

Planning and Development Amendment Bill 2023

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Western Australia

LEGISLATIVE ASSEMBLY

Planning and Development Amendment Bill 2023

A Bill for

An Act to:

- **amend the *Planning and Development Act 2005*; and**
- **make consequential and related amendments to other Acts; and**
- **repeal the *Power of Entry and Inspection Regulations*.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Planning and Development Amendment Act 2023*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 — immediately after the *Planning and Development Amendment Act 2020* Part 3 comes into operation;
- (c) Parts 4, 6 and 7, Part 8 (but only Division 3), Part 10, Part 11 (other than section 76) and Part 12 — on the day after assent day;
- (d) Part 5 — immediately after the *Planning and Development Amendment Act 2020* Part 7 comes into operation;
- (e) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — Development Assessment Panels**

2 **3. Act amended**

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

4 **4. Section 4 amended**

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

6 *district DAP*

7 *special matters DAP*

8 (2) In section 4(1) in the definition of *Development Assessment*
9 *Panel* or *DAP* delete “district DAP or special matters DAP;”
10 and insert:

11
12 Development Assessment Panel established under
13 section 171C(1);
14

15 **5. Section 171C amended**

16 (1) In section 171C(1) delete the passage that begins with
17 “establish —” and continues to the end of the subsection and
18 insert:

19
20 establish a Development Assessment Panel for 1 or more
21 districts specified in the order.
22

23 (2) Delete section 171C(1A).

24 (3) In section 171C(3) and (5) delete “district DAP” (each
25 occurrence) and insert:

26
27 DAP
28

s. 6

1 **6. Section 289 amended**

2 (1) In section 289(2) and (3) delete “district DAP established under
3 section 171C(1)(a)” and insert:

4
5 DAP established under section 171C(1)

6
7 (2) In section 289(4) delete “district DAP under
8 section 171C(1)(a)” and insert:

9
10 DAP under section 171C(1)

11
12 Note: The heading to amended section 289 is to read:

13 **LDAP or JDAP continues as DAP for district or districts**

1 **Part 3 — Development approval for significant**
2 **development and avoiding conflicts with approvals**

3 **7. Act amended**

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

5 **8. Section 4 amended**

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

7
8 **Government agreement** has the meaning given in the
9 *Government Agreements Act 1979* section 2;
10

11 **9. Section 20 amended**

12 In section 20(1) delete “in the *Gazette*” and insert:

13
14 in accordance with the *Interpretation Act 1984* section 41(1)(a)
15

16 **10. Section 171A amended**

17 After section 171A(3) insert:

18
19 (4) Regulations made for the purposes of subsection (2)
20 have effect subject to Parts 11B and 17.
21

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1 **11. Parts 11B and 11C inserted**

2 Before Part 11 insert:

3

4 **Part 11B — Development approval for**
5 **significant development**

6 **Division 1 — Preliminary**

7 **171H. Terms used**

8 (1) In this Part —

9 ***applicable planning instrument*** means —

- 10 (a) in relation to a development application that
11 would, apart from this Part, be determined
12 under a local planning scheme — the local
13 planning scheme; or
- 14 (b) in relation to a development application that
15 would, apart from this Part, be determined
16 under a region planning scheme — the region
17 planning scheme; or
- 18 (c) in relation to a development application that
19 would, apart from this Part, be determined
20 under the Swan Valley Planning Scheme — the
21 Swan Valley Planning Scheme; or
- 22 (d) in relation to a development application that
23 would, apart from this Part, be determined
24 under an interim development order — the
25 interim development order;

26 ***design review***, in relation to development to which a
27 development application or prospective development

- 1 application relates, means a review of the design of the
2 development conducted by —
- 3 (a) a committee established under Schedule 2
4 clause 1; or
- 5 (b) another person or body that the Commission
6 considers has appropriate qualifications,
7 knowledge and experience to conduct the
8 review;
- 9 ***development application*** —
- 10 (a) means a development application as defined in
11 section 4(1); and
- 12 (b) includes a prescribed development application
13 as defined in section 171A(1);
- 14 ***local planning strategy*** means a local planning strategy
15 in effect under regulations made under this Act;
- 16 ***mandatory significant development*** has the meaning
17 given in section 171I(2);
- 18 ***normal decision-maker***, in relation to a development
19 application, means a person or body who could, apart
20 from this Part, determine the application under the
21 applicable planning instrument;
- 22 ***Part 11B regulations*** means regulations made under
23 section 171ZD(1);
- 24 ***prescribed significant development*** has the meaning
25 given in section 171I(1);
- 26 ***procedural provision***, in relation to an applicable
27 planning instrument —
- 28 (a) means a provision of the applicable planning
29 instrument that relates to a procedure for
30 dealing with a development application; and

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- 1 (b) includes a provision of the applicable planning
2 instrument that relates to any of the
3 following —
4 (i) a development application being
5 accepted for assessment;
6 (ii) the provision of additional information
7 or material in relation to a development
8 application;
9 (iii) advertising or publicising a
10 development application, including
11 recovery of costs of such advertising or
12 publicising;
13 (iv) consulting with any persons or bodies in
14 relation to a development application;
15 (v) considering submissions made on a
16 development application;
17 (vi) the time within which a development
18 application is required to be determined;
19 (vii) a development application being taken
20 to be refused if it is not determined
21 within the required time;
22 (viii) any other matter prescribed by Part 11B
23 regulations for the purposes of this
24 subparagraph;
25 but
26 (c) does not include a provision of the applicable
27 planning instrument that relates to the matters
28 to which regard must be had in considering a
29 development application (except to the extent
30 that the provision provides for a matter to
31 which regard must be had in connection with
32 submissions or consultation as referred to in
33 paragraph (b));

- 1 **significant development application** means a
2 development application made to the Commission for
3 determination under this Part under section 171L(1);
4 **substantially commenced**, in relation to development
5 approved under section 171P(1), means that some
6 substantial part of work in respect of the development
7 has been performed at the site of the development.
- 8 (2) In this Part —
- 9 (a) a reference to a determination under
10 section 171P(1) is a reference to that
11 determination as amended from time to time
12 under section 171X or by an order under
13 section 171ZA; and
- 14 (b) a reference to the conditions on an approval of
15 development granted under section 171P(1) is a
16 reference to those conditions as amended from
17 time to time under section 171X or by an order
18 under section 171ZA; and
- 19 (c) a reference to the approved development in
20 relation to an approval of development granted
21 under section 171P(1) is a reference to that
22 approved development as amended from time
23 to time under section 171X or by an order
24 under section 171ZA.

25 **171I. Prescribed significant development**

- 26 (1) In this Part, **prescribed significant development** is
27 development that is of a class or kind prescribed by
28 Part 11B regulations for the purposes of this
29 subsection.
- 30 (2) Part 11B regulations may provide for classes or kinds
31 of prescribed significant development to be **mandatory**
32 **significant development** for the purposes of
33 section 171L(2).

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- 1 (3) Without limiting subsections (1) and (2), Part 11B
2 regulations made for the purposes of this section may
3 describe a class or kind of development by reference to
4 the estimated cost of the development, the nature of the
5 development, the area in which the development is to
6 be carried out or any other matter.

7 **171J. Development to which this Part applies**

- 8 This Part does not apply in relation to development —
9 (a) in a planning control area; or
10 (b) in an improvement scheme area; or
11 (c) in an area to which an approved redevelopment
12 scheme under the *Metropolitan Redevelopment*
13 *Authority Act 2011* applies; or
14 (d) in the redevelopment area as defined in the
15 *Hope Valley-Wattleup Redevelopment Act 2000*
16 section 3(1); or
17 (e) to which the *Swan and Canning Rivers*
18 *Management Act 2006* Part 5 applies; or
19 (f) if a Government agreement is in effect that
20 affects the operation of this Act, or the
21 operation of an applicable planning instrument,
22 in relation to approval for the development; or
23 (g) that is a public work.

24 **171K. Relationship of this Part with other laws**

- 25 (1) This Part has effect despite any other provision of this
26 Act (other than Part 11C) or any provision of an
27 applicable planning instrument.
28 (2) To avoid doubt, this Part is subject to section 5 of the
29 EP Act.

1 **Division 2 — Determination of significant development**
2 **applications**

3 **Subdivision 1 — Making significant development**
4 **applications**

5 **171L. Development application may be made to**
6 **Commission for determination under this Part**

- 7 (1) A person may make a development application to the
8 Commission for determination under this Part if —
9 (a) the application is for approval of prescribed
10 significant development; or
11 (b) the Premier has given authorisation under
12 section 171M(3) for the application to be made
13 and determined under this Part.

- 14 (2) A development application for approval of mandatory
15 significant development must be made to the
16 Commission for determination under this Part under
17 subsection (1) and cannot be made to a normal
18 decision-maker for determination under the applicable
19 planning instrument as it applies apart from this Part.

20 **171M. Authorisation for application raising issues of State**
21 **or regional importance to be made under s. 171L**

- 22 (1) The prospective applicant in relation to a development
23 application that has not yet been made may, by notice
24 given to the Minister, request authorisation for the
25 application to be made and determined under this Part.
26 (2) On a request under subsection (1), the Minister may
27 recommend that the Premier give authorisation for the
28 making and determination of the development
29 application under this Part if the Minister considers that
30 the application raises issues of such State or regional

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- 1 importance that it would be appropriate for it to be
2 made and determined under this Part.
- 3 (3) On the recommendation of the Minister under
4 subsection (2), the Premier may give authorisation in
5 writing for the development application to be made and
6 determined under this Part.
- 7 (4) If authorisation is given under subsection (3) —
8 (a) the Premier must, as soon as is practicable —
9 (i) give a copy of the authorisation to the
10 Commission; and
11 (ii) cause a copy of the authorisation to be
12 laid before each House of Parliament or
13 dealt with under section 268A;
14 and
15 (b) the Commission must publish the authorisation
16 on a website maintained by, or on behalf of, the
17 Commission.

18 **171N. Supplementary provisions about applications and**
19 **authorisations**

- 20 (1) A significant development application —
21 (a) must be made —
22 (i) in accordance with any requirements
23 prescribed by Part 11B regulations for
24 the purposes of this subparagraph; and
25 (ii) otherwise in the manner and form
26 required by the Commission;
27 and
28 (b) without limiting paragraph (a), must include
29 any documents or information required by
30 Part 11B regulations or by the Commission.

- 1 (2) A request under section 171M(1) must be made in the
2 manner and form required by the Minister and, without
3 limitation, include any documents or information
4 required by the Minister.
- 5 (3) Without limiting section 171K(1), in imposing
6 requirements under subsection (1) or (2), the
7 Commission or Minister is not bound or restricted by
8 any provisions of an applicable planning instrument
9 that would, apart from this Part and Part 11B
10 regulations, regulate, or otherwise apply in relation to,
11 any of the following —
- 12 (a) the making of a development application;
- 13 (b) a development application itself;
- 14 (c) the consideration or determination of a
15 development application.

16 **Subdivision 2 — Considering and determining significant**
17 **development applications**

18 **171O. Significant development application must be**
19 **determined under s. 171P(1)**

20 A significant development application must be
21 determined under section 171P(1).

22 **171P. Determination of significant development**
23 **application by Commission**

- 24 (1) The Commission must consider a significant
25 development application and determine it by —
- 26 (a) granting approval for the development without
27 conditions; or
- 28 (b) granting approval for the development with
29 conditions; or
- 30 (c) refusing approval for the development.

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- 1 (2) Except as otherwise provided in this Subdivision, the
2 Commission must consider and determine the
3 significant development application under
4 subsection (1) as if it were considering and determining
5 the application under the applicable planning
6 instrument.
- 7 (3) If the Commission is not a normal decision-maker
8 under the applicable planning instrument, the
9 applicable planning instrument applies for the purposes
10 of subsection (2) as if the Commission were a normal
11 decision-maker.

12 **171Q. Procedures for dealing with significant development**
13 **application**

- 14 (1) For the purposes of the Commission's consideration
15 and determination of a significant development
16 application under section 171P(1) —
- 17 (a) Part 11B regulations made under
18 section 171ZD(2)(c) apply; and
- 19 (b) procedural provisions of the applicable
20 planning instrument do not apply.
- 21 (2) Despite subsection (1)(b), the Commission may decide
22 to apply particular procedural provisions of the
23 applicable planning instrument in considering and
24 determining a significant development application if
25 the Commission considers that the provisions are
26 consistent with this Subdivision and Part 11B
27 regulations made under section 171ZD(2)(c) and that it
28 is appropriate in the circumstances for the provisions to
29 apply.

