EXPLANATORY MEMORANDUM

Planning and Development Amendment Bill 2023

OVERVIEW

The purpose of this Bill is to amend the *Planning and Development Act 2005* ('the PD Act'), together with other consequential changes to other acts, in order to:

- accelerate housing supply;
- cut unnecessary red tape and bring more consistency to urban and regional planning in WA; and
- help promote a more consistent and efficient planning system.

These aims align with the National Planning Reform Blueprint, endorsed by National Cabinet on 16 August 2023, which has set the policy approach and measures to accelerate housing supply around the Nation. The outcomes of the National Planning Reform Blueprint included in this Bill broadly comprise:

- Streamlining approval pathways and prioritising planning amendments to support diverse housing across a range of areas.
- Promoting medium and high-density housing in well located areas close to existing public transport connections, amenities, and employment.
- Reforms to support the rapid delivery of social and affordable housing.
- Reforms to address barriers to the timely issuing of development approvals.

This Bill includes four key components designed to accelerate the delivery and supply of housing and streamline the planning system:

- A new permanent significant development pathway (Part 3 of the Bill).
- Reforms to decision making in local government for single houses (Part 4 of the Bill).
- Various reforms to streamline existing planning processes (including Development Assessment Panels) (Part 2 of the Bill).
- Reform of the Western Australian Planning Commission to improve efficiency in decision making, streamline membership and clarify its role as expert advisor and independent decision-making body with the necessary technical expertise ('WAPC' or 'Commission') (Part 8 of the Bill).

In addition to these four key components, the Bill also addresses identified anomalies within the existing WA planning system, which are seen to undermine housing delivery, add unnecessary red tape, and contribute to a less consistent and less efficient planning system. These measures include:

- Expand existing conflict resolution processes, in order to prevent potential regulatory gridlock between different development approval agencies (Part 3 of the Bill).
- Remove unnecessary, duplicate, environmental review processes as they relate to preparing or amending planning codes (Part 5 of the Bill).
- Correct legal anomalies that undermine urban renewal, particularly within areas likely to benefit from good access to public transport and facilitate medium and high-density housing (e.g. METRONET precincts), such as:
    - the inability to extinguish a non-conforming use within an improvement scheme area (Part 6 of the Bill); and
    - the inability to concurrently terminate a strata scheme and subdivide land (Part 7 of the Bill).
- Modernise processes for reviewing and updating planning frameworks, including:
    - bring consolidation and review requirements into the digital age; and
    - introduce new practicable targets for the Commission and local governments, as they relate to updating of planning schemes and other strategic planning documents (encompassing zoning, subdivision, development, housing targets and other planning requirements) (Part 9 of the Bill).
- Modernise enforcement powers for the officers of the Department of Planning, Lands and Heritage ('the Department') assisting the Commission, in order to bring State powers into alignment with local government, and help ensure quality planning and development outcomes (Part 10 of the Bill).
- Address a range of other minor issues, including:
    - clarify the ability to reduce or exempt advertising requirements for certain minor or basic amendments to planning schemes; and
    - clarify the status of master planning documents such as structure plans,

    noting efficient local planning scheme amendment processes, together with the proper use of master planning documents, form important aspects of subdivision, zoning, land release and other reforms (Part 11 of the Bill).
- Deal with transitional matters (Part 12 of the Bill).

While these measures contribute to the National Planning Reform Blueprint, as was noted in the explanatory memorandum accompanying the *Planning and Development Amendment Bill 2020,* a second tranche of measures had already been foreshadowed. The delivery of the latest suite of priority planning reforms have been identified through the Action Plan for Planning Reform established in 2019, and extensive consultation has been undertaken over the past 6 years.

This legislative programme reflects the fact Western Australia is already a national leader in the area of planning reform. Nonetheless, this Bill also reflects a legislative objective of utilising multiple levers to support National Cabinet's position.

CLAUSE NOTES

Part 1 – Preliminary

This Part deals with preliminary matters, including the short title and commencement of this Bill.

Clause 1. Short title

This clause provides that the name of this Bill when enacted is the *Planning and Development Amendment Act 2023.*

Clause 2. Commencement

This clause sets out when different provisions of the Bill become operational. Part 1, being these preliminary matters, will commence upon assent. Parts 4 (Performance of development approval functions), 6 (Improvement schemes), 7 (Subdivision of land), 8 (Western Australian Planning Commission, only Division 3), 10 (Powers of entry and inspection), 11 (Other amendments, other than s.76) and 12 (Transitional) will commence the day after assent.

Parts 2 (Development Assessment Panels) and 5 (Planning Codes) will commence immediately after related provisions in the *Planning and Development Amendment Act 2020* ('2020 Amendment Act') are proclaimed. This Bill has been drafted on the premise of Parts of the 2020 Amendment Act being proclaimed, many of which required supporting regulations before commencing.

The rest of the Bill, comprising Parts 3 (Significant development and conflict resolution), 9 (Consolidations and reviews) and the remainder of Parts 8 (Western Australian Planning Commission) and 11 (Other Amendments) will commence upon a staged proclamation process. A staged proclamation is necessary to allow time for the drafting and approval of supporting regulations, as well as putting in place other administrative arrangements before new provisions can come into effect.

Part 2 — Development Assessment Panels

This Part contains provisions that deal with aspects of the Development Assessment Panel ('DAP') system. DAPs were first introduced into the planning system by the *Approvals and Related Reforms (No. 4) (Planning) Act 2010*. DAPs are panels comprising a mix of technical experts and local government representatives, with the power to determine applications for development approvals in place of the relevant decision-making authority. DAPs enhance planning expertise in decision making by improving the balance between technical advice and local knowledge.

This Part of the Bill forms a component of an integrated package of legislative reform, including both changes to the PD Act, together with anticipated changes to the *Planning and Development (Development Assessment Panel) Regulations 2011* (DAP Regulations), in order to:

- replace the concept of special matters DAPs with a new permanent significant development pathway;
- transition specialist DAP members to fixed-term, full-time members, together with a pool of technical experts from specialised fields;

- remove mandatory thresholds, providing proponents with the choice of opting into the DAP pathway or seeking approval from the local government;
- provide a completely opt-in pathway over a prescribed threshold (likely to be $2 million, excluding single houses and ancillary structures, public works, and development on a region scheme reserve);
- remove current exclusions for 10 grouped dwellings and 10 multiple dwellings, warehouses, and applications by responsible authorities; and
- permit any community housing project to opt-into the DAP system, regardless of financial threshold.

The composition of the panels is intended to remain unchanged, with 3 technical experts and 2 local government elected members on each panel. An assessment timeframe of 60 or 90-days will also continue to apply. The role of the relevant local government will also remain unchanged, meaning for all DAP applications the assessment, consultation and recommendation will be administered by the local government.

In order to facilitate these broader reforms, especially the establishment of a new significant development pathway under new Part 11B, the concept of 'district DAP' and 'special matters DAP', introduced by the 2020 Amendment Act, will need to be deleted.

Clause 3. Act amended

This clause explains this Part amends the PD Act.

Clause 4. Section 4 amended

This clause amends s.4 and deletes the terms 'district DAP' and 'special matters DAP' from the terms used in the PD Act.

Clause 5. Section 171C amended

This clause amends s.171C and is related to removing district DAPs and special matters DAPs.

Clause 6. Section 289 amended

This clause amends s.289 and is related to removing the district DAPs and special matters DAPs.

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

This Part introduces a permanent pathway for approval of significant development by the Commission and a conflict-resolution process for certain planning approvals. This Part deals with two key reforms:

- A new significant development pathway under Part 11B; and
- An expanded conflict resolution process under Part 11C.

Clause 7. Act amended

This clause explains this Part amends the PD Act.

Clause 8. Section 4 amended

This clause inserts the definition of Government agreement used in the *Government Agreements Act 1979*. An administrative amendment.

Clause 9. Section 20 amended

This clause amends s.20 and relates to the commencement of the *Legislation Act 2021*, encompassing changes permitting forms of publication on the WA legislation website. An administrative amendment.

Clause 10. Section 171A amended

This clause provides that any regulations under s.171A are subject to Part 11B and Part 17 of the PD Act.

Clause 11. Parts 11B and 11C inserted

This clause inserts the Part 11B significant development approval pathway and the Part 11C conflict resolution provisions.

Part 11B – Development approval for significant development

The new Part 11B significant development pathway refines concepts from Part 17 – *Special provisions for COVID-19 pandemic relating to development applications.* The new permanent assessment pathway will be a refined version of the temporary COVID-19 pathway with improvements, including a timeframe for determination (120 days), to make it suitable in a post COVID-19 environment. This permanent pathway under new Part 11B will continue to apply some of the now tested aspects of Part 17, with minor changes, including:

- prescribed financial thresholds to opt-into the pathway (to be set out in regulations, expected to continue as $20 million for Perth and now also including Peel, as well as $5 million for other remaining regional areas);
- the Commission retained as the decision-maker, where proposals will benefit from coordinated referral and consultation processes with state agencies (but with entrenched best practices relating to design review and pre-lodgement advice, also supported by regulations);
- flexible procedural and administrative requirements, to provide proponents with more complex proposals the ability to opt into this pathway that offers a streamlined, efficient, and coordinated assessment process (also supported by regulations); and
- additional safeguards to ensure good and timely decision-making (including an expected 120-day time limit for determination, public meetings, and published written reasons, also expected to be set out in regulations).

Some provisions have also been modelled on well-known procedures from the DAP system and the *Planning and Development (Local Planning Schemes) Regulations 2015* ('LPS Regulations').

The permanent significant development pathway under new Part 11B will also replace the concept of 'special matters DAPs'. This was a clear preference amongst consulted stakeholders.

Noting most Part 17 applications to date have involved residential or mixed-use projects, the new and permanent significant development pathway under Part 11B will continue to prioritise the State's commitments to housing in support the National Planning Reform Blueprint. This will especially be the case for larger and often more complex proposals, which often require a tailored, more bespoke approach with whole-of-government and public interest considerations, which a significant development pathway is best placed to support.

A new permanent significant development pathway will also bring the State of Western Australia into alignment with most other jurisdictions of the nation, and many other common law countries, who have specialist planning pathways for development proposals of significance. Common features of these other significant development pathways typically include: qualification by either prescription or authorisation by an elected official; bespoke administrative procedures for consultation, advertising, assessment, and determination; and additional decision-making discretion, often including the ability to consider non-planning matters in the public interest. These features are also reflected in new Part 11B.

