

## ***The Planning and Development Bill 2005*** **Explanatory Memorandum**

The purpose of this Bill is to consolidate the existing planning legislation. The Bill also includes several amendments to the current planning legislation to streamline planning processes and provide a more clear, certain and workable planning system.

### Background

The Bill is identical to the *Planning and Development Bill 2004* (the ‘2004 Bill’) as second read in the Legislative Council of the 36<sup>th</sup> Parliament, except in respect of two minor amendments and the inclusion of amendments consequential on the coming into operation of the *State Administrative Tribunal Act 2004* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*.

The 2004 Bill was introduced into the Legislative Assembly of the 36<sup>th</sup> Parliament on 30 June 2004. On 16 September 2004, a number of pro forma amendments were made and the Legislative Assembly referred the amended Bill to a Legislation Committee for detailed consideration and a report. On 23 September 2004, the Legislation Committee reported that it agreed to clauses 1 to 295, schedules 1 to 11 and the title of the Bill, and made amendments. On 24 September 2004, the Bill was third read in the Legislative Assembly.

On 19 October 2004, the 2004 Bill was introduced and second read in the Legislative Council of the 36<sup>th</sup> Parliament.

The 2004 Bill lapsed on 23 January 2005 when the 36<sup>th</sup> Parliament was prorogued and dissolved. The Bill has been reintroduced.

The Bill differs from the 2004 Bill as second read in the Legislative Council of the 36<sup>th</sup> Parliament on 19 October 2004 in the following minor respects:

- various consequential amendments are made to recognise the establishment of the State Administrative Tribunal;
- a minor amendment is made clause 138 to confirm that the Commission may approve a subdivision at variance to the provisions of a local scheme in circumstances where the subdivision is supported by the relevant local government; and
- a minor amendment is made to clause 211 to correct an omission in the drafting of the 2004 Bill and reflect the current section 18(2) of the *Town Planning and Development Act 1928*. Section 18(2) provides that the Minister, if satisfied of certain matters, may make an order “after holding an inquiry or receiving a report and recommendations from the State Administrative Tribunal”.

These minor amendments are explained in greater detail below.

First, the Bill includes amendments consequential on the coming into force of the *State Administrative Tribunal Act 2004* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*.

Second, a minor amendment is made to confirm that the Commission may approve a subdivision at variance to the provisions of a local scheme in circumstances where the subdivision is supported by the relevant local government.

The Bill provides that the Commission may give approval to a subdivision that conflicts with the provisions of a local scheme where one or more of certain criteria is met. One criterion in the 2004 Bill was that the Commission may give its approval where “the local government responsible for the enforcement of the observance of the scheme has been given the plan of subdivision ... and has not made any objection or recommendation”.

The intent is plain – namely, the Commission may approve a subdivision at variance to a local scheme where the local government has not made an objection or recommendation for refusal. However, for the avoidance of doubt, the words “or recommendation” have been deleted. In other words, the Commission may approve a subdivision at variance to a local scheme where the local government has not made an objection (or recommendation for refusal).

Third, a minor amendment is made to correct an omission in the drafting of the 2004 Bill. The current section 18(2) of the *Town Planning and Development Act 1928* provides that the Minister, if satisfied of certain matters, may make an order “after holding an inquiry or receiving a report and recommendations from the State Administrative Tribunal”. The 2004 Bill omits the phrase “after holding an inquiry” and merely states that the Minister, if satisfied of certain matters, may make an order on “receiving a report and recommendations from the Tribunal”. The Bill corrects the omission from the 2004 Bill by including the phrase “after holding an inquiry”.

### Consolidation and Improvement

The existing planning legislation in Western Australia is based on three primary Acts: the *Western Australian Planning Commission Act 1985* (the ‘WAPCA’); *Metropolitan Region Town Planning Scheme Act 1959* (the ‘MRTPSA’); and *Town Planning and Development Act 1928* (the ‘TPDA’).

Over time there have been many amendments to these Acts which has created a fragmented and complex legal framework. There is widespread support on the need to consolidate the planning legislation into one simple, easy-to-read Act which is more simple to understand and accessible to users.

The consolidation also presents the opportunity to make some amendments to improve the planning system. The purpose and content of these amendments is summarised below:

- *Greater effectiveness in achieving Government policy objectives* by requiring the WAPC to prepare a written statement setting out the planning objectives of a region scheme or amendment and requiring a local government to have due regard to the written statement of planning objectives in preparing a consequential amendment to its local scheme;

- *Promoting sustainability* by including sustainable land use and development as a fundamental and underlying purpose of the planning legislation; expanding the functions of the WAPC to include advising on sustainable land use and development; expanding the membership of the WAPC to include the Directors General of the Department of Industry and Resources and Department of Housing and Works; and providing that planning schemes can include provisions for promoting sustainable land use and development;
- *Streamlining planning procedures* in respect of region scheme processes, the review of local government schemes and for the subdivision of land;
- *Providing greater certainty and consistency* particularly in the relationship between subdivision and local government schemes; exemption of subdivision works from development approvals; common compensation provisions; and common enforcement provisions, including the introduction of infringement notices for minor offences; and
- *Providing equity and fairness* by expanding the current arrangements for consultation on Statements of Planning Policy and region schemes, and expanding the right to apply for an application for review by introducing a right to apply for a review of the decision of a local government on the characterisation of a use under a scheme.

The clause notes that follow explain the proposed amendments in more detail.

### Consultation

The Bill is the result of extensive consultation.

The previous Government commenced work on the consolidation of the planning legislation by releasing for public comment:

- a Discussion Paper entitled *Discussion Paper: Consolidation of the Planning Legislation* in October 1998; and
- an earlier Green Bill entitled the *Urban and Regional Planning Bill 2000* in November 2000.

In its first-term of office, the Government re-evaluated the proposals contained in the earlier Green Bill and released for public comment:

- a Position Paper entitled *Position Paper: Consolidation and Streamlining of the Planning Legislation* in April 2002 outlining a number of changes and improvements to the previous Government's Green Bill; and
- revised Green Bills entitled the *Planning and Development Bill 2004* and the *Planning and Development (Consequential Provisions) Bill 2004* in April 2004.

Comments and submissions were invited at key stages of the process by way of public notices and direct invitations to key stakeholders. The Position Paper and 2004 Green Bill were discussed at stakeholder forums and briefings held with State agencies, local government and interest groups. Submissions and comments were taken into account in finalising the proposals contained in the 2004 Bill.

The 2004 Bill was introduced into the Legislative Assembly of the 36<sup>th</sup> Parliament on 30 June 2004. Following further consultation, on 16 September 2004, a number of *pro forma* amendments were made by the Legislative Assembly. On 19 October 2004, the 2004 Bill was introduced and second read in the Legislative Council of the 36<sup>th</sup> Parliament. The 2004 Bill lapsed on 23 January 2005. This Bill is identical to the 2004 Bill as second read in the Legislative Council of the 36<sup>th</sup> Parliament, except in respect of the minor amendments explained above.

The suite of three bills comprising the consolidation of the planning legislation makes several amendments to a number of other Acts. These are set out in the *Planning and Development (Consequential Provisions) Bill 2005* and *Metropolitan Region Improvement Tax Amendment Bill 2005*. Most of these changes are of a minor nature replacing reference to the titles of the current planning Acts by the new Bill or referring to the new descriptions of region and local planning schemes.

Consequential amendments to the *Land Administration Act 1997* and the *Local Government (Miscellaneous Provisions) Act 1960* provide for the transfer of the subdivision provisions of section 295 of the latter Act to the Bill. An amendment has also been made to the *Mining Act 1978* so that mining operations under the Metropolitan Region Scheme are dealt with in the same way as a local scheme.

The suite of three bills also includes transitional and saving provisions to ensure a smooth transition from the existing to the consolidated legislation.

Outlined below is an examination of the Bills on a clause by clause basis.

### Provisions in detail

#### **Part 1 – Preliminary**

This Part contains the short title, relevant commencement provisions, purposes of the Bill, definitions of terms used in the Bill, and provisions binding the Crown together with the current exemptions for public works.

Clause 1: the short title derives from the *Town Planning and Development Act* and is consistent with the essential purpose of the consolidation of the legislation and the provisions of the Bill.

Clause 2: provides for the Act to become operational at a date to be set by a proclamation rather than automatically after the Act has been passed by Parliament and signed by the Governor.

The reasons for this is that regulations will be required to be made for some of the provisions in the Bill and this allows for coordination of the timing of the introduction of the principal provisions and the corresponding regulations. The Bill also provides that different provisions can be proclaimed at different dates. This is to ensure the proclamation of the Bill is not delayed pending the preparation of regulations.

Clause 3: sets out the purposes of the Bill which is to consolidate the provisions of the current planning Acts, to provide for an efficient and effective land use planning system and promote the sustainable use and development of land.

Clause 4: defines words and expressions used in the proposed Act. These are consolidated from the current Acts with some modifications to introduce new definitions, remove redundant definitions and modify existing definitions. The changes are largely for clarity and consistency, and to reflect new or amended provisions in the Bill.

“Lot” has been defined to remove reference to a “strata lot”. This will make it clear that the term “lot” includes conventional green title lots only. The term “lot” in relation to a strata scheme is defined separately in the *Strata Titles Act 1985*.