1 **171R. Determining significant development application**
2 **inconsistently with applicable planning instrument**
3 **in some circumstances**

4 (1) The Commission may determine a significant
5 development application under section 171P(1) in a
6 manner that conflicts with the provisions of the
7 applicable planning instrument —

8 (a) if the Commission is of the opinion that —

9 (i) the application raises issues of State or
10 regional importance; and

11 (ii) the determination is in the public
12 interest;

13 or

14 (b) if —

15 (i) the applicable planning instrument is a
16 local planning scheme; and

17 (ii) the local planning scheme was not first
18 published, or a consolidation of the
19 local planning scheme has not been
20 published, in the preceding 5 years; and

21 (iii) the determination complies with any
22 requirements prescribed by Part 11B
23 regulations for the purposes of this
24 subparagraph;

25 or

26 (c) if —

27 (i) the applicable planning instrument is a
28 local planning scheme; and

29 (ii) in the opinion of the Commission, the
30 conflict is of a minor nature; and

31 (iii) in the opinion of the Commission, the
32 determination is consistent with the

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- 1 general intent of each State planning
2 policy, planning code, region planning
3 scheme and local planning strategy that
4 is relevant to the development;
- 5 or
- 6 (d) in circumstances prescribed by Part 11B
7 regulations for the purposes of this paragraph.
- 8 (2) In making a determination under section 171P(1) in a
9 manner permitted by subsection (1) of this section, the
10 Commission must have due regard to the need to
11 ensure the orderly and proper planning, and the
12 preservation of amenity, of the locality to which the
13 application relates.
- 14 (3) For the purposes of subsection (1)(a), the Commission
15 is not limited to planning considerations and may have
16 regard to any other matter affecting the public interest.
- 17 (4) Subsection (1) does not permit the Commission to
18 determine a significant development application under
19 section 171P(1) in a manner that conflicts with an
20 environmental condition.
- 21 **171S. Provisions about determination of significant**
22 **development application**
- 23 (1) In determining a significant development application
24 under section 171P(1) —
- 25 (a) approval can be granted —
- 26 (i) for the development for which approval
27 is sought; or
- 28 (ii) for that development, except for a part
29 or aspect of that development specified
30 in the approval; or

- 1 (iii) for a part or aspect of that development
2 specified in the approval;
- 3 but
- 4 (b) approval cannot be granted as referred to in
5 paragraph (a)(ii) or (iii) —
- 6 (i) in the case of a significant development
7 application made with the authorisation
8 of the Premier under
9 section 171M(3) — for development
10 that is substantially different from the
11 development for which approval is
12 sought; or
- 13 (ii) otherwise — for development that is not
14 prescribed significant development.
- 15 (2) For the purposes of section 171P(1)(b), the
16 Commission may impose any conditions that the
17 Commission considers appropriate, including (without
18 limitation) the following —
- 19 (a) a condition limiting the time period for which
20 approval is granted;
- 21 (b) a condition requiring further details of the
22 development specified in the approval to be,
23 before the development is commenced,
24 submitted to, and approved by, the
25 Commission.
- 26 (3) The Commission can impose a condition of the kind
27 referred to in subsection (2)(b) only if the Commission
28 considers that the further details to be approved would
29 not substantially change the approved development.

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- 1 (4) When the Commission determines a significant
2 development application under section 171P(1), the
3 Commission must —
- 4 (a) give written notice of the determination,
5 including the Commission’s reasons for the
6 determination, to —
- 7 (i) the applicant; and
8 (ii) each local government to the district of
9 which the significant development
10 application relates;
- 11 and
- 12 (b) make copies of the determination and reasons
13 publicly available on a website maintained by,
14 or on behalf of, the Commission.
- 15 (5) A determination under section 171P(1) has effect on
16 the day on which the notice of the determination is
17 given to the applicant under subsection (4)(a)(i).

18 **171T. Time for determination of significant development**
19 **application**

- 20 (1) The Commission must determine a significant
21 development application within the period provided for
22 under Part 11B regulations for the purposes of this
23 subsection.
- 24 (2) The Commission may determine a significant
25 development application under section 171P(1) after
26 the period referred to in subsection (1) has expired and
27 the validity of the determination is not affected by the
28 expiry.

**Subdivision 3 — Consequences of determination and
amendment and cancellation of determination**

**171U. Effect of determination of significant development
application under s. 171P(1)**

- (1) This section applies if the Commission determines a significant development application under section 171P(1).
- (2) The Commission's determination has effect, and is valid, for the purposes of this Act and all other written laws, as if it had been made under the applicable planning instrument by a normal decision-maker.

Example for this subsection:

1. If the significant development application would, apart from this Part, have been determined by a local government for the purposes of a local planning scheme, the Commission's determination has the same effect for the purposes of the local planning scheme as if the determination had been made by the local government.
2. Accordingly, if the determination is to grant approval for development —
 - (a) the development may be commenced and carried out as if the approval had been granted by the local government; and
 - (b) any conditions imposed by the Commission on the approval must be complied with as if they were conditions imposed on the approval by the local government; and
 - (c) section 218(c) applies in relation to a failure to comply with any of those conditions.
- (3) Subsection (2) applies even if the Commission's determination could not have been made by a normal decision-maker under the applicable planning instrument.
- (4) Without limiting subsections (2) and (3), a decision, or other act or omission, of a person or body is not unlawful or invalid just because the Commission's

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- 1 determination could not have been made by a normal
2 decision-maker under the applicable planning
3 instrument.
- 4 (5) Subsections (2) to (4) are subject to sections 171W
5 and 171X and Division 3.
- 6 (6) If the Commission's determination is to grant approval
7 for development, the determination does not affect the
8 operation of any written law that requires the obtaining,
9 in relation to the development, of any other type of
10 approval, consent, licence, permit, registration or other
11 authority (however described).
- 12 Examples for this subsection:
- 13 1. A building permit or demolition permit under the *Building*
14 *Act 2011*.
- 15 2. A licence under the *Liquor Control Act 1988*.
- 16 Note for this subsection:
17 Part 11C applies despite this Part (see section 171ZF(1)).
- 18 **171V. Enforcement powers of Commission in relation to**
19 **conditions**
- 20 (1) If development is commenced, continued or carried out
21 otherwise than in accordance with any of the
22 conditions on an approval of development granted
23 under section 171P(1), the Commission has the powers
24 of a responsible authority under sections 214, 215
25 and 216 in relation to the development.
- 26 (2) Subsection (1) does not limit any powers of a
27 responsible authority under sections 214, 215 and 216
28 (including any powers that a responsible authority has
29 under those sections because of section 171U(2)).

- 1 **171W. Substantial commencement of development**
2 **approved under s. 171P(1)**
- 3 (1) This section applies if the Commission grants approval
4 for development under section 171P(1).
- 5 (2) The development must be substantially commenced —
6 (a) within the period specified in the approval for
7 the purposes of this subsection; or
8 (b) if no period is specified in the approval —
9 within the period of 4 years beginning on the
10 day on which the approval is granted.
- 11 (3) The approval lapses if the development is not
12 substantially commenced within the period referred to
13 in subsection (2).
- 14 Note for this subsection:
15 The period referred to in subsection (2) can be extended by
16 an amendment to the approval made under
17 section 171X(2)(a) or an order made under
18 section 171ZA(2)(a).
- 19 (4) An application under section 171X(2)(a) can be made
20 or determined in relation to the approval even if the
21 approval has lapsed under subsection (3) and, if the
22 application is granted after the approval has lapsed, the
23 approval comes back into effect accordingly when the
24 application is granted.
- 25 (5) An order under section 171ZA(2)(a) can be made in
26 relation to the approval even if the approval has lapsed
27 under subsection (3), in which event the approval
28 comes back into effect accordingly when the
29 amendment is made.

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- 1 **171X. Amendment or cancellation of approval granted**
2 **under s. 171P(1)**
- 3 (1) This section applies if the Commission grants approval
4 for development under section 171P(1) in respect of
5 any land.
- 6 (2) An owner of the land, or a person who is of a class or
7 kind prescribed by Part 11B regulations for the
8 purposes of this subsection, may apply to the
9 Commission for the Commission —
- 10 (a) for the purposes of section 171W(2), to amend
11 the approval —
- 12 (i) to extend the period specified in the
13 approval; or
- 14 (ii) if no period is specified in the
15 approval — to specify a period that is
16 longer than the period of 4 years
17 referred to in section 171W(2)(b);
- 18 or
- 19 (b) to amend or remove any of the conditions
20 imposed on the approval; or
- 21 (c) to amend any part or aspect of the approved
22 development; or
- 23 (d) to amend the approval in any other way; or
- 24 (e) to cancel the approval.
- 25 (3) An amendment of the kind referred to in
26 subsection (2)(c) —
- 27 (a) cannot substantially change the approved
28 development; and
- 29 (b) in the case of approval granted on a significant
30 development application not made with the
31 authorisation of the Premier under
32 section 171M(3) — cannot result in the

- 1 approved development no longer being
2 prescribed significant development.
- 3 (4) The Commission must consider an application made
4 under subsection (2) and determine it by —
5 (a) granting it (with or without conditions); or
6 (b) refusing it.
- 7 (5) Sections 171N(1), 171P(2) and (3), 171Q, 171R,
8 171S(2) to (5), 171T and 171ZD apply with any
9 necessary modifications to an application under
10 subsection (2) as they apply to a significant
11 development application.
- 12 (6) Subject to Division 3, no person or body, apart from
13 the Commission acting under this section, can do any
14 of the following in relation to the approval referred to
15 in subsection (1) —
16 (a) make an amendment of the kind referred to in
17 subsection (2)(a);
18 (b) amend or remove any of the conditions
19 imposed on the approval;
20 (c) impose new conditions on the approval;
21 (d) amend any part or aspect of the approved
22 development;
23 (e) amend the approval in any other way;
24 (f) cancel the approval.

25 **Division 3 — Oversight of Commission**

26 **171Y. Review by State Administrative Tribunal**

- 27 (1) If the Commission determines a significant
28 development application, the applicant may apply to

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- 1 the State Administrative Tribunal for a review, in
2 accordance with Part 14, of —
- 3 (a) a determination by the Commission to refuse
4 approval for the development under
5 section 171P(1)(c); or
- 6 (b) any condition imposed by the Commission on
7 the determination of the application.
- 8 (2) If the Commission determines an application under
9 section 171X, the applicant may apply to the State
10 Administrative Tribunal for a review, in accordance
11 with Part 14, of —
- 12 (a) a determination by the Commission to refuse
13 the application under section 171X(4)(b); or
- 14 (b) any condition imposed by the Commission on
15 the determination of the application.
- 16 (3) If the Commission does not determine a significant
17 development application within the period referred to
18 in section 171T(1), the applicant may apply for a
19 review under subsection (1) as if the Commission had,
20 on the last day of that period, determined the
21 application under section 171P(1)(c) by refusing
22 approval for the development.
- 23 (4) If the Commission does not determine an application
24 under section 171X(2) within the period referred to in
25 section 171T(1) (as that section applies under
26 section 171X(5)), the applicant may apply for a review
27 under subsection (2) as if the Commission had, on the
28 last day of that period, determined the application
29 under section 171X(4)(b) by refusing the application.
- 30 (5) For an application for review under this section, the
31 Commission is the decision-maker for the purposes of
32 the *State Administrative Tribunal Act 2004*.

1 **171Z. Ministerial call-in of application for review under**
2 **s. 171Y**

- 3 (1) If the significant development application to which an
4 application for review under section 171Y(1) or (2)
5 relates was made with the authorisation of the Premier
6 under section 171M(3), the application for review must
7 be heard by the State Administrative Tribunal, and
8 determined by the Minister under section 247, as if the
9 Minister had given a direction under section 246(2)(b)
10 in relation to the application for review.
- 11 (2) If the significant development application to which an
12 application for review under section 171Y(1) or (2)
13 relates was not made with the authorisation of the
14 Premier under section 171M(3), the Minister cannot
15 give a direction under section 246(2)(a) in relation to
16 the application for review.
- 17 (3) Subsection (2) does not affect the Minister's power to
18 give a direction under section 246(2)(b).
- 19 (4) For the purposes of subsections (1) and (2), the
20 significant development application to which an
21 application for review under section 171Y(1) or (2)
22 relates is —
- 23 (a) in the case of an application for review under
24 section 171Y(1) — the significant development
25 application referred to in section 171Y(1); or
- 26 (b) in the case of an application under
27 section 171Y(2) — the significant development
28 application determined by granting the approval
29 of development to which the application under
30 section 171X referred to in section 171Y(2)
31 relates.

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- 1 **171ZA. Governor may amend or cancel approval granted**
2 **by Commission under s. 171P(1)**
- 3 (1) This section applies if the Commission grants approval
4 for development under section 171P(1).
- 5 (2) The Governor may, by order, do any of the
6 following —
- 7 (a) for the purposes of section 171W(2), amend the
8 approval —
- 9 (i) to extend the period specified in the
10 approval; or
- 11 (ii) if no period is specified in the
12 approval — to specify a period that is
13 longer than the period of 4 years
14 referred to in section 171W(2)(b);
- 15 (b) amend or remove any of the conditions
16 imposed on the approval;
- 17 (c) impose new conditions on the approval;
- 18 (d) amend any part or aspect of the approved
19 development;
- 20 (e) amend the approval in any other way;
- 21 (f) cancel the approval.
- 22 (3) An amendment of the kind referred to in
23 subsection (2)(d) —
- 24 (a) cannot substantially change the approved
25 development; and
- 26 (b) in the case of approval granted on a significant
27 development application not made with the
28 authorisation of the Premier under
29 section 171M(3) — cannot result in the
30 approved development no longer being
31 prescribed significant development.

