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WESTERN AUSTRALIA

**TOWN PLANNING AND
DEVELOPMENT ACT 1928**

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WESTERN AUSTRALIA

**TOWN PLANNING AND
DEVELOPMENT ACT 1928**

**AN ACT relating to the Planning and Development of
Land for Urban, Suburban, and Rural Purposes.**

Short title and commencement

1. This Act may be cited as the *Town Planning and Development Act 1928*, and shall come into operation on a date to be fixed by proclamation¹.

Interpretation

2. (1) In this Act, unless the context otherwise requires —

“building line” means the line between which and any public place or public reserve a building may not be erected, fixed by a local authority or the Commission, as the case may be, and shown on or described in a plan for a town planning scheme approved by the Minister or the Metropolitan Region Scheme made by the Commission and includes a building line or a new building line prescribed by a by-law of any local authority;

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“Commission” means the Western Australian Planning Commission established by section 4 of the *Western Australian Planning Commission Act 1985*;

“development” means the development or use of any land, including any demolition, erection, construction, alteration of or addition to any building or structure on the land and the carrying out on the land of any excavation or other works and, in the case of a place to which a Conservation Order made under section 59 of the *Heritage of Western Australia Act 1990* applies, also includes any act or thing that —

- (a) is likely to change the character of that place or the external appearance of any building; or
- (b) would constitute an irreversible alteration of the fabric of any building;

“district” means a municipal district;

“Heritage Council” means the Heritage Council of Western Australia established pursuant to the *Heritage of Western Australia Act 1990*;

“land” includes land, tenements and hereditaments and any interest therein, and also houses, buildings, and other works and structures;

“local authority” means the council of a municipality;

“lot” means a defined portion of land —

depicted on a plan or diagram publicly exhibited in the public office of the Department of Land Administration², or deposited in the Office of Titles or Registry of Deeds and for which a separate Crown Grant or Certificate of Title has been or can be issued;
or

depicted on a subdivisional plan or diagram, whether so exhibited or deposited or not, but which is, whether before or after the coming into operation of the *Town Planning and Development Act Amendment Act 1956*¹, approved by the Commission

and includes the whole of the land the subject —

- (a) of a Crown Grant issued under the *Land Act 1933*; or
- (b) of a certificate of title issued under the *Transfer of Land Act 1893*; or
- (c) of a survey into a lot pursuant to a direction given under section 17 of the *Land Act 1933*; or
- (d) of a part-lot shown on a plan of subdivision or diagram deposited in the Department of Land Administration², Office of Titles, or Registry of Deeds; or
- (e) of a conveyance registered under the *Registration of Deeds Act 1856*;

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

“responsible authority” means the local authority responsible for the enforcement of the observance of a scheme, or for the execution of any works which under a scheme, or this Act, are to be executed by a local authority;

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“**subdivision**” means —

- (a) activity requiring the approval of the Commission under Part III; or
- (b) strata plan, strata plan of subdivision and strata plan of consolidation required to be accompanied by a certificate of approval given under section 25 of the *Strata Titles Act 1985*;

“**town planning**” means either city, town, suburban, or rural planning and development, or all four;

“**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.

(2) After the coming into operation of Part III of the *Acts Amendment (Metropolitan Region Town Planning Scheme) Act 1982*¹, the meaning to be given to a reference, however expressed, in any written law, or other instrument, or document to the metropolitan region as defined in or for the purposes of this Act or to the districts of the municipalities specified in the Third Schedule shall, unless otherwise provided in that written law, instrument, or document, be the meaning that that reference had immediately before the coming into operation of that Part.

[Section 2 amended by No. 79 of 1953 s.2; No. 63 of 1955 s.2; No. 79 of 1956 s.2; No. 61 of 1958 s.2; No. 49 of 1959 s.2; No. 64 of 1961 s.3; No. 30 of 1973 s.2; No. 73 of 1982 s.15; No. 120 of 1982 s.3; No. 92 of 1985 s.4; No. 97 of 1990 s.10; No. 84 of 1994 ss.46 and 52.]

PART I — TOWN PLANNING

[3, 4, 5, 5A. Repealed by No. 92 of 1985 s.5.]

Statements of planning policy

5AA. (1) Without limiting the generality of section 18 of the *Western Australian Planning Commission Act 1985*, the Commission may, with the approval of the Minister, prepare statements of planning policy.

(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 and may be prepared so as to apply —

- (a) generally or in a particular class of matter or in particular classes of matters; and
- (b) throughout the State or in a specified portion or specified portions of the State, whether or not a town planning scheme has been prepared or is being prepared in that portion or those portions of the State.

(3) In the preparation of a statement of planning policy the Commission shall have regard to —

- (a) demographic, social and economic factors and influences;
- (b) conservation of natural or cultural resources for social, economic, environmental, ecological and scientific purposes;
- (c) characteristics of land;

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- (d) characteristics and disposition of land use;
- (e) amenity and environment;
- (f) communications; and
- (g) developmental requirements of public authorities,

in respect of the State, portion of the State, or portions of the State, as the case may be, 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 Western Australia (Inc.), the Country Shire Councils' Association of W.A. and the Country Town Councils' Association with respect thereto.

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

(5) The Commission 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.

(6) A statement of planning policy may be varied or amplified by amendments prepared by the Commission and approved by the Minister, or may be revoked by a subsequent statement of policy prepared by the Commission and approved by the Minister.

(7) Subsections (3), (4), and (5) apply, with such modifications as are necessary, to and in relation to amendments and subsequent statements referred to in subsection (6).

[Section 5AA inserted by No. 32 of 1978 s.3; amended by No. 92 of 1985 s.6; No. 97 of 1990 s.11; No. 84 of 1994 s.46.]

Town planning schemes

6. (1) A town planning scheme may be made, in accordance with the provisions of this Act, with respect to any land with the general object of improving and developing such land to the best possible advantage, and of securing suitable provision for traffic, transportation, disposition of shops, residence, factory and other areas, proper sanitary conditions and conveniences, parks, gardens and reserves, and of making suitable provision for the use of land for building or other purposes and for all or any of the purposes provisions, powers or works contained in the First Schedule.

(2) With those objects the scheme may provide for planning, replanning, or reconstructing the whole or any part of the area comprised in the scheme.

(3) Nothing in this Act prevents, or has ever prevented, —

- (a) a town planning scheme from being made with respect to land comprised in another town planning scheme; or
- (b) 2 or more town planning schemes from having force and effect concurrently with respect to any land.

(4) A town planning scheme shall not be made under this Act for any land that is in the redevelopment area within the meaning in the *East Perth Redevelopment Act 1991*¹ or in the *Subiaco Redevelopment Act 1994*¹, so long as there is in operation in respect of that land a redevelopment scheme under Part 4 of either of those Acts.

[Section 6 amended by No. 29 of 1947 s.3; No. 79 of 1953 s.5; No. 72 of 1980 s.5; No. 62 of 1991 s.59; No. 35 of 1994 s.67.]

Preparation of schemes

7. (1) A local authority may, subject to section 7A, prepare a town planning scheme with reference to any land within its district, or with reference to land within its district and other land within any adjacent district, or may adopt, with or without modifications, any such scheme proposed by all or any of the owners of any land with respect to which the local authority might itself have prepared a scheme.

(2) A town planning scheme prepared or adopted, or an amendment to a town planning scheme prepared, by a local authority shall —

- (a) be advertised for public inspection in accordance with the regulations; and
- (b) after advertisement under this subsection, be submitted to the Minister for his approval.

(2a) The Minister may, in relation to a town planning scheme or amendment submitted to him under subsection (2) (b) —

- (a) approve of that town planning scheme or amendment;
- (b) require the local authority concerned to modify that town planning scheme or amendment in such manner as he specifies before that town planning scheme or amendment is resubmitted for his approval under this subsection; or
- (c) refuse to approve of that town planning scheme or amendment.

(3) A town planning scheme or amendment to a town planning scheme, when approved of by the Minister and published in the *Gazette*, shall have full force and effect as if it were enacted by this Act.

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

(4) A town planning scheme may, subject to section 7A, be —

- (a) revoked by a subsequent town planning scheme;
- (b) varied or amplified by an amendment to the scheme prepared by the local authority, approved by the Minister and published in the *Gazette*;
- (c) revoked by an instrument of revocation made by the local authority, approved by the Minister and published in the *Gazette*.

(5) Every local authority in preparing or amending a town planning scheme —

- (a) shall have due regard to any approved statement of planning policy prepared under section 5AA which affects its district; and
- (b) may include in the scheme a provision that a specified statement of planning policy, which such modifications as may be set out in the scheme, shall be read as part of the scheme, or a provision however expressed to the same effect,

and where a scheme includes such a provision —

- (c) the scheme shall have effect as if the statement of planning policy, as from time to time duly amended, or any subsequent statement by which it is revoked as mentioned in section 5AA (6) were set out in full in the scheme; and

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- (d) the statement of planning policy shall have effect as part of the scheme subject to any modifications set out therein, which modifications shall prevail over any later amendment of the statement, or subsequent statement, referred to in paragraph (c) which is inconsistent therewith.

(6) Where any entry in the Register or on any list maintained under section 46 or section 45 of the *Heritage of Western Australia Act 1990* relates to land or waters that are within or abut the district of any municipality, the local authority in preparing or amending a town planning scheme shall refer the proposed scheme to the Heritage Council for advice in so far as any proposal under that scheme affects or may affect any such land or waters, shall have regard to any advice furnished, and shall not, without the consent of the Minister, proceed with the proposal unless or until that advice has been received.

(7) If a management programme in force under Part 3 of the *Swan River Trust Act 1988* relates to land or waters that are within or abut the district of a municipality referred to in Schedule 2 of that Act, the local authority of that municipality in preparing or amending a town planning scheme shall have due regard to that management programme.

[Section 7 amended by No. 61 of 1958 s.3; No. 103 of 1976 s.4; No. 72 of 1980 s.6; No. 120 of 1982 s.4 (1)³; No. 32 of 1983 s.2; No. 21 of 1988 s.20; No. 97 of 1990 s.12; No. 84 of 1994 s.53; No. 31 of 1995 s.27.]

Schemes, and amendments, applicable to the Swan Valley

7A. (1) Where the Council of the Shire of Swan has prepared a town planning scheme, or an amendment to a town planning scheme, that would apply to land in the Swan Valley, that Council shall before the scheme or the amendment is advertised for public inspection in accordance with the regulations, refer the scheme or the amendment to the Swan Valley Planning Committee.

(2) The Committee shall, within 42 days after the day on which it receives the referral, or within such longer period as the Council allows, give to the Council its advice in writing on the scheme or the amendment, including any modifications it thinks should be made to it.

(3) If the Committee fails to give its advice within the time allowed under subsection (2), it shall be taken to have no advice to give on the scheme or the amendment.

(4) The Commission may, at the request of the Council of the Shire of Swan, approve of the Shire disregarding the Committee's advice in whole or in part in preparing the scheme or the amendment.

(5) Subject to any approval under subsection (4), the Council shall prepare the town planning scheme or the amendment in accordance with any advice given by the Committee under this section.

(6) In this section "**Swan Valley**", "**Swan Valley Planning Committee**" and "**Committee**" have the same meanings as they have in the *Swan Valley Planning Act 1995*¹.

[Section 7A inserted by No. 31 of 1995 s.27.]

Review of schemes

7AA. (1) A town planning scheme that has been approved by the Minister and published in the *Gazette* shall be examined —

- (a) if the Minister after consulting the local authority affected by notice in the *Gazette* so directs, in accordance with that direction; or
- (b) in each fifth year following the date on which it was last published in the *Gazette* with the approval of the Minister.

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(2) (a) The examination required by subsection (1) shall be effected by way of a report to the Minister by the local authority on the operation of the scheme.

(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.

(b) Where a report of the local authority recommends a review of the scheme, or the Minister after considering a report advises the local authority that a review is desirable, the scheme shall be reviewed within the period of 6 months or such longer period as the Minister may in writing agree from the date of the report or the date of the Minister's advice as the case may be.

(c) Where a report of the local authority recommends the revocation of the scheme without a review thereof, or the Minister after considering a report advises the local authority that it is desirable that the scheme be revoked without a review thereof, the scheme shall be revoked pursuant to section 7 (4) (c) as soon as practicable after the date of the report or the date of the Minister's advice as the case may be.

(3) Except where subsection (3a) applies, the review of a town planning scheme in accordance with subsection (2) 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) (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 in respect of which the Minister had given consent to public submissions being sought as provided in such regulations.

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

(4) Where 2 or more town planning schemes are consolidated the provisions of this section apply to those schemes as so consolidated with effect from the date on which they were last published in the *Gazette* as a consolidated scheme with the approval of the Minister.

[Section 7AA inserted by No. 34 of 1972 s.2; amended by No. 72 of 1980 s.7; No. 120 of 1982 s.6 (as amended by No. 32 of 1983 s.8).]

