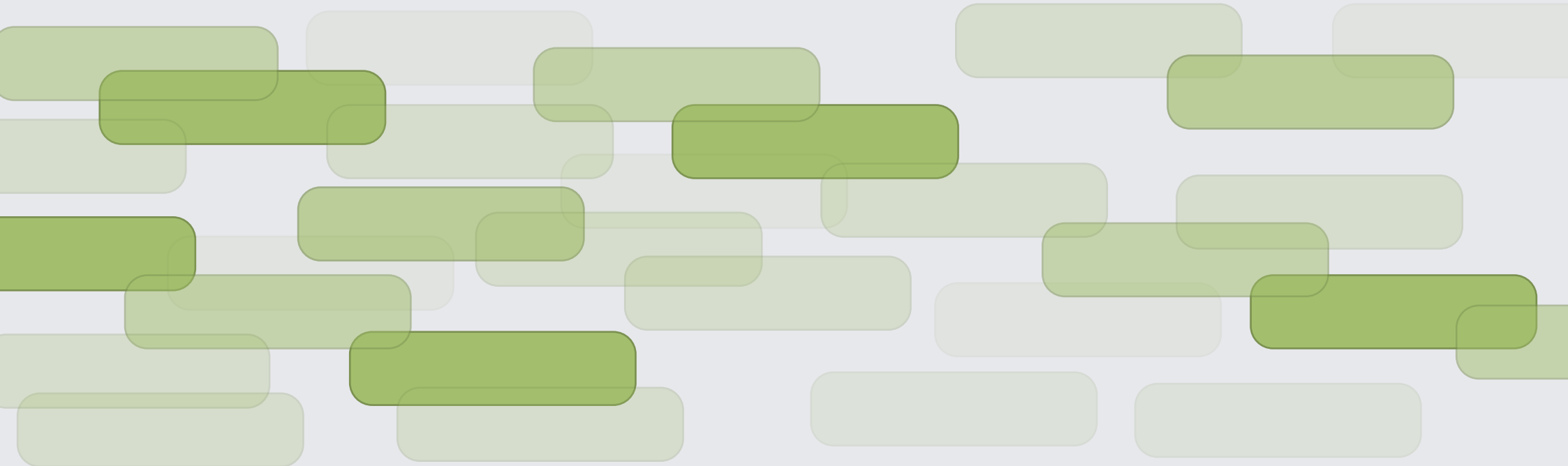


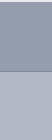
introduction to the Western Australian **Planning System**



Department of
Planning



Western
Australian
Planning
Commission



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About this document

This document is an overview of the planning system in Western Australia. It is intended to be of use to anyone with an interest in urban planning, land use or development.

The document clarifies the various roles, responsibilities and functions of the key players involved in the planning system. It also describes the various pieces of legislation that are relevant to planning in Western Australia, and it outlines the key features of the statutory and strategic planning instruments that together make up the State's planning framework. Within this framework long-term policy decisions and everyday subdivision and development control decisions are made by the relevant planning authorities.

To complement the text, key planning processes are illustrated in flowcharts included in the Appendices.

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1 The Western Australian Planning System

1.1 Introduction to planning

Modern town planning originated in the 19th century, when the Industrial Revolution led to significant population growth in urban areas and associated poor health and environmental conditions for city dwellers.

Today, many people and government agencies interact in the planning process to ensure that our towns, cities and regions grow in a sustainable way. Planning controls are required to meet the different needs of people living and working together.

Town planning, or urban and regional planning, coordinates land use and development by balancing economic, social and environmental issues. Planning legislation, policy and statutory processes guide decisions that shape communities and provide quality of life for people living in those communities.

There are two key components of planning in the 21st century:

- Strategic planning, which focuses on the big picture and on setting a framework for future development of towns and regions in Western Australia, to effectively guide land supply, land use, and urban and regional development.
- Statutory planning, which is guided by legislation and concerns the day-to-day decision making by the various responsible authorities on planning schemes, subdivision and development proposals.

1.2 Planning in Western Australia

Western Australia's planning system is based on a unique combination of institutional arrangements that provide for:

- strong and simple legislation
- centralised statutory regional planning, subdivision control and facilitation of local planning
- funding for metropolitan improvement
- statutory authority to exercise powers, allocate resources and provide advice based on expert professional support of a State Government department.

The first legislation to be passed in WA relating to town planning, the *Municipal Institutions Act 1871*, had its origins in public health and housing control, and aimed to control the use and development of land in the interests of public well-being.

In 1928, WA introduced its first specific town planning legislation, the *Town Planning and Development Act 1928* (the TP&D Act). This Act gave power to local authorities to prepare district zoning planning schemes, and retained State Government control of subdivision through the Town Planning Board. Before this legislation was passed there was no requirement to obtain approval for subdivision of land – all a landowner needed to do was to have a licensed land surveyor draw up a plan and register it with the Office of Land Titles (the early predecessor to the current Landgate).





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The TP&D Act was in place for just over 76 years, and while it was amended and added to a number of times throughout its life, the main features of the system it created remain to this day. The Act was also augmented by two other significant pieces of legislation:

- the *Metropolitan Region Town Planning Scheme Act 1959*, which set in place the power to make a region scheme over the whole of the metropolitan area, and the ability to secure funds to acquire and reserve land for public purposes; and
- the *Western Australian Planning Commission Act 1985*, which established the Western Australian Planning Commission (WAPC), and granted this new body a number of powers, including the power to make State planning policy.

These three separate pieces of legislation were subsequently consolidated into one piece of legislation, the *Planning and Development Act 2005* (the P&D Act), which provides a comprehensive system of land-use planning and development in WA.

2 Responsible authorities

The following bodies have responsibility for one or more aspects of planning in Western Australia.

2.1 The Governor of Western Australia

The constitutional laws of Western Australia provide for a Governor to represent the Sovereign as Head of State. The Governor's role includes important constitutional, ceremonial and community functions. In performing these functions, the Governor is required to act in an apolitical way. Since the Australia Acts were passed in 1986 by the Commonwealth Parliament and the Parliament of the United Kingdom at the request of all State Parliaments, the Governor acts on the advice of the Premier, Ministers and Executive Council.

The approval of the Governor is required for various elements of the WA planning framework, including all legislation, State planning policies prepared under Part 3 of the P&D Act, and new region planning schemes or major amendments to a region planning scheme.

2.2 Minister for Planning

Under the Westminster system of "responsible government", each government minister is an elected Member of Parliament, individually responsible for implementing government policy and for the administration of the departments, statutory authorities and agencies within their portfolio. While the day-to-day administration of the planning portfolio is handled by public servants, it is the Minister for Planning who is answerable to Parliament. The Minister is required to make statements to Parliament, face parliamentary questioning, and be accountable to the media and the general public on all matters relating to the planning portfolio.





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In addition, the Minister for Planning has a number of statutory responsibilities under the various pieces of planning legislation. These include (but are not limited to):

- nomination of a chairperson and members of the WAPC to the Governor
- approval of members of committees established by the WAPC
- appointment of a chairperson and board of management of the Metropolitan Redevelopment Authority
- recommending land to the Governor for declaration as a redevelopment area under the *Metropolitan Redevelopment Authority Act 2011*
- introduction of new and amended planning legislation to Parliament
- making of subsidiary legislation (regulations)
- approving the preparation or modification of State planning policies by the WAPC, and recommending those policies to the Governor for approval
- consenting to advertising of region schemes or substantial amendments to region schemes, and presenting final documents to the Governor for approval and to Parliament for consideration
- making final decisions on minor amendments to region schemes
- making final decisions on local planning schemes and amendments to local planning schemes, including issuing orders to local government as necessary
- enforcement of local government responsibilities under a local planning scheme

- option to make submissions to the State Administrative Tribunal on applications for review, or to call-in applications for review where appropriate
- deciding on any expenditure by the WAPC which exceeds \$1,000,000
- directing the WAPC with respect to the exercise or performance of its functions, either generally or in relation to a specific matter.

2.3 Western Australian Planning Commission

The WAPC is the statutory authority with state-wide responsibility for urban, rural and regional land-use planning and land development matters. The WAPC responds to the strategic direction of government and is responsible for the strategic planning of the State.

As prescribed in the P&D Act, the WAPC can have up to 15 members. These must include an independent chairperson; the chief executive officer of the Department of Planning and of several other State government agencies; representatives of metropolitan and regional local government; and other members with expertise covering a range of environmental, social and economic planning matters. The WAPC is also serviced by a number of specialised committees that have a range of expertise and local community knowledge, and which make decisions on its behalf.

The WAPC's responsibilities are established in the P&D Act, and can be summarised as follows:

- advising the Minister for Planning on land use, transport planning and land development, and on legislation relating to these matters





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- preparing and keeping under review a planning strategy for the State and planning policies to guide local government and public authorities on sustainable planning matters
- planning for the coordinated provision of transport and infrastructure for land development
- providing advice and assistance on land-use planning and development, and advising local government in particular on local planning matters
- undertaking, and advising the Minister for Planning on, strategic planning for all region scheme areas
- preparing and keeping under review State planning policies, region planning schemes, and improvement plans and schemes
- developing, maintaining and managing reserved land held by it
- establishing and exercising powers in relation to the various committees of the WAPC identified in the P&D Act.

Department of Planning

The WAPC operates with the support of the Department of Planning (DoP), which provides professional and technical expertise, administrative services, and resources to advise the WAPC and implement its decisions. In this partnership the WAPC has responsibility for decision-making and a significant level of funding while the department provides the administrative and technical advice.

The WAPC delegates some of its functions to officers of DoP. This delegated authority includes decisions on subdivision and development applications, when they comply with WAPC policies and practices.

DoP has a head office in Perth and regional offices in Albany, Broome, Bunbury, Geraldton, Karratha and Mandurah.

2.4 Local government

Local governments are involved in planning for local communities by ensuring appropriate planning controls exist for land use and development. They do this by, amongst other things, preparing and administering their local planning schemes and strategies.

Local planning schemes contain planning controls such as designation of appropriate land-uses, residential densities and development standards. Local governments must base their planning decisions on the provisions and controls in their local planning scheme.

All local government planning schemes and policies are required to be consistent with State Government planning objectives and requirements.

In the Perth region and other areas subject to region planning schemes, local governments are required to ensure their local planning schemes are consistent with the relevant region planning scheme.

The WAPC has delegated to local government the power to determine most development applications under the region schemes.

In addition to their role in development control and local planning policy setting, local government authorities are invited by the WAPC to provide comment on proposals for subdivision and amalgamation of any land within their jurisdiction.



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2.5 Metropolitan Redevelopment Authority

The Metropolitan Redevelopment Authority (MRA) was established through the *Metropolitan Redevelopment Authority Act 2011* (MRA Act) to undertake redevelopment projects in certain parts of the Perth metropolitan area. In addition to taking on new projects, the MRA combines the responsibilities and projects formerly undertaken by the East Perth, Subiaco, Midland and Armadale redevelopment authorities, and is responsible for the Elizabeth Quay project.

The planning role of the MRA is similar to that of a local government. The MRA Act requires the MRA to prepare a redevelopment scheme for each project area, and to determine applications for development approval lodged pursuant to that scheme. In areas where the MRA operates, the redevelopment scheme replaces the relevant local government planning scheme as the statutory document guiding planning decision making, and the MRA takes over development control from the local government for the duration of the redevelopment project.

In addition, the MRA has the power to resume land; undertake environmental rehabilitation; and implement, promote and coordinate urban regeneration projects.

As a statutory authority of the State Government, the MRA is governed by a board appointed by and answerable to the Minister for Planning. Land redevelopment committees are established for each redevelopment area to enable community and local government involvement in the development and delivery of urban renewal projects.

2.6 Development Assessment Panels

Development Assessment Panels (DAPs) were introduced to the WA planning system through the *Planning and Development (Development Assessment Panels) Regulations 2011* (DAP Regulations). DAPs are panels of five members, comprising a mix of technical experts and local government representatives. DAPs have the power to determine applications for development which meet certain monetary value thresholds, in place of the otherwise relevant decision-making authority (with the exception of applications under redevelopment or improvement schemes).

DAPs exist to provide additional transparency, consistency and reliability in decision-making on complex and significant development applications. The involvement of both independent technical experts and local representatives balances local representation and professional advice in decision-making, ensuring that decisions made by the panel are based on the planning merits of an application.

DAPs are not involved with, or responsible for, the preparation of planning schemes or planning policy. Their decision-making powers fit within the planning framework for the local government area the subject of the application they are dealing with.

A number of DAPs have been established, with each servicing one or more local government areas. The P&D Act and the DAP Regulations set out how DAPs are established and the applications which a DAP is to determine. All DAP members are appointed by the Minister for Planning.





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2.7 State Administrative Tribunal

The State Administrative Tribunal (SAT) is a body that reviews decisions made by government where it is empowered to do so by State legislation. SAT's jurisdiction, powers and procedures are primarily set out in the *State Administrative Tribunal Act 2004* (SAT Act), the *State Administrative Tribunal Regulations 2004* and the *State Administrative Tribunal Rules 2004*.

The P&D Act and local planning schemes give power to SAT to review decisions made pursuant to the P&D Act, local and region planning schemes, and the MRA Act.

The President of SAT is a Supreme Court judge and the two deputy presidents are District Court judges. Their role is to ensure the effective functioning and independence of the tribunal, and to resolve difficult questions of fact and law.

In addition to the judicial members, there are a number of non-judicial members, who are employed by SAT in either a permanent or sessional capacity. Non-judicial members have a broad range of qualifications and experience, depending upon their area of specialisation at SAT. In the Development and Resources stream (under which planning matters fall), non-judicial members include qualified lawyers, town planners, architects and surveyors, who conduct directions hearings, mediation, and hearings alone or in panels of up to three.

3 Planning legislation

3.1 Principal planning legislation

3.1.1 Planning and Development Act 2005

The P&D Act came into operation on 9 April 2006. The P&D Act consolidated the following pieces of legislation:

- *Town Planning and Development Act 1928*
- *Metropolitan Region Town Planning Scheme Act 1959*
- *Western Australian Planning Commission Act 1985*

The P&D Act is the primary piece of legislation governing development and subdivision in Western Australia, and its stated purposes are to provide for an efficient and effective land-use planning system in the State, and to promote the sustainable use and development of land in the State.

