

Swan Valley Protection Bill 2016

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**Schedule 1 — Map of Swan Valley
(indicative only)**

Western Australia

LEGISLATIVE COUNCIL

Swan Valley Protection Bill 2016

A Bill for

An Act to —

- **provide for a Swan Valley Development Plan with the object of protecting the rural character of the Swan Valley; and**
 - **repeal the *Swan Valley Planning Act 1995*; and**
 - **make consequential amendments to the *Planning and Development Act 2005* and the *Swan and Canning Rivers Management Act 2006*,**
- and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Swan Valley Protection Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act —

Commission means the Western Australian Planning Commission established by the *Planning and Development Act 2005* section 7;

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

development plan means the Swan Valley Development Plan prepared and approved under Part 2, as in effect from time to time;

development plan proposal has the meaning given in section 7(2);

EPA means the Environmental Protection Authority continued in existence under the *Environmental Protection Act 1986*;

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

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

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

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

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

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

Swan Valley means the area referred to in section 4(1);

Swan Valley local government means a local government the local government district of which includes the Swan Valley or part of the Swan Valley;

Swan Valley improvement scheme means an improvement scheme that applies to an area that includes the Swan Valley or part of the Swan Valley;

Swan Valley local planning scheme means a local planning scheme that applies to an area that includes the Swan Valley or part of the Swan Valley;

Swan Valley region planning scheme means a region planning scheme that applies to an area that includes the Swan Valley or part of the Swan Valley;

utility services has the meaning given in the *Planning and Development Act 2005* section 4(1).

4. Swan Valley

- (1) The Swan Valley is the area outlined in blue on the plan entitled “Swan Valley Development Plan Area” held at the office of the Commission and certified by the Minister as the plan prepared for the purposes of defining the Swan Valley under this Act.
- (2) In any proceedings, a plan purporting to be a copy of the plan referred to in subsection (1) showing the boundaries of the Swan Valley is evidence of those boundaries.
- (3) The map in Schedule 1 is indicative of the area of the Swan Valley.

s. 5

1 **5. Act binds Crown**

2 This Act binds the State and, so far as the legislative power of
3 the State permits, the Crown in all its other capacities.

Part 2 — Swan Valley Development Plan

6. Swan Valley Development Plan

- (1) A plan called the Swan Valley Development Plan is to be prepared and approved in accordance with this Part.
- (2) The development plan must have the object of ensuring that the rural character of the Swan Valley is protected.
- (3) The development plan must describe —
 - (a) the key attributes of the Swan Valley, including the natural environment, landform and the topography of the Swan Valley; and
 - (b) the planning context for the Swan Valley and the region within which the Swan Valley is located.
- (4) The development plan may make provision, in a manner that is consistent with the object referred to in subsection (2), for and in relation to any of the following —
 - (a) development and use of land in the Swan Valley;
 - (b) zoning of land in the Swan Valley;
 - (c) subdivision of land in the Swan Valley;
 - (d) development standards to be applied to any development in the Swan Valley;
 - (e) development controls, including requirements for the approval, refusal of approval, or approval subject to conditions, of any use or development of land in the Swan Valley;
 - (f) transport, infrastructure and the provision of utility services in the Swan Valley;
 - (g) other matters that are ancillary or incidental to the matters referred to in paragraphs (a) to (f).
- (5) The development plan is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

s. 7

- 1 **7. Preparation and submission of development plan proposal**
- 2 (1) The Minister may, by written notice, request the Commission to
- 3 prepare and submit to the Minister, within the period specified
- 4 in the notice —
- 5 (a) a proposed development plan; or
- 6 (b) a proposed amendment to the development plan to
- 7 address any issue specified in the notice.
- 8 (2) If the Minister gives the Commission a notice under
- 9 subsection (1), the Commission must prepare and submit to the
- 10 Minister the following documents (together called a
- 11 *development plan proposal*) —
- 12 (a) a proposed development plan or amendment to the
- 13 development plan in accordance with the notice;
- 14 (b) any amendment to a Swan Valley region planning
- 15 scheme that the Commission considers is necessary to
- 16 make that scheme consistent with, or to give effect to,
- 17 the proposed development plan;
- 18 (c) any amendment to a Swan Valley local planning scheme
- 19 that the Commission considers is necessary to make that
- 20 scheme consistent with, or to give effect to, the
- 21 proposed development plan;
- 22 (d) any amendment to a Swan Valley improvement scheme
- 23 that the Commission considers is necessary to make that
- 24 scheme consistent with, or to give effect to, the
- 25 proposed development plan.
- 26 (3) A reference in subsection (2)(b), (c) or (d) to the proposed
- 27 development plan is a reference to —
- 28 (a) for a development plan proposal that includes a
- 29 proposed development plan — that development plan;
- 30 or

