

WESTERN AUSTRALIA

PLANNING LEGISLATION AMENDMENT ACT 1996

No. 23 of 1996

AN ACT to amend the —

- ***East Perth Redevelopment Act 1991;***
- ***Environmental Protection Act 1986;***
- ***Metropolitan Region Town Planning Scheme Act 1959;***
- ***Subiaco Redevelopment Act 1994;***
- ***Town Planning and Development Act 1928;*** and
- ***Western Australian Planning Commission Act 1985,***

and for related matters.

[Assented to 11 July 1996.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Planning Legislation Amendment Act 1996*.

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

Review of amendments effected by this Act

3. (1) The Minister shall carry out a review of the operation and effectiveness of the amendments effected by this Act as soon as is practicable after the expiry of 2 years from the commencement of this Act.

(2) The Minister shall prepare a report based on the review made under subsection (1) and shall, as soon as practicable after that preparation, cause that report to be laid before each House of Parliament.

PART 2 — AMENDMENTS TO *EAST PERTH REDEVELOPMENT ACT 1991*

Principal Act

4. In this Part, the *East Perth Redevelopment Act 1991** is referred to as the principal Act.

[* *Act No. 62 of 1991.*

For subsequent amendments, see 1994 Index to Legislation of Western Australia, Table 1, p. 63 and Act No. 84 of 1994.]

Section 3 amended

5. Section 3 of the principal Act is amended by inserting, in their appropriate alphabetical positions, the following definitions —

“

“**EPA**” means the Environmental Protection Authority continued in existence under the EP Act;

“**EP Act**” means the *Environmental Protection Act 1986*;

“**Minister for the Environment**” means the Minister to whom the Governor has for the time being committed the administration of the EP Act;

”.

Section 29 amended

6. Section 29 (3) of the principal Act is amended by inserting after “Minister unless” the following —

“

sections 34A and 34B have been complied with in respect of that redevelopment scheme and

”.

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Section 30 amended

7. After section 30 (3) of the principal Act the following subsection is inserted —

“

(4) The Authority shall, in addition to complying with subsection (2), make reasonable endeavours to consult in respect of the proposed redevelopment scheme such public authorities and persons as appear to the Authority to be likely to be affected by that redevelopment scheme.

”.

Section 32 amended

8. Section 32 (1) of the principal Act is amended by inserting after “The Authority shall” the following —

“ , after sections 34C and 34D have been complied with, ”.

Sections 34A, 34B, 34C and 34D inserted, and transitional

9. (1) Part 4 of the principal Act is amended by inserting after section 34 the following sections —

“

Reference of proposed redevelopment schemes, and proposed amendments to redevelopment schemes, to Environmental Protection Authority

34A. When the Authority resolves to prepare a redevelopment scheme, or an amendment to a redevelopment scheme, the Authority shall forthwith refer the redevelopment scheme or amendment to the EPA by giving to the EPA —

- (a) written notice of that resolution; and

- (b) such written information about the redevelopment scheme or amendment as is sufficient to enable the EPA to comply with section 48A of the EP Act in relation to the redevelopment scheme or amendment.

Prerequisite to submission of proposed redevelopment schemes, and proposed amendments to redevelopment schemes, to Minister for approval before public notification

34B. (1) When the EPA has acted under section 48C (1) (a) of the EP Act in relation to a proposed redevelopment scheme or a proposed amendment to a redevelopment scheme, the Authority shall, if it wishes to proceed with that redevelopment scheme or amendment, undertake an environmental review of that redevelopment scheme or amendment in accordance with the relevant instructions issued under that section and shall not submit that redevelopment scheme or amendment to the Minister for approval under section 29, or section 34 as read with section 29, as the case requires, until —

- (a) the Authority has forwarded that review to the EPA; and
 - (b) the EPA has advised that that review has been undertaken in accordance with those instructions, or 30 days have elapsed since that forwarding without the EPA having advised whether or not that review has been undertaken in accordance with those instructions, whichever first occurs.
- (2) If the EPA has advised that the review has not been undertaken in accordance with the relevant

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instructions issued under section 48C (1) (a) of the EP Act, the Authority may —

- (a) comply with subsection (1) in respect of the redevelopment scheme or amendment concerned; or
- (b) request the Minister to consult the Minister for the Environment and, if possible, agree with him or her on whether or not the review has been undertaken in accordance with those instructions.

(3) If the Minister, having complied with a request under subsection (2), and the Minister for the Environment —

- (a) agree on whether or not the review has been undertaken in accordance with the relevant instructions, their decision shall be final and without appeal; or
- (b) cannot so agree, section 48J of the EP Act applies.

Role of Authority in relation to environmental submissions

34C. When the Authority has been informed under section 48A (1) (b) (i) of the EP Act that the proposed redevelopment scheme or amendment should be assessed by the EPA under Division 3 of Part IV of the EP Act, the Authority shall —

- (a) as soon as practicable, but in any event within 7 days after the expiry of the period referred to in section 31 (1) (a), or section 34 as read with section 31 (1) (a), as the

case requires, transmit to the EPA a copy of each submission —

- (i) made under section 31, or section 34 as read with section 31, as the case requires; and
- (ii) relating wholly or in part to environmental issues raised by that redevelopment scheme or amendment;

and

- (b) within 42 days, or such longer period as the Minister allows, after the expiry of the period referred to in section 31 (1) (a), or section 34 as read with section 31 (1) (a), as the case requires, inform the EPA of its views on and response to the environmental issues raised by submissions referred to in paragraph (a) and received within that period.

Prerequisite to final approval by Minister of proposed redevelopment schemes and proposed amendments to redevelopment schemes

34D. The Minister shall not approve under section 32, or section 34 as read with section 32, a proposed redevelopment scheme or amendment referred to the EPA under section 34A if he or she has reached agreement with the Minister for the Environment under section 48A (2) (b) of the EP Act, or until —

- (a) he or she is informed under section 48A (1) (a) of the EP Act that the EPA considers that that redevelopment scheme or amendment should not be assessed by the

EPA under Division 3 of Part IV of the EP Act;

- (b) he or she has received a statement delivered under section 48F (2), or a decision has been made under section 48J, of the EP Act in respect of the conditions, if any, to which that redevelopment scheme or amendment is subject; or
- (c) the period of 28 days referred to in section 48A (1) (b) (i) of the EP Act has expired without the EPA having informed the Authority under that section,

whichever first occurs, and he or she is satisfied that the conditions, if any, to which that redevelopment scheme or amendment is subject have been incorporated into that redevelopment scheme or amendment.

”.

(2) Subject to subsections (3) and (4), sections 34A, 34B, 34C and 34D of the principal Act do not apply to or in relation to a redevelopment scheme, or an amendment to a redevelopment scheme, which the Authority has resolved to prepare for submission to the Minister under section 29 (1), or section 34 as read with section 29 (1), of the principal Act before the commencement of this section.

(3) The Minister may, before exercising a power conferred by section 29 (4), or section 34 as read with section 29 (4), of the principal Act in respect of a proposed redevelopment scheme, or a proposed amendment to a redevelopment scheme, referred to in subsection (2), direct the Authority to ensure compliance with sections 34A and 34B of the principal Act, and the Authority shall comply with that direction before resubmitting that redevelopment scheme or amendment to the Minister under section 29 (1), or section 34 as read with section 29 (1), of the principal Act.

(4) If a redevelopment scheme or amendment in respect of which a direction given under subsection (3) has been complied with is subsequently approved, with or without amendments, under section 29 (4), or section 34 as read with section 29 (4), of the principal Act, the Authority shall, if it wishes to proceed with that redevelopment scheme or amendment, ensure that sections 34C and 34D of the principal Act are complied with in respect of that redevelopment scheme or amendment.

Section 47A inserted

10. After section 47 of the principal Act the following section is inserted —

“

Powers of Minister to ensure that environmental conditions are met

47A. (1) In this section —

“**assessed scheme**” means a redevelopment scheme, or an amendment to a redevelopment scheme, that is an assessed scheme within the meaning of the EP Act;

“**environmental condition**” means a condition agreed under section 48F of the EP Act or decided under section 48J of the EP Act.

(2) After receiving advice from the Minister for the Environment under section 48H (4) of the EP Act the Minister may exercise one or more of the powers set out in subsection (3) in relation to a development implementing an assessed scheme.

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(3) For the purposes of subsection (2) the Minister may —

(a) by order in writing served on the person who is undertaking the development, direct the person to stop doing so for such period, beginning immediately and lasting not more than 24 hours, as is specified in the order;

(b) cause the Authority to serve a notice on the person who is undertaking the development directing the person to take such steps as are specified in the notice, within such period as is so specified, for the purpose of —

(i) complying with; or

(ii) preventing any non-compliance with,

the environmental condition to which the Minister for the Environment's advice relates; or

(c) advise the Authority to cause such steps to be taken as are necessary for the purpose of —

(i) complying with; or

(ii) preventing any non-compliance with,

the environmental condition to which the Minister for the Environment's advice relates.

