

Approvals and Related Reforms (No. 4) (Planning) Bill 2009

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**Approvals and Related Reforms (No. 4)
(Planning) Bill 2009**

A Bill for

An Act —

- **to amend the *Planning and Development Act 2005*; and**
- **to consequentially amend various other Acts,
and for related purposes.**

The Parliament of Western Australia enacts as follows:

1
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Part 1 — Preliminary matters

1. Short title

This is the *Approvals and Related Reforms (No. 4) (Planning) Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — 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.

1 **Part 2 — Improvement plans and schemes under**
2 ***Planning and Development Act 2005***

3 **Division 1 — *Planning and Development Act 2005* amended**

4 **3. Act amended**

5 This Division amends the *Planning and Development Act 2005*.

6 **4. Section 4 amended**

7 (1) In section 4(1) insert in alphabetical order:

8

9 ***improvement scheme*** means an improvement scheme
10 that has effect under Part 8 Division 2;

11 ***improvement scheme area*** has the meaning given in
12 section 122A(2);

13

14 (2) In section 4(1) in the definition of ***planning scheme*** delete
15 “local or region planning scheme” and insert:

16

17 local planning scheme, region planning scheme or
18 improvement scheme

19

20 (3) In section 4(1) in the definition of ***responsible authority***:

21 (a) in paragraph (b) omit “Commission;” and insert:

22

23 Commission; and

24

25 (b) after paragraph (b) insert:

26

27 (c) in relation to an improvement scheme, the
28 Commission;

29

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Part 2 Improvement plans and schemes under Planning and
Development Act 2005

Division 1 Planning and Development Act 2005 amended

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1 **5. Section 5 amended**

2 After section 5(2) insert:

3

4 (3) An improvement scheme binds the Crown.

5

6 **6. Section 6 amended**

7 In section 6(1) delete “section 5(2)” and insert:

8

9 section 5(2) and (3)

10

11 **7. Section 14 amended**

12 In section 14:

13 (a) after paragraph (h) insert:

14

15 (ia) to prepare improvement plans and improvement
16 schemes under Part 8; and

17

18 (b) in paragraph (i) delete “scheme,” and insert:

19

20 scheme and improvement scheme,

21

22 (c) in paragraph (i) delete “under Part 4 any amendment of
23 a region planning scheme” and insert:

24

25 under Part 4 or 8 any amendment

26

27 (d) in paragraph (j) after “region planning scheme” insert:

28

29 or improvement scheme

30

1 (e) in paragraph (l) delete “Act and region planning
2 schemes; and” and insert:
3
4 Act, region planning schemes and improvement
5 schemes; and
6

7 (f) after each of paragraphs (a) to (k) insert:
8
9 and
10

11 **8. Section 26 amended**

12 In section 26(4)(b) delete “local”.

13 **9. Part 8 heading replaced**

14 Delete the heading to Part 8 and insert:
15

16 **Part 8 — Improvement plans and schemes**
17 **Division 1 — Improvement plans**
18

19 **10. Section 119 amended**

20 (1) In section 119(1)(a) delete “land within a part of the State to
21 which a region planning scheme applies —” and insert:
22

23 land —
24

25 (2) After section 119(2) insert:
26

27 (3A) The power in subsection (1) cannot be exercised in
28 respect of any land that is —

29 (a) the subject of a redevelopment scheme
30 approved under the *East Perth Redevelopment*

1 **11. Part 8 Division 2 inserted**

2 After section 121 insert:

3

4 **Division 2 — Improvement schemes**

5 **122A. Content of improvement schemes**

6 (1) Without limiting section 119, an improvement plan
7 may authorise the making of an improvement scheme
8 by the Commission in respect of some or all of the land
9 to which the improvement plan applies.

10 (2) An improvement scheme must specify the land to
11 which it applies (the *improvement scheme area*).

12 (3) An improvement scheme may, in relation to the whole
13 or any part of the relevant improvement scheme area,
14 provide for all or any of —

15 (a) the matters referred to in section 119(1)(a); and

16 (b) the objects, purposes, provisions, powers and
17 works referred to in section 69(1).

18 **122B. Preparing, approving and reviewing improvement**
19 **schemes**

20 (1) Sections 75, 77 and 79 to 95 apply, with such
21 modifications as are necessary, to and in relation to an
22 improvement scheme as if, in each of those
23 provisions —

24 (a) a reference to a local planning scheme were a
25 reference to the improvement scheme; and

26 (b) a reference to a local government were a
27 reference to the Commission; and

28 (c) a reference to a local government district or
29 land in a district were a reference to the
30 improvement scheme area.

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Division 1 Planning and Development Act 2005 amended

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- 1 (2) Section 78 applies to and in relation to an improvement
2 scheme —
- 3 (a) in the manner set out in subsection (1); and
4 (b) as if a reference in that section to the City of
5 Swan were a reference to the Commission; and
6 (c) as if subsections (4) and (5) were deleted and
7 the following subsection were inserted:
8
- 9 (4) The Commission must have regard to,
10 but is not bound to accept, the advice of
11 the Swan Valley Planning Committee.
12
- 13 (3A) Before submitting an improvement scheme or
14 amendment to an improvement scheme to the Minister
15 under section 87, the Commission must consult with
16 any affected local government.
- 17 (3B) In subsection (3A) —
18 ***affected local government*** means —
- 19 (a) in the case of an improvement scheme — a
20 local government in the district of which the
21 improvement scheme is proposed to apply; and
22 (b) in the case of an amendment — a local
23 government in the district of which the
24 improvement scheme applies.
- 25 (3) Regulations made under section 258 apply, with such
26 modifications as are necessary, to and in relation to an
27 improvement scheme as if the improvement scheme
28 were a local planning scheme.
- 29 (4) An improvement scheme may be repealed by an
30 instrument of repeal prepared by the Commission,
31 approved by the Minister and published in the *Gazette*.

