EXPLANATORY MEMORANDUM

Planning and Development Amendment Bill 2020

OVERVIEW

The purpose of this Bill is to amend the *Planning and Development Act 2005* ('the PD Act'), and other related or consequential acts such as the *Environmental Protection Act 1986* ('EP Act') and *Community Titles Act 2018* ('CT Act'), in order to achieve two broad aims:

- Provide an urgent response to the COVID-19 pandemic, as it relates to planning and development impacted by the greatest economic crisis since the Great Depression, by:
    - facilitating significant development projects;
    - removing regulatory road blocks and significantly reduce red tape;
    - strategically refocus what urban and regional planning considers important;
    - enhancing how development contribution funds are utilised for community benefit; and
    - providing for a more robust planning environment with a higher degree of professionalism and enforcement capability.
- Implement a comprehensive series of public, stakeholder and specialist reviews of the planning system, carried out over the last seven-plus years, in order to create a better planning system, which:
    - creates great places for people;
    - is easier to understand and navigate; and
    - is consistent and efficient.

These aims will be implemented in two tranches or phases of legislation. This Bill is the first tranche or phase, which will implement those aspects of planning reform with most immediate impact on the planning framework, as a prioritised COVID-related response.

The second tranche will be facilitated by another follow-up Bill in the near future. While equally important, the second Bill includes reforms with less immediate effect and therefore with less urgency. In many instances the second Bill relates to reforms that will require new or amended regulations be drafted in order to commence, would benefit administratively by a short lead time before commencement, or simply clarifies aspects of the current planning framework in order to create a more legible and understood system.

CLAUSE NOTES

Part 1 – Preliminary

This Part deals with preliminary matters, including the short title and commencement of this Bill.

Clause 1. Short title

This clause provides that the name of this Bill when enacted is the *Planning and Development Amendment Act 2020.*

Clause 2. Commencement

This clause sets out when different provisions of the Bill become operational. Part 1, being these preliminary matters, will commence upon assent. Parts 2 (being the special COVID-related response measures) and 17 (being the transitional provisions), will commence almost immediately the day after assent.

The rest of the Bill, comprising Parts 3 to 16, will commence upon a staged proclamation process. A staged proclamation is necessary to allow time for the drafting and approval of supporting regulations, as well as putting in place other administrative arrangements before new provisions can come into effect.

Part 2 — Special provisions for COVID-19 pandemic

This Part contains special provisions, which represent part of the State Government's immediate COVID-related response as it falls within the planning and development system.

The proposed provisions aim to address the following particular areas of reform:

- Introduce a new flexible and streamlined approval pathway for state significant developments and other referred developments, through a new Part 17.
- Introduce an automatic two-year extension for all subdivision applications submitted (but not yet approved) or approved (but not yet lapsed) before the State of emergency came into effect on 16 March 2020, through a new Part 18.

Clause 3. Act amended.

This clause explains this Part amends the PD Act.

Clause 4. Parts 17 and 18 inserted.

This clause inserts a new Parts 17 and 18 into the PD Act.

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

Part 17 facilitates an immediate interim 18-month measure, pending other further longer-term reforms. These longer-term reforms include further changes to the Development Assessment Panel ('DAP') system, as set out in Part 3 of this Bill.

The purpose of new Part 17 is to provide an expedited approval pathway for certain significant development applications and other referred developments. A "significant development" is

defined to include proposals of $30 million or more, involving residential development of 100 or more dwellings, or commercial development with the total net lettable area of 20 000 m2 or more space.

There will also be scope for the Premier on the recommendation of the Minister, to refer additional proposals of State or regional importance to be assessed under the new pathway. This additional referral process will particularly facilitate major development activities to regional areas, noting a proposal of less than $30 million may nonetheless have a significantly beneficial impact on a town, regional city or regional area.

As to its aims, this Part encourages major proponents, by way of regulatory benefits, to submit a development application for significant development and commence construction and associated activities in the next 18-months or soon as possible thereafter. Benefits to proponents include:

- an expedited approval process by arguably the State's most respected and independent decision-maker – the Western Australian Planning Commission ('WAPC' or 'Commission');
- a significant streamlining of advertising, consultation and assessment processes;
- an explicit and coordinated management by the WAPC of the agency referral process to ensure referrals are responded to in the timeframe allocated;
- a substantially more flexible application of planning rules, including the ability to consider non-planning matters in the public interest; and
- ensure a much stronger degree certainty for proponents, ensuring other approval regimes administered by other Government agencies and authorised persons (for example, in relation to a building permit, liquor licence, noise permit, or road access etc.) will not later frustrate any development approval obtained under this pathway without special authorisation to do so.

It should be observed that Part 17, by its design, is aimed it facilitating investment and economic activity by larger developers. However, it should be noted that a range of businesses, small to medium sized developers, and local governments, have also already been facilitated in the planning system through the *Planning and Development (Local Planning Schemes) Amendment Regulations 2020*, which were amendments gazetted on 3 April 2020. These amendment regulations facilitated notices that provided a range of exemptions from existing planning requirements. Under those amendment regulations, exemptions can remain in effect up to five years. New provisions under Part 17 should be viewed in conjunction with that earlier reform.

As this Part addresses the issue of development approvals, it also works in conjunction with Part 18, which addresses impacts of the COVID-19 pandemic on subdivision approvals.

This Part also works in synergy with reforms clarifying how development contribution funds are utilised for community benefit. As Part 17 facilitates how major proponents undertake significant developments, amendments to s.153 and Sch.7 of the PD Act in turn provides further legal support and clarify as to how monies payable as a development contribution are raised and spent on public open space (including parks, recreation grounds or open spaces) and community infrastructure (including for community centres, libraries, schools, child care centres and sporting facilities).

Finally, it should be emphasised that this Part is time-limited with an in-built sunset clause of 18 months. There will be no opportunity for proponents who obtain development approval under this expedited pathway to extend the period in which they must substantially commence development. This will ensure Part 17 facilitates actual development on the ground, with that important economic activity generated in the State, and not merely permit proponents to "bank" a development approval without actually commencing construction and associated activities.

Part 17 therefore represents a significant part of an entire planning-directed COVID-related response, which holistically addresses all segments and participants in the State's economy.

Division 1 — Preliminary

This Division sets out basic terms and concepts relevant to Part 17.

Section 269. Terms used

This section provides a range of relevant definitions for new Part 17. Of particular note:

- ***applicable legal instrument*** is effectively the planning legal instrument that would ordinarily be applied by the normal decision-maker in making a planning decision. An applicable legal instrument should not be confused with a legal instrument (minus the word "applicable"), which encompasses both planning and non-planning circumstances.
- ***development*** is defined to include definitions that fall within the meaning set out in the *Swan and Canning Rivers Act 2006* ('SC Rivers Act'), in addition to the concept as defined in the PD Act. This provision removes any ambiguity, noting the two definitions of development in both acts are similar but not exactly the same, so Part 17 needs to capture both.
- ***development application*** is defined narrowly to certain applications only, which would be applicable in some instances under the PD Act or the SC Rivers Act. This means new Part 17 will not, for example, capture development applications that already fall within the remit of the *Metropolitan Redevelopment Authority Act 2011* or *Hope Valley-Wattleup Redevelopment Act 2000*. These acts are also referenced explicitly in s.270.
- ***dwelling*** is effectively taken from the current definition in the Residential Design Codes ('R-Codes').
- ***legal instrument*** encompasses both planning and non-planning laws, schemes, codes, policies plans, local laws, by-laws, rules, conditions, notices and other instruments. A legal instrument should not be confused with an applicable legal instrument (with the additional word "applicable").
- ***mining*** cross references the *Mining Act 1978*. This term is relevant to s.270. The intention is for Part 17 not to affect any existing mining approval processes.
- ***net lettable area*** is effectively taken from the current definition in the *Planning and Development (Local Planning Schemes) Regulations 2015* ('LPS Regulations'). It broadly captures the amount of space within a building dedicated to its primary or denominate use, which is to say it excludes parts of the building such as stairs, toilets, escalators, lobbies etc.

- ***normal decision-maker*** is effectively the planning decision-maker who would ordinarily be determining the development application were it not for Part 17, usually encompassing the relevant local government, a DAP or the Commission itself. The normal decision-maker should not be confused with a decision-maker (minus the word "normal") mentioned in other provisions. The latter encompasses a broader number of persons and bodies, including those who make non-planning decisions that have relevance to or may conflict with a development approval granted under Part 17.
- ***Part 17 regulations*** refers to regulations that may be made under this Part. However, it should be noted the Part has been drafted to stand alone, as if no regulations need necessarily be made.
- ***R-codes*** is one of, if not the most, important planning document in the State, and governs all residential development.
- ***recovery period*** is aimed is an 18-month period following the commencement of Part 17, with a focus on maximising economic recovery from the COVID-19 pandemic.
- ***significant development*** sets out the criteria upon which certain development applications can be submitted to the Commission for determination under Part 17. It is deliberately aimed at larger proposals that will generate more substantive benefits to the State economy. However, it should be noted that other classes of development that do not otherwise fit this criteria will be able to be referred to the Commission by the Premier on the recommendation of the Minister.
- ***Government agreement*** is relevant to s.270. The intention is for Part 17 not to affect any existing State agreement.
- ***substantially commenced*** is a definition taken primarily from the existing LPS Regulations. The term is relevant and important as it cross-references other provisions that are aimed at major developers not simply obtaining and "banking" a development approval, but to start actual construction and other development activities within four years of the 18-month recovery period or soon as possible thereafter.
- ***warehouse*** is a definition taken primarily from the existing LPS Regulations. The intention is for Part 17 not to capture development applications for warehouses because, although they can otherwise major developments, are usually not controversial and often already approved under delegation.

  A reference to warehouse is also aimed at a proposal where the dominant purpose of the development is as a warehouse. That is, pursuant to longstanding planning principles, where a warehouse is only a subordinate use to a larger dominant use, the warehouse component is not considered in terms of ascribing a use. This means, for example, a large shop or supermarket could be considered under Part 17 if it otherwise satisfied the other criteria, even though it would most likely have a warehouse component in its design.

Section 270. Effect of part

This section makes clear Part 17 applies generally, including as to how it might affect non-planning laws, schemes, codes, policies plans, or local laws etc. This provision is especially important to the conflict resolution provisions set out in Division 3.

This section also sets out in what circumstances Part 17 will not apply generally. For example, Part 17 will have no impact on DevelopmentWA's mandate under the *Metropolitan Redevelopment Authority Act 2011*, or on the State's mining approval system, or on a number of other specified statutory regimes.

