

Western Australia

**Swan Valley Planning Legislation Amendment
Act 2006**

As at 19 Apr 2006

No. 7 of 2006

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Swan Valley Planning Legislation Amendment Act 2006

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Western Australia

Swan Valley Planning Legislation Amendment Act 2006

No. 7 of 2006

An Act to —

- **amend the *Swan Valley Planning Act 1995*; and**
- **consequentially amend certain other Acts and the Metropolitan Region Scheme,**

and for related purposes.

[Assented to 19 April 2006]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Swan Valley Planning Legislation Amendment Act 2006*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. The Act amended

The amendments in this Act, other than those effected by section 20, are to the *Swan Valley Planning Act 1995**.

[* *Reprint 1 as at 12 September 2003.*]

Part 2 — Swan Valley Planning Act 1995 amended

4. Section 3 amended

Section 3 is amended as follows:

- (a) in the definition beginning “Area A” by deleting “, “Area C” and “Area D” ” and inserting instead —
“ and “**Area C**” ”;
- (b) in the definition of “*ex officio* member” after “in section 11(2)(b)” by inserting —
“ , (ba) ”;
- (c) in the definition of “Swan Valley” by deleting “ , Area C and Area D” and inserting instead —
“ and Area C ”.

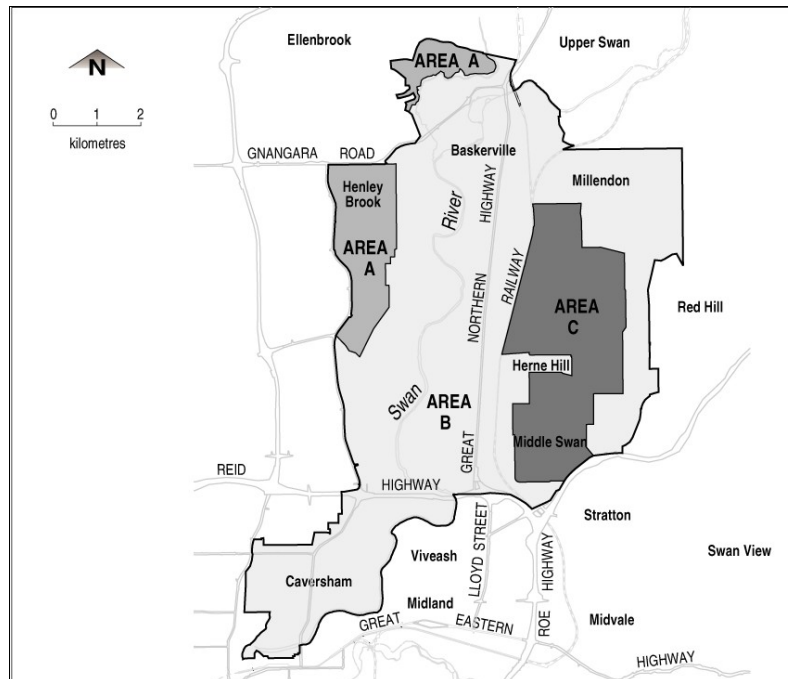
5. Section 4 replaced

Section 4 is repealed and the following section is inserted instead —

“

4. Areas A, B and C

- (1) Area A, Area B and Area C comprise all of the land in the areas respectively shown as Area A, Area B and Area C on the plan of the Swan Valley held at the office of the Commission, that plan being certified by the Minister as being the plan prepared to define those Areas for the purposes of this Act.
- (2) For guidance, Area A, Area B and Area C are indicated in the following representation of the plan referred to in subsection (1).



6. Section 5 amended

Section 5(1) is amended by deleting “, Area C or Area D” in both places where it occurs and inserting instead —

“ or Area C ”.

7. Section 6 amended

Section 6 is amended as follows:

- (a) by inserting after “uses of the area” —
“ that complement its rural character ”;

- (b) by inserting after “of tourism” —

“

that complements the rural character of the Swan Valley

”.

8. Section 7 amended

Section 7 is amended as follows:

- (a) in item 3 by inserting after “of tourism” —
“ that complements the rural character of the area ”;
- (b) in item 6 by inserting after “rural land” —
“
and, in particular, the subdivision of rural land
into lots of less than 2 hectares,
”.

