

EXPLANATORY MEMORANDUM ***Swan Valley Planning Bill 2020***

OVERVIEW

This Bill will, when enacted, achieve five key aims:

- The new Act will repeal in its entirety the *Swan Valley Planning Act 1995* (the “current Act”) and replace it with the new Act that provides for a clear vision for the Swan Valley, and regulates the mechanism for land use planning and development within in the Swan Valley.
- The new Act will further clarify the relationship between special legislative requirements applicable to the Swan Valley and the ordinary planning system governed by the *Planning and Development Act 2005* (“PD Act”), as well as make certain consequential amendments to other acts.
- The new Act establishes a new Swan Valley Statutory Planning Committee (“SVSP Committee”), much like the Western Australian Planning Commission (“WAPC or Commission”), but specifically for the Swan Valley.
- The new Act also establishes a new Swan Valley Strategic Leadership Group (“SVSL Group”), to provide information to the Minister on matters relating to the Swan Valley, so as to ensure protection of the unique characteristics of the Swan Valley.
- The new Act facilitates a new Swan Valley Planning Scheme (“SVP Scheme”), which will replace the existing dual scheme system encompassing the City of Swan Local Planning Scheme no.17 (the “LPS17”) and the Metropolitan Region Scheme (“the MRS”).

BACKGROUND

Planning system under the *Swan Valley Planning Act 1995* (“the current Act”)

The Swan Valley is a unique rural environment within metropolitan Perth. Horticulture, tourism, lifestyle properties, equestrian and hospitality are all important contributors to what makes the Swan Valley and development needs to be sympathetic to its rural character.

The planning system in metropolitan Perth is essentially governed by two layers, at local and regional level. In the Swan Valley, this would be the City’s LPS17 and Commission’s MRS.

The current Act, which applies throughout the Swan Valley Planning Area (“SVP Area”), imposes a third layer of planning control. The main features of the current planning system under the current Act is that it establishes:

- Certain planning objectives, which are said to apply to sub-areas within the SVP Area. These include matters such as maintaining rural character, encouraging viticulture, horticulture, hobby farming and tourism, and restricting certain subdivision activities.
- An oversight body, the Swan Valley Planning Committee, which acts as a referral and advisory agency but does not have direct planning decision-making functions or powers.

Existing challenges with the planning system under the current Act

There have been long-recognised challenges with the planning system under the current Act. This includes the following issues:

- Subsequent generations of family farmers not wishing to continue grape growing on the family property. The low returns on investment and their labour, make viticulture less than attractive as a viable avenue of employment.
- A push for subdivision of lot sizes so as to maximise return on property prices. The desire of existing landowners to maximise profit through subdivision is in conflict with the State and regional objective of keeping larger parcels together, in order to make horticulture, tourism, lifestyle properties, equestrian and hospitality viable.
- The current planning system in Metropolitan Perth is already subject to two layers of planning control – one local and one regional – through the LPS17 and MRS. The current Act, in effect, imposes a third layer on top. However, that third layer often fails to add much practically to the planning and protection of the area.
- The current Act ascribes a role to a Swan Valley Planning Committee. However, this body is merely an advisory – not a decision-maker. Moreover, the interaction between the planning objectives in the current Act to be considered by the Committee, and how they relate to the existing local and region scheme requirements considered by other planning decision-makers over the Swan Valley, is not always clear or congruent.
- The presence of residents on a neighbouring lot can pose a threat to the maintenance of agriculture on adjoining lands. This is because of the potential for complaints associated with nuisance or concerns in relation to vineyard management practices involving noise, dust and crop spraying.

As a consequence of these long-recognised challenges, there have been concerted efforts over time by different governments to update the existing legislative framework.

The Barnett Government carried out a review of the planning system in the Swan Valley through a Discussion Paper, produced in 2012. This in turn led to the draft Swan

Valley Development Plan 2015. Finally, supporting legislation was drafted and introduced into the State Parliament in 2016.

This proposed 2016 Bill had not advanced prior to the 2017 State Election. The McGowan State Government, on its election in 2017, announced it would not proceed with the Bill and Development Plan in their previous form.

In 2017, John Kobelke JP was appointed by the Minister to review these proposals, consult with interested parties, and put forward proposals, as an independent reviewer resourced and supported by the Department of Planning, Lands and Heritage (“the Department of DPLH”). Mr Kobelke set out his findings in the Kobelke Report.

Key recommendations and objectives arising out of the Kobelke Report

Mr Kobelke identified several solutions to the planning challenges found within the Swan Valley operating under the current Act. This Bill adopts many of the recommendations identified by Mr Kobelke, including on matters relating to the following:

- A more straightforward and streamlined process that cuts out red tape that has been found to provide little practical benefit. Three layers of planning, involving two separate planning schemes, will be replaced by a single layer introduced by the new SVP Scheme.
- The current, somewhat ambiguous, functions carried out by the Swan Valley Planning Committee, will be replaced by two separate bodies with a clearer delineation of roles: the SVSP Committee (as a decision-maker) and SVSL Group (providing the Minister with strategic advice).
- The new Act will allow the SVSL Group to focus entirely on important strategic matters of the Swan Valley, without getting caught up in individual planning applications, as is the case with the Committee under the current Act.
- The new Act will appoint the SVSP Committee (as a statutory committee of the WAPC) as the sole decision-maker on planning applications under the SVP Scheme. This is in contrast to the current system, which can involve up to four separate bodies on a single development application (the Committee under the current Act, WAPC under the MRS, City of Swan under LPS17, and a development assessment panel under the DAP Regulations).
- The new Act will bring clarity to a range of important planning issues in the Swan Valley, to be addressed through the new SVP Scheme, including:
 - new objectives including the protection of the Swan Valley as a productive agricultural area within the Perth metropolitan area;
 - ability of scheme to incorporate provisions from other planning instruments;

- planning areas and provisions about subdivision and minimum lot size;
- provisions to ensure non-rural development is designed to minimise impacts from rural land uses; and
- other matters.

CLAUSE NOTES

Outlined below is an explanation of the Bill on a clause by clause basis.

Part 1 – Preliminary

This Part contains the short title, relevant commencement provisions, definitions of terms used in the Bill, description of the Area of the Swan Valley, objects of the Bill, and a provision binding the Crown.

Clause 1. Short title

The short title is consistent with the essential purpose of providing a separate planning regime for the Swan Valley.

Clause 2. Commencement

This clause provides for the Act to become operational:

- as to Part 1: on the day when the Act receives Royal assent;
- as to the rest of the Act: on a day fixed by proclamation, except for certain specified sections (providing for amendments to the *Swan Valley Planning Act 2020*, the *Planning and Development Act 2005* and *Environmental Protection Act 1986* following from the *Planning and Development Amendment Act 2020*) at a date when certain sections in the *Planning and Development Amendment Act 2020* come into operation, or on proclamation date.

The commencement provision is staggered into different stages to manage the interactions with the amendments made by the PD Act. This Bill relies on many of the provisions in the PD Act which in turn refer to this Bill.

At the date of submitting the Bill, it was not certain that all the provisions of the PD Act would commence before this Bill, even though it has been enacted first.

Therefore, this provision addresses these interactions so that:

- Under clauses 52, 53 and 61 of this Bill, when the planning codes provisions of the *Planning and Development Amendment Act 2020* commence, this Bill will “amend itself” to deal with planning codes (in section 65 of the PD Act). If the

planning codes provisions have effect already when this Bill is proclaimed, those amendments will come into operation on proclamation day. If PDA Act s65 does not come into operation on or before proclamation day, section 52, 53 and 61 commence when PDA Act section 65 comes into operation.

- Clause 102 of this Bill amends the new *Environmental Protection Act 1986* s.48AAA so it also covers the Swan Valley Planning Scheme. Under clause 54, this Bill will “amend itself” to insert a new s.20(2) like the *Planning and Development Act* s. 81(2). These amendments will come into operation on the later of when the *Planning and Development Amendment Act 2020* section 56 comes into operation and when this Bill is proclaimed. If s.48AAA has effect already when this Bill is proclaimed, those amendments will come into operation on proclamation day.
- The *Planning and Development Amendment Act 2020* amends ss.40 and 47 of the PD Act, which this Bill deletes. If this Bill comes into operation first, those amendments will need to be deleted so they never come into operation. This is the effect of new Part 10 Division 10. If the *Planning and Development Amendment Act 2020* Part 6 Division 1 comes into operation before this Bill is proclaimed, Part 10 Division 10 is not needed and will be deleted under proposed subsection (2) of this commencement provision.

As also made clear in other clauses, regulations are not required to commence this new Act and give the first version of the SVP Scheme legal effect. However, regulations will be needed to permit a range of matters, including allowing a process for further versions or amendments to the SVP Scheme to occur. Therefore, while regulations are needed, this new Act has been drafted so that they are not needed immediately.

Clause 3. Terms used

This clause defines words and expressions used in the proposed Act. These are consolidated from the current Acts with some modifications to introduce new definitions necessary for the Bill.

Of particular note are the definitions of:

- ***Herne Hill townsite*** which describes this area geographically with reference to the roads which border this area. This definition is used in clause 5(f) (Objects of the Act).
- ***Swan Valley rural land*** which means land in the Swan Valley that is used, or is suitable to be used, for horticulture or viticulture.
- ***Swan Valley Strategic Leadership Group*** which means the committee established by section 28(1).

Clause 4. Swan Valley

This clause describes the area of the Swan Valley.

Note that while the Bill provides an indicative map in Schedule 1, the official delineation is the map held in the custody of the Commission. This is because geographical information systems require a degree of precision not easily reflected in legislative instruments, so cross-referencing to an externally held map is the preferred approach. This practice is also adopted in other acts, such as s.4 and sch.1 of the *Hope Valley-Wattleup Act 2000*.

Clause 5. Objects of the Act

This clause sets out the purposes of the Act. The approach includes, in essence, adopting many of the objects from the current Act plus additional measures.

Some eleven elements are listed from subclause (a) to (k). Nonetheless, all these elements have at their core the necessity of protecting the Swan Valley as a productive agricultural region with special rural character, and whose unique proximity within the Perth metropolitan region warrants special protection as a matter of State and regional interest.

Clause 6. Act binds the Crown

This clause states that the new Act binds the Crown. A standard clause in modern drafting.