Division 2 — Commission to determine certain development applications

This Division sets out when certain development applications are sent to the Commission under Part 17, and how the Commission considers and determines such applications.

Subdivision 1 — Applications and referrals

Subdivision 1 sets out two application pathways: one where a landowner submits an application to the Commission, and the other where the Premier submits an application to the Commission.

Section 271. Development applications that may be made directly to Commission during recovery period

This section permits a landowner to submit a development application to the Commission under Part 17 if it satisfies the criteria of significant development and is submitted during the recovery period. Given the recovery period is only for 18-months, this works as an in-built sunset clause to Part 17.

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

This section permits the Premier, on the recommendation of the Minister, to submit certain other applications to the Commission under Part 17. These applications need not satisfy the criteria for significant development but they must be of State or regional importance. This referral power will be especially relevant to regional areas, where a proposal may not otherwise satisfy the definition of significant development, but may clearly have State or regional importance to the economic revisitation of a town, regional city or regional area. The Premier's power is also likewise time-limited to the 18-months in-built sunset clause.

273. Supplementary provisions for applications and referrals

This section provides additional authority and flexibility for the Commission and Minister, as to how applications and referrals are to be made under Part 17.

Subdivision 2 — Determinations

This Division sets out how the Commission assesses and determines development applications under Part 17.

274. Determination of development applications by Commission

This section provides the central framework as to how the Commission is to determine applications under Part 17. Importantly, the features of s.274 include the following:

- The Commission must determine an application in Part 17 under this section and not any other applicable legal instrument, which is to say the ordinary planning rules or provisions that might otherwise apply.

- The Commission has the choice whether to grant the development application approval, with or without conditions, or to refuse the application, in much the same way as planning decision-makers ordinarily do.
- The Commission does not have a time limit to make its determination, but it must do so as soon as reasonably practicable. In all likelihood, the speed in which the Commission can make a decision is likely to be driven by the complexity of the application, and to the extent an applicant provides sufficient information to enable it to be determined expeditiously.
- While an application can only be submitted within the 18-month recovery period, the Commission can continue to determine such applications after the end of the period. This would include, for example, the possibility of a new application or referral being submitted to the Commission on the last day during the recovery period.
- The Commission cannot grant an approval that amounts to a *de facto* refusal by stealth. That is, in the case of an application under the significant development criteria, the Commission could not for example consider an application involving 100 dwellings and only approve the application for 90 dwellings, thereby rendering the application under the significant development threshold. The Commission could also not grant approval so that in effect the original proposal requested by the applicant no longer exists and is something else entirely.
- The Commission has explicit power to limit the time period of approval, and grant approval subject to later details. The latter is particularly useful, because it is routine in the planning system for planning approvals to have minor aspects to be still worked out in future, such as the drafting and approval of various management plans.
- Finally, as an important feature of transparency and accountability, where the Commission makes a decision it must provide written reasons. The Commission's decision and reasons in turn have to be published on its website.

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

This section sets out what criteria the Commission applies in considering and making a determination.

The cornerstone principle is that the Commission has broad powers as to how it comes to a decision. It is not bound by any legal instrument, which is to say any planning or non-planning law, rule or other requirement that might otherwise apply to limit the Commission's decision-making power.

The Commission is not strictly bound by any planning consideration and may consider any other matter in the public interest. The Commission also has broad powers in order to take steps to inform itself, including consult with relevant persons and bodies.

The Commission may also have regard to, and apply, any legal instrument, with or without modification. This provides the Commission with greater scope than it might traditionally have had to address issues relevant across different and often overlapping approval regimes. The Commission may also take steps to address these issues upfront, as part of its development

approval, thereby mitigating the prospects of future conflicts and the need to use the conflict resolution provisions in Division 3.

Nonetheless, while the Commission is not strictly bound by any planning or non-planning law, rule or other requirement, it must still give due regard to relevant considerations in making a determination. These relevant considerations include the purpose and intent of any planning scheme, orderly and proper planning, amenity, relevant State planning policies ('SPPs') and other policies. Importantly, the Commission is also required to give due regard to the need to facilitate development in response to the economic effects of the COVID-19 pandemic.

Section 276. Consultation, submissions and other input

This section provides further provisions in relation to consultation. Despite having a broad power to inform itself under s.275, including the power to consult persons and bodies, this section clarifies that the Commission must consult: the Minister; the EPA; the Heritage Council (if the proposal is one to which certain provisions in the *Heritage Act 2018* apply); the Swan River Trust (if the proposal is in or abutting or likely to affect the river development control area); and any relevant local government.

This section also provides the Commission with explicit authority to require the applicant provide the Commission with any document or information, or do anything else that the Commission considers appropriate.

Finally, this section provides more explicit provisions permitting consultation, advertising, and doing anything else the Commission considers appropriate for obtaining a document, information, an opinion or any other contribution from any person or body.

Section 277. Effect of Commission determination under s. 274

This section holds that a decision under this Part 17 approval pathway is deemed to be a decision of a normal decision-maker under the applicable legal instrument. Subsection (2) provides examples by way of legislative notes.

However, note that pursuant to subsection (5) a Part 17 decision is deemed to be a decision of a normal decision-maker only insofar as it is "subject to sections 278 and 279 and Divisions 3 and 4". This means, in effect, that an applicant cannot attempt to get around any limitations imposed under Part 17 by later seeking to amend their approval through different mechanisms available under the ordinary planning system. For example, an applicant with approval under Part 17 could not make an application to extend the substantial commencement period, or amend or modify the approval, under Sch.2, cl.77 of the LPS Regulations or r.17 of *Planning and Development (Development Assessment Panels) Regulations 2011* ('DAP Regulations'), given this is what ss.278 and 279 already specifically covers.

The section also makes clear that just because a landowner obtains a development approval under Part 17 does not mean they are absolved from the need to obtain other non-planning approvals. Subsection (6) provides further examples by way of legislative notes. However, these other non-planning approvals are "Subject to Division 3", which is to say the conflict resolution provisions.

Section 278. Substantial commencement of development approved by Commission under s. 274

This section requires any development approved under Part 17 result in the substantial commencement of that development within 48 months (4 years) or such other period specified in the decision. The purpose of this provision is to require the applicant begin actual construction and other development activities within four years of the 18-month recovery period or soon as possible thereafter.

Section 279. Amendment or cancellation of approval granted by Commission under s. 274

This section permits an applicant to modify, cancel, or amend aspects or conditions of approval earlier granted by the Commission under Part 17. This provision largely mirrors standard practice within the planning system, reflecting provisions already found in both Sch.2, cl.77 of the LPS Regulations and r.17 of DAP Regulations, with some important differences. It is not unusual for developments, especially major developments, to require modification or amendment as the proposal progresses toward completion – often due to changes in circumstances beyond the applicant's own control.

Notably, unlike those provisions set out in the LPS Regulations and DAP Regulations, the Commission is explicitly prohibited from extending the substantial commencement period imposed under s.278. This means that a development approval granted under Part 17 has a hard deadline and offers a developer a "use-it-or-lose-it" opportunity only. This will help ensure that Part 17 approvals genuinely facilitate economic recovery, through actual construction and other development activities in response to the COVID-19 pandemic, and are not simply "banked" by proponents for other means.

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

Division 3 introduces a somewhat innovative and unique attribute into the Western Australian planning system. Its aim is to encourage investment and development by providing maximum certainty to major developers (and with it perhaps their financiers and investors) as to the viability of development projects afforded development approval.

When an applicant obtains development approval, often after a significant investment in cost and time, this is not normally the end but only the beginning of the regulatory process before actual construction and other development activities can commence. As reflected in s.277, even after having obtained development approval, the proponent will usually need to obtain several other approvals from other Government departments, agencies and decision-makers. For example, development approval of a major new hotel-resort could require: a building permit or demolition permit; a liquor licence; a clearing permit in the case of existing vegetation; a noise permit; a permission from Main Roads to construct a road access crossover; and a number of other approvals.

Unfortunately, these differing approval regimes do not always align. In some cases, an applicant may have conditions imposed under a development approval that directly contradicts or are otherwise inconsistent with conditions imposed by another Government decision-maker. In such situations, a developer may need to seek resolution of these conflicting approvals by initiating legal proceedings in SAT (at significant cost and a further delay of many months or even years), or seek to amend their earlier development approval, or both, or abandon the project entirely as it becomes increasingly unviable. Such incongruence between overlapping statutory regimes perhaps reflect the very worse examples of red tape, and their restraint on economic activity.

Division 3 introduces a new mechanism whereby such conflicts between different Government approval processes are identified, either by the Government decision-maker *before* it makes a decision, or by an applicant soon *after* a decision is made, and resolved expeditiously. Importantly, while the applicant retains their right of review to SAT, the Division aims to see such conflicts dealt with upfront, without the need to devote further significant time and resources to a full Tribunal review process. The Minister and Premier take key roles in this conflict resolution.

Importantly, this Division does not suggest that principles of safety, amenity or some other relevant concern should be compromised. The point is to allow such issues to be identified upfront and then addressed in an expeditious way through a whole-of-government approach, under the control and auspices of the Premier and his Department.

Section 280. General provisions for Division

This section outlines what constitutes a *conflict* for the purpose of the conflict resolution provisions in this Division. The section itself provides examples by way of legislative notes. A conflict is otherwise narrowly defined, in that it does permit another non-planning decision-maker to impose supplemental conditions and requirements that deal with special circumstances and contingencies, as long as it would not in effect veto the proposal as approved by the Commission under Part 17.

This section also outlines that where the Minister (with agreement from the Premier) gives a direction to another Government person or body, that person or body is obligated to comply with that direction. The person or body must comply with the direction, even if it would otherwise normally be unlawful or invalid, or contrary to some prescribed time limit.

Section 281. Decision-maker proposing to perform function in conflict with approval

This section imposes a positive statutory duty at law on a non-planning person or body (the "decision-maker", not to be confused with a "normal decision-maker" under Divisions 1 and 2) to identify any conflict with a development approval granted by the Commission under Part 17. The decision-maker is thereby prohibited at law from performing any function unless the Minister has been notified and the conflict resolution provisions engaged.

With the Premier's agreement under s.280, the Minister under s.281 is to resolve the conflict between regulatory systems by broad powers to direct how a statutory function is or is not to be performed. As to the rationale in imposing this positive duty on other Government decision-makers under this section, and not merely leave it to applicants under s.282, it is expected such an obligation will encourage upfront collaboration between Government decision-makers and applicants, as to how to avoid such regulatory conflicts from arising in the first place.

