



Western Australia

Planning and Development Amendment Act 2023

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Planning and Development Amendment Act 2023

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Western Australia

Planning and Development Amendment Act 2023

No. 34 of 2023

An Act to:

- **amend the *Planning and Development Act 2005*; and**
- **make consequential and related amendments to other Acts; and**
- **repeal the *Power of Entry and Inspection Regulations*.**

[Assented to 11 December 2023]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Planning and Development Amendment Act 2023*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 — immediately after the *Planning and Development Amendment Act 2020* Part 3 comes into operation;
- (c) Parts 4, 6 and 7, Part 8 (but only Division 3), Part 10, Part 11 (other than section 76) and Part 12 — on the day after assent day;
- (d) Part 5 — immediately after the *Planning and Development Amendment Act 2020* Part 7 comes into operation;
- (e) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — Development Assessment Panels

3. Act amended

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

4. Section 4 amended

- (1) In section 4(1) delete the definitions of:
district DAP
special matters DAP
- (2) In section 4(1) in the definition of *Development Assessment Panel* or *DAP* delete “district DAP or special matters DAP;” and insert:

Development Assessment Panel established under section 171C(1);

5. Section 171C amended

- (1) In section 171C(1) delete the passage that begins with “establish —” and continues to the end of the subsection and insert:

establish a Development Assessment Panel for 1 or more districts specified in the order.
- (2) Delete section 171C(1A).
- (3) In section 171C(3) and (5) delete “district DAP” (each occurrence) and insert:

DAP

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6. Section 289 amended

- (1) In section 289(2) and (3) delete “district DAP established under section 171C(1)(a)” and insert:

DAP established under section 171C(1)

- (2) In section 289(4) delete “district DAP under section 171C(1)(a)” and insert:

DAP under section 171C(1)

Note: The heading to amended section 289 is to read:

LDAP or JDAP continues as DAP for district or districts

Part 3 — Development approval for significant development and avoiding conflicts with approvals

7. Act amended

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

8. Section 4 amended

In section 4(1) insert in alphabetical order:

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

9. Section 20 amended

In section 20(1) delete “in the *Gazette*” and insert:

in accordance with the *Interpretation Act 1984* section 41(1)(a)

10. Section 171A amended

After section 171A(3) insert:

- (4) Regulations made for the purposes of subsection (2)
have effect subject to Parts 11B and 17.

11. Parts 11B and 11C inserted

Before Part 11 insert:

**Part 11B — Development approval for
significant development**

Division 1 — Preliminary

171H. Terms used

(1) In this Part —

applicable planning instrument means —

- (a) in relation to a development application that would, apart from this Part, be determined under a local planning scheme — the local planning scheme; or
- (b) in relation to a development application that would, apart from this Part, be determined under a region planning scheme — the region planning scheme; or
- (c) in relation to a development application that would, apart from this Part, be determined under the Swan Valley Planning Scheme — the Swan Valley Planning Scheme; or
- (d) in relation to a development application that would, apart from this Part, be determined under an interim development order — the interim development order;

design review, in relation to development to which a development application or prospective development

application relates, means a review of the design of the development conducted by —

- (a) a committee established under Schedule 2 clause 1; or
- (b) another person or body that the Commission considers has appropriate qualifications, knowledge and experience to conduct the review;

development application —

- (a) means a development application as defined in section 4(1); and
- (b) includes a prescribed development application as defined in section 171A(1);

local planning strategy means a local planning strategy in effect under regulations made under this Act;

mandatory significant development has the meaning given in section 171I(2);

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

Part 11B regulations means regulations made under section 171ZD(1);

prescribed significant development has the meaning given in section 171I(1);

procedural provision, in relation to an applicable planning instrument —

- (a) means a provision of the applicable planning instrument that relates to a procedure for dealing with a development application; and

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- (b) includes a provision of the applicable planning instrument that relates to any of the following —
- (i) a development application being accepted for assessment;
 - (ii) the provision of additional information or material in relation to a development application;
 - (iii) advertising or publicising a development application, including recovery of costs of such advertising or publicising;
 - (iv) consulting with any persons or bodies in relation to a development application;
 - (v) considering submissions made on a development application;
 - (vi) the time within which a development application is required to be determined;
 - (vii) a development application being taken to be refused if it is not determined within the required time;
 - (viii) any other matter prescribed by Part 11B regulations for the purposes of this subparagraph;
- but
- (c) does not include a provision of the applicable planning instrument that relates to the matters to which regard must be had in considering a development application (except to the extent that the provision provides for a matter to which regard must be had in connection with submissions or consultation as referred to in paragraph (b));

significant development application means a development application made to the Commission for determination under this Part under section 171L(1);
substantially commenced, in relation to development approved under section 171P(1), means that some substantial part of work in respect of the development has been performed at the site of the development.

- (2) In this Part —
- (a) a reference to a determination under section 171P(1) is a reference to that determination as amended from time to time under section 171X or by an order under section 171ZA; and
 - (b) a reference to the conditions on an approval of development granted under section 171P(1) is a reference to those conditions as amended from time to time under section 171X or by an order under section 171ZA; and
 - (c) a reference to the approved development in relation to an approval of development granted under section 171P(1) is a reference to that approved development as amended from time to time under section 171X or by an order under section 171ZA.

171I. Prescribed significant development

- (1) In this Part, ***prescribed significant development*** is development that is of a class or kind prescribed by Part 11B regulations for the purposes of this subsection.
- (2) Part 11B regulations may provide for classes or kinds of prescribed significant development to be ***mandatory significant development*** for the purposes of section 171L(2).

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- (3) Without limiting subsections (1) and (2), Part 11B regulations made for the purposes of this section may describe a class or kind of development by reference to the estimated cost of the development, the nature of the development, the area in which the development is to be carried out or any other matter.

171J. Development to which this Part applies

This Part does not apply in relation to development —

- (a) in a planning control area; or
- (b) in an improvement scheme area; or
- (c) in an area to which an approved redevelopment scheme under the *Metropolitan Redevelopment Authority Act 2011* applies; or
- (d) in the redevelopment area as defined in the *Hope Valley-Wattleup Redevelopment Act 2000* section 3(1); or
- (e) to which the *Swan and Canning Rivers Management Act 2006* Part 5 applies; or
- (f) if a Government agreement is in effect that affects the operation of this Act, or the operation of an applicable planning instrument, in relation to approval for the development; or
- (g) that is a public work.

171K. Relationship of this Part with other laws

- (1) This Part has effect despite any other provision of this Act (other than Part 11C) or any provision of an applicable planning instrument.
- (2) To avoid doubt, this Part is subject to section 5 of the EP Act.

Division 2 — Determination of significant development applications

Subdivision 1 — Making significant development applications

171L. Development application may be made to Commission for determination under this Part

- (1) A person may make a development application to the Commission for determination under this Part if —
 - (a) the application is for approval of prescribed significant development; or
 - (b) the Premier has given authorisation under section 171M(3) for the application to be made and determined under this Part.
- (2) A development application for approval of mandatory significant development must be made to the Commission for determination under this Part under subsection (1) and cannot be made to a normal decision-maker for determination under the applicable planning instrument as it applies apart from this Part.

171M. Authorisation for application raising issues of State or regional importance to be made under s. 171L

- (1) The prospective applicant in relation to a development application that has not yet been made may, by notice given to the Minister, request authorisation for the application to be made and determined under this Part.
- (2) On a request under subsection (1), the Minister may recommend that the Premier give authorisation for the making and determination of the development application under this Part if the Minister considers that the application raises issues of such State or regional

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importance that it would be appropriate for it to be made and determined under this Part.

- (3) On the recommendation of the Minister under subsection (2), the Premier may give authorisation in writing for the development application to be made and determined under this Part.
- (4) If authorisation is given under subsection (3) —
 - (a) the Premier must, as soon as is practicable —
 - (i) give a copy of the authorisation to the Commission; and
 - (ii) cause a copy of the authorisation to be laid before each House of Parliament or dealt with under section 268A;
 - and
 - (b) the Commission must publish the authorisation on a website maintained by, or on behalf of, the Commission.

171N. Supplementary provisions about applications and authorisations

- (1) A significant development application —
 - (a) must be made —
 - (i) in accordance with any requirements prescribed by Part 11B regulations for the purposes of this subparagraph; and
 - (ii) otherwise in the manner and form required by the Commission;
 - and
 - (b) without limiting paragraph (a), must include any documents or information required by Part 11B regulations or by the Commission.

- (2) A request under section 171M(1) must be made in the manner and form required by the Minister and, without limitation, include any documents or information required by the Minister.
- (3) Without limiting section 171K(1), in imposing requirements under subsection (1) or (2), the Commission or Minister is not bound or restricted by any provisions of an applicable planning instrument that would, apart from this Part and Part 11B regulations, regulate, or otherwise apply in relation to, any of the following —
 - (a) the making of a development application;
 - (b) a development application itself;
 - (c) the consideration or determination of a development application.

Subdivision 2 — Considering and determining significant development applications

171O. Significant development application must be determined under s. 171P(1)

A significant development application must be determined under section 171P(1).

171P. Determination of significant development application by Commission

- (1) The Commission must consider a significant development application and determine it by —
 - (a) granting approval for the development without conditions; or
 - (b) granting approval for the development with conditions; or
 - (c) refusing approval for the development.

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- (2) Except as otherwise provided in this Subdivision, the Commission must consider and determine the significant development application under subsection (1) as if it were considering and determining the application under the applicable planning instrument.
- (3) If the Commission is not a normal decision-maker under the applicable planning instrument, the applicable planning instrument applies for the purposes of subsection (2) as if the Commission were a normal decision-maker.

171Q. Procedures for dealing with significant development application

- (1) For the purposes of the Commission's consideration and determination of a significant development application under section 171P(1) —
 - (a) Part 11B regulations made under section 171ZD(2)(c) apply; and
 - (b) procedural provisions of the applicable planning instrument do not apply.
- (2) Despite subsection (1)(b), the Commission may decide to apply particular procedural provisions of the applicable planning instrument in considering and determining a significant development application if the Commission considers that the provisions are consistent with this Subdivision and Part 11B regulations made under section 171ZD(2)(c) and that it is appropriate in the circumstances for the provisions to apply.