Division 1 – Preliminary

This Division deals with preliminary matters necessary for Part 11B.

Section 171H. Terms used

This section provides a range of relevant definitions for the new Part 11B. Definition of note include:

- ***applicable planning instrument*** is similar to the term 'legal instrument' in Part 17, however, it is more limited as it only includes local planning schemes, region planning schemes, the Swan Valley Planning Scheme and interim development orders.
- ***design review*** is a new term intended to capture review of the design of a proposed development by a committee of the Commission, such as the State Design Review Panel. The definition also recognises that there may be instances where design review does not require a review by full panel, permitting design review by another suitably qualified person or body (such as by or a person associated with the Government Architect).
- ***development application*** means, in relation to s.4, a development application within the scope of the planning system, in the usual sense under the PD Act, which (subject to criteria set out in this Part) can potentially fall within the new significant development pathway. This is distinct from:
    - other types of planning applications outside of approvals for development (such as those relating to subdivision and structure plans); or

- other development applications outside the planning system (such as applications for a building or demolition permit under the *Building Act 2011*),

which could not fall within the new significant development pathway under Part 11B.

The reference to s.171A(1) cross-references classes of development applications relating to DAPs. This ensures proponents (subject to criteria set out in this Part) can opt-into the new significant development pathway, even if they would otherwise also qualify for the DAP system.

- ***mandatory significant development*** acts as a flexible concept to capture development applications that must be made under Part 11B if it is set out in regulations. Nonetheless, as at the introduction of this Bill, no classes of mandatory significant development are contemplated.
- ***normal decision-maker*** is modelled on the meaning of the term used in Part 17. That is, it is the decision maker who would ordinarily determine the development application if the application was not under Part 11B. This provision reflects the intent for the Commission to 'stand in the shoes' of that person or body, such as the relevant local government or DAP.
- ***procedural provision*** is broad and captures provisions that relate to the procedure for dealing with a development application. This may include details similar to the LPS Regulations, however, it does not extend to the matters the WAPC has regard to in making a decision. This provision captures the conceptual intent of Part 11B, which distinguishes:
    - the procedural and administrative aspects of the development application process, which can be flexible, tailored, and bespoke;
    - the assessment itself based on the planning merits, where well-established planning factors will continue to apply as relevant considerations; but
    - the decision itself will be made by the Commission instead of the normal decision-maker, potentially applying additional elements of discretion.
- ***significant development application*** refers to applications which meet criteria for a prescribed significant development or which the Premier has given authorisation for and have been made to the Commission. It does not capture applications before they have been made, including any consultation with the Commission about the prospective application.
- ***substantially commenced*** enshrines the well-known principle in town planning law to prevent the banking of development approvals. This provision is based on the existing definition found in Sch.2, cl.1 of the LPS Regulations.

Section 171I. Prescribed significant development

This section provides that significant development may be prescribed or mandatory and that regulations may be made for the purposes of prescribing development which fits in

either category Part 11B. As noted, as at the introduction of this Bill, no classes of mandatory significant development are contemplated.

Section 171J. Development to which this Part applies

This section clarifies that certain development cannot be approved under Part 11B. Development within a planning control area, an improvement scheme area, redevelopment scheme under the *Metropolitan Redevelopment Authority Act 2011*, redevelopment area of the *Hope Valle-Wattleup Redevelopment Act 2000* s.3(1), wholly within the Swan River Trust development control area, to which a State Agreement applies, or that is a public work cannot be approved. These are classes of development that are already determined by the Commission or by a decision-maker of State significance (such as a Minister), and often apply bespoke procedures and merits outside the ordinary planning framework.

Section 171K. Relationship of this Part with other laws

This section makes clear that Part 11B has effect despite any other provision in the PD Act. However, Part 11B is subject to s.5 of the *Environmental Protection Act 1986* ('EP Act'). This provision puts beyond doubt that the State's environmental statutory regime will continue to take precedence.

Division 2 – Determination of significant development applications

This Division provides how significant development applications are made and determined by the Commission.

Subdivision 1- Making significant development applications

Section 171L. Development application may be made to Commission for determination under this Part

This section provides that an application may be made under Part 11B in three instances. Summarily, these three instances are:

- if the development is prescribed by regulations;
- if authorised by the Premier under s.171M; or
- if it is mandatory significant development.

As noted, as at the introduction of this Bill, the classes of development prescribed by regulations is expected to include financial thresholds of $20 million for Perth and Peel, and $5 million for regional areas.

Similar as noted, as at the introduction of this Bill, no classes of mandatory significant development are contemplated.

Section 171M. Authorisation for application raising issues of State or reginal importance to be made under s.171L

This section sets out the procedure to seek authorisation from the Premier for an application which otherwise would not satisfy the criteria, such as financial threshold, for a significant development application under Part 11B but may raise issues of State of regional importance.

While the class of applications is by design not intended to be limited, it is expected, for example, that applications relating to social and affordable housing may be authorised for potential inclusion under Part 11B, in support of the National Planning Reform Blueprint. Other examples where potential authorisation may be contemplated could include a childcare centre, tourist attraction or a critical service in a regional area, which may not meet the established financial threshold but do raise issues of importance for that regional locality.

Authorisation under s.171L is a three-step process. Firstly, a proponent must request authorisation from the Minister for Planning in the required manner and form. Secondly, if the Minister is satisfied that the application raises issues of State or regional importance, the Minister may recommend the application to the Premier. Thirdly, if the Premier agrees with the Minister, the Premier may approve the application being made and determined under Part 11B.

Section 171N. Supplementary provisions about applications and authorisations

This section sets out how an application is made under Part 11B. An application must comply with the regulations, be in the manner and form required by the Commission and include any other documents or information which may be set out in regulations.

Subdivision 2 – Considering and determining significant development applications

This subdivision sets out how the Commission assesses and determines development applications under Part 11B.

Section 171O. Significant development application must be determined under s.171P(1)

This section requires a significant development application to be determined under s.171P(1).

Section 171P. Determination of significant development application by Commission

This section provides the framework for how the Commission will determine applications for significant development under part 11B. This section is broadly modelled on Part 17, s.274.

Subsection (1) applies the well-accepted tripart formular that the Commission can either approve the application *without* conditions, approve the application *with* conditions, or refuse the application.

Subsection (2) confirms the Commission determines the application under the existing planning framework. This approach departs from Part 17, where pursuant to s.274(1), decisions were made outside the existing planning framework. However, this requirement is subject to where, "Except otherwise provided in this Subdivision". This contemplates provisions such as s.171R, which provide situations where the Commission has additional discretion to make a decision inconsistently with the applicable planning framework.

Subsection (3) confirms the Commission makes a decision as if it were the normal decision-maker. That is, the Commission essentially "stands in the shoes" of the original decision-maker, in a similar way to DAPs or SAT do in relation to planning decisions.

The normal decision-maker in the context of Part 11B applications will usually be either a local government, a DAP, or in some instances the Commission itself.

Section 171Q. Procedures for dealing with significant development application

This section provides a flexible approach to dealing with Part 11B applications and that the procedures, such as the time period and process for accepting an application, public advertising, additional information, and consideration of submissions, for dealing with Part 11B, are set in regulations. This allows the procedure to be more easily amended to reflect the kind of applications the Commission receives under Part 11B. At the introduction of this Bill, draft regulations had been prepared.

The Commission is not bound by the procedural provisions in the applicable planning instrument, such as the advertising timeframes under the LPS Regulations, however, may choose to apply them if consistent with the regulations.

Section 171R. Determining significant development application inconsistently with applicable planning instrument in some circumstances

This section enables the Commission to approve an application under Part 11B in a manner that conflicts with the planning framework and is modelled on existing powers within the PD Act, including s.138(3) (in relation to subdivision applications) and s.246(1) (Ministerial call-ins from SAT reviews) of the PD Act. The powers of the Commission are still substantial but more limited than Part 17 (which was theoretically near-unlimited), with the Commission empowered to approve an application that conflicts with the existing planning framework in four instances:

- Pursuant to subsection (1)(a), if the application raises issues of State or regional importance, and is in the public interest.
- Pursuant to subsection (1)(b) if the conflict concerns the local planning scheme and the scheme has not been published or consolidated accordance with the PD Act.
- Pursuant to subsection (1)(c), if the conflict concerns the local planning scheme, the Commission considers the conflict is minor and the determination is consistent with the general intent the SPP, code, region scheme or local planning strategy relevant to the development.
- Pursuant to subsection (1)(d), if it is of a class prescribed in Part 11B.

In relation to the first trigger under subsection (1)(a), concerning situations where the Commission intends to exercise additional discretion due to issues of State or regional importance:

- Subsection (1)(a) does not require proof that an application itself to be of State or regional significance, but rather that the application raises *'issues'* of the same.
- Subsection (1)(a) does require the determination be in the public interest, but under subsection (3) confirms this can include non-planning considerations, broadly modelled on existing s.247(1).

In relation to the second trigger under subsection (1)(b), broadly modelled on existing s.138(3), in accordance with Part 9 of this Bill, this period will be 10 years rather than the 5 years under Part 5, Division 5 of the PD Act. See transitional provisions in s.311. This provision incentivises responsible authorities, especially local governments, to have up-to-date planning frameworks.

In relation to the third trigger subsection (1)(c), this provision is also broadly modelled on existing s.138(3). Note the question of consistency will not necessarily be applicable to every State planning policy, planning code, region planning scheme or local planning strategy in existence, but rather 'that *is relevant* to the development'.

In relation to the fourth trigger under subsection (1)(d), at the time of introduction of this Bill, no additional circumstances are contemplated in regulations.

Finally, in relation to any of the four triggers for additional discretion, subsection (2) confirms the Commission must still have due regard to the need to ensure the orderly and proper planning, and the preservation of amenity, of the locality to which the application relates. These are well-established planning terms and invoke responsible decision-making. These requirements also incentivise responsible authorities, especially local governments, to have up-to-date planning frameworks.

Section 171S. Provisions about determination of significant development application

This section is broadly modelled on Part 17, s.274, and provides the framework as to how the Commission is to determine applications under Part 11B.

Summarily, the Commission can grant approval in full or in part. The Commission's approval and conditions also cannot vary the development to such an extent that it no longer satisfies the requirements for prescribed significant development, or if the application was authorised by the Premier under s.171M, that the approval is substantially different to that applied for. This helps protect applicants from what can be considered 'refusals by stealth'.

