

**TOWN PLANNING AND
DEVELOPMENT.**

11° Elizabeth II., No. XLV.

No. 45 of 1962.

**AN ACT to amend the Town Planning and
Development Act, 1928-1961.**

[Assented to 1st November, 1962.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *Town Planning and Development Act Amendment Act, 1962.*

Reprinted as
approved for
reprint
26th June,
1962.

(2) In this Act the Town Planning and Development Act, 1928-1961, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Town Planning and Development Act, 1928-1962.

2. Paragraph (a) of subsection (3) of section seven A of the principal Act is amended by substituting for the passage, "one thousand nine hundred and sixty-two" in line five, the passage, "one thousand nine hundred and sixty-three".

S. 7A
amended.

3. The principal Act is amended by adding after section seven A the following section—

S. 7B added.

7B. (1) (a) Pending the consideration by the Minister of a proposed town planning scheme for a district or part of a district which district or which part is situated outside the metropolitan region; the Minister may with the approval of the Governor, in accordance with this section, make such interim development order or orders as are necessary for regulating, restricting or prohibiting the development of any land within the district or such part or parts thereof as are affected by, and specified in, the order.

Interim de-
velopment.

(b) During the operation of an interim development order made under this section a person shall not carry out or cause to be carried out any development within a district or part of a district to which the order applies contrary to the terms of the order; but nothing in an interim development order prevents the continuance of the use of any land or building for the purposes for which the land or building was being lawfully used; or the carrying out of any development for which, immediately prior to the coming into operation of the order, a permit or permits, if any, required by or under this or any other Act authorising the development to be carried out had been obtained and were current.

(2) (a) Upon the approval by the Governor of an interim development order, the local authority in whose district the order applies shall cause to be published in the *Gazette* and three times in a daily newspaper circulating in that district, a notice containing a summary of the order and stating that copies of the order

will be made available by the Minister for inspection by any person free of charge at the offices of the Board and of the local authority or local authorities within the area or areas affected by the order.

(b) Subject to the provisions of subsection (3) of this section, an interim development order made under this section has effect from the date of publication in the *Gazette* of the notice in accordance with the provisions of paragraph (a) of this subsection, as though its provisions were enacted by this Act.

(3) An interim development order made under this section that applies to a district or part of a district ceases to have effect in that district or that part—

- (a) when a town planning scheme made in accordance with this Act comes into force with respect to that district or that part;
- (b) when the order is revoked by the Minister, by notice of revocation published in the *Gazette* under subsection (10) of this section; or
- (c) twelve months from the date the order applies to the district or the part unless the Minister from time to time, with the approval of the Governor, by notice published in the *Gazette*, extends the operation of the order for a further period not exceeding twelve months.

(4) An interim development order made under this section shall be administered by the council or councils of a municipality specified in the order.

(5) An interim development order made under this section may—

- (a) (i) require a person, before commencing to carry out any specified development within the district or part of a district to which the order applies, to obtain the permission of the council administer-

- ing the order in writing in accordance with the provision of paragraph (b) of this subsection;
- (ii) regulate, restrict or prohibit any specified class of development within the district or such part or parts thereof as are specified in the order;
 - (iii) exempt from the operation of the order any specified class of development within the district or the part or parts thereof as are specified in the order;
- (b) provide that the permission of the council in writing for the carrying out of any development referred to in the order, if granted, may be granted subject to such conditions as the council deems necessary to impose, including, without limiting the generality of the conditions,—
- (i) a condition limiting the period during which the development may be carried out; and
 - (ii) a condition requiring the cessation of the development and the removal of any structure or building erected, pursuant to that permission, at the expiry of the period so limited;
- (c) provide that the council administering the order may refuse to grant to an applicant its permission for the carrying out of any specified class of development within the district or such part or parts thereof as are specified in the order;
- (d) subject to the provisions of paragraph (b) of subsection (1) of this section suspend, vary, supplement or supersede any of the provisions of any of the by-laws in force under the Local Government Act, 1960, in the district or part of the district to which the interim development order applies.

(6) (a) Subject to paragraph (c) of this subsection, when a person is aggrieved by the refusal of any such permit or by the conditions subject to which a permit is granted, he may within sixty days after the refusal is communicated to him, or the permit is granted to him, appeal to the Minister who may—

(i) hear the appeal himself; or

(ii) appoint a person or persons to hear the appeal and report thereon to the Minister,

and the Minister, after considering the report, if any, shall make his decision thereon and communicate it to the applicant.

(b) The decision of the Minister given under paragraph (a) of this subsection is final.

(c) No appeal shall be made or heard in respect of any development that contravenes any provision of a town planning scheme or of any by-laws of a local authority that are not superseded by the interim development order.

(d) Where a council administering an interim development order fails to grant its permission within a period of sixty days after the receipt by it of an application for permission to carry out any development referred to in this section, the applicant may regard the failure as a refusal of permission and may appeal to the Minister as provided in paragraph (a) of this subsection.