**171R. Determining significant development application
inconsistently with applicable planning instrument
in some circumstances**

- (1) The Commission may determine a significant development application under section 171P(1) in a manner that conflicts with the provisions of the applicable planning instrument —
- (a) if the Commission is of the opinion that —
 - (i) the application raises issues of State or regional importance; and
 - (ii) the determination is in the public interest;

or

 - (b) if —
 - (i) the applicable planning instrument is a local planning scheme; and
 - (ii) the local planning scheme was not first published, or a consolidation of the local planning scheme has not been published, in the preceding 5 years; and
 - (iii) the determination complies with any requirements prescribed by Part 11B regulations for the purposes of this subparagraph;

or

 - (c) if —
 - (i) the applicable planning instrument is a local planning scheme; and
 - (ii) in the opinion of the Commission, the conflict is of a minor nature; and
 - (iii) in the opinion of the Commission, the determination is consistent with the

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general intent of each State planning policy, planning code, region planning scheme and local planning strategy that is relevant to the development;

or

- (d) in circumstances prescribed by Part 11B regulations for the purposes of this paragraph.
- (2) In making a determination under section 171P(1) in a manner permitted by subsection (1) of this section, the Commission must have due regard to the need to ensure the orderly and proper planning, and the preservation of amenity, of the locality to which the application relates.
- (3) For the purposes of subsection (1)(a), the Commission is not limited to planning considerations and may have regard to any other matter affecting the public interest.
- (4) Subsection (1) does not permit the Commission to determine a significant development application under section 171P(1) in a manner that conflicts with an environmental condition.

171S. Provisions about determination of significant development application

- (1) In determining a significant development application under section 171P(1) —
 - (a) approval can be granted —
 - (i) for the development for which approval is sought; or
 - (ii) for that development, except for a part or aspect of that development specified in the approval; or

- (iii) for a part or aspect of that development specified in the approval;
- but
- (b) approval cannot be granted as referred to in paragraph (a)(ii) or (iii) —
 - (i) in the case of a significant development application made with the authorisation of the Premier under section 171M(3) — for development that is substantially different from the development for which approval is sought; or
 - (ii) otherwise — for development that is not prescribed significant development.
- (2) For the purposes of section 171P(1)(b), the Commission may impose any conditions that the Commission considers appropriate, including (without limitation) the following —
 - (a) a condition limiting the time period for which approval is granted;
 - (b) a condition requiring further details of the development specified in the approval to be, before the development is commenced, submitted to, and approved by, the Commission.
- (3) The Commission can impose a condition of the kind referred to in subsection (2)(b) only if the Commission considers that the further details to be approved would not substantially change the approved development.

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- (4) When the Commission determines a significant development application under section 171P(1), the Commission must —
- (a) give written notice of the determination, including the Commission's reasons for the determination, to —
 - (i) the applicant; and
 - (ii) each local government to the district of which the significant development application relates;
- and
- (b) make copies of the determination and reasons publicly available on a website maintained by, or on behalf of, the Commission.
- (5) A determination under section 171P(1) has effect on the day on which the notice of the determination is given to the applicant under subsection (4)(a)(i).

171T. Time for determination of significant development application

- (1) The Commission must determine a significant development application within the period provided for under Part 11B regulations for the purposes of this subsection.
- (2) The Commission may determine a significant development application under section 171P(1) after the period referred to in subsection (1) has expired and the validity of the determination is not affected by the expiry.

**Subdivision 3 — Consequences of determination and
amendment and cancellation of determination**

**171U. Effect of determination of significant development
application under s. 171P(1)**

- (1) This section applies if the Commission determines a significant development application under section 171P(1).
- (2) The Commission's determination has effect, and is valid, for the purposes of this Act and all other written laws, as if it had been made under the applicable planning instrument by a normal decision-maker.

Example for this subsection:

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

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determination could not have been made by a normal decision-maker under the applicable planning instrument.

- (5) Subsections (2) to (4) are subject to sections 171W and 171X and Division 3.
- (6) If the Commission's determination is to grant approval for development, the determination does not affect the operation of any written law that requires the obtaining, in relation to the development, of any other type of approval, consent, licence, permit, registration or other authority (however described).

Examples for this subsection:

- 1. A building permit or demolition permit under the *Building Act 2011*.
- 2. A licence under the *Liquor Control Act 1988*.

Note for this subsection:

Part 11C applies despite this Part (see section 171ZF(1)).

171V. Enforcement powers of Commission in relation to conditions

- (1) If development is commenced, continued or carried out otherwise than in accordance with any of the conditions on an approval of development granted under section 171P(1), the Commission has the powers of a responsible authority under sections 214, 215 and 216 in relation to the development.
- (2) Subsection (1) does not limit any powers of a responsible authority under sections 214, 215 and 216 (including any powers that a responsible authority has under those sections because of section 171U(2)).

171W. Substantial commencement of development approved under s. 171P(1)

- (1) This section applies if the Commission grants approval for development under section 171P(1).
- (2) The development must be substantially commenced —
 - (a) within the period specified in the approval for the purposes of this subsection; or
 - (b) if no period is specified in the approval — within the period of 4 years beginning on the day on which the approval is granted.
- (3) The approval lapses if the development is not substantially commenced within the period referred to in subsection (2).

Note for this subsection:

The period referred to in subsection (2) can be extended by an amendment to the approval made under section 171X(2)(a) or an order made under section 171ZA(2)(a).

- (4) An application under section 171X(2)(a) can be made or determined in relation to the approval even if the approval has lapsed under subsection (3) and, if the application is granted after the approval has lapsed, the approval comes back into effect accordingly when the application is granted.
- (5) An order under section 171ZA(2)(a) can be made in relation to the approval even if the approval has lapsed under subsection (3), in which event the approval comes back into effect accordingly when the amendment is made.

171X. Amendment or cancellation of approval granted under s. 171P(1)

- (1) This section applies if the Commission grants approval for development under section 171P(1) in respect of any land.
- (2) An owner of the land, or a person who is of a class or kind prescribed by Part 11B regulations for the purposes of this subsection, may apply to the Commission for the Commission —
 - (a) for the purposes of section 171W(2), to amend the approval —
 - (i) to extend the period specified in the approval; or
 - (ii) if no period is specified in the approval — to specify a period that is longer than the period of 4 years referred to in section 171W(2)(b);
 - or
 - (b) to amend or remove any of the conditions imposed on the approval; or
 - (c) to amend any part or aspect of the approved development; or
 - (d) to amend the approval in any other way; or
 - (e) to cancel the approval.
- (3) An amendment of the kind referred to in subsection (2)(c) —
 - (a) cannot substantially change the approved development; and
 - (b) in the case of approval granted on a significant development application not made with the authorisation of the Premier under section 171M(3) — cannot result in the

approved development no longer being
prescribed significant development.

- (4) The Commission must consider an application made under subsection (2) and determine it by —
 - (a) granting it (with or without conditions); or
 - (b) refusing it.
- (5) Sections 171N(1), 171P(2) and (3), 171Q, 171R, 171S(2) to (5), 171T and 171ZD apply with any necessary modifications to an application under subsection (2) as they apply to a significant development application.
- (6) Subject to Division 3, no person or body, apart from the Commission acting under this section, can do any of the following in relation to the approval referred to in subsection (1) —
 - (a) make an amendment of the kind referred to in subsection (2)(a);
 - (b) amend or remove any of the conditions imposed on the approval;
 - (c) impose new conditions on the approval;
 - (d) amend any part or aspect of the approved development;
 - (e) amend the approval in any other way;
 - (f) cancel the approval.

Division 3 — Oversight of Commission

171Y. Review by State Administrative Tribunal

- (1) If the Commission determines a significant development application, the applicant may apply to

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the State Administrative Tribunal for a review, in accordance with Part 14, of —

- (a) a determination by the Commission to refuse approval for the development under section 171P(1)(c); or
 - (b) any condition imposed by the Commission on the determination of the application.
- (2) If the Commission determines an application under section 171X, the applicant may apply to the State Administrative Tribunal for a review, in accordance with Part 14, of —
 - (a) a determination by the Commission to refuse the application under section 171X(4)(b); or
 - (b) any condition imposed by the Commission on the determination of the application.
- (3) If the Commission does not determine a significant development application within the period referred to in section 171T(1), the applicant may apply for a review under subsection (1) as if the Commission had, on the last day of that period, determined the application under section 171P(1)(c) by refusing approval for the development.
- (4) If the Commission does not determine an application under section 171X(2) within the period referred to in section 171T(1) (as that section applies under section 171X(5)), the applicant may apply for a review under subsection (2) as if the Commission had, on the last day of that period, determined the application under section 171X(4)(b) by refusing the application.
- (5) For an application for review under this section, the Commission is the decision-maker for the purposes of the *State Administrative Tribunal Act 2004*.

171Z. Ministerial call-in of application for review under s. 171Y

- (1) If the significant development application to which an application for review under section 171Y(1) or (2) relates was made with the authorisation of the Premier under section 171M(3), the application for review must be heard by the State Administrative Tribunal, and determined by the Minister under section 247, as if the Minister had given a direction under section 246(2)(b) in relation to the application for review.
- (2) If the significant development application to which an application for review under section 171Y(1) or (2) relates was not made with the authorisation of the Premier under section 171M(3), the Minister cannot give a direction under section 246(2)(a) in relation to the application for review.
- (3) Subsection (2) does not affect the Minister's power to give a direction under section 246(2)(b).
- (4) For the purposes of subsections (1) and (2), the significant development application to which an application for review under section 171Y(1) or (2) relates is —
 - (a) in the case of an application for review under section 171Y(1) — the significant development application referred to in section 171Y(1); or
 - (b) in the case of an application under section 171Y(2) — the significant development application determined by granting the approval of development to which the application under section 171X referred to in section 171Y(2) relates.

**171ZA. Governor may amend or cancel approval granted
by Commission under s. 171P(1)**

- (1) This section applies if the Commission grants approval for development under section 171P(1).
- (2) The Governor may, by order, do any of the following —
 - (a) for the purposes of section 171W(2), amend the approval —
 - (i) to extend the period specified in the approval; or
 - (ii) if no period is specified in the approval — to specify a period that is longer than the period of 4 years referred to in section 171W(2)(b);
 - (b) amend or remove any of the conditions imposed on the approval;
 - (c) impose new conditions on the approval;
 - (d) amend any part or aspect of the approved development;
 - (e) amend the approval in any other way;
 - (f) cancel the approval.
- (3) An amendment of the kind referred to in subsection (2)(d) —
 - (a) cannot substantially change the approved development; and
 - (b) in the case of approval granted on a significant development application not made with the authorisation of the Premier under section 171M(3) — cannot result in the approved development no longer being prescribed significant development.

- (4) An order under this section may include directions for giving effect to the order.
- (5) The Commission cannot do anything under section 171X that would override, or otherwise be inconsistent with, the provisions of an order under this section.
- (6) An order under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (7) The *Interpretation Act 1984* section 42 applies to an order under this section as if it were a regulation.

Division 4 — Miscellaneous

171ZB. Meetings to be open to public

- (1) A meeting of the board, or of a committee of the Commission, that is held for the purpose of the Commission's consideration or determination of a significant development application, or an application under section 171X, must be open to the public.
- (2) The requirement in subsection (1) is satisfied if members of the public can observe the meeting using audiovisual communication.
- (3) Subsection (1) does not apply to a meeting, or part of a meeting, that deals with a matter of a kind prescribed by Part 11B regulations for the purposes of this subsection.