(4) A person shall comply with an order or notice served on the person under subsection (3) (a) or (b).

Penalty: \$50 000, and a daily penalty of \$5 000.

(5) Nothing in this section prevents or otherwise affects the application of Part V of the EP Act to —

- (a) a development referred to in subsection (2);
or
- (b) pollution caused by any non-compliance with an environmental condition referred to in subsection (3).

”.

PART 3 — AMENDMENTS TO *ENVIRONMENTAL PROTECTION ACT 1986*

Principal Act

11. In this Part, the *Environmental Protection Act 1986** is referred to as the principal Act.

[* *Act No. 87 of 1986.*
For subsequent amendments, see 1994 Index to Legislation of Western Australia, Table 1, p. 68 and Act No. 84 of 1994.]

Section 3 amended

12. (1) Section 3 (1) of the principal Act is amended by inserting, in their appropriate alphabetical positions, the following definitions —

“

“assessed scheme” —

- (a) means scheme which has been assessed under Division 3 of Part IV and in respect of which a statement has been delivered to the responsible authority under section 48F (2) (a);
- (b) for the purposes of Part IV, includes scheme —
 - (i) in respect of which the responsible authority has been informed under section 48A (1) (a);
 - (ii) in respect of which the responsible authority has not been informed under section 48A (1) (a), (b) or (c)

within 28 days after the referral of that scheme to the Authority under the relevant scheme Act; or

(iii) which is a town planning scheme, or an amendment to a town planning scheme, in respect of which —

(A) section 35A of the *Metropolitan Region Town Planning Scheme Act 1959* has been complied with to the extent, if any, necessary in relation to an amendment to the Metropolitan Region Scheme; or

(B) section 18 of the *Western Australian Planning Commission Act 1985* has been complied with to the extent, if any, necessary in relation to a regional planning scheme, or an amendment to a regional planning scheme,

which amendment to the Metropolitan Region Scheme, or regional planning scheme, or amendment to a regional planning scheme, is a scheme referred to in paragraph (a) or subparagraph (i) or (ii);

(c) does not include scheme in respect of which the responsible authority has been advised under section 48A (2) (b);

“final approval”, in relation to a scheme which is —

(a) prepared under the *East Perth Redevelopment Act 1991*, means approval

- under section 32 of that Act, or under section 34 of that Act as read with that section;
- (b) prepared under the *Subiaco Redevelopment Act 1994*, means approval under section 36 of that Act, or under section 38 of that Act as read with that section;
 - (c) prepared under the *Metropolitan Region Town Planning Scheme Act 1959*, means approval under section 33 (2) (l) or 33A (7), as the case requires, of that Act;
 - (d) a regional planning scheme, or an amendment to a regional planning scheme, means approval under section 33 (2) (l) or 33A (7), as the case requires, of the *Metropolitan Region Town Planning Scheme Act 1959* as read with section 18 of the *Western Australian Planning Commission Act 1985*;
 - (e) a town planning scheme, or an amendment to a town planning scheme, means approval under section 7 (2a) of the *Town Planning and Development Act 1928*; or
 - (f) a statement of planning policy to which section 5AA (8) of the *Town Planning and Development Act 1928* applies, or an amendment to such a statement, means approval under section 7 (2a), as read with section 5AA (8), of that Act;

“Metropolitan Region Scheme” has the meaning given by the *Metropolitan Region Town Planning Scheme Act 1959*;

“period of public review”, in relation to a scheme which is —

- (a) prepared under the *East Perth Redevelopment Act 1991*, means period referred to in section 31 (1) (a) of that Act, or in section 34 of that Act as read with that section;
- (b) prepared under the *Subiaco Redevelopment Act 1994*, means period referred to in section 35 (1) (a) of that Act, or in section 38 of that Act as read with that section;
- (c) prepared under the *Metropolitan Region Town Planning Scheme Act 1959*, means period referred to in section 33 (2) (d) or 33A (3), as the case requires, of that Act;
- (d) a regional planning scheme, or an amendment to a regional planning scheme, means period referred to in section 33 (2) (d) or 33A (3), as the case requires, of the *Metropolitan Region Town Planning Scheme Act 1959* as read with section 18 of the *Western Australian Planning Commission Act 1985*;
- (e) a town planning scheme, or an amendment to a town planning scheme, means period of advertisement for public inspection referred to in section 7 (2) (a) of the *Town Planning and Development Act 1928*; or
- (f) a statement of planning policy to which section 5AA (8) of the *Town Planning and Development Act 1928* applies, or an amendment to such a statement, means period of advertisement for public

inspection referred to in section 7 (2) (a), as read with section 5AA (8), of that Act;

“proposal under an assessed scheme” means application under the assessed scheme or an Act for the approval of any development or subdivision of any land within the area to which the assessed scheme applies;

“regional planning scheme” has the meaning given by the *Western Australian Planning Commission Act 1985*;

“responsible authority”, in relation to —

- (a) a scheme which is —
 - (i) prepared under the *East Perth Redevelopment Act 1991*, means East Perth Redevelopment Authority established by that Act;
 - (ii) prepared under the *Subiaco Redevelopment Act 1994*, means Subiaco Redevelopment Authority established by that Act;
 - (iii) prepared under the *Metropolitan Region Town Planning Scheme Act 1959*, means Western Australian Planning Commission;
 - (iv) a regional planning scheme, or an amendment to a regional planning scheme, means Western Australian Planning Commission;
 - (v) a town planning scheme, or an amendment to a town planning scheme, means local authority within

the meaning of the *Town Planning and Development Act 1928* which is responsible for the town planning scheme or amendment; or

- (vi) a statement of planning policy to which section 5AA (8) of the *Town Planning and Development Act 1928* applies, or an amendment to such a statement, means Western Australian Planning Commission;

or

- (b) subdivision which is —

- (i) an activity requiring approval under Part III of the *Town Planning and Development Act 1928*, means Western Australian Planning Commission; or
- (ii) a strata plan, strata plan of subdivision or strata plan of consolidation required to be accompanied by a certificate issued under section 23 of the *Strata Titles Act 1985*, means local authority (as defined by the *Town Planning and Development Act 1928*) within the district of which the subdivision is proposed.

“responsible Minister”, in relation to a scheme, means Minister to whom the administration of the relevant scheme Act is for the time being committed by the Governor;

“scheme” means —

- (a) redevelopment scheme within the meaning of the *East Perth Redevelopment Act 1991*, or amendment to such a redevelopment scheme;
- (b) redevelopment scheme within the meaning of the *Subiaco Redevelopment Act 1994*, or amendment to such a redevelopment scheme;
- (c) amendment to the Metropolitan Region Scheme;
- (d) regional planning scheme, or amendment to a regional planning scheme;
- (e) town planning scheme, or amendment to a town planning scheme; or
- (f) statement of planning policy to which section 5AA (8) of the *Town Planning and Development Act 1928* applies, or amendment to such a statement;

“scheme Act” means *East Perth Redevelopment Act 1991, Metropolitan Region Town Planning Scheme Act 1959, Subiaco Redevelopment Act 1994, Town Planning and Development Act 1928* or *Western Australian Planning Commission Act 1985*;

“town planning scheme” has the meaning given by the *Town Planning and Development Act 1928*;

”.

(2) Section 3 (1) of the principal Act is amended in the definition of “proponent” by inserting after “the proposal” the following —

“
 , or public authority on which the responsibility for
 the proposal is imposed under another written law
 ”.

(3) Section 3 (1) of the principal Act is amended in the definition of “proposal” by inserting after “foregoing” the following —

“ , but does not include scheme ”.

(4) After section 3 (2) of the principal Act the following subsection is inserted —

“
 (2a) For the purposes of the definition of
 “proposal under an assessed scheme” in subsection (1),
 “**subdivision**” means —
 (a) activity requiring the approval of the
 Western Australian Planning Commission
 under Part III of the *Town Planning and
 Development Act 1928*; or
 (b) strata plan, strata plan of subdivision or
 strata plan of consolidation required to be
 accompanied by a certificate issued under
 section 23 of the *Strata Titles Act 1985*.
 ”.

Section 16 amended

13. Section 16 of the principal Act is amended in paragraph (e) by inserting after “proposal” the following —

“ or scheme ”.

Section 17 amended

14. Section 17 (3) (b) of the principal Act is amended by inserting after “proposals” the following —

“ , schemes ”.

Section 26 amended

15. Section 26 (f) of the principal Act is amended by inserting after “consult” the following —

“ the Western Australian Planning Commission and ”.

