Western Australia

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Planning and Development Legislation Amendment (Western Trade Coast Protection Area) Bill 2015

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Schedule 10 — Western Trade Coast Protection Area
Planning and Development Legislation Amendment (Western Trade Coast Protection Area) Bill 2015

A Bill for

An Act to amend the *Hope Valley Wattleup Redevelopment Act 2000* and the *Planning and Development Act 2005* to provide for development restrictions in respect of the Western Trade Coast Protection Area.

The Parliament of Western Australia enacts as follows:
Part 1 — Preliminary

1. **Short title**

   This is the *Planning and Development Legislation Amendment (Western Trade Coast Protection Area) Act 2015*.

2. **Commencement**

   This Act comes into operation as follows —
   
   (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
   
   (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.
Part 2 — Hope Valley Wattleup Redevelopment Act 2000 amended

3. Act amended
   This Part amends the Hope Valley-Wattleup Redevelopment Act 2000.

4. Section 28 amended
   After section 28(1)(e) insert:

   (fa) any relevant regulations made under section 34B(1); and

5. Part 5A inserted
   After section 33 insert:

   Part 5A — Additional development control for Western Trade Coast Protection Area

34A. Term used: Western Trade Coast Protection Area
   In this Part —
   Western Trade Coast Protection Area means the area referred to in the Planning and Development Act 2005 section 165B(1).

34B. Regulations restricting land use
   (1) The Governor may make regulations —
       (a) setting out classes of land use that are prohibited in any part of the Western Trade Coast Protection Area that is within, or partly within, the redevelopment area; and
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(b) providing for duties and responsibilities of the Commission in relation to deciding applications for approval of development in the Western Trade Coast Protection Area.

(2) The Governor must not make regulations under subsection (1) except on the recommendations of —

(a) the Minister responsible for the administration of the Government Agreements Act 1979; and

(b) the Minister.

(3) Before making a recommendation under subsection (2)(b), the Minister must consult with the following —

(a) the Commission;

(b) each local government the district of which includes land within the Western Trade Coast Protection Area;

(c) any party to a Government agreement (within the meaning of the Government Agreements Act 1979 section 2) that relates to land within the Western Trade Coast Protection Area.

(4) If a provision in a State planning policy is inconsistent with a regulation made under subsection (1), the provision in the State planning policy is void to the extent of the inconsistency.

34C. Approvals must not conflict with regulations

(1) An application cannot be made for approval of development in the Western Trade Coast Protection Area if the development would conflict with regulations made under section 34B.

(2) The Commission must not grant an approval for development in the Western Trade Coast Protection
Area if the development would conflict with regulations made under section 34B.

34D.  Prohibited land use

(1) A person who undertakes a use of land in the Western Trade Coast Protection Area that is prohibited under regulations made under section 34B commits an offence.

Penalty for this subsection: a fine of $50,000 and a daily penalty of $5,000.

(2) Subsection (1) applies subject to section 34E.

34E.  Saving

(1) In this section —

non-conforming use means a use of land which, though lawful immediately before the coming into operation of a regulation made under section 34B, is prohibited under the regulation.

(2) Nothing in regulations made under section 34B affects the following —

(a) the continuation and completion of the development of any land in the Western Trade Coast Protection Area that was lawfully being carried out immediately before the regulations came into operation;

(b) the continued use of any land in the Western Trade Coast Protection Area for the purpose for which it was lawfully being used immediately before the regulations came into operation;

(c) the erection, alteration or extension on land in the Western Trade Coast Protection Area of any building in connection with, or in furtherance of, a non-conforming use of the land which, but
for the regulations, would not have been an unlawful erection, alteration or extension.

(3) Subsection (2)(c) only applies in respect of that part of the land that comprises the lot or lots on which the non-conforming use is being carried on.
Part 3 — Planning and Development Act 2005 amended

6. Act amended

This Part amends the Planning and Development Act 2005.