- 1 (5) Unless otherwise specified in an instrument of repeal,
2 the instrument has effect on the day on which it is
3 published in the *Gazette*.
- 4 (6) The Minister must not approve an amendment to an
5 improvement scheme that removes land from an
6 improvement scheme area, or approve an instrument of
7 repeal under subsection (4), unless satisfied that any
8 other planning scheme, insofar as it will apply to the
9 improvement scheme area on the amendment day or
10 repeal day, does not —
- 11 (a) prevent any development that would be
12 permitted; or
- 13 (b) allow any development that would not be
14 permitted,
- 15 in the improvement scheme area immediately before
16 the amendment day or repeal day.
- 17 (7) In subsection (6) —
- 18 ***amendment day***, for an improvement scheme, means
19 the day on which the amendment to the scheme has
20 effect;
- 21 ***repeal day***, for an improvement scheme, means the day
22 on which an instrument of repeal of that scheme has
23 effect.
- 24 **122C. Effect of improvement scheme on development**
25 **control**
- 26 (1) This Division (other than this section) does not apply to
27 a development that was lawfully being carried out on
28 land immediately before an improvement scheme
29 applied to the land.
- 30 (2) A development referred to in subsection (1) or in
31 respect of which all necessary approvals under the
32 relevant region planning scheme and local planning

- 1 scheme were in force immediately before the
2 improvement scheme applied to the land —
- 3 (a) may be lawfully carried out as if this Division
4 had not been enacted; and
- 5 (b) is governed by those schemes despite
6 section 122D.
- 7 **122D. Effect of improvement scheme on other planning**
8 **schemes**
- 9 (1) In this section —
- 10 *start day*, for an improvement scheme, means the day
11 on which the improvement scheme has effect under
12 section 87(4) as applied by section 122B(1).
- 13 (2) On the start day for an improvement scheme, any other
14 planning scheme that applies to land in the
15 improvement scheme area immediately before that day
16 ceases to apply —
- 17 (a) to that land; and
18 (b) to any development of that land commenced on
19 or after that day.
- 20 (3) If, after the start day, any land is added to an
21 improvement scheme area by an amendment to the
22 improvement scheme, any other planning scheme that
23 applies to the land area immediately before the
24 amendment comes into operation ceases to apply —
- 25 (a) to that land; and
26 (b) to any development of that land commenced on
27 or after that time.
- 28 (4) Subsections (2) and (3) do not affect the operation of
29 sections 122I to 122K.
- 30 (5) The *Interpretation Act 1984* section 37 applies in
31 respect of subsections (2) and (3) as if a planning

1 scheme were an enactment and the subsections
2 repealed the scheme in so far as it applies to the land in
3 the improvement scheme area and development of that
4 land.

5 (6) Subsection (5) has effect subject to any provision of an
6 improvement scheme that relates to non-conforming
7 uses.

8 **122E. Effect of removal of land from improvement scheme**
9 **area or repeal of improvement scheme**

10 (1) If land is removed from an improvement scheme area
11 by an amendment to an improvement scheme (the
12 ***removed land***) —

13 (a) the improvement scheme for the area ceases to
14 apply to the removed land; and

15 (b) a planning scheme that, but for section 122D,
16 would apply to the land, applies to the land.

17 (2) If an improvement scheme is repealed, a planning
18 scheme that, but for section 122D would apply to the
19 improvement scheme area, applies to the area.

20 **122F. Amended improvement scheme area: transitional**
21 **provisions**

22 If land is added to or removed from an improvement
23 scheme area by amendment to the improvement
24 scheme, regulations may make provisions of a
25 transitional nature that are expedient to be made,
26 including provisions that save rights existing at the
27 time of the amendment, but subject to any provisions
28 of the improvement scheme relating to non-conforming
29 uses.

- 1 **122G. Applications for development not finalised when**
2 **land removed or improvement scheme repealed**
- 3 (1) This section applies if —
- 4 (a) when land is removed from an improvement
5 scheme area by an amendment to an
6 improvement scheme (the *removed land*); or
- 7 (b) when an improvement scheme is repealed,
- 8 an application for approval of development of any of
9 the removed land or of any part of the improvement
10 scheme area under the repealed improvement scheme
11 made under this Act to the Commission —
- 12 (c) has not been determined by the Commission; or
- 13 (d) having been so determined, is the subject of an
14 application to the State Administrative Tribunal
15 for a review that has not been finalised.
- 16 (2) This Act continues to apply, and the Commission must
17 continue to perform its functions, in relation to the
18 application for approval and any application for review
19 as if the land had not been removed or the scheme had
20 not been repealed, as the case requires.
- 21 (3) This section applies irrespective of whether or not
22 another planning scheme applies to the land after the
23 land is removed or the improvement scheme is
24 repealed.
- 25 **122H. Permanent closure of streets**
- 26 For the purposes of permanently closing a street in an
27 improvement scheme area, the *Land Administration*
28 *Act 1997* section 58 and regulations made under that
29 Act apply as if each reference to a local government in
30 that section and in those regulations —
- 31 (a) were a reference to the Commission; and

1 (b) were not a reference to the local government of
2 the district in which the street is wholly or
3 partly situated.

4 **122I. Certain planning schemes affecting improvement**
5 **scheme area not to operate until repeal day**

6 (1) A local or region planning scheme, or an amendment to
7 a local or region planning scheme, made after an
8 improvement scheme has effect, insofar as it purports
9 to apply to land in an improvement scheme area, has no
10 effect while the improvement scheme applies to the
11 land.

