

Planning Appeals (Transitional and Consequential Provisions) Bill 1999

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Western Australia

LEGISLATIVE ASSEMBLY

**Planning Appeals (Transitional and
Consequential Provisions) Bill 1999**

A Bill for

An Act to —

- **amend the *Town Planning and Development Act 1928* and various other Acts; and**
 - **enact transitional provisions,**
- as a consequence of the enactment of the *Planning Appeals Act 1999*.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Planning Appeals (Transitional and Consequential Provisions) Act 1999*.

5 **2. Commencement**

(1) This Act, other than sections 21, 27, 29(1) to the extent that it amends section 26(1)(ad) of the *Town Planning and Development Act 1928*, 33 and 34, comes into operation on the day on which the *Planning Appeals Act 1999* comes into operation.

(2) Sections 21, 27 and 29(1) to the extent that it amends section 26(1)(ad) of the *Town Planning and Development Act 1928* come into operation on —

- 15 (a) the day on which Part 2 of the *Planning Legislation Amendment Act 1999* comes into operation; or
- (b) if on that day the other provisions of this Act have not yet come into operation, the day when they come into operation.

(3) Sections 33 and 34 come into operation on —

- 20 (a) the day on which Part 3 of the *Planning Legislation Amendment Act 1999* comes into operation; or
- (b) if on that day the other provisions of this Act have not yet come into operation, the day when they come into operation.

Part 2 — *Constitution Acts Amendment Act 1899*

3. Schedule V amended

Schedule V of the *Constitution Acts Amendment Act 1899** is amended as follows:

- 5 (a) by inserting the following item at the end of Division 1 of Part 1 —

“

The Director of Planning Appeals or any other Assessor appointed under the *Planning Appeals Act 1999*.

10

”;

- (b) in Part 3 by deleting the following items —

“

The Town Planning Appeal Committee constituted under the *Town Planning and Development Act 1928*.

15

The Town Planning Appeal Tribunal constituted under the *Town Planning and Development Act 1928*.

”.

20

[* Reprinted as at 22 January 1997.
For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 53.]

Part 3 — East Perth Redevelopment Act 1991

4. The Act amended

The amendments in this Part are to the *East Perth Redevelopment Act 1991**.

5 [* Act No. 62 of 1991.
For subsequent amendments see 1998 Index to Legislation of
Western Australia, Table 1, p. 75.]

5. Section 45 replaced

10 Section 45 is repealed and the following section is inserted
instead —

“

45. Appeal

15 An applicant aggrieved by a decision of the Authority
under section 43 may appeal against that decision
under the *Planning Appeals Act 1999*.

”.

6. Section 47 amended

20 (1) Section 47(2) is amended by deleting “to the Minister against
the direction, and on such an appeal the Minister may confirm,
vary or cancel the direction.” and inserting instead —

“

against the direction under the *Planning Appeals
Act 1999*.

”.

25 (2) Section 47(4) is repealed.

Part 4 — *Government Employees Superannuation Act 1987*

7. Schedule 1 amended

5 Part B of Schedule 1 to the *Government Employees Superannuation Act 1987* * is amended by deleting “Town Planning Appeal Committee (until 31 March 1990)”.

[* *Reprinted as at 22 January 1999.*]

**Part 5 — Metropolitan Region Town Planning
Scheme Act 1959**

8. The Act amended

5 The amendments in this Part are to the *Metropolitan Region
Town Planning Scheme Act 1959**.

[* *Reprinted as at 7 March 1996.*

*For subsequent amendments see 1998 Index to Legislation of
Western Australia, Table 1, p. 161.]*

9. Section 33A amended

10 (1) Section 33A(5) and (6) are repealed and the following
subsection is inserted instead —

“

(5) If the Minister receives any submissions in relation to a
proposed amendment the Minister shall —

15 (a) give copies of the submissions to the
Commission; and

(b) refer the submissions to be dealt with under
section 29 of the *Planning Appeals Act 1999*.

”.