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Interim development

7B. (1) (a) Pending the consideration by the Minister of a proposed town planning scheme for a district or part of a district which district or which part is situated outside the region described in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959* as the metropolitan region, the Minister may in accordance with this section, make such interim development order or orders as are necessary for regulating, restricting or prohibiting the development of any land within the district or such part or parts thereof as are affected by, and specified in, the order.

(b) Nothing in an interim development order prevents the continuance of the use of any land or building for the purposes for which the land or building was being lawfully used, or the carrying out of any development for which, immediately prior to the coming into operation of the order, a permit or permits, if any required by or under this or any other Act authorizing the development to be carried out had been obtained and were current.

(2) (a) Upon the making of an interim development order, the local authority in whose district the order applies shall cause to be published in the *Gazette* and 3 times in a daily newspaper circulating in that district, a notice containing a summary of the order and stating that copies of the order will be made available by the Minister for inspection by any person free of charge at the offices of the Commission and of the local authority or local authorities within the area or areas affected by the order.

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

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

- (a) when a town planning scheme made in accordance with this Act comes into force with respect to that district or that part;
- (b) when the order is revoked by the Minister, by notice of revocation published in the *Gazette* under subsection (10); or
- (c) at the expiration of 3 years from the day on which the order first applies to the district or the part,

but the Minister may, by notice published in the *Gazette* before the order ceases to have effect under paragraph (c), extend its operation for a further period, not exceeding 12 months, and may if he thinks fit exercise such power of extension more than once.

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

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

- (a) (i) require a person, before commencing to carry out any specified development within the district or part of a district to which the order applies, to obtain the permission of the council administering the order in writing in accordance with the provisions of paragraph (b);
- (ii) regulate, restrict or prohibit any specified class of development within the district or such part of parts thereof as are specified in the order;
- (iii) exempt from the operation of the order any specified class of development within the district

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or the part or parts thereof as are specified in the order; or

- (iv) in the case of land to which the *Heritage of Western Australia Act 1990* applies, require the council administering the order before granting an application for permission to carry out any development to refer the application in question to the Heritage Council, not to proceed with the application unless or until the advice of the Heritage Council has been received, and to have regard to that advice;
- (b) provide that the permission of the council in writing for the carrying out of any development referred to in the order, if granted, may be granted subject to such conditions as the council deems necessary to impose, including, without limiting the generality of the conditions, —
 - (i) a condition limiting the period during which the development may be carried out; and
 - (ii) a condition requiring the cessation of the development and the removal of any structure or building erected, pursuant to that permission, at the expiry of the period so limited;
- (c) provide that the council administering the order may refuse to grant to an applicant its permission for the carrying out of any specified class of development within the district or such part or parts thereof as are specified in the order;
- (d) subject to the provisions of subsection (1) (b), suspend, vary, supplement or supersede any of the provisions of any of the by-laws in force under the *Local Government Act 1960*, in the district or part of the district to which the interim development order applies.

(6) (a) Subject to paragraph (c), when a person is aggrieved by the refusal of any such permit or by the conditions subject to which a permit or by the conditions subject to which a permit is granted, he may within 60 days after the refusal is communicated to him, or the permit is granted to him, appeal to the Minister who may —

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

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

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

(c) No appeal shall be made or heard in respect of any development that contravenes any provision of a town planning scheme or of any by-laws of a local authority that are not superseded by the interim development order or of any Order made under Part 6, or Order in Council made under section 80, of the *Heritage of Western Australia Act 1990*.

(d) Where a council administering an interim development order fails to grant its permission within a period of 60 days after the receipt by it of an application for permission to carry out any development referred to in this section, or, in the case of land in relation to which the council has referred the application to the Heritage Council and has so notified the applicant, where a period of 60 days has elapsed since that notification and the council has failed to make its decision known, the applicant may regard the failure as a refusal of permission and may appeal to the Minister as provided in paragraph (a).

(7) (a) Subject to subsection (1) (b), a person who —

- (i) contravenes or fails to comply with an interim development order; or

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- (ii) commences or continues to carry out any development which is required to comply with an interim development order otherwise than in accordance with that order or otherwise than in accordance with any condition imposed with respect to the development by a council administering that order pursuant to its powers under the order,

is guilty of an offence.

Penalty: \$50 000, and a daily penalty of \$5 000.

[(b) *deleted*]

- (c) This subsection does not prejudice or affect subsection (8).

(8) (a) The council administering an interim development order may by notice in writing served on the owner or owners of any land to which the interim development order refers, or such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last known place of residence, direct him or them —

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

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

(b) The owner or owners on whom a notice is served in accordance with the provisions of paragraph (a) may within the period specified in the notice, such period being not less than 30 days, appeal to the Minister against any direction contained

in the notice and the Minister shall after considering the appeal, confirm or vary the direction and the owner or owners shall comply with the direction as so confirmed or varied.

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

(9) Where a public authority or local authority desires to carry out, within an area to which a current interim development order relates, any work or undertaking that is not exempted by the provisions of the order but which, in the opinion of the council administering that order, would not be in conformity with the proposed town planning scheme for the district in which the area is situated, if, after consultation between that authority and the council, agreement is not reached with respect to the coordination of the work or undertaking with the proposals to be included in the scheme the council may submit the matter to the Minister for determination by the Governor and the Governor may by Order in Council —

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

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

(10) (a) The Minister may at any time revoke an interim development order made under this section by notice published in the *Gazette* and that notice shall also be published 3 times in a daily newspaper circulating in the district to which the order applies.

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

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

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

(i) the council administering the interim development order —

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

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

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

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

(b) Where compensation is claimed under paragraph (a), the compensation shall be determined by arbitration in accordance with the *Commercial Arbitration Act 1985*¹ or by some other method agreed upon by the parties, but instead of the payment of compensation determined under this subsection, the council may, and shall at the request of the claimant, purchase the land injuriously affected at a price not exceeding the value of the land at the time of the refusal of permission or of the grant of permission subject to conditions, without regard to any increase in value attributable wholly or in part to the proposed town planning scheme for the district in which the land is situated.

[Section 7B inserted by No. 45 of 1962 s.3; amended by No. 113 of 1965 s.8 (1); No. 73 of 1982 s.16; No. 32 of 1983 s.3; No. 92 of 1985 s.10; No. 109 of 1985 s.3 (1); No. 97 of 1990 s.13; No. 84 of 1994 s.54.]

General provisions of schemes

8. (1) The Minister may, by regulation, prescribe a set of general provisions (or separate sets of general provisions adapted for areas of any special character) for carrying out the general objects of town planning schemes, and in particular for dealing with the matters set out in the First Schedule.

(1a) Where a town planning scheme is made in respect of an area, any general provision, appropriate to the area, that is in force under subsection (1) when the scheme is approved by the Minister, shall have effect as part of the scheme, except so far as the scheme, as approved by the Minister, provides for the variation or exclusion of that provision.

(2) Special provisions shall, in addition, be inserted in every town planning scheme —

- (a) defining in such manner as may be prescribed by regulations under this Act the area to which the scheme is to apply; and

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- (b) defining the local authority to be responsible for enforcing the observance of the scheme, and for the execution of any works which, under the scheme or this Act, are to be executed by a local authority (in this Act referred to as the responsible authority); and
- (c) providing for any matters which may be dealt with by general provisions, and otherwise supplementing, excluding, or varying the general provisions; and also dealing with any special circumstances or contingencies for which adequate provision is not made by the general provisions.

(3) Where land included in a town planning scheme is in the districts of more than one local authority, or is in the district of a local authority by which the scheme was not prepared, the responsible authority may be one of those local authorities, or for certain purposes of the scheme one local authority, and for other purposes of the scheme another local authority.

[Section 8 amended by No. 72 of 1985 s.8.]

Appeal against exercise of discretionary power under a scheme

- 8A.** (1) Subject to this section, if —
- (a) under a town planning scheme, the grant of any consent, permission, approval or other authorization is in the discretion of the responsible authority;
 - (b) a person has applied to the authority for such a grant; and
 - (c) the authority has refused the application or has granted it subject to any condition,

the applicant may appeal to the Minister against the authority's decision in accordance with Part V.

(2) Subsection (1) does not affect the operation of a right of appeal contained in a town planning scheme; but, where rights of appeal are available under a scheme and under subsection (1), the commencement of an appeal under one extinguishes the right to appeal under the other.

(3) The Minister may allow the appeal with or without conditions, affix further conditions, or reject the appeal either in whole or in part.

(4) The decision of the Minister is final.

*[Section 8A inserted by No. 32 of 1983 s.4 (1)⁴;
amended by No. 26 of 1986 s.4.]*

Regulations as to procedure

9. (1) The Minister may make regulations for regulating the procedure to be observed —

- (a) with respect to the preparation or adoption of a town planning scheme; and
- (b) with respect to obtaining the approval of the Minister to a scheme so prepared or adopted; and
- (c) with respect to the review, variation or revocation of a scheme; and
- (d) with respect to any inquiries, reports, notices, or other matters required in connection with the preparation or adoption or the approval of the scheme, or preliminary thereto, or in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof, or the review, variation or revocation of the scheme.

(2) Provision shall be made by such regulations —

- (a) for securing that notice of the proposal to prepare or adopt a scheme shall be given, at the earliest stage

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possible, to any local authority interested in the land;
and

- (b) for securing that the local authority of the district in which any land proposed to be included in a scheme is situated, shall be furnished with a notice of any proposal to prepare or adopt such a scheme, and with a copy of the draft scheme before the scheme is made, and that such local authority shall be entitled to be heard at any inquiry held by the Minister in regard to the scheme.

(2a) Without limiting the generality of subsection (1) regulations made under that subsection with regard to the variation of a scheme may require the payment by the owner of land of the costs incurred in the publication pursuant to the regulations of any notice prescribed therein relating to an amendment to a town planning scheme where the amendment is made at the request of that owner and is in respect of land owned by him.

(3) Regulations made under this section may prescribe penalties not exceeding \$5 000 for offences against the regulations.

(4) A town planning scheme, or an amendment to a town planning scheme, made or adopted before the coming into operation of the *Town Planning and Development Act Amendment Act 1975*¹ or any act or thing done pursuant to such a town planning scheme or amendment to a town planning scheme shall not be regarded as invalid by reason only of one or more of the following reasons, namely —

- (a) that, in the notice of that town planning scheme or amendment to a town planning scheme, as the case may be, the date specified by the Town Planning Board as the date on or before which objections to the scheme or amendment could be made was a date earlier, but not more than 7 days earlier, than the proper date;

- (b) that the responsible authority did not accept for consideration an objection to that town planning scheme or amendment to a town planning scheme, as the case may be, being an objection that was made on or before the proper date but was not made —
 - (i) on or before the date specified in the notice of the scheme or amendment; or
 - (ii) more than 7 days before the proper date;
 - (c) that a copy of the notice of that town planning scheme or amendment to a town planning scheme, as the case may be, was displayed in the offices of the responsible authority for a period, shorter, but not more than 7 days shorter, than the prescribed period.
- (5) In subsection (4) —

“notice”, in relation to a town planning scheme or an amendment to a town planning scheme, means the notice notifying persons of their entitlement to make objections to that scheme or amendment;

“prescribed period”, in relation to a notice notifying persons of their entitlement to make objections to a town planning scheme or amendment to a town planning scheme, means the period prescribed by the regulations as in force at the time that notice was displayed;

“proper date”, in relation to a town planning scheme or an amendment to a town planning scheme, means the earliest date that the Town Planning Board could lawfully have specified as the date on or before which objections to that town planning scheme or amendment to a town planning scheme could be made.

[Section 9 amended by No. 98 of 1965 s.2; No. 113 of 1965 s.8 (1); No. 69 of 1975 s.2; No. 120 of 1982 s.7; No. 92 of 1985 s.7; No. 84 of 1994 s.55.]

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Responsible authority may remove certain buildings, etc.

10. (1) The responsible authority may, at any time after giving such notice as may be prescribed by a town planning scheme, and in accordance with the provisions of this Act —

- (a) remove, pull down, or alter any building or other work in the area included in the scheme, which has been commenced or continued after the approval of the scheme, and which is such as to contravene the scheme, or in the erection or carrying out of which any provision of the scheme has not been complied with; and
- (b) execute any work which it is the duty of any person to execute under the scheme, in any case where it appears to the responsible authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by the responsible authority under this section may be recovered from the person in default in such manner and subject to such conditions as may be provided by the scheme.

(3) If any question arises whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, such question shall be referred to the Minister as arbitrator, and the decision of the Minister shall be final and conclusive.

(4) (a) A person who —

- (i) contravenes or fails to comply with the provisions of a town planning scheme; or
- (ii) commences or continues to carry out any development which is required to comply with a town planning scheme otherwise than in

accordance with that scheme or otherwise than in accordance with any condition imposed with respect to the development by the responsible authority pursuant to its powers under that scheme,

is guilty of an offence.

