

Swan Valley Planning Bill 2020

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Western Australia

LEGISLATIVE ASSEMBLY

Swan Valley Planning Bill 2020

A Bill for

An Act to —

- **provide for a Swan Valley Planning Scheme that will apply to the Swan Valley for the purposes of the *Planning and Development Act 2005*; and**
- **provide for the establishment and functions of a Swan Valley Strategic Leadership Group and a Swan Valley Statutory Planning Committee; and**
- **amend the *Planning and Development Act 2005* in relation to its application in the Swan Valley; and**
- **repeal the *Swan Valley Planning Act 1995*; and**
- **make consequential amendments to other Acts,**
and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Swan Valley Planning Act 2020*.

2. Commencement

(1) This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) sections 52, 53 and 61 —
 - (i) if the *Planning and Development Amendment Act 2020* section 65 comes into operation on or before the day fixed under paragraph (e) — on the day fixed under paragraph (e); or
 - (ii) otherwise — immediately after the day on which the *Planning and Development Amendment Act 2020* section 65 comes into operation;
- (c) sections 54 and 102 —
 - (i) if the *Planning and Development Amendment Act 2020* section 56 comes into operation on or before the day fixed under paragraph (e) — on the day fixed under paragraph (e); or
 - (ii) otherwise — immediately after the *Planning and Development Amendment Act 2020* section 56 comes into operation;
- (d) section 83(2) —
 - (i) if the *Planning and Development Amendment Act 2020* section 18 comes into operation on or before the day fixed under paragraph (e) — on the day fixed under paragraph (e); or
 - (ii) otherwise — immediately after the *Planning and Development Amendment Act 2020* section 18 comes into operation;

- 1 (e) the rest of the Act — on a day fixed by proclamation.
- 2 (2) Despite subsection (1), if the *Planning and Development*
3 *Amendment Act 2020* Part 6 Division 1 comes into operation
4 before the day fixed under subsection (1)(e), sections 65 and 66
5 and Part 10 Division 10 of this Act —
- 6 (a) do not come into operation; and
7 (b) are deleted on the day fixed under subsection (1)(e).

8 **3. Terms used**

9 In this Act —

10 ***applicable regulations*** means —

- 11 (a) if there are relevant local planning scheme regulations,
12 as defined in section 40(1), that deal with a matter in
13 relation to local planning schemes that is substantially
14 similar to the matter referred to in the provision in which
15 the term is used — those relevant local planning scheme
16 regulations as they apply for the purposes of this Act
17 under section 40; or
- 18 (b) if there are no relevant local planning scheme
19 regulations of the kind referred to in paragraph (a) —
20 regulations made under section 41 for the purposes of
21 the provision in which the term is used;

22 ***chairperson*** has the meaning given in the *Planning and*
23 *Development Act 2005* section 4(1);

24 ***Commission*** means the Western Australian Planning
25 Commission established by the *Planning and Development*
26 *Act 2005* section 7(1);

27 ***Department*** means the department of the Public Service
28 principally assisting in the administration of this Act;

29 ***development*** has the meaning given in the *Planning and*
30 *Development Act 2005* section 4(1);

s. 3

- 1 **EPA** means the Environmental Protection Authority continued
2 in existence under the *Environmental Protection Act 1986*
3 section 7(1);
- 4 **Heritage Council** means the Heritage Council of Western
5 Australia established by the *Heritage Act 2018* section 11(1);
- 6 **Herne Hill townsite** means the area in the Swan Valley
7 bounded by the Great Northern Highway to the west, McDonald
8 Street to the north, Railway Crescent to the east and Argyle
9 Street to the south;
- 10 **improvement scheme** has the meaning given in the *Planning*
11 *and Development Act 2005* section 4(1);
- 12 **land** has the meaning given in the *Planning and Development*
13 *Act 2005* section 4(1);
- 14 **local planning scheme** has the meaning given in the *Planning*
15 *and Development Act 2005* section 4(1);
- 16 **Metropolitan Region Scheme** has the meaning given in the
17 *Planning and Development Act 2005* section 4(1);
- 18 **Minister for Heritage** means the Minister who administers the
19 *Heritage Act 2018*;
- 20 **Minister for the Environment** means the Minister who
21 administers the *Environmental Protection Act 1986*;
- 22 **officer of the Commission** has the meaning given in the
23 *Planning and Development Act 2005* section 4(1);
- 24 **public authority** has the meaning given in the *Planning and*
25 *Development Act 2005* section 4(1);
- 26 **State planning policy** has the meaning given in the *Planning*
27 *and Development Act 2005* section 4(1);
- 28 **State Register of Heritage Places** means the register established
29 and maintained under the *Heritage Act 2018* section 35(1);
- 30 **Swan Valley** has the meaning given in section 4(1);
- 31 **Swan Valley local government** means the local government for
32 the local government district that includes the Swan Valley;

1 **Swan Valley Planning Scheme** means the Swan Valley
2 Planning Scheme in force under Part 2;

3 **Swan Valley rural land** means land in the Swan Valley that is
4 used, or is suitable to be used, for horticulture or viticulture;

5 **Swan Valley Strategic Leadership Group** means the committee
6 established by section 28(1).

7 **4. Swan Valley**

8 (1) For the purposes of this Act, the **Swan Valley** is the area
9 delineated in black on the plan number 0.0731 entitled “Area of
10 the Swan Valley” held at the office of the Commission and
11 certified by the Minister as the plan prepared for the purposes of
12 this section.

13 (2) The area delineated in black on the map in Schedule 1 is
14 indicative of the area of the Swan Valley.

15 (3) In any proceedings, a plan purporting to be a copy of the plan
16 referred to in subsection (1) showing the boundaries of the
17 Swan Valley is evidence of those boundaries.

18 **5. Objects of Act**

19 (1) The objects of this Act are —

- 20 (a) to protect the Swan Valley as a productive agricultural
21 area within the Perth metropolitan region; and
- 22 (b) to maintain the rural character and conserve the heritage
23 of the Swan Valley; and
- 24 (c) to ensure that horticulture, viticulture, hobby farming
25 and equestrian activities remain the principal land uses
26 in the Swan Valley; and
- 27 (d) to discourage land uses in the Swan Valley that are
28 incompatible with its rural character and the principal
29 land uses referred to in paragraph (c); and

s. 6

- 1 (e) to ensure that tourism and hospitality in the Swan Valley
2 are consistent with the objects in paragraphs (a) to (d);
3 and
- 4 (f) other than in the Herne Hill townsite, to prevent new
5 residential development in the Swan Valley except for
6 single houses on single lots in keeping with the rural
7 character of the Swan Valley; and
- 8 (g) to avoid overstocking, clearing of natural vegetation,
9 activities causing pollution or degradation of the
10 environment, or any other land management practices
11 detrimental to the Swan Valley; and
- 12 (h) to protect the natural environment of the Swan Valley,
13 including by reducing nutrient levels in the Swan River;
14 and
- 15 (i) to ensure that, for all development in the Swan Valley,
16 appropriate consideration is given to building setbacks,
17 retention of vegetation, suitable building materials and
18 boundary fencing; and
- 19 (j) to ensure that new non-rural development of Swan
20 Valley rural land is designed and located so as to reduce
21 any nuisance or other detrimental impacts that could
22 arise from existing or future uses of other Swan Valley
23 rural land for horticulture or viticulture; and
- 24 (k) to ensure that development and subdivision in the Swan
25 Valley are only permitted if this does not prevent the
26 objects in paragraphs (a) to (j) from being satisfied.
- 27 (2) A person exercising a power or performing a function under this
28 Act, or under the *Planning and Development Act 2005* in
29 relation to the Swan Valley Planning Scheme, must have regard
30 to the objects of this Act.

1 **6. Act binds Crown**

2 This Act binds the Crown in right of Western Australia and, so
3 far as the legislative power of the Parliament permits, the Crown
4 in all its other capacities.

1 **Part 2 — Swan Valley Planning Scheme**

2 **Division 1 — Nature and effect of scheme**

3 **7. Swan Valley Planning Scheme**

4 (1) A scheme called the Swan Valley Planning Scheme is to be
5 prepared by the Commission and approved by the Minister in
6 accordance with this Part.

7 (2) The Swan Valley Planning Scheme is a planning scheme for the
8 purposes of the *Planning and Development Act 2005*.

9 **8. Scheme has legislative effect**

10 (1) The Swan Valley Planning Scheme has legislative effect.

11 (2) For the purposes of the *Interpretation Act 1984*, the Swan
12 Valley Planning Scheme is subsidiary legislation made under
13 this Act.

14 (3) The *Interpretation Act 1984* section 41 does not apply to the
15 Swan Valley Planning Scheme or to an amendment of the Swan
16 Valley Planning Scheme.

17 **9. Effect of scheme for *Planning and Development Act 2005***

18 (1) In this section —

19 ***relevant planning scheme*** means —

20 (a) the Metropolitan Region Scheme; or

21 (b) the local planning scheme that applies to land in the
22 Swan Valley immediately before the scheme start day;
23 or

24 (c) any improvement scheme that applies to land in the
25 Swan Valley immediately before the scheme start day;

1 ***scheme start day*** means the day on which the first Swan Valley
2 Planning Scheme comes into operation.

- 3 (2) On and from the scheme start day —
- 4 (a) each relevant planning scheme ceases to apply —
- 5 (i) to land in the Swan Valley; and
- 6 (ii) to any development of that land that commenced
7 on or after that day;
- 8 and
- 9 (b) the *Planning and Development Act 2005* continues to
10 apply to land and development referred to in
11 paragraph (a), but the planning scheme that applies to
12 that land and development is the Swan Valley Planning
13 Scheme.