Section 33 amended

16. Section 33 of the principal Act is amended —

(a) in subsection (1) by deleting “A draft” and substituting the following —

“ Subject to this section, a draft ”; and

(b) by inserting after subsection (3) the following subsections —

“

(4) To the extent that there is an inconsistency between an approved policy and a scheme which came into operation before the approved policy was approved under section 31 (d), the approved policy prevails.

(5) To the extent that there is an inconsistency between an approved policy and an assessed scheme which was

assessed under Division 3 of Part IV after the approved policy was approved under section 31 (d), that assessed scheme prevails.

”.

Section 36 amended

17. Section 36 (1) of the principal Act is amended by —

- (a) deleting “and” at the end of paragraph (a); and
- (b) inserting after paragraph (a) the following —

“

(aa) if the approved policy is inconsistent with an assessed scheme which was assessed under Division 3 of Part IV after the approved policy was approved under section 31 (d); and

”.

Section 38 amended

18. (1) Section 38 (1) of the principal Act is amended —

- (a) in paragraph (a) by deleting “shall” and substituting the following —

“

subject to section 48I, shall, in the case of a proposal other than a proposal under an assessed scheme,

”.

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- (b) in paragraph (b) (ii) by inserting before “any other person” the following —

“
in the case of a proposal other than a
proposal under an assessed scheme,
”.

- (2) Section 38 (3) of the principal Act is amended by —

- (a) deleting “or” at the end of paragraph (a) and substituting the following —

“ and ”;

- (b) deleting paragraph (b) and substituting the following paragraph —

“
(b) in the case of a proposal under an
assessed scheme, the Authority did
not, when it assessed the assessed
scheme under Division 3 of this Part,
have sufficient scientific or technical
information to enable it to assess the
environmental issues raised by that
proposal,
”;

and

- (c) deleting “require” and substituting the following —

“
or if a proposal is of a prescribed class,
require in writing
”.

(3) Section 38 of the principal Act is amended by inserting after subsection (3) the following subsection —

“

(3a) In subsections (1) and (3), a reference to a proposal of a prescribed class includes a reference to a proposal of a prescribed class under an assessed scheme.

”.

(4) Section 38 (6) of the principal Act is amended by —

(a) deleting “The” and substituting the following —

“

Except when the responsibility for a proposal is imposed on a public authority under another written law, the

”;

and

(b) inserting after “under this section” the following —

“

and which the Authority considers should be assessed by it under this Part

”.

Section 39 amended

19. Section 39 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) The Authority shall, subject to this section, keep a public record of each proposal referred to it under section 38 and shall in that public record set out —

(a) whether or not that proposal is to be assessed under this Part; and

- (b) if that proposal is to be assessed under this Part, the level of that assessment and such other details as are prescribed.

”.

Divisions 3 and 4 inserted in Part IV

20. The principal Act is amended by inserting after section 48 the following Divisions —

“

Division 3 — Assessment of schemes

Authority to decide whether or not schemes to be assessed

48A. (1) When a scheme is referred to the Authority under the relevant scheme Act, the Authority shall, if it considers that the scheme —

- (a) should not be assessed by it under this Division, so inform in writing the responsible authority within 28 days after that referral, but may nevertheless give advice and make recommendations to the responsible authority and any other relevant person on the environmental issues raised by the scheme;
- (b) should be assessed by it under this Division —
 - (i) so inform in writing the responsible authority and any relevant decision-making authority within 28 days after that referral and send within 60 day after that referral any instructions issued by the Authority

under section 48C (1) (a) concerning the scope and content of an environmental review of the scheme; and

- (ii) assess under this Division changes in reservation and zoning proposed by the scheme;

or

- (c) is by its nature incapable of being made environmentally acceptable, so inform in writing the responsible authority and the Minister within 28 days after that referral.

(2) On being informed under subsection (1) (c), the Minister may —

- (a) under section 48E direct the Authority to assess the relevant scheme; or
- (b) with the agreement of the responsible Minister, advise —
 - (i) the Authority;
 - (ii) the responsible authority; and
 - (iii) any relevant decision-making authority,

that the responsible authority cannot be informed under subsection (1) (a) and that a statement cannot be delivered and published under section 48F (2).

(3) If the Minister and the responsible Minister cannot agree on whether or not advice should be given under subsection (2) (b), section 48J applies.

Authority to keep public records of schemes referred to it

48B. (1) The Authority shall, subject to this section, keep a public record of each scheme referred to it under the relevant scheme Act and shall in that public record set out —

- (a) whether or not that scheme is to be assessed under this Division; and
- (b) if that scheme is to be assessed under this Division, any instructions issued by the Authority under section 48C (1) (a) concerning the scope and content of an environmental review of that scheme.

(2) The Authority shall cause each public record kept by it under subsection (1) to be made available for public inspection under such conditions and at such places and times as are prescribed.

Powers of Authority in relation to assessment of schemes referred to it

48C. (1) The Authority may, for the purpose of assessing under this Division a scheme referred to it under the relevant scheme Act —

- (a) require the responsible authority, if it wishes that scheme to proceed, to undertake an environmental review of that scheme and report on it to the Authority, and issue to the responsible authority instructions concerning the scope and content of that environmental review;

- (b) require any person to provide it with such information as is specified in that requirement;
- (c) make such investigations and inquiries as it thinks fit; and
- (d) consider existing reservations and zonings if the Authority is of the opinion that there is scientific or technical information that a proposal framed in accordance with one or more of those reservations or zonings is likely, if implemented, to have a significant effect on the environment.

(2) A responsible authority or person of which or whom a requirement is made under subsection (1) shall comply with that requirement.

(3) Subject to any direction given under section 48E, the Authority shall determine the form, timing and procedure of any environmental review required to be undertaken under subsection (1) (a).

(4) The Authority may cause —

- (a) any report made in compliance with a requirement made under subsection (1) (a);
or
- (b) any information provided in compliance with a requirement made under subsection (1) (b),

to be made available for public review and shall, if it does so, determine the period within which, the extent to which and the manner in which public authorities or persons may make submissions to the Authority in respect of that report or information.

(5) When any report or information is made available for public review under subsection (4) or the relevant scheme Act —

(a) the responsible authority shall —

(i) at its own expense advertise the availability of the report or information for public review; and

(ii) provide copies of the report or information to such persons at such places and times and at such prices as are prescribed;

and

(b) the Authority may require the responsible authority to respond to any submissions made in respect of that report or information in such manner as the Authority thinks fit.

(6) Despite subsections (3), (4) and (5), if a scheme Act provides for the timing and procedure of the public review of a scheme —

(a) the responsible authority shall incorporate in the report on the scheme any environmental review undertaken in compliance with a requirement made under subsection (1) (a); and

(b) the provisions of the scheme Act relating to that public review shall apply to the scheme with that environmental review incorporated in that report and subsections (3), (4) and (5) shall not so apply.

(7) In subsection (6) —

“public review”, in relation to a scheme which is —

- (a) prepared under the *East Perth Redevelopment Act 1991*, means procedure referred to in sections 30 and 31 of that Act, or in section 34 of that Act as read with those sections;
- (b) prepared under the *Subiaco Redevelopment Act 1994*, means procedure referred to in sections 34 and 35 of that Act, or in section 38 of that Act as read with those sections;
- (c) prepared under the *Metropolitan Region Town Planning Scheme Act 1959*, means procedure referred to in section 33 (2) (b) to (gaa) or 33A (2) to (4), as the case requires, of that Act;
- (d) a regional planning scheme, or an amendment to a regional planning scheme, means procedure referred to in section 33 (2) (b) to (gaa) or 33A (2) to (4), as the case requires, of the *Metropolitan Region Town Planning Scheme Act 1959* as read with section 18 of the *Western Australian Planning Commission Act 1985*;
- (e) a town planning scheme, or an amendment to a town planning scheme, means procedure referred to in section 7 (2) of the *Town Planning and Development Act 1928*; or
- (f) a statement of planning policy to which section 5AA (8) of the *Town*

Planning and Development Act 1928 applies, or an amendment to such a statement, means procedure referred to in section 7 (2), as read with section 5AA (8), of that Act.

Authority to report to Minister on schemes

48D. (1) Subject to subsection (2), the Authority shall, within a period of —

- (a) 60 days after the end of the period of public review under the relevant scheme Act of a scheme referred to the Authority under that scheme Act; or
- (b) 30 days after receiving a response to environmental issues raised in submissions made within the period of public review under the relevant scheme Act, but not more than 72 days after the end of the period referred to in paragraph (a),

whichever is the later, or such longer period as the Minister allows, report to the Minister on —

- (c) the environmental factors relevant to that scheme; and
- (d) the conditions, if any, to which that scheme should be subject,

and may make such recommendations in that report as it sees fit.