7. Part 10 Division 6A inserted

After Part 10 Division 5 insert:

Division 6A — Additional development control for Western Trade Coast Protection Area

165A. Terms used

In this Division —

planning instrument means —

(a) a planning scheme; or

(b) an interim development order;

Western Trade Coast Protection Area means the area referred to in section 165B(1).

165B. Western Trade Coast Protection Area

(1) The Western Trade Coast Protection Area is the area identified in Schedule 10 Part A.

(2) In any proceedings, a plan purporting to be a copy of the plan referred to in Schedule 10 Part A showing the boundaries of the Western Trade Coast Protection Area is evidence of those boundaries.

(3) The map in Schedule 10 Part B is indicative of the Western Trade Coast Protection Area.

165C. Regulations restricting land use

(1) The Governor may make regulations —
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(a) setting out classes of land use that are prohibited in any part of the Western Trade Coast Protection Area; and

(b) providing for duties and responsibilities of local governments, the Commission and Development Assessment Panels in relation to deciding applications for approval of development in the Western Trade Coast Protection Area.

(2) The Governor must not make regulations under subsection (1) except on the recommendations of —

(a) the Minister responsible for the administration of the Government Agreements Act 1979; and

(b) the Minister.

(3) Before making a recommendation under subsection (2)(b), the Minister must consult with the following —

(a) the Minister responsible for the administration of the Hope Valley-Wattleup Redevelopment Act 2000;

(b) the Commission;

(c) each local government the district of which includes land within the Western Trade Coast Protection Area;

(d) any party to a Government agreement (within the meaning of the Government Agreements Act 1979 section 2) that relates to land within the Western Trade Coast Protection Area.

(4) If a provision in a State planning policy or a planning instrument is inconsistent with a regulation made under subsection (1), the provision in the State planning policy or planning instrument is void to the extent of the inconsistency.
165D. Approvals must not conflict with regulations

(1) An application cannot be made for approval of development in the Western Trade Coast Protection Area if the development would conflict with regulations made under section 165C.

(2) A local government, the Commission or a Development Assessment Panel must not grant an approval for development in the Western Trade Coast Protection Area if the development would conflict with regulations made under section 165C.

165E. Saving

(1) In this section —

non-conforming use means a use of land which, though lawful immediately before the coming into operation of a regulation made under section 165C, is prohibited under the regulation.

(2) Nothing in regulations made under section 165C affects the following —

(a) the continuation and completion of the development of any land in the Western Trade Coast Protection Area which was lawfully being carried out immediately before the regulations came into operation;

(b) the continued use of any land in the Western Trade Coast Protection Area for the purpose for which it was lawfully being used immediately before the regulations came into operation;

(c) the erection, alteration or extension on land in the Western Trade Coast Protection Area of any building in connection with, or in furtherance of, a non-conforming use of the land which, but for the regulations, would not have been an unlawful erection, alteration or extension.
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(3) Subsection (2)(c) only applies in respect of that part of the land that comprises the lot or lots on which the non-conforming use is being carried on.

8. Section 223A inserted

After section 222 insert:

223A. Prohibited land use

(1) In subsection (2) —

Western Trade Coast Protection Area has the meaning given in section 165A.

(2) A person who commences, continues or carries out a use of land in the Western Trade Coast Protection Area that is prohibited under regulations made under section 165C commits an offence.

(3) Subsection (2) applies subject to section 165E.

9. Schedule 10 inserted

After Schedule 9 insert:

Schedule 10 — Western Trade Coast Protection Area

PART A

The Western Trade Coast Protection Area is the area outlined in red on the plan entitled “Western Trade Coast Protection Area (1)” held at the office of the Commission and certified by the Minister as the plan prepared for the purpose of defining the area under this Act.
10. Schedule 10 replaced

Delete Schedule 10 and insert:

Schedule 10 — Western Trade Coast Protection Area

PART A

The Western Trade Coast Protection Area is the area outlined in purple on the plan entitled “Western Trade Coast Protection Area (2)” held at the office of the Commission and certified by the Minister as the plan prepared for the purpose of defining the area under this Act.
PART B

Western Trade Coast Protection Area (2)