“Officer of the Commission” has been amended to include Secretary. This will provide formal recognition to the role of Secretary and enable the Commission to authorise the Secretary to execute documents on its behalf and undertake delegated functions.

The Bill makes a number of minor amendments to clause 4 of the 2004 Bill. Definitions of “appeal”, “deputy President”, “party”, “Principal Registrar”, “rules”, “Tribunal” and “Tribunal member” have been deleted from Part 1 of the Bill. The deletion of these definitions is consequential on the coming into force of the *State Administrative Tribunal Act 2004* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*.

Clause 5: states that the Act and a region scheme binds the Crown.

Clause 6: contains the current provisions of section 32 TPDA to the effect that the Crown, the Governor, the Government of the State, or a local government are not bound by local government schemes in carrying out public works subject to consultation with the local government and ensuring that public works have regard to the purpose and intent of the relevant scheme, and the orderly and proper planning and amenity of the locality.

## **Part 2 – Western Australian Planning Commission**

### **Division 1 – Establishment and Management**

This Part, and Schedules 1 and 2, sets out the constitution, membership and functions of the Commission and its constituent committees.

Clause 7: reflects section 4(1)(2) WAPCA and establishes the Commission.

Clause 8: reflects section 4(3) WAPCA on the status of the Commission.

Clause 9: sets out the management structure of the Commission.

Clause 10: sets out the membership of the Commission and reflects section 5 WAPCA. The membership of the Commission has been changed to:

- a) include the Director Generals of the Department of Industry and Resources and Department of Housing and Works as members of the Commission;
- b) delete local government as a field of experience upon which a community/specialist representative may be appointed to the Commission (local government members are separately represented on the Commission);
- c) add the following fields of experience to those listed based upon which a community/specialist representative may be appointed to the Commission: commerce and industry, environmental conservation, natural resource management, urban design and the planning provision of community services;
- d) increase the number of community representatives from two to three to respectively represent business and development, conservation and heritage, and social and community expertise.

Clause 11: provides for the appointment of Associate Members and reflects section 6 WAPCA.

Clause 12: refers to Schedule 1 on the constitution and proceedings of the Commission.

Clause 13: provides for remuneration and allowances for Commission members and reflects section 11 WAPCA.

## Division 2 – Functions and Powers

Clause 14: sets out the functions of the Commission from section 18 WAPCA amended to recognise the function of the Commission in coordinating and promoting land use, transport planning and land development in the State in a sustainable manner.

Clause 15: sets out the powers of the Commission.

Clause 16: provides for delegation of power by the Commission and reflects section 20 WAPCA.

Clause 17: provides for directions by the Minister to the Commission and reflects section 18 (4) WAPCA amended to require directions to be in writing, reported in the Annual Report and tabled in Parliament.

Clause 18: empowers the Minister to have access to information from the Commission.

Clause 19: refers to provisions regarding committees of the Commission in Schedule 2 (formerly section 19 WAPCA). The Bill provides for a number of changes to the membership of committees largely in the interest of improving efficiency and broadening the range of expertise on committees:

- a) enabling deputies to be appointed to local government and regional representative members of the standing committees;
- b) retitling the “Transport Committee” as the “Sustainable Transport Committee”;
- c) broadening the fields of experience of the community representative on the Statutory Planning Committee to include environmental conservation, natural resource management, urban design, commerce and industry and infrastructure;
- d) including a community representative on the Infrastructure Coordinating Committee;
- e) introducing a requirement for a community representative to be included on a regional planning committee and changing the local government representation from a minimum three to a minimum two local government members.

Clause 20: provides for WAPC to charge fees in relation to its functions. Reflects section 29 TPDA amended to confirm fees are to be published by notice in *Gazette*.

#### Division 3 - Administration

Clause 21: gives formal recognition to the role of the Secretary of the Commission.

Clause 22: provides for the appointment of staff and reflects section 38 WAPCA.

Clause 23: provides for the use of staff and facilities of public authorities and reflects section 42 WAPCA.

#### Division 4 - Miscellaneous

Clause 24: provides for the execution of documents and reflects section 57 WAPCA.

### **Part 3 – State Planning Policies**

Clause 25: this is a new provision that confirms statements of planning policy made prior to the commencement of the Act continue as if enacted under the provisions of the Act.

Clause 26: this provision modifies section 5AA of the TPDA. The current section 5AA provides that the Commission, on its own initiative, creates an SPP. The provision has been amended in the Bill to give the Minister for Planning power to direct the Commission to prepare an SPP.

Clause 27: this clause reflects the existing section 5AA (3) of the TPDA.

Clause 28: this clause modifies the existing section 5AA (3) of the TPDA. WALGA has been inserted as the peak local government representative body in WA, replacing the Local Government Association of Western Australia Inc, Country Shire Councils Association of Western Australia and the Country Town Councils Association.

Sub-clauses (2)-(5) are new, and set out procedures for advertising and considering submissions. Currently, only affected local governments or the WALGA are required to be consulted on the preparation of an SPP. The Bill extends the consultation requirements so that the WAPC will be required to advertise SPPs for general public comment as well as to consult with public agencies and other persons likely to be affected. This reflects the increasing importance attached to SPPs as policy instruments.

Clause 29: this clause reflects the existing provision of section 5AA (4) TPDA. Sub-clause 2 is a new provision that provides greater transparency by providing that an SPP has force and effect when published in the *Gazette*.

Clause 30: this clause reflects the existing provisions of section 5AA (5) TPDA.

Clause 31: this clause modifies the existing section 5AA (6)(7) TPDA. It confirms that an SPP may be revoked by an instrument of revocation, as well as by the preparation of a subsequent SPP.

Clause 32: this clause reflects the existing section 5AA (8) TPDA.

#### **Part 4 – Region Planning Schemes**

This Part combines the current provisions for the preparation, approval and amendment of the MRS and region schemes outside the metropolitan region, which are scattered throughout the MRTPSA and the WAPCA, into a coherent structure. The process for preparing and amending region schemes will, therefore, be uniform throughout the State.

Minor changes to the current legislation have been made to streamline the procedures for major amendments to region schemes, mainly to reflect current practice. The Bill confirms the current consultation arrangements whereby the WAPC notifies landowners affected by an amendment which changes the zones or reserves in the scheme. In addition it provides the notification by other means as instructed by the Minister to make public the details of an amendment. Also, the Bill confirms the current practice whereby any person who lodges a submission is given the opportunity of being heard by a hearings committee in place of the current provision which refers only to those objecting.

Significantly, the Bill provides for the WAPC to prepare a statement setting out the planning objectives of a scheme or amendment. This is designed to give greater guidance of the planning rationale behind a scheme or amendment. Provisions in Part 9 provide that, where a local government is to prepare an amendment to its scheme to be in accordance with and consistent with a region scheme or amendment, it is to have

regard to the written statement setting out the planning objectives of the region scheme or amendment.

Finally, in order to avoid delays in the progression of amendments, the disallowance process has been changed to provide that sitting days to run from one session, or one Parliament, to the next. This applies in respect of the period for the laying of scheme or amendment before Parliament and the period in which notice of disallowance may be given.

#### Division 1 – Continuation and Formulation of Region Planning Schemes

Clause 33: this clause is a new provision that provides for region planning schemes including the MRS to be continued as if enacted by the Act.

Clause 34: the purpose of this clause is to allow the WAPC to make a Region Scheme for any part of the State, not just any part of the State outside of the Metropolitan Region, where required for matters of State original importance. The clause generally reflects the existing section 18 (1) (ba).

Clause 35: the purpose of this clause is to require the Commission, when making a region planning scheme or amendment, to comply with relevant procedures. The clause reflects the existing section 18 (1a) WAPCA.

Clause 36: the purpose of this clause is to provide that the MRS or any other region scheme is not to be made or amended in a manner that is inconsistent with the *Swan River Trust Act*, the *Heritage of Western Australia Act*, the *East Perth Redevelopment Act*, the *Subiaco Redevelopment Act*, the *Midland Redevelopment Act*, the *Armadale Redevelopment Act* or the *Hope Valley-Wattleup Redevelopment Act*. The clause reflects the existing section 32 A (1) and (3) MRTPSA.

Clause 37: the purpose of this clause is to confirm that a region scheme may be revoked by an instrument of repeal published in the *Gazette*. The clause modifies section 33 (1) MRTPSA and section 18 (1b) and (b) WAPCA, which provide a region planning scheme may only be repealed by a subsequent planning scheme.

#### Division 2 – Prerequisites to Region Planning Scheme or Amendment

Clause 38: the purpose of this clause is to require the WAPC to refer a scheme or amendment to the EPA where it resolves to prepare such a scheme or amendment. The clause reflects the existing section 33E MRTPSA and section 18 (1a) WAPCA.

Clause 39: the purpose of this clause is to set out provisions governing the environmental review of the proposed region planning scheme or amendment. The clause reflects the existing section 33F MRTPSA.

Clause 40: the purpose of this clause is to require the referral of region schemes or amendments in the Swan Valley to the Swan Valley Planning Committee. This clause generally reflects the existing section 33AA MRTPSA.

