

**METROPOLITAN REGION
TOWN PLANNING SCHEME
(No. 2).**

No. 115 of 1979.

**AN ACT to amend the Metropolitan Region Town
Planning Scheme Act, 1959-1976.**

[Assented to 21st December, 1979.]

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 *Metropolitan Region Town Planning Scheme Act Amendment Act (No. 2), 1979.*

Short title
and
citation.

(2) In this Act the Metropolitan Region Town Planning Scheme Act, 1959-1976 is referred to as the principal Act.

Reprinted
as approved
for reprint
27th Decem-
ber, 1978.

(3) The principal Act as amended by this Act may be cited as the Metropolitan Region Town Planning Scheme Act, 1959-1979.

Commence-
ment.

2. (1) The provisions of this Act other than section 22 shall come into operation on such day or days as is or are, respectively, fixed by proclamation.

(2) Section 22 of this Act shall come into operation on the day on which section 12 of this Act comes into operation.

Section 6
amended.

3. Section 6 of the principal Act is amended—

(a) by adding immediately after the interpretation “Authority” the following interpretation—

“Chairman” means the person holding or acting in the office of Chairman of the Authority; ; and

(b) as to the interpretation “Metropolitan Region Scheme” or “Scheme”—

(i) by deleting the word “and” immediately after paragraph (b); and

(ii) by deleting paragraph (c) and substituting the following paragraphs—

(c) the Scheme as varied or amplified by any amendment that has the force of law; and

(d) a subsequent scheme that has the force of law and any such subsequent scheme as varied or amplified by any amendment that has the force of law; .

4. Section 11 of the principal Act is repealed and re-enacted as follows—

Section 11
repealed
and
re-enacted.

11. (1) The Governor may appoint a member to be Deputy Chairman to act in performing the functions and duties of the Chairman when the Chairman is absent, whether on account of illness or otherwise, and the Deputy Chairman, while acting in performing the functions and duties of the Chairman, shall be regarded as the Chairman for the purposes of this Act.

Deputies.

(2) The Governor may appoint a person to be the deputy for a member, other than the Chairman, and any person so appointed is, in the event of the absence, whether on account of illness or otherwise, of the member for whom he is the deputy, authorised to exercise the functions and duties of a member under this Act.

(3) Notwithstanding subsection (2) of this section, a person who is deputy for the Deputy Chairman of the Authority, is, at any time that the Deputy Chairman is performing the functions and duties of the Chairman, authorised to exercise the functions and duties that the Deputy Chairman may exercise as a member as though the Deputy Chairman were absent.

5. Sections 13 and 14 of the principal Act are repealed and re-enacted as follows—

Sections 13
and 14
repealed
and
re-enacted.

13. (1) Subject to this section, the Chairman of the Authority and other members shall be paid such remuneration and allowances as the Governor may from time to time determine for him or them.

Remunera-
tion and
expenses.

(2) The Governor shall not determine the remuneration and allowances to be paid to any member who is a person to whom the Public Service Act, 1978 applies except on the recommendation of the Public Service Board constituted under the Public Service Act, 1978.

Protection
of rights
of public
servants.

14. Acceptance of or acting in the office of member or deputy for a member shall not of itself render the provisions of the Public Service Act, 1978, or any other Act applying to persons as officers of the Public Service of the State, applicable to that member, or deputy for a member, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in such office. .

Section 15
amended.

6. Section 15 of the principal Act is amended by repealing and re-enacting subsections (2) and (3) as follows—

(2) The Chairman shall preside at all meetings of the Authority at which he is present and the Deputy Chairman shall preside at all meetings of the Authority at which he, but not the Chairman, is present, but where neither the Chairman nor the Deputy Chairman is present at a meeting of the Authority, the members present shall elect one of their number present to act as Chairman at the meeting. .

Section 16
amended.

7. Subsection (1) of section 16 of the principal Act is amended by deleting the word “six” in line one and substituting the word “seven”.

Section 18A
added.

8. The principal Act is amended by adding immediately after section 18 the following section—

Authority
may
appoint
Committees.

18A. (1) In this section—

“eligible person” means a member of the Authority or a deputy for a member.