Part 2 – Swan Valley Planning Scheme

Division 1 – Nature and effect of scheme

Clause 7. Swan Valley Planning Scheme

This clause provides for the new Swan Valley Planning Scheme to be prepared by the Commission and approved by the Minister. The effect of clause 7(2) is that because the Swan Valley Planning Scheme is a planning scheme for the purposes of the PD Act, all of the provisions that apply to planning schemes under the PD Act will apply to the Swan Valley Planning Scheme.

In this way this Bill, as does the current Act, interfaces with the current planning system under the PD Act. This Bill does not establish a separate statutory regime in its own right.

Clause 8. Scheme has legislative effect

This clause gives legislative effect to the Swan Valley Planning Scheme so that it has the status of subsidiary legislation. Section 41 of the *Interpretation Act 1984* does not apply to the Swan Valley Scheme. Section 41 provides for subsidiary legislation to be

published in the Gazette and to come into operation on the day published in the Gazette. By contrast, the date that the Swan Valley Planning Scheme comes into effect is the date when it is approved by the Minister.

Clause 9. Effect of scheme for Planning and Development Act 2005

This clause provides that on the day on which the first SVP Scheme comes into operation ('the scheme start day') a relevant planning scheme, being a Metropolitan Region Scheme, or the local planning scheme or any improvement scheme that applies to land in the Swan Valley before the scheme start day, ceases to apply from that date, and the Swan Valley Planning Scheme applies. The PD Act continues to apply, but the planning scheme that applies to the land and the development is the Swan Valley Planning Scheme.

This clause is qualified by clause 45 which provides for developments being lawfully carried out before the scheme start day.

Division 2 – Contents of scheme

Clause 10. Contents of scheme

Clause 10(1) provides that the Swan Valley Planning Scheme ("SVP Scheme") must be consistent with the objects of the Act (set out in clause 5).

Subject to clauses 12 and 13, which broadly speaking provide for minimum lot sizes and planning objectives and non-agricultural development to minimise nuisance or detriment that could arise from possible or future uses of Swan Valley farm land:

- clause 10(2)(a) provides that the SVP Scheme may include any provision that the Commission considers will promote orderly and proper planning, development and management of the Swan Valley;
- clause 10(2)(b) provides that the SVP Scheme may make provision for all of the purposes, provisions, powers or works referred to in Schedule 7 of the PD Act (i.e. with Sch.7 listing all matters which may be dealt with by a planning scheme) but specifically in relation to the Swan Valley;
- clause 10(2)(c) provides that the Swan Valley Planning Scheme may confer functions on the SVSP Committee (which is to say the SVSP Committee acting on behalf of the Commission).

Clause 11. Scheme may incorporate provisions of other planning instruments

This clause allows incorporation into the SVP Scheme of provisions from a range of other planning instruments, such as a State planning policy, the Metropolitan Region Scheme, and model and deemed provisions as defined in sections 257A(1) and 257(B)1 of the PD Act. Once incorporated, the effect is that it is as if that provision was set out in full in the SVP Scheme, subject to any modifications set out in the Scheme.

Modifications prevail over later amendments or subsequent provisions, if these are inconsistent with the modifications.

The purpose of this clause allows the SVP Scheme some simplicity, by cross-referencing existing provisions found in the existing planning system. Without this mechanism, the SVP Scheme would be exceptionally long and difficult to read. However, the clause also retains a power to apply modifications as required, ensuring the particular planning needs of the Swan Valley are dealt with appropriately.

Clause 12. Planning areas and provisions about subdivision and minimum lot sizes

This clause provides for planning areas, prohibition of certain subdivision of land, and minimum lot sizes, to be included in the SVP Scheme. This clause addresses a key challenge for planning in the Swan Valley, being the continued fragmentation of land into smaller and smaller parcels, which no longer become viable for supporting the primary activities of horticulture, viticulture, hobby farming and equestrian activities.

This clause should also be particularly read in connection with clause 5(k), which creates a presumption against any development and subdivision in the Swan Valley unless it does not prevent the other objects of the new Act.

Clause 13. Provisions to ensure non-rural development designed to minimise impacts from rural land uses

This clause provides that the SVP Scheme must include provisions to ensure that non-rural development that is near Swan Valley farm land is designed and located so as to minimise nuisance or other detrimental impacts. These provisions may include provisions relating to setbacks or otherwise dealing with the position of buildings on lots.

This clause addresses “right to farm” concerns amongst existing landowners engaged in rural activities, but subject to potential complaints from new non-rural development. Non-rural development is defined to mean any residential, tourism, hospitality or any other development that is not for the purpose of horticulture, viticulture, hobby farming or equestrian activities.

Within the scope of acceptable planning tools and mechanisms, these measures include provisions in the SVP Scheme that address setbacks, the position of building and lots, and other measures that can minimise land use conflicts.

Division 3 – Making and amending scheme

Subdivision 1 – Preliminary

It should be noted that “subdivision” refers to subdivisions within divisions or sections of the Act.

Clause 14. Term used: proposed scheme or amendment

This clause defines the term “proposed scheme or amendment” which means the first proposed SVP Scheme, a proposed scheme to replace any existing scheme, or a proposed amendment of an existing scheme.

Clause 15. First proposed scheme

This clause provides that the Commission must prepare the first proposed SVP Scheme and submit it for approval by the Minister as soon as practicable after the day on which the Act comes into operation. The note below clause 15 points to section 43 which provides that the process to be followed in preparing the first proposed SVP Scheme is different from that which applies to subsequent proposed schemes or amendments.

It should be noted that it normally takes several years to draft a new planning scheme and having it undergo the full consultation process to final approval. Therefore, this clause in effect works in conjunction with clause 43, to permit certain activities be undertaken prior to and concurrently with any new heads of power that will apply under the new Act. This will permit the Minister to commence the first SVP Scheme as soon as possible after the new Act commences, rather than having a further delay of several months or years.

Clause 16. Replacement or amendment of scheme

This clause provides that the SVP Scheme may be:

- (a) repealed by a subsequent SVP Scheme; or
- (b) amended by an amendment prepared by the Commission and approved by the Minister.

This clause largely replicates existing arrangements that apply to other types of planning schemes. See for example s.37 of the PD Act.

Subdivision 2 – Process to be followed in preparing proposed scheme or amendment

Clause 17. Matters to which Commission must have regard

This clause sets out the matters to which the Commission must have regard in preparing a proposed scheme or amendment to the Swan Valley Planning Scheme.

These are:

- (a) the objects of this Act set out in clause 5;
- (b) any State planning policy that affects the Swan Valley;

- (c) any strategic document in force under the *Swan and Canning Rivers Management Act 2006 Part 4 Division 2* (this Division broadly speaking provides for with Strategic Documents dealing with the river protection strategy, management plan and programmes relating to the development control area and Riverpark);
- (d) the views of any person consulted under clause 18, being the SVSL Group, the Swan Valley local government (which is to say the City of Swan), and any public authorities or persons that appear to the Commission to have an interest in the proposed scheme or amendment;
- (e) any advice of the Heritage Council on referral under clause 19.

This clause has similarities to the considerations that must be considered by the Commission or a local government in preparing or amending a region or local planning scheme, with some modifications are necessary relevant to the particular circumstances of this new Act. See for example ss.34 and 77 of the PD Act.

Clause 18. Consultation requirements

This clause provides that before submitting a proposed scheme or amendment to the Minister, the Commission must consult the SVSL Group and the Swan Valley local government (that is to say the City of Swan), and must make reasonable endeavours to consult any public authorities or persons that appear to the Commission to have an interest in the proposed scheme or amendment.

Clause 19. Referral to Heritage Council

This clause applies where a proposed scheme or amendment affects or may affect land or waters in the Swan Valley if:

- (a) the land or waters are the subject of entry in the State Register of Heritage Places;
- (b) the Heritage Council has commenced a review under the *Heritage Act 2018* section 40 (which broadly speaking allows the Heritage Council to review a place nominated to determine whether it should be entered in the register due to cultural heritage significance) but has not made a recommendation, has not yet decided not to make a recommendation, or has made a recommendation but has not given a direction by the Minister for Heritage in relation to that recommendation; or
- (c) the land or waters are the subject of an entry in a local heritage survey prepared under the *Heritage Act 2018*.

As soon as practicable after preparing the proposed scheme or amendment, the Commission must refer the proposed scheme or amendment to the Heritage Council

for advice, and the Commission may not proceed with the proposed scheme or amendment unless it has received the advice.

This clause should be read in conjunction with clause 5(b), which set out the Act's objectives. That is, the Swan Valley also has special State and regional significance due to its prevalence of historically important heritage.

Clause 20. Referral to EPA

This clause provides that the Commission must as soon as practicable after having prepared a proposed scheme or amendment, refer it to the EPA by giving it a copy of the proposed scheme or amendment together with written information about the proposed scheme or amendment that is necessary to enable the EPA to comply with section 48A of the *Environmental Protection Act 1986* in relation to the proposed scheme or amendment.

(Section 48A of the *Environmental Protection Act 1986* provides for the EPA giving advice and recommendations in certain circumstances on schemes referred to it.)

This clause, and following clauses concerning environmental review, largely replicate existing processes as they apply to region and local planning schemes in parts 4 and 5 of the PD Act. This clause should be read in conjunction with clause 5(g) and (h), which set out the Act's objectives. That is, the Swan Valley also has special State and regional significance due its environmental qualities, both in terms of the nature of the rural activities on the land, and the importance of the Swan River to the locality.

Clause 21. Environmental review to be undertaken if required by EPA

This clause applies where the EPA requires the Commission to undertake an environmental review of the proposed scheme and has issued instructions regarding the scope and content of the environmental review. In that case, if the Commission wishes to proceed with the proposed scheme or amendment, it must undertake, or cause the landowner to undertake an environmental review in accordance with the review instructions provided by the EPA. The Commission must not advertise the proposed scheme or amendment until the Commission has given the report on the environmental review to the EPA and either the EPA advises that the review has been undertaken in accordance with the review instructions, or 30 days from the date on which the report is given to the EPA expires without the EPA having advised whether or not the review has been undertaken in accordance with the review instructions.

Clause 21(4) provides that if the EPA advises that the review has not been undertaken in accordance with the review instructions, the Commission may then comply with the review instructions or request the Minister for Planning to consult the Minister of the Environment and agree with the Minister of whether the review has been carried out in accordance with the review instructions.

