

# TOWN PLANNING AND DEVELOPMENT.

---

No. 117 of 1970.

---

**AN ACT to add Part V to the Town Planning and Development Act, 1928-1969 for the purpose of providing, in specified cases, for alternative appeals to the Minister or to a Town Planning Court and for purposes incidental thereto.**

*[Assented to 10th December, 1970.]*

**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 Act Amendment Act, 1970.*

Short title  
and citation.

Reprinted  
as approved  
for reprint  
28th August,  
1967 and  
amended by  
Acts Nos.  
25 of 1967  
and 31 of  
1969.

(2) In this Act the Town Planning and Development Act, 1928-1969 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Town Planning and Development Act, 1928-1970.

Commence-  
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Addition of  
Part V.

3. The principal Act is amended by adding after Part IV a Part as follows—

PART V.—APPEALS.

Application  
of this Part.

36. Notwithstanding the provisions of—

- (a) any other Part of this Act;
- (b) any planning scheme that has effect under section seven of this Act;
- (c) the Metropolitan Region Town Planning Scheme Act, 1959; or
- (d) the Metropolitan Region Scheme,

this Part applies to and in relation to all appeals within the meaning of this Part.

Interpreta-  
tion.

37. In this Part—

“appeal” means—

- (a) an appeal to the Minister under—

- (i) a town planning scheme that has effect under section seven of this Act, if the appeal is in respect of the exercise of a discretionary power by the responsible authority under the scheme.

- (ii) subsection (1) of section twenty-six of this Act; and
- (iii) subsection (6) of section twenty-eight A of this Act;
- (b) a reference to the Minister under subsection (3) of section ten of this Act; and
- (c) an appeal to the Minister under clause thirty-three of the Metropolitan Region Scheme;

“Court” means a Town Planning Court constituted under section forty-three of this Act;

“member” means a member of a Court;

“Metropolitan Region Scheme” has the same meaning as it has in section six of the Metropolitan Region Town Planning Scheme Act, 1959;

“party” means a party to an appeal;

“prescribed” means prescribed in regulations;

“President” means President of a Court;  
and

“regulations” means regulations made under this Part.

38. An appeal is commenced by giving notice, including the grounds of the appeal, in the time and manner prescribed, to the persons and bodies prescribed.

*Commence-  
ment of  
appeal.*

39. (1) Subject to section forty-two of this Act, an appeal may be made to the Minister or to a Court but the commencement of an appeal to one extinguishes any right of appeal to the other.

*Alternative  
appeals.*

(2) When the Minister or a Court, as the case may be, makes a determination on an appeal that determination has effect according to its tenor.

Town Plan-  
ning Appeal  
Committee.

40. (1) There shall be a committee called the Town Planning Appeal Committee.

(2) The Committee shall consist of such persons as the Governor may, from time to time, appoint.

(3) The Minister, if he thinks fit, may require any person on the Committee to consider, and report and make a recommendation to him upon, any appeal to the Minister and that person shall do so as soon as practicable thereafter, and the Minister, after considering the report and recommendation of that person, shall determine the appeal.

(4) A person on the Committee shall receive such remuneration and allowances as the Governor, from time to time, determines and any cost incurred by or in respect of such a person in carrying out his functions under subsection (3) of this section shall be paid out of the Consolidated Revenue Fund which is hereby appropriated accordingly.

Costs of  
appeal to  
Minister.

41. On an appeal to the Minister, the Minister may award such costs as he thinks fit and any costs so awarded may, as a debt due, be recovered in a court of competent jurisdiction.

Appeal to  
a Court.

42. (1) The Minister shall, in the prescribed time and manner, be given notice of the commencement of an appeal to a Court.

(2) Where an appeal to a Court is commenced it shall not be further maintained until at least fourteen days after notice has been given to the Minister under subsection (1) of this section.

(3) Within fourteen days after receiving a notice under subsection (1) of this section the Minister may, by giving notice in the prescribed manner, object to a Court hearing the appeal on the grounds that upholding the appeal would be contrary to town planning principles, in general or in

respect of land the subject of the appeal, and would tend to prejudice the public interest.

(4) Where the Minister objects, under subsection (3) of this section to a Court hearing the appeal—

- (a) the appeal shall not be further maintained until at least thirty days after the Minister so objects;
- (b) the Governor may, within thirty days after the Minister so objects, make a declaration that upholding the appeal would be contrary to town planning principles, in general or in respect of land the subject of the appeal, and would tend to prejudice the public interest and thereupon the appeal shall not be heard or determined by a Court but, if the appellant so elects in the time and manner prescribed, the appeal shall become an appeal to the Minister who shall determine it;
- (c) if the Governor does not, within thirty days after the Minister so objects, make a declaration under paragraph (b) of this subsection, the appeal may be heard and determined by a Court.

43. (1) For the purposes of this Part there shall be constituted from time to time a Court to be known as a Town Planning Court.

*Establishment and constitution of a Court.*

(2) A Court shall consist of a President who shall be a Judge appointed by the Chief Justice of Western Australia, and two members, one to be appointed by each of the two parties to the appeal, but so that each of those members is, in the opinion of the President, an appropriate person, by reason of qualifications or experience, to participate in the hearing and determination of the appeal.

*c.f. No. 30 of 1918, s. 4.*

(3) If either party objects to the appointment of any member other than the President, the President may, unless the objection appears to be frivolous or

unreasonable, upon the application of that party, order the member to be discharged from the Court, and the party having appointed him shall, within ten days after the order, appoint another member, failing which the President shall forthwith appoint another member, to be a member of the Court instead of the member so discharged, but so that the member so appointed is, in the opinion of the President, an appropriate person, by reason of qualifications or experience, to participate in the hearing and determination of the appeal.