12 (2) Subject to subsection (1) and without limiting
13 sections 122J to 122L, this Division does not prevent a
14 local or region planning scheme or amendment referred
15 to in that subsection being made after an improvement
16 scheme has effect so as to commence when the
17 improvement scheme ceases to apply to the land.

18 **122J. Minister may amend local planning scheme to**
19 **conform with improvement scheme**

20 (1) The Minister may, while an improvement scheme is of
21 effect, publish in the *Gazette* a notice amending a local
22 planning scheme so that the local planning scheme is
23 consistent with the improvement scheme in relation to
24 land in the improvement scheme area.

25 (2) An amendment published under subsection (1) has
26 effect, by force of this subsection and without further
27 action under this Act, on the day on which the
28 improvement scheme ceases to apply to the land.

29 **122K. Region planning scheme may be amended to**
30 **conform with improvement scheme**

31 (1) A region planning scheme may be amended under
32 Part 4 Division 4 while an improvement scheme is of

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Division 1 Planning and Development Act 2005 amended

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1 effect so that the region planning scheme is consistent
2 with the improvement scheme in relation to land in the
3 improvement scheme area.

4 (2) An amendment referred to in subsection (1) has effect
5 on the day on which the improvement scheme ceases to
6 apply to the land.

7 **122L. Other Ministerial powers**

8 Sections 211 and 212 apply in relation to an
9 improvement scheme as if, in each of those sections —

- 10 (a) a reference to a local planning scheme were a
11 reference to the improvement scheme; and
12 (b) a reference to a local government were a
13 reference to the Commission.

14 **122M. Fees**

15 The Commission may, in relation to an improvement
16 scheme, impose fees under section 261 as if it were a
17 local government, and that section, and the regulations
18 made under that section, apply accordingly.
19

20 **12. Part 8 Division 3 heading inserted**

21 Before section 122 insert:
22

23 **Division 3 — General**
24

25 **13. Section 122 amended**

26 In section 122 delete “Nothing in this Part” and insert:
27

28 Except as provided in Division 2, nothing in this Part
29

1 **14. Part 9 heading replaced**

2 Delete the heading to Part 9 and insert:

3

4 **Part 9 — Relationship between planning**
5 **schemes, planning control provisions and**
6 **written laws**

7

8 **15. Section 170 amended**

9 (1) Before section 170(1) insert:

10

11 (1A) In this section —

12 *responsible authority* means —

13 (a) in relation to land that is subject to a local
14 planning scheme — the local government
15 responsible for the enforcement of the
16 observance of the scheme; and

17 (b) in relation to land that is subject to an
18 improvement scheme — the Commission.

19

20 (2) In section 170(1) delete “local government —” and insert:

21

22 responsible authority —

23

24 (3) In section 170(3), (4), (5) and (6) delete “local government”
25 (each occurrence) and insert:

26

27 responsible authority

28

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Division 1 Planning and Development Act 2005 amended

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1 **16. Section 195 amended**

2 In section 195(1) delete “while the relevant region planning
3 scheme has the force of law,”.

4 **17. Section 196 amended**

5 (1) In section 196(1):

6 (a) after “scheme” (first occurrence) insert:

7

8 or improvement plan

9

10 (b) in paragraph (a) delete “scheme; or” and insert:

11

12 scheme or improvement plan; or

13

14 (2) In section 196(2) delete “scheme.” and insert:

15

16 scheme or improvement plan.

17

18 **18. Section 197 amended**

19 (1) In section 197(1):

20 (a) delete “scheme,” and insert:

21

22 scheme or improvement plan,

23

24 (b) delete “scheme.” and insert:

25

26 scheme or improvement plan.

27

1 (2) In section 197(2) delete “scheme.” and insert:

2

3 scheme or improvement plan.

4

5 Note: The heading to amended section 197 is to read:

6 **Governor may declare land to be held and used for region**
7 **planning scheme or improvement plan**

8

9 **19. Section 198 amended**

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

11

12 Scheme and any improvement scheme that has effect in part or
13 all of the metropolitan region,

14

15 **20. Section 199 amended**

16 (1) Before section 199(1) insert:

17

18 (1A) In this section —

19 *metropolitan improvement scheme* means an
20 improvement scheme that has effect in part or all of the
21 metropolitan region.

22

23 (2) In section 199(1):

24 (a) delete “Scheme, including — ” and insert:

25

26 Scheme and any metropolitan improvement scheme,
27 including —

28

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Division 1 Planning and Development Act 2005 amended

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1 (b) in paragraph (b)(i) after “the metropolitan region” insert:

2

3 or a metropolitan improvement scheme

4

5 (c) in paragraph (b)(i) delete “Scheme or regional interim
6 development order;” and insert:

7

8 Scheme, regional interim development order or
9 metropolitan improvement scheme; or

10

11 (d) in paragraph (b)(ii) delete “Scheme; or” and insert:

12

13 Scheme or metropolitan improvement scheme; or

14

15 **21. Section 218 amended**

16 In section 218(b) after “local planning scheme” insert:

17

18 or improvement scheme

19

20 **22. Section 252 amended**

21 (1) In section 252(1)(a) delete “local planning scheme or a region”.

22 (2) In section 252(2):

23 (a) after “a local planning scheme” insert:

24

25 or an improvement scheme

26

27 (b) in paragraphs (a) and (b) delete “local”.

1 **23. Section 262 amended**

2 (1) In section 262(4) delete “local planning scheme” (each
3 occurrence) and insert:

4
5 planning scheme

6
7 (2) In section 262(5) delete “local”.