14 **Division 2 — Contents of scheme**

15 **10. Contents of scheme**

- 16 (1) The Swan Valley Planning Scheme must be consistent with the
17 objects of this Act.
- 18 (2) The Swan Valley Planning Scheme may, subject to
19 subsection (1) and sections 12 and 13 —
- 20 (a) include any provision that the Commission considers
21 will promote the orderly and proper planning,
22 development and management of the Swan Valley; and
- 23 (b) make provision, in relation to land in the Swan Valley,
24 for all or any of the purposes, provisions, powers or
25 works referred to in the *Planning and Development*
26 *Act 2005* Schedule 7; and
- 27 (c) without limiting paragraphs (a) and (b), confer functions
28 on the Commission.

- 1 **11. Scheme may incorporate provisions of other planning**
2 **instruments**
- 3 (1) The Swan Valley Planning Scheme may incorporate, with or
4 without modifications, any of the following —
- 5 (a) provisions of a State planning policy;
- 6 (b) provisions of the Metropolitan Region Scheme;
- 7 (c) model provisions, as defined in the *Planning and*
8 *Development Act 2005* section 257A(1);
- 9 (d) deemed provisions, as defined in the *Planning and*
10 *Development Act 2005* section 257B(1).
- 11 (2) If the Swan Valley Planning Scheme incorporates provisions
12 (the *incorporated provisions*) referred to in subsection (1) —
- 13 (a) the scheme is to have effect as if the incorporated
14 provisions, as in force from time to time, or any
15 subsequent provisions by which the incorporated
16 provisions are replaced, were set out in full in the
17 scheme; and
- 18 (b) the provisions are to have effect as part of the scheme
19 subject to any modifications set out in the scheme.
- 20 (3) Modifications referred to in subsection (2)(b) prevail over any
21 later amendments of the incorporated provisions, or subsequent
22 provisions referred to in subsection (2)(a), that are inconsistent
23 with the modifications.
- 24 **12. Planning areas and provisions about subdivision and**
25 **minimum lot sizes**
- 26 (1) The Swan Valley Planning Scheme must provide for the Swan
27 Valley to be divided into planning areas (the *Swan Valley*
28 *planning areas*).
- 29 (2) The Swan Valley Planning Scheme must set out planning
30 objectives for —
- 31 (a) the whole of the Swan Valley; and

- 1 (b) each of the Swan Valley planning areas.
- 2 (3) The Swan Valley Planning Scheme must, for each of the Swan
3 Valley planning areas, either —
- 4 (a) provide that subdivision of land is prohibited in that
5 area; or
- 6 (b) set out a minimum lot size that applies to subdivision of
7 land in that area and provide that land in that area must
8 not be subdivided into lots smaller than that minimum
9 lot size.
- 10 (4) Nothing in this section prevents the Swan Valley Planning
11 Scheme from providing for zones and reserves in the Swan
12 Valley.
- 13 **13. Provisions to ensure non-rural development designed to**
14 **minimise impacts from rural land uses**
- 15 (1) In this section —
- 16 *non-rural development* means residential development, tourism
17 or hospitality development, or any other development, that is
18 not related to horticulture, viticulture, hobby farming or
19 equestrian activities.
- 20 (2) The Swan Valley Planning Scheme must include provisions for
21 the purpose of ensuring that any new non-rural development of
22 Swan Valley rural land is designed and located so as to
23 minimise any nuisance or other detrimental impacts that could
24 arise from existing or possible future uses of other Swan Valley
25 rural land for horticulture or viticulture.
- 26 (3) The provisions referred to in subsection (2) may, without
27 limitation, include provisions relating to setbacks or otherwise
28 dealing with the position of buildings on lots.

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Division 3 — Making and amending scheme

Subdivision 1 — Preliminary

14. Term used: proposed scheme or amendment

In this Division —

proposed scheme or amendment means —

- (a) the first proposed Swan Valley Planning Scheme; or
- (b) a proposed Swan Valley Planning Scheme to replace the existing Swan Valley Planning Scheme; or
- (c) a proposed amendment of the Swan Valley Planning Scheme.

15. First proposed scheme

The Commission must prepare the first proposed Swan Valley Planning Scheme in accordance with this Part and submit it for approval by the Minister under Subdivision 4 as soon as practicable after the day on which this section comes into operation.

Note for this section:

Under s. 43, the process to be followed in preparing the first proposed Swan Valley Planning Scheme is different from the process that applies under Subdivisions 2 and 3.

16. Replacement or amendment of scheme

(1) The Swan Valley Planning Scheme may be —

- (a) repealed by a subsequent Swan Valley Planning Scheme prepared by the Commission and approved by the Minister in accordance with this Part; or
- (b) amended by an amendment prepared by the Commission and approved by the Minister in accordance with this Part.

- 1 (2) The Commission may, from time to time, prepare for approval
2 by the Minister —
- 3 (a) a proposed Swan Valley Planning Scheme to replace the
4 existing Swan Valley Planning Scheme; or
- 5 (b) a proposed amendment of the Swan Valley Planning
6 Scheme.

7 **Subdivision 2 — Processes to be followed in preparing proposed**
8 **scheme or amendment**

9 **17. Matters to which Commission must have regard**

10 In preparing a proposed scheme or amendment, the Commission
11 must have regard to the following —

- 12 (a) the objects of this Act;
- 13 (b) any State planning policy that affects the Swan Valley;
- 14 (c) any strategic document in force under the *Swan and*
15 *Canning Rivers Management Act 2006* Part 4
16 Division 2;
- 17 (d) the views of any person or body consulted under
18 section 18;
- 19 (e) any advice of the Heritage Council on referral under
20 section 19(2).

21 **18. Consultation requirements**

22 Before submitting a proposed scheme or amendment to the
23 Minister, the Commission must —

- 24 (a) consult the Swan Valley Strategic Leadership Group;
25 and
- 26 (b) consult the Swan Valley local government; and
- 27 (c) make reasonable endeavours to consult any public
28 authorities or persons that appear to the Commission to
29 have an interest in the proposed scheme or amendment.

1 **19. Referral to Heritage Council**

2 (1) This section applies to a proposed scheme or amendment that
3 affects or may affect any land or waters in the Swan Valley if —

4 (a) the land or waters are the subject of an entry in the State
5 Register of Heritage Places; or

6 (b) the Heritage Council has commenced a review under the
7 *Heritage Act 2018* section 40 in relation to the land or
8 waters, but —

9 (i) the Heritage Council has not yet made a
10 recommendation, and has not yet decided not to
11 make a recommendation, under that section; or

12 (ii) the Heritage Council has made a
13 recommendation under that section but the
14 Minister for Heritage has not yet given a
15 direction under section 41(1) of that Act in
16 relation to that recommendation;

17 or

18 (c) the land or waters are the subject of an entry in a local
19 heritage survey prepared under the *Heritage Act 2018*.

20 (2) As soon as practicable after preparing the proposed scheme or
21 amendment, the Commission must refer the proposed scheme or
22 amendment to the Heritage Council for advice.

23 (3) The Commission must not proceed, without the consent of the
24 Minister, with the proposed scheme or amendment unless the
25 advice of the Heritage Council has been received.

26 **20. Referral to EPA**

27 As soon as practicable after preparing a proposed scheme or
28 amendment, the Commission must refer the proposed scheme or
29 amendment to the EPA by giving to the EPA —

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

31 (b) any other written information about the proposed
32 scheme or amendment that is necessary to enable the

1 EPA to comply with the *Environmental Protection*
2 *Act 1986* section 48A in relation to the proposed scheme
3 or amendment.

4 **21. Environmental review to be undertaken if required by EPA**

5 (1) This section applies if, for the purposes of assessing a proposed
6 scheme or amendment referred to the EPA under section 20, the
7 EPA has under the *Environmental Protection Act 1986*
8 section 48C(1)(a) —

9 (a) required the Commission, if it wishes the proposed
10 scheme or amendment to proceed, to undertake an
11 environmental review of the proposed scheme or
12 amendment and report on it to the EPA; and

13 (b) issued instructions (the *review instructions*) concerning
14 the scope and content of that environmental review.

15 (2) If the Commission wishes to proceed with the proposed scheme
16 or amendment, the Commission must undertake, or cause under
17 section 22 to be undertaken, an environmental review of the
18 proposed scheme or amendment in accordance with the review
19 instructions.

20 (3) The Commission must not advertise the proposed scheme or
21 amendment under section 23 until —

22 (a) the Commission has given the report on the
23 environmental review to the EPA; and

24 (b) either of the following occurs —

25 (i) the EPA advises that the review has been
26 undertaken in accordance with the review
27 instructions;

28 (ii) the period of 30 days beginning on the day on
29 which the report on the review is given to the
30 EPA expires without the EPA having advised
31 whether or not the review has been undertaken in
32 accordance with the review instructions.

- 1 (4) If the EPA advises that the review has not been undertaken in
2 accordance with the review instructions, the Commission
3 may —
4 (a) comply with subsection (2); or
5 (b) request the Minister to consult the Minister for the
6 Environment and, if possible, agree with that Minister
7 on whether or not the review has been undertaken in
8 accordance with those instructions.
- 9 (5) If the Minister complies with a request made under
10 subsection (4)(b) and —
11 (a) agrees with the Minister for the Environment on whether
12 or not the review has been undertaken in accordance
13 with the review instructions — their decision is final and
14 without appeal or review; or
15 (b) cannot agree with the Minister for the Environment on
16 whether or not the review has been undertaken in
17 accordance with the review instructions — the
18 *Environmental Protection Act 1986* section 48J applies.
- 19 (6) The Commission may, in accordance with the applicable
20 regulations, recover the expenses incurred by the Commission
21 in undertaking an environmental review in accordance with the
22 review instructions.
- 23 **22. Environmental review to be undertaken by land owner in**
24 **some circumstances**
- 25 (1) This section applies if —
26 (a) the Commission is required under section 21(2) to
27 undertake an environmental review of a proposed
28 scheme or amendment in accordance with the review
29 instructions referred to in that section; and
30 (b) the proposed scheme or amendment was prepared at the
31 request of an owner of land to which the proposed
32 scheme or amendment relates.