The P&D Act is the enabling legislation for most of the tasks undertaken by the WAPC, DoP and local government in progressing planning and development for WA. In summary, the P&D Act:

- establishes and specifies the functions and powers of the WAPC
- establishes the need for and process by which the WAPC can create and administer State planning policies, region planning schemes, interim development orders, planning control areas, and improvement plans and schemes, and identifies the relationship between these different planning instruments
- gives power to local governments to make local planning schemes for their jurisdictions, and establishes the process by which these schemes are to be formulated, administered and reviewed





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- establishes the requirement for WAPC approval to subdivide or amalgamate any lot, and outlines the functions of the WAPC and processes it must follow in dealing with applications for subdivision or amalgamation;
- confirms the requirement for approval to commence development where established in a planning scheme or interim development order;
- sets out a regime for the payment of compensation for injurious affection caused by the making or amendment of a planning scheme, or the acquisition of such land by the responsible authority;
- establishes the existence and operating procedures of the Metropolitan Region Improvement Fund, and the financial provisions relating to the WAPC; and
- outlines the enforcement and legal proceedings applicable, and the review options available, under the planning system as established in the P&D Act.

3.1.2 Town Planning Regulations 1967

The *Town Planning Regulations 1967* prescribe the procedures by which local planning strategies, local planning schemes and amendments to local planning schemes must be prepared and adopted by local government, the WAPC and the Minister for Planning; and establish a Model Scheme Text for local planning schemes.

While the Regulations were originally enacted in 1967 under the *Town Planning and Development Act 1928*, transitional provisions enacted in 2005 ensure that the Regulations continue in force under the current planning legislation, the P&D Act.

3.2 Planning legislation that applies in specific cases

The P&D Act provides the default position for planning control in Western Australia. There are, however, a number of pieces of legislation that set up separate planning regimes for location-specific areas. These are discussed below.

3.2.1 Metropolitan Redevelopment Authority Act 2011

The MRA Act established the Metropolitan Redevelopment Authority (MRA) to undertake redevelopment projects in suitable areas across the Perth metropolitan region. In MRA project areas, the planning framework established in the MRA Act applies (further information provided in section 2.5).

3.2.2 Swan and Canning Rivers Management Act 2006 (as amended)

The *Swan and Canning Rivers Management Act 2006* (SCRM Act) came into effect in September 2007, replacing the *Swan River Trust Act 1988* and the Environmental Protection (Swan and Canning Rivers) Policy 1997.

The SCRM Act establishes the Swan River Trust board, which has planning, management and protection responsibility for the area around the Swan and Canning Rivers.

The SCRM Act creates a separate planning approval process for development on lots that are wholly within the development control area, with decision making by the Minister for Environment rather than the relevant local government, or by the Swan River Trust board where the Minister has delegated his power.



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In addition, the SCRM Act, together with the Metropolitan Region Scheme, requires referral to the Swan River Trust board of development applications for lots that are partially within the development control area under the SCRM Act, or which abut the waters thereto.

The WAPC must have regard to the Trust's recommendations when determining such an application. Where the WAPC disagrees with the Trust's advice, the matter is to be resolved between the Minister for Planning and the Minister for Environment, and the Minister for Planning is then to direct the WAPC to determine the application as resolved.

3.2.3 Perry Lakes Redevelopment Act 2005

The Perry Lakes Redevelopment, located within the Town of Cambridge, is subject to the *Perry Lakes Redevelopment Act 2005*, and the Perry Lakes Redevelopment Plan. The MRS has been repealed in relation to this redevelopment area.

LandCorp is responsible for planning, promoting and coordinating the development of land within Perry Lakes.

3.2.4 Hope Valley Wattleup Redevelopment Act 2000

Latitude 32 (formerly known as the Hope Valley Wattleup Redevelopment Project) is subject to the *Hope Valley Wattleup Redevelopment Act 2000*, the Hope Valley-Wattleup Master Plan and a District Structure Plan. The MRS has been repealed in relation to the redevelopment area.

LandCorp is responsible for planning, promoting and coordinating the development of land within Latitude 32.

3.2.5 Swan Valley Planning Act 1995

The *Swan Valley Planning Act 1995* (SVP Act) was enacted to establish a committee to advise on land-use planning and land development in the Swan Valley, and to prescribe development objectives for the various parts of that area.

The SVP Act divides the Swan Valley into three discrete areas, and sets different but complementary planning objectives for each area, recognising the land-use characteristics of each area. Many of the objectives relate to the retention of viable agricultural land, in particular for viticulture use, and the protection of the environment and character of the area, which has flow-on benefits for tourism. Any planning decision made for land in the Swan Valley must be consistent with the relevant planning objectives identified in the SVP Act.

Most planning proposals that are received by the City of Swan or WAPC for land within the Swan Valley must be referred to the Swan Valley Planning Committee, which provides advice regarding the application, including any conditions to which an approval should be subject. The relevant decision maker must give due regard to this advice, and decisions should generally be consistent with the advice of the SVPC.

3.3 Legislation that influences planning legislation

3.3.1 Environmental Protection Act 1986

The *Environmental Protection Act 1986* (EP Act) established a system where environmental assessment of proposals is required if there is likely to be a significant effect on the environment. If it is found that a proposal will have a significant effect, the Minister for Environment will ultimately determine whether the proposal can be implemented, and if so, what conditions are to be imposed.



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In practice, there are not many development or subdivision applications which require referral, and even fewer that require assessment. This is because the EP Act requires all planning schemes and amendments to planning schemes to be assessed by the Environmental Protection Authority, and any application for approval to commence development that meets the requirements of a planning scheme previously assessed by the EPA is assumed to be environmentally acceptable.

However, where an application for approval to commence development raises environmental issues that were not considered during the assessment of the applicable planning scheme, the WAPC must refer the application to the EPA.

The WAPC must also refer an application to the EPA where an application for approval to commence development is considered to be:

- a significant proposal (such as major clearing of vegetation, potential threats to wetlands and watercourses, or major emissions)
- of a prescribed class (such as an abattoir or poultry farm).

Where a proposal has been referred to the EPA, and the EPA has decided to assess the proposal, the responsible planning authority shall not make a decision until the proposal has been assessed and determined by the Minister for Environment.

3.3.2 Heritage of Western Australia Act 1990

The *Heritage of Western Australia Act 1990* (HWA Act) encourages the conservation of places of cultural heritage significance. "Cultural heritage significance" is defined in section 3 of the HWA Act as "the relative value which that place has in terms of its aesthetic, historic, scientific or social significance, for the present community and future generations".

The HWA Act establishes a State Register of Heritage Places, which is primarily a planning tool that notifies relevant planning decision-making authorities of heritage places and their significance.

Where land is listed on the State Register, a planning decision-making authority is required to obtain the advice of the Heritage Council before determining the application. If the planning decision-making authority approves the application, it must not impose any conditions on the approval that are inconsistent with conditions imposed by the Minister for Heritage or the Heritage Council.

In addition, the HWA Act provides for a local government to compile and maintain, after public consultation, an inventory of buildings within its district that are or may become of cultural heritage significance.

The HWA Act does not require a local government to do anything specific with the inventory, except that it must be provided to the Heritage Council and be updated. In practice, a local government may use its heritage inventory when compiling a heritage list under its local planning scheme, which can be used to impose special development control restrictions on land identified in the list.





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3.3.3 Contaminated Sites Act 2003

The *Contaminated Sites Act 2003* (CS Act) sets out a regime for classifying land that is contaminated. It classifies sites in accordance with the risk to human health that is posed by the condition of the land and the use to which it is being put.

Where land is classified as “contaminated – remediation required”, the WAPC must not approve subdivision of that land, and a local government is not to approve development on that land, without seeking and taking into account the advice of the chief executive officer of the Department of Environment Regulation as to the suitability of the land for the purpose for which approval is sought.

3.4 Legislation that overrides some planning legislation

3.4.1 Mining Act 1978

Under section 120 of the *Mining Act 1978*, while the Minister for Mines and Petroleum, the warden or the mining registrar will take into account any planning instrument made under the P&D Act when considering an application for a mining tenement, a planning instrument shall not operate to prohibit or affect the grant of such tenement.

There are, however, some areas in the State where the Mining Act has limited application, because where land was converted from Crown land to freehold title prior to 1899, the State Government only retained ownership of precious metals (for example, gold and silver). The ownership of non-precious metals remains with the landowner. In this situation, a mining lease is not required to mine for non-precious metals. It therefore follows that section 120 of the Mining Act has no application in these circumstances.

The result of this is that the Mining Act does not apply, and planning approvals under the relevant planning scheme are still required in relation to development on land which:

- was converted to freehold before 1899; and
- involves either the mining of a non-precious metal (such as basic raw materials) or other works or uses which support such operation.

3.4.2 State Agreement Acts

State Agreements are contracts between the Government of Western Australia and proponents of major resources projects, which are ratified by an Act of State Parliament. They specify the rights, obligations, terms and conditions for development of the project and establish a framework for ongoing relations and cooperation between the State and the project proponent.

For more than 50 years, State Agreements have been used by successive Western Australian governments to foster major developments, including mineral, petroleum, wood processing and related downstream processing projects, together with associated infrastructure investments. Such projects require long-term certainty, extensive or complex land tenure and are often located in relatively remote areas of the State requiring significant infrastructure development.

State Agreement Acts are project specific statutes, each of which involves the signing of a deed of agreement between the State and the proponent. The deed of agreement is then attached as an appendix to an Act, which is passed through Parliament in the usual way. Such a system gives greater security to proponents of large and complex ventures, the development of which take longer than the four-year political cycle.





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One of the functions of State Agreement Acts can be to remove some of the power of local governments so that the local planning system does not prevent a proposed development from going ahead. Often there is a provision included which expressly exempts the proponent from having to obtain development approvals. Some of the more recent State Agreement Acts provide that the local planning scheme ceases to apply in relation to the area the subject of the agreement.

The Department of State Development administers State Agreement Acts on behalf of the Government of Western Australia.

4 Planning framework

The WA planning system comprises a framework of planning policy and statutory documents to guide decision making and ensure appropriate development outcomes.

4.1 Strategic planning

Strategic planning documents are developed and implemented by the WAPC and local government to provide guidance on planning, land use and development matters.

4.1.1 State Planning Strategy

The State Planning Strategy is an integral part of the Western Australian planning system, and is intended to inform planning and development policies and decisions throughout the State. Preparation and review of a Planning Strategy for WA is a core function of the WAPC.

The current draft State Planning Strategy defines land-use planning and development as an integral aspect of broader strategic economic, social and environmental planning for the State. It establishes a framework of collaborative mechanisms by which Government can plan for the State's physical and social infrastructure, environment, food security, land availability, economic development, housing accessibility, security, education and training.

The State Planning Strategy is to be used by the Government as a basis to plan for the coordinated provision of regional and urban infrastructure across the State; to improve the efficiency of infrastructure investment; and to facilitate the consideration of project approvals, delivery of services and urban land supply.





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4.1.2 State planning policies

State planning policies (SPPs), which are specifically provided for in the P&D Act, are required to be prepared and kept under review by the WAPC according to procedures established in the Act¹. A recommendation of the Minister for Planning and approval of the Governor is required before a SPP has force or effect.

The first SPP takes the form of a State Planning Framework, outlining all of the State and regional policies, plans, strategies and guidelines which apply to land use and development in WA. It also establishes the key principles for land-use planning and development that should apply in the state, restating and expanding on those contained in the State Planning Strategy.

The State Planning Framework is the overarching SPP and is, therefore, numbered SPP 1. Other SPPs dealing with key sectors of the planning framework follow, and are categorised according to subject matter – environment and natural resources; urban growth and settlement; the economy and employment; transport and infrastructure; and regional development.

SPPs can be subject or location specific, and are generally used for two main purposes:

1. To assist the WAPC in its decision-making with respect to the subdivision of land and development approval under region schemes
2. To provide guidance to local government on the matters they need to take into account in preparing local planning schemes.

SPPs do not have a binding effect, but under the P&D Act every local government is required to have due regard to SPPs in preparing or amending a local planning scheme. SPPs may also be made part of local planning schemes through insertion of specific scheme provisions to this effect (see Residential Design Codes below), and the Minister for Planning may order a local government to amend its scheme to be consistent with a SPP.

The P&D Act also requires SAT to have due regard to any relevant SPP which affects the subject matter of an application for review under its consideration.

Residential Design Codes

SPP 3.1 outlines the Residential Design Codes (R-Codes) that apply to all residential development in Western Australia. The Model Scheme Text (see section 3.1.2) contains a provision that should be included in all local planning schemes, to the effect that the development of land for any residential purposes in the local scheme area must conform to the provisions of the R-Codes.

Where the R-Codes have been adopted under a local planning scheme by inclusion of such a provision, they have the same effect as if part of the scheme and their provisions apply in determining the nature and form of residential development that may take place. The R-Codes include standards for lot sizes, required dwelling setbacks from lot boundaries, requirements for private open space and the proportion of built form permitted on each lot (plot ratio), amongst other things. Special provisions are also included for multi-unit development.

¹ State Planning Policies were called “Statements of Planning Policy” under the TPD Act, but were renamed “State Planning Policies” in the P&D Act. Many local planning schemes and policies still use the term “Statement of Planning Policy”, but these are to be read as if they were references to State Planning Policies.



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The WAPC has regard to the prescribed minimum and average lot sizes contained in the R-Codes when considering applications for the subdivision of land, and both the WAPC and local government must apply the “design principles” and “deemed-to-comply requirements” in their assessment of applications for residential development.

4.1.3 Other State policies

Development control policies

Development control policies (DCs) are operational policies which have been adopted by the WAPC to guide its decision-making on subdivision and development applications. Like SPPs, DCs are grouped by subject matter, and provide detailed guidance on topics including residential, rural, industrial and commercial land planning.

Liveable Neighbourhoods

In addition to the standard DCs, the WAPC has adopted a document called Liveable Neighbourhoods (LN) as a key operational policy. LN is to be followed in the design and approval of urban development for greenfield sites and for the redevelopment of large brownfield and urban infill sites. Generally LN replaces other WAPC development control policies that deal with the same matters. Where there is conflict with existing policies, LN prevails unless an applicant can demonstrate why it cannot or should not apply.

Planning guidelines and planning manuals

The WAPC’s operational policies are supported by a variety of planning guidelines and manuals to assist in a range of planning issues. These documents are available to users of the planning system to provide

additional guidance on the policy approach taken by the WAPC to land-use planning and development control across the state.

Guidelines and manuals are also issued to provide information on the expected content of planning documentation required by the WAPC of local government and proponents, such as local planning schemes and strategies, structure plans, and environmental management plans.

Planning bulletins

Planning bulletins canvass proposed policy changes or highlight information about WAPC and DoP practices on a variety of planning matters. Planning bulletins are also issued by the WAPC to provide guidance and advice on certain statutory planning issues.