Penalty: \$50 000, and a daily penalty of \$5 000.

[(b) deleted]

(5) The provisions of the last preceding subsection do not prejudice or affect the other provisions of this section.

[Section 10 amended by No. 79 of 1953 s.6; No. 98 of 1965 s.3; No. 113 of 1965 s.8 (1); No. 89 of 1979 s.3; No. 84 of 1994 s.56.]

Compensation

11. (1) Any person whose land or property is injuriously affected by the making of a town planning scheme shall, if such person makes a claim within the time, if any, limited by the scheme (such time not being less than 6 months after the date when notice of the approval of the scheme is published in the manner prescribed by the regulations), be entitled to obtain compensation in respect thereof from the responsible authority:

Provided that a person shall not be entitled to obtain compensation under this section on account of any building erected, or any contract made, or other thing done with respect to land included in a scheme after the date of the approval of a scheme, or after such other date as the Minister may fix for the purpose, being not earlier than the date of the approval of the scheme.

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Provided also that the local authority may make agreements with owners for the development of their land during the time that the town planning scheme is being prepared.

(2) Whenever, by the expenditure of money by the responsible authority in the making and carrying out of any town planning scheme, any land or property is within 12 months of the completion of the work, or of the section of the work affecting such land, as the case may be, increased in value, the responsible authority shall be entitled to recover from any person whose land or property is so increased in value, one half of the amount of such increase, if the responsible authority makes a claim for that purpose within the time, if any, limited by the scheme, not being less than 3 months after the date when notice of the approval of the scheme is first published.

(3) Where a town planning scheme is altered or revoked by an order of the Minister under this Act, any person who has incurred expenditure for the purpose of complying with the scheme shall be entitled to compensation from the responsible authority, in so far as any such expenditure is rendered abortive by reason of the alteration or revocation of the scheme.

(4) Any question as to whether any land or property is injuriously affected or increased in value within the meaning of this section, and as to the amount and manner of payment (whether by instalments or otherwise) of the sum which is to be paid as compensation under this section, or which the responsible authority is entitled to recover from a person whose land is increased in value shall be determined by arbitration under and in accordance with the *Commercial Arbitration Act 1985*¹, unless the parties agree on some other method of determination.

[Section 11 amended by No. 109 of 1985 s.3 (1).]

Compensation not recoverable in certain cases

12. (1) Where land or property is alleged to be injuriously affected by reason of any provisions contained in a town planning scheme, no compensation shall be payable in respect thereof if or

so far as the provisions are also contained in any public general or local Act, or in any order having the force of an Act of Parliament, in operation in the area, or are such as would have been enforceable without compensation, if they had been contained in by-laws lawfully made by the local authority.

(2) Land or property shall not be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme which, with a view to securing the amenity, health, or convenience of the area included in the scheme, or any part thereof, prescribe the space about, or limit the number of, or prescribe the height, location, purpose, dimensions, or general character of buildings, or any sanitary conditions in connection with buildings, or the quantity of land that may be taken for parks or open spaces, which the local authority, having regard to the nature and situation of the land affected by the provisions, considers reasonable for the purpose or which provide for the conservation of any land to which the *Heritage of Western Australia Act 1990* applies.

(2a) (a) In this subsection, unless the context otherwise requires, the expression —

“appointed day” means the day on which the *Town Planning and Development Act Amendment Act 1956*, comes into operation¹;

“land” includes any building or structure on land;

“non-conforming use” means a use of land which, though lawful immediately prior to the coming into operation of a town planning scheme, is not in conformity with any provision of that scheme which deals with a matter specified in clause 10 of the First Schedule;

“public purpose” means a purpose which serves or is intended to serve the interests of the public or a section of the public and includes a public work within the meaning of the expression **“public work”** in the *Public Works Act 1902*²⁰.

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(b) Subject to the provisions of paragraph (c), land shall not be deemed to be injuriously affected by reason of any provision of a town planning scheme which comes into force on or after the appointed day, and which deals with any of the matters specified in clause 10 of the First Schedule, unless the scheme

- (i) permits development on that land for no purpose other than a public purpose; or
- (ii) prohibits wholly or partially the continuance of any non-conforming use of that land or the erection, alteration or extension on the land of any building in connection with or in furtherance of, any non-conforming use of the land, which, but for that prohibition, would not have been an unlawful erection, alteration or extension under the laws of the State or the by-laws of the local authority within whose district the land is situated.

(c) Notwithstanding the provisions of paragraph (b) a provision of a town planning scheme which prescribes any requirement to be complied with in respect of a class or kind of building shall not be deemed to have the effect of so prohibiting the erection, alteration or extension of a building of that class or kind in connection with, or in furtherance of non-conforming use.

(d) Where a town planning scheme, which comes into operation on or after the appointed day, wholly or partially prohibits the continuance of any non-conforming use of any land or the erection, alteration or extension of any building in connection with or in furtherance of a non-conforming use of any land, no compensation for injurious affection is payable in respect of any part of the land which immediately prior to the coming into operation of the scheme, does not comprise

- (i) the lot or lots on which the non-conforming use is in fact being carried on; or

if the prohibition relates to a building or buildings standing on one lot,

- (ii) the lot on which the building stands or the buildings stand; or

if the prohibition relates to a building or buildings standing on more than one lot,

- (iii) the land on which the building stands or the buildings stand and such land, which is adjacent to the building or buildings, and not being used for any other purpose authorized by the scheme, as is reasonably required for the purpose for which the building or buildings is or are being used.

(e) Notwithstanding the provisions of section 11, if any question arises under paragraph (d) as to whether at any particular date, any land does or does not comprise the lot or lots on which a non-conforming use is being carried on, or is or is not being used for any purpose authorized by a scheme, or is or is not reasonably required for the purpose for which any building is being used that question shall, on the application of the claimant or the responsible authority be determined by arbitration under and in accordance with the *Commercial Arbitration Act 1985*¹, unless the parties agree on some other method of determination.

(3) When a person is entitled to compensation under this Act in respect to any matter or thing, and is also entitled to compensation in respect to the same matter or thing under any other enactment, he shall not be entitled to compensation in respect of that matter or thing both under this Act and that other enactment, and shall not be entitled to any greater compensation under this Act than he would be under such other enactment.

[Section 12 amended by No. 79 of 1956 s.4; No. 109 of 1985 s.3 (1); No. 97 of 1990 s.14.]

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Record of conditions on title

12A. (1) This section applies when the Commission considers it desirable that owners or prospective owners of land —

- (a) comprised in a plan of subdivision; or
- (b) comprised in a strata scheme or proposed strata scheme presented to the Commission for approval under section 25 of the *Strata Titles Act 1985*,

be made aware of hazards or other factors seriously affecting the use or enjoyment of that land and determines that the title and land register in respect of that land should be noted accordingly.

(2) Where this section applies, the Commission may cause a notification of the hazard or other factor affecting the use or enjoyment of the land to be prepared in a form acceptable to the Registrar of Titles or the Registrar of Deeds, as the case requires, and deposited at the Office of Titles or the Registry of Deeds.

(3) Where a notification is deposited under subsection (2) the Registrar of Titles or the Registrar of Deeds, as the case requires, shall endorse or note the title and land register in respect of the land with that notification.

(4) The Commission may, at any time after the notification has been deposited under subsection (2), request that the Registrar of Titles or the Registrar of Deeds, as the case requires, remove that notification from the title or land register.

[Section 12A inserted by No. 84 of 1994 s.57.]

Power to acquire land

13. (1) The responsible authority may, for the purpose of a town planning scheme, in the name and on behalf of such authority —

- (a) purchase any land comprised in such scheme from any person who may be willing to sell the same; or

- (b) with the consent of the Governor, take compulsorily, under and subject to the *Public Works Act 1902*²⁰, (but subject to subsection (2)), any land comprised in such scheme, and whether situate within or without the boundaries of the district of such responsible authority.

(2) When any land is taken compulsorily under the powers conferred by this section the provisions of

- (a) subsections (2) to (7) inclusive of section 17; and
- (b) section 17A;

of the *Public Works Act 1902*²⁰, shall not apply to or in respect of the land or the taking or in any manner whatsoever, and that Act shall be read and construed as if the said provisions were deleted.

[*Section 13 amended by No. 68 of 1957 s.3.*]

Responsible authority to have the powers of an owner of land

14. Subject to the scheme, the responsible authority shall have all the powers of an owner in respect of such land, and may erect buildings thereon or otherwise improve and make use of same in such manner as the responsible authority may deem best.

Responsible authority may grant easements

15. The responsible authority may grant to any person any easement in, upon, through, under, or over any land taken or acquired for town planning purposes, subject to such conditions and payments of such rents as the responsible authority may think fit: Provided that the grant of such easement shall be subject to revocation without compensation at any time when the responsible authority thinks fit, or in the case of the breach of any condition under which easement may have been granted.

Borrowing powers

16. (1) A local authority may with the consent of the Governor borrow, in addition to the sums which it is authorized to borrow under Part XXVI of the *Local Government Act 1960*, any further sums required for the purposes of this Act or of any town planning scheme, including the cost of the preparation and adoption of such scheme.

(2) The provisions of the *Local Government Act 1960* shall apply to such loans, except those relating to the restriction of the amounts borrowed, and except that if and when a poll of ratepayers under the *Local Government Act 1960*, is held, the local authority shall be at liberty to proceed with the loan unless forbidden to do so by the result of such poll, and any demand that the proposal be submitted to a vote of the ratepayers shall be signed by not less than one per centum of the persons for the time being enrolled on the electoral roll for the municipality.

[Section 16 amended by No. 64 of 1961 s.5; No. 84 of 1994 s.58.]

Apportionment of expenses between local authorities

17. (1) The Minister may order that any part of the expenses incurred by a local authority under this Act, or under any scheme made under this Act, shall be borne by some other local authority, and the amount so ordered shall thereupon be deemed to be a debt due to such local authority by such other local authority.

(2) In fixing the amount to be borne by such other local authority, the Minister shall have regard to the proportion of the expenses incurred in respect of anything done within the district of such other local authority in relation to a scheme under this Act, and the ratio of such proportion to the whole expense under this Act in relation to the scheme, and such other matters as are prescribed.

(3) There shall be an appeal to the Supreme Court against any order of the Minister under this section, subject to the Rules of Court, regulating the procedure to be adopted for the purpose of any such appeal.

Obligation to prepare or adopt a scheme

18. (1) If the Minister is satisfied on any representation that a local authority —

- (a) has failed to take the requisite steps for having a satisfactory town planning scheme prepared and approved in a case where a town planning scheme ought to be made; or
- (b) has failed to adopt any scheme proposed by owners of any land, in a case where a town planning scheme ought to be adopted; or
- (c) has refused to consent to any modifications or conditions imposed by the Minister, —

the Minister may, as the case requires, order the local authority to prepare and submit for the approval of the Minister a town planning scheme, or to adopt a scheme, or to consent to the modification or conditions so inserted:

Provided that, where the representation is that a local authority has failed to adopt a scheme, the Minister, in lieu of making such an order as aforesaid, may approve of the proposed scheme, subject to such modifications and conditions, if any, as the Minister may deem fit; and thereupon the scheme shall have effect as if it had been adopted by the local authority and approved by the Minister.

(2) If the Minister is satisfied on any representation, after holding an inquiry, that a local authority has failed to enforce effectively the observance of a scheme, which has been confirmed, or any provisions thereof, or to execute any works, which, under

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the scheme or this Act the local authority is required to execute, the Minister may order the local authority to do all things necessary for enforcing the observance of the scheme, or any provision thereof effectively, or for executing any works which, under the scheme or this Act, the local authority is required to execute and shall cause a copy of the order to be served upon the local authority.

(3) The local authority may within 28 days of service of the order referred to in the next preceding subsection appeal against the order of the Minister to a Judge, who may confirm, vary or annul the Minister's order, and make such order as to the costs of the appeal as he shall deem proper, and the decision of the Judge shall be final and enforceable as an order of judgment of the Supreme Court.

(4) The Governor may make rules relating to the institution, conduct, determination of and all matters touching appeals referred to in the next preceding subsection and until rules be made by the Governor under this subsection the proceedings in those matters shall be as the Judge directs and subject to his direction may, as regards the summoning and attendance of witnesses, the production of documents and costs be regulated by the appropriate Rules of the Supreme Court, the appropriate adaptations and alterations being made.

[Section 18 amended by No. 29 of 1947 s.4.]

Minister may assume powers of local authority

18A. (1) If the Minister is satisfied that a local authority has failed to comply with a provision of section 7AA or 18 ("the relevant provision") the Minister may serve notice in writing on the local authority —

- (a) specifying the relevant provision and the manner in which the local authority has failed to comply with it;

- (b) specifying a period (which is not to be less than 90 days) within which the local authority is required to comply with the relevant provision; and
- (c) advising the local authority that the Minister intends to exercise the powers conferred by subsection (2) if the local authority does not comply with the relevant provision within the period specified in the notice.