1 (2) The Commission may, by written notice served on the owner of
2 land, request the owner to undertake an environmental review of
3 the proposed scheme or amendment in accordance with the
4 review instructions.

5 (3) If an owner of land served with a notice under subsection (2)
6 wishes the proposed scheme or amendment to proceed, the
7 owner must undertake the environmental review in accordance
8 with the review instructions and give it to the Commission.

9 **Subdivision 3 — Advertising proposed scheme or amendment**

10 **23. Advertising proposed scheme or amendment**

11 After complying with sections 20 and 21 (if applicable) in
12 relation to a proposed scheme or amendment, the Commission
13 must, in accordance with the applicable regulations —

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

18 **24. Commission's duties if proposed scheme or amendment to
19 be assessed under *Environmental Protection Act 1986***

20 (1) This section applies if the Commission has been informed by
21 the EPA under the *Environmental Protection Act 1986*
22 section 48A(1)(b)(i) that a proposed scheme or amendment
23 referred to the EPA under section 20 should be assessed by the
24 EPA under Part IV Division 3 of that Act.

25 (2) The Commission must —

- 26 (a) as soon as practicable, but in any event within 7 days
27 after the expiry of the period during which the proposed
28 scheme or amendment is advertised under section 23,
29 give the EPA a copy of each submission —
30 (i) made during that period; and

- 1 (ii) relating wholly or partly to environmental issues
2 raised by the proposed scheme or amendment;
3 and
4 (b) within 42 days, or any longer period that the Minister
5 allows, after the expiry of the period referred to in
6 paragraph (a), inform the EPA of its views on and
7 response to the environmental issues raised by the
8 submissions referred to in paragraph (a).

9 **Subdivision 4 — Approving and publicising scheme or amendment**

10 **25. Approval of proposed scheme or amendment**

- 11 (1) After complying with the applicable requirements of
12 Subdivisions 2 and 3 in relation to a proposed scheme or
13 amendment, the Commission must submit the proposed scheme
14 or amendment to the Minister.
- 15 (2) If a proposed scheme or amendment is submitted under this
16 section, the Minister may —
- 17 (a) subject to subsection (3) and section 26, approve the
18 proposed scheme or amendment; or
- 19 (b) require the Commission to modify the proposed scheme
20 or amendment in any manner that the Minister specifies
21 before the proposed scheme or amendment is
22 resubmitted for the Minister's approval under this
23 subsection; or
- 24 (c) refuse to approve the proposed scheme or amendment.
- 25 (3) The Minister must not approve a proposed scheme or
26 amendment under subsection (2)(a) unless the Minister is
27 satisfied that the proposed scheme or amendment is consistent
28 with the objects of this Act.
- 29 (4) The Minister must notify the Commission in writing of a
30 decision under subsection (2).

1 **26. Approval of scheme or amendment referred to EPA**

2 (1) The Minister must not under section 25(2)(a) approve a
3 proposed scheme or amendment referred to the EPA under
4 section 20 if the Minister has reached agreement with the
5 Minister for the Environment under the *Environmental*
6 *Protection Act 1986* section 48A(2)(b) in relation to the
7 proposed scheme or amendment.

8 (2) The Minister must not under section 25(2)(a) approve a
9 proposed scheme or amendment referred to the EPA under
10 section 20 unless —

11 (a) the EPA has informed the Minister under the
12 *Environmental Protection Act 1986* section 48A(1)(a)
13 that the EPA considers that the proposed scheme or
14 amendment should not be assessed by the EPA under
15 Part IV Division 3 of that Act; or

16 (b) the Minister —

17 (i) has received a statement under the
18 *Environmental Protection Act 1986*
19 section 48F(2) in respect of the conditions, if
20 any, to which the proposed scheme or
21 amendment is subject; and

22 (ii) is satisfied that the conditions, if any, have been
23 incorporated into the proposed scheme or
24 amendment;

25 or

26 (c) both —

27 (i) a decision has been made under the
28 *Environmental Protection Act 1986* section 48J
29 in respect of the conditions, if any, to which the
30 proposed scheme or amendment is subject; and

- 1 (ii) the Minister is satisfied that the conditions, if
2 any, have been incorporated into the proposed
3 scheme or amendment;
- 4 or
- 5 (d) the period of 28 days referred to in the *Environmental*
6 *Protection Act 1986* section 48A(1)(b)(i) has expired
7 without the EPA having informed the Commission
8 under that section.

9 **27. Publication, advertisement and commencement of approved**
10 **scheme or amendment**

- 11 (1) If the Minister approves a Swan Valley Planning Scheme or an
12 amendment of the Swan Valley Planning Scheme (the *approved*
13 *scheme or amendment*), the Commission must, as soon as
14 practicable after being notified of the approval —
- 15 (a) ensure that the approved scheme or amendment is
16 published in the *Gazette*; and
- 17 (b) advertise the approved scheme or amendment in
18 accordance with the applicable regulations; and
- 19 (c) ensure that copies of the approved scheme or
20 amendment are made available to the public.
- 21 (2) An approved scheme or amendment comes into operation on the
22 day on which the approved scheme or amendment is published
23 under subsection (1)(a) or on a later day specified in the
24 approved scheme or amendment.
- 25 (3) It is sufficient compliance with subsection (1)(a) if the approved
26 scheme or amendment is published in the *Gazette* without any
27 maps, plans or diagrams that form part of the approved scheme
28 or amendment.

1 **Part 3 — Swan Valley Strategic Leadership Group**

2 **28. Swan Valley Strategic Leadership Group established**

3 (1) A committee called the Swan Valley Strategic Leadership
4 Group is established.

5 (2) The Swan Valley Strategic Leadership Group is to consist of the
6 following persons appointed by the Minister —

7 (a) a presiding member;

8 (b) 6 other members.

9 (3) The Minister is to ensure that each person appointed under
10 subsection (2)(b) —

11 (a) has practical knowledge or experience that is relevant to
12 the functions of the Swan Valley Strategic Leadership
13 Group; or

14 (b) is otherwise an appropriate person to represent the
15 interests of Swan Valley residents and businesses.

16 (4) The Swan Valley Strategic Leadership Group may establish 1 or
17 more committees to assist it in the performance of its functions.

18 (5) Subject to the regulations, the Swan Valley Strategic Leadership
19 Group may determine its own procedures.

20 **29. Functions of Swan Valley Strategic Leadership Group**

21 (1) The Swan Valley Strategic Leadership Group has the following
22 functions —

23 (a) to give information to the Minister on matters relating to
24 the Swan Valley, including —

25 (i) the protection of the Swan Valley as a productive
26 agricultural region within the Perth metropolitan
27 region; and

28 (ii) the promotion and marketing of horticulture,
29 viticulture, tourism, hospitality, hobby farming
30 and equestrian activities in the Swan Valley; and

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- 1 (iii) the enhancement and protection of the cultural
2 heritage, built heritage, recreation and landscape
3 values of the Swan Valley;
- 4 (b) to prepare reports or other documents in relation to any
5 of the matters referred to in paragraph (a);
- 6 (c) to comment on any proposed Swan Valley Planning
7 Scheme or proposed amendment of the Swan Valley
8 Planning Scheme;
- 9 (d) to comment on any proposed policies, schemes or
10 instruments under the *Planning and Development*
11 *Act 2005* or another written law that affect the Swan
12 Valley;
- 13 (e) to provide direction and support to public authorities,
14 industry, commerce and the community in relation to the
15 Swan Valley and furthering the objects of this Act;
- 16 (f) any other functions given to the Swan Valley Strategic
17 Leadership Group by this Act or another written law.
- 18 (2) It is not a function of the Swan Valley Strategic Leadership
19 Group to provide advice or comments, or to prepare reports or
20 other documents, in relation to particular applications for
21 approval of subdivision or development in the Swan Valley.
- 22 (3) The Swan Valley Strategic Leadership Group may do all things
23 necessary or convenient to be done for or in connection with the
24 performance of its functions.

25 **30. Remuneration**

26 A member of the Swan Valley Strategic Leadership Group is
27 entitled to be paid the remuneration and allowances (if any)
28 determined in respect of the member by the Minister on the
29 recommendation of the Public Sector Commissioner.

30 **31. Use of staff and facilities of public authorities**

- 31 (1) The Swan Valley Strategic Leadership Group may, by
32 arrangement with the relevant employing authority, make use

- 1 either full-time or part-time of the services of any officer or
2 employee employed —
- 3 (a) in the Public Service; or
4 (b) in a State agency; or
5 (c) otherwise in the service of the State.
- 6 (2) The Swan Valley Strategic Leadership Group may, by
7 arrangement with a department of the Public Service or a State
8 agency, make use of any facilities of the department or agency.
- 9 (3) An arrangement under subsection (1) or (2) must be made on
10 terms agreed to by the parties.

11 **32. Regulations about Swan Valley Strategic Leadership Group**

- 12 The regulations may make provision for or in relation to the
13 Swan Valley Strategic Leadership Group, including —
- 14 (a) the constitution of the Group, including term of office,
15 vacancies and resignation or termination of members;
16 and
17 (b) the procedures of the Group.