After approval under Part 11B, the Commission must give notice of the approval with reasons to stakeholders, including the applicant and relevant local government and publish the approval on its website.

Section 171T. Time for determination of significant development application

This section is broadly modelled on the LPS Regulations Schedule 2, clause 75 and provides that the Commission must determine an application under Part 11B in the period set out in regulations. As noted, as at the introduction of this Bill, the anticipated timeframe to be prescribed in regulations is expected to be 120 days. However, if the period expires the application can still be determined, broadly modelled on similar provisions in Sch.2, cl.75 of the LPS Regulations.

This procedural provision is distinguished from Part 17, which has no timeframe for determination. Stakeholder consultation indicated a strong preference for an established timeframe for decision-making.

Subdivision 3 – Consequences of determination and amendment and cancellation of determination

This subdivision sets out the consequences of a development approval and the process for amendment.

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

This section is modelled on Part 17, s.277, and provides that a determination under Part 11B is deemed to be an approval as if made by a normal planning decision maker. The legislative note at subsection (2) provides an example in the context a local planning scheme.

This section clarifies that approval under Part 11B does not negate the requirement to obtain any other non-planning approvals. For example, even with a development approval under Part 11B of the PD Act, a proponent is not excused from having to obtain any necessary building or demolition permit under the *Building Act 2011*. The legislative note at subsection (3) clarifies that Part 11C conflict resolution applies despite this.

Section 171V. Enforcement powers of Commission in relation to conditions

This section provides that the Commission can enforce the conditions of a development approval under Part 11B, such as the various powers to rectify or remove illegal development under sections 214 to 216. Noting the Commission's enforcement activities are carried out through officers of the Department, this reform also ties-in with Part 10 of this Bill.

To provide flexibility, a responsible authority (such as the local government) is not precluded by this section from enforcing an approval.

Section 171W. Substantial commencement of development approved under s.171P(1)

This section is broadly modelled on Part 17, s.278 and Sch.2, cl.71 of the LPS Regulations. A prescribed substantial commencement period aims to prevent the banking of approvals. Under this provision, a development approval under Part 11B must be substantially commenced within 4 four years or the period specified in the approval.

Note this effectively doubles the default period under Part 17, which was 2 years (24 months). A period of 2 years was considered too short to be practicable for developments of such scale and complexity to qualify for assessment under a significant development pathway. A longer period was also considered more appropriate for a permanent system, in comparison to Part 17, which had a stated aim of more immediate development activity to facilitate economic recovery from the COVID-19 Pandemic.

Section 171X. Amendment or cancellation of approval granted under s.171P(1)

This section permits an owner to apply to amend or cancel an approval under Part 11B. This section is broadly modelled on the process in Part 17, s.279, and Sch.2, cl.77 of the LPS Regulations, and applies several sections from Part 11B apply as if this were an application under the Part.

Division 3 – Oversight of Commission

This Division provides mechanisms for ensuring oversight of the Commission's decision-making power under Part 11B. This includes oversight by SAT, the Governor and Parliament.

Section 171Y. Review by State Administrative Tribunal

This section provides that an applicant may apply to the State Administrative Tribunal to review a refusal, or a condition imposed under Part 11B.

Section 171Z. Ministerial call-in of application for review under s171.Y

This section enables the Minister to call-in an application for review made by an applicant under s.171Y. The process at s.246 applies, however, call-ins under Part 11B must be heard by the State Administrative Tribunal before being referred to the Minister for Planning for formal determination under s.246(2)(b).

This procedure ensures that these applications, which by their nature are for significant development and/or of State or regional importance, have the benefit of the Tribunals' expertise in carrying out the hearing, as well ensuring greater transparency for Part 11B applications authorised by the Premier on the recommendation of the Minister for Planning. The Minister will still make the final decision and have the ability to apply non-planning considerations in the public interest under s.247(1).

Note the Minister's powers here are notably less than most other comparable jurisdictions. In most states or territories of the nation, Ministerial decision-making for significant development applications occur at the original phase. Within the WA planning system, by contrast, a Ministerial call-in under s.246 only applies at a latter review stage.

Section 171ZA. Governor may amend or cancel approval granted by Commission under s.171P(1)

This section, similar to s.274 of Part 17, enables the Governor to amend or cancel a development approval under Part 11B. As was noted in the introduction to Part 17, these provisions provide an important degree of oversight and check on the Commission's power, particularly its additional powers to apply non-planning considerations in the public interest.

This section enables the Governor (including acting on the advice and consent of a current or future Government in Executive Council pursuant to s.60 of the *Interpretation Act 1984*) to cancel an approval, as well as add, amend or remove aspects or conditions of any approval. The Governor's decision is also a disallowable instrument, in turn subject to scrutiny and potential disallowance by Parliament.

Noting the process for invoking this power would require the consent of both the Governor (acting on the advice and consent of the Government) and Parliament, it is anticipated such powers would be used sparingly – if at all. In practice, given existing statute of limitation requirements, any intervention would likely be anticipated before construction began or early within a development proposal. Nonetheless, the provisions aim to balance the aims of economic investment certainty with the right of the State, through both its executive and legislative branches, to retain ultimate oversight over a system that does afford potentially significant discretion, including applying non-planning grounds in the public interest.

Division 4 – Miscellaneous

This division deals with final matters including meetings, fees, and regulations.

Section 171ZB. Meetings to be open to public

This section requires meetings under Part 11B held by the board or a committee of the Commission to be open to the public except in circumstances provided in regulations. This reflects best contemporary practice.

Section 171ZC. Fees

This section enables the Commission to charge fees for any matter relating to Part 11B, including regulations.

Section 171ZD. Regulations

This section enables the Governor to make regulations necessary or convenient for Part 11B. As at the introduction of this Bill, draft regulations have been prepared.

Part 11C – Avoiding conflicts with certain development approvals

The new Part 11C conflict resolution procedure refines and replaces the conflict resolution process from Part 17, Division 3, to prevent and address common instances where proponents are unable to carry out development. As was noted in the introduction to Part 17, Division 3, differing approval regimes do not always align. In some cases, an applicant may have conditions imposed under a development approval that directly contradicts or are otherwise inconsistent with conditions imposed by another government decision-maker. In such situations, a proponent may need to seek resolution of these conflicting approvals by initiating legal proceedings in SAT (at significant cost and a further delay of many months or even years), or seek to amend their earlier development approval, or both, or abandon the project entirely as it becomes increasingly unviable. Such incongruence between overlapping statutory regimes perhaps reflect the very worse examples of red tape, and their restraint on economic activity.

Stakeholder consultation suggested the conflict resolution provisions were a successful aspect of Part 17, warranting continuation and expansion to other planning applications across the permanent planning system. In addition to Part 17 applications, these new conflict resolution provisions now encompass other higher-order planning decisions. A regulation-making power is also provided to further expand the classes of planning applications that may be covered, if in the future that proves necessary or desirable.

The conflict resolution provisions set out in new Part 11C facilitate a resolution of such conflict through a collaborative discussion between the Minister for Planning and other relevant Minister (in practice assisted by their respective departments), coordinated under the auspices of the Premier. This Part deals with the process for addressing either a proposed or performed function that prevents certain approved development from proceeding.

Conflict resolution in either instance is limited. It is only available to functions arising from legislation outside the Minister for Planning's portfolio and where the Premier agrees. Therefore, given the limited definition of 'relevant legal instrument', it can only be used to address a conflict with a function under the *Main Roads Act 1930* ('Main Roads Act') or the *Local Government Act 1995* ('LG Act') (applying as local law in Schedule 9.1 clause 7, particularly concerning vehicle crossings).

As with Part 17, Division 3, new Part 11C does not suggest that principles of safety, amenity or some other relevant concern should be compromised. The point is to allow such issues to be identified upfront and then addressed in an expeditious way through a whole-of-government approach, rather than leave proponents to deal with potentially conflicting functions by different government agencies.

Finally, Part 11C also facilitates the work of a new State Referral Coordination Unit to be established within the Department. This unit will utilise the methodology employed by the existing Part 17 State Development Assessment Unit with the Department. The new unit will coordinate with key referral agencies for planning applications, such as Department of Transport, Main Roads, Department of Water and Environmental Regulation, and Department of Fire and Emergency Services. This will also bring the State of Western Australia into alignment with some other jurisdictions, who have utilise similar referral coordination agencies.

Division 1 – Preliminary

This Division deals with preliminary matters necessary for Part 11C.

Section 171ZE. Terms Used

This section provides a range of relevant definitions for the new Part 11C. Of note:

- ***relevant legal instrument*** is similar to 'legal instrument' in Part 17, however, it is narrower and limited to the PD Act, *Main Roads Act 1930*, including any subsidiary legislation, and regulations under the LG Act, made as local law concerning crossings. This in effect limits the conflict resolution provisions to matters of planning and transport, although regulations could provide for other statutory regimes to be included in the future. Stakeholder consultation suggested most conflicts were planning-and-transport related, which is not unforeseen, given integrated transport-planning is often an expected and common issue for more significant developments.
- ***responsible Minister*** is the Minister, that is not the Minister for Planning, responsible for administration of the relevant legal instrument.

Section 171ZF. Relationship of this Part with other laws and instruments

This section provides that Part 11C has effect despite any other provision of a relevant legal instrument, however, it is subject to s.5 of the EP Act. This provision puts beyond doubt that the State's environmental statutory regime will continue to take precedence.

Section 171ZG. Relevant development approvals

This section provides the kinds of development approvals that the Part 11C conflict resolution provisions are available for. This is similar to Part 17, Division 3, however, conflict resolution is expanded to be available to other instances of higher-order planning decisions. That is, where development has been approved in a planning control area, under an improvement scheme, under Part 17, under Part 11B, has been called-in under section 246(2)(a) or is prescribed in regulations.

Section 171ZH. Performance of functions to which this Part applies

This section clarifies the kind of functions the Part 11C conflict resolution provisions apply to. Part 11C conflict resolution is not available for decisions of or matters before a court or tribunal (upholding the independence of the judiciary), or to a function performed in accordance with a Government agreement (which are often subject to their own bespoke requirements approved by Parliament). Part 11C conflict resolution is available for not only acts, but omissions in refusing or failing to perform a function, or a deemed action or omission, by another government agency.