(2) The Authority may from time to time—

(a) constitute Committees by appointing any number of eligible persons to be members of the Committees and abolish a Committee so constituted;

- (b) assign names to the Committees so constituted;
- (c) remove any member of a Committee and appoint another eligible person to the office of the member so removed; and
- (d) appoint eligible persons to be additional members to any Committee.

(3) The Authority shall appoint as Chairman of a Committee one of the members thereof.

(4) A Committee shall not enter into a contract or other commitment or undertaking without first having the express authorization of the Authority to do so and any contract, commitment, or undertaking entered into without that authorization is of no effect.

(5) A Committee appointed pursuant to this section is answerable to the Authority and shall, as and when required by the Authority to do so, report fully on its activities to the Authority. .

9. Subsection (1) of section 19 of the principal Act is amended by adding after the word "to" in line three the passage "a Committee constituted pursuant to section eighteen A of this Act," .

Section 19
amended.

10. Section 27 of the principal Act is amended—

Section 27
amended.

- (a) by deleting the passage "Subject to the provisions of section thirty-eight of this Act," in lines one and two and substituting the passage "(1) Subject to this section,"; and

(b) by adding the following subsections—

(2) Subject to subsection (3) of this section, the cost of any services provided, pursuant to any agreement under subsection (1) of this section, by any person employed in a department of the Public

Service of the State shall not be paid out of the Fund but shall be paid from the moneys appropriated by Parliament in respect of the department in which that person is employed.

(3) Where the Minister administering a department of the Public Service of the State certifies to the Authority in relation to any services to be provided pursuant to an agreement under subsection (1) of this section that those services are not to be paid for from the moneys appropriated by Parliament in respect of the department the Authority may, subject to the approval of the Treasurer and such conditions as may be determined by the Public Service Board constituted under the Public Service Act, 1978, provide the moneys for the cost of the services so provided. .

Section 29A amended.

11. Subsection (1) of section 29A of the principal Act is amended by adding immediately after paragraph (a) of the interpretation "member" the following paragraph—

(aa) a Committee constituted pursuant to section eighteen A of this Act; .

Section 33 repealed and sections 33, 33A and 33B substituted.

12. The principal Act is amended by repealing section 33 and substituting the following sections—

Scheme may be amended.

33. (1) The Scheme may be varied or amplified by an amendment to the Scheme or revoked by a subsequent Scheme formulated by the Authority submitted and approved in accordance with this section.

(2) Subject to sections thirty-three A and thirty-three B of this Act, the Authority shall adopt the procedure set forth in this section for submitting and obtaining approval of any

amendment to the Scheme and any revocation of the Scheme by a subsequent Scheme (in this section referred to as "the amendment") formulated by the Authority:—

- (a) The amendment when formulated by the Authority shall be submitted, together with such reports, surveys and other material as the Authority considers desirable, to the Minister for his preliminary approval.
- (b) If the Minister so approves, the Authority shall deposit copies of the amendment, for public inspection during ordinary business hours free of charge—
 - (i) at the office of the Town Planning Department;
 - (ii) at the Council Offices of the Municipalities of the City of Perth and City of Fremantle; and
 - (iii) in at least three other public places situate in the metropolitan region which the Authority considers are most convenient for public inspection of the amendment.
- (c) As soon as practicable after the deposit of the copies of the amendment as provided for in paragraph (b) of this subsection the Authority shall cause to be inserted at least three times in each of the following publications—
 - (i) the *Gazette*;
 - (ii) two daily newspapers circulating in the metropolitan region; and
 - (iii) one Sunday newspaper circulating in the metropolitan region,

a notice stating—

- (iv) in short, the purpose of the amendment; and
- (v) that the amendment has been deposited and the places and times where it may be inspected free of charge,

and notifying all persons who desire to make submissions on any provision of the amendment that such submissions may be made to the Authority in writing in the form prescribed by the Authority in the notice.