(2) Where a notice has been served on a local authority under subsection (1) in relation to a town planning scheme and that local authority has not complied with the relevant provision within the period specified in the notice, the Minister may take all such steps and prepare or cause to be prepared all such documents as are necessary to ensure compliance with the relevant provision as if the Minister were the local authority.

(3) For the purposes of subsection (2) the Minister may by order direct the local authority to provide the Minister with such reports or other information specified in the order as are necessary to allow the preparation of the documents referred to in that subsection.

(4) The Minister shall cause a copy of an order directed to a local authority under subsection (3) to be served on the local authority, and the local authority shall comply with the order.

(5) For the purposes of subsection (2) the provisions of the regulations that would have applied to the local authority shall apply to the Minister with such modifications as are necessary or are prescribed.

(6) Where the Minister prepares or causes to be prepared and published in the *Gazette* —

- (a) a town planning scheme, incorporating, if necessary, any modifications to, or conditions on, the scheme;
- (b) a consolidated town planning scheme; or

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- (c) the revocation of a town planning scheme,

that scheme, scheme as modified or with conditions, consolidation or revocation, as the case may be, has effect as if it were made, published and adopted by the local authority and approved by the Minister and shall be implemented by the local authority accordingly.

(7) All costs, charges and expenses incurred by the Minister in the exercise of any powers conferred on the Minister by subsection (2) 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.

(8) A reference in this or any other Act to a scheme prepared in accordance with section 7 or 18 shall be read and construed as including a reference to a town planning scheme prepared or caused to be prepared by the Minister in accordance with this section.

[Section 18A inserted by No. 84 of 1994 s.59.]

[18B. Repealed by No. 84 of 1994 s.60.]

Heritage Places

18C. (1) Where any land comprised within a place entered in the Register maintained by the Heritage Council under the *Heritage of Western Australia Act 1990*, or of which such a place forms part, is to be the subject of development, an application for approval of that development shall be made —

- (a) in the case of land subject to a town planning scheme prepared under section 7, to the responsible authority; and
(b) in any other case, to the Commission,

and any such approval may be given subject to conditions.

(2) A person shall not, without the approval referred to in subsection (1) or otherwise than in accordance with any condition to which the giving of the approval was subject, carry out, or cause or permit to be carried out, any development affecting land to which subsection (1) applies.

Penalty: \$50 000.

[Section 18C inserted by No. 97 of 1990 s.15; amended by No. 84 of 1994 s.61.]

PART II — CROWN LAND

Planning of town and suburban lands

19. (1) Where any Crown land has been, or hereafter shall be, set aside or reserved under the *Land Act 1933*, as town, suburban, or village land, such land shall not be sold, leased or disposed of until the Commission shall have prepared, and the Minister shall have approved or refused to approve, a town planning scheme in respect of such land.

(2) The Commission may prepare a town planning scheme in respect of any such land with the general objects set out in section 6, and such scheme shall, if approved by the Minister and published in the *Gazette*, have the same effect as if it had been lawfully prepared by a local authority, and approved under section 7.

(3) The foregoing provisions of this Act shall, so far as the same are consistent and applicable, apply to and in respect of any scheme so prepared, with the substitution of the Commission for the responsible authority.

(4) (a) Where a town planning scheme has been prepared, approved, and published in accordance with the provisions of subsection (2) and where any Crown land the subject of the town planning scheme has been sold, leased or disposed of, the Commission, with the approval of the Minister —

- (i) may suspend, vary, supplement, or supersede, any of the provisions of the town planning scheme; or
- (ii) may agree with a local authority to be jointly responsible with that local authority, as the responsible authority under and for the purposes of the town planning scheme either with respect to all, or part, of the town planning scheme; or

(iii) may agree with a local authority that the local authority shall be substituted as the responsible authority under and for the purposes of the town planning scheme, either with respect to all, or part, of the town planning scheme, and after the provisions of paragraph (b) have been complied with, the provisions of section 7 (4) apply to the town planning scheme.

(b) Where the Commission exercises a power conferred on the Commission by the provisions of paragraph (a) and as a result of the exercise of that power a town planning scheme is amended the Minister shall cause notice of the amendment to the scheme to be published in the *Gazette*.

[*Section 19 amended by No. 61 of 1958 s.5; No. 92 of 1985 s.10.*]

PART III — ALIENATED LAND

Plans of subdivision to be approved

20. (1) (a) Subject to section 68 of the *Environmental Protection Act 1986*, to this section and to section 20B, a person shall not, without the approval of the Commission, lay out, grant or convey a street, road or way, or either lease or grant a licence to use or occupy land for any term exceeding 10 years including any option to extend or renew the term or period, or lease and grant a licence to use or occupy land for terms in the aggregate exceeding 10 years, including any option to renew or extend the terms or periods, or sell land or grant any option of purchase of land, unless the land is dealt with by way of such lease, licence, sale or option of purchase as a lot or lots, or subdivide any lot, or amalgamate any lot with any other lot whether within the same district or otherwise; and the Commission may give its approval under this paragraph subject to conditions which shall be carried out before the approval becomes effective.

(b) Where, after payment of consideration for any transaction relating to any land, it is found that the transaction cannot be completed —

- (i) within a period of 6 months after the date of entering into the transaction; or
- (ii) within such further period as is stipulated in the transaction, or in a subsequent agreement in writing made by all the parties to the transaction, or when the subsequent agreement is made after the death of any of those parties, by the surviving party or parties and the legal personal representative of any deceased party,

because the land cannot be dealt with as a lot or as lots the person who paid the consideration is entitled to a refund of the consideration from the person to whom it was paid.

(c) This subsection does not apply and never has applied to the grant of, or to the transfer of or other dealing with or in, a mining tenement within the meaning of the *Mining Act 1904*²¹ or the *Mining Act 1978* or a portion of such a mining tenement or any shares therein.

(d) In subsection (1) (a) “**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) subject to paragraph (da), 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.

(da) A reference in paragraph (d) to the whole or a portion of a building includes a reference to any area outside that whole or portion, which area is —

- (i) the subject of the same lease or licence to use or occupy as that whole or portion or of a lease or licence to use or occupy entered into or granted by the lessor of, or grantor of a licence to use or occupy, that whole or portion; and
- (ii) used for the purpose of ingress to or egress from that whole or portion, advertising, parking vehicles, storing goods, loading or unloading goods or passengers or for any other purpose necessary or desirable for the convenient occupation of that whole or portion.

(e) In subsection (1) (a) “**licence to use or occupy**” does not include an easement.

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(1a) A person may without the approval of the Commission lease or grant a licence to use or occupy land for a term of any duration and otherwise than as a lot or lots if that lease or licence belongs to a class of lease or licence for the time being approved under subsection (1c) in respect of the person and complies with such conditions as are imposed under that subsection in respect of that approval.

(1b) A person may apply to the Commission in writing for a class of lease or licence to use or occupy land to be approved under subsection (1c) in respect of him.

(1c) On receiving an application made under subsection (1b) the Commission may, having regard to —

- (a) the nature of the interest proposed to be granted under leases or licences of the class concerned;
- (b) the classification or zoning of the land to which leases or licences of the class concerned will relate;
- (c) the proposed terms of leases or licences of the class concerned, whether for the lives of the proposed lessees or licensees or for fixed periods;
- (d) the anticipated number or frequency of leases or licences of the class concerned; and
- (e) such matters other than those referred to in paragraphs (a), (b), (c) and (d) as the Commission considers relevant,

approve the class of lease or licence concerned in respect of the applicant for the purposes of subsection (1a), subject to such conditions as the Commission thinks fit to impose in respect of that approval, or refuse so to approve that class.

(1d) The Commission may at any time revoke or amend an approval given under subsection (1c) by notice in writing of that revocation or amendment served on the person in respect of whom or which that approval was given.

(2) The Registrar of Titles shall not issue a certificate of title under the *Transfer of Land Act 1893* for land the subject of a plan of subdivision unless —

- (a) in the case of a plan of subdivision to which this Act applies, the subdivision of that land; or
- (b) in the case of a plan of subdivision to which this Act does not apply, the application for title concerned,

has been approved by the Commission.

(3) A plan containing one lot only shall be deemed a plan of subdivision provided that it is a portion of the land comprised in a certificate of title, registered conveyance, a Crown grant, or a lot on a registered plan.

(4) In the case of land to which section 78 of the *Heritage of Western Australia Act 1990* applies —

- (a) the Commission shall not grant any application for its approval under this section unless —
 - (i) the requirements of subsection (1) and subsection (4) of that section have been observed; and
 - (ii) regard has been had to any advice received from the Heritage Council;
- (b) the holder of any approval given by the Commission under this section shall not, where subsection (2) (a) of that section applies, give effect to that approval —
 - (i) during such time as the operation of the approval is suspended under that section; or
 - (ii) otherwise than in accordance with subsection (2) (b) and (c) of that section;

and

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- (c) in relation to any place which is entered in the Register maintained by the Heritage Council under that Act, any approval given shall be deemed to be revoked pursuant to subsection (3) of that section.

[Section 20 amended by No. 79 of 1956 s.5; No. 79 of 1957 s.2; No. 61 of 1958 s.6; No. 98 of 1965 s.4; No. 25 of 1967 s.2; No. 31 of 1969 s.2; No. 34 of 1972 s.3; No. 76 of 1978 s.142; No. 89 of 1979 s.4; No. 107 of 1978 s.3 (1); No. 120 of 1982 s.10 (1)^{6, 7}; No. 122 of 1982 s.32; No. 32 of 1983 s.5; No. 92 of 1985 s.10; No. 26 of 1986 s.5; No. 77 of 1986 s.34; No. 97 of 1990 s.16.]

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

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

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

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

any land shown on the diagram or plan as being reserved for the purpose of a waterway, pedestrian accessway, right-of-way or reserve for water supply, sewerage,

drainage, foreshore management, waterway management, or recreation

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

[Section 20A inserted by No. 45 of 1962 s.4; amended by No. 72 of 1980 s.9; No. 120 of 1982 s.11; No. 92 of 1985 s.10; No. 97 of 1990 s.17.]

Savings of certain agreements

20B. (1) Where an agreement to sell or to grant an option to purchase, or to lease or grant or lease and grant a licence to use or occupy any portion of a lot has been entered into without the approval of the Commission to the subdivision of the land comprising that lot having been first obtained, as required by section 20 (1), the agreement shall be deemed not to have been entered into in contravention of that subsection, if —

- (a) the agreement is made after coming into operation of the *Town Planning and Development Act Amendment Act 1967*¹;
- (b) the agreement is entered into subject to the approval of the Commission to the subdivision of the land being obtained; and
- (c) an application for the approval of the Commission to the subdivision is made within a period of 3 months after the date of the agreement,

and nothing in that subsection renders the agreement illegal or void by reason only that the agreement was entered into before the approval of the Commission to the subdivision was obtained.

(2) Without prejudice to the operation of section 20 (1) (b), the agreement referred to in subsection (1) has no effect, unless and until the Commission gives its approval to the subdivision so

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referred to, within a period of 6 months after the date of the agreement or within such further period as is stipulated in that agreement, or in a subsequent agreement, in writing made by all the parties to the first-mentioned agreement, or when the subsequent agreement is made after the death of any of those parties, by the surviving party or parties and the legal personal representative of any deceased party.

[Section 20B inserted by No. 25 of 1967 s.3; amended by No. 31 of 1969 s.3; No. 92 of 1985 s.10.]

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

20C. (1) Where the Commission 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 Commission 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) 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), 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), 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), 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

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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 *Commercial Arbitration Act 1985*¹.

(7) For the purposes of this section —

(a) land is subdivided on the date on which the Commission 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) or in this paragraph shall be construed as obliging the Valuer-General to undertake any valuation for the purposes of this section.

[Section 20C inserted by No. 120 of 1982 s.12 (1)⁷;
amended by No. 92 of 1985 s.10; No. 109 of 1985
s.3 (1).]

When approval under section 20 deemed to be approval under town planning scheme

20D. When the Commission has approved under this Act a subdivision of any land to which a town planning scheme relates, subject to —

(a) the condition that the applicant for that approval —

(i) cause to be constructed to the satisfaction, and in accordance with the specifications, of the

responsible authority a road or roads providing access to, or within;

- (ii) make arrangements with the Water Corporation established by the *Water Corporation Act 1995* for the provision of water services as defined by that Act to the satisfaction of that Corporation within; or
- (iii) cause to be filled or drained or filled and drained to the satisfaction, and in accordance with the specifications, of the responsible authority the whole or any part of,

that land; or

- (b) any 2 or all 3 of the conditions referred to in paragraph (a),

that approval shall be deemed to be approval by the responsible authority under the town planning scheme of the development which is, in the opinion of the Commission, necessary or desirable for compliance with the condition or conditions to which the first-mentioned approval is subject.