171ZC. Fees

- (1) The Minister may, by notice published in accordance with the *Interpretation Act 1984* section 41(1)(a) —
 - (a) set fees to be charged in respect of any matter under, or relating to, this Part or any Part 11B regulations; and

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- (b) make provision for determining the persons by whom the fees are payable.
- (2) Neither the Commission nor any other person or body is required to consider or determine a significant development application, or to do any other thing under this Part or Part 11B regulations, unless any fee relating to the application or other thing has been paid.
- (3) Section 20 does not apply in relation to this Part.

171ZD. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Part.
- (2) Without limiting subsection (1), Part 11B regulations may make provision for or in relation to the following —
 - (a) requests, recommendations and authorisations under section 171M;
 - (b) procedures to be followed before significant development applications are made;
 - (c) procedures for dealing with significant development applications, including in relation to any matter referred to in paragraph (b)(i) to (v) of the definition of *procedural provision* in section 171H(1).
- (3) For the purposes of subsection (2)(b) and (c), Part 11B regulations may, without limitation —
 - (a) prescribe procedures that require or permit design review of development to be conducted; and

- (b) provide for procedures to be determined by the Commission.

Part 11C — Avoiding conflicts with certain development approvals

Division 1 — Preliminary

171ZE. Terms used

In this Part —

approved development, in relation to a relevant development approval, means the development for which approval is given;

conflict, in relation to the performance of a function and a relevant development approval, has the meaning given in section 171ZI;

Part 11C regulations means regulations made under section 171ZP;

prescribed significant development has the meaning given in section 171I(1);

relevant development approval has the meaning given in section 171ZG(1);

relevant legal instrument means —

- (a) this Act, other than this Part and Part 11C regulations;
- (b) a planning scheme or an interim development order;
- (c) the *Main Roads Act 1930*;
- (d) regulations made under the *Local Government Act 1995* section 9.60 and applying as local laws, to the extent that those regulations deal with a matter referred to in Schedule 9.1 clause 7 of that Act;

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- (e) any other enactment prescribed by Part 11C regulations for the purposes of this paragraph;
- (f) any other scheme, code, policy, plan, local law, by-law, rule, condition, notice or other instrument made under any enactment covered by paragraph (a), (c) or (e);

responsible Minister, in relation to a relevant legal instrument, means the Minister responsible for the administration of the relevant legal instrument or the enactment under which the relevant legal instrument is made.

171ZF. Relationship of this Part with other laws and instruments

- (1) This Part has effect despite any relevant legal instrument.
- (2) To avoid doubt, this Part is subject to section 5 of the EP Act.

171ZG. Relevant development approvals

- (1) A **relevant development approval** is any of the following —
 - (a) an approval of development in a planning control area granted by the Commission under section 116(1); or
 - (b) an approval of development granted by the Commission in determining a development application under an improvement scheme; or
 - (c) an approval of development granted by the Commission in determining a significant development application under section 171P(1); or
 - (d) an approval of development affirmed, varied or granted by the Minister in determining under

section 247 an application for review that was —

- (i) made to the State Administrative Tribunal; and
- (ii) referred to the Minister for determination in compliance with a direction given under section 246(2)(a);

or

- (e) an approval of development granted by the Commission under section 274; or
- (f) an approval of development granted under a planning scheme or interim development order, being an approval of a class or kind prescribed by Part 11C regulations for the purposes of this paragraph.

(2) In this Part —

- (a) a reference to a relevant development approval is a reference to the relevant development approval as amended or in effect from time to time; and
- (b) a reference to the conditions on a relevant development approval is a reference to the conditions as amended or in effect from time to time; and
- (c) a reference to the approved development in relation to a relevant development approval is a reference to the approved development as amended or in effect from time to time.

171ZH. Performance of functions to which this Part applies

- (1) This Part does not apply to the performance of a function —
 - (a) of a court or tribunal; or

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- (b) that is the subject of proceedings before a court or tribunal or a decision made by a court or tribunal; or
 - (c) that is performed or to be performed in accordance with, or in a manner affected by, a Government agreement.
- (2) In this Part, references to performing a function include references to the following —
- (a) refusing or failing to perform a function or otherwise not performing a function;
 - (b) being taken to perform a function;
 - (c) being taken to refuse or fail to perform a function or otherwise not to perform a function.

171ZI. When performance of function conflicts with relevant development approval

- (1) For the purposes of this Part, the performance of a function under a relevant legal instrument *conflicts* with a relevant development approval if the performance of the function, or the way in which the function is performed —
- (a) prevents the approved development from proceeding in accordance with the approval; or
 - (b) prevents any of the conditions imposed on the approval from being complied with; or
 - (c) otherwise substantially undermines, or substantially conflicts with, the approval.

Examples for this subsection:

1. An authority refuses to grant a permit under a relevant legal instrument that is necessary for the approved development to proceed in accordance with the relevant development approval.
2. An authority grants a permit under a relevant legal instrument that is necessary for the approved development

to proceed in accordance with the relevant development approval but the permit is granted subject to conditions that prevent the approved development from proceeding in accordance with the relevant development approval.

- (2) Despite subsection (1), the performance of a function under a relevant legal instrument does not *conflict* with a relevant development approval if the function consists of —
- (a) amending or varying —
 - (i) the relevant development approval; or
 - (ii) the conditions on the relevant development approval; or
 - (iii) the approved development in relation to the relevant development approval;
 - or
 - (b) the imposition of new conditions on the relevant development approval; or
 - (c) the cancellation of the relevant development approval.

Division 2 — Dealing with conflicts with relevant development approvals

171ZJ. Proposed performance of function that conflicts with relevant development approval

- (1) This section applies if —
- (a) a relevant development approval has been granted; and
 - (b) a person or body (the *decision-maker*) proposes to perform a function under a relevant legal instrument; and
 - (c) the performance of the function as proposed would conflict with the relevant development approval.

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- (2) The decision-maker must not perform the function as proposed unless —
 - (a) the decision-maker has notified the Minister of the proposed performance of the function and the conflict; and
 - (b) either —
 - (i) the decision-maker performs the function in compliance with a direction given to the decision-maker under section 171ZK; or
 - (ii) the Minister has notified the decision-maker under section 171ZK(6).
- (3) A notification under subsection (2)(a) must be made in the manner and form required by the Minister and, without limitation, include any documents or information required by the Minister.

171ZK. Direction to decision-maker by Minister on notification of proposed performance of function

- (1) If the Minister is notified under section 171ZJ(2)(a) by a decision-maker, the Minister may give a direction under this section if the Minister considers —
 - (a) that —
 - (i) the approved development in relation to the relevant development approval is prescribed significant development; or
 - (ii) the conflict raises issues of State or regional importance;and
 - (b) that it is appropriate to resolve the conflict.

- (2) A direction under this section is a direction to the decision-maker to do 1 or more of the following for the purpose of resolving the conflict —
 - (a) not perform the function as proposed;
 - (b) perform the function in accordance with the direction;
 - (c) reconsider the performance of the function in accordance with the direction and give effect to the outcome of the reconsideration;
 - (d) take any steps specified in the direction for giving effect to the direction.
- (3) The direction can only be given —
 - (a) if the Minister is not the responsible Minister for the relevant legal instrument under which it is proposed to perform the function — after consulting that responsible Minister; and
 - (b) with the agreement of the Premier.
- (4) The direction may specify a period within which anything required to be done under the direction must be done.
- (5) The decision-maker must comply with the direction —
 - (a) even if that involves doing something, or omitting to do something, that, apart from this subsection, the decision-maker could not do, or could not omit to do, under the relevant legal instrument; and
 - (b) without limiting paragraph (a), despite any time limit that would, apart from this subsection, apply under the relevant legal instrument in relation to anything to which the direction relates.

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- (6) If the Minister decides not to give a direction under this section, the Minister must notify the decision-maker of the Minister's decision.

171ZL. Application for direction if performance of function conflicts with approval

- (1) This section applies if —
- (a) a relevant development approval has been granted; and
 - (b) a person or body (the *decision-maker*) performs a function under a relevant legal instrument; and
 - (c) the performance of the function has not been the subject of a notification or direction under section 171ZJ or 171ZK; and
 - (d) the performance of the function conflicts with the approval.
- (2) An owner of land in respect of which the relevant development approval is granted, or a person who is of a class or kind prescribed by Part 11C regulations for the purposes of this subsection, may apply to the Minister for a direction under section 171ZM to resolve the conflict.
- (3) An application under subsection (2) must be made in the manner and form required by the Minister and, without limitation, include any documents or information required by the Minister.

171ZM. Direction by Minister on application if performance of function conflicts with approval

- (1) If an application is made under section 171ZL(2), the Minister may give a direction under this section if the Minister considers —
 - (a) that —
 - (i) the approved development in relation to the relevant development approval is prescribed significant development; or
 - (ii) the conflict raises issues of State or regional importance;
 - and
 - (b) that it is appropriate to resolve the conflict.
- (2) A direction under this section is a direction to the decision-maker to do 1 or more of the following for the purpose of resolving the conflict —
 - (a) cancel the performance of the function;
 - (b) perform the function again but in accordance with the direction;
 - (c) reconsider the performance of the function in accordance with the direction and give effect to the outcome of the reconsideration;
 - (d) take any steps specified in the direction for giving effect to the direction.
- (3) The direction can only be given —
 - (a) if the Minister is not the responsible Minister for the relevant legal instrument under which the function is performed — after consulting that responsible Minister; and
 - (b) with the agreement of the Premier.

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- (4) The direction may specify a period within which anything required to be done under the direction must be done.
- (5) The decision-maker must comply with the direction —
 - (a) even if that involves doing something, or omitting to do something, that, apart from this subsection, the decision-maker could not do, or could not omit to do, under the relevant legal instrument; and
 - (b) without limiting paragraph (a), despite any time limit that would, apart from this subsection, apply under the relevant legal instrument in relation to anything to which the direction relates.

171ZN. Direction is disallowable subsidiary legislation

- (1) A direction under section 171ZK or 171ZM is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (2) The *Interpretation Act 1984* section 42 applies to a direction under section 171ZK or 171ZM as if it were a regulation.

171ZO. Effect of performance of function in compliance with direction

- (1) The performance of a function by a person or body (the *decision-maker*) in compliance with a direction given to the decision-maker under section 171ZK or 171ZM has effect, and is valid, for the purposes of the relevant legal instrument and all other enactments.
- (2) Subsection (1) applies even if, apart from this Part, the decision-maker could not have performed the function as required by the direction.