- 1 (4) An order under this section may include directions for
2 giving effect to the order.
- 3 (5) The Commission cannot do anything under
4 section 171X that would override, or otherwise be
5 inconsistent with, the provisions of an order under this
6 section.
- 7 (6) An order under this section is subsidiary legislation for
8 the purposes of the *Interpretation Act 1984*.
- 9 (7) The *Interpretation Act 1984* section 42 applies to an
10 order under this section as if it were a regulation.

Division 4 — Miscellaneous

171ZB. Meetings to be open to public

- 13 (1) A meeting of the board, or of a committee of the
14 Commission, that is held for the purpose of the
15 Commission's consideration or determination of a
16 significant development application, or an application
17 under section 171X, must be open to the public.
- 18 (2) The requirement in subsection (1) is satisfied if
19 members of the public can observe the meeting using
20 audiovisual communication.
- 21 (3) Subsection (1) does not apply to a meeting, or part of a
22 meeting, that deals with a matter of a kind prescribed
23 by Part 11B regulations for the purposes of this
24 subsection.

171ZC. Fees

- 26 (1) The Minister may, by notice published in accordance
27 with the *Interpretation Act 1984* section 41(1)(a) —
- 28 (a) set fees to be charged in respect of any matter
29 under, or relating to, this Part or any Part 11B
30 regulations; and

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- 1 (b) make provision for determining the persons by
2 whom the fees are payable.
- 3 (2) Neither the Commission nor any other person or body
4 is required to consider or determine a significant
5 development application, or to do any other thing under
6 this Part or Part 11B regulations, unless any fee
7 relating to the application or other thing has been paid.
- 8 (3) Section 20 does not apply in relation to this Part.

9 **171ZD. Regulations**

- 10 (1) The Governor may make regulations prescribing all
11 matters that are required or permitted by this Part to be
12 prescribed or are necessary or convenient to be
13 prescribed for giving effect to the purposes of this Part.
- 14 (2) Without limiting subsection (1), Part 11B regulations
15 may make provision for or in relation to the
16 following —
- 17 (a) requests, recommendations and authorisations
18 under section 171M;
- 19 (b) procedures to be followed before significant
20 development applications are made;
- 21 (c) procedures for dealing with significant
22 development applications, including in relation
23 to any matter referred to in paragraph (b)(i)
24 to (v) of the definition of *procedural provision*
25 in section 171H(1).
- 26 (3) For the purposes of subsection (2)(b) and (c), Part 11B
27 regulations may, without limitation —
- 28 (a) prescribe procedures that require or permit
29 design review of development to be conducted;
30 and
- 31 (b) provide for procedures to be determined by the
32 Commission.

1 **Part 11C — Avoiding conflicts with certain**
2 **development approvals**

3 **Division 1 — Preliminary**

4 **171ZE. Terms used**

5 In this Part —

6 ***approved development***, in relation to a relevant
7 development approval, means the development for
8 which approval is given;

9 ***conflict***, in relation to the performance of a function
10 and a relevant development approval, has the meaning
11 given in section 171ZI;

12 ***Part 11C regulations*** means regulations made under
13 section 171ZP;

14 ***prescribed significant development*** has the meaning
15 given in section 171I(1);

16 ***relevant development approval*** has the meaning given
17 in section 171ZG(1);

18 ***relevant legal instrument*** means —

- 19 (a) this Act, other than this Part and Part 11C
20 regulations;
- 21 (b) a planning scheme or an interim development
22 order;
- 23 (c) the *Main Roads Act 1930*;
- 24 (d) regulations made under the *Local Government*
25 *Act 1995* section 9.60 and applying as local
26 laws, to the extent that those regulations deal
27 with a matter referred to in Schedule 9.1
28 clause 7 of that Act;
- 29 (e) any other enactment prescribed by Part 11C
30 regulations for the purposes of this paragraph;

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- 1 (f) any other scheme, code, policy, plan, local law,
2 by-law, rule, condition, notice or other
3 instrument made under any enactment covered
4 by paragraph (a), (c) or (e);

5 **responsible Minister**, in relation to a relevant legal
6 instrument, means the Minister responsible for the
7 administration of the relevant legal instrument or the
8 enactment under which the relevant legal instrument is
9 made.

10 **171ZF. Relationship of this Part with other laws and**
11 **instruments**

- 12 (1) This Part has effect despite any relevant legal
13 instrument.
14 (2) To avoid doubt, this Part is subject to section 5 of the
15 EP Act.

16 **171ZG. Relevant development approvals**

- 17 (1) A **relevant development approval** is any of the
18 following —
19 (a) an approval of development in a planning
20 control area granted by the Commission under
21 section 116(1); or
22 (b) an approval of development granted by the
23 Commission in determining a development
24 application under an improvement scheme; or
25 (c) an approval of development granted by the
26 Commission in determining a significant
27 development application under section 171P(1);
28 or
29 (d) an approval of development affirmed, varied or
30 granted by the Minister in determining under

- 1 section 247 an application for review that
2 was —
- 3 (i) made to the State Administrative
4 Tribunal; and
- 5 (ii) referred to the Minister for
6 determination in compliance with a
7 direction given under section 246(2)(a);
- 8 or
- 9 (e) an approval of development granted by the
10 Commission under section 274; or
- 11 (f) an approval of development granted under a
12 planning scheme or interim development order,
13 being an approval of a class or kind prescribed
14 by Part 11C regulations for the purposes of this
15 paragraph.
- 16 (2) In this Part —
- 17 (a) a reference to a relevant development approval
18 is a reference to the relevant development
19 approval as amended or in effect from time to
20 time; and
- 21 (b) a reference to the conditions on a relevant
22 development approval is a reference to the
23 conditions as amended or in effect from time to
24 time; and
- 25 (c) a reference to the approved development in
26 relation to a relevant development approval is a
27 reference to the approved development as
28 amended or in effect from time to time.

29 **171ZH. Performance of functions to which this Part applies**

- 30 (1) This Part does not apply to the performance of a
31 function —
- 32 (a) of a court or tribunal; or

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- 1 (b) that is the subject of proceedings before a court
2 or tribunal or a decision made by a court or
3 tribunal; or
4 (c) that is performed or to be performed in
5 accordance with, or in a manner affected by, a
6 Government agreement.
- 7 (2) In this Part, references to performing a function include
8 references to the following —
9 (a) refusing or failing to perform a function or
10 otherwise not performing a function;
11 (b) being taken to perform a function;
12 (c) being taken to refuse or fail to perform a
13 function or otherwise not to perform a function.

14 **171ZI. When performance of function conflicts with**
15 **relevant development approval**

- 16 (1) For the purposes of this Part, the performance of a
17 function under a relevant legal instrument *conflicts*
18 with a relevant development approval if the
19 performance of the function, or the way in which the
20 function is performed —
21 (a) prevents the approved development from
22 proceeding in accordance with the approval; or
23 (b) prevents any of the conditions imposed on the
24 approval from being complied with; or
25 (c) otherwise substantially undermines, or
26 substantially conflicts with, the approval.

27 Examples for this subsection:

- 28 1. An authority refuses to grant a permit under a relevant legal
29 instrument that is necessary for the approved development
30 to proceed in accordance with the relevant development
31 approval.
32 2. An authority grants a permit under a relevant legal
33 instrument that is necessary for the approved development
34 to proceed in accordance with the relevant development

- 1 approval but the permit is granted subject to conditions that
2 prevent the approved development from proceeding in
3 accordance with the relevant development approval.
- 4 (2) Despite subsection (1), the performance of a function
5 under a relevant legal instrument does not *conflict* with
6 a relevant development approval if the function
7 consists of —
- 8 (a) amending or varying —
- 9 (i) the relevant development approval; or
10 (ii) the conditions on the relevant
11 development approval; or
12 (iii) the approved development in relation to
13 the relevant development approval;
- 14 or
- 15 (b) the imposition of new conditions on the
16 relevant development approval; or
17 (c) the cancellation of the relevant development
18 approval.

19 **Division 2 — Dealing with conflicts with relevant**
20 **development approvals**

21 **171ZJ. Proposed performance of function that conflicts**
22 **with relevant development approval**

- 23 (1) This section applies if —
- 24 (a) a relevant development approval has been
25 granted; and
26 (b) a person or body (the *decision-maker*) proposes
27 to perform a function under a relevant legal
28 instrument; and
29 (c) the performance of the function as proposed
30 would conflict with the relevant development
31 approval.

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- 1 (2) The decision-maker must not perform the function as
2 proposed unless —
- 3 (a) the decision-maker has notified the Minister of
4 the proposed performance of the function and
5 the conflict; and
- 6 (b) either —
- 7 (i) the decision-maker performs the
8 function in compliance with a direction
9 given to the decision-maker under
10 section 171ZK; or
- 11 (ii) the Minister has notified the
12 decision-maker under section 171ZK(6).
- 13 (3) A notification under subsection (2)(a) must be made in
14 the manner and form required by the Minister and,
15 without limitation, include any documents or
16 information required by the Minister.

17 **171ZK. Direction to decision-maker by Minister on**
18 **notification of proposed performance of function**

- 19 (1) If the Minister is notified under section 171ZJ(2)(a) by
20 a decision-maker, the Minister may give a direction
21 under this section if the Minister considers —
- 22 (a) that —
- 23 (i) the approved development in relation to
24 the relevant development approval is
25 prescribed significant development; or
- 26 (ii) the conflict raises issues of State or
27 regional importance;
- 28 and
- 29 (b) that it is appropriate to resolve the conflict.

- 1 (2) A direction under this section is a direction to the
2 decision-maker to do 1 or more of the following for the
3 purpose of resolving the conflict —
- 4 (a) not perform the function as proposed;
- 5 (b) perform the function in accordance with the
6 direction;
- 7 (c) reconsider the performance of the function in
8 accordance with the direction and give effect to
9 the outcome of the reconsideration;
- 10 (d) take any steps specified in the direction for
11 giving effect to the direction.
- 12 (3) The direction can only be given —
- 13 (a) if the Minister is not the responsible Minister
14 for the relevant legal instrument under which it
15 is proposed to perform the function — after
16 consulting that responsible Minister; and
- 17 (b) with the agreement of the Premier.
- 18 (4) The direction may specify a period within which
19 anything required to be done under the direction must
20 be done.
- 21 (5) The decision-maker must comply with the direction —
- 22 (a) even if that involves doing something, or
23 omitting to do something, that, apart from this
24 subsection, the decision-maker could not do, or
25 could not omit to do, under the relevant legal
26 instrument; and
- 27 (b) without limiting paragraph (a), despite any time
28 limit that would, apart from this subsection,
29 apply under the relevant legal instrument in
30 relation to anything to which the direction
31 relates.

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- 1 (6) If the Minister decides not to give a direction under this
2 section, the Minister must notify the decision-maker of
3 the Minister's decision.

4 **171ZL. Application for direction if performance of function**
5 **conflicts with approval**

- 6 (1) This section applies if —
7 (a) a relevant development approval has been
8 granted; and
9 (b) a person or body (the *decision-maker*)
10 performs a function under a relevant legal
11 instrument; and
12 (c) the performance of the function has not been
13 the subject of a notification or direction under
14 section 171ZJ or 171ZK; and
15 (d) the performance of the function conflicts with
16 the approval.
- 17 (2) An owner of land in respect of which the relevant
18 development approval is granted, or a person who is of
19 a class or kind prescribed by Part 11C regulations for
20 the purposes of this subsection, may apply to the
21 Minister for a direction under section 171ZM to
22 resolve the conflict.
- 23 (3) An application under subsection (2) must be made in
24 the manner and form required by the Minister and,
25 without limitation, include any documents or
26 information required by the Minister.

1 **171ZM. Direction by Minister on application if performance**
2 **of function conflicts with approval**

- 3 (1) If an application is made under section 171ZL(2), the
4 Minister may give a direction under this section if the
5 Minister considers —
- 6 (a) that —
- 7 (i) the approved development in relation to
8 the relevant development approval is
9 prescribed significant development; or
- 10 (ii) the conflict raises issues of State or
11 regional importance;
- 12 and
- 13 (b) that it is appropriate to resolve the conflict.
- 14 (2) A direction under this section is a direction to the
15 decision-maker to do 1 or more of the following for the
16 purpose of resolving the conflict —
- 17 (a) cancel the performance of the function;
- 18 (b) perform the function again but in accordance
19 with the direction;
- 20 (c) reconsider the performance of the function in
21 accordance with the direction and give effect to
22 the outcome of the reconsideration;
- 23 (d) take any steps specified in the direction for
24 giving effect to the direction.
- 25 (3) The direction can only be given —
- 26 (a) if the Minister is not the responsible Minister
27 for the relevant legal instrument under which
28 the function is performed — after consulting
29 that responsible Minister; and
- 30 (b) with the agreement of the Premier.

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- 1 (4) The direction may specify a period within which
2 anything required to be done under the direction must
3 be done.
- 4 (5) The decision-maker must comply with the direction —
- 5 (a) even if that involves doing something, or
6 omitting to do something, that, apart from this
7 subsection, the decision-maker could not do, or
8 could not omit to do, under the relevant legal
9 instrument; and
- 10 (b) without limiting paragraph (a), despite any time
11 limit that would, apart from this subsection,
12 apply under the relevant legal instrument in
13 relation to anything to which the direction
14 relates.

