

Planning Appeals Amendment Bill 2001

CONTENTS

Part 1 — Preliminary		
1 .	Short title	2
2 .	Commencement	2
Part 2 — <i>Town Planning and Development Act 1928</i>		
3 .	The Act amended	3
4 .	Section 2 amended	3
5 .	Section 7B amended	4
6 .	Section 8A amended	5
7 .	Section 8B amended	5
8 .	Section 10 replaced by sections 10, 10AA and 10AB	6
9 .	Section 18 amended	10
10 .	Section 26 amended	11
11 .	Part V replaced	12
12 .	Review of <i>Town Planning and Development Act 1928</i>	30
13 .	First Schedule amended	31
14 .	Schedules 3 and 4 inserted	31
Part 3 — Transitional provisions		
15 .	Interpretation	36
16 .	<i>Interpretation Act 1984</i> not affected	36
17 .	Current appeals	36
18 .	References to Committee	37
19 .	Existing appointments	37
20 .	Transitional regulations	38

Part 4 — Consequential amendments

21 .	<i>Constitution Acts Amendment Act 1899</i>	40
22 .	<i>East Perth Redevelopment Act 1991</i>	40
23 .	<i>Heritage of Western Australia Act 1990</i>	41
24 .	<i>Hope Valley-Wattleup Redevelopment Act 2000</i>	41
25 .	<i>Metropolitan Region Town Planning Scheme Act 1959</i>	42
26 .	<i>Midland Redevelopment Act 1999</i>	43
27 .	<i>Strata Titles Act 1985</i>	44
28 .	<i>Subiaco Redevelopment Act 1994</i>	46
29 .	<i>Western Australian Planning Commission Act 1985</i>	46

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Planning Appeals Amendment Bill 2001

A Bill for

An Act to amend the planning laws of Western Australia in relation to appeals and for related and consequential purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Planning Appeals Amendment Act 2001*.

5 **2. Commencement**

- (1) This Act comes into operation on a day to be fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Part 2 — *Town Planning and Development Act 1928*

3. The Act amended

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

5 [* *Reprinted as at 3 November 2000.*
For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 457.]

4. Section 2 amended

10 Section 2(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“**appeal**” means an appeal made to the Tribunal under Part V;

15 “**deputy President**” means deputy President of the Tribunal;

“**legal practitioner**” means a practitioner within the meaning of the *Legal Practitioners Act 1893*;

20 “**member**” means member of the Tribunal and includes the President, deputy President and a person appointed under clause 5 of Schedule 3;

“**Metropolitan Region Scheme**” has the same meaning as it has in the *Metropolitan Region Town Planning Scheme Act 1959*;

25 “**party**”, in relation to an appeal, means —

(a) the appellant;

(b) the person who made the decision or direction appealed against; and

(c) any person joined as a party to the appeal by the Tribunal;

30 “**President**” means President of the Tribunal;

s. 5

“Principal Registrar” means the Principal Registrar of the Tribunal;

“regulations”, in Part V, means regulations made under section 70;

5 **“rules”** means rules of the Tribunal made under section 69;

“Tribunal” means the Town Planning Appeal Tribunal established by section 36;

”.

10 **5. Section 7B amended**

(1) Section 7B(6) is amended as follows:

(a) by deleting paragraph (a) and inserting instead —

“

15 (a) Subject to paragraph (c), if an applicant is aggrieved by the refusal of a permit or by the conditions subject to which a permit is granted, the applicant may appeal under Part V.

”;

(b) by deleting paragraph (b);

20 (c) in paragraph (d) by deleting “to the Minister”.

(2) Section 7B(7)(a) is amended as follows:

(a) by deleting “or” after subparagraph (i);

(b) in subparagraph (ii) by deleting “order,” and substituting the following —

25 “ order; or ”;

(c) by inserting after subparagraph (ii) the following —

“

30 (iii) fails to comply with a notice given to the person under subsection (8)(a),

”.

- (3) Section 7B(8)(b) is repealed and the following paragraphs are inserted instead —

“

- 5 (b) The owner or owners on whom a notice is served under paragraph (a) may appeal under Part V against any direction in the notice.
- 10 (ba) If the Tribunal affirms, varies or substitutes a direction appealed against, the owner or owners shall comply with the direction as so affirmed, varied or substituted.

”.

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

“

- 15 (ii) any determination appealed against by the claimant under subsection (6) has been affirmed in whole or in part by the Tribunal.

”.

20 **6. 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 —

“

- 25 against the responsible authority’s decision under Part V.

”.

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

30 **7. Section 8B amended**

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

“ under ”.

s. 8

8. Section 10 replaced by sections 10, 10AA and 10AB

Section 10 is repealed and the following sections are inserted instead —

“

- 5 **10. Power to direct cessation or removal of unlawful development, or restoration or execution of work**
- (1) For the purposes of subsections (2) and (3) a development is undertaken in contravention of a town planning scheme if the development —
- 10 (a) is required to comply with a town planning scheme; and
- (b) is commenced, continued or carried out otherwise than in accordance with that scheme or otherwise than in accordance with any
- 15 condition imposed with respect to the development by the responsible authority pursuant to its powers under that scheme.
- (2) If a development, or any part of a development, is undertaken in contravention of a town planning
- 20 scheme, the responsible authority may give a written direction to the owner or any other person undertaking that development to stop, and not recommence, the development or that part of the development that is undertaken in contravention of the scheme.
- (3) If a development has been undertaken in contravention of a town planning scheme, the responsible authority may give a written direction to the owner or any other
- 25 person who undertook the development —
- 30 (a) to remove, pull down, take up, or alter the development; or
- (b) to restore the land as nearly as practicable to its condition immediately before the development

started, to the satisfaction of the responsible authority.

- 5
- (4) The responsible authority may give directions under subsections (2) and (3)(a) and (b) in respect of the same development and in the same instrument.
- 10
- (5) If it appears to a responsible authority that delay in the execution of any work to be executed under a scheme would prejudice the efficient operation of the scheme, the responsible authority may give a written direction to the person whose duty it is to execute the work to execute that work.
- 15
- (6) A direction under subsection (3) or (5) is to specify a time, being not less than 60 days after the service of the direction, within which the direction is to be complied with.
- 20
- (7) A person who —
- (a) fails to comply with a direction given to the person under subsection (2); or
 - (b) fails to comply with a direction given to the person under subsection (3) or (5) within the time specified in the direction, or within any further time allowed by the responsible authority,
- commits an offence.
- 25
- Penalty: \$50 000 and a daily penalty of \$5 000.
- (8) If a person commits an offence under subsection (7) or section 10AA(5) the responsible authority —
- 30
- (a) may remove, pull down, take up or alter the development, restore the land as nearly as practicable to its condition immediately before the development started, or execute the work, as it directed that person; and

- (b) may recover from the person the costs incurred by the responsible authority in so doing as a debt in a court of competent jurisdiction.

10AA. Appeal against section 10 direction

- 5 (1) A person to whom a direction is given under section 10 may appeal against the direction under Part V.
- (2) Pending the determination of an appeal against a direction under section 10(2), the relevant direction continues to have effect.
- 10 (3) On an application under this section the Tribunal may —
 - (a) stay the operation of a direction under section 10(2) to which the appeal relates until the appeal has been determined;
 - 15 (b) order that a direction under section 10(3) to which the appeal relates is to continue to have effect until the appeal has been determined; or
 - (