- (d) Submissions on the amendment may be made at any time within the period prescribed in the notice being not less than three months from the date the notice is first published in the *Gazette*.
- (e) The Authority may take such other steps as it considers necessary to make public the details of the amendment.
- (f) (i) The Authority shall consider all submissions that have been duly lodged and where a submission contains an objection to the amendment the Authority shall not dismiss the objection until the person making the submission or his agent has been given the opportunity of being heard on the objection by the Authority or by a subcommittee of the Authority appointed by it for the purpose and which it is hereby authorized to appoint.
- (ii) The Authority shall not uphold an objection to the amendment until it has given every person who has duly lodged a submission supporting the provision to which the objection relates, or his agent, the opportunity of being heard in

support of that provision by the Authority or a subcommittee of the Authority.

- (iii) Where a submission is made by a group of persons, the group shall appoint one person to represent the group and only he shall be heard under subparagraph (i) or subparagraph (ii) of this paragraph.
- (g) The Authority shall submit the amendment with or without such modifications as it thinks fit to make after considering the submissions, together with a copy of all written submissions and a report by the Authority on the submissions, to the Minister for presentation to the Governor for his consideration.
- (h) Before presenting the amendment to the Governor for his consideration, if the Minister is of opinion that any modification made to the amendment by the Authority is of such a substantial nature as to warrant such action, he may direct the Authority to again deposit the amendment as so modified, or that portion of the Scheme which is so modified, for public inspection at such time and at such places as he directs.
- (i) The Minister may direct the Authority to publish such notices in connection with the amendment as he deems appropriate.
- (j) The Authority shall comply with the directions.
- (k) A person who desires to make any submissions on any modifications so made by the Authority may notify the Minister in writing in the form prescribed by the Authority in any notice of the modification published

pursuant to paragraph (i) of this subsection, and the Minister shall direct the Authority to consider and report on the submission to the Minister in accordance with the procedure set out in paragraphs (f) and (g) of this subsection.

(l) The Minister shall then present the amendment to the Governor who may approve the amendment with or without such modifications as he deems necessary to make and which he is hereby authorized to make.

(m) At any time before the amendment is published in the *Gazette* pursuant to subsection (3) of this section, the Governor may revoke the approval given under paragraph (1) of this subsection.

(3) Except where the approval has, pursuant to paragraph (m) of subsection (2) of this section, been revoked, when the Governor has approved the amendment whether with or without modifications—

(a) the amendment or the amendment as so modified but not including any maps, plans or diagrams, shall be published in the *Gazette*, and the maps, plans or diagrams shall be open for public inspection at such times and such places as the Minister determines;

(b) the amendment together with the report of the Authority on the submissions made on the Scheme referred to in paragraphs (g) and (k) of subsection (2) of this section, shall be laid before each House of Parliament within six sitting days of the House next following the date of the publication of the amendment in the *Gazette*.

(4) Either House may, by resolution of which resolution notice has been given at any time within twelve sitting days of such House after the amendment has been laid before it, pass a resolution disallowing the amendment.

(5) As soon as the amendment is no longer subject to disallowance under subsection (4) of this section the amendment shall have effect as though its provisions were enacted by this Act.

(6) If either House of Parliament passes a resolution disallowing the amendment the Authority shall cause notice of the disallowance to be published in the *Gazette* within twenty-one days of the passing of the resolution.

33A. (1) Notwithstanding section thirty-three of this Act, where the Authority sends to the Minister a copy of a proposed amendment together with a written certificate certifying that, in the opinion of the Authority, the proposed amendment does not constitute a substantial alteration to the Scheme, the amendment is not required to be submitted and approved in accordance with the procedure prescribed in subsections (2), (3) and (4) of section thirty-three of this Act.

Procedure for amendments not constituting substantial alteration to the Scheme.

(2) Where pursuant to subsection (1) of this section an amendment is not required to be submitted and approved in the manner prescribed under subsections (2), (3) and (4) of section thirty-three of this Act—

- (a) a notice of the amendment describing the amendment and stating where and when the proposed amendment will be available for inspection shall, as soon as practicable after the receipt by the Minister of the certificate of the Authority, be published by the Authority in the *Gazette* and in a daily newspaper circulating in the metropolitan region; and

(b) the Authority shall, within seven days after the date of the last such publication of that notice, notify in writing such owners of land directly affected by the amendment as the Minister directs shall be so notified.

