

Perry Lakes Redevelopment Bill 2005

Explanatory Memorandum

The purpose of the *Perry Lakes Redevelopment Bill 2005* ('the Bill') is to:

- allow for the resumption of certain land by the State;
- in respect of the Perry Lakes land, provide a specific scheme for compensation that generally reflects agreements previously reached between the State and the Town of Cambridge;
- in respect of the AK Reserve land, provide a specific scheme for compensation whereby the State is liable to pay compensation on the basis that the use and development of the land is restricted solely to recreational purposes;
- enable the sustainable redevelopment of the Perry Lakes land and the construction of sporting facilities on land designated as AK Reserve in a timely manner; and
- provide for the disposition of financial and land assets to the Town of Cambridge upon the completion of the sporting facilities.

The Bill is organised into six parts; namely:

- Part 1 – Preliminary;
- Part 2 – Resumption and return of certain lands;
- Part 3 – Redeveloping the redevelopment area;
- Part 4 – Financial provisions;
- Part 5 – Miscellaneous; and
- Part 6 – *Cambridge Endowment Lands Act 1920* amended.

Each of these parts is explained below, along with significant clauses.

The Bill contains one schedule: Schedule 1 – Resumed land. The schedule provides an indicative plan of the land to be resumed under the Act.

The long title of the Bill is, 'An Act to provide for the resumption and redevelopment of certain land at Perry Lakes, and for related purposes'.

Part 1 – Preliminary

This part comprises:

- the short title;
- commencement provisions; and

- interpretation provisions.

This part also provides for the fixing of relevant dates under the Act and confirms that the Act will bind the Crown.

Clause 1 Short title: this clause provides that the short title of the Act is the *Perry Lakes Redevelopment Bill 2005*.

Clause 2 Commencement: this clause provides that the Act, save for Part 3, comes into operation on the day on which it receives the Royal Assent.

Subclause (2) provides for Part 3 to come into operation on ‘resumption day’. Resumption day is a date fixed by the Governor under clause 4. Part 2 provides that on resumption day the estate in fee simple of certain land is transferred to the State.

Clause 3 Interpretation: this clause defines relevant terms for the purposes of interpreting the Act.

Importantly, ‘redevelopment period’ is defined as the period beginning on resumption day and ending immediately before completion day.

The terms ‘resumption day’ and ‘completion day’ are fixed under clause 4, and explained in detail below.

The Bill confers functions and otherwise refers to the following positions: ‘AK Reserve Minister’, ‘Environment Minister’ and ‘Planning Minister’. As is explained below, clause 50 ‘Delegation’ empowers any Minister who has a function under the Act to delegate the function to another person (or body), other than the power to delegate.

In certain circumstances where appropriate, and for reasons of legislative consistency, similar definitions to those in the *Hope Valley-Wattleup Redevelopment Act 2000* have been used. For example, ‘development’ has the meaning given by the *Town Planning and Development Act 1928*, but clause 3 and clause 52 ‘Regulations’ of the Bill empower the Governor to make regulations to declare any work, act or activity to not constitute ‘development’.

Note that other terms are explained elsewhere in this explanatory memorandum where relevant.

Clause 4 Governor may fix certain dates: this clause provides for the Governor, by a proclamation published in the *Gazette*, to fix:

- a ‘resumption day’; and
- a ‘completion day’.

‘Resumption day’ may only be fixed on the recommendation from the Planning Minister. The significance of ‘resumption day’ is twofold:

- *first*, clause 6 ‘Certain land resumed’ provides that on resumption day the estate in fee simple of certain land is transferred to the Crown in right of the State and the land defined under clause 3 as the ‘Avenues land’ is revested in the Crown and dedicated as a road; and
- *second*, clause 2 ‘Commencement’ provides for Part 3 to come into operation on ‘resumption day’. Part 3

‘Completion day’ may likewise only be fixed on the recommendation from the Planning Minister. The Planning Minister must only make a recommendation if satisfied that:

- the Metropolitan Region Scheme and any relevant town planning scheme is consistent with the redevelopment plans for the AK Reserve land and the Perry Lakes land; and
- there are no costs or expenses chargeable to the Perry Lakes Trust Fund established under Part 4 – Financial Provisions or that satisfactory alternative arrangements have been made for the payment of those costs or expenses.

