

STATE PLANNING COMMISSION (AMENDMENT AND VALIDATION) ACT

No. 7 of 1990

AN ACT to amend the *State Planning Commission Act 1985*, to ensure that, apart from a specified ground of challenge, certain amendments to the Metropolitan Region Scheme have effect, and for related purposes.

[Assented to 16 July 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *State Planning Commission (Amendment and Validation) Act 1990*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. In this Act—

- (a) the *State Planning Commission Act 1985** is referred to as the principal Act;
- (b) expressions used have the meanings assigned to them by the principal Act.

[*Act No. 91 of 1985; amended by Acts Nos. 4 and 77 of 1986.]

Application of sections 6 and 7

4. (1) Subject to this section, sections 6 and 7 have effect notwithstanding any judgment or order in any proceedings before a court or any writ or other relief, or an entitlement to the issue of any writ or the grant of other relief, in those proceedings.

(2) Section 7 does not make good any error or insufficiency held by a court to have occurred in relation to Metropolitan Region Scheme Amendment No. 774/33A affecting certain land in Helena Valley being the proposed amendment in respect of which notice under section 33A (2) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 12 May 1989 at page 1453.

(3) Section 6 does not apply to the following amendments—

- (a) Metropolitan Region Scheme Amendment No. 696/33A affecting certain land in Padbury known as Hepburn Heights being the amendment in respect of which notice under section 33A (8) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 10th March 1989 at page 715; and
- (b) Metropolitan Region Scheme Amendment No. 692/33A affecting certain land known as the old Swan Brewery site being the amendment in respect of which notice under section 33A (8) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 30th October 1987 at page 4010.

(4) Section 7 does not apply to Metropolitan Region Scheme Amendment No. 776/33A affecting certain land in Leda near Kwinana being the proposed amendment in respect of which notice under section 33A (2) of the Metropolitan Scheme Act appeared in the *Government Gazette* on 30th June 1989 at page 1950.

(5) Sections 6 and 7 have effect subject to any judgment or order, relating to an amendment to the Metropolitan Region Scheme, that is consequential on a finding by a court to the effect that an opinion under subsection (1) of section 33A of the Metropolitan Scheme Act that the amendment did not constitute a substantial alteration to that Scheme was not one that could reasonably have been held for the purposes of that subsection.

(6) For the purposes of reaching a finding referred to in subsection (5) a court shall not assume that the absence of any proper record of the basis for forming the opinion indicates any failure to—

- (a) give proper consideration to relevant matters; or
- (b) exclude consideration of irrelevant matters,

nor shall it reach or base such a finding on the ground of the absence of a proper record.

(7) Subsection (5) applies to a judgment or order whether it is given or made before or after the commencement of this Act.

Section 20 amended

5. Section 20 of the principal Act is amended by inserting after subsection (4) the following subsections—

- “ (5) The reference to functions in subsection (1) extends, without limitation or restriction, to all of the powers, privileges, authorities, discretions, duties and responsibilities vested in or imposed on the Commission by this Act or any other written law.

(6) Without limiting the generality of subsection (1), where the Commission has delegated its functions under section 18 (1) (e) (ii) or (v), the delegation includes, subject to the instrument of delegation, a delegation of every function of the Commission under sections 33 and 33A of the Metropolitan Scheme Act. ”.

Validation of certain amendments to Scheme

6. (1) An amendment to the Metropolitan Region Scheme published in the *Government Gazette* under section 33A (8) of the Metropolitan Scheme Act after the commencement of the principal Act and before the commencement of this Act and every act or omission done or made, or purporting to have been done or made, under or for the purposes of or in reliance on that amendment or that Scheme as so amended—

- (a) is and always has been valid notwithstanding the matters set out in subsection (2); and
- (b) is not to be held in any proceedings to be, or ever to have been, invalid by reason only of any of those matters.

(2) The matters referred to in subsection (1) are—

- (a) any failure by the Commission, either itself or through a person acting or purporting to act on its behalf, to comply with subsection (1) of section 33A of the Metropolitan Scheme Act in respect of the formation of an opinion under that subsection that the amendment did not constitute a substantial alteration to the Scheme; or
- (b) the terms of any delegation or supposed delegation by the Commission of its functions under section 33 or 33A of that Act.

(3) Section 7 (1) (a), (b) and (c) applies to an amendment referred to in subsection (1) in the same way as it applies to a pending amendment under that section.

Amendments in progress

7. (1) For the purposes of the Metropolitan Scheme Act and any pending amendment of the Metropolitan Region Scheme—

- (a) the Commission is to be taken to have properly and effectually formed the opinion under section 33A (1) of that Act that the pending amendment does not constitute a substantial alteration to that Scheme;
- (b) without limiting paragraph (a), the Commission is to be taken to have properly and effectually delegated to the Council as from the commencement of the principal Act all of its functions, powers, privileges, authorities, discretions, duties and responsibilities under sections 33 and 33A of that Act; and
- (c) effect is to be given accordingly to every notice and certificate under section 33A (2) of that Act relating to any pending amendment that has appeared in the *Government Gazette* and to all things done or remaining to be done in respect of the pending amendment in order to comply with that section.

(2) In subsection (1) “pending amendment” means an amendment in respect of which a notice and certificate have appeared in the *Government Gazette* for the purposes of subsection (2) of section 33A of the Metropolitan Scheme Act but which has not taken effect under subsection (8) of that section before the commencement of this Act.