1 **Part 4 — Swan Valley Statutory Planning Committee**

2 **33. Swan Valley Statutory Planning Committee established**

3 (1) The Commission must establish a committee of the Commission
4 to be known as the Swan Valley Statutory Planning Committee.

5 (2) The Swan Valley Statutory Planning Committee is to consist
6 of —

7 (a) the chairperson or, if another person has been nominated
8 by the chairperson and approved by the Minister under
9 the *Planning and Development Act 2005* Schedule 2
10 clause 4(2)(a), that person; and

11 (b) 5 other persons appointed by the Commission, with the
12 approval of the Minister, who must be members of the
13 Statutory Planning Committee established under the
14 *Planning and Development Act 2005* Schedule 2
15 clause 4; and

16 (c) 1 other person appointed by the Commission, with the
17 approval of the Minister, to represent the Swan Valley
18 local government; and

19 (d) 2 other persons appointed by the Commission, with the
20 approval of the Minister, to represent the interests of
21 Swan Valley residents and businesses.

22 (3) The Commission is to ensure that each person appointed under
23 subsection (2)(d) —

24 (a) has practical knowledge or experience that is relevant to
25 horticulture, viticulture, cultural heritage, landscape
26 protection, tourism, hospitality, hobby farming or
27 equestrian activities in the Swan Valley; or

28 (b) is otherwise an appropriate person to represent the
29 interests of Swan Valley residents and businesses.

1 **34. Functions of Swan Valley Statutory Planning Committee**

2 (1) The Swan Valley Statutory Planning Committee has the
3 function of exercising the powers or duties delegated to it under
4 subsection (2).

5 (2) The Commission may, by resolution, delegate to the Swan
6 Valley Statutory Planning Committee any power or duty of the
7 Commission under the *Planning and Development Act 2005*,
8 another provision of this Act or another written law.

9 (3) The Commission must ensure that the following are delegated to
10 the Swan Valley Statutory Planning Committee under
11 subsection (2) —

12 (a) the functions of the Commission under Part 2 of this
13 Act;

14 (b) the functions that the Commission has under the
15 *Planning and Development Act 2005* as the responsible
16 authority for the Swan Valley Planning Scheme;

17 (c) the functions of the Commission under the *Swan and*
18 *Canning Rivers Management Act 2006* Parts 4 and 5;

19 (d) substantially the same functions of the Commission
20 under the *Planning and Development Act 2005* as are
21 delegated to the Statutory Planning Committee
22 established under the *Planning and Development*
23 *Act 2005* Schedule 2 clause 4, but only to the extent that
24 those functions relate to land and development in the
25 Swan Valley.

26 (4) The Commission must not delegate a function referred to in
27 subsection (3)(a) to (c) to another person or body under the
28 *Planning and Development Act 2005* section 16(1).

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- 1 **35. Subdelegation of functions by Swan Valley Statutory**
2 **Planning Committee**
- 3 (1) The Swan Valley Statutory Planning Committee may, by
4 resolution, subdelegate any power or duty of the Commission
5 delegated to it under section 34(2).
- 6 (2) A subdelegation under subsection (1) may be made to —
- 7 (a) a member or associate member (as those terms are
8 defined in the *Planning and Development Act 2005*
9 section 4(1)); or
- 10 (b) a subcommittee; or
- 11 (c) an officer of the Commission; or
- 12 (d) a public authority or a member or officer of a public
13 authority; or
- 14 (e) the Swan Valley local government; or
- 15 (f) a committee of the council of the Swan Valley local
16 government; or
- 17 (g) an employee of the Swan Valley local government.
- 18 (3) A person or committee to whom a function is subdelegated
19 under subsection (1) cannot subdelegate that function.
- 20 **36. General provisions about delegation under s. 34 and 35**
- 21 (1) A resolution referred to in section 34(2) or 35(1) takes effect
22 when notice of the resolution is published in the *Gazette*.
- 23 (2) A person or committee exercising or performing a power or
24 duty that has been delegated or subdelegated to the person or
25 committee under section 34 or 35 is taken to do so in
26 accordance with the terms of the delegation or subdelegation
27 unless the contrary is shown.
- 28 (3) Nothing in section 34 or 35 limits the ability of the Commission
29 or the Swan Valley Statutory Planning Committee to perform a
30 function through an officer or agent.

1 **Part 5 — Miscellaneous**

2 **37. Delegation by Minister**

3 (1) The Minister may delegate to a person any power or duty of the
4 Minister under another provision of this Act.

5 (2) The delegation must be in writing signed by the Minister.

6 (3) A person to whom a power or duty is delegated under this
7 section cannot delegate that power or duty.

8 (4) A person exercising or performing a power or duty that has been
9 delegated to the person under this section is taken to do so in
10 accordance with the terms of the delegation unless the contrary
11 is shown.

12 (5) Nothing in this section limits the ability of the Minister to
13 perform a function through an officer or agent.

14 **38. Protection from liability**

15 (1) An action in tort does not lie against a person for anything that
16 the person has done, in good faith, in the performance or
17 purported performance of a function under this Act.

18 (2) The protection given by subsection (1) applies even though the
19 thing done as described in that subsection may have been
20 capable of being done whether or not this Act had been enacted.

21 (3) Despite subsection (1), neither the Commission nor the State
22 nor a local government is relieved of any liability that it might
23 have for another person having done anything as described in
24 that subsection.

25 (4) In this section, a reference to the doing of anything includes a
26 reference to an omission to do anything.

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- 1 **39. Certain references in written laws to include Swan Valley**
2 **Planning Scheme or things done under scheme**
- 3 (1) A reference in a written law to a planning scheme or scheme
4 under, or in force under, the *Planning and Development*
5 *Act 2005* includes, where the context requires, a reference to the
6 Swan Valley Planning Scheme.
- 7 (2) A reference in a written law to approval of development under
8 the *Planning and Development Act 2005* includes, where the
9 context requires, a reference to approval of development under
10 the Swan Valley Planning Scheme.
- 11 (3) A reference in a written law to requirements under the *Planning*
12 *and Development Act 2005* includes, where the context requires,
13 a reference to requirements under this Act.
- 14 (4) This section does not apply to references in this Act or the
15 *Planning and Development Act 2005*.
- 16 **40. Application of regulations under *Planning and Development***
17 ***Act 2005***
- 18 (1) In this section —
19 ***relevant local planning scheme regulations*** —
- 20 (a) means regulations made under the *Planning and*
21 *Development Act 2005* section 258, 259 or 261; but
- 22 (b) does not include any regulations or provisions of
23 regulations prescribed for the purposes of this
24 paragraph.
- 25 (2) Relevant local planning scheme regulations apply for the
26 purposes of this Act as if —
- 27 (a) the Swan Valley Planning Scheme were a local planning
28 scheme; and
- 29 (b) a reference to a local government were a reference to the
30 Commission.

- 1 (3) Relevant local planning scheme regulations apply under
2 subsection (2) with any modifications prescribed by regulations
3 made for the purposes of this subsection and any other
4 necessary modifications.
- 5 (4) If regulations made under the *Planning and Development*
6 *Act 2005* section 261 are relevant local planning scheme
7 regulations, the Commission may, in relation to the Swan
8 Valley Planning Scheme, impose fees under those regulations as
9 if it were a local government and that section applies
10 accordingly.

11 **41. Regulations**

- 12 (1) The Governor may make regulations prescribing matters —
13 (a) required or permitted by this Act to be prescribed; or
14 (b) necessary or convenient to be prescribed for giving
15 effect to the purposes of this Act.
- 16 (2) Without limiting subsection (1), the regulations may —
17 (a) make provision for or in relation to the making of
18 applications for the purposes of this Act, including the
19 manner in which applications are to be made and the
20 procedure to be followed; and
21 (b) prescribe forms for the purposes of this Act; and
22 (c) make provision for or in relation to the imposition,
23 collection and recovery of fees and charges for the
24 purposes of this Act; and
25 (d) confer functions on the Commission, the Swan Valley
26 Strategic Leadership Group, the chief executive officer
27 of the Department or any other person; and
28 (e) make provision for or in relation to the Swan Valley
29 Planning Scheme, including —
30 (i) the form of the scheme; and
31 (ii) the matters for which the scheme may or must
32 provide; and

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- 1 (iii) the process for the preparation, advertisement,
2 approval and amendment of the scheme; and
3 (iv) review of the scheme; and
4 (v) the interaction of the scheme with any plans or
5 other instruments made under the *Planning and*
6 *Development Act 2005*;
7 and
8 (f) make provision with respect to the persons from whom,
9 and the means by which, the Commission may recover
10 expenses incurred by it in undertaking an environmental
11 review required by the *Environmental Protection*
12 *Act 1986* section 48C(1)(a) in relation to a proposed
13 Swan Valley Planning Scheme or amendment of the
14 Swan Valley Planning Scheme; and
15 (g) provide for offences against the regulations and
16 prescribe penalties for those offences not exceeding a
17 fine of \$50 000.

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Part 6 — Transitional provisions

42. Terms used

In this Part —

relevant planning scheme has the meaning given in section 9(1);

scheme start day has the meaning given in section 9(1).

43. Process for making first Swan Valley Planning Scheme

(1) Part 2 Division 3 Subdivisions 2 and 3 do not apply to the first proposed Swan Valley Planning Scheme (the *first proposed scheme*) that the Commission is required under section 15 to prepare and submit to the Minister for approval.

