

1955.] *Town Planning and Development*. [No. 63.

TOWN PLANNING AND DEVELOPMENT.

4° Elizabeth II., No. LXIII.

No. 63 of 1955.

AN ACT to amend the Town Planning and Development Act, 1928-1954.

[Assented to 19th December, 1955.]

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:—

1. (1) This Act may be cited as the *Town Planning and Development Act Amendment Act, 1955*.

Short title
and citation.

(2) In this Act the Town Planning and Development Act, 1928-1954,

See
Reprinted
Acts
Vol. 4, 1951.

Act No. 39 of 1928 as reprinted with amendments to and including Act No. 29 of 1947 incorporated pursuant to the provisions of the Amendments Incorporation Act, 1938, and as further amended by Acts Nos. 79 of 1953 and 73 of 1954,

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, 1928-1955.

S. 2
amended.

2. Section two of the principal Act is amended—

(a) by adding after the interpretation of “Commissioner” the following interpretation—

“development” means the use or development of any land and includes the erection, construction, alteration or carrying out, as the case may be, of any building, excavation or other works on any land;

(b) by adding after the interpretation of “local authority” the following interpretations—

“metropolitan region” means the area of land comprised within the limits of the districts of the local authorities specified in the Third Schedule to this Act;

“public authority” means a Minister of the Crown acting in his official capacity, a State Government Department, State trading concern, State instrumentality, State public utility and any other person or body, whether corporate or not, who or which, under the authority of any Act, administers or carries on for the benefit of the State, a social service or public utility.

3. The principal Act is amended by adding after section seven a new section as follows:—

New s. 7A
added.

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

Interim
develop-
ment:
metropolitan
region.

(b) During the operation of an interim development order a person shall not carry out or cause to be carried out any development within the metropolitan region contrary to the terms of the order; but nothing in an interim development order shall prevent 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 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 Minister shall cause to be published once in the *Gazette* and three times in a daily newspaper circulating in the metropolitan region a notice containing a summary of the order and stating that copies of the order shall be made available by the Minister for inspection by any person free of charge at the offices of the Board and of the 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 has effect, from and after 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.

(c) Every interim development order shall be laid before each House of Parliament within six sitting days of the House next following the date of publication in the *Gazette* of the notice referred to in paragraph (a) of this subsection, and if either House passes a resolution revoking that order, of which resolution notice was given at any time within fourteen sitting days of that House after the order was laid before it the order shall, on the passing of the resolution, cease to have effect notwithstanding the provisions of paragraph (b) of this subsection; but the revocation shall not affect the operation of the order, or any claim for compensation, with respect to anything done or omitted pursuant to the order, prior to the revocation.

(3) (a) Subject to the provisions of paragraphs (b) and (c) of this subsection, an interim development order made under the provisions of this section shall cease to have effect on the thirty-first day of December, one thousand nine hundred and fifty-six, unless prior to that date

- (i) it is extended with or without qualification by a resolution adopted by both Houses of Parliament; or
- (ii) a town planning scheme for the metropolitan region is made in accordance with the provisions of this Act and comes into operation.

(b) Where an interim development order is extended by a resolution adopted by both Houses of Parliament, it shall have effect for such further period and subject to such qualifications or conditions as are specified in the resolution.

(c) An interim development order relating to the metropolitan region or any part of it shall cease to have effect when a town planning scheme for the metropolitan region, made in accordance with the provisions of this Act, comes into operation.

(4) Subject to any special provisions contained in any interim development order, the Board shall administer every interim development order made pursuant to the provisions of this section.

(5) An interim development order may

- (a) (i) require a person, before commencing to carry out any specified development within the metropolitan region, to obtain the Board's permission in writing in accordance with the provisions of paragraph (b) of this subsection;
 - (ii) regulate, restrict or prohibit any specified class of development within the metropolitan region 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 metropolitan region or such part or parts thereof as are specified in the order;
- (b) provide that the Board's permission in writing for the carrying out of any development referred to in the order shall be obtained through the local

authority in whose district the development is proposed to be carried out and that the permission, if granted, may be subject to such conditions as the Board 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 Board may refuse to grant to an applicant its permission for the carrying out of any specified class of development within the metropolitan region or such part or parts thereof as are specified in the order, the refusal being communicated to the applicant through the local authority;
- (d) Subject to the provisions of paragraph (b) of subsection (1) of this section suspend, vary, supplement or supersede any of the provisions of a town planning scheme relating to any part of the metropolitan region approved by the Minister in accordance with the provisions of this Act or any of the by-laws in force pursuant to the provisions of the Municipal Corporations Act, 1906, or the Road Districts Act, 1919, as amended by section thirty of this Act;