- 1 (b) for a development plan proposal that includes a
2 proposed amendment to the development plan — the
3 development plan as it would be in effect after that
4 proposed amendment comes into effect.
- 5 (4) The development plan proposal must be submitted within the
6 period specified in the notice under subsection (1) or a longer
7 period approved in writing by the Minister.
- 8 (5) Before submitting a development plan proposal to the Minister,
9 the Commission —
- 10 (a) must comply with any requirements for public
11 consultation set out in the regulations; and
- 12 (b) must consult with the EPA and each Swan Valley local
13 government; and
- 14 (c) may consult with any other public authority or person
15 that the Commission considers is likely to be affected by
16 the development plan proposal; and
- 17 (d) must have regard to any submissions made as a result of
18 consultation under paragraphs (a) to (c).
- 19 (6) Consultation under subsection (5)(b) or (c) may be undertaken
20 in any way, and within any period, that the Commission
21 considers appropriate in the circumstances.

22 **8. Requirement for further consultation**

- 23 The Minister may, if a development plan proposal is submitted
24 to the Minister under section 7(2) or 9(1), by written notice,
25 require the Commission to —
- 26 (a) undertake further consultation as specified in the notice;
27 and
- 28 (b) provide the Minister with a report on that further
29 consultation.

s. 9

9. Approval of development plan proposal

(1) The Minister may, if a development plan proposal is submitted to the Minister under section 7(2) or this subsection, by written notice to the Commission —

(a) approve the development plan proposal; or

(b) require the Commission to —

(i) modify the development plan proposal in a way specified in the notice; and

(ii) submit the modified development plan proposal to the Minister for approval;

or

(c) refuse to approve the development plan proposal.

(2) The Minister must not approve a development plan proposal unless the Minister is satisfied that, when the development plan proposal comes into effect, the development plan will comply with section 6.

(3) If the Minister approves a development plan proposal —

(a) the development plan, or amendment to the development plan, that forms part of the proposal comes into effect on the day specified under section 10(2)(a) (*commencement day*); and

(b) any amendment to a region planning scheme that forms part of the proposal comes into effect, for the purposes of the *Planning and Development Act 2005* and as if it were enacted by that Act, on commencement day; and

(c) any amendment to a local planning scheme that forms part of the proposal comes into effect, for the purposes of the *Planning and Development Act 2005* and as if it were enacted by that Act, on commencement day; and

- 1 (d) any amendment to an improvement scheme that forms
2 part of the proposal comes into effect, for the purposes
3 of the *Planning and Development Act 2005* and as if it
4 were enacted by that Act, on commencement day.

5 **10. Requirements for notification and publication**

- 6 (1) The Commission must, as soon as is practicable after a
7 development plan proposal is approved under section 9(1)(a) —
8 (a) give each Swan Valley local government notice of the
9 approval and a copy of each document that forms part of
10 the proposal; and
11 (b) cause the following to be published in the *Gazette* —
12 (i) notice of the approval of the proposal;
13 (ii) any amendment to a region planning scheme that
14 forms part of the proposal;
15 (iii) any amendment to a local planning scheme that
16 forms part of the proposal;
17 (iv) any amendment to an improvement scheme that
18 forms part of the proposal.
19 (2) A notice published under subsection (1)(b)(i) of the approval of
20 a development plan proposal must —
21 (a) specify the day on which the proposal comes into effect;
22 and
23 (b) specify each document that forms part of the proposal;
24 and
25 (c) state that a copy of each document that forms part of the
26 proposal is published on the Commission's website and
27 the address of that website; and
28 (d) state that a copy of each document that forms part of the
29 proposal is available for inspection at the office of the
30 Commission and the office of each Swan Valley local
31 government.

s. 11

1 (3) A day specified under subsection (2)(a) must not be earlier than
2 the day on which the notice is published.

3 (4) It is sufficient compliance with subsection (1)(b)(ii), (iii) or (iv)
4 if the amendment to a region planning scheme, local planning
5 scheme or improvement scheme, as the case requires, is
6 published in the *Gazette* without any maps, plans or diagrams
7 that form part of the amendment.

8 **11. Requirements for documents to be publicly available**

9 (1) The Commission must, on and from the day on which notice of
10 a development plan proposal is published under
11 section 10(1)(b)(i), ensure that a copy of each document that
12 forms part of the proposal —

- 13 (a) is published on the Commission’s website; and
14 (b) is available for public inspection at the office of the
15 Commission during ordinary business hours and free of
16 charge.