Section 171ZI. When performance of function conflicts with relevant development approval

This section provides when a conflict is said to arise. It is similar to Part 17, s.280. The intent is that Part 11C is available to assist where the performance of a legislative function, such as the granting of an approval, licence or permit or enforcement of some other legislative requirement, may prohibit a development from proceeding in accordance with the conditions of its approval.

Note the intent is to account for other approval processes, *external* to an existing development approval, which may conflict with that development approval. Pursuant to subsection (2), changes *within* the planning process relevant to that development approval, such as amending any conditions of that approval, do not constitute a conflict for the purposes of Part 11C.

Division 2 – Dealing with conflicts with relevant development approvals

Section 171ZJ. Proposed performance of function that conflicts with relevant development approval

This section provides that if a proposed function under a listed relevant legislation (such as Main Roads Act) would prevent an approved development from proceeding, the decision-maker must not perform the function and must give notice to the Minister for Planning. Note pursuant to subsection (2) the onus rests on the other decision-maker (such as the CEO of Main Roads, or other government agency in some form), not to perform the conflicting function. Also note under subsections (1)(b) and (2) the provisions apply where a conflicted function is only ‘proposed’, and not yet even occurred.

Therefore, a proponent covered by a class of development approval within Part 11C need not do anything. It is the other government agency who must seek approval – not the proponent – if they wish to propose the performance of a function which would conflict with the relevant development approval. This essentially shifts the regulatory burden, and any new potential red tape, onto government itself. This incentivises more efficient and coordinated decision-making within a whole-of-government context.

In practice, such conflicts should rarely arise, because all potentially conflicting functions should have been dealt with, upfront, during the initial planning application process. Nonetheless, noting legitimate unforeseen circumstances can arise, Part 11C does provide a mechanism by which another government agency can seek approval to perform a conflicting function.

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

This section provides a process for the Minister for Planning to consult with the other Minister responsible for the proposed conflicting function. It enables the Minister for Planning to direct the decision-maker to do one or more things after receiving a notice of a proposed function, including not perform the function or perform the function in a different manner.

However, the power is only available to the Minister for Planning if: the development prescribed significant development; the conflict raises issues of State or regional importance; and that the Minister considers it is appropriate to resolve the conflict. The last requirement denotes a discretion, not an obligation imposed on the Minister. There may be situations where the Minister might legitimately be able to intervene but consider it not appropriate to do so.

The agreement of the Premier is also required. This is intended to ensure that ultimately a whole-of-government is applied to resolve what could otherwise amount to a form of regulatory gridlock.

Section 171ZL. Application for direction if performance of function conflicts with approval

This section clarifies the process if no notice has been given under s.171ZJ and a conflicting function is performed under the listed relevant legislation (such as Main Roads Act) that prevents a relevant approved development from proceeding. In that instance, the owner of land on which the development is approved may apply (in the manner and from required) to the Minister for Planning to resolve the conflict.

In some sense this provision should not need to exist, because s.171ZJ restrains the other government agency from proposing to perform a conflicting function. The proponent need not do anything. However, this additional provision reflects the fact that questions as to whether a function is conflicting or not may not always be clear cut. This provision therefore provides an additional safeguard, permitting a landowner themselves to apply to the Minister.

Section 171ZM. Direction by Minister on application if performance of function conflicts with approval

This section is similar s.171ZK but concerns situations where an application to the Minister concerning a conflict is raised by the owner of the land who believes a conflicting function has been performed, rather than the other government agency proposing to perform a conflicting function. This provision imposes similar requirements on the Minister, and as with s.171ZK, provides the Minister with a discretion, but not an obligation, to intervene.

Section 171ZN. Direction is disallowable subsidiary legislation

This section provides that that a direction of the Minister for Planning under Part 11C is subsidiary legislation. This is similar to existing reporting requirements under Part 17, Division 3, where sections 281(7) and 282(7) require any Ministerial notice be published in the Gazette or on the WA legislation website, and laid before each House of

Parliament. However, these requirements have been tightened, whereby such notices are now also subject to the additional step of potential disallowance by Parliament. The minor changes are intended to reflect responsible legislative reform, necessary when incorporating a temporary process permanently into the WA planning system.

Section 171ZO. Effect of performance of function in compliance with direction

This section clarifies the effect of anything done by a decision-maker in compliance with a direction from the Minister for Planning under Part 11C. Anything done under this Part has effect notwithstanding that a normal decision maker could not have performed the function under the relevant legislation. This provision is necessary because in a situation where there exists two simultaneous but conflicting statutory functions, giving rise to a form of regulatory grid lock, there needs to be a mechanism whereby at least one of the functions be performed which might not otherwise be performed.

Subsection (4) makes clear actions in compliance with the Minister's direction cannot be reviewed by SAT. This provision compliments s.171H(1), which prevents the conflict resolution provisions under Part 11C from applying to any function of a court or tribunal. Combined together, these sections highlight the conflict resolution provisions are intended only to cover decision-making functions *within* different aspects of the same executive branch of government, under the auspices of Minister and the Premier, separate and distinct from any *external* review function carried out independently by the judiciary.

Division 3 – Regulations

This division deals with regulations necessary for Part 11C. As at the introduction of this Bill, no regulations for Part 11C are contemplated.

Section 171ZP. Regulations

This section enables the Governor to make regulations necessary or convenient for Part 11C.

Clause 12. Section 268A amended

This clause amends s.268A(1) and clarifies the process for laying documents before House of Parliament that is not sitting, including that document may be laid by the Premier. An administrative amendment.

Clause 13. Section 269 amended

This clause amends s.269 and is consequential to the introduction of Part 11B and Part 11C. An administrative amendment.

Clause 14. Section 272 amended

This clause deletes s.272(8) and is consequential to the amendment of s.268A(1). An administrative amendment.

Clause 15. Section 277 amended

This clause amends s.277 and is consequential to the introduction of Part 11B and Part 11C. An administrative amendment.

Clause 16. Section 277A amended

This clause amends s.277A and clarifies the powers of the Commission and responsible authorities to enforce development approvals under Part 17. This provision mirrors s.171V introduced in relation to enforcement of development approvals under Part 11B.

Clause 17. Section Part 17, Division 3 deleted

This clause deletes Part 17, Division 3 and is consequential to the introduction of Part 11C. Unlike most of Part 17, which will continue despite the introduction of Part 11B, Division 3 of Part 17 is to be replaced with new Part 11C.

It was considered too confusing from a legislative drafting perspective, and potentially unfair to proponents, to try rollover existing provisions under Part 17 into Part 11B, despite their similarities. By contrast, the conflict resolution provisions are of a general nature that more easily lend themselves to being incorporated into new Part 11C.

Clause 18. Section 283 amended

This clause amends s.283 and is consequential to the deletion of Part 17, Division 3. An administrative amendment.

Part 4 – Performance of development approval functions

This Part inserts a head of power into the PD Act, to make regulations governing the performance of certain development approval functions pertaining to single houses and related development. At the time of the introduction of this Bill, draft regulations had been prepared.

The reforms relate to decision-making in local government, with the aim of reducing red tape and streamlining approval processes for single houses. It does this by empowering the Chief Executive Officer of each local government ('LG CEO'), or an authorised local government employee, to determine most development applications for single houses and ancillary development (e.g. carports, patios, fences etc.), except where heritage is involved.

These provisions promote the strategic focus of local government councils, by ensuring certain matters that are of a more routine and operational nature are performed by local government employees. This in turn enables each elected council to focus on strategic matters, such as ensuring its local planning strategy, local planning scheme and local planning policies are contemporary and fit for purpose.

It is important to stress that due to past planning reforms, in many instances the construction of single houses, together with ancillary structures, are already exempt from requiring development approval under the planning system. These new reforms only apply to situations where development of a single house, or ancillary structure, is not already exempt but requires some form of active development approval.

Moreover, these reforms are also consistent with the current level of delegated decision-making powers that the majority of local governments already have. Nonetheless, they represent an enshrinement of best practice, red-tape reduction, across the entire local government sector.

Clause 20. Act amended.

This clause explains these provisions amend the PD Act.

Clause 21. Section 257C inserted.

This clause inserts a new s.257C into Part 15 of the PD Act.

Subsection (1) contains definitions of the terms used in this section:

- ***development approval function,*** which is intended to cover the various functions involved in accepting, assessing, and determining a development application for a single house development.
- ***single house,*** which is further defined by reference to:
  - *building type* – broadly understood, as defined in the LPS Regulations and Residential Design Codes, as meaning a building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not compromise a single family; and
  - *land tenure* – with that dwelling being found on land tenure that would be widely recognised as supporting a single house, usually by way of a freehold (green title) lot or survey-strata lot, and not land that instead typically supports apartments or units, such as a strata scheme or community titles (building) scheme.
- ***single house development,*** which is intended to cover:
  - any initial wholesale construction activities, as well as any subsequent renovations by way of additions or alterations; and
  - not merely the primary building that comprises the single house itself, but ancillary structures one would normally associate with being part-and-parcel of owning a home (e.g. carports, patios, fences etc.).

Subsection (2) provides that regulations made under s.256 may prescribe that the performance of certain development approval functions of local governments under local planning schemes, relating to single house development, must be performed by the LG CEO or authorised local government employees, on behalf of the local government, and not by the council or a council committee. Provisions made under s.256 may deal with or regulate the performance of these functions, the authorisation of local government employees and any supplementary or incidental matters.

Subsection (3) provides that any regulations made under subsection (2) have effect despite any provisions of the LG Act. Regulations made pursuant to this section are intended to take precedence over any arrangements made under the LG Act. This provision is intended to cover potential eventualities whereby a LG CEO, or an authorised local government employee, may be unsure about potentially conflicting statutory obligations under both the PD Act and LG Act.

Part 5 – Planning codes

The 2020 Amendment Act introduced the concept of planning codes into the planning framework. A planning code is a prescriptive type of policy. These instruments are designed to

be read-into a local planning scheme and have the status of subsidiary legislation. The parts of the 2020 Amendment Act relating to planning codes (Part 7 of that Act) are yet to be proclaimed. These provisions are drafted on the premise they will be proclaimed before this Bill's provision's take effect.

The best-known example in the WA planning system is the Residential Design Codes ('R-Codes'). By virtue of transitional provisions set out in 2020 Amendment Act, cl.105 (inserting s.291), the R-Codes will automatically become a planning code when supporting regulations are finalised and those enabling provisions proclaimed.