4.1.4 Local policy documents

Local planning strategies

A local planning strategy (LPS) establishes the planning framework for each local government, and provides the strategic basis for local planning schemes. It sets out the local government’s objectives for future land-use planning and development, and includes a broad framework by which to pursue those objectives. A LPS needs to address the social, environmental, resource management and economic factors that affect, and are affected by, land use and development.

The local planning strategy should:

- be consistent with State and regional planning policy, including current strategies and structure plans (or provide the rationale for why it is not)





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- provide strategic direction for land-use planning and development over the ensuing 10 years or longer as the basis for the local planning scheme
- set out the strategic direction for sustainable resource management and development in the context of State and regional planning
- provide the rationale for the zoning and reservation of land and for the provisions of the scheme relating to development and development control
- provide a strategic framework for assessment and decision-making in relation to proposed scheme amendments, subdivision, and development
- provide the context for coordinated planning and programming of physical and social infrastructure at the local level
- assess the capacity of infrastructure such as water, sewerage, electricity and roads to ensure there is sufficient infrastructure in a locality to accommodate managed growth
- identify the need for further studies or investigation within a local government area to address longer-term strategic planning and development issues.

Each LPS contains a diagrammatic representation (spatial plan) of existing and proposed strategic land uses, development, infrastructure and natural resources. Mapping focuses on the general pattern of land use, rather than specific zoning, as a guide to more detailed representation when a local planning scheme is prepared.

Each LPS must be submitted to the WAPC for review prior to advertising, to ensure it meets the necessary standards and is consistent with State and regional policy and strategy. Following public advertising and once any submissions have been considered and the

strategy modified appropriately, the WAPC will provide final endorsement of the LPS, at which point it can be used as the basis for more detailed local planning and preparation of a local planning scheme.

Local planning policies

Local planning policies (LPPs) can be prepared by local government to provide additional information about the position that local government will take on certain planning matters.

LPPs are not part of a local planning scheme, but are recognised in most local scheme provisions as one of the matters to be given due regard in the relevant authority's consideration of applications for planning approval. As such, a LPP cannot impose any mandatory requirement upon development, but may provide guidance on the way in which proposals will be assessed and determined by that local government. LPPs must be consistent with the intent of the relevant local planning scheme provisions, including the R-Codes, and by implication must also be consistent with any relevant SPP.

There is no requirement for WAPC review or endorsement of LPPs proposed by local government; however, as previously stated, a local planning policy should be consistent with State planning policy.

4.2 Spatial planning

Strategic spatial plans are an integral part of the planning process. They provide a framework for the coordinated provision of services, infrastructure, land use and development, and provide a guide to the intended pattern of future development of an area. At various scales, they help guide State and local government decision makers in assessment of rezoning, subdivision and development applications.





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4.2.1 Regional planning and infrastructure frameworks

Regional planning and infrastructure frameworks have replaced regional strategies as the guiding document for planning at a regional level.

The frameworks interpret the objectives of the State Planning Strategy at a regional level; provide an overview of the major regional economic, social, cultural and environmental issues; identify the priority actions required to enable comprehensive sub-regional planning and to guide local planning processes; and identify the regional infrastructure priorities to facilitate economic and population growth in a region.

Directions 2031

In addition to preparing regional planning and infrastructure frameworks for non-metropolitan regions of the State, the WAPC prepares and keeps under review a high-level spatial planning and infrastructure framework for the Perth metropolitan and Peel regions. The current metropolitan framework, *Directions 2031 and Beyond*, was released in 2010, and was formulated to guide the detailed planning and delivery of housing, infrastructure and services across the metropolitan region to 2031 and beyond.

4.2.2 Sub-regional structure plans

Sub-regional structure plans are strategic spatial plans providing a broad framework for planning at a sub-regional level. They cover planning issues including location of urban growth and consolidation, population trends, employment areas, major commercial centres, transport links, infrastructure and servicing requirements, environmental protection and regional open space.

Preparation of a sub-regional structure plan is usually a precursor to the zoning and reservation of land under a region scheme, and the plan should establish priorities and identify the additional studies and investigations needed to progress to the preparation of more detailed district and local structure plans.

Sub-regional structure plans are prepared by the WAPC, in liaison with local government, having due regard to the State Planning Strategy, SPPs, and relevant regional planning and infrastructure frameworks. They must be advertised for public comment before being modified as necessary and adopted by the WAPC.

4.2.3 District structure plans

A district structure plan shows in more detail the general pattern of development in a particular part of a sub-region, and provides guidance on future land use, employment, density targets and the coordination and provision of major infrastructure at a district level. This may include the location of high schools, district water management requirements, movement networks, refinement of regional land-use boundaries, coordination of regional and district infrastructure provision, location and distribution of regional or district open space, land-use buffers, environmental assets and activity centres.

District structure plans identify matters that will require further refinement through the more detailed investigations involved in preparation of local structure plans. District structure plans can be prepared by local government, landowners, or a landowner representative, in liaison with the WAPC and in consultation with other affected government agencies. The plans must be advertised by local government for public comment, and are required to be assessed and endorsed, subject to any necessary modifications, by the WAPC.



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4.2.4 Local structure plans

A local structure plan is a statutory spatial plan, prepared by local government, a landowner, or a landowner representative, and approved under the provisions of a local planning scheme.

Local structure plans provide more specific detail on the proposed pattern of land use for a certain area, such as a residential neighbourhood or industrial area. They provide a framework for the assessment of detailed scheme amendments, subdivision and development proposals.

These plans include details of location and density of housing, road layout, pedestrian and cycle network, public open space, school sites, servicing infrastructure, community purpose sites and activity centre locations.

The plans must be advertised by local government for public comment, and are required to be assessed and endorsed, subject to any necessary modifications, by the WAPC.

Activity centre structure plans

An activity centre structure plan is a form of local structure plan required specifically for certain types of activity centres according to the provisions of SPP 4.2 Activity Centres for Perth and Peel. Activity centre structure plans can be prepared by local government, a landowner, or a landowner representative.

Prior to any major development or subdivision being approved in a centre, an activity centre structure plan should be prepared, advertised for public comment, and assessed and endorsed by the WAPC, subject to any necessary modifications. This is to ensure all activity centre development is integrated, cohesive and accessible.

4.2.5 Local development plans

Local development plans² are a planning tool used to control built form outcomes on particular lots, when proponents or local government are concerned about the relationship between lot layout and built form at subdivision and development stage. They are particularly important for lots where design coordination is required to ensure that buildings work for both the private occupier and the surrounding public realm.

Local development plans are often required as a condition of subdivision for small lots, lots serviced by laneways, narrow lots, lots abutting public open space, or residential lots in mixed-use areas. They can address various different design elements such as building setbacks, building heights, parking and access requirements, and placement of private open space and ancillary dwellings to ensure passive surveillance and climate responsive design.

Most local development plans are assessed and endorsed by local government according to the provisions of the local planning scheme, and are used to assess applications for planning or building approval. The WAPC does not usually have a role in the local development plan process.

² Local development plans were known as "Detailed Area Plans" until 2012, and may still be referred to as such in some planning documents.



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4.3 Statutory planning

4.3.1 Region planning schemes

Region planning schemes outline objectives for regional development and provide a statutory mechanism to assist strategic planning, by setting out broad land-use zones, setting aside areas for regional open space and other regional infrastructure purposes, and assisting in coordinating the provision of major infrastructure.

There are currently three region planning schemes in Western Australia:

- Metropolitan Region Scheme (MRS)
- Peel Region Scheme (PRS)
- Greater Bunbury Region Scheme (GBRS).

In areas not covered by a region planning scheme, the relevant local planning scheme provides the only statutory reservation and zoning of land, and the local government alone is (unless another statutory planning mechanism applies) the relevant authority for decisions on planning applications.

Where there is both a region planning scheme and a local planning scheme in place, in theory there is a legal requirement to obtain planning approvals from both the WAPC and the local government, as one scheme does not override the other.

In practice, however, generally only one approval is needed. This is because in most circumstances the WAPC delegates its power under the region schemes to the relevant local government. Therefore, an approval is issued by the local government, but it is an approval under both the region and local planning schemes. The exceptions to this are for development on or

abutting certain regional reserves, or for certain classes of development over which the WAPC wants to retain control.

The procedures for preparing and amending a region planning scheme are established in the P&D Act, and involve an extended process of consultation; formal advertising; public hearings if requested; and assessment and endorsement by the WAPC, the Minister, and (in the case of substantial amendments) the Governor and Parliament of Western Australia.

Each region scheme, or amendment to a region scheme, must be referred to the EPA early in the process, and may then be subject to an environmental assessment and, if appropriate, incorporation of environmental conditions set by the Minister for the Environment. Other relevant government agencies and stakeholders, including relevant local government, will also be invited to comment on a proposed region scheme or amendment to a region scheme.

Region scheme amendments can be progressed by the WAPC either as a substantial (major) amendment to the scheme, or a minor amendment.

Substantial amendments must have consent of the Minister to be advertised; are required to be advertised for not less than three months; must ultimately be approved by the Governor on recommendation of the Minister; and must be laid before both Houses of Parliament for 12 sitting days, during which time they are subject to a resolution of disallowance, before they have effect.

Minor amendments do not require ministerial consent to advertise; need only be advertised for not less than 60 days; and require the final approval of the Minister, but do not need to go before the Governor or Parliament, before they have effect.



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4.3.2 Interim development orders

Interim development orders can be made under Part 6 of the P&D Act, and are used to regulate, restrict or prohibit development from going ahead in certain areas while a region or local planning scheme is being prepared for that area.

A regional interim development order may be made by the WAPC, with approval of the Minister, for an area outside the metropolitan region in respect of which there is a resolution to prepare a region planning scheme, if the WAPC is of the opinion that development in the interim might materially affect the preparation or implementation of that scheme.

A local interim development order may be made by the Minister for any district or part of a district where a local planning scheme is proposed, if the Minister thinks it is necessary and in the public interest to regulate, restrict or prohibit development of that land in the interim.

Interim development orders can regulate development in various ways, dependent on the needs of the specific circumstances in which they are used, and may only apply until the relevant region or local planning scheme comes into operation; until they are revoked; or for three years, whichever occurs first (although there is an option to extend the life of an order by 12 months, more than once).

4.3.3 Planning control areas

Planning control areas are a mechanism used by the WAPC, with the Minister's approval, when it wishes to protect land that has been identified for future use for various public purposes (specific uses are listed in Schedule 6 of the P&D Act, and include such uses

as car parks, cultural heritage conservation, parks, important regional roads, railways, universities and waterways).

Often this mechanism is used as an interim device before such land has been reserved in a region or local planning scheme; however, planning control areas can be used in any part of the State, whether land is subject to a planning scheme or not.

The effect of land being declared a planning control area is that any application for development on that land must be forwarded by the relevant local government to the WAPC for determination. The WAPC will have regard to the purpose of the planning control area in making its decision.

4.3.4 Improvement plans and schemes

Improvement plans are strategic instruments used to facilitate the development of land in areas identified as requiring special planning, where it is recommended that:

- a) the land should be planned, replanned, designed, redesigned, consolidated, re-subdivided, cleared, developed, reconstructed or rehabilitated; or
- b) provision should be made for the land to be used for such residential, commercial, industrial, public, recreational, institutional, religious, charitable or other uses, buildings, works, improvements or facilities, or spaces for those purposes, as may be appropriate or necessary.

Unlike other strategic instruments, the WAPC is involved in undertaking the development required under an improvement plan. It can do so on land it already holds or land it acquires under the P&D Act, or by entering into an agreement with a private owner.



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Improvement plans themselves do not have any statutory effect, as they do not remove the land in question from the overall statutory planning it is subject to under existing region or local planning schemes. As such, development undertaken under an improvement plan is subject to the usual requirements regarding approvals under those schemes.

However, an improvement plan accepted by the Governor, on the recommendation of the Minister, may authorise the making of an improvement scheme by the WAPC for some or all of the land to which the improvement plan applies.

An improvement scheme is similar to a local planning scheme. It contains development control provisions relating to the area subject to the associated improvement plan, and is based on the Model Scheme Text.

An improvement scheme, once it comes into effect, prevails over any region planning scheme or local planning scheme that would usually apply to the improvement scheme area. As such, for the duration of the improvement scheme, existing local and region planning schemes cease to apply to the land identified in the improvement scheme. The WAPC is the development control authority for an improvement scheme area, and has responsibility for determining applications made for development in that area. However, the WAPC may delegate these powers to other bodies, including the relevant local government.

When an improvement scheme is no longer required, it is revoked, and the land is once again subject to the provisions of existing region and local planning schemes, which may both have been amended to conform to the improvement scheme.

Examples of where an improvement scheme may be the most appropriate planning mechanism available include:

- where the WAPC is a significant landowner in an improvement plan area or has capacity to acquire land in that area
- where an improvement plan covers more than one local government area and coordinated development of the improvement plan area is required
- where development of an area is a priority and must occur in a specified time period
- where there is fragmented land ownership
- where there are particular issues that require a coordinated planning and development response, such as important heritage sites or contaminated sites.

An improvement scheme is prepared in the same way as a local planning scheme (see below), and the decision to approve, amend or repeal an improvement scheme rests with the Minister.

4.3.5 Local planning schemes

Local planning schemes are the principal statutory tool for achieving a local government's aims and objectives with respect to the development of its local area, subject to compliance with the State Government's statutory and strategic planning framework. Schemes deal mainly with land use, development control and infrastructure coordination, and are formulated based on the strategic framework established in the supporting local planning strategy.



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A local government may prepare or adopt a local planning scheme³ for any land in its jurisdiction. Generally, local planning schemes cover the whole of the district of the local government to which they apply. However, occasionally in rural and regional areas a local planning scheme may be made in respect of a townsite only.

Local planning schemes are prepared and adopted under Part 5 of the P&D Act, which sets out the general objects of schemes, the matters which may be addressed in schemes and the requirements for review of schemes.

The P&D Act is supported by subsidiary legislation (the Town Planning Regulations 1967) which outline the procedure for preparation and approval of local planning schemes, and establish a Model Scheme Text which indicates the form that local planning schemes should take, unless otherwise required or agreed by the Minister.

The purposes of local planning schemes are to:

- a) set out the local government's planning aims for the scheme area, and implement the local planning strategy;
- b) set aside land as reserves for public purposes, in accordance with the aims of the scheme and the local planning strategy;
- c) zone land within the scheme area in accordance with the aims of the scheme and the local planning strategy;

- d) control and guide land use and development in accordance with the aims of the scheme and the objectives of the respective zones and reserves;
- e) make provision for the administration and enforcement of the scheme where necessary to supplement the provisions in the Act; and
- f) provide for such other matters as set out in the Schedule 7 to the P&D Act as are necessary and appropriate to the local area.