8 **Division 2 — Consequential amendments**

9 **Subdivision 1 — *Environmental Protection Act 1986* amended**

10 **24. Act amended**

11 This Subdivision amends the *Environmental Protection*
12 *Act 1986*.

13 **25. Section 3 amended**

14 (1) In section 3(1) insert in alphabetical order:

15
16 *improvement scheme* has the meaning given in the
17 *Planning and Development Act 2005* section 4(1);

18
19 (2) In section 3(1) in the definition of *assessed scheme*:

20 (a) after paragraph (b)(iii) insert:

21
22 (iv) which is a local planning scheme or a
23 region planning scheme, or an
24 amendment to a local planning scheme
25 or a region planning scheme, amended
26 under the *Planning and Development*
27 *Act 2005* section 122J or 122K to the
28 extent, if any, necessary in relation to an
29 improvement scheme, or an amendment
30 to an improvement scheme, which

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Division 2 Consequential amendments

s. 25

- 1 amendment or scheme is a scheme
2 referred to in paragraph (a) or
3 subparagraph (i) or (ii);
4
- 5 (b) after paragraph (b)(i) and (iii) insert:
6
7 or
8
- 9 (3) In section 3(1) in the definition of *final approval*:
10 (a) after paragraph (e) insert:
11
12 (f) an improvement scheme, or an amendment to
13 an improvement scheme, means an approval
14 under the *Planning and Development Act 2005*
15 section 87(2), as read with section 122B(1) of
16 that Act;
17
- 18 (b) after each of paragraphs (a) to (c) and (e) insert:
19
20 or
21
- 22 (4) In section 3(1) in the definition of *period of public review*:
23 (a) after paragraph (e) insert:
24
25 (f) an improvement scheme, or an amendment to
26 an improvement scheme, means the period of
27 advertisement for public inspection prescribed
28 for the purposes of the *Planning and*
29 *Development Act 2005* section 84, as read with
30 section 122B(1) of that Act;
31

- 1 (b) after each of paragraphs (a) to (c) and (e) insert:
2
3 or
4
- 5 (5) In section 3(1) in the definition of *responsible authority*:
6 (a) after paragraph (a)(viii) insert:
7
8 (ix) an improvement scheme, or an
9 amendment to an improvement scheme,
10 means the Western Australian Planning
11 Commission;
12
- 13 (b) in paragraph (a) after each of subparagraphs (i) to (vi)
14 and (viii) insert:
15
16 or
17
- 18 (6) In section 3(1) in the definition of *scheme*:
19 (a) after paragraph (h) insert:
20
21 (i) an improvement scheme or an amendment to an
22 improvement scheme;
23
- 24 (b) after each of paragraphs (a) to (f) and (h) insert:
25
26 or
27

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Division 2 Consequential amendments

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1 **26. Section 48C amended**

2 In section 48C(7) in the definition of *public review*:

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

4

5 that Act; or

6

7 (b) after paragraph (e) insert:

8

9 (f) an improvement scheme, or an amendment to
10 an improvement scheme, means the procedure
11 referred to in the *Planning and Development*
12 *Act 2005* sections 84 and 87(1) as read with
13 section 122B(1) of that Act.

14

15 (c) in each of paragraphs (a) to (e) after “means” insert:

16

17 the

18

19 (d) after each of paragraphs (a) to (c) insert:

20

21 or

22

23 **Subdivision 2 — Other Acts amended**

24 **27. *Agricultural Practices (Disputes) Act 1995* amended**

25 (1) This section amends the *Agricultural Practices (Disputes)*
26 *Act 1995*.

27 (2) In section 3 in the definition of *rural land* delete “as that term
28 is” and insert:

29

30 or an improvement scheme as those terms are

31

- 1 **28. *Armadale Redevelopment Act 2001* amended**
- 2 (1) This section amends the *Armadale Redevelopment Act 2001*.
- 3 (2) In section 5(4)(a) after “local planning scheme” insert:
- 4
- 5 or improvement scheme
- 6
- 7 (3) In section 43(1) in the definition of *planning scheme*
- 8 paragraph (aa) after “local planning scheme” insert:
- 9
- 10 or improvement scheme
- 11
- 12 **29. *Control of Vehicles (Off-road Areas) Act 1978* amended**
- 13 (1) This section amends the *Control of Vehicles (Off-road Areas)*
- 14 *Act 1978*.
- 15 (2) In section 16(5)(d) delete “scheme.” and insert:
- 16
- 17 scheme or improvement scheme under the
- 18 *Planning and Development Act 2005*.
- 19
- 20 **30. *East Perth Redevelopment Act 1991* amended**
- 21 (1) This section amends the *East Perth Redevelopment Act 1991*.
- 22 (2) In section 5(4)(a) after “local planning scheme” insert:
- 23
- 24 or improvement scheme
- 25
- 26 (3) In section 38(3) in the definition of *planning schemes*
- 27 paragraph (aa) after “local planning scheme” insert:
- 28
- 29 or improvement scheme
- 30

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1 **31. *Electricity Corporations Act 2005* amended**

2 (1) This section amends the *Electricity Corporations Act 2005*.

3 (2) In section 60(3):

4 (a) delete “sections 221 and 218,” and insert:

5
6 sections 218 and 221,

7
8 (b) in paragraph (b) delete “scheme,” and insert:

9
10 scheme; or

11
12 (c) after paragraph (b) insert:

13
14 (c) an improvement scheme,

15

16 **32. *Hope Valley-Wattleup Redevelopment Act 2000* amended**

17 (1) This section amends the *Hope Valley-Wattleup Redevelopment*
18 *Act 2000*.

19 (2) In section 23(3) in the definition of **planning schemes**
20 paragraph (aa) after “local planning scheme” insert:

21

22 or improvement scheme

23

24 **33. *Land Tax Assessment Act 2002* amended**

25 (1) This section amends the *Land Tax Assessment Act 2002*.

