

# TOWN PLANNING AND DEVELOPMENT.

No. 103 of 1976.

AN ACT to amend the Town Planning and  
Development Act, 1928-1975.

[Assented to 17th November, 1976.]

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, 1976.*

Short title  
and  
citation.

(2) In this Act the Town Planning and Development Act, 1928-1975 is referred to as the principal Act.

Reprinted  
as approved  
for reprint  
8th March,  
1973 and  
amended  
by Acts  
Nos. 19 and  
30 of 1973,  
14 of 1974  
and 69  
of 1975.

(3) The principal Act as amended by this Act may be cited as the Town Planning and Development Act, 1928-1976.

Commence-  
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Section 5AA  
added.

3. The principal Act is amended by adding after section 5A the following new section—

Statement  
of planning  
policy.

5AA. (1) Without prejudice to the generality of section five of this Act the Board may, with the approval of the Minister, prepare a statement of planning policy with respect to any portion of the State, whether or not a town planning scheme has been or is being prepared for that portion of the State.

(2) A statement of planning policy may make provision for any matter which may be the subject of a town planning scheme under this Act but shall be directed primarily towards broad general planning and facilitating the co-ordination of planning throughout the State by all local authorities.

(3) In the preparation of a statement of planning policy for an area the Board shall have regard to—

- (a) demographic, social and economic factors and influences;
- (b) conservation of natural resources for social, economic, environmental, ecological and scientific purposes;
- (c) characteristics of land;
- (d) characteristics and disposition of land use;
- (e) amenity and environment;
- (f) communications; and

(g) developmental requirements of public authorities,

and shall in any case where the statement of planning policy is likely to affect a district or districts in particular consult the local authority for that district or the local authorities for those districts with respect thereto and in any other case shall consult the Local Government Association of W.A. Incorporated and the body known as the Country Shire Councils' Association with respect thereto.

(4) A statement of planning policy shall have no force or effect until approved by the Governor.

(5) The Board shall cause a copy of the approved statement of planning policy to be published in the *Government Gazette* and shall further cause a copy of the approved planning policy to be forwarded to each local authority, any portion of the district of which is included in the area covered by the statement. .

4. Section 7 of the principal Act is amended by adding at the end thereof the following subsection:— Section 7  
amended.

(5) Every local authority shall in preparing or amending any town planning scheme have due regard to any approved statement of planning policy prepared pursuant to the provisions of section 5AA of this Act which affects its district. .

5. Section 37 of the principal Act is amended:— Section 37  
amended.

(a) by adding after the interpretation of the term "appeal" the following interpretations:—

"Appeal Tribunal" means the Town Planning Appeal Tribunal constituted under section forty-two of this Act;

"Chairman" means Chairman of the Appeal Tribunal;

- (b) by deleting the interpretations of the terms “Court” and “President”;
- (c) by substituting the words “the Appeal Tribunal” for the words “a Court” in the interpretation of the term “member”; and
- (d) by adding after the interpretation of the term “prescribed” the following interpretation:—

“Registrar” means the Registrar of the Appeal Tribunal.

Section 39  
repealed  
and  
re-enacted.

6. Section 39 of the principal Act is amended:—

- (a) by repealing and re-enacting subsection (1) as follows:—

“(1) An appeal may be made to the Minister or to the Appeal Tribunal but the commencement of an appeal to one extinguishes any right of appeal to the other. ; and

- (b) in subsection (2) by substituting the words “the Appeal Tribunal” for the words “a Court”.

Section 42  
repealed  
and  
re-enacted.

7. Section 42 of the principal Act is repealed and re-enacted as follows—

42. (1) For the purposes of this Part there shall be constituted an appeal tribunal, to be known as the Town Planning Appeal Tribunal.

(2) The Appeal Tribunal shall consist of three members appointed by the Governor of whom—

- (a) one shall be a practitioner as defined by the Legal Practitioners Act, 1893 of not less than eight years practice and standing;
- (b) one shall be a person having knowledge of and experience in town planning; and

Establish-  
ment and  
constitu-  
tion of  
Appeal  
Tribunal.

- (c) one shall be a person having knowledge of and experience in public administration, commerce, or industry,

but a person shall not be a member if he is employed under the Public Service Act, 1904 or is otherwise employed in a full time capacity by an agency or instrumentality of the Crown.

(3) Each member of the Appeal Tribunal shall be appointed for a period of not more than three years but shall be eligible for re-appointment.

(4) The Governor shall appoint one of the members to be the Chairman of the Appeal Tribunal.

(5) The Governor may terminate the appointment of a member for inability, inefficiency or misbehaviour.

(6) If any member of the Tribunal:—

- (a) resigns his office by writing under his hand addressed to the Minister;
- (b) has his appointment terminated by the Governor; or
- (c) dies.

his office shall become vacant.

