

TOWN PLANNING AND DEVELOPMENT.

No. 120 of 1982.

AN ACT to amend the Town Planning and Development Act 1928-1981.

[Assented to 10 December 1982.]

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 Amendment Act 1982*.

Short title
and citation.

(2) In this Act the Town Planning and Development Act 1928-1981 is referred to as the principal Act.

Reprinted as
approved
22 May 1980
and amended
by Acts
Nos. 107 of
1978, 72 of
1980 and 79
of 1981.

(3) The principal Act as amended by this Act may be cited as the Town Planning and Development Act 1928-1982.

Commence-
ment.

2. (1) Subject to subsection (2) of this section, this Act shall come into operation on the day on which it is assented to by the Governor.

(2) Sections 6, 7, 8, 15, 19, 20, 21 and 22 of this Act shall come into operation on such day or days as is or are fixed by proclamation.

Section 2
amended.

3. Section 2 of the principal Act is amended—

(a) in the definition of “Town planning”, by deleting the full stop and substituting a semi-colon; and

(b) by inserting, after the definition of “Town planning”, the following definition—

“ “waterway” means an artificial channel, lake, harbour or embayment, for navigational, ornamental and recreational purposes, or for any of those purposes; and includes any addition to or alteration of a waterway as so defined; ” .

Section 7
amended and
validation.

4. (1) Section 7 of the principal Act is amended by inserting after subsection (3) the following subsection—

“ (3a) It is sufficient compliance with subsection (3) of this section if a town planning scheme is published in the *Gazette* without any maps, plans or diagrams which form part of the scheme. ” .

(2) Subject to subsection (3) of this section, no town planning scheme published in the *Gazette* before this section comes into operation, and no act or omission done or made, or purporting to have been done or made, thereunder shall be, or ever have been, or in any proceedings be held to be, or ever to have been, invalid or unlawful by reason

only that the scheme was published in the *Gazette* without any maps, plans or diagrams which form part of it.

(3) Subsection (2) of this section shall extend to any proceedings (but not including proceedings on appeal) instituted before the coming into operation of this section except where a decision in any such proceedings has actually been given before such coming into operation; in respect of such last-mentioned proceedings subsection (2) shall not affect the rights, powers, liabilities and remedies of the parties under the decision, and an appeal consequent on any such decision shall also be determined as if this section had not come into operation.

5. Section 7A of the principal Act is repealed.

Section 7A
repealed.

6. Section 7AA of the principal Act is amended—

Section 7AA
amended.

(a) in subsection (2), by inserting after paragraph (a) the following paragraph—

“ (aa) Before it makes such a report, the local authority shall, except to the extent that the Minister in writing exempts it from compliance with this paragraph or unless the scheme does not contain any provision for the zoning or classification of land, in accordance with this Act—

(i) prepare a consolidation of the scheme incorporating such amendments as have been made to the scheme and are in force; and

(ii) invite submissions from the public on the desirability of a review of the scheme,

and the report shall include all such submissions and the local authority's recommendations thereon. ” ; and

(b) by repealing subsection (3) and substituting the following subsections—

“ (3) Except where subsection (3a) of this section applies, the review of a town planning scheme in accordance with subsection (2) of this section shall be effected by way of the preparation and making in accordance with this Act of a new town planning scheme for the land to which the scheme relates.

(3a) If the Minister considers that the making of a new town planning scheme is unnecessary or inexpedient, he may—

(a) declare any consolidated scheme prepared by the local authority under subsection (2)(aa) of this section (and incorporating any amendment specified by the Minister which has come into force subsequently) to be acceptable for the purposes of this section; and

(b) direct that the review be effected by the making of the scheme so declared,

and, where he does so, that consolidated scheme shall, without affecting its continuation in force as a town planning scheme, be treated for the purpose of review pursuant to regulations made under this Act as if it were a proposed scheme to which the Minister had given preliminary approval as provided in such regulations.

(3b) A reference in this or any other Act to a scheme prepared in accordance with section 7 of this Act shall be read as including a reference to a scheme prepared on review in accordance with subsection (3) or (3a) of this section. ” .

7. Section 9(1) of the principal Act is amended— Section 9 amended.

(a) in paragraph (c), by inserting after “with respect to the” the following—

“ review, ” ; and

(b) in paragraph (d), by inserting after “thereof, or the”, the following—

“ review, ” .