(3) A proposed amendment to the Scheme shall have the force of law on the day on which notice of the proposed amendment is published in the *Gazette* and a newspaper pursuant to subsection (2) of this section.

(4) A person who feels aggrieved by an amendment notice of which is published pursuant to subsection (3) of this section, may, within the time and in the manner prescribed appeal to the Minister against the amendment and the Minister shall hear the appeal in accordance with the regulations.

(5) The Minister may dismiss or uphold the appeal and if the Minister upholds the appeal he shall order that the amendment be cancelled or modified and from the date of the order the amendment has no force or effect or has force and effect as so modified.

Pending
Amendment
of Scheme.

33B. (1) In this section—

“amending Act” means the Metropolitan Regional Town Planning Scheme Act Amendment Act (No. 2), 1979;

“pending amendment” means any proposed amendment to the Scheme that was—

(a) approved, pursuant to paragraph (a) of section thirty-one of this Act, by the Minister; or

(b) certified, pursuant to the substituted section, by the Authority as not being a substantial alteration,

before the proclaimed date but which did not have the force of law as though enacted by this Act immediately before the proclaimed date;

“proclaimed date” means the date on which section twelve of the amending Act comes into operation;

“Second Schedule” means the Second Schedule to this Act as in force immediately before the proclaimed date;

“substituted section” means section thirty-three of this Act as in force immediately before the proclaimed date.

(2) Notwithstanding sections thirty-three and thirty-three A of this Act, but subject to subsection (3) of this section pending amendments shall be continued and dealt with in accordance with the substituted section and the Second Schedule as if those provisions were in force after the proclaimed date.

(3) Paragraph (m) of subsection (2) of section thirty-three of this Act with such modifications as are necessary applies to a pending amendment.

(4) Nothing in subsection (2) of this section affects the operation of the Interpretation Act, 1918.

13. The principal Act is amended by re-designating section 33A of the principal Act as section 33C and by adding immediately thereafter the following sections—

Section 33A
renumbered
and sections
33D and 33E
added.

33D. (1) Subject to section thirty-three E of this Act, where the Minister is of the opinion that it is necessary or desirable to reprint the Scheme he may direct the Authority to cause the Scheme as in force at the date of the direction to be reprinted by the Government Printer.

Reprint of
Scheme.

(2) Before the Government Printer reprints the Scheme the Authority shall cause a copy of the Scheme to be supplied to the Government Printer certified by the Authority to be a correct

copy of the Scheme as in force at the date of the direction given pursuant to subsection (1) of this section by the Minister.

(3) For the purposes of compiling the copy of the Scheme to be supplied to the Government Printer pursuant to subsection (2) of this section the Authority shall cause the Scheme to be examined by an officer of the Town Planning Department of the Public Service of the State.

(4) The Authority shall not give a certificate referred to in subsection (2) of this section unless it has received from the officer who has, pursuant to subsection (3) of this section examined the copy of the Scheme to be supplied to the Government Printer, a written certificate that the copy of the Scheme is a correct copy of the Scheme as in force at the date of the direction given by the Minister.

(5) The Government Printer shall as soon as practicable deliver to the Authority a printer's proof of a reprint of the Scheme.

(6) If the Authority is satisfied that the printer's proof is a true copy of the Scheme as in force at the date of the direction given pursuant to subsection (1) of this section by the Minister it may authorize the Government Printer to reprint the Scheme in accordance with the printer's proof and he shall reprint the Scheme accordingly.

(7) In every reprint of the Scheme under this section reference shall be made to every amendment, whether under the provisions of this Act or under the provisions of the Scheme, incorporated in the reprinted Scheme.

(8) Whenever the Government Printer reprints the Scheme pursuant to this section, he shall—

- (a) print in a conspicuous place on the reprinted Scheme authorization of the Authority of the reprint and the date thereof;

- (b) publish the reprint but not the maps, plans or diagrams thereof in the *Gazette*.

(9) The Scheme as reprinted pursuant to this section shall in all courts and by persons acting judicially be judicially noticed and a production of the Scheme as so reprinted is evidence thereof, of the matters contained therein and that the Scheme and any amendment incorporated therein was duly made.