Division 3 – Making a Region Planning Scheme or Amendments

Clause 41: the purpose of this clause is to confirm that the WAPC is to adopt the procedures set out in this Division for submitting and obtaining approval to a region scheme or amendment. The clause reflects the existing section 33(1) and (2) MRTPSA read with section 18(1) and (1b) WAPCA (as with subsequent clauses in Divisions 3 and 4).

Clause 42: the purpose of this clause is require the WAPC to seek the Minister's consent to public submissions being sought on a scheme or amendment. The clause reflects the existing section 33 (2)(a) MRTPSA.

Clause 43: the purpose of this clause is to set out the procedural requirements governing how the WAPC is to make public the details of the region planning scheme or amendment. The clause generally reflects the existing section 33 (2) MRTPSA.

Sub-clause (3) replaces the requirement to publish a notice in two daily newspapers with a requirement for notice in one daily newspaper as there is currently only one daily newspaper circulating in the metropolitan region.

Sub-clause (4) is a new provision that requires the WAPC to make reasonable endeavours to give notice to owners whose land is the subject of a change of zoning or reservation. This reflects the current practice of the WAPC.

Sub-clause (5)(b) is a new provision that provides the Minister with the power to direct the WAPC to take steps to make public the details of the region scheme or amendment.

Sub-clause (1)(b) is a new clause that requires the WAPC to prepare a statement setting out the purpose and planning objectives of a region scheme or amendment. Land is often removed from a public purpose reservation and zoned urban under the MRS or other region scheme. The classification 'urban' may give insufficient guidance to the planning rationale behind the removal of the reservation and the intent and purpose of the newly zoned land. It is therefore possible that a consequential amendment to a local government scheme may not be consistent with, or give effect to the underlying planning rationale to the region scheme. This sub-clause, therefore, gives better direction as to the consequential amendment required of the relevant local planning scheme. Note that Clause 124 (4) provides that a local government is to have due regard to the statement setting out the purpose and planning objectives of the region planning scheme or amendment when preparing a consequential amendment to its local planning scheme.

Clause 44: the purpose of this clause is to provide that submissions on a region scheme or amendment may be made to the WAPC within the prescribed period and that the WAPC shall consider all submissions that are duly lodged. The clause reflects the existing section 33 (2)(d) and section 33 (2)(f)(i) MRTPSA.

Clause 45: the purpose of this clause is to set out the role of the WAPC in relation the environmental submissions on a region scheme or amendment. The clause reflects the existing section 33G MRTPSA.

Clause 46: the purpose of this clause is to confirm that all persons who make a submission have the opportunity to be heard. The clause modifies the current section 33 (2)(f) MRTPSA, which provides that persons objecting to an amendment have the opportunity to be heard. The clause codifies the practice of the WAPC to provide all persons who make submissions with the opportunity of being heard.

Clause 47: the purpose of this clause is to require the WAPC to refer the scheme or amendment back to the Swan Valley Planning Committee in circumstances where, after considering public submissions, the WAPC has modified the scheme or amendment in a way which is not in accordance with the earlier advice of the Swan Valley Planning Committee. The clause reflects the existing section 33AB MRTPSA.

Clause 48: the purpose of this clause is to set out the documents that are to accompany a region scheme or amendment that is submitted to the Minister by the WAPC. The clause reflects the existing section 33 (2)(g) and 33(2)(gaa) MRTPSA.

Clause 49: the purpose of this clause is to provide the circumstances where the Minister may withdraw a region scheme or amendment. The clause reflects the existing section 33 (2)(ga) MRTPSA.

Clause 50: the purpose of this clause is to provide the prerequisites for final approval of the region scheme or amendment by the Minister. The clause reflects and clarifies the existing section 33H MRTPSA. The clause clarifies that it is at the final approval stage that the Minister must be satisfied that environmental conditions have been incorporated into the amendment.

Clause 51: enables the Minister to direct the WAPC to readvertise where modifications are made to an amendment or region scheme pursuant to public submissions. The clause reflects sections 33 (2)(h),(i) and (g) MRTPSA.

Clause 52: sets out the procedure to be followed in making submissions on a readvertised modified amendment. The clause reflects sections 33 (2)(k) and (ka) MRTPSA.

Clause 53: provides that the Minister may make recommendations as to the modifications which should be made to a region scheme or amendment. The Governor has the power to actually make the modifications. The clause reflects the existing section 33 (2)(l) MRTPSA.

Clause 54: requires a scheme or amendment approved by the Governor to be published in the *Gazette* and be made available for public inspection. The clause reflects the existing section 33 (3)(a) MRTPSA.

Clause 55: provides that the Governor on the recommendation of the Minister may revoke approval to a scheme or amendment. The clause reflect the existing section 33 (2)(m) MRTPSA.

Clause 56: provides that a scheme or amendment may be disallowed. The clause reflects the existing sections 33 (3)(b), (4),(5) and (6) MRTPSA. The resolution of a motion of disallowance is determined according to the standing orders of each House.

#### Division 4 – Minor Amendments to Region Planning Scheme

Clause 57: enables the WAPC to make minor amendments to region planning schemes and reflects existing sections 33A(1) and (1a) MRTPSA.

Clause 58: provides for notification of a minor amendment. Reflects existing section 33A MRTPSA. Sub-clause (1)(c) confirms that where a region planning scheme changes the zoning or reservation of land the Commission is to make reasonable endeavours to give written notice to the owners of that land. Existing provisions state that the Commission is to notify when in the opinion of the Commission land owners are affected.

Clause 59: provides for consideration of submissions on minor amendment. Reflects existing sections 33A (5) and (6).

Clause 60: provides for the role of the WAPC in relation to environmental submission on minor amendments. Reflects existing section 33G MRTPSA.

Clause 61: provides for prerequisite for final approval by the Minister of a proposed minor amendment. Reflects existing section 33H MRTPSA.

Clause 62: provides that the Minister may approve or decline to approve minor amendment. Reflects existing sections 33A (7) and (8) MRTPSA.

#### Division 5 – Consolidation of Region Planning Scheme

This Division reflects section 33D MRTPSA. Essentially, it provides for the consolidations or reprint of a region scheme incorporating all of the amendments to a specified date. A court or tribunal can take judicial notice of the consolidation under this section. Between official consolidations a court should look at the last consolidation with any amendments.

Clause 63: provides Minister may direct consolidation. Reflects existing section 33D (1) and (2) MRTPSA.

Clause 64: provides that a map, plan, diagrams may be added or substituted. Reflects existing section 33D MRTPSA.

Clause 65: provides certification and delivery of consolidation. Reflects existing section 33D MRTPSA.

Clause 66: provides for proof of consolidation. Reflects existing section 33D, but with the removal of the role of the Surveyor-General, as this role is ceremonial with the advent of digital mapping.

Clause 67: provides the consolidation of portion of a region planning scheme. Reflects existing section 33D MRTPSA.

## **Part 5 – Local Planning Schemes**

Part 5 consolidates the current provisions for preparing and approving local government planning schemes and amendments. These provisions largely incorporate the existing sections 6 – 7AA and 18 (1) TPDA. The main changes are in respect of the scope and content of planning schemes and the scheme review procedures.

### Division 1 – Continuation and formulation of local planning schemes

Clause 68: provides for the continuation of town planning schemes under the new legislation.

Clause 69: provides for the general objects of local planning schemes. Reflects section 6 (1) TPDA.

Clause 70: provides for a scheme to be made for land comprised in another scheme or be concurrent with another scheme. Sub-clause (2) is a new provision that provides that the zoning of land in an area to which a local planning scheme applies is not to be provided for in more than one local planning scheme. The clause otherwise reflects section 6 (3) TPDA.

Clause 71: prohibits the making of a local planning scheme in a redevelopment area. Reflects existing section 6 (4) TPDA.

Clause 72: provides for a local government to prepare or adopt a local planning scheme. Reflects existing section 7 (1) TPDA. The clause expressly sets out the process for making a joint scheme. Joint schemes have always been available. The new sub-clauses merely gives details as to how they are made.

Clause 73: provides for the provision of a local planning scheme. Reflects existing section 8 (2),(3) TPDA. This clause is distinct from clause 69 because it deals with the mechanical and administrative provisions of planning schemes.

Clause 74: provides a local planning scheme may be repealed. Reflects existing section 7 (4) TPDA.

Clause 75: provides a local planning scheme may be amended. Reflects existing section 7 (4) TPDA.

### Division 2 – Minister’s powers in relation to local planning schemes

Clause 76: provides Minister may order a local government to prepare or adopt a local planning scheme. Reflects existing section 18 TPDA.

### Division 3 – Relevant considerations in preparation or amendment of local planning scheme

Clause 77: sets out the effect of the policy content of an SPP. Reflects existing section 7(5) TPDA.

Clause 78: provides for local government to refer a proposed scheme amendment to the Swan Valley Planning Committee. Reflects existing section 7A TPDA.

Clause 79-83: These clauses respectively provide for reference to the Heritage Council; to a Swan River Management Programme; to the EPA; Environmental Review; and consultation with persons likely to be affected. They reflect existing provisions in section 7(6), section 7(7), section 7A1 and section 7A2 TPDA.

### Division 4 – Advertisement and approval

Clauses 84-86: provide for, respectively, the advertisement of a local scheme or amendment; the role of local government in relation to environmental submissions; and prerequisite for final approval by Minister. These clauses reflect the existing provisions of section 7 TPDA and section 7A (3) TPDA and section 7A (4) TPDA.