Finally, it should be observed the Minister's power is discretionary, as subsection (7) explicitly contemplates the Minister may decide not to issue a direction. Without limiting potential future scenarios, including under subsection (3) where the Minister is of the view the conflict is not of a State or regional significance or a direction would not be appropriate to resolve the conflict, it would also be envisioned the Minister may be disinclined to issue a direction where the applicant and Government decision-maker come to their own consensus on the matter.

Section 282. Owner of land may apply for direction if performance of function conflicts with approval

This section largely replicates much of s.282, but permits an applicant to seek resolution of regulatory conflict after receiving approvals from both the Commission under Part 17 and from another Government decision-maker.

Division 4 — Oversight of Commission

This Division provides mechanisms for ensuring oversight of the Commission's decision-making power under Part 17. This includes oversight by SAT, by the Governor and by Parliament.

Section 283. State Administrative Tribunal

This section provides an enabling power for SAT to review the Commission's decisions under Part 17. Despite a decision under Part 17 being deemed to have effect as if it were a decision of the normal decision-maker under s.277(2), the decision-maker for the purpose of any review is the Commission. Given the importance of applications determined under this Part, the Tribunal must be composed by at least one member who is a judicial officer.

On review, the Tribunal is not limited to the range of matters set out in s.241, but can in effect adopt the Commission's broader considerations under Part 17. However, s.242 concerning submissions from third parties, and s.243 concerning the exclusion of powers to join parties, continue to apply.

Section 284. Governor may amend or cancel approval granted by Commission under s. 274

This section provides an important degree of oversight and check on the Commission's power. Although the Commission has been selected to exercise these more extraordinary COVID-19 recovery powers precisely because of its good reputation as a trusted and independent professional town planning body, this section nonetheless ensures such power is not unfettered.

This section enables the Governor (including acting on the advice of a current or future Government) to add, amend or remove aspects or conditions of any approval. The Governor also wields the ultimate check on power – he can cancel the approval in its entirety.

Nonetheless, given the certainty Part 17 aims to give to a developer (and any financiers and investors), especially reflected in the new Division 3 conflict resolution mechanisms, the Governor's power should not be utilised except with very serious thought to the appropriateness of such an outcome. For this reason, the Governor's order to modify or cancel a development earlier approved by the Commission under Part 17 will have to be communicated to Parliament and be subject to potential disallowance. Such an approach balances the aims of economic investment certainty with the right of the State, through both its executive and legislative branches, to retain ultimate oversight over the system.

Division 5 — Final matters

This Division deals with final matters, including fees and regulations.

Section 285. Fees

This section enables the Commission the charge fees. It is different from but broadly analogous to the Commission's existing powers to charge fees under s.20 of the PD Act.

Section 286. Regulations

This section enables the Governor to make regulations. Despite the existence of this provision, Part 17 has been drafted so the Part can operate without regulations, and regulations need not be necessarily made.

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

This Part contains provisions that introduce an automatic two-year extension for all subdivision applications submitted (but not yet approved) or approved (but not yet lapsed) before the State of emergency came into effect on 16 March 2020. This extension will apply equally to smaller "mum and dad" landowners and large institutional developers, in order to mitigate the disruptions arising out of the unforeseen circumstances of the COVID-19 pandemic. The extension will be automatic and existing subdividers need not do anything to take advantage of the extended period.

Section 287. Term used: COVID-19 emergency start date

This section defines *COVID-19 emergency start date*, which is linked to 16 March 2020, being the day on which the state of emergency declaration under the *Emergency Management Act 2005* section 56.

Section 288. Extension of time for endorsement of diagram or plan of survey of approved subdivision

This section effectively grants an automatic two-year extension for all subdivision applications submitted (but not yet approved) or approved (but not yet lapsed) before the State of emergency came into effect on 16 March 2020. The rationale for linking the provision to 16 March 2020, and making the extension automatic, is in recognition of the suddenness of the pandemic and its dramatic impact on economic activities within the State.

By contrast, any new subdivision application submitted after that date would have been in the full knowledge of the existence of the pandemic. In any event, any new subdivision application submitted after 16 March 2020 is likely to be able to rely upon new s.145A, although that extension will not be automatic. This section also makes clear a landowner cannot "double-dip", in that they cannot be afforded this automatic extension and also seek a further extension under new s.145A (which would amount to a four-year extension).

Part 3 — Development assessment panels

This Part contains provisions that deal with aspects of the Development Assessment Panel ('DAP') system.

DAPs were first introduced into the planning system by the *Approvals and Related Reforms (No. 4) (Planning) Act 2010*. That act permitted the drafting and promulgation of the *Planning and Development (Development Assessment Panels) Regulations 2011* ('DAP').

When introduced, DAPs were designed as panels comprising a mix of technical experts and local government representatives, with the power to determine applications for development approvals in place of the relevant decision-making authority.

The Minister for Planning was afforded a power to create a panel for each local government area,

and these panels were to determine development applications made under local and region planning schemes. DAPs were also required to make decisions in accordance with the existing planning framework, essentially "standing in the shoes" of local governments and the Commission, taking into account any local or state planning policy or other matter that the responsible authority would ordinarily be required to take into account.

DAPs are now a well-established part of the State's existing planning system. However, after nearly a decade of continuous operation, it is necessary but not unexpected that the DAP system requires a further degree of refinement.

Key is the need to expand the idea of a DAP beyond mere groupings by local government district boundaries, into new groupings by subject matter. To some degree this has already occurred pursuant to existing regulations, through recent changes made by the Minister on 24 April 2020. These recent changes resulted, for example, in inner metropolitan local government districts grouped into two DAPs, outer metropolitan districts grouped into the same single DAP, regional districts grouped into the same single DAP, and the City of Perth retaining its own specific DAP.

This realignment on 24 April 2020 recognised that planning and development issues facing like-for-like districts creates better synergies, in both technical expertise and sharing of local councillor knowledge. For example, grouping Armadale, Cockburn and Joondalup together in the same Metro Outer Joint Development Assessment Panel makes increased sense, given as a question of subject matter and not mere geography, all these localities face similar planning and development issues, such as urban growth pressures in expanding greenfield sites.

By contrast by way of further example, prior to 2020 changes, the local government district areas of Fremantle and Cockburn occupied the same grouping within the Metro South-West JDAP. However, the planning and development issues in Fremantle and Cockburn may be more different in nature, compared with Cockburn and Joondalup, even though the former two localities are geographically adjacent and the latter two are geographically at different ends of the metropolitan footprint.

The proposed changes to the DAP system are aimed to improve consistency and transparency of decision making.

By extension, this Bill proposes to extend this concept further to allow for the creation of "special matter DAPs". These specialist panels will allow the provision of more refined technical expertise, better resourced and more narrowly focused, in order to better deal with some of the State's most important but challenging planning matters.

Before the COVID-19 pandemic, the State faced a number of significant planning challenges, which in itself warranted a further specialisation and refinement of a DAP's role. The post-COVID environment has only exacerbated that need.

Once new provisions under this Bill are given effect, new and amended regulations will set out in what circumstances a development application is to be determined by a DAP established for special matter, as opposed to be determined by a DAP established by a local government geographical district.

With this refinement of a DAP's role will also come a corresponding expansion of that role. While remaining exclusively focused on development approvals, regulations may also provide circumstances in which a DAP is to give advice to another planning decision-maker in relation to

an application.

Clause 5. Act Amended

This clause explains this Part amends the PD Act.

Clause 6. Section 4 amended

This clause amends section 4, changing certain definitions, including the following:

- Deleting both concepts of ***JDAP*** ('Joint Development Assessment Panel') and ***LDAP*** ('Local Development Assessment Panel') and combine both concepts as new ***district DAP***. In practice, the distinction between JDAPs and LDAPs proved mostly illusory, as the City of Perth has forever been the only LDAP ever established. However, the Perth LDAP operates in virtually the same way as any JDAP. As reflected in the transitional provisions, at least initially, the City of Perth will retain its own specific panel, but as a district DAP.
- Introducing a new class of panel called a ***special matter DAP***. New special matter DAPs recognise the need for specialist panels specifically established to determine development applications by reference to some special matter, as distinguished from applications determined by DAPs grouped by local government district boundaries.

Clause 7. Section 171A amended

This clause amends s.171A, and includes an expansion of the role of DAPs to give advice to local governments, the Commission, and the Minister, in certain circumstances to be prescribed in the DAP Regulations.

Clause 8. Section 171C amended

This clause amends s.171C, and alters the scope of the Minister's powers to establish DAPs from LDAPs and JDAPs to district DAPs and special matter DAPs. Importantly, a special matter DAP can be established by reference to an area (such as a special development precinct) or class (such as by reference to a particular use, or height and size, or other defining feature). However, special matter DAPs can only operate if the project, plan or programme for development, or area or a class or kind of area, is of State or regional importance.

Clause 9. Section 171G inserted

This clause inserts section 171G, and provides a new head of power for transitional provisions to be made to accommodate these further changes to the DAP system.

Part 4 — Public works

This Part contains provisions that deal with aspects of the public work framework. Under section 6 of the PD Act, public works provide exemptions for some Government-related persons and bodies from needing to obtain development approval under a local planning scheme, subject to important limitations and qualifications.

The proposed provisions aim to address the following particular areas of reform:

- Expand the definition of public works by reference to region and local planning schemes.

- Clarify the application of public works exemptions to "public authorities".
- Provides a more explicit head of power for planning schemes to deal with public works.

Clause 10. Act Amended

This clause explains this Part amends the PD Act.

Clause 11. Section 4 amended

This clause amends section 4, and expands the definition of public works by reference to region and local planning schemes. The current definition of *public work* in the PD Act cross-references the *Public Works Act 1902* ('PWA'). That definition in turn is found in s.2 of the PWA, which is over a century old and in places outdated, from a modern planning perspective.

While s.2 mostly remains fit-for-purpose, it does not have sufficient breadth and flexibility to address future planning and development needs, in a new age of GPS-guided self-driving vehicles, to some yet-to-be-known key disruptor to society and the economy. The COVID-19 pandemic has only emphasised the need for a power to expand the potential definition of public works, as prescribed in planning schemes.

Clause 12. Section 6 amended

This clause amends section 6, and expands the application of public work exemptions, beyond local governments and the State Government, to now include *public authorities*. As defined in s.4, the concept of public authority is broader than that of the State, and can include not only Government departments and agencies, but also include any person or body carrying on a benefit of the State, a social service or public utility.

There is currently confusion about the range of public, semi-public and private bodies that may claim entitlement to a public work or other planning scheme exemption. There is further complexity where there are partnerships between State and private bodies undertaking public works. This amendment helps resolve that confusion by expanding to whom a public work exemption might apply.