26 (2) In section 15(3)(b) delete “scheme.” and insert:

27

28 scheme or an improvement scheme.

29

- 1 (3) In section 28(2)(a) delete “scheme,” and insert:
2
- 3 scheme or an improvement scheme,
4
- 5 (4) In section 28(7) in the definition of *residential equivalent value*
6 delete “planning scheme” and insert:
7
- 8 planning scheme, improvement scheme
9
- 10 (5) In the Glossary:
11 (a) in clause 1 insert in alphabetical order:
12
- 13 *improvement scheme* has the meaning given in the *Planning*
14 *and Development Act 2005* section 4(1);
15
- 16 (b) in clause 4 delete “scheme.” and insert:
17
- 18 scheme or an improvement scheme.
19
- 20 **34. *Local Government Act 1995* amended**
- 21 (1) This section amends the *Local Government Act 1995*.
22 (2) In section 6.33(1)(a) after “planning scheme” insert:
23
- 24 or improvement scheme
25
- 26 **35. *Midland Redevelopment Act 1999* amended**
- 27 (1) This section amends the *Midland Redevelopment Act 1999*.

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1 (2) In section 5(4)(a) after “local planning scheme” insert:

2

3 or improvement scheme

4

5 (3) In section 45(3) in the definition of *planning scheme*
6 paragraph (aa) after “local planning scheme” insert:

7

8 or improvement scheme

9

10 **36. *Sale of Land Act 1970* amended**

11 (1) This section amends the *Sale of Land Act 1970*.

12 (2) In section 16 delete “scheme,” and insert:

13

14 scheme or improvement scheme,

15

16 **37. *Strata Titles Act 1985* amended**

17 (1) This section amends the *Strata Titles Act 1985*.

18 (2) In section 21U(3) delete “planning scheme” and insert:

19

20 planning scheme or improvement scheme

21

22 (3) In section 21U(5) delete “planning scheme.” and insert:

23

24 planning scheme or improvement scheme.

25

- 1 (4) In section 23(2):
2 (a) in paragraph (a) after “local planning scheme” insert:
3
4 or improvement scheme
5
6 (b) in paragraph (b) delete “local”.
- 7 (5) In section 31F(2)(e) after “local planning scheme” insert:
8
9 or improvement scheme
10
- 11 (6) In section 31F(4) delete “scheme.” and insert:
12
13 scheme or improvement scheme.
14

15 **38. *Subiaco Redevelopment Act 1994* amended**

- 16 (1) This section amends the *Subiaco Redevelopment Act 1994*.
17 (2) In section 5(4)(a) after “local planning scheme” insert:
18
19 or improvement scheme
20
- 21 (3) In section 45(3) in the definition of *planning schemes*
22 paragraph (aa) after “local planning scheme” insert:
23
24 or improvement scheme
25

26 **39. *Waterways Conservation Act 1976* amended**

- 27 (1) This section amends the *Waterways Conservation Act 1976*.

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Development Act 2005

Division 2 Consequential amendments

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1 (2) After section 36(1)(f)(i) insert:

2

3

(ia) an improvement scheme;

4

1 **43. Part 11A inserted**

2 After section 170 insert:

3

4 **Part 11A — Development Assessment Panels**
5 **and development control**

6

Division 1 — Functions of DAPs

7 **171A. Prescribed development applications to be**
8 **determined by DAP**

9 (1) In this section —

10 *planning instrument* means —

11 (a) a planning scheme; or

12 (b) an interim development order;

13 *prescribed development application* means —

14 (a) a development application of a class or kind
15 prescribed for the purposes of subsection (2)(a);
16 or

17 (b) a development application of a class or kind
18 prescribed for the purposes of
19 subsection (2)(ba) in respect of which an
20 applicant has made an election in accordance
21 with regulations made under
22 subsection (2)(ba)(i);

23 (2) The Governor may make regulations —

24 (a) providing that, despite any other provision of
25 this Act or a planning instrument, a
26 development application of a class or kind
27 prescribed for the purposes of this paragraph —

28 (i) must be determined by a DAP as if the
29 DAP were the responsible authority
30 under the relevant planning instrument
31 in relation to the development; and

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- 1 (g) providing for the notification of a determination
2 of a prescribed development application;
- 3 (h) providing for the review of a determination of a
4 prescribed development application.
- 5 (3) Unless otherwise provided under regulations made for
6 the purposes of subsection (2) —
- 7 (a) a determination by a DAP of a prescribed
8 development application; and
- 9 (b) a failure by a DAP to make a determination of a
10 prescribed development application,
- 11 is to be regarded as, and has effect as if it were, a
12 determination or failure of the responsible authority to
13 which the application was made.

14 **171B. DAP to carry out delegated functions**

- 15 (1) In addition to the functions conferred on it by
16 regulations made under section 171A, a DAP is to
17 perform the functions that are delegated to it by a
18 responsible authority in accordance with regulations
19 made under subsection (2).
- 20 (2) The Governor may make regulations —
- 21 (a) prescribing the functions under this Act or a
22 planning scheme that may be delegated by a
23 responsible authority to a DAP; and
- 24 (b) making provision in relation to the making and
25 effect of the delegation of functions by a
26 responsible authority to a DAP.

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**Division 2 — Development Assessment Panels:
establishment and administration**

171C. Establishment of Development Assessment Panels

- (1) The Minister may, by order published in the *Gazette*, establish —
 - (a) a LDAP for a district;
 - (b) a JDAP for 2 or more districts.
- (2) The order must give the DAP a name.
- (3) A JDAP cannot be established for a district for which a LDAP is established.
- (4) A LDAP cannot be established for a district for which a JDAP is established.
- (5) If a JDAP is established for 2 or more districts, the districts need not be contiguous.
- (6) The Minister may revoke or amend an order made under subsection (1) by further order published in the *Gazette*.
- (7) The regulations may prescribe transitional provisions in relation to the revocation or amendment of an order under this section.