Clause 87: provides for the approval and publication of a scheme or amendment. The clause largely reflects section 7 TPDA. Sub-clause (3) is a new provision that confirms that the next step after Ministerial approval is publication in the *Gazette*. Further amended to provide for publication of finalised scheme or amendment and for copies to be available to the public.

### Division 5 – Review of local planning schemes

Clause 88: provides for a local government to prepare a consolidation. Reflects existing section 7AA TPDA. Sub-clause (3) is a new provision that provides a local government is not required to prepare a consolidation of the scheme if the local government resolves instead to prepare a new scheme in substitution for that scheme.

Clause 89: provides for submissions on a consolidated scheme. Reflects existing section 7AA TPDA.

Clause 90: provides for local government to make a report to the Minister on the operation of its scheme. Reflects existing section 7AA TPDA.

Clause 91: provides the procedure where there is no change to scheme. This is a new provision that enables a consolidated scheme to be published in the *Gazette* without

further advertising. It also enables the publication of a notice of a consolidation in the *Gazette* without the need for publishing the full scheme text. It is intended that this position will enable local governments to make considerable savings on the ordinary publication costs.

Clause 92: sets out the procedure where amendments proposed. This clause address the current shortcomings in section 7AA TPDA, by providing the power to amend a consolidated scheme.

Clause 93: refers to the effect of the publication of a consolidation. Reflects existing section 7 AA TPDA. This section recognises consolidated schemes as being a correct representation of a local planning scheme as of the date of publication. A court or tribunal can take judicial notice of a consolidated scheme under this section.

Clause 94: sets out the procedure when a new scheme prepared following the report. This is a new provision that provides the process when a scheme is revoked and a new scheme is prepared. Under current provisions, a scheme is reviewed and a new planning scheme is prepared. In this clause, it is clearly expressed that the old planning scheme is to be revoked on the coming into operation of the new planning scheme.

Clause 95: sets out the procedure where a scheme is repealed following a report. Reflects existing section 7AA TPDA.

Clause 96: provides for the consolidation of two or more local planning schemes. Reflects existing section 7AA.

#### Division 6 – Crown land

Clause 97: provides for the planning of town and suburban lands. Reflects existing section 19 TPDA.

### **Part 6 – Interim Development Orders**

Part 6 consolidates the current provisions for the preparation of interim development orders and regional interim development orders. The new terminology of local interim development order and regional interim development order is introduced for clarity.

#### Division 1 – Regional interim development orders

Clause 98: provides for the WAPC to make regional interim development orders. Reflects existing section 21 WAPCA.

Clause 99: provides for the contents of regional interim development orders. Reflects existing section 24 WAPCA.

Clause 100: provides for the WAPC to consult with local government on development approval. Reflects existing section 24 WAPCA.

Clause 101: provides that the WAPC cannot approve development which contravenes the provisions of a local planning scheme. Reflects existing section 24 WAPCA.

#### Division 2 – Local interim development orders

Clause 102: provides for the Minister to make local interim development orders. Reflects existing section 7B TPDA. Note that local interim development orders are not available in the metropolitan region.

Note also that sub-clause (2) has been added to the current provisions of section 7B TPDA to make it clear that a local interim development order may be made where there is an existing local scheme, but only where it is necessary in the public interest.

Clause 103: provides for the contents of local interim development orders. Reflects current section 7B TPDA. Minor amendment to enable Minister to grant consent to local government determining development application without advice of Heritage Council. Amendment reflects section 7(6) TPDA for local scheme.

#### Division 3 – Provisions applying to regional and local interim development orders

Clause 104: provides for consultation with public authorities and utility service providers. This is a new provision that requires the WAPC and local government, as the case requires, to consult with utility services providers and local governments in preparing an interim development order where the order may in the opinion of the responsible authority affect the powers or functions of a utility service provider or public authority.

Clause 105: provides for the publication of a summary of the interim development order. Reflects existing section 21 WAPCA and existing section 7B TPDA.

Clause 106: provides for the administration of interim development orders. Reflects existing section 21 WAPCA and section 7B TPDA.

Clause 107: sets out the effect and duration of an interim development order. Reflects existing section 7B TPDA and section 22 WAPCA.

Clause 108: provides for the continuation of any lawful uses or lawful development being carried out immediately before the coming into operation of an interim development order. Reflects existing section 7B TPDA.

Clause 109: provides for the amendment of an interim development order. Reflects existing section 7B TPDA and section 23 WAPCA. Confirms that clause 105 (publication of summary of interim development order) applies for amendment to interim development orders.

Clause 110: provides for revocation of interim development orders. Reflects section 7B TPDA and section 23 WAPCA. In respect of the process governing local interim development orders, as set out in section 7B TPDA, the clause confirms that the Minister may by order, rather than by notice, revoke a local interim development order.

Clause 111: provides the procedure in respect of non-conforming development by local government or public authorities. Reflects current section 7B TPDA and section 27 WAPCA.

### **Part 7 – Planning control areas**

Part 7 consolidates the current provisions contained in section 35C MRTPSA and section 37A-37D WAPCA for the declaration of planning control areas under region schemes.

Clauses 112-115: these clauses provide for, respectively, the declaration of planning control areas; the amendment or revocation of such declarations; the duration of a declaration; and the procedure for applying for approval of development in planning control areas. These clauses reflect existing section 35C MRTPSA, section 37B WAPCA and section 37D WAPCA.

Clause 116: provides how the WAPC is to deal with an application for development approval in a planning control area. Reflects existing section 35E MRTPSA and section 37D WAPCA. Relevantly, the clause confirms that the WAPC is to have regard to any relevant SPP in addition to other matters enumerated in clause (1)(b) in determining an application for development approval in a planning control area.

Clause 117: confirms the Commission may revoke an approval where development is carried out in a manner which is not in conformity with that approval. Reflects existing section 35E MRTPSA and section 37D WAPCA.

Clause 118: provides for the continued lawful use and continued lawful development carried out immediately before the declaration of a planning control area under this Part. Reflects existing section 35B(2) MRTPSA and 37A(2) WAPCA.

### **Part 8 – Improvement plans**

Part 8 consolidates existing provisions in section 37A MRTPSA and section 37I WAPCA for the preparation of improvement plans in region scheme areas.

Clauses 119-122: provide, respectively, that the WAPC may recommend improvement plans; that an improvement plan may be amended or revoked; that the WAPC may develop land included in an improvement plan; and that nothing in Part 9 derogates from the other powers of the WAPC or any other authority, body or person. These clauses reflect the existing provision of section 37A MRTPSA and section 37I WAPCA.

## **Part 9 – Relationship between region planning schemes, local planning schemes, planning control provisions and written laws**

Part 9 consolidates the existing provisions dealing with the relationship between region planning schemes, local planning schemes, planning control provisions and other legislation.

Clause 123: provides the local planning schemes and local laws are to be consistent with a region planning scheme. Reflects existing section 34 MRTPSA and section 18 (1bb) WAPCA.

Clause 124: provides that a region planning scheme prevails over a local planning scheme to the extent of any inconsistency, and requires a local government to amend its scheme where it is inconsistent with a region planning scheme. Reflects existing section 18(1c) WAPCA. Sub-clause (4) provides that a local government is to have due regard to the statement as to the purpose and planning objectives of the region planning scheme or amendment as required by clause 43 (1) in preparing or amending its scheme.

Clause 125: provide that Minister may direct local government to amend scheme for consistency with region scheme. Reflects existing section 18(1a) WAPCA and section 35(2) MRTPSA.

A new provision is inserted to enable the Minister to direct a local government to advertise an amendment to a local government scheme concurrently with a corresponding region planning scheme amendment. The power is discretionary. The concurrent amendment of a region planning scheme and local government scheme will enable the broad and detailed issues to be considered at the same time and, thereby reduce the time taken for the total rezoning process, make better use of public comment periods, simplify environmental assessment and, generally, provide better opportunities for the public to comment.

Clause 126: provides that where a region planning scheme delineates land comprised in a local planning scheme as a reserve for any public purpose then the local planning scheme is automatically amended to such extent as is necessary to give effect to the reservation under the region planning scheme. Reflects existing section 35A MRTPSA.

As a region scheme amendment which includes land in a reservation automatically amends a local government scheme, there is no need for a local government to initiate a separate amendment. However, sub-clause (2) recognises there are benefits in providing formal notification of the automatic amendment to the local government scheme. It therefore requires notice of any such automatic amendment to be published in the *Gazette*.

Sub-clause (3) is a new provision whereby, if a region scheme is amended to include land in an urban zone, the local government scheme may be automatically amended to development zone or similar generalised zoning by agreement between the WAPC and the local government. It is anticipated that relevant procedures will be prescribed

in regulations. The local government will only be required to update its scheme by publication of a notice in the government *Gazette*. The local planning scheme will be amended as set out in such notice and on the date of publication of such notice.

Clause 127: provides that the Minister may direct a local government to modify a proposed scheme or amendment. Reflects existing section 35A MRTPSA and section 18 (1g) WAPCA.

Clause 128: consolidates current provisions enabling the Minister to cause a local scheme or amendment to be prepared to be consistent with a region scheme where the local government defaults. Reflects existing section 35A MRTPSA and sections 18 (1e),(1f) and (1g) WAPCA.

