

Planning and Development Amendment Bill 2020

Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — Special provisions for COVID-19 pandemic		
3.	Act amended	3
4.	Parts 17 and 18 inserted	3
Part 17 — Special provisions for COVID-19 pandemic relating to development applications		
Division 1 — Preliminary		
269.	Terms used	3
270.	Effect of Part	8
Division 2 — Commission to determine certain development applications		
Subdivision 1 — Applications and referrals		
271.	Development applications that may be made directly to Commission during recovery period	8
272.	Development applications that may be referred to Commission by Premier during recovery period	8
273.	Supplementary provisions for applications and referrals	10
Subdivision 2 — Determinations		
274.	Determination of development applications by Commission	11
275.	Application of legal instruments and matters to which Commission must have due regard	13
276.	Consultation, submissions and other input	15

Contents

277.	Effect of Commission determination under s. 274	17
278.	Substantial commencement of development approved by Commission under s. 274	19
279.	Amendment or cancellation of approval granted by Commission under s. 274	19
Division 3 — Avoiding conflicts with approvals granted by Commission under section 274		
280.	General provisions for Division	21
281.	Decision-maker proposing to perform function in conflict with approval	23
282.	Owner of land or other prescribed person may apply for direction if performance of function conflicts with approval	25
Division 4 — Oversight of Commission		
283.	State Administrative Tribunal	26
284.	Governor may amend or cancel approval granted by Commission under s. 274	27
Division 5 — Final matters		
285.	Fees	29
286.	Regulations	29
Part 18 — Extension of time for endorsement of diagram or plan of survey due to COVID-19 pandemic		
287.	Term used: COVID-19 emergency start date	30
288.	Extension of time for endorsement of diagram or plan of survey of approved subdivision	30
Part 3 — Development assessment panels		
5.	Act amended	32
6.	Section 4 amended	32
7.	Section 171A amended	33
8.	Section 171C amended	34
9.	Section 171G inserted	35
171G.	Regulations about transitional matters	35
Part 4 — Public works		
10.	Act amended	36
11.	Section 4 amended	36

12.	Section 6 amended	36
13.	Schedule 7 amended	38
	Part 5 — Acquisition of land	
14.	Act amended	39
15.	Section 190 amended	39
16.	Section 191 amended	39
17.	Section 195 amended	40
18.	Section 196 amended	41
19.	Section 197A inserted	41
	197A. Planning control areas	41
	Part 6 — Matters relating to preparation and approval of planning schemes	
	Division 1 — <i>Planning and Development Act 2005</i> amended	
20.	Act amended	43
21.	Section 17 amended	43
22.	Part 4 Division 2 heading replaced	43
	Division 2 — Relevant considerations in preparation or amendment of region planning scheme or amendment and requirement to advertise	
23.	Section 38 replaced	43
	38. Referral of proposed scheme or amendment to EPA	43
24.	Section 39 amended	44
25.	Section 40 amended	45
26.	Part 4 Division 3 heading deleted	45
27.	Sections 41 to 44 replaced	45
	43. Advertising proposed scheme or amendment	45
28.	Section 45 amended	46
29.	Section 46 deleted	47
30.	Section 47 amended	47
31.	Part 4 Division 3 heading inserted	47
	Division 3 — Submission and approval of region planning schemes or amendments other than minor amendments	

Contents

32.	Section 47A inserted	48
	47A. Region planning scheme or non-minor amendment to be submitted and approved under this Division	48
33.	Sections 48 and 49 replaced	48
	48. Proposed scheme or amendment and public submissions to be submitted to Minister	48
34.	Section 51 amended	49
35.	Section 52 amended	49
36.	Section 53 amended	49
37.	Part 4 Division 4 heading replaced	49
	Division 4 — Submission and approval of minor amendments to region planning schemes	
38.	Section 56A inserted	50
	56A. Term used: minor region planning scheme amendment	50
39.	Section 57 amended	50
40.	Sections 58 to 60 deleted	50
41.	Section 61 amended	51
42.	Section 62 amended	51
43.	Part 4 Division 4A inserted	52
	Division 4A — Withdrawal of region planning scheme or amendment	
	62A. Minister may withdraw or direct withdrawal of proposed scheme or amendment	52
44.	Section 76 amended	53
45.	Section 81 replaced	54
	81. Referral of proposed scheme or amendment to EPA	54
46.	Section 82 amended	55
47.	Section 84 replaced	55
	83A. Proposed scheme or amendment to be submitted to Minister for approval to advertise	55
	84. Advertising proposed scheme or amendment	56
48.	Section 85 amended	56
49.	Section 87 amended	56
50.	Section 124 amended	57
51.	Section 125 amended	57
52.	Section 258A inserted	57
	258A. Regulations as to procedure and costs for region planning schemes	57

53.	Section 263 amended	58
	Division 2 — <i>Environmental Protection Act 1986</i> amended	
54.	Act amended	58
55.	Section 3 amended	58
56.	Section 48AAA inserted	59
	48AAA. Certain schemes not required to be assessed	59
57.	Section 48C amended	60
	Part 7 — State planning policies and planning codes	
	Division 1 — <i>Planning and Development Act 2005</i> amended	
58.	Act amended	61
59.	Section 4 amended	61
60.	Section 14 amended	61
61.	Section 17 amended	62
62.	Section 26 amended	62
63.	Section 27 amended	62
64.	Sections 28 to 32 replaced	63
	28. Process for preparation and approval of State planning policy	63
	29. Persons and bodies performing functions to have due regard to State planning policies	64
65.	Part 3A inserted	64
	Part 3A — Planning codes	
	32A. Planning codes	64
	32B. Process for preparation and approval of planning code or amendment	65
	32C. Effect of planning code	66
66.	Section 77 amended	66
67.	Section 269 amended	67
	Division 2 — <i>Environmental Protection Act 1986</i> amended	
68.	Act amended	68
69.	Section 3 amended	68
70.	Section 48AAB inserted	70
	48AAB. Certain planning codes not required to be assessed	70

Contents

71.	Section 48C amended	71
72.	Section 51O amended	71
Part 8 — Making of subsidiary legislation		
73.	Act amended	72
74.	Part 15 Division 1 heading deleted	72
75.	Section 256 amended	72
76.	Section 258 amended	72
77.	Section 259 amended	73
78.	Section 260 deleted	73
79.	Part 15 Division 2 heading deleted	73
80.	Section 263 amended	73
81.	Part 15 Division 3 heading deleted	73
Part 9 — Signatures and approvals for Crown or State land		
82.	Act amended	74
83.	Section 267A amended	74
84.	Section 267 amended	75
Part 10 — Requirements to set aside land for open space or make payment in lieu		
85.	Act amended	76
86.	Section 153 replaced	76
	153. Setting aside land for open space or payment in lieu	76
87.	Section 154 amended	77
Part 11 — Community infrastructure		
88.	Act amended	78
89.	Schedule 7 amended	78

Part 12 — Endorsement of diagram or plan of survey of approved subdivision		
Division 1 — <i>Planning and Development Act 2005</i> amended		
90.	Act amended	79
91.	Section 145 amended	79
92.	Section 145A inserted	80
	145A. Period for submission of diagram or plan of survey for approval by Commission	80
93.	Section 251 amended	82
94.	Section 253 amended	82
Division 2 — <i>Community Titles Act 2018</i> amended		
95.	Act amended	83
96.	Section 30 amended	83
Part 13 — Improvement plans		
97.	Act amended	84
98.	Section 119 amended	84
Part 14 — Electronic planning maps		
99.	Act amended	85
100.	Sections 267B and 267C inserted	85
	267B. Electronic planning maps	85
	267C. Certified copies of electronic planning maps	87
Part 15 — Minister’s powers in relation to local governments		
101.	Act amended	88
102.	Section 212 amended	88
Part 16 — Purposes for which land may be required for planning control areas		
103.	Act amended	89
104.	Schedule 6 amended	89

Part 17 — Transitional provisions

105.	Act amended	90
106.	Part 19 inserted	90

Part 19 — Transitional provisions for *Planning and Development Amendment Act 2020*

289.	LDAP or JDAP continues as district DAP	90
290.	Preparation and approval of planning schemes where process commenced before commencement day	91
291.	R-Codes taken to be planning codes	92
292.	Regulations made by Minister continue in force	93
293.	Electronic planning maps prepared before commencement day	93
294.	Transitional regulations	94

Western Australia

LEGISLATIVE ASSEMBLY

**Planning and Development Amendment
Bill 2020**

A Bill for

An Act to amend the *Planning and Development Act 2005*, and to make related amendments to the *Environmental Protection Act 1986* and the *Community Titles Act 2018*.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Planning and Development Amendment Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Parts 3 to 16 — on a day fixed by proclamation, and different days may be fixed for different provisions;
- (c) the rest of the Act — on the day after assent day.

1 **Part 2 — Special provisions for COVID-19 pandemic**

2 **3. Act amended**

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

4 **4. Parts 17 and 18 inserted**

5 After section 268 insert:

6

7 **Part 17 — Special provisions for COVID-19**
8 **pandemic relating to development applications**

9 **Division 1 — Preliminary**

10 **269. Terms used**

11 (1) In this Part —

12 ***applicable legal instrument***, in relation to a
13 development application, means a legal instrument
14 under which the application could, apart from this Part,
15 be determined;

16 ***development***, in relation to a development application
17 that is an application for approval under the *Swan and*
18 *Canning Rivers Management Act 2006* section 72(1)
19 or (4) or to a determination of such an application, has
20 the meaning given in section 3(1) of that Act;

21 ***development application*** —

22 (a) means a development application as defined in
23 section 4(1); and

24 (b) includes (to avoid doubt) a development
25 application as defined in section 4(1) that is to
26 be determined, or could be determined, by a
27 Development Assessment Panel; and

s. 4

- 1 (c) includes an application under Part 7 for
2 approval of development in a planning control
3 area; and
- 4 (d) includes an application for approval under the
5 *Swan and Canning Rivers Management*
6 *Act 2006* section 72(1) or (4);
- 7 ***dwelling*** means a building, or a part of a building, used
8 for the purpose of human habitation on a permanent
9 basis by —
- 10 (a) a single person; or
11 (b) a single family; or
12 (c) no more than 6 persons who do not comprise a
13 single family;
- 14 ***Government agreement*** has the meaning given in the
15 *Government Agreements Act 1979* section 2;
- 16 ***legal instrument*** means any of the following —
- 17 (a) this Act, other than this Part, any Part 17
18 regulations and any orders under section 284;
- 19 (b) any of the following enactments —
- 20 (i) the *Contaminated Sites Act 2003*;
- 21 (ii) the *Environmental Protection Act 1986*;
- 22 (iii) the *Heritage Act 2018*;
- 23 (iv) the *Swan and Canning Rivers*
24 *Management Act 2006*;
- 25 (v) the *Swan Valley Planning Act 1995*;
- 26 (c) any enactment, other than this Act or an
27 enactment covered by paragraph (b);
- 28 (d) a planning scheme or an interim development
29 order;
- 30 (e) any other scheme, code, policy, plan, local law,
31 by-law, rule, condition, notice or other

- 1 instrument made under any enactment covered
2 by paragraph (a), (b) or (c);
- 3 **mining** has the meaning given in the *Mining Act 1978*
4 section 8(1);
- 5 **net lettable area**, in relation to a building, means the
6 area of all floors within the internal finished surfaces of
7 permanent walls but does not include the following
8 areas —
- 9 (a) stairs, toilets, cleaners’ cupboards, lift shafts,
10 motor rooms, escalators, tea rooms, plant rooms
11 and other service areas;
- 12 (b) lobbies between lifts facing other lifts serving a
13 floor or the building;
- 14 (c) areas set aside as public space or thoroughfares
15 and not for the exclusive use of occupiers of a
16 floor or the building;
- 17 (d) areas set aside for the provision of facilities or
18 services to a floor or the building where those
19 facilities or services are not for the exclusive
20 use of occupiers of the floor or building;
- 21 **normal decision-maker**, in relation to a development
22 application, means a person or body who could, apart
23 from this Part, determine the application under an
24 applicable legal instrument;
- 25 **Part 17 regulations** means regulations under
26 section 286(1);
- 27 **R-codes** means the Residential Design Codes prepared
28 as a State planning policy under section 26(1), as
29 amended from time to time;
- 30 **recovery period** means the period of 18 months
31 beginning on the day on which the *Planning and*
32 *Development Amendment Act 2020* section 4 comes
33 into operation;

s. 4

- 1 **significant development**, subject to subsections (2)
2 and (3), means —
- 3 (a) development —
- 4 (i) to which the R-codes apply (with or
5 without modifications); and
- 6 (ii) that is or includes the erection,
7 construction or alteration of 100 or more
8 dwellings; and
- 9 (iii) that has an estimated cost of \$30 million
10 or more;
- 11 or
- 12 (b) development —
- 13 (i) to which the R-codes do not apply (with
14 or without modifications); and
- 15 (ii) that is or includes the erection,
16 construction or alteration of 1 or more
17 buildings where the total net lettable
18 area to be erected, constructed or altered
19 is 20 000 m² or more; and
- 20 (iii) that has an estimated cost of \$30 million
21 or more;
- 22 or
- 23 (c) development that is of a class or kind
24 prescribed by Part 17 regulations for the
25 purposes of this paragraph;
- 26 **substantially commenced** —
- 27 (a) if no meaning is prescribed for the purposes of
28 paragraph (b) — subject to subsection (4), has
29 the meaning given in the *Planning and*
30 *Development (Local Planning Schemes)*
31 *Regulations 2015* Schedule 2 clause 1 as in
32 force at the beginning of the recovery period; or