(4) If before the determination of an appeal to a Court any member of the Court dies or becomes incapable of acting, or resigns or refuses to act—

- (a) in the case of the President, some other Judge, appointed by the Chief Justice of Western Australia, shall take his place; and
- (b) in the case of any other member, the person having appointed him shall forthwith appoint, or if he fails to do so, the President shall appoint, another person to act as a member of the Court instead of that first-mentioned member, but so that the member so appointed is, in the opinion of the President, an appropriate person, by reason of qualifications or experience, to participate in the hearing and determination of the appeal,

and the appeal shall proceed and be determined as if no change in members of the Court had taken place.

*Jurisdiction  
of a Court.*

44. A Court shall hear and determine an appeal referred to it under this Part and the regulations.

*Sittings of  
Court.*

45. The President shall appoint the time and place for the sittings of the Court and may adjourn its sittings from time to time and shall, not less than twenty-one days before the first sitting on an appeal, cause a notice of the time and place for that sitting to be given to each other member and to each party.

## 46. (1) Where a party—

Hearing to  
proceed in  
absence of  
parties.

- (a) after a notice of the first sitting of a Court on an appeal is given to him in accordance with section forty-five of this Act; or
- (b) with knowledge of the time and place appointed for any subsequent sitting of the Court on the appeal,

fails to appear at the time and place appointed, the Court may proceed to hear and determine the appeal in his absence.

(2) A party may appear before a Court personally, or by counsel or a solicitor.

47. (1) A Court may summon all persons required by a party or by the Court to give evidence before it, and may examine those persons on oath or affirmation, and may require the production of any documents, plans, or other papers in the custody or control of any party.

Court  
to examine  
witnesses,  
etc.

(2) The parties and their counsel, solicitors, witnesses, and all other persons attending a Court shall have the same rights and privileges, and shall be subject to the same obligations, fines, and penalties, as in the trial of an action at law in the Supreme Court.

(3) A Court has, until it has made its determination, all the powers of the Supreme Court so far as may be necessary for hearing and determining the appeal to it.

48. (1) On an appeal to a Court a determination of a majority of the members thereof is the determination of the Court but the President alone shall determine any questions of law.

Appeals to  
be deter-  
mined by  
majority.

(2) The President and one other member form a quorum but where such a quorum is divided on a question of fact the hearing of the appeal shall be adjourned until all three members are present.

(3) The President has jurisdiction to hear and determine all interlocutory proceedings before the Court and for that purpose, has the same powers he has as a Judge and may sit in chambers and alone.

If Court  
unable to  
agree.

49. If a Court is unable, by a majority, to agree upon a determination of an appeal, the President shall dissolve the Court and cause notice thereof to be given to each party to the appeal and there shall, under this Part, be constituted a fresh Court, which shall rehear the appeal.

Case stated.

50. (1) The President, if he thinks fit, may on his own motion or on the application of any party, state a case for the decision of the Full Court of the Supreme Court on any question of law arising on the appeal.

(2) A decision of the Full Court of the Supreme Court on a case stated under subsection (1) of this section binds the Court in making its determination on the appeal.

(3) The Full Court of the Supreme Court may make such order as to costs as it thinks fit in relation to a case stated under subsection (1) of this section.

Costs of  
appeal to  
Court.

51. On an appeal to a Court, the Court may award such costs as it thinks fit, and any costs so awarded may, as a debt due, be recovered in a court of competent jurisdiction.

Determina-  
tion of Court  
final.

52. On an appeal to a Court the determination of the Court is final and conclusive and, except as provided by section fifty of this Act, shall not be subject to question or review in any other court and no proceedings by or before the Court shall be restrained by injunction, prohibition, or other process or proceedings in any other court, or by removal



or *certiorari* or otherwise into any other court and no action shall be maintained or brought against any member of the Court in respect of any act or decision done or made in the honest belief that it was within the jurisdiction of that Court.

53. All proceedings before a Court, other than interlocutory proceedings, shall be conducted in public unless the Court determines, as it is hereby authorised to do, that any part of the proceedings shall be in camera.

Proceedings  
before a  
Court.

54. (1) The President, while acting as such, shall continue to receive the salary and other allowances that he is, under the Judges' Salaries and Pensions Act, 1950 and otherwise, entitled to receive as a Judge.

Remunera-  
tion of  
members.

(2) A member other than the President shall receive such remuneration and allowances as the Governor determines, from time to time, for such a member.

(3) Any cost incurred by or in respect of a member in carrying out his functions as a member shall be paid out of the Consolidated Revenue Fund which is hereby appropriated accordingly.

55. (1) The Governor may make such regulations as are necessary or convenient for giving effect to the provisions of this Part and, without limiting the generality of the foregoing, may make regulations prescribing—

Regulations.

- (a) the time and manner of giving notice, and the persons and bodies to be given notice of, an appeal;
- (b) the time and manner of referring an appeal to a Court;

- (c) the time and manner of giving any other notice, and the persons and bodies to be given any other notice, required under this Part or the regulations;
- (d) the time and manner of maintaining an appeal;
- (e) the procedure to be followed on an appeal;
- (f) the fees to be paid in relation to an appeal; and
- (g) the forms to be used in relation to an appeal.

(2) The regulations may differ according to the type of appeal and to whether the appeal is to the Minister or a Court. .

---