171D. Constitution, procedure and conduct of DAPs

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed, for the establishment and functioning of DAPs.

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- 1 (2) Without limiting subsection (1), regulations may be
2 made about the constitution, procedure and conduct of
3 DAPs, including but not limited to regulations about
4 the following —
- 5 (a) the total number of persons who are to be on a
6 DAP;
- 7 (b) the qualifications to be held by each person on
8 a DAP;
- 9 (c) the procedure to be followed for nominating
10 and appointing DAP members;
- 11 (d) the remuneration and allowances payable to
12 DAP members;
- 13 (e) the term of office of DAP members;
- 14 (f) the removal of DAP members;
- 15 (g) compiling and maintaining a register of persons
16 who are eligible to be DAP members;
- 17 (h) the paid training of persons appointed to be
18 DAP members;
- 19 (i) procedures at DAP meetings;
- 20 (j) the conduct of DAP members.
- 21 (3) The qualifications to be held by a person on a DAP
22 may be specified in the regulations by reference to one
23 or more of these —
- 24 (a) an office or position;
- 25 (b) an educational qualification;
- 26 (c) a type or level of knowledge;
- 27 (d) a type or level of experience.
- 28 **171E. Administration and costs of DAPs**
- 29 (1) The Governor may make regulations about —
- 30 (a) the administration of DAPs; and
- 31 (b) the payment of the costs and expenses of DAPs.

- 1 (2) Without limiting subsection (1), regulations may be
2 made —
- 3 (a) about the staffing, facilities and services that
4 are to be provided to DAPs by the chief
5 executive officer or by local governments; and
- 6 (b) about the access of the Minister to information
7 in the possession of a DAP; and
- 8 (c) about reporting requirements in relation to —
- 9 (i) directions under the regulations; and
10 (ii) expenditure in relation to DAPs; and
11 (iii) determinations by DAPs; and
12 (iv) any other matter specified in the
13 regulations.
- 14 (3) A local government must comply with a direction
15 given and requirements prescribed under
16 subsection (2).

17 **171F. Review of Regulations**

- 18 (1) An appropriate Standing Committee of the Legislative
19 Council is to carry out a review of the operation and
20 effectiveness of all regulations made under this Part as
21 soon as practicable after the expiry of 2 years from the
22 day on which regulations made under this Part first
23 come into operation.
- 24 (2) The Standing Committee is to prepare a report based
25 on the review and, as soon as practicable after the
26 report is prepared, is to cause the report to be laid
27 before each House of Parliament.
28

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44. Section 266 amended

(1) In section 266(1) in the definition of *member*:

(a) in paragraph (e) delete “local government.” and insert:

local government;

(b) after paragraph (e) insert:

(f) a member of a DAP.

(2) In section 266(6) delete “Commission.” and insert:

Commission or any other person.

1 **Part 4 — State planning policy amendments: *Planning***
2 ***and Development Act 2005***

3 **45. Act amended**

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

5 **46. Section 77A inserted**

6 At the end of Part 5 Division 2 insert:

7
8 **77A. Minister may order local government to amend**
9 **local planning scheme to be consistent with State**
10 **planning policy**

- 11 (1) The Minister may, on the recommendation of the
12 Commission, order a local government to prepare and
13 submit for the approval of the Minister an amendment
14 to a local planning scheme for the purpose of rendering
15 the local planning scheme consistent with a specified
16 State planning policy.
- 17 (2) The order must specify the following —
- 18 (a) the relevant State planning policy;
- 19 (b) the amendments that are to be made to the local
20 planning scheme;
- 21 (c) the time (being sufficient time to allow the
22 local government to comply with its obligations
23 under Divisions 3 and 4) by which the local
24 government must comply with the order.
- 25 (3) The Minister must, as soon as is practicable after the
26 order is given to the local government, cause a copy of
27 the order to be laid before each House of Parliament or
28 dealt with under section 268A.

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- 1 (4) If —
2 (a) the Commission makes a recommendation for
3 the purposes of subsection (1); and
4 (b) the Minister decides not to make an order
5 pursuant to the recommendation,
6 the Minister must, as soon as is practicable —
7 (c) give the Commission written reasons for the
8 Minister’s decision; and
9 (d) cause a copy of the reasons to be laid before
10 each House of Parliament or dealt with under
11 section 268A.
12

13 **47. Section 212 amended**

14 In section 212(1):

- 15 (a) after paragraph (a) insert:
16
17 (ba) comply with an order made under section 77A;
18 or
19
20 (b) after each of paragraphs (a) and (b) insert:
21
22 or
23

24 **48. Section 246 amended**

25 In section 246(4) delete “before, or transmitted in accordance
26 with section 248(1) to the Clerk of, each House of Parliament.”
27 and insert:

28
29 before each House of Parliament or dealt with under
30 section 268A.
31

1 **49. Section 248 deleted**

2 Delete section 248.

3 **50. Section 268A inserted**

4 After section 267 insert:

5

6 **268A. Laying before House of Parliament that is not**
7 **sitting**

8 (1) If section 77A(4) or (5), 119(5A) or 246(4) requires the
9 Minister, as soon as is practicable, to cause a copy of
10 an order, improvement plan or direction to be laid
11 before each House of Parliament, or dealt with under
12 this section, and —

13 (a) at the commencement of the period after the
14 day on which the order, improvement plan or
15 direction is given, a House of Parliament is not
16 sitting; and

17 (b) the Minister is of the opinion that the House
18 will not sit during the period of 14 days after
19 the order or direction is given,

20 the Minister is to transmit a copy of the order,
21 improvement plan or direction to the Clerk of that
22 House.