Clause 21(5) provides that if the Minister for Planning agrees with the Minister for the Environment as to whether or not the review has been completed in accordance with

the review instructions, their decision is final and without repeal or review. If the Minister for Planning and the Minister for the Environment cannot agree, then section 48J of the *Environmental Protection Act 1986* applies. Section 48J of the *Environmental Protection Act 1986* provides that where the Minister cannot agree, the matter is referred to the Governor for decision and the Governor's decision is final and without appeal.

Clause 21(6) provides that the Commission may recover the expenses in undertaking environmental review, in accordance with the review instructions.

Clause 21 does not apply to the first proposed scheme because of clause 43. That is, consultation with the EPA already occurs through a different mechanism prior to the formal commencement of the new Act.

Clause 22. Environmental review to be undertaken by land owner in some circumstances

This clause applies if the Commission is required to undertake an environmental review of a proposed scheme or amendment in accordance with the review instructions and the proposed scheme or amendment was prepared at the request of an owner of land to which the proposed scheme or amendment relates.

In this situation, clause 22 provides that Commission may by written notice served on the owner of land, request the owner to undertake an environmental review of the proposed scheme or amendment in accordance with the review instructions and the owner must proceed accordingly.

Clause 22 does not apply to the first proposed scheme because of clause 43.

Subdivision 3 – Advertising proposed scheme or amendment

Clause 23. Advertising proposed scheme or amendment

This clause provides that after referring the proposed scheme or amendment to the EPA under clause 20 and after undertaking the environmental review if required by the EPA under clause 21, the Commission must advertise the proposed scheme or amendment in accordance with the applicable regulations.

This provision largely mirrors existing provisions that apply to preparing local and region planning schemes, which are both done in accordance with regulations. See ss.43 and 84 of the PD Act.

It is worth repeating that these provisions will not apply with respect to the first SVP Scheme, which is prepared through special provisions set out in s.43. Only further and subsequent versions of the SVP Scheme, whether by way of a new scheme or amendments, will undertake advertising in accordance with the regulations.

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

This clause applies if the Commission has been informed by the EPA under section 48A(1)(b) of the *Environmental Protection Act 1986* that the scheme should be assessed by the EPA under clause 20. In such case, the Commission must as soon as practicable but no later than 7 days after expiry of the period during which the proposed scheme or amendment is advertised under clause 23, give the EPA a copy of each submission made during that period and relating to the environmental issues raised by the proposed scheme or amendment.

Within 42 days after the expiry of the period during which the proposed scheme or amendment is advertised under clause 23 or such longer period as allowed by the Minister, inform the EPA of its views on and response to the environmental issues raised by those submissions.

Subdivision 4 – Approving and publicising scheme or amendment

Clause 25. Approval of proposed scheme or amendment

This clause provides that after complying with the applicable requirements of Subdivisions 2 and 3 in relation to a proposed scheme or amendment, the Commission must submit the proposed scheme or amendment to the Minister.

The Minister may then approve the proposed scheme or amendment, require the Commission to modify the proposed scheme or amendment in any manner that the Minister specifies before the proposed scheme is resubmitted for the Minister's approval under this clause, or refuse to approve the proposed scheme or amendment. The Minister must not approve a proposed scheme or amendment, unless the Minister is satisfied that the proposed scheme or amendment is consistent with the objects of this Act.

This provision largely mirrors existing provisions that apply to preparing local and region planning schemes and amendments, which are both done in accordance with regulations. See s.62 and 87 of the PD Act. However, this clause imposes on the Minister an important, additional and positive obligation in subclause (3), not to approve any proposed scheme or amendment unless it is consistent with the objects of the Act under s.5.

The Minister must notify the Commission of its decision in writing.

Clause 26. Approval of scheme or amendment referred to EPA

This clause provides that the Minister must not approve a proposed scheme or amendment which has been referred to the EPA if the Minister has reached an agreement with the Minister for the Environment under section 48A(2)(b) of the *Environmental Protection Act 1986* in relation to the proposed scheme or amendment.

Section 48A(2)(b) of the *Environmental Protection Act 1986* provides the circumstances in which the Minister and the Minister for the Environment agree that the responsible authority cannot be informed of the assessment and that a statement of conditions cannot be delivered and published under section 48F of the *Environmental Protection Act 1986*.

Clause 26(2) provides that the Minister must not approve a proposed scheme or amendment which has been referred to the EPA unless:

- (a) the EPA has informed the Minister under the *Environmental Protection Act 1986* that the proposed scheme or amendment should not be assessed by the EPA under the relevant provisions of the *Environmental Protection Act 1986*; or
- (b) the Minister has received a statement under the *Environmental Protection Act 1986*, in respect of conditions to which the proposed scheme or amendment is subject, and or a decision has been made in respect of those conditions to which the proposed scheme or amendment is subject and the Minister is satisfied that the conditions (if any) have been incorporated into the proposed scheme or amendment; or
- (c) both a decision has been made in respect of those conditions to which the proposed scheme or amendment is subject and the Minister is satisfied that the conditions (if any) have been incorporated into the proposed scheme or amendment; or
- (d) the period of 28 days referred to in section 48A(1)(b)(i) of the *Environmental Protection Act 1986* has expired without the EPA having informed the Commission under that section.

Clause 27. Publication, advertisement and commencement of approved scheme or amendment

This clause provides that if the Minister approves a SVP Scheme or an amendment to the SVP Scheme (the **approved scheme or amendment**), the Commission must, as soon as practicable after being notified of the approval, ensure that the approved scheme or amendment is published in the Gazette, advertised in accordance with the regulations and ensure that copies of the approved scheme or amendment are made available to the public.

An approved scheme or amendment comes into operation on the day on which it is published in the Gazette, or on a later day specified in the approved scheme or amendment.

The approved scheme or amendment can be published in the Gazette without any maps, plans or diagrams that form part of the approved scheme or amendment.

This provision largely mirrors existing provisions that apply to preparing local and region planning schemes and amendments. See ss.58 and 87.

Part 3 – Swan Valley Strategic Leadership Group

Clause 28. Swan Valley Strategic Leadership Group established

This clause establishes the Swan Valley Strategic Leadership Group (“SVSL Group”) and provides that it is to consist of a presiding member and 6 other members, all appointed by the Minister. These members are to have knowledge or experience relevant to the functions of the Swan Valley Strategic Leadership Group, which are set out in clause 29, and otherwise be appropriate to represent the interests of residents and businesses within the Swan Valley.

The clause allows the SVSL Group to establish 1 or more committees to assist it in the performance of its functions, and it may determine its own procedures.

Clause 29. Functions of Swan Valley Strategic Leadership Group

This clause describes the functions of the SVSL Group, which are:

- to give information to the Minister on matters relating to the Swan Valley, such as protection of the Swan Valley as a productive rural area within the Perth metropolitan area and the promotion and marketing of horticulture, viticulture, tourism, hospitality, hobby farming and equestrian activities in the Swan Valley and the enhancement and protection of the cultural heritage, built heritage, recreation and landscape values of the Swan Valley, as provided for in and envisaged by clause 5 (the Objects of the Act) and to prepare reports or other documents in relation to these objects;
- to comment on:
 - any proposed Swan Valley Planning Scheme or proposed amendment of the Swan Valley Planning Scheme;
 - proposed policies, schemes or instruments under the *Planning and Development Act 2005* or other written law that affects the Swan Valley; and
- to provide direction and support to public authorities, industry, commerce and community in relation to the Swan Valley in furthering the objects of the Act.

It is not a function of the SVSL Group to provide advice, comments, reports or documents in relation to particular subdivision or development applications in the Swan Valley.

There is a general enabling provision to allow the SVSL Group to do all things necessary or convenient in connection with the performance of its functions, provided that the SVSL Group has regard to the objects of the Act.

Clause 30. Remuneration

This clause allows members of the SVSL Group to be paid the remuneration and advances (if any) determined by the Minister on the recommendation of the Public Sector Commissioner.

Clause 31. Use of staff and facilities of public authorities

This clause allows members of the SVSL Group to, by arrangement with the relevant employing authority, make use of the services of any officer or employee employed in the Public Service, State agency or otherwise in the service of the State and to use any facilities of the department or agency, all on terms agreed to by the parties.

This provision largely mirrors existing provisions that exist in the planning system. See s.22 of the PD Act.

Clause 32. Regulations about Swan Valley Strategic Leadership Group

This clause provides that regulations can be made to make provision for or in relation to the constitution (term of office, vacancies, resignation and termination of members) and procedures of the SVSL Group.

Part 4 – Swan Valley Statutory Planning Committee

Clause 33. Swan Valley Statutory Planning Committee established

This clause establishes the Swan Valley Statutory Planning Committee (“SVSP Committee”) which must consist of:

- the chairperson (or other person nominated by the chairperson and approved by the Minister);
- 5 other persons appointed by the Commission with the approval of the Minister who must be members of the Statutory Planning Committee;
- 1 other person appointed by the Commission with the approval of the Minister to represent the Swan Valley local government; and
- 2 other persons appointed by the Commission with the approval of the Minister to represent the interests of the Swan Valley residents and businesses.

In furtherance of the objects of this Act, the Commission must ensure that each person appointed to the SVSP Committee has practical knowledge or experience that is relevant to horticulture, viticulture, cultural heritage, landscape, protection, tourism, hospitality, hobby farming or equestrian activities in the Swan Valley or is otherwise the appropriate person to represent the interests of Swan Valley residents and businesses.

In effect, the SVSP Committee is essentially the existing Statutory Planning Committee (“SPC”) of the WAPC as set out in the PD Act, but with additional representation relevant to the Swan Valley. This approach utilises but builds upon an existing approach.

Clause 34. Functions of Swan Valley Statutory Planning Committee

This clause sets out the functions of the SVSP Committee. The Committee operates as a delegate of the Western Australian Planning Commission. However, the Commission *must* delegate certain powers to the SVSP Committee, including:

- The functions of the Commission under Part 2 (in respect of the Swan Valley Planning Scheme);
- The functions that the Commission has under the *Planning and Development Act 2005* as the responsible authority for the Swan Valley Planning Scheme;
- The functions of the Commission under parts 4 and 5 of the *Swan and Canning Rivers Management Act 2006* (relating to Targets and Strategic Documents and Development in Development control area);
- Substantially the same functions of the Commission under the *Planning and Development Act 2005* as are delegated to the Statutory Planning Committee under Schedule 2 clause 4, but only to the extent that those functions relate to land and development in the Swan Valley.

