

WESTERN AUSTRALIA

TOWN PLANNING AND DEVELOPMENT AMENDMENT ACT

No. 26 of 1986

AN ACT to amend the *Town Planning and Development Act 1928* and section 295 of the *Local Government Act 1960*.

[Assented to 29 July 1986.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Town Planning and Development Amendment Act 1986*.

Commencement

2. (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 5 (2) and 10 (2) shall come into operation on such day as is fixed by proclamation.

Principal Act

3. In this Act, the *Town Planning and Development Act 1928** is referred to as the principal Act.

*[*Reprinted as approved 22 May 1980 and amended by Acts Nos. 107 of 1978, 72 of 1980, 79 of 1981, 73, 120, and 122 of 1982, 32 of 1983 and 7, 92 and 109 of 1985.]*

Section 8A amended

4. Section 8A of the principal Act is amended in subsection (1) by deleting “Where” and substituting the following—

“ Subject to this section, if ”.

Section 20 amended

5. (1) Section 20 of the principal Act is amended—

(a) in subsection (1) by—

(i) deleting “section twenty B of this Act” in paragraph (a) and substituting the following—

“ this section and to section 20B, ”;

(ii) inserting before “the leasing or the granting” in paragraph (d) (ii) the following—

“ subject to paragraph (da), ”;

and

(iii) inserting after paragraph (d) the following paragraph—

“ (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. ”;

and

(b) by inserting after subsection (1) the following subsections—

“ (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) Section 20 of the principal Act is amended by repealing subsection (2) and substituting the following subsection—

“ (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. ”.

Section 20D inserted

6. The principal Act is amended by inserting after section 20C the following section—

“ 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 Authority of Western Australia established by the *Water Authority Act 1984* for the provision of water services as defined by that Act to the satisfaction of that Authority 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 firstmentioned approval is subject. ”.

Section 21 amended

7. Section 21 of the principal Act is amended in subsection (1) (c) by—

(a) deleting “or” at the end of subparagraph (i);

(b) deleting the full stop at the end of subparagraph (ii) and substituting the following—

“ ; or ”; and

(c) inserting after subparagraph (ii) the following subparagraph—

- “ (iii) the lease is a lease which may be entered into without the approval of the Commission by virtue of section 20 (1a). ”.

Section 23 repealed

8. (1) Section 23 of the principal Act is repealed.

(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.

Section 24 amended

9. Section 24 of the principal Act is amended by repealing subsection (3) and substituting the following subsections—

“ (3) The Commission shall—

- (a) after receiving a plan or copy and accompanying memorandum forwarded to it under subsection (2) and considering any objections or recommendations contained in that memorandum; and
- (b) within a period of 90 days after the day on which the plan referred to in paragraph (a) was submitted to the Commission for approval or such longer period after that day as may be agreed in writing between the Commission and the applicant for approval,

approve or refuse to approve the plan referred to in paragraph (a) or require the applicant for approval to comply with such conditions as the Commission thinks fit to impose before approving that plan.

(4) If the Commission does not under subsection (3)—

- (a) approve or refuse to approve a plan; or
- (b) impose conditions,

within the relevant period referred to in paragraph (b) of that subsection, the application for approval of the plan concerned is deemed to have been refused on the expiry of that period.

(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 26 amended

10. (1) Section 26 of the principal Act is amended in subsection (1) by deleting “such approval.” in paragraph (a) and substituting the following—

“ such approval, or from a decision of the Commission made under section 24(6). ”.

(2) Section 26 of the principal Act is amended in subsection (1) by inserting after “any plan,” in paragraph (a) the following—

“ application for title, ”.

Section 28A amended

11. Section 28A of the principal Act is amended in subsection (1) by deleting—

(a) paragraph (a) and substituting the following paragraph—

“ (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

(ii) a road of that subdivision (in this subsection called “a subdivisional road”) joins,

an existing road; ”; and

(b) “referred to in paragraph (a) of this subsection.” and substituting the following—

“ , or is joined by a subdivisional road, referred to in paragraph (a). ”.

First Schedule amended

12. The First Schedule to the principal Act is amended by inserting after clause 11 the following clause—

“ 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. ”.

Section 295 of Local Government Act 1960 amended

13. Section 295 of the *Local Government Act 1960** is amended—

(a) in subsection (2) by deleting “Town Planning” and substituting the following—

“ Planning or his delegate under subsection (2a), as the case requires, ”; and

(b) by inserting after subsection (2) the following subsections—

“ (2a) The Minister for Planning may, subject to subsection (2b), by writing signed by him delegate generally to the State Planning Commission the power to give or withhold consent conferred on him by subsection (2).

(2b) If the Minister for Planning has under subsection (2a) delegated the power referred to in that subsection to the State Planning Commission and a council to which a plan of subdivision has been delivered under subsection (1)

objects to the exercise by the State Planning Commission of that power in relation to the relevant subdivision, the Minister for Planning shall, and the State Planning Commission shall not, exercise that power in relation to that subdivision.

(2c) In subsections (2), (2a) and (2b)—

“the Minister for Planning” means the Minister to whom the administration of the *Town Planning and Development Act 1928* is for the time being committed by the Governor;

“the State Planning Commission” means the State Planning Commission established by section 4 of the *State Planning Commission Act 1985*. ”.

[*Reprinted as approved 24 June 1983 and amended by Acts Nos. 6 and 84 of 1983, 17, 25, 42 and 79 of 1984 and 35, 99, 105 and 109 of 1985.]
