

Approved for reprint 21st June, 1966.

WESTERN AUSTRALIA.

METROPOLITAN REGION TOWN PLANNING SCHEME.

8° Elizabeth II., No. LXXVIII

No. 78 of 1959.

(Affected by Act Nos. 56 of 1964¹ and 113 of 1965.²)

[As amended by Acts:

No. 39 of 1960, assented to 3rd November, 1960;
No. 44 of 1962,³ assented to 1st November, 1962;
No. 29 of 1963, assented to 13th November, 1963;
No. 7. of 1965, assented to 15th September, 1965;
No. 95 of 1965, assented to 8th December, 1965;

and reprinted pursuant to the Amendments Incorporation Act,
1938.]

AN ACT to provide for and relating to the Planning and Development of land within the Metropolitan Region, for the purposes of constituting the Metropolitan Region Planning Authority, to regulate the assessment of a Metropolitan Improvement Tax and for incidental and other purposes.

[Assented to 14th December, 1959.]

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:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Metropolitan Region Town Planning Scheme Act, 1959-1965*.

Short title.
Amended by
No. 95 of
1965, s. 1.

¹ Clean Air Act, 1964.

² Decimal Currency Act, 1965.

³ Came into operation on 16/8/1963. *Government Gazette* 16/8/63, p. 2377.
25353/3/66—2,500.

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Commence-
ment.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.¹

(2) It shall not be necessary to proclaim that the whole Act shall commence on one day, but the several Parts and sections may be proclaimed to commence on such days as are respectively fixed by proclamation.

Construction.

3. This Act shall be construed in conjunction with the Town Planning Act, as if the provisions of this Act were incorporated with and formed part of that Act, but where the provisions of this Act are in conflict or are inconsistent with the provisions of that Act, the provisions of this Act prevail to the extent to which they are so in conflict or inconsistent.

Arrangement.

4. The arrangement of this Act is as follows—

PART I.—PRELIMINARY.

PART II.—METROPOLITAN REGION PLANNING
AUTHORITY AND DISTRICT PLANNING
COMMITTEES.

PART III.—METROPOLITAN REGION SCHEME.

PART IV.—LOCAL AUTHORITY TOWN PLAN-
NING SCHEMES.

PART V.—COMPENSATION, BETTERMENT,
ACQUISITION.

PART VI.—FINANCE.

PART VII.—ADMINISTRATION, PENALTIES.

Application
of this Act.

5. (1) The provisions of this Act apply only to the metropolitan region.

(2) The provisions of the Town Planning Act, except as modified by this Act, apply to the metropolitan region.

¹ Came into operation on 19/2/1960. *Government Gazette* 19/2/1960, p. 412.

6. In this Act, unless the context requires otherwise— Interpre-
tation.

“Authority” means The Metropolitan Region Planning Authority constituted under this Act;

“functions” includes powers and duties;

“Fund” means The Metropolitan Region Improvement Fund established under this Act;

“member” means a person appointed to be a member of the Authority and includes the Chairman of the Authority;

“Metropolitan Region Scheme” or “Scheme” means a town planning scheme for the metropolitan region or any part thereof, including the provisions therein for regulating and controlling the use of the land the subject of the Scheme and the purposes for which the land may be used and includes—

- (a) the provisions of the Scheme;
- (b) all maps, plans, specifications and other particulars contained in the Scheme and colourings, markings or legend thereon; and
- (c) A Scheme which has been varied, amplified or revoked by a subsequent Scheme under the provisions of section thirty-three of this Act;

“order” means an interim development order made under section seven A of the Town Planning Act, and

“Town Planning Act” means the Town Planning and Development Act, 1928.

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PART II.—METROPOLITAN REGION PLANNING
AUTHORITY AND DISTRICT PLANNING COMMITTEES.

Metropolitan
Region
Planning
Authority.

7. (1) For the purposes of this Act, an authority having the functions prescribed by this Act is constituted as provided in this section.

Name of
authority.

(2) The name of the authority is The Metropolitan Region Planning Authority.

Eleven
members.

(3) Eleven members including the Chairman, each appointed in accordance with the provisions of this Act, constitute the Authority.

Members
of the
Authority.

(4) Subject to the provisions of section eight of this Act, the members shall be —

(a) the Chairman of the Authority appointed by the Governor;

(b) five members, each one appointed by the Governor;

(c) a member being a mayor or councillor of the Municipality of The City of Perth who is nominated for appointment as a member by the Council of the Municipality and appointed by the Governor; and

(d) four members each representing one of the groups of local authorities in The Schedule to this Act, who shall be a mayor, councillor or member as the case may be of one of the local authorities set out in the group which he represents.

Schedule.

Members
to be
appointed
from panel
submitted by
Committees.

8. (1) Each of the four members referred to in paragraph (d) of subsection (4) of section seven of this Act shall be appointed by the Governor from a panel of the names of three persons nominated by the appropriate District Planning Committee constituted under the provisions of section twenty-three of this Act.

Minister
to give notice
to Committee
to nominate
member.

(2) The Minister shall by notice in writing invite each of the District Planning Committees to furnish the Governor within a time stipulated in the notice, being not less than twenty-one days from the

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giving of the notice, with a panel of the names of three persons nominated by the Committee for appointment and willing to accept office as member representing the group of local authorities from which the District Planning Committee is formed.

(3) Where a District Planning Committee fails to so furnish the panel of names within the stipulated time as provided in subsection (2) of this section, the Governor shall appoint such person, having the necessary qualifications, as he thinks fit to represent the group from which a panel of names has not been received.