The Commission may not delegate the power of delegation to another person or body.

The benefit of this approach is it establishes the SVSP Committee as a separate statutory body with its own independence, rights, privileges and duties. However, as a Committee of the WAPC, it allows the SVSP Committee to operate within a well-established existing governance structure. A similar approach was adopted for the State Design Review Committee, which also is a committee of the WAPC. This arrangement always permits the parent Board of the WAPC to operate if, for whatever reason, the SVSP Committee could not, including for say reason of extensive conflicts of interests or other inhibiting factors amongst SVSP Committee members.

Nonetheless, it should be noted that unlike the SVSP Committee, the SVSL Group is not a committee of the WAPC. This is because the Group is more strategic in nature, and also because of the importance of distinguishing its independence as an advisory body to the Minister outside of the existing planning framework. Finally, making both the SVSP Committee and SVSL Group committees of the WAPC could result in some confusion and conflict between the two bodies.

Clause 35. Subdelegation of functions by Swan Valley Statutory Planning Committee

This clause allows the Swan Valley Statutory Planning Committee by resolution to subdelegate any power or duty of the Commission delegated to it under clause 34(2), to a member or associate member (as defined in the PD Act – i.e. a member of the board or associate member of the board); a subcommittee, officer of the Commission, public authority or member or officer of a public authority, the Swan Valley local government, committee of the council of the Swan Valley local government or an employee of the Swan Valley local government.

A person to whom a function has been subdelegated cannot subdelegate that function.

This clause overturns the usual legal rule against subdelegation. This provision exists in recognition of the fact the SVSP Committee is a statutory authority in its own right, even though it is formally a delegate of the WAPC. Without this provision, there may be procedural hurdles to, for example, officers of DPLH being able to carry out routine or administrative decisions on behalf of the Committee without the permission of the full Commission board.

Clause 36. General provisions about delegation under s. 34 and 35

This clause provides that the resolution under which a subdelegation has been made under clause 35 takes effect when a notice of the resolution is published in the Gazette.

A person or committee exercising a power or performing a power or duty that has been delegated or subdelegated to that person or committee does so in accordance with the delegation or subdelegation (unless shown to the contrary).

The Commission or the Swan Valley Statutory Planning Committee may perform a function through an officer or agent.

Part 5 – Miscellaneous

Clause 37. Delegation by Minister

This clause provides for delegation by the Minister to a person any power or duty of the Minister under the Act, without limiting his/her ability to perform a function through an officer or agent. Delegation must be in writing and signed by the Minister and the person to whom a power or duty has been delegated cannot further delegate that power or duty, and is taken to exercise or perform the power or duty in accordance with the delegation unless the contrary is shown.

This clause largely mirrors existing provisions in the planning system. See s.265 of the PD Act.

Clause 38. Protection from liability

This clause provides that an action in tort (being a civil action for loss or harm) does not lie against a person for anything done (or omitted to be done) in the performance or purported performance of a function under this Act, whether or not that function could have been performed without the enactment of this Act. This section does not extend to protect the Commission, the State or local government from liability for another person having performed a function under this Act.

This clause largely mirrors existing provisions in the planning system. See s.267 of the PD Act.

Clause 39. Certain references in written laws to include Swan Valley Planning Scheme or things done under scheme

This clause makes the PD Act applicable to this new Act. This clause is necessary for ensuring this Act interfaces as seamlessly as possible with the ordinary planning system under the PD Act. For example, development approval obtained under the SVP Scheme is deemed to be approval for the purposes of the PD Act.

Clause 40. Application of regulations under *Planning and Development Act 2005*

This clause makes relevant local planning scheme regulations (with any modifications prescribed by the regulations) made under the *Planning and Development Act 2005* applicable for the purposes of this Act as if the Swan Valley Planning Scheme were a local planning scheme and as if reference to local government were a reference to the Commission, unless regulations made under the Act provide that those regulations do not apply.

The Commission may impose fees as if it were a local government entitled to impose fees under the relevant regulation.

This clause in effect permits the planning system under this Act automatically by way of using existing regulations which apply to local planning schemes. This provision will preclude the need for separate standalone Swan Valley regulations to be made. However, the head of power does permit new regulations to be made as outlined in clause 41, or existing regulations to be modified to fit the particular planning needs of the Swan Valley.

Clause 41. Regulations

This clause allows the Governor to make various types of regulations prescribing matters required, permitted, necessary or convenient to be prescribed for purposes of the Act or giving effect to the Act.

The regulations may:

- make provision for making applications under the Act, including the manner in which such applications are to be made;
- prescribe forms for the purposes of the Act;
- make provision in relation to the imposition, collection and recovery of fees and charges for purposes of the Act;
- confer functions on the Commission, SVSL Group, the CEO of the Department or any other person;
- make provision in relation to the SVP Scheme in relation to the form of the scheme, matters to be included in the scheme, process of preparation, advertisement, approval, amendment and review of the scheme as well as the interaction of the scheme with any other plans or instruments made under the PD Act;
- make provision with respect to recovery of expenses by the Commission incurred in undertaking environmental review under the *Environmental Protection Act 1986* in relation to the Swan Valley Planning Scheme or an amendment thereof; and
- provide for offences against the regulations and prescribe penalties up to a maximum of \$50 000.

This clause works in conjunction with other clauses, especially clauses 39 and 40, so that regulations made under this clause are not strictly required for the new Act and first version of the SVP Scheme to operate.

Part 6 – Transitional provisions

Clause 42. Terms used

This clause defines “relevant planning scheme” and “scheme start day” as per clause 9(1) of the Act.

Clause 43. Process for making first Swan Valley Planning Scheme

Clause 43(1) provides that Part 2 Division 3 Subdivisions 2 and 3 which provide for the process to be followed in preparing the proposed scheme or amendment and advertising the proposed scheme or amendment, do not apply to the first proposed Swan Valley Planning Scheme (defined as “the first proposed scheme”).

It should be noted that it normally takes several years to draft a new planning scheme and having it undergo the full consultation process to final approval. Therefore, this clause in effect works in conjunction with clause 15, to permit certain activities to be undertaken prior to and concurrently with any new heads of power that will apply under the new Act. This will permit the Minister to commence the first SVP Scheme as soon

as possible after the new Act commences, rather than having a further delay of several months or years.

Clause 43(2) provides that the Commission must comply with the following before submitting a proposed scheme to the Minister for approval:

- (a) the Commission must have regard to the matters described in clause 17(a) to (c), (being the objects of the Act, the State planning policy that affects the Swan Valley and any strategic document in force under Part 4 Division 2 of the *Swan and Canning Rivers Management Act 2006*);
- (b) The Commission has given a draft of the first proposed scheme to the Minister and the Minister has given the draft to each of the EPA and the Heritage Council and requested each of the EPA and the Heritage Council to give advice on the first draft; and
- (c) The Commission has consulted the Swan Valley local government (i.e. the City of Swan) about the first proposed scheme and 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 had regard to the views of any such person or body consulted and to the advice received by the Minister from the EPA and the Heritage Council.

Clause 43(3) provides that it does not matter whether the consultation required under clause 43(2) was done before, on or after the day on which this section (i.e. the Act) comes into operation.

Clause 44. Application of *Interpretation Act 1984*

This clause confirms that the *Interpretation Act 1984* applies in relation to the repeal of an enactment by Part 7. Part V of the *Interpretation Act 1984* provides how written laws are to be repealed and how the language used in repealing written laws is to be understood. The effect of clause 44 is to confirm that clauses 9(2), 49 and 50 are to be understood in accordance with the provisions of the *Interpretation Act 1984*.

Clause 45. Existing lawful or approved development

This clause provides that notwithstanding the provision of clause 9(2) (that on the scheme start day, the relevant planning scheme or the local planning scheme or any improvement scheme that applies to land in the Swan Valley before the scheme start day ceases to apply from that date, and the Swan Valley Planning Scheme applies), this does not apply to a development that was lawfully carried out in the Swan Valley immediately before the scheme start day.

A development that was lawfully carried out in the Swan Valley immediately before the scheme start day, or in relation to which all necessary approvals under the relevant planning schemes were in force immediately before the scheme start day may be lawfully carried out and be governed by those schemes despite clause 9(2).

Clause 46. Applications for approval not finalised on scheme start day

This clause applies in respect of applications for approval under a relevant planning scheme in relation to land in the Swan Valley which was made as at the scheme start day but had not been decided. With effect from the scheme start day, such applications are taken to be made under the SVP Scheme and the decision on the application must be made in accordance with the SVP Scheme rather than the relevant planning scheme.

If before the scheme start day the application was to be determined by a Development Assessment Panel, on and after the scheme start day, such application must be decided in accordance with the SVP Scheme by the Commission (which is to say the SVSP Committee), rather than by the DAP.

It is ordinary planning practice across the different jurisdictions of Australia, and in this State, for development applications to be assessed against the scheme provisions and planning framework that exists as at the date of decision, rather than the date a proposal is lodged.

Clause 47. State Administrative Tribunal review not finalised on scheme start day

This clause applies if on the scheme start day an application to the State Administrative Tribunal for review of an application had been made under Part 14 of the *Planning and Development Act 2005* but had not been decided. From the scheme start day, the reviewed decision is taken to be a decision under the SVP Scheme and the Tribunal's decision on the application for review is to be made in accordance with the SVP Scheme rather than the relevant planning scheme.

Clause 48. Transitional regulations

This clause defines the terms "specified" and "transitional matter" and allows for regulations under the Act to prescribe matters relating to transitional matters that are required, necessary or convenient to be prescribed for dealing with such matters not dealt with under the Act.

These regulations may come into effect on a date that is specified to be earlier than the date that the regulation is published in the Gazette, but after the date that this Act comes into effect, provided that in specifying a date that is earlier than the date of the Gazette, the provision does not prejudice the rights of any person (other than the State or an authority of the State) or impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication of those regulations.

As stated elsewhere, the new Act and first version of the SVP Scheme is intended to operate immediately without the need for regulations. However, if at a later date it becomes apparent that a matter does need to be addressed through regulations, and

essentially back-dated to the start of the SVP Scheme, then this head of power permits this to occur.