(2) The Minister may, after consulting the Authority in respect of a scheme and with the agreement of the responsible Minister, direct the Authority to report to the Minister on the matters referred to in subsection (1) (c) and (d) in relation to the scheme, and to make such recommendations in that report as the Authority thinks fit —

- (a) within such period commencing on the day on which the scheme was referred to the Authority under the relevant scheme Act or a direction was given to the Authority under section 48E (1), as the case requires; or
- (b) before such date,

as the Minister specifies in that direction, and the Authority shall comply with that direction.

(3) The Minister shall, as soon as he is reasonably able to do so after receiving a report and any recommendations made to him under subsection (1) or in compliance with a direction given under subsection (2), simultaneously cause —

- (a) that report and any such recommendations to be published; and
- (b) copies of that report and any such recommendations to be given to —
 - (i) the responsible Minister;
 - (ii) any other Minister appearing to the Minister to be likely to be concerned in the outcome of the scheme to which that report relates; and

- (iii) the responsible authority in respect of the scheme to which that report relates and any relevant decision-making authority.

Minister may direct further assessment or reassessment of schemes by Authority

48E. (1) Having consulted the Authority and obtained the agreement of the responsible Minister, the Minister may —

- (a) if the Authority decides not to assess a scheme referred to it under the relevant scheme Act, after that decision but before the period of public review of that scheme begins; or
- (b) if the Authority decides to assess a scheme referred to it under the relevant scheme Act, after that assessment has begun but before that scheme is finally approved,

direct the Authority to assess that scheme under this Division, or to reassess that scheme under this Division more fully or more publicly or both, as the case requires, in accordance with that direction, and the Authority shall comply with that direction.

(2) Sections 48A, 48B, 48C and 48D apply to the assessment or reassessment under this Division of a scheme under a direction given under subsection (1) as if that direction were a referral of the scheme under the relevant scheme Act.

Procedure for agreeing or deciding on conditions to which schemes are to be subject

48F. (1) The Minister shall, after he has caused a report to be published under section 48D (3), consult the responsible Minister and, if possible, agree with him on the conditions, if any, to which the scheme to which the report relates should be subject if that scheme is to be implemented.

(2) If an agreement is reached under this section or a decision is made under section 48J on the conditions, if any, to which a scheme should be subject, the Minister shall cause —

(a) copies of a statement which sets out those conditions, if any, and advises that there is no environmental reason why the scheme should not be implemented subject to those conditions to be delivered to —

(i) the Authority;

(ii) the responsible Minister; and

(iii) any other Minister to whom a copy of the relevant report has been given under section 48D (3), the responsible authority and any relevant decision-making authority;

and

(b) that statement to be published as soon after the delivery referred to in paragraph (a) as is practicable.

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(3) Despite anything in this section, a scheme to which a report published under section 48D (3) relates shall not be implemented, and conditions shall not be agreed under this section or decided under section 48J —

- (a) during the period of 14 days referred to in section 100 (2) (b); or
- (b) if an appeal is lodged under section 100 (2) (b) in respect of that report —
 - (i) while the appeal is pending; or
 - (ii) otherwise than in accordance with the decision made on the appeal.

Review of conditions set out in statements published under section 48F

48G. (1) A responsible authority may, after the publication of a statement of conditions under section 48F (2) (b) and before the responsible Minister or the Governor grants final approval of the scheme to which that statement relates, request the responsible Minister to initiate a review of the conditions set out in the statement.

(2) If the responsible Minister agrees to a request under subsection (1), the responsible Minister and the Minister shall consult each other and attempt to reach agreement on whether or not the relevant conditions should be altered and, if so, to what extent.

(3) If conditions the subject of an agreement under this section or a decision under section 48J are altered by that agreement or decision, the Minister shall cause —

(a) copies of a statement setting out those conditions as altered to be delivered to —

(i) the Authority;

(ii) the responsible Minister; and

(iii) the responsible authority and any relevant decision-making authority;

and

(b) that statement to be published as soon after the service referred to in paragraph (a) as is practicable,

and conditions so altered shall be treated for the purposes of this Act as having been agreed under section 48F or decided under section 48J.

Division 4 — Implementation of schemes

Control of implementation of assessed schemes

48H. (1) A responsible authority shall monitor or cause to be monitored the implementation of its assessed schemes and of proposals under its assessed schemes insofar as those assessed schemes and proposals are subject to any condition agreed under section 48F or decided under section 48J (referred to in this section as “**the condition**”) for the purpose of determining whether or not the condition has been or is being complied with.

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(2) If the responsible authority finds under subsection (1) that the condition has not been or is not being complied with, it shall —

- (a) exercise such powers, if any, in respect of that non-compliance as are conferred on it by any written law as it thinks fit for the purpose of securing compliance with the condition; and
- (b) report that non-compliance to the responsible Minister.

(3) If non-compliance with the condition is reported to the responsible Minister under subsection (2) (b) or otherwise becomes known to him, the responsible Minister shall —

- (a) advise the Minister of that non-compliance; and
- (b) cause such steps to be taken as are necessary to achieve compliance with the condition.

(4) If the Minister is not satisfied with any monitoring conducted, exercise of powers, report or advice made or received, or steps taken, under this section, the Minister may, after making reasonable endeavours to consult the responsible Minister, give the responsible Minister advice recommending the steps that the Minister considers to be necessary to achieve compliance with the condition.

Proposals under assessed schemes

48I. (1) Despite section 38, when a proposal under an assessed scheme that appears likely, if implemented, to have a significant effect on the

environment comes to the notice of the responsible authority in respect of the assessed scheme, that responsible authority shall determine whether or not —

- (a) the environmental issues raised by that proposal were assessed in any assessment of the assessed scheme under this Division; and
- (b) that proposal complies with the assessed scheme and any conditions to which the assessed scheme is subject.

(2) If the responsible authority determines under subsection (1) that —

- (a) the environmental issues raised by the proposal were assessed in any assessment of the assessed scheme under this Division; and
- (b) the proposal complies with the assessed scheme and any conditions to which the assessed scheme is subject,

the responsible authority need not refer the proposal to the Authority under section 38.

(3) If the responsible authority determines under subsection (1) that —

- (a) one or more of the environmental issues raised by the proposal was or were not assessed in any assessment of the assessed scheme under this Division; or
- (b) the proposal does not comply with the assessed scheme or one or more of the conditions to which the assessed scheme is subject,

the responsible authority shall —

- (c) in its capacity as a decision-making authority refer the proposal to the Authority under section 38; or
- (d) refuse to approve the implementation of the proposal.

Decision of disputes between Minister and responsible Ministers

48J. If the Minister and a responsible Minister cannot agree —

- (a) on whether or not the Minister should give advice under section 48A (2) (b) in relation to a scheme;
- (b) under the relevant scheme Act on whether or not an environmental review has been undertaken in accordance with the relevant instructions issued under section 48C (1) (a);
- (c) on whether or not a direction should be given to the Authority under section 48D (2) or 48E (1) or, if a direction should be so given, what its content should be;
- (d) on whether or not the scheme to which a report relates should be subject to conditions under section 48F or, if that scheme should be so subject, to what conditions it should be so subject; or
- (e) on whether or not conditions referred to in section 48G (2) should be altered and, if so, to what extent,

the Minister and the responsible Minister shall refer the matter in dispute to the Governor and the decision of the Governor on that matter shall be final and without appeal.

”.

Section 89 amended

21. Section 89 (1) of the principal Act is amended —

(a) in paragraph (c) by inserting after “a proposal has been made” the following —

“

or a scheme has been prepared or formulated

”;

(b) in paragraph (e) by inserting after “a proposal” the following —

“ or scheme ”; and

(c) in paragraph (f) (ii) by inserting after “section 45” the following —

“ or 48F ”.

Section 100 amended

22. Section 100 of the principal Act is amended by repealing subsections (1) and (2) and substituting the following subsections —

“

(1) Any decision-making authority, responsible authority, proponent or other person which or who disagrees with —

- (a) a decision of the Authority that a proposal should not be assessed by it set out in a public record under section 39 (1);
- (b) the level of assessment of a proposal set out in a public record under section 39 (1); or
- (c) the content of any instructions set out in a public record under section 48B (1),

may within 14 days of the making available of the public record lodge with the Minister an appeal in writing setting out the grounds of that appeal.

(2) Any responsible authority, decision-making authority, proponent or other person which or who disagrees with the content of, or any recommendations in, the report prepared in respect of —

- (a) a proposal under section 44 may, within 14 days of the publication under section 44 (3) (a); or
- (b) a scheme under section 48D may, within 14 days of the publication under section 48D (3) (a),

of that report, lodge with the Minister an appeal in writing setting out the grounds of that appeal.

”.