(2) However, the Commission must not submit the first proposed scheme to the Minister for approval under section 25(1) unless —

(a) the Commission has had regard to the matters referred to in section 17(a) to (c); and

(b) the Commission has given a draft of the first proposed scheme to the Minister and the Minister has —

(i) given the draft to each of the EPA and the Heritage Council; and

(ii) requested each of the EPA and the Heritage Council to give advice on the draft;

and

(c) the Commission has —

(i) consulted the Swan Valley local government about the first proposed scheme; and

(ii) made reasonable endeavours to consult any public authorities or persons that appear to the Commission to have an interest in the first proposed scheme; and

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- 1 (iii) had regard to the views of any person or body
2 consulted under subparagraph (i) or (ii); and
3 (iv) had regard to any advice received by the Minister
4 from the EPA and the Heritage Council in
5 response to the request referred to in
6 paragraph (b)(ii).
- 7 (3) For the purposes of subsection (2), it does not matter whether
8 any consultation was undertaken, or any other thing was done,
9 before, on or after the day on which this section came into
10 operation.

11 **44. Application of *Interpretation Act 1984***

12 Except to the extent that this Part expressly provides
13 differently —

- 14 (a) the *Interpretation Act 1984* applies in relation to the
15 repeal of an enactment by Part 7; and
16 (b) the *Interpretation Act 1984* applies in relation to
17 section 9(2) as if —
18 (i) each relevant planning scheme were an
19 enactment; and
20 (ii) section 9(2) repealed each relevant planning
21 scheme, to the extent that the scheme applies to
22 the land and development referred to in that
23 section, on the scheme start day.

24 **45. Existing lawful or approved development**

- 25 (1) Section 9(2) and the Swan Valley Planning Scheme do not
26 apply in relation to a development that was lawfully being
27 carried out in the Swan Valley immediately before the scheme
28 start day.

- 1 (2) A development referred to in subsection (1) or in relation to
2 which all necessary approvals under the relevant planning
3 schemes were in force immediately before the scheme start
4 day —
- 5 (a) may be lawfully carried out as if section 9(2) and the
6 Swan Valley Planning Scheme were not in operation;
7 and
- 8 (b) is governed by the relevant planning schemes despite
9 section 9(2).

10 **46. Applications for approval not finalised on scheme start day**

- 11 (1) This section applies if, on the scheme start day, an application
12 for approval under a relevant planning scheme in relation to
13 land in the Swan Valley has been made but not decided.
- 14 (2) On and after the scheme start day, the application is taken to be
15 made under, and the decision on the application must be made
16 in accordance with, the Swan Valley Planning Scheme rather
17 than the relevant planning scheme.
- 18 (3) If before the scheme start day, under regulations made for the
19 purposes of the *Planning and Development Act 2005* Part 11A,
20 the application was to be determined by a DAP (as defined in
21 section 4(1) of that Act), on and after the scheme start day the
22 application must be decided in accordance with the Swan Valley
23 Planning Scheme by the Commission rather than the DAP.

24 **47. State Administrative Tribunal review not finalised on**
25 **scheme start day**

- 26 (1) This section applies if, on the scheme start day —
- 27 (a) an application to the State Administrative Tribunal
28 under the *Planning and Development Act 2005* Part 14
29 has been made for a review of a decision (the ***reviewed***
30 ***decision***) under a relevant planning scheme in relation to
31 land in the Swan Valley; and

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- 1 (b) the Tribunal has not made a final decision on the
2 application.
- 3 (2) On and after the scheme start day —
- 4 (a) the reviewed decision is taken to be a decision under the
5 Swan Valley Planning Scheme; and
- 6 (b) the Tribunal’s decision on the application for review is
7 to be made in accordance with the Swan Valley
8 Planning Scheme rather than the relevant planning
9 scheme.
- 10 **48. Transitional regulations**
- 11 (1) In this section —
- 12 *specified* means specified or described in the regulations;
- 13 *transitional matter* —
- 14 (a) means a matter or issue of a transitional nature that
15 arises as a result of —
- 16 (i) the enactment of this Act; or
17 (ii) the repeal of the *Swan Valley Planning Act 1995*;
- 18 and
- 19 (b) includes a saving or application matter.
- 20 (2) If there is not sufficient provision in this Act for dealing with a
21 transitional matter, regulations under this Act may prescribe all
22 matters that are required, or are necessary or convenient, to be
23 prescribed for dealing with the transitional matter.
- 24 (3) If regulations made under subsection (2) provide that a specified
25 state of affairs is taken to have existed, or not to have existed,
26 on and from a day that is earlier than the day on which the
27 regulations are published in the *Gazette* but not earlier than the
28 day on which this section comes into operation, the regulations
29 have effect according to their terms.

- 1 (4) If regulations made under subsection (2) contain a provision of
2 a kind described in subsection (3), the provision does not
3 operate so as to —
- 4 (a) affect in a manner prejudicial to any person (other than
5 the State or an authority of the State) the rights of that
6 person existing before the day of publication of those
7 regulations; or
- 8 (b) impose liabilities on any person (other than the State or
9 an authority of the State) in respect of anything done or
10 omitted to be done before the day of publication of those
11 regulations.

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Part 7 — Repeals

2

49. *Swan Valley Planning Act 1995* repealed

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The *Swan Valley Planning Act 1995* is repealed.

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50. *Swan Valley Planning Regulations 1995* repealed

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The *Swan Valley Planning Regulations 1995* are repealed.

**Part 8 — Amendments to this Act commencing on
later of proclamation and commencement of *Planning
and Development Amendment Act 2020* provisions**

51. Act amended

This Part amends this Act.

52. Section 3 amended

In section 3 insert in alphabetical order:

planning code has the meaning given in the *Planning
and Development Act 2005* section 4(1);

53. Section 11 amended

In section 11(1)(a) delete “State planning policy;” and insert:

planning code;

54. Section 20 amended

(1) In section 20 delete “As soon” and insert:

(1) As soon

(2) At the end of section 20 insert:

(2) Despite subsection (1), a proposed scheme or
amendment of a class prescribed by regulations under
the *Environmental Protection Act 1986*
section 48AAA(2) is not required to be referred to the
EPA.

1 **Part 9 — *Planning and Development Act 2005* amended**

2 **55. Act amended**

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

4 **56. Section 4 amended**

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

6 *Swan Valley*

7 *Swan Valley Planning Committee*

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

9

10 *Swan Valley* has the meaning given in the *Swan Valley*
11 *Planning Act 2020* section 3;

12 *Swan Valley Planning Scheme* has the meaning given
13 in the *Swan Valley Planning Act 2020* section 3;

14

15 (3) In section 4(1) in the definition of *planning scheme*:

16 (a) delete “this Act” and insert:

17

18 this Act, or the Swan Valley Planning Scheme that has
19 effect under the *Swan Valley Planning Act 2020*,

20

21 (b) in paragraph (a) delete “the provisions of the scheme”
22 and insert:

23

24 in the case of a local planning scheme, region planning
25 scheme or improvement scheme that has effect under
26 this Act — the provisions of the scheme

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- (c) after paragraph (a) insert:
 - (aa) in the case of the Swan Valley Planning Scheme — the provisions of the scheme being —
 - (i) the provisions set out in the scheme; and
 - (ii) any provisions of a kind referred to in the *Swan Valley Planning Act 2020* section 11 that, with any modifications set out in the scheme, have effect under that section as part of the scheme;
- and

(4) In section 4(1) in the definition of *responsible authority* paragraph (c) delete “improvement scheme,” and insert:

improvement scheme or the Swan Valley Planning Scheme,

57. Section 13 amended

In section 13 after “Schedule 2” insert:

or the *Swan Valley Planning Act 2020* section 33

58. Section 14 amended

In section 14:

- (a) in paragraph (j) delete “scheme or improvement scheme” and insert:

scheme, an improvement scheme or the Swan Valley Planning Scheme

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- 1 (b) in paragraph (k) delete “Schedule 2; and” and insert:
2
3 Schedule 2 and the *Swan Valley Planning Act 2020*; and
4
5 (c) in paragraph (l) delete “schemes and improvement
6 schemes; and” and insert:
7
8 schemes, improvement schemes and the Swan Valley
9 Planning Scheme; and
10
11 (d) in paragraph (m) delete “this or any other written law.”
12 and insert:
13
14 this Act, the *Swan Valley Planning Act 2020* or any
15 other written law.
16

17 **59. Section 19 amended**

18 In section 19 delete “that Schedule.” and insert:
19
20 that Schedule or the *Swan Valley Planning Act 2020* section 33.
21

22 **60. Section 20 amended**

23 In section 20(1) after “this Act” insert:
24
25 or the *Swan Valley Planning Act 2020*
26

1 **61. Section 32C amended**

2 In section 32C(2):

3 (a) in paragraph (b) delete “122B(1).” and insert:

4

5 122B(1)); or

6

7 (b) after paragraph (b) insert:

8

9 (c) into the Swan Valley Planning Scheme
10 under the *Swan Valley Planning Act 2020*
11 section 11(1)(a).

12

13 **62. Section 36 amended**

14 In section 36:

15 (a) in paragraph (d) delete “Act.” and insert:

16

17 Act; or

18

19 (b) after paragraph (d) insert:

20

21 (e) without limiting the *Swan Valley Planning*
22 *Act 2020* section 9, to make any provision in
23 respect of any land in the Swan Valley once the
24 first Swan Valley Planning Scheme has come
25 into operation under that Act.