- 1 (b) if Part 17 regulations prescribe for the purposes
2 of this paragraph a meaning of *substantially*
3 *commenced* — the prescribed meaning;
- 4 **warehouse** means a building or outdoor facility, or a
5 part of a building or outdoor facility, used for 1 or both
6 of the following —
- 7 (a) the storage of goods, equipment, plant or
8 materials;
- 9 (b) the display or sale by wholesale of goods.
- 10 (2) Development that is of a class or kind prescribed by
11 Part 17 regulations for the purposes of this
12 subsection —
- 13 (a) is not to be regarded as significant development
14 or as being part of any significant development;
15 and
- 16 (b) is not to be taken into account in determining
17 whether any larger development of which the
18 development forms part is significant
19 development.
- 20 (3) Development of a warehouse —
- 21 (a) is not to be regarded as significant development
22 or as being part of any significant development;
23 and
- 24 (b) is not to be taken into account in determining
25 whether any larger development of which the
26 development forms part is significant
27 development.
- 28 (4) For the purposes of paragraph (a) of the definition of
29 *substantially commenced* in subsection (1), the
30 definition of that term in the *Planning and*
31 *Development (Local Planning Schemes)*
32 *Regulations 2015* Schedule 2 clause 1 applies as if the
33 reference to a development approved under a planning

s. 4

1 scheme or under an interim development order were a
2 reference to a development approved by the
3 Commission under section 274.

4 **270. Effect of Part**

- 5 (1) This Part has effect despite any legal instrument.
- 6 (2) However, this Part does not apply in relation to any of
7 the following —
- 8 (a) land to which an approved redevelopment
9 scheme under the *Metropolitan Redevelopment*
10 *Authority Act 2011* applies;
- 11 (b) land in the redevelopment area as defined in the
12 *Hope Valley-Wattleup Redevelopment*
13 *Act 2000*;
- 14 (c) land to which a Government agreement applies;
- 15 (d) mining, or proposed mining, that is, or would
16 be, authorised under the *Mining Act 1978*.

17 **Division 2 — Commission to determine certain**
18 **development applications**

19 **Subdivision 1 — Applications and referrals**

20 **271. Development applications that may be made**
21 **directly to Commission during recovery period**

22 During the recovery period, a person may make a
23 development application to the Commission for
24 determination under section 274 if the application is for
25 approval of significant development.

26 **272. Development applications that may be referred to**
27 **Commission by Premier during recovery period**

- 28 (1) During the recovery period, the prospective applicant
29 in relation to a development application that has not yet

- 1 been made may notify the Minister that they want the
2 application to be determined under section 274.
- 3 (2) Subsection (3) applies if the Minister —
- 4 (a) is notified under subsection (1); and
- 5 (b) considers that the development application
6 raises issues of such State or regional
7 importance that it would be appropriate for the
8 application to be determined under section 274.
- 9 (3) During the recovery period, the Premier, on the
10 Minister’s recommendation, may refer the
11 development application to the Commission for
12 determination under section 274.
- 13 (4) Subsection (5) applies if —
- 14 (a) before or during the recovery period, a person
15 makes a development application (otherwise
16 than to the Commission under section 271); and
- 17 (b) the Minister considers that the development
18 application raises issues of such State or
19 regional importance that it would be
20 appropriate for the application to be determined
21 under section 274.
- 22 (5) During the recovery period, the Premier, on the
23 Minister’s recommendation, may —
- 24 (a) direct any person or body who is dealing with
25 the development application to refer the
26 application to the Commission for
27 determination under section 274; or
- 28 (b) if the Commission is dealing with the
29 development application — direct the
30 Commission to determine the application under
31 section 274.

s. 4

- 1 (6) However, the Premier cannot give a direction under
2 subsection (5) if the development application has
3 already been determined, or been taken to be
4 determined, by a normal decision-maker (whether or
5 not the determination is to be reviewed by the State
6 Administrative Tribunal or otherwise challenged).
- 7 **273. Supplementary provisions for applications and**
8 **referrals**
- 9 (1) A development application that is made under
10 section 271 must be made in the manner and form
11 required by the Commission and, without limitation,
12 include any documents or information required by the
13 Commission.
- 14 (2) A notification under section 272(1) must be made in
15 the manner and form required by the Minister and,
16 without limitation, include any documents or
17 information required by the Minister.
- 18 (3) A person or body who is given a direction under
19 section 272(5) to refer a development application to the
20 Commission —
- 21 (a) must refer the development application within
22 the period specified in the direction; and
- 23 (b) in referring the development application, must
24 provide the Commission with the application
25 and any documents or information that
26 accompanied the application.
- 27 (4) Without limiting section 270(1), in imposing
28 requirements under subsection (1) or (2), the
29 Commission or Minister is not bound or restricted by
30 any legal instrument that would, apart from this Part,
31 regulate, or otherwise apply in relation to, any of the
32 following —
- 33 (a) the making of the development application;

- 1 (b) the development application itself;
2 (c) the consideration or determination of the
3 development application.

4 **Subdivision 2 — Determinations**

5 **274. Determination of development applications by**
6 **Commission**

- 7 (1) A development application must be determined under
8 this section (and not any applicable legal instrument)
9 if —
10 (a) the development application is made or referred
11 to the Commission under section 271 or 272(3)
12 or (5); or
13 (b) the Commission is directed under
14 section 272(5) to determine the development
15 application under this section.
- 16 (2) The Commission must consider the development
17 application and determine it by —
18 (a) granting approval for the development without
19 conditions; or
20 (b) granting approval for the development with
21 conditions; or
22 (c) refusing approval for the development.
- 23 (3) The Commission must determine the development
24 application as soon as is reasonably practicable but,
25 subject to that, does not have to determine the
26 application before the end of the recovery period.
- 27 (4) For the purposes of subsection (2)(a) and (b) —
28 (a) approval can be granted —
29 (i) for the development for which approval
30 is sought; or

s. 4

- 1 (ii) for that development, except for a part
2 or aspect of that development specified
3 in the approval; or
4 (iii) for a part or aspect of that development
5 specified in the approval;
6 but
7 (b) approval cannot be granted as referred to in
8 paragraph (a)(ii) or (iii) —
9 (i) in the case of a development application
10 made under section 271 — for
11 development that is not significant
12 development; or
13 (ii) in any other case — for development
14 that is substantially different from the
15 development for which approval is
16 sought.
- 17 (5) For the purposes of subsection (2)(b), the Commission
18 may impose any conditions that the Commission
19 considers appropriate, including (without limitation)
20 the following —
21 (a) a condition limiting the time period for which
22 approval is granted;
23 (b) a condition requiring further details of the
24 development specified in the approval to be,
25 before the development is commenced,
26 submitted to, and approved by, the
27 Commission.
- 28 (6) The Commission can impose a condition of the kind
29 referred to in subsection (5)(b) only if the Commission
30 considers that the further details to be approved would
31 not substantially change the approved development.

- 1 (7) When the Commission determines the development
2 application, the Commission must —
- 3 (a) give the applicant written notice of the
4 determination, including the Commission’s
5 reasons for the determination; and
- 6 (b) make copies of the determination and reasons
7 publicly available on a website maintained by,
8 or on behalf of, the Commission.

9 **275. Application of legal instruments and matters to**
10 **which Commission must have due regard**

- 11 (1) This section applies if the Commission is required to
12 consider and determine a development application
13 under section 274.
- 14 (2) Subsections (3) and (4) apply in relation to any legal
15 instrument that would, apart from this Part, regulate, or
16 otherwise apply in relation to, any of the following —
- 17 (a) the making of the development application;
18 (b) the development application itself;
19 (c) the consideration or determination of the
20 development application.
- 21 (3) Without limiting section 270(1), for the purposes of the
22 Commission’s consideration and determination of the
23 development application —
- 24 (a) the legal instrument does not apply; and
25 (b) the Commission is not otherwise bound or
26 restricted by the legal instrument.
- 27 (4) However, in considering and determining the
28 development application, the Commission may do any
29 of the following —
- 30 (a) anything that a normal decision-maker, or any
31 other person or body dealing with the

s. 4

- 1 development application, could, apart from this
2 Part, have done under the legal instrument;
- 3 (b) request any person or body to perform (in
4 whole or in part and with or without
5 modifications) any functions that the person or
6 body would, apart from this Part, have had in
7 relation to the development application under
8 the legal instrument;
- 9 (c) otherwise involve, or consult, a person or body
10 referred to in paragraph (b);
- 11 (d) otherwise apply (with or without
12 modifications), or have regard to, the legal
13 instrument.
- 14 (5) Without limiting subsection (3), the Commission —
- 15 (a) in considering and determining the
16 development application, is not limited to
17 planning considerations and may have regard to
18 any other matter affecting the public interest;
19 and
- 20 (b) may grant approval for development even if —
- 21 (i) there has been a contravention by any
22 person or body of a legal instrument
23 referred to in subsection (2); or
- 24 (ii) there would, apart from this Part, have
25 been such a contravention.
- 26 (6) In considering and determining the development
27 application, the Commission must have due regard
28 to —
- 29 (a) the purpose and intent of any planning scheme
30 that has effect in the locality to which the
31 development application relates; and

- 1 (b) the need to ensure the orderly and proper
- 2 planning, and the preservation of amenity, of
- 3 that locality; and
- 4 (c) the need to facilitate development in response
- 5 to the economic effects of the COVID-19
- 6 pandemic; and
- 7 (d) any relevant State planning policies and any
- 8 other relevant policies of the Commission.

9 **276. Consultation, submissions and other input**

- 10 (1) This section applies for the purposes of the
- 11 Commission’s consideration of a development
- 12 application under section 274 (but does not limit what
- 13 the Commission may or must do under section 275).
- 14 (2) The Commission must —
- 15 (a) consult the Minister; and
- 16 (b) if required by the Minister — give the Minister
- 17 a reasonable opportunity to make submissions
- 18 to the Commission; and
- 19 (c) have due regard to any submissions made by
- 20 the Minister.
- 21 (3) The Commission must —
- 22 (a) consult the EPA; and
- 23 (b) consult the Heritage Council if the development
- 24 would, or would be likely to, affect any of the
- 25 following —
- 26 (i) a place that is a registered place under
- 27 the *Heritage Act 2018*;
- 28 (ii) a place that is the subject of a protection
- 29 order under the *Heritage Act 2018*
- 30 Part 4 Division 1;
- 31 (iii) a place that is the subject of a heritage
- 32 agreement made by the Heritage

s. 4

- 1 Council under the *Heritage Act 2018*
2 Part 7;
- 3 and
- 4 (c) consult the Swan River Trust if the
5 development —
- 6 (i) is of land that is wholly or partly in the
7 development control area as defined in
8 the *Swan and Canning Rivers*
9 *Management Act 2006*; or
- 10 (ii) is of land that abuts that development
11 control area; or
- 12 (iii) would, or would be likely to, affect any
13 waters in that development control area.
- 14 (4) The Commission must —
- 15 (a) give any local government to whose district the
16 development application relates an opportunity
17 to make submissions to the Commission within
18 a period specified by the Commission; and
- 19 (b) have due regard to any submissions made by
20 the local government within that period.
- 21 (5) The Commission may require the applicant to do any
22 of the following within a period specified by the
23 Commission —
- 24 (a) provide the Commission with any document or
25 information;
- 26 (b) do anything else that the Commission considers
27 appropriate.
- 28 (6) The Commission may do any of the following —
- 29 (a) consult any person or body the Commission
30 considers it appropriate to consult;

- 1 (b) advertise the development application and
2 invite submissions from members of the public
3 or any class or group of members of the public;
4 (c) do anything else that the Commission considers
5 appropriate for obtaining a document,
6 information, an opinion or any other
7 contribution from any person or body.
- 8 (7) If the Commission does anything referred to in
9 subsection (6)(a), (b) or (c), the Commission must, as it
10 considers appropriate, set a limit on the time within
11 which, as the case requires —
- 12 (a) a person or body who is being consulted by the
13 Commission may respond to the Commission
14 on any matter; or
15 (b) members of the public may make submissions;
16 or
17 (c) a person or body may provide any document,
18 information, opinion or other contribution.