The section also clarifies the rights and obligations on a person or body who seeks to rely upon a public works exemption. This includes making it more explicit that the responsible authority (i.e. normally the relevant local government) must be consulted, and the responsible authority's advice must be given due regard by the person or body seeking to carry out the public work. The requirement to give "regard" has also been amended to "due regard", with the latter being an elevated deliberative exercise as recognised within the existing planning system.

Clause 13. Schedule 7 amended

This clause amends Sch.7, providing a more explicit head of power for planning schemes to deal with public works. Sch.7 provides the heads of power as to what matters can be dealt with in planning schemes. As abovementioned amendments to s.6 contemplate planning schemes now prescribing further types of public works in planning schemes, a further reference in Sch.7 provides additional clarity.

Part 5 — Acquisition of land

This Part contains provisions that deal with aspects of the land compensation and acquisition system, as especially found and administered within the planning system under Part 11 of the PD Act.

The land compensation and acquisition provisions form an essential part of the planning system. They provide mechanisms by which the Commission on behalf of the State can set aside, purchase and acquire land needed for the State's interest and future prosperity of its people. This includes but is not limited to major projects such as METRONET. The provisions also provide important safeguards for private owners and the protection of their private property rights.

The proposed provisions aim to address the following particular areas of reform:

- Clarify the capacity of a responsible authority to acquire or purchase zoned land to avoid sterilisation of development potential.
- Clarify deemed public works for improvement plans under *the Land Administration Act 1997*.
- Introduce express powers to resume land for a planning control area under section 186.

Clause 14. Act Amended

This clause explains this Part amends the PD Act.

Clause 15. Section 190 amended

This clause amends s.190, and clarifies the capacity of a responsible authority (i.e. the Commission in relation to a region planning scheme and local government in relation to a local planning scheme) to acquire or purchase zoned land to avoid sterilisation of development potential. Under the PD Act, certain land is reserved for a particular public purpose, triggering certain rights, powers and privileges. This includes the right of landowners to compensation in accordance with certain provisions, as well as the ability of a responsible authority to purchase that reserved land.

However, under the current application of s.190, it appears a responsible authority is not entitled to purchase the unreserved portion of a lot that is otherwise reserved, as this unreserved portion of land could not acquired 'for the purpose of a planning scheme'. This can result in unfavourable outcomes, including remaining unreserved portions of land becoming sterilised (i.e. essentially landlocked and undevelopable).

Clause 16. Section 191 amended

This clause amends s.191, and essentially replicates the abovementioned changes to s.190, except with respect to a responsible authority's power to compulsorily acquire land.

Clause 17. Section 195 amended

This clause amends s.195, and clarifies what is deemed a public work for improvement plans under the *Land Administration Act 1997* ('LAA'). Under section 195(2) of the PD Act, the Commission may compulsorily acquire land within an improvement plan under and subject to Part 9 of the LAA. Pursuant to Part 9 of the LAA, land may be compulsorily acquired or purchased by agreement if the land is required for a "public work" as defined in s.2 of the PWA.

However, land under improvement plans may not always be acquired for the purpose of a public work within the PWA definition. To avoid any perceived conflict between section 195 and the LAA requirements, it is proposed to clarify that an acquisition under an improvement plan is taken to be a public work for the purposes of the PWA.

Clause 18. Section 196 amended

This clause amends s.196, and supports the abovementioned amendments to s.190 and s.191, clarifying the capacity of a responsible authority to acquire or purchase zoned land to avoid sterilisation of development potential. Section 196 operates to restrict the circumstances in which the Commission can dispose or alienate land, except for the purpose in which it was acquired. This amendment clarifies that where part of a lot was reserved and purchased or taken, s.196 is also to be construed as extending to the unreserved portion of the lot.

Clause 19. Section 197A inserted

This clause inserts new s.197A, and introduces express powers to resume land for a planning control area ('PCA') under s.186. PCAs operate in the nature of *de facto* planning reserves. To this end, s.186 is intended to provide mechanisms for compensation in the much the same way as reserves. However, compensation under the PD Act is not automatic but in fact has two process points: an initial trigger for injurious affection under s.174; and a second trigger whereby compensation can actually be claimed and made payable under s.177.

The current reference to the words "Compensation is payable" in s.186(1), and the reference to Division 2 in s.186(2), adds ambiguity as to whether the Commission can exercise certain powers to purchase or compulsorily acquire land without an actual claim for compensation being first made. New s.197A in effect clarifies that the Commission has the same powers under Division 4 with respect to a PCA, including powers to purchase and compulsorily acquire land, as if the PCA were a reserve.

Part 6 — Process for making planning schemes and referral of planning schemes to Environmental Protection Authority

This Part contains provisions that deal with processes governing the preparation of new or amended planning schemes, especially as set out in Part 4 and Part 5 of the PD Act.

Planning schemes have the status of subsidiary legislation, with the effect of law, and are the principal documents that govern how planning and development is regulated at both local government and regional level. A typical planning scheme would include information such as: a zoning table prescribing how land is to be used (e.g. residential, commercial or industrial); development standards (e.g. building height to car parking requirements); land use definitions (e.g. "convenience store", "dwelling", "shop"); relevant planning considerations (e.g. amenity, orderly and proper planning); and the preparation of further policies and instruments (e.g. the preparation of local planning policies). As subsidiary legislation, the process for preparing and amending planning schemes can be extensive red tape, requiring significant investment in time and resources.

The proposed provisions aim to address the following particular areas of reform:

- Improve EPA referral requirements.

- Introduce risk-based assessment and decision-making pathways for region scheme amendments, through new region planning scheme regulations.
- Empower the Minister to withdraw a proposed region planning scheme or amendment partway through the scheme process.
- Clarify the Minister's power to direct local governments for failing to have a satisfactory scheme or amendment.
- Clarify the Minister's power for consent to advertise new schemes or amendments.
- Expand the prospect of enforcement powers with respect to compliance with region planning schemes.

Division 1 — Planning and Development Act 2005 amended

This Division deals with changes to the PD Act.

Clause 20. Act Amended

This clause explains this Division amends the PD Act.

Clause 21. Section 17 amended

This clause amends s.17, and deletes references to provisions that will in turn be deleted to enact other reforms under this Bill. An administrative amendment.

Clause 22. Part 4 Division 2 heading replaced

This clause deletes the current heading in Part 4, Division 2 of the PD Act, currently entitled *Prerequisites to region planning scheme amendment*, and replaced with a new title, *Relevant considerations in preparation or amendment of region planning scheme or amendment and requirement to advertise*. This amendment supports further changes to improve EPA referral requirements. Planning schemes are currently subject to certain environmental assessment and oversight as mandated by an interaction between provisions under the PD Act and EP Act. However, a number of current aspects concerning EPA referral requirements are unclear or could be improved. An administrative amendment.

Clause 23. Section 38 replaced

This clause deletes current s.38 and replaces it with a new s.38. The new section aims to address key two areas of reform, as they both relate to EPA referrals:

- First, s.38(1) currently states that when the Commission *resolves* to prepare a region planning scheme or amendment, *then* the Commission is to refer the scheme or amendment to the EPA "forthwith". However, this resolution only signals intent to prepare or adopt a region planning scheme or amendment – nothing more. Therefore, situations have resulted where planning schemes or amendments are referred to the EPA without having yet been drafted. This makes it difficult for the EPA to decide, in accordance with section 48A of the EP Act, whether the proposal should be assessed. The new s.38(1) changes this requirement, from as soon as the Commission 'resolves to prepare' to 'after preparing' a region planning scheme or a proposed amendment.

- Second, s.38(3) provides a new head of power for the EPA, under its own regulations made pursuant to new s.48AAA, to set out classes of region planning schemes or proposed amendments that do not require referral to the EPA. Currently, the vast majority of new or amended planning schemes are not assessed and not do have any significant impact on the environment. However, current requirements to refer *every* single new or amended planning scheme clearly constitutes unnecessary red tape, with no benefit to the environment. Nonetheless, to avoid doubt and risk repeating the point, any potential exemptions for referrals will be wholly a decision for the Governor (advised by EPA and the Minister for Environment), to be set out in environmental regulations.

Clause 24. Section 39 amended

This clause amends s.39, and supports amendments to s.38, making administrative changes contemplating in future some region planning schemes and amendments may not necessarily be referred to the EPA, on account of new environmental regulations. An administrative amendment.

Clause 25. Section 40 amended

This clause amends s.40, and supports amendments to ss.41-44. An administrative amendment.

Clause 26. Part 4 Division 3 heading deleted

This clause deletes the heading to Division 3, entitled, *Making of region planning scheme and amendments*. This amendment supports further changes to introduce risk-based assessment and decision-making pathways for region scheme amendments, through new region planning scheme regulations. An administrative amendment.

Clause 27. Sections 41 to 44 replaced

This clause deletes current ss.41 to 44, which set out the process for making region planning schemes and amendments. This clause in turn inserts a new s.43 (arguably the central clause in the Division), shifting most of the making, advertising and consultation requirements into new region planning scheme regulations. This amendment will facilitate risk-based assessment and decision-making pathways for region scheme amendments.

Region planning schemes are broad-brush planning documents. They are focussed on providing strategic direction as to what land can be used for in a general sense. The current process for preparing and amending region planning schemes is extensive, with current average timeframes for finalisation of a region planning scheme amendment between three to five years. New regulations will allow for different tracks to be introduced, as they already exist for local planning schemes under the LPS Regulations, with its “complex”, “standard” and “basic” approval pathways.

Clause 28. Section 45 amended

This clause amends s.45, and supports amendments to s.38 and ss.41 to 44. An administrative amendment.

Clause 29. Section 46 deleted

This clause amends s.45, and supports amendments to ss.41 to 44. Any requirements as to consultation, submissions and hearings will be set out in new region planning scheme regulations made under new ss.43 and 258A. An administrative amendment.

Clause 30. Section 47 amended

This clause amends s.47, and inserts new s.47(1A), which clarifies the referral requirements to the Swan Valley do not apply to minor amendments under Division 4. Currently, there is no requirement for referring minor amendments to region planning schemes, because s.47 is found in Division 3, while the minor amendment pathway is in Division 4. However, with Division 3 currently being removed from its current location, and s.43 applying to all advertisements of region planning schemes or amendments, including minor amendments by virtue of new s.48(a), it is necessary to insert s.47(1A) for clarity. An administrative amendment.

Clause 31. Part 4 Division 3 heading inserted

This clause re-inserts the heading to Part 4 Division 3, which was otherwise deleted from its previous place by cl.45. An administrative amendment.