- (3) Without limiting subsections (1) and (2), a decision, or other act or omission, of a person or body is not unlawful or invalid just because the decision-maker could not, apart from this Part, have performed the function as required by the direction.
- (4) Despite any relevant legal instrument or other enactment, the State Administrative Tribunal has no jurisdiction in relation to anything done under this Part, including (without limitation) anything done in compliance with a direction under section 171ZK or 171ZM.

Division 3 — Regulations

171ZP. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Part.

12. Section 268A amended

In section 268A(1):

- (a) delete “Minister, as soon as is practicable, to cause a copy of an order, improvement plan or direction” and insert:

Minister or the Premier, as soon as is practicable after the occurrence of an event, to cause a document

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- (b) in paragraph (a) delete “at the commencement of the period after the day on which the order, improvement plan or direction is given,” and insert:

on the day after the event occurs,

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

(b) the Minister or the Premier (as the case requires) is of the opinion that the House will not sit during the period of 14 days after the day on which the event occurs,

- (d) delete “the Minister is to transmit a copy of the order, improvement plan or direction” and insert:

the Minister or the Premier (as the case requires) must transmit the document

- (2) In section 268A(2) and (3) delete “copy of an order, improvement plan or direction” and insert:

document

13. Section 269 amended

- (1) In section 269(1) delete the definition of *Government agreement*.

- (2) In section 269(1) in the definition of *legal instrument* paragraph (a) after “this Part,” insert:

Part 11C,

14. Section 272 amended

Delete section 272(8).

15. Section 277 amended

- (1) In section 277(5) delete “Divisions 3 and 4.” and insert:

Division 4.

- (2) In section 277(6) delete “Subject to Division 3, if” and insert:

If

- (3) In section 277(6) after the examples insert:

Note for this subsection:

Part 11C applies despite this Part (see section 171ZF(1)).

16. Section 277A inserted

After section 277 insert:

277A. Enforcement powers of Commission in relation to conditions

- (1) If development is commenced, continued or carried out otherwise than in accordance with any of the

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conditions on an approval of development granted under section 274, the Commission has the powers of a responsible authority under sections 214, 215 and 216 in relation to the development.

- (2) Subsection (1) does not limit any powers of a responsible authority under sections 214, 215 and 216 (including any powers that a responsible authority has under those sections because of section 277(2)).
- (3) In subsection (1), the reference to the conditions on an approval of development granted under section 274 is a reference to the conditions as amended from time to time under section 279 or by an order under section 284.

17. Part 17 Division 3 deleted

Delete Part 17 Division 3.

18. Section 283 amended

In section 283(7) delete “regulations, including (without limitation) anything done in compliance with a direction under section 281 or 282.” and insert:

regulations.

19. Section 285 amended

In section 285(1) delete “in the *Gazette* —” and insert:

in accordance with the *Interpretation Act 1984*
section 41(1)(a) —

Part 4 — Performance of development approval functions of local governments in relation to single houses

20. Act amended

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

21. Section 257C inserted

After section 257B insert:

257C. Regulations dealing with performance of functions under local planning schemes in relation to single house development

(1) In this section —

ancillary structure means a building, structure, fixture, or feature, that is ancillary or incidental to a single house;

CEO, in relation to a local government, means the chief executive officer of the local government;

development approval function means a function of a local government under a local planning scheme in relation to development applications, approvals of development or ancillary or incidental matters;

Examples for this definition:

1. Receiving, administering or considering development applications.
2. Granting or refusing approvals of development.
3. Imposing conditions on approvals of development.
4. Receiving, administering or considering applications for any of the following —
 - (a) an amendment to an approval of development;

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- (b) an amendment to conditions imposed on an approval of development;
 - (c) the cancellation of an approval of development.
5. Amending approvals of development or conditions imposed on approvals of development.
6. Cancelling approvals of development.

single house means a dwelling, other than a dwelling on land that is, or is to be, subject to —

- (a) a strata scheme under the *Strata Titles Act 1985*; or
- (b) a community titles (building) scheme under the *Community Titles Act 2018*;

single house development means development that consists of —

- (a) the erection of, or alterations or additions to, a single house; or
 - (b) the erection or installation of, or alterations or additions to, an ancillary structure.
- (2) Without limiting section 256, regulations under section 256(1) may prescribe provisions that —
- (a) specify development approval functions of the local government (the **prescribed development approval functions**); and
 - (b) provide that, when the prescribed development approval functions are performed in relation to single house development, or single house development of a specified class, the functions —
 - (i) must be performed for and on behalf of the local government by the CEO or employees of the local government authorised by the CEO; and

- (ii) cannot be performed by the local government in any other manner (for example, by the council of the local government or a committee of that council);
- and
- (c) otherwise deal with or regulate —
 - (i) the performance of the prescribed development approval functions as referred to in paragraph (b); and
 - (ii) authorisations referred to in paragraph (b)(i); and
 - (iii) supplementary or incidental matters.
- (3) Provisions of a kind referred to in subsection (2), and regulations prescribing those provisions, have effect despite any provision of the *Local Government Act 1995*.

Part 5 — Planning codes

Division 1 — *Planning and Development Act 2005* amended

22. Act amended

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

23. Section 32B amended

(1) After section 32B(2)(c) insert:

- (ca) requirements for advertisement for public inspection and public submissions in relation to a proposed planning code or amendment;

(2) Delete section 32B(3) and insert:

(3) Regulations made under subsection (1) —

- (a) may provide that the Commission may refer a proposed planning code or amendment to the EPA; and
- (b) must, in relation to a proposed planning code or amendment that is referred to the EPA, make provision for —
 - (i) matters relating to the process under the EP Act Part IV; and
 - (ii) advertisement and submissions as referred to in subsection (2)(ca).

Division 2 — *Environmental Protection Act 1986* amended

24. Act amended

This Division amends the *Environmental Protection Act 1986*.

25. Section 3 amended

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

(ea) a planning code, or an amendment to a planning code, to which regulations made under the *Planning and Development Act 2005* section 32B(3)(a) apply, means an approval of the planning code or amendment by the responsible Minister under regulations made under section 32B(1) of that Act; or

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

(ea) a planning code, or an amendment to a planning code, to which regulations made under the *Planning and Development Act 2005* section 32B(3)(a) apply, means the period of advertisement for public inspection prescribed under section 32B(3)(b)(ii) of that Act; or

- (3) In section 3(1) in the definition of *responsible authority* delete paragraph (a)(viiiia) and insert:

(viiiia) a planning code, or an amendment to a planning code, to which regulations made under the *Planning and Development Act 2005* section 32B(3)(a) apply, means the Western Australian Planning Commission; or

- (4) In section 3(1) in the definition of *scheme* delete paragraph (ha) and insert:

(ha) a planning code, or an amendment to a planning code, to which regulations made under the *Planning and Development Act 2005* section 32B(3)(a) apply; or

26. Section 48AAB deleted

Delete section 48AAB.

27. Section 48C amended

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

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

Part 6 — Improvement schemes

28. Act amended

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

29. Section 122C amended

After section 122C(2) insert:

- (3) Despite subsections (1) and (2) —
- (a) an improvement scheme may prohibit wholly or partially —
 - (i) the continuance of a non-conforming use; or
 - (ii) the erection, alteration or extension on land of any building in connection with, or in furtherance of, a non-conforming use;
 - and
 - (b) this Division applies to a development affected by a prohibition under paragraph (a) accordingly.
- (4) In subsection (3) —
- non-conforming use*** means a use of land which, though lawful immediately before the improvement scheme, or an amendment to the improvement scheme, takes effect, is not in conformity with a provision of the improvement scheme that deals with a matter specified in Schedule 7 clause 6 or 7.

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30. Section 122D amended

Delete section 122D(6) and insert:

- (6) This section has effect subject to any provision of an improvement scheme made under section 122C(3).

31. Section 122F amended

In section 122F delete “relating to non-conforming uses.” and insert:

made under section 122C(3).

Note: The heading to amended section 122F is to read:

Transitional provisions for amended improvement scheme area

Part 7 — Subdivision of land

32. Act amended

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

33. Section 145B inserted

After section 145A insert:

145B. Land subject to strata titles scheme

- (1) This section applies if —
 - (a) the Commission approves a plan of subdivision in respect of land that is or includes —
 - (i) land that, at the time of the approval, is the subject of a strata titles scheme under the *Strata Titles Act 1985* (the *existing strata titles scheme*); or
 - (ii) a part of such land;
 - and
 - (b) in accordance with section 149A, the Commission imposes a condition requiring the termination of the existing strata titles scheme.

Note for this subsection:

See the *Strata Titles Act 1985* section 195(1) for when a strata titles scheme is terminated.

- (2) A diagram or plan of survey of the subdivision may be submitted to the Commission under section 145 even though the existing strata titles scheme has not terminated.
- (3) The Commission must endorse its approval on a diagram or plan of survey of the subdivision under

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section 145 even though the existing strata titles scheme has not terminated if —

- (a) had the existing strata titles scheme terminated, the Commission would be required to endorse its approval in accordance with section 145(4); and
 - (b) the Commission is satisfied that the existing strata titles scheme will terminate within the period referred to in section 145(1).
- (4) In subsections (2) and (3), references to a diagram or plan of survey of the subdivision include, if the subdivision is being carried out in stages, a diagram or plan of survey that relates to a stage of the subdivision.

34. Section 146 amended

In section 146(1):

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

registered; and
- (b) after paragraph (c) insert:

- (d) in the case of a diagram or plan of survey endorsed with the approval of the Commission under section 145B(3), the existing strata titles scheme has terminated.

Note for this subsection:

For the purposes of paragraph (d), see the *Strata Titles Act 1985* section 195(1) for when a strata titles scheme is terminated.

35. Section 149A inserted

Before section 150 insert:

149A. Condition requiring termination of strata titles scheme

- (1) This section applies if —
- (a) the Commission approves a plan of subdivision in respect of land that is or includes —
 - (i) land that, at the time of the approval, is the subject of a strata titles scheme under the *Strata Titles Act 1985* (the *existing strata titles scheme*); or
 - (ii) a part of such land;
- and
- (b) the Commission considers that the subdivision is dependent upon the existing strata titles scheme being terminated under the *Strata Titles Act 1985*.

Note for this subsection:

See the *Strata Titles Act 1985* section 195(1) for when a strata titles scheme is terminated.

- (2) Without limiting any other conditions that may be imposed under section 143, the Commission must impose a condition under that section requiring the termination of the existing strata titles scheme.
- (3) This section does not apply to a plan of subdivision for the termination of a strata titles scheme as referred to in the *Strata Titles Act 1985* section 177 or 191.

Note for this section:

If a condition is imposed in accordance with this section, section 145B provides for the Commission to endorse its approval on a diagram or plan of survey for the subdivision

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even though the existing strata titles scheme has not terminated.