(7) On the occurrence of any vacancy in the Appeal Tribunal the Governor may appoint another eligible person to fill the vacancy.

(8) In the case of illness or absence of the Chairman or any other member of the Appeal Tribunal, the Minister may appoint another eligible person to act as Chairman or member in his stead during the illness or absence and the person so appointed shall while so acting have all the powers and perform all the duties of the Chairman or member in whose stead he is appointed to act.

(9) The Chairman and other members of the Appeal Tribunal and any persons acting instead of the Chairman or a member shall each be entitled to be paid such salaries or fees and such expenses as the Governor shall determine. .

Section 43  
repealed  
and  
re-enacted.

8. Section 43 of the principal Act is repealed and re-enacted as follows:—

Registrar  
and  
officers  
of the  
Appeal  
Tribunal.

43. (1) There shall be a Registrar of the Appeal Tribunal and there may be such other officers of the Appeal Tribunal as may be necessary to assist the Registrar or the Appeal Tribunal.

(2) The officers of the Appeal Tribunal shall be appointed and shall hold office subject to and in accordance with the Public Service Act, 1904.

(3) The officers of the Appeal Tribunal may hold office as such in conjunction with any other office in the Public Service of the State.

(4) The Registrar shall keep a register in the prescribed form of all appeals and the determination of the Appeal Tribunal thereon. .

Section 44  
repealed  
and  
re-enacted.

9. Section 44 of the principal Act is repealed and re-enacted as follows:—

Jurisdiction  
of Appeal  
Tribunal.

44. The Appeal Tribunal shall hear and determine all appeals referred to it under this Part and the regulations and may allow an appeal with or without conditions, affix further conditions, or dismiss the appeal either in whole or in part. .

Section 45  
repealed  
and  
re-enacted.

10. Section 45 of the principal Act is repealed and re-enacted as follows:—

Grounds for  
contesting  
appeal.

45. Every party who desires to contest an appeal shall lodge with the Registrar a short statement of the grounds on which he intends

to rely at the hearing of the appeal and shall deliver a copy thereof to the appellant not less than seven days before the day appointed for the hearing. .

11. Section 46 of the principal Act is repealed and re-enacted as follows:—

Section 46  
repealed  
and  
re-enacted.

46. The Chairman shall appoint the time and place for the sittings of the Appeal Tribunal and may adjourn its sittings from time to time and shall, not less than twenty-one days before the first sitting of an appeal, cause a notice of the time and place for that sitting to be given to each party. .

Sittings of  
Appeal  
Tribunal.

12. Section 47 of the principal Act is repealed and re-enacted as follows:—

Section 47  
repealed  
and  
re-enacted.

47. (1) The Chairman and one other member of the Appeal Tribunal shall be a quorum but where such a quorum is divided the hearing of the appeal shall be adjourned until all three members are present.

Quorum  
Appeals  
to be  
determined  
by  
majority.

(2) The decision of a majority of the members of the Appeal Tribunal shall be the decision of the Appeal Tribunal.

13. Section 48 of the principal Act is repealed and re-enacted as follows:—

Section 48  
repealed  
and  
re-enacted.

48. Where a party—

(a) after a notice of the first sitting of the Appeal Tribunal on an appeal is given to him in accordance with section forty-six of this Act; or

(b) with knowledge of the time and place appointed for any subsequent sitting of the Appeal Tribunal on the appeal,

Hearing to  
proceed in  
absence of  
parties.

fails to appear at the time and place appointed the Appeal Tribunal may proceed to hear and determine the appeal in his absence. .

Section 49  
repealed  
and  
re-enacted.

14. Section 49 of the principal Act is repealed and re-enacted as follows:—

Appearance  
before  
Appeal  
Tribunal.

49. A party may appear before the Appeal Tribunal personally or by counsel or a solicitor or an agent. .

Section 50  
repealed  
and  
re-enacted.

15. Section 50 of the principal Act is repealed and re-enacted as follows:—

Appeal  
Tribunal  
to examine  
witnesses.

50. (1) The Appeal Tribunal may summon all persons required by a party or by the Appeal Tribunal to give evidence before it and may examine those persons on oath or affirmation and may require the production of any documents, plans or other papers in the custody or control of any party.

(2) The parties and their counsel, solicitors, witnesses and all other persons attending the Appeal Tribunal shall have the same rights and privileges and shall be subject to the same obligations and penalties as in the trial of an action at Law in the Supreme Court.

(3) The Appeal Tribunal has, until it has made its determination, all the powers of the Supreme Court insofar as may be necessary for hearing and determining the appeal. .

Section 51  
repealed  
and  
re-enacted.

16. Section 51 of the principal Act is repealed and re-enacted as follows:—

Appellant  
not res-  
tricted to  
grounds of  
appeal.