17 (2) Each Swan Valley local government must, on and from the day
18 on which notice of a development plan proposal is published
19 under section 10(1)(b)(i), ensure that a copy of each document
20 that forms part of the proposal is available for inspection at the
21 office of the local government during ordinary business hours
22 and free of charge.

23 **12. Revocation of development plan**

24 (1) A development plan may be revoked by —

- 25 (a) a subsequent development plan; or
26 (b) an instrument of revocation approved in writing by the
27 Minister.

28 (2) If a development plan is revoked, the Commission must cause
29 notice of that revocation to be published in the *Gazette*.

30 (3) A revocation under subsection (1)(a) comes into effect when the
31 subsequent development plan comes into effect.

- 1 (4) A revocation under subsection (1)(b) comes into effect when
2 notice of the revocation is published under subsection (2) or on
3 a later day that is specified in that notice.

4 **13. Instruments prepared under local planning scheme**

5 As soon as is practicable after an amendment to a Swan Valley
6 local planning scheme comes into effect under section 9(3)(c),
7 the local government that is the responsible authority for the
8 local planning scheme must amend any policy, strategy, plan or
9 other instrument made by the local government under the local
10 planning scheme to ensure that it is consistent with the
11 development plan.

12 **14. Application of *Planning and Development Act 2005* to**
13 **amendments to planning schemes under this Part**

- 14 (1) The *Planning and Development Act 2005* Part 4 Divisions 2,
15 3 and 4 do not apply in relation to an amendment to a region
16 planning scheme under this Part.
- 17 (2) The following do not apply in relation to an amendment to a
18 local planning scheme under this Part —
- 19 (a) the *Planning and Development Act 2005* sections 79 to
20 83 and Part 5 Division 4;
- 21 (b) regulations made for the purposes of the *Planning and*
22 *Development Act 2005* section 258.
- 23 (3) The following do not apply in relation to an amendment to an
24 improvement scheme under this Part —
- 25 (a) the *Planning and Development Act 2005* sections 79 to
26 83 and Part 5 Division 4 (as applied under
27 section 122B(1) of that Act);
- 28 (b) the *Planning and Development Act 2005*
29 section 122B(3A) to (3).

s. 14

- 1 (4) When approving an amendment to a local planning scheme
2 under this Part, the Minister may approve the exclusion from, or
3 variation in, the scheme of a model provision (as defined in the
4 *Planning and Development Act 2005* section 257A(1)).

Part 3 — Miscellaneous

15. Review of Act

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the 5th anniversary of the commencement of this section.
- (2) The Minister must —
 - (a) prepare a report based on the review; and
 - (b) as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

16. Delegation

- (1) The Minister may delegate to another person any power or duty of the Minister under another provision of this Act.
- (2) A delegation under subsection (1) must be in writing signed by the Minister.
- (3) A person exercising or performing a power or duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (4) This section does not limit the ability of the Minister to perform a function through an officer or agent.

17. Protection from liability

- (1) No action or claim for damages lies against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) Despite subsection (1), neither the Commission, the State nor a local government is relieved of any liability that it might otherwise have had for another person having done anything described in that subsection.

s. 18

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

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

6 **18. Transitional provision: approval of first development plan**

7 (1) In this section —
8 *associated planning scheme amendments*, in relation to a
9 proposed development plan, means any amendments to
10 planning schemes that are required to be submitted with the
11 proposed development plan under section 7(2).

12 (2) This section applies in relation to the first development plan
13 approved under this Act.

14 (3) The Commission may submit the proposed first development
15 plan, and the associated planning scheme amendments, to the
16 Minister for approval even if —

17 (a) the Minister has not made a request under section 7(1);
18 and

19 (b) the requirements for consultation under section 7(5)
20 have not been complied with.

21 (4) Despite section 7(2)(b), (c) and (d), the Commission may
22 submit the proposed first development plan to the Minister for
23 approval under section 7(2) separately from the associated
24 planning scheme amendments.

25 (5) If the Minister approves a proposed development plan submitted
26 in accordance with subsection (4) —

27 (a) the Commission must as soon as practicable submit the
28 associated planning scheme amendments to the Minister
29 under section 7(2); and

30 (b) during the period that begins when the development plan
31 comes into effect and ends immediately before the

1 associated planning scheme amendments come into
2 effect, the development plan prevails over a Swan
3 Valley region planning scheme, a Swan Valley local
4 planning scheme or a Swan Valley improvement scheme
5 to the extent of any inconsistency.

6 (6) For the purposes of sections 7 to 11, each of the following is to
7 be taken to be a development plan proposal —

8 (a) a proposed first development plan submitted in
9 accordance with subsection (4);

10 (b) associated planning scheme amendments submitted in
11 accordance with subsection (5).