Part 8 — The Western Australian Planning Commission

Division 1 — *Planning and Development Act 2005* amended

36. Act amended

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

37. Section 4 amended

In section 4(1) delete the definitions of:

associate member

deputy member

district planning committee

Regional Minister

38. Sections 10 to 13 replaced

Delete sections 10 to 13 and insert:

10. Membership of board

- (1) The board is to consist of 7 to 9 members appointed by the Minister.
- (2) The Minister must appoint 1 of the members to be the chairperson.
- (3) The Minister may appoint 1 or more other members to be deputy chairpersons.
- (4) A member cannot be a public service officer.
- (5) The terms and conditions of a member's appointment are to be determined by the Minister, subject to —
 - (a) any regulations made for the purposes of section 11(1); and

- (b) section 12.
- (6) The Minister must ensure that, taken together, the members have what the Minister considers to be a suitable level of knowledge, expertise and experience in the following fields —
 - (a) urban and regional planning;
 - (b) subdivision of land;
 - (c) property development;
 - (d) planning and management of infrastructure;
 - (e) economic, social and environmental policy;
 - (f) public sector governance and administration.
- (7) In addition to the requirement of subsection (6), the Minister must ensure the following —
 - (a) that the chairperson, and at least 1 other member, each has what the Minister considers to be —
 - (i) extensive knowledge, expertise and experience in the field of urban and regional planning; and
 - (ii) a suitable professional qualification or accreditation in that field;
 - (b) that at least 1 member has what the Minister considers to be extensive experience in local government administration as either or both of the following —
 - (i) a member of the council of a local government;
 - (ii) an employee of a local government;
 - (c) that at least 1 member has what the Minister considers to be extensive experience of living

and working in regions other than the following —

- (i) the metropolitan region;
- (ii) the region referred to in item 6 of Schedule 4.

11. Board’s constitution and proceedings

- (1) Regulations may make provision in relation to the constitution and proceedings of the board.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision in relation to any of the following —
 - (a) the appointment of members, including method of recruitment and terms and conditions of appointments;
 - (b) circumstances that cause vacancies in offices of members and the filling of vacancies;
 - (c) circumstances in which a member can be removed from office and the process for removing a member;
 - (d) the granting of leave of absence for a member;
 - (e) the role of the chairperson and any deputy chairpersons;
 - (f) procedures of the board.
- (3) Subject to regulations made for the purposes of subsection (1), the board must determine its own procedures.
- (4) The board may invite representatives of public sector bodies (as defined in the *Public Sector Management Act 1994* section 3(1)) to participate in meetings or other proceedings of the board as if they were members.

- (5) An invitation under subsection (4) —
- (a) is subject to any conditions or other limitations specified by the board; and
 - (b) does not enable the representative to vote or to do anything else that is binding on the board.

12. Remuneration and allowances

A member must be paid the remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner.

39. Section 14 replaced

Delete section 14 and insert:

13. Introduction to Commission's role

The Commission is the State's leading body for land use planning and, as such, must perform its functions having regard to the following —

- (a) the need to provide leadership to local governments, public authorities and other persons or bodies in relation to their roles in land use planning;
- (b) the need to promote the following —
 - (i) an efficient and effective land use planning system in the State;
 - (ii) the integrated and sustainable development of land in the State;
- (c) the need to act expertly;
- (d) the need to act impartially, subject to this Act and any other written law;

- (e) if the Commission makes a decision that affects a local government, public authority or other person or body — the need to ensure that the Commission’s reasons for the decision are available to the local government, public authority or other person or body.

14. Functions

The Commission’s functions are as follows —

- (a) to advise the Minister in relation to the coordination and promotion of planning for integrated and sustainable development in the State;
- (b) to advise and assist the Minister in relation to the administration, revision and reform of legislation relating to development and planning for development;
- (c) to prepare and maintain the following as a basis for coordinating and promoting planning for integrated and sustainable development in the State and to provide guidance for public authorities and local governments on those matters —
 - (i) a planning strategy for the State to be approved by the Minister;
 - (ii) planning strategies for the parts of the State to which region planning schemes apply;
 - (iii) other planning strategies as agreed between the Minister and the Commission;
 - (iv) State planning policies under Part 3;
 - (v) planning codes under Part 3A;

- (vi) other documents, including plans, policies, guidance and operational documents;
- (d) to plan for the coordinated provision of transport and infrastructure to support development;
- (e) to undertake research, and to prepare planning methods and models, relating to the following —
 - (i) integrated and sustainable development;
 - (ii) planning for such development;
 - (iii) other matters relating to such development;
- (f) to provide advice and assistance to local governments and other persons or bodies in relation to development and planning for development, including advice and assistance in relation to the following —
 - (i) planning schemes;
 - (ii) functions that are under planning schemes or that otherwise relate to development and planning for development, including functions that relate to referring, consulting on or advertising applications for approval of development or instruments made under this Act or planning schemes;
- (g) to prepare, maintain and administer region planning schemes under Part 4;
- (h) to prepare, maintain and administer interim development orders under Part 6;
- (i) to declare planning control areas and administer those areas under Part 7;

- (j) to prepare, maintain and administer improvement plans and improvement schemes under Part 8;
- (k) to prepare, maintain and administer the Swan Valley Planning Scheme under the *Swan Valley Planning Act 2020*;
- (l) to provide advice and assistance to the Minister in relation to the matters referred to in paragraphs (g) to (k);
- (m) to provide advice and assistance to the Minister in relation to local planning schemes, and amendments to those schemes, made or proposed under Part 5;
- (n) to acquire land for the purpose of implementing region planning schemes, improvement schemes and the Swan Valley Planning Scheme;
- (o) to develop, maintain and manage land held by the Commission for the purpose of implementing a region planning scheme, an improvement scheme or the Swan Valley Planning Scheme, including carrying out works and providing facilities on the land that are —
 - (i) incidental to the development, maintenance or management of the land; or
 - (ii) conducive to the use of the land for any purpose for which the land is reserved;
- (p) to deal with matters relating to subdivisions of land under Part 10;
- (q) to deal with development applications under Parts 11B and 17;

- (r) to do all things that are necessary for the purpose of carrying out this Act, region planning schemes, improvement schemes and the Swan Valley Planning Scheme;
- (s) any other functions conferred on the Commission under this Act, the *Swan Valley Planning Act 2020* or any other written law.

40. Section 15 amended

In section 15(2)(b) delete “14(j); and” and insert:

14(o); and

41. Section 16 amended

(1) Delete section 16(2) and insert:

(2) A delegation under subsection (1) takes effect on the day after the day on which the resolution is made or on a later day specified in the resolution.

(2A) The Commission must publish a copy of a resolution under subsection (1) on a website maintained by, or on behalf of, the Commission (but a failure to do this does not invalidate the delegation).

(2) Delete section 16(3)(a) and insert:

(a) a member; or

- (3) Delete section 16(5) and insert:
- (5) Without limiting the generality of subsection (1), a delegation may be expressed as a delegation of every function of the Commission within a specified class (subject to any specified exceptions).
- (4) Delete section 16(7B) and insert:
- (7B) A subdelegation under subsection (7A) takes effect on the day after the day on which the subdelegation is made or on a later day specified in the terms of the subdelegation.
- (7BA) The Metropolitan Redevelopment Authority must publish a copy of the terms of a subdelegation under subsection (7A) on a website maintained by, or on behalf of, the Authority (but a failure to do this does not invalidate the subdelegation).

42. Section 17 amended

After section 17(1) insert:

- (1A) However, the Minister cannot give a direction under subsection (1) in relation to the following —
- (a) a particular application made to, or to be determined by, the Commission under any of the following —
- (i) a planning scheme;
- (ii) Part 10, 11B or 17;
- (iii) another provision of this Act;
- (iv) another written law;

- (b) a particular development or a particular proposed development, including any approval of a particular development or a particular proposed development.

43. Section 19 replaced

Delete section 19 and insert:

19. Committees of Commission

- (1) Schedule 2 has effect in relation to committees of the Commission.
- (2) A member of a committee of the Commission must be paid the remuneration and allowances determined by the Minister on the recommendation of the Public Sector Commissioner.
- (3) Regulations may make provision in relation to committees of the Commission.
- (4) Without limiting subsection (3), regulations made for the purposes of that subsection may make provision in relation to any of the following —
 - (a) the constitution and membership of committees;
 - (b) the establishment of subcommittees;
 - (c) the functions and procedures of committees;
 - (d) the discharge, alteration or reconstituting of committees;
 - (e) the Commission's functions in relation to committees.

- (5) Regulations made for the purposes of subsection (3) may do the following —
 - (a) limit the Commission’s powers under Schedule 2 or otherwise regulate the exercise of those powers;
 - (b) limit a committee’s power under Schedule 2 clause 1(6) or otherwise regulate the exercise of that power.
- (6) Regulations made for the purposes of subsection (3) may supplement, but not override or otherwise limit, any requirements of —
 - (a) Schedule 2 clauses 3 and 4; or
 - (b) the *Swan Valley Planning Act 2020* Part 4.

44. Section 266 amended

In section 266(1) in the definition of *member* delete paragraph (b).

45. Schedule 1 deleted

Delete Schedule 1.

46. Schedule 2 clause 1 amended

- (1) Delete Schedule 2 clause 1(1) and insert:
 - (1) In addition to the committees of the Commission established under clauses 3 and 4 and the *Swan Valley Planning Act 2020* section 33, the Commission may from time to time establish other committees of the Commission.
- (2) In Schedule 2 clause 1(2)(c) delete “or deputy members”.

- (3) Delete Schedule 2 clause 1(3) and (4).

Note: The heading to amended Schedule 2 clause 1 is to read:

General provisions as to committees

47. Schedule 2 clause 2 deleted

Delete Schedule 2 clause 2.

48. Schedule 2 clause 3 amended

- (1) In Schedule 2 clause 3(1) after “a committee” insert:

of the Commission

- (2) Delete Schedule 2 clause 3(2) and insert:

- (2) The Executive, Finance and Property Committee is to consist of the following persons —

- (a) 2 or more members of the board appointed by the Commission;
- (b) 1 or more persons appointed by the Commission with the approval of the Minister —
 - (i) who are not members of the board; and
 - (ii) who have knowledge, expertise and experience in the field of financial management;
- (c) any 1 or more other persons, not being members of the board, appointed by the Commission with the approval of the Minister.