Noting planning condes are read-into local planning schemes, a proposed local planning scheme, or an amendment to a local planning scheme, is required to be referred to the *Environmental Protection Authority 1986* ('EPA'). The reason for this is to ensure the planning scheme, which governs the use or development of land, is made having regard to the requirements of the EP Act.

The processes for creating and approving a planning code (or an amendment thereto) is governed by regulations, which may made under s.32B of the PD Act.

Under s.32B such regulations must provide for matters like public advertising, public submissions and matters relating to the processes under the EP Act.

Section 32B also mandates that the Commission must refer proposed planning codes or amendments thereto to the EPA, unless these are excluded from such referral under environmental regulations. This is an anomaly.

This anomaly results in a duplicate assessment process under the EP Act. Given the EPA considers local planning schemes or scheme amendments before they can be made, there is no utility in requiring what may form a component of such a scheme, to also be assessed separately by the EPA.

Planning Codes themselves do not have an effect on the environment, and approval to planning proposals are not sought 'under' them. Instead, they have effect to the extent they are incorporated into a local planning scheme. Applications for approval or consent to a planning proposal are made pursuant to a planning scheme, which must be referred to the EPA before it can be made.

Therefore, it is appropriate to remove the anomaly in s.32B which mandates referral of a planning code to the EPA, given appropriate review is already provided for through the scheme creation or amendment process. The current legislative process establishes a duplicate procedure with no practical benefit to the environment.

The same principle applies where the scheme in question is an improvement scheme.

These provisions are designed to correct this anomaly.

Division 1 – *Planning and Development Act 2005* amended.

Clause 22. Act amended.

This clause explains these provisions amend the PD Act.

Clause 23. Section 32B amended.

This clause amends s.32B.

Subsection (1) provides that regulations may be made addressing matters concerning advertising and public submissions on a planning code or proposed amendment to one. This amendment changes these requirements from ones that must be addressed in regulations, to matters that may be addressed in regulations.

Subsection (2) amends s.32B (3) by replacing it with a modified provision. Regulations made may provide the Commission a discretion as to whether to refer a planning code to the EPA or not. However, for circumstances where the Commission does refer a planning code, the regulations must make provision for matters relating to the process under the EP Act (as currently provided for in s.32B(3)(c)) and must provide for a requirement to advertise and accept submissions on the referred planning code.

Division 2 – *Environmental Protection Act 1986* amended.

Clause 24. Act amended.

This clause explains these provisions amend the EP Act.

Clause 25. Section 3 amended.

This section amends definitions of the terms 'final approval', 'period of public review' 'responsible authority' and 'scheme'. These amendments define, for the purposes of the EP Act, when, under relevant legislation:

- a planning code, or amendment to one, is considered to have received final approval;
- the period during which instruments like a State planning policy or planning code, or amendment to these, are available for the public to inspect;
- that the Commission is the responsible authority for planning codes; and
- that a scheme includes a planning code, or amendment to one.

Clause 26. Section 48AAB deleted.

This clause deletes s.48AAB of the EP Act.

Section 48AAB provided for regulations to be made, on the advice of the EPA, exempting certain planning codes or classes of planning codes from assessment by the EPA. The Authority could only make such a recommendation if satisfied the planning code would not have a significant effect on the environment.

Planning codes do not have an effect on the environment. They have effect to the extent they are incorporated into a planning scheme. Planning schemes or amendments are referred to the EPA. This ensures any provisions incorporated from a planning code are considered by the EPA.

In light of this, and the amendments to s.32B, s.48AAB is not required.

Clause 27. Section 48C amended.

This clause amends s.48C(7) of the EP Act.

S.48C concerns the powers the EPA may exercise in relation to a scheme referred to it. Under s.48C(1)(a) the EPA may require the authority responsible for the scheme in question, to undertake an environmental review of the scheme and prepare a report on that review.

S.48C(6) stipulates that public review of such a report is to be conducted according to the enabling legislation for the scheme in question. S.48C(7) defines the term 'public review' for the purposes of s.48A(6).

By this provision, s.48C(7)(ea), which relates to planning codes, is amended to define 'public review' for the purposes of a planning code, or amendment thereto, by reference to any procedure prescribed under s.32B(3)(b)(ii) of the PD Act.

Part 6 – Improvement schemes

An improvement scheme is a special bespoke planning scheme that excises or supresses any underlying planning scheme (both local and region planning schemes). Improvement schemes are particularly important to develop and redevelop areas of high strategic importance to the State, including for industrial, commercial, and residential projects.

Within a housing-delivery context, improvement schemes remain an important planning tool, especially in delivering medium and high-density housing in well located areas close to public transport connections, amenities, and employment. This includes the use of improvement schemes in relation to delivering good, higher density housing within or in close proximity to new METRONET precincts.

Under Part 8 of the PD Act, the Commission may prepare an improvement plan for the purpose of 'advancing the planning, development and use of any land' in any designated area. Such a plan can authorise the making of an improvement scheme for some or all of the land to which the plan relates. As indicated in section 122A(3), improvement schemes are intended to deal with the same sort of matters applicable to other planning schemes.

However, s.122C precludes the use of an improvement scheme to extinguish any non-conforming use. A non-conforming use means a use of land which, though lawful immediately before the coming into operation of a planning scheme or amendment to a planning scheme, is not in conformity with a provision of that scheme. A typical example might include a light industrial use, that was originally located in a semi-rural location, but several decades later through urban growth that landowner now finds themselves within a residential area, where such an activity would no longer be permitted.

It is the very purpose and nature of urban and regional planning to deal with such land use conflicts. As the landowner of the light industrial use was there first, before the planning framework changed, then it is fair and equitable that they be permitted to continue that pre-existing use, despite a change in planning rules. Nonetheless, noting a potential conflict with residential neighbours, whose own property rights to enjoy their own might be impacted, the planning system recognises a mechanism whereby this conflict can be resolved by extinguishing any non-conforming rights. However, where non-conforming rights are so extinguished, it is also fair and equitable that the original landowner be afforded compensation for injurious affection done to their land.

Despite these well-understood planning principles, it appears s.122C precludes the use of an

improvement scheme to extinguish any non-conforming use. This anomaly undermines the very purpose for which improvement schemes are said to exist, which is the advancement of key State planning priorities or projects, as contemplated under the enabling improvement plan. Without the ability to extinguish non-conforming use rights, improvement schemes would be an inferior planning instrument than ordinary local and region planning schemes.

This Part addresses these issues by amending s.122C to permit improvement schemes to extinguish non-conforming uses. This is consistent with how such uses can be treated under a region or local planning scheme. As noted, any landowner affected by improvement scheme provisions which extinguish a non-conforming use will have the right to claim compensation in accordance with Part 11 of the PD Act.

Clause 28. Act amended.

This clause explains these provisions amend the PD Act.

Clause 29. Section 122C amended.

This clause inserts new subsections (3) and (4) into s.122C.

Section 122C generally provides that existing lawful development cannot be affected by an improvement scheme, and that such development continues to be regulated by the schemes that were in place before the improvement scheme applied.

New subsection (3) introduces an exception to the general position in s.122C. Under subsection (3) provisions in an improvement scheme may prohibit, wholly or partly, the continuation of any non-conforming uses or works to any building in connection with or furtherance of a non-conforming use. If such a provision is used in an improvement scheme, Part 8 of the PD Act, which governs the application of improvement schemes, applies.

Subsection (4) defines the term ‘non-conforming use’ for the purposes of subsection (3).

Clause 30. Section 122D amended.

This clause deletes s.122D(6) and replaces it with a provision that provides s.122D has effect, subject to any provision of an improvement scheme made under s.122C(3).

Clause 31. Section 122F amended.

This clause amends s.122F to refer to new subsection (3) inserted into 122C.

Part 7 – Subdivision of land

This Part concerns the Commission’s functions in determining subdivision applications, where its role in the termination of a strata titles scheme is engaged. It clarifies the Commission’s capacity to endorse its approval to the subdivision of land, which is subject to a strata titles scheme, where the Commission is satisfied the strata titles scheme will terminate.

Within a housing delivery context, the termination of strata schemes is important for urban renewal, including the creation of new housing developments. Currently, there is a requirement for proponents:

- first, to apply to terminate a strata scheme to create a freehold lot, which Landgate considers a type of subdivision requiring Commission approval; and
- secondly, then lodge a subsequent application to apply to the Commission for a subdivision approval.

This creates a two-step process, rather than a single step. This is unnecessary red tape, which discourages development activity, especially in relation to larger residential and mixed-use projects.

To be clear, this proposal does not impact or undermine existing statutory safeguards (under strata titles legislation) that Landgate oversees in relation to the termination of strata schemes, which include measures such as strict voting requirements and potential review by the State Administrative Tribunal. This provision instead deals with a new and additional regulatory process within the planning system, when termination of strata schemes moved away from a "on the papers" process, managed by a surveyor, following amendments to the *Strata Titles Act 1985*, which were implemented in 2020.

Clause 32. Act Amended

This clause explains these provisions amend the PD Act.

Clause 33. Section 145B inserted.

This clause inserts a new provision, s.145B, after s.145A.

Subsection (1) outlines when this section applies. Its application relates to the Commission's role in approving a subdivision, where land the subject of that application forms all or part of a strata titles scheme under the *Strata Titles Act 1985* (defined as *the existing strata titles scheme*) and the Commission has imposed a condition requiring that scheme be terminated.

Subsection (2) clarifies that a diagram or plan of survey can be submitted to the Commission for approval under section 145 of the PD Act, even though the existing strata titles scheme is not terminated.

Subsection (3) requires the Commission to endorse its approval to the diagram or plan of survey for land that remains subject to a strata titles scheme, if two conditions are met. Those are:

- the Commission would have had to endorse such an application, in accordance with section 145(4), if the land was not strata titled; and
- the Commission is confident that the existing strata titles scheme will terminate within the period during which approval to a plan of subdivision is valid (the timeframe referred to in s.145(1)).

A subdivision may be undertaken in stages, instead of all at once. Accordingly, under section 145(3), the Commission's endorsement to diagram or plan or survey can be sought for a stage of the subdivision. Subsection (4) of s.145B reflects this. It confirms for matters to which this section applies, where a subdivision is undertaken in stages, the reference to a diagram or plan of survey of *the* subdivision, includes a reference to such documents submitted for a stage of the subdivision.

Clause 34. Section 146 amended.