[Section 20D inserted by No. 26 of 1986 s.6; amended by No. 73 of 1995 s.188.]

Certain transfers, etc., to be subject to approval

21. (1) A transfer, conveyance, lease or mortgage of any land shall not be received or registered in the Office of Titles or Registry of Deeds unless —

- (a) it has been first approved in writing by the Commission; or
- (b) the land comprises the whole of one or more lots, or the land comprises part of a lot included in a plan of

subdivision that has been approved by the Commission; or

- (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);
 - (ii) paragraph (a) of subsection (1) of section 20 does not apply to the lease by virtue of paragraph (d) of that subsection; or
 - (iii) the lease is a lease which may be entered into without the approval of the Commission by virtue of section 20 (1a).

(2) The Registrar of Titles shall not receive any application from the registered proprietor of any land to issue in the name of such registered proprietor a certificate of title for a portion of land, not being the whole of one or more lots unless such application has been approved by the Commission.

[Section 21 amended by No. 16 of 1943 s.2; No. 79 of 1953 s.7; No. 79 of 1957 s.3; No. 61 of 1958 s.7; No. 31 of 1969 s.4; No. 120 of 1982 s.13; No. 92 of 1985 s.10; No. 26 of 1986 s.7.]

Conditions

22. (1) Every plan or amended plan of subdivision submitted to the Commission for approval, shall be accompanied by 2 copies traced on cloth or such other copy or copies or such duplicate or duplicates as it may determine.

(2) The Commission shall retain one of such copies or duplicates for reference purposes, and shall forward another to

the local authority for the district in which the land comprised therein is situated.

(3) Every plan shall conform in all respects with the regulations in force in the Office of Titles and the owner of the land shall supply any additional information required by the Commission as to levels, drainage, nature of soil, physical features, and such other particulars as may be prescribed.

[Section 22 amended by No. 92 of 1985 s.10.]

[23. Repealed by No. 26 of 1986 s.8 (1)^a.]

Objections and recommendations

24. (1) When, in the opinion of the Commission, the plan of subdivision may affect the powers or functions of any local authority or public body other than the Commission, or any Government department, the Commission shall forward the plan or a copy thereof to such local authority, public body, or Government department, as the case may be, for objections or recommendations.

(2) Any such local authority, public body, or Government department receiving such plan or copy thereof shall, within 42 days, forward it to the Commission with a memorandum in writing containing objections or recommendations (if any), to the whole or part of such plan.

(3) After receiving a plan or copy and accompanying memorandum forwarded to it under subsection (2) and considering any objections or recommendations contained in the memorandum the Commission shall approve or refuse to approve the plan or require the applicant for approval to comply with such conditions as the Commission thinks fit to impose before approving the plan.

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(4) The Commission is to try to deal with the plan in one of the ways mentioned in subsection (3) within the period of 90 days after the day on which the plan was submitted to the Commission for approval or within such longer period after that day as may be agreed in writing between the Commission and the applicant for approval.

(5) If the Commission under subsection (3) refuses to approve a plan or imposes conditions and the applicant for approval concerned is dissatisfied with any such refusal or condition, that applicant for approval may within 28 days of being notified of that refusal or condition request in writing the Commission to reconsider that refusal or condition.

(6) On receiving a request made under subsection (5), the Commission may by notice in writing served on the person who made that request —

- (a) approve the plan; or
- (b) alter or revoke the condition,

to which that request relates or refuse that request.

[Section 24⁹ amended by No. 120 of 1982 s.14; No. 92 of 1985 s.10; No. 26 of 1986 s.9; No. 84 of 1994 s.62.]

Applications relating to land in the Swan Valley

24A. (1) Where an application is made to the Commission for approval under section 20 in relation to land in the Swan Valley, unless subsection (6) applies, the Commission is to give full particulars of the application to the Swan Valley Planning Committee.

(2) The Committee, within 42 days after the day on which it receives particulars of an application or within such longer period as the Commission allows, is to give to the Commission its advice in writing on how the application should be determined, including any conditions to which any approval should be made subject.

(3) If the Committee fails to give its advice within the time allowed under subsection (2), it is to be taken to have no advice to give on the application.

(4) The Minister may, at the request of the Commission, approve of the Commission disregarding the Committee's advice in whole or in part in determining the application.

(5) Subject to any approval under subsection (4) the Commission is to determine the application in accordance with the advice of the Committee.

(6) The Committee may determine that any particular class or description of applications for approval under section 20 need not be referred to the Committee for advice under this section and is to notify the Commission of any such determination.

(7) In this section "**Swan Valley**", "**Swan Valley Planning Committee**" and "**Committee**" have the same meanings as they have in the *Swan Valley Planning Act 1995*¹.

[Section 24A inserted by No. 31 of 1995 s.27.]

Encroachments

25. Where, after the erection of a building on land the property of one owner, it is found that such building encroaches upon land the property of another owner to the extent of not more than one metre, and where the encroaching owner desires to purchase the land upon which the encroachment stands, the Commission shall, upon the application of the owner of the land which is encroached upon, and upon being satisfied that there has not been collusion, but that everything has been done in good faith without intention to evade the law, approve of the necessary subdivision or transfer.

[Section 25⁹ amended by No. 94 of 1972 (as amended) s.4 (1); No. 92 of 1985 s.8.]

Appeals

26. (1) (a) Any person may appeal to the Minister from the refusal of the Commission to approve any plan, application for title, transfer, conveyance, lease, licence to use and occupy, or mortgage, or from the conditions affixed to the granting of such approval, or from a decision of the Commission made under section 24 (6).

(aa) If at any time after the end of the decision period the Commission has not approved, refused to approve or imposed conditions on the approval of a plan, the applicant for approval may give a written notice of default to the Commission.

(ab) Where a notice of default is given to the Commission under paragraph (aa), the applicant for approval may appeal to the Minister as if the Commission had refused to approve the plan on the day on which the notice of default was given to it.

(ac) In paragraph (aa) “**decision period**” means the period of 90 days specified in section 24 (4) or any longer period that has been agreed between the Commission and the applicant under section 24 (4).

(b) The Minister may allow the appeal with or without conditions, affix further conditions, or reject the appeal either in whole or in part.

(c) Where the appeal is allowed the plan, transfer, conveyance, lease, licence to use and occupy, or mortgage shall be received, registered, or deposited, subject to such conditions, if any, as the Minister may direct.

(d) The decision of the Minister is final.

[(2) *repealed*¹⁰]

[Section 26⁹ amended by No. 16 of 1943 s.3; No. 79 of 1953 s.8; No. 79 of 1957 s.4; No. 61 of 1958 s.8; No. 120 of 1982 s.15 (1)¹⁰; No. 92 of 1985 s.10; No. 26 of 1986 s.10; No. 84 of 1994 s.63.]

Offences under this Part

27. (1) Any person who contravenes or fails to comply with section 20 (1) is guilty of an offence.

Penalty: \$50 000, and a daily penalty of \$5 000.

[(2) *repealed*]

[Section 27 inserted by No. 89 of 1979 s.5; amended by No. 84 of 1994 s.64.]

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PART IV — MISCELLANEOUS

Easements

27A. (1) Where —

- (a) a plan of subdivision or diagram of subdivision approved by the Commission after the coming into operation of section 10 of the *Town Planning and Development Amendment Act 1980*¹ is deposited at the Office of Titles or the Registry of Deeds; and
- (b) it is shown on the plan or diagram that any land comprised therein is subject or intended to be subject to an easement in favour of —
 - (i) the local authority in whose district the land is situated, for the purpose of drainage or access to drainage works;
 - (ii) the Water Corporation established by the *Water Corporation Act 1995*, for the purpose of water supply, sewerage, drainage or access to water supply, sewerage or drainage works;
 - [(iii) *deleted*]
 - (iv) the Electricity Corporation under the *Electricity Corporation Act 1994* for the purpose of the supply of electricity or access to electricity supply works;
 - (v) the Gas Corporation under the *Gas Corporation Act 1994* for the purpose of the supply of gas or access to gas supply works,

the land shall, on and from the date of the approval of the plan or diagram by the Inspector of Plans and Surveys be subject to an easement in favour of the person or authority mentioned on the plan or diagram for the purpose mentioned thereon.

(2) An easement in favour of a person or authority for any purpose, to which any land is subject by virtue of this section, shall give that person or authority such rights, powers and privileges as are prescribed under this section in respect of an easement in favour of that person or authority for that purpose.

(3) If, by virtue of this section, any land is subject to an easement, the Registrar of Titles, or the Registrar of Deeds, as the case requires, shall make all such entries or endorsements, or register any such memorial, as may be necessary or proper to evidence that the land is so subject, and, for the purpose of making any such entry or endorsement or registering any such memorial, it shall be sufficient description of the easement if reference is made to this section.

(4) Where, by virtue of this section, any land is subject to an easement in favour of a person or authority for any purpose, the Registrar of Titles or Registrar of Deeds as the case requires, may, by order made —

- (a) upon application in writing by the person or authority; and
- (b) with the consent in writing of all persons having a registered interest in the land,

vary or extinguish the easement and upon such variation or extinction the Registrar of Titles or Registrar of Deeds, as the case requires, shall make all such entries or endorsements, or register any such memorial, as may be necessary or proper to evidence the variation or extinction.

(5) The Governor may make regulations —

- (a) prescribing the rights, powers and privileges given to a specified person or authority where an easement for a specified purpose has effect in favour of that person or authority by virtue of this section;

- (b) prescribing any other matter necessary or convenient for giving effect to this section.

(6) In subsection (5) “**specified**” means specified in regulations made pursuant to that subsection.

[Section 27A inserted by No. 72 of 1980 s.10; amended by No. 92 of 1985 s.10; No. 89 of 1994 s.109; No. 73 of 1995 s.188.]

Dedication to public use of land acquired to extend or improve streets

28. (1) When a portion of land is transferred to the Crown or a local authority for the purpose of extending or adding to a public street or road, such transferred portion shall be deemed to be dedicated to the public use, and to form part of the street or road, as and from the date of registration of the transfer in the Office of Titles.

(2) When a street or road corner shown on any plan registered in the Office of Titles or in the Department of Land Administration² is subsequently rounded off or truncated, the portion of land so excised shall form part of the public street or road, and from the date of approval of the Inspector of Plans and Surveys is hereby declared to be dedicated to the public use, and shall be under the control of the local authority.

(3) (a) All land on a plan or diagram of subdivision deposited at the Office of Titles or the Registry of Deeds that is shown as road widening or is for the purpose of extending or adding to a public street or road is hereby declared —

- (i) to form part of the public street or road; and
- (ii) to be dedicated to the public use.

- (b) The provisions of paragraph (a) —
- (i) are deemed to have operated —
 - (A) in the case of a plan or diagram of subdivision deposited before the coming into operation of the *Local Government Act Amendment Act (No. 4) 1969*¹², on and from the date of the registration of a transfer of a lot on the plan or diagram at the Office of Titles or the Registry of Deeds; and
 - (B) in the case of a plan or diagram of subdivision deposited after the coming into operation of the *Local Government Act Amendment Act (No. 4) 1969*¹² but before the coming into operation of the *Town Planning and Development Act Amendment Act 1974*¹, on and from the date of the approval of the Inspector of Plans and Surveys;
 - (ii) operate, in the case of a plan or diagram of subdivision deposited after the coming into operation of the *Town Planning and Development Act Amendment Act 1974*¹, on and from the date of approval of the Inspector of Plans and Surveys.

[Section 28⁹ amended by No. 14 of 1974 s.5.]

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*¹ (in this section referred to as “**the amending Act**”) —

- (a) a person (in this section called “**the later subdivider**”) having after that coming into operation subdivided land —
 - (i) a lot or lots of that subdivision has or have a common boundary with; or

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(ii) a road of that subdivision (in this subsection called "**a subdivisinal road**") joins,

an existing road;

(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, or is joined by a subdivisinal road, referred to in paragraph (a).

(2) An amount payable under subsection (1) 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 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 Commission having been complied with, the approval of the Commission 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 section 20C (4) (c) (ii), (iii) and (iv), 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 28A inserted by No. 120 of 1982 s.16;
amended by No. 92 of 1985 s.10; No. 26 of 1986 s.11.]

Fees

29. The Minister may prescribe a set or sets of fees to be charged in respect of anything to be done by the Commission under or in pursuance of this Act, and such fees shall be payable by the person at whose request or on whose application such matter is done.

[Section 29⁹ amended by No. 92 of 1985 s.9.]

[30. Repealed by No. 64 of 1961 s.7.]

Uniform general by-laws, etc.