Nonetheless, these transitional provisions made through regulations are not unfettered. Importantly, they cannot be made to prejudice the pre-existing rights of any person other than the State itself. As such, this head of power is primarily directed towards administrative changes and requirements that may need to be back-dated.

Part 7 – Repeals

Clause 49. *Swan Valley Planning Act 1995* repealed

This clause repeals the *Swan Valley Planning Act 1995*.

Clause 50. *Swan Valley Planning Regulations 1995* repealed

This clause repeals the *Swan Valley Planning Regulations 1995*.

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

Clause 51. Act amended

This clause states that this Part amends this Act. This Part is necessary because as provided in clause 2, at the date of submitting the Bill, it was not certain that all the provisions of the *Planning and Development Amendment Act 2020* would commence before this Bill, even though it has been enacted first. Therefore certain amendments to this Bill will be necessary when the relevant provisions of the *Planning and Development Act 2020* commence.

Clause 52. Section 3 amended

This clause inserts the definition of “planning code” as given in the PD Act.

Clause 53. Section 11 amended

This clause deletes the words “State planning policy” and replaces it with “planning code” to conform to the changes made to the PD Act by the *Planning and Development Amendment Act 2020*.

Clause 54. Section 20 amended

This clause inserts references to proposed schemes or amendments prescribed by regulations under the *Environmental Protection Act 1986*, required to conform to changes made to the *Environmental Protection Act 1986* by the *Planning and Development Amendment Act 2020*.

Part 9 – *Planning and Development Act 2005* amended

Clause 55. Act amended

This clause states that this Part of the Act amends the PD Act.

Clause 56. Section 4 amended

This clause amends the terms section of the PD Act required because of the repeal of the *Swan Valley Act Planning 1995* so as to make provision for the new Act. New definitions are also required because of the new Act.

Definitions deleted from the *Planning and Development Act 2005* are:

- “Swan Valley”;
- “Swan Valley Planning Committee”;

Required new definitions in the PD Act:

- “Swan Valley”;
- “Swan Valley Planning Scheme”.

Definitions to be amended in the *Planning and Development Act 2005*:

- “planning scheme”;
- “responsible authority”.

Clause 57. Section 13 amended

This clause amends section 13 of the PD Act which provides for remuneration and allowances to be paid to certain members of committees, to include a reference to section 33 of the *Swan Valley Planning Act 2020*, so that section 13 applies to members of the Swan Valley Statutory Planning Committee.

Clause 58. Section 14 amended

This clause amends section 14 of the PD Act which provides for the functions of the Commission so as to include references to the SVP Scheme and the *Swan Valley Planning Act 2020* to enable the Commission to develop, maintain and manage land that is reserved under the SVP Scheme, and otherwise carry out its functions required under the *Swan Valley Planning Act 2020*.

Clause 59. Section 19 amended

This clause amends section 19 of the PD Act so as to include the Swan Valley Statutory Planning Committee in the application of Schedule 2 (Committees) of the PD Act.

Clause 60. Section 20 amended

This clause amends section 20 of the PD Act so as to include fees to be charged in respect of anything done under this new Act as well as under the PD Act.

Clause 61. Section 32C amended

This clause amends section 32C of the PD Act so that a planning code has effect only to the extent that it is incorporated, with or without modifications, into the Swan Valley Planning Scheme (in addition to a local planning scheme or improvement scheme).

Clause 62. Section 36 amended

This clause amends section 36 by inserting a reference to the Swan Valley Planning Act 2020 to restrict the Metropolitan Region Scheme and any other region scheme applicable to the metropolitan region scheme from making provision in respect of land in the Swan Valley once the first Swan Valley Planning Scheme has come into operation under this new Act.

Clause 63. Section 40 deleted

This clause deletes section 40 of the PD Act because this relates to the Swan Valley Planning Committee established under the *Swan Valley Planning Act 2005*.

Clause 64. Section 47 deleted

This clause deletes section 40 of the PD Act because this relates to the Swan Valley Planning Committee established under the *Swan Valley Planning Act 2005*, repealed under clauses 56 and 63.

Clause 65. Section 48 amended

This clause amends section 48 of the PD Act by deleting the reference to the provisions contained in section 47, repealed under clauses 56 and 63.

Clause 66. Section 49 amended

This clause amends section 49 of the PD Act by deleting reference to the provisions contained in section 47, repealed under clauses 56 and 63.

Clause 67. Section 57 amended

This clause deletes section 57(2) of the PD Act so as to remove the prohibition of making an amendment to the Metropolitan Region Scheme to change the zoning of any land in the Swan Valley. This is because the MRS no longer applies to the Swan Valley so this clause is not relevant. Note that while the MRS does not apply to the Swan Valley, the MRI Account still does (refer to Clause 85).

Clause 68. Section 71 amended

This clause amends section 71 of the PD Act so as to prevent a local planning scheme from being made or amended under the *Planning and Development Act* from making provision in respect of land in the Swan Valley once the first Swan Valley Planning Scheme has come into operation under this new Act.

The heading of section 71 of the PD Act is amended to include reference to the Swan Valley.

Clause 69. Section 78 deleted

This clause deletes section 78 of the PD Act because this relates to consultation with the Swan Valley Planning Committee established under the *Swan Valley Planning Act 2005*.

Clause 70. Section 112 amended

This clause deletes section 112(3) of the PD Act because this applies to land in the Swan Valley prior to this new Act and to the Swan Valley Planning Committee established under the *Swan Valley Planning Act 2005*.

Clause 71. Section 119 amended

This clause amends section 119(3A) of the PD Act so as to exclude certain powers of the Commission in making improvement plans for land in the Swan Valley. Improvement plans are similarly prohibited in MRA redevelopment areas, the Hope-Valley Wattleup area, and Swan and Canning Rivers development area.

Clause 72. Section 122B amended

This clause deletes section 122B(2) of the PD Act because this applies to section 78 of the PD Act, deleted by clause 68.

Clause 73. Section 123 amended

This clause amends section 123(2) of the PD Act so that Local laws may not be made by a local government if it would affect or be likely to affect the SVP Scheme, unless the laws are in accordance with the SVP Scheme.

The Heading to the amended section 123 is also amended to include a reference to the SVP Scheme.

Clause 74. Section 130 amended

This clause amends section 130 of the PD Act so as to include the SVP Scheme as being subordinate to Part 7 (Planning control area provisions) of the PD Act.

Clause 75. Section 131 amended

This clause amends section 131 of the PD Act so that if there is any inconsistency between a local planning scheme or the Swan Valley Planning Scheme and a regulation made under the *Building Act 2011*, the regulation prevails to the extent of any inconsistency.

Clause 76. Section 131A inserted

This clause amends the PD Act by inserting a new section 131A, which provides for the relationship between the SVP Scheme and other planning schemes or policies.

In terms of (1) of this clause, the Minister may, by notice published in the Gazette, make any amendments to a region planning scheme, local planning scheme or improvement scheme that are necessary as a result of the *Swan Valley Planning Act 2020* coming into operation on the scheme start day (clause 9) and relevant planning schemes ceasing to apply with effect from that date.

(2) With effect from the day when the first SVP Scheme comes into operation under the *Swan Valley Planning Act 2020*, a State planning policy that applies to land in the Swan Valley has no effect to the extent that it is inconsistent with the Swan Valley Planning Scheme.

(3) The Minister may, by notice published in the Gazette, amend a State planning policy so that the State Planning Policy is consistent with the Swan Valley Planning Scheme in relation to land in the Swan Valley.

(4) An amendment in a notice published under subclauses (1) and (3) on the day when it is published in the Gazette or on a later date (but not earlier than the day on which the first SVP Scheme comes into operation).

Clause 77. Section 134 amended

This clause deletes section 134(3) to (8) of the PD Act because these sections deal with the application of some laws to land in the Swan Valley, now provided for in this new Act, and also the Swan Valley Planning Committee established under the *Swan Valley Planning Act 2005*. The Heading of section 134 is also amended so as not to refer to the Swan Valley because of the deletes sections.

Clause 78. Section 138A inserted

This clause amends the PD Act by inserting a new section 138A in the PD Act which provides for the Commission's functions when approving subdivision etc. in the Swan Valley.

The scheme start day is defined as the day on which the first SVP Scheme comes into operation under the *Swan Valley Planning Act 2020*. (This is the definition used in clause 9 of the *Swan Valley Act 2020*.)

On and after the scheme start day, section 138(2) to (4) of the PD Act do not apply in relation to the Commission giving approval under section 135 or 136 of the PD Act. Section 138(2) to (4) deal with the Commission having regard to the provision of local planning schemes and is not to give approval that conflicts with the provisions of a local planning scheme except in certain circumstances, but must ensure that an approval under section 135 or 136 of the PD Act complies with the provisions of a local planning scheme to the extent necessary for compliance with an environmental condition relevant to land under consideration.

Section 135 of the PD Act provides for subdivision approval and section 136 provides for approval for dealings as to land not dealt with as lot or lots.

After the scheme start day, in giving a Swan Valley approval, the Commission must have regard to the SVP Scheme and must not give approval that conflicts with the provisions of the SVP Scheme, except in circumstances set out in the regulations.

The provision largely reflects the current interrelationship between local planning schemes and the powers of the Commission with respect to subdivision applications under s.138 of the PD Act. However, this new s.138A is standalone and designed to address the special situation that relates to subdivision in the Swan Valley as governed by this Act and the new SVP Scheme, noting this new Act has a much stronger presumption against subdivision activities. For example, s.138A does not permit the Commission the ability to make a decision that conflicts with the SVP Scheme as it can with ordinary local planning schemes by virtue of s.138(3) of the PD Act.

Clause 79. Section 170 amended

This clause amends section 170(1A) of the PD Act by including reference to the SVP Scheme in the definition of the term 'responsible authority', and replacing the reference in section 170(1)(c) to 'local government' with 'responsible authority'. This clause is needed because the responsible authority in relation to land governed by the SVP Scheme is now the Commission, not the local government.

Clause 80. Section 171A amended

This clause amends section 171A(2) of the PD Act by the insertion of a new subsection (2A) to provide that a development application that relates to land in the Swan Valley cannot be a prescribed development application for the purposes of the DAP system.

That is, as noted in other clauses, the decision-maker with respect to all development applications in the Swan Valley will be the Commission (i.e. the SVSP Committee) and not a DAP.