9. Section 8 amended

- (1) Section 8 item 4 is amended by inserting after “cottage industry” —
“
provided that they are compatible with the rural
character of the area
”.
- (2) Section 8 item 5 is deleted and the following items are inserted instead —
“
 - 5. The encouragement of the consolidation of retail and community facilities at Herne Hill, Caversham and West Swan.
 - 5A. The limited expansion of existing retail and community facilities at Herne Hill, Caversham and West Swan where such facilities are required to service the local community and will not detract from the rural character of the area.”.

10. Section 10 repealed

Section 10 is repealed.

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11. Section 11 amended

- (1) After section 11(2)(b) the following paragraph is inserted —

“

- (ba) a City of Swan councillor for a ward representing the Swan Valley, nominated by the City of Swan, and appointed by the Minister;

”.

- (2) Section 11(2)(e) is amended as follows:

- (a) by deleting “not more than 3” and inserting instead —

“ 4 ”;

- (b) at the end of subparagraph (i) by deleting “and”;

- (c) at the end of subparagraph (ii) by deleting the full stop and inserting instead —

“

;

- (iii) one is to be a person who in the opinion of the Minister is suitable to represent equestrian interests in that area; and

- (iv) one is to be a person who in the opinion of the Minister has expertise on the reduction of nutrient levels in the Swan River or other environmental expertise relevant to the implementation of this Act.

”.

12. Section 13 amended

- (1) After section 13(1)(a) the following paragraphs are inserted —

“

- (aa) to advise the Minister on the coordination and promotion of sustainable use and development of land in the Swan Valley;

- (ab) to provide advice to the City of Swan in relation to —
 - (i) the Shire town planning scheme and policies of the City of Swan; and
 - (ii) the planning and development functions of the City of Swan;
 - (ac) to provide advice on, and assistance to, any body or person in relation to sustainable use and development of land in the Swan Valley;
- ”.
- (2) Section 13(1)(c) is amended by inserting after “public authority” in both places where it occurs —

“ or utility services provider ”.
 - (3) Section 13(1)(d) is amended by inserting after “public authority” in both places where it occurs —

“ or utility services provider ”.
 - (4) Section 13(1)(e) is amended by inserting after “public authority” in both places where it occurs —

“ or utility services provider ”.
 - (5) Section 13(2) is repealed and the following subsection is inserted instead —

“

 - (2) In this section —
 - “**public authority**” includes the City of Swan;
 - “**utility services**” means drainage services, electricity services, sewerage or water services, or other prescribed services.

”.

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13. Section 14 amended

Section 14 is amended by deleting “, 9 or 10” and inserting instead —

“ or 9 ”.

14. Section 22 amended

Section 22(3) is amended by deleting all of the subsection from and including “this Act” and inserting instead —

“

this Act unless —

- (a) the disclosure is made in connection with the carrying out of this Act or under a legal duty; or
- (b) that information is otherwise available to the public under section 24.

”.

15. Section 23 amended

Section 23(1) is repealed and the following subsections are inserted instead —

“

- (1) The City of Swan is to ensure that any aspects of the Shire town planning scheme, and any policies made under that scheme, that relate to —

- (a) the subdivision of land;
- (b) the provision of infrastructure; and
- (c) the carrying out of development generally,

in Area A, Area B or Area C are consistent with the objectives set out in section 7, 8 or 9.

- (1a) The City of Swan is to ensure that any policies made under the scheme, where relevant, reflect the planning objectives in section 7, 8 or 9.

”.

16. Schedule 1 amended

- (1) Schedule 1 item 5(5) is amended by deleting “5” and inserting instead —
“ 6 ”.
- (2) Schedule 1 item 7 is deleted and the following items are inserted instead —

“

7. Telephone and video meetings

Despite anything in this Schedule, a communication between members constituting a quorum under clause 5(5) by telephone or audiovisual means is a valid meeting of members, but only if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings and the subject matter under consideration is not being considered for the first time.

