

EXPLANATORY MEMORANDUM

Hope Valley-Wattleup Redevelopment Amendment Bill 2010

The purpose of this Bill is to facilitate the next stage of strategic planning and development within the Latitude 32 Industry Zone (the 'Latitude 32 area' or 'Hope Valley-Wattleup Area'), by amending the *Hope Valley-Wattleup Redevelopment Act 2000* (HVWRA) to:

1. Provide further legal clarity as to operation of the HVWRA Master Plan, by confirming that it has legislative effect and the status of subsidiary legislation as defined in the *Interpretation Act 1984*, in a similar manner to other planning schemes under the *Planning and Development Act 2005*;
2. Provide a specific and unambiguous penalty for contravening the Master Plan;
3. Provide retrospective operation and transitional arrangements, which confirm the validity of the Master Plan, together with any past acts or omissions done under the Master Plan, before its legal effect and status as subsidiary legislation was clarified by these amendments; and
4. Delete references to the Fremantle-Rockingham Industrial Area Regional Strategy (FRIARS) document, given it no longer has any legislative effect.

Part 1- Preliminary matters

Clause 1. Short Title

Provides that the name of this Bill when enacted is the *Hope Valley-Wattleup Redevelopment Act 2010* (the Act).

Clause 2. Commencement

Provides that:

- (a) Sections 1 and 2 of the Act come into operation when the Act receives the Royal Assent; and
- (b) the rest of the Act comes into operation on the day after the Act receives the Royal Assent.

The Bill will have effect on the day after Royal Assent.

Part 2 – Hope Valley-Wattleup Redevelopment Act 2000 amended

Clause 3. Act Amended

This Part amends the *Hope Valley-Wattleup Redevelopment Act 2000* (the HVWRA) – a procedural clause naming the Act to be amended.

Clause 4. Section 2 deleted.

This section relates to the Fremantle-Rockingham Industrial Area Regional Strategy (FRIARS). The FRIARS policy document is similar to a sub-regional structure plan. Its intended role was to inform government of the future land use direction for the Latitude 32 Industry Zone (the ‘Latitude 32 area’ or ‘Hope Valley-Wattleup Area’), but was never intended to have the same legislative role as the HVWRA Master Plan or local planning scheme. The FRIARS policy document was largely intended as a temporary measure until all the land within the Latitude 32 area became within the scope of the HVWRA Master Plan.

Given all land within the Latitude 32 area is now subject to the HVWRA Master Plan, and given sections (10)(1)(b) and 28(1)(b) make it clear that the FRIARS policy document only applies to land not yet subject to the Master Plan, the FRIARS document no longer has any legislative effect. As such, the intent is to improve clarity by removing references to the FRIARS document.

Sections 2(2) and (3) relate to the FRIARS document and section 2(1) is subject to them. Therefore, the provisions are now spent.

Clause 5. Section 3 amended.

This clause deletes references to the FRIARS policy document at sections 3(1) and 3(2).

Clause 6. Section 10 amended.

This clause deletes references to the FRIARS policy document at section 10(1)(b), and replaces it with the responsibility for the Authority to perform its functions under the HVWRA in accordance with any master plan.

The heading to section 10 is to be changed administratively under the *Reprints Act 1984*.

Clause 7. Section 11 amended.

As outlined in clause 8 amending section 22A, the intention is to confirm the Master Plan’s legal status as subsidiary legislation. However, this in turn leads to the possibility

of conflict arising between the Master Plan and regulations – both having the status of subsidiary legislation. Section 11 establishes a hierarchy of legislation, with the HVWRA taking precedence, followed by any regulations and finally by the Master Plan. In the event of any inconsistency between the regulations and the Master Plan, the regulations prevail, and the provision in the Master Plan is void to the extent of that inconsistency.

Clause 8. Part 3 Division 5 inserted.

At the end Part 3, this clause inserts Division 5 – Effect of master plan. Division 5 involves two new provisions:

Section 22A – Master plan’s effect.

Part 3 of the Act establishes a ‘Master Plan’, which effectively operates as a local planning scheme and replaces the schemes over certain land in the local government districts of the City of Cockburn and Town of Kwinana. Landcorp (as the Western Australian Land Authority responsible for planning and developing the area), noted that there is some confusion as to the legal status of the Master Plan. Continued uncertainty impacts the successful operation of the project, such as confidence in the ability to enforce Development Contribution Plans under the Master Plan.

Subsection (1) puts the issue beyond any doubt, stating the Master Plan has legislative effect. This amendment effectively confirms the Master Plan has the same status as other planning schemes under the *Planning and Development Act 2005*.

Subsection (2) further confirms the Master Plan has the legal status of subsidiary legislation as defined in the *Interpretation Act 1984*.

Finally, subsection (3) states that the procedures for the publication and commencement of subsidiary legislation under section 41 of the *Interpretation Act 1984* do not apply, given section 16 of the HVWRA already provides similar requirements for public notification and commencement.

Section 22B – Contravening a master plan.

Section 22B has been inserted to confirm that a person who contravenes the Master Plan is liable to a penalty of \$50,000 and a daily penalty of \$5,000. This will again improve clarity and ensure consistency with other similar penalty provisions in the Act, found at sections 25, 31(5) and 32(4).

Clause 9. Section 28 amended.

This clause deletes references to the FRIARS policy document at section 28(1)(b).

Clause 10. Part 6 inserted.

After Part 5, this clause inserts Part 6, which effectively involves inserting one new section:

Section 37 – Effect of master plan and validity of things done under it before Hope-Valley Redevelopment Amendment Act 2010.

This section provides retrospective operation and transitional arrangements, which confirm the validity of the Master Plan, together with any past acts or omissions done under the Master Plan, before its legal effect and status as subsidiary legislation was clarified by this Act.