8. After section 18 of the principal Act the following section is inserted— Section 18A inserted.

“ 18A. (1) Any person may, by instrument in writing served on a local authority, request the local authority to prepare and deal with an amendment to a town planning scheme, being an amendment which is specified in the instrument and which the local authority is authorized by law to prepare and deal with. Minister may order amendment of scheme.

(2) If the local authority fails or refuses to prepare and deal with the amendment, the person may, by instrument in writing served on the Minister, request the Minister to make an order under subsection (3) of this section requiring the local authority to do so.

(3) If, upon a request being made to him under subsection (2) of this section, the Minister is satisfied that the amendment, or an amendment substantially equivalent thereto, might reasonably be made and is one which the local authority is authorized by law to prepare and deal with, he may, subject to

subsection (5) of this section, by order served on the local authority require it to prepare and deal with, or to deal with (as the case may require), the amendment, or an amendment specified in the order substantially equivalent thereto.

(4) The Minister may, at any time before an amendment referred to in subsection (3) of this section is publicly notified in accordance with regulations made under this Act, by further order served on the local authority, revoke an order made under subsection (3), or revoke the order and, subject to subsection (5) of this section, substitute therefor a new order under subsection (3).

(5) Before he makes an order under subsection (3) of this section, the Minister shall furnish to the local authority and the Board details of the request made under subsection (2), and allow each of those bodies an opportunity of making written submissions to him thereon.

(6) If the local authority fails or refuses to comply with an order made by the Minister under subsection (3) of this section, whether wholly or in part, the Minister may, subject to subsection (7) of this section, approve of the amendment or so much thereof as has not been incorporated into the scheme, or an amendment substantially equivalent thereto, and publish the amendment in the *Gazette*; and thereupon the amendment shall come into operation as provided by section 18B of this Act.

(7) Before he approves of an amendment under subsection (6) of this section, the Minister shall comply with such requirements as are prescribed by regulations made under this Act, for the purposes of this section, in relation to the advertisement of the amendment or a modification of the amendment,

the allowance of time for the making of submissions thereon and the consideration of submissions by the Minister.

(8) The terms in which an order for amendment is made by the Minister under subsection (3) of this section shall not preclude the Minister from—

- (a) requiring a modification to the amendment, as provided in regulations made under this Act, if in his opinion it becomes necessary or desirable for him to do so before he approves of the amendment under section 7 (4) (b) of this Act; or
- (b) making a modification to the amendment as a result of his considering the submissions referred to in subsection (7) of this section.

(9) Where the Minister intends to exercise the power conferred on him by subsection (6) of this section, he shall notify the local authority in writing of that intention and, as from the receipt of such notice, the power of the local authority to prepare and deal with the amendment in question shall be suspended until the expiration of such period as is necessary to enable the Minister to exercise the power conferred by subsection (6) or until the Minister earlier notifies the local authority in writing that he no longer intends to exercise that power.

(10) For the purposes of subsection (2) or (6) of this section, a local authority has failed or refused to prepare and deal with an amendment or to comply with an order of the Minister (as the case may be) if—

- (a) within 6 months after service on it of an instrument under subsection (1) or an order under subsection (3), the amendment has not been sub-

mitted to the Board for preliminary approval in accordance with regulations made under this Act; or

- (b) within 12 months after service on it of an instrument under subsection (1) or an order under subsection (3), the amendment has not been dealt with in accordance with the procedure set out in regulations made under this Act up to the stage where the amendment duly executed by the local authority under seal is lodged with the Board for final approval by the Minister under section 7 (4) (b) of this Act.

(11) In this section—

“amendment” includes a provision amplifying the provisions of a scheme; and

“deal with”, in relation to an amendment, means to take such steps provided for by regulations made under this Act as are required to be taken by the local authority before the amendment may be brought into effect. ” .

Section
18B inserted.

9. After section 18A of the principal Act the following section is inserted—

Amendment
under section
18A to be
laid before
Parliament.

“ 18B. (1) A copy of an amendment published in the *Gazette* under section 18A (6) of this Act shall be laid before each House of Parliament within 6 sitting days of the House next following the date of the publication of the amendment in the *Gazette*.

