

ACTS AMENDMENT (LAND
USE PLANNING).

No. 79 of 1981.

AN ACT to amend the Metropolitan Region Town Planning Scheme Act 1959-1980 and the Town Planning and Development Act 1928-1980.

[Assented to 9 November 1981.]

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:—

PART I—PRELIMINARY.

1. This Act may be cited as the *Acts Amendment (Land Use Planning) Act 1981*. Short title.

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

PART II—METROPOLITAN REGION TOWN PLANNING
SCHEME ACT 1959-1980.

Citation.
Reprinted
as approved
27 December
1978 and
amended by
Act No. 115
of 1979, and
Nos. 30, 73
and 78 of
1980.

3. (1) In this Part the Metropolitan Region Town Planning Scheme Act 1959-1980 is referred to as the principal Act.

(2) The principal Act as amended by this Act may be cited as the Metropolitan Region Town Planning Scheme Act 1959-1981.

Section 4
amended.

4. Section 4 of the principal Act is amended by inserting, after "PART IV.—LOCAL AUTHORITY TOWN PLANNING SCHEMES.", the following—

“ PART IVA.—P L A N N I N G CONTROL
AREAS. ” .

Section 6
amended.

5. Section 6 of the principal Act is amended by—

- (a) deleting “and” after the semi-colon at the end of the definition of “order”; and
- (b) inserting, after the definition of “order”, the following definition—

“ “planning control area” means a
planning control area declared and
in force under section 35C of this
Act; ” .

Section 19
amended.

6. Section 19 (1) of the principal Act is amended by inserting, after “this power of delegation”, the following—

“ and the functions conferred or imposed on the
Authority by Part IVA of this Act ” .

7. After Part IV of the principal Act, the following Part is inserted— Part IVA inserted.

“ PART IVA.—PLANNING CONTROL AREAS.

35B. (1) This Part of this Act shall prevail over anything in— Effect of Part IVA.

- (a) any other Part of this Act;
- (b) any town planning scheme that has effect under section 7 of the Town Planning Act;
- (c) the Scheme; or
- (d) the Town Planning Act,

to the extent of any inconsistency therewith.

(2) Nothing in this Part affects—

- (a) the continued use of any land in a planning control area for the purpose for which it was lawfully being used; or
- (b) the continuation and completion of the development of any land in a planning control area, including the erection, construction, alteration or carrying out, as the case requires, of any building, excavation or other works on that land, which development was lawfully being carried out,

immediately before the declaration of the planning control area.

35C. (1) If the Authority considers that any land situated in the metropolitan region may be required for one or more of the purposes specified in the Second Schedule to this Act, the Authority may by notice published in the *Gazette* and with the approval of the Minister declare that land to be a planning control area. Declaration of planning control areas.

(2) The Authority may by notice published in the *Gazette* and with the approval of the Minister amend or revoke a declaration made under subsection (1) of this section.

(3) A declaration made under subsection (1) of this section remains in force until—

(a) the expiry of such period, not exceeding five years from the date on which the notice by which that declaration was so made was published in the *Gazette*, as is specified in that notice;

or

(b) revoked under subsection (2) of this section,

whichever is the sooner.

No develop-
ment in
planning
control areas
without
prior
approval.

35D. A person shall not commence and carry out development in a planning control area except—

(a) with the prior approval of that development obtained under section 35E of this Act; and

(b) in a manner which is in conformity with the approval referred to in paragraph (a) of this section and in accordance with the conditions, if any, subject to which that approval was given.

Penalty: \$2 000 and, in the case of a continuing offence, a further fine of \$200 for each day during which that offence continues.

Applications
for approval
of develop-
ment in
planning
control
areas.

35E. (1) A person who wishes to commence and carry out development in a planning control area shall apply in the prescribed form to the local authority in the district of which the planning control area is situated for approval of that development and submit to that local authority such plans and other information as that local authority may reasonably require.

(2) The local authority to which an application is made under subsection (1) of this section shall, within 30 days of receiving the application, forward the application, together with its recommendation thereon, to the Authority for determination.

(3) After receiving an application and recommendation forwarded to it under subsection (2) of this section, the Authority may—

(a) consult with any authority that in the circumstances it thinks appropriate; and

(b) having regard to—

(i) the purpose for which the land to which that application relates is zoned or reserved under the Scheme;

(ii) any special considerations relating to the nature of the planning control area concerned and of the development to which that application relates; and

(iii) the orderly and proper planning, and the amenities, of the locality in which the land to which that application relates is situated,

approve, subject to such conditions as it thinks fit, or refuse to approve that application.

