

**The *Planning and Development (Consequential and Transitional Provisions)*
Bill 2005**
Explanatory Memorandum

The *Planning and Development Bill 2005* impacts on many other Acts. There are consequential amendments to 71 Acts. Most of these amendments are of a minor nature, replacing reference to titles of the current planning Acts by the new Bill, or referring to new descriptions of region and local planning schemes.

The Bill is identical to the *Planning and Development (Consequential and Transitional Provisions) Bill 2004* as second read in the Legislative Council of the 36th Parliament on 19 October 2004, except in respect of one minor amendment that is explained below. The Bill lapsed on 23 January 2005 when the 36th Parliament was prorogued and dissolved. The Bill has been reintroduced.

There is one minor amendment to the 2004 Bill. Part 3 of the 2004 Bill was headed ‘SAT amendments’. Part 3 of the 2004 Bill provided for various amendments to be made to the *Planning and Development Bill 2004* should it have come into force after the commencement of the *State Administrative Tribunal Bill 2004* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2004*. At the time, both of these Bills were before Parliament. Part 3 of the 2004 Bill provided for consequential amendments to the *Planning and Development Bill 2004* to reflect the relevant amendments set out in the then *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2004*.

On 1 January 2005, the *State Administrative Tribunal Act 2004* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* came into force. Accordingly, the *Planning and Development Bill 2005* reflects these amendments. In other words, the *Planning and Development Bill 2004*, which also lapsed on 23 January 2005 when the 36th Parliament was prorogued and dissolved, has been revised to include the amendments that would otherwise have been made by Part 3 of the *Planning and Development (Consequential and Transitional Provisions) Bill 2004*.

There is a need for consequential amendments to the *Land Administration Act* and *Local Government (Miscellaneous Provisions) Act* to provide for the transfer of the provisions of section 295 of the latter Act to the Bill. This is provided for in Part 2, Division 2 and Division 3 of the Bill.

There is one change of some significance, which is to the *Mining Act 1978*. This is outlined in Schedule 2 and explained under Division 4, clause 15.

The Bill 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 Bill on a clause by clause basis.

Part 1 – Preliminary

This part contains the short title, relevant commencement provisions and definition of terms used in the Bill.

Clause 1: Short title which is self explanatory.

Clause 2: Commencement which is self explanatory.

Clause 3: Interpretation which is self explanatory.

Part 2 – Repeal and amendment of legislation

Division 1 – Acts repealed

Clause 4: provides that Acts in Schedule 1 are repealed.

Division 2 – *Land Administration Act 1997*

Clause 5: the *Land Administration Act 1997* amended which is self explanatory.

Clause 6: amends title of Act in section 3(1) which has no effect on meaning.

Clause 7: amends title of Act in section 23(1)(b) which has no effect on meaning.

Clause 8: amends section 26(2) of Act which has no effect on meaning.

Clause 9: transfers provision for the naming of roads in subdivisions from section 295(3) *Local Government (Miscellaneous Provisions) Act 1960*, which is repealed by this Bill. The penalty has been increased to be consistent with other penalties in the *Land Administration Act 1997 (LAA)*.

Clause 10: repeals section 27(5) and reinstates in Part 10 of the Bill. Section 27(5) *LAA* requires the Minister for Lands, when subdividing Crown land for sale to the public, to obtain subdivision approval under section 20 of the TPDA.

Clause 11: amends title of Act in section 190(1)(e)(i) which has no effect on meaning.

Clause 12: amends title of Act in section 196(9) which has no effect on meaning.

Clause 13: amends title of Act in section 274(6) which has no effect on meaning.

Division 3 – *Local Government (Miscellaneous Provisions) Act 1960*

Clause 14: repeals section 295 and reinstates in s.26A *LAA* and Part 10 of the Bill.

Division 4 – Miscellaneous amendments

Clause 15: amends Acts as set out in Schedule 2: There are consequential amendments to 71 Acts. Most of these amendments are of a minor nature, replacing reference to titles of the current planning Acts by the new Bill, or referring to new descriptions of regional and local planning schemes.