(2) Either House may, by resolution of which notice has been given within 12 sitting days of such House after a copy of the amendment has been laid before it, disallow the amendment.

(3) As soon as the amendment is no longer subject to disallowance under subsection (2) of this section, the amendment shall have effect as if it had been published in the *Gazette* in accordance with section 7 (4) (b) of this Act.

(4) If either House of Parliament passes a resolution disallowing the amendment the Minister shall cause notice of the disallowance to be published in the *Gazette* within 21 days of the passing of the resolution. ” .

10. (1) Section 20 of the principal Act is amended— Section 20
amended and
validation.

(a) in subsection (1), by inserting after paragraph (c) the following paragraph—

“ (d) In paragraph (a) of subsection (1) of this section “land”, in relation to the leasing or the granting of a licence to use or occupy or, where applicable, the leasing and the granting of such a licence, does not include the whole or a portion of a building where—

(i) the building was constructed pursuant to an approval granted by a local authority under the Local Government Act 1960 or an Act repealed by that Act; and

(ii) the leasing or the granting of a licence does not relate to any land other than that building or portion, and is for a term or period (including any option to renew or extend the same) not exceeding 21 years. ” ;

and

(b) by repealing subsections (4), (5) and (6).

(2) A leasing or granting of a licence to use or occupy entered into before the commencement of this section which, by virtue of section 20 (1) of the principal Act as amended by subsection (1) of this section—

- (a) would not, if entered into after that commencement, require the approval of the Town Planning Board; or
- (b) would, if entered into after that commencement require such approval on account only of being for a term or period (including any option to renew or extend the same) exceeding 21 years,

shall not be, or ever have been, invalid, illegal or unenforceable by reason only that such approval was not obtained.

Section 20A
amended.

11. Section 20A of the principal Act is amended—

- (a) by inserting after “for the purpose of a”, in both places where it appears, the following—
“ waterway, ” ; and
- (b) by inserting after “drainage”, in both places where it appears, the following—
“ , foreshore management, waterway management, ” .

Section 20C
inserted and
transitional
provision.

12. (1) After section 20B of the principal Act, the following section is inserted—

When owner
may pay
money in
lieu of
land
being set
aside for
open spaces.

- “ 20C. (1) Where the Board has approved a plan of subdivision of land upon condition that portion thereof be set aside and vested in the Crown for parks, recreation grounds or open spaces generally, if the local authority in whose district the portion is situated and the Board approve, the owner of the land may, in lieu thereof, pay to that local authority a sum that represents the value of the portion.

(2) All money received by a local authority under subsection (1) of this section shall be paid into a separate account of the local authority and shall be applied—

- (a) for the purchase of land by the local authority for parks, recreation grounds or open spaces generally, in the locality in which the land included in the plan of subdivision referred to in that subsection is situated;
- (b) in repaying any loans raised by the local authority for the purchase of any such land; or
- (c) with the approval of the Minister, for the improvement or development as parks, recreation grounds or open spaces generally of any land in the said locality vested in or administered by the local authority for any of those purposes.

(3) For the purposes of subsection (1) of this section, the value of the portion shall be such percentage of the market value of the land of which the portion forms part as the area of the portion bears to the area of that land on the date of the subdivision.

(4) For the purposes of subsection (3) of this section, the market value of land—

- (a) is the capital sum which an unencumbered estate in fee simple in the land might reasonably be expected to realize if offered for sale on such reasonable terms and conditions as a *bona fide* seller would require;
- (b) shall be determined, at the cost of the owner of the land, by a licensed valuer agreed upon by the parties or, failing agreement, appointed by the local authority; and

(c) shall be so determined—

- (i) as at the date of the subdivision;
- (ii) on the basis that there are no buildings, fences or other improvements of a like nature on the land;
- (iii) on the assumption that any rezoning necessary for the purpose of the subdivision has come into force; and
- (iv) taking into account the added value of all other improvements on or appurtenant to the land.

(5) If either the owner of the land or the local authority disputes a valuation made under subsection (4) of this section, the valuation may be varied by agreement between the parties or the dispute may be settled by such method as they may agree upon.

(6) If after 28 days from the date when both parties have received the valuation the dispute has not been settled or an agreement made as to the method of settlement, either the owner of the land or the local authority may refer the dispute for determination by an arbitrator under the Arbitration Act 1895.

