

Port Kennedy Development Bill 2017

EXPLANATORY MEMORANDUM

Background

Over 20 years ago, the State and a developer, Fleuris Pty Ltd, envisioned creating a world-class development at Port Kennedy (the Project). To facilitate this they entered into an agreement, which was ratified by the *Port Kennedy Development Agreement Act 1992* (the Existing Act).

Unfortunately, time and fate was not to favour this Project. In 1994, Port Kennedy Resorts Pty Ltd acquired the Project's development rights. This company entered into receivership in 2002, whereupon the State transferred the rights to Western Australia Beach and Golf Resort Pty Ltd (WABGR). For WABGR, the global financial crisis of 2008 affected the Project's feasibility, as well as issues of stamp duty and GST treatments, which were not applicable under the Existing Act.

By 2012, it was apparent the Project needed to be redesigned following a decision by the Western Australian Planning Commission to adopt a State Planning Policy in respect of coastal developments and adoption of set backs for rising sea levels. This policy reduced the developable area that would raise revenue to fund the requisite public works by approximately 30 per cent. In 2016 the State Government and WABGR reframed the Project. This was reflected in a non-binding Sale and Development Agreement (SADA), executed by both parties in January 2017.

To bring the SADA to fruition and undertake the reframed Project, the Existing Act must be repealed. It is also necessary to zone and reserve certain land, the subject of the Project, under applicable planning schemes.

The purpose of this Bill is to repeal the *Port Kennedy Development Agreement Act 1992* and to zone and reserve certain land under the Metropolitan Region Scheme and the City of Rockingham Town Planning Scheme No. 2 – District Zoning Scheme. Public consultation will be invited at the required structure plan stage under the City of Rockingham scheme.

PART 1 – PRELIMINARY

This part contains the short title and relevant commencement provisions.

Clause 1: Short Title

The short title of the act will be the *Port Kennedy Development Act 2017* (the New Act).

Clause 2: Commencement

This provides that clause 1 comes into operation on the day of Royal Assent and the rest of the Bill on a day fixed by proclamation, and different days may be fixed for different sections. This allows the State to control the release of WABGR from its obligations under the Existing Act and to align the commencement of the New Act with timeframes under the SADA relating to conditions precedent and land valuations. This ensures the State is exposed to minimal risk of costs associated with settlement delays.

PART 2 – PLANNING SCHEME AMENDMENTS

Clause 3: Terms used

This clause contains definitions of various terms used in the Bill.

Many of these terms adopt definitions used in the *Planning and Development Act 2005* to promote consistency and certainty within the planning system.

It describes the plans which are used to identify the land to be zoned or reserved.

Clause 4: Metropolitan Region Scheme amended

This clause changes the zoning and reservation of land under the Metropolitan Region Scheme.

The Metropolitan Region Scheme (MRS) is a large town planning scheme which applies to the Perth Metropolitan area. It comprises a set of maps and a scheme text. The MRS uses zones and reservations to identify the uses to which land may be put. The text sets out the planning rules for zones and reservations, which are depicted using maps. Accordingly, this clause effects the following changes to the MRS:

- 4(1) By operation of this clause, the land comprised in Area A is reserved for Parks and Recreational purposes under the MRS. Area A is identified on an indicative map in Schedule 1.
- 4(2) By operation of this clause, the land comprised in Area B, is reserved for Urban purposes under the MRS. This only relates to land that is not already zoned Urban. Area B is also identified on the indicative map in Schedule 1.
- 4(3) This clause establishes what may serve as evidence of the boundaries of Areas A or B. A plan, which appears to be a copy of the Port Kennedy Revised Development Plan (the formal version of that depicted in Schedule 1), may serve as such evidence.

Clause 5: Rockingham local planning scheme amended

This clause changes the zoning of land under the City of Rockingham's local planning scheme, the full title of which is the City of Rockingham Town Planning Scheme No. 2 – District Zoning Scheme (Rockingham LPS).

Local planning schemes set out the way land is to be used and developed, classify areas for land use and include provisions to coordinate infrastructure and development within a local government area. They operate in a similar manner to the MRS, but are more detailed and regulate land within a local government's jurisdiction, rather than a whole region. Again these schemes comprise text and maps. The text sets out the planning rules for zones and reservations, which are depicted using maps.

This clause effects the following changes to the Rockingham LPS:

- 5(1) By operation of this clause, the zoning of land in Area B is changed to "Development Zone" unless it is already so zoned.

- 5(2) Consistent with clause 4(3), this clause establishes what may serve as evidence of Area B's boundary. A plan, which appears to be a copy of the Rockingham Development Zone Plan (the formal version of that depicted in Schedule 2), can be used as such evidence.

Clause 6: Effect of Amendments

- 6(1) By virtue of this subclause, any scheme amendments made under the New Act are given the same force and effect as if they were processed under the principal act governing such matters, namely the *Planning and Development Act 2005*.
- 6(2) Section 126 of the *Planning and Development Act 2005* provides a mechanism by which the Western Australian Planning Commission can make a local planning scheme consistent with the MRS. This clause makes it clear such a process is inapplicable as clause 5 of this New Act achieves the same outcome.
- 6(3) Sub clause (2) provides that nothing in this Part affects the operation of the *Planning and Development Act 2005* with respect to amendments to the Metropolitan Region Scheme and local planning scheme as amended by this Part.

PART 3 – REPEAL AND AMENDMENT OF ACTS

Clause 7: *Port Kennedy Development Agreement Act 1992*

This clause repeals the Existing Act. This will occur when the rest of the New Act is proclaimed under clause 2.

Clause 8: *Aquatic Resources Management Act 2016*

This clause amends the *Aquatic Resources Management Act 2016* by removing a reference to the Existing Act. This is necessary given the Existing Act is being repealed.

SCHEDULE 1 – PORT KENNEDY REVISED DEVELOPMENT PLAN (INDICATIVE ONLY)

This schedule contains a map that sets out, indicatively, where Area A and Area B are located. This map relates to the zoning and reservation changes for the MRS. The formal map is held by the Western Australian Planning Commission.

SCHEDULE 2 – ROCKINGHAM DEVELOPMENT ZONE PLAN (INDICATIVE ONLY)

This schedule contains a map that sets out, indicatively, where Area B is located. This map relates to the zoning changes for the Rockingham LPS. The formal map is held by the Western Australian Planning Commission.