19 **277. Effect of Commission determination under s. 274**

- 20 (1) This section applies if the Commission determines a
21 development application under section 274.
- 22 (2) The Commission’s determination has effect, and is
23 valid, for all purposes as if it had been made by a
24 normal decision-maker under an applicable legal
25 instrument.
- 26 Example for this subsection:
- 27 1. If the development application would, apart from this Part,
28 have been determined by a local government for the
29 purposes of a local planning scheme, the Commission’s
30 determination has the same effect for the purposes of the
31 local planning scheme as if the determination had been
32 made by the local government.

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- 1 2. Accordingly, if the determination is to grant approval for
2 development —
- 3 (a) the development may be commenced and carried
4 out as if the approval had been granted by the local
5 government; and
- 6 (b) any conditions imposed by the Commission on the
7 approval must be complied with as if they were
8 conditions imposed on the approval by the local
9 government; and
- 10 (c) section 218(c) applies in relation to a failure to
11 comply with any of those conditions.
- 12 (3) Subsection (2) applies even if the Commission’s
13 determination could not have been made by a normal
14 decision-maker under an applicable legal instrument.
- 15 (4) Without limiting subsections (2) and (3), a decision, or
16 other act or omission, of a person or body is not
17 unlawful or invalid just because the Commission’s
18 determination could not have been made by a normal
19 decision-maker under an applicable legal instrument.
- 20 (5) Subsections (2) to (4) are subject to sections 278
21 and 279 and Divisions 3 and 4.
- 22 (6) Subject to Division 3, if the Commission’s
23 determination is to grant approval for development, the
24 determination does not affect the operation of any legal
25 instrument that requires the obtaining, in relation to the
26 development, of any other type of approval, consent,
27 licence, permit, registration or other authority (however
28 described).
- 29 Examples for this subsection:
- 30 1. A consent under the *Aboriginal Heritage Act 1972*
31 section 18.
- 32 2. A building permit or demolition permit under the *Building*
33 *Act 2011*.
- 34 3. A clearing permit under the *Environmental Protection*
35 *Act 1986* Part V Division 2.
- 36 4. A licence under the *Liquor Control Act 1988*.

- 1 (7) If the Commission’s determination is to grant approval
2 for development, references in subsections (2) to (6) to
3 the Commission’s determination are to the
4 determination as amended from time to time under
5 section 279 or by an order under section 284.

6 **278. Substantial commencement of development**
7 **approved by Commission under s. 274**

- 8 (1) This section applies if the Commission grants approval
9 for development under section 274.
- 10 (2) The development must be substantially commenced —
11 (a) within the period specified in the approval for
12 the purposes of this subsection; or
13 (b) if no period is specified in the approval —
14 within the period of 48 months beginning on
15 the day on which the approval is granted.
- 16 (3) The approval lapses if the development is not
17 substantially commenced within the period referred to
18 in subsection (2).

19 **279. Amendment or cancellation of approval granted by**
20 **Commission under s. 274**

- 21 (1) This section applies if the Commission grants approval
22 for development under section 274 in respect of any
23 land.
- 24 (2) An owner of the land, or a person who is of a class or
25 kind prescribed by Part 17 regulations for the purposes
26 of this subsection, may apply to the Commission for
27 the Commission —
28 (a) to amend or remove any of the conditions
29 imposed on the approval; or
30 (b) to amend any part or aspect of the approved
31 development; or

s. 4

- 1 (c) to amend the approval in any other way; or
2 (d) to cancel the approval.
- 3 (3) An amendment of the kind referred to in
4 subsection (2)(b) —
- 5 (a) cannot substantially change the approved
6 development; and
- 7 (b) in the case of approval granted on a
8 development application made under
9 section 271 — cannot result in the approved
10 development no longer being significant
11 development.
- 12 (4) The Commission cannot do anything under this section
13 that would have the effect of extending the period
14 within which the development must be substantially
15 commenced in accordance with section 278(2).
- 16 (5) The Commission must consider an application made
17 under subsection (2) and determine it by —
- 18 (a) granting it (with or without conditions); or
19 (b) refusing it.
- 20 (6) Sections 273(1), 274(3) and (5) to (7), 275 and 276
21 apply with any necessary modifications to an
22 application made under subsection (2) as they apply to
23 a development application made under section 271.
- 24 (7) Subject to Division 4, no person or body, apart from
25 the Commission acting under this section, can do any
26 of the following in relation to the approval referred to
27 in subsection (1) —
- 28 (a) amend or remove any of the conditions
29 imposed on the approval;
- 30 (b) impose new conditions on the approval;
- 31 (c) amend any part or aspect of the approved
32 development;

- 1 (d) amend the approval in any other way;
2 (e) cancel the approval.
- 3 (8) In subsections (2) and (7), references to the conditions
4 imposed on the approval, the approved development or
5 the approval are to the conditions, development or
6 approval as amended from time to time under this
7 section or by an order under section 284.

8 **Division 3 — Avoiding conflicts with approvals granted**
9 **by Commission under section 274**

10 **280. General provisions for Division**

- 11 (1) For the purposes of this Division, the performance of a
12 function *conflicts* with an approval for development
13 granted by the Commission under section 274 if the
14 performance of the function, or the way in which the
15 function is performed —
- 16 (a) prevents the approved development from
17 proceeding in accordance with the approval; or
- 18 (b) prevents a condition imposed by the
19 Commission on the approval from being
20 complied with; or
- 21 (c) otherwise substantially undermines, or
22 substantially conflicts with, the approval.

23 Examples for this subsection:

- 24 1. An authority refuses to grant a permit under another Act
25 that is necessary for the approved development to proceed
26 in accordance with the Commission's approval.
- 27 2. An authority grants a permit under another Act that is
28 necessary for the approved development to proceed in
29 accordance with the Commission's approval but the permit
30 is granted subject to conditions that prevent the approved
31 development from proceeding in accordance with the
32 Commission's approval.

s. 4

- 1 (2) In this Division, references to performing a function
2 include references to the following —
- 3 (a) refusing or failing to perform a function or
4 otherwise not performing a function;
- 5 (b) being taken to perform a function;
- 6 (c) being taken to refuse or fail to perform a
7 function or otherwise not to perform a function.
- 8 (3) A notification or application to the Minister under
9 section 281 or 282 must be made in the manner and
10 form required by the Minister and, without limitation,
11 include any documents or information required by the
12 Minister.
- 13 (4) The Minister can give a direction under section 281
14 or 282 only with the agreement of the Premier.
- 15 (5) The performance of a function by a person or body (the
16 *decision-maker*) in compliance with a direction given
17 to the decision-maker under section 281 or 282 has
18 effect, and is valid, for all purposes.
- 19 (6) Subsection (5) applies even if, apart from this Division,
20 the decision-maker could not have performed the
21 function as required by the direction.
- 22 (7) Without limiting subsections (5) and (6), a decision, or
23 other act or omission, of a person or body is not
24 unlawful or invalid just because the decision-maker
25 could not, apart from this Division, have performed the
26 function as required by the direction.
- 27 (8) This Division does not apply to the performance, or
28 proposed performance, of a function under section 279
29 or Division 4.

- 1 **281. Decision-maker proposing to perform function in**
2 **conflict with approval**
- 3 (1) This section applies if —
- 4 (a) the Commission grants approval for
5 development under section 274; and
- 6 (b) a person or body (the *decision-maker*) proposes
7 to perform a function under a legal instrument;
8 and
- 9 (c) the performance of the function as proposed
10 would conflict with the approval.
- 11 (2) The decision-maker must not perform the function as
12 proposed unless —
- 13 (a) the decision-maker has notified the Minister of
14 the proposed performance of the function and
15 the conflict; and
- 16 (b) either —
- 17 (i) the decision-maker performs the
18 function in compliance with a direction
19 given to the decision-maker under this
20 section; or
- 21 (ii) the Minister has notified the
22 decision-maker under subsection (7).
- 23 (3) If the Minister is notified under subsection (2)(a), the
24 Minister may give a direction under this section if the
25 Minister considers —
- 26 (a) that —
- 27 (i) the approved development is significant
28 development; or
- 29 (ii) the conflict raises issues of State or
30 regional importance;
- 31 and
- 32 (b) that it is appropriate to resolve the conflict.

s. 4

- 1 (4) A direction under this section is a direction to the
2 decision-maker to do 1 or more of the following for the
3 purpose of resolving the conflict —
- 4 (a) not perform the function as proposed;
- 5 (b) perform the function in accordance with the
6 direction;
- 7 (c) reconsider the performance of the function in
8 accordance with the direction and give effect to
9 the outcome of the reconsideration;
- 10 (d) take any steps specified in the direction for
11 giving effect to the direction.
- 12 (5) The direction may specify a period within which
13 anything required to be done under the direction must
14 be done.
- 15 (6) The decision-maker must comply with the direction —
- 16 (a) even if that involves doing something, or
17 omitting to do something, that, apart from this
18 subsection, the decision-maker could not do, or
19 could not omit to do, under any legal
20 instrument; and
- 21 (b) without limiting paragraph (a), despite any time
22 limit that would, apart from this subsection,
23 apply under any legal instrument in relation to
24 anything to which the direction relates.
- 25 (7) If the Minister decides not to give a direction under this
26 section, the Minister must notify the decision-maker of
27 the Minister's decision.

- 1 **282. Owner of land or other prescribed person may**
2 **apply for direction if performance of function**
3 **conflicts with approval**
- 4 (1) This section applies if —
- 5 (a) the Commission grants approval for
6 development under section 274; and
- 7 (b) a person or body (the *decision-maker*)
8 performs a function under a legal instrument;
9 and
- 10 (c) the performance of the function has not been
11 the subject of a notification or direction under
12 section 281; and
- 13 (d) the performance of the function conflicts with
14 the approval.
- 15 (2) An owner of land in respect of which the approval is
16 granted, or a person who is of a class or kind
17 prescribed by Part 17 regulations for the purposes of
18 this subsection, may apply to the Minister for a
19 direction under this section to resolve the conflict.
- 20 (3) If an application is made under subsection (2), the
21 Minister may give a direction under this section if the
22 Minister considers —
- 23 (a) that —
- 24 (i) the approved development is significant
25 development; or
- 26 (ii) the conflict raises issues of State or
27 regional importance;
- 28 and
- 29 (b) that it is appropriate to resolve the conflict.

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- 1 (4) A direction under this section is a direction to the
2 decision-maker to do 1 or more of the following for the
3 purpose of resolving the conflict —
4 (a) cancel the performance of the function;
5 (b) perform the function again but in accordance
6 with the direction;
7 (c) reconsider the performance of the function in
8 accordance with the direction and give effect to
9 the outcome of the reconsideration;
10 (d) take any steps specified in the direction for
11 giving effect to the direction.
- 12 (5) The direction may specify a period within which
13 anything required to be done under the direction must
14 be done.
- 15 (6) The decision-maker must comply with the direction —
16 (a) even if that involves doing something, or
17 omitting to do something, that, apart from this
18 subsection, the decision-maker could not do, or
19 could not omit to do, under any legal
20 instrument; and
21 (b) without limiting paragraph (a), despite any time
22 limit that would, apart from this subsection,
23 apply under any legal instrument in relation to
24 anything to which the direction relates.

25 **Division 4 — Oversight of Commission**

26 **283. State Administrative Tribunal**

- 27 (1) This section applies if the Commission determines a
28 development application under section 274 or an
29 application under section 279.

- 1 (2) The applicant may apply to the State Administrative
2 Tribunal (the *Tribunal*) for a review of the
3 Commission’s decision to make the determination.
- 4 (3) For the purposes of the Tribunal’s jurisdiction under
5 this section, the member, or at least 1 of the members,
6 who constitute the Tribunal must be a judicial member
7 (as defined in the *State Administrative Tribunal*
8 *Act 2004* section 3(1)).
- 9 (4) For a review under this section, the Commission is the
10 decision-maker for the purposes of the *State*
11 *Administrative Tribunal Act 2004*.
- 12 (5) In conducting a review under this section, the Tribunal
13 must give the Minister a reasonable opportunity to
14 make submissions to the Tribunal on any matter
15 relating to the review.
- 16 (6) Sections 242 and 243 apply to a review under this
17 section as they apply to a review in accordance with
18 Part 14.
- 19 (7) Except as set out in this section, the Tribunal has no
20 jurisdiction in relation to anything done under this Part
21 or any Part 17 regulations, including (without
22 limitation) anything done in compliance with a
23 direction under section 281 or 282.