7A. Resolution may be passed without meeting

- (1) If —
 - (a) a document containing a statement to the effect that an act, matter or thing has been done or a resolution has been passed is sent or given to all members; and
 - (b) the document is assented to by all members,that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the Committee.
- (2) For the purposes of subclause (1) —
 - (a) the meeting is to be taken as having been held —
 - (i) if the members assented to the document on the same day — on the day on which the document was assented to and at the time at

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- which the document was last assented to by a member; or
- (ii) if the members assented to the document on different days — on the day on which, and at the time at which, the document was last assented to by a member;
- (b) 2 or more separate documents in identical terms each of which is assented to by one or more members are to be taken to constitute one document; and
- (c) a member may signify assent to a document —
- (i) by signing the document; or
- (ii) by notifying the chairperson of the member's assent in person or by post, facsimile transmission, telephone, email or other method of written, electronic, audio or audiovisual communication.
- (3) Where a member signifies assent to a document otherwise than by signing the document, the member must by way of confirmation sign the document at the next meeting of the board attended by the member, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the Committee.

”.

17. References to “Shire” changed to “City”

Each provision of the Act set out in the Table to this section is amended by deleting “Shire of” in each place where it occurs and inserting instead —

“ City of ”.

Table

s. 5(3)(a)	s. 15(2) twice
s. 11(2)(b)	s. 15(4)
s. 13(1)(f)	s. 15(5)
s. 15(1) twice	

Part 3 — Further amendments to the *Swan Valley Planning Act 1995*

18. Section 13 amended

Section 13(1)(ab)(i) is amended by deleting “the Shire town planning scheme” and inserting instead —

“ the local planning scheme ”.

19. Section 23 amended

Section 23(1) is amended by deleting “the Shire town planning scheme” and inserting instead —

“ the local planning scheme ”.

Part 4 — Consequential amendments

20. Consequential amendments

- (1) Schedule 1 Division 1, and Schedule 1 Division 3 item 3, have effect.
- (2) Schedule 1 Division 2 has effect.
- (3) Schedule 1 Division 2, and Schedule 1 Division 3 item 4, have effect.

Schedule 1 — Consequential amendments

[s. 20]

Division 1 — Consequential amendments

1. Town Planning and Development Act 1928 amended

- (1) The amendments in this item are to the *Town Planning and Development Act 1928**.

[* *Reprinted as at 3 November 2000.*

For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 458.]

- (2) Section 7A is amended as follows:

- (a) in subsection (1) by deleting “Shire” in the 2 places where it occurs and inserting in both places instead —
“ City ”;
- (b) in subsection (2) by deleting “Shire” in the 2 places where it occurs and inserting in both places instead —
“ City ”;
- (c) in subsection (4) by deleting “Shire” in the 2 places where it occurs and inserting in both places instead —
“ City ”;
- (d) in subsection (5) by deleting “Shire” and inserting instead —
“ City ”.

- (3) Section 24A(5) is repealed and the following subsection is inserted instead —

“

- (5) Subject to any approval under subsection (4), the Commission is to determine the application after having due regard to the advice of the Committee, but may determine that application otherwise than in accordance with that advice.

”.

Division 2 — Other consequential amendments

2. *Planning and Development Act 2005* amended

- (1) The amendments in this item are to the *Planning and Development Act 2005**.

[* *Act No. 37 of 2005.*]

- (2) Section 134(7) is repealed and the following subsection is inserted instead —

“

- (7) Subject to any approval under subsection (6), the Commission is to determine the application after having due regard to the advice of the Committee, but may determine that application otherwise than in accordance with that advice.

”.

Division 3 — Alternative amendments to the Metropolitan Region Scheme

3. *Metropolitan Region Scheme* amended

- (1) In this item —
“**Metropolitan Region Scheme**” has the same meaning as it has in the *Metropolitan Region Town Planning Scheme Act 1959*.
- (2) The amendments in this item are to the Metropolitan Region Scheme.
- (3) The amendments to the Metropolitan Region Scheme effected by this item have effect as though the provisions were enacted by the *Metropolitan Region Town Planning Scheme Act 1959*.
- (4) Nothing in this item affects the operation of the *Metropolitan Region Town Planning Scheme Act 1959* with respect to the amendments to the Metropolitan Region Scheme as amended by this Act.
- (5) Clause 26 is amended as follows:
- (a) by inserting before “Except” the subclause designation “(1)”;