- (e) confer on a local authority within whose district the order operates any of the functions, powers, rights or duties of the Board under the provisions of this subsection or of subsections (7) or (8) of this section.

(6) (a) Where a person is aggrieved by the refusal of a 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 hear the appeal himself or 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. The Minister's decision is final. But no appeal shall be made or entertained in respect of any development which contravenes any provisions of a town planning scheme or of any by-laws of a local authority which are not superseded by the interim development order.

(b) Where the Board, or a local authority exercising the powers of the Board, fails to grant its permission within a period of sixty days after the receipt by the local authority 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 within thirty days after the expiry of the period referred to appeal to the Minister as provided in paragraph (a) of this subsection.

(7) (a) A person who contravenes or fails to comply with the provisions of an interim development order except as provided in this section commits an offence: Penalty—fifty pounds.

(b) Proceedings under this subsection may be instituted by the Board or by a local authority exercising the powers of the Board.

(8) (a) The Board or a local authority exercising the powers of the Board may by notice in writing served on the owner or owners of any land to which an 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 to remove, pull down, take up, or alter any building or work or 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 in the notice, the Board or authority, as the case may be, 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 Board or authority 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) (a) 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 which is not exempted by the provisions of the order but which in the opinion of the Board would not be in conformity with the proposed town planning scheme for the metropolitan region, and where, after consultation with that authority, 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 Board or the authority may submit the matter to the Minister for determination by the Governor and the Governor may by Order in Council prohibit absolutely or for such period as he thinks fit, or 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 and the Order in Council shall have effect accordingly subject to any provision of law inconsistent with it.

(b) Where a consultation between the Board and a public authority takes place as provided in paragraph (a) of this subsection, the Board shall also consult the local authority in whose district the work or undertaking is proposed to be carried out.

(10) (a) The Minister may at any time, with the approval of the Governor, revoke an interim development order by notice published in the *Gazette*. A notice revoking an interim development order shall also be published three times in a daily newspaper circulating in the metropolitan region.

(b) The Minister may at any time, with the approval of the Governor, 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 any part of the metropolitan region and which is operating therein and any by-laws in force made pursuant to the provisions of the Municipal Corporations Act, 1906 or the Road Districts Act, 1919 as amended by section thirty of this Act shall remain in force subject to the provisions of any interim development order and where any of the provisions of the town planning scheme or of the by-laws is inconsistent with any of the provisions of the interim development order, the provisions of the interim development order shall prevail.

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

(i) the Board

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 metropolitan region 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 and the compensation, if any, so determined shall be paid to the claimant by such public authority as the Governor deems proper; but in lieu of the payment of compensation determined under this subsection, the Crown may, at the option of the Governor, or 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 metropolitan region.

4. Section thirty-two of the principal Act is amended by adding after the word "Act" in line one the passage, "^{s. 32} , except the provisions of section seven A," ^{amended.}

Third
Schedule
added.

5. The principal Act is amended by adding after The Second Schedule the following as The Third Schedule—

THE THIRD SCHEDULE.

Perth Metropolitan Region.

LOCAL AUTHORITIES INCLUDED IN THE REGION.

Municipalities—

Claremont.
Cottesloe.
Fremantle.
East Fremantle.
North Fremantle.
Guildford.
Midland Junction.
Perth.
Subiaco.

Road Districts—

Bassendean.
Bayswater.
Belmont Park.
Canning.
Melville.
Kwinana.
Mosman Park.
Nedlands.
Peppermint Grove.
Perth.
South Perth.
Swan.
Gosnells.
Fremantle.
Wanneroo.
Darling Range.
Mundaring.
Armadale-Kelmscott.
Rockingham.
Serpentine-Jarrahdale.