15 **171ZN. Direction is disallowable subsidiary legislation**

- 16 (1) A direction under section 171ZK or 171ZM is
17 subsidiary legislation for the purposes of the
18 *Interpretation Act 1984*.
- 19 (2) The *Interpretation Act 1984* section 42 applies to a
20 direction under section 171ZK or 171ZM as if it were a
21 regulation.

22 **171ZO. Effect of performance of function in compliance**
23 **with direction**

- 24 (1) The performance of a function by a person or body (the
25 *decision-maker*) in compliance with a direction given
26 to the decision-maker under section 171ZK or 171ZM
27 has effect, and is valid, for the purposes of the relevant
28 legal instrument and all other enactments.
- 29 (2) Subsection (1) applies even if, apart from this Part, the
30 decision-maker could not have performed the function
31 as required by the direction.

- 1 (3) Without limiting subsections (1) and (2), a decision, or
2 other act or omission, of a person or body is not
3 unlawful or invalid just because the decision-maker
4 could not, apart from this Part, have performed the
5 function as required by the direction.
- 6 (4) Despite any relevant legal instrument or other
7 enactment, the State Administrative Tribunal has no
8 jurisdiction in relation to anything done under this Part,
9 including (without limitation) anything done in
10 compliance with a direction under section 171ZK
11 or 171ZM.

Division 3 — Regulations

171ZP. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Part to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Part.

12. Section 268A amended

In section 268A(1):

- 21 (a) delete “Minister, as soon as is practicable, to cause a
22 copy of an order, improvement plan or direction” and
23 insert:

25 Minister or the Premier, as soon as is practicable after
26 the occurrence of an event, to cause a document

27

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- 1 (b) in paragraph (a) delete “at the commencement of the
2 period after the day on which the order, improvement
3 plan or direction is given,” and insert:
4
5 on the day after the event occurs,
6
7 (c) delete paragraph (b) and insert:
8
9 (b) the Minister or the Premier (as the case
10 requires) is of the opinion that the House will
11 not sit during the period of 14 days after the
12 day on which the event occurs,
13
14 (d) delete “the Minister is to transmit a copy of the order,
15 improvement plan or direction” and insert:
16
17 the Minister or the Premier (as the case requires) must
18 transmit the document
19
20 (2) In section 268A(2) and (3) delete “copy of an order,
21 improvement plan or direction” and insert:
22
23 document
24
25 **13. Section 269 amended**
26 (1) In section 269(1) delete the definition of *Government*
27 *agreement*.
28 (2) In section 269(1) in the definition of *legal instrument*
29 paragraph (a) after “this Part,” insert:
30
31 Part 11C,
32

1 **14. Section 272 amended**

2 Delete section 272(8).

3 **15. Section 277 amended**

4 (1) In section 277(5) delete “Divisions 3 and 4.” and insert:

5

6 Division 4.

7

8 (2) In section 277(6) delete “Subject to Division 3, if” and insert:

9

10 If

11

12 (3) In section 277(6) after the examples insert:

13

14 Note for this subsection:

15 Part 11C applies despite this Part (see section 171ZF(1)).

16

17 **16. Section 277A inserted**

18 After section 277 insert:

19

20 **277A. Enforcement powers of Commission in relation to**
21 **conditions**

22 (1) If development is commenced, continued or carried out
23 otherwise than in accordance with any of the
24 conditions on an approval of development granted
25 under section 274, the Commission has the powers of a
26 responsible authority under sections 214, 215 and 216
27 in relation to the development.

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avoiding conflicts with approvals

s. 17

- 1 (2) Subsection (1) does not limit any powers of a
2 responsible authority under sections 214, 215 and 216
3 (including any powers that a responsible authority has
4 under those sections because of section 277(2)).
- 5 (3) In subsection (1), the reference to the conditions on an
6 approval of development granted under section 274 is a
7 reference to the conditions as amended from time to
8 time under section 279 or by an order under
9 section 284.
10

11 **17. Part 17 Division 3 deleted**

12 Delete Part 17 Division 3.

13 **18. Section 283 amended**

14 In section 283(7) delete “regulations, including (without
15 limitation) anything done in compliance with a direction under
16 section 281 or 282.” and insert:

17
18 regulations.
19

20 **19. Section 285 amended**

21 In section 285(1) delete “in the *Gazette* —” and insert:

22
23 in accordance with the *Interpretation Act 1984*
24 section 41(1)(a) —
25

1 **Part 4 — Performance of development approval**
2 **functions of local governments in relation to single**
3 **houses**

4 **20. Act amended**

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

6 **21. Section 257C inserted**

7 After section 257B insert:

8
9 **257C. Regulations dealing with performance of functions**
10 **under local planning schemes in relation to single**
11 **house development**

12 (1) In this section —

13 *ancillary structure* means a building, structure, fixture,
14 or feature, that is ancillary or incidental to a single
15 house;

16 *CEO*, in relation to a local government, means the
17 chief executive officer of the local government;

18 *development approval function* means a function of a
19 local government under a local planning scheme in
20 relation to development applications, approvals of
21 development or ancillary or incidental matters;

22 Examples for this definition:

- 23 1. Receiving, administering or considering development
24 applications.
25 2. Granting or refusing approvals of development.
26 3. Imposing conditions on approvals of development.
27 4. Receiving, administering or considering applications for any
28 of the following —
29 (a) an amendment to an approval of development;

s. 21

- 1 (b) an amendment to conditions imposed on an
2 approval of development;
- 3 (c) the cancellation of an approval of development.
- 4 5. Amending approvals of development or conditions imposed
5 on approvals of development.
- 6 6. Cancelling approvals of development.
- 7 **single house** means a dwelling, other than a dwelling
8 on land that is, or is to be, subject to —
- 9 (a) a strata scheme under the *Strata Titles*
10 *Act 1985*; or
- 11 (b) a community titles (building) scheme under the
12 *Community Titles Act 2018*;
- 13 **single house development** means development that
14 consists of —
- 15 (a) the erection of, or alterations or additions to, a
16 single house; or
- 17 (b) the erection or installation of, or alterations or
18 additions to, an ancillary structure.
- 19 (2) Without limiting section 256, regulations under
20 section 256(1) may prescribe provisions that —
- 21 (a) specify development approval functions of the
22 local government (the **prescribed development**
23 **approval functions**); and
- 24 (b) provide that, when the prescribed development
25 approval functions are performed in relation to
26 single house development, or single house
27 development of a specified class, the
28 functions —
- 29 (i) must be performed for and on behalf of
30 the local government by the CEO or
31 employees of the local government
32 authorised by the CEO; and

- 1 (ii) cannot be performed by the local
2 government in any other manner (for
3 example, by the council of the local
4 government or a committee of that
5 council);
6 and
7 (c) otherwise deal with or regulate —
8 (i) the performance of the prescribed
9 development approval functions as
10 referred to in paragraph (b); and
11 (ii) authorisations referred to in
12 paragraph (b)(i); and
13 (iii) supplementary or incidental matters.
14 (3) Provisions of a kind referred to in subsection (2), and
15 regulations prescribing those provisions, have effect
16 despite any provision of the *Local Government*
17 *Act 1995*.
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Part 5 — Planning codes

Division 1 — *Planning and Development Act 2005* amended

22. Act amended

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

23. Section 32B amended

(1) After section 32B(2)(c) insert:

- (ca) requirements for advertisement for public inspection and public submissions in relation to a proposed planning code or amendment;

(2) Delete section 32B(3) and insert:

(3) Regulations made under subsection (1) —

- (a) may provide that the Commission may refer a proposed planning code or amendment to the EPA; and
- (b) must, in relation to a proposed planning code or amendment that is referred to the EPA, make provision for —
 - (i) matters relating to the process under the EP Act Part IV; and
 - (ii) advertisement and submissions as referred to in subsection (2)(ca).

1 **Division 2 — *Environmental Protection Act 1986* amended**

2 **24. Act amended**

3 This Division amends the *Environmental Protection Act 1986*.

4 **25. Section 3 amended**

5 (1) In section 3(1) in the definition of *final approval* delete
6 paragraph (ea) and insert:

7

8 (ea) a planning code, or an amendment to a planning
9 code, to which regulations made under the
10 *Planning and Development Act 2005*
11 section 32B(3)(a) apply, means an approval of
12 the planning code or amendment by the
13 responsible Minister under regulations made
14 under section 32B(1) of that Act; or

15

16 (2) In section 3(1) in the definition of *period of public review* delete
17 paragraph (ea) and insert:

18

19 (ea) a planning code, or an amendment to a planning
20 code, to which regulations made under the
21 *Planning and Development Act 2005*
22 section 32B(3)(a) apply, means the period of
23 advertisement for public inspection prescribed
24 under section 32B(3)(b)(ii) of that Act; or

25

1 (3) In section 3(1) in the definition of *responsible authority* delete
2 paragraph (a)(viiiia) and insert:

3

4 (viiiia) a planning code, or an amendment to a
5 planning code, to which regulations
6 made under the *Planning and*
7 *Development Act 2005*
8 section 32B(3)(a) apply, means the
9 Western Australian Planning
10 Commission; or
11

12 (4) In section 3(1) in the definition of *scheme* delete paragraph (ha)
13 and insert:

14

15 (ha) a planning code, or an amendment to a planning
16 code, to which regulations made under the
17 *Planning and Development Act 2005*
18 section 32B(3)(a) apply; or
19

20 **26. Section 48AAB deleted**

21 Delete section 48AAB.

22 **27. Section 48C amended**

23 In section 48C(7) in the definition of *public review* delete
24 paragraph (ea) and insert:

25

26 (ea) a planning code, or an amendment to a planning
27 code, to which regulations made under the
28 *Planning and Development Act 2005*
29 section 32B(3)(a) apply, means the procedure
30 prescribed under section 32B(3)(b)(ii) of that
31 Act; or
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Part 6 — Improvement schemes

28. Act amended

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

29. Section 122C amended

After section 122C(2) insert:

(3) Despite subsections (1) and (2) —

(a) an improvement scheme may prohibit wholly or partially —

(i) the continuance of a non-conforming use; or

(ii) the erection, alteration or extension on land of any building in connection with, or in furtherance of, a non-conforming use;

and

(b) this Division applies to a development affected by a prohibition under paragraph (a) accordingly.

(4) In subsection (3) —

non-conforming use means a use of land which, though lawful immediately before the improvement scheme, or an amendment to the improvement scheme, takes effect, is not in conformity with a provision of the improvement scheme that deals with a matter specified in Schedule 7 clause 6 or 7.

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1 **30. Section 122D amended**

2 Delete section 122D(6) and insert:

3

4 (6) This section has effect subject to any provision of an
5 improvement scheme made under section 122C(3).

6

7 **31. Section 122F amended**

8 In section 122F delete “relating to non-conforming uses.” and
9 insert:

10

11 made under section 122C(3).

12

13 Note: The heading to amended section 122F is to read:

14 **Transitional provisions for amended improvement scheme area**

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Part 7 — Subdivision of land

32. Act amended

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

33. Section 145B inserted

After section 145A insert:

145B. Land subject to strata titles scheme

- (1) This section applies if —
 - (a) the Commission approves a plan of subdivision in respect of land that is or includes —
 - (i) land that, at the time of the approval, is the subject of a strata titles scheme under the *Strata Titles Act 1985* (the *existing strata titles scheme*); or
 - (ii) a part of such land;
 - and
 - (b) in accordance with section 149A, the Commission imposes a condition requiring the termination of the existing strata titles scheme.

Note for this subsection:

See the *Strata Titles Act 1985* section 195(1) for when a strata titles scheme is terminated.

- (2) A diagram or plan of survey of the subdivision may be submitted to the Commission under section 145 even though the existing strata titles scheme has not terminated.
- (3) The Commission must endorse its approval on a diagram or plan of survey of the subdivision under

s. 34

- 1 section 145 even though the existing strata titles
2 scheme has not terminated if —
- 3 (a) had the existing strata titles scheme terminated,
4 the Commission would be required to endorse
5 its approval in accordance with section 145(4);
6 and
- 7 (b) the Commission is satisfied that the existing
8 strata titles scheme will terminate within the
9 period referred to in section 145(1).
- 10 (4) In subsections (2) and (3), references to a diagram or
11 plan of survey of the subdivision include, if the
12 subdivision is being carried out in stages, a diagram or
13 plan of survey that relates to a stage of the subdivision.
14

15 **34. Section 146 amended**

16 In section 146(1):

- 17 (a) in paragraph (c) delete “registered.” and insert:
18
19 registered; and
20
- 21 (b) after paragraph (c) insert:
22
- 23 (d) in the case of a diagram or plan of survey
24 endorsed with the approval of the Commission
25 under section 145B(3), the existing strata titles
26 scheme has terminated.

27 Note for this subsection:

28 For the purposes of paragraph (d), see the *Strata Titles*
29 *Act 1985* section 195(1) for when a strata titles scheme is
30 terminated.
31

1 **35. Section 149A inserted**

2 Before section 150 insert:

3

4 **149A. Condition requiring termination of strata titles**
5 **scheme**

6 (1) This section applies if —

7 (a) the Commission approves a plan of subdivision
8 in respect of land that is or includes —

9 (i) land that, at the time of the approval, is
10 the subject of a strata titles scheme
11 under the *Strata Titles Act 1985* (the
12 ***existing strata titles scheme***); or

13 (ii) a part of such land;

14 and

15 (b) the Commission considers that the subdivision
16 is dependent upon the existing strata titles
17 scheme being terminated under the *Strata Titles*
18 *Act 1985*.