Governor may appoint member where Committee fails to nominate.

9. (1) The Minister shall cause notice of appointments to the respective offices of members of the Authority to be published in the *Gazette*.

(2) By the publication of the first appointments the Authority is constituted a body corporate with perpetual succession and a common seal and is capable in its corporate name of acquiring, holding, leasing, exchanging, mortgaging and disposing of real and personal property and of suing and being sued and of doing or suffering all such other acts and things as bodies corporate may by law do and suffer.

Authority body corporate.

(3) All Courts and Judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and presume that it was duly affixed.

10. (1) Power to make the first appointments of persons to fill the offices of members, including that of Chairman, and to make subsequent appointments of persons to fill vacancies as they occur in those offices, is conferred on the Governor and is exercisable in accordance with the provisions of this Act.

Appointment to offices.

(2) A person is not eligible for appointment and shall not be appointed to or hold office as member—

Ineligibility for appointment.

(a) if he is bankrupt;

- (b) if within six years, he has as a bankrupt debtor, taken advantage of protection or relief under any law for the protection of bankrupt debtors;
- (c) if through mental or physical infirmity or sickness he would, if appointed, be unable satisfactorily to carry out the duties and perform the functions of office;
- (d) if he has been convicted of an indictable offence, or other offence which, in the opinion of the Governor, was of so serious a nature as to render him unsuitable for appointment.

(3) A person is eligible for appointment to the office of member notwithstanding that he has previously occupied office as such.

(4) A person shall not be appointed to the office of Chairman of the Authority unless he has had wide experience and has shown capacity in town planning, development of land and local government matters.

(5) The term of tenure of office of a person appointed to an office of member expires by effluxion of time on the expiration of a period of two years commencing on the day specified in the notice of the appointment published in the *Gazette* as the commencing date of that term.

Termination
of office
of member.

(6) The term of tenure of office of a person appointed to office of member terminates, if during the term—

- (a) he becomes bankrupt, or as a debtor takes advantage of protection or relief under any law for the protection or relief of bankrupt debtors;
- (b) he absents himself from three consecutive meetings of the Authority, except with permission granted by the Minister who is hereby authorised to grant the permission from time to time;

- (c) he tenders resignation from the office in writing signed by him and addressed to the Governor, and the Governor who is hereby authorised to do so, accepts the resignation;
- (d) he dies;
- (e) he being a member representing a group of local authorities, ceases to be a mayor, councillor or a member as the case may be of a local authority in that group;
- (f) he being a member representing the Municipality of The City of Perth, ceases to be mayor or a councillor of that Municipality.

11. (1) Deputies to act in the respective offices of members of the Authority in the absence of the occupants of those offices may be appointed in writing by the Governor. Deputies.

(2) During the absence of a member, a deputy so appointed is authorised to exercise any power and to carry out any duty, which the member if present could exercise, or would be required to carry out under this Act.

12. (1) The Governor may fill a vacancy in the office of member that occurs otherwise than by the retirement of a member on the expiration of the term of his office. Vacancies
in office.

(2) The person appointed to fill the vacancy holds office only for the unexpired portion of the term of the office of the member in whose place he is appointed.

13. The remuneration and travelling expenses payable in respect of the attendances at meetings and carrying out of their functions under this Act by members, is such as the Governor determines and is hereby authorised to determine when making appointments to the respective offices of members. Remunera-
tion and
expenses of
members.

Protection
of rights
of public
servants.

14. A member or a deputy for a member, in his capacity as member or deputy, is not a public servant under the provisions of the Public Service Act, 1904, but if at the time of his appointment to the office of member or as deputy he is a public servant under the provisions of that Act, his appointment to and service in the office of member or as deputy shall be deemed to be without prejudice to his rights under that or any other Act applying to him as a public servant.

Convening
of meetings.

15. (1) The Chairman shall convene the first meeting of the Authority to be held at a time and place appointed by him, and the Authority shall meet accordingly, and shall hold subsequent meetings at times and places appointed by the Authority.

(2) The Chairman shall preside at the meetings of the Authority.

(3) When the Chairman is absent from any meeting, the members present at the meeting shall elect a member from among those present to preside at the meeting and the person so elected has, during the absence of the Chairman, all the powers of the Chairman.

Quorum.

16. (1) A quorum which is constituted by six members who are present at any meeting of the Authority at, or within half an hour after, the time appointed for the commencement of the meeting, may exercise any function of the Authority as effectively as if all members were present.

Each
member
one vote.

(2) Where at a meeting of the Authority any question arises for determination by the Authority each member or deputy present is entitled to, and shall exercise, one vote only.

Motions how
carried.

(3) If a majority of those present vote in favour of a motion for the determination of a question, the question shall be deemed to be determined in accordance with their votes, but if the votes in favour equal votes against the motion, it shall be deemed lost.

17. An act or determination of the Authority is not invalid or defective on the ground that when the act was done or the determination was made, a vacancy existed in the office of a member or deputy, or on the ground of a defect in the appointment of a member or deputy.

Vacancy in or defect in appointment to office no ground for invalidity.

18. (1) The Authority shall cause to be kept minutes of all its proceedings in such manner and form as the Minister directs or approves and is hereby authorised to direct and approve from time to time.

Minutes.

(2) The Authority shall conduct its proceedings in such manner as may be prescribed and until prescribed, as the Authority determines.

Proceedings.

19. (1) The Authority may, in relation to any particular matter or class of matters, by written authorisation, signed by the Chairman, delegate to any member, the members of a District Planning Committee, public authority or local authority, power to exercise any of the functions conferred or imposed on the Authority by this Act, except this power of delegation.