Section 146 restricts the Registrar of Titles from creating or registering a certificate of title for land the subject of a diagram or plan of survey unless certain preconditions are met.

This clause inserts a new precondition into s.146. New subsection (1)(d) requires the existing strata titles scheme to be terminated, before a certificate of title for land the subject of a diagram or plan of survey endorsed under s.143B(3) can be created or registered by the Registrar of Titles.

Clause 35. Section 149A inserted.

This clause inserts a new provision, s.149A, into Division 3 of Part 10 of the PD Act.

Subsection (1) outlines when this section applies. Its application relates to the Commission's role in approving a subdivision, where land the subject of that application forms all or part of a strata titles scheme under the *Strata Titles Act 1985* (defined as *the existing strata titles scheme*) and the Commission considers the subdivision depends upon termination of that scheme.

Where this provision applies, subsection (2) mandates the Commission must impose as a condition of any approval granted to a plan subdivision, a requirement that the existing strata titles scheme be terminated.

Subsection (3) clarifies that the reference to a 'plan of subdivision' in this provision relates to such plans under the PD Act, and not those referred to in s.177 or s.191 in the *Strata Titles Act 1985*.

Part 8 — The Western Australian Planning Commission

This Part amends the structure and operation of the Western Australian Planning Commission ('Commission or WAPC') to increase its efficiency and focus on strategic planning, and makes consequential amendments to the *Swan Valley Planning Act 2020* ('SVP Act') and *Aquatic Resources Management Act 2016* ('ARM Act').

The Commission is the State's leading urban and regional planning body. As evidenced by this Bill, the role of the Commission has expanded, including for example becoming the decision-maker for significant development applications, first temporarily under first Part 17, and now permanently under new Part 11C. These new roles complement the Commission's pre-existing functions, including in: advising the Minister and local governments; in determining subdivision and structure plan applications; in preparing the State's pinnacle planning policies and instruments including State planning policies, region schemes and planning codes; in overseeing regulatory changes by local governments including new and amended local planning schemes; in acquiring and managing land; in taking a more active proponent-led role within improvement schemes; and performing a range of other important matters relating to planning and development.

As with the reforms to local governments and DAPs, the Commission must also be fit-for-purpose, especially as it takes a greater role in facilitating the goals of accelerated housing delivery as endorsed by the National Planning Reform Blueprint. Within this context, legislative amendments are proposed that aim to improve the Commission's efficiency in decision-making, streamline membership and clarify its role as expert advisor and independent decision-making body with the necessary technical expertise.

These reforms include changes that do the following:

- Modifies the composition of the Commission's current membership by:
    - almost halving the current board, from 16 members, to a more streamlined and agile 7-to-9-member team;
    - reformulating member qualifications, including a new composition that maximises skilled members from relevant fields, including members with significant experience in local government and in regional areas; and
    - removes Director Generals from full participating membership, although they will continue to be invited to meetings as non-voting members, in order to support informed decision-making and ensure a coordinated approach from State Government.
- Enables the movement of various procedural, governance and administrative matters into regulations.
- Clarifies the role and functions of the Commission, which stakeholder consultation suggests is often poorly understood, including:
    - the introduction of guiding principles, including the Commission's leadership role;
    - more explicitly affirms both the Commission's independence; but
    - also affirming the Commission's role in delivering the Government stated planning agenda.
- Alters the current use of committees, including facilitating greater flexibility to form and disband committees to deal with specific matters, and mechanisms to improve collaboration and coordination with government agencies.

Division 1 - *Planning and Development Act 2005* amended

This Division deals with changes to the constitution, functions, and procedures of the Commission.

Clause 36. Act amended.

This clause explains this Division amends the PD Act.

Clause 37. Section 4

This clause amends s.4 and supports the streamlining of the Commission and committees.

Clause 38. Sections 10 to 13 replaced.

This clause deletes and replaces section 10 to 13. The intent of this clause is to capture a focus on strategic planning, impartiality of the board and clarity of functions for the Commission.

Section 10. Membership of board

This section sets out the new composition of the board's membership. This enables the Commission to be a more flexibly constituted board, comprising seven to nine independent members who are not public service officers. Removing all current Director

General members but otherwise ensuring the PD act provides for public sector participation in meetings allows a proportional input at the Commission-level.

The new membership composition ensures the Commission has board members with diverse relevant experience rather than a single skill set whilst ensuring specific interests remain represented. This includes specific requirements for at least two members with extensive experience in local government administration and living and working in remote or regional Western Australia.

Section 11. Board's Constitution and proceedings

This section enables regulations to be made for the constitution and proceedings of the board. Transferring the procedural details from Schedule 1 in regulations provides a more agile and contemporary model than being within the PD Act whilst still providing the appropriate level of Government oversight.

Section 12. Remuneration and allowances

This section sets out how the remuneration of the board is determined.

Clause 39. Section 14 replaced

Section 13. Introduction to the Commission's Role

This new section clarifies the role of the Commission, defines its overarching purpose and is the foundation how the Commission will operate. Summarily, it supports s.14 by clarifying that the Commission will perform its functions with regard to:

- Leadership – the Commission is the industry-leader and provides advice and assistance not only to Government, but to other stakeholders.
- Expertise – Commission members have extensive experience and expertise under the new s.10 and this expertise is at the forefront of everything done by the Commission.
- Impartiality – the Commission operates independently, and this is subject only to instances where the Minister for Planning directs the Commission under s.17 of the PD Act or where the Minister or other bodies are provided with an explicit role in the process, such as in the Minister's approval of a local planning scheme amendment or interim development order.
- Reasons – clarity in the Commission's actions, including with reference to the specific legislative power where possible, assists all parties.

Section 14. Functions

This section has been reworded to clarify the Commission's functions and powers. It makes clear where the Commission's role is to advise and/or assist the Minister for Planning with specified matters and where its role is to deal with, prepare, maintain and/or administer specified matters.

Clause 40. Section 15 amended

This clause amends s.15 and is consequential to the amendment of s.14. An administrative amendment.

Clause 41. Section 16 amended

This clause amends s.16 to provide for Commission delegations to be published on the Commission's website rather than the Gazette. An administrative amendment.

Clause 42. Section 17 amended

This clause amends s.17 to clarify the instances where the Minister for Planning may direct the Commission and reflect the long-held position that directions can only be procedural or administrative in nature. When determining planning applications on the planning merits, the Commission should act expertly and independently, with a degree of freedom from potential Ministerial interference. This change also supports those clarifications to the Commission's role set out in new s.13(c) and (d).

Clause 43. Section 19 amended

This clause amends s.19 to update the constitution of the Commission's committee, permit regulations being made for committees, and is consequential to the amended s.10.

Clause 44. Section 266 amended

This clause amends s.266, and is consequential to the amended s.10. An administrative amendment.

Clause 45. Schedule 1 deleted

This clause deletes Schedule 1. Deleting this clause and putting this detail into regulations provides a more contemporary model with an appropriate balance between a flexible committee system and Government oversight.

Clause 46. Schedule 2 clause 1 amended

This clause deletes Schedule 2, clause 1. An administrative amendment.

Clause 47. Schedule 2 clause 2 deleted

This clause deletes schedule 2, clause 2. An administrative amendment.

Clause 48. Schedule 2 clause 3 amended

This clause deletes schedule 2, clause 3 and is consequential to the amendment of s.10. An administrative amendment.

Clause 49. Schedule 2 clause 4 amended

This clause amends Schedule 2 clause 4 and is consequential to the amendment of s.10. An administrative amendment.

Clause 50. Schedule 2 clauses 5 to 9 deleted

This clause deletes Schedule 2 clauses 5 to 9. An administrative amendment.

Clause 51. Schedule 4 amended

This clause amends the reference to the provisions in the PD Act at Schedule 4 and is consequential to the amendment of s.11. An administrative amendment.

Division 2 – *Swan Valley Planning Act 2020* amended

This Division deals with changes to the SVP Act necessary to reflect reform of the Commission and its committees. An administrative amendment.

Clause 52. Act amended

This clause explains this Division amends the SVP Act. An administrative amendment.

Clause 53. Section 3 amended

This clause amends s.3 of the SVP Act, and amendment to the constitution of the board. An administrative amendment.

Clause 54. Section 33 amended

This clause amends s.33 of the SVP Act. An administrative amendment.

Clause 55. Section 35 amended

This clause amends s.35(2)(a) of the SVP Act. An administrative amendment.

Clause 56. Section 36 amended

Division 3 – *Aquatic Resources Management Act 2016* amended

This Division deals with consequential amendments to the ARM Act. An administrative amendment.

Clause 57. Act amended

This clause explains this Division amends the ARM Act. An administrative amendment.

Clause 58. Section

This clause amends section 2 of the ARM Act, and contemplates amendments notwithstanding whether the provisions of the ARM which reference the provisions amended in Part 8 of this Bill are commenced. An administrative amendment.

Part 9 – Consolidations and reviews of planning instruments

This Part updates the PD Act to reflect the shift from a paper-based to digital environment.

Planning schemes are now available and maintained electronically. As such, provisions which address the manual updating of schemes, through publication of a consolidated instrument, are no longer suitable. This Part repeals these requirements.

The review processes that were intended to form part of the consolidation process remain vital to the ongoing operation of the planning system. However, stakeholder consultation suggests the current timeframe of 5 years is impracticable, and can act as a disincentive for responsible authorities, including both the Commission and local governments, to ensure up-to-date planning frameworks.

Accordingly, this Part also introduces new Part 9A into the PD Act, which requires the Commission and local governments to review their respective planning frameworks in the manner set out in this Part, in order to promote the maintenance of a contemporary framework. A new, more practicable, timeframe of 10 years is proposed.

Clause 61. Act amended

This clause explains this Part amends the PD Act. An administrative amendment.

Clause 62. Part 4 Division 5 deleted

This clause deletes Part 4, Division 5 of the PD Act. An administrative amendment.

Clause 63. Part 5 Division 5 deleted

This clause deletes Part 5, Division 5 of the PD Act. An administrative amendment.

Clause 64. Part 9A inserted

This clause inserts Part 9A into the PD Act.

Part 9A introduces new sections 132A – 132E into the PD Act, which establish requirements to review planning instruments.

Part 9A – Ten-yearly reviews of planning instruments

Section 132A – Terms used

This section defines the term 'commencement day' and what constitutes a 'relevant' anniversary for the purposes of this Part.