23 (2) A copy of an order, improvement plan or direction
24 transmitted to the Clerk of a House is to be taken to
25 have been laid before that House.

26 (3) The laying of a copy of an order, improvement plan or
27 direction that is regarded as having occurred under
28 subsection (2) is to be recorded in the Minutes, or
29 Votes and Proceedings, of the House on the first sitting
30 day of the House after the Clerk received the copy.

31

1 **Part 5 — Other amendments related to *Planning and***
2 ***Development Act 2005***

3 **Division 1 — *Planning and Development Act 2005* amended**

4 **51. Act amended**

5 This Division amends the *Planning and Development Act 2005*.

6 **52. Section 4 amended**

7 In section 4(1) in the definition of *planning scheme* delete
8 paragraph (a) and “and” after it and insert:

- 9
- 10 (a) the provisions of the scheme being —
- 11 (i) the provisions set out in the scheme; and
- 12 (ii) any State planning policy that, with any
13 modifications set out in the scheme, has
14 effect under section 77(2)(b) as part of
15 the scheme; and
- 16 (iii) any provisions that have effect under
17 section 257B(2) as part of the scheme;
- 18 and
- 19

20 **53. Section 68 amended**

21 In section 68(2) delete “Nothing” and insert:

22

23 Except as provided in section 257B(3), nothing

24

1 **54. Section 69 amended**

2 After section 69(2) insert:

3

4 (3) This section applies subject to section 256 and the
5 regulations made under it and sections 257A and 257B.

6

7 **55. Section 73 amended**

8 (1) In section 73(1):

9 (a) in paragraph (b) delete “local government;” and insert:

10

11 local government.

12

13 (b) delete paragraphs (c), (d) and (e).

14 (2) After section 73(1) insert:

15

16 (2A) A local planning scheme may —

17 (a) supplement provisions prescribed under
18 section 256; and

19 (b) deal with any special circumstances or
20 contingencies for which adequate provisions
21 are not prescribed under section 256.

22

23 **56. Section 76 amended**

24 (1) In section 76(1):

25 (a) in paragraph (a) after “local planning scheme” (each
26 occurrence) insert:

27

28 or an amendment to a local planning scheme

29

30 (b) insert “or” after paragraph (a);

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Division 1 Planning and Development Act 2005 amended

s. 56

- 1 (c) in paragraph (b) delete “any scheme” and insert:
2
3 a local planning scheme or an amendment to a
4 local planning scheme
5
- 6 (d) in paragraph (b) after “local planning scheme” insert:
7
8 or an amendment to a local planning scheme
9
- 10 (e) after “local planning scheme,” (each occurrence) insert:
11
12 or an amendment to a local planning scheme
13
- 14 (2) In section 76(2):
- 15 (a) delete “a scheme,” and insert:
16
17 a local planning scheme or an amendment to a local
18 planning scheme,
19
- 20 (b) delete “the scheme,” and insert:
21
22 the scheme or amendment,
23
- 24 (c) delete “proposed scheme” and insert:
25
26 proposed scheme or amendment
27

- 1 (3) In section 76(3) delete “scheme” and insert:
2
3 local planning scheme or an amendment
4
- 5 Note: The heading to amended section 76 is to read:
6 **Minister may order local government to prepare or adopt local**
7 **planning scheme or amendment**
- 8 (4) The Minister must, as soon as is practicable after an order is
9 given to the local government under subsection (1), cause a
10 copy of the order to be laid before each House of Parliament or
11 dealt with under section 268A.
12
- 13 **57. Section 87 amended**
- 14 Delete section 87(3) and insert:
15
- 16 (3) When the Minister notifies the Commission that the
17 Minister has approved a local planning scheme or an
18 amendment to a local planning scheme, the
19 Commission is to cause the scheme or amendment to
20 be published in the *Gazette*.
- 21 (4A) Any costs incurred by the Commission in publishing a
22 scheme or amendment under subsection (3) may be
23 recovered by the Commission from the local
24 government which prepared or adopted the scheme or
25 amendment as a debt due to the Crown.
- 26 (4B) When the Minister has approved a local planning
27 scheme or an amendment to a local planning scheme,
28 the local government which prepared or adopted the
29 scheme or amendment is to —
- 30 (a) advertise the scheme or amendment in
31 accordance with the regulations; and

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Part 5 Other amendments related to Planning and Development Act 2005

Division 1 Planning and Development Act 2005 amended

s. 58

- 1 (b) ensure that copies of the scheme or amendment
2 are available to the public.
3

4 **58. Section 112 amended**

5 (1) In section 112(1) delete “situated in a region to which a region
6 planning scheme applies”.

7 (2) Delete section 112(2) and insert:
8

9 (2) The power in subsection (1) cannot be exercised in
10 respect of any land that is —

11 (a) the subject of a redevelopment scheme
12 approved under the *East Perth Redevelopment*
13 *Act 1991*, the *Subiaco Redevelopment Act 1994*,
14 the *Midland Redevelopment Act 1999* or the
15 *Armadale Redevelopment Act 2001*; or

16 (b) in the redevelopment area as defined in the
17 *Hope Valley-Wattleup Redevelopment*
18 *Act 2000*; or

19 (c) in the development control area as defined in
20 the *Swan and Canning Rivers Management*
21 *Act 2006*; or