Clause 5 Crown bound: this clause confirms that the Act will bind the Crown.

Part 2 – Resumption and return of certain lands

This part provides for the resumption and return of certain land by the State.

Resumption of land

Clause 6 Certain land resumed: this clause provides that on ‘resumption day’ the estate in fee simple of the AK Reserve land and the Perry Lakes land is transferred to the Crown in right of the State. Each of these areas is defined in clause 3 as follows:

- ‘AK Reserve land’ means the land being Lot 713 on Deposited Plan 48234 as created under section 6(6); and
- ‘Perry Lakes land’ means the land being Lot 712 on Diagram 90077 and being the whole of the land in Certificate of Title Volume 2128 Folio 21.

Subclause (6) confirms that the Registrar of Titles has sufficient power to create Lot 713 on Deposited Plan 48234, which is ‘AK Reserve land’. Schedule 1 – Resumed land provides an indicative plan of ‘AK Reserve land’. The Registrar will create Lot 713 by amalgamating:

- Lot 711 on Diagram 90080 and being the whole of the land in Certificate of Title Volume 2138 Folio 28;
- part of Lot 25 on Deposited Plan 25810 and being part of the land in Certificate of Title Volume 2586 Folio 279; and
- portion of road shown as Lot 2 on Deposited Plan 48234.

Clause 7 No compensation payable for Perry Lakes land: this clause confirms that the State is not required to compensate any person who holds an interest in the Perry Lakes land that is extinguished by the Act.

It should be noted that clause 6(4) extinguishes, on resumption day, every registered and unregistered interest on the Perry Lakes land, save an easement to the Metropolitan Water Supply Sewerage and Drainage Board.

Parts 9 and 10 of the *Land Administration Act 1997* do not apply.

Rather, the Bill provides an alternative scheme for compensation that generally reflects agreements previously reached between the State and the Town of Cambridge.

In respect of the Perry Lakes land, the resumed land will be redeveloped to fund the construction of sporting facilities generally on the AK Reserve land.

Clause 8 Compensation for part of the AK Reserve land: this clause provides that compensation is to be paid to persons having an interest in certain parts of the area defined as ‘AK Reserve land’. The State will be liable to compensate any person who has an interest in the following land that is extinguished by the Act:

- Lot 711 on Diagram 90080 and being the whole of the land in Certificate of Title Volume 2138 Folio 28; and
- part of Lot 25 on Deposited Plan 25810 and being part of the land in Certificate of Title Volume 2586 Folio 279.

As noted above, the remainder of the area defined as ‘AK Reserve’ is a portion of road shown as Lot 2 on Deposited Plan 48234.

Importantly, subclause (4) provides, amongst other things, that in determining the amount of compensation to be awarded:

- it is to be assumed that the land has no current or future use other than for the purposes of recreation; and
- there is to be no reference to the amount it would cost to re-instate a person who has had an interest extinguished by this clause with an interest equivalent to that extinguished by this clause.

This limitation on compensation is deliberate, and arises from the philosophy that undergirds the Bill – namely, the desire to achieve through legislation that which would otherwise have been achieved through agreements previously reached between the State and the Town of Cambridge. As a consequence of this philosophy, in respect of the AK Reserve land, clause 8 provides a specific scheme for compensation whereby the State is liable to pay compensation on the basis that the use and development of the land is restricted solely to recreational purposes.

Return of land

Clause 9 Return of part of Perry Lakes land: this clause provides that the State is to return to the Town of Cambridge any of the Perry Lakes land held by it for an estate in fee simple.

This may occur part-way through the construction of the sporting facilities on the AK Reserve land, at the discretion of the State.

In any event, the State must return to the Town of Cambridge any of the Perry Lakes land held by it for an estate in fee simple following the completion of the sporting facilities. This is to occur within 6 months of ‘completion day’, which is defined in clause 4. In respect of the AK Reserve land, the State is to provide compensation to the Town of Cambridge on the basis that the use and development of the land is restricted solely to recreational purposes. In other words, compensation will be on the basis that the land is reserved for Parks and Recreation under the Metropolitan Region Scheme, as is presently the case.

All transfers made pursuant to Part 2 are exempt from:

- fees under the *Transfer of Land Act 1893*; and
- stamp duty.

There is no requirement for the State to return the AK Reserve land.