Section 132B - Commission to review State planning instruments every 10 years

This section requires the Commission to:

- review instruments comprising its strategic and statutory framework either once every 10 years (132B(2)); or
- to engage in an ongoing process of reviewing the various State planning instruments, at 10 yearly intervals, calculated from when the respective instrument first came into force or effect (s.132B (3)-(5)).

Subsection (1) defines the term 'State planning instrument' for the purpose of this provision. The definition includes statutory and strategic instruments.

Subsection (2) requires the Commission to review each State planning instrument that is in force or effect on the relevant anniversary and compile a report of this review, which includes any recommendations arising from it. The Commission has 6 months from the relevant anniversary date to complete this review and approve the report.

Subsection (3) permits the Commission to undertake its review obligations through the process set out in subsection (4) instead of subsection (2).

Under subsection (4), if the Commission chooses to exercise this option, the Commission must review a State planning instrument and compile a report of this review, including any recommendations arising from the review. The Commission has 6 months from the anniversary specified in subsection (5) to complete its review of the instrument and approve the report.

Subsection (5) sets the anniversary date as every 10th anniversary of the date the State planning instrument first came into force and effect.

Section 132C – Local governments to review local planning instruments every 10 years

This section has similarities to s.132B, but with respect to local governments reviewing their local planning frameworks. This section requires a local government to review instruments comprising planning framework either once every 10 years (s.132C(2)), or to engage in an ongoing process of reviewing the various local planning instruments, at 10 yearly intervals, calculated from when the respective instrument first came into force or effect (s.132C (3)-(5)):

- Subsection (1) defines the term 'local planning instrument' for the purpose of this provision. The definition includes a local planning scheme, any local planning instrument prescribed by regulations for this purpose, that the local government prepared or adopted or that otherwise relates to the local government's district or land within that district.
- Subsection (2) requires the local government to review each local planning instrument that is in force or effect on the relevant anniversary and compile a report of this review, which includes any recommendations arising from it. The local government has 6 months from the relevant anniversary date to complete this review and approve the report.
- Subsection (3) permits a local government to undertake its review obligations through the process set out in subsection (4) instead of subsection (2).
- Under subsection (4), if the local government chooses to exercise this option, the local government must review a local planning instrument and compile a report of this review, including any recommendations arising from the review. The local government has 6 months from the anniversary specified in subsection (5) to complete its review of the instrument and approve the report.
- Subsection (5) sets the anniversary date as every 10th anniversary of the date the local planning instrument first came into force and effect.

Section 132D – Regulations

This section contains a regulation making power, to enable regulations to be made which govern the review process and the content and approval of reports.

Section 132E – Part does not limit other review provisions

The requirements of this Part do not limit any other review processes established under this Act or another written law.

Clause 65. Section 138 amended

This clause amends s.138, which concerns the Commission's functions when approving a subdivision application.

Section 138(3) identifies when the Commission may exercise its discretion to approve a subdivision, which conflicts with a local planning scheme.

One such circumstance includes where the proposal is consistent with a State planning policy that deals with substantially the same matter, but the local planning scheme is not current, which, under s.138(3)(a) is if it is older than, or has not been reviewed within, the preceding 5 years.

This amendment changes the timeframe requirement in s.138(3)(a) to align with the review period of 10 years established by Part 9A. The requirement for consistency with a State planning policy that deals with substantially the same matter is retained, and provision made to extend this to a planning code that deals with substantially the same matter.

Transitional provisions identify that a report on the review of the local planning scheme is taken to have been approved under s132C in the 'preceding 10 years' if, in the preceding 10 years the Commission made a decision on a report prepared under regulation 67(1)(a) of the LPS Regulations.

Clause 66. Section 171R amended

This clause amends s.171R(1)(b)(ii) by replacing the provision with one that refers to a report on a review of the local planning scheme not being approved under section 132C in the preceding 10 years.

Transitional provisions identify that a report on the review of the local planning scheme is taken to have been approved under s.132C in the 'preceding 10 years' if, in the preceding 10 years the Commission made a decision on a report prepared under regulation 67(1)(a) the LPS Regulations.

Clause 67. Section 212 amended

This clause amends s.212, which provides the Minister with powers to address the failure by a local government to comply with certain obligations or provisions arising under the PD Act.

One of these obligations includes complying with consolidation requirements under Part 5 Division 5, which is deleted by clause 63 of this Bill.

This provision replaces a reference to Part 5 Division 5 in s.212(1)(b) with a reference to compliance with s.132C.

Clause 68. Section 213 amended

This clause removes the reference to consolidation from s.213. As consolidation requirements are being replaced with the review requirements under Part 9A. An administrative amendment.

Clause 69. Section 257B amended

Section 257B sets out the effect of the deemed provisions. This clause retains the existing concept that publication of a local planning scheme is valid if publication excludes the deemed provisions (they are already published in regulations) but updates the relevant subsections of this section to remove references to provisions deleted by this Part or terms referring to the concept of consolidation, which is removed by this Part. An administrative amendment.

Part 10 – Powers of entry and inspection

This Part repeals the *Power of Entry and Inspection Regulations 1931* ('Power of Entry and Inspection Regulations') and provides more contemporary powers of entry and inspection to the Commission. Laws are only as good as the ability to enforce them. The planning system authorises, through its development plans and decisions, an alteration in the character of a neighbourhood. Planning authorities also exist to help manage such changes, resolve land use

conflicts, and ultimately protect the rights of other landowners to enjoy their own land from any unreasonable activities caused by their neighbours.

Within a housing-delivery context, the need to deliver more medium and high-density development attracts a parallel need to ensure planning requirements are adhered to. This is particularly important in relation to any conditions of approval imposed by a planning authority, which are often imposed in order to mitigate impacts on other residents in a locality. Together with perceptions of new developments not fitting with local character, a lack of appropriate enforcement can generate undue community angst and undermine the ability to deliver good medium and high-density housing outcomes.

Noting this aim, the current enforcement powers of State officers, working within the Department of Planning, Lands and Heritage ('the Department') in assisting the Commission, is limited. In many respects State officers have fewer and less clearly defined enforcement powers than officers working within local government. State officers currently rely upon regulations, drafted nearly a century ago, referring to legislation and planning bodies that no longer exist.

Finally, it should be noted that enforcement within the planning system is often more remedial than punitive. That is, various enforcement powers, such as those available under sections 214 to 216, are aimed foremost at ensuring proponents correct any non-compliant works or use of land. In light of these objectives, the powers of entry and inspection have been modernised, to be fit-for-purpose in line with contemporary 21st century expectations.

Division 1 – *Planning and Development Act 2005* amended

Clause 70. Act amended

This clause explains this Part amends the PD Act. An administrative amendment.

Clause 71. Part 13 Division 4 inserted

Part 13 of the PD Act relates to enforcement and legal proceedings. This clause inserts a new division, Division 4, at the end of Part 13, to provide the Commission with powers to enter and inspect land for purposes connected to the enforcing or monitoring compliance with the PD Act or the SVP Act.

These provisions have been broadly modelled on other contemporary enforcement powers, such as the *Heritage Act 2018* ('HER Act'), Part 11 – Enforcement, or aspects of the *Criminal Investigation Act 2006* ('CI Act'). However, these powers have been modified, usually reduced in scope, to be fit-for-purpose within a town planning context. For example, while under proposed s.235E there *are* powers to inspect land and take photographs, there are *no* equivalent powers for officers to direct an individual to answer questions, seize items or produce documents (cf. s.119 HER Act). This moderated approach is intended to reflect responsible legislative reform.

Division 4 – Entry and Inspection powers for officers authorised by the Commission

Subdivision 1 - Preliminary

Section 235A – Terms used

This section contains defined terms for the purpose of this new Division.

Subdivision 2 – Authorised officers

Section 235B – Commission may authorise certain persons for the purposes of Division.

This section permits the Commission to authorise one or more public servants to be authorised persons for the purposes of this Part. In practice, this would likely mean officers currently employed within the Department of Planning, Lands and Heritage. See for analogy s.114 HER Act and s.9 CI Act.

Section 235C – Identity cards

This section requires the Commission to issue an authorised officer with an identity card and imposes obligations on the authorised officer regarding the production and return of such a card. See for analogy s.116 HER Act and s.9 CI Act.

Section 235D – Offences relating to authorised officers

This section makes it an offence to, without a reasonable excuse to:

- hinder or obstruct an authorised officer exercising a power under this Division; or
- fail to comply with a direction of the authorised officer given under s.235E(7).

A penalty of $10,000 may be imposed upon the offender. See for analogy s.127 HER Act.

This section also makes it an offence to impersonate an authorised officer. A fine of $5000 may be imposed upon an offender. See for analogy s.128 HER Act.

Subdivision 3 – Entry and inspection

Section 235E – Power of entry and inspection.

Subsection (1) provides that an authorised officer may, for an authorised purpose, enter any land. This may be done either with the occupier's consent or pursuant to an entry warrant.

Subsection (2) identifies that upon gaining entry, the authorised officer may inspect, photograph or otherwise make a record, of the land or anything on or in the land. This may only be done for the authorised purpose.

Subsection (3) applies where an authorised officer has obtained an entry warrant and the occupier is present at the land. The authorised officer must, to the extent it is practicable to do so, tell the occupier of his or her intention to enter the land, show the occupier the entry warrant and afford the occupier the chance to consent to the entry.

Subsection (4) provides that if it is not practicable for the authorised officer to produce the entry warrant to the occupier, as provided for in subsection 3(b), the authorised officer must produce it as soon as practicable after he or she enters the land.

Under subsection (5), if the authorised officer enters the land pursuant to an entry warrant, and there is no occupier present, the authorised officer must leave a notice, in a prominent place, which sets out the authorised officer's details and that entry pursuant to an entry warrant occurred.

Subsection (6) stipulates that where more than one authorised officer attends the land, only one of them need perform the duties in subsections (3) to (5).

Subsection (7) permits an authorised officer to direct any person present on the land to assist the officer to:

- enter the land, or access anything on or in it; or
- inspect, photograph or otherwise make a record, of the land or anything on or in the land.

Under subsection (8) the authorised officer must not stop an occupier, who is present at the land, from observing the authorised officer carrying out the entry and inspection. There are three exceptions to this:

- the officer reasonably suspects the occupier might be endangered by observing;
- the occupier hinders or obstructs the authorised officer; or
- it is not practicable for the occupier to watch this.