19 Note for this subsection:

20 See the *Strata Titles Act 1985* section 195(1) for when a
21 strata titles scheme is terminated.

22 (2) Without limiting any other conditions that may be
23 imposed under section 143, the Commission must
24 impose a condition under that section requiring the
25 termination of the existing strata titles scheme.

26 (3) This section does not apply to a plan of subdivision for
27 the termination of a strata titles scheme as referred to in
28 the *Strata Titles Act 1985* section 177 or 191.

29 Note for this section:

30 If a condition is imposed in accordance with this section,
31 section 145B provides for the Commission to endorse its
32 approval on a diagram or plan of survey for the subdivision

s. 35

1 even though the existing strata titles scheme has not
2 terminated.
3

1 **Part 8 — The Western Australian Planning**
2 **Commission**

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

4 **36. Act amended**

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

6 **37. Section 4 amended**

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

8 *associate member*

9 *deputy member*

10 *district planning committee*

11 *Regional Minister*

12 **38. Sections 10 to 13 replaced**

13 Delete sections 10 to 13 and insert:

14

15 **10. Membership of board**

16 (1) The board is to consist of 7 to 9 members appointed by
17 the Minister.

18 (2) The Minister must appoint 1 of the members to be the
19 chairperson.

20 (3) The Minister may appoint 1 or more other members to
21 be deputy chairpersons.

22 (4) A member cannot be a public service officer.

23 (5) The terms and conditions of a member's appointment
24 are to be determined by the Minister, subject to —

25 (a) any regulations made for the purposes of
26 section 11(1); and

- 1 (b) section 12.
- 2 (6) The Minister must ensure that, taken together, the
3 members have what the Minister considers to be a
4 suitable level of knowledge, expertise and experience
5 in the following fields —
- 6 (a) urban and regional planning;
7 (b) subdivision of land;
8 (c) property development;
9 (d) planning and management of infrastructure;
10 (e) economic, social and environmental policy;
11 (f) public sector governance and administration.
- 12 (7) In addition to the requirement of subsection (6), the
13 Minister must ensure the following —
- 14 (a) that the chairperson, and at least 1 other
15 member, each has what the Minister considers
16 to be —
- 17 (i) extensive knowledge, expertise and
18 experience in the field of urban and
19 regional planning; and
- 20 (ii) a suitable professional qualification or
21 accreditation in that field;
- 22 (b) that at least 1 member has what the Minister
23 considers to be extensive experience in local
24 government administration as either or both of
25 the following —
- 26 (i) a member of the council of a local
27 government;
- 28 (ii) an employee of a local government;
- 29 (c) that at least 1 member has what the Minister
30 considers to be extensive experience of living

- 1 and working in regions other than the
2 following —
3 (i) the metropolitan region;
4 (ii) the region referred to in item 6 of
5 Schedule 4.

6 **11. Board’s constitution and proceedings**

- 7 (1) Regulations may make provision in relation to the
8 constitution and proceedings of the board.
- 9 (2) Without limiting subsection (1), regulations made for
10 the purposes of that subsection may make provision in
11 relation to any of the following —
- 12 (a) the appointment of members, including method
13 of recruitment and terms and conditions of
14 appointments;
- 15 (b) circumstances that cause vacancies in offices of
16 members and the filling of vacancies;
- 17 (c) circumstances in which a member can be
18 removed from office and the process for
19 removing a member;
- 20 (d) the granting of leave of absence for a member;
- 21 (e) the role of the chairperson and any deputy
22 chairpersons;
- 23 (f) procedures of the board.
- 24 (3) Subject to regulations made for the purposes of
25 subsection (1), the board must determine its own
26 procedures.
- 27 (4) The board may invite representatives of public sector
28 bodies (as defined in the *Public Sector Management*
29 *Act 1994* section 3(1)) to participate in meetings or
30 other proceedings of the board as if they were
31 members.

- 1 (5) An invitation under subsection (4) —
2 (a) is subject to any conditions or other limitations
3 specified by the board; and
4 (b) does not enable the representative to vote or to
5 do anything else that is binding on the board.

6 **12. Remuneration and allowances**

7 A member must be paid the remuneration and
8 allowances determined by the Minister on the
9 recommendation of the Public Sector Commissioner.
10

11 **39. Section 14 replaced**

12 Delete section 14 and insert:
13

14 **13. Introduction to Commission's role**

15 The Commission is the State's leading body for land
16 use planning and, as such, must perform its functions
17 having regard to the following —

- 18 (a) the need to provide leadership to local
19 governments, public authorities and other
20 persons or bodies in relation to their roles in
21 land use planning;
22 (b) the need to promote the following —
23 (i) an efficient and effective land use
24 planning system in the State;
25 (ii) the integrated and sustainable
26 development of land in the State;
27 (c) the need to act expertly;
28 (d) the need to act impartially, subject to this Act
29 and any other written law;

- 1 (e) if the Commission makes a decision that affects
2 a local government, public authority or other
3 person or body — the need to ensure that the
4 Commission’s reasons for the decision are
5 available to the local government, public
6 authority or other person or body.

7 **14. Functions**

8 The Commission’s functions are as follows —

- 9 (a) to advise the Minister in relation to the
10 coordination and promotion of planning for
11 integrated and sustainable development in the
12 State;
- 13 (b) to advise and assist the Minister in relation to
14 the administration, revision and reform of
15 legislation relating to development and
16 planning for development;
- 17 (c) to prepare and maintain the following as a basis
18 for coordinating and promoting planning for
19 integrated and sustainable development in the
20 State and to provide guidance for public
21 authorities and local governments on those
22 matters —
- 23 (i) a planning strategy for the State to be
24 approved by the Minister;
- 25 (ii) planning strategies for the parts of the
26 State to which region planning schemes
27 apply;
- 28 (iii) other planning strategies as agreed
29 between the Minister and the
30 Commission;
- 31 (iv) State planning policies under Part 3;
- 32 (v) planning codes under Part 3A;

- 1 (vi) other documents, including plans,
2 policies, guidance and operational
3 documents;
- 4 (d) to plan for the coordinated provision of
5 transport and infrastructure to support
6 development;
- 7 (e) to undertake research, and to prepare planning
8 methods and models, relating to the
9 following —
- 10 (i) integrated and sustainable development;
- 11 (ii) planning for such development;
- 12 (iii) other matters relating to such
13 development;
- 14 (f) to provide advice and assistance to local
15 governments and other persons or bodies in
16 relation to development and planning for
17 development, including advice and assistance
18 in relation to the following —
- 19 (i) planning schemes;
- 20 (ii) functions that are under planning
21 schemes or that otherwise relate to
22 development and planning for
23 development, including functions that
24 relate to referring, consulting on or
25 advertising applications for approval of
26 development or instruments made under
27 this Act or planning schemes;
- 28 (g) to prepare, maintain and administer region
29 planning schemes under Part 4;
- 30 (h) to prepare, maintain and administer interim
31 development orders under Part 6;
- 32 (i) to declare planning control areas and administer
33 those areas under Part 7;

- 1 (j) to prepare, maintain and administer
2 improvement plans and improvement schemes
3 under Part 8;
- 4 (k) to prepare, maintain and administer the Swan
5 Valley Planning Scheme under the *Swan Valley*
6 *Planning Act 2020*;
- 7 (l) to provide advice and assistance to the Minister
8 in relation to the matters referred to in
9 paragraphs (g) to (k);
- 10 (m) to provide advice and assistance to the Minister
11 in relation to local planning schemes, and
12 amendments to those schemes, made or
13 proposed under Part 5;
- 14 (n) to acquire land for the purpose of implementing
15 region planning schemes, improvement
16 schemes and the Swan Valley Planning
17 Scheme;
- 18 (o) to develop, maintain and manage land held by
19 the Commission for the purpose of
20 implementing a region planning scheme, an
21 improvement scheme or the Swan Valley
22 Planning Scheme, including carrying out works
23 and providing facilities on the land that are —
 - 24 (i) incidental to the development,
25 maintenance or management of the
26 land; or
 - 27 (ii) conducive to the use of the land for any
28 purpose for which the land is reserved;
- 29 (p) to deal with matters relating to subdivisions of
30 land under Part 10;
- 31 (q) to deal with development applications under
32 Parts 11B and 17;
- 33 (r) to do all things that are necessary for the
34 purpose of carrying out this Act, region

- 1 planning schemes, improvement schemes and
2 the Swan Valley Planning Scheme;
3 (s) any other functions conferred on the
4 Commission under this Act, the *Swan Valley*
5 *Planning Act 2020* or any other written law.
6

7 **40. Section 15 amended**

8 In section 15(2)(b) delete “14(j); and” and insert:

9
10 14(o); and
11

12 **41. Section 16 amended**

13 (1) Delete section 16(2) and insert:

14
15 (2) A delegation under subsection (1) takes effect on the
16 day after the day on which the resolution is made or on
17 a later day specified in the resolution.

18 (2A) The Commission must publish a copy of a resolution
19 under subsection (1) on a website maintained by, or on
20 behalf of, the Commission (but a failure to do this does
21 not invalidate the delegation).
22

23 (2) Delete section 16(3)(a) and insert:

24
25 (a) a member; or
26

27 (3) Delete section 16(5) and insert:

28
29 (5) Without limiting the generality of subsection (1), a
30 delegation may be expressed as a delegation of every

1 function of the Commission within a specified class
2 (subject to any specified exceptions).
3

4 (4) Delete section 16(7B) and insert:
5

6 (7B) A subdelegation under subsection (7A) takes effect on
7 the day after the day on which the subdelegation is
8 made or on a later day specified in the terms of the
9 subdelegation.

10 (7BA) The Metropolitan Redevelopment Authority must
11 publish a copy of the terms of a subdelegation under
12 subsection (7A) on a website maintained by, or on
13 behalf of, the Authority (but a failure to do this does
14 not invalidate the subdelegation).
15

16 **42. Section 17 amended**

17 After section 17(1) insert:
18

19 (1A) However, the Minister cannot give a direction under
20 subsection (1) in relation to the following —

21 (a) a particular application made to, or to be
22 determined by, the Commission under any of
23 the following —

24 (i) a planning scheme;

25 (ii) Part 10, 11B or 17;

26 (iii) another provision of this Act;

27 (iv) another written law;

28 (b) a particular development or a particular
29 proposed development, including any approval

1 of a particular development or a particular
2 proposed development.
3

4 **43. Section 19 replaced**

5 Delete section 19 and insert:
6

7 **19. Committees of Commission**

- 8 (1) Schedule 2 has effect in relation to committees of the
9 Commission.
- 10 (2) A member of a committee of the Commission must be
11 paid the remuneration and allowances determined by
12 the Minister on the recommendation of the Public
13 Sector Commissioner.
- 14 (3) Regulations may make provision in relation to
15 committees of the Commission.
- 16 (4) Without limiting subsection (3), regulations made for
17 the purposes of that subsection may make provision in
18 relation to any of the following —
- 19 (a) the constitution and membership of
20 committees;
- 21 (b) the establishment of subcommittees;
- 22 (c) the functions and procedures of committees;
- 23 (d) the discharge, alteration or reconstituting of
24 committees;
- 25 (e) the Commission's functions in relation to
26 committees.

- 1 (5) Regulations made for the purposes of subsection (3)
2 may do the following —
- 3 (a) limit the Commission’s powers under
4 Schedule 2 or otherwise regulate the exercise of
5 those powers;
- 6 (b) limit a committee’s power under Schedule 2
7 clause 1(6) or otherwise regulate the exercise of
8 that power.
- 9 (6) Regulations made for the purposes of subsection (3)
10 may supplement, but not override or otherwise limit,
11 any requirements of —
- 12 (a) Schedule 2 clauses 3 and 4; or
13 (b) the *Swan Valley Planning Act 2020* Part 4.
14

15 **44. Section 266 amended**

16 In section 266(1) in the definition of *member* delete
17 paragraph (b).

18 **45. Schedule 1 deleted**

19 Delete Schedule 1.

20 **46. Schedule 2 clause 1 amended**

21 (1) Delete Schedule 2 clause 1(1) and insert:

22

23 (1) In addition to the committees of the Commission established
24 under clauses 3 and 4 and the *Swan Valley Planning*
25 *Act 2020* section 33, the Commission may from time to time
26 establish other committees of the Commission.
27

28 (2) In Schedule 2 clause 1(2)(c) delete “or deputy members”.

1 (3) Delete Schedule 2 clause 1(3) and (4).

2 Note: The heading to amended Schedule 2 clause 1 is to read:

3 **General provisions as to committees**

4 **47. Schedule 2 clause 2 deleted**

5 Delete Schedule 2 clause 2.

6 **48. Schedule 2 clause 3 amended**

7 (1) In Schedule 2 clause 3(1) after “a committee” insert:

8

9 of the Commission

10

11 (2) Delete Schedule 2 clause 3(2) and insert:

12

13 (2) The Executive, Finance and Property Committee is to
14 consist of the following persons —

15 (a) 2 or more members of the board appointed by the
16 Commission;

17 (b) 1 or more persons appointed by the Commission
18 with the approval of the Minister —

19 (i) who are not members of the board; and

20 (ii) who have knowledge, expertise and
21 experience in the field of financial
22 management;

23 (c) any 1 or more other persons, not being members of
24 the board, appointed by the Commission with the
25 approval of the Minister.