(7) For the purposes of this section—

- (a) land is subdivided on the date on which the Board approves of the plan of subdivision of the land subject to the condition mentioned in subsection (1); and
- (b) “licensed valuer” means—
 - (i) a licensed valuer within the meaning of the Land Valuers Licensing Act 1978;

(ii) the Valuer-General,

but nothing in subsection (4) (b) of this section or in this paragraph shall be construed as obliging the Valuer-General to undertake any valuation for the purposes of this section. ” .

(2) Notwithstanding the repeal of subsections (4), (5) and (6) of section 20 of the principal Act by section 10 (1) (b) of this Act those subsections shall continue to apply for the purpose of all subdivisions for which the plan of subdivision is conditionally approved by the Board before the day on which this section comes into operation; and section 20C, as inserted by subsection (1) of this section, shall apply for the purpose of all subdivisions for which the plan of subdivision is conditionally approved on or after that day.

13. Section 21 of the principal Act is amended, in subsection (1), by deleting paragraph (c) and substituting the following—

Section 21
amended.

“ (c) in the case of a lease, it does not contain or purport to contain an option to purchase land other than the whole of one or more lots and—

(i) the term is not more than 10 years (including any option to renew or extend the term); or

(ii) paragraph (a) of subsection (1) of section 20 of this Act does not apply to the lease by virtue of paragraph (d) of that subsection. ” .

14. Section 24 of the principal Act is amended—

Section 24
amended.

(a) in subsection (2) by deleting “thirty” and substituting the following—

“ 42 ” ; and

(b) in subsection (3) by deleting “thirty” and substituting the following—

“ 42 ” .

Section 26
amended and
transitional
provision.

15. (1) Section 26 of the principal Act is amended by repealing subsection (2).

(2) The repeal of subsection (2) of section 26 of the principal Act effected by subsection (1) of this section shall apply for the purposes of an appeal under section 26 commenced on or after the day on which this section comes into operation; but an appeal commenced before that day shall not be affected by such repeal.

Section 28A
repealed and
substituted.

16. Section 28A of the principal Act is repealed and the following section is substituted—

Subdivider
may recover
portion of
road
costs from
subsequent
subdivider.

“ 28A. (1) Where after the coming into operation of section 16 of the Town Planning and Development Amendment Act 1982 (in this section referred to as “the amending Act”)—

(a) a person (in this section called “the later subdivider”) subdivides land and a lot or lots of the subdivision have a common boundary with an existing road; and

(b) a person (in this section called “the original subdivider”) who previously subdivided land that also has a common boundary with that existing road, in connection with that subdivision, contributed to or bore solely the cost of providing the existing road; and

(c) the later subdivider did not contribute to that cost,

the original subdivider may, in accordance with this section, recover from the later subdivider a sum representing one-half of so much of the cost as was borne by the original subdivider of providing the part of the existing road which has a common boundary with the lot or lots referred to in paragraph (a) of this subsection.

(2) An amount payable under subsection (1) of this section may be recovered by the original subdivider in a court of competent jurisdiction as a debt due to him by the later subdivider; but no proceedings therefor shall be commenced after the expiration of 6 years from the date of the later subdivision.

(3) In this section reference to the cost of providing a road is a reference to the aggregate of—

- (a) the value, as at the date of the subdivision referred to in subsection (1) (b) of this section, of the portion of the land provided as a road, being such percentage of the market value of the total area of land comprised in that subdivision as the area of the road bears to that total area as at the date of that subdivision; and
- (b) the cost of designing and carrying out the following works—
 - (i) the survey of the land provided as a road;
 - (ii) the formation, preparation, priming and sealing of the road; and
 - (iii) the provision of kerbing, drainage and service ducts in connection with the road.

(4) For the purposes of this section—

- (a) land is subdivided on the date on which, any conditions specified by the Board having been complied with, the approval of the Board is endorsed on the diagram or plan of survey relating to the subdivision of the land, as provided in regulations made under this Act; and
- (b) the market value of land is the capital sum, determined in accordance with subparagraphs (ii), (iii) and (iv) of section 20C (4) (c) of this Act, which an unencumbered estate in fee simple in the land might reasonably be expected to realize if offered for sale on such reasonable terms and conditions as a *bona fide* seller would require.