31. (1) The Governor may make, and publish in the *Gazette*, uniform general by-laws, or separate sets of general by-laws adapted for areas of any special character, for carrying into effect all or any of the purposes mentioned in the Second Schedule, and such by-laws shall have the force of law in the district of any local authority which the Governor may from time to time prescribe, and shall supersede the by-laws made for the same or a similar purpose by the local authority of the district so prescribed; and the Governor may at any time repeal any by-law made under section 248 of the *Local Government Act 1960*.

(2) When any by-law made under section 248 of the *Local Government Act 1960*, or under the last preceding subsection of this section, is inconsistent with any town planning scheme approved before or after the making of such by-law, and having effect in the district, or in part of the district, in which such by-law is in force, then to the extent of such inconsistency, and in the part of the district in which such scheme has effect, the provisions of such scheme shall prevail.

(2a) In subsection (2) reference to a town planning scheme includes a reference to a redevelopment scheme approved under Part 4 of the *East Perth Redevelopment Act 1991*¹ or under Part 4 of the *Subiaco Redevelopment Act 1994*¹.

(3) Where any property is injuriously affected or increased in value by the operation of any by-law made under section 248 of the *Local Government Act 1960*, or under subsection (1), the provisions of section 11 or 12, shall apply *mutatis mutandis* as if the by-law were a scheme made under this Act, and as if the resolution passing a by-law were a resolution to prepare or adopt a scheme.

[Section 31⁹ amended by No. 29 of 1947 s.5; No. 64 of 1961 s.8; No. 62 of 1991 s.59; No. 35 of 1994 s.67.]

Savings

32. Nothing in this Act shall be deemed to interfere with the right of Her Majesty, or the Governor, or the Government of the State or a local authority to undertake, construct, or provide any public work, and to take land for the purposes of that work: Provided that —

- (a) so far as, in the interests of the public, it is reasonably possible, every such work shall be undertaken, constructed, or provided, and all land taken for the purpose of such work shall be taken, in such a manner as to be in keeping with the design and intent of every town planning scheme, and so as not to destroy the amenity of any town planning scheme made and approved under this Act and having effect in the district where, and at the time when, such work is undertaken, constructed, or provided, or such land is taken; and
- (b) the responsible authority shall be consulted at the time when a proposal for any public work, or for the taking of land therefor, is being formulated to ensure that the undertaking, construction, or provision of, or the taking of land for, the work will comply with paragraph (a).

[Section 32⁹ amended by No. 63 of 1955 s.4; No. 120 of 1982 s.17; No. 32 of 1983 s.6.]

Power to suspend the operation of certain provisions of other Acts

33.⁹ Where the carrying out of any provision of an approved scheme would conflict with any provisions, limitations, or conditions of or prescribed by any Act, the responsible authority may apply to the Governor for an order modifying or suspending the provisions of that Act, so far as may be necessary to enable effect to be given to the scheme; and thereupon the Governor may, in respect of that scheme but not otherwise, make an order accordingly for the suspension or modification of such provisions or any of them, subject to such conditions and limitations as he thinks fit to impose:

Provided that an Order in Council purporting to modify or suspend any provisions of any Act shall not take effect unless and until it has been approved by a resolution of both Houses of Parliament.

Regulations

34. Subject to the regulations made by the Minister under the preceding provisions of this Act, the Governor may make such further regulations as are necessary to give effect to this Act and in particular for prescribing penalties not exceeding \$5 000 for offences against the regulations.

[Section 34 amended by No. 98 of 1965 s.7 No. 113 of 1965 s.8 (1); No. 84 of 1994 s.65.]

Crown bound

35.⁹ Except where otherwise provided, this Act shall bind the Crown.

PART V — APPEALS

[*Heading inserted by No. 117 of 1970 s.3.*]

Application

36. Notwithstanding the provisions of —

- (a) any other Part;
- (b) any planning scheme that has effect under section 7;
- (c) the *Metropolitan Region Town Planning Scheme Act 1959*; or
- (d) the Metropolitan Region Scheme,

this Part applies to and in relation to all appeals within the meaning of this Part.

[*Section 36 inserted by No. 117 of 1970 s.3.*]

Interpretation

37. In this Part —

“**appeal**” means —

- (a) an appeal to the Minister under —
 - (i) a town planning scheme that has effect under section 7, if the appeal is in respect of the exercise of a discretionary power by the responsible authority under the scheme;
 - (ia) section 8A;

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- (ii) section 7B (6); and
- (iii) section 26 (1);
- (b) a reference to the Minister under section 10 (3);
- (ba) an appeal under section 45 of the *East Perth Redevelopment Act 1991*¹;
- (bb) an appeal under section 52 of the *Subiaco Redevelopment Act 1994*¹;
- (c) an appeal to the Minister under clause 33 of the Metropolitan Region Scheme;
- (d) an appeal under section 35F of the *Metropolitan Region Town Planning Scheme Act 1959*; and
- (e) an appeal referred to the Tribunal under the *Heritage of Western Australia Act 1990*;

“Appeal Tribunal” means the Town Planning Appeal Tribunal constituted under section 42;

“Chairman” means Chairman of the Appeal Tribunal;

“member” means a member of the Appeal Tribunal;

“Metropolitan Region Scheme” has the same meaning as it has in section 6 of the *Metropolitan Region Town Planning Scheme Act 1959*;

“party” means a party to an appeal;

“prescribed” means prescribed in regulations;

“Registrar” means the Registrar of the Appeal Tribunal;
and

“regulations” means regulations made under this Part.

[Section 37 inserted by No. 117 of 1970 s.3; amended by No. 103 of 1976 s.5; No. 89 of 1979 s.7; No. 79 of 1981 s.16; No. 120 of 1982 s.18; No. 32 of 1983 s.7; No. 97 of 1990 s.18; No. 62 of 1991 s.59; No. 35 of 1994 s.67.]

Commencement of appeal

38. An appeal is commenced by giving notice, including the grounds of the appeal, in the time and manner prescribed, to the persons and bodies prescribed.

[Section 38 inserted by No. 117 of 1970 s.3.]

Alternative appeals

39. (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.

(2) When the Minister or the Appeal Tribunal, as the case may be, makes a determination on an appeal that determination has effect according to its tenor.

[Section 39 inserted by No. 117 of 1970 s.3; amended by No. 103 of 1976 s.6.]

Town Planning Appeal Committee

40. (1) There shall be a committee called the Town Planning Appeal Committee.

(2) The Committee shall consist of such persons as the Governor may, from time to time, appoint.

(3) The Minister may require the Committee to consider, and report and make a recommendation to him on, an appeal to the Minister (not being an appeal referred to in subsection (3a)) and the Committee shall do so as soon as practicable thereafter, and the Minister, after considering the report and recommendation of the Committee, shall determine that appeal.

(3a) The Minister may require the Committee to consider, and report and make a recommendation to him on, any appeal to the Minister under section 26 (5) or 27 (3) of the *Strata Titles Act 1985* and the Committee shall do so as soon as practicable thereafter.

(4) A person on the Committee shall receive such remuneration and allowances as the Governor, from time to time, determines and any cost incurred by or in respect of such a person in carrying out his functions under subsection (3) shall be paid out of the Consolidated Fund which is hereby appropriated accordingly.

[Section 40 inserted by No. 117 of 1970 s.3; amended by No. 6 of 1993 s.11; No. 84 of 1994 s.66.]

[41. Repealed by No. 120 of 1982 s.19 (1)⁴³.]

Establishment and constitution of Appeal Tribunal

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 3 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 8 years practice and standing;

- (b) one shall be a person having knowledge of and experience in town planning; and
- (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 Part 3 of the *Public Sector Management Act 1994* 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 3 years but shall be eligible for re-appointment.

(4) The member appointed pursuant to subsection (2) (a) shall 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.

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

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(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.

(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.

(8a) Where a person appointed under subsection (7a) is required to act in the stead of the Chairman or a member but that person —

(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,

the Minister may appoint a person who has the same qualification for appointment as is required of the Chairman or that member to act in his stead during the illness, absence or in the particular appeal as the case may be and for such further time as is necessary to complete the hearing and determination of any proceedings that he has entered upon 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 acting.

(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 42 inserted by No. 103 of 1976 s.7; amended by No. 32 of 1978 s.4; No. 120 of 1982 s.20; No. 7 of 1985 s.2; No. 97 of 1990 s.19; No. 32 of 1994 s.3 (2).]

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 Part 3 of the *Public Sector Management Act 1994*.

(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 43 inserted by No. 103 of 1976 s.8; amended by No. 32 of 1994 s.3 (2).]

Jurisdiction of Appeal Tribunal

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

[Section 44 inserted by No. 103 of 1976 s.9; amended by No. 89 of 1979 s.8.]

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 7 days before the day appointed for the hearing.

[Section 45 inserted by No. 103 of 1976 s.10.]

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Sittings of Appeal Tribunal

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 21 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.

[Section 46 inserted by No. 103 of 1976 s.11.]

Quorum

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 3 members are present.

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

[Section 47 inserted by No. 103 of 1976 s.12.]

Hearing to proceed in absence of parties

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

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

[Section 48 inserted by No. 103 of 1976 s.13.]

Appearance before Appeal Tribunal

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

[Section 49 inserted by No. 103 of 1976 s.14.]

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 50 inserted by No. 103 of 1976 s.15.]

Appellant not restricted 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 45 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.

[Section 51 inserted by No. 103 of 1976 s.16.]

Appeal Tribunal to act according to substantial merits of the case

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.

[Section 52 inserted by No. 103 of 1976 s.17.]

Appeal Tribunal to have regard to statements of planning policy

53. (1) 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 and to any management programme for the time being in force under Part 3 of the *Swan River Trust Act 1988*, which may affect the subject matter of the appeal.

(2) In the case of an appeal that relates to land to which the *Heritage of Western Australia Act 1990* applies, and whether or not the statement of planning policy provides for the conservation of that land, the Minister or the Appeal Tribunal, as the case may be, shall refer the matter to the Heritage Council for advice, may hear representations made on behalf of the Heritage Council, may join the Heritage Council as a party to the appeal, and shall have regard to the objects of that Act.

[Section 53 inserted by No. 103 of 1976 s.18; amended by No. 21 of 1988 s.21; No. 97 of 1990 s.20.]

Power of Minister to make submissions to Appeal Tribunal

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.

(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.

(6) In this section, where the area in which the land the subject of the appeal is situate includes or comprises land or waters that are within or abut the management area within the meaning of the *Swan River Trust Act 1988*, “**Minister**” includes the Minister to whom the administration of the *Swan River Trust Act 1988* is committed.

(7) In this section, where an area in which the land the subject of the appeal is situated includes, or is included in, or abuts any land or waters to which an entry in the Register maintained under section 46 of the *Heritage of Western Australia Act 1990* relates, “**Minister**” includes a reference to the Minister to whom the administration of that Act is committed.

[Section 54 inserted by No. 103 of 1976 s.19; amended by No. 21 of 1988 s.22; No. 97 of 1990 s.21.]

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Proceedings to be public unless otherwise determined

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

[Section 54A inserted by No. 103 of 1976 s.20.]

Appeal to Supreme Court in certain cases

54B. (1) Subject to subsection (2), 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.

[Section 54B inserted by No. 103 of 1976 s.20.]

Costs of appeal

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).

(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) may be recovered by that party, as a debt due to him, in a court of competent jurisdiction.

[Section 54C inserted by No. 120 of 1982 s.21 (1)¹⁴]

Determination of Appeal Tribunal final except in certain cases

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

[Section 54D inserted by No. 103 of 1976 s.20.]

Written reasons for determination and publication thereof

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; and
- (c) shall, upon payment of a fee determined in the manner prescribed, supply a copy of those reasons to any other person.

[Section 54E inserted by No. 103 of 1976 s.20; amended by No. 72 of 1980 s.11.]

s. 54F

Immunity of Appeal Tribunal and officers

54F. No liability shall attach to a member or a deputy of a 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.

[Section 54F inserted by No. 103 of 1976 s.20; amended by No. 120 of 1982 s.22.]

Pending appeals

54G. *[Omitted under Reprints Act 1984 s.7 (4) (e).]*

Regulations and rules

55. (1) The Governor may make such regulations as are necessary or convenient for giving effect to the provisions of this Part in respect of appeals to the Minister and, without limiting the generality of the foregoing, may make regulations prescribing —

- (a) the time and manner of giving notice, and the persons and bodies to be given notice, of an appeal;
- (b) the time and manner of referring an appeal to the Minister;
- (c) the time and manner of giving any other notice, and the persons and bodies to be given any other notice, required under this Part or the regulations;
- (d) the time and manner of maintaining an appeal;
- (e) the procedure to be followed on an appeal;

- (f) the fees to be paid in relation to an appeal; and
- (g) the forms to be used in relation to an appeal.

(2) The Appeal Tribunal may make such rules as are necessary for giving effect to the provisions of this Part in respect of appeals to the Tribunal and, without limiting the generality of the foregoing, may make rules prescribing in respect of such appeals like matters to those referred to in subsection (1) in respect of appeals to the Minister.