26

1 **49. Schedule 2 clause 4 amended**

2 (1) In Schedule 2 clause 4(1) after “a committee” insert:

3

4 of the Commission

5

6 (2) Delete Schedule 2 clause 4(2) and (3) and insert:

7

8 (2) The Statutory Planning Committee is to consist of the
9 following persons —

10 (a) 2 or more members of the board appointed by the
11 Commission;

12 (b) 1 or more persons appointed by the Commission
13 with the approval of the Minister —

14 (i) who are not members of the board; and

15 (ii) who have knowledge, expertise and
16 experience in the field of urban and regional
17 planning;

18 (c) 1 or more persons, not being members of the board,
19 appointed by the Commission with the approval of
20 the Minister to represent the interests of local
21 governments;

22 (d) any 1 or more other persons, not being members of
23 the board, appointed by the Commission with the
24 approval of the Minister.

25

26 (3) Delete Schedule 2 clause 4(5).

27 **50. Schedule 2 clauses 5 to 9 deleted**

28 Delete Schedule 2 clauses 5 to 9.

1 **51. Schedule 4 amended**

2 Delete the reference after the heading to Schedule 4 and insert:

3

4 [s. 4]

5

6 **Division 2 — *Swan Valley Planning Act 2020* amended**

7 **52. Act amended**

8 This Division amends the *Swan Valley Planning Act 2020*.

9 **53. Section 3 amended**

10 In section 3 delete the definition of *chairperson*.

11 **54. Section 33 amended**

12 In section 33(2):

13 (a) delete paragraph (a);

14 (b) in paragraph (b) delete “5 other” and insert:

15

16 2 or more

17

18 **55. Section 35 amended**

19 In section 35(2)(a) delete “or associate member (as those terms
20 are” and insert:

21

22 (as that term is

23

1 **56. Section 36 amended**

2 Delete section 36(1) and insert:

3
4 (1) A delegation under section 34(2) takes effect on the
5 day after the day on which the resolution is made or on
6 a later day specified in the resolution.

7 (1A) The Commission must publish a copy of a resolution
8 under section 34(2) on a website maintained by, or on
9 behalf of, the Commission (but a failure to do this does
10 not invalidate the delegation).

11 (1B) A subdelegation under section 35(1) takes effect on the
12 day after the day on which the resolution is made or on
13 a later day specified in the resolution.

14 (1C) The Swan Valley Statutory Planning Committee must
15 publish a copy of a resolution under section 35(1) on a
16 website maintained by, or on behalf of, the Committee
17 (but a failure to do this does not invalidate the
18 subdelegation).
19

20 **Division 3 — *Aquatic Resources Management Act 2016* amended**

21 **57. Act amended**

22 This Division amends the *Aquatic Resources Management*
23 *Act 2016*.

24 **58. Section 2 amended**

25 (1) In section 2 delete “This” and insert:

26
27 (1) This
28

1 (2) At the end of section 2 insert:

2

3 (2) Despite subsection (1)(b), if section 377 has not come
4 into operation before the day on which the *Planning*
5 *and Development Amendment Act 2023* section 50
6 comes into operation, the 2nd row in the Table to
7 section 377(2) —

8 (a) does not come into operation; and

9 (b) is deleted on that day.

10

11 **Division 4 — *Metropolitan Redevelopment Authority Act 2011***
12 **amended**

13 **59. Act amended**

14 This Division amends the *Metropolitan Redevelopment*
15 *Authority Act 2011*.

16 **60. Section 15 amended**

17 In section 15(2) delete “when notice of the subdelegation is
18 published in the *Gazette* under” and insert:

19

20 in accordance with

21

1 **Part 9 — Consolidations and reviews of planning**
2 **instruments**

3 **61. Act amended**

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

5 **62. Part 4 Division 5 deleted**

6 Delete Part 4 Division 5.

7 **63. Part 5 Division 5 deleted**

8 Delete Part 5 Division 5.

9 **64. Part 9A inserted**

10 After section 132 insert:
11

12 **Part 9A — Ten-yearly reviews of planning**
13 **instruments**

14 **132A. Terms used**

15 (1) In this Part —

16 *commencement day* means the day on which the
17 *Planning and Development Amendment Act 2023*
18 section 64 comes into operation.

19 (2) For the purposes of this Part, the anniversaries of
20 commencement day that are *relevant* are the
21 10th anniversary, the 20th anniversary, the
22 30th anniversary and so on.

- 1 **132B. Commission to review State planning instruments**
2 **every 10 years**
- 3 (1) In this section —
- 4 ***State planning instrument*** means any of the following,
5 as in force or effect from time to time —
- 6 (a) a region planning scheme;
- 7 (b) an improvement plan;
- 8 (c) an improvement scheme;
- 9 (d) a State planning policy;
- 10 (e) a planning code;
- 11 (f) a planning strategy prepared by the
12 Commission under section 14.
- 13 (2) During the period of 6 months after a relevant
14 anniversary of commencement day, the Commission
15 must —
- 16 (a) review the operation and effectiveness of each
17 State planning instrument that is in force or
18 effect on the relevant anniversary; and
- 19 (b) prepare and approve a report based on the
20 review, including any recommendations arising
21 from the review.
- 22 (3) However, the Commission may elect to review a State
23 planning instrument under subsection (4) instead of
24 subsection (2).
- 25 (4) If the Commission elects to review a State planning
26 instrument under this subsection, the Commission
27 must, during the period of 6 months after an
28 anniversary referred to in subsection (5) that falls on or
29 after commencement day —
- 30 (a) review the operation and effectiveness of the
31 State planning instrument; and

- 1 (b) prepare and approve a report based on the
2 review, including any recommendations arising
3 from the review.
- 4 (5) The anniversaries are the 10th anniversary of the day on
5 which the State planning instrument first came into
6 force or effect, the 20th anniversary of that day, the
7 30th anniversary of that day and so on.

8 **132C. Local governments to review local planning**
9 **instruments every 10 years**

- 10 (1) In this section —
11 *local planning instrument*, in relation to a local
12 government, means an instrument, as in force or effect
13 from time to time —
- 14 (a) that is either of the following —
15 (i) a local planning scheme;
16 (ii) an instrument of a type prescribed by
17 regulations for the purposes of this
18 subparagraph;
- 19 and
- 20 (b) that was prepared or adopted by the local
21 government or that otherwise relates to the
22 local government’s district or any land in that
23 district.
- 24 (2) During the period of 6 months after a relevant
25 anniversary of commencement day, a local government
26 must —
- 27 (a) review the operation and effectiveness of each
28 local planning instrument that is in force or
29 effect on the relevant anniversary; and
- 30 (b) prepare and approve a report based on the
31 review, including any recommendations arising
32 from the review.

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- 1 (3) However, a local government may elect to review a
2 local planning instrument under subsection (4) instead
3 of subsection (2).
- 4 (4) If a local government elects to review a local planning
5 instrument under this subsection, the local government
6 must, during the period of 6 months after an
7 anniversary referred to in subsection (5) that falls on or
8 after commencement day —
- 9 (a) review the operation and effectiveness of the
10 local planning instrument; and
- 11 (b) prepare and approve a report based on the
12 review, including any recommendations arising
13 from the review.
- 14 (5) The anniversaries are the 10th anniversary of the day on
15 which the local planning instrument first came into
16 force or effect, the 20th anniversary of that day, the
17 30th anniversary of that day and so on.

18 **132D. Regulations**

- 19 (1) Regulations may make provision in relation to the
20 conduct of reviews, and the preparation and approval
21 of reports, under this Part.
- 22 (2) Without limiting subsection (1), regulations made for
23 the purposes of that subsection may do any of the
24 following —
- 25 (a) prescribe matters to be covered, or otherwise
26 taken into account, as part of a review;
- 27 (b) prescribe procedures to be followed in
28 conducting a review;
- 29 (c) prescribe the form and content of reports;
- 30 (d) provide for reports, parts of reports or
31 information about reports to be published or
32 given to any person or body.

1 **132E. Part does not limit other review provisions**

2 This Part does not limit any other provision of this Act,
3 or any provision of another written law, under which a
4 review of an instrument is, or may be, required or
5 permitted.
6

7 **65. Section 138 amended**

8 Delete section 138(3)(a) and insert:

- 9
- 10 (a) both —
- 11 (i) the local planning scheme did not first
12 come into force, and a report on a
13 review of the local planning scheme has
14 not been approved under
15 section 132C(2) or (4), in the preceding
16 10 years; and
- 17 (ii) the approval is consistent with any State
18 planning policy or planning code that
19 deals with substantially the same matter;
- 20 or
- 21

22 **66. Section 171R amended**

23 Delete section 171R(1)(b)(ii) and insert:

- 24
- 25 (ii) the local planning scheme did not first
26 come into force, and a report on a
27 review of the local planning scheme has
28 not been approved under
29 section 132C(2) or (4), in the preceding
30 10 years; and
31

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1 **67. Section 212 amended**

2 Delete section 212(1)(b) and insert:

3

4 (b) comply with section 132C; or

5

6 Note: The heading to amended section 212 is to read:

7 **Minister's powers in relation to non-compliance by local**
8 **government**

9 **68. Section 213 amended**

10 In section 213(1):

11 (a) delete paragraph (c);

12 (b) delete “conditions, consolidation” and insert:

13

14 conditions

15

16 Note: The heading to amended section 213 is to read:

17 **Effect of Minister's action under s. 212**

18 **69. Section 257B amended**

19 (1) Delete section 257B(4) and insert:

20

21 (4) It is sufficient compliance with a requirement of this
22 Act that a local planning scheme be published in the
23 *Gazette* if the local planning scheme is so published
24 without the deemed provisions.

25

26 (2) In section 257B(5) delete “scheme or a consolidation of a local
27 planning”.

1 **Part 10 — Powers of entry and inspection**

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

3 **70. Act amended**

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

5 **71. Part 13 Division 4 inserted**

6 At the end of Part 13 insert:
7

8 **Division 4 — Entry and inspection powers for officers**
9 **authorised by Commission**

10 **Subdivision 1 — Preliminary**

11 **235A. Terms used**

12 In this Division —

13 ***authorised officer*** means a person authorised by the
14 Commission under section 235B;

15 ***authorised purpose*** means a purpose of ascertaining
16 any matter for purposes connected with enforcing or
17 monitoring compliance with this Act or the *Swan*
18 *Valley Planning Act 2020*, including investigating a
19 suspected contravention of, or offence against, this Act
20 or that Act;

21 ***entry warrant*** has the meaning given in
22 section 235F(1);

23 ***entry warrant application*** means an application under
24 section 235F(1);

25 ***occupier***, in relation to any land, includes a person
26 apparently in charge of the land;

1 *remote communication* means any way of
2 communicating at a distance, including by telephone,
3 fax, radio, videoconferencing, email and other
4 electronic means.

5 **Subdivision 2 — Authorised officers**

6 **235B. Commission may authorise certain persons for**
7 **purposes of Division**

8 The Commission may authorise a person who is either
9 of the following for the purposes of this Division —

- 10 (a) a public service officer who is appointed or
11 made available under section 22;
12 (b) an officer or employee who is the subject of an
13 arrangement under section 23(1).

14 **235C. Identity cards**

- 15 (1) The Commission must give an authorised officer an
16 identity card.
- 17 (2) The identity card must —
- 18 (a) identify the person as an authorised officer; and
19 (b) include a recent photograph of the authorised
20 officer; and
21 (c) state an expiry date for the card; and
22 (d) include any other matter required by
23 regulations for the purposes of this paragraph.
- 24 (3) An authorised officer must —
- 25 (a) if it is practicable to do so — before exercising
26 any powers under section 235E in respect of
27 any land, produce the officer's identity card to
28 an occupier of the land who is present (if any);
29 and

- 1 (b) otherwise carry the officer's identity card when
2 exercising any powers under section 235E and
3 produce it upon any reasonable request.
- 4 (4) If a person ceases to be an authorised officer, the
5 person must, within 14 days after the day on which the
6 person ceases to be an authorised officer, return to the
7 Commission the identity card that the person was
8 given.
- 9 (5) A person commits an offence if, without reasonable
10 excuse, the person fails to comply with subsection (4).
11 Penalty for this subsection: a fine of \$5 000.

12 **235D. Offences relating to authorised officers**

- 13 (1) A person must not, without reasonable excuse, hinder
14 or obstruct an authorised officer exercising a power
15 under this Division.
16 Penalty for this subsection: a fine of \$10 000.
- 17 (2) A person commits an offence if, without reasonable
18 excuse, the person fails to comply with a direction
19 given to the person by an authorised officer under
20 section 235E(7).
21 Penalty for this subsection: a fine of \$10 000.
- 22 (3) A person must not impersonate an authorised officer.
23 Penalty for this subsection: a fine of \$5 000.

24 **Subdivision 3 — Entry and inspection**

25 **235E. Powers of entry and inspection**

- 26 (1) For an authorised purpose, an authorised officer may
27 enter any land —
28 (a) with the consent of an occupier of the land; or
29 (b) if authorised to do so by an entry warrant.