Delegation.

(2) A delegation of power conferred by this section has the effect and may be exercised according to its tenor, but is revocable at the will of the Authority and does not preclude the Authority from exercising the power.

(3) Where the Authority delegates any power under the provisions of this section, the Authority shall publish, or cause to be published, a copy of the instrument of delegation in the *Government Gazette*.

20. A person who is or has been a member, deputy for a member, or delegate, of the Authority is not personally liable for anything done or omitted in

Exemption from personal liability.

good faith in, or in connection with, the exercise or purported exercise of any power conferred, or the carrying out of any duty imposed on the Authority by this Act.

Suspension.

21. (1) The Governor may suspend a member from office on the Authority and may, and where the member so suspended requests shall, direct an inquiry to be held in manner prescribed by a stipendiary magistrate appointed by the Minister to inquire into the grounds of suspension.

(2) A member so suspended is not entitled to any remuneration, expenses, or to act in office, during the suspension, unless the stipendiary magistrate, as he is hereby authorised to do, orders otherwise.

(3) The stipendiary magistrate hearing the inquiry is hereby authorised to recommend to the Governor that—

- (a) the suspension be confirmed and the Governor terminate the appointment of the member; or
- (b) the suspension be cancelled and the member be reinstated a member of the Authority.

(4) The Governor shall give effect to the recommendation.

Office of
member not
office of
profit.

22. An office on the Authority shall be deemed not to be

- (a) an office or place of profit under or in the gift or disposal of a council of a municipality, by holding which office or place, a person is rendered incapable of being or continuing mayor or councillor of the municipality; or
- (b) an office of profit under the board of a road district, by holding which office a person is rendered incapable of being elected or as acting as member of the board.

23. (1) For the purposes of assisting and advising the Authority, the Council of the Municipality of The City of Perth and the groups of local authorities referred to in the Schedule to this Act, shall each appoint from among their mayors, councillors or members, as the case may be, a District Planning Committee as provided in this section.

**Constitution
of District
Planning
Committees.**

(2) In the case of the Municipality of The City of Perth, the District Planning Committee for the Municipality is the Town Planning Committee of the Council for the time being.

(3) (a) In the case of the groups of local authorities referred to in subsection (1) of this section each local authority in each group shall, as soon as practicable after the passing of this Act, appoint one person as a member of the Committee to represent that local authority on the Committee.

(b) Where a local authority fails to make an appointment, the Governor may appoint a person having the necessary qualifications to be a member representing that local authority.

(c) When the members are duly appointed, the District Planning Committee for the group of local authorities is constituted.

(4) Subject to the direction and approval of the Minister, who is hereby authorised to direct and approve from time to time, procedural matters relating to the holding and conduct of meetings of each Committee, including the election of chairman, the appointment of deputies, the constitution and powers of a quorum, are such as each Committee determines.

24. (1) Each District Planning Committee may, and at the direction of the Authority shall, within the time stipulated by the direction or within such extended time as the Minister may authorise, make inquiries into and report and formulate recommendations in respect to the Metropolitan Region

**Functions
of District
Planning
Committees.**

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Scheme so far as it relates to the area or part of the area comprising the districts of the local authorities which the Committee represents.

(2) Each Committee shall present its reports and recommendations to the Authority.

(3) Each Committee shall exercise such functions of the Authority as the Authority may delegate to it under the provisions of section nineteen of this Act.

(4) Each Committee, except that representing the Municipality of The City of Perth, shall furnish to the Governor a panel of names in accordance with the provisions of section eight of this Act.

Functions of
Authority.

25. Subject to the Minister the functions of the Authority are—

- (a) to formulate and promulgate a Metropolitan Region Scheme for the Metropolitan Region or such part thereof as the Authority from time to time deems fit so to do, having due and particular regard to the recommendations contained in the publications known as "Plan for the Metropolitan Region, Perth and Fremantle 1955 Report" and "Atlas", as printed and published by the Government Printer of the State, and to any order;
- (b) on a date to be fixed by proclamation and thereafter to administer and carry out any order, and for that purpose the powers conferred on the Board by section seven A of the Town Planning Act and any order shall cease to be exercisable by the Board and be conferred on and be exercisable by the Authority;
- (c) to present the Metropolitan Region Scheme for approval in accordance with the provisions of this Act;

- (d) notwithstanding section five of the Town Planning Act to administer and carry out the Metropolitan Region Scheme;
- (e) to keep the Metropolitan Region Scheme from time to time under review, and in any case to review completely the Scheme whenever requested by the Minister so to do at any time after a period of two years of its having effect as if its provisions were enacted in this Act and to submit for approval in accordance with the provisions of Part III. of this Act, any variation, amplification or revocation of the Scheme, considered necessary as a result of any review; and
- (f) whether before or after the Metropolitan Region Scheme becomes so effective to do, notwithstanding section five of the Town Planning Act, all such matters and things as are proper and necessary for the purposes and administration of this Act and the Scheme.

26. (1) The Authority may make regulations prescribing a set of general provisions or separate sets of general provisions adapted for the whole of, or areas within, the metropolitan region of any special character, for carrying out the general objects of the Metropolitan Region Scheme and in particular for dealing with the matters set out in the First Schedule to the Town Planning Act, and the general provisions or set of general provisions appropriate to the area for which the Metropolitan Region Scheme is made shall take effect as part of the Scheme.