The local planning scheme generally divides the local government area into zones and reserves. These are illustrated on the scheme map and are associated with particular land use and development requirements in the scheme text.

Zoning is used to control both the use of land and form of development. The purpose of zoning is to group together similar uses and to manage potential land use conflicts. Local planning schemes assign zones to land within the scheme area, and specify the land uses and development standards which will be supported within each of those zones.

Reservation of land under a local planning scheme generally applies for public uses such as schools or public utilities, or for protection of land from development for recreation or environmental purposes. Local planning schemes may also include special controls if an area has a particular character or environmental constraints for which specific design and development requirements apply.

Local governments are required to review their planning scheme, either by consolidation or by the preparation of a new scheme, in the fifth year following gazettal of their existing scheme. A new scheme is generally required when there is a need to update the current scheme in

³ Local planning schemes were called "town planning schemes" in the TPD Act, and were renamed "local planning schemes" in the P&D Act. Schemes gazetted prior to 2005 may still have "town planning scheme" in their title. Other variations also exist, including "district planning scheme" and "city planning scheme".



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terms of strategic direction, which may include changes to land use, zoning, environmental or other provisions or practices, or review of the prospects for future growth and development in the area. Given the age of many current schemes, and recognising the rapid rates of growth and change in many local government areas, most reviews take the form of a new scheme, supported by a local planning strategy (see section 4.1.4).

If a local government proposes to review its scheme by means of preparing a new scheme, the process as established in the P&D Act and regulations must be followed. Under the *Town Planning Regulations 1967*, this involves the following steps:

1. Commencement and referral

- a) The local government adopts a formal resolution as set out in the regulations, and forwards to the WAPC a copy of the resolution and a copy of the map delineating the scheme area (both certified by the CEO), together with a statement setting out the objects and intentions of the scheme and the proposed format.
- b) The WAPC notifies the local government of receipt of the documents, advises of any necessary adjustment to the scheme area, and makes relevant comments regarding the preparation of the new scheme.
- c) The local government publishes in the Government Gazette and a local newspaper a notice of the resolution, and forwards a copy to any adjoining local government, the Water Corporation, the Department of Environment Regulation, the Department of Water and every other public authority likely to be affected by the scheme, with a request to forward matters to be taken into consideration in preparation of the scheme.

- d) The local government must also refer written notice of the resolution to the EPA to enable it to determine whether the scheme is to be formally assessed, and if so the relevant level of assessment. Alternatively, the EPA may determine that the scheme only requires informal assessment, and may instead provide advice which is to be taken into consideration by the local government during the preparation of the scheme.

2. Formulation and advertising of scheme

- a) The local government formulates the scheme based on the local planning strategy and in accordance with the format required by the regulations.
- b) The local government endorses two copies of the scheme documents and forwards these to the WAPC with a request for ministerial consent to advertise the scheme.
- c) The WAPC will consider the scheme and make a recommendation to the Minister. The recommendation will include, as relevant, any suggested additions, deletions, changes or other modifications for the Minister to consider.
- d) The Minister will consider the WAPC's report, and if modifications are required to the scheme prior to advertising, the relevant ministerial instruction will be conveyed to the local government by the WAPC.
- e) On receipt of the Minister's consent, and on completion of any required modifications, the local government is to advertise the scheme for 90 days and invite public comment, in the manner outlined in the regulations.

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3. Adoption and endorsement of scheme

- a) Within six months of the conclusion of the consultation period the local government is to consider all submissions received, make a recommendation on each and recommend any modifications to the scheme. The local government may also recommend that certain components are readvertised before the scheme is finalised, or that the scheme review be discontinued. The local government must either formally resolve to adopt the scheme (with or without the modifications) or resolve that it does not wish to proceed with the scheme.
- b) The local government forwards to the WAPC a copy of its resolution and a schedule of submissions received (at this point it is not appropriate for the local government to alter the formal scheme documents, as a final decision on the scheme is yet to be made by the Minister.)
- c) The WAPC will consider the scheme, the local government's resolution, all submissions, and any other relevant information, and makes its recommendation to the Minister.
- d) The Minister considers the WAPC's report and will approve the scheme, approve the scheme with modifications, or refuse the scheme. If any modifications are considered likely to result in additional or varied submissions, the Minister will require the modified part of the scheme to be readvertised for public comment. If readvertising is required, steps 2e) to 3d) above are repeated, but usually with a reduced advertising period.
- e) Following advice of the Minister's decision, the local government undertakes any required modifications, signs and seals three copies of the scheme text, map, and any other scheme document, and forwards these to the WAPC for checking and endorsement.
- f) The WAPC will check and endorse the documents if correct, and forward the documents to the Minister.
- g) The Minister will check and endorse the documents. Notice of finalisation of the scheme is then published in the Government Gazette by the WAPC (at the local government's cost) and in a local newspaper by the local government. The local government is also required to advise each person who lodged a submission of the outcome of the review process, including whether and how the scheme was modified in response to that submission.

A scheme has effect following the Minister's endorsement and when it is published in the Government Gazette.

Local planning scheme amendments

A local government may resolve to amend its planning scheme, and may do this at its own initiative, at the request of all or any of the relevant landowners, or if directed to do so by the Minister for Planning.

An amendment would generally be initiated to bring the scheme into line with changes in planning procedures; to reflect changes to a State or regional planning policy; or to allow for a different use of land, varied development standard, or to provide additional subdivision or development potential.

The amendment process is similar to that outlined above for a new scheme, except that the advertising period is generally shorter, and ministerial consent to advertise is not a standard requirement.

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5.1 Subdivision

Under the P&D Act, it is an offence to subdivide or amalgamate any lot without the approval of the WAPC. The WAPC is responsible for determining all subdivision applications under the P&D Act, and certain classes of strata subdivision applications under the *Strata Titles Act 1985*.

Having received an application for subdivision (or amalgamation), the WAPC is to refer the application for comment to the relevant local government, and any public authority or utility services provider that may be affected by the proposed plan. Each referral body has 42 days from lodgement of the proposal to provide in writing any objections or recommendations, after which the WAPC may deem that no objection or recommendation will be forthcoming.

The WAPC should make a decision on an application within 90 days after the day on which the application is submitted, unless otherwise agreed to in writing by the applicant. The WAPC may approve the proposed plan, refuse the plan, or approve the plan subject to certain conditions being complied with before the WAPC will endorse the associated diagram or plan of survey. Advice notes may also be applied to subdivision approvals to provide supplementary information associated with relevant conditions.

In making its decision on a proposal to subdivide (or amalgamate), the WAPC will consider any comments received from a referral body, the provisions of any planning scheme that applies to the subject land, and any other relevant statutory or strategic planning

documents. The WAPC may only make a decision that conflicts with the provisions of a local planning scheme in very specific circumstances, as established in the P&D Act.

In addition to the standard right of review to SAT afforded by the P&D Act, any applicant for subdivision (or amalgamation) may, within 28 days of a decision on their proposal, request in writing that the WAPC reconsider a refusal or conditional approval of the plan. On receiving such a request, the WAPC must either review its decision or confirm its original decision.

In order to progress to lodgement of a diagram or plan of survey of the subdivision, having received a subdivision (or amalgamation) approval, an applicant will need to have carried out all subdivision works necessary to satisfy the conditions of approval, such as road construction or upgrades, extension and installation of services, and completion of other detailed planning tasks.

There is a prescribed period within which an applicant must submit a diagram or plan of survey to the WAPC for approval, accompanied by evidence to confirm that any conditions of approval have been met. The prescribed period is four years from approval for a plan of subdivision creating more than five lots, and three years from approval in all other cases. If no diagram or plan of survey is submitted to the WAPC within the prescribed period, the original approval of the plan of subdivision (or amalgamation) ceases to have effect.

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The WAPC should make a decision on a diagram or plan of survey within 30 days after the day on which the request to approve is made. The WAPC will endorse the diagram or plan of survey if it is in accordance with the approved plan of subdivision, and if the relevant conditions have been met. Land is considered subdivided (or amalgamated) on the date of endorsement, and an applicant then has two years to lodge an application for certificates of title for the new lot/s with the Registrar of Titles.

5.2 Development

Development is defined in the P&D Act as follows:

“development means the development or use of any land, including:

- a) *any demolition, erection, construction, alteration of or addition to any building or structure on the land;*
- b) *the carrying out on the land of any excavation or other works;*
- c) *in the case of a place to which a Conservation Order made under section 59 of the Heritage of Western Australia Act 1990 applies, any act or thing that –*
 - (i) *is likely to change the character of that place or the external appearance of any building; or*
 - (ii) *would constitute an irreversible alteration of the fabric of any building”.*

Planning legislation considers development to relate not only to physical works but to the actual use of any land or building. Development requires approval under planning legislation if a planning scheme or

interim development order specifically states that it does. It follows that where there is no planning scheme or interim development order in place, development does not require planning approval (although other government approvals, such as a building licence, may be required).

As previously discussed, in most circumstances the WAPC delegates its development control function under any applicable region scheme to the relevant local government. Therefore, a planning approval issued by a local government under its local planning scheme would also be an approval under the relevant region planning scheme. The exceptions to this are for development on or abutting certain regional reserves, or for certain classes of development that the WAPC wants to retain control over, in which circumstances applications for planning approval will be referred to the WAPC for determination.

Local planning schemes usually specify that all development requires local planning approval, and then a number of exemptions to this requirement may be identified. The exemptions tend to vary across local governments; however, the Model Scheme Text suggests the following exemptions:

- a) *the carrying out of any building or work which affects only the interior of a building and which does not materially affect the external appearance of the building except where the building is –*
 - (i) *located in a place that has been entered in the Register of Heritage Places under the Heritage of Western Australia Act 1990;*
 - (ii) *the subject of an order under Part 6 of the Heritage of Western Australia Act 1990; or*



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- (iii) included on the Heritage List under clause 7.1 of the Scheme;
- b) the erection on a lot of a single house including any extension, ancillary outbuildings and swimming pools, except where –
 - (i) the proposal requires the exercise of a discretion by the local government under the Scheme to vary the provisions of the Residential Planning Codes; or
 - (ii) the development will be located in a heritage area designated under the Scheme;
- c) the demolition of any building or structure except where the building or structure is –
 - (i) located in a place that has been entered in the Register of Places under the Heritage of Western Australia Act 1990;
 - (ii) the subject of an order under Part 6 of the Heritage of Western Australia Act 1990;
 - (iii) included on the Heritage List under clause 7.1 of the Scheme; or
 - (iv) located within a heritage area designated under the Scheme;
- d) a home office;
- e) any works which are temporary and in existence for less than 48 hours or such longer time as the local government agrees; and
- f) any of the exempted classes of advertisements listed in Schedule 5 except in respect of a place included in the Heritage List or in a heritage area.

Note: Development carried out in accordance with a subdivision approval granted by the Commission is exempt under section 20D of the Town Planning Act.

For any use or development of land not subject to an exemption in the relevant local planning scheme, an application for planning approval must be lodged with the local government. In some cases the proposal will need to be advertised for the purpose of seeking public comment, and this will include notifying owners of land adjacent the site of the proposal. The local government may also consult with any other statutory, public or planning authority it considers appropriate.

There are many factors that a local government is required to consider in determining an application for planning approval, whether for a use of land or for physical works, or both. The Model Scheme Text outlines these factors as follows:

- a) the aims and provisions of the scheme and any other relevant town planning schemes operating within the scheme area (including the region scheme);
- b) the requirements of orderly and proper planning including any relevant proposed new town planning scheme or amendment, or region scheme or amendment, which has been granted consent for public submissions to be sought;
- c) any approved statement of planning policy of the WAPC;
- d) any approved environmental protection policy under the Environmental Protection Act 1986;



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- e) *any relevant policy or strategy of the WAPC and any relevant policy adopted by the Government of the State;*
- f) *any local planning policy adopted by the local government, any heritage policy statement for a designated heritage area, and any other plan or guideline adopted by the local government under the scheme;*
- g) *in the case of land reserved under the scheme, the ultimate purpose intended for the reserve;*
- h) *the conservation of any place that has been entered in the Register within the meaning of the Heritage of Western Australia Act 1990, or which is included in the Heritage List, and the effect of the proposal on the character or appearance of a heritage area;*
- i) *the compatibility of a use or development with its setting;*
- j) *any social issues that have an effect on the amenity of the locality;*
- k) *the cultural significance of any place or area affected by the development;*
- l) *the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment;*
- m) *whether the land to which the application relates is unsuitable for the proposal by reason of it being, or being likely to be, subject to flooding, tidal inundation, subsidence, landslip, bush fire or any other risk;*
- n) *the preservation of the amenity of the locality;*
- o) *the relationship of the proposal to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the proposal;*
- p) *whether the proposed means of access to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles;*
- q) *the amount of traffic likely to be generated by the proposal, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;*
- r) *whether public transport services are necessary and, if so, whether they are available and adequate for the proposal;*
- s) *whether public utility services are available and adequate for the proposal;*
- t) *whether adequate provision has been made for access for pedestrians and cyclists (including end of trip storage, toilet and shower facilities);*
- u) *whether adequate provision has been made for access by disabled persons;*
- v) *whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation on the land should be preserved;*
- w) *whether the proposal is likely to cause soil erosion or land degradation;*



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- x) *the potential loss of any community service or benefit resulting from the planning approval;*
- y) *any relevant submissions received on the application;*
- z) *the comments or submissions received from any authority consulted;*
- za) *any other planning consideration the local government considers relevant.*

It is clear from this list of necessary considerations that all aspects of the planning system outlined in this “Introduction to the Western Australian Planning System” document are ultimately relevant at the point of a planning authority deciding whether a development application can be approved. All relevant legislation, policy, spatial plans and statutory planning instruments must be borne in mind at the time of day to day planning decision making.

The decision on a planning application will be to approve it, to approve it subject to conditions, or to refuse it. Approval, if given, will generally be for a limited time, often two years, to ensure that development is commenced in a timely manner and if not, that any changes to the planning framework in the interim can be considered when a new application is lodged.

If the local government does not make a determination on an application within the prescribed period, which is usually 60 days (or 90 days in the case of an advertised application), the proposal is deemed to have been refused. The local government can still make a decision after this time, but deemed refusal provides an avenue for review by SAT (see below for more information).

5.3 Review of decisions

Certain planning decisions can be reviewed by SAT. A right to review exists if expressly provided for in any of the planning legislation, or any planning scheme. The P&D Act also provides that if a right to a review of a decision is not expressly provided for in a local planning scheme, applicants still have that right in circumstances where a decision made involves an exercise of discretion by the responsible authority.