(10) Where in the opinion of the Minister it is expedient to do so he may instead of directing the Authority to cause the Scheme to be reprinted direct the Authority to cause the reprinting of such portion of the Scheme (whether by reference to a map of the Scheme or any other portion thereof) as is specified in his direction and the provisions of this section apply to and in relation to the reprinting of the portion of the Scheme so specified in the direction as though the portion of the Scheme so specified were the Scheme, but where the reprint comprises only maps, plans or diagrams only a notice of the reprint shall be published in the *Gazette*.

33E. (1) In order to facilitate—

- (a) the representation of the information shown on the maps, plans and specifications included in the Scheme on scales that are consistent with the metric system of measurement as defined in the Metric Conversion Act, 1972; and
- (b) the consolidation of the amendments to the Scheme for the purposes of the first reprinting thereof pursuant to section thirty-three D of this Act,

Metric
Conversions
on first
reprinting
of the
Scheme.

the Minister shall direct the Authority to cause to be prepared, on such scale as is approved by the Minister, a copy of the Scheme as in force at the time of the direction certified by the Surveyor General as a correct copy and the copy

of the Scheme so certified shall be forwarded to the Authority for certification pursuant to subsection (2) of section thirty-three D of this Act as a correct copy of the Scheme for the purposes of the reprinting of the Scheme pursuant to that section.

(2) The provisions of—

(a) sections thirty-three and thirty-three A of this Act; and

(b) the Metric Conversion Act, 1972,

do not apply to any amendment effected to the Scheme for the purposes of subsection (1) of this section.

Section 35A
added.

14. The principal Act is amended by adding after section 35 a section 35A as follows—

Effect of
amendment
of the
Scheme on
local
authority
town
planning
scheme.

35A. (1) If for the time being the Scheme delineates land comprised in a town planning scheme under the Town Planning Act as a reserve for a public purpose the town planning scheme, in so far as it operates in relation to that land, is, by force of this section and without any further action under this Act or the Town Planning Act, amended to such extent (if any) as is necessary to give effect to the Scheme.

(2) Where—

(a) under the Scheme land is reserved for a public purpose; and

(b) as a result of an amendment to the Scheme or a revocation of the Scheme the land so reserved becomes available for any other purpose,

the local authority of the district in which the land directly affected by the amendment or the revocation is situate or the responsible authority in relation to the land under the Town Planning Act, as the case requires, shall, not later than six months after the date on which the amendment to, or revocation of, the Scheme, as the case may be, has the force of law, forward to the Minister

a town planning scheme, or an amendment to an existing town planning scheme, in relation to the land providing for the zoning of the land.

(3) If the local authority or the responsible authority, as the case requires, fails to comply with subsection (2) of this section the Minister, on behalf of the local authority, or the responsible authority, as the case may be, may cause a town planning scheme, or an amendment to an existing town planning scheme, to be prepared and submitted under the Town Planning Act to the Minister to whom the administration of that Act is committed for approval and may take all or any of the steps necessary to have the scheme adopted by the local authority or the responsible authority and if, within a period of ninety days after the scheme is delivered to it by the Minister the local authority or the responsible authority fails to adopt the scheme, or the amendment to an existing town planning scheme, as the case requires, the Minister to whom the administration of the Town Planning Act is committed may approve of the Scheme and cause it to be published in the *Gazette*.

(4) A town planning scheme, or an amendment to an existing town planning scheme, as the case requires, published in the *Gazette* pursuant to subsection (3) of this section takes effect from the date of such publication and has effect as if it were made, published and adopted by the local authority or the responsible authority and approved under the Town Planning Act by the Minister to whom the administration of that Act is committed.

(5) All costs, charges and expenses incurred by the Minister in the exercise of any powers conferred on him by subsections (3) and (4) of this section may be recovered from the local authority or the responsible authority, as the case requires, as a debt due to the Crown or may be deducted from any moneys payable by the Crown to the local authority or the responsible authority. .

Section 37
amended.

