

TOWN PLANNING AND DEVELOPMENT.

No. 32 of 1983.

AN ACT to amend the Town Planning and Development Act 1928-1982 and section 6 of the Town Planning and Development Amendment Act 1982.

[Assented to 1 December 1983.]

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:—

1. (1) This Act may be cited as the *Town Planning and Development Amendment Act 1983*. Short title and citation.

(2) In this Act the Town Planning and Development Act 1928-1982 is referred to as the principal Act.

Reprinted as approved 22 May 1980; amended by Acts Nos. 107 of 1978, 72 of 1980, 79 of 1981 and 73, 120 and 122 of 1982.

(3) The principal Act as amended by this Act may be cited as the Town Planning and Development Act 1928-1983.

Section 7
amended.

2. Section 7 of the principal Act is amended—

(a) in subsection (2) by deleting “refuse to approve a scheme except with such modifications, and on such conditions, as he may think fit” and substituting the following—

“ require the local authority to modify the scheme in such manner as he may specify before approval is given ”;
and

(b) by repealing subsection (5) and substituting the following—

“ (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 of this Act which affects its district; and

(b) may include in the scheme a provision that a specified statement of planning policy, with 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) of this Act, were set out in full in the scheme; and

- (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) of this subsection which is inconsistent therewith. ”.

3. Section 7B of the principal Act is amended— Section 7B
amended.

(a) in subsection (1)—

- (i) in paragraph (a), by deleting “with the approval of the Governor”; and
- (ii) in paragraph (b), by deleting “During the operation of an interim development order made under this section a person shall not carry out or cause to be carried out any development within a district or part of a district to which the order applies contrary to the terms of the order; but nothing” and substituting the following—

“ Nothing ”;

- (b) in paragraph (a) of subsection (2) by deleting “approval by the Governor” and substituting the following—

“ making ”;

- (c) in subsection (3) by deleting paragraph (c) and substituting the following—

“ (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. ”; and

- (d) by deleting subsection (7) and substituting the following—

“ (7) (a) Subject to subsection (1) (b) of this section, a person who—

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

(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: \$1 000.

(b) Where a continuing state of affairs is created by a wrongful act or omission referred to in paragraph (a) of this subsection, and that state of affairs continues after conviction and after the court considers that the same could reasonably have been removed, the person is guilty of a further offence and is liable to a further fine not exceeding \$100 in respect of each day on which that further offence so continues.

(c) This subsection does not prejudice or affect subsection (8) of this section. ”.

4. (1) After section 8 of the principal Act, the following section is inserted—

Section 8A
inserted;
and
validation.

“ 8A. (1) Where—

Appeal
against
exercise of
discretionary
power under
scheme.

- (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 of this Act.

(2) Subsection (1) of this section 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. ”.

(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.

Section 20
amended.

5. Section 20 of the principal Act is amended in subsection (1) by inserting, after paragraph (d), the following paragraph—

“ (e) In paragraph (a) of subsection (1) of this section “license to use or occupy” does not include an easement. ”.

Section 32
amended.

6. Section 32 of the principal Act is amended in the proviso—

(a) by deleting “Provided that, so” and substituting the following—

“ Provided that—

(a) so ”;

- (b) by deleting the full stop at the end thereof and substituting the following—

“ ; and ”; and

- (c) by inserting after paragraph (a) the following paragraph—

“ (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) of this proviso. ”.

7. Section 37 of the principal Act is amended in paragraph (a) of the definition of “appeal” by inserting after subparagraph (i) the following subparagraph—

Section 37
amended.

“ (ia) section 8A of this Act; ”.

8. Section 6 (b) of the Town Planning and Development Amendment Act 1982 is amended, in subsection (3a) to be inserted in section 7AA of the principal Act, by deleting “to which the Minister had given preliminary approval” and substituting the following—

Section 6
of the Town
Planning
and
Development
Amendment
Act 1982
amended.

“ in respect of which the Minister had given consent to public submissions being sought ”.