Clause 129-130: these clauses provide, respectively, for the effects of interim development orders on local planning schemes and local laws; that planning control areas prevail over region and local planning schemes; compliance with local government regulations; and confer the Governor with the power to suspend the operation of certain written laws. These clauses reflect the existing section 7B TPDA, section 28 WAPCA, section 35B MRTPSA, section 33A TPDA and section 33 TPDA.

## **Part 10 – Subdivision and development control**

Part 10 incorporates provisions dealing with the subdivision of land contained in Parts III and IV TPDA. It also introduces development control powers to legitimise the powers already exercised under region and local planning schemes. Subdivision provisions have been substantially reworded for greater clarity and ease of understanding.

### Division 1 – Application

Clause 133: this is a new provision that requires the Crown to obtain subdivision approval where Crown land is to be subdivided for the purpose of selling into the freehold system. The clause has the effect of the existing section 27(5) *Land Administration Act 1997*. Section 27(5) will be repealed by the *Planning and Development (Consequential and Transitional Provisions) Bill*.

Clause 134: provides for the application and effect of certain other written laws. Reflects existing section 20 TPDA, and in reference to the Swan Valley Planning Committee, the existing section 24A TPDA.

### Division 2 – Approval for subdivision and certain transactions

Clause 135: provides that approval is required for a subdivision. Reflects existing section 20 TPDA.

Clause 136: provides approval is required for certain transactions where land is not dealt with as a lot or lots. Modifies existing section 20 TPDA by removing the requirement for WAPC approval to leases and licences to occupy buildings and extending the period for which approval is required for leases and licences over land from the current 10 years to 20 years.

Note that Clauses 135 and 136 have been redrafted to provide greater clarity. Leases and licences are separately referred to in Clause 136. This is to delineate between the two separate functions of the current section 20 TPDA. First, the physical subdivision of land into separate lots with boundaries of land; and second, the de facto subdivision of land by way of a long-term lease.

Clause 137: sets out provisions in respect of heritage land. Reflects existing section 20(4) TPDA.

Clause 138: replaces the provision whereby the discretion of the WAPC is not fettered by the provisions of a local government town planning scheme with a provision requiring the WAPC to have due regard to the provisions of a town planning scheme and setting out the circumstances under which the WAPC may approve subdivisions at variance to scheme provisions.

Sub-clause (3)(f) allows for additional criteria to be prescribed in regulations that enable the WAPC to approve subdivision at variance to scheme provisions.

The Bill makes a minor amendment to clause 138 of the 2004 Bill. Criterion (e) in the 2004 Bill provided that the Commission may give its approval where “the local government responsible for the enforcement of the observance of the scheme has been given the plan of subdivision ... and has not made any objection or recommendation”. The Bill confirms that the Commission may approve a subdivision at variance to the provisions of a local scheme in circumstances where the subdivision is supported by the relevant local government. The words “or recommendation” have been deleted.

Clause 139: provides for the WAPC to approve classes of lease or licence. Reflects current section 20 TPDA.

Clause 140: provides for the saving of certain agreements. Reflects current section 20B TPDA.

Clause 141: provides refund where transaction cannot be completed. Reflects current section 20 TPDA.

Clause 142: requires the WAPC to consult on a plan of subdivision. Modifies the existing section 24 TPDA. To assist the WAPC in meeting statutory timeframes, sub-clause (3) confers the WAPC with the discretion to determine that there are no objections or recommendations on a plan of subdivision where affected bodies have not provided comment within 42 days or agreed longer period.

The clause also modifies existing section 24 TPDA to provide for the referral of subdivision applications to utility service providers, other than local governments, public bodies or government departments.

Clause 143: sets out how the WAPC is to deal with a plan of subdivision. Modifies existing section 24 TPDA for clarity. Sub-clause (1)(c) replaces the existing wording “require the applicant for approval to comply with such conditions as the Commission thinks fit to impose before approving the plan”, with the wording “such conditions .... as the Commission thinks fit before the diagram or plan of survey will be endorsed with the approval of the Commission”.

Clause 144: provides for the reconsideration of a refusal to approve plan of subdivision. Reflects existing section 24 (5) TPDA, but with the reference to the reconsideration of conditions removed and instead located in clause 151 (reconsideration of conditions).

Sub-clause (2) provides that the WAPC may approve, refuse or approve with conditions on a reconsideration in the same way as it can at the first instance. The existing provisions are unclear as to whether the WAPC was refusing the request to reconsider or again refusing the application.

Clause 145: provides for the endorsement of approval by the WAPC upon diagram or plan of subdivision. Reflects existing section 20AA TPDA.

Sub-clause (2) extends the subdivision approval period to 4 years but only for subdivisions creating more than 5 lots.

Sub-clause (4) introduces a statutory time period of 30 days for the WAPC to endorse a deposited plan. This is necessary to provide a right to apply for a review in the event of a deemed refusal by the WAPC.

Clause 146: provides restrictions on the Registrar of Titles from creating or registering a certificate of title for land the subject of a diagram or plan of survey unless certain preconditions are met. Modifies existing section 20 TPDA.

In the case of existing diagrams or plans of survey endorsed with the approval of the WAPC, an applicant has 5 years from the coming into operation of the clause to lodge a title application with the Registrar of Titles.

In the case of a diagram or plan of survey endorsed with the approval of the WAPC on or after the coming into operation of this clause, the applicant has 24 months to lodge a title application with the Registrar of Titles.

Finally, the Registrar of Titles is prohibited from creating or registering a certificate of title where any conditions as to the registration or recording or continued registration or recording of any encumbrances or other documents noted on the diagram or plan of survey have not been complied with.

Clause 147: provides approval requirements for certain transfers and other dealings. Reflects existing section 21 TPDA.

### Division 3 – Conditions of subdivision

Clause 148: provides that the WAPC may impose conditions as to development. This is an enabling provision that expressly allows the WAPC to affix subdivision conditions pertaining to the integration of subdivision and development.

Clause 149: provides for the WAPC to affix conditions on rural land that require the tying of lots. A tied lot is one owned by a person who is the owner or another specified lot (principal lot) and used for agricultural purposes together with the principal lot.

Sub-clause (9) enables regulations to be made to govern ancillary matters.

Clause 150: provides for statutory covenants to restrict access. Covenants are created by notation on the plan.

Note that clause 263(2)(c) provides that the Governor may make regulations prescribing the rights, powers and privileges given to, and duties imposed on, a specified person or authority where road access is restricted or prohibited as set out in a condition referred to in this clause.

Clause 151: provides for the reconsideration of conditions. Reflects existing section 24(5) TPDA but referring only to conditions.

Clause 152: provides for certain land to vest in the Crown. The existing section 20A TPDA is modified to broaden the specified purposes for which land may be ceded free of cost on subdivision to include land used for “a public purpose specified in the condition related to the subdivision”.

The clause automatically reserves land under section 41 of the *Land Administration Act 1997* for the purpose set out in the relevant condition.

However, the automatic reservation only applies where there are no existing encumbrances on the portion of the land that is subject to the condition or there are prescribed encumbrances.

Clause 153: Provides circumstances where a subdivider may pay money in lieu of land being set aside for open space. Modifies existing section 20C TPDA. The existing provisions provide that the subdivider of land with the agreement of the WAPC and local government may make a cash payment in lieu of providing POS.

The clause extends the current provision to enable the WAPC, after consultation with the relevant local government, to require the owner of land to, in lieu of setting aside the portion, pay to the local government a sum that represents the value of the portion. However, sub-clause (2) provides that the WAPC is not to impose such requirement in respect of a plan of subdivision that creates less than three (3) lots.

Clause 154: provides how money received in lieu of open space is to be dealt with. Modifies existing section 20C TPDA. Clarifies that interest on a POS trust account to be returned to the trust account and also enables these funds to be used to reimburse

owners who have provided excess of land for POS under a joint subdivision agreement by private land owners.

Clause 155: provides how value of portion set aside for POS is determined. Modifies existing section 20C TPDA.

The clause amends the current provisions to provide for the valuation to be determined on a specified date following a request by the subdivider. The subdivider is then required to pay within 90 days of the valuation date or such longer period as agreed in writing by the local government. If the payment is not made within that period, then the local government may require and updated valuation.

Clause 156: Sets out provisions governing disputes as to valuation. Reflects existing section 20C TPDA.

Clause 157: sets out when approval of subdivision is deemed to be approval of development under the planning scheme.

The clause reflects existing section 20D TPDA amended to exempt all subdivision works from development approval, provided subdivision works are shown on the plan of subdivision, required by the WAPC to be carried out as a condition of approval of the plan of subdivision, and are not specifically exempt from approval by a determination of the WAPC.

#### Division 4 – Subdivision costs

Clause 158: sets out provisions regarding expenses of road or waterway construction and road drainage. Reflects existing section 295(6) *Local Government (Miscellaneous Provisions) Act*.

Clause 159: provides that original subdivider may recover portion of road costs from subsequent subdivider. Modifies existing section 28A TPDA to include the upgrading of roads. The current provision refers to “the cost of providing a road”.

Clause 160: sets out how subdivision costs are recovered. Reflects existing section 28A TPDA.

Clause 161: sets out when land is subdivided for the purpose of this Division. Reflects existing section 28A.