12 **19. Regulations**

13 The Governor may make regulations prescribing matters —

14 (a) required or permitted to be prescribed by this Act; or

15 (b) necessary or convenient to be prescribed for giving
16 effect to this Act.

1 **Part 4 — Repeal and consequential amendments**

2 **Division 1 — Repeal**

3 **20. *Swan Valley Planning Act 1995* repealed**

4 The *Swan Valley Planning Act 1995* is repealed.

5 **Division 2 — Consequential amendments**

6 **Subdivision 1 — *Planning and Development Act 2005* amended**

7 **21. Act amended**

8 This Subdivision amends the *Planning and Development*
9 *Act 2005*.

10 **22. Section 4 amended**

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

12 *Swan Valley*

13 *Swan Valley Planning Committee*

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

15
16 *Swan Valley* has the meaning given in the *Swan Valley*
17 *Protection Act 2016* section 3;
18

19 **23. Section 36 amended**

20 In section 36:

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

22
23 Act; or
24

- 1 (b) after paragraph (d) insert:
2
3 (e) to make any provision in respect of any land in
4 the Swan Valley in a manner that is contrary to
5 or inconsistent with the Swan Valley
6 Development Plan in effect under the *Swan*
7 *Valley Protection Act 2016*.
8

9 **24. Section 40 deleted**

10 Delete section 40.

11 **25. Section 47 deleted**

12 Delete section 47.

13 **26. Section 48 amended**

14 In section 48(1) delete “Subject to section 47, after — ” and
15 insert:
16

17 After —
18

19 **27. Section 49 amended**

20 In section 49 delete the passage that begins with “If — ” and
21 ends with “scheme or amendment under section 48,” and insert:
22

23 If the report of the Commission submitted with a scheme or
24 amendment under section 48
25

26 **28. Section 57 amended**

27 Delete section 57(2).

1 **29. Section 71 amended**

2 In section 71:

3 (a) in paragraph (b) delete “Act.” and insert:

4

5 Act; or

6

7 (b) after paragraph (b) insert:

8

9 (c) to make any provision in respect of any land in
10 the Swan Valley in a manner that is contrary to
11 or inconsistent with the Swan Valley
12 Development Plan in effect under the *Swan*
13 *Valley Protection Act 2016*.

14

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

16 **Restrictions on making or amending local planning scheme**

17 **30. Section 78 deleted**

18 Delete section 78.

19 **31. Section 112 amended**

20 In section 112(3) delete the passage that begins with “the
21 Commission is” and ends with “paragraph (a).” and insert:

22

23 the Commission must have regard to the Swan Valley
24 Development Plan in effect under the *Swan Valley Protection*
25 *Act 2016*.

26

1 **32. Section 119 amended**

2 After section 119(3C) insert:

3

4 (3D) An improvement plan must not make provision in
5 respect of any land in the Swan Valley in a manner that
6 is contrary to or inconsistent with the Swan Valley
7 Development Plan in effect under the *Swan Valley*
8 *Protection Act 2016*.

9

10 **33. Section 122B amended**

11 (1) In section 122B(1) after “Sections” insert:

12

13 71(c),

14

15 (2) Delete section 112B(2).

16 **34. Section 134 amended**

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

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

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

20 **Subdivision 2 — *Swan and Canning Rivers Management***
21 ***Act 2006* amended**

22 **35. Act amended**

23 This Subdivision amends the *Swan and Canning Rivers*
24 *Management Act 2006*.

25 **36. Section 67 amended**

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

1 (2) In section 67 insert in alphabetical order:

2

3 *Swan Valley* has the meaning given in the *Swan Valley*
4 *Protection Act 2016* section 3.

5

6 **37. Section 73 amended**

7 (1) In section 73(1):

8 (a) in paragraph (c) delete “development;” and insert:

9

10 development.

11

12 (b) delete paragraph (d).

13

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

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

19

20 subsection,

21

22 **38. Section 75 amended**

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

26

27 section 73(1); and

28

1 **39. Section 76 amended**

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

5

6 section 75;

7

8 **40. Section 80 amended**

9 (1) In section 80(2)(d) delete “any recommendation of the Swan
10 Valley Planning Committee in relation to that development,”
11 and insert:

12

13 the Swan Valley Development Plan in effect under the *Swan*
14 *Valley Protection Act 2016*,

15

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

17 **41. Section 82 amended**

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

21

22 section 73(1); and

23

24 **42. Section 87 amended**

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

28

29 section 75; and

30

Schedule 1 — Map of Swan Valley (indicative only)

[s. 4(3)]