24 **284. Governor may amend or cancel approval granted**
25 **by Commission under s. 274**

- 26 (1) This section applies if the Commission grants approval
27 for development under section 274.
- 28 (2) The Governor may, by order, do any of the
29 following —
- 30 (a) amend or remove any of the conditions
31 imposed on the approval;

s. 4

- 1 (b) impose new conditions on the approval;
2 (c) amend any part or aspect of the approved
3 development;
4 (d) amend the approval in any other way;
5 (e) cancel the approval.
- 6 (3) An amendment of the kind referred to in
7 subsection (2)(c) —
8 (a) cannot substantially change the approved
9 development; and
10 (b) in the case of approval granted on a
11 development application made under
12 section 271 — cannot result in the approved
13 development no longer being significant
14 development.
- 15 (4) In subsection (2), references to the conditions imposed
16 on the approval, the approved development or the
17 approval are to the conditions, development or
18 approval as amended from time to time under
19 section 279 or by an order under this section.
- 20 (5) An order under this section may include directions for
21 giving effect to the order.
- 22 (6) The Commission cannot do anything under section 279
23 that would override, or otherwise be inconsistent with,
24 the provisions of an order under this section.
- 25 (7) An order under this section is subsidiary legislation for
26 the purposes of the *Interpretation Act 1984*.
- 27 (8) The *Interpretation Act 1984* section 42 applies to an
28 order under this section as if it were a regulation.

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Division 5 — Final matters

285. Fees

- (1) The Minister may, by notice published in the *Gazette* —
 - (a) set fees to be charged in respect of any matter under, or relating to, this Part or any Part 17 regulations; and
 - (b) make provision for determining the persons by whom the fees are payable.
- (2) Despite section 274(3), the Commission is not required to consider or determine a development application, or to do any other thing under this Part or Part 17 regulations, unless any fee relating to the application or other thing has been paid.
- (3) Section 20 does not apply in relation to this Part.

286. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Part.
- (2) Without limiting subsection (1), Part 17 regulations may do any of the following —
 - (a) prescribe powers, duties, procedures or any other matters for the purposes of, or in relation to —
 - (i) applications, notifications, referrals or directions under this Part; or
 - (ii) the consideration or determination of applications or notifications under this Part;

s. 4

- 1 (b) prescribe modifications to the application of
2 any legal instrument for the purpose of giving
3 effect to section 277 or Division 3.

4 **Part 18 — Extension of time for endorsement of**
5 **diagram or plan of survey due to COVID-19**
6 **pandemic**

7 **287. Term used: COVID-19 emergency start date**

8 In this Part —

9 **COVID-19 emergency start date** means
10 16 March 2020, being the day on which the state of
11 emergency declaration under the *Emergency*
12 *Management Act 2005* section 56 in relation to the
13 COVID-19 pandemic came into effect.

14 **288. Extension of time for endorsement of diagram or**
15 **plan of survey of approved subdivision**

16 (1) This section applies to —

17 (a) a plan of subdivision approved by the
18 Commission under section 143(1)(a) or (c)
19 before the COVID-19 emergency start date if,
20 immediately before that date —

21 (i) the Commission had not endorsed its
22 approval on the diagram or plan of
23 survey of the subdivision under
24 section 145(4); and

25 (ii) the approval of the plan of subdivision
26 had not ceased to have effect under
27 section 145(7);

28 or

29 (b) a plan of subdivision approved by the
30 Commission under section 143(1)(a) or (c) on
31 or after the COVID-19 emergency start date if

- 1 the application for the Commission’s approval
2 of the plan of subdivision was made before that
3 date.
- 4 (2) Despite any provision of Part 10 Division 2, the period
5 within which the person to whom the approval of the
6 plan of subdivision was given under section 143(1)(a)
7 or (c) must submit, and request approval of, a diagram
8 or plan of survey of the subdivision under
9 section 145(1) is, and is taken always to have been —
- 10 (a) in relation to a plan of subdivision creating
11 more than 5 lots — the period of 6 years
12 beginning on the day on which the Commission
13 approved the plan of subdivision; and
- 14 (b) in any other case — the period of 5 years
15 beginning on the day on which the Commission
16 approved the plan of subdivision.
- 17 (3) The Commission cannot, after the coming into
18 operation of the *Planning and Development*
19 *Amendment Act 2020* Part 12 Division 1, grant an
20 extension under section 145A in relation to the plan of
21 subdivision.
22

1 **Part 3 — Development assessment panels**

2 **5. Act amended**

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

4 **6. Section 4 amended**

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

6 *JDAP*

7 *LDAP*

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

9

10 *district DAP* has the meaning given in
11 section 171C(1)(a);

12 *special matters DAP* has the meaning given in
13 section 171C(1)(b);

14

15 (3) In section 4(1) in the definition of *Development Assessment*
16 *Panel* or *DAP* delete “JDAP or LDAP;” and insert:

17

18 district DAP or special matters DAP;

19

20 (4) In section 4(1) in the definition of *responsible authority* delete
21 “171A(2)(a),” and insert:

22

23 171A(2)(a) or (ba),

24

1 **7. Section 171A amended**

2 (1) In section 171A(1) in the definition of *prescribed development*
3 *application* paragraph (b) delete “subsection (2)(ba)(i);” and
4 insert:

5

6 subsection (2)(ba)(i).

7

8 (2) In section 171A(2):

9 (a) after paragraph (ba) insert:

10

11 (bb) making provision for determining which DAP
12 is to determine a prescribed development
13 application of a particular class or kind;

14

15 (b) in paragraph (h) delete “application.” and insert:

16

17 application;

18

19 (c) after paragraph (h) insert:

20

21 (i) providing for a DAP to give advice to —

22 (i) a local government or the Commission
23 in relation to development applications
24 to be determined by the local
25 government or Commission; or

26 (ii) the Minister in relation to development
27 applications;

28 (j) providing for the circumstances in which, and
29 the classes or kinds of development application
30 for which, advice is required or permitted to be
31 given by a DAP as referred to in paragraph (i);

s. 8

- 1 (k) providing for the procedures to be followed by,
2 and powers of, a DAP when preparing and
3 giving advice referred to in paragraph (i);
4 (l) providing for the duties and responsibilities of
5 local governments and the Commission in
6 relation to advice referred to in paragraph (i).
7

8 **8. Section 171C amended**

9 (1) Delete section 171C(1) and insert:
10

11 (1) The Minister may, by order published in the *Gazette*,
12 establish —

13 (a) a Development Assessment Panel (a *district*
14 *DAP*) for 1 or more districts specified in the
15 order; or

16 (b) a Development Assessment Panel (a *special*
17 *matters DAP*) for 1 or more special matters
18 specified in the order.

19 (1A) In subsection (1) —

20 *special matter* means —

21 (a) a project, plan or programme for development
22 that the Minister considers to be of State or
23 regional importance; or

24 (b) an area, or a class or kind of area, the
25 development of which the Minister considers to
26 be of State or regional importance.
27

28 (2) Delete section 171C(3) and (4) and insert:
29

30 (3) A district DAP cannot be established for a district for
31 which another district DAP is established.
32

1 (3) In section 171C(5) delete “JDAP” and insert:

2

3 district DAP

4

5 (4) Delete section 171C(7).

6 **9. Section 171G inserted**

7 At the end of Part 11A insert:

8

9 **171G. Regulations about transitional matters**

10 The Governor may make regulations making provision
11 for any transitional issues arising because of the repeal
12 or amendment of any regulations made under this Part
13 or the revocation or amendment of an order made
14 under section 171C.

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Part 4 — Public works

10. Act amended

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

11. Section 4 amended

In section 4(1) delete the definition of *public work* and insert:

public work includes the following —

- (a) any public work as defined in the *Public Works Act 1902*;
- (b) development in any area to which a region planning scheme applies if the development is of a class or kind designated as public work under the scheme;
- (c) development in any area to which a local planning scheme applies if the development is of a class or kind designated as public work under the scheme;

12. Section 6 amended

(1) In section 6(1):

- (a) delete “section 5(2) and (3) and subsections (2) and (3) of this section,” and insert:

subsections (2) to (4),
- (b) delete “the Government of the State,” and insert:

a public authority,

- 1 (2) In section 6(2):
2 (a) after “having” insert:
3
4 due
5
6 (b) in paragraph (b) delete “time.” and insert:
7
8 time; and
9
10 (c) after paragraph (b) insert:
11
12 (c) any advice provided by the responsible
13 authority in the course of the consultation
14 required under subsection (3) in respect of the
15 exercise of the right.
16
- 17 (3) Delete section 6(3) and insert:
18
- 19 (3) At the time when a proposal for any public work, or for
20 the taking of land for a public work, is being
21 formulated, the responsible authority is to be consulted
22 as to whether the undertaking, construction or
23 provision of, or the taking of land for, the public work
24 will be consistent with the matters referred to in
25 subsection (2)(a) and (b).
- 26 (4) This section does not affect —
27 (a) the application of section 5(2) and (3); or
28 (b) the application of a region planning scheme or
29 an improvement scheme in relation to anything
30 done, or proposed to be done, by a public
31 authority that is not an agency of the Crown.
32

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1 Note: The heading to amended section 6 is to read:

2 **Act does not interfere with public works**

3 **13. Schedule 7 amended**

4 After Schedule 7 clause 5(4) insert:

5

6 (5) The designation of classes or kinds of development as
7 public work.

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Part 5 — Acquisition of land

14. Act amended

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

15. Section 190 amended

(1) In section 190 delete “The” and insert:

(1) The

(2) At the end of section 190 insert:

(2) If the land to be purchased under subsection (1) (the *relevant land*) forms only part of a lot, the responsible authority may also purchase under subsection (1) the rest of the lot, or any part of the rest of the lot, for purposes related to the purchase of the relevant land.

(3) Subsection (2) applies whether or not the rest of the lot, or the part of the rest of the lot, is comprised in the planning scheme and whether or not its purchase is for the purpose of the scheme.

Note: The heading to amended section 190 is to read:

Responsible authority may purchase land for planning scheme

16. Section 191 amended

(1) In section 191(1) delete “of the responsible authority.” and insert:

of the responsible authority, as if the land were required for a public work (as defined in section 151(1) of that Act).

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1 (2) After section 191(1) insert:

2

3 (1A) If the land to be taken under subsection (1) (the
4 ***relevant land***) forms only part of a lot, the responsible
5 authority may also take under subsection (1) the rest of
6 the lot, or any part of the rest of the lot, for purposes
7 related to the taking of the relevant land.

8 (1B) Subsection (1A) applies whether or not the rest of the
9 lot, or the part of the rest of the lot, is comprised in the
10 planning scheme and whether or not the taking of the
11 rest of the lot, or the part of the rest of the lot, is for the
12 purpose of the scheme.

13

14 Note: The heading to amended section 191 is to read:

15 **Compulsory acquisition of land in scheme area**

16 **17. Section 195 amended**

17 (1) In section 195(2) delete “1997, as modified by this section.” and
18 insert:

19

20 *1997* as if the land were required for a public work (as defined
21 in section 151(1) of that Act), subject to subsection (3).

22

23 (2) Delete section 195(3) and insert:

24

25 (3) Sections 191(3) and 192 apply with any necessary
26 modifications to the taking of land under subsection (2)
27 as they apply to the taking of land under section 191.

28 (3A) For the purposes of subsection (3), in section 192(1)(a),
29 the reference to the relevant planning scheme is to be
30 read as a reference to the improvement plan.