(7) A person who contravenes or fails to comply with the provisions of an interim development order made under this section, except as provided in this section, commits an offence.

Penalty: Fifty pounds.

(8) (a) The council administering an interim development order may by notice in writing served on the owner or owners of any land to which the interim development order refers, or

such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last known place of residence, direct him or them—

- (i) to remove, pull down, take up, or alter any building or work; or
- (ii) cease any development commenced, continued or carried out in contravention of the provisions of the order on that land,

and subject to the provisions of paragraph (b) of this subsection, if the owner or owners, as the case may be, fail or refuse to comply with the notice within the time specified therein, the council may itself remove, pull down, take up or alter the building, work or development accordingly.

(b) The owner or owners on whom a notice is served in accordance with the provisions of paragraph (a) of this subsection may within the period specified in the notice, such period being not less than thirty days, appeal to the Minister against any direction contained in the notice and the Minister shall after considering the appeal, confirm or vary the direction and the owner or owners shall comply with the direction as so confirmed or varied.

(c) Any expenses incurred by the council under the provisions of paragraph (a) of this subsection may be recovered from the owner or owners of the land on which the building or work was so commenced, continued or carried out as a debt due to it by the owner or owners.

(9) Where a public authority or a local authority desires to carry out, within an area to which a current interim development order relates, any work or undertaking that is not exempted by the provisions of the order but which, in the opinion of the council administering that order, would not be in conformity with the proposed town planning scheme for the

district in which the area is situated, if, after consultation between that authority and the council, agreement is not reached with respect to the co-ordination of the work or undertaking with the proposals to be included in the scheme, the council may submit the matter to the Minister for determination by the Governor and the Governor may by Order in Council—

- (a) prohibit absolutely or for such period as he thinks fit; or
- (b) restrict, or regulate, or permit,

the carrying out of the work or undertaking or any part thereof subject to such conditions as he may specify in the Order in Council which order has effect accordingly subject to any provision of law inconsistent therewith.

(10) (a) The Minister may at any time revoke an interim development order made under this section by notice published in the *Gazette* and that notice shall also be published three times in a daily newspaper circulating in the district to which the order applies.

(b) The Minister may at any time make an order amending an interim development order and the provisions of subsection (2) of this section apply *mutatis mutandis* to any order amending an interim development order as though the amending order were an interim development order.

(11) A town planning scheme relating to a district or part of a district and that is operating therein and any by-laws in force made under the Local Government Act, 1960, or any Act for which that Act is in substitution remains in force subject to the provisions of any interim development order applying to that district or that part and where any of the provisions of the town planning scheme or of the by-laws are inconsistent with any of the provisions of the interim development order, the provisions of the interim development order prevail.

(12) (a) No compensation for injurious affection to any land within a district or for loss arising from any other cause is payable under this Act as a result of the operation of an interim development order unless—

(i) the council administering the interim development order—

refuses an application made pursuant to the order for permission to carry out development on the land;
or

grants permission for the carrying out of the development on the land subject to conditions

on the ground that the proposed town planning scheme for the district is to include that land within a reservation for public purposes; and

(ii) an appeal, if lawfully made by the claimant under the provisions of subsection (6) of this section, has been disallowed in whole or in part by the Minister.

(b) Where compensation is claimed under paragraph (a) of this subsection, the compensation shall be determined by arbitration in accordance with the Arbitration Act, 1895, or by some other method agreed upon by the parties, but instead of the payment of compensation determined under this subsection, the council may, and shall at the request of the claimant, purchase the land injuriously affected at a price not exceeding the value of the land at the time of the refusal of permission or of the grant of permission subject to conditions, without regard to any increase in value attributable wholly or in part to the proposed town planning scheme for the district in which the land is situated.

S. 20A
added.

4. The principal Act is amended by adding after section twenty a section as follows:—

Pedestrian
accessways,
rights-of-
way, certain
reserves to
vest in
Crown.

20A. When the Board has approved, under this Act, a subdivision of land subject to the condition that certain portions of that land

shown on a diagram or plan of survey relating to the subdivision

shall vest in the Crown for the purpose of a pedestrian accessway, right-of-way or reserve for drainage or recreation, if, after the commencement of this section, the diagram or plan of subdivision of the land as so approved is received, registered or deposited in the Office of Titles or Registry of Deeds and is approved by the Inspector of Plans and Surveys or other officer appointed for the purpose, the Registrar of Titles or the Registrar of Deeds shall, in accordance with the condition, on the date of the lastmentioned approval, vest in the Crown

any land shown on the diagram or plan as being reserved for the purpose of a pedestrian accessway, right-of-way or reserve for drainage or recreation

without any conveyance, transfer or assignment or the payment of any fee.

First
Schedule
amended.

5. The First Schedule to the principal Act is amended by adding after the passage, “right-of-way”, being the last word in clause 9, the following passage, “; and the making, fixing, and altering building lines generally and providing that buildings generally or a building of any specified class shall not be built nearer to a building line or an ocean or waterway than is prescribed in a town planning scheme”.