General
provisions
of Scheme
amended by
No. 113 of
1965, s. 8.¹

(2) Regulations may be so made as to impose for a breach of a regulation a maximum penalty of one hundred dollars with or without provision for a maximum daily penalty of ten dollars for every day the breach continues.

¹ Decimal Currency Act, 1965.

Power of
Authority
to co-opt
services.

27. Subject to the provisions of section thirty-eight of this Act, with the consent of the Minister administering any department of the Public Service of the State, the Authority may, for the purposes of this Act, co-opt the services, whether of an administrative, technical or other nature, of any person employed in that department upon such terms as may be agreed between that Minister and the Authority.

Approval
of Minister
to certain
expenditure
amended by
No. 113 of
1965, s. 8.¹

28. No contract made or expenditure incurred in respect of any one work by the Authority, the consideration or cost of which exceeds ten thousand dollars, shall be made or incurred unless approved in writing by the Minister.

Annual
Report to
be made by
Authority.

29. (1) The Authority shall in each year prepare an annual report of its proceedings under this Act during the preceding year, and deliver the report as soon as practicable to the Minister.

(2) The report shall in each year be laid on the Table of both Houses of Parliament by the Minister within fourteen days of its receipt by him, or if at the time Parliament is not in Session, then within fourteen days of the commencement of the next Session of Parliament.

PART III.—METROPOLITAN REGION SCHEME.

Metropolitan
Region
Scheme.

30. (1) The Authority shall make the Metropolitan Region Scheme in accordance with the provisions of this Act, with respect to the whole or any part of the land within the metropolitan region.

(2) The Scheme may be made for all or any of the objects or purposes, provisions, powers or works, referred to in section six of the Town Planning Act and may provide for planning, replanning or reconstructing the whole or a part of the metropolitan region.

¹ Decimal Currency Act, 1965.

31. The Authority shall adopt the following procedure for submitting and obtaining approval of the Metropolitan Region Scheme:—

Procedure for
submission
and approval
of plan
amended by
No. 44 of
1962, s. 3.

- (a) The Scheme when formulated by the Authority shall be submitted, together with such reports, surveys and other material as the Authority considers desirable, to the Minister for his preliminary approval.
- (b) If the Minister so approves, the Authority shall deposit copies of the Scheme, for public inspection during ordinary business hours free of charge,
- at the office of the Town Planning Department;
 - at the Council Offices of the Municipalities of The Cities of Perth and Fremantle;
 - in at least three other public places situate in the metropolitan region which the Authority considers are most convenient for public inspection of the Scheme.
- (c) As soon as practicable after the deposit of the copies of the Scheme as provided for in paragraph (b) of this section, the Authority shall cause to be inserted at least three times in each of the following publications—
- the *Gazette*;
 - two daily newspapers circulating in the metropolitan region; and
 - one Sunday newspaper circulating in the metropolitan region;
- a notice—
- stating shortly the purpose of the Scheme;

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stating that the Scheme has been deposited and the places and times where it may be inspected free of cost; and notifying all persons who object to any provisions of the Scheme to lodge written objections on a prescribed form with the Authority at the address stated in the notice.

- (d) Objections to the Scheme may be made at any time within the period prescribed in the notice being not less than three months from the date the notice is first published in the *Gazette*.
- (e) The Authority shall take such other steps as it considers necessary to make public the details of the Scheme.
- (f) (i) The Authority shall consider all objections duly lodged and shall not dismiss an objection until the person objecting or his agent has been given the opportunity of being heard on the objection either by the Authority or a sub-committee of the Authority appointed by it for the purpose and which it is hereby authorised to appoint.
 - (ii) Where an objection is made by a group of persons, the group shall appoint one person to represent the group and he only shall be heard on the objection.
- (g) The Authority shall submit the Scheme, with or without such modifications as it thinks fit to make after considering the objections, together with a copy of all written objections and a report by the Authority on the objections, to the Minister for presentation to the Governor for his consideration.

- (h) Before presenting the Scheme to the Governor for his consideration, if the Minister is of opinion that any modification made to the Scheme by the Authority is of such a substantial nature as to warrant such action, he may direct the Authority to again deposit the Scheme as so modified, or that portion of the Scheme which is so modified, for public inspection at such time and at such places as he directs.
- (i) The Minister may direct the Authority to publish such notices in connection with the Scheme as he deems appropriate.
- (j) The Authority shall comply with the directions.
- (k) A person who objects to any modifications so made by the Authority may notify the Minister in writing on the prescribed form, and the Minister shall direct the Authority to consider and report on the objection to the Minister in accordance with the procedure set out in paragraphs (f) and (g) of this section.
- (l) The Minister shall then present the Scheme to the Governor who may approve the Scheme with or without such modifications as he deems necessary to make and which he is hereby authorised to make.

32. (1) When the Governor has approved the Scheme whether with or without modifications—

Scheme to be submitted to Parliament.

- (a) the Scheme or the Scheme as so modified but not including any maps, plans or diagrams, shall be published in the *Gazette*, and the maps, plans or diagrams shall be open for public inspection at such times and such places as the Minister determines;
- (b) The Scheme together with the report of the Authority on the objections made to it referred to in paragraphs (g) and (k) of section thirty-one of this Act, shall be laid

before each House of Parliament within six sitting days of the House next following the date of the publication of the Scheme in the *Gazette*.

Scheme has, when not disallowed by Parliament, effect and force of law.

(2) If either House does not pass a resolution disallowing the Scheme, of which resolution notice was given at any time within twenty-one sitting days of that House after the Scheme was laid before it, the Scheme has effect, from and after the last day on which the Scheme might have been disallowed, as though its provisions were enacted by this Act, but if the Scheme is disallowed the disallowance does not affect the validity, or cure the invalidity, of anything done or omitted to be done before the disallowance.

