *final approval* after paragraph (ab) insert:
- (b) prepared under the *Swan Valley Planning Act 2020*, means an approval under section 25(2)(a) of that Act; or
- (3) In section 3(1) in the definition of *period of public review* after paragraph (ab) insert:
- (b) prepared under the *Swan Valley Planning Act 2020*, means the period of advertisement for public inspection that applies for the purposes of section 23 of that Act; or
- (4) In section 3(1) in the definition of *responsible authority* after paragraph (a)(iii) insert:
- (iv) prepared under the *Swan Valley Planning Act 2020*, means the Western Australian Planning Commission; or
- (5) In section 3(1) in the definition of *scheme* after paragraph (c) insert:
- (d) the Swan Valley Planning Scheme, as defined in the *Swan Valley Planning Act 2020* section 3, or an amendment of that Scheme; or

- (6) In section 3(1) in the definition of *scheme Act* after paragraph (c) insert:

(d) the *Swan Valley Planning Act 2020*;

**103. Section 48AAA amended**

In section 48AAA(1) in the definition of *relevant scheme* after “paragraph” insert:

(d),

**104. Section 48C amended**

In section 48C(7) in the definition of *public review* after paragraph (ab) insert:

- (b) prepared under the *Swan Valley Planning Act 2020*, means the procedure referred to in sections 23 and 25(1) of that Act; or

**Division 4 — *Heritage Act 2018* amended**

**105. Act amended**

This Division amends the *Heritage Act 2018*.

**106. Section 85 amended**

In section 85 in the definition of *planning instrument*:

- (a) in paragraph (c) delete “2000.” and insert:

2000; or

(b) after paragraph (c) insert:

(d) the Swan Valley Planning Scheme in force  
under the *Swan Valley Planning Act 2020*.

### **Division 5 — *Jetties Act 1926* amended**

**107. Act amended**

This Division amends the *Jetties Act 1926*.

**108. Section 7 amended**

In section 7(3) delete “section 70 or under the Metropolitan Region Scheme as that term is” and insert:

section 70, or under the Metropolitan Region Scheme or the Swan Valley Planning Scheme as those terms are

### **Division 6 — *Land Tax Assessment Act 2002* amended**

**109. Act amended**

This Division amends the *Land Tax Assessment Act 2002*.

**110. Section 15 amended**

In section 15(3)(b) delete “local planning scheme or an improvement scheme.” and insert:

local planning scheme, an improvement scheme or the Swan Valley Planning Scheme.

**111. Glossary amended**

In the Glossary clause 1 insert in alphabetical order:

*Swan Valley Planning Scheme* has the meaning given in the *Planning and Development Act 2005* section 4(1);

**Division 7 — *Local Government Act 1995* amended**

**112. Act amended**

This Division amends the *Local Government Act 1995*.

**113. Section 6.33 amended**

In section 6.33(1)(a) delete “local planning scheme or improvement scheme in force under” and insert:

planning scheme as defined in

**Division 8 — *Marine and Harbours Act 1981* amended**

**114. Act amended**

This Division amends the *Marine and Harbours Act 1981*.

**115. Section 12 amended**

In section 12(3) delete “2006 or under the Metropolitan Region Scheme as that term is” and insert:

2006, or under the Metropolitan Region Scheme or the Swan Valley Planning Scheme as those terms are

**Division 9 — *Metropolitan Redevelopment Authority Act 2011*  
amended**

**116. Act amended**

This Division amends the *Metropolitan Redevelopment Authority Act 2011*.

**117. Section 3 amended**

In section 3 insert in alphabetical order:

*Swan Valley* has the meaning given in the *Swan Valley Planning Act 2020* section 3;

**118. Section 30 amended**

In section 30(1)(a) delete “region; and” and insert:

region (other than the Swan Valley); and

**Division 10 — *Planning and Development Amendment Act 2020*  
amended**

**119. Act amended**

This Division amends the *Planning and Development Amendment Act 2020*.

**120. Section 25 deleted**

Delete section 25.

**121. Section 30 deleted**

Delete section 30.

**Division 11 — *Railway (METRONET) Act 2018* amended**

**122. Act amended**

This Division amends the *Railway (METRONET) Act 2018*.

**123. Section 5 amended**

- (1) In section 5 insert in alphabetical order:

*Swan Valley Planning Scheme* has the meaning given  
in the *Swan Valley Planning Act 2020* section 3.

- (2) In section 5 in the definition of ***railway land*** delete “railways.”  
and insert:

railways;

**124. Section 6 amended**

In section 6 delete “Scheme,” and insert:

Scheme or the Swan Valley Planning Scheme,

**Division 12 — *Sale of Land Act 1970* amended**

**125. Act amended**

This Division amends the *Sale of Land Act 1970*.