Clause 32. Section 47A inserted

This clause inserts a new s.47A, which requires any new region scheme or non-minor amendment to be submitted and approved under this Division.

Clause 33. Sections 48 and 49 replaced

This clause deletes current ss.48 and 49 and replaces these section with a new s.48. New s.48 largely replicates aspects of old s.48, but modified to take into account that the process for preparing and advertising a region scheme is now to be set out in new regulations.

The entirety of s.49 is deleted because it has been replaced with the more general power of the Minister to withdraw a proposed scheme or amendment under new s.62A. An administrative amendment.

Clause 34. Section 51 amended

This clause amends s.51, and clarifies that a direction to the Commission to republicise a proposed modification to a region planning scheme or amendment, if of a substantial nature, is a direction to "advertise" the proposed region planning scheme or amendment again. The current word "deposit" is ambiguous. An administrative amendment.

Clause 35. Section 52 amended

This clause amends s.52, and deletes references to ss.46 to 48 and replaces them with a reference to regulations. This change supports amendments to ss.41 to 44, and new ss.43 and 258A, establishing new region planning scheme regulations. An administrative amendment.

Clause 36. Section 53 amended

This clause amends s.53, and deletes current references to ss.49 or 52(3), and instead refers to new s.62A, which is a new power of the Minister to withdraw or direct withdrawal of a proposed scheme or amendment. An administrative amendment.

Clause 37. Part 4 Division 4 heading replaced

This clause deletes the current heading of Division 4, entitled, *Minor amendments to region planning scheme*, and replaces with the new heading, *Submission and approval of minor amendments to region planning scheme*. Division 4 is the existing pathway for processing minor amendments to region planning schemes, with less onerous process requirements. An administrative amendment.

Clause 38. Section 56A inserted

This clause inserts a new s.56A, which provides a definition of *minor region planning scheme amendment.* The new section is necessary because the existing definition is otherwise to be deleted from the opening sentence in s.57(1), but otherwise replicates that existing definition. An administrative amendment.

Clause 39. Section 57 amended

This clause amends s.57, and slightly recasts the provision in light of the fact that minor amendments will be advertised in accordance with new Division 2, namely new s.43 (which is to say pursuant to new regulations), and not under its own standalone processes in Division 4, namely current s.58 to 60 (which will be deleted). Supports amendments to ss.58 to 60. An administrative amendment.

Clause 40. Sections 58 to 60 deleted

This clause amends ss.50 to 60, ensuring minor amendments will be advertised in accordance with new Division 2, namely new s.43 (which is to say pursuant to new regulations), and not under its own standalone processes in Division 4, namely current ss.58 to 60 (which are deleted by this clause).

Clause 41. Section 61 amended

This clause amends s.61, and is a minor change deleting the existing reference to s.60 (which will be deleted). An administrative amendment.

Clause 42. Section 62 amended

This clause amends s.62, and inserts new provisions outlining the Minister's powers to approve, refuse or require modifications to a minor region planning scheme amendment. In particular, new s.62(1A) is necessary to tie-into the new advertising and consultation process for minor amendments under Division 2, namely new s.43 (which is to say pursuant to new regulations), rather than its own standalone processes in Division 4, namely current ss.58 to 60 (which are deleted by this clause).

Moreover, s.62(1), (2) and (3) have been slightly reworded so that its language better reflects the current wording in s.87(2), concerning the approval of local planning schemes. There is a slight but possibly important difference between the Minister:

- approving an amendment with modifications (the current wording, which suggests the Minister's role is finished and powers spent); and
- making a decision that requires further modifications be made, with those modifications being resubmitted to the Minister for approval (the proposed wording matching s.87(2)(b), which suggests the Minister's role is not yet finished and powers not yet spent).

Clause 43. Part 4 Division 4A inserted

This clause inserts new Part 4A, entitled *Withdrawal of region planning scheme or amendment*, which empowers the Minister to withdraw a proposed region planning scheme or amendment partway through the scheme process. Currently under section 49 of the PD Act once a proposed region planning scheme or amendment has been submitted to the Minister in accordance with section 48, the Minister may decide to withdraw the scheme or amendment, rather than submit the proposal to the Governor for approval under section 50. However, there have been instances where a proposed scheme amendment has been overtaken by other events and has become redundant either before it is advertised, or after it is advertised but before it is provided to the Minister under section 48.

This has caused great confusion, especially in situations where Government has all but committed – including openly through a much-publicised election commitment – for a proposal not to continue, but where current provisions suggest must otherwise undertake the formal scheme amendment process to its official completion. Notable examples include: MRS amendment 1310/41 in 2017, concerning the proposed road widening on Guildford Road from East Parade to Tonkin Highway; GBRS amendment 0044/57 in 2017, concerning the development of DPAW offices; MRS amendment 1271/41 in 2011, concerning Lot 59 Wilkins Road, Kalamunda; MRS amendment 1271/41 in 2010, concerning Lot 59 Wilkins Road, Kalamunda; MRS amendment 1158/41 in 2008, concerning the Fremantle Outer Harbour; MRS amendment 1107/33A in 2005, concerning Tonkin Highway Access to Perth Airport, Redcliffe.

Section 62A. Minister may withdraw or direct withdrawal of proposed scheme or amendment

This section affords the Minister a broad power to cause the withdrawal of a region planning scheme amendment at any time before it has been officially determined.

Clause 44. Section 76 amended

This clause amends s.76, and clarifies the Minister's power to direct local governments for failing to have a satisfactory scheme or amendment. Section 76 is the Minister's main enforcement power to take action if the Minister believes a local government does not have a satisfactory planning scheme, and thereby should take steps to introduce a new scheme or amendment. However, the drafting of section 76 is currently ambiguous.

For example, in the case of a 'standard' amendment to a local planning scheme under Part 5 Division 3 of the LPS Regulations, the local government may have resolved to prepare the amendment, but failed to proceed to advertise the amendment in accordance with s.84 of the PD Act and r.47 of the LPS Regulations, and it is unclear whether they could be made to do so under s.76. Similarly, it is unclear whether a local government that has presented a scheme to the Minister for approval, but then refused to execute the scheme documents in accordance with s.87(4B) and r.62, could be subject to a s.76 order. A rewording of s.76 aims to clarify the scope of the Minister's power, so that it encompasses the entire ambit of new scheme and scheme amendment processes.

Clause 45. Section 81 replaced

This clause deletes s.81 and replaces it with a new s.81. This clause essentially replicates new EPA referral provisions (that is to say including when a referral is made and new regulations made under new s.48AAA of the EP Act, prescribing classes of referral where referral may not

be required), as they relate to local planning schemes. Meaning, this clause operates in relation to local planning schemes in essentially the same way as new cl.23 deletes and replaces s.38 in relation to region planning schemes.

Clause 46. Section 82 amended

This clause amends s.82, in much the same way as they relate to local planning schemes in cl.24 amending s.39. An administrative amendment.

Clause 47. Section 84 replaced

This clause deletes s.84 and replaces it with a new s.83A and new s.84, in order to clarify the Minister's power for consent to advertise new schemes or amendments. Under the previous *Town Planning Regulations 1967* ('TP Regulations'), the Minister had a role to give consent to the advertising of local planning schemes, which included the power to in effect block schemes or scheme amendments proceeding in certain forms. However, s.84 of the PD Act, as currently worded, says that after compliance with the EPA referral and environmental review requirements contained in sections 81 and 82, a local planning scheme *is* to be advertised.

The phrase 'is to be advertised' suggests that while the Minister can regulate how a new local planning scheme or amendment is advertised, the Minister cannot outright prohibit a new scheme or amendment being advertised. For this reason, when the current LPS Regulations were published in 2015, they afforded the Minister no role in relation to advertising, as had existed as an equivalent to the old TP Regulations. However, given the Minister is the ultimate decision-maker for all new local planning schemes or amendments, this creates public confusion in situations where a local government insists on a particular new scheme or amendment be advertised, but where the Minister is of the firm view that this proposed new scheme or amendment should not and will not ever be approved.

Permitting new schemes or amendments to be advertised in such situations generates both unnecessary public angst and is essentially a waste of time and resources, as unnecessary red tape. Therefore, the Minister's previous understood role, to give consent to the advertising of all new local planning schemes and amendments, should be restored and made clear.

Section 83A. Proposed scheme or amendment to be submitted to Minister for approval to advertise

This section provides the Minister with a clear power to approve, refuse, or require further modifications to a new local planning scheme or amendment, before it is advertised. Noting the LPS Regulations have already established "complex", "standard" and "basic" amendment streams, it is open to the Minister to delegate all or aspects of this power under existing powers set out in s.265 of the PD Act.

Section 84. Advertising proposed scheme or amendment

This section rewords s.84 in light of the Minister's new powers with respect to advertising in new s.83A. An administrative amendment.

Clause 48. Section 85 amended

This clause amends s.85, and facilitates amendments to ss.81 and 82. An administrative amendment.

Clause 49. Section 87 amended

This clause amends s.87, and facilitates amendments to ss.81 and 82. The inclusion of the words 'if applicable' is recognition of the prospect that some schemes or amendments may not require referral under new environmental regulations made pursuant to s.48AAA of the EP Act. An administrative amendment.

Clause 50. Section 124 amended

This clause amends s.124, and deletes the reference in 124(4) to s.43(1), due to changes to the region planning scheme process under Part 4 (especially new region scheme regulations governing advertising under s.43). An administrative amendment.

Clause 51. Section 125 amended

This clause amends s.125, and deletes references no longer applicable on account of the new region planning scheme process under Part 4 (especially new region scheme regulations). An administrative amendment.

Clause 52. Section 258A inserted

This clause inserts a new s.258A, which provides the actual head of power for the Governor to make regulations with respect to region planning schemes under Part 4.

Clause 53. Section 263 amended

This clause amends s.263, and inserts a new s.263(2)(eb), clarifying the Governor can make regulations in relation to the enforcement of region planning schemes and not merely local planning schemes. Currently local governments enjoy broad powers to enforce compliance with their own local planning schemes, including under r.79 in the LPS Regulations, enjoying certain powers of entry and inspection.

Curiously, officers of the Department and other persons representing the Commission have no clear equivalent powers with respect to ensure compliance with a region planning scheme. This means, in practice, the State's own public servants have less ability to ensure obedience to State-level planning instruments than local governments do with their own local-level ones. Given new region planning scheme regulations are to be made, a clear head of power is beneficial to ensure an equivalent to r.79 be provided at a State and regional level.