Subsection (9) permits the authorised officer to record the exercise of powers under this section, including by making an audio-visual recording.

These measures represent a responsible and moderated approach to enforcement, balancing the rights of occupiers, whose enjoyment of land should not be unreasonably hindered, with those of officers, who need a sufficient level of authority to carry out an appropriate investigation.

See for analogy sections 115 to 126 HER Act and sections 30 to 31 CI Act.

Section 235F – Authorised officer may apply for entry warrant

This section provides that an application for an entry warrant must be made to a magistrate, contain the information set out in subsection (2) and follow the requirements of Section 235G. The requirement to obtain an entry warrant from a magistrate is an important safeguard on the exercise of enforcement powers.

See for analogy s.121 HER Act.

Section 235G – Making entry warrant application

This section sets out procedural requirements for the making of an entry warrant application.

Applications must be made in person unless the magistrate considers it reasonable for remote communication to be used. The application must be written, unless this is not practicable and it is sought through remote communication, in which case it may be made orally, and the magistrate is to make a written record of the application and information given in support of it.

Entry warrant applications must be made on oath, unless it is made remotely, and this is not practicable. If an application is made in an unsworn form, the applicant must as soon as practicable, send the magistrate an affidavit verifying the application and information supplied in support of it.

See for analogy s.121 HER Act, and sections 13 and 41 CI Act.

Section 235H - Further provisions about entry warrant application made by remote communication

This section contains procedural requirements that apply when an entry warrant application is made by remote communication.

A contravention of these provisions renders evidence derived from an inspection, photograph or other record made of the land, or anything on or in the land, inadmissible in court or State Administrative Tribunal proceedings. This provides another important safeguard ensuring enforcement powers are exercised responsibly.

See for analogy s.121 HER Act, and sections 13 and 41 CI Act.

Section 235I – Issuing entry warrant

This section provides that a magistrate may only issue an entry warrant if satisfied it is necessary for an authorised purpose. It also sets out what the warrant must contain and that, if refused, the magistrate must provide the reasons for refusal.

See for analogy s.122 HER Act and s.42 CI Act.

Section 235J – Effect of entry warrant

This section stipulates a warrant issued takes effect according to its terms and the provisions of this section. The entry warrant authorises the authorised officer executing it to enter the land described in the warrant and exercise the powers under s.235E(2), which are to inspect, photograph or otherwise make a record, of the land or anything on or in the land. The use of force is not authorised, subject to the provisions of s.235K.

See for analogy sections 123 and 124 HER Act and s.43 CI Act.

Section 235K – Execution of entry warrant

This section sets out that any authorised officer may execute an entry warrant. Police assistance may be requested, and a police officer may use force, that is reasonably necessary, when providing that assistance. This provides another important safeguard ensuring enforcement powers are exercised responsibly.

See for analogy sections 115 and 125 HER Act and s.16 CI Act.

Division 2 – *Power of Entry and Inspection Regulations* repealed

Clause 72. Regulations repealed

This clause repeals the Power of Entry and Inspection Regulations. As this legislation is now nearly a century old, and refers to entities (such as the Town Planning Board) and statutes (such as the *Town Planning and Development Act 1928*) that have since ceased to exist, it is no longer fit-for-purpose.

Part 11 – Other amendments

This Part amends the PD Act to streamline and clarify various processes and correct errors.

Clause 73. Act Amended

This clause explains that this Part amends the PD Act.

Clause 74. Section 43 amended

This clause amends s.43 and clarifies that regulations may provide certain minor amendments to region planning schemes, such as basic-minor amendments which have already been extensively consulted on, do not require advertising. Within a housing-delivery context, an efficient region planning scheme amendment process is an important aspect of subdivision, zoning, land release and other reforms.

Clause 75. Section 62 amended

This clause amends s.62(1A) and is consequential to the amended s.43. An administrative amendment.

Clause 76. Section 83A amended

This clause amends s.83A(4) and clarifies that the s.83 consultation requirements do not apply if the local planning scheme amendment is not required to be advertised under the LPS Regulations and the amendment it is not required to be assessed by the EPA. Within a housing-delivery context, an efficient local planning scheme amendment process is an important aspect of subdivision, zoning, land release and other reforms.

Clause 77. Section 125 amended

This clause amends a drafting error where the words ‘this ‘Part’ should actually refer to ‘the notice.’ The erroneous reference to this ‘Part’ in section 125(b) is replaced with the correct wording ‘the notice’.

Clause 78. Section 246 amended

This clause is amended to extend the timeframe within which a Minister may call in an application from the State Administrative Tribunal, from 14 days to 28 days. Stakeholder consultation suggests 14 days is too short a timeframe, and in practice the Minister may not even be made aware of the application’s existence until after the 14-day period has already expired.

Clause 79. Schedule 7 clause 13 amended

This clause amends Schedule 7 clause 13(4). This clause, together with clause 80 (amending Sch.7 cl.15), provides clarity more explicitly supporting the preparation of master planning documents, such as structure plans. Master planning documents, such as structure plans, have long been an accepted part of the planning system in WA and most other jurisdictions. These master planning documents exist as ancillary to planning schemes. Within a housing-delivery context, master planning documents form an important aspect of subdivision, zoning, land release and other reforms.

Clause 80. Schedule 7 clause 15 amended

This clause amends Schedule 7 clause 15 to clarify that planning schemes may include plans or other documents, including master planning documents such as structure plans, which are future looking. This clause reflects the fact that master planning documents help guide the preparation of new or amended planning schemes.

Part 12 – Transitional Provisions

This Part contains provisions that deal with provisions necessary to implement the Bill.

Clause 81. Act amended

This clause explains that this Part amends the PD Act.

Clause 82. Part 19 Division 3 inserted

This clause inserts transitional provisions at the end of Part 19 necessary for the introduction of Part 11B significant development pathway, Part 11C conflict resolution and Commission reform. It also includes other necessary transitional provisions for the amendments introduced generally. These various measures are largely administrative in nature.

Subdivision 1 – Preliminary

Section 297. Terms used: 2023 amendment Act

This section inserts the definition of 2023 amendment Act.

Subdivision 2 – Avoiding conflicts with development approvals

This subdivision deals with the removal of Part 17, Division 3 and introduction of Part 11C.

Section 298. Provisions about avoiding conflicts with development approvals

This section provides that the notifications or applications under Part 17 specified in the Table are taken to be the notifications or applications specified in Table under Part 11C from the commencement of Part 3 of this Bill.

Subdivision 3 — Western Australian Planning Commission

This subdivision ensures a smooth transition from the existing board of the Commission to the new board appointed under the amended (i.e. 'new') s.10 and from the current committees of the Commission, including those with members who are members of the board.

Section 299. Terms used and interaction with Interpretation Act 1984 s.25

This section inserts terms necessary for the transitional provisions concerning the Commission and its committees. Of note, reconstitution day is the day on which Part 8, Divisions 1 and 2 of the Bill commence.

Section 300. Membership of board

This section enables the Minister for Planning to appoint new members of the Commission prior to the reconstitution date and clarifies that existing members are no longer members from reconstitution date unless appointed by the Minister under the amended s.10.

Section 301. New board may exercise certain powers of Commission before reconstitution day

This section enables the new board of the Commission to meet and exercise necessary powers prior to reconstitution day.

Section 302. Membership of Executive, Finance and Property Committee

This section clarifies that existing membership of the Executive, Finance and Property committee ceases on reconstitution day and enables new members to be appointed before this date to ensure a smooth transition. Members can be re-appointed from the existing committee.

Section 303. Membership of Statutory Planning Committee

This section clarifies that existing membership of the Statutory Planning Committee ceases on reconstitution day and enables new members to be appointed before this date to ensure a smooth transition. Members can be re-appointed from the existing committee.

Section 304. Membership of Swan Valley Statutory Planning Committee

This section clarifies that existing membership of the Swan Valley Statutory Planning Committee ceases on reconstitution day and enables new members to be appointed before this date to ensure a smooth transition. Members can be re-appointed from the existing committee.

Section 305. Other continuing committees

This section clarifies that existing membership of any other continuing committee ceases on reconstitution day and enables new members to be appointed before this date to ensure a smooth transition. Members can be re-appointed from the existing committee.

Section 306. Board of management of Metropolitan Redevelopment Authority

This section clarifies that the existing Commission member sitting on the Metropolitan Redevelopment Authority Board ('MRA Board') ceases membership of the MRA Board on reconstitution day and enables the Commission to appoint a new board member to sit on the MRA Board be appointed before this to ensure a smooth transition.

Section 307. Certain committees abolished

This section clarifies that committees of the Commission under Schedule 2 of the PD Act are abolished on reconstitution day.

Subdivision 4 – consolidation of planning schemes

Section 308. Terms used: repeal day

This section defines the term 'repeal day' for the purpose of Part 9 of this Act.

Section 309. Proof of consolidation of region planning scheme

This section contains provisions addressing any consolidation of a region planning scheme, immediately before repeal day. An administrative requirement.

Section 310. Proof of consolidation of local planning scheme

This section contains provisions addressing any consolidation of a local planning scheme, immediately before repeal day. An administrative requirement.

Section 311. Application of amended sections 138(3)(a) and 171R(1)(b) in relation to previous review local planning scheme

Sections 138(3)(a) and 171R(1)(b)(ii) both permit the Commission to exercise certain discretion dependent on how contemporary a local planning scheme is. This used to be based on a 5-year timeframe. New Part 9A will update the review requirement to 10 years, so timeframes in sections 138(3)(a) and 171R(1)(b)(ii) will reflect these new 10-year periods.

This section sets out what is considered sufficient compliance for review of a scheme within 'the preceding 10 years' within the new terms of sections 138(3)(a) and 171R(1)(b)(ii), to accommodate the transition from the old system to the new one.

Accordingly, if, in the preceding 10 years, the Commission made any decision on a report of review into the local planning scheme, prepared under r.67(1)(a) of the LPS Regulations, this clause deems that decision to have been approval of a report within the preceding 10 years for the purposes of s.132C(2) or (4).

Subdivision 5 – Reviews of planning decisions

Section 312. Applications made to the State Administrative Tribunal

This section provides that amendments made by s.78 of this Act does not apply to applications made before that section takes effect.

Subdivision 6 – Regulations

Section 313. Transitional regulations

This section provides a head of power to make regulations, which are necessary and convenient to address matters of a transitional nature. At the time of introduction of this Bill, no additional transitional regulations are contemplated.