The right to commence review proceedings is generally available to the person who applied for the relevant planning decision in the following circumstances:

- where an application was refused;
- where an application was approved subject to conditions which are not satisfactory to the applicant; or
- where the decision-maker has failed to make a decision within the prescribed time period, and the relevant scheme states that such a failure amounts to a deemed refusal.

No right exists in Western Australia for a third-party (such as an adjacent landowner) to commence review proceedings if they are unhappy with the outcome of a planning application. There is, however, some scope under the SAT Act for a third-party to become involved in a review commenced by an applicant, including a right to make a submission to SAT.

An applicant who wishes to have a planning decision reviewed by SAT must lodge an application for review with SAT within 28 days of the relevant decision being made. A copy of the application for review must also be provided to the relevant decision-maker within seven days of lodging with SAT.



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SAT's role in reviewing a planning decision is to take on the role of the original decision maker and remake the decision, having regard to the relevant planning legislation and policy framework, and any other planning considerations that apply. A SAT hearing is not limited to or confined to matters considered by the original decision-maker, and SAT may include consideration of new material.

A review by SAT is not, however, a form of judicial review. SAT will not consider whether the decision-maker has acted appropriately, or whether it has performed its responsibilities adequately. Reviews to the SAT are based upon the merits of the planning matter only.

An application for review may be upheld and a new decision on the planning application made by SAT with or without conditions; or an application for review may be dismissed. The review decision replaces the original planning decision, and the decision of SAT is final (although a right of appeal to the Supreme Court does exist on a point of law). SAT publishes written reasons for each review decision, and such decisions form a precedent for determining future planning applications or reviews.

Ministerial review

There are various options available to the Minister to become involved in an application for review made to SAT. The Minister may be invited by SAT to make a submission if it appears that an application may be determined in a way that will have a substantial effect on the future planning of an area. The Minister may also choose to make such a submission irrespective of whether he has been invited to do so by SAT. The submission may be in writing or may be made by a representative of the Minister appearing at the relevant SAT hearing.

In addition, the Minister may call in an application for review, within 14 days of an application being made to SAT, if the Minister considers that the application raises issues of such State or regional importance that it would be appropriate for the application to be determined by the Minister. If such a call in is made, the Minister has the option to have the application referred directly to him for determination, or to request that SAT hear the application but, without determining it, refer it with recommendations to him for determination.

In determining an application for review, the Minister is not limited to planning considerations, but may have regard to any other matter affecting the public interest. Written reasons for the determination of the Minister must be provided to each party to the proceedings, and must be laid before Parliament.

5.4 Enforcement

The P&D Act provides responsible planning authorities and the Minister for Planning with the power to enforce the provisions of primary and subsidiary planning legislation, including interim development orders and planning schemes. The nature of and penalties for the various offences under the planning legislation are established in the P&D Act.

A local government has powers to enforce the provisions of its local planning scheme, including any decisions made under the scheme. This includes not just the requirements for development and conditions of approval, but also the requirement to obtain planning approval prior to commencement of development or use of land.





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A person commits an offence if contravening a planning scheme, interim development order or if undertaking unauthorised works. A person who commits or continues to commit an offence may be liable to a penalty.

If a development contravenes a planning scheme or approval, the responsible authority can direct the landowner or the person undertaking the development to stop and rectify the contravention, even if that means removing structures and restoring the land to its previous state. The responsible authority may also apply to the Supreme Court to grant an injunction to restrain a person from engaging in any act that contravenes a planning scheme or approval.

Infringement notices are used for minor offences where a contravention is clear and apparent, for example the unlawful or after-hours use of buildings, or illegal parking of commercial vehicles in residential areas. Infringement notices give landowners the opportunity to rectify an offence without criminal conviction and with minimum legal cost.

The Minister may issue orders to a local government if he considers (based on advice from SAT) that it has failed to enforce or implement effectively observance of its planning scheme, or failed to execute any works it is required by its planning scheme to execute.

The Minister may also serve written notice on a local government if it has failed to comply with a ministerial order (such as an order to initiate a scheme or amendment to a scheme). If that local government still does not comply, the Minister may take any steps on behalf of the local government that are necessary for compliance.



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Appendix 1. Overview of Western Australian planning system

	Legislation	Strategic Planning	Spatial Planning	Statutory Planning	Applications
State	P&D Act 2005 TP Regs 1967 DAP Act 2010 DAP Regs 2011	State Planning Strategy State Planning Policies DC Policies Guidelines and Manuals Planning Bulletins			
Region	MRA Act 2011	State Planning Policies DC Policies Guidelines and Manuals Planning Bulletins	Regional Planning and Infrastructure Frameworks (incl. Directions 2031)	Region Planning Schemes Regional Interim Development Orders	
Sub-region	Swan & Canning Rivers Act 2006	State Planning Policies DC Policies Guidelines and Manuals Planning Bulletins	Sub-Regional Structure Plans		
Local Government		Local Planning Strategies Local Planning Policies		Local Planning Schemes Local Interim Development Orders	
District	Perry Lakes Act 2005 Hope Valley Wattleup Act 2000 Swan Valley Act 1995		District Structure Plans	Local Interim Development Orders Improvement Plans & Schemes	
Locality	State Agreement Acts		Local Structure Plans (incl. Activity Centre Plans)	Improvement Plans & Schemes Planning Control Areas	Subdivision
Street/lot			Local Development Plans		Subdivision Development
Other	EP Act 1986 Heritage Act 1990 Contaminated Sites Act 2003 Mining Act 1978				

Note: Certain planning instruments may in some cases fall within more than one column eg Local Structure Plans and Local Development Plans are spatial documents but often have statutory weight

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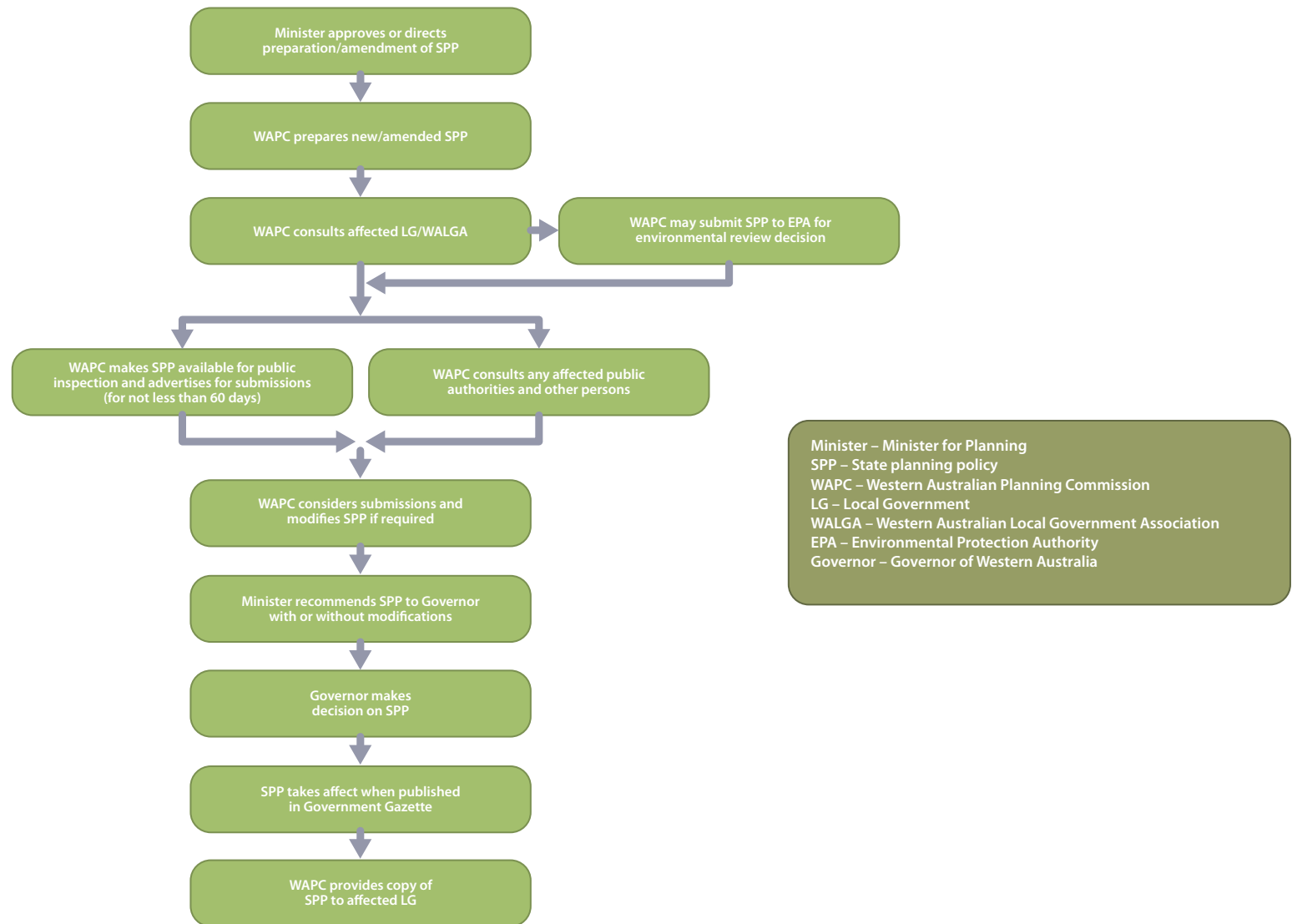
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Appendix 2. Strategic planning framework

	State Planning Strategy	State Planning Policies	DC Policies Guidelines & Manuals Planning Bulletins	Local Planning Strategies	Local Planning Policies
State	✗	✗	✗		
Region		✗	✗		
Sub-region		✗	✗		
Local Government				✗	✗
District					✗
Locality					✗
Street/lot					✗

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Appendix 3. State planning policy



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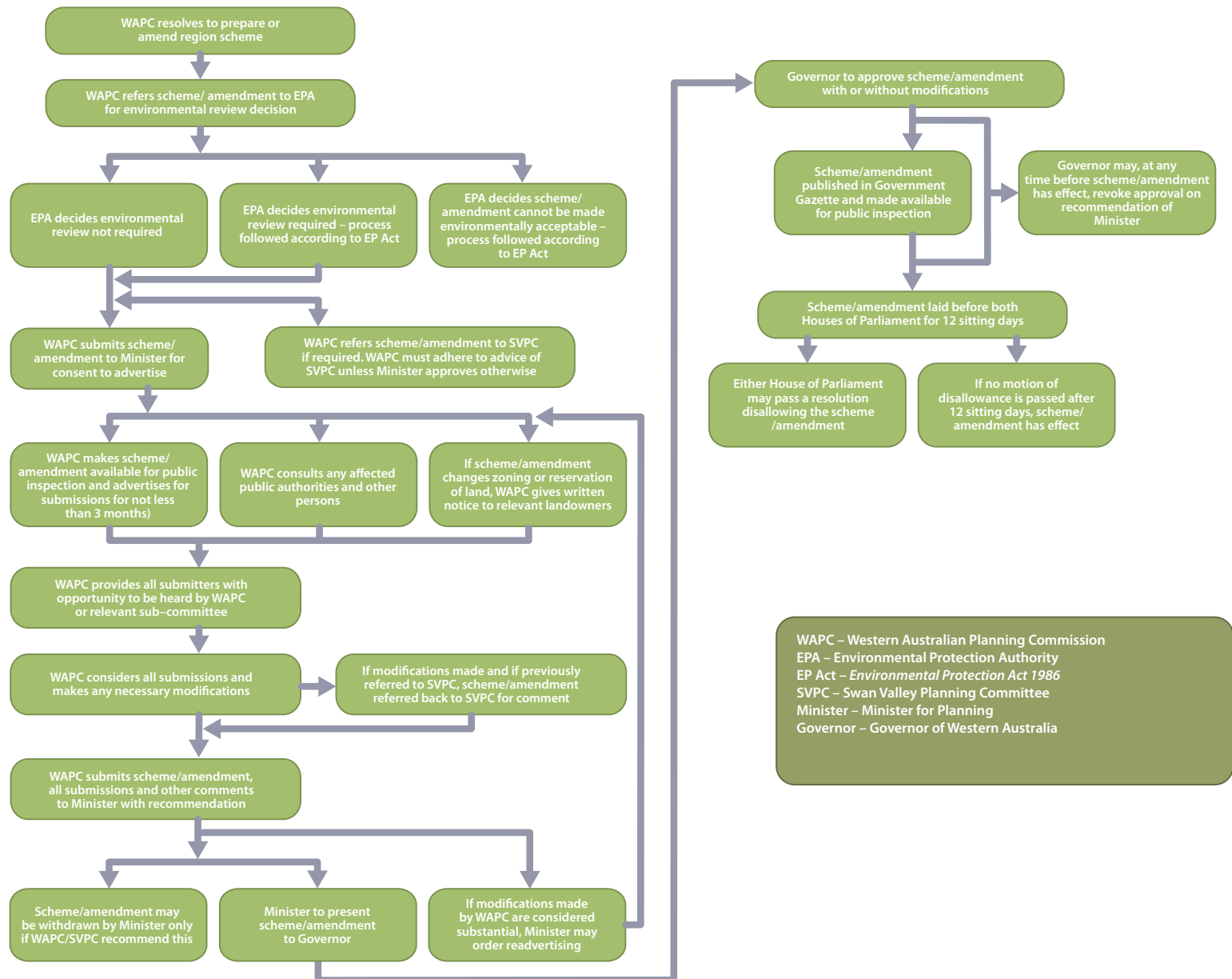
Appendix 4. Statutory planning framework

	Region Planning Schemes	Regional Interim Development Orders	Local Planning Schemes	Local Interim Development Orders	Improvement Plans & Schemes	Planning Control Areas
State						
Region	✗	✗				
Sub-region						
Local Government			✗	✗		
District				✗	✗	
Locality					✗	✗
Street/lot						✗