Division 2 — Environmental Protection Act 1986 amended

This Division deals with changes to the EP Act, in order to facilitate corresponding changes in s.38 and s.81 of the PD Act, permitting regulations to be made prescribing classes of planning schemes that may not require referral to the EPA.

Clause 54. Act Amended

This clause explains this Division amends the EP Act.

Clause 55. Section 3 amended

This clause amends s.3 of the EP Act, and expands the scope of assessed schemes to include of a class prescribed by regulations made under section 48AAA.

Clause 56. Section 48AAA inserted

This clause inserts new s.48AAA into the EP Act, and permits regulations to be made prescribing classes of planning schemes that may not require referral to the EPA. To avoid doubt, whether or not any potential exemptions for referral will be made is wholly a decision for the Governor (advised by EPA and the Minister for Environment), to be set out in environmental regulations.

It would be anticipated that no exemption would be permitted where the new planning scheme or amendment could have a significant impact on the environment. Nevertheless and to negate any such possibility, subsection (3) contains an explicit limitation that outright prohibits any exemption were it to have a significant effect on the environment.

Clause 57. Section 48C amended

This clause amends s.48C of the EP Act, and deletes references concerning advertising that cite sections in the PD Act that are to be deleted due to this Bill, and instead refer to new relevant sections. An administrative amendment.

Part 7 — State planning policies and planning codes

This Part contains provisions that deal with existing State planning policies ('SPPs') under Part 3 of the PD Act. This Part also permits the preparation of new instruments to be known as "planning codes" through a new Part 3A.

State planning policies are the highest-level policy documents found in the planning system, and as such, the process for preparing and amending such documents is quite extensive. Under section 77(1)(b) of the PD Act, such as *State Planning Policy 7.3: The Residential Design Codes* ('R-Codes'), can be read-into local planning schemes, essentially elevating such policies into law as if they were subsidiary legislation.

The proposed provisions aim to address the following particular areas of reform:

- Introduce a new requirement for all planning-related decision-makers to have due regard to the State policy framework in decision-making.
- Ensure State Planning Policies explicitly contemplate bushfires, coastal erosion and other hazards.
- Introduce risk-based approaches to State planning policy amendments.
- Introduce the concept of planning codes.

Division 1 — Planning and Development Act 2005 amended

This Division deals with changes to the PD Act.

Clause 58. Act Amended

This clause explains this Division amends the PD Act.

Clause 59. Section 4 amended

This clause amends certain definitions in s.4, including:

- introduce a new definition of *planning code*;

- amend existing definition of *planning scheme*, replacing the existing reference to a SPP with a reference to a planning code;
- amend the existing definition of *State planning policy*, changing the current reference to preparing an SPP under s.29 with a reference to preparing an SPP under regulations.

Clause 60. Section 14 amended

This clause amends s.14, which sets out the Commission's function, to include a reference to planning codes.

Clause 61. Section 17 amended

This clause amends s.17, and deletes references to provisions that will in turn be deleted enact other reforms under this Bill. An administrative amendment.

Clause 62. Section 26 amended

This clause amends s.26, which prescribes the preparation and content of SPPs, with the aim of ensuring all planning-related decision-makers have due regard to the State policy framework in decision-making. Currently, s.26(2) states that SPPs exist to direct planning throughout the State *by* local governments. It does not, however, say whether SPPs exist to facilitate State Government departments, agencies, or semi-governmental public authorities. The PD Act also does not explicitly contemplate whether the Commission itself is to be directed by SPPs, even though it prepares these documents. Changes to s.26 clarify SPPs exist to facilitate planning by public authorities in addition to local governments.

Clause 63. Section 27 amended

This clause amends s.27, which sets out what matters the Commission must have regard to in preparing an SPP, and more explicitly contemplate bushfires, coastal erosion and other hazards. It should be noted there are already SPPs on bushfires, coastal erosion and other hazards in existence. It is also arguable that s.27(c) 'characteristics of land' may already cover the field. Nonetheless, recent events, including cataclysmic national bushfires and significant erosion as major beaches, highlights the benefit of a more deliberate reference to natural hazards and other hazards, as something that must be considered when the Commission prepares an SPP.

Clause 64. Sections 28 to 32 replaced

This clause deletes ss.28 to 32 and inserts a new ss.28 and 29.

Section 28. Process for preparation and approval of State planning policy

This section introduces new risk-based approaches to SPP amendments through new regulations. As with the introduction of new regulations to the preparation of region planning scheme regulations through this Bill, the introduction of regulations will permit greater flexibility in a manner similar to local planning schemes under the LPS Regulations, which have "complex", "standard" and "basic" amendment streams.

Section 29. Persons and bodies performing functions to have due regard to State planning policies

This section works in tandem to changes to s.26, and clarifies that any person or body who performs a function under the PD Act (whether a local government, public authority or the Commission itself), they must have due regard to any relevant SPP.

Clause 65. Part 3A inserted

This clause inserts new Part 3A, which permits the preparation of new planning codes, which will replace the role of certain SPPs in being incorporated into planning schemes.

Part 3A — Planning codes

Currently SPPs are arguably the State's premier planning policy documents. However, they are very divergent in how they guide planning throughout the State. On the one hand, certain SPPs can be descriptive and aspirational, adopting discretionary language and function more-or-less in the way a traditional policy would operate. On the other hand, certain SPPs can be prescriptive and definitive, adopting mandatory language and function more akin to legislation.

In the mould of the latter prescriptive kind, arguably the most important and well-known SPP is *State Planning Policy 7.3: The Residential Design Codes* ('R-Codes'). This document regulates how almost all residential development occurs throughout the State. It sets out whether someone can subdivide their land, the density of the locality, building height, setbacks, bulk, scale, overshadowing, privacy, good design and a myriad of other requirements and features.

In something of a quirk of the current planning system, SPPs such as the R-Codes can also be read into planning schemes, through an incorporation mechanism set out in s.77(1)(b) of the PD Act. After such incorporation, the SPP 'is to be read as part of the scheme'. As planning schemes have the status of subsidiary legislation, akin to regulations, SPPs in effect can be elevated beyond being mere policies and can take effect as if they are law. As also contemplated by the model provisions of the LPS Regulations, the R-Codes are essentially read-into every local planning scheme throughout the State in this way.

Nonetheless, there are some significant problems with the current system, including the following:

- The development of some SPPs, such as the R-Codes, has reached such a state of evolution that they could hardly now be called "policies" anymore, and are virtually of a different genus of instrument entirely.
- Despite the incorporation process under s.77(1)(b), recent judicial determinations have called into question to what extent an SPP, such as the R-Codes, ever truly becomes anymore more than a mere policy.
- The importance of the R-Codes in particular has only grown in recent years, as it expands its scope of matters to deal with the critical issues of medium and high density residential development, as well as precinct design, so any ambiguity regarding its legal status is problematic.

To put the issue beyond doubt, new Part 3A will work in conjunction with Part 3 to create a new conceptual divide. Part 3 will continue to govern existing descriptive and aspirational policies. Part 3A will in effect govern prescriptive and mandatory policies, such as the R-Codes, as new *planning codes*. The existing incorporation provisions will also henceforth be moved from Part 3

into Part 3A. Transitional provisions will also name the R-Codes as planning codes, although of course it will be possible for other planning codes will be developed in the future.

Section 32A. Planning codes

This section permits the Commission to prepare planning codes with the agreement of the Minister. Given, by design as set out in s.32A(2), planning codes are aimed at incorporation into local planning schemes through the incorporation mechanism in s.77(1)(b) of the PD Act, a planning codes made under s.32A(1) can deal with any matter that may be the subject of a local planning scheme. The question as to what can be dealt with in a local planning scheme is otherwise set out in Sch.7 of the PD Act.

Section 32B. Process for preparation and approval of planning code or amendment

This section permits regulations to be made regulating the preparation, submission and approval of planning codes. The use of regulations broadly matches the introduction of new regulations applicable to the preparation of SPPs, as set out in this Bill.

Section 32C. Effect of planning code

This section puts the effect of planning codes incorporated into a local planning scheme beyond doubt by giving them the status of subsidiary legislation. However, it is important to note a planning code is a nuanced instrument, insofar it will only have effect to the extent it is incorporated into a local planning scheme through s.77(1)(b), with or without modifications. While this gives clear status to a centrally-prepared document, it also permits a degree of flexibility and discretion by local governments with respect to any application in their own local planning scheme.

Clause 66. Section 77 amended

This clause amends s.77, replacing existing references to SPPs with planning codes, with respect to the incorporation mechanisms.

Clause 67. Section 269 amended

This clause works in tandem with new transitional provisions in s.291 of this Bill, which deems the R-Codes as planning codes. Both provisions are structured in this way due to the fact that different Parts of the PD Act commence by proclamation.

Division 2 — Environmental Protection Act 1986 amended

This Division deals with changes to the EP Act.

Clause 68. Act Amended

This clause explains this Division amends the EP Act.

Clause 69. Section 3 amended

This clause amends s.3 of the EP Act, to take into account the creation of planning codes as a new planning legal instrument with the effect of subsidiary legislation.

Clause 70. Section 48AAB inserted

This clause introduces new s.38AAB into the EP Act, and operates in much the same way as s.38AAA with respect to planning schemes. That is, provides a head of power for environmental

regulations to be made prescribing classes of planning codes that may not require referral to the EPA.

Clause 71. Section 48C amended

This clause amends s.48C of the EP Act. It clarifies that advertising and consultation requirements for the purpose of a "public review" under the environmental review system is governed by reference to new advertising and consultation requirements as they now apply to SPPs and planning codes, as altered by this Bill. An administrative amendment.

Clause 72. Section 51O amended

This clause amends s.51O of the EP Act, and deletes the reference to s.29 that is no longer relevant in light of new advertising and consultation requirements as they now apply, as altered by this Bill. An administrative amendment.

Part 8 — Making of subsidiary legislation

This Part contains provisions that deals with the roles of the Governor and Minister when making regulations under the PD Act.

Currently, sections 256 and 258 empower the Minister to make regulations with regard to the content, procedures and costs for local planning schemes. However, section 261 nominates the Governor as having the authority to make regulations with respect to local government fees for planning matters. The Governor also is given a broad power to make regulations under section 263, including the manner in which applications are made.

These inconsistencies have arisen because when the PD Act was introduced in 2005 it was a consolidation of different earlier statutes, some of which had named the Minister and others the Governor as the appropriate approval authority for new regulations. This oversight should now be corrected.

Clause 73. Act Amended

This clause explains this Part amends the PD Act.

Clause 74. Part 15 Division 1 heading deleted

This clause works in tandem with cl.79, by deleting headings that distinguish regulations made by the Minister and those made by the Governor. An administrative amendment.