20 (2) Section 33A(7) is amended by deleting “subsection (5),” and
inserting instead —

“ the *Planning Appeals Act 1999*, ”.

(3) Section 33A(9) is repealed.

10. Section 35F amended

25 (1) Section 35F(1) is amended by deleting “Part V of the Town
Planning Act.” and inserting instead —

“ the *Planning Appeals Act 1999*. ”.

(2) Section 35F(2) is repealed.

11. Section 43 amended

- (1) Section 43(3) is repealed and the following subsection is inserted instead —

“

- 5 (3) An owner on whom a notice is served under this section may, within 60 days of being served with the notice, appeal under the *Planning Appeals Act 1999* against any direction contained in the notice.

”.

- 10 (2) Section 43(4) is amended by inserting after “giving the direction” —

“

- 15 or such longer time as is determined by the Planning Appeal Panel convened under the *Planning Appeals Act 1999* that determines the appeal

”.

- (3) Section 43(5)(b) is amended by deleting “specified by the Minister in the notice given under subsection (3),” and inserting instead —

- 20 “ required under subsection (4), ”.

15. Section 26 amended

- 5 (1) Section 26(5) is amended by deleting “to the Minister to whom the administration of the *Town Planning and Development Act 1928* is for the time being committed by the Governor or to the Town Planning Appeal Tribunal constituted under that Act” and inserting instead —
- “ under the *Planning Appeals Act 1999* ”.
- (2) Section 26(6) is repealed.
- (3) Section 26(7) is amended as follows:
- 10 (a) by deleting “, other than an appeal to the Town Planning Appeal Tribunal,”;
- (b) by deleting “, in such manner and upon payment of such fees as may be prescribed”.
- (4) Section 26(8) is repealed and the following subsection is
- 15 inserted instead —
- “
- (8) An appeal to the Minister under subsection (4) may be commenced in such manner and on payment of such
- 20 fees as may be prescribed. ”.
- (5) Section 26(9) is amended as follows:
- (a) by deleting “The relevant Minister, or the Town Planning Appeal Tribunal, as the case may be,” and inserting instead —
- 25 “ On an appeal under subsection (4) the Minister ”;
- (b) by deleting “or the Tribunal” in the 3 places where it occurs.

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- (6) Section 26(10) is amended by deleting “decision of a Minister or the Town Planning Appeal Tribunal upon any such appeal is” and inserting instead —

5

“

determination of an appeal under this section is, subject to any right of appeal under the *Planning Appeals Act 1999*,

”.

- (7) Section 26(11) is amended as follows:

10

(a) by deleting “a Minister or the Town Planning Appeal Tribunal upholds”;

(b) after “this section” by inserting —

“ is upheld ”;

15

(c) by deleting “Tribunal” in both other places where it occurs and inserting instead —

“ Director of Planning Appeals ”.

- (8) Section 26(12)(a) is amended by deleting “Town Planning Appeal Tribunal” and inserting instead —

“ Director of Planning Appeals ”.

20

16. Section 27 amended

- (1) Section 27(3) is amended by deleting “to the Minister to whom the administration of the *Town Planning and Development Act 1928* is for the time being committed by the Governor or to the Town Planning Appeal Tribunal constituted under that Act” and inserting instead —

25

“ under the *Planning Appeals Act 1999* ”.

- (2) Section 27(4) is repealed.

(3) Section 27(5) is amended as follows:

(a) by deleting “, other than an appeal to the Town Planning Appeal Tribunal,”;

5

(b) by deleting “, in such manner and upon payment of such fees as may be prescribed”.

(4) Section 27(6) and (7) are repealed.

(5) Section 27(8) is amended by deleting “decision of the Minister or the Town Planning Appeal Tribunal upon any such appeal is” and inserting instead —

10

“

determination of an appeal under this section is, subject to any right of appeal under the *Planning Appeals Act 1999*,

”.