Scheme may be varied, amplified or amended. Amended by No. 44 of 1962, s. 4.

33. (1) The Scheme after it has the force of law as though its provisions were enacted by this Act, may be varied or amplified by an amendment to the Scheme or revoked by a subsequent Scheme made by the Authority and submitted and approved in the manner provided for in this Act in respect to a Scheme which the Authority formulates and promulgates under this Act, but if the Authority sends to the Minister a copy of the proposed amendment together with a written certificate certifying that, in the opinion of the Authority, the proposed amendment does not constitute a substantial alteration to the Scheme, the amendment is not required to be so submitted and approved.

(1a) (a) Where the Authority so certifies in relation to a proposed amendment to the Scheme—

- (i) a notice of the amendment describing the amendment and stating where and when the proposed amendment will be available for inspection shall, as soon as practicable after the receipt by the Minister of the certificate of the Authority, be published by the Authority in the *Gazette* and in a daily newspaper circulating in the Metropolitan Region; and

(ii) the Authority shall within seven days after the date of the last such publication of that notice, notify in writing such owners of land directly affected by the amendment as the Minister directs shall be so notified.

(b) The proposed amendment to the Scheme shall come into operation on the publication of the notice in the *Gazette* and daily newspaper in accordance with paragraph (a) of this subsection.

(c) Any person who feels aggrieved by the proposed amendment may, within the time and in the manner prescribed, appeal to the Minister against the amendment, and the Minister shall hear the appeal in accordance with the regulations.

(d) The Minister may dismiss or uphold the appeal and if the Minister upholds the appeal he shall order that the amendment be cancelled or modified and from the date of the order the amendment has no force or effect or has force and effect as so modified.

(2) The provisions of this Act apply, with all necessary modifications and adaptations, to any Scheme in substitution of an existing Scheme or amendment to any Scheme, and the substituted Scheme or amendment takes effect and has the force of law in accordance with those provisions.

PART IV.—LOCAL AUTHORITY TOWN
PLANNING SCHEMES.

34. If the Scheme is not disallowed by Parliament under the provisions of section thirty-two of this Act,

a town planning scheme made under the provisions of the Town Planning Act by the Council of the Municipality of The City of Perth or by any local authority referred to in the Schedule to this Act shall not be approved by the Minister to whom the administration of

No town
planning
schemes or
by-laws to be
made unless
consistent
with Scheme
amended by
No. 7 of
1965, s. 2.

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that Act is for the time being committed by the Governor; and by-laws which if made would affect or be likely to affect the Scheme shall not be made by the local authority,

unless the provisions of the town planning scheme or by-laws, as the case may be, are in accordance with and consistent with the Scheme.

Local
authorities to
make town
planning
schemes
consistent
with Metro-
politan
Region
Scheme
amended by
No. 7 of
1965, s. 3.

35. (1) Subject to subsections (1a) and (1b) of this section, within a period of three years from the day the Scheme has the force of law as provided in section thirty-two of this Act, the Council of the Municipality of The City of Perth and each local authority referred to in the Schedule to this Act shall—

- (a) where on the day the Scheme has the force of law no town planning scheme made under the provisions of the Town Planning Act is operating in its district, prepare and submit, under the provisions of that Act, to the Minister to whom the administration of that Act is for the time being committed by the Governor for approval, a town planning scheme for its district which is in accordance and consistent with the provisions of the Scheme;
- (b) where on that day a town planning scheme is operating in its district, take such steps to amend the scheme so that it shall conform with the provisions of the Scheme.

(1a) Where the Council or any local authority referred to in subsection (1) of this section makes application in writing to the Minister to have the period of three years, referred to in that subsection, extended, if the application is made at any time being more than one month before the expiration of that period, the Minister may extend the period, in so far as it applies to the applicant, as he thinks fit.

(1b) Where the Minister extends the period pursuant to subsection (1a) of this section, subsection (1) of this section, so far as it applies to the applicant in respect of which the period is so extended, shall be read and applied as though the reference therein to three years, were a reference to the period as so extended.

(2) Where a local authority has not observed the provisions of subsection (1) of this section, the Minister may at any time by notice in writing direct the local authority to so comply within a period specified in the notice and being not less than six months from the giving of the notice.

(3) (a) If the local authority fails to comply with the direction, the Minister on behalf of the local authority may cause a town planning scheme to be prepared and submitted under the Town Planning Act to the Minister to whom the administration of that Act is so committed for approval and may take all or any of the steps necessary to have the scheme adopted by the local authority.

(b) If the local authority fails to adopt the scheme within ninety days of the delivery of the scheme to the local authority by the Minister, the Minister to whom the administration of the lastmentioned Act is so committed may approve of the scheme and cause it to be published in the *Gazette* and thereupon the scheme has effect as if it were made, published and adopted by the local authority and approved by that Minister under the Town Planning Act.

(4) All costs, charges and expenses incurred by the Minister in the exercise of any of the powers conferred on him by subsection (3) of this section may be recovered from the local authority as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local authority.

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PART V.—COMPENSATION, BETTERMENT, ACQUISITION.

Application
of sections
11 and 12
of Town
Planning Act
to Scheme
amended by
No. 44 of
1962, s. 5,
No. 29 of
1963, s. 2.