Section 101 amended

23. (1) Section 101 (1) of the principal Act is amended by deleting “When” and substituting the following —

“
Subject to subsections (2a), (2b), (2c), (2d) and (2e),
when
”.

(2) After section 101 (2) of the principal Act the following subsections are inserted —

“
(2a) When an appeal is lodged under section 100 (1) (c), the Minister shall consult, and attempt to reach agreement with, the responsible Minister on the decision of that appeal.

(2b) If the Minister and the responsible Minister are unable to reach agreement under subsection (2a), they shall refer the matter in dispute to the Governor and the Governor shall decide that matter.

(2c) The Minister shall decide an appeal lodged under section 100 (1) (c) in accordance with an agreement reached under subsection (2a) or the decision of the Governor under subsection (2b) and that decision of the Minister is final and without appeal.

(2d) When an appeal is lodged under section 100 (2) (b), the Minister shall —

(a) if he considers that the decision of the appeal could affect the content of any condition to which the relevant scheme might be subject, having consulted the responsible Minister under section 48F (1) in respect of that condition and, if possible, agreed with him on that condition, decide

the appeal in accordance with that agreement or, in the absence of any such agreement, with the relevant decision under section 48J; or

- (b) if he does not consider that the decision of the appeal could affect the content of any such condition, decide the appeal without consulting the responsible Minister under section 48F (1).

(2e) A decision of the Minister under subsection (2d) is final and without appeal.

”.

(3) Section 101 (3) of the principal Act is amended —

(a) in paragraph (a) by —

- (i) deleting “or the level” and substituting the following —

“ , the level ”; and

- (ii) inserting after “relevant proposal,” the following —

“
or the operation of the relevant instructions,
”;

(b) in paragraph (b) by inserting after “section 45 (6)” the following —

“ or 48F (3), as the case requires ”; and

(c) by inserting after “under subsection (1)” the following —

“ , (2c) or (2d) ”.

Section 106 amended

24. Section 106 of the principal Act is amended —

(a) by deleting “When” and substituting the following —

“ (1) Subject to subsection (2), when ”; and

(b) by inserting the following subsection —

“

(2) Subsection (1) (c) does not apply to an appeal referred to in section 101 (2a) or (2d).

”.

Section 107 amended

25. After section 107 (2) of the principal Act the following subsection is inserted —

“

(3) Subsection (2) does not apply to an appeal referred to in section 101 (2a) or (2d).

”.

Section 110 amended

26. Section 110 (2) of the principal Act is amended by deleting “his”.

**PART 4 — AMENDMENTS TO *METROPOLITAN REGION
TOWN PLANNING SCHEME ACT 1959***

Principal Act

27. In this Part, the *Metropolitan Region Town Planning Scheme Act 1959** is referred to as the principal Act.

[* *Reprinted as at 11 March 1993.*
*For subsequent amendments, see 1994 Index to
Legislation of Western Australia, Table 1, pp. 135-6
and Act No. 84 of 1994.*]

Section 6 amended

28. Section 6 of the principal Act is amended by inserting, in their appropriate alphabetical positions, the following definitions —

“

“**EPA**” means the Environmental Protection Authority continued in existence under the EP Act;

“**EP Act**” means the *Environmental Protection Act 1986*;

“**Minister for the Environment**” means the Minister to whom the Governor has for the time being committed the administration of the EP Act;

”.

Section 33 amended

29. Section 33 (2) of the principal Act is amended —

- (a) in paragraph (a) by inserting after “Commission shall” the following —

“
 , after sections 33E and 33F have been
 complied with in relation to the
 amendment,
”;

- (b) in paragraph (e) by inserting after “The Commission” the following —

“
 shall make reasonable endeavours to
 consult in respect of the amendment such
 public authorities and persons as appear to
 the Commission to be likely to be affected
 by the amendment and
”;

and

- (c) in paragraph (g) by inserting before “considering” the following —

“
 sections 33G (1) and 33H have been
 complied with in relation to the
 amendment and after
”.

(3) Section 33A (7) of the principal Act is amended by inserting after “the Minister may” the following —

“
 , after the Minister has complied with section 33H in relation to the amendment concerned
”.

Sections 33E, 33F, 33G and 33H inserted, and transitional

31. (1) Part III of the principal Act is amended by inserting after section 33D the following sections —

“
 Reference of proposed amendments to Scheme to Environmental Protection Authority

33E. When the Commission resolves to formulate an amendment to the Scheme, the Commission shall, whether or not that amendment constitutes, in the opinion of the Commission, a substantial alteration to the Scheme, forthwith refer that amendment to the EPA by giving to the EPA —

- (a) written notice of that resolution; and
- (b) such written information about that amendment as is sufficient to enable the EPA to comply with section 48A of the EP Act in relation to that amendment.

Prerequisite to submission of proposed amendments to Scheme to Minister for consent to public submissions being sought

33F. (1) When the EPA has acted under section 48C (1) (a) of the EP Act in relation to a proposed amendment to the Scheme, the Commission

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shall, if it wishes to proceed with that amendment, undertake an environmental review of that amendment in accordance with the relevant instructions issued under that section and shall not submit that amendment to the Minister under section 33 (2) (a) for his consent to public submissions being sought, or act in relation to that amendment under section 33A (2), as the case requires, until —

- (a) the Commission has forwarded that review to the EPA; and
- (b) the EPA has advised that that review has been undertaken in accordance with those instructions, or 30 days have elapsed since that forwarding without the EPA having advised whether or not that review has been undertaken in accordance with those instructions, whichever first occurs.

(2) If the EPA has advised that the review has not been undertaken in accordance with the relevant instructions issued under section 48C (1) (a) of the EP Act, the Commission may —

- (a) comply with subsection (1) in respect of the amendment concerned; or
- (b) request the Minister to consult the Minister for the Environment and, if possible, agree with him on whether or not the review has been undertaken in accordance with those instructions.

(3) If the Minister, having complied with a request under subsection (2), and the Minister for the Environment —

- (a) agree on whether or not the review has been undertaken in accordance with the

relevant instructions, their decision shall be final and without appeal; or

- (b) cannot so agree, section 48J of the EP Act applies.

Role of Commission in relation to environmental submissions

33G. When the Commission has been informed under section 48A (1) (b) (i) of the EP Act that the proposed amendment to the Scheme should be assessed by the EPA under Division 3 of Part IV of the EP Act, the Commission shall —

- (a) as soon as practicable, but in any event within 7 days after the expiry of the period referred to in section 33 (2) (d) or 33A (3), transmit to the EPA a copy of each submission —
 - (i) made to the Commission under section 33 (2) (d) or to the Minister under section 33A (3); and
 - (ii) relating wholly or in part to environmental issues raised by the proposed amendment to the Scheme;

and

- (b) within 42 days, or such longer period as the Minister allows, after the expiry of the period referred to in section 33 (2) (d) or 33A (3), inform the EPA of its views on and response to the environmental issues raised by submissions referred to in paragraph (a) and received within that period.

Prerequisite for final approval by Minister of proposed amendment to Scheme

33H. The Minister shall not approve under section 33 (2) (a) or 33A (7) (a) a proposed amendment to the Scheme referred to the EPA under section 33E if he or she has reached agreement with the Minister for the Environment under section 48A (2) (b) of the EP Act, or until —

- (a) he is informed under section 48A (1) (a) of the EP Act that the EPA considers that that amendment should not be assessed by the EPA under Division 3 of Part IV of the EP Act;
- (b) he has received a statement under section 48F (2), or a decision has been made under section 48J, of the EP Act in respect of the conditions, if any, to which that amendment is subject; or
- (c) the period of 28 days referred to in section 48A (1) (b) (i) of the EP Act has expired without the EPA having informed the Commission under that section,

whichever first occurs, and he is satisfied that the conditions, if any, to which that amendment is subject have been incorporated into that amendment.

”.

(2) Subject to subsections (3) and (4), sections 33E, 33F, 33G and 33H of the principal Act do not apply to or in relation to an amendment to the Scheme which the Commission has resolved to formulate for submission to the Minister under section 33 (2) (a), or for publication under section 33A (2), of the principal Act before the commencement of this section.

(3) The Minister may —

- (a) on receiving a proposed amendment to the Scheme referred to in subsection (2), which amendment was submitted to him or her under section 33 (2) (a), or copied to him or her under section 33A (2) (a), of the principal Act; and
- (b) before taking any other action in relation to that amendment,

direct the Commission to ensure compliance with sections 33E and 33F of the principal Act, and the Commission shall comply with that direction before resubmitting or recopying that amendment to him or her under section 33 (2) (a) or 33A (2) (a) of the principal Act.