26

27 **63. Section 40 deleted**

28 Delete section 40.

29 **64. Section 47 deleted**

30 Delete section 47.

s. 65

1 **65. Section 48 amended**

2 In section 48(1) delete “Subject to section 47, after —” and
3 insert:
4

5 After —
6

7 **66. Section 49 amended**

8 In section 49 delete the passage that begins with “If — ” and
9 ends with “scheme or amendment under section 48,” and insert:
10

11 If the report of the Commission submitted with a scheme or
12 amendment under section 48
13

14 **67. Section 57 amended**

15 Delete section 57(2).

16 **68. Section 71 amended**

17 In section 71:

18 (a) in paragraph (b) delete “that Act.” and insert:
19

20 that Act; or
21

22 (b) after paragraph (b) insert:
23

24 (c) without limiting the *Swan Valley Planning*
25 *Act 2020* section 9, to make any provision in
26 respect of any land in the Swan Valley once the
27 first Swan Valley Planning Scheme has come
28 into operation under that Act.
29

30 Note: The heading to amended section 71 is to read:

31 **Scheme not to apply to redevelopment area or Swan Valley**

1 **69. Section 78 deleted**

2 Delete section 78.

3 **70. Section 112 amended**

4 Delete section 112(3).

5 **71. Section 119 amended**

6 In section 119(3A):

7 (a) in paragraph (c) delete “2006.” and insert:

8

9 2006; or

10

11 (b) after paragraph (c) insert:

12

13 (d) in the Swan Valley.

14

15 **72. Section 122B amended**

16 Delete section 122B(2).

17 **73. Section 123 amended**

18 In section 123(2):

19 (a) after “a region planning scheme” insert:

20

21 or the Swan Valley Planning Scheme

22

23 (b) delete “scheme.” and insert:

24

25 scheme or (if relevant) the Swan Valley Planning
26 Scheme.

27

28 Note: The heading to amended section 123 is to read:

29

30

**Local planning scheme or local law to be consistent with region
planning scheme or Swan Valley Planning Scheme**

s. 74

1 **74. Section 130 amended**

2 In section 130:

3 (a) in paragraph (c) delete “scheme,” and insert:

4

5 scheme; and

6

7 (b) after paragraph (c) insert:

8

9 (d) the Swan Valley Planning Scheme,

10

11 **75. Section 131 amended**

12 (1) In section 131(1) after “local planning scheme” insert:

13

14 or the Swan Valley Planning Scheme

15

16 (2) After section 131(2) insert:

17

18 (3) In the exercise of any power conferred on it by the
19 Swan Valley Planning Scheme the Commission is
20 obliged to have regard to any regulations made under
21 the *Building Act 2011*.

22

23 **76. Section 131A inserted**

24 After section 131 insert:

25

26 **131A. Relationship between Swan Valley Planning Scheme**
27 **and other planning schemes or policies**

28 (1) The Minister may, by notice published in the *Gazette*,
29 make any amendments to a region planning scheme,

- 1 local planning scheme or improvement scheme that are
2 necessary as a result of the *Swan Valley Planning*
3 *Act 2020* section 9.
- 4 (2) On and after the day on which the first Swan Valley
5 Planning Scheme comes into operation under the *Swan*
6 *Valley Planning Act 2020*, a State planning policy that
7 applies to land in the Swan Valley has no effect to the
8 extent that it is inconsistent with the Swan Valley
9 Planning Scheme.
- 10 (3) The Minister may, by notice published in the *Gazette*,
11 amend a State planning policy so that the policy is
12 consistent with the Swan Valley Planning Scheme in
13 relation to land in the Swan Valley.
- 14 (4) An amendment in a notice published under
15 subsection (1) or (3) has effect, by force of this
16 subsection and without further action under this Act, on
17 the day on which it is published or a later day stated in
18 the notice (which must not be earlier than the day on
19 which the first Swan Valley Planning Scheme comes
20 into operation under the *Swan Valley Planning*
21 *Act 2020*).
- 22

23 **77. Section 134 amended**

24 Delete section 134(3) to (8).

25 Note: The heading to amended section 134 is to read:

26 **Relationship of Part to some other laws**

s. 78

1 **78. Section 138A inserted**

2 After section 138 insert:

3

4 **138A. Commission's functions when approving**
5 **subdivision etc. in Swan Valley**

6 (1) In this section —

7 *scheme start day* means the day on which the first
8 Swan Valley Planning Scheme comes into operation
9 under the *Swan Valley Planning Act 2020*.

10 (2) On and after the scheme start day, section 138(2) to (4)
11 do not apply in relation to the Commission giving an
12 approval under section 135 or 136 relating to land in
13 the Swan Valley (a *Swan Valley approval*).

14 (3) Subject to subsection (4), in giving a Swan Valley
15 approval on or after the scheme start day, the
16 Commission —

17 (a) must have regard to the provisions of the Swan
18 Valley Planning Scheme; and

19 (b) must not give an approval that conflicts with
20 the provisions of the Swan Valley Planning
21 Scheme.

22 (4) The Commission may give a Swan Valley approval
23 that conflicts with the provisions of the Swan Valley
24 Planning Scheme on or after the scheme start day if the
25 approval is given in circumstances set out in the
26 regulations.
27

1 **79. Section 170 amended**

2 (1) In section 170(1A) in the definition of *responsible authority*
3 paragraph (b) delete “scheme —” and insert:

4
5 scheme or the Swan Valley Planning Scheme —

6
7 (2) In section 170(1)(c) delete “local government” and insert:

8
9 responsible authority

10
11 **80. Section 171A amended**

12 After section 171A(2) insert:

13
14 (2A) A development application that relates to land in the
15 Swan Valley cannot be a prescribed development
16 application.

17
18 **81. Section 175 amended**

19 (1) In section 175 delete “When” and insert:

20
21 (1) When

22
23 (2) At the end of section 175 insert:

24
25 (2) When land is alleged to be injuriously affected by the
26 making of the first Swan Valley Planning Scheme, no
27 compensation is payable in respect of the injurious
28 affection if or so far as the relevant provisions of the
29 Swan Valley Planning Scheme were also contained in
30 a relevant planning scheme (as defined in the *Swan*

s. 82

1 *Valley Planning Act 2020* section 9) that applied to the
2 Swan Valley before the scheme start day referred to in
3 that section.

4 (3) A reference in this section to provisions includes a
5 reference to maps, plans and diagrams.
6

7 **82. Section 181 amended**

8 After section 181(16) insert:
9

10 (16A) The reference in subsection (1)(b) to the planning
11 scheme being amended or revoked includes, in relation
12 to land in the Swan Valley for which compensation for
13 injurious affection was paid before the scheme start
14 day referred to in the *Swan Valley Planning Act 2020*
15 section 9 —

16 (a) a reference to that planning scheme ceasing to
17 apply, and the first Swan Valley Planning
18 Scheme beginning to apply instead, under the
19 *Swan Valley Planning Act 2020* section 9; and

20 (b) a reference to the making of a subsequent Swan
21 Valley Planning Scheme or the amendment of
22 the Swan Valley Planning Scheme.
23

24 **83. Section 196 amended**

25 (1) In section 196(1) and (2) delete “scheme” (each occurrence) and
26 insert:

27
28 scheme, Swan Valley Planning Scheme
29

1 (2) In section 196(4) after “region planning scheme” insert:

2

3 or the Swan Valley Planning Scheme

4

5 **84. Section 197 amended**

6 (1) In section 197(1):

7 (a) delete “scheme or” (1st occurrence) and insert:

8

9 scheme, the Swan Valley Planning Scheme or an

10

11 (b) delete “scheme or” (2nd occurrence) and insert:

12

13 scheme, Swan Valley Planning Scheme or

14

15 (2) In section 197(2) delete “scheme or” and insert:

16

17 scheme, Swan Valley Planning Scheme or

18

19 **85. Section 198 amended**

20 In section 198(1) delete “Scheme” and insert:

21

22 Scheme, the Swan Valley Planning Scheme

23

1 **86. Section 199 amended**

2 (1) In section 199(1):

3 (a) delete “effect to the Metropolitan Region Scheme” and
4 insert:

5

6 effect to the Metropolitan Region Scheme, the Swan
7 Valley Planning Scheme

8

9 (b) in paragraph (b)(i) after “Scheme,” (1st occurrence)
10 insert:

11

12 the Swan Valley Planning Scheme,

13

14 (c) in paragraph (b)(i) after “Scheme,” (2nd occurrence)
15 insert:

16

17 Swan Valley Planning Scheme,

18

19 (d) in paragraph (b)(ii) delete “Scheme” and insert:

20

21 Scheme, Swan Valley Planning Scheme

22

23 (2) In section 199(2) delete “2011 or the *Hope Valley-Wattleup*
24 *Redevelopment Act 2000.*” and insert:

25

26 *2011, the Hope Valley-Wattleup Redevelopment Act 2000 or the*
27 *Swan Valley Planning Act 2020.*

28

1 **87. Section 217 amended**

2 After section 217(5) insert:

3

- 4 (6) If the assessed scheme to which this section applies is
5 the Swan Valley Planning Scheme or an amendment to
6 that scheme, a reference in this section to the Minister
7 is to be read as a reference to the Minister responsible
8 for the administration of the *Swan Valley Planning*
9 *Act 2020*.

10

11 **88. Section 218 amended**

12 In section 218(b) delete “scheme or improvement scheme” and
13 insert:

14

15 scheme, an improvement scheme or the Swan Valley Planning
16 Scheme

17

18 **89. Section 241 amended**

19 In section 241(1):

- 20 (a) in paragraph (b) delete “application.” and insert:

21

22 application; and

23

- 24 (b) after paragraph (b) insert:

25

- 26 (c) in the case of an application that relates to the
27 Swan Valley Planning Scheme — the objects
28 set out in the *Swan Valley Planning Act 2020*
29 section 5.