Part 3 – Redeveloping the redevelopment area

Part 3 is divided into the following divisions:

- Division 1 – Preliminary;
- Division 2 – General;
- Division 3 – Operation of planning and other laws affected;
- Division 4 – Redevelopment plans;
- Division 5 – Development control;
- Division 6 – Unauthorised developments; and
- Division 7 – Miscellaneous.

Division 1 – Preliminary

This division provides a guide to interpretation for the purposes of the *Environment Protection Act 1986*.

Division 2 – General

This division sets out the functions of:

- the Western Australian Land Authority, in respect of the Perry Lakes land; and
- the AK Reserve Minister, in respect of the AK Reserve land.

Clause 11 Perry Lakes land: provides that the Western Australian Land Authority is responsible for coordinating the redevelopment of the Perry Lakes land.

The Western Australian Land Authority will perform its functions under this clause as a ‘not-for-profit’ project manager.

Again, this restriction arises from the philosophy that undergirds the Bill – namely, the desire to achieve through legislation that which would otherwise have been achieved through agreements previously reached between the State and the Town of Cambridge. The Bill enables the construction of the sporting facilities on the AK Reserve land to be funded by the redevelopment of the Perry Lakes land. Consistent with this philosophy, the Bill is drafted to ensure that neither the State nor the Western Australian Land Authority profit from the redevelopment of the Perry Lakes land.

Clause 42 ‘Amounts to be credited to the Fund’ provides that the net proceeds of the sale of any of the Perry Lakes land are to be credited to the Perry Lakes Trust Fund. The Fund is explained below under ‘Part 4 – Financial provisions’.

Clause 43 ‘Amounts to be charged to the Fund’ provides that any costs that are incurred under the Act in redeveloping the Perry Lakes land are to be charged to the Fund.

Clause 12 AK Reserve Minister’s functions: this clause provides that the AK Reserve Minister, acting on behalf of, and in the name of, the State, is responsible for ensuring that the athletics, basketball and rugby facilities are constructed on AK Reserve land.

On account of the land required to build the various sporting facilities, the AK Reserve Minister may cause facilities to be constructed on land in the redevelopment area that is contiguous with AK Reserve land or on land outside the redevelopment area.

Clause 3 defines ‘redevelopment area’ to comprise:

- the resumed land; and
- any land that is contiguous to the resumed land and that is declared to be part of the redevelopment area by the regulations any land.

Again, the Bill has been drafted to generally reflect agreements previously reached between the State and the Town of Cambridge.

Clause 43 'Amounts to be charged to the Fund' provides that the following costs that are incurred by the AK Reserve Minister in complying with clause 12 are to be charged to the Fund:

- 52% of the costs incurred in designing and constructing athletics facilities that will serve the people of the whole State; and
- the costs incurred in designing and constructing basketball and rugby facilities that are of a size and standard as are determined by the Minister.

It should be noted that the basketball and rugby facilities are intended to be of a size and standard that is suitable in order to replace the existing facilities on the Perry Lakes stadium site.

Division 3 – Operation of planning and other laws affected

This division provides that planning schemes and building local laws are suspended in so far as they would apply to the redevelopment area for the period between resumption day and completion day.

'Planning schemes' is defined for the purpose of the division to mean the Metropolitan Region Scheme and any relevant town planning scheme.

The division states that planning schemes are 'repealed'. The effect of the division, however, is to suspend planning schemes.

To illustrate the distinction, clause 15 'Certain planning schemes affecting redevelopment area not to operate until completion day' provides that planning schemes may be amended in the period between resumption day and completion day but an amendment to a planning scheme, in so far as it applies to the redevelopment area, has no effect until completion day.

Importantly, however, the Bill retains the requirement for planning approval and building approval.

The Bill provides for planning and building decision-making roles to be performed by the Western Australian Planning Commission and the Housing Minister, respectively.

The Bill further provides for planning and building decisions to be made according to well-accepted principles and procedures. These are respectively:

- planning decisions are to be made having regard to a redevelopment plan prepared subject to public consultation and in a manner akin to a town planning scheme; and
- building decisions are to be made in the ordinary manner pursuant to Part XV, Division 20 of the *Local Government (Miscellaneous Provisions) Act 1960* and regulations made thereunder.