(4) If the Minister consents under section 33 (2) (a) of the principal Act to public submissions being sought, or the Commission publishes a notice and certificate under section 33A (2) (b) of the principal Act, in relation to an amendment in respect of which a direction given under subsection (3) has been complied with, the Commission shall, if it wishes to proceed with that amendment, ensure that sections 33G and 33H of the principal Act are complied with in respect of that amendment.

Section 35A amended

32. (1) Section 35A of the principal Act is amended by inserting between subsections (2) and (2a) the following subsections —

“

(2aa) The operation of subsection (2) extends to an amendment to the Scheme which had the force of law before 1 March 1995 unless, in relation to that amendment, action of the kind required by that subsection was taken by the local authority or responsible authority concerned before 1 March 1995

or between 1 March 1995 and the coming into operation of section 32 of the *Planning Legislation Amendment Act 1996*.

(2ab) For the purposes of subsection (2aa) the reference in subsection (2) (a) to the date on which the amendment to the Scheme has the force of law shall be read as a reference to the date of the coming into operation of section 32 of the *Planning Legislation Amendment Act 1996*.

”.

(2) Section 35A (2a) of the principal Act is amended by deleting “amendment complies with paragraphs (a) and (b) of that subsection.” and substituting the following —

“

amendment —

- (a) is in accordance with and consistent with the Scheme as amended; and
- (b) will not impede the implementation of the Scheme.

”.

(3) Section 35A (3) of the principal Act is amended by —

(a) inserting after “60 days after the scheme” the following —

“ or amendment ”;

(b) deleting “the scheme, or an amendment to an existing town planning scheme, as the case requires,” and substituting the following —

“ the scheme or amendment ”; and

- (c) deleting “the Scheme” and substituting the following —

“ the scheme or amendment ”.

Section 43B inserted

33. After section 43A of the principal Act the following section is inserted —

“

Powers of Minister to ensure that environmental conditions are met

43B. (1) In this section —

“**assessed scheme**” means an amendment to the Scheme that is an assessed scheme within the meaning of the EP Act;

“**environmental condition**” means a condition agreed under section 48F of the EP Act or decided under section 48J of the EP Act.

(2) After receiving advice from the Minister for the Environment under section 48H (4) of the EP Act the Minister may exercise one or more of the powers set out in subsection (3) in relation to a development implementing an assessed scheme.

(3) For the purposes of subsection (2) the Minister may —

- (a) by order in writing served on the person who is undertaking the development, direct the person to stop doing so for such period, beginning immediately and lasting not more than 24 hours, as is specified in the order;

- (b) cause the Commission, or a local authority exercising the powers of the Commission, to serve a notice on the person who is undertaking the development directing the person to take such steps as are specified in the notice, within such period as is so specified, for the purpose of —
 - (i) complying with; or
 - (ii) preventing any non-compliance with,

the environmental condition to which the Minister for the Environment's advice relates; or
 - (c) advise the Commission, or a local authority exercising the powers of the Commission, to cause such steps to be taken as are necessary for the purpose of —
 - (i) complying with; or
 - (ii) preventing any non-compliance with,

the environmental condition to which the Minister for the Environment's advice relates.
- (4) A person shall comply with an order or notice served on the person under subsection (3) (a) or (b).
- (5) Nothing in this section prevents or otherwise affects the application of Part V of the EP Act to —
- (a) a development referred to in subsection (2);
or

- (b) pollution caused by any non-compliance with an environmental condition referred to in subsection (3).

”.

**PART 5 — AMENDMENTS TO *SUBIACO*
*REDEVELOPMENT ACT 1994***

Principal Act

34. In this Part, the *Subiaco Redevelopment Act 1994** is referred to as the principal Act.

[* *Act No. 35 of 1994.*

For subsequent amendments, see 1994 Index to Legislation of Western Australia, Table 1, p. 208 and Act No. 84 of 1994.]

Section 3 amended

35. Section 3 of the principal Act is amended by deleting the definitions of “environment”, “EPA”, “Minister for the Environment” and “subdivision” and substituting, in their appropriate alphabetical positions, the following definitions —

“

“**EPA**” means the Environmental Protection Authority continued in existence under the EP Act;

“**EP Act**” means the *Environmental Protection Act 1986*;

“**Minister for the Environment**” means the Minister to whom the Governor has for the time being committed the administration of the EP Act;

”.

Section 33 amended

36. Section 33 (3) of the principal Act is amended by inserting after “Minister unless” the following —

“

sections 40 and 41 have been complied with in respect of that redevelopment scheme and

”.

Section 34 amended

37. After section 34 (3) of the principal Act the following subsection is inserted —

“

(4) The Authority must, in addition to complying with subsection (2), make reasonable endeavours to consult in respect of the proposed redevelopment scheme such public authorities and persons as appear to the Authority to be likely to be affected by that redevelopment scheme.

”.

Section 36 amended

38. Section 36 (1) of the principal Act is amended by deleting “The” and substituting the following —

“

After sections 42 and 42A have been complied with, the

”.

Sections 40, 41 and 42 repealed and sections 40, 41, 42 and 42A substituted, and transitional

39. (1) Sections 40, 41 and 42 of the principal Act are repealed and the following sections are substituted —

“

Reference of proposed redevelopment schemes, and proposed amendments to redevelopment schemes, to Environmental Protection Authority

40. When the Authority resolves to prepare a redevelopment scheme, or an amendment to a redevelopment scheme, the Authority shall forthwith

refer the redevelopment scheme or amendment to the EPA by giving to the EPA —

- (a) written notice of that resolution; and
- (b) such written information about the redevelopment scheme or amendment as is sufficient to enable the EPA to comply with section 48A of the EP Act in relation to the redevelopment scheme or amendment.

Prerequisite to submission of proposed redevelopment schemes, and proposed amendments to redevelopment schemes, to Minister for approval before public notification

41. (1) When the EPA has acted under section 48C (1) (a) of the EP Act in relation to a proposed redevelopment scheme or a proposed amendment to a redevelopment scheme, the Authority shall, if it wishes to proceed with that redevelopment scheme or amendment, undertake an environmental review of that redevelopment scheme or amendment in accordance with the relevant instructions issued under that section and shall not submit that redevelopment scheme or amendment to the Minister for consent to public notification under section 33, or section 38 as read with section 33, as the case requires, until —

- (a) the Authority has forwarded that review to the EPA; and
- (b) the EPA has advised that that review has been undertaken in accordance with those instructions, or 30 days have elapsed since that forwarding without the EPA having advised whether or not that review has

been undertaken in accordance with those instructions, whichever first occurs.

(2) If the EPA has advised that the review has not been undertaken in accordance with the relevant instructions issued under section 48C (1) (a) of the EP Act, the Authority may —

- (a) comply with subsection (1) in respect of the redevelopment scheme or amendment concerned; or
- (b) request the Minister to consult the Minister for the Environment and, if possible, agree with him or her on whether or not that review has been undertaken in accordance with those instructions.

(3) If the Minister, having complied with a request under subsection (2), and the Minister for the Environment —

- (a) agree on whether or not the review has been undertaken in accordance with the relevant instructions, their decision is to be final and without appeal; or
- (b) cannot so agree, section 48J of the EP Act applies.

Role of Authority in relation to environmental submissions

42. When the Authority has been informed under section 48A (1) (b) (i) of the EP Act that the proposed redevelopment scheme or amendment should be

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assessed by the EPA under Division 3 of Part IV of the EP Act, the Authority shall —

- (a) as soon as practicable, but in any event within 7 days after the expiry of the period referred to in section 35 (1) (a), or section 38 as read with section 35 (1) (a), as the case requires, transmit to the EPA a copy of each submission —
 - (i) made under section 35, or under section 38 as read with section 35, as the case requires; and
 - (ii) relating wholly or in part to environmental issues raised by that redevelopment scheme or amendment;
- and
- (b) within 42 days, or such longer period as the Minister allows, after the expiry of the period referred to in section 35 (1) (a), or section 38 as read with section 35 (1) (a), as the case requires, inform the EPA of its views on and response to the environmental issues raised by submissions referred to in paragraph (a) and received within that period.

Prerequisite to final approval by Minister of proposed redevelopment schemes and proposed amendments to redevelopment schemes

42A. The Minister shall not approve under section 36, or section 38 as read with section 36, a proposed redevelopment scheme or amendment referred to the EPA under section 40 if he or she has reached agreement with the Minister for the

Environment under section 48A (2) (b) of the EP Act, or until —

- (a) he or she is informed under section 48A (1) (a) of the EP Act that the EPA considers that that redevelopment scheme or amendment should not be assessed by the EPA under Division 3 of Part IV of the EP Act;
- (b) he or she has received a statement delivered under section 48F (2), or a decision has been made under section 48J, of the EP Act in respect of the conditions, if any, to which that redevelopment scheme or amendment is subject; or
- (c) the period of 28 days referred to in section 48A (1) (b) (i) of the EP Act has expired without the EPA having informed the Authority under that section,

whichever first occurs, and he or she is satisfied that the conditions, if any, to which that redevelopment scheme or amendment is subject have been incorporated into that redevelopment scheme or amendment.