49. Schedule 2 clause 4 amended

- (1) In Schedule 2 clause 4(1) after “a committee” insert:

of the Commission

- (2) Delete Schedule 2 clause 4(2) and (3) and insert:

- (2) The Statutory Planning Committee is to consist of the following persons —

- (a) 2 or more members of the board appointed by the Commission;
- (b) 1 or more persons appointed by the Commission with the approval of the Minister —
 - (i) who are not members of the board; and
 - (ii) who have knowledge, expertise and experience in the field of urban and regional planning;
- (c) 1 or more persons, not being members of the board, appointed by the Commission with the approval of the Minister to represent the interests of local governments;
- (d) any 1 or more other persons, not being members of the board, appointed by the Commission with the approval of the Minister.

- (3) Delete Schedule 2 clause 4(5).

50. Schedule 2 clauses 5 to 9 deleted

Delete Schedule 2 clauses 5 to 9.

51. Schedule 4 amended

Delete the reference after the heading to Schedule 4 and insert:

[s. 4]

Division 2 — *Swan Valley Planning Act 2020* amended

52. Act amended

This Division amends the *Swan Valley Planning Act 2020*.

53. Section 3 amended

In section 3 delete the definition of *chairperson*.

54. Section 33 amended

In section 33(2):

- (a) delete paragraph (a);
- (b) in paragraph (b) delete “5 other” and insert:

2 or more

55. Section 35 amended

In section 35(2)(a) delete “or associate member (as those terms are” and insert:

(as that term is

56. Section 36 amended

Delete section 36(1) and insert:

- (1) A delegation under section 34(2) takes effect on the day after the day on which the resolution is made or on a later day specified in the resolution.
- (1A) The Commission must publish a copy of a resolution under section 34(2) on a website maintained by, or on behalf of, the Commission (but a failure to do this does not invalidate the delegation).
- (1B) A subdelegation under section 35(1) takes effect on the day after the day on which the resolution is made or on a later day specified in the resolution.
- (1C) The Swan Valley Statutory Planning Committee must publish a copy of a resolution under section 35(1) on a website maintained by, or on behalf of, the Committee (but a failure to do this does not invalidate the subdelegation).

Division 3 — Aquatic Resources Management Act 2016 amended

57. Act amended

This Division amends the *Aquatic Resources Management Act 2016*.

58. Section 2 amended

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

- (1) This

(2) At the end of section 2 insert:

(2) Despite subsection (1)(b), if section 377 has not come into operation before the day on which the *Planning and Development Amendment Act 2023* section 50 comes into operation, the 2nd row in the Table to section 377(2) —

- (a) does not come into operation; and
- (b) is deleted on that day.

**Division 4 — *Metropolitan Redevelopment Authority Act 2011*
amended**

59. Act amended

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

60. Section 15 amended

In section 15(2) delete “when notice of the subdelegation is published in the *Gazette* under” and insert:

in accordance with

Part 9 — Consolidations and reviews of planning instruments

61. Act amended

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

62. Part 4 Division 5 deleted

Delete Part 4 Division 5.

63. Part 5 Division 5 deleted

Delete Part 5 Division 5.

64. Part 9A inserted

After section 132 insert:

Part 9A — Ten-yearly reviews of planning instruments

132A. Terms used

(1) In this Part —

commencement day means the day on which the *Planning and Development Amendment Act 2023* section 64 comes into operation.

(2) For the purposes of this Part, the anniversaries of commencement day that are *relevant* are the 10th anniversary, the 20th anniversary, the 30th anniversary and so on.

132B. Commission to review State planning instruments every 10 years

(1) In this section —

State planning instrument means any of the following, as in force or effect from time to time —

- (a) a region planning scheme;
- (b) an improvement plan;
- (c) an improvement scheme;
- (d) a State planning policy;
- (e) a planning code;
- (f) a planning strategy prepared by the Commission under section 14.

(2) During the period of 6 months after a relevant anniversary of commencement day, the Commission must —

- (a) review the operation and effectiveness of each State planning instrument that is in force or effect on the relevant anniversary; and
- (b) prepare and approve a report based on the review, including any recommendations arising from the review.

(3) However, the Commission may elect to review a State planning instrument under subsection (4) instead of subsection (2).

(4) If the Commission elects to review a State planning instrument under this subsection, the Commission must, during the period of 6 months after an anniversary referred to in subsection (5) that falls on or after commencement day —

- (a) review the operation and effectiveness of the State planning instrument; and

- (b) prepare and approve a report based on the review, including any recommendations arising from the review.
- (5) The anniversaries are the 10th anniversary of the day on which the State planning instrument first came into force or effect, the 20th anniversary of that day, the 30th anniversary of that day and so on.

132C. Local governments to review local planning instruments every 10 years

- (1) In this section —
local planning instrument, in relation to a local government, means an instrument, as in force or effect from time to time —
 - (a) that is either of the following —
 - (i) a local planning scheme;
 - (ii) an instrument of a type prescribed by regulations for the purposes of this subparagraph;
 - and
 - (b) that was prepared or adopted by the local government or that otherwise relates to the local government's district or any land in that district.
- (2) During the period of 6 months after a relevant anniversary of commencement day, a local government must —
 - (a) review the operation and effectiveness of each local planning instrument that is in force or effect on the relevant anniversary; and
 - (b) prepare and approve a report based on the review, including any recommendations arising from the review.

- (3) However, a local government may elect to review a local planning instrument under subsection (4) instead of subsection (2).
- (4) If a local government elects to review a local planning instrument under this subsection, the local government must, during the period of 6 months after an anniversary referred to in subsection (5) that falls on or after commencement day —
 - (a) review the operation and effectiveness of the local planning instrument; and
 - (b) prepare and approve a report based on the review, including any recommendations arising from the review.
- (5) The anniversaries are the 10th anniversary of the day on which the local planning instrument first came into force or effect, the 20th anniversary of that day, the 30th anniversary of that day and so on.

132D. Regulations

- (1) Regulations may make provision in relation to the conduct of reviews, and the preparation and approval of reports, under this Part.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may do any of the following —
 - (a) prescribe matters to be covered, or otherwise taken into account, as part of a review;
 - (b) prescribe procedures to be followed in conducting a review;
 - (c) prescribe the form and content of reports;
 - (d) provide for reports, parts of reports or information about reports to be published or given to any person or body.

132E. Part does not limit other review provisions

This Part does not limit any other provision of this Act, or any provision of another written law, under which a review of an instrument is, or may be, required or permitted.

65. Section 138 amended

Delete section 138(3)(a) and insert:

- (a) both —
 - (i) the local planning scheme did not first come into force, and a report on a review of the local planning scheme has not been approved under section 132C(2) or (4), in the preceding 10 years; and
 - (ii) the approval is consistent with any State planning policy or planning code that deals with substantially the same matter;
- or

66. Section 171R amended

Delete section 171R(1)(b)(ii) and insert:

- (ii) the local planning scheme did not first come into force, and a report on a review of the local planning scheme has not been approved under section 132C(2) or (4), in the preceding 10 years; and

s. 67

67. Section 212 amended

Delete section 212(1)(b) and insert:

- (b) comply with section 132C; or

Note: The heading to amended section 212 is to read:

Minister's powers in relation to non-compliance by local government

68. Section 213 amended

In section 213(1):

- (a) delete paragraph (c);
- (b) delete “conditions, consolidation” and insert:

conditions

Note: The heading to amended section 213 is to read:

Effect of Minister's action under s. 212

69. Section 257B amended

- (1) Delete section 257B(4) and insert:

- (4) It is sufficient compliance with a requirement of this Act that a local planning scheme be published in the *Gazette* if the local planning scheme is so published without the deemed provisions.

- (2) In section 257B(5) delete “scheme or a consolidation of a local planning”.

Part 10 — Powers of entry and inspection

Division 1 — *Planning and Development Act 2005* amended

70. Act amended

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

71. Part 13 Division 4 inserted

At the end of Part 13 insert:

Division 4 — Entry and inspection powers for officers authorised by Commission

Subdivision 1 — Preliminary

235A. Terms used

In this Division —

authorised officer means a person authorised by the Commission under section 235B;

authorised purpose means a purpose of ascertaining any matter for purposes connected with enforcing or monitoring compliance with this Act or the *Swan Valley Planning Act 2020*, including investigating a suspected contravention of, or offence against, this Act or that Act;

entry warrant has the meaning given in section 235F(1);

entry warrant application means an application under section 235F(1);

occupier, in relation to any land, includes a person apparently in charge of the land;

remote communication means any way of communicating at a distance, including by telephone, fax, radio, videoconferencing, email and other electronic means.

Subdivision 2 — Authorised officers

235B. Commission may authorise certain persons for purposes of Division

The Commission may authorise a person who is either of the following for the purposes of this Division —

- (a) a public service officer who is appointed or made available under section 22;
- (b) an officer or employee who is the subject of an arrangement under section 23(1).

235C. Identity cards

- (1) The Commission must give an authorised officer an identity card.
- (2) The identity card must —
 - (a) identify the person as an authorised officer; and
 - (b) include a recent photograph of the authorised officer; and
 - (c) state an expiry date for the card; and
 - (d) include any other matter required by regulations for the purposes of this paragraph.
- (3) An authorised officer must —
 - (a) if it is practicable to do so — before exercising any powers under section 235E in respect of any land, produce the officer's identity card to an occupier of the land who is present (if any); and

- (b) otherwise carry the officer's identity card when exercising any powers under section 235E and produce it upon any reasonable request.
- (4) If a person ceases to be an authorised officer, the person must, within 14 days after the day on which the person ceases to be an authorised officer, return to the Commission the identity card that the person was given.
- (5) A person commits an offence if, without reasonable excuse, the person fails to comply with subsection (4).
Penalty for this subsection: a fine of \$5 000.

235D. Offences relating to authorised officers

- (1) A person must not, without reasonable excuse, hinder or obstruct an authorised officer exercising a power under this Division.
Penalty for this subsection: a fine of \$10 000.
- (2) A person commits an offence if, without reasonable excuse, the person fails to comply with a direction given to the person by an authorised officer under section 235E(7).
Penalty for this subsection: a fine of \$10 000.
- (3) A person must not impersonate an authorised officer.
Penalty for this subsection: a fine of \$5 000.

Subdivision 3 — Entry and inspection

235E. Powers of entry and inspection

- (1) For an authorised purpose, an authorised officer may enter any land —
 - (a) with the consent of an occupier of the land; or
 - (b) if authorised to do so by an entry warrant.

- (2) If an authorised officer enters any land under subsection (1), the authorised officer may, for the authorised purpose —
 - (a) inspect the land or anything on or in the land; and
 - (b) photograph, or otherwise make a record of, the land or anything on or in the land.
- (3) Before an authorised officer enters any land under subsection (1)(b) in a case where an occupier of the land is present, the officer must do the following to the extent it is practicable to do so —
 - (a) inform the occupier of the officer's intention to enter the land;
 - (b) produce the entry warrant for the occupier to see;
 - (c) give the occupier an opportunity to consent to the officer entering the land under subsection (1)(a).
- (4) If it is not practicable for the authorised officer to produce the entry warrant as required under subsection (3)(b) before entering the land, the officer must produce the entry warrant as soon as practicable after entering the land.
- (5) If an authorised officer enters any land under subsection (1)(b) in a case where no occupier of the land is present, the officer must leave, in a prominent place on the land, a notice stating —
 - (a) the officer's official details; and
 - (b) that the land has been entered under the authority of an entry warrant.