36. (1) For the purposes of applying the provisions of sections eleven and twelve of the Town Planning Act to the provisions of the Scheme, the former provisions shall be read and construed as if—

- (a) the Authority were the “responsible authority or local authority” wherever referred to in the sections; and
- (b) the passage, “varied, amplified or revoked by the Authority” were substituted for the passage, “altered or revoked by an order of the Minister under this Act” in subsection (3) of section eleven; and
- (c) those provisions included subsections (3), (4), (5) and (6) of this section.

(2) The Scheme may provide that where compensation for injurious affection is claimed as a result of the operation of the provisions of subparagraph (i) or (ii) of paragraph (b) of subsection (2a) of section twelve of the Town Planning Act, the Authority may at its option elect to acquire the land so affected instead of paying compensation.

(3) Subject to subsection (4) of this section, where under the Scheme any land has been reserved for a public purpose, no compensation is payable by the responsible authority for injurious affection to that land alleged to be due to or arising out of such reservation until—

- (a) the land is first sold following the date of the reservation; or
- (b) the responsible authority refuses an application made under the Scheme for permission to carry out development on the land or grants permission to carry out development on the land subject to conditions that are unacceptable to the applicant.

(4) Before compensation is payable under subsection (3) of this section—

(a) where the land is sold, the person lawfully appointed to determine the amount of the compensation shall be satisfied—

(i) that the owner of the land has sold the land at a lesser price than he might reasonably have expected to receive had there been no reservation of the land under the Scheme;

(ii) that the owner before selling the land gave notice in writing to the responsible authority of his intention to sell the land; and

(iii) that the owner sold the land in good faith and took reasonable steps to obtain a fair and reasonable price for the land; or

(b) where the responsible authority refuses an application made under the Scheme for permission to carry out development on the land or grants permission to carry out development on the land subject to conditions that are unacceptable to the applicant, the person lawfully appointed to determine the amount of compensation shall be satisfied that the application was made in good faith.

(5) A claim for compensation under subsection (3) of this section shall be made at any time within six months after the land is sold or the application for permission to carry out development on the land is refused or the permission is granted subject to conditions that are unacceptable to the applicant.

(6) (a) Subject to this section, the compensation payable for injurious affection due to or arising out of the land being reserved under the scheme for a

public purpose, where no part of the land is purchased or acquired by the Authority, shall not exceed the difference between—

- (i) the value of the land as so affected by the existence of such reservation; and
- (ii) the value of the land as not so affected.

(b) The value referred to in subparagraphs (i) and (ii) of paragraph (a) of this subsection shall be assessed as at the date the land is sold as referred to in paragraph (a) of subsection (3) of this section or the date on which the application for permission to carry out development on the land is refused or the permission is granted subject to conditions that are unacceptable to the applicant.

Authority is responsible authority amended by No. 29 of 1963, s. 3, No. 95 of 1965, s. 2.

37. (1) For the purposes of this Act and the Town Planning Act in relation to a Scheme, the Authority shall be deemed to be the responsible authority and has all the powers, rights, duties and authority conferred or imposed on a responsible authority.

(2) Any purchase moneys or rents or profits or other money received by the Authority from land acquired by it or arising out of the use or occupation of the land by the Authority shall be paid into the Fund.

(3) If before the Scheme has the force of law the Authority is satisfied that any land is or is likely to be comprised in the Scheme, it may purchase the land.

(4) After the Authority is appointed to administer and carry out any order as provided in section twenty-five of this Act, it becomes the public authority responsible for the payment of compensation or the cost of purchasing any land under the provisions of paragraph (b) of subsection (12) of section seven A of the Town Planning Act.

(5) Notwithstanding anything contained in the Public Works Act, 1902, the value of any land or improvements thereon which is compulsorily acquired by the Authority under this section or section thirteen of the Town Planning Act shall for the purpose of assessing the amount of compensation to be paid for the land and improvements, be assessed without regard to any increase or decrease in value attributed wholly or in part to any of the provisions contained in, or to the operation or effect of, the Scheme and having regard to values current at the time of acquisition but in assessing the amount of compensation regard shall be had to any amounts of compensation already paid or payable in respect of the land under section thirty-six of this Act.

(6) (a) The Authority shall hold for the purposes of the Scheme, any land acquired by it under this Act or the Town Planning Act whether acquired before or after the Scheme has the force of law, and may dispose of or alienate the land for or in furtherance of the provisions or likely provisions of the Scheme.

(b) The Authority shall not except with the consent of the Governor dispose of or alienate any land compulsorily acquired by it other than for or in furtherance of the provisions or likely provisions of the Scheme.

(7) (a) Where any land held, taken, resumed or otherwise acquired under the Public Works Act, 1902 or any other Act, for any public work, is in the opinion of the Governor not required for that work and is required for the purposes or likely purposes of the Scheme, the Governor notwithstanding the provisions of section twenty-nine of the firstmentioned Act, may declare by notice published in the *Gazette*, that the land shall be held and may be used for the purposes of the Scheme. ^{s. 69.}

(b) From the date of the publication of the notice the land described therein, by force of this subsection, vests in the Authority for the purposes of the Scheme.

Power of
Authority
to acquire
certain land
added by No.
95 of 1965,
s. 3.

37A. (1) Where the Authority certifies in writing to the Minister that for the purpose of advancing the planning, development and use of any land within the metropolitan region in accordance with the zoning classifications in the Scheme that relate thereto—

- (a) the land should be dealt with in all or any of the following ways, namely—planned, replanned, designed, redesigned, consolidated, resubdivided, 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 therefor, as may be appropriate or necessary and as are in accordance with those zoning classifications,

and the Authority so certifies and so recommends to the Minister that in order that the land shall be so dealt with or used for the purpose, it should be acquired by the Authority, if the Minister accepts the recommendation of the Authority, which shall be accompanied by an Improvement Plan, including such supporting maps and texts as the Minister may require, he shall forward the recommendation as soon as practicable thereafter to the Governor.