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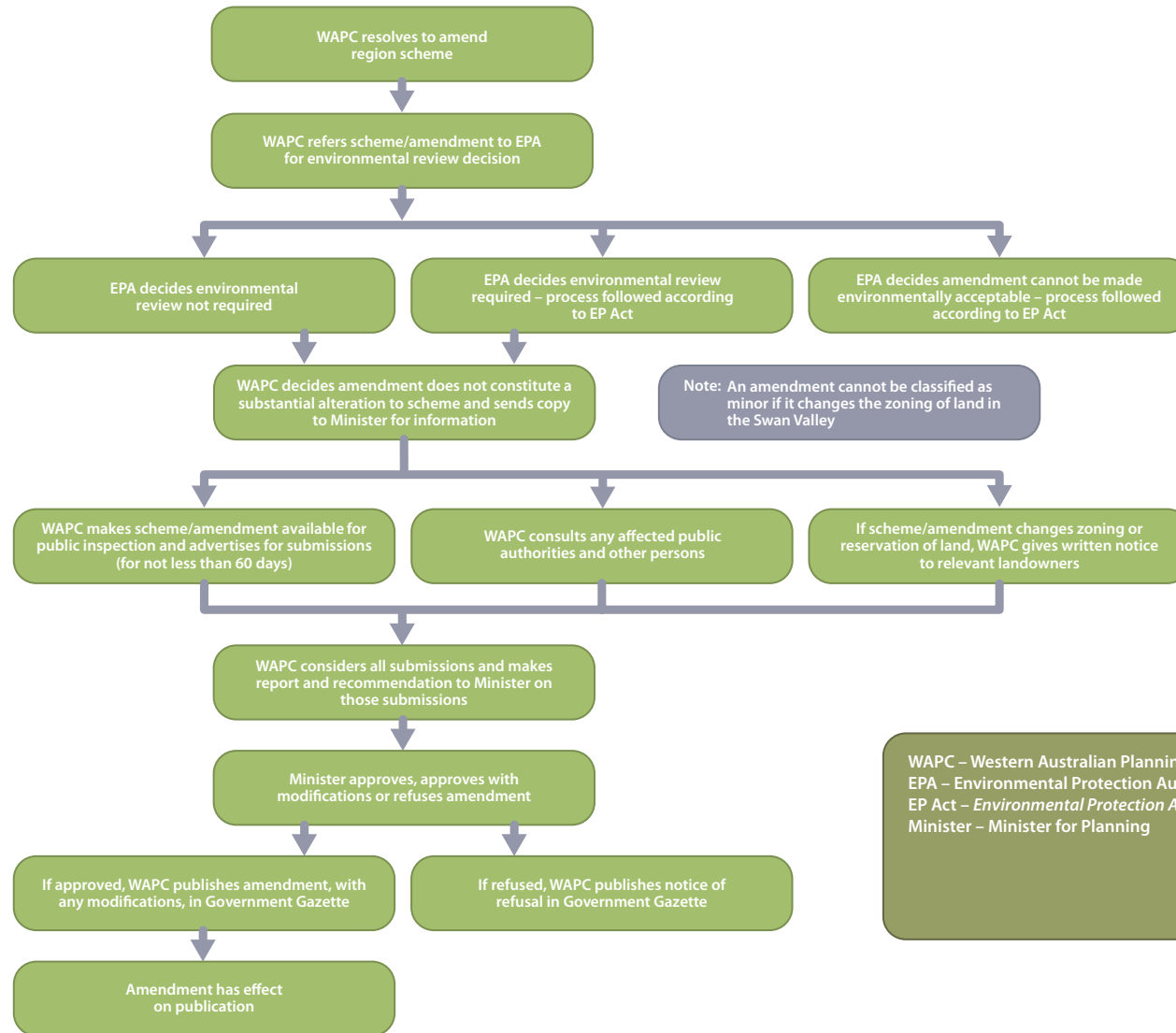
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Appendix 5a. Region scheme preparation and substantial (major) amendment



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Appendix 5b. Region scheme minor amendment

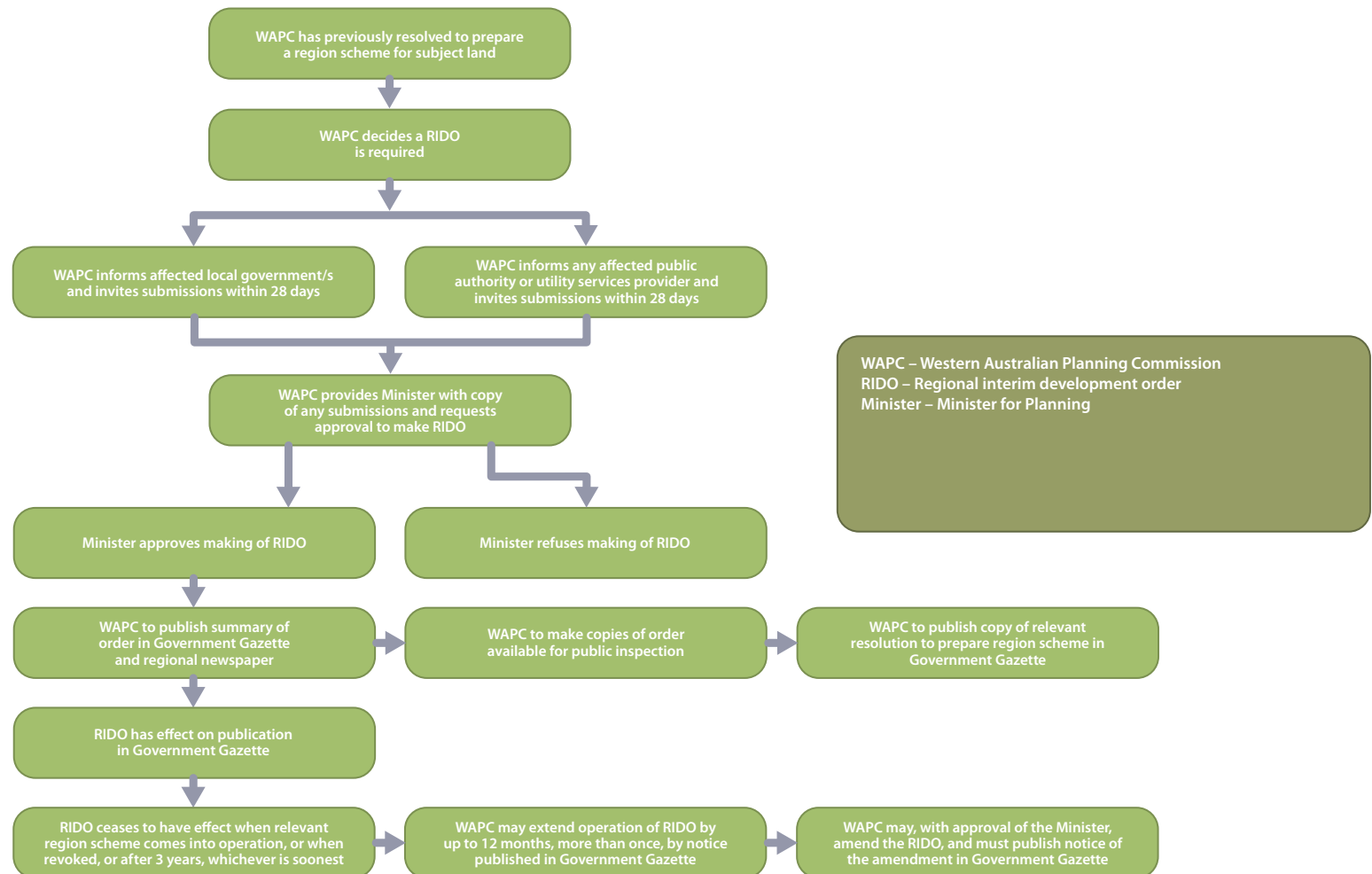


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Appendix 6a. Regional interim development order



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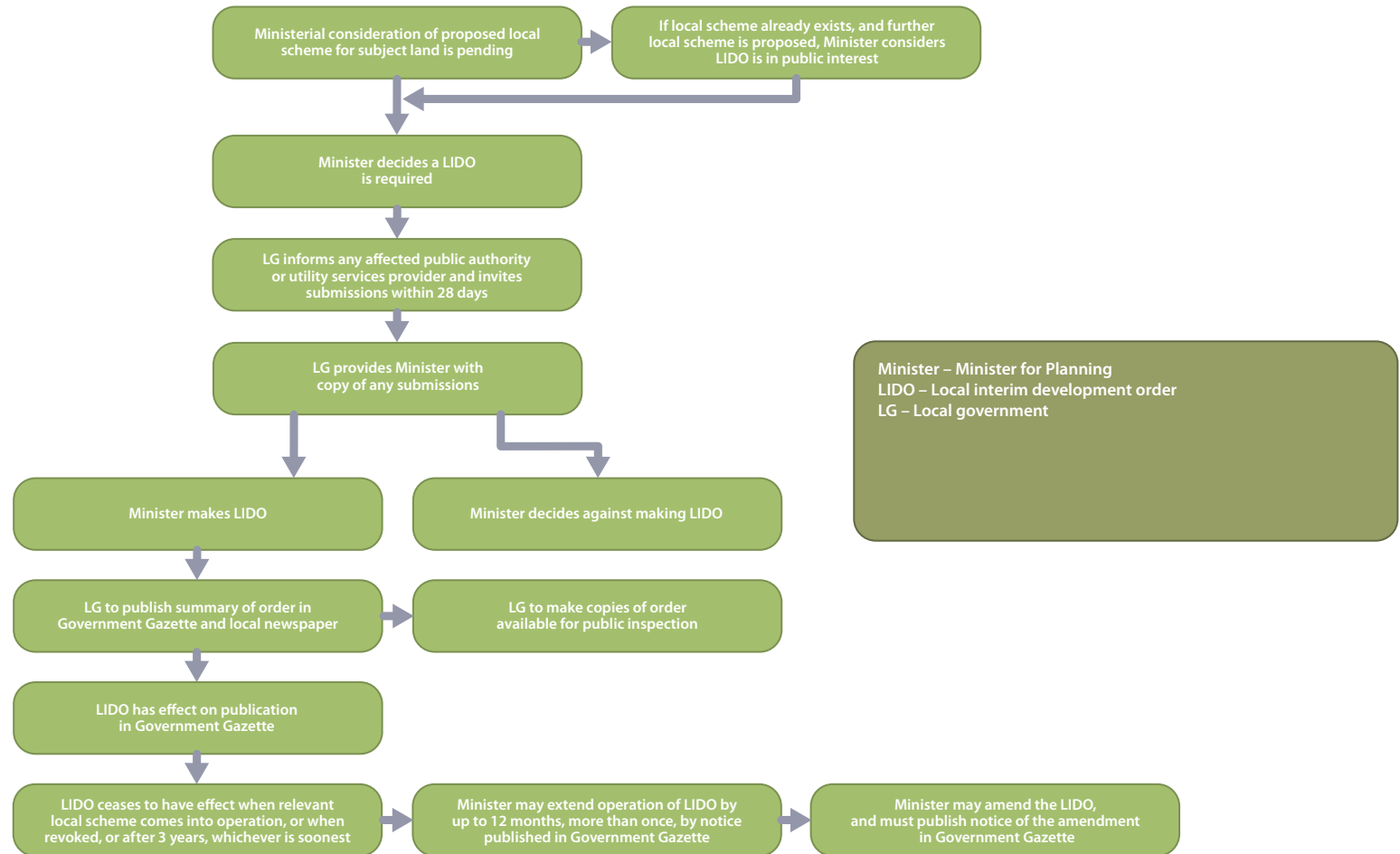
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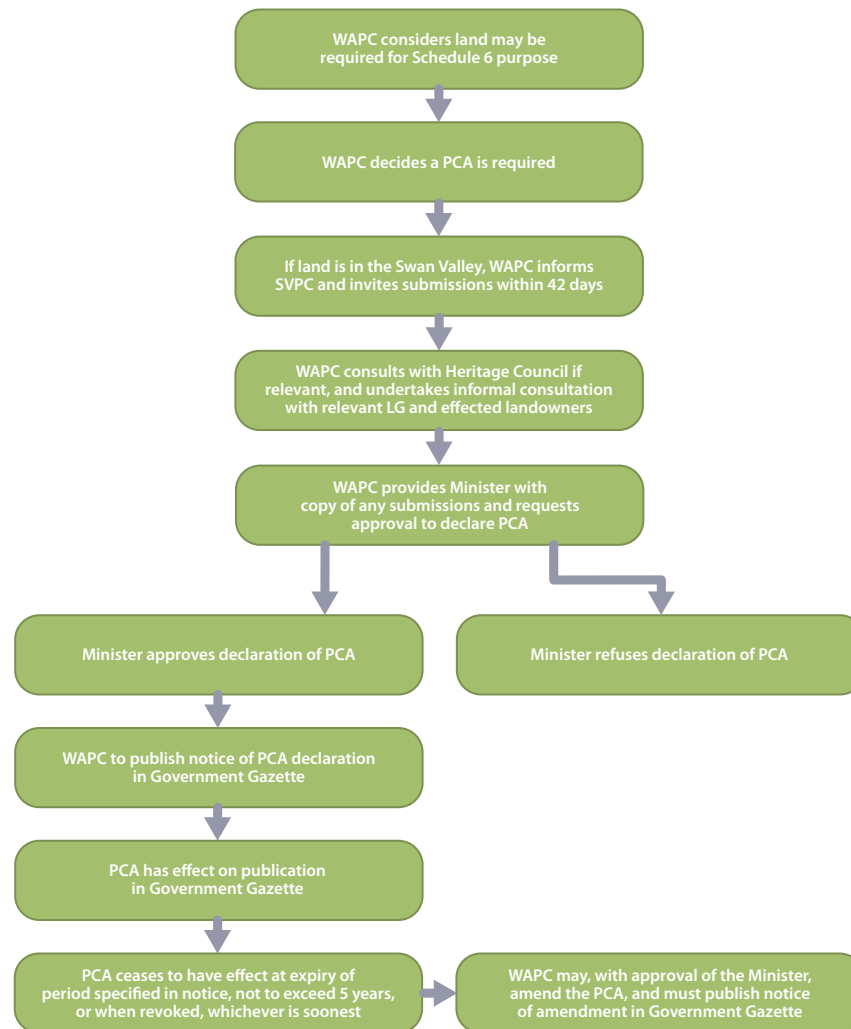
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Appendix 6b. Local interim development order