15

(6) Section 27(9) is repealed and the following subsection is inserted instead —

“

(9) Where an appeal under this section is upheld —

20

(a) the Director of Planning Appeals shall issue to the applicant a certificate certifying that the appeal has been upheld; and

25

(b) if the appeal is against the refusal of the Commission to give its approval the certificate of the Director of Planning Appeals shall be deemed to be the approval of the Commission.

”.

(7) Section 27(10)(a) is amended by deleting “Minister or the Town Planning Appeal Tribunal” and inserting instead —

“ Director of Planning Appeals ”.

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Part 7 — Subiaco Redevelopment Act 1994

17. The Act amended

The amendments in this Part are to the *Subiaco Redevelopment Act 1994**.

5 [* *Act No. 35 of 1994.*
For subsequent amendments see *1998 Index to Legislation of Western Australia, Table 1, pp. 242-3.*]

18. Section 52 replaced

10 Section 52 is repealed and the following section is inserted instead —

“

52. Appeal

15 An applicant aggrieved by a decision of the Authority under section 50 may appeal against that decision under the *Planning Appeals Act 1999*.

”.

19. Section 54 amended

20 (1) Section 54(2) is amended by deleting “to the Minister against the direction, and on the appeal the Minister may confirm, vary or cancel the direction.” and inserting instead —

“

against that decision under the *Planning Appeals Act 1999*.

”.

25 (2) Section 54(4) is repealed.

Part 8 — *Town Planning and Development Act 1928*

20. The Act amended

The amendments in this Part are to the *Town Planning and Development Act 1928**

5 [* Reprinted as at 19 March 1999.]

21. Section 7 amended

Section 7(1f) is amended by deleting “to the Town Planning Appeal Tribunal constituted under section 42.” and inserting instead —

10 “ under the *Planning Appeals Act 1999*. ”.

22. Section 7B amended

- (1) Section 7B(6)(a) is amended by deleting from “to the Minister who may —” to the end of the paragraph and inserting instead —

15 “ under the *Planning Appeals Act 1999*. ”.

- (2) Section 7B(6)(b) is deleted.

- (3) Section 7B(6)(d) is amended by deleting “to the Minister as provided in paragraph (a).” and inserting instead —

“ under the *Planning Appeals Act 1999*. ”.

- 20 (4) Section 7B(8)(b) is amended by deleting from “to the Minister” to the end of the paragraph and inserting instead —

“

against any direction contained in the notice
under the *Planning Appeals Act 1999*.

25 ”.

s. 23

- (5) Section 7B(12)(a)(ii) is deleted and the following subparagraph is inserted instead —

“

- (ii) on an appeal made by the claimant under subsection (6), the decision has been affirmed.

”.

23. Section 8A amended

- (1) Section 8A(1) is amended by deleting “to the Minister against the authority’s decision in accordance with Part V.” and inserting instead —

“

against the authority’s decision under the *Planning Appeals Act 1999*.

”.

- (2) Section 8A(3) and (4) are repealed.

24. Section 8B amended

Section 8B is amended by deleting “to the Minister in accordance with Part V.” and inserting instead —

“ under the *Planning Appeals Act 1999*. ”.

25. Section 10 amended

Section 10(3) is repealed and the following subsection is inserted instead —

“

- (3) A person aggrieved by the decision of a responsible authority to take action under subsection (1) may appeal against that decision under the *Planning Appeals Act 1999*.

”.

26. Section 18 amended

Section 18(2) is repealed and the following subsections are inserted instead —

“

- 5 (2) A person aggrieved by the failure of a local government to —
- (a) enforce effectively the observance of a scheme, which has been confirmed, or any provisions of such a scheme; or
 - 10 (b) execute any works which, under such a scheme or this Act, the local government is required to execute,

may refer the matter to be dealt with under section 30 of the *Planning Appeals Act 1999*.

- 15 (2a) On receiving a report and recommendation made to him or her under the *Planning Appeals Act 1999*, the Minister may order the local government to do all things necessary for enforcing the observance of the scheme, or for executing any works which, under the
- 20 scheme or this Act, the local government is required to execute.

”.