”.

(2) Subject to subsections (3) and (4), sections 40, 41, 42 and 42A of the principal Act do not apply to or in relation to a redevelopment scheme, or an amendment to a redevelopment scheme, which the Authority has resolved to prepare for submission to the Minister under section 33 (1), or section 38 as read with section 33 (1), of the principal Act before the commencement of this section.

(3) The Minister may, before exercising a power conferred by section 33 (4), or section 38 as read with section 33 (4), of the principal Act in respect of a proposed redevelopment scheme, or a

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proposed amendment to a redevelopment scheme, referred to in subsection (2), direct the Authority to ensure compliance with sections 40 and 41 of the principal Act and the Authority must comply with that direction before resubmitting that redevelopment scheme or amendment to the Minister under section 33 (1), or section 38 as read with section 33 (1), of the principal Act.

(4) If a redevelopment scheme or amendment in respect of which a direction given under subsection (3) has been complied with is subsequently approved, with or without amendments, under section 33 (4), or section 38 as read with section 33 (4), of the principal Act, the Authority shall, if it wishes to proceed with that redevelopment scheme or amendment, ensure that sections 42 and 42A of the principal Act are complied with in respect of that redevelopment scheme or amendment.

Section 54A inserted

40. After section 54 of the principal Act the following section is inserted —

“

Powers of Minister to ensure that environmental conditions are met

54A. (1) In this section —

“**assessed scheme**” means a redevelopment scheme, or an amendment to a redevelopment scheme, that is an assessed scheme within the meaning of the EP Act;

“**environmental condition**” means a condition agreed under section 48F of the EP Act or decided under section 48J of the EP Act.

(2) After receiving advice from the Minister for the Environment under section 48H (4) of the EP Act

the Minister may exercise one or more of the powers set out in subsection (3) in relation to a development implementing an assessed scheme.

(3) For the purposes of subsection (2) the Minister may —

- (a) by order in writing served on the person who is undertaking the development, direct the person to stop doing so for such period, beginning immediately and lasting not more than 24 hours, as is specified in the order;
- (b) cause the Authority to serve a notice on the person who is undertaking the development directing the person to take such steps as are specified in the notice, within such period as is so specified, for the purpose of —
 - (i) complying with; or
 - (ii) preventing any non-compliance with,
the environmental condition to which the Minister for the Environment's advice relates; or
- (c) advise the Authority to cause such steps to be taken as are necessary for the purpose of —
 - (i) complying with; or
 - (ii) preventing any non-compliance with,
the environmental condition to which the Minister for the Environment's advice relates.

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(4) A person shall comply with an order or notice served on the person under subsection (3) (a) or (b).

Penalty: \$50 000, and a daily penalty of \$5 000.

(5) Nothing in this section prevents or otherwise affects the application of Part V of the EP Act to —

(a) a development referred to in subsection (2);
or

(b) pollution caused by any non-compliance with an environmental condition referred to in subsection (3).

”.

PART 6 — AMENDMENTS TO *TOWN PLANNING AND DEVELOPMENT ACT 1928*

Principal Act

41. In this Part, the *Town Planning and Development Act 1928** is referred to as the principal Act.

[* *Reprinted as at 19 December 1988.*

For subsequent amendments, see 1994 Index to Legislation of Western Australia, Table 1, pp. 216-8 and Acts Nos. 84 and 89 of 1994 and 31, 58 and 73 of 1995.]

Section 2 amended

42. Section 2 (1) of the principal Act is amended by —

(a) inserting, in their appropriate alphabetical positions, the following definitions —

“

“**assessed scheme**” means a town planning scheme, or an amendment to a town planning scheme, that is an assessed scheme within the meaning of the EP Act;

“**environmental condition**” means a condition agreed under section 48F, or decided under section 48J, of the EP Act;

“**EPA**” means the Environmental Protection Authority continued in existence under the EP Act;

“**EP Act**” means the *Environmental Protection Act 1986*;

“Minister for the Environment” means
the Minister to whom the Governor
has for the time being committed the
administration of the EP Act;

”;

and

- (b) deleting the definition of “subdivision”.

Section 5AA amended

43. After section 5AA (7) of the principal Act the following subsection is inserted —

“

(8) The Commission may, in relation to a particular statement of planning policy or an amendment to such a statement, act under sections 7 (2), 7A1, 7A2, 7A3 and 7A4 as if —

- (a) the Commission were a local authority; and
(b) that statement or amendment were a town planning scheme,

but otherwise this section applies to that statement or amendment.

”.

Section 7 amended

44. (1) Section 7 (1) of the principal Act is amended by inserting after “town planning scheme” the following —

“ , or an amendment to a town planning scheme, ”.

(2) Section 7 (2) of the principal Act is amended —

- (a) by deleting “A town” and substituting the following —
“ Subject to subsection (2aa), a town ”;

- (b) in paragraph (a) by inserting before “be advertised” the following —

“
after compliance with sections 7A1 and 7A2
in respect of that town planning scheme or
amendment,
”;

and

- (c) in paragraph (b) by inserting after “this subsection” the following —

“
and compliance with sections 7A3 and 7A4
in respect of that town planning scheme or
amendment
”.

- (3) Section 7 of the principal Act is amended by inserting between subsections (2) and (2a) the following subsection —

“
(2aa) A local authority shall, before submitting a town planning scheme or amendment to the Minister under subsection (2) (b), make reasonable endeavours to consult in respect of the town planning scheme or amendment such public authorities and persons as appear to the local authority to be likely to be affected by the town planning scheme or amendment.
”.

Sections 7A1, 7A2, 7A3 and 7A4 inserted, and transitional

45. (1) Part I of the principal Act is amended by inserting between sections 7A and 7AA the following sections —

“

Reference of proposed town planning schemes, and proposed amendments to town planning schemes, to Environmental Protection Authority

7A1. When a local authority resolves to prepare or adopt a town planning scheme, or to prepare an amendment to a town planning scheme, under section 7, the local authority shall forthwith refer the proposed town planning scheme or amendment to the EPA by giving to the EPA —

- (a) written notice of that resolution; and
- (b) such written information about the town planning scheme or amendment as is sufficient to enable the EPA to comply with section 48A of the EP Act in relation to the town planning scheme or amendment.

Prerequisite to advertisement of proposed town planning schemes and proposed amendments to town planning schemes

7A2. (1) When the EPA has acted under section 48C (1) (a) of the EP Act in relation to a proposed town planning scheme or a proposed amendment to a town planning scheme, the local authority concerned shall, if it wishes to proceed with that town planning scheme or amendment, undertake, or cause under subsection (4) to be undertaken, an environmental review of that town planning scheme or amendment in accordance with the relevant instructions issued under that section and shall not

advertise that town planning scheme or amendment under section 7 (2) (a) until —

- (a) the local authority has forwarded that review to the EPA; and
- (b) the EPA has advised that that review has been undertaken in accordance with those instructions, or 30 days have elapsed since that forwarding without the EPA having advised whether or not that review has been undertaken in accordance with those instructions, whichever first occurs.

(2) If the EPA has advised that the review has not been undertaken in accordance with the relevant instructions issued under section 48C (1) (a) of the EP Act, the local authority may —

- (a) comply with subsection (1) in respect of the town planning scheme or amendment concerned; or
- (b) request the Minister to consult the Minister for the Environment and, if possible, agree with him on whether or not the review has been undertaken in accordance with those instructions.

(3) If the Minister, having complied with a request made under subsection (2), and the Minister for the Environment —

- (a) agree on whether or not the review has been undertaken in accordance with the relevant instructions, their decision shall be final and without appeal; or
- (b) cannot so agree, section 48J of the EP Act applies.

(4) If the resolution to prepare or adopt a town planning scheme, or to prepare an amendment to a town planning scheme, referred to in subsection (1) was passed at the request of the owner of land to which that town planning scheme or amendment relates and the local authority referred to in that subsection by notice in writing served on that owner so requests, that owner shall, if that owner wishes that town planning scheme or amendment to be proceeded with, undertake an environmental review of that town planning scheme or amendment in accordance with the relevant instructions issued under section 48C (1) (a) of the EP Act and forward that review to that local authority.

(5) A local authority may, in accordance with regulations made under section 9 (2b), recover the expenses incurred by the local authority in undertaking an environmental review in accordance with instructions issued under section 48C (1) (a) of the EP Act.

