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WESTERN AUSTRALIA

MUNICIPALITY OF FREMANTLE ACT 1925

AN ACT to confer on the Municipality of Fremantle additional powers relating to the opening, diverting, altering, or increasing the width of streets, and to amend Section 217 of the *Municipal Corporations Act 1906*².

Short title

1. This Act may be cited as the *Municipality of Fremantle Act 1925*¹.

Acquisition of land

2. Whenever the Municipal Council of Fremantle (hereinafter referred to as "the Council") may decide that it is necessary or expedient to acquire land under the provisions of section 217, section 219 and section 438(1), of the *Municipal Corporations Act 1906*² (hereinafter referred to as the principal Act), for the purpose of opening, extending, diverting, altering, or increasing the width of any streets or footways, the Council shall not be confined to the acquisition of such land as is actually required for such purpose, but it shall be lawful for the Council to acquire or take land on either side or on both sides of the proposed new street, or extended or widened street, for such a depth as the Council shall think fit.

Dealing with land when acquired

3. The Council may in respect of any land acquired by it under authority of this Act, or the principal Act², do all or any of the following things:—

- (a) Demolish or repair any buildings or works thereon;
- (b) Construct new buildings or erections thereon;
- (c) Close, alter, widen, extend, or divert any existing public way thereon;
- (d) Construct and open any new public way thereon;
- (e) Alter the levels of such land, and alter existing drains, and construct new drains and stormwater sewers thereon;
- (f) Generally alter, remodel, and improve such land and buildings in such manner as the Council may think fit;
- (g) Sell the whole or any portion of such land, in one or more lots, on such terms and conditions (including power to take securities for any balance of purchase money) as the Council may think fit;
- (h) Lease the whole or any portion of such land for such periods, and on such terms and conditions, as the Council may think fit.

Power to widen streets

4. In addition to, and without limiting any other provisions of this Act or the principal Act², the Council may widen any street in accordance with the following provisions:—

- (a) The Council may widen the carriage way of any street by including therein part or the whole of the space occupied by footways, and by providing footways.
- (b) The Council may purchase or resume, for the purpose of footways, land abutting on any street, and such purchase or resumption may extend, to a limited distance only, above and below or above or below the ground level or the intended level of the footway.
- (c) Such purchase or resumption may be carried out on conditions reserving to the owners of the land purchased or resumed any of the following rights, that is to say:—
 - (i) rights to the continued possession, use, and occupation of any existing cellars or rooms below the level of the new footways;
 - (ii) rights to the continued possession, use, and occupation of existing buildings above such footway;
 - (iii) rights of erecting, possessing, using, and occupying buildings above such footway; and
 - (iv) rights of support for such buildings.

- (d) The Council may construct such footways on land so purchased or resumed, and for that purpose may carry out such structural alterations of existing buildings as may be necessary.
- (e) The Council shall pay reasonable compensation for damage or injury caused by the exercise of the powers of this section.
- (f) Any question as to the amount of such compensation shall be determined by arbitration under the *Arbitration Act 1895*³, unless the parties agree upon some other method of determination.

[Section 4 amended by No. 70 of 1959 s. 2.]

Power to prescribe new building lines

5. (1) The Council may by a by-law under the principal Act² at any time prescribe a new building line for any street or part of a street.

(2) Notice in writing of such new building line shall forthwith be served on the owners of all lands affected.

(3) No person shall construct, build, place, reconstruct, rebuild, replace, or repair any building or work or portion of a building or work upon the land between the old alignment and the new, except for the purpose of completing a building already in course of erection at the time of the prescribing of the new building line as aforesaid: Provided that the building surveyor (subject to any directions which the Council may give) may approve the execution of minor and not substantial repairs, in order to permit of the reasonable preservation of any existing building or work.

(4) Any land lying between the old and the new alignment shall be deemed to have been taken by, and shall vest in the Council on the date on which it shall be cleared of buildings and obstructions for the purpose of rebuilding on the new alignment or, in the case of land upon which no building or work or portion of a building or work is erected or in course of erection at the time of the prescribing of the new building line, on the date of such prescribing, or on the date of the commencement of the *Municipality of Fremantle Act Amendment Act 1956*¹, whichever shall be the later date. Compensation shall thereupon be payable by the Council to the owner or person or persons interested: Provided that such compensation shall be calculated as at such date, and shall be limited to a sum representing the depreciation in value (if any) of the remaining land, due to the setting back of the building line.

(5) Any question as to the amount of such compensation shall be determined by arbitration under the *Commercial Arbitration Act 1985*, unless the parties agree upon some other method of determination.

(6) Any amount due for such compensation may be recoverable as a debt in any court of competent jurisdiction.

(7) Notwithstanding that the Council shall have prescribed a new building line in accordance with the provisions of this section, it may at any time decide to purchase or resume any or all of the lands affected, under the provisions of this Act and the principal Act² relating to the purchase or resumption of land.

[Section 5 amended by No. 13 of 1956 s. 2; No. 70 of 1959 s. 3; No. 109 of 1985 s. 3.]

Works deemed to be within section 438 of *Municipal Corporations Act 1906*²

6. The exercise of any of the powers by this Act conferred on the Council shall be deemed to be works and undertakings within the meaning of section 438 of the principal Act².

Borrowing powers

7. The Council may, with the consent of the Governor, borrow in addition to the sums which it is authorized to borrow under Part XXIV of the principal Act², any further sums required for the purposes of carrying out any of the works and undertakings which by this Act it is empowered to carry out. All the provisions of the principal Act² relating to the borrowing of moneys shall apply to such loans, except those relating to the restriction of the amounts borrowed.

Amendment of section 217 of the *Municipal Corporations Act 1906*²

8. Section 217 of the principal Act² is amended by inserting after the word "undertakings," in paragraph (a) thereof, the words "and may mortgage the land so purchased to secure to the vendor payment of the purchase money, or any part thereof, with interest"; and such amendment shall have effect as from the commencement of the principal Act².

Provided that such amendment of section 217 of the principal Act² shall not extend or apply to land purchased or acquired by the Municipal Council of Fremantle for the purposes of this Act, or to the purchase or acquisition of land by the council of any municipality for streets or public places.

**Powers under *Municipal Corporations Act 1906*²
not restricted**

9. Subject to the proviso to section 8, nothing in this Act shall be deemed to limit the powers conferred on the Council by the principal Act².

NOTES

¹ This reprint is a compilation as at 12 July 1989 of the *Municipality of Fremantle Act 1925* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	No. and Year	Assent	Commencement	Miscellaneous
<i>Municipality of Fremantle Act 1925</i>	19 of 1925	4 November 1925	4 November 1925	
<i>Municipality of Fremantle Act Amendment Act 1956</i>	13 of 1956	16 October 1956	16 October 1956	
<i>Municipality of Fremantle Act Amendment Act 1959</i>	70 of 1959	10 December 1959	10 December 1959	
<i>Commercial Arbitration Act 1985</i> section 3	109 of 1985	7 January 1986	1 April 1986 (see <i>Gazette</i> 28 February 1986 p. 605)	

² Now see the *Local Government Act 1960*.

³ Now see the *Commercial Arbitration Act 1985*.