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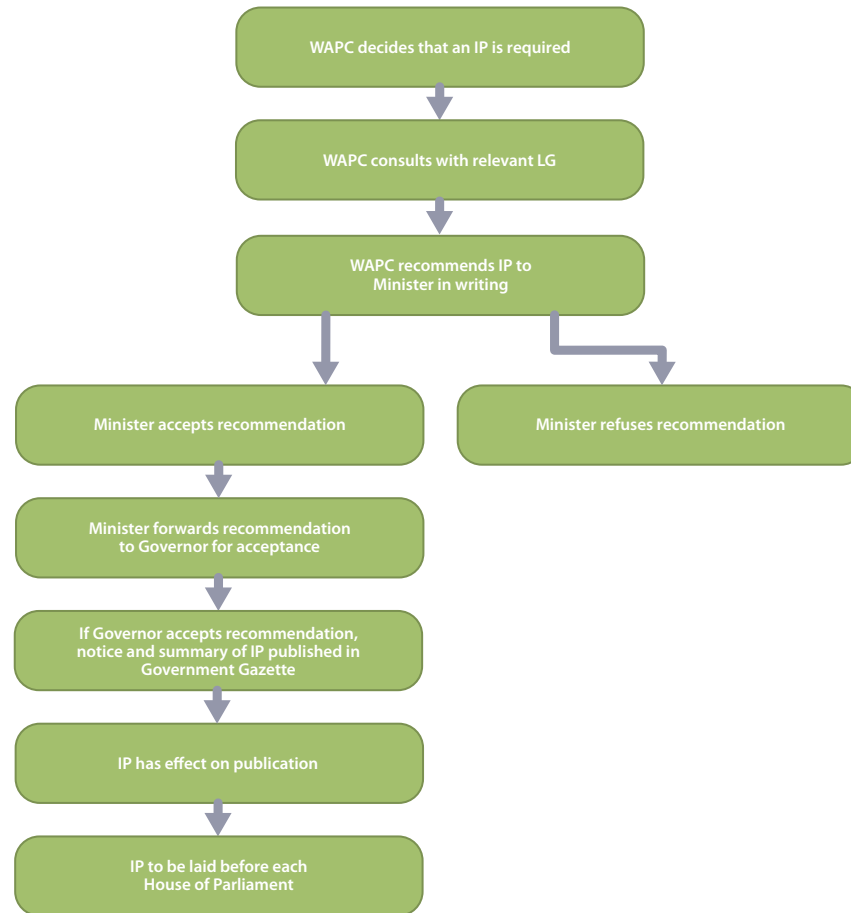
Appendix 7. Planning control area



WAPC – Western Australian Planning Commission
Schedule 6 – Schedule 6 of the *Planning and Development Act 2005*
PCA – Planning control area
SVPC – Swan Valley Planning Committee
LG – local government
Minister – Minister for Planning

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Appendix 8a. Improvement plan

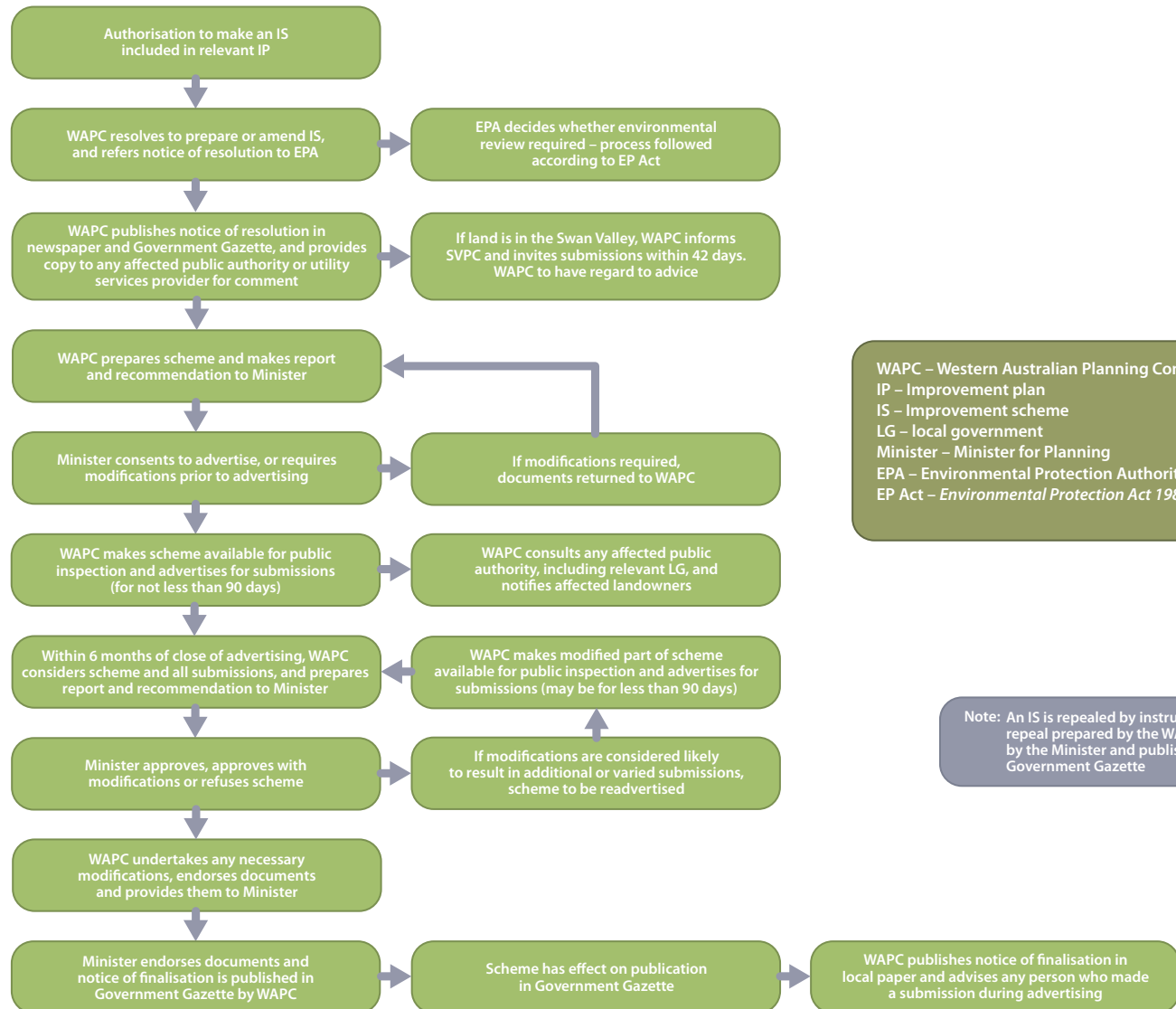


WAPC – Western Australian Planning Commission
IP – Improvement plan
LG – local government
Minister – Minister for Planning
Governor – Governor of Western Australia

Note: An amendment to or revocation of an IP follows the same process

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Appendix 8b. Improvement scheme

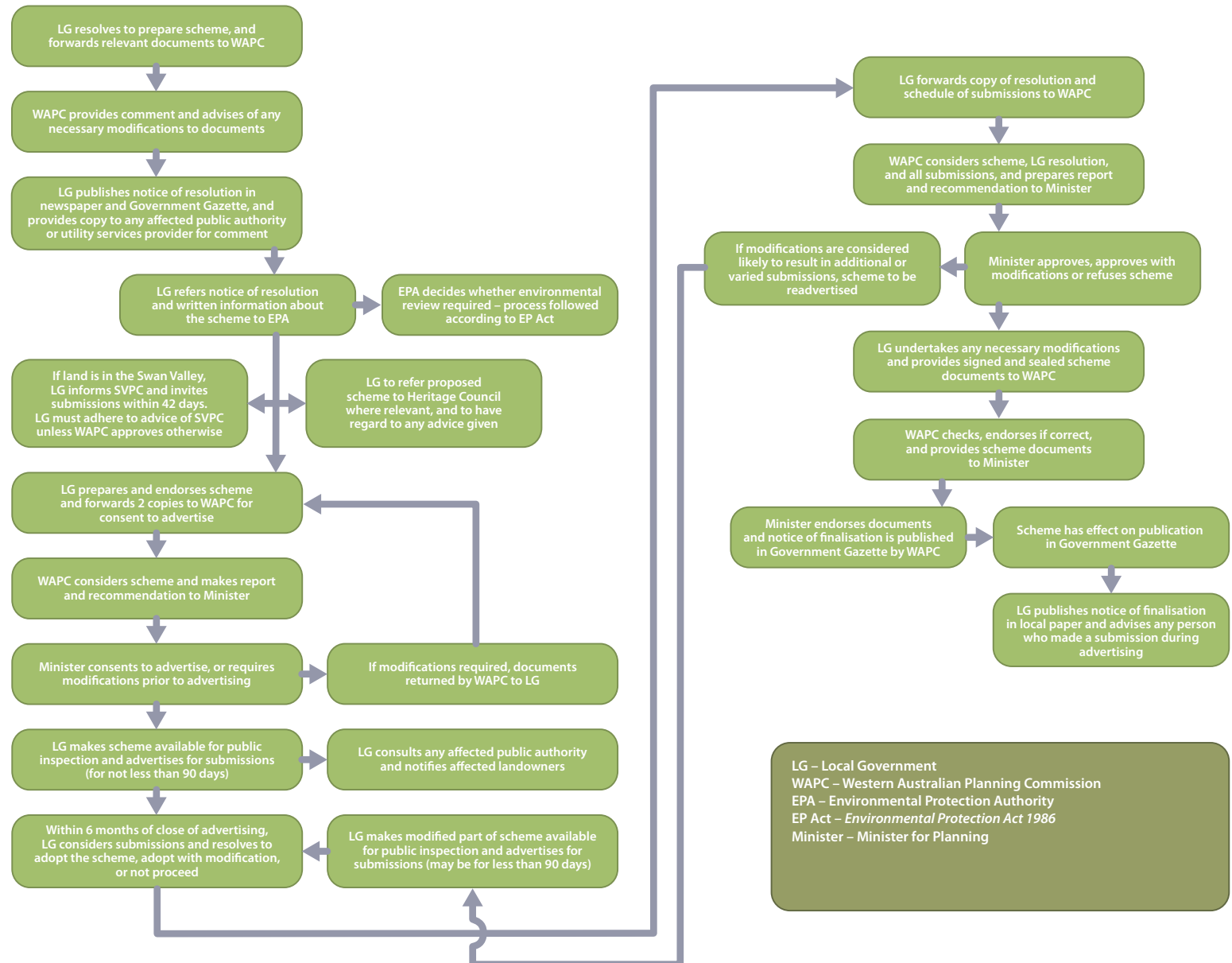


WAPC – Western Australian Planning Commission
 IP – Improvement plan
 IS – Improvement scheme
 LG – local government
 Minister – Minister for Planning
 EPA – Environmental Protection Authority
 EP Act – Environmental Protection Act 1986

Note: An IS is repealed by instrument of repeal prepared by the WAPC, approved by the Minister and published in the Government Gazette

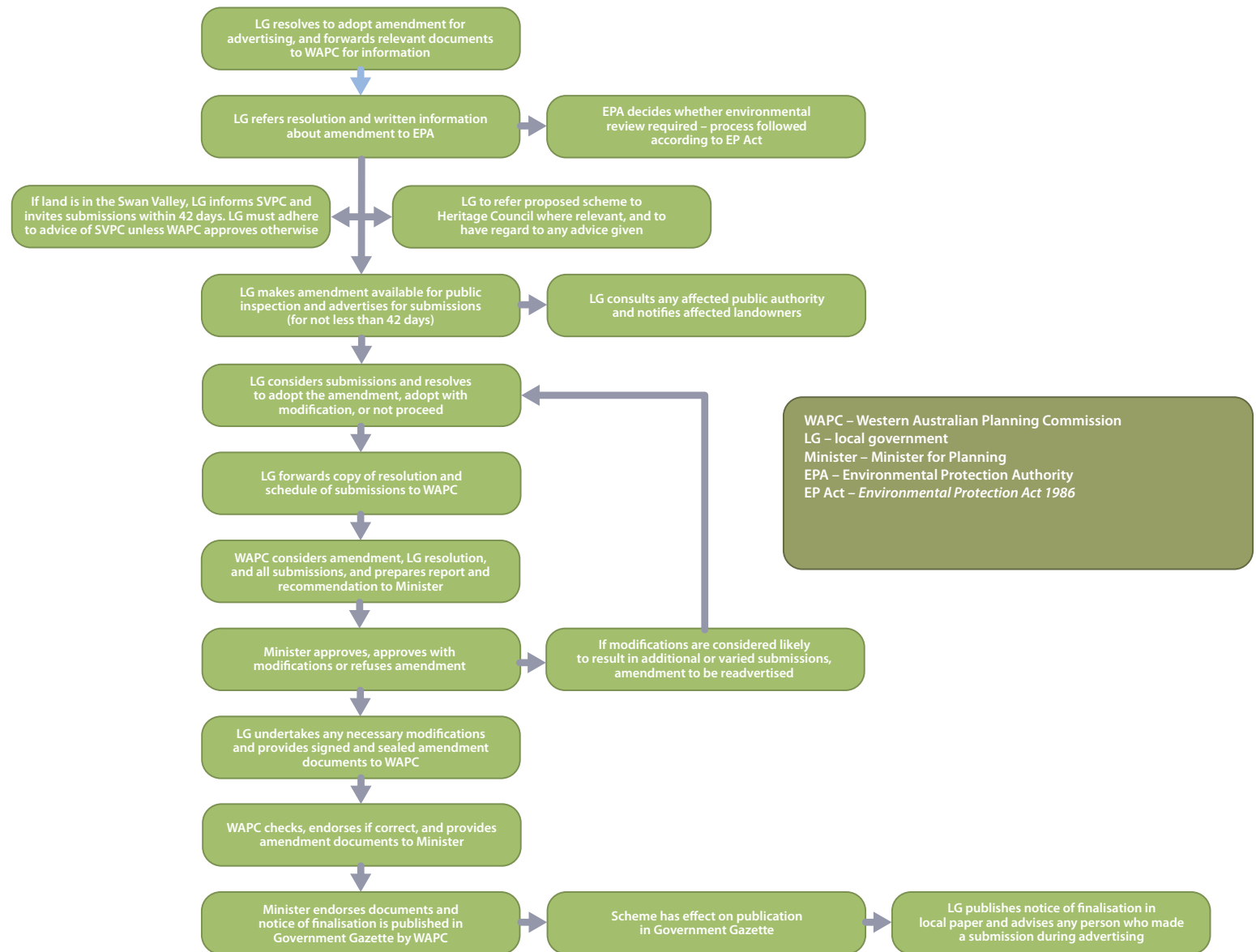
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Appendix 9a. Local planning scheme preparation