Clause 81. Section 175 amended

This clause amends section 175 of the PD Act by making the current section subsection (1) and inserting a new subsection (2) so that no compensation is payable for land injuriously affected by the making of the first SVP Scheme insofar as the relevant provisions of the SVP Scheme were also contained in a relevant planning scheme that applied to land in the Swan Valley before the scheme start day under clause 9.

Without this clause, it might be said that a longstanding reservation under the LPS17 or MRS, where compensation had already been paid, if carried over in the SVP Scheme would constitute a “new reserve” triggering a new, second amount of compensation payable. This clause prevents that, noting the planning principle that landowners should only be paid once for injurious affection.

A new (3) is inserted to provide for inclusion of references in this section to maps, plans and diagrams.

Clause 82. Section 181 amended

This clause amends section 181 of the PD Act by inserting a new section 181(16A) after section 181(16). Section 181 provides for the calculation of the refund recoverable from an owner of land where compensation for injurious affection was paid in the circumstances provided for where land was reserved for a public purpose (under section 177) and as a result of a planning scheme being amended or revoked, the reservation of land for a public purpose is revoked.

The new section 181(16A) is drafted to include in the reference to the planning scheme being revoked to include, in relation to land in the Swan Valley for which compensation was paid before the scheme start day:

- (a) the first SVP Scheme beginning to apply instead; and
- (b) a reference to the making of a subsequent SVP Scheme or the amendment of the SVP Scheme.

Clause 83. Section 196 amended

This clause amends section 196(1) and (2) of the PD Act by including “Swan Valley Planning Scheme” in relation to the Commission’s power to dispose of or alienate land no longer required by it, except where this was compulsorily acquired, in which case the Governor’s consent is required.

Without this and similar provisions relating to acquisition and compensation of land, it is not clear if the Commission could carry out its normal functions in that regard as it applies to the Swan Valley. For example, acquiring land for the purposes of critical transport infrastructure.

Clause 84. Section 197 amended

This clause amends section 197 of the PD Act by including “Swan Valley Planning Scheme” in the context of land acquired for any public work, no longer being required for that work and required for purposes of a region planning scheme, improvement scheme or SVP Scheme.

Clause 85. Section 198 amended

This clause amends section 198(1) of the PD Act by including “Swan Valley Planning Scheme” in the purposes for which the Metropolitan Region Improvement Account (“MRI Account” or “MRIF” as it is otherwise known) is established as provided for in this section. The MRI Account is a hypothecated trust account out of which compensation is paid to land owners for the reservation and acquisition of land.

Although the land in the Swan Valley will no longer technically be under the MRS, landowners are to be continued to be compensated for any reservation or acquisition of land out of the MRI Account. This provision operates in a similar way to existing provisions that also permit monies to be paid out of the MRIF for compensation connected with an MRA redevelopment area operated by DevelopmentWA.

Clause 86. Section 199 amended

This clause amends section 199(1) of the PD Act by including “Swan Valley Planning Scheme” in the application of funding from the MRI Account for expenses relating to the MRS; regional development order in respect of land in the metropolitan region or a metropolitan improvement scheme; and development, maintenance or management of any such land.

The Commission is also authorised to apply money standing to the credit of the MRI Account to payment of expenditure required for the purposes of carrying out the *Swan Valley Planning Act 2020*.

Clause 87. Section 217 amended

This clause amends section 217 of the PD Act by inserting a new subsection 217(6) to provide that if an assessed scheme, being a planning scheme or amendment to a planning scheme that is an assessed scheme as defined in the *Environmental Protection Act 1986*, is the Swan Valley Planning Scheme or an amendment to that scheme, then a reference in section 217 is to be read as a reference to the Minister responsible for the administration of the *Swan Valley Planning Act 2020*.

Clause 88. Section 218 amended

This clause amends section 218 of the PD Act by including “Swan Valley Planning Scheme” in section 218(b) so that a person who commences, continues or carries out any development in any part of an area the subject of a local planning scheme, an improvement scheme or the SVP Scheme, commits an offence. This provision is important in tying the need to obtain development approval under this new Act and pursuant to the SVP Scheme with the existing offence and enforcement provisions in Part 13 the PD Act.

Clause 89. Section 241 amended

This clause amends section 241(1) of the PD Act by inserting subsection 241(1)(c) such that the State Administrative Tribunal is to have due regard to relevant planning considerations in the case of an application that relates to the SVP Scheme, including the objects set out in section 5 of the *Swan Valley Planning Act 2020*.

Clause 90. Section 252 amended

This clause amends section 252 of the PD Act by including “Swan Valley Planning Scheme” in the context of an applicant’s application to the State Administrative Tribunal for review of the responsible authority’s decision in relation to the classification or permissibility of use under a local planning scheme, improvement scheme or SVP Scheme.

Clause 91. Section 266 amended

This clause amends section 266 of the PD Act by inserting ‘*Swan Valley Planning Act 2020*’ in section 266(1) so that the term:

- ‘function’ means a function in connection with the carrying out of the *Planning and Development Act 2005* and the *Swan Valley Planning Act 2020*;
- ‘meeting’ means a meeting held in connection with the carrying out of the *Planning and Development Act 2005* and the *Swan Valley Planning Act 2020*; and
- ‘member’ includes a member or committee established under Schedule 2 of the *Planning and Development Act 2005* or the *Swan Valley Planning Act 2020*.

This clause also amends section 266 of the PD Act by inserting ‘*Swan Valley Planning Act 2020*’ in section 266(5) so that a member is not to disclose information acquired by virtue of the performance of any function unless the disclosure is made in connection with the carrying out of the PD Act and the *Swan Valley Planning Act 2020*, or for the purposes of proceedings or report of proceedings arising out of the PD Act and the *Swan Valley Planning Act 2020*.

The Heading of section 266 of the PD Act is amended to include reference to the *Swan Valley Planning Act 2020*.

Clause 92. Section 269 amended

This clause amends section 269(1) of the PD Act which is inserted by the *Planning and Development Amendment Act 2020*, to include the *Swan Valley Planning Act 2020* in the definition of “legal instrument”. This is mostly an administrative change in nomenclature, to ensure the right act name is referenced.

Clause 93. Schedule 2 clause 1 amended

This clause amends Schedule 2 clause 1(1) of the PD Act inserting by a reference to section 33 of the *Swan Valley Planning Act 2020* such that the Commission may establish the SVP Committee.

References to the *Swan Valley Planning Act 2020* are also included in Schedule 2 to allow the Commission to prescribe the constitution of a committee, authorise a committee to establish a subcommittee, appoint various members and persons to the committee and to discharge or reconstitute a committee and determine its own procedures, for purposes of the Swan Valley Statutory Planning Committee.

Clause 94. Schedule 2 clause 2 amended

This clause amends Schedule 2 clause 2(1) of the PD Act by inserting a reference to section 33(2)(c) of the *Swan Valley Planning Act 2020* such that the Commission, with the approval of the Minister, may appoint a person to be a deputy of a member of a committee appointed under the relevant sections of the PD Act and under section 33 of the *Swan Valley Planning Act 2020* (The Swan Valley Statutory Planning Committee).

Part 10 – Other Acts amended

Division 1 – *Control of Vehicles (Off-Road Areas) Act 1978* amended

Clause 95. Act amended

This clause states that this Division of the Act amends the *Control of Vehicles (Off-Road Areas) Act 1978*.

The *Control of Vehicles (Off-Road Areas) Act 1978* is “an Act to prohibit the use of vehicles in certain places, to make provision as to the use of vehicles otherwise than on a road, to provide for areas where the use of off-road vehicles shall be permitted, for the registration of off-road vehicles, and for related purposes”.

Clause 96. Section 16 amended

This clause amends section 16(5)(d) of the *Control of Vehicles (Off-Road Areas) Act 1978*. Section 16 allows the Minister, with the consent of the Governor, to establish certain land as a prohibited area for purposes of the Act. The Minister may only do so in relation to private land without consent of the owner if the Minister is of the opinion that it is in the public interest by virtue of (s16(5)(d)) the provisions of any local planning scheme or improvement scheme under the *Planning and Development Act 2005*. This amendment includes reference to the Swan Valley Planning Scheme in force under the *Swan Valley Planning Act 2020* as well so that the Minister may establish land as a prohibited area for purposes of the *Swan Valley Planning Act 2020*.

Clause 97. Section 47 amended

This clause amends section 47(1) of the *Control of Vehicles (Off-Road Areas) Act 1978*. Section 47(1) allows the Governor in certain circumstances to revoke or amend a local law made by local government any local planning scheme made under the *Planning and Development Act 2005*. This amendment includes reference to the Swan Valley Planning Scheme in force under the *Swan Valley Planning Act 2020* as well, so that the Governor may in certain circumstances revoke such scheme.

Division 2 – *Electricity Corporations Act 2005* amended

Clause 98. Act amended

This clause states that this Division of the Act amends the *Electricity Corporations Act 2005*.

The *Electricity Corporations Act 2005* is “an Act to provide for the establishment and operation of electricity corporations and for related matters”.

Clause 99. Section 60 amended

This clause amends section 60(3) of the *Electricity Corporations Act 2005*. Under section 60, certain works are exempt from planning laws. Section 60(3) provides that despite sections 218 and 221 of the *Planning and Development Act 2005* (under which it is an offence for a person to contravene a planning scheme or interim development order), a corporation is not required to comply with the provisions of:

- (a) an interim development order; or
- (b) a local planning scheme; or
- (c) an improvement scheme; or
- (d) the Swan Valley Planning Scheme,

in force under the *Planning and Development Act 2005*.

Sub section (d) is inserted by this amendment.

In addition, reference to section 4(1) of the *Planning and Development Act 2005* is inserted so as to refer to the terms listed in (a) to (d) as defined terms under section 4(1) of the *Planning and Development Act 2005*.

Division 3 – *Environmental Protection Act 1986* amended

Clause 100. Act amended

This clause states that this Division of the Act amends the *Environmental Protection Act 1986*.

The *Environmental Protection Act 1986* is “an Act to provide for an Environmental Protection Authority, for the prevention, control and abatement of pollution and environmental harm, for the conservation, preservation, protection, enhancement and management of the environment and for matters incidental to or connected with the foregoing”.