- (b) after “provided” by inserting —
“ in subclause (2) or (3) of this clause or ”;
 - (c) at the end of the clause by inserting the following subclauses —
“
 - (2) In respect of applications for approval to develop land in the Swan Valley, where the advice of the Swan Valley Planning Committee is accepted by the City of Swan, the determination of the City of Swan under the local planning scheme is taken to be a determination under this Scheme.
 - (3) In respect of applications for approval to develop land in the Swan Valley, where the advice of the Committee is not accepted by the City of Swan, the City of Swan is to refer the application, together with any recommendations provided by all bodies consulted, and the reasons why the advice of the Committee was not accepted by the City of Swan, to the Commission for determination.
 - (4) In this clause “**Committee**”, “**Swan Valley**” and “**Swan Valley Planning Committee**” have the same meanings as they have in the *Swan Valley Planning Act 1995*.
”.
- (6) Clause 30B(4) is deleted and the following subclause is inserted instead —
“
 - (4) Where the responsible authority is the Commission, the Commission is required to have due regard to the advice of the Committee, but may determine the application otherwise than in accordance with that advice.
”.
- (7) Clause 30B(5) is amended as follows:
 - (a) by deleting “council of the Shire of Swan, the council” and inserting instead —
“ City of Swan, the City ”;

- (b) by deleting “but may determine the application otherwise than in accordance with that advice.” and inserting instead —

“

but if the City of Swan does not accept that advice, the City of Swan is to refer the application, together with any recommendations provided by all bodies consulted, and the reasons why the advice of the Committee was not accepted by the City of Swan, to the Commission for determination.

”.

- (8) Clause 30B(6) is amended by deleting “council of the Shire” and inserting instead —

“ City ”.

4. Metropolitan Region Scheme amended

- (1) In this item —

“**Metropolitan Region Scheme**” has the same meaning as it has in the *Planning and Development Act 2005*.

- (2) The amendments in this item are to the Metropolitan Region Scheme.

- (3) The amendments to the Metropolitan Region Scheme effected by this item have effect as though the provisions were enacted by the *Planning and Development Act 2005*.

- (4) Nothing in this item affects the operation of the *Planning and Development Act 2005* with respect to the amendments to the Metropolitan Region Scheme as amended by this Act.

- (5) Clause 26 is amended as follows:

- (a) by inserting before “Except” the subclause designation “(1)”;
(b) after “provided” by inserting —
“ in subclause (2) or (3) of this clause or ”;
(c) at the end of the clause by inserting the following subclauses —

“

- (2) In respect of applications for approval to develop land in the Swan Valley, where the advice of the Swan Valley Planning

Committee is accepted by the City of Swan, the determination of the City of Swan under the local planning scheme is taken to be a determination under this Scheme.

- (3) In respect of applications for approval to develop land in the Swan Valley, where the advice of the Committee is not accepted by the City of Swan, the City of Swan is to refer the application, together with any recommendations provided by all bodies consulted, and the reasons why the advice of the Committee was not accepted by the City of Swan, to the Commission for determination.
- (4) In this clause “**Committee**”, “**Swan Valley**” and “**Swan Valley Planning Committee**” have the same meanings as they have in the *Swan Valley Planning Act 1995*.

”.

- (6) Clause 30B(4) is deleted and the following subclause is inserted instead —

“

- (4) Where the responsible authority is the Commission, the Commission is required to have due regard to the advice of the Committee, but may determine the application otherwise than in accordance with that advice.

”.

- (7) Clause 30B(5) is amended as follows:

- (a) by deleting “council of the Shire of Swan, the council” and inserting instead —
“ City of Swan, the City ”;
- (b) by deleting “but may determine the application otherwise than in accordance with that advice.” and inserting instead —

“

but if the City of Swan does not accept that advice, the City of Swan is to refer the application, together with any recommendations provided by all bodies consulted, and the reasons why the advice of the Committee was not accepted by the City of Swan, to the Commission for determination.

”.

Swan Valley Planning Legislation Amendment Act 2006

Consequential amendments

Schedule 1

Alternative amendments to the Metropolitan Region Scheme

Division 3

cl. 4

- (8) Clause 30B(6) is amended by deleting “council of the Shire” and inserting instead —

“ City ”.

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