31

1 Note: The heading to amended section 195 is to read:

2 **Commission's powers to acquire land in improvement plan**

3 **18. Section 196 amended**

4 After section 196(3) insert:

5

6 (4) In relation to a part of a lot purchased or taken by the
 7 Commission in accordance with section 190(2)
 8 or 191(1A), in subsection (1), the reference to the
 9 purposes of the relevant region planning scheme is a
 10 reference to the purposes for which the part of the lot
 11 was purchased or taken.
 12

13 **19. Section 197A inserted**

14 At the end of Part 11 Division 4 insert:

15

16 **197A. Planning control areas**

- 17 (1) In section 187(1), the reference to the provisions of
 18 section 174(1) includes those provisions as applied by
 19 section 186(2).
- 20 (2) The Commission may purchase any of the following
 21 land —
- 22 (a) land within a proposed planning control area;
 - 23 (b) land that would be brought within a planning
 24 control area as a result of a proposed change to
 25 the area;
 - 26 (c) land within a planning control area.
- 27 (3) The Commission may compulsorily take any land
 28 within a planning control area under and subject to the
 29 *Land Administration Act 1997* Part 9 as if the land
 30 were required for a public work (as defined in
 31 section 151(1) of that Act).

s. 19

- 1 (4) Sections 191(3) and 192 apply with any necessary
2 modifications to the taking of land under subsection (3)
3 as they apply to the taking of land under section 191.
- 4 (5) For the purposes of subsection (4), in section 192(1)(a),
5 the reference to the relevant planning scheme is to be
6 read as a reference to the declaration of the planning
7 control area under section 112.
- 8 (6) The Commission —
- 9 (a) must hold any land acquired by the
10 Commission under this section for the purpose,
11 or for any 1 or more of the purposes, for which
12 the land is required as referred to in
13 section 112(1); and
- 14 (b) may dispose of or alienate the land —
- 15 (i) for that purpose or 1 or more of those
16 purposes; or
- 17 (ii) if the land is no longer required for that
18 purpose or any of those purposes.
- 19 (7) Land acquired under subsection (3) can be disposed of
20 or alienated under subsection (6)(b)(ii) only with the
21 Governor’s consent.
- 22 (8) Section 196(3) applies to the power to dispose of or
23 alienate land conferred by subsection (6)(b) as it
24 applies to a power conferred by section 196.
- 25 (9) In section 197, references to the purposes of a region
26 planning scheme include the purposes, or any 1 or
27 more of the purposes, for which land within a planning
28 control area is required as referred to in section 112(1).
29

1 **Part 6 — Matters relating to preparation and approval**
2 **of planning schemes**

3 **Division 1 — *Planning and Development Act 2005* amended**

4 **20. Act amended**

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

6 **21. Section 17 amended**

7 In section 17(7):

- 8 (a) delete “43(5)(b),”;
- 9 (b) after “52(2),” insert:

10
11 62A(1),
12

13 **22. Part 4 Division 2 heading replaced**

14 Delete the heading to Part 4 Division 2 and insert:
15

16 **Division 2 — Relevant considerations in preparation or**
17 **amendment of region planning scheme or amendment**
18 **and requirement to advertise**
19

20 **23. Section 38 replaced**

21 Delete section 38 and insert:
22

23 **38. Referral of proposed scheme or amendment to EPA**

- 24 (1) As soon as practicable after preparing a proposed
25 region planning scheme or a proposed amendment to a
26 region planning scheme, the Commission must refer

Planning and Development Amendment Bill 2020

Part 6 Matters relating to preparation and approval of planning schemes

Division 1 Planning and Development Act 2005 amended

s. 24

- 1 the proposed scheme or amendment to the EPA by
2 giving to the EPA —
- 3 (a) a copy of the proposed scheme or amendment;
4 and
- 5 (b) any other written information about the
6 proposed scheme or amendment that is
7 necessary to enable the EPA to comply with the
8 EP Act section 48A in relation to the proposed
9 scheme or amendment.
- 10 (2) Subsection (1) applies to a proposed amendment to a
11 region planning scheme whether or not the amendment
12 constitutes a substantial alteration to the scheme.
- 13 (3) Despite subsections (1) and (2), a proposed region
14 planning scheme or amendment to a region planning
15 scheme of a class prescribed by regulations under the
16 EP Act section 48AAA(2) is not required to be referred
17 to the EPA.
18

19 **24. Section 39 amended**

- 20 (1) In section 39(2) delete “amendment to a region planning
21 scheme,” and insert:
22
- 23 amendment to a region planning scheme referred to the EPA
24 under section 38,
25

1 (2) In section 39(3) delete “submit a scheme or an amendment
2 referred to in subsection (2) to the Minister under section 42 for
3 consent to public submissions being sought, or act in relation to
4 that scheme under section 58, as the case requires,” and insert:

5

6 advertise the proposed region planning scheme or amendment
7 under section 43

8

9 Note: The heading to amended section 39 is to read:

10 **Environmental review of proposed scheme or amendment**

11 **25. Section 40 amended**

12 In section 40(1) delete “submitting to the Minister under
13 section 42” and insert:

14

15 advertising under section 43

16

17 Note: The heading to amended section 40 is to read:

18 **Consultation with Swan Valley Planning Committee before**
19 **advertisement of proposed scheme or amendment**

20 **26. Part 4 Division 3 heading deleted**

21 Delete the heading to Part 4 Division 3.

22 **27. Sections 41 to 44 replaced**

23 Delete sections 41 to 44 and insert:

24

25 **43. Advertising proposed scheme or amendment**

26 After preparing a proposed region planning scheme or
27 a proposed amendment to a region planning scheme,
28 and complying with sections 38 and 39 (if applicable)
29 in relation to the proposed scheme or amendment, the

Planning and Development Amendment Bill 2020

Part 6 Matters relating to preparation and approval of planning schemes

Division 1 Planning and Development Act 2005 amended

s. 28

- 1 Commission must, in accordance with the
2 regulations —
- 3 (a) advertise the proposed scheme or amendment
4 for public inspection; and
- 5 (b) consider public submissions made on the
6 proposed scheme or amendment.
7

8 **28. Section 45 amended**

9 In section 45(2):

- 10 (a) delete “the proposed scheme or proposed amendment
11 should” and insert:
12
13 a proposed scheme or proposed amendment referred to
14 the EPA under section 38 should
15
- 16 (b) delete paragraph (a) and insert:
17
- 18 (a) as soon as practicable, but in any event within
19 7 days after the expiry of the period during
20 which the proposed scheme or proposed
21 amendment is advertised under section 43,
22 transmit to the EPA a copy of each
23 submission —
- 24 (i) made during that period; and
25 (ii) relating wholly or in part to
26 environmental issues raised by the
27 proposed scheme or proposed
28 amendment;
- 29 and
30

1 (c) in paragraph (b) delete “section 44(1),” and insert:
2
3 paragraph (a),
4

5 **29. Section 46 deleted**

6 Delete section 46.

7 **30. Section 47 amended**

8 Before section 47(1) insert:
9

10 (1A) This section does not apply to an amendment of a
11 region planning scheme to be submitted and approved
12 under Division 4.
13

14 Note: The heading to amended section 47 is to read:

15 **Consultation with Swan Valley Planning Committee after public**
16 **submissions**

17 **31. Part 4 Division 3 heading inserted**

18 After section 47 insert:
19

20 **Division 3 — Submission and approval of region**
21 **planning schemes or amendments other than minor**
22 **amendments**
23

Planning and Development Amendment Bill 2020

Part 6 Matters relating to preparation and approval of planning schemes

Division 1 Planning and Development Act 2005 amended

s. 32

1 **32. Section 47A inserted**

2 Before section 48 insert:

3

4 **47A. Region planning scheme or non-minor amendment**
5 **to be submitted and approved under this Division**

6 A proposed region planning scheme, or a proposed
7 amendment to a region planning scheme (other than a
8 proposed amendment to be submitted and approved
9 under Division 4), must be submitted and approved in
10 accordance with this Division.
11

12 **33. Sections 48 and 49 replaced**

13 Delete sections 48 and 49 and insert:

14

15 **48. Proposed scheme or amendment and public**
16 **submissions to be submitted to Minister**

17 After complying with the applicable requirements of
18 Division 2 in relation to a proposed region planning
19 scheme or a proposed amendment to a region planning
20 scheme, the Commission, unless the proposed scheme
21 or amendment has been withdrawn under section 62A,
22 is to submit to the Minister —

- 23 (a) the proposed scheme or amendment, with the
24 modifications, if any, the Commission thinks fit
25 to make, including as a result of public
26 submissions made under regulations made for
27 the purposes of section 43; and
28 (b) a copy of each of those submissions; and
29 (c) a report by the Commission on those
30 submissions.
31

1 **34. Section 51 amended**

2 In section 51(1) delete “deposit” and insert:

3

4 advertise

5

6 **35. Section 52 amended**

7 (1) In section 52(2) delete “sections 46 and 48.” and insert:

8

9 the regulations.

10

11 (2) Delete section 52(3).

12 **36. Section 53 amended**

13 In section 53(1) delete “49 or 52(3),” and insert:

14

15 62A,

16

17 **37. Part 4 Division 4 heading replaced**

18 Delete the heading to Part 4 Division 4 and insert:

19

20 **Division 4 — Submission and approval of minor**
21 **amendments to region planning schemes**

22

Planning and Development Amendment Bill 2020

Part 6 Matters relating to preparation and approval of planning schemes

Division 1 Planning and Development Act 2005 amended

s. 38

1 **38. Section 56A inserted**

2 At the beginning of Part 4 Division 4 insert:

3

4 **56A. Term used: minor region planning scheme**
5 **amendment**

6 In this Division —

7 *minor region planning scheme amendment* means an
8 amendment to a region planning scheme that does not,
9 in the opinion of the Commission, constitute a
10 substantial alteration to the region planning scheme.

11

12 **39. Section 57 amended**

13 In section 57(1) delete “If a proposed amendment does not, in
14 the opinion of the Commission, constitute a substantial
15 alteration to a region planning scheme, that amendment —” and
16 insert:

17

18 A proposed minor region planning scheme amendment —

19

20 Note: The heading to amended section 57 is to read:

21 **Proposed minor amendment may be submitted and approved**
22 **under this Division**

23 **40. Sections 58 to 60 deleted**

24 Delete sections 58 to 60.

1 **41. Section 61 amended**

2 In section 61 delete “proposed amendment to a region planning
3 scheme referred to the EPA under section 60” and insert:

4
5 proposed minor region planning scheme amendment referred to
6 the EPA under section 38
7

8 **42. Section 62 amended**

9 (1) Delete section 62(1) and insert:
10

11 (1A) After complying with the applicable requirements of
12 Division 2 in relation to a proposed minor region
13 planning scheme amendment, the Commission must,
14 unless the proposed amendment has been withdrawn
15 under section 62A, submit to the Minister —

- 16 (a) the proposed amendment; and
17 (b) a report and recommendation on the proposed
18 amendment.

19 (1) The Minister may, if a proposed minor region planning
20 scheme amendment is submitted under this section —

- 21 (a) approve the amendment; or
22 (b) require the Commission to modify the
23 amendment in such manner as the Minister
24 specifies before the amendment is resubmitted
25 for the Minister’s approval under this
26 subsection; or
27 (c) refuse to approve the amendment.
28

Planning and Development Amendment Bill 2020

Part 6 Matters relating to preparation and approval of planning schemes

Division 1 Planning and Development Act 2005 amended

s. 43

1 (2) In section 62(2)(a) delete “that amendment or that amendment
2 as modified under subsection (1), as the case requires,” and
3 insert:

4
5 that amendment,

6
7 (3) In section 62(3) delete “or the amendment as modified under
8 subsection (1), as the case requires,”.

9 **43. Part 4 Division 4A inserted**

10 After Part 4 Division 4 insert:

11

12 **Division 4A — Withdrawal of region planning scheme**
13 **or amendment**

14 **62A. Minister may withdraw or direct withdrawal of**
15 **proposed scheme or amendment**

16 (1) The Minister may, if the Minister considers it
17 appropriate, withdraw, or direct the Commission to
18 withdraw, a proposed region planning scheme or
19 proposed amendment to a region planning scheme at
20 any time before the proposed scheme or amendment is
21 presented to the Governor under section 53(1) or
22 submitted to the Minister under section 62.

23 (2) The Minister must cause notice of the withdrawal of a
24 proposed region planning scheme or amendment under
25 subsection (1) to be published in the *Gazette*.