Clause 101. Section 3 amended

This clause amends section 3 of the *Environmental Protection Act 2006*. Section 3 defines the terms used in the *Environmental Protection Act 1986*. The following amendments to the terms used are made so as to include references to the *Swan Valley Planning Act 2020* and to the Swan Valley Planning Scheme:

- (1) The definition of “assessed scheme” includes the first Swan Valley Planning Scheme submitted in accordance with section 43 of the *Swan Valley Planning Act 2020* and approved under section 25(2)(a) of that Act.
- (2) The definition of “final approval” in relation to a scheme includes a scheme which is prepared under the *Swan Valley Planning Act 2020* and approved under section 25(2)(a) of that Act.
- (3) The definition of “period of public review” in relation to a scheme includes a scheme prepared under the *Swan Valley Planning Act 2020* and the “period of public review” means the period of advertisement for public inspection that applies for purpose of section 23 of the *Swan Valley Planning Act 2020* (advertising a proposed scheme or amendment).
- (4) The definition of “responsible authority” in relation to a scheme includes a scheme prepared under the *Swan Valley Planning Act 2020*, and the ‘responsible authority’ means the Western Australian Planning Commission.

(5) The definition of “scheme” includes the Swan Valley Planning Scheme as defined in section 3 of the *Swan Valley Planning Act 2020*, or an amendment of that scheme.

(6) The definition of “scheme Act” includes the *Swan Valley Planning Act 2020*.

Clause 102. Section 48AAA amended

This clause amends section 48AAA of the *Environmental Protection Act 1986*. This amendment ensures that regulations under s.48AAA(2) can prescribe the SVP Scheme or an amendment to this scheme as schemes that do not require assessment.

Note that (per clause 2), this amendment will come into operation on the later of when the *Planning and Development Act 2020* s56 comes into operation and when this Bill is proclaimed.

Clause 103. Section 48C amended

This clause amends section 48C of the *Environmental Protection Act 1986*. Section 48C provides for the Authority’s powers for assessing referred schemes. Section 48C(7) defines ‘public review’ in relation to a scheme. This now includes a scheme prepared under the *Swan Valley Planning Act 2020*, following the procedure set out in section 23 (advertising a proposed scheme or amendment) and section 25(1) (submission of the proposed scheme or amendment to the Minister by the Commission) of that Act.

Division 4 – *Heritage Act 2018* amended

Clause 104. Act amended

This clause states that this Division of the Act amends the *Heritage Act 2018*. The *Heritage Act 2018* is “an Act to —

- recognise the importance of, and promote understanding and appreciation of, Western Australia’s cultural heritage; and
- provide for the identification and documentation of places of cultural heritage significance and for the conservation, use, development and adaptation of such places; and
- repeal the *Heritage of Western Australia Act 1990*; and
- make consequential amendments to various other Acts, and for related purposes.

Clause 105. Section 85 amended

This clause amends section 85 of the *Heritage Act 2018* defines the terms used in Division 3 which provides for the modification of planning permits. This clause amends the term “planning instrument” to include the Swan Valley Planning Scheme in force under the *Swan Valley Planning Act 2020*.

Division 5 – *Jetties Act 1926* amended

Clause 106. Act amended

This clause states that this Division of the Act amends the *Jetties Act 1926*.

The *Jetties Act 1926* is “an Act to provide for the construction, maintenance, and preservation of jetties and other works, and to make better provision for securing and regulating the use and management thereof”.

Clause 107. Section 7 amended

This clause amends section 7(3) of the *Jetties Act 1926*. Section 7(3) provides that where the erection or construction of a jetty is required to be approved under section 70 of the *Swan and Canning Rivers Management Act 2006*, or under the Metropolitan Region Scheme, a licence shall only be granted in certain circumstances set out in that section. Reference to the Swan Valley Scheme is now included for purposes of approval required for the erection or construction of a jetty.

Division 6 – *Land Tax Assessment Act 2002* amended

Clause 108. Act amended

This clause states that this Division of the Act amends the *Land Tax Assessment Act 2002*.

The *Land Tax Assessment Act 2002* is “an Act relating to the assessment and collection of tax upon land”.

Clause 109. Section 15 amended

This clause amends section 15(3) of the *Land Tax Assessment Act 2002*. Section 15 provides for lands tax to be payable in accordance with this section in certain circumstances when land is subdivided. Section 15(3) provides what the taxable portion of the land is. This clause inserts the reference to the Swan Valley Planning Scheme in addition to a local planning scheme or an improvement scheme.

Clause 110. Glossary amended

This clause inserts a definition of the Swan Valley Planning Scheme (referring to the meaning given to it in section 4(1) of the *Planning and Development Act 2005* as inserted by clause 52) for purposes of section 15(3).

Division 7 – *Local Government Act 1995* amended

Clause 111. Act amended

This clause states that this Division of the Act amends the *Local Government Act 1995*.

The *Local Government Act 1995* is “an Act to provide for a system of local government in Western Australia, to amend the *Local Government Act 1960* and for related purposes”.

Clause 112. Section 6.33 amended

This clause amends section 6.33 which provides that a local government may impose differential general rates according to various characteristics as provided for in section 6.33(1). This clause amends section 6.33(1)(a) to refer to the definition of planning scheme as defined in the *Planning and Development Act 2005* so as to include a planning scheme under the *Swan Valley Planning Act 2020*.

Division 8 – *Marine and Harbours Act 1981* amended

Clause 113. Act amended

This clause states that this Division of the Act amends the *Marine and Harbours Act 1981*.

The *Marine and Harbours Act 1981* is “an Act to provide for the advancement of efficient and safe shipping and effective boating and port administration through the provision of certain facilities and services, and for incidental and connected purposes”.

Clause 114. Section 12 amended

This clause amends section 12(3) of the *Marine and Harbours Act 1981*. Section 12 provides for leases of vested land. Section 12(3) provides that where a development to which the proposed lease relates is required to be approved under section 70 of the *Swan and Canning Rivers Management Act 2006* or under the Metropolitan Region Scheme, it can only be granted in certain circumstances as detailed in section 16(3). This clause inserts the Swan Valley Planning Scheme so that the development to which the lease relates in terms of this section, may be in respect of the Swan Valley Planning Scheme as well.

Division 9 – Metropolitan Redevelopment Authority Act 2011 amended

Clause 115. Act amended

This clause states that this Division of the Act amends the *Metropolitan Redevelopment Authority Act 2011*.

The *Metropolitan Redevelopment Authority Act 2011* is “an Act to —

- provide for the planning and redevelopment of, and the control of development in, certain land in the metropolitan region; and
- establish a State agency with planning, development control, land acquisition and disposal and other functions in respect of that land; and
- provide for related matters, including the repeal or amendment of certain Acts”.

Clause 116. Section 3 amended

This clause amends section 3 of the *Metropolitan Redevelopment Authority Act 2011* which provides for the definitions of terms used in the Act, by inserting a definition of ‘Swan Valley’, which is defined as having the meaning given in section 3 of the *Swan Valley Planning Act 2020*.

Clause 117. Section 30 amended

This clause amends section 30 of the *Metropolitan Redevelopment Authority Act 2011*. Clause 30 provides for regulations to declare redevelopment areas and provide for related matters. Clause 30(1)(a) is amended to exclude land in the Swan Valley from being declared as a redevelopment area by regulation.

Division 10 – Planning and Development Amendment Act 2020 amended

Clause 118. Act amended

This clause states that this Division of the Act amends the *Planning and Development Amendment Act 2020*.

The *Planning and Development Amendment Act 2020* is an Act to “amend the *Planning and Development Act 2005* and other related or consequential acts such as the *Environmental Protection Act 1986* and *Community Titles Act 2018*”.

Clause 119. Section 25 deleted

This clause deletes section 25 of the *Planning and Development Amendment Act 2020* which amends section 40 of the *Planning and Development Act 2005*. This amendment was necessary for purposes of the current Act, but will not be necessary when the current Act is repealed.

Clause 120. Section 30 deleted

This clause deletes section 30 of the *Planning and Development Amendment Act 2020* which amends section 47 of the *Planning and Development Act 2005*. This amendment was necessary for purposes of the current Act, but will not be necessary when the current Act is repealed.

Division 11 – *Railway (METRONET) Act 2018* amended

Clause 121. Act amended

This clause states that this Division of the Act amends the *Railway (METRONET) Act 2018*.

The *Railway (METRONET) Act 2018* is “An Act to authorise, as part of the METRONET plan, the construction of —

- a railway from Beckenham junction to Cockburn (known as the Thornlie-Cockburn Link); and
- a railway from Butler to Yanchep (known as the Yanchep Rail Extension); and
- a railway from Bayswater to Ellenbrook (known as the Morley Ellenbrook Line), and for related purposes”.

Clause 122. Section 5 amended

This clause amends section 5 of the *Railway (METRONET) Act 2018*, which provides for the definitions of terms used in the Act, by inserting a definition of ‘Swan Valley Planning Scheme’, which is defined as having the meaning given in section 3 of the *Swan Valley Planning Act 2020*.

This clause also changes the full stop to a semi-colon at the end of the definition of ‘railway land’ to facilitate the insertion in alphabetical order of the definition of ‘Swan Valley Planning Scheme’.

Clause 123. Section 6 amended

This clause amends section 6 of the *Railway (METRONET) Act 2018*. Section 6 provides that despite any in the Metropolitan Region Scheme, certain development as provided for in section 6 does not require approval of the Planning Commission. The Swan Valley Planning Scheme is inserted so that certain development as provided for in section 6 does not require approval of the Planning Commission, despite any in the Metropolitan Region Scheme or the Swan Valley Planning Scheme.

Division 12 – *Sale of Land Act 1970* amended

Clause 124. Act amended

This clause states that this Division of the Act amends the *Sale of Land Act 1970*.

The *Sale of Land Act* is “an Act to consolidate and amend the law relating to the sale of land”.

Clause 125. Section 16 amended

This clause amends section 16 of the *Sale of Land Act 1970*. Section 16 provides that a person shall not, in relation to any land for sale, advertise that the land may be put to a specified use if that use of the land would be contrary to any local planning scheme or improvement scheme, or any local law relating to planning, in force under the *Planning and Development Act 2005* or contrary to any local law in force under the *Local Government Act 1995*.

This clause deletes ‘local planning scheme or improvement scheme’ and replaces it with ‘planning scheme’, the effect of which is to include the Swan Valley Planning Scheme as well as the Metropolitan Regional Scheme.