[Section 55 inserted by No. 32 of 1978 s.5.]

THE FIRST SCHEDULE

(sections 6 and 8)

**MATTERS WHICH MAY BE DEALT WITH BY
GENERAL PROVISIONS**

1. Streets, roads, and rights-of-way generally including probable new routes and junctions; and particularly the levels alteration, widening, closing, diverting, raising, lowering, aligning, re-aligning, grading, re-grading, classifying, re-classifying, naming, re-naming, constructing, re-constructing, maintaining, repairing, draining, re-draining, sewerage, re-sewerage, beautifying, gardening, and tree planting of streets, roads and rights-of-way, the junctions and intersections of streets, roads, rights-of-way and the excision of their corners, the laying of sewers, pipes and wires, and the placing of lamps, lamp posts, tramway poles, monuments, fences, gateways, public signs, notices, and other objects in or on land adjacent to streets, roads, and rights-of-way.

2. Parks and open spaces generally; and particularly public reserves, gardens, playgrounds, sports and recreation grounds, public and private camping grounds and reserves, drill grounds, aviation grounds, public squares and other open public spaces, and fences, railings, monuments, statues, buildings, and other erections or works on parks, open spaces, public squares, and other public places.

3. Gardens and park spaces for the use of particular parts of the area, and park ways for general use.

4. Public conveniences generally; and particularly churches, schools, educational and recreational institutions, libraries, public buildings, theatres and other places of public entertainment, fountains, public comfort stations, and refreshment kiosks and other buildings.

5. The subdivision of land generally; and in particular any requirements deemed necessary —

- (a) in regard to new subdivisions or re-subdivisions of any land (or maps, plans, sections, or particulars thereof) contained within the scheme area, including drainage, size and shape of allotments (or separate parcels of land), and access thereto;
- (b) for the classification of, and prescribing and determining, notwithstanding the provisions of section 225 of the *Municipal Corporations Act 1906*¹⁵, and of section 146 of the *Road Districts Act 1919*¹⁵, any requirements in regard to

the length or width of any street, road or right-of-way according to the use to which such street, road or right-of-way is likely to be put, or according to the physical features of the land, together with the design, method of construction, and cost of completion or alignment of any street, road, or right-of-way; and

- (c) for dealing with or disposing of land acquired under this Act by a responsible authority, or by any council or other public body or any person.

6. The replanning and reconstruction of the scheme area, or any part thereof, including any provisions necessary for —

- (a) the pooling of the lands of several owners (or any lands, roads, streets, or rights-of-way adjacent or near thereto);
- (b) the re-division of such land among such owners or among such other persons as may be provided for in the scheme;
- (c) providing and making new roads, streets or rights-of-way;
- (d) adjusting and altering the boundaries of any such lands, roads, streets, or rights-of-way;
- (e) effecting such exchanges of land, or cancellation of existing subdivisions as may be necessary or convenient for the purposes aforesaid;
- (f) adjustment of rights between such owners or other persons interested in such lands, roads, streets, or rights-of-way;
- (g) the vesting of such lands, roads, streets, or rights-of-way subject or not subject to any rights or trusts; and any other provisions necessary for giving effect to the purposes aforesaid.

7. Buildings generally, and in particular —

- (a) the height, location, purpose, dimensions or the general character of buildings;
- (b) the special control and regulation of buildings;
- (c) the demolition or alteration of buildings;
- (d) the prevention of the erection of ugly buildings which may destroy local amenities;
- (e) the prohibition or regulation of the placing or subject to section 11 or a reasonable time limit, the continuance of advertisements, advertising hoardings, illuminated signs and other advertising devices and erections, or other disfigurements;

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- (f) the placing of new public buildings;
- (g) harmony in the exterior designs of buildings;
- (h) in the case of buildings to be used for business or industry, the provision of accommodation or the location of the building on the site for the purpose of loading, unloading, servicing, parking or fuelling vehicles, with a view to preventing the obstruction of traffic on public streets or roads.

8. Limiting the number of buildings, rooms, dwelling units, or other accommodation units to the hectare generally or in any particular locality, or on any subdivision, allotment, or parcel of land, particularly or generally and the extent to which each subdivision, allotment, or parcel of land is to be built upon, and providing for adequate light and air to the windows of each house, and prescribing other requirements so far as is reasonable for the purpose of securing the convenience and amenity of the scheme area and proper sanitary and hygienic conditions in connection with any building therein.

9. The making, fixing, and altering and ascertaining of building lines irrespective of the width or alignment of any street, road, or right-of-way, to secure as far as practicable, having regard to the physical features of the site and the depth of the existing subdivisions, that the distance between the buildings to be erected, or buildings likely to be reconstructed, on opposite sides of any street, road or right-of-way, shall not be less than that fixed by the scheme, according to the prospective traffic requirements of such street, road or right-of-way; and the making, fixing, and altering building lines generally and providing that buildings generally or a building of any specified class shall not be built nearer to a building line or an ocean or waterway than is prescribed in a town planning scheme.

10. Classification or zoning of the scheme area for various types, kinds or classes of residences, flats, trade, business, industry, commercial, recreation, cultural heritage conservation, educational or other public or institutional purposes, and including areas for agricultural or rural use or for protection of the environment or landscape or to provide for waterway development and for any other general or particular purposes, whether of the same class or kind as the class or kind before enumerated or not and fixing the sites or areas for any of the purposes included in this Schedule and prohibiting in any of these zones or classification any building or use of land of or for a general or particular nature or purpose.

11. Conservation of the natural beauties of the area, including lakes and other inland waters, banks of rivers, foreshores of harbours, and other parts of the sea, hill slopes and summits, and valleys.

11A. (1) The preservation of —

- (a) particular trees;

- (b) trees of a particular species;
- (c) trees of a particular height or girth or both; or
- (d) trees belonging to a particular group of trees.

(2) The planting or replanting of trees of a particular species.

(3) A local authority may in a town planning scheme declare shrubs or other perennial plants of a species specified in that declaration to be trees for the purposes of the town planning scheme.

(4) In subclauses (1) and (2) —

“trees”, in relation to a town planning scheme in which there is a declaration made under subclause (3), includes shrubs or other perennial plants of the species specified in that declaration.

12. The preservation of places and objects of cultural heritage significance or other scientific interest.

13. Probable routes for railways, tramways, and canals and probable sites for bridges, docks, harbours, piers, quarries, and lighting, water, drainage and sewerage, or any other private or public work or undertaking authorized by statute.

14. Works ancillary to or consequent on the scheme.

15. The extinction or variation of any right-of-way or easement, public or private, or of any restrictive covenant or covenants affecting land.

16. Power of entry and inspection.

17. Facilities for the operation of public utilities and trading undertakings of any local authority or authorized public body, or of any society or public utility.

18. The exercise of the power of the responsible authority to acquire land or buildings, or to make any agreement or proposal in respect thereto.

19. Power to limit the height, at the corner of any street, road, right-of-way, of any wall, fence, hedge, tree or shrub or other obstruction, not being an authorized building.

20. Power of the responsible authority to remove, alter, or demolish any building which obstructs the observance or carrying out of the scheme.

21. Power of a responsible authority to make agreements with owners and of owners to make agreements with one another.

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22. Co-operation of the responsible authority and the owners of land and co-operation between owners of land.

23. Co-operation between the responsible authority and the Government of the State or the Commonwealth, or any public or statutory bodies or authorities, including councils.

24. The recovery of expenses incurred in giving effect to the scheme.

25. The carrying out and completion of the scheme generally, and particularly the time and manner in which, and the persons and authorities by whom or by which the scheme, or any part thereof, shall be carried out and completed and its observance ensured.

26. Any matter with respect to which under this Act an agreement relating to a scheme may be made.

27. Limitation of time for the operation of a scheme.

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 power¹⁶.

28. Any matter necessary or incidental to town planning or housing.

The mention of particular matters in this Schedule shall not be held to prejudice or affect the generality of any other matter.

[The First Schedule amended by No. 41 of 1944 s.2; No. 79 of 1953 s.9; No. 45 of 1962 s.5; No. 94 of 1972 (as amended) s.4 (1); No. 120 of 1982 s.23 (1)¹⁶; No. 26 of 1986 s.12; No. 97 of 1990 s.22; No. 84 of 1994 s.67.]

THE SECOND SCHEDULE

(section 31)

**MATTERS FOR WHICH TOWN PLANNING BY-LAWS MAY BE
MADE BY A LOCAL AUTHORITY**

1. Purchasing or reserving land for new main thoroughfares which it is desired to keep free of buildings by agreement between the owners of such land and the responsible authority or by co-operation between 2 or more local authorities with regard to the lines, widths and direction of thoroughfares which connect adjacent parts of their respective areas.

2. Limiting the number of buildings, rooms, dwelling units or other accommodation units to the hectare generally or in any particular locality, or on any subdivision, allotment or parcel of land, particularly or generally, and the extent to which each subdivision, allotment or parcel of land is to be built upon, and providing for adequate light and air to the windows of each house, and prescribing other requirements so far as is reasonable for the purpose of securing the convenience or amenity of the area to which by-laws apply, and proper sanitary and hygienic conditions in connection with any buildings therein.

3. Classification or zoning reclassifying or re-zoning the area for residence, flats, trade, business, industry, commercial recreation, educational or other public or institutional purposes, and including areas for agricultural or rural use and for any other general or particular purposes whether of the same class or kind as the class or kind before enumerated or not, and fixing the sites or areas for any of the purposes included in this Schedule and prohibiting in any of these zones or classification any building or use of land of or for a general or particular nature or purpose.

4. Prohibiting any district or part of it from being used for any purpose other than that for which it has been classified.

5. Prescribing the height, location, purpose and dimensions or the general character of buildings to be erected or reconstructed as far as is reasonable for securing proper sanitary and hygienic conditions, convenience, or amenity of the area to which the town planning by-laws are to apply.

6. Prohibiting the carrying on of any noxious trades or manufactures, or the erection or use of any buildings without adequate sanitary arrangements, or prohibiting or regulating the erection and use of buildings, advertisement hoardings, or structures for advertising purposes which are such as to be injurious to the amenity or natural beauty of the area to which the town planning by-laws are to apply.

7. Prescribing and determining any requirements deemed necessary in regard to new subdivisions or re-subdivisions of any land (or maps, plans, sections, or particulars thereof) contained within the area to which it is intended that the town planning by-laws shall apply,

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including drainage, size and shape of allotments (or separate parcels of land) and access thereto; also for the classification of and the prescribing and determining of any requirements in regard to the length or width of any street, road, or right-of-way according to the use such street, road, or right-of-way is likely to be put, or according to the physical features of the land, together with the design, method of construction, and completion of alignment, of any street, road or right-of-way.

8. The making, fixing, altering and ascertaining of building lines irrespective of the width or alignment of any street, road, or right-of-way, to secure as far as practicable, having regard to the physical features of the site and the depths of the existing subdivisions of land, that the distance between the buildings to be erected, or buildings likely to be reconstructed on the opposite sides of any street, road, or right-of-way, shall be not less than that fixed by the by-laws according to the prospective traffic requirements of such street, road or right-of-way, and the making, fixing and altering building lines generally and providing that buildings generally or a building of any specified class shall not be built nearer to a building line or an ocean or waterway than is prescribed in a town planning by-law.

9. Limiting of open spaces, recreation grounds, or sites for public buildings, by purchase or agreement between owners of lands and the local authority.

10. Limiting the height, at the corner of any street, road, or right-of-way of any wall, fence, hedge, tree, or shrub or other obstruction not being an authorized building.

11. Providing for the authority or authorities responsible for carrying the town planning by-laws into effect and enforcing their observance.

[The Second Schedule amended by No. 41 of 1944 s.3; No. 79 of 1953 s.10; No. 61 of 1958 s.9; No. 64 of 1961 s.9; No. 94 of 1972 (as amended) s.4 (1).]

[The Third Schedule. Repealed by No. 73 of 1982 s.17.]