30

s. 90

1 **90. Section 252 amended**

2 In section 252(2) delete “scheme or an improvement scheme”
3 and insert:

4
5 scheme, an improvement scheme or the Swan Valley Planning
6 Scheme
7

8 **91. Section 266 amended**

9 (1) In section 266(1) in the definition of *function* delete “this Act;”
10 and insert:

11
12 this Act or the *Swan Valley Planning Act 2020*;

13
14 (2) In section 266(1) in the definition of *meeting* delete “this Act;”
15 and insert:

16
17 this Act or the *Swan Valley Planning Act 2020*;

18
19 (3) In section 266(1) in the definition of *member* paragraph (c)
20 delete “Schedule 2;” and insert:

21
22 Schedule 2 or the *Swan Valley Planning Act 2020* section 33;

23
24 (4) In section 266(5)(a) and (b) after “this Act” insert:

25
26 or the *Swan Valley Planning Act 2020*

27
28 Note: The heading to amended section 266 is to read:

29 **Duties and liabilities of persons performing functions under**
30 **this Act or *Swan Valley Planning Act 2020***

1 **92. Section 269 amended**

2 In section 269(1) in the definition of *legal instrument* delete
3 paragraph (b)(iv) and insert:

4

5 (iv) the *Swan Valley Planning Act 2020*;

6

7 **93. Schedule 2 clause 1 amended**

8 (1) In Schedule 2 clause 1(1) delete “to 9,” and insert:

9

10 to 9 and the *Swan Valley Planning Act 2020* section 33,

11

12 (2) In Schedule 2 clause 1(2) delete “Schedule,” and insert:

13

14 Schedule and the *Swan Valley Planning Act 2020*,

15

16 (3) In Schedule 2 clause 1(6) delete “section 16,” and insert:

17

18 section 16 or the *Swan Valley Planning Act 2020* section 34,

19

20 **94. Schedule 2 clause 2 amended**

21 In Schedule 2 clause 2(1) delete “7(2)(h), (i) or 8(2)(d).” and
22 insert:

23

24 7(2)(h) or (i) or 8(2)(d) or under the *Swan Valley Planning Act 2020*
25 section 33(2)(c).

26

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Part 10 — Other Acts amended

**Division 1 — *Control of Vehicles (Off-road Areas) Act 1978*
amended**

95. Act amended

This Division amends the *Control of Vehicles (Off-road Areas) Act 1978*.

96. Section 16 amended

In section 16(5)(d) delete “2005.” and insert:

2005 or the Swan Valley Planning Scheme in force under the *Swan Valley Planning Act 2020*.

97. Section 47 amended

In section 47(1) delete “2005” and insert:

2005, or the Swan Valley Planning Scheme has been or is made under the *Swan Valley Planning Act 2020*,

Division 2 — *Electricity Corporations Act 2005* amended

98. Act amended

This Division amends the *Electricity Corporations Act 2005*.

1 **99. Section 60 amended**

2 In section 60(3):

3 (a) in paragraph (c) delete “scheme,” and insert:

4

5 scheme; or

6

7 (b) after paragraph (c) insert:

8

9 (d) the Swan Valley Planning Scheme,

10

11 (c) delete “in force under that Act” and insert:

12

13 as defined in section 4(1) of that Act

14

15 **Division 3 — *Environmental Protection Act 1986* amended**

16 **100. Act amended**

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

18 **101. Section 3 amended**

19 (1) In section 3(1) in the definition of *assessed scheme* after
20 paragraph (a) insert:

21

22 (aa) includes the first Swan Valley Planning
23 Scheme submitted in accordance with the *Swan*
24 *Valley Planning Act 2020* section 43 and
25 approved under section 25(2)(a) of that Act;

26

Swan Valley Planning Bill 2020

Part 10 Other Acts amended

Division 3 Environmental Protection Act 1986 amended

s. 101

- 1 (2) In section 3(1) in the definition of *final approval* after
2 paragraph (ab) insert:
3
- 4 (b) prepared under the *Swan Valley Planning*
5 *Act 2020*, means an approval under
6 section 25(2)(a) of that Act; or
7
- 8 (3) In section 3(1) in the definition of *period of public review* after
9 paragraph (ab) insert:
10
- 11 (b) prepared under the *Swan Valley Planning*
12 *Act 2020*, means the period of advertisement
13 for public inspection that applies for the
14 purposes of section 23 of that Act; or
15
- 16 (4) In section 3(1) in the definition of *responsible authority* after
17 paragraph (a)(iii) insert:
18
- 19 (iv) prepared under the *Swan Valley*
20 *Planning Act 2020*, means the Western
21 Australian Planning Commission; or
22
- 23 (5) In section 3(1) in the definition of *scheme* after paragraph (c)
24 insert:
25
- 26 (d) the Swan Valley Planning Scheme, as defined
27 in the *Swan Valley Planning Act 2020*
28 section 3, or an amendment of that Scheme; or
29

1 (6) In section 3(1) in the definition of *scheme Act* after
2 paragraph (c) insert:

3

4 (d) the *Swan Valley Planning Act 2020*;

5

6 **102. Section 48AAA amended**

7 In section 48AAA(1) in the definition of *relevant scheme* after
8 “paragraph” insert:

9

10 (d),

11

12 **103. Section 48C amended**

13 In section 48C(7) in the definition of *public review* after
14 paragraph (ab) insert:

15

16 (b) prepared under the *Swan Valley Planning*
17 *Act 2020*, means the procedure referred to in
18 sections 23 and 25(1) of that Act; or

19

20 **Division 4 — *Heritage Act 2018* amended**

21 **104. Act amended**

22 This Division amends the *Heritage Act 2018*.

23 **105. Section 85 amended**

24 In section 85 in the definition of *planning instrument*:

25 (a) in paragraph (c) delete “2000.” and insert:

26

27 2000; or

28

1 (b) after paragraph (c) insert:

2

3 (d) the Swan Valley Planning Scheme in force
4 under the *Swan Valley Planning Act 2020*.

5

6 **Division 5 — *Jetties Act 1926* amended**

7 **106. Act amended**

8 This Division amends the *Jetties Act 1926*.

9 **107. Section 7 amended**

10 In section 7(3) delete “section 70 or under the Metropolitan
11 Region Scheme as that term is” and insert:

12

13 section 70, or under the Metropolitan Region Scheme or the
14 Swan Valley Planning Scheme as those terms are

15

16 **Division 6 — *Land Tax Assessment Act 2002* amended**

17 **108. Act amended**

18 This Division amends the *Land Tax Assessment Act 2002*.

19 **109. Section 15 amended**

20 In section 15(3)(b) delete “local planning scheme or an
21 improvement scheme.” and insert:

22

23 local planning scheme, an improvement scheme or the Swan
24 Valley Planning Scheme.

25

1 **110. Glossary amended**

2 In the Glossary clause 1 insert in alphabetical order:

3

4 *Swan Valley Planning Scheme* has the meaning given in
5 the *Planning and Development Act 2005* section 4(1);

6

7 **Division 7 — Local Government Act 1995 amended**

8 **111. Act amended**

9 This Division amends the *Local Government Act 1995*.

10 **112. Section 6.33 amended**

11 In section 6.33(1)(a) delete “local planning scheme or
12 improvement scheme in force under” and insert:

13

14 planning scheme as defined in

15

16 **Division 8 — Marine and Harbours Act 1981 amended**

17 **113. Act amended**

18 This Division amends the *Marine and Harbours Act 1981*.

19 **114. Section 12 amended**

20 In section 12(3) delete “2006 or under the Metropolitan Region
21 Scheme as that term is” and insert:

22

23 2006, or under the Metropolitan Region Scheme or the Swan
24 Valley Planning Scheme as those terms are

25

1 **Division 9 — *Metropolitan Redevelopment Authority Act 2011***
2 **amended**

3 **115. Act amended**

4 This Division amends the *Metropolitan Redevelopment*
5 *Authority Act 2011*.

6 **116. Section 3 amended**

7 In section 3 insert in alphabetical order:

8

9 *Swan Valley* has the meaning given in the *Swan Valley*
10 *Planning Act 2020* section 3;

11

12 **117. Section 30 amended**

13 In section 30(1)(a) delete “region; and” and insert:

14

15 region (other than the Swan Valley); and

16

17 **Division 10 — *Planning and Development Amendment Act 2020***
18 **amended**

19 **118. Act amended**

20 This Division amends the *Planning and Development*
21 *Amendment Act 2020*.

22 **119. Section 25 deleted**

23 Delete section 25.

24 **120. Section 30 deleted**

25 Delete section 30.

1 **Division 11 — *Railway (METRONET) Act 2018* amended**

2 **121. Act amended**

3 This Division amends the *Railway (METRONET) Act 2018*.

4 **122. Section 5 amended**

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

6

7 *Swan Valley Planning Scheme* has the meaning given
8 in the *Swan Valley Planning Act 2020* section 3.