- 1 (2) If an authorised officer enters any land under
2 subsection (1), the authorised officer may, for the
3 authorised purpose —
- 4 (a) inspect the land or anything on or in the land;
5 and
- 6 (b) photograph, or otherwise make a record of, the
7 land or anything on or in the land.
- 8 (3) Before an authorised officer enters any land under
9 subsection (1)(b) in a case where an occupier of the
10 land is present, the officer must do the following to the
11 extent it is practicable to do so —
- 12 (a) inform the occupier of the officer’s intention to
13 enter the land;
- 14 (b) produce the entry warrant for the occupier to
15 see;
- 16 (c) give the occupier an opportunity to consent to
17 the officer entering the land under
18 subsection (1)(a).
- 19 (4) If it is not practicable for the authorised officer to
20 produce the entry warrant as required under
21 subsection (3)(b) before entering the land, the officer
22 must produce the entry warrant as soon as practicable
23 after entering the land.
- 24 (5) If an authorised officer enters any land under
25 subsection (1)(b) in a case where no occupier of the
26 land is present, the officer must leave, in a prominent
27 place on the land, a notice stating —
- 28 (a) the officer’s official details; and
29 (b) that the land has been entered under the
30 authority of an entry warrant.

- 1 (6) If 2 or more authorised officers are involved, the duties
2 under subsections (3) and (4), or the duty under
3 subsection (5), need only be performed by 1 of the
4 officers.
- 5 (7) If an authorised officer is authorised by an entry
6 warrant to enter any land, the officer may direct any
7 person present on the land to provide the officer with
8 any assistance that the officer reasonably requires to
9 enable or assist the officer —
- 10 (a) to enter the land or to gain access to anything
11 on or in the land; or
- 12 (b) otherwise to exercise powers under
13 subsection (2) on the land.
- 14 (8) If an authorised officer enters any land under
15 subsection (1) in a case where an occupier of the land
16 is present, the officer must not prevent the occupier
17 from observing the exercise of powers under
18 subsection (2) on the land unless —
- 19 (a) the officer reasonably suspects that the occupier
20 might be endangered if they were to observe
21 the exercise of powers; or
- 22 (b) the occupier hinders or obstructs the exercise of
23 powers; or
- 24 (c) it is not practicable for the occupier to observe
25 the exercise of powers.
- 26 (9) An authorised officer may record the exercise of a
27 power under this section, including by making an
28 audiovisual recording.

29 **235F. Authorised officer may apply for entry warrant**

- 30 (1) An authorised officer may apply to a magistrate for a
31 warrant (an *entry warrant*) authorising an authorised
32 officer to enter land for an authorised purpose.

- 1 (2) An entry warrant application must be made in
2 accordance with section 235G and must include the
3 following information —
4 (a) the applicant’s full name;
5 (b) a reasonably particular description of the land;
6 (c) a reasonably particular description of the
7 authorised purpose for which entry to the land
8 is required;
9 (d) why it is necessary to enter the land for the
10 authorised purpose;
11 (e) any other information prescribed by the
12 regulations.

13 **235G. Making entry warrant application**

- 14 (1) A reference in this section to making an entry warrant
15 application includes a reference to giving information
16 in support of an entry warrant application.
17 (2) An entry warrant application must be made in person
18 before a magistrate.
19 (3) Despite subsection (2), a magistrate may allow an entry
20 warrant application to be made by remote
21 communication if the magistrate considers that it is
22 reasonable in the circumstances to do so.
23 (4) An entry warrant application must be made in writing
24 unless —
25 (a) the entry warrant application is made by remote
26 communication; and
27 (b) it is not practicable to send the magistrate
28 written material.
29 (5) If subsection (4)(a) and (b) apply —
30 (a) the entry warrant application may be made
31 orally; and

- 1 (b) the magistrate must make a written record of —
2 (i) the entry warrant application; and
3 (ii) any information given in support of the
4 entry warrant application.
- 5 (6) An entry warrant application must be made on oath
6 unless —
- 7 (a) the entry warrant application is made by remote
8 communication; and
- 9 (b) it is not practicable for the magistrate to
10 administer an oath to the applicant.
- 11 (7) If subsection (6)(a) and (b) apply —
- 12 (a) the entry warrant application may be made in
13 an unsworn form; and
- 14 (b) if the magistrate issues an entry warrant, the
15 applicant must, as soon as practicable, send the
16 magistrate an affidavit verifying —
- 17 (i) the entry warrant application; and
18 (ii) any information given in support of the
19 entry warrant application.

20 **235H. Further provisions about entry warrant application**
21 **made by remote communication**

- 22 (1) This section applies if an entry warrant application is
23 made by remote communication.
- 24 (2) If the magistrate issues an entry warrant, the magistrate
25 must, if practicable, send a copy of the original entry
26 warrant to the applicant by remote communication.
- 27 (3) If that is not practicable —
- 28 (a) the magistrate must send to the applicant by
29 remote communication any information that
30 must be set out in the entry warrant; and

- 1 (b) the applicant must —
- 2 (i) complete a form of entry warrant with
- 3 the information received; and
- 4 (ii) give the magistrate a copy of the form
- 5 as soon as practicable after completing
- 6 the form;
- 7 and
- 8 (c) the magistrate must —
- 9 (i) attach the copy of the form to the
- 10 original entry warrant and any affidavit
- 11 received from the applicant; and
- 12 (ii) make them available for collection by
- 13 the applicant.
- 14 (4) The copy of the original entry warrant sent under
- 15 subsection (2), or the form of the entry warrant
- 16 completed under subsection (3), has the same force as
- 17 the original entry warrant.
- 18 (5) If an applicant contravenes subsection (3)(b) or
- 19 section 235G(7)(b), neither of the following is
- 20 admissible in proceedings in a court or the State
- 21 Administrative Tribunal —
- 22 (a) any evidence of, or derived from, an inspection
- 23 made under section 235E(2)(a);
- 24 (b) any evidence of, or derived from, a photograph
- 25 taken, or other record made, under
- 26 section 235E(2)(b).
- 27 **235I. Issuing entry warrant**
- 28 (1) A magistrate may issue an entry warrant only if
- 29 satisfied that it is necessary for an authorised purpose.

- 1 (2) An entry warrant must contain the following
2 information —
- 3 (a) a reasonably particular description of the land
4 to which the entry warrant relates;
- 5 (b) a reasonably particular description of the
6 authorised purpose for which entry on the land
7 is authorised;
- 8 (c) the period, not exceeding 30 days, during which
9 the entry warrant may be executed;
- 10 (d) the name of the magistrate who issued the entry
11 warrant;
- 12 (e) the date and time when the entry warrant was
13 issued.
- 14 (3) If a magistrate refuses to issue an entry warrant, the
15 magistrate must record on the entry warrant application
16 the fact of, the date and time of and the reasons for the
17 refusal.

18 **235J. Effect of entry warrant**

- 19 (1) An entry warrant has effect according to its content and
20 this section.
- 21 (2) An entry warrant comes into force when it is issued by
22 the magistrate.
- 23 (3) An entry warrant authorises an authorised officer
24 executing the warrant —
- 25 (a) to enter the land described in the entry warrant;
26 and
- 27 (b) to exercise the powers under section 235E(2)
28 for the authorised purpose described in the
29 entry warrant.
- 30 (4) An entry warrant does not authorise the use of force,
31 subject to section 235K(2).

1 **235K. Execution of entry warrant**

2 (1) An entry warrant may be executed by the authorised
3 officer to whom it is issued or by any other authorised
4 officer.

5 (2) An authorised officer executing an entry warrant may
6 call on the assistance of a police officer who, in
7 providing assistance, may use force, including force
8 against a person, that is reasonably necessary in the
9 circumstances.
10

11 **Division 2 — *Power of Entry and Inspection Regulations***
12 **repealed**

13 **72. Regulations repealed**

14 The *Power of Entry and Inspection Regulations* are repealed.

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Part 11 — Other amendments

73. Act amended

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

74. Section 43 amended

(1) In section 43 delete “After” and insert:

(1) After

(2) At the end of section 43 insert:

(2) The Commission is not required to comply with subsection (1) in relation to a proposed amendment to a region planning scheme if —

(a) the proposed amendment is a proposed minor region planning scheme amendment (as defined in section 56A) of a class that regulations provide is not required to be advertised; and

(b) either —

(i) the proposed amendment was not referred to the EPA under section 38 because of section 38(3); or

(ii) the EPA has informed the Commission under section 48A(1)(a) of the EP Act that the proposed amendment should not be assessed by the EPA.

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1 **75. Section 62 amended**

2 In section 62(1A) delete “the applicable” and insert:

3

4 any applicable

5

6 **76. Section 83A amended**

7 After section 83A(4) insert:

8

9 (5) A local government is not required to submit a
10 proposed amendment to a local planning scheme under
11 subsection (1), or to comply with section 84 in relation
12 to a proposed amendment to a local planning scheme,
13 if —

14 (a) the proposed amendment is of a class that
15 regulations provide is not required to be
16 advertised; and

17 (b) either —

18 (i) the proposed amendment was not
19 referred to the EPA under section 81
20 because of section 81(2); or

21 (ii) the EPA has informed the local
22 government under section 48A(1)(a) of
23 the EP Act that the proposed
24 amendment should not be assessed by
25 the EPA.
26

27 **77. Section 125 amended**

28 (1) In section 125(2)(b) delete “this Part; and” and insert:

29

30 the notice; and

31

1 (2) In section 125(3) delete “with the” and insert:

2

3 with any

4

5 **78. Section 246 amended**

6 In section 246(3)(b) delete “14” and insert:

7

8 28

9

10 **79. Schedule 7 clause 13 amended**

11 In Schedule 7 clause 13(4) after “Requiring” insert:

12

13 or permitting

14

15 **80. Schedule 7 clause 15 amended**

16 After Schedule 7 clause 15(1) insert:

17

18 (1A) Requiring or permitting the preparation and approval of
19 plans or other documents relating to the future planning or
20 coordination of subdivision, zoning or any other matter with
21 respect to which the scheme may make provision.

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Part 12 — Transitional provisions

81. Act amended

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

82. Part 19 Division 3 inserted

At the end of Part 19 insert:

Division 3 — Provisions for *Planning and Development Amendment Act 2023*

Subdivision 1 — Preliminary

297. Term used: 2023 amendment Act

In this Division —

2023 amendment Act means the *Planning and Development Amendment Act 2023*.

Subdivision 2 — Avoiding conflicts with development approvals

298. Provisions about avoiding conflicts with development approvals

(1) In this section —

commencement day means the day on which Part 3 of the 2023 amendment Act comes into operation;

former Part 17 Division 3 means Part 17 Division 3 as in force immediately before commencement day.

(2) If a term used in this section is given a meaning in section 171ZE, it has the same meaning in this section.

(3) This section applies for the purposes of the application of Part 11C on and from commencement day.

- 1 (4) Sections 171ZJ and 171ZK apply in relation to a
 2 relevant development approval whether it is granted
 3 before, on or after commencement day.
- 4 (5) Sections 171ZL and 171ZM —
- 5 (a) apply in relation to a relevant development
 6 approval whether it is granted before, on or
 7 after commencement day; and
- 8 (b) apply in relation to the performance of a
 9 function that conflicts with a relevant
 10 development approval —
- 11 (i) if the relevant development approval is
 12 an approval of development granted by
 13 the Commission under section 274 —
 14 whether the function is performed
 15 before, on or after commencement day;
 16 or
- 17 (ii) otherwise — only if the function is
 18 performed on or after commencement
 19 day.
- 20 (6) A notification or application of a kind referred to in
 21 column 1 of an item in the Table that was made before
 22 commencement day in relation to the performance or
 23 proposed performance of a function under a relevant
 24 legal instrument is, on and from commencement day,
 25 taken to be a notification or application of a kind
 26 referred to in column 2 of that item.

Table

Column 1	Column 2
Notification under s. 281(2)(a)	Notification under s. 171ZJ(2)(a)

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Column 1	Column 2
Notification under s. 281(8)	Notification under s. 171ZK(6)
Application under s. 282(2)	Application under s. 171ZL(2)

- 1 (7) Despite the amendments made by sections 17 and 18 of
 2 the 2023 amendment Act, former Part 17 Division 3,
 3 and section 283(7) as in force immediately before
 4 commencement day, continue to apply in relation to a
 5 direction given under section 281 or 282 before
 6 commencement day.
- 7 (8) A reference in subsection (6) or (7) to section 281
 8 or 282, or a subsection or paragraph of section 281
 9 or 282, is a reference to that provision as in force
 10 before commencement day.

11 **Subdivision 3 — Western Australian Planning Commission**

12 **299. Terms used and interaction with *Interpretation***
 13 ***Act 1984 s. 25***

- 14 (1) In this Subdivision —
 15 *new board* has the meaning given in section 301(1);
 16 *new section 10* means section 10 as to be inserted by
 17 section 38 of the 2023 amendment Act;
 18 *new section 11* means section 11 as to be inserted by
 19 section 38 of the 2023 amendment Act;
 20 *new section 12* means section 12 as to be inserted by
 21 section 38 of the 2023 amendment Act;
 22 *new section 19* means section 19 as to be inserted by
 23 section 43 of the 2023 amendment Act;

1 *reconstitution day* means the day on which Part 8
 2 Divisions 1 and 2 of the 2023 amendment Act come
 3 into operation.