26

- 1 **44. Section 76 amended**
- 2 (1) Delete section 76(1) and insert:
- 3
- 4 (1A) Subsection (1) applies if the Minister is satisfied on any
5 representation that a local government —
- 6 (a) has failed to prepare a local planning scheme,
7 or an amendment to a local planning scheme,
8 where one ought to be prepared; or
- 9 (b) has failed to adopt a local planning scheme, or
10 an amendment to a local planning scheme,
11 where one ought to be adopted; or
- 12 (c) has failed to take a requisite step for getting
13 approval for a local planning scheme, or an
14 amendment to a local planning scheme, that has
15 been prepared or adopted by the local
16 government where that step ought to be taken;
17 or
- 18 (d) without limiting paragraph (c), has failed to
19 give effect to any decision of the Minister
20 under section 87(2)(b).
- 21 (1) The Minister may order the local government, within
22 such time as is specified in the order, as the case
23 requires —
- 24 (a) to prepare and submit to the Minister a local
25 planning scheme or an amendment to a local
26 planning scheme; or
- 27 (b) to adopt and submit to the Minister a local
28 planning scheme or an amendment to a local
29 planning scheme; or
- 30 (c) to take the requisite step referred to in
31 subsection (1A)(c); or

Planning and Development Amendment Bill 2020

Part 6 Matters relating to preparation and approval of planning schemes

Division 1 Planning and Development Act 2005 amended

s. 45

1 (d) to give effect to the decision referred to in
2 subsection (1A)(d).
3

4 (2) In section 76(2) delete “(1)” and insert:
5

6 (1A)
7

8 **45. Section 81 replaced**

9 Delete section 81 and insert:
10

11 **81. Referral of proposed scheme or amendment to EPA**

12 (1) As soon as practicable after preparing, or resolving to
13 adopt, a proposed local planning scheme or a proposed
14 amendment to a local planning scheme, a local
15 government must refer the proposed scheme or
16 amendment to the EPA by giving to the EPA —

17 (a) a copy of the proposed scheme or amendment;
18 and

19 (b) any other written information about the
20 proposed scheme or amendment that is
21 necessary to enable the EPA to comply with the
22 EP Act section 48A in relation to the proposed
23 scheme or amendment.

24 (2) Despite subsection (1), a proposed local planning
25 scheme or amendment to a local planning scheme of a
26 class prescribed by regulations under the EP Act
27 section 48AAA(2) is not required to be referred to the
28 EPA.
29

1 **46. Section 82 amended**

2 In section 82(1) delete “amendment to a local planning
3 scheme,” and insert:

4
5 amendment to a local planning scheme referred to the EPA
6 under section 81,
7

8 **47. Section 84 replaced**

9 Delete section 84 and insert:
10

11 **83A. Proposed scheme or amendment to be submitted to**
12 **Minister for approval to advertise**

13 (1) After preparing, or resolving to adopt, a proposed local
14 planning scheme or a proposed amendment to a local
15 planning scheme, and complying with sections 81 and
16 82 (if applicable) in relation to the proposed scheme or
17 amendment, a local government must submit the
18 proposed scheme or amendment to the Minister.

19 (2) The Minister may —

20 (a) approve the proposed scheme or amendment
21 for advertising under section 84; or

22 (b) require the local government to modify the
23 proposed scheme or amendment in such
24 manner as the Minister specifies and to
25 resubmit the proposed scheme or amendment to
26 the Minister under subsection (1); or

27 (c) refuse approval for the proposed scheme or
28 amendment to be advertised under section 84.

29 (3) A requirement under subsection (2)(b) may include a
30 requirement that sections 81 and 82 (if applicable) be

Planning and Development Amendment Bill 2020

Part 6 Matters relating to preparation and approval of planning schemes

Division 1 Planning and Development Act 2005 amended

s. 48

1 complied with again in relation to the modified scheme
2 or amendment.

3 (4) If approval is refused under subsection (2)(c), the local
4 government cannot proceed with the proposed scheme
5 or amendment.

6 **84. Advertising proposed scheme or amendment**

7 If under section 83A(2)(a) the Minister approves a
8 proposed local planning scheme, or a proposed
9 amendment to a local planning scheme, for advertising
10 under this section, the local government must, in
11 accordance with the regulations —

- 12 (a) advertise the proposed scheme or amendment
13 for public inspection; and
14 (b) consider public submissions on the proposed
15 scheme or amendment.
16

17 **48. Section 85 amended**

18 In section 85(1) before “should” insert:

19

20 referred to the EPA under section 81
21

22 **49. Section 87 amended**

23 In section 87(1) delete “sections 85 and 86,” and insert:

24

25 sections 85 and 86 (if applicable),
26

1 **50. Section 124 amended**

2 In section 124(4) delete “scheme as set out in the statement
3 deposited under section 43(1).” and insert:

4
5 scheme.

6
7 **51. Section 125 amended**

8 In section 125(3):

9 (a) delete “notification” and insert:

10
11 advertisement

12
13 (b) delete “section 43 or 58.” and insert:

14
15 regulations made for the purposes of section 43.

16
17 **52. Section 258A inserted**

18 After section 258 insert:

19
20 **258A. Regulations as to procedure and costs for region**
21 **planning schemes**

22 (1) The Governor may make regulations for regulating the
23 procedure to be observed —

24 (a) with respect to the preparation of a region
25 planning scheme; and

26 (b) with respect to obtaining the approval of the
27 Governor to a region planning scheme so
28 prepared; and

Planning and Development Amendment Bill 2020

Part 6 Matters relating to preparation and approval of planning schemes

Division 2 Environmental Protection Act 1986 amended

s. 53

- 1 (c) with respect to the review, amendment or
2 repeal of a region planning scheme; and
- 3 (d) with respect to any inquiries, reports, notices,
4 or other matters required in connection with the
5 preparation or approval of a region planning
6 scheme, or preliminary to the preparation or
7 approval of the scheme.
- 8 (2) Section 258(2) and (3) apply to regulations made under
9 subsection (1) as if a region planning scheme were a
10 local planning scheme.
11

12 **53. Section 263 amended**

13 In section 263(2)(eb) after “enforcement of” insert:

14
15 region planning schemes or
16

17 **Division 2 — Environmental Protection Act 1986 amended**

18 **54. Act amended**

19 This Division amends the *Environmental Protection Act 1986*.

20 **55. Section 3 amended**

21 (1) In section 3(1) in the definition of *assessed scheme* before
22 paragraph (b)(i) insert:

- 23
24 (ia) of a class prescribed by regulations
25 made under section 48AAA(2); or
26

1 (2) In section 3(1) in the definition of *period of public review*
2 paragraph (c) delete “period referred to in section 44(1) or
3 58(1)(b), as the case requires, of the *Planning and Development*
4 *Act 2005*; or” and insert:

5
6 period of advertisement for public inspection prescribed for the
7 purposes of the *Planning and Development Act 2005* section 43;
8 or
9

10 **56. Section 48AAA inserted**

11 At the beginning of Part IV Division 3 insert:

12
13 **48AAA. Certain schemes not required to be assessed**

- 14 (1) In this section —
15 *relevant scheme* means a scheme of a kind referred to
16 in section 3(1) the definition of *scheme* paragraph (f),
17 (g) or (i).
- 18 (2) The Governor may, on the recommendation of the
19 Authority, make regulations prescribing classes of
20 relevant schemes that are not required to be assessed
21 under this Division.
- 22 (3) The Authority must not make a recommendation under
23 subsection (2) unless the Authority is satisfied that the
24 classes of relevant schemes to be prescribed will not
25 have a significant effect on the environment.
26

Planning and Development Amendment Bill 2020

Part 6 Matters relating to preparation and approval of planning schemes

Division 2 Environmental Protection Act 1986 amended

s. 57

1 **57. Section 48C amended**

2 In section 48C(7) in the definition of *public review*
3 paragraph (c) delete “sections 43, 44, 46 and 48, or section 58,
4 as the case requires, of the *Planning and Development Act 2005*;
5 or” and insert:

6

7 the *Planning and Development Act 2005* section 43; or

8

1 **Part 7 — State planning policies and planning codes**

2 **Division 1 — *Planning and Development Act 2005* amended**

3 **58. Act amended**

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

5 **59. Section 4 amended**

6 (1) In section 4(1) insert in alphabetical order:

7

8 *planning code* means a planning code approved by the
9 Minister under regulations made under section 32B(1);

10

11 (2) In section 4(1) in the definition of *planning scheme*
12 paragraph (a)(ii) delete “State planning policy” and insert:

13

14 planning code

15

16 (3) In section 4(1) in the definition of *State planning policy* delete
17 “approved under section 29;” and insert:

18

19 approved by the Governor or Minister, as the case requires,
20 under regulations made under section 28(1);

21

22 **60. Section 14 amended**

23 After section 14(g) insert:

24

25 (ga) to prepare and amend planning codes under
26 Part 3A; and

27

1 **61. Section 17 amended**

2 In section 17(7) delete “28(4)(b), 31(1), 31(2),” and insert:

3

4 32A(1),

5

6 **62. Section 26 amended**

7 (1) In section 26(1) delete “approval” and insert:

8

9 agreement

10

11 (2) In section 26(2) delete “governments.” and insert:

12

13 governments and public authorities.

14

15 Note: The heading to amended section 26 is to read:

16 **Preparation and content of State planning policy**

17 **63. Section 27 amended**

18 In section 27:

19 (a) in paragraph (g) delete “authorities,” and insert:

20

21 authorities; and

22

23 (b) after paragraph (g) insert:

24

25 (h) risks associated with natural hazards and other
26 hazards,

27

1 **64. Sections 28 to 32 replaced**

2 Delete sections 28 to 32 and insert:

3

4 **28. Process for preparation and approval of State**
5 **planning policy**

6 (1) The Governor may make regulations prescribing any
7 matter relating to the preparation, submission,
8 approval, amendment or repeal of State planning
9 policies.

10 (2) Without limiting subsection (1), regulations under that
11 subsection may provide for the following —

12 (a) the form and content of a proposed State
13 planning policy or amendment to a State
14 planning policy (*proposed State planning*
15 *policy or amendment*);

16 (b) a proposed State planning policy or amendment
17 to be approved by —

18 (i) in the case of a proposed State planning
19 policy or amendment to which
20 subparagraph (ii) does not apply — the
21 Governor; and

22 (ii) in the case of a proposed amendment to
23 a State planning policy that the
24 Commission considers does not
25 constitute a substantial alteration — the
26 Minister;

27 (c) requirements for consultation with any person
28 or body in relation to a proposed State planning
29 policy or amendment;

30 (d) requirements for advertisement for public
31 inspection and public submissions in relation to
32 a proposed State planning policy or
33 amendment;

- 1 (e) a process by which the Minister may require
2 the Commission to make modifications to a
3 proposed State planning policy or amendment.
- 4 (3) Regulations made under subsection (1) —
- 5 (a) may provide that the Commission may refer a
6 proposed State planning policy or amendment
7 to the EPA; and
- 8 (b) must, in relation to a proposed State planning
9 policy or amendment that is referred to the
10 EPA, make provision for —
- 11 (i) matters relating to the process under the
12 EP Act Part IV; and
- 13 (ii) advertisement and submissions as
14 referred to in subsection (2)(d).

15 **29. Persons and bodies performing functions to have**
16 **due regard to State planning policies**

17 A person or body performing a function under this Act
18 must have due regard to any State planning policy to
19 the extent that the policy is relevant to the function.
20

21 **65. Part 3A inserted**

22 Before Part 4 insert:
23

24 **Part 3A — Planning codes**

25 **32A. Planning codes**

- 26 (1) The Commission may, with the agreement or on the
27 direction of the Minister, prepare planning codes that
28 make provision for any matter that may be the subject
29 of a local planning scheme.

1 (2) The purpose of a planning code is to set out, in relation
2 to any matter referred to in subsection (1), provisions
3 that may be incorporated into a local planning scheme
4 or improvement scheme.

5 **32B. Process for preparation and approval of planning**
6 **code or amendment**

7 (1) The Governor may make regulations prescribing any
8 matter relating to the preparation, submission, approval
9 by the Minister, amendment or repeal of planning
10 codes.

11 (2) Without limiting subsection (1), regulations made
12 under that subsection may provide for the following —

13 (a) matters to be taken into account in preparing a
14 proposed planning code or amendment to a
15 planning code (***proposed planning code or***
16 ***amendment***);

17 (b) the form and content of a proposed planning
18 code or amendment;

19 (c) requirements for consultation with any person
20 or body in relation to a proposed planning code
21 or amendment;

22 (d) a process by which the Minister may require
23 the Commission to make modifications to a
24 proposed planning code or amendment.

25 (3) Regulations made under subsection (1) must
26 provide —

27 (a) for requirements for advertisement for public
28 inspection and public submissions in relation to
29 a proposed planning code or amendment; and

- 1 (b) that the Commission is to refer a proposed
2 planning code or amendment (other than a
3 proposed planning code or amendment of a
4 class prescribed by regulations under the EP
5 Act section 48AAB(1)) to the EPA; and
6 (c) for matters relating to the process under the EP
7 Act Part IV in relation to a proposed planning
8 code or amendment referred to the EPA.