(2) If the Governor accepts the recommendation of the Authority, the Authority may while the Scheme has the force of law as provided in this Act, purchase or otherwise acquire the land the subject of the recommendation by agreement with the owner thereof or in default of such agreement, the Authority may acquire the land compulsorily under and subject to the Public Works Act, 1902, as modified by this section.

(3) Subject to this section, the provisions of the Public Works Act, 1902, apply to the taking of any land compulsorily under this section, with such

modifications as circumstances require and in so applying those provisions any reference to the Minister for Works shall be read as a reference to the Minister for Town Planning.

(4) For the purpose of advancing the development of land in the metropolitan region in accordance with the Improvement Plan referred to in subsection (1) of this section and with the zoning classifications in the Scheme that relate to the land, the Authority, with the approval of the Governor, may—

- (a) construct, repair, rehabilitate or improve buildings, works, improvements or facilities on land acquired or held by it under this Act;
- (b) return, sell, lease, exchange or otherwise dispose of any buildings, works, improvements or facilities and the land appurtenant thereto and any land howsoever acquired by the Authority under this Act, to any person, or public authority upon such terms and conditions as the Authority with the approval of the Governor thinks fit; and particulars of any return, sale, lease, exchange or disposal to any person shall within one month of the Governor's approval be notified by the Authority in the *Government Gazette*.

"Person"
includes
body
corporate.
See s. 4, No.
30 of 1918.

(5) Nothing in this section shall be construed as taking away or in any way derogating from or diminishing any power otherwise conferred by this or any other Act upon the Authority.

PART VI.—FINANCE.

38. (1) (a) For the purpose of making, carrying out and giving effect to the Scheme, a fund called The Metropolitan Region Improvement Fund is established at the Treasury.

The Metro-
politan
Region
Improve-
ment Fund
amended by
No. 95 of
1965, s. 4.

*Metropolitan Region Town
Planning Scheme.*

(b) The Authority shall control the Fund and the Fund may be operated upon for the purpose in such manner as from time to time the Treasurer approves and is hereby authorised to approve.

(c) The Authority shall keep such records relating to operations on the Fund, in such manner as the Treasurer approves and is hereby authorised to approve.

(2) The Authority shall pay or cause to be paid to the Fund—

- (a) the proceeds of the Metropolitan Region Improvement Tax referred to in section forty-one of this Act;
- (b) money borrowed by the Authority from time to time under authority conferred by this Act; and
- (c) any other payments made to the Authority.

(3) Subject to the provisions of subsection (4) of this section, the Authority is authorised to apply money represented in the Fund to payment of all expenditure incurred by it for the purpose of formulating, promulgating, carrying out and giving effect to the Scheme, including without limiting the generality of that authorisation—

- (a) payment of capital expenditure, costs and other expenses incurred by the Authority in and in connection with, the acquisition, whether by agreement or compulsorily, of any property under any provisions of this Act;
- (b) all expenses incurred by the Authority in or in connection with the Scheme or an order or the establishment and maintenance of any works in connection with the Scheme or order; and
- (c) payment of the remuneration and expenses of the members.

(4) (a) Where the Authority agrees to co-opt the services of any person employed in any department of the Public Service of the State as provided for in section twenty-seven of this Act, the cost of the services shall not be paid out of the Fund but shall be paid from the funds appropriated by Parliament for the purpose of the department in which the person is employed.

(b) Subject to any agreement made under the provisions of section twenty-seven of this Act, the department of the Public Service known as the Town Planning Department shall provide at no cost to the Authority, whenever required by the Authority so to do, the services whether administrative, technical or otherwise of any person employed in that department.

39. (1) If the money represented in the Fund is insufficient at any time to meet expenditure incurred or proposed to be incurred by the Authority in carrying out its functions, the Treasurer with the approval of the Governor, who is hereby authorised to grant the approval, may make, and the Authority may borrow, from the Public Account advances of such amounts as the Governor approves, on such conditions as to repayment and payment of interest as the Governor imposes and is hereby authorised to approve and impose.

Power for
authority to
borrow from
Treasury.

(2) Where an advance is made under this section—

(a) the Authority shall repay the amount of the advance; and

(b) shall pay interest,

in accordance with the conditions imposed under subsection (1) of this section and shall comply with any other conditions so imposed.

(3) By virtue of this subsection the Fund and the assets of the Authority are charged with the performance by the Authority of conditions imposed under this section in respect of an advance so made.

Power to
borrow
generally.

40. (1) The provisions of this section are in addition to, and do not derogate from those of section thirty-nine of this Act.

(2) For the purpose of carrying out its functions under this Act and for any of the purposes and provisions of this Act, the Scheme or an order, the Authority has power to borrow money.

(3) Where the Authority proposes to raise a loan for any of those purposes and desires the Treasurer of the State to guarantee repayment of the amount of the proposed loan and payment of interest thereon, the Authority shall cause particulars of the proposed loan to be submitted to the Treasurer for presentation to the Governor.

(4) If the Governor approves the particulars of the proposed loan and the guarantee by the Treasurer and advises the Authority accordingly, the Authority may proceed to negotiate the proposed loan, but shall not finalise the negotiations for, or execute any form of instrument of security required in respect of, the proposed loan, until the form has been submitted to and approved by the Treasurer.