Role of local authorities in relation to environmental submissions

7A3. When a local authority has been informed under section 48A (1) (b) (i) of the EP Act that a proposed town planning scheme or amendment should be assessed by the EPA under Division 3 of Part IV of the EP Act, the local authority shall —

- (a) as soon as practicable, but in any event within 7 days after the expiry of the period during which that town planning scheme or amendment is advertised under section 7 (2) (a), transmit to the EPA a copy of each submission —
 - (i) made during that period; and

(ii) relating wholly or in part to environmental issues raised by that town planning scheme or amendment;

and

(b) within 42 days, or such longer period as the Minister allows, after the expiry of the period referred to in paragraph (a) (i) inform the EPA of its views on and response to the environmental issues raised by submissions referred to in paragraph (a) and received within that period.

Prerequisite to final approval by Minister of proposed town planning schemes and proposed amendments to town planning schemes

7A4. The Minister shall not approve under section 7 (2a) (a) of a proposed town planning scheme or amendment referred to the EPA under section 7A1 if he or she has reached agreement with the Minister for the Environment under section 48A (2) (b) of the EP Act, or until —

- (a) he is informed under section 48A (1) (a) of the EP Act that the EPA considers that that town planning scheme or amendment should not be assessed by the EPA under Division 3 of Part IV of the EP Act;
- (b) he has received a statement delivered under section 48F (2), or a decision has been made under section 48J, of the EP Act in respect of the conditions, if any, to which that town planning scheme or amendment is subject; or

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- (c) the period of 28 days referred to in section 48A (1) (b) (i) of the EP Act has expired without the EPA having informed the local authority under that section,

whichever first occurs, and he is satisfied that the conditions, if any, to which that town planning scheme or amendment is subject have been incorporated into that town planning scheme or amendment.

”.

(2) Subject to subsection (3), sections 7A1, 7A2, 7A3 and 7A4 of the principal Act do not apply to or in relation to a town planning scheme, or an amendment to a town planning scheme, which a local authority has resolved to prepare or adopt for submission to the Minister under section 7 (2) (b) of the principal Act before the commencement of this section.

(3) The Minister may, before exercising a power conferred on him or her by section 7 (2a) of the principal Act in respect of a proposed town planning scheme, or a proposed amendment to a town planning scheme, referred to in subsection (2), direct the local authority concerned to ensure compliance with sections 7A1, 7A2, 7A3 and 7A4 of the principal Act and that local authority shall comply with that direction before resubmitting that town planning scheme or amendment to the Minister under section 7 (2) (b) of the principal Act.

Section 8B inserted

46. Part I of the principal Act is amended by inserting after section 8A the following section —

“

**Appeal against decision under section 48I of
*Environmental Protection Act 1986***

8B. If a responsible authority makes a decision under section 48I (3) (c) or (d) of the EP Act in respect

of a proposal under an assessed scheme, the applicant promoting the proposal may appeal against that decision to the Minister in accordance with Part V.

”.

Section 9 amended

47. Section 9 of the principal Act is amended by inserting after subsection (2a) the following subsection —

“

(2b) The Minister may make regulations with respect to the persons from whom, and the means by which, a local authority may recover expenses incurred by it in undertaking an environmental review required by the EPA Act under section 48C (1) (a) of the EP Act.

”.

Section 10A inserted

48. After section 10 of the principal Act the following section is inserted —

“

Powers of Minister to ensure that environmental conditions are met

10A. (1) After receiving advice from the Minister for the Environment under section 48H (4) of the EP Act the Minister may exercise one or more of the powers set out in subsection (2) in relation to a development implementing an assessed scheme.

(2) For the purposes of subsection (1) the Minister may —

- (a) by order in writing served on the person who is undertaking the development, direct

the person to stop doing so for such period, beginning immediately and lasting not more than 24 hours, as is specified in the order;

(b) cause the responsible authority to serve a notice on the person who is undertaking the development directing the person to take such steps as are specified in the notice, within such period as is so specified, for the purpose of —

(i) complying with; or

(ii) preventing any non-compliance with,

the environmental condition to which the Minister for the Environment's advice relates; or

(c) advise the responsible authority to cause such steps to be taken as are necessary for the purpose of —

(i) complying with; or

(ii) preventing any non-compliance with,

the environmental condition to which the Minister for the Environment's advice relates.

(3) A person shall comply with an order or notice served on the person under subsection (2) (a) or (b).

Penalty: \$50 000, and a daily penalty of \$5 000.

”.

(4) Nothing in this section prevents or otherwise affects the application of Part V of the EP Act to —

- (a) a development referred to in subsection (1); or
- (b) pollution caused by any non-compliance with an environmental condition referred to in subsection (2).

Section 18A amended

49. Section 18A (1) of the principal Act is amended by inserting before “(**the relevant provision**)” the following —

“ or of regulations made under section 9 ”.

Section 20 amended

50. Section 20 of the principal Act is amended by inserting after subsection (4) the following subsection —

“

(5) In giving its approval under subsection (1) (a), the discretion of the Commission is not fettered by the provisions of a town planning scheme except to the extent necessary for compliance with an environmental condition relevant to the land under consideration.

”.

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Section 24 amended

51. Section 24 of the principal Act is amended —

- (a) in subsection (2) by deleting “to the Commission with a memorandum in writing containing objections or recommendations (if any), to the whole or part of such plan.” and substituting the following —

“

to the Commission with —

- (a) a memorandum in writing containing any objections to, or recommendations in respect of, the whole or part of that plan; and
- (b) in the case of a local authority receiving a plan or copy relating to land within the area to which an assessed scheme applies, advice of any relevant environmental condition to which the assessed scheme is subject.

”;

and

- (b) in subsection (3) by inserting after —

- (i) “accompanying memorandum” the following —

“ and any advice of a relevant environmental condition

”;

and

(ii) “in the memorandum” the following —

“ and any such advice ”.

Section 37 amended

52. Section 37 of the principal Act is amended by inserting —

(a) after paragraph (a) (ia) of the definition of “appeal” the following subparagraph —

“ (ib) section 8B; ”; and

(b) before the definition of “member” the following definition —

“
“**environmental condition**” means a
condition referred to in section 48F (2)
of the EP Act;
”.

Section 40 amended

53. (1) Section 40 (3) of the principal Act is amended by —

(a) inserting before “to consider,” the following —

“ or one or more of its members ”;

(b) inserting before “shall do so” the following —

“ or the member or members ”; and

(c) deleting “of the Committee”.

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(2) Section 40 (3a) of the principal Act is amended by —

(a) inserting before “to consider,” the following —

“ or one or more of its members ”; and

(b) inserting before “shall do so” the following —

“ or the member or members ”.

Section 41 inserted

54. Part V of the principal Act is amended by inserting after section 40 the following section —

“

Minister to consult Minister for the Environment before determining certain appeals

41. Before determining an appeal to the Minister from a decision referred to in section 8B or a decision relating to an environmental condition, the Minister shall consult the Minister for the Environment.

”.

Section 42 amended

55. Section 42 of the principal Act is amended —

(a) in subsection (2) by deleting “The Appeal Tribunal” and substituting the following —

“

Subject to subsection (2a), the Appeal Tribunal

”;

and

- (b) by inserting after subsection (2) the following subsection —

“

(2a) When hearing and determining an appeal to the Appeal Tribunal from a decision relating to an environmental condition, the Appeal Tribunal shall consist of 4 members appointed by the Governor, of whom —

- (a) 3 shall be the members referred to in subsection (2) (a), (b) and (c); and
- (b) one shall be a person having knowledge of and experience in environmental matters.

”.

Section 52A inserted

- 56.** Part V of the principal Act is amended by inserting after section 52 the following section —

“

Appeal Tribunal to invite submissions from Minister for the Environment before determining certain appeals

52A. Before determining an appeal to the Appeal Tribunal from a decision relating to an environmental condition, the Appeal Tribunal shall invite the Minister for the Environment to make a submission in respect of that appeal.

”.

**PART 7 — AMENDMENTS TO *WESTERN AUSTRALIAN
PLANNING COMMISSION ACT 1985***

Principal Act

57. In this Part, the *Western Australian Planning Commission Act 1985** is referred to as the principal Act.

[* *Act No. 91 of 1985.*

For subsequent amendments, see 1994 Index to Legislation of Western Australia, Table 1, p. 204, and Act No. 84 of 1994 under the heading “STATE PLANNING COMMISSION ACT 1985”.]

Section 18 amended

58. (1) Section 18 (1a) of the principal Act is amended by —

(a) deleting “complying” and substituting the following —

“ ensuring compliance ”;

(b) deleting “comply” and substituting the following —

“ ensure compliance ”; and

(c) deleting “and 33A” and substituting the following —

“ , 33A, 33E, 33F, 33G and 33H ”.

(2) Section 18 (1c) of the principal Act is amended by inserting after “with a town planning scheme prepared” the following —

“ or adopted ”.