- (6) If 2 or more authorised officers are involved, the duties under subsections (3) and (4), or the duty under subsection (5), need only be performed by 1 of the officers.
- (7) If an authorised officer is authorised by an entry warrant to enter any land, the officer may direct any person present on the land to provide the officer with any assistance that the officer reasonably requires to enable or assist the officer —
 - (a) to enter the land or to gain access to anything on or in the land; or
 - (b) otherwise to exercise powers under subsection (2) on the land.
- (8) If an authorised officer enters any land under subsection (1) in a case where an occupier of the land is present, the officer must not prevent the occupier from observing the exercise of powers under subsection (2) on the land unless —
 - (a) the officer reasonably suspects that the occupier might be endangered if they were to observe the exercise of powers; or
 - (b) the occupier hinders or obstructs the exercise of powers; or
 - (c) it is not practicable for the occupier to observe the exercise of powers.
- (9) An authorised officer may record the exercise of a power under this section, including by making an audiovisual recording.

235F. Authorised officer may apply for entry warrant

- (1) An authorised officer may apply to a magistrate for a warrant (an *entry warrant*) authorising an authorised officer to enter land for an authorised purpose.

- (2) An entry warrant application must be made in accordance with section 235G and must include the following information —
- (a) the applicant's full name;
 - (b) a reasonably particular description of the land;
 - (c) a reasonably particular description of the authorised purpose for which entry to the land is required;
 - (d) why it is necessary to enter the land for the authorised purpose;
 - (e) any other information prescribed by the regulations.

235G. Making entry warrant application

- (1) A reference in this section to making an entry warrant application includes a reference to giving information in support of an entry warrant application.
- (2) An entry warrant application must be made in person before a magistrate.
- (3) Despite subsection (2), a magistrate may allow an entry warrant application to be made by remote communication if the magistrate considers that it is reasonable in the circumstances to do so.
- (4) An entry warrant application must be made in writing unless —
- (a) the entry warrant application is made by remote communication; and
 - (b) it is not practicable to send the magistrate written material.
- (5) If subsection (4)(a) and (b) apply —
- (a) the entry warrant application may be made orally; and

- (b) the magistrate must make a written record of —
 - (i) the entry warrant application; and
 - (ii) any information given in support of the entry warrant application.
- (6) An entry warrant application must be made on oath unless —
 - (a) the entry warrant application is made by remote communication; and
 - (b) it is not practicable for the magistrate to administer an oath to the applicant.
- (7) If subsection (6)(a) and (b) apply —
 - (a) the entry warrant application may be made in an unsworn form; and
 - (b) if the magistrate issues an entry warrant, the applicant must, as soon as practicable, send the magistrate an affidavit verifying —
 - (i) the entry warrant application; and
 - (ii) any information given in support of the entry warrant application.

235H. Further provisions about entry warrant application made by remote communication

- (1) This section applies if an entry warrant application is made by remote communication.
- (2) If the magistrate issues an entry warrant, the magistrate must, if practicable, send a copy of the original entry warrant to the applicant by remote communication.
- (3) If that is not practicable —
 - (a) the magistrate must send to the applicant by remote communication any information that must be set out in the entry warrant; and

- (b) the applicant must —
 - (i) complete a form of entry warrant with the information received; and
 - (ii) give the magistrate a copy of the form as soon as practicable after completing the form;and
- (c) the magistrate must —
 - (i) attach the copy of the form to the original entry warrant and any affidavit received from the applicant; and
 - (ii) make them available for collection by the applicant.
- (4) The copy of the original entry warrant sent under subsection (2), or the form of the entry warrant completed under subsection (3), has the same force as the original entry warrant.
- (5) If an applicant contravenes subsection (3)(b) or section 235G(7)(b), neither of the following is admissible in proceedings in a court or the State Administrative Tribunal —
 - (a) any evidence of, or derived from, an inspection made under section 235E(2)(a);
 - (b) any evidence of, or derived from, a photograph taken, or other record made, under section 235E(2)(b).

235I. Issuing entry warrant

- (1) A magistrate may issue an entry warrant only if satisfied that it is necessary for an authorised purpose.

- (2) An entry warrant must contain the following information —
- (a) a reasonably particular description of the land to which the entry warrant relates;
 - (b) a reasonably particular description of the authorised purpose for which entry on the land is authorised;
 - (c) the period, not exceeding 30 days, during which the entry warrant may be executed;
 - (d) the name of the magistrate who issued the entry warrant;
 - (e) the date and time when the entry warrant was issued.
- (3) If a magistrate refuses to issue an entry warrant, the magistrate must record on the entry warrant application the fact of, the date and time of and the reasons for the refusal.

235J. Effect of entry warrant

- (1) An entry warrant has effect according to its content and this section.
- (2) An entry warrant comes into force when it is issued by the magistrate.
- (3) An entry warrant authorises an authorised officer executing the warrant —
- (a) to enter the land described in the entry warrant; and
 - (b) to exercise the powers under section 235E(2) for the authorised purpose described in the entry warrant.
- (4) An entry warrant does not authorise the use of force, subject to section 235K(2).

235K. Execution of entry warrant

- (1) An entry warrant may be executed by the authorised officer to whom it is issued or by any other authorised officer.
- (2) An authorised officer executing an entry warrant may call on the assistance of a police officer who, in providing assistance, may use force, including force against a person, that is reasonably necessary in the circumstances.

**Division 2 — *Power of Entry and Inspection Regulations*
repealed**

72. Regulations repealed

The *Power of Entry and Inspection Regulations* are repealed.

Part 11 — Other amendments

73. Act amended

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

74. Section 43 amended

(1) In section 43 delete “After” and insert:

(1) After

(2) At the end of section 43 insert:

(2) The Commission is not required to comply with subsection (1) in relation to a proposed amendment to a region planning scheme if —

(a) the proposed amendment is a proposed minor region planning scheme amendment (as defined in section 56A) of a class that regulations provide is not required to be advertised; and

(b) either —

(i) the proposed amendment was not referred to the EPA under section 38 because of section 38(3); or

(ii) the EPA has informed the Commission under section 48A(1)(a) of the EP Act that the proposed amendment should not be assessed by the EPA.

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75. Section 62 amended

In section 62(1A) delete “the applicable” and insert:

any applicable

76. Section 83A amended

After section 83A(4) insert:

- (5) A local government is not required to submit a proposed amendment to a local planning scheme under subsection (1), or to comply with section 84 in relation to a proposed amendment to a local planning scheme, if —
- (a) the proposed amendment is of a class that regulations provide is not required to be advertised; and
 - (b) either —
 - (i) the proposed amendment was not referred to the EPA under section 81 because of section 81(2); or
 - (ii) the EPA has informed the local government under section 48A(1)(a) of the EP Act that the proposed amendment should not be assessed by the EPA.

77. Section 125 amended

- (1) In section 125(2)(b) delete “this Part; and” and insert:

the notice; and

- (2) In section 125(3) delete “with the” and insert:

with any

78. Section 246 amended

In section 246(3)(b) delete “14” and insert:

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79. Schedule 7 clause 13 amended

In Schedule 7 clause 13(4) after “Requiring” insert:

or permitting

80. Schedule 7 clause 15 amended

After Schedule 7 clause 15(1) insert:

- (1A) Requiring or permitting the preparation and approval of plans or other documents relating to the future planning or coordination of subdivision, zoning or any other matter with respect to which the scheme may make provision.

Part 12 — Transitional provisions

81. Act amended

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

82. Part 19 Division 3 inserted

At the end of Part 19 insert:

Division 3 — Provisions for *Planning and Development Amendment Act 2023*

Subdivision 1 — Preliminary

297. Term used: 2023 amendment Act

In this Division —

2023 amendment Act means the *Planning and Development Amendment Act 2023*.

Subdivision 2 — Avoiding conflicts with development approvals

298. Provisions about avoiding conflicts with development approvals

(1) In this section —

commencement day means the day on which Part 3 of the 2023 amendment Act comes into operation;

former Part 17 Division 3 means Part 17 Division 3 as in force immediately before commencement day.

(2) If a term used in this section is given a meaning in section 171ZE, it has the same meaning in this section.

(3) This section applies for the purposes of the application of Part 11C on and from commencement day.

- (4) Sections 171ZJ and 171ZK apply in relation to a relevant development approval whether it is granted before, on or after commencement day.
- (5) Sections 171ZL and 171ZM —
 - (a) apply in relation to a relevant development approval whether it is granted before, on or after commencement day; and
 - (b) apply in relation to the performance of a function that conflicts with a relevant development approval —
 - (i) if the relevant development approval is an approval of development granted by the Commission under section 274 — whether the function is performed before, on or after commencement day; or
 - (ii) otherwise — only if the function is performed on or after commencement day.
- (6) A notification or application of a kind referred to in column 1 of an item in the Table that was made before commencement day in relation to the performance or proposed performance of a function under a relevant legal instrument is, on and from commencement day, taken to be a notification or application of a kind referred to in column 2 of that item.

Table

Column 1	Column 2
Notification under s. 281(2)(a)	Notification under s. 171ZJ(2)(a)

Column 1	Column 2
Notification under s. 281(8)	Notification under s. 171ZK(6)
Application under s. 282(2)	Application under s. 171ZL(2)

- (7) Despite the amendments made by sections 17 and 18 of the 2023 amendment Act, former Part 17 Division 3, and section 283(7) as in force immediately before commencement day, continue to apply in relation to a direction given under section 281 or 282 before commencement day.
- (8) A reference in subsection (6) or (7) to section 281 or 282, or a subsection or paragraph of section 281 or 282, is a reference to that provision as in force before commencement day.

Subdivision 3 — Western Australian Planning Commission

299. Terms used and interaction with *Interpretation Act 1984* s. 25

- (1) In this Subdivision —
 - new board* has the meaning given in section 301(1);
 - new section 10* means section 10 as to be inserted by section 38 of the 2023 amendment Act;
 - new section 11* means section 11 as to be inserted by section 38 of the 2023 amendment Act;
 - new section 12* means section 12 as to be inserted by section 38 of the 2023 amendment Act;
 - new section 19* means section 19 as to be inserted by section 43 of the 2023 amendment Act;

reconstitution day means the day on which Part 8 Divisions 1 and 2 of the 2023 amendment Act come into operation.