Clause 75. Section 256 amended

This amends s.256, and gives regulation-making power to the Governor rather than Minister.

Clause 76. Section 258 amended

This amends s.258, and gives regulation-making power to the Governor rather than Minister.

Clause 77. Section 259 amended

This amends s.259, and gives regulation-making power to the Governor rather than Minister.

Clause 78. Section 260 deleted

This clause deletes s.260, which gives the Minister a penalty-making power in regulations up to

$5,000. This power is no longer needed in light of the fact the Governor, not the Minister, will now make all regulations under the PD Act, and the Governor already has a penalty-making power in regulation up to $50,000 in s.263(2)(e).

Clause 79. Part 15 Division 2 heading deleted

This clause works in tandem with cl.74, by deleting headings that distinguish regulations made by the Minister and those made by the Governor. An administrative amendment.

Clause 80. Section 263 amended

This clause amends s.263, and includes minor changes that delete and reword provisions that previous distinguished regulations made by the Minister under Division 1 with those made by the Governor under Division 2, but where no such distinction will now exist.

Clause 81. Part 15 Division 3 heading deleted

This clause deletes the heading to Division 3, and works in tandem with ss.74 and 79, with such Division heads no longer being relevant.

Part 9 — Signing off documents as to Crown or State land

This Part contains provisions that deal with the issue of signing planning applications under section 267A, when the land is Crown land or land owned by the State.

Currently under section 267A, only the Minister for Lands or a person authorised in writing by the Minister for Lands can sign planning applications. It is proposed to expand this list of persons to allow for a public authority or agency that has been vested with the care, control and management of a Crown reserve to have the ability to provide approval, or to sign a planning application, as the 'owner' with respect to Crown land.

The proposed provisions aim to address the following particular areas of reform:

- Expand the list of persons who can sign a planning application where it relates to Crown land.
- Clarify the list of persons who can sign a planning application where it is alienated land owned by the State.

Clause 82. Act Amended

This clause explains this Part amends the PD Act.

Clause 83. Section 267A amended

This clause amends s.267A, and expands and clarifies the list of persons who can sign a planning application where it relates to Crown land or freehold land owned by the State. The provision is largely based on the existing definition in r.10(2) of the *Building Regulations 2012.*

Clause 84. Section 267 amended

This clause amends s.267, and deletes from s.267(1)(b) the current reference to s.267A(1). The deletion is necessary because the original intent of s.267(1)(b) is to give personal protection from any claim in torts against someone acting on behalf of the Minister for Lands. However,

s.267A(1) no longer reflects only persons who act on behalf of persons acting on behalf of the Minister for Lands, whereas, the remaining reference to s.152(5)(c) still does so. An administrative amendment.

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

This Part contains provisions that deal with issues relating to setting aside land for open space and making payment in lieu of setting aside land, as part of the subdivision process found in Part 10 of the PD Act.

It is a long-held feature of the planning system, both in this State and other jurisdictions, that when there is an obvious and direct nexus between the creation of extra lots through subdivision, and the additional residents that this will bring into the area, thereby generating a consequent need for additional recreation infrastructure. This requirement is to be satisfied, as is usual in this State, through ceding public open space ("POS") or cash in lieu in exchange. Such a contribution is not a tax, but fee for services, a *quid pro quo*, or a reasonable response to the change in existing affairs created by the proposed subdivision.

The proposed provisions aim to address the following particular areas of reform:

- Clarify requirement of a condition to set aside land of public open space.
- Reformulate the use of the trust account.

Clause 85. Act Amended

This clause explains this Part amends the PD Act.

Clause 86. Section 153 replaced

This clause deletes s.153 as currently set out in the PD Act and replaces it with a new s.153. Currently under s.153 of the PD Act, the Commission must first impose a condition to set aside a certain portion of land within a subdivision area for public open space, and then may agree to clear the condition if the owner of the land, in lieu of setting aside that portion of land, pays to the local government a sum that represents the value of that portion. However, judicial guidance confirms there can only be an agreement to a cash-in-lieu payment after, and in consequence of, the exercise of its discretion under s.143(1) to impose a condition requiring a specific portion of land to be set aside for parks, recreation grounds or open spaces. The PD Act does not presently allow the imposition of a specific condition requiring a cash contribution in lieu of providing land for public open space within the subdivision area.

Given that cash-in-lieu may be more appropriate than the setting aside of land in some situations, it may be more efficient to allow the Commission to consider the question upfront whether a cash-in-lieu payment would be more appropriate, without needing to first impose a condition that requires land to be set aside. It is incumbent on the Commission, on behalf of the Government and people of Western Australia, to ensure that the existing POS framework is able to function in an appropriate manner to serve the needs of an increased population.

Providing land for public open space establishes an equitable "beneficiary pays" system. Without this system, State and local governments (supported ultimately by the public) are financially limited by the need to fund new infrastructure requirements arising out of urban growth. These

financial implications are especially apparent in a post-COVID economic environment. In that regard, it is reasonable that developers who contribute to increased demand on the use of POS, contribute to the cost of that open space being improved or upgraded to account for higher levels of activity.

Clause 87. Section 154 amended

This clause amends s.154, provides further clarity as to how cash-in-lieu for POS monies are to be managed. In particular, local governments have questioned why the funds received under s.153 need to go into a trust account rather than a special reserve account as is required for developer contributions under *State Planning Policy SPP 3.6 Development Contributions for Infrastructure* (SPP 3.6). The change to a reserve account is appropriate as:

- reserve accounts are established for a specific purpose and strict constraints apply to changing the purpose;
- interest on the reserve account can be restricted to apply to that purpose; and
- the monies are being held in reserve for specific works rather than for a specific individual or company.

Part 11 — Community infrastructure

This Part introduces deals with heads of power in Sch.7, as they relate to community infrastructure.

Sch.7 sets out the matters which may be dealt with by a planning scheme. Clause 5 permits planning schemes to deal with infrastructure such as roads, public works, reservations of land, and provision of facilities. In conjunction with cl.11(4), a planning scheme often deals with such matters through the imposition of development contributions.

Development contributions are a long-established feature of the planning system, both in Western Australia and other jurisdictions. Importantly, a development contribution is not designed as nor should operate as a tax. Rather, development contributions are an exchange, a fee for service, or a recovery of expenses in giving effect to a planning scheme. That is, in providing a proponent the right and ability to develop land under the scheme, there is a corresponding cost generated through an increased demand for infrastructure.

Managing development contributions through development contribution plans is already embedded in the State's planning framework, including in the *Planning and Development (Local Planning Schemes) Regulations 2015* ("LPS Regulations"), and policies such as *State Planning Policy 3.6 Development Contributions for Infrastructure*.

Development contributions establish an equitable "beneficiary pays" system. Without development contributions, State and local governments (supported ultimately by the public) are financially limited by the needed to fund new infrastructure requirements arising out of urban growth. These financial implications are especially apparent in a post-COVID economic environment. In that regard, it is reasonable that developers who contribute to increased demand on the use of infrastructure, contribute to the cost of that infrastructure being improved or upgraded to account for higher levels of activity.

The proposed provisions aim to address the following particular areas of reform:

- Clarify community infrastructure is a type of infrastructure contemplated for the purposes of clause 5, and then further detail what is further expected as community infrastructure.
- Clarify how community infrastructure monies are to be managed for the purposes of clause 11.

Clause 88. Act Amended

This clause explains this Part amends the PD Act.

Clause 89. Schedule 7 amended

This clause amends Sch.7 by inserting a new cl.5(2A) and new cl.11(4).

Clause 5 already contemplates a range infrastructure types that, in conjunction with the head of power under clause 11(4), is routinely supported in planning schemes through development contributions as "standard development infrastructure". This includes roads, intersections, lighting, water, sewerage, drainage and public transport.

However, clause 5 is less clear in providing a head of power in planning schemes for what is considered "community infrastructure". This includes community centres, libraries, schools and other educational facilities, child care centres (including outside school hours care services), and sporting facilities.

Clause 5(4) does already provide a general reference to "public facilities and conveniences". Moreover, in many cases community infrastructure can and has been supported through policy, such as State Planning Policy 3.6. Nonetheless, the ability to recover development contributions, especially for community infrastructure, has increasingly been subject to debate and challenge.

Importantly, cl.5(2A) will not automatically expand the scope of circumstances development contributions can necessarily be imposed on a developer. Whether any particular development contribution can be imposed is something that must be addressed having regard to well-understood principles such as need and nexus, the particular provisions of a development contribution plan embedded in a planning scheme, and the peculiar circumstances of an individual landowner's case. Nonetheless, cl.2(5A) provides additional legal clarity at a time when there is increased demand for, but equally enlarged uncertainty about, securing future development contributions for community infrastructure needs.

Similarly, new cl.11(4) provides additional support and legal clarity for the management of development contributions. This is to support the establishment of financial regimes that may better enable appropriate funds for the improvement of existing, or the development of, new community infrastructure via local planning schemes. It is envisioned that such financial regimes may include systems where funds are under held in trust by a responsible authority for expenditure, in a similar manner as provided for under s.154 for cash in lieu of public open space.

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

This Part deals with aspects of endorsing diagrams and plans of survey of approval plans of subdivision under Part 10 of the PD Act.

Subdivision under Part 10 is essentially a two-step process. A landowner submits to and obtains from the Commission conditional approval, pursuant to s.143 (via submitting Form 1A), which permits the landowner to carry out necessary site works on the land. Once those site work activities have be concluded, the landowner submits to and obtains from the Commission a final endorsement of a proposed diagram or planning of survey, pursuant to s.145 (via submitting Form 1C). Once endorsement has been provided by the Commission, the landowner can apply the Registrar of Titles for new certificates of title.

The proposed provisions aim to address the following particular areas of reform:

- Clarify when the Commission can endorse a diagram or plan of survey of subdivision on the basis that certain conditions will be complied with at the time of registration.
- Introduce a further 2 year extension of time to lodge 'certified correct' diagram or survey of subdivision.

Division 1 — Planning and Development Act 2005 amended

This Division amends the PD Act.

Clause 90. Act Amended

This clause explains this Division amends the PD Act.

Clause 91. Section 145 amended

This clause amends s.145, in order to clarify when the Commission can endorse a diagram or plan of survey of subdivision on the basis that certain conditions will be complied with at the time of registration. Under s.145(4)(b), the Commission is to approve a diagram or plan of survey of subdivision if any conditions of subdivision approval 'have been complied with or will be complied with *at the time* a certificate of title is created or registered'. However, there has been some confusion amongst planning stakeholders that this provision allows for the Commission to endorse a diagram or plan of survey of subdivision where any condition *has not* been complied with as long as it can be shown that the developer *will* comply with it by the time the diagram or plan is registered.