4 (2) Nothing in this Subdivision limits what can be done
 5 under the *Interpretation Act 1984* section 25 in relation
 6 to the enactment of the 2023 amendment Act.

7 **300. Membership of board**

8 (1) In this section —
 9 *existing member* means a person who, immediately
 10 before reconstitution day, holds office as a member,
 11 deputy member or associate member (as those terms
 12 are defined in section 4(1) immediately before
 13 reconstitution day).

14 (2) Before reconstitution day, the Minister may, as if
 15 section 38 of the 2023 amendment Act had come into
 16 operation, exercise the Minister’s power under new
 17 section 10 to appoint persons to take office as members
 18 on reconstitution day.

19 (3) The Minister’s power under subsection (2) includes the
 20 following —

- 21 (a) the power to appoint the chairperson under
 22 subsection (2) of new section 10 and 1 or more
 23 deputy chairpersons under subsection (3) of
 24 new section 10;
- 25 (b) the power to determine terms and conditions of
 26 appointments under subsection (5) of new
 27 section 10;
- 28 (c) the power to make determinations under new
 29 section 12 on the recommendation of the Public
 30 Sector Commissioner (which determinations
 31 cannot take effect before reconstitution day).

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- 1 (4) Regulations under section 313 may (without limitation)
2 make any provision referred to in subsections (1)
3 and (2) of new section 11 for the purposes of, or
4 otherwise in relation to, the operation of this section
5 before reconstitution day.
- 6 (5) All existing members go out of office at the beginning
7 of reconstitution day.
- 8 (6) Subsection (5) does not prevent a person who will go
9 out of office under that subsection from being
10 appointed under subsection (2).
- 11 **301. New board may exercise powers of Commission**
12 **before reconstitution day**
- 13 (1) For the purposes of this Subdivision, the *new board*
14 consists of the persons appointed by the Minister under
15 section 300(2) (if any).
- 16 (2) Before reconstitution day, the new board may meet and
17 do any of the following —
- 18 (a) exercise a power referred to in section 302(2),
19 303(2), 304(2), 305(3) or 306(2);
- 20 (b) do any other thing —
- 21 (i) that, on or after reconstitution day, the
22 Commission or board will be able to do
23 under this Act or otherwise (including
24 as a result of an amendment made by
25 the 2023 amendment Act); and
- 26 (ii) that the new board considers it
27 appropriate to do in advance of
28 reconstitution day;

- 1 (c) consider whether or how to exercise a power
2 under paragraph (a) or do any other thing under
3 paragraph (b).

4 Example for this subsection:

5 An example of something that could be done under
6 paragraph (b) is delegating functions, or revoking
7 delegations of functions, under section 16.

- 8 (3) A thing done by the new board under
9 subsection (2)(b) —
10 (a) has effect as if done by the Commission or
11 board (as the case requires); but
12 (b) cannot take effect before reconstitution day.
- 13 (4) If an appointment that can be made under
14 subsection (2)(a), or any other thing that can be done
15 under subsection (2)(b), requires the Minister's
16 approval, the Minister may give the approval before
17 reconstitution day.
- 18 (5) The Minister may, before reconstitution day, make
19 determinations on the recommendation of the Public
20 Sector Commissioner under subsection (2) of new
21 section 19 as if section 43 of the 2023 amendment Act
22 had come into operation (which determinations cannot
23 take effect before reconstitution day).
- 24 (6) Subject to any directions of the Minister and any
25 regulations made under section 313 —
26 (a) Schedule 1 clause 8 (as in force before
27 reconstitution day) applies with any necessary
28 modifications to a meeting of the new board
29 under subsection (2); and
30 (b) the new board may otherwise determine its own
31 procedures for the purposes of this section.
- 32 (7) Accurate records must be kept of any proceedings of
33 the new board under this section.

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- 1 (8) Section 22 applies in relation to the functions of the
2 new board under this section.
- 3 (9) Regulations under section 313 may (without limitation)
4 make any provision referred to in subsections (1)
5 and (2) of new section 11, or subsections (3) and (4) of
6 new section 19, for the purposes of, or otherwise in
7 relation to, the operation of this section before
8 reconstitution day.
- 9 (10) The Minister may, on the recommendation of the
10 Public Sector Commissioner, determine remuneration
11 and allowances to be paid to members of the new board
12 in relation to the performance of the functions of the
13 new board under this section.
- 14 **302. Membership of Executive, Finance and Property**
15 **Committee**
- 16 (1) In this section —
17 *committee* means the Executive, Finance and Property
18 Committee established under Schedule 2 clause 3;
19 *existing member* means a person who, immediately
20 before reconstitution day, is a member of the
21 committee;
22 *new Schedule 2 clause 3(2)* means Schedule 2
23 clause 3(2) as to be inserted by section 48 of the 2023
24 amendment Act.
- 25 (2) Before reconstitution day, the new board may, as if
26 new Schedule 2 clause 3(2) were in force, exercise the
27 Commission’s powers under new Schedule 2
28 clause 3(2) to appoint persons to take office as
29 members of the committee on reconstitution day.
- 30 (3) All existing members go out of office at the beginning
31 of reconstitution day.

- 1 (4) Subsection (3) does not prevent a person who will go
 2 out of office under that subsection from being
 3 appointed under subsection (2).

4 **303. Membership of Statutory Planning Committee**

- 5 (1) In this section —
 6 *committee* means the Statutory Planning Committee
 7 established under Schedule 2 clause 4;
 8 *existing member* means a person who, immediately
 9 before reconstitution day, is a member of the
 10 committee;
 11 *new Schedule 2 clause 4(2)* means Schedule 2
 12 clause 4(2) as to be inserted by section 49 of the 2023
 13 amendment Act.
- 14 (2) Before reconstitution day, the new board may, as if
 15 new Schedule 2 clause 4(2) were in force, exercise the
 16 Commission’s powers under new Schedule 2
 17 clause 4(2) to appoint persons to take office as
 18 members of the committee on reconstitution day.
- 19 (3) All existing members go out of office at the beginning
 20 of reconstitution day.
- 21 (4) Subsection (3) does not prevent a person who will go
 22 out of office under that subsection from being
 23 appointed under subsection (2).

24 **304. Membership of Swan Valley Statutory Planning
 25 Committee**

- 26 (1) In this section —
 27 *amended section 33(2)* means the *Swan Valley
 28 Planning Act 2020* section 33(2) as to be amended by
 29 section 54 of the 2023 amendment Act;

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- 1 *committee* means the Swan Valley Statutory Planning
2 Committee established under the *Swan Valley Planning*
3 *Act 2020* section 33(1);
- 4 *relevant existing member* means a person who,
5 immediately before reconstitution day, is a member of
6 the committee under the *Swan Valley Planning*
7 *Act 2020* section 33(2)(a) or (b).
- 8 (2) Before reconstitution day, the new board may, as if
9 amended section 33(2) were in force, exercise the
10 Commission’s powers under paragraph (b) of amended
11 section 33(2) to appoint persons to take office as
12 members of the committee on reconstitution day.
- 13 (3) All relevant existing members go out of office at the
14 beginning of reconstitution day.
- 15 (4) Subsection (3) does not prevent a person who will go
16 out of office under that subsection from being
17 appointed under subsection (2).

18 **305. Other continuing committees**

- 19 (1) In this section —
- 20 *committee* means a committee that is in place under
21 Schedule 2 clause 1(1) immediately before
22 reconstitution day;
- 23 *existing member* has the meaning given in
24 section 300(1);
- 25 *new Schedule 2 clause 1(1)* means Schedule 2
26 clause 1(1) as to be inserted by section 46 of the 2023
27 amendment Act.
- 28 (2) The replacement of Schedule 2 clause 1(1) by
29 section 46 of the 2023 amendment Act does not, of
30 itself, affect the existence or membership of a
31 committee.

- 1 (3) Before reconstitution day, the new board may, as if
 2 new Schedule 2 clause 1(1) were in force, exercise the
 3 Commission’s powers under new Schedule 2
 4 clause 1(1) to appoint members of the new board to
 5 take office as members of a committee on
 6 reconstitution day.
- 7 (4) An existing member who, immediately before
 8 reconstitution day, is also a member of a committee
 9 goes out of office as a member of the committee at the
 10 beginning of reconstitution day.
- 11 (5) Subsection (4) does not prevent a person who will go
 12 out of office under that subsection from being
 13 appointed under subsection (3).

14 **306. Board of management of Metropolitan**
 15 **Redevelopment Authority**

- 16 (1) In this section —
 17 *board of management* means the board of management
 18 established under section 76(1) of the MRA Act;
 19 *existing nominated member* means the person who,
 20 immediately before reconstitution day, is the member
 21 of the board of management under section 77(1)(a) of
 22 the MRA Act;
 23 *MRA Act* means the *Metropolitan Redevelopment*
 24 *Authority Act 2011*.
- 25 (2) Before reconstitution day, the new board may exercise
 26 the Commission’s power under section 77(1)(a) of the
 27 MRA Act to nominate a member of the new board to
 28 be a member of the board of management.
- 29 (3) If the new board nominates a person under
 30 subsection (2), the Minister may, before reconstitution
 31 day, appoint the nominated person to take office as the

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1 member of the board of management under
2 section 77(1)(a) of the MRA Act on reconstitution day.

3 (4) The existing nominated member goes out of office at
4 the beginning of reconstitution day.

5 (5) Subsection (4) does not prevent the person who will go
6 out of office under that subsection from being
7 nominated under subsection (2) and appointed under
8 subsection (3).

9 **307. Certain committees abolished**

10 (1) In this section —
11 *committee* means a committee that was established
12 before reconstitution day under Schedule 2 clause 5, 7,
13 8 or 9 (as in force before reconstitution day).

14 (2) At the beginning of reconstitution day, all committees
15 are abolished (and their members go out of office).

16 **Subdivision 4 — Consolidation of planning schemes**

17 **308. Term used: repeal day**

18 In this Subdivision —
19 *repeal day* means the day on which Part 9 of the 2023
20 amendment Act comes into operation.

21 **309. Proof of consolidation of region planning scheme**

22 (1) In this section —
23 *repealed section 66(2)* means section 66(2) as in force
24 immediately before repeal day.

25 (2) This section applies if, immediately before repeal day,
26 repealed section 66(2) applies to a consolidation.

- 1 (3) Repealed section 66(2) continues to apply to the
 2 consolidation on and after repeal day as if section 62 of
 3 the 2023 amendment Act had not come into operation.

4 **310. Proof of consolidation of local planning scheme**

- 5 (1) In this section —
 6 *repealed section 93* means section 93 as in force
 7 immediately before repeal day.
 8 (2) This section applies if, immediately before repeal day,
 9 repealed section 93 applies to a consolidation.
 10 (3) Repealed section 93 continues to apply to the
 11 consolidation on and after repeal day as if section 63 of
 12 the 2023 amendment Act had not come into operation.

13 **311. Application of amended s. 138(3)(a) and**
 14 **171R(1)(b)(ii) in relation to previous review of**
 15 **local planning scheme**

- 16 (1) In this section —
 17 *amended section 138(3)(a)* means section 138(3)(a) as
 18 in force on repeal day;
 19 *amended section 171R(1)(b)(ii)* means
 20 section 171R(1)(b)(ii) as in force on repeal day.
 21 (2) For the purposes of the application on and after repeal
 22 day of amended section 138(3)(a) and amended
 23 section 171R(1)(b)(ii) in relation to a local planning
 24 scheme, a report on a review of the local planning
 25 scheme is taken to have been approved under
 26 section 132C(2) or (4) in the preceding 10 years if, in
 27 the preceding 10 years, the Commission made a
 28 decision in relation to a report of a review of the local
 29 planning scheme under the *Planning and Development*
 30 *(Local Planning Schemes) Regulations 2015*
 31 regulation 67(1)(a) (as in force before repeal day).

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Subdivision 5 — Reviews of planning decisions

312. Applications made to State Administrative Tribunal

The amendment made by section 78 of the 2023 amendment Act does not apply to applications made to the State Administrative Tribunal before the day on which that section comes into operation.

Subdivision 6 — Regulations

313. Transitional regulations

- (1) In this section —
specified means specified or described in regulations;
transitional matter —
 - (a) means a matter or issue of a transitional nature that arises as a result of any of the amendments to this Act, or to any other written law, made by the 2023 amendment Act; and
 - (b) includes a saving or application matter.
- (2) Regulations may prescribe anything required, necessary or convenient to be prescribed in relation to a transitional matter.
- (3) Without limiting subsection (2), regulations made for the purposes of that subsection may provide that specified provisions of this Act or any other written law —
 - (a) do not apply to, or in relation to, a specified matter or thing; or
 - (b) apply with specified modifications to, or in relation to, a specified matter or thing.
- (4) If regulations made for the purposes of subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that

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is earlier than the day on which the regulations are published in accordance with the *Interpretation Act 1984* section 41(1)(a) but not earlier than the day on which Part 12 of the 2023 amendment Act comes into operation, the regulations have effect according to their terms.

- (5) If regulations made for the purposes of subsection (2) contain a provision of a kind described in subsection (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