Town Planning and Development Act 1928

NOTES

^{1.} This reprint is a compilation as at 21 February 1996 of the *Town Planning and Development Act 1928* and includes the amendments effected by the other Acts referred to in the following Table^{1a, 17}.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Town Planning and Development Act 1928</i>	39 of 1928	28 December 1928	1 November 1929 (see <i>Gazette</i> 1 November 1929 p.2432)	
<i>Town Planning and Development Act Amendment Act 1943</i>	16 of 1943	20 October 1943	20 October 1943	
<i>Town Planning and Development Act Amendment Act 1944</i>	41 of 1944	11 January 1945	11 January 1945	
<i>Town Planning and Development Act Amendment Act 1945</i>	16 of 1945	9 January 1946	9 January 1946	
<i>Town Planning and Development Act Amendment Act 1947</i>	29 of 1947	18 November 1947	18 November 1947	
<i>Town Planning and Development Act Amendment Act 1953</i>	79 of 1953	18 January 1954	18 January 1954	
<i>Limitation Act Amendment Act 1954, section 8</i>	73 of 1954	14 January 1955	1 March 1955 (see <i>Gazette</i> 18 February 1955 p.343)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Town Planning and Development Act Amendment Act 1955</i>	63 of 1955	19 December 1955	19 December 1955	
<i>Town Planning and Development Act Amendment Act 1956</i>	79 of 1956	17 January 1957	17 January 1957	
<i>Town Planning and Development Act Amendment Act 1957</i>	68 of 1957	6 December 1957	6 December 1957	
<i>Town Planning and Development Act Amendment Act (No. 2) 1957</i>	79 of 1957	23 December 1957	23 December 1957	
<i>Town Planning and Development Act Amendment Act (No. 2) 1958</i>	61 of 1958	24 December 1958	24 December 1958	Sections 2 (2) and 6 (2) retrospective
<i>Town Planning and Development Act Amendment Act (No. 3) 1959</i>	49 of 1959	20 November 1959	20 November 1959	
<i>Town Planning and Development Act Amendment Act 1961</i>	64 of 1961	28 November 1961	1 January 1962 (see <i>Gazette</i> 22 December 1961 p.3860)	
<i>Town Planning and Development Act Amendment Act 1962</i>	45 of 1962	1 November 1962	1 November 1962	
<i>Town Planning and Development Act Amendment Act 1965</i>	98 of 1965	17 December 1965	17 December 1965	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see section 2 (2)); balance: 21 December 1965	
<i>Town Planning and Development Act Amendment Act 1967</i>	25 of 1967	27 October 1967	27 October 1967	
<i>Town Planning and Development Act Amendment Act 1969</i>	31 of 1969	16 May 1969	16 May 1969	
<i>Town Planning and Development Act Amendment Act 1970</i>	117 of 1970	10 December 1970	15 February 1971 (see <i>Gazette</i> 12 February 1971 p.378)	
<i>Town Planning and Development Act Amendment Act 1972</i>	34 of 1972	16 June 1972	16 June 1972	
<i>Metric Conversion Act 1972</i>	94 of 1972	4 December 1972	The relevant amendments as set out in the Second Schedule, took effect on 1 July 1973 (see <i>Gazette</i> 26 June 1973 p.2378)	The Second Schedule was added by the <i>Metric Conversion Act Amendment Act 1973</i> (Act No. 19 of 1973)
<i>Town Planning and Development Act Amendment Act 1973</i>	30 of 1973	6 June 1973	6 June 1973	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Town Planning and Development Act Amendment Act 1974</i>	14 of 1974	16 October 1974	Section 3: 15 November 1974 (see section 2 and <i>Gazette</i> 15 November 1974 p.5053); balance on assent	
<i>Town Planning and Development Act Amendment Act 1975</i>	69 of 1975	7 November 1975	7 November 1975	
<i>Town Planning and Development Act Amendment Act 1976</i>	103 of 1976	17 November 1976	25 June 1979 (see section 2 and <i>Gazette</i> 25 June 1979 p.1757)	
<i>Town Planning and Development Act Amendment Act 1978</i>	32 of 1978	22 May 1978	25 June 1979 (see section 2 and <i>Gazette</i> 25 June 1979 p.1757)	
<i>Acts Amendment and Repeal (Valuation of Land) Act 1978, Part XIV</i>	76 of 1978	20 October 1978	1 July 1979 (see section 2 and <i>Gazette</i> 11 May 1979 p.1211)	
<i>Mining Act 1978, section 3</i>	107 of 1978	8 December 1978	1 January 1982 (see section 2 (2) and <i>Gazette</i> 18 December 1981 p.5085)	
<i>Town Planning and Development Act Amendment Act 1979</i>	89 of 1979	11 December 1979	11 December 1979	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Town Planning and Development Amendment Act 1980</i>	72 of 1980	26 November 1980	Sections 3 and 4: 14 December 1980 (see section 2 (2)); sections 6, 7, 8, 9 and 11: 25 December 1980 (see section 2 (3)); section 10: 18 March 1983 (see <i>Gazette</i> 18 March 1983 p.869); balance on assent	
<i>Acts Amendment (Land Use Planning) Act 1981, Part III</i>	79 of 1981	9 November 1981	18 December 1981 (see section 2 and <i>Gazette</i> 18 December 1981 p.5166)	
<i>Acts Amendment (Metropolitan Region Town Planning Scheme) Act 1982, Part III</i>	73 of 1982	29 October 1982	29 October 1982	
<i>Town Planning and Development Act Amendment Act 1982</i>	120 of 1982	10 December 1982	Sections 15, 19, 20, 21 and 22: 20 May 1983 (see section 2 (2) and <i>Gazette</i> 20 May 1983 p.1522); sections 6 and 7: 10 March 1986 (see <i>Gazette</i> 7 March 1986 p.692); section 8 to be proclaimed ⁵ ; balance on assent	Amended by Act No. 32 of 1983, section 8 and Act No. 84 of 1994, section 60 ⁵ ; Section 4 (2) and (3) savings and transitional ³ ; section 10 (2) saving ⁶ ; section 12 (2) transitional ⁷ ; section 15 (2) transitional ¹⁰ ; section 19 (2) transitional ¹³ ; section 21 (2) transitional ¹⁴ ; section 23 (2) transitional ¹⁶

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Mining) Act 1982, Part III</i>	122 of 1982	10 December 1982	1 December 1982	
<i>Town Planning and Development Amendment Act 1983</i>	32 of 1983	1 December 1983	1 December 1983	Section 4 (2) transitional ⁴
<i>Town Planning and Development Amendment Act 1985</i>	7 of 1985	25 March 1985	22 April 1985	
<i>Acts Amendment (State Planning Commission) Act 1985, Part II</i>	92 of 1985	4 December 1985	6 December 1985 (see section 2 and <i>Gazette</i> 6 December 1985 p.4591)	
<i>Commercial Arbitration Act 1985, section 3 (1)</i>	109 of 1985	7 January 1986	1 April 1986 (see section 2 and <i>Gazette</i> 28 February 1986 p.605)	
<i>Town Planning and Development Amendment Act 1986</i>	26 of 1986	29 July 1986	Sections 5 (2) and 10 (2): 19 January 1987 (see section 2 (2) and <i>Gazette</i> 31 December 1986 p.5027); balance on assent	Section 8 (2) validation ⁵
<i>Acts Amendment and Repeal (Environmental Protection) Act 1986, section 34</i>	77 of 1986	4 December 1986	20 February 1987 (see <i>Gazette</i> 20 February 1987 p.440)	
<i>Acts Amendment (Swan River Trust) Act 1988, Part 9</i>	21 of 1988	5 October 1988	1 March 1989 (see section 2 and <i>Gazette</i> 27 January 1989 p.264)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Heritage Council) Act 1990, Part 2, Division 4</i>	97 of 1990	22 December 1990	25 February 1991 (see section 2 and <i>Gazette</i> 22 February 1991 p.868)	
<i>East Perth Redevelopment Act 1991, section 59</i>	62 of 1991	30 December 1991	1 July 1992 (see section 2 and <i>Gazette</i> 1 July 1992 p.2945)	
<i>Financial Administration Legislation Amendment Act 1993, section 11</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993	
<i>Acts Amendment (Public Sector Management) Act 1994, section 3 (2)</i>	32 of 1994	29 June 1994	1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)	
<i>Subiaco Redevelopment Act 1994, section 67</i>	35 of 1994	8 July 1994	24 August 1994 (see section 2 and <i>Gazette</i> 23 August 1994 p.4364)	
<i>Planning Legislation Amendment Act (No. 2) 1994, section 46 and Part 6</i>	84 of 1994	13 January 1995	1 March 1995 (see section 2 and <i>Gazette</i> 21 February 1995 p.567)	
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994, section 109</i>	89 of 1994	15 December 1994	1 January 1995 (see section 2 (2) and <i>Gazette</i> 23 December 1994 p.7069)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Swan Valley Planning Act 1995, section 27 (Schedule 2, Division 3)</i>	31 of 1995	18 September 1995	25 November 1995 (see section 2 and <i>Gazette</i> 24 November 1995 p.5389)	Trans- itional ^{18, 19}
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995, section 188</i>	73 of 1995	27 December 1995	1 January 1996 (see section 2 (2) and <i>Gazette</i> 29 December 1995 p.6291)	

N.B. The *Town Planning and Development Act 1928* is affected by section 3 of the *Soil and Land Conservation Act 1945* (Act No. 15 of 1945); the *Metropolitan Region Town Planning Scheme Act 1959* (Act No. 78 of 1959); and the *Industrial Lands Development Authority Act 1966* (Act No. 60 of 1966).

^{1a} As at the date of this reprint section 100 of the *Strata Titles Amendment Act 1995* (Act No. 58 of 1995) was not in operation.

² Title (as changed under the *Public Service Act 1978* — see Public Service Notices 11 June 1986 Volume 8 No. 22) substituted under section 7 (3) (h) of the *Reprints Act 1984*.

³ Section 4 (2) and (3) of the *Town Planning and Development Amendment Act 1982* (Act No. 120 of 1982) read as follows —

“ (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.

”.

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⁴ Section 4 (2) of the *Town Planning and Development Amendment Act 1983* (Act No. 32 of 1983) reads as follows —

“ (2) Where an appeal was instituted before subsection (1) of this section came into operation and the appeal proceedings (that is the institution of the appeal, the decision thereon and all proceedings connected therewith) would have been authorized if section 8A of the principal Act had been in operation at the time when the appeal proceedings were instituted and in progress, those proceedings shall have, and be deemed always to have had, the same validity as they would have had if section 8A had been in operation at that time. ”

⁵ Section 8 of the *Town Planning and Development Amendment Act 1982* (Act No. 120 of 1982) repealed by Act No. 84 of 1994 section 60.

⁶ Section 10 (2) of the *Town Planning and Development Amendment Act 1982* (Act No. 120 of 1982) reads as follows —

“ (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 [now the State Planning Commission — see Act No. 91 of 1985 section 65 (1)]; 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. ”

⁷ Section 12 (2) of the *Town Planning and Development Amendment Act 1982* (Act No. 120 of 1982) reads as follows —

“ (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. ”

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⁸ Section 8 (2) of the *Town Planning and Development Amendment Act 1986* (Act No. 26 of 1986) reads as follows —

“ (2) Notwithstanding that any plan or amended plan of subdivision to which section 23 of the principal Act applied before its repeal by subsection (1) was not dealt with in accordance with that section, that plan or amended plan of subdivision shall, if it was dealt with in accordance with the provisions of the principal Act other than that section, be deemed to have been validly and properly dealt with in accordance with the provisions of the principal Act. ”.

⁹ In this reprint the numbering of Parts, sections, Divisions, etc., effected in the 1951 reprint (in Volume 4 of the Reprinted Acts of Parliament of Western Australia) and subsequent reprints has again been retained. References to the original numbering are contained in those reprints.

¹⁰ Section 15 (2) of the *Town Planning and Development Amendment Act 1982* (Act No. 120 of 1982) reads as follows —

“ (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. ”.

¹¹ Note no longer relevant.

¹² *The Local Government Act Amendment Act (No. 4) 1969* came into operation on 12 December 1969. See *Gazette* 12 December 1969 p.4001.

¹³ Section 19 (2) of the *Town Planning and Development Amendment Act 1982* (Act No. 120 of 1982) reads as follows —

“ (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. ”.

¹⁴ Section 21 (2) of the *Town Planning and Development Amendment Act 1982* (Act No. 120 of 1982) reads as follows —

“ (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. ”.

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- ¹⁵ Repealed by the *Local Government Act 1960* (Act No. 84 of 1960).
- ¹⁶ Section 23 (2) of the *Town Planning and Development Amendment Act 1982* (Act No. 120 of 1982) reads as follows —
- “ (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. ”.
- ¹⁷ Marginal notes in the *Town Planning and Development Act 1928* referring to legislation of other jurisdictions have been omitted from this reprint.
- ¹⁸ Clause 11 (2) of Schedule 2 of the *Swan Valley Planning Act 1995* (Act No. 31 of 1995) reads as follows —
- “ (2) The provisions inserted by subclause (1) do not apply to a town planning scheme or an amendment to a town planning scheme that was prepared before the commencement of section 27 of this Act. ”.
- ¹⁹ Clause 12 (2) of Schedule 2 of the *Swan Valley Planning Act 1995* (Act No. 31 of 1995) reads as follows —
- “ (2) The provisions inserted by subclause (1) do not apply to any application for approval under section 20 of the principal Act made before the commencement of section 27 of this Act. ”.
- ²⁰ Now known as the *Land Acquisition and Public Works Act 1902*.
- ²¹ Repealed by the *Mining Act 1978* (Act No. 107 of 1978).