#### Division 5 – Development controls

Clause 162: provides that development requires approval. This is a new provision which has been added to recognise development control as an essential feature of the planning system.

Clause 163: sets out special provisions governing heritage places. Reflects existing section 18C TPDA.

Clause 164: allows a local government, or the WAPC, to grant approval to development that has been commenced or carried out.

#### Division 6 – Miscellaneous

Clause 165: provides WAPC with power to cause a notification of hazards and other factors seriously affecting the use or enjoyment of land to be recorded on title. Reflects existing section 12A TPDA.

Clause 166: sets out how WAPC is to deal with encroachments. Reflects existing section 24 TPDA.

Clause 167: sets out provisions governing statutory easements created by notation on plan.

The clause allows an easement to be made in favour of a holder of a licence under a written law for the purpose of supplying a utility service. This recognises the deregulation of utility services and competition policy. Reflects section 27A TPDA.

Clause 168: provides that land on a diagram or plan of survey shown as a new road is dedicated as a road. Reflects section 295 (5) *Local Government (Miscellaneous Provisions) Act 1960* and section 28 TPDA.

Sub-clause (2) modifies existing provisions that require streets to be over 6 metres in width to be capable of being dedicated to a local government. This requirement is removed as it fetters the discretion of the local government to recommend, and the Commission to approve, roads under that width.

Clause 169: enables the Commission to fix minimum standards of construction. Reflects existing section 295 *Local Government (Miscellaneous Provisions) Act 1960*, amended to enable the Commission to set the standards of construction rather than the Minister for Local Government.

Clause 170: requires local government to be provided with specifications for roads and waterways. Reflects existing section 295 *Local Government (Miscellaneous Provisions) Act* amended to confirm that local government may only require amendment of specifications where necessary to comply with a Commission approval. Provisions extended to include anticipated waterways (canal estates).

#### **Part 11 – Compensation and acquisition**

This part is principally concerned with the payment of compensation and acquisition of land for the making of planning schemes and consolidates the current TPDA, MRTPSA and WAPCA provisions.

Division 1 – General Matters in Relation to Compensation

Clause 171: provides that there is only one entitlement to compensation. Reflects existing section 36AA MRTPSA and section 12 (3) TPDA.

Division 2 – Compensation where land injuriously affected by planning scheme.

Clause 172: sets out definition of terms used in this Division.

Clause 173: provides entitlement to compensation where land is injuriously affected by the making or amendment of a planning scheme. Reflects existing section 11(1) TPDA.

Clause 174: sets out when land is injuriously affected. Reflects existing section 12 TPDA amended to transfer jurisdiction on questions as to what constitutes a non-conforming use from the arbitrator under the *Commercial Arbitration Act* to the State Administrative Tribunal. This will ensure that planning matters are dealt with in a forum which is qualified and experienced in planning matters.

Clause 175: confirms that there is no entitlement to compensation, where provisions are, or could have been, set out in certain other laws. Reflects existing section 12 TPDA.

Clause 176: procedure for how questions relating to compensation under the Act are determined. Reflects existing section 11 (4) TPDA amended to transfer jurisdiction on questions as to whether land is injuriously affected from the arbitrator under the *Commercial Arbitration Act* to the State Administrative Tribunal.

Clause 177: sets out when compensation is payable if land is reserved for a public purpose. Reflects section 36 MRTPSA.

The clause extends the compensation provisions under the MRTPSA to local government schemes made under the TPDA. A land owner is no longer limited to the period specified in the scheme for making a claim for compensation.

Clause 178: sets out when a claim for compensation may be made. Reflects existing sections 11(1) TPDA, 33(4) WAPCA and 36(5) MRTPSA.

Clause 179: sets out the amount of compensation for injurious affection arising out of reservation for a public purpose. Reflects section 36 MRTPSA and 34 WAPCA.

Clause 180: provides for notification to be lodged if compensation paid. Reflects section 36 MRTPSA and 35 WAPCA amended to refer to the more appropriate terminology of notification as compared with a caveat.

Clause 181: provides responsible authority may recover compensation if a reservation is revoked or reduced. Reflects section 36 MRTPSA but extends provision to local governments recovering compensation in respect to local planning schemes.

Clause 182: establishes the Board of Valuers. Reflects existing section 36B MRTPSA but replaces reference to “Australian Institute of Valuers” with “Australian Property Institute”, which is the new name for this industry body.

Clause 183: sets out provisions governing valuations by the Board of Valuers. Modifies existing section 36C MRTPSA by reducing the current 1 year valuation period in respect to compensation for owners selling on the open market to 6 months. The reduction in time is more equitable to owners because the compensation payable will reflect more accurately prevailing property values.

#### Division 3 – Other compensation

Clause 184: sets out provisions governing battement, and compensation where a scheme is amended or repealed. Reflects section 11 TPDA.

Clause 185: provides for compensation in relation to interim development order. Reflects existing section 7B TPDA and section 29 WAPCA.

Clause 186: provides for compensation in relation to planning control areas. Reflects existing section 36A MRTPSA.

#### Division 4 – Purchase or compulsory acquisition

Clause 187: enables the responsible authority to elect to acquire instead of paying compensation. The clause makes it clear that an owner who has claimed compensation and subsequently an election to purchase has been made, can withdraw the claim. Reflects existing section 36 MRTPSA and section 31 WAPCA.

Clause 188: sets out how the value of land is to be determined where a responsible authority elects to purchase. Reflects existing section 36 MRTPSA and section 32 WAPCA.

The Bill makes a minor amendment to clause 188 of the 2004 Bill. The amendment is consequential on the coming into force of the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*. Sections 750 and 1319 of the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* amended section 36 MRTPSA and section 32 WAPCA, respectively. The State Administrative Tribunal, rather than a Local or the Supreme Court, is the body that determines the value of land.

Existing provisions are amended to enable the responsible authority after 12 months to refer an outstanding valuation on an election to purchase for a decision so that the date of settlement does not extend an unreasonable period beyond the date of claim.

Clause 189: enables WAPC to purchase land before a scheme has force of law. Reflects existing section 37 MRTPSA.

Clause 190: enables responsible authority to purchase land. Reflects existing section 13 TPDA but extended to region planning schemes.

Clause 191: provides that responsible authority may take land comprised in scheme. Reflects existing section 13 TPDA.

Clause 192: sets out the provisions governing the valuation of land or improvements acquired by responsible authority under this Division. Reflects existing section 37 MRTPSA, but extended to other region planning schemes and local planning schemes.

Clause 193: provides that a responsible authority that takes or acquires land under this part has powers of owner of land. Reflects section 14 TPDA.

Clause 194: provides that a responsible authority may grant easements in respect of land taken required. Reflects existing section 15 TPDA.

Clause 195: provides that the WAPC may acquire land included in improvement plan. Reflects existing section 37A MRTPSA and 37I WAPCA.

Clause 196: provides that WAPC may dispose of land acquired by it. Reflects existing section 37 MRTPSA and 37H WAPCA.

Clause 197: empowers the Governor to declare land taken or acquired under any Act for any public work that is no longer required for such work may be held and used for a region planning scheme. Reflects existing section 37 MRTPSA, with the additional requirement that a memorial is to be lodged with the Registrar of Titles in respect of land so vested under this clause.

## **Part 12 – Financial provisions**

Part 12 consolidates the current legislation largely dealing with the financial responsibilities of the WAPC in the operation of the Metropolitan Region Improvement Fund and associated matters.

### Division 1 – Metropolitan Region Improvement Fund

Clause 198: establishes the Metropolitan Region Improvement Fund. Reflects existing section 37 and section 38 MRTPSA.

Clause 199: provides the manner in which the WAPC may use the fund. Confirms that expenditure is limited to the metropolitan region, as per section 38 MRTPSA.

### Division 2 – Metropolitan Region Improvement Tax

Clauses 200-201: set out, respectively, provisions governing an owners liability to pay Metropolitan Region Improvement Tax, and how tax collections are dealt with. These clauses reflect section 41 and section 41AA MRTPSA.

### Division 3 – Financial provision relating to the Commission

Clause 202: confirms that nothing in this Division derogates from Division 1.

Clauses 203-208: these clauses set out, respectively, provisions governing funds of the Commission; approval of the Minister to certain expenditure; borrowing restrictions; borrowing from the Treasurer; guarantee of borrowing etc; and application of the Financial Administration and Audit Act 1985. These clauses reflect, respectively, section 45 – 51 WAPCA.

Clause 209: provides that land owned by the Commission is not subject to rates or taxes. Reflects section 41A MRTPSA, but extended to include land the subject of a region scheme outside the metropolitan region.

### Division 4 – Financial provisions relating to local governments

Clause 210: provides power of the Minister to order apportionment of expenses between local governments. Reflects section 17 TPDA.

Sub-clause (4) makes a minor amendment to the 2004 Bill. The amendment is consequential on the coming into force of the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*. The State Administrative Tribunal, rather than the Supreme Court, is the body that determines an application for review against an order of the Minister.

## **Part 13 – Enforcement and Legal Proceedings**

Part 13 consolidates the current offence and enforcement provisions which are scattered in various parts of the separate Acts.

### Division 1 – Enforcement

Clause 211: provides that the Minister may order a local government to enforce the observance of its local planning scheme or to execute works. Reflects existing section 18 TPDA.