Division 4 of the Bill requires redevelopment plans to be prepared in respect of AK Reserve land and Perry Lakes land. Division 5 prohibits unauthorised development and prescribes a procedure for applying for development approval. The division provides:

- the Western Australian Planning Commission is required to have regard to an approved redevelopment plan in determining an application for development approval; and
- the ‘building laws’ apply as if a reference to the local government or chief executive officer of the local government were a reference to the Housing Minister.

These divisions are explained below.

Division 4 – Redevelopment plans

This division provides for the preparation of redevelopment plans.

Clause 19 Draft redevelopment plans to be prepared: subclause (1) provides that the Western Australian Land Authority is responsible for preparing a redevelopment plan for the Perry Lakes land.

Subclause (2) provides that the AK Reserve Minister is responsible for preparing a redevelopment plan for the AK Reserve land.

Stages in preparing a redevelopment plan

The stages in preparing a redevelopment plan include:

- consultation with affected public authorities and persons (clause 19(3));
- submission of the draft redevelopment plan to local government for comment within 28 days (clause 20; clause 22(2));
- submission of the draft redevelopment plan to the Environment Protection Authority (clause 21);
- submission of the draft redevelopment plan and comments received from the local government (if any) to the Western Australian Planning Commission for consent to release the plan for public notification (clause 22; clause 23);
- a public submission period of not less than 60 days on the draft redevelopment plan (clause 24(3));
- submission of the draft redevelopment plan and a report on submissions received on the plan to the Western Australian Planning Commission (clause 26);
- approval of the redevelopment plan by the Planning Minister subject to such amendments being made (if any) as directed by the Planning Minister (clause 27); and

- publication of a notice in the *Gazette* by either the Western Australian Land Authority or the AK Reserve Minister that the Planning Minister has approved the plan (clause 28).

Clause 28 Planning Minister's approval to be gazetted: subclause (2) provides that a redevelopment plan comes into operation:

- on the day on which either the Western Australian Land Authority or the AK Reserve Minister publish a notice in the *Gazette* that the Planning Minister has approved the plan; or
- on any later day specified in the plan.

Division 5 – Development control

This division provides for applications for development approval under the Act to be made to the Western Australian Planning Commission.

The Western Australian Planning Commission is required to notify affected public authorities and persons and the relevant local government of any application for development approval made under the Act.

The Western Australian Planning Commission is required to have regard to, amongst other things, the approved redevelopment plan in determining an application for development approval.

This division also provides that the 'building laws' apply as if a reference to the local government or chief executive officer of the local government were a reference to the Housing Minister, as defined under clause 36.

Division 6 – Unauthorised developments

This division confers enforcement powers on the Western Australian Planning Commission in respect of unauthorised development in the redevelopment areas.

Division 7 – Miscellaneous

This division:

- empowers the Planning Minister to exercise various powers to ensure environmental conditions are met; and
- requires the Planning Minister and the AK Reserve Minister to jointly prepare a report on the redevelopment of the Perry Lakes land and the AK Reserve land and table it before each House of Parliament.

Part 4 – Financial provisions

This part establishes the Perry Lakes Trust Fund and the reporting requirements in respect of the Fund.

This part prescribes the amounts that may be credited to and charged to the Fund.

These amounts generally reflect agreements previously reached between the State and the Town of Cambridge, with the contribution of the Town of Cambridge met by the Fund.

On completion day, any funds remaining in the Fund are to be paid to the Town of Cambridge. The Fund is then to be closed.

Part 5 – Miscellaneous

This part sets out miscellaneous provisions. These provisions:

- empower relevant Ministers to delegate functions conferred under the Act;
- provide for the liability of officers of a body corporate;
- empower the Governor to make regulations; and
- require the Minister principally responsible for administering the Act to carry out a review of the Act after five years.

Part 6 – *Cambridge Endowment Lands Act 1920* amended

This part amends the *Cambridge Endowment Lands Act 1920*. The AK Reserve land and the Perry Lakes land, which is defined for the purposes of this part as the ‘Perry Lakes redevelopment land’, is excluded from the definition of ‘the said lands’ under the *Cambridge Endowment Lands Act 1920* and therefore from the restrictions under that Act.

Schedule 1 – Resumed land

The schedule provides an indicative plan of the land to be resumed under the Act.