This is not how s.145(4) of the PD Act is intended to operate. This provision should only allow for the Commission to endorse a diagram or plan of survey of subdivision where conditions have not been complied with if those conditions relate to matters that are only capable of being complied with at the time of registration. For example, a condition requiring the grant of a restrictive covenant or an easement can physically only be complied with at the time the interest is registered and the new titles are created. New s.145, especially s.145(b)(ii) and 145(4A), bring further clarity to these issues.

Clause 92. Section 145A inserted

This clause inserts new s.145A, in order to introduce a further 2 year extension of time to lodge 'certified correct' diagram or survey of subdivision. Under the current planning system, there can be challenges – sometimes beyond the control of landowners – as to obtaining the 'certified correct' version of the diagram or plan of survey in time to lodge it with the Commission with the prescribed period. This can put the Commission (usually assisted by the Department) in the difficult position of accepting an unofficial diagram or survey of subdivision, noting the official

one from Landgate will soon arrive, or to require a landowner undertake the entire subdivision process again.

The latter situation is particularly problematic and creates unnecessary red tape, where it may be otherwise clear the landowner has carried out all necessary site works and seems to have complied with all conditions of earlier conditional approval. To deal with this issue, it is proposed that the Commission be provided with the ability to grant an extension to the prescribed period in section 145(2) of 2 years (once only).

Clause 93. Section 251 amended

This clause amends s.251, and provides a right of review to SAT for extension of time decisions under new s.145A.

Clause 94. Section 253 amended

This clause amends s.253, and provides a "deemed refusals" period for triggering a 30-day right of review to SAT for extension of time decisions under new s.145A.

Division 2 — Community Titles Act 2018 amended

This Division amends the Community Titles Act 2018 ('CT Act').

Clause 95. Act Amended

This clause explains this Division amends the CT Act.

Clause 96. Section 30 amended

This clause amends s.30 of the CT Act, and is a consequential amendment to take into account new s.145A. An administrative amendment.

Part 13 — Improvement plans

This Part clarifies improvement plans can be applied to multiple local government district areas.

Clause 97. Act Amended

This clause explains this Part amends the PD Act.

Clause 98. Section 119 amended

This clause amends s.119, to clarify improvement plans can be applied to multiple local government district areas.

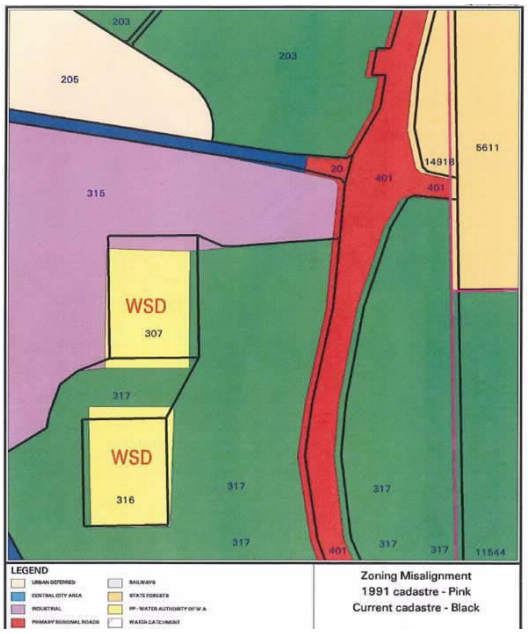
Part 14 — Electronic planning maps

This Part introduces new provisions permitting the use of electronic planning scheme maps.

All planning schemes have scheme maps, which delineate planning boundaries, such as zones, reserves, special control areas and other planning markings. As the modern planning system in Western Australia harks back almost a century to 1928, many of the spatial and cadastral data that underpinned the creation of these maps at that time pre-dated computers, the use of global position satellite technology, and more modern surveying techniques. In many instances, the

planning boundaries at the time of original marking had an accurate correlation to lot boundaries as understood at that time.

However, in an age of new and improved geographic information and surveying systems, new cadastral information is frequently updated by the Western Australian Land Information Authority (i.e. Landgate) on its Spatial Cadastral Database. The effect of these frequent updates is a continuous, gradual misalignment between lot boundaries and planning markings, as depicted in the following example:



Where the Department's Geographic Information Service Team does create updated maps that do reflect a new alignment based on the latest Landgate data, these are not "official" maps for the purpose of the planning system. Under the current planning system, either the Commission or relevant local government, would have to undertake a formal scheme amendment (subject to an entire regulatory process, set out under Parts 4 and 5 of the PD Act, and taking several weeks to months) to realign updated cadastral boundaries and existing planning boundaries.

The proposed provisions aim to address the following particular areas of reform:

- Enable the electronic version of a planning scheme map, which is held by the Commission, to be the official legal version.
- Enable minor changes to an electronic map, as new cadastral information is provided, without the need for a formal scheme amendment.

Clause 99. Act Amended

This clause explains this Part amends the PD Act.

Clause 100. Sections 267B and 267C inserted

This clause inserts new ss.267B and 267C.

Section 267B. Electronic planning maps

This section inserts new provisions that enables the electronic version of a planning scheme map, which is held by the Commission, to be the official legal version. This section also enables minor changes to an electronic map, as new cadastral information is provided, without the need for a formal scheme amendment.

267C. Certified copies of electronic planning maps

This section empowers the Commission to certify a copy of any electronic map for the purpose of any legal proceeding.

Part 15 — Minister's powers in relation to local governments

This Part contains provisions that deal with the Minister's powers in relation to local governments who have failed to comply with a statutory duty under the PD Act.

Under the existing powers set out in s.212, the Minister can issue a notice to a local government if satisfied that local government has failed to comply with one or more statutory obligations outlined in subsection (1). If the local government fails to comply with the notice, the Minister has further powers under subsections (2) to (7) to fulfil the local government's functions (through the Department) as if the Minister were the local government.

The proposed provisions aim to address the following particular areas of reform:

- Clarify that an obligation imposed on a local government to comply with duties under regulations includes all regulations made under the PD Act.
- Expand the oversight of the Minister's use of such powers, by requiring any such notice be laid before Parliament and subject to Parliament's scrutiny.

Clause 101. Act Amended

This clause explains this Part amends the PD Act.

Clause 102. Section 212 amended

This clause amends s.212, and clarifies that an obligation imposed on a local government to comply with duties under regulations includes all regulations made under the PD Act. Currently, it is not clear whether the Minister could issue a notice under s.212 for say a failure of a local government to comply with a statutory duty under the LPS Regulations or DAP Regulations, as these are not regulations made under s.258.

This clause also expands the oversight of the Minister's use of such powers, by requiring any such notice be laid before Parliament and subject to Parliament's scrutiny.

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

This Part contains provisions that deal with land required for planning control areas ('PCAs') under Part 7 and Sch.6 of the PD Act.

PCAs operate in the nature of *de facto* planning reserves, put in place to set aside land often pending a formal reservation through a scheme amendment. PCAs are an integral part of the planning and development system, aimed at regulating or prohibiting the development of land

which is earmarked for a future public use. In the same nature as reserves, PCAs can trigger a private property owner's right to compensation for injurious affection.

Section 112 prescribes that a PCA can only be put over land if it is for one of the public purposes listed in Sch.6. While PCAs are in the nature of a *de facto* reserve, they are also more restrictive than reserves – as they should be. In particular, PCAs can only be established for the list of public purposes set out in Sch.6 of the PD Act. It is this characteristic which helps differ a PCA from a formal reserve.

The proposed provisions aim to address some current ambiguities in the list of public purposes set out in Schedule 6, including the following areas of reform:

- Clarify that where a PCA can be put in place for the purpose of a highway and other important regional road, this includes other roads such as access roads and roads ensuring local alternate access arrangements, which are necessary to deal practically with a proposed highway or important regional road.
- Clarify that a PCA can deal with land set aside for public transport.

Clause 103. Act Amended

This clause explains this Part amends the PD Act.

Clause 104. Schedule 6 amended

This clause amends Sch.6, cl.5, and clarifies that where a PCA can be put in place for the purpose of a highway and other important regional road, this includes other roads such as access roads and roads ensuring local alternate access arrangements, which are necessary to deal practically with a proposed highway or important regional road. Currently, it is not clear whether Important Regional Roads extends to include what might be considered related local alternate access arrangements, arising because of a proposed or existing highway or other important regional road. That is, on one view, while a PCA could be put over land for a highway, it cannot be put over land that would give access to residents who are to be cut-off because of the highway, because their road network is not a highway in itself, thereby in effect limiting or preventing the highway from being constructed.

This clause also inserts new cl.20, clarifying that a PCA can deal with land set aside for public transport. While car parks are mentioned in cl.1, and railways in cl.13, these purposes can be interpreted quite narrowly. For example, it is not necessarily clear whether clauses 1 and 13 are sufficient to cover what would be considered "public transport", and associated infrastructure. Given the importance of the METRONET project, the categories in Sch.6 should be broadened.

Part 17 — Transitional provisions

This Part contains provisions that deal with transitional provisions necessary to implement the Bill.

Clause 105. Act Amended

This clause explains this Part amends the PD Act.

Clause 106. Part 19 inserted

This clause inserts new Part 19 into the PD Act, which contains a number of transitional matters.

Section 289. LDAP or JDAP continues as district DAP

This section contains transitional provisions that will, at the proclamation of reforms relating to the DAP system, will automatically deem all LDAPs and JDAPs types of district DAPs.

Section 290. Preparation and approval of planning scheme where process commenced before commencement day

This section contains transitional provisions that permit the making of regulations concerning the preparation and approval of planning schemes, which otherwise would be affected further changes to the scheme process in this Bill.

Section 291. R-Codes taken to be planning codes

This section contains transitional provisions relating to the R-Codes, and work in tandem with s.269. Importantly, they allow the R-Codes – currently an SPP – to be deemed planning codes for the purpose of new Part 3A.

Section 292. Regulations made by Minister continue in force

This section contains transitional provisions that make clear any regulations made by the Minister continue to have effect notwithstanding such regulations, and amendments to such regulations, will in future by made by the Governor.

Section 293. Electronic planning maps prepared before commencement day

This section contains transitional provisions that allows for the retrospective application of electronic mapping, so as to allow any electronic maps that exist at the proclamation of Part 14 to have immediate effect.

Section 294. Transitional regulations

This section contains a broad head of power for transitional regulations, necessary to give effect to this Bill.