The Bill makes a minor amendment to clause 211 of the 2004 Bill. This is to correct an omission in the drafting of the 2004 Bill and reflect the current section 18(2) of the *Town Planning and Development Act 1928*. Section 18(2) provides that the Minister, if satisfied of certain matters, may make an order “after holding an inquiry or

receiving a report and recommendations from the State Administrative Tribunal”. The 2004 Bill omits the phrase “after holding an inquiry” and merely states that the Minister, if satisfied of certain matters, may make an order on “receiving a report and recommendations from the Tribunal”. The Bill corrects the omission from the 2004 Bill by including the phrase “after holding an inquiry”.

Clause 212: provides that in certain circumstances the Minister may assume the powers of local government or enforce review decision. Reflects existing section 18A TPDA.

Clause 213: provides that where the Minister exercises powers under clause 212 to prepare and publish an amendment, scheme, consolidation or repeal, such action has effect as if it were taken by the local government. Reflects existing section 18A TPDA.

Clause 214: provides that a responsible authority may direct cessation, removal etc of an unauthorised development. Reflects existing section 43MRTPSA and sections 7B and 10 TPDA.

Clause 215: provides that where a person fails to comply with a notice served under clause 218, the responsible authority may itself remove or alter an unauthorised development. Reflects existing section 43 MRTPSA, section 37J WAPCA and section 7B and 10 TPDA.

Clause 216: enables a responsible authority to apply to the Supreme Court for an injunction in circumstances where a person contravenes a provision of the Act. Reflects existing section 43A MRTPSA and 37K WAPCA, but with the ability to apply for an injunction afforded to both the WAPC for a breach of a region scheme and to a local government for a breach of a local government scheme.

Clause 217: sets out powers of the Minister to ensure that environmental conditions are met. Reflects existing section 43B MRTPSA, section 37L WAPCA and section 10A TPDA.

## Division 2 – Offences

Clause 218: provides that a person who contravenes a planning scheme commits an offence. Reflects existing section 42 MRTPSA and section 10 AB TPDA. Sub-clause (2) confirms that a person who contravenes a statutory SPP (that is, an SPP that is to be read with the provisions of a local planning scheme) commits an offence under this section.

Clause 219: provides that a person who carries out works for the purpose of enabling the subdivision of land otherwise than as shown on a plan of subdivision approved by the Commission or as required by the Commission to be carried out as a condition of approval, commits an offence.

Sub-clause (2) provides that it is a defence to a charge of an offence under sub-clause (1) to show that the person has lawful authority to carry out the works.

Clause 220: provides that a person who carries out development in a planning control area without prior approval commits an offence. Reflects section 35D MRTPSA and section 37C WAPCA. The clause amalgamates the provisions for all planning control areas in both the metropolitan region and other regions into one provision.

Clause 221: provides that a person who contravenes an interim development order commits an offence. Reflects section 26 WAPCA and section 7B TPDA. The clause amalgamates the provisions for both local and regional interim development orders.

Clause 222: provides that a person who carries out development in a heritage place without approval under clause 167 commits an offence. Reflects section 18C TPDA.

Clause 223: provides the penalty for committing an offence. Reflects sections 10 and 10AA TPDA and section 42 MRTPSA.

Clause 224: confirms that Division 2 does not affect the civil enforcement procedures set out in Division 1 and, further, that a person may be prosecuted for an offence under this Division irrespective of whether or not a direction has been given under clause 218.

Clause 225: sets out provisions governing the onus of proof in respect of vehicle offences. A procedure is provided whereby the owner of the vehicle is, in the absence of proof to the contrary, deemed to have committed the offence.

### Division 3 – Infringement notices

Clause 226: sets out the definitions that apply in the interpretation of this Division.

Clause 227: provides an enabling power for regulations to prescribe an offence for which an infringement notice may be issued under this Division. This enabling power will provide the WAPC and local governments with a means of dealing quickly with minor breaches of planning schemes or approvals. It also provides an alleged offender with the means of expiating an offence without conviction and at minimum legal cost. Sub-clause (3) confirms that an expiation fee for an offence is not to exceed 20 percent of the maximum penalty that could be imposed for that offence by a court.

Clause 228: sets out the procedures governing the giving of an infringement notice. A notice must be given within six months after the alleged offence is believed to have been committed.

Clause 229: requires an infringement notice to be in a prescribed form and to contain certain particulars set out in sub-clause (1).

Clause 230: enables the extension of the period in which an expiation fee must be paid.

Clause 231: empowers a designated person to withdraw an infringement notice, and provides for an expiation fee to be refunded if already paid.

Clause 232: provides that if a person pays an expiation fee they are not subject to proceedings or the imposition of penalties to the same extent as if they had been convicted by a court and punished for the alleged offence.

Clause 233: provides for the application of expiation fees collected.

Clause 234: provides for the appointment of designated persons under this Division.

Clause 235: provides for an infringement notice to place the onus on a vehicle owner in accordance with clause 229.

#### **Part 14 – Applications for review**

Part 14 consolidates the current provisions and rights to apply for a review of a decision contained in the separate Acts. Under the current legislation, rights to apply for a review of a decision exist throughout the different sections of the legislation and in town planning schemes. These provisions are consolidated in Part 14.

Provisions governing the right to apply for a review of a decision were amended by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*. Division 82 amended the MRTPSA; Division 126 amended the TPDA; and Division 127 amended the WAPCA.

The Bill makes a number of amendments to Part 14 of the 2004 Bill. First, the Bill includes amendments consequential on the coming into force of the *State Administrative Tribunal Act 2004* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*.

#### Division 1 – Making and determination of applications for review

Clause 236: provides when Part 14 applies. The clause reflects section 36 TPDA.

Clause 237: provides for the definition of “ordinary member”, “party” and “President”. The clause reflects section 37 of the TPDA.

The Bill makes a minor amendment to clause 4 of the 2004 Bill. Definitions of “appeal”, “deputy President”, “party”, “Principal Registrar”, “rules”, “Tribunal” and “Tribunal member” have been deleted from Part 1 of the Bill. The deletion of these definitions is consequential on the coming into force of the *State Administrative Tribunal Act 2004* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004*.

Clause 238: provides requirements for the qualification of Tribunal members and that certain ‘less complex’ applications for a review are to be constituted by an ordinary member sitting alone. The clause reflects section 38 TPDA.

Clause 239: provides that an applicant may, in certain ‘less complex’ applications for a review, elect that no party is to be represented by a legal practitioner. The clause reflects section 58 TPDA.

Clause 240: provides the requirement for the Tribunal to invite submissions from the Minister for the Environment before determining certain applications for review. The clause reflects section 60 TPDA.

Clause 241: provides the requirement for the Tribunal to have regard to certain matters. The clause reflects section 61 TPDA.

Clause 242: provides for submissions from persons who are not parties. The clause reflects section 62 TPDA.

Clause 243: provides that section 38 of the *State Administrative Tribunal Act 2004* does not apply to Part 14. Section 38 is headed, ‘Joining a party’, and provides the general position with respect to the State Administrative Tribunal joining parties. The clause reflects section 63 TPDA.

Clause 244: provides for review by President of the Tribunal. The clause reflects section 66 TPDA.

Clause 245: provides for the Minister to make submissions to the Tribunal. The clause reflects section 69 TPDA.

Clause 246: provides for the Minister to call in an application for review. The Minister may either direct the President to refer the application to the Minister for determination or direct the Tribunal to hear the application and refer it with recommendations to the Minister for determination. The clause reflects section 70 TPDA.

Clause 247: provides for the Minister to determine an application for review. As stated, the Minister may either determine the application personally or direct the Tribunal to hear the application and refer it with recommendations to the Minister for determination. The clause reflects section 71 TPDA.

Clause 248: provides the procedure for the Minister to lay before each House of Parliament a direction to call in an application for review in circumstances where a House of Parliament is not sitting. The clause reflects section 72 TPDA.

#### Division 2 – Decisions which may be reviewed

Clause 249: provides for application for review against a decision under an interim development order. Reflects existing section 7 TPDA.

Clause 250: provides for application for review against a decision in respect of planning control area. Reflects existing section 35F MRTPSA.

Clause 251: provides for application for review against certain decisions of the WAPC under Part 10. These determinations include subdivision determinations and endorsement of plans or diagrams of survey. Reflects existing section 26 TPDA.

Clause 252: confers an applicant with a right to apply for an application for review against the exercise of a discretionary power under a planning scheme.

Sub-clause (1) Reflects section 8A TPDA.

Sub-clause (1) confers an applicant with a right to apply for an application for review against a decision of a local government as to the characterisation of use under a local planning scheme. This can arise in the case of a determination as to whether a use legitimately falls within the general terms of any of the use classes listed in the zoning table or, if the use cannot be reasonably determined as falling within any of the land use classes in the zoning table, then whether the local government considers it consistent with the objectives of a particular zone (and is permitted), may be consistent, (and requires planning approval) or is not consistent (and is prohibited).

Clause 253: enables an applicant to lodge a notice of default on the WAPC in respect of subdivision determinations that have not been made within the prescribed period. Reflects existing section 26 TPDA, but is extended to include the WAPC's endorsement or refusal to endorse a diagram or plan of survey under clause 145.