51. Upon the hearing of any appeal the appellant shall not be restricted to the grounds stated in his notice of appeal and a party contesting an appeal shall not be restricted to the grounds stated by him under section forty-five of this Act but where any new ground or matter not so stated is raised on the appeal the Appeal Tribunal shall, by adjournment or otherwise, ensure that the other parties or persons entitled to be heard have a reasonable opportunity of properly considering and replying to that ground or matter. .



17. Section 52 of the principal Act is repealed and re-enacted as follows:—

Section 52  
repealed  
and  
re-enacted.

52. On the hearing of any appeal the Appeal Tribunal shall act according to equity and a good conscience and the substantial merits of the case without regard to technicalities or legal forms and shall not be bound by any rules of evidence, subject to the requirements of justice, and may inform itself of any matter in such manner as it thinks fit.

Appeal  
Tribunal  
to act  
according  
to sub-  
stantial  
merits of  
the case.

18. Section 53 of the principal Act is repealed and re-enacted as follows:—

Section 53  
repealed  
and  
re-enacted.

53. In determining any appeal the Appeal Tribunal shall have due regard to any approved statement of planning policy prepared pursuant to the provisions of section 5AA of this Act which may affect the subject matter of the appeal.

Appeal  
Tribunal  
to have  
regard to  
statements  
of planning  
policy.

19. Section 54 of the principal Act is repealed and re-enacted as follows:—

Section 54  
repealed  
and  
re-enacted.

54. (1) Where it appears to the Appeal Tribunal that any appeal may be determined in a way which will have a substantial effect on the future planning of the area in which the land the subject of the appeal is situated the Appeal Tribunal may invite the Minister to make a submission as to the matters which he considers to be relevant to the issues before the Appeal Tribunal.

Power of  
Minister  
to make  
submissions  
to Appeal  
Tribunal.

(2) Where it appears to the Minister that any appeal may be determined in a way which will have a substantial effect on the future planning of the area in which the land the subject of the appeal is situated the Minister may make a submission as to the matters which he considers to be relevant to the issues before the Appeal Tribunal.

(3) Any submission may be made by the Minister in writing, or orally on his behalf by a representative who appears at the hearing of the appeal, and may be made at any time before the determination of the appeal.

(4) Where a submission has been made by the Minister in writing, a copy shall be given to the parties who shall in any case be given an opportunity of making further submissions to the Appeal Tribunal.

(5) In determining the appeal the Tribunal shall have due regard to the submissions made by the Minister. .

Sections  
54A to 54G  
added.

20. The principal Act is amended by adding after section 54 the following new sections:—

Proceedings  
to be  
public  
unless  
otherwise  
deter-  
mined.

54A. All proceedings before the Appeal Tribunal shall be conducted in public unless the Appeal Tribunal determines as it is hereby authorised to do, that any part of the proceedings shall be *in camera*.

Appeal to  
Supreme  
Court in  
certain  
cases.

54B. (1) Subject to subsection (2) of this section, any person aggrieved by a direction, determination, or order of the Appeal Tribunal in proceedings before the Tribunal to which the person was a party may appeal to the Supreme Court against the direction, determination, or order, in the manner, and in the time, prescribed by the Rules of Court.

(2) An appeal does not lie to the Supreme Court from a direction, determination, or order of the Court unless the appeal involves a question of law.

(3) The Supreme Court may make such order as to costs as it thinks fit in relation to an appeal to the Supreme Court under this section.

54C. On an appeal to the Appeal Tribunal the Appeal Tribunal may award such costs as it thinks fit and any costs so awarded may, as a debt due, be recovered in a court of competent jurisdiction.

Costs of  
appeal.

54D. On an appeal to the Appeal Tribunal the determination of the Tribunal is final except as provided by section fifty-four B of this Act.

Determina-  
tion of  
Appeal  
Tribunal  
final  
except in  
certain  
cases.

54E. The Appeal Tribunal—

- (a) shall give to the parties to an appeal to the Tribunal written reasons for the determination of the Tribunal on the appeal; and
- (b) shall publish those reasons in the manner prescribed.

Written  
reasons  
for deter-  
mination  
and  
publication  
thereof.

54F. No liability shall attach to a member or an acting member, or the Registrar or any other officer of the Appeal Tribunal for any act or omission by him, or by the Tribunal, in good faith, and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties under this Act.

Immunity  
of Appeal  
Tribunal  
and  
officers.

54G. Without prejudice to the provisions of section sixteen of the Interpretation Act, 1918, every appeal commenced and not finally disposed of before the commencement of the Town Planning and Development Act Amendment Act, 1976, shall be heard and determined in all respects as if that Act had not been passed.

Pending  
appeals.

21. Section 55 of the principal Act is amended by substituting the words "the Appeal Tribunal" for the words "a Court" where appearing.

Section 55  
amended.