**126. Section 16 amended**

In section 16 delete “local planning scheme or improvement scheme,” and insert:

planning scheme,

**Division 13 — *Soil and Land Conservation Act 1945* amended**

**127. Act amended**

This Division amends the *Soil and Land Conservation Act 1945*.

**128. Schedule amended**

In the Schedule insert in alphabetical order:

*Swan Valley Planning Act 2020*

**Division 14 — *Strata Titles Act 1985* amended**

**129. Act amended**

This Division amends the *Strata Titles Act 1985*.

**130. Section 223A inserted**

After section 223 insert:

**223A. Application in Swan Valley**

On and after the day on which the first Swan Valley Planning Scheme comes into operation under the *Swan Valley Planning Act 2020*, this Act applies in relation to land in the Swan Valley (as defined in section 3 of that Act) as if —

- (a) a reference to a local planning scheme were a reference to the Swan Valley Planning Scheme; and
- (b) a reference in sections 22 to 28 to a local government were a reference to the Planning Commission; and
- (c) Schedule 2A clause 21W(3)(b) permitted a discharge of an easement referred to in that clause to be approved either by the Planning Commission or by the local government.

**Division 15 — *Swan and Canning Rivers Management Act 2006*  
amended**

**131. Act amended**

This Division amends the *Swan and Canning Rivers Management Act 2006*.

**132. Section 57 amended**

After section 57(b) insert:

- (ba) the Western Australian Planning Commission; and

**133. Section 67 amended**

- (1) In section 67 delete the definitions of *Swan Valley* and *Swan Valley Planning Committee*.
- (2) In section 67 insert in alphabetical order:

*Swan Valley* has the meaning given in the *Swan Valley Planning Act 2020* section 3.

- (3) In section 67 in the definition of *development application* paragraph (b) delete “government or redevelopment authority” and insert:

government, redevelopment authority or the Western Australian Planning Commission

**134. Section 68 amended**

In section 68(a) after “Region” insert:

Scheme or the Swan Valley Planning

**135. Section 72 amended**

- (1) In section 72(1) delete “subsection (2).” and insert:

subsection (2) or (3).

- (2) After section 72(2) insert:

(3) If a development is proposed to be carried out on land in the Swan Valley, an application for development approval must be made to the Western Australian Planning Commission.

- (3) In section 72(4) delete “(1) or (2),” and insert:

(1), (2) or (3),

(4) Delete section 72(6) and insert:

- (6) An application to which subsection (1), (2) or (3) applies must be sent to the CEO by the local government, redevelopment authority or Western Australian Planning Commission, as the case requires, within 7 days after it is made.

**136. Section 73 amended**

- (1) In section 73(1)(d) delete “Swan Valley Planning Committee.” and insert:

Western Australian Planning Commission.

- (2) In section 73(2) delete “and, where particulars are referred to the Swan Valley Planning Committee, that committee.”
- (3) In section 73(3)(b) delete “subsection and, where particulars were referred to the Swan Valley Planning Committee, by that Committee,” and insert:

subsection,

**137. Section 74 amended**

Delete section 74(4) and insert:

- (4) The CEO must send a notice under subsection (2) to —
- (a) in the case of a proposed development to be carried out on land in the Swan Valley — the Western Australian Planning Commission; or

- (b) otherwise — each local government and redevelopment authority for which the proposed development appears to the CEO to be a relevant matter as that term is defined in section 73.

- (4A) An entity sent a notice under subsection (4) must display a copy of the notice at its public office until the expiry of the period for making submissions under subsection (5).

**138. Section 75 amended**

In section 75(3)(a)(ii) delete “section 73(1) and where notice was given to the Swan Valley Planning Committee, that committee; and” and insert:

section 73(1); and

**139. Section 76 amended**

In section 76(2)(a)(iii) delete “section 75 and where notice was given to the Swan Valley Planning Committee, that committee;” and insert:

section 75;

**140. Section 80 amended**

- (1) Delete section 80(2)(d) and insert:

- (d) if a development is proposed to be carried out in the Swan Valley — the Swan Valley

Planning Scheme in force under the *Swan Valley Planning Act 2020*.

- (2) Delete section 80(5)(a)(iii).

**141. Section 82 amended**

In section 82(4)(a) delete “section 73(1) and, where notice was given to the Swan Valley Planning Committee, to that Committee; and” and insert:

section 73(1); and

**142. Section 87 amended**

In section 87(2)(a)(iii) delete “section 75 and where notice was given to the Swan Valley Planning Committee, that Committee; and” and insert:

section 75; and

**Division 16 — *Water Agencies (Powers) Act 1984* amended**

**143. Act amended**

This Division amends the *Water Agencies (Powers) Act 1984*.

**144. Section 38 amended**

In section 38(1) after “2005,” insert:

or the Swan Valley Planning Scheme is in force under the *Swan Valley Planning Act 2020*,

Note: The heading to amended section 38 is to read:

**Revocation or amendment of local laws and planning schemes**

**Division 17 — *Water Services Act 2012* amended**

**145. Act amended**

This Division amends the *Water Services Act 2012*.