- (2) Nothing in this Subdivision limits what can be done under the *Interpretation Act 1984* section 25 in relation to the enactment of the 2023 amendment Act.

300. Membership of board

- (1) In this section —
existing member means a person who, immediately before reconstitution day, holds office as a member, deputy member or associate member (as those terms are defined in section 4(1) immediately before reconstitution day).
- (2) Before reconstitution day, the Minister may, as if section 38 of the 2023 amendment Act had come into operation, exercise the Minister's power under new section 10 to appoint persons to take office as members on reconstitution day.
- (3) The Minister's power under subsection (2) includes the following —
- (a) the power to appoint the chairperson under subsection (2) of new section 10 and 1 or more deputy chairpersons under subsection (3) of new section 10;
 - (b) the power to determine terms and conditions of appointments under subsection (5) of new section 10;
 - (c) the power to make determinations under new section 12 on the recommendation of the Public Sector Commissioner (which determinations cannot take effect before reconstitution day).

- (4) Regulations under section 313 may (without limitation) make any provision referred to in subsections (1) and (2) of new section 11 for the purposes of, or otherwise in relation to, the operation of this section before reconstitution day.
- (5) All existing members go out of office at the beginning of reconstitution day.
- (6) Subsection (5) does not prevent a person who will go out of office under that subsection from being appointed under subsection (2).

301. New board may exercise powers of Commission before reconstitution day

- (1) For the purposes of this Subdivision, the *new board* consists of the persons appointed by the Minister under section 300(2) (if any).
- (2) Before reconstitution day, the new board may meet and do any of the following —
 - (a) exercise a power referred to in section 302(2), 303(2), 304(2), 305(3) or 306(2);
 - (b) do any other thing —
 - (i) that, on or after reconstitution day, the Commission or board will be able to do under this Act or otherwise (including as a result of an amendment made by the 2023 amendment Act); and
 - (ii) that the new board considers it appropriate to do in advance of reconstitution day;

- (c) consider whether or how to exercise a power under paragraph (a) or do any other thing under paragraph (b).

Example for this subsection:

An example of something that could be done under paragraph (b) is delegating functions, or revoking delegations of functions, under section 16.

- (3) A thing done by the new board under subsection (2)(b) —
 - (a) has effect as if done by the Commission or board (as the case requires); but
 - (b) cannot take effect before reconstitution day.
- (4) If an appointment that can be made under subsection (2)(a), or any other thing that can be done under subsection (2)(b), requires the Minister's approval, the Minister may give the approval before reconstitution day.
- (5) The Minister may, before reconstitution day, make determinations on the recommendation of the Public Sector Commissioner under subsection (2) of new section 19 as if section 43 of the 2023 amendment Act had come into operation (which determinations cannot take effect before reconstitution day).
- (6) Subject to any directions of the Minister and any regulations made under section 313 —
 - (a) Schedule 1 clause 8 (as in force before reconstitution day) applies with any necessary modifications to a meeting of the new board under subsection (2); and
 - (b) the new board may otherwise determine its own procedures for the purposes of this section.
- (7) Accurate records must be kept of any proceedings of the new board under this section.

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- (8) Section 22 applies in relation to the functions of the new board under this section.
- (9) Regulations under section 313 may (without limitation) make any provision referred to in subsections (1) and (2) of new section 11, or subsections (3) and (4) of new section 19, for the purposes of, or otherwise in relation to, the operation of this section before reconstitution day.
- (10) The Minister may, on the recommendation of the Public Sector Commissioner, determine remuneration and allowances to be paid to members of the new board in relation to the performance of the functions of the new board under this section.

302. Membership of Executive, Finance and Property Committee

- (1) In this section —
 - committee* means the Executive, Finance and Property Committee established under Schedule 2 clause 3;
 - existing member* means a person who, immediately before reconstitution day, is a member of the committee;
 - new Schedule 2 clause 3(2)* means Schedule 2 clause 3(2) as to be inserted by section 48 of the 2023 amendment Act.
- (2) Before reconstitution day, the new board may, as if new Schedule 2 clause 3(2) were in force, exercise the Commission's powers under new Schedule 2 clause 3(2) to appoint persons to take office as members of the committee on reconstitution day.
- (3) All existing members go out of office at the beginning of reconstitution day.

- (4) Subsection (3) does not prevent a person who will go out of office under that subsection from being appointed under subsection (2).

303. Membership of Statutory Planning Committee

- (1) In this section —
committee means the Statutory Planning Committee established under Schedule 2 clause 4;
existing member means a person who, immediately before reconstitution day, is a member of the committee;
new Schedule 2 clause 4(2) means Schedule 2 clause 4(2) as to be inserted by section 49 of the 2023 amendment Act.
- (2) Before reconstitution day, the new board may, as if new Schedule 2 clause 4(2) were in force, exercise the Commission's powers under new Schedule 2 clause 4(2) to appoint persons to take office as members of the committee on reconstitution day.
- (3) All existing members go out of office at the beginning of reconstitution day.
- (4) Subsection (3) does not prevent a person who will go out of office under that subsection from being appointed under subsection (2).

304. Membership of Swan Valley Statutory Planning Committee

- (1) In this section —
amended section 33(2) means the *Swan Valley Planning Act 2020* section 33(2) as to be amended by section 54 of the 2023 amendment Act;

committee means the Swan Valley Statutory Planning Committee established under the *Swan Valley Planning Act 2020* section 33(1);

relevant existing member means a person who, immediately before reconstitution day, is a member of the committee under the *Swan Valley Planning Act 2020* section 33(2)(a) or (b).

- (2) Before reconstitution day, the new board may, as if amended section 33(2) were in force, exercise the Commission's powers under paragraph (b) of amended section 33(2) to appoint persons to take office as members of the committee on reconstitution day.
- (3) All relevant existing members go out of office at the beginning of reconstitution day.
- (4) Subsection (3) does not prevent a person who will go out of office under that subsection from being appointed under subsection (2).

305. Other continuing committees

- (1) In this section —
committee means a committee that is in place under Schedule 2 clause 1(1) immediately before reconstitution day;
existing member has the meaning given in section 300(1);
new Schedule 2 clause 1(1) means Schedule 2 clause 1(1) as to be inserted by section 46 of the 2023 amendment Act.
- (2) The replacement of Schedule 2 clause 1(1) by section 46 of the 2023 amendment Act does not, of itself, affect the existence or membership of a committee.

- (3) Before reconstitution day, the new board may, as if new Schedule 2 clause 1(1) were in force, exercise the Commission's powers under new Schedule 2 clause 1(1) to appoint members of the new board to take office as members of a committee on reconstitution day.
- (4) An existing member who, immediately before reconstitution day, is also a member of a committee goes out of office as a member of the committee at the beginning of reconstitution day.
- (5) Subsection (4) does not prevent a person who will go out of office under that subsection from being appointed under subsection (3).

306. Board of management of Metropolitan Redevelopment Authority

- (1) In this section —
board of management means the board of management established under section 76(1) of the MRA Act;
existing nominated member means the person who, immediately before reconstitution day, is the member of the board of management under section 77(1)(a) of the MRA Act;
MRA Act means the *Metropolitan Redevelopment Authority Act 2011*.
- (2) Before reconstitution day, the new board may exercise the Commission's power under section 77(1)(a) of the MRA Act to nominate a member of the new board to be a member of the board of management.
- (3) If the new board nominates a person under subsection (2), the Minister may, before reconstitution day, appoint the nominated person to take office as the

member of the board of management under section 77(1)(a) of the MRA Act on reconstitution day.

- (4) The existing nominated member goes out of office at the beginning of reconstitution day.
- (5) Subsection (4) does not prevent the person who will go out of office under that subsection from being nominated under subsection (2) and appointed under subsection (3).

307. Certain committees abolished

- (1) In this section —
committee means a committee that was established before reconstitution day under Schedule 2 clause 5, 7, 8 or 9 (as in force before reconstitution day).
- (2) At the beginning of reconstitution day, all committees are abolished (and their members go out of office).

Subdivision 4 — Consolidation of planning schemes

308. Term used: repeal day

In this Subdivision —

repeal day means the day on which Part 9 of the 2023 amendment Act comes into operation.

309. Proof of consolidation of region planning scheme

- (1) In this section —
repealed section 66(2) means section 66(2) as in force immediately before repeal day.
- (2) This section applies if, immediately before repeal day, repealed section 66(2) applies to a consolidation.

- (3) Repealed section 66(2) continues to apply to the consolidation on and after repeal day as if section 62 of the 2023 amendment Act had not come into operation.

310. Proof of consolidation of local planning scheme

- (1) In this section —
repealed section 93 means section 93 as in force immediately before repeal day.
- (2) This section applies if, immediately before repeal day, repealed section 93 applies to a consolidation.
- (3) Repealed section 93 continues to apply to the consolidation on and after repeal day as if section 63 of the 2023 amendment Act had not come into operation.

311. Application of amended s. 138(3)(a) and 171R(1)(b)(ii) in relation to previous review of local planning scheme

- (1) In this section —
amended section 138(3)(a) means section 138(3)(a) as in force on repeal day;
amended section 171R(1)(b)(ii) means section 171R(1)(b)(ii) as in force on repeal day.
- (2) For the purposes of the application on and after repeal day of amended section 138(3)(a) and amended section 171R(1)(b)(ii) in relation to a local planning scheme, a report on a review of the local planning scheme is taken to have been approved under section 132C(2) or (4) in the preceding 10 years if, in the preceding 10 years, the Commission made a decision in relation to a report of a review of the local planning scheme under the *Planning and Development (Local Planning Schemes) Regulations 2015* regulation 67(1)(a) (as in force before repeal day).

Subdivision 5 — Reviews of planning decisions

312. Applications made to State Administrative Tribunal

The amendment made by section 78 of the 2023 amendment Act does not apply to applications made to the State Administrative Tribunal before the day on which that section comes into operation.

Subdivision 6 — Regulations

313. Transitional regulations

- (1) In this section —
specified means specified or described in regulations;
transitional matter —
 - (a) means a matter or issue of a transitional nature that arises as a result of any of the amendments to this Act, or to any other written law, made by the 2023 amendment Act; and
 - (b) includes a saving or application matter.
- (2) Regulations may prescribe anything required, necessary or convenient to be prescribed in relation to a transitional matter.
- (3) Without limiting subsection (2), regulations made for the purposes of that subsection may provide that specified provisions of this Act or any other written law —
 - (a) do not apply to, or in relation to, a specified matter or thing; or
 - (b) apply with specified modifications to, or in relation to, a specified matter or thing.
- (4) If regulations made for the purposes of 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 accordance with the *Interpretation Act 1984* section 41(1)(a) but not earlier than the day on which Part 12 of the 2023 amendment Act comes into operation, the regulations have effect according to their terms.

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



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