### Division 3 – Other applications for review

Clause 254: provides for an application for review against a decision of a responsible authority decision under Section 48I of *Environmental Protection Act 1986*. Reflects section 8A TPDA.

Clause 255: provides for an application for review against a direction given under clause 214. Reflects existing section 43 MRTPSA and section 10AA TPDA.

## **Part 15 – Subsidiary Legislation**

Part 15 consolidates the current provisions for making regulations in subsidiary legislation.

### Division 1 – Subsidiary Legislation made by Minister

Clause 256: provides for the Minister to make regulations prescribing general provisions of planning schemes. Reflects section 26 MRTPSA and section 8 TPDA. Note, however, that in contrast to section 26 MTRPSA, regulations are made by the Minister and not the Commission.

Clause 257: empowers a court to order that a person found guilty of an offence against regulations made under clause 288 pays compensation to the WAPC for the costs of any repairs rendered necessary or any loss of property suffered or expenses incurred through or by means of the offence. Reflects existing section 26 MTRPSA.

Clause 258: provides that the Minister may make regulations for regulating the procedure to be observed with respect to the preparation of local planning schemes and other ancillary matters. Reflects existing section 9 TPDA.

Clause 259: empowers the Minister to make regulations with respect to the recovery of environmental review expenses. Reflects existing section 9 (2b) TPDA.

Clause 260: provides that regulations made under this Division may prescribe penalties not exceeding five thousand dollars.

#### Division 2 – Subsidiary legislation made by Governor

Clause 261: enables the Governor to make regulations providing for the fees that may be levied by a local government in respect of planning matters, and ancillary matters. Reflects existing section 33B TPDA.

Sub-clause (4) expressly provides that a fee imposed for an application for approval of development that has commenced or been carried out may include an amount prescribed by way of penalty.

Clause 262: provides that the Governor may make uniform general local laws for carrying into effect all or any of the purposes mentioned in Schedule 8 (matters for which local laws may be made by Governor).

Clause 263: provides that the Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of the Act. Reflects existing section 44 MRTPSA and section 34 TPDA, but with the consolidation on various regulation making powers provided in sub-clause (2).

Sub-clause (3) provides that regulations may prescribe a fee imposed for an application for approval of development that has commenced or been carried out by way of penalty.

#### Division 3 – General

Clause 264: provides that regulations made under the Act may adopt the text of any codes, rules, specifications or standards issued by the Standards Association of Australia or by such other body as is specified in the regulation. Reflects existing section 36C MRTPSA.

### **Part 16 – Miscellaneous**

Clause 265: enables the Minister to delegate any function of the Minister under the Act, except the power of delegation conferred by this clause. This will allow the Minister to delegate routine administrative decisions.

Sub-clause (2) ensures transparency by requiring the Minister to cause the name or title of the delegate to be published in the *Gazette* as soon as is practicable after the making of the delegation concerned.

Clause 266: sets out the duties and liabilities of persons performing functions under this Act. Reflects existing section 55 WAPCA.

Clause 267: provides protection from liability for wrong doing for a WAPC member (or committee member) who has acted in good faith in the performance or purported performance of a function under this Act or any other written law. Reflects existing section 17 WAPCA, but extended to confer protection to officers of the Commission.

Clause 268 requires the Minister to carry out a review of the operation and effectiveness of the Act as soon as practical after the expiry of five years from the commencement of the Act. Reflects existing section 59 WAPCA, but extended to have general application to the whole of the Act.

## **Schedule 1 – Constitution and proceedings of the board**

Clause 1: sets out the terms used in this Schedule.

Clause 2: sets out the term of office of members. Reflects section 7 WAPCA with minor modification to improve clarity.

Clause 3: sets out the extent of duties. Reflects section 8 (1), (2) WAPCA with minor modification to improve clarity.

Clause 4: provides for resignation and removal. Reflects section 10, Section 5A WAPCA with minor modifications to allow local government representatives to continue for up to 3 months after they cease to hold office on the council of the local government.

Clause 5: provides for leave of absence. Reflects section 8(3) WAPCA with minor modification to clarify that the Minister can affix terms and conditions to a leave of absence.

Clause 6: provides for appointment of Deputy chairperson. Reflects section 12 WAPCA with minor modification to clarify rights and protection given to the deputy chairperson. New provision to confirm that an act or omission cannot be questioned on the ground that the occasion for acting had not arisen or had ceased.

Clause 7: provides for appointment of Deputy members. Reflects section 5A WAPCA amended to insert new provision to confirm that an act or omission cannot be questioned on the ground that the occasion for acting had not arisen or had ceased.

Clause 8: refers to arrangements for meetings. Reflects sections 15, 16 WAPCA with minor modifications to improve clarity.

Clause 9: provides for resolution without meeting. This is a new provision allowing for a resolution, assented by way of letter or facsimile, without the need for an actual meeting.

Clause 10: provides for telephone and similar meetings. This is a new provision and confirms that members may participate in a meeting by various forms of instantaneous electronic communication.

Clause 11: requires minutes of meetings. Reflects section 16(5) WAPCA amended to heighten responsibility for the keeping of accurate minutes.

Clause 12: enables WAPC to determine its own procedures. Reflects section 14 WAPCA with minor modification to improve clarity.

## **Schedule 2 – Committees**

Clause 1: provides for the establishment of committees. Reflects section 19(1), (2), (3) WAPCA amended to improve clarity, confirm that local government appointees may continue for 3 months from ceasing to hold office on the council of a local government, amalgamate provisions and clarify that the Commission may establish committees over and above those already listed.

Clause 2: provides for appointment of deputy members to local government representatives. This is a new provision to enable deputies to be appointed to local government and regional representative members of the standing committees of the Commission.

Clause 3: Executive Finance and Property Committee. Reflects section s.19(1a)(a),(1b) WAPCA.

Clause 4: Statutory Planning Committee. Reflects section 19(1a)(b), (1c), (1d), (1f) WAPCA amended to: i) delete local government as a field of experience upon which a specialist representative on the Statutory Planning Committee may be appointed as the SPC otherwise has direct local government representation; and ii) broaden the range of experience upon which a specialist representative may be appointed.

Clause 5: Sustainable Transport Committee. Reflects section 19(1a)(c), (1e), (1f) WAPCA amended to retitle the Transport Committee to the Sustainable Transport Committee.

Clause 6: Infrastructure Coordinating Committee. Reflects section 19(1a)(d), (1g) WAPCA amended to insert a new provision requiring not less than one person to be appointed as a specialist representative on the basis of having experience in fields relating to planning, business, financial or property management, engineering, surveying, valuation, transport, housing, heritage, environmental conservation, natural resource management, commerce and industry and infrastructure.

Clause 7: Coastal Planning and Coordination Council. Reflects section 19(1ga) WAPCA.

Clause 8: Regional Planning Committees. Reflects section 19(1h), (1i), (1j), (1k) WAPCA amended to: (i) improve format; (ii) replace the current provisions requiring not less than three local government members to be appointed to regional planning committees to be reduced to not less than two local government members; and (iii) inserts a provision requiring one person to be a specialist representative on the basis of having experience in fields relating to planning, business, financial or property management, engineering, surveying, valuation, transport, housing, heritage, environmental conservation, natural resource management, commerce and industry and infrastructure.

Clause 9: District planning committees. Reflects section 23, 24 MRTPSA amended to be consistent with the format and style of other sections establishing committees.

### **Schedule 3 – Metropolitan Region**

Reflects Sch. 3 MRTPSA.

### **Schedule 4 – Other regions**

Reflects Sch. 1 WAPCA.

### **Schedule 5 – Local governments – metropolitan region**

Reflects Sch. 1 MRTPSA.

### **Schedule 6 – Planning control areas: purposes for which land may be required**

Reflects Sch 2 MRTPSA and Sch.2 WAPCA. Reference to ‘public utilities’ in Sch.2 WAPCA has been deleted and instead each type of utility has been listed separately consistent with the MRTPSA. A new category of ‘public purpose of the State’ has been inserted. Note that cl.13A Sch. 2 MRTPSA, “Gas Corporation” has been deleted as required by s.113 *Gas Corporation (Business Disposal) Act 1999*.

### **Schedule 7 - Matters which may be dealt with by local planning scheme**

Replaces First Schedule of the TPDA which sets out matters for which a planning scheme may be made. The First Schedule is now outdated and has been reviewed to reflect the current scope and practice of planning , in particular, the model scheme text, heritage provisions, and a system of development control that incorporates sustainability principles. Many of the provisions have been reworded in modern, easier to understand, language and grouped together under common headings.

### **Schedule 8 – Matters for which local laws may be made by Governor**

Reflects Schedule 2 TPDA amended to insert a definition of ‘building line’ taken from the existing definition in section 2 TPDA.

### **Schedule 9 – Board of Valuers**

Clause 1: new provision inserted to define the board.

Clause 2: sets out term of office. Reflects section 36B(2) MRTPSA amended to improve clarity.

Clause 3: sets out constitution of board. Reflects section 36B(4) MRTPSA.

Clause 4: provides for resignation or removal from office. Reflects section 36B(5) MRTPSA amended to improve clarity.

Clause 5: sets out fees and expenses. Reflects section 36B(6), (6a), (6b) MRTPSA amended so that the Minister replaces the Governor in determining the schedule of remuneration.