27. Section 18B amended

- 25 (1) Section 18B(1) is amended by deleting “by the Town Planning Appeal Tribunal”.

- (2) Section 18B(2)(a) is deleted and the following paragraph is inserted instead —

“ (a) set out the determination made on the appeal; ”.

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28. Section 18D inserted

After section 18C the following section is inserted in Part I —

“

18D. Appeals under town planning schemes

- 5 (1) Where a person is entitled under a town planning scheme to appeal against the exercise by the responsible authority of a discretionary power the appeal is to be made under the *Planning Appeals Act 1999*.
- 10 (2) Subsection (1) has effect despite any provision in the town planning scheme that provides for the appeal to be made to any other person or body.

”.

29. Section 26 amended

- 15 (1) Section 26(1)(a), (ab) and (ad) are amended by deleting “to the Minister” and inserting instead —
“ under the *Planning Appeals Act 1999* ”.
- (2) Section 26(1)(b), (c) and (d) are deleted.

30. Part V repealed

- 20 Part V is repealed.

31. Schedule 1 amended

Clause 27A of Schedule 1 is amended by deleting “to the Minister” and inserting instead —

“ under the *Planning Appeals Act 1999* ”.

**Part 9 — Western Australian Planning
Commission Act 1985**

32. The Act amended

5 The amendments in this Part are to the *Western Australian
Planning Commission Act 1985**.

[* Act No. 91 of 1985.

*For subsequent amendments see 1998 Index to Legislation of
Western Australia, Table 1, p. 272.]*

33. Sections 25 and 37E amended

10 (1) Sections 25(1) and (2) and 37E(1) are amended by deleting
“Part V of the *Town Planning and Development Act 1928*.” and
inserting instead —

“ the *Planning Appeals Act 1999*. ”.

(2) Section 37E(2) is repealed.

15 **34. Section 37J amended**

(1) Section 37J(4) and (5) are repealed and the following subsection
is inserted instead —

“

20 (4) An owner on whom a notice is served under this
section may, within 60 days of being served with the
notice, appeal under the *Planning Appeals Act 1999*
against any direction contained in the notice.

”.

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(2) Section 37J(6) is amended by inserting after “giving the direction” —

“

5 or such longer time as is determined by the Planning
 Appeal Panel convened under the *Planning Appeals
 Act 1999* that determines the appeal

”.

10 (3) Section 37J(7)(b) is amended by deleting “specified by the
 Minister in the notice given under subsection (5),” and inserting
 instead —

“ required under subsection (6) ”.

Part 10 — Transitional

35. Current proceedings

- 5 (1) If a proceeding was commenced before the day on which this Act came into operation but as at that day is not concluded, the proceeding may be dealt with and determined under the repealed provisions as if this Act and the *Planning Appeals Act 1999* were not in operation.
- (2) In this section —
- 10 **“proceeding”** means an appeal, referral or application to the Minister, Town Planning Appeal Tribunal or Town Planning Appeal Committee made under a written law that, after the commencement of this Act, provides for such appeals, referrals or applications to be made to the Director of Planning Appeals under the *Planning Appeals Act 1999*;
- 15 **“repealed provisions”**, in relation to a proceeding, means the provisions of the Act under which the proceeding was commenced and, where relevant the *Town Planning and Development Act 1928*, as in force immediately before this Act came into operation.

20 36. References to Tribunal or Committee

- 25 (1) Unless the context otherwise requires, where in any written law or in any document of any other kind there is a reference to an appeal, referral or application to the Town Planning Appeal Tribunal or the Town Planning Appeal Committee that reference is to be read and construed as a reference to an appeal, referral or application to the Director of Planning Appeals under the *Planning Appeals Act 1999*.
- (2) Unless the context otherwise requires, where in any written law or in any document of any other kind there is a reference to a decision, determination or order of the Town Planning Appeal

s. 36

Tribunal or the Town Planning Appeal Committee that reference is to be read and construed as a reference to a decision, determination or order of a Planning Appeal Panel convened under the *Planning Appeals Act 1999*.