(5) Section 28A of this Act repealed by section 16 of the amending Act shall continue to govern—

- (a) the liability of “the subdivider”, as defined in subsection (1) of the repealed section 28A, in respect of a subdivision which occurred before section 16 of the amending Act came into operation; and
- (b) all matters relating thereto or arising therefrom,

and that repealed section, and section 37 of this Act amended by section 18 of the amending Act, shall for those purposes have effect as if they had not been respectively repealed and amended by the amending Act. ” .

Section 32
amended.

17. Section 32 of the principal Act is amended by deleting “, except the provisions of section seven A, ”.

18. Section 37 of the principal Act is amended, Section 37 amended.
in paragraph (a) of the definition of "appeal"—

(a) in subparagraph (ii), by inserting after "this Act;" the following—

“ and ” ;

(b) in subparagraph (iii), by deleting "and";
and

(c) by deleting subparagraph (iv).

19. (1) Section 41 of the principal Act is Section 41 repealed and transitional provision.
repealed.

(2) The repeal of section 41 of the principal Act effected by subsection (1) of this section shall apply for the purposes of an appeal to the Minister under Part V of the principal Act commenced on or after the day on which this section comes into operation; but an appeal commenced before that day shall not be affected by such repeal.

20. Section 42 of the principal Act is amended— Section 42 amended.

(a) by inserting after subsection (7) the following subsections—

“ (7a) The Governor shall, in accordance with subsection (7b) of this section, appoint for the Chairman and every other member of the Tribunal a person to be the deputy of the Chairman or of the member.

(7b) The deputy of the Chairman or of any other member shall be a person who has the same qualification for appointment as is required of the Chairman or other member for whom he is appointed to be deputy. ” ; and

(b) by repealing subsection (8) and substituting the following subsection—

“ (8) Where the Chairman or any other member—

(a) is ill or absent; or

(b) disqualifies himself in respect of a particular appeal by reason of the possibility of a conflict of interest,

his deputy may act in his stead during the illness or absence or in the particular appeal, as the case may be, and such deputy shall, while so acting, be treated for the purposes of this Act as a member and have all the powers and perform all the duties of the Chairman or member in whose stead he is acting. ”

Section 54C
repealed
and substituted,
and transitional
provision.
Costs of
appeal.

21. (1) Section 54C of the principal Act is repealed and the following section is substituted—

“ 54C. (1) Each party to an appeal, whether to the Minister or the Appeal Tribunal, shall bear his own costs of the appeal, except to the extent that an award of costs is made under subsection (2) or (3) of this section.

(2) Where in the opinion of the Minister or the Appeal Tribunal, as the case may be, a party to an appeal has behaved unreasonably, vexatiously or frivolously in relation to the appeal, the Minister or Appeal Tribunal may award such costs as he or it thinks fit against that party and in favour of any other party who, in the opinion of the Minister or the Appeal Tribunal, has not so behaved.

(3) The Minister or the Appeal Tribunal, as the case may be, may award such costs as he or it thinks fit against an appellant who withdraws an appeal, and in favour of any other party to the appeal.

(4) Costs awarded in favour of a party under subsection (2) or (3) of this section may be recovered by that party, as a debt due to him, in a court of competent jurisdiction. ” .

(2) Section 54C of the principal Act, as substituted by subsection (1) of this section, shall apply for the purposes of an appeal to the Minister or the Appeal Tribunal commenced on or after the day on which this section comes into operation; but an appeal to the Appeal Tribunal commenced before that day shall not be affected by the repeal and substitution effected by subsection (1) of this section.

22. Section 54F of the principal Act is amended by deleting “an acting member” and substituting the following—

Section 54F
amended.

“ a deputy of a member ” .

23. (1) The First Schedule to the principal Act is amended—

First
Schedule
amended and
validation.

(a) in clause 10, by inserting after “rural use” the following—

“ or for waterway development ” ;
and

(b) by inserting, after clause 27, the following clause—

“ 27A. Where a discretionary power is vested by a scheme in the responsible authority, the conferral of a right of appeal to the Minister on a person aggrieved by the exercise of that power. ” .

(2) A right of appeal, as provided for in clause 27A inserted by subsection (1) (b) of this section, which is contained in a town planning scheme at the commencement of this section shall have effect as if that clause had been in operation at the time when the provision containing the right of appeal came into effect.