22 (d) in an improvement scheme area.
23

24 **59. Section 116 amended**

25 In section 116(1)(b):

26 (a) in subparagraph (i) delete “policy;” and insert:
27

28 policy; and
29

- 1 (b) in subparagraph (ii) delete “a region planning scheme;”
2 and insert:
3
4 any planning scheme; and
5
- 6 **60. Section 126 amended**
- 7 Delete section 126(3) and insert:
- 8
- 9 (3) If a region planning scheme delineates, or it is
10 proposed that a region planning scheme delineate, land
11 comprised in a local planning scheme as land in an
12 Urban zone, the Commission may publish in the
13 *Gazette* a notice amending the local planning scheme,
14 insofar as it operates in relation to that land, so that the
15 land is zoned in the local planning scheme in a manner
16 that is consistent with the objectives of the delineation
17 or proposed delineation under the region planning
18 scheme.
- 19 (4) The Commission must not publish a notice under
20 subsection (3) amending a local planning scheme until
21 the local government that made or adopted the scheme
22 has been consulted.
- 23 (5) An amendment in a notice published under
24 subsection (3) takes effect —
- 25 (a) if the relevant region planning scheme is in
26 operation on the day on which the notice is
27 published under subsection (3) — on that day;
- 28 (b) otherwise — on the day on which the relevant
29 region planning scheme comes into operation.
- 30 (6) When an amendment to a local planning scheme takes
31 effect under subsection (5), the local planning scheme
32 is, by force of this subsection and without further
33 action under this Act, amended as set out in the notice.
34

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Part 5 Other amendments related to Planning and Development Act 2005

Division 1 Planning and Development Act 2005 amended

s. 61

1 **61. Section 133 amended**

2 In section 133(1) after “this Part” insert:

3

4 (other than Division 5)

5

6 **62. Section 136 amended**

7 (1) After section 136(2) insert:

8

9 (3A) Subsection (1) does not affect the operation of the
10 *Strata Titles Act 1985* section 25(5).

11

12 (2) In section 136(3) insert in alphabetical order:

13

14 *lot* includes —

15 (a) a lot, in relation to a strata scheme, as defined
16 in the *Strata Titles Act 1985* section 3(1); and

17 (b) a lot, in relation to a survey-strata scheme, as
18 defined in the *Strata Titles Act 1985*
19 section 3(1).

20

21 (3) In section 136(3) in the definition of *licence to use or occupy*
22 delete “easement.” and insert:

23

24 easement;

25

26 **63. Section 181 amended**

27 In section 181(15)(a) delete “1998; or” and insert:

28

29 1988; or

30

1 **64. Section 256 replaced**

2 Delete section 256 and insert:

3

4 **256. Provisions that operate as part of, or are required**
5 **to be included in, a local planning scheme**

- 6 (1) The Minister may make regulations prescribing
7 provisions that deal with any or all of the following —
8 (a) carrying out the general objects of local
9 planning schemes;
10 (b) any matter set out in Schedule 7.
- 11 (2) Before making regulations under subsection (1) the
12 Minister —
13 (a) must consult with the EPA and local
14 governments; and
15 (b) may consult with any other public authority or
16 person the Minister considers is likely to be
17 affected by the proposed regulations; and
18 (c) must have regard to any submissions made
19 pursuant to consultation under paragraphs (a)
20 and (b).
- 21 (3) Consultation under subsection (2) may be undertaken
22 in any way and within such period as the Minister
23 considers appropriate in the circumstances.
- 24 (4) Unless the regulations otherwise provide, provisions
25 prescribed under subsection (1) apply to all local
26 planning schemes.
- 27 (5) The regulations must designate each provision
28 prescribed under subsection (1) as —
29 (a) a model provision, being a provision to which
30 section 257A applies; or

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Part 5 Other amendments related to Planning and Development Act 2005

Division 1 Planning and Development Act 2005 amended

s. 64

- 1 (b) a deemed provision, being a provision to which
2 section 257B applies.
- 3 (6) The regulations may include provisions of a savings or
4 transitional nature that are necessary or convenient to
5 be made for the purpose of dealing with matters that
6 are incidental to or consequential on the prescribing of
7 a model provision or a deemed provision under this
8 section.
- 9 (7) Without limiting subsection (6), regulations made
10 under that subsection may provide that specified model
11 provisions or deemed provisions of a local planning
12 scheme —
- 13 (a) do not apply; or
14 (b) apply with specified modifications,
15 to or in relation to any matter.
- 16 **257A. Effect of model provisions**
- 17 (1) In this section —
18 *model provision* means a provision designated as a
19 model provision under section 256(5)(a).
- 20 (2) Subject to subsection (3), a local planning scheme
21 prepared or adopted by a local government must
22 include any model provisions that —
- 23 (a) are prescribed by regulations in force at the
24 time the scheme is approved under section 87;
25 and
26 (b) apply to the scheme.
- 27 (3) When approving a local planning scheme under
28 section 87, the Minister may approve the exclusion
29 from, or variation in, the scheme of a model provision.

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Part 5 Other amendments related to Planning and Development Act 2005

Division 2 Local Government Act 1995 amended

s. 67

1 **67. Section 263 amended**

2 After section 263(2)(d) insert:

3

4 (ea) provide for and regulate reporting by local
5 governments in relation to planning matters;

6 (eb) regulate procedures in relation to the carrying
7 out and enforcement of local planning schemes;

8

9 **68. Schedule 7 amended**

10 (1) After Schedule 7 clause 13(3) insert:

11

12 (4) Requiring the preparation and approval of documents
13 ancillary to the carrying out of a scheme.

14

15 **Division 2 — Local Government Act 1995 amended**

16 **69. Act amended**

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

18 **70. Section 5.42 amended**

19 In section 5.42(1) delete “duties under this Act other than those
20 referred to in section 5.43.” and insert:

21

22 duties under —

23 (a) this Act other than those referred to in
24 section 5.43; or

25 (b) the *Planning and Development Act 2005*
26 section 214(2), (3) or (5).

27

28