(4) If the Authority approves an application forwarded to it under subsection (2) of this section and the development concerned is carried out in a manner which is not in conformity with that approval, or any conditions subject to which that approval was given are not complied with, the Authority may revoke that approval, but this subsection does not prevent proceedings for an offence against section 35D of this Act in respect of that carrying

out or non-compliance alleged to have been committed during the subsistence of that approval.

(5) The Authority shall issue in the prescribed form to the applicant its decision on an application forwarded to it under subsection (2) of this section.

(6) If the Authority has not within 60 days of receiving an application forwarded to it under subsection (2) of this section issued its decision on that application to the applicant, that application shall be deemed to have been refused.

Appeals.

35F. An applicant whose application has under section 35E of this Act been—

- (a) approved subject to conditions which are unacceptable to him; or
- (b) refused,

may, except when that approval or refusal—

- (c) is in accordance with an operative town planning scheme or with the Scheme;
- or
- (d) relates to land which is reserved under the Scheme for a public purpose,

appeal against that approval or refusal under Part V of the Town Planning Act. ” .

Section 36A amended.

8. Section 36A of the principal Act is amended by deleting the section designation “36A.” and substituting the following—

“ 36B. ” .

9. Section 36B of the principal Act is amended by deleting the section designation "36B." and substituting the following—

Section 36B amended.

" 36C. "

10. After section 36 of the principal Act, the following section is inserted—

Section 36A inserted.

" 36A. Compensation is payable in respect of land injuriously affected by the declaration, or by the amendment of the declaration, of a planning control area, and land so affected may be acquired by the Authority, in the same circumstances and to the same extent as if the land in the planning control area, instead of being in a planning control area, had been reserved under the Scheme for a public purpose. "

Compensation in relation to planning control areas.

11. Section 37 (6) of the principal Act is amended—

Section 37 amended.

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

" (a) The Authority shall hold for the purposes of the Scheme any land acquired by it under this Act or the Town Planning Act, including land purchased under section 36A of this Act or subsection (3) of this section, and may, subject to paragraphs (b) and (c) of this subsection, dispose of or alienate that land—

(i) for or in furtherance of the provisions or likely provisions of the Scheme; or

(ii) if that land is no longer required by the Authority. ” ;

(b) in paragraph (b) by deleting “The Authority shall not” and substituting the following—

“ Subject to paragraph (c) of this subsection, the Authority shall not ” ; and

(c) by inserting, after paragraph (b), the following paragraph—

“ (c) In exercising a power to dispose of or alienate land conferred by this subsection, the Authority shall have regard to the general principle that in such cases land acquired by the Authority should, if in the opinion of the Minister it is practicable and appropriate to do so, be first offered for sale at a reasonable price determined by the Minister to the person from whom that land was so acquired. ” .

Section 43 amended.

12. Section 43 of the principal Act is amended by inserting, after subsection (1), the following subsection—

“ (2) The Authority may by notice in writing served on the owner of any land situated in a planning control area direct him within such period, being not less than 40 days after the service of that notice, as is specified in that notice to cease any development carried out on that land in contravention of section 35D of this Act. ” .

Section 43A amended.

13. Section 43A (1) of the principal Act is amended by inserting, after “approval to commence” in paragraph (b), the following—

“ or carry out ” .

14. After the First Schedule to the principal Act, the following Schedule is inserted—

Second
Schedule
inserted.

“ SECOND SCHEDULE. (Section 35C)
PURPOSES FOR WHICH LAND MAY BE REQUIRED.

<i>Item.</i>	<i>Purpose.</i>
1.	Car parks.
2.	Civic and cultural amenities.
3.	Commonwealth Government.
4.	Highways and important regional roads.
5.	Hospitals.
6.	Metropolitan Water Supply, Sewerage, and Drainage Board.
7.	Parks and recreation areas.
8.	Port installations.
9.	Prisons.
10.	Railways.
11.	Schools.
12.	Special uses.
13.	State Energy Commission.
14.	State forests.
15.	Universities.
16.	Water catchments.
17.	Waterways. ” .

PART III—TOWN PLANNING AND DEVELOPMENT
ACT 1928-1980.

15. (1) In this Part the Town Planning and Development Act 1928-1980 is referred to as the principal Act.

Citation.
Reprinted
as approved
22 May 1980
and amended
by Act No.
72 of 1980.

(2) The principal Act as amended by this Act may be cited as the Town Planning and Development Act 1928-1981.

Section 37
amended.

16. Section 37 of the principal Act is amended in the definition of "appeal" by—

- (a) deleting "and" after the semi-colon at the end of paragraph (b);
- (b) inserting "and" after the semi-colon at the end of paragraph (c); and
- (c) inserting, after paragraph (c), the following paragraph—
 - " (d) an appeal under section 35F of the Metropolitan Region Town Planning Scheme Act 1959; " .