There is one change of some significance to the *Mining Act 1978*. Under section 120 of the *Mining Act*, the decision-maker in the grant of a mining tenement, (Minister, Warden or Mining Registrar) is required to take into account the provisions of any town planning scheme but the provision of a scheme cannot prohibit the granting of a mining tenement. Mining operations are therefore exempt from the approval requirement of a local scheme. Instead, there is a provision in section 120(2) of the *Mining Act* which requires the responsible Minister to consult with the Minister for Planning on an application for a mining lease which would, in the opinion of the local government, authorise the carrying on of mining operations contrary to the provision of a scheme.

The Supreme Court has determined that the reference to a town planning scheme in the *Mining Act* cannot be construed as reference to the *Metropolitan Region Scheme*. This has created some uncertainty as to whether section 120 exempts development associated with mining operations from the approval requirements of the *Metropolitan Region Scheme*.

An amendment is proposed to the *Mining Act*, so that mining operations in areas covered by a region scheme are also exempt from the planning approval requirements of that region scheme. The intent of the *Mining Act* is to give special consideration to mining operations by exempting them from normal planning processes. The consultation between the responsible Ministers, where a mining operation is considered contrary to either a local or region scheme, provides a level of scrutiny on the regional and State significance of the mining operation and its implications, that would otherwise be provided by the WA Planning Commission, through the approval process under a region scheme. There is no need to duplicate this process.

Clause 16: provides power to make or amend subsidiary legislation arising from the enactment of the Bill.

Part 3 – Transitional and saving provisions

Division 1 – Preliminary

Clause 17: Schedule 1 of this Bill repeals the *TPDA*, *MRTPSA* and the *WAPCA*. This clause provides that the *Interpretation Act 1984* applies to that repealed legislation so that subsidiary legislation, committees, approvals etc made under that repealed legislation continue as if made under the Bill.

Clause 18: this provision provides a ‘stop gap’ so that where transitional provisions have not been provided for in the Bill, there is power to make regulations to deal with these specific matters.

Clause 19: this provision ensures that where there is a reference in a written law to legislation repealed by this Bill, it is taken to mean a reference to the corresponding provision in the new Bill.

Division 2 – Continuation of various bodies, memberships and appointments

Clause 20: confirms that the WA Planning Commission, created under the WAPCA and repealed by this Bill, continues under the Bill as the same legal entity and provides continuity to rights and obligations of the Commission.

Clause 21: confirms that members of the Commission continue.

Clause 22: confirms the continuity of employment of staff of the Commission.

Clause 23: confirms the continuity of the various committees created by the Commission.

Clause 24: confirms the continuation of the Board of Valuers.

Division 3 – Transitional provisions

Clause 25: confirms the continuation of specific subsidiary legislation and fees made under the TPDA, MRTPSA and WAPCA.

Clause 26: provides for continuation of local and regional town planning schemes still being prepared at the time the Bill comes into force.

Clause 27: provides for the continuation of caveats lodged but not registered under the MRTPSA or the WAPCA.

Division 4 – Other savings

Clause 28: section 9(4) and (5) TPDA are repealed as they are now redundant, however, clause 28 provides continuity. Section 9(4) and (5) *TPDA* was inserted by the *Town Planning and Development Amendment Act 1975*. This amendment arose from legal advice to the effect that many local town planning schemes, because of the wording of the *Town Planning Regulations 1967*, had been advertised for one day short of the statutory three month advertising period. This exposed such schemes to legal challenge concerning their validity. Section 9(4) and (5) confirm the validity of such schemes, notwithstanding the procedural irregularity. The *Regulations* have since been changed, making section 9(4) and (5) redundant. However, clause 28 provides continuity in the case where a town planning scheme dated prior to 1975 Amendment Act is still in force.

Clause 29: section 28A(5) TPDA is repealed as it is now redundant, however, clause 29 provides for continuity. Section 28A(5) provided continuity for the rights and obligations of subdividers in relation to the payment and recovery of the cost of building roads, where the subdivision occurred prior to the coming into operation of section 28A(5) by Act No.120 of 1982. It is unlikely that any person who subdivided their land prior to 1982 would be able to claim against a subsequent subdivider today but clause 70 provides continuity to that provision.

Clause 30: section 37A (4a) MRTPSA is repealed as it is now redundant, however, clause 71 provides for continuity. Section 37A(4a) validated agreements in relation to Improvement Plans entered into prior to the commencement of the *MRTPS Amendment Act 1975* that would have otherwise have been invalid.