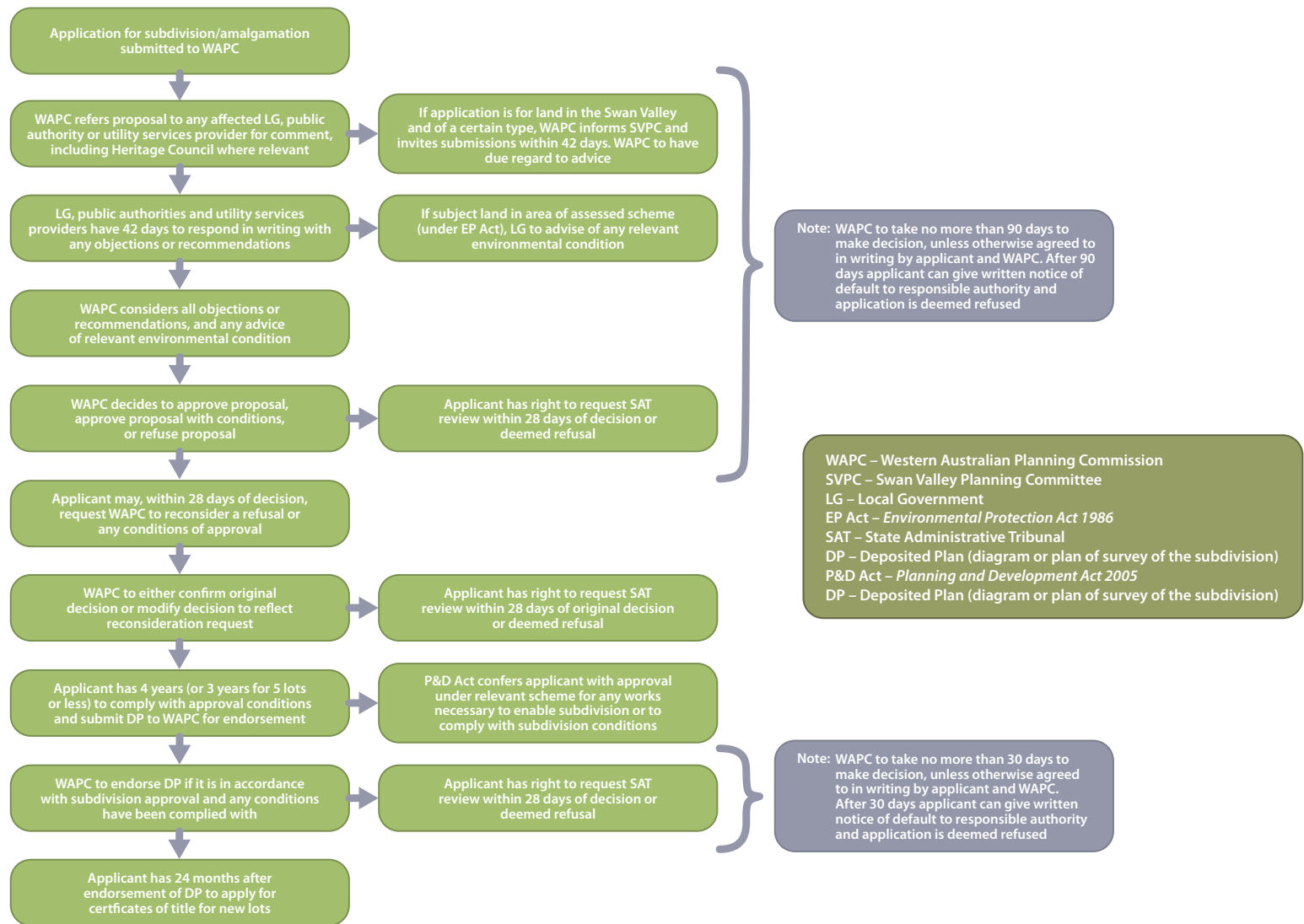
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Appendix 9b. Local planning scheme amendment



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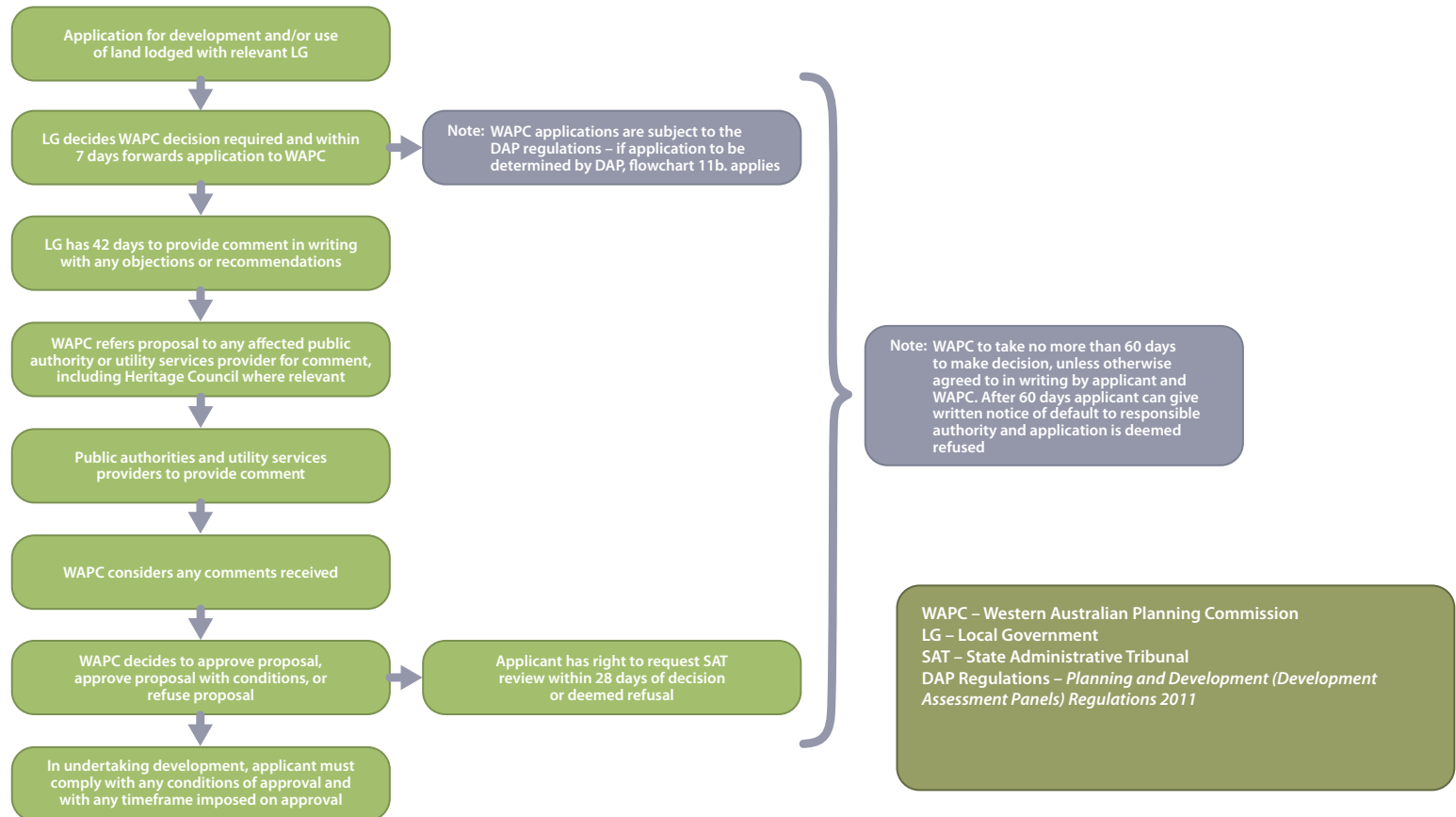
Appendix 10. Subdivision



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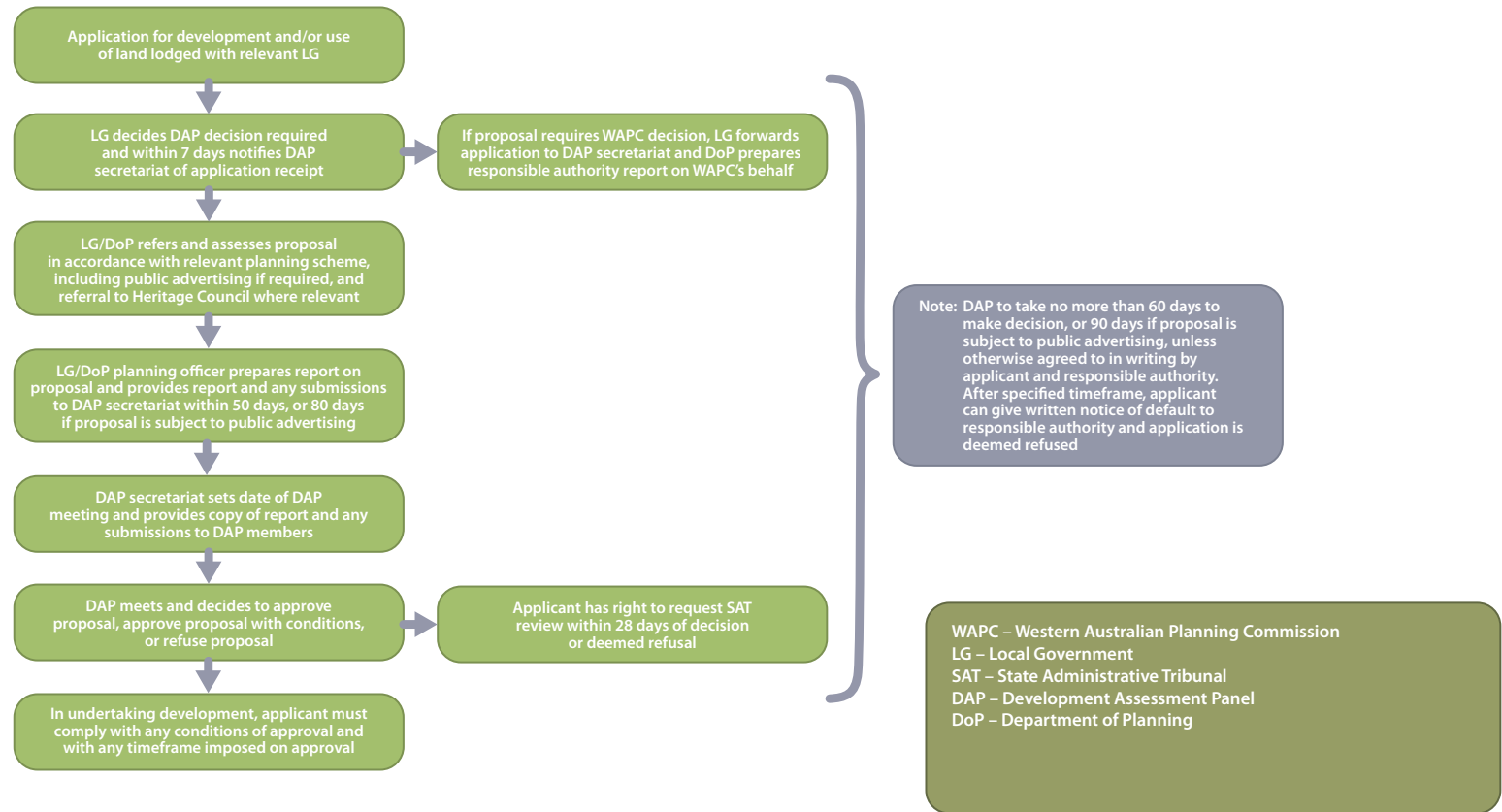
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Appendix 11a. Development – WAPC



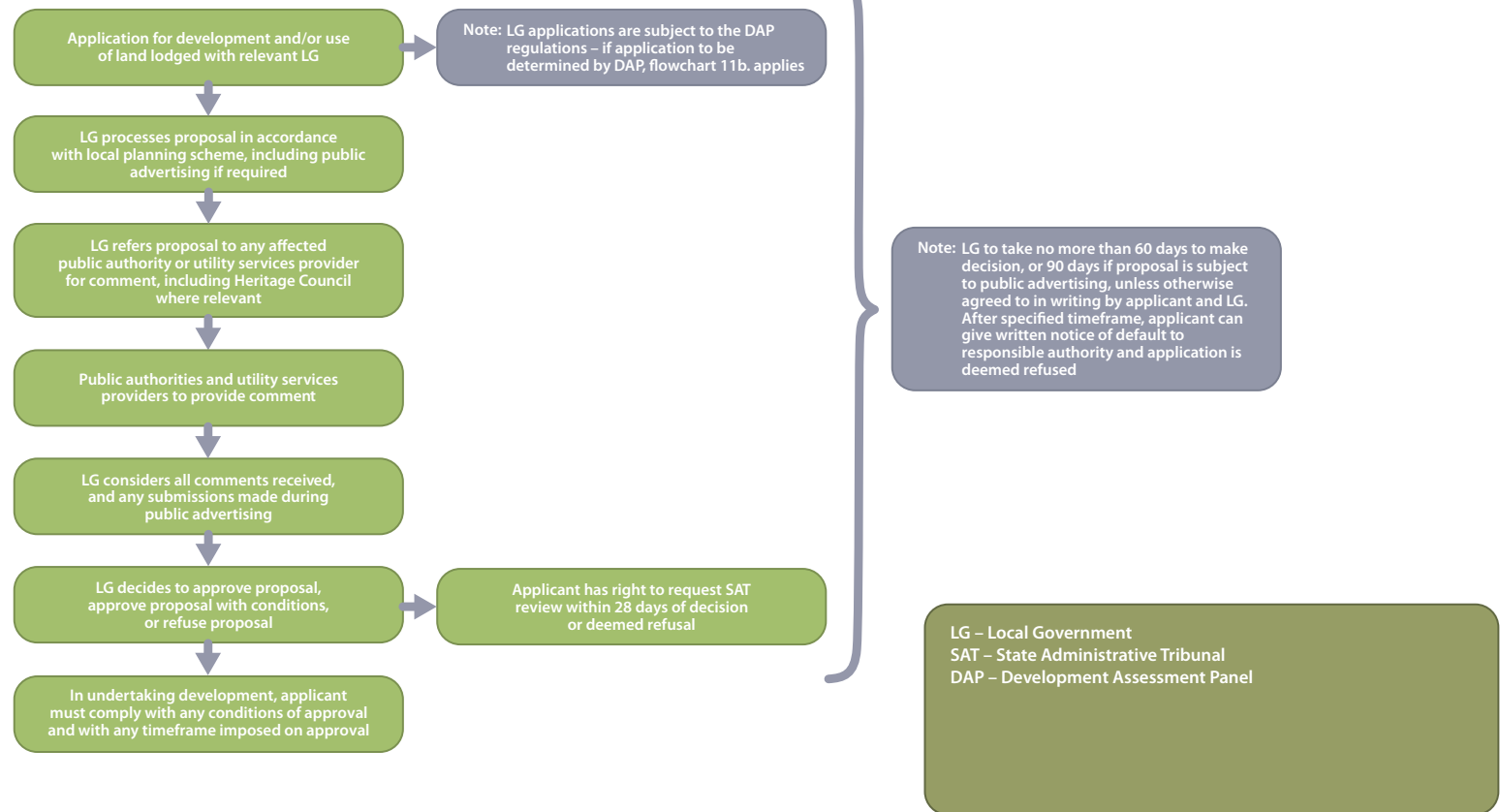
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Appendix 11b. Development – Development Assessment Panel



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Appendix 11c. Development – Local Government



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