(5) If the Governor approves the particulars of the proposed loan and the Treasurer approves the form of instrument, or if more than one, instruments of security, the Treasurer on behalf of the State shall guarantee repayment of the amount of the loan and payment of interest thereon in accordance with the provisions of that instrument or those instruments of security, which the Treasurer is hereby authorised to execute on behalf of the State.

(6) The due payment of money payable by the Treasurer under a guarantee given by him under the authority of this section—

(a) is hereby guaranteed by the State; and

(b) shall be paid out of the money referred to in section four of the Audit Act as "Public Moneys".

(7) By virtue of this subsection any sum paid by the Treasurer under any guarantee given under this section is a charge on the Fund and assets of the Authority, and the Fund and the assets are charged with the performance and observance by the Authority of any covenants and conditions which the Governor requests, and is hereby authorised to request, the Authority to agree with the Treasurer to perform and observe as a condition of approval of the guarantee.

PART VII.—ADMINISTRATION, PENALTIES.

41. (1) Subject to the provisions of subsections (2) and (3) of this section, every person who, at midnight on the thirtieth day of June, one thousand nine hundred and fifty-nine, and at that time in each year thereafter, is the owner of land situate within the metropolitan region shall in accordance with the provisions of this Act pay Metropolitan Region Improvement Tax on the land which is hereby chargeable with the tax imposed by and at the rate imposed by section two of the Metropolitan Region Improvement Tax Act, 1959, for the then current financial year.

Owners'
liability to
pay Metro-
politan
Region
Improvement
Tax.

(2) For the purposes of this Act the provisions of the Land Tax Assessment Act, 1907, relating to land tax and land so far as they can be made applicable with all necessary modifications or adaptations apply to the Metropolitan Region Improvement Tax and land situate within the metropolitan region.

(3) The following lands are also exempted from the provisions of this section—

improved land within the meaning of subsection (2) of section nine of the Land Tax Assessment Act, 1907, used solely or principally for the purpose of agricultural, pastoral, horticultural, apicultural, victicultural, grazing, pig-raising or poultry-farming business.

(4) Notwithstanding anything contained in any other law, the amount of the tax which the Commissioner of Taxation shall treat as having come into his possession under this Act in each financial year commencing with the financial year that commenced on the first day of July, one thousand nine hundred and fifty-nine, shall be the amount of the tax which becomes payable in that financial year.

Offences and penalties amended by No. 113 of 1963, s. 8.¹

42. A person who—

- (a) after the Scheme has the force of law commences or continues to carry out any development in any part of the metropolitan region the subject of the Scheme otherwise than in accordance with the provisions of the Scheme; or
- (b) at any time contravenes the provisions of this Act,

commits an offence.

Penalty: Two hundred dollars and in the case of a continuing offence, a further fine of twenty dollars for each day during which the offence continues.

Power to Authority to direct removal, etc. of development contrary to Scheme.

43. (1) The Authority or a local authority exercising the powers of the Authority, may by notice in writing served on the owner of any land situate in the metropolitan region direct him within such period, being not less than forty days after the service of the notice, as is specified in the notice, to remove, pull down, take up, or alter any building or work or cease any development commenced, continued or carried out on the land in contravention of the Scheme.

(2) Subject to the provisions of subsection (3) of this section, if the owner fails or refuses to comply with the direction within the time specified in the notice, the Authority or the local authority, as the

¹ Decimal Currency Act, 1965.

case may be, may itself remove, pull down, take up or alter the building, work, or development accordingly.

(3) The owner on whom a notice is so served may, within the period specified in the notice, appeal in manner prescribed to the Minister against any direction contained therein, and the Minister after considering the appeal may confirm, vary or cancel the direction.

(4) Where the direction appealed against is confirmed or varied, the owner to whom the direction was given shall comply with it to the extent to which it is so confirmed or varied.

44. The Governor may make regulations prescribing forms, fees and matters which by this Act are contemplated, required or permitted to be prescribed or which appear to him necessary, convenient or desirable to be prescribed for the purpose of effectually carrying out the provisions of this Act and the regulations may impose a penalty not exceeding one hundred dollars for a breach of any of the regulations.

Power to
Governor
to make
regulations
amended by
No. 113 of
1965, s. 8.¹

45. A Scheme, whether original or substituted, which has the force of law or when duly varied or amplified as provided in section thirty-three of this Act, binds the Crown.

Scheme
binds the
Crown.

46. [Repealed by No. 39 of 1960, s. 2.]

SCHEDULE.²

S. 7.

Group A.—Council of the City of Fremantle, Councils of the Towns of East Fremantle and Melville and of the Shires of Cockburn, Kwinana and Rockingham.

¹ Decimal Currency Act, 1965.

² The names of the bodies originally contained in this Schedule have been varied to the names set out in the Schedule as printed above by Orders in Council made under the Local Government Act, 1960, as amended. See *Government Gazettes* 1961, pp. 1995 and 3086; and 1962, pp. 221 and 2680.

*Metropolitan Region Town
Planning Scheme.*

Group B.—Councils of the Cities of Nedlands and Subiaco, of the Towns of Claremont, Cottesloe and Mosman Park and of the Shires of Perth, Peppermint Grove and Wanneroo.

Group C.—Council of the City of South Perth and Councils of the Shires of Armadale-Kelmscott, Belmont, Canning, Gosnells and Serpentine-Jarrahdale.

Group D.—Council of the Town of Midland and Councils of the Shires of Bassendean, Bayswater, Kalamunda, Mundaring and Swan-Guildford.