9

10 (2) In section 5 in the definition of *railway land* delete “railways.”
11 and insert:

12

13 railways;

14

15 **123. Section 6 amended**

16 In section 6 delete “Scheme,” and insert:

17

18 Scheme or the Swan Valley Planning Scheme,

19

20 **Division 12 — *Sale of Land Act 1970* amended**

21 **124. Act amended**

22 This Division amends the *Sale of Land Act 1970*.

1 **125. Section 16 amended**

2 In section 16 delete “local planning scheme or improvement
3 scheme,” and insert:

4
5 planning scheme,
6

7 **Division 13 — *Soil and Land Conservation Act 1945* amended**

8 **126. Act amended**

9 This Division amends the *Soil and Land Conservation Act 1945*.

10 **127. Schedule amended**

11 In the Schedule insert in alphabetical order:

12
13 *Swan Valley Planning Act 2020*
14

15 **Division 14 — *Strata Titles Act 1985* amended**

16 **128. Act amended**

17 This Division amends the *Strata Titles Act 1985*.

18 **129. Section 223A inserted**

19 After section 223 insert:
20

21 **223A. Application in Swan Valley**

22 On and after the day on which the first Swan Valley
23 Planning Scheme comes into operation under the *Swan*
24 *Valley Planning Act 2020*, this Act applies in relation
25 to land in the Swan Valley (as defined in section 3 of
26 that Act) as if —

- 1 (a) a reference to a local planning scheme were a
2 reference to the Swan Valley Planning Scheme;
3 and
4 (b) a reference in sections 22 to 28 to a local
5 government were a reference to the Planning
6 Commission; and
7 (c) Schedule 2A clause 21W(3)(b) permitted a
8 discharge of an easement referred to in that
9 clause to be approved either by the Planning
10 Commission or by the local government.
11

12 **Division 15 — *Swan and Canning Rivers Management Act 2006***
13 **amended**

14 **130. Act amended**

15 This Division amends the *Swan and Canning Rivers*
16 *Management Act 2006*.

17 **131. Section 57 amended**

18 After section 57(b) insert:
19

- 20 (ba) the Western Australian Planning Commission;
21 and
22

23 **132. Section 67 amended**

24 (1) In section 67 delete the definitions of *Swan Valley* and *Swan*
25 *Valley Planning Committee*.

26 (2) In section 67 insert in alphabetical order:
27

28 *Swan Valley* has the meaning given in the *Swan Valley*
29 *Planning Act 2020* section 3.
30

1 (3) In section 67 in the definition of *development application*
2 paragraph (b) delete “government or redevelopment authority”
3 and insert:

4
5 government, redevelopment authority or the Western Australian
6 Planning Commission
7

8 **133. Section 68 amended**

9 In section 68(a) after “Region” insert:

10
11 Scheme or the Swan Valley Planning
12

13 **134. Section 72 amended**

14 (1) In section 72(1) delete “subsection (2).” and insert:

15
16 subsection (2) or (3).
17

18 (2) After section 72(2) insert:

19
20 (3) If a development is proposed to be carried out on land
21 in the Swan Valley, an application for development
22 approval must be made to the Western Australian
23 Planning Commission.
24

25 (3) In section 72(4) delete “(1) or (2),” and insert:

26
27 (1), (2) or (3),
28

1 (4) Delete section 72(6) and insert:
2

3 (6) An application to which subsection (1), (2) or (3)
4 applies must be sent to the CEO by the local
5 government, redevelopment authority or Western
6 Australian Planning Commission, as the case requires,
7 within 7 days after it is made.
8

9 **135. Section 73 amended**

10 (1) In section 73(1)(d) delete “Swan Valley Planning Committee.”
11 and insert:
12

13 Western Australian Planning Commission.
14

15 (2) In section 73(2) delete “and, where particulars are referred to
16 the Swan Valley Planning Committee, that committee.”.

17 (3) In section 73(3)(b) delete “subsection and, where particulars
18 were referred to the Swan Valley Planning Committee, by that
19 Committee,” and insert:
20

21 subsection,
22

23 **136. Section 74 amended**

24 Delete section 74(4) and insert:
25

26 (4) The CEO must send a notice under subsection (2) to —

27 (a) in the case of a proposed development to be
28 carried out on land in the Swan Valley — the
29 Western Australian Planning Commission; or

1 (b) otherwise — each local government and
2 redevelopment authority for which the
3 proposed development appears to the CEO to
4 be a relevant matter as that term is defined in
5 section 73.

6 (4A) An entity sent a notice under subsection (4) must
7 display a copy of the notice at its public office until the
8 expiry of the period for making submissions under
9 subsection (5).
10

11 **137. Section 75 amended**

12 In section 75(3)(a)(ii) delete “section 73(1) and where notice
13 was given to the Swan Valley Planning Committee, that
14 committee; and” and insert:

15
16 section 73(1); and
17

18 **138. Section 76 amended**

19 In section 76(2)(a)(iii) delete “section 75 and where notice was
20 given to the Swan Valley Planning Committee, that committee;”
21 and insert:
22

23 section 75;
24

25 **139. Section 80 amended**

26 (1) Delete section 80(2)(d) and insert:
27

28 (d) if a development is proposed to be carried out
29 in the Swan Valley — the Swan Valley

1 Planning Scheme in force under the *Swan*
2 *Valley Planning Act 2020*.
3

4 (2) Delete section 80(5)(a)(iii).

5 **140. Section 82 amended**

6 In section 82(4)(a) delete “section 73(1) and, where notice was
7 given to the Swan Valley Planning Committee, to that
8 Committee; and” and insert:

9
10 section 73(1); and
11

12 **141. Section 87 amended**

13 In section 87(2)(a)(iii) delete “section 75 and where notice was
14 given to the Swan Valley Planning Committee, that Committee;
15 and” and insert:

16
17 section 75; and
18

19 **Division 16 — *Water Agencies (Powers) Act 1984* amended**

20 **142. Act amended**

21 This Division amends the *Water Agencies (Powers) Act 1984*.

22 **143. Section 38 amended**

23 In section 38(1) after “2005,” insert:

24
25 or the Swan Valley Planning Scheme is in force under the *Swan*
26 *Valley Planning Act 2020*,
27

1 Note: The heading to amended section 38 is to read:

2 **Revocation or amendment of local laws and planning schemes**

3 **Division 17 — *Water Services Act 2012* amended**

4 **144. Act amended**

5 This Division amends the *Water Services Act 2012*.

6 **145. Section 143 amended**

7 In section 143(3)(c) delete “scheme (as” and insert:

8

9 scheme or the Swan Valley Planning Scheme (as those terms
10 are

11

12 **146. Section 151 amended**

13 In section 151(2)(c) delete “scheme (as” and insert:

14

15 scheme or the Swan Valley Planning Scheme (as those terms
16 are

17

18 **Division 18 — *Waterways Conservation Act 1976* amended**

19 **147. Act amended**

20 This Division amends the *Waterways Conservation Act 1976*.

21 **148. Section 36 amended**

22 After section 36(1)(f)(iia) insert:

23

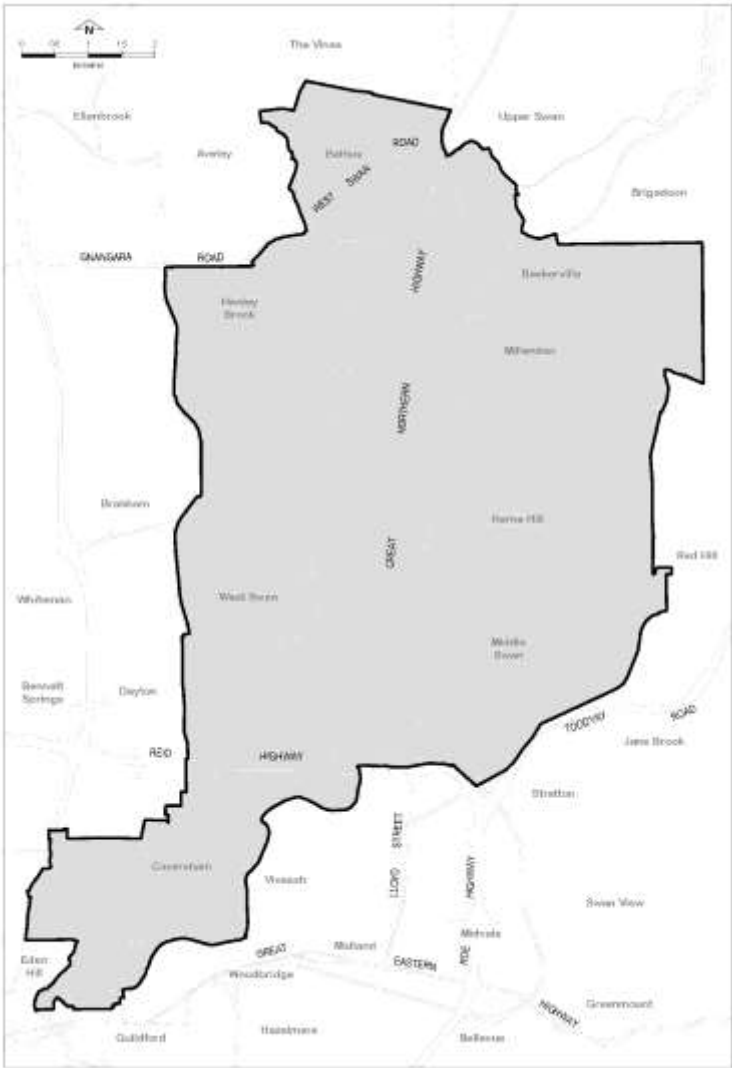
24 (ib) the Swan Valley Planning Scheme;

25

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2

Schedule 1 — Indicative map of Swan Valley

[s. 4(2)]



Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
applicable regulations	3
approved scheme or amendment	27(1)
assent day	2(1)
chairperson	3
Commission	3
Department	3
development	3
EPA	3
first proposed scheme	43(1)
Heritage Council	3
Herne Hill townsite	3
improvement scheme	3
incorporated provisions	11(2)
land	3
local planning scheme	3
Metropolitan Region Scheme	3
Minister for Heritage	3
Minister for the Environment	3
non-rural development	13(1)
officer of the Commission	3
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