Division 13 – *Soil and Land Conservation Act 1945* amended

Clause 126. Act amended

This clause states that this Division of the Act amends the *Soil and Land Conservation Act 1945*.

The *Soil and Land Conservation Act 1945* is “an Act relating to the conservation of soil and land resources, and to the mitigation of the effects of erosion, salinity and flooding”.

Clause 127. Schedule amended

This clause amends the Schedule of Acts to which the *Soil and Land Conservation Act 1945* is supplementary by inserting the Swan Valley Planning Act 2020 in that Schedule.

Division 14 – *Strata Titles Act 1985* amended

Clause 128. Act amended

This clause states that this Division of the Act amends the *Strata Titles Act 1985*.

The *Strata Titles Act 1985* is “an Act to provide for the subdivision of land by strata titles schemes, the creation of strata titles and the governance and operation of strata titles schemes and for related purposes”.

Clause 129. Section 223A inserted

This clause inserts a new section 223A which provides that on and after the day on which the first Swan Valley Planning Scheme comes into operation under the *Swan Valley Act 2020*, the Strata Titles Act 1985 applies to land in the Swan Valley (as defined in this Act) as if reference to a local planning scheme were a reference to the Swan Valley Planning Scheme, a reference to local government in sections 23 to 28 to local government were a reference to the Planning Commission, and the approval of the discharge of an easement referred to in Schedule 2A clause 21W(3)(b) is to be by either the Planning Commission or the local government.

Division 15 – *Swan and Canning Rivers Management Act 2006* amended

Clause 130. Act amended

This clause states that this Division of the Act amends the *Swan and Canning Rivers Management Act 2006*.

The *Swan and Canning Rivers Management Act* is “an Act to make provision for —

- the protection of the Swan and Canning Rivers and associated land to ensure maintenance of ecological and community benefits and amenity;
- the establishment of a Trust to provide advice and perform other functions in respect of the Swan and Canning Rivers and associated land;
- the management policies to be followed in relation to the Swan and Canning Rivers and associated land;
- the establishment of a Foundation with fund-raising and other functions, and for related purposes”.

Clause 131. Section 57 amended

This clause amends section 57 of the *Swan and Canning Rivers Management Act 2006* by inserting the Western Australian Planning Commission as one of the persons with whom the Trust must consult in the preparation of the river protection strategy or management program.

Clause 132. Section 67 amended

This clause amends section 67 of the *Swan and Canning Rivers Management Act 2006*. Section 67 provides the definitions of terms used in Part 5 of the Act (Development in development control area).

This clause deletes the definitions of ‘Swan Valley’ and ‘Swan Valley Planning Committee’ as they are defined with reference to the *Swan Valley Planning Act 1995*.

A new definition for ‘Swan Valley’ is inserted and is defined as having the meaning given in section 3 of the Swan Valley Planning Act 2020.

The definition of ‘development application’ is amended to include the Western Australian Planning Commission so that a development application means an application for approval sent to the CEO by a local government, redevelopment authority or the Western Australian Planning Commission.

Clause 133. Section 68 amended

This clause amends section 68 of the *Swan and Canning Rivers Management Act 2006*. Section 68 provides for the use and development of land owned by a public authority. This clause inserts the Swan Valley Planning Scheme so that land owned by or vested in a public authority may not be developed without approval under section 70 if the land and waters are used for the purpose for which they are reserved under the Metropolitan Region Scheme or the Swan Valley Planning Scheme.

Clause 134. Section 72 amended

This clause amends section 72 of the *Swan and Canning Rivers Management Act 2006* by inserting a new subsection (3). Section 72 provides for application for approval for development on land that is within the district of a local government.

Subsection (3) is inserted to provide that if a development is proposed to be carried out on land in the Swan Valley, an application for development approval must be made to the Western Australian Planning Commission.

Subsection 72(6) is amended to include reference to the new subsection (3).

This clause also amends section 72(6) to include reference to the new subsection (3) and also to provide that the development application must be sent to the CEO by the local government, redevelopment authority or to the Western Australian Planning Commission, as the case requires, within 7 days after it is made.

Clause 135. Section 73 amended

This clause amends section 73(1)(d) of the *Swan and Canning Rivers Management Act 2006*. Section 73 provides for consultation with local governments etc. about development applications. This clause deletes reference to the Swan Valley Planning Committee and replaces it with the Western Australian Planning Commission, if the development is proposed to be carried out on land in the Swan Valley. This amendment is required for purposes of the *Swan Valley Planning Act 2020*.

Section 73(2) is amended to remove the reference to the Swan Valley Planning Committee as it is no longer relevant.

Section 73(3) is amended to remove the reference to the Swan Valley Planning Committee as it is no longer relevant.

Clause 136. Section 74 amended

This clause amends section 74(4) of the *Swan and Canning Rivers Management Act 2006*.

Section 74(4) deals with development applications to be publicised and is amended by deleting it and replacing it so that provision is now made for the CEO to send a notice of the proposed development to the Commission in the case of proposed development to be carried out on land in the Swan Valley, as well as to each local government and redevelopment authority for which the proposed development.

A new section (4A) is inserted to provide that an entity sent a notice under subsection (4) must display a copy of the notice until the expiry of the period for making submissions provided for in subsection (5).

Clause 137. Section 75 amended

This clause amends section 75 of the *Swan and Canning Rivers Management Act 2006*. Section 75 provides for the CEO to draft a report on a proposed development. This clause amends section 75(3)(a)(ii) to remove the reference to the Swan Valley Planning Committee as it is no longer relevant.

Clause 138. Section 76 amended

This clause amends section 76 of the *Swan and Canning Rivers Management Act 2006*. Section 76 provides for the CEO to provide a report to the Minister on the proposed development. This clause amends section 76(2)(a)(iii) to remove the reference to the Swan Valley Planning Committee as it is no longer relevant.

Clause 139. Section 80 amended

This clause amends section 80 of the *Swan and Canning Rivers Management Act 2006*. Section 80 provides for the Minister's decision on the development application. This clause amends section 80(2)(d) by deleting it as it referred to recommendations of the Swan Valley Planning Committee which is no longer relevant, and replacing it with a provision that the Minister is not authorised to approve a development in a manner that is inconsistent with - if a development is proposed to be carried out in the Swan Valley, the Swan Valley Planning Scheme in force under the *Swan Valley Planning Act 2020*.

This clause also deletes section 80(5)(a)(iii) because it refers to the Swan Valley Planning Committee which is no longer relevant.

Clause 140. Section 82 amended

This clause amends section 82 of the *Swan and Canning Rivers Management Act 2006*. Section 82 provides for requests for reconsideration of conditions imposed by the Minister in approvals. This clause amends section 82(4)(a) to remove the

reference to notices given to the Swan Valley Planning Committee as it is no longer relevant.

Clause 141. Section 87 amended

This clause amends section 87 of the *Swan and Canning Rivers Management Act 2006*. Section 87 provides for the Minister to revoke the CEO's decision and to provide notice of revocation to certain parties. This clause amends section 87(2)(a)(iii) to remove the reference to the Swan Valley Planning Committee as it is no longer relevant.

Division 16 – *Water Agencies (Powers) Act 1984* amended

Clause 142. Act amended

This clause states that this Division of the Act amends the *Water Agencies (Powers) Act 1984*.

The *Water Agencies (Powers) Act 1984* is “an Act to give the Minister functions and powers, to make other provisions in respect of the Minister's functions, to establish the Water Resources Ministerial Body and the Water Resources Council, and for related and other purposes”.

Clause 143. Section 38 amended

This clause amends section 38 of the *Water Agencies (Powers) Act 1984*. Section 38 provides for the revocation or amendment of local laws and local planning schemes. Section 38(1) allows the Governor in certain circumstances to revoke or amend a local law made by local government any local planning scheme made under the *Planning and Development Act 2005*. This amendment includes reference to the Swan Valley Planning Scheme in force under the *Swan Valley Planning Act 2020* as well, so that the Governor may in certain circumstances revoke such scheme.

The heading of section 38 of the *Water Agencies (Powers) Act 1984* is amended as well.

Division 17 – *Water Services Act 2012* amended

Clause 144. Act amended

This clause states that this Division of the Act amends the *Water Services Act 2012*.

The *Water Services Act 2012* is “an Act relating to the provision of water services and the regulation of water service providers, and for related purposes”.

Clause 145. Section 143 amended

This clause amends section 143 of the *Water Services Act 2012*. Section 143 provides for a licensee to prepare plans and publish and give notice of major works. This clause inserts a reference to the Swan Valley Planning Scheme in section 143(3)(c) such that the licensee must, within 5 days of publishing the plans and details on the licensee's website, give a notice setting out the matters referred to in subsection (4) (description of works, area of works etc) to the Western Australian Planning Commission, if the area to be affected by the proposed works is in, or partly in, an area covered by a region planning scheme or the Swan Valley Planning Scheme (as defined in section 4(1) of the *Planning and Development Act 2005*).

Clause 146. Section 151 amended

This clause amends section 151 of the *Water Services Act 2012*. Section 151 provides for a licensee to prepare plans and publish and give notice of major works. This clause inserts a reference to the Swan Valley Planning Scheme in section 151(2)(c) such that the licensee must give a notice setting out the matters referred to in subsection (3) (description of works, area of works etc) to the Western Australian Planning Commission, if the area to be affected by the proposed works is in, or partly in, an area covered by a region planning scheme or the Swan Valley Planning Scheme (as defined in section 4(1) of the *Planning and Development Act 2005*).

Division 18 – *Waterways Conservation Act 1976* amended

Clause 147. Act amended

This clause states that this Division of the Act amends the *Waterways Conservation Act 1976*.

The *Waterways Conservation Act 1976* is “an Act to make provision for the conservation and management of certain waters and of the associated land and environment, to repeal the *Swan River Conservation Act 1958*, and for incidental and other purposes”.

Clause 148. Section 36 amended

This clause amends section 36 of the *Waterways Conservation Act 1976*. Section 36 provides for town planning referrals. This clause inserts reference to the Swan Valley Planning Scheme such that the Minister may from time to time request a town planning authority to submit to the Minister particulars of each application or proposal for the exercise of power to approve the Swan Valley Planning Scheme.

Schedule 1 – Indicative map of Swan Valley

A diagram of an indicative map of the Swan Valley is inserted as Schedule 1.