**146. Section 143 amended**

In section 143(3)(c) delete “scheme (as)” and insert:

scheme or the Swan Valley Planning Scheme (as those terms are

**147. Section 151 amended**

In section 151(2)(c) delete “scheme (as)” and insert:

scheme or the Swan Valley Planning Scheme (as those terms are

**Division 18 — *Waterways Conservation Act 1976* amended**

**148. Act amended**

This Division amends the *Waterways Conservation Act 1976*.

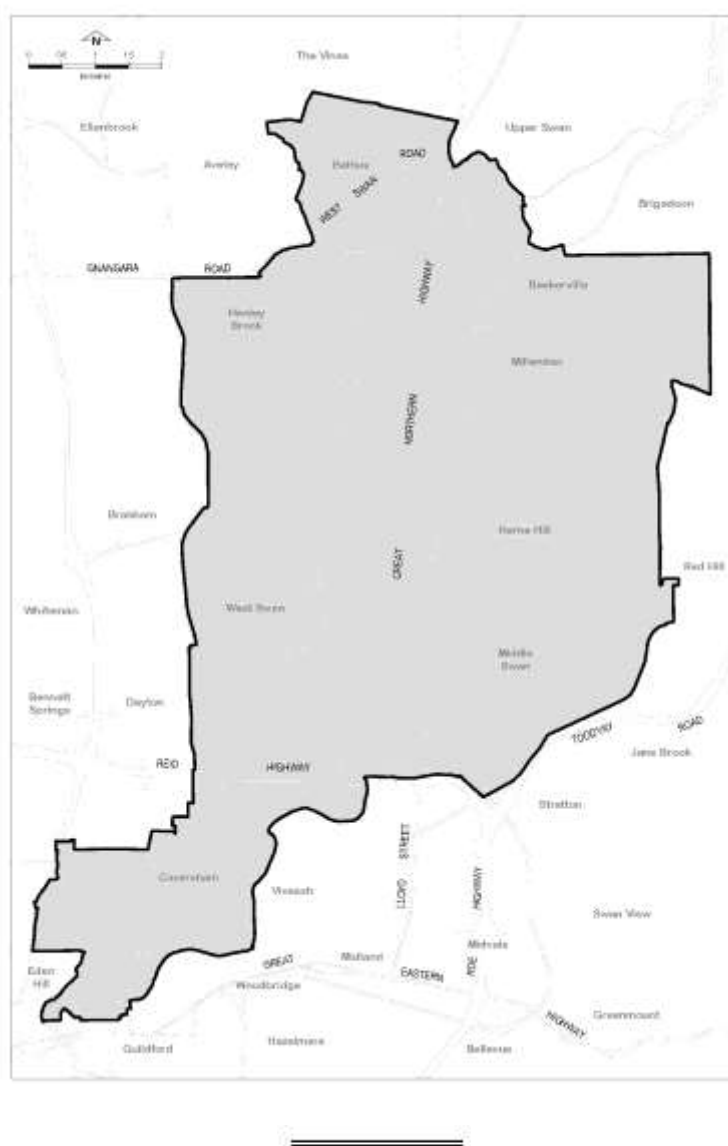
**149. Section 36 amended**

After section 36(1)(f)(iia) insert:

(iib) the Swan Valley Planning Scheme;

## **Schedule 1 — Indicative map of Swan Valley**

[s. 4(2)]





## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

Defined term	Provision(s)
applicable regulations .....	3
approved scheme or amendment .....	27(1)
assent day .....	2(1)
chairperson .....	3
Commission .....	3
Department .....	3
development .....	3
EPA .....	3
first proposed scheme .....	44(1)
Heritage Council .....	3
Herne Hill townsite .....	3
improvement scheme .....	3
incorporated provisions .....	11(2)
land .....	3
local planning scheme .....	3
Metropolitan Region Scheme .....	3
Minister for Heritage .....	3
Minister for the Environment .....	3
non-rural development .....	13(1)
officer of the Commission .....	3
proposed scheme or amendment .....	14
public authority .....	3
relevant local planning scheme regulations .....	40(1)
relevant planning scheme .....	9(1), 43
review instructions .....	21(1)
reviewed decision .....	48(1)
scheme start day .....	9(1), 43
specified .....	49(1)
State planning policy .....	3
State Register of Heritage Places .....	3
Swan Valley .....	3, 4(1)
Swan Valley local government .....	3
Swan Valley planning areas .....	12(1)
Swan Valley Planning Scheme .....	3
Swan Valley rural land .....	3

Defined terms

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Swan Valley Statutory Planning Committee.....3

Swan Valley Strategic Leadership Group .....3

transitional matter ..... 49(1)