9 **32C. Effect of planning code**

- 10 (1) A planning code approved by the Minister under
11 regulations made under section 32B(1) is subsidiary
12 legislation for the purposes of the *Interpretation*
13 *Act 1984*.
14 (2) Despite subsection (1), a planning code has effect only
15 to the extent that it is incorporated, with or without
16 modifications —
17 (a) into a local planning scheme by a provision of
18 the scheme under section 77(1)(b); or
19 (b) into an improvement scheme by a provision of
20 the scheme under section 77(1)(b) (as that
21 section applies under section 122B(1)).
22

23 **66. Section 77 amended**

- 24 (1) In section 77(1)(b) delete “State planning policy,” and insert:
25
26 planning code,
27

- 1 (2) In section 77(2):
- 2 (a) in paragraph (a) delete “State planning policy, as from
- 3 time to time amended, or any subsequent policy” and
- 4 insert:
- 5
- 6 planning code, as from time to time amended, or any
- 7 subsequent planning code
- 8
- 9 (b) in paragraph (b) delete “State planning policy” and
- 10 insert:
- 11
- 12 planning code
- 13
- 14 (3) In section 77(3) delete “State planning policy, or subsequent
- 15 policy” and insert:
- 16

17 planning code, or subsequent code

18

19 Note: The heading to amended section 77 is to read:

20 **Effect of State planning policies and planning codes on scheme**

21 **67. Section 269 amended**

22 In section 269(1) delete the definition of ***R-codes*** and insert:

23

24 ***R-codes*** means the Residential Design Codes taken to

25 be planning codes under section 291(2), as amended, or

26 repealed and replaced, from time to time;

27

1 **Division 2 — *Environmental Protection Act 1986* amended**

2 **68. Act amended**

3 This Division amends the *Environmental Protection Act 1986*.

4 **69. Section 3 amended**

5 (1) In section 3(1) insert in alphabetical order:

6

7 *planning code* means a planning code prepared under
8 the *Planning and Development Act 2005* Part 3A;

9 *State planning policy* means a State planning policy
10 prepared under the *Planning and Development*
11 *Act 2005* Part 3;

12

13 (2) In section 3(1) in the definition of *final approval* delete
14 paragraph (e) and insert:

15

16 (e) a State planning policy, or an amendment to a
17 State planning policy, to which regulations
18 made under the *Planning and Development*
19 *Act 2005* section 28(3)(a) apply, means an
20 approval of the policy or amendment by the
21 Governor or responsible Minister under
22 regulations made under section 28(1) of that
23 Act; or

24 (ea) a planning code or an amendment to a planning
25 code, means an approval of the planning code
26 or amendment by the responsible Minister
27 under regulations made under the *Planning and*
28 *Development Act 2005* section 32B(1); or

29

- 1 (3) In section 3(1) in the definition of *period of public review* delete
2 paragraph (e) and insert:
3
- 4 (e) a State planning policy, or an amendment to a
5 State planning policy, to which regulations
6 made under the *Planning and Development*
7 *Act 2005* section 28(3)(a) apply, means the
8 period of advertisement for public inspection
9 prescribed under section 28(3)(b)(ii) of that
10 Act; or
- 11 (ea) a planning code or an amendment to a planning
12 code, means the period of advertisement for
13 public inspection prescribed under the *Planning*
14 *and Development Act 2005* section 32B(3)(a);
15 or
16
- 17 (4) In section 3(1) in the definition of *responsible authority* delete
18 paragraph (a)(viii) and insert:
19
- 20 (viii) a State planning policy, or an
21 amendment to a State planning policy,
22 to which regulations made under the
23 *Planning and Development Act 2005*
24 section 28(3)(a) apply, means the
25 Western Australian Planning
26 Commission; or
- 27 (viia) a planning code or an amendment to a
28 planning code, means the Western
29 Australian Planning Commission; or
30

Planning and Development Amendment Bill 2020

Part 7 State planning policies and planning codes

Division 2 Environmental Protection Act 1986 amended

s. 70

1 (5) In section 3(1) in the definition of *scheme* delete paragraph (h)
2 and insert:

3

4 (h) a State planning policy, or an amendment to a
5 State planning policy, to which regulations
6 made under the *Planning and Development*
7 *Act 2005* section 28(3)(a) apply; or

8 (ha) a planning code or an amendment to a planning
9 code; or

10

11 **70. Section 48AAB inserted**

12 Before section 48A (in Part IV Division 3) insert:

13

14 **48AAB. Certain planning codes not required to be assessed**

15 (1) The Governor may, on the recommendation of the
16 Authority, make regulations prescribing classes of
17 planning codes, or classes of amendments to planning
18 codes, that are not required to be assessed under this
19 Division.

20 (2) The Authority must not make a recommendation under
21 subsection (1) unless the Authority is satisfied that the
22 classes of planning codes or amendments to be
23 prescribed will not have a significant effect on the
24 environment.

25

1 **71. Section 48C amended**

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

4
5 (e) a State planning policy, or an amendment to a
6 State planning policy, to which regulations
7 made under the *Planning and Development*
8 *Act 2005* section 28(3)(a) apply, means the
9 procedure prescribed under section 28(3)(b)(ii)
10 of that Act; or

11 (ea) a planning code or an amendment to a planning
12 code, means the procedure prescribed under the
13 *Planning and Development Act 2005*
14 section 32B(3)(a); or
15

16 **72. Section 51O amended**

17 In section 51O(1) in the definition of *planning instrument*
18 paragraph (b) delete “policy approved under section 29 of the
19 *Planning and Development Act 2005* and published in the
20 *Gazette*; or” and insert:

21
22 policy approved under the *Planning and Development Act 2005*
23 Part 3; or
24

1 **Part 8 — Making of subsidiary legislation**

2 **73. Act amended**

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

4 **74. Part 15 Division 1 heading deleted**

5 Delete the heading to Part 15 Division 1.

6 **75. Section 256 amended**

7 (1) In section 256(1) delete “Minister may” and insert:

8

9 Governor may, on the recommendation of the Minister,

10

11 (2) In section 256(2) delete “regulations under” and insert:

12

13 a recommendation under

14

15 Note: The heading to amended section 256 is to read:

16

Regulations for content of local planning schemes

17 **76. Section 258 amended**

18 In section 258(1) delete “Minister may” and insert:

19

20 Governor may

21

22 Note: The heading to amended section 258 is to read:

23

Regulations for procedure and costs for local planning schemes

1 **77. Section 259 amended**

2 In section 259 delete “Minister may” and insert:

3

4 Governor may

5

6 Note: The heading to amended section 259 is to read:

7 **Regulations for environmental review expenses**

8 **78. Section 260 deleted**

9 Delete section 260.

10 **79. Part 15 Division 2 heading deleted**

11 Delete the heading to Part 15 Division 2.

12 **80. Section 263 amended**

13 (1) In section 263(2) delete “Without limiting subsection (1),
14 regulations made under that subsection” and insert:

15

16 Without limiting any other provision of this Act, regulations

17

18 (2) In section 263(4) delete “Division 1, the regulation made under
19 Division 1” and insert:

20

21 sections 256 to 259, the regulation made under sections 256 to
22 259

23

24 Note: The heading to amended section 263 is to read:

25 **Regulations: general**

26 **81. Part 15 Division 3 heading deleted**

27 Delete the heading to Part 15 Division 3.

1 **Part 9 — Signatures and approvals for Crown or State**
2 **land**

3 **82. Act amended**

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

5 **83. Section 267A amended**

6 (1) In section 267A(1) delete the passage that begins with “may be
7 given by — ” and ends with “to do so.” and insert:
8

9 must be given by or on behalf of —

- 10 (a) in relation to a managed reserve as defined in
11 the *Land Administration Act 1997*
12 section 3(1) — the management body, as
13 defined in that section, of the reserve; or
14 (b) in relation to a road — whichever of the
15 following persons has the care, control and
16 management of the road under a written law —
17 (i) the local government in whose district
18 the road is situated;
19 (ii) the Commissioner of Main Roads;
20 (iii) the Minister as defined in the *Public*
21 *Works Act 1902* section 2;
22 or
23 (c) in relation to Crown land that is vested in a
24 person or body under a written law other than
25 the *Land Administration Act 1997* — that
26 person or body; or
27 (d) in relation to Crown land that is subject to a
28 lease, other than land referred to in
29 paragraph (a), (b) or (c) — the Minister as
30 defined in the *Land Administration Act 1997*

1 section 3(1) (the *Minister for Lands*) and the
2 lessee; or
3 (e) in relation to any other Crown land or freehold
4 land in the name of the State — the Minister for
5 Lands.
6

7 (2) In section 267A(2) delete “the Minister for Lands to otherwise”
8 and insert:
9

10 a Minister referred to in subsection (1) to
11

12 Note: The heading to amended section 267A is to read:

13 **Signatures and approvals for Crown and State land**

14 **84. Section 267 amended**

15 In section 267(1)(b) delete “or 267A(1)”.

1 **Part 10 — Requirements to set aside land for open**
2 **space or make payment in lieu**

3 **85. Act amended**

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

5 **86. Section 153 replaced**

6 Delete section 153 and insert:
7

8 **153. Setting aside land for open space or payment in lieu**

- 9 (1) The Commission may under section 143(1)(c) impose
10 either of the following conditions on the approval of a
11 plan of subdivision of land —
- 12 (a) a requirement that a specified portion of the
13 land be set aside and vested in the Crown for
14 parks, recreation grounds or open spaces
15 generally;
- 16 (b) a requirement that the owner of the land make a
17 payment to the local government in whose
18 district the land is situated of a sum that
19 represents the value of a specified portion of
20 the land in lieu of a requirement to set aside and
21 vest in the Crown that portion of the land for
22 parks, recreation grounds or open spaces
23 generally.
- 24 (2) The Commission must not impose a requirement
25 referred to in subsection (1)(b) unless the local
26 government in whose district the land is situated has
27 been consulted.
- 28 (3) The Commission must not impose a requirement
29 referred to in subsection (1)(b) in respect of a plan of
30 subdivision that creates fewer than 3 lots.

- 1 (4) If the Commission has imposed a condition referred to
2 in subsection (1)(a) on an approval of a plan of
3 subdivision, the Commission may, with the agreement
4 of the local government in whose district the land is
5 situated, consent to the owner of the land making a
6 payment to the local government of a sum that
7 represents the value of a portion of the land in lieu of
8 setting aside that portion.
- 9 (5) This section does not limit any other condition that the
10 Commission may impose under section 143(1)(c).
11

12 **87. Section 154 amended**

13 In section 154(1) delete “account of the trust fund of the local
14 government established under section 6.9 of the *Local*
15 *Government Act 1995.*” and insert:

16
17 reserve account established and maintained under the *Local*
18 *Government Act 1995* section 6.11 for the purposes set out in
19 subsection (2)(a) to (d).
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Part 11 — Community infrastructure

88. Act amended

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

89. Schedule 7 amended

(1) After Schedule 7 clause 5(2) insert:

(2A) Community infrastructure, including community centres, libraries, schools and other educational facilities, child care centres (including outside school hours care services) and sporting facilities.

(2) After Schedule 7 clause 11(4) insert:

(5) The financial management of any expenses recovered as referred to in subclause (4).

Note: The heading to amended Schedule 7 clause 5 is to read:

Roads, public works, community infrastructure, reservation of land, provision of facilities

1 **Part 12 — Endorsement of diagram or plan of survey**
2 **of approved subdivision**

3 **Division 1 — *Planning and Development Act 2005* amended**

4 **90. Act amended**

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

6 **91. Section 145 amended**

7 (1) In section 145(1) delete “prescribed period —” and insert:

8

9 period that applies under section 145A —

10

11 (2) Delete section 145(2).

12 (3) Delete section 145(4) and insert:

13

14 (4) Subject to subsection (6), the Commission must
15 endorse its approval on the diagram or plan of survey if
16 the Commission is satisfied that —

17 (a) the diagram or plan of survey is in accordance
18 with the plan of subdivision approved by the
19 Commission; and

20 (b) if that approval was given subject to
21 conditions —

22 (i) the conditions (other than any
23 conditions to which subparagraph (ii)
24 applies) have been complied with; and

25 (ii) any conditions that cannot be complied
26 with until a certificate of title is created
27 or registered will be complied with at
28 that time.

Planning and Development Amendment Bill 2020

Part 12 Endorsement of diagram or plan of survey of approved subdivision

Division 1 Planning and Development Act 2005 amended

s. 92

- 1 (4A) In the case of a diagram or plan of survey submitted in
2 relation to a stage of subdivision, the conditions to
3 which subsection (4)(b) applies are the conditions
4 imposed on the approval in relation to that stage of
5 subdivision or that, in the opinion of the Commission,
6 are relevant to that stage of subdivision or the
7 subdivision as a whole.
8

9 **92. Section 145A inserted**

10 After section 145 insert:
11

12 **145A. Period for submission of diagram or plan of survey**
13 **for approval by Commission**

- 14 (1) Subject to any extension granted under subsection (2),
15 the period within which a person to whom approval of
16 a plan of subdivision was given must submit, and
17 request approval of, a diagram or plan of survey of the
18 subdivision under section 145(1) is —
19 (a) in relation to a plan of subdivision creating
20 more than 5 lots — the period of 4 years
21 beginning on the day on which the Commission
22 approved the plan of subdivision; and
23 (b) in any other case — the period of 3 years
24 beginning on the day on which the Commission
25 approved the plan of subdivision.
26 (2) On the application of a person to whom approval of a
27 plan of subdivision has been given, the Commission
28 may, by written notice, grant an extension of 2 years to
29 the period that would otherwise apply under
30 subsection (1).
31 (3) An application under subsection (2) must be made in
32 the manner and form approved by the Commission.

- 1 (4) The Commission must not grant an extension under
2 subsection (2) unless the Commission is satisfied
3 that —
- 4 (a) the applicant has done everything that is
5 reasonably practicable to enable the applicant
6 to submit, and request approval of, the diagram
7 or plan of survey in accordance with
8 section 145(1) within the period that would
9 otherwise apply under subsection (1); and
- 10 (b) since the approval of the plan of subdivision
11 was granted, there have been no significant
12 changes to the requirements that apply under
13 this Act to the area covered by the plan of
14 subdivision.
- 15 (5) The Commission must not grant more than 1 extension
16 under this section in relation to a plan of subdivision.
- 17 (6) The Commission must try to deal with an application
18 under subsection (2) within the period of 30 days after
19 the day on which the application is made or within
20 such longer period after that day as may be agreed in
21 writing between the Commission and the applicant.
- 22 (7) If an extension is granted under subsection (2) after the
23 expiry of the period that would otherwise have applied
24 under subsection (1) (the *original period*), the approval
25 of the plan of subdivision is taken not to have ceased to
26 have effect under section 145(7) at the end of the
27 original period.
28

Planning and Development Amendment Bill 2020

Part 12 Endorsement of diagram or plan of survey of approved subdivision

Division 1 Planning and Development Act 2005 amended

s. 93

1 **93. Section 251 amended**

2 After section 251(5) insert:

3

- 4 (6) An applicant for an extension under section 145A(2)
5 who is aggrieved by the Commission's decision to
6 refuse to grant the extension may apply to the State
7 Administrative Tribunal for a review, in accordance
8 with this Part, of the decision of the Commission.
9

10 **94. Section 253 amended**

- 11 (1) In section 253(1) in the definition of *decision period* after
12 paragraph (b) insert:

13

- 14 (ba) in the case of an application under
15 section 145A(2), the period of 30 days
16 specified in section 145A(6) or any longer
17 period as may be agreed between the
18 Commission and the applicant under
19 section 145A(6); and
20

- 21 (2) In section 253(2)(a) after "an application" insert:

22

23 under section 145A(2) or

24

25 Note: The heading to amended section 253 is to read:

26 **Failure of responsible authority to make decision within decision**
27 **period**

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Division 2 — *Community Titles Act 2018* amended

95. Act amended

This Division amends the *Community Titles Act 2018*.

96. Section 30 amended

In section 30(1)(i) delete “section 145(2) of the Act is to be read as if the prescribed period were defined as” and insert:

section 145A(1) of the Act is to be read as if the period that applies under that section were

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Part 13 — Improvement plans

97. Act amended

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

98. Section 119 amended

(1) After section 119(2) insert:

(2A) A recommendation under subsection (1) may relate to land in 1 or more districts.

(2) Delete section 119(3B) and insert:

(3B) Before making a recommendation under subsection (1) in relation to any land, the Commission must consult with —

- (a) the local government for the district in which the land is situated; or
- (b) if the land is situated in more than 1 district — each of the local governments for those districts.

1 **Part 14 — Electronic planning maps**

2 **99. Act amended**

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

4 **100. Sections 267B and 267C inserted**

5 After section 267A insert:

6

7 **267B. Electronic planning maps**

8 (1) In this section —

9 ***minor modification***, in relation to spatial data,
10 means —

11 (a) for cadastral data produced by the Authority —
12 a minor modification to that data made by the
13 Authority to reflect updated survey
14 information; or

15 (b) for other spatial data produced by the
16 Commission — the replacement of that data
17 with cadastral data produced by the Authority
18 to reflect updated survey information, where
19 the effect of that replacement is minor;

20 ***planning instrument*** means —

21 (a) a planning scheme; or

22 (b) an interim development order; or

23 (c) a declaration under section 112 in relation to a
24 planning control area;

25 ***planning markings***, in relation to a map, means the
26 markings on the map that indicate different zones,
27 reserves or other areas or boundaries relevant to
28 planning requirements;

s. 100

- 1 *spatial data* means cadastral data produced by the
2 Authority or other spatial data produced by the
3 Commission.
- 4 (2) A map (the *original map*) that forms part of a planning
5 instrument may be prepared by the Commission as an
6 electronic map (the *electronic planning map*) in a
7 format approved by the Commission.
- 8 (3) The electronic planning map must —
- 9 (a) replicate the planning markings on the original
10 map in a form defined by reference to spatial
11 data; and
- 12 (b) include —
- 13 (i) any key or other information on the
14 original map that is associated with the
15 planning markings and is necessary to
16 interpret the map; and
- 17 (ii) any other information required by the
18 Commission.
- 19 (4) The electronic planning map is not required to replicate
20 the original map except to the extent required by
21 subsection (3).
- 22 (5) For the purposes of subsection (3)(a), the planning
23 markings on the electronic planning map are taken to
24 replicate the planning marks on the original map even
25 if —
- 26 (a) 1 or more minor modifications to the spatial
27 data by reference to which the planning
28 markings are defined have occurred since the
29 electronic planning map was first prepared; and
- 30 (b) the planning markings on the electronic
31 planning map are defined by reference to the
32 spatial data as modified by those modifications.

- 1 (6) The Commission must make the electronic planning
2 map available for public inspection on its website.
- 3 (7) An electronic planning map that is prepared and made
4 available in accordance with this section is taken to be
5 the original map for the purposes of the planning
6 instrument, this Act and any other written law.

7 **267C. Certified copies of electronic planning maps**

8 In any proceedings, a copy certified by the
9 Commission of an electronic planning map prepared
10 under section 267B, or part of such a map, is evidence
11 of the contents of the electronic planning map or part
12 of the map.
13

1 **Part 16 — Purposes for which land may be required**
2 **for planning control areas**

3 **103. Act amended**

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

5 **104. Schedule 6 amended**

6 In Schedule 6:

7 (a) delete item 5 and insert:

8

5. Highways, important regional roads and other roads
 that are necessary because of highways or
 important regional roads

9

10 (b) after item 19 insert:

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20. Public transport

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Part 17 — Transitional provisions

105. Act amended

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

106. Part 19 inserted

After section 288 (as inserted by section 4 of this Act) insert:

Part 19 — Transitional provisions for *Planning and Development Amendment Act 2020*

289. LDAP or JDAP continues as district DAP

- (1) In this section —
commencement day means the day on which the *Planning and Development Amendment Act 2020* Part 3 comes into operation;
JDAP has the meaning given in section 4(1) as in force immediately before commencement day;
LDAP has the meaning given in section 4(1) as in force immediately before commencement day.
- (2) If, immediately before commencement day, there is an LDAP for a district, the LDAP is taken, on and after commencement day, to be a district DAP established under section 171C(1)(a) for the district.
- (3) If, immediately before commencement day, there is a JDAP for 2 or more districts, the JDAP is taken, on and after commencement day, to be a district DAP established under section 171C(1)(a) for those districts.
- (4) An order establishing an LDAP or a JDAP to which subsection (2) or (3) applies continues to have effect on and after commencement day as if it were an order

1 establishing a district DAP under section 171C(1)(a)
2 and may be amended or revoked accordingly.

3 **290. Preparation and approval of planning schemes**
4 **where process commenced before commencement**
5 **day**

6 (1) In this section —

7 *amended Act* means this Act as amended by the
8 *Planning and Development Amendment Act 2020*
9 Part 6 Division 1;

10 *commencement day* means the day on which the
11 *Planning and Development Amendment Act 2020*
12 Part 6 Division 1 comes into operation;

13 *former Act* means this Act as in force immediately
14 before commencement day;

15 *preparation and approval process*, in relation to a
16 planning scheme or amendment to a planning
17 scheme —

18 (a) means the process for the preparation or
19 adoption, submission and approval of the
20 scheme or amendment; and

21 (b) includes, without limitation, any consultation,
22 referral, advertisement, hearings, reports and
23 consideration of submissions that occur as part
24 of that process.

25 (2) The regulations may make provision for how the
26 preparation and approval process for a planning
27 scheme or an amendment to a planning scheme is to be
28 completed if —

29 (a) 1 or more steps in the preparation and approval
30 process for the scheme or amendment are taken
31 before commencement day under the former
32 Act; but

s. 106

1 (b) the scheme or amendment is not approved
2 under the former Act before commencement
3 day.

4 (3) Without limiting subsection (2), the regulations may
5 provide that any requirement of the preparation and
6 approval process under the amended Act is taken to be
7 satisfied in relation to a planning scheme or
8 amendment referred to in that subsection in
9 circumstances prescribed by the regulations.

10 **291. R-Codes taken to be planning codes**

11 (1) In this section —
12 *commencement day* means the day on which the
13 *Planning and Development Amendment Act 2020*
14 section 65 comes into operation;
15 *R-Codes* means the Residential Design Codes prepared
16 as a State planning policy under section 26(1), as in
17 force immediately before commencement day.

18 (2) On and after commencement day, the R-Codes are
19 taken to be planning codes.

20 (3) Subsection (2) does not prevent the R-Codes from
21 being amended or repealed under Part 3A.

22 (4) A provision included before commencement day in a
23 local planning scheme under section 77(1)(b), or an
24 improvement scheme under section 77(1)(b) as it
25 applies under section 122B(1), in relation to the
26 R-Codes as State planning policies continues to apply
27 on and after commencement day in relation to the
28 R-Codes as planning codes.

- 1 **292. Regulations made by Minister continue in force**
- 2 (1) In this section —
- 3 *commencement day* means the day on which the
- 4 *Planning and Development Amendment Act 2020*
- 5 Part 8 comes into operation.
- 6 (2) Regulations made by the Minister under section 256
- 7 before commencement day continue to have effect on
- 8 and after commencement day as if they were made by
- 9 the Governor under section 256 and may be amended
- 10 or repealed accordingly.
- 11 (3) Regulations made by the Minister under section 258
- 12 before commencement day continue to have effect on
- 13 and after commencement day as if they were made by
- 14 the Governor under section 258 and may be amended
- 15 or repealed accordingly.
- 16 (4) Regulations made by the Minister under section 259
- 17 before commencement day continue to have effect on
- 18 and after commencement day as if they were made by
- 19 the Governor under section 259 and may be amended
- 20 or repealed accordingly.
- 21 **293. Electronic planning maps prepared before**
- 22 **commencement day**
- 23 (1) In this section —
- 24 *commencement day* means the day on which the
- 25 *Planning and Development Amendment Act 2020*
- 26 Part 14 comes into operation.
- 27 (2) This section applies if, before commencement day, a
- 28 map that forms part of a planning instrument (as
- 29 defined in section 267B(1)) has been prepared as an
- 30 electronic map.

s. 106

- 1 (3) The Commission may, in writing, approve the
2 electronic map if the Commission is satisfied that it
3 substantially complies with the requirements for
4 electronic planning maps under section 267B(3) to (5).
- 5 (4) On and after commencement day, a map approved
6 under subsection (3) is taken to be an electronic
7 planning map prepared in accordance with
8 section 267B.
- 9 (5) A reference in subsection (2) or (3) to a subsection of
10 section 267B is, before commencement day, a
11 reference to that subsection as it will be in force on
12 commencement day.

13 **294. Transitional regulations**

- 14 (1) In this section —
15 *specified* means specified or described in the
16 regulations;
17 *transitional matter* —
18 (a) means a matter or issue of a transitional nature
19 that arises as a result of any of the amendments
20 to this Act made by the *Planning and*
21 *Development Amendment Act 2020*; and
22 (b) includes a saving or application matter.
- 23 (2) If there is not sufficient provision in this Act for
24 dealing with a transitional matter, regulations may
25 prescribe all matters that are required, or are necessary
26 or convenient, to be prescribed for dealing with the
27 matter.
- 28 (3) Regulations made under subsection (2) may provide
29 that specified provisions of a written law —
30 (a) do not apply to or in relation to any matter; or
31 (b) apply with specified modifications to or in
32 relation to any matter.

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- (4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day on which the *Planning and Development Amendment Act 2020* Part 17 comes into operation, the regulations have effect according to their terms.

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