15. Section 37 of the principal Act is amended—
- (a) as to subsection (3), by adding immediately after the word “Scheme” in line one the passage “, or an amendment to the Scheme,”; and
 - (b) as to subsection (6), by deleting the words “whether acquired before or after the Scheme has the force of law” in lines three and four and substituting the passage “, including land purchased pursuant to subsection (3) of this section”.

Section 38
amended.

16. Section 38 of the principal Act is amended—
- (a) as to subsection (3), by deleting the passage “Subject to the provisions of subsection (4) of this section, the” in lines one and two and substituting the word “The”; and
 - (b) by repealing subsection (4).

Section 42
amended.

17. Section 42 of the principal Act is amended—
- (a) by adding after the word “Scheme” in the last line of paragraph (a) the passage “or commences or continues to carry out any such development otherwise than in accordance with any condition imposed by the Authority or a local authority pursuant to this Act with respect to the development or otherwise fails to comply with any such condition”; and
 - (b) as to the penalty provision—
 - (i) by deleting the words “Two hundred dollars” in line one and substituting the words “Two thousand dollars”; and
 - (ii) by deleting the words “twenty dollars” in line two and substituting the words “two hundred dollars”.

Section 43
amended.

18. Section 43 of the principal Act is amended—
- (a) by repealing subsection (2);
 - (b) as to subsection (3) by adding immediately after the word “direction” in the last line the passage “and the Minister may, where

he confirms or varies the direction, by written notice, direct that the owner shall comply with the direction as so confirmed or varied, as the case requires, within such period, being not less than forty days after the service of the notice, as is specified in the notice”;

- (c) as to subsection (4), by adding after the word “varied” in the last line the words “and within the time specified in the notice giving the direction”; and
- (d) by adding the following subsection—

(5) Where—

- (a) a notice is served pursuant to subsection (1) of this section on an owner of any land directing him to carry out such work as is specified therein and the owner fails to—

- (i) carry out the directions;

or

- (ii) appeal against the direction pursuant to subsection (3) of this section,

within the time specified in the notice; or

- (b) on appeal by an owner of any land a direction specified in a notice served on him under subsection (1) is confirmed or varied pursuant to subsection (3) of this section and the owner fails to carry out the direction as confirmed or varied pursuant to that subsection within the time specified by the Minister in the notice given under subsection (3) of this section,

the Authority or local authority, as the case requires, may itself remove, pull down, take up or alter the building, work or development accordingly and may

recover the costs incurred by it in carrying out such work in any court of competent jurisdiction. .

Section 43A
added.

19. The principal Act is amended by adding a new section to stand as section 43A as follows—

Injunction.

43A. (1) Without prejudice to any proceedings for an offence against this Act, where—

- (a) a person contravenes a provision of this Act or the Scheme; or
- (b) the Authority or a local authority exercising the powers delegated to it by the Authority grants any application for approval to commence development subject to conditions and the development is commenced, continued or completed contrary to or otherwise than in accordance with any condition imposed with respect to the development by the Authority or the local authority pursuant to this Act,

the Supreme Court may, on application by the Authority or the local authority, as the case requires, grant an injunction—

- (c) where the application is with respect to a contravention of the Act or the Scheme, restraining the person from engaging in any conduct or doing any act, that constitutes or is likely to constitute a contravention of this Act or the Scheme; or

- (d) where the application is with respect to the commencement, continuation or completion of a development contrary to or otherwise than in accordance with any condition imposed by the Authority or the local authority with respect to the development—

- (i) in the case where the development is commenced but not completed, restraining the continuation or completion of the development or any use thereof;

1979.] *Metropolitan Region* [No. 115.
Town Planning Scheme (No. 2).

(ii) in the case where the development is completed, restraining the use of the development,

until the condition is complied with.

(2) An injunction granted under subsection (1) of this section—

(a) shall have effect for such period specified therein or until further order of the Court;

(b) may be varied or rescinded by the Court.

20. Section 44 of the principal Act is amended by deleting the words “one hundred dollars” in line eight and substituting the words “one thousand dollars”. Section 44 amended.

21. Section 45 of the principal Act is repealed and re-enacted as follows— Section 45 repealed and re-enacted.

45. The Scheme binds the Crown. Crown bound.

22. The principal Act is amended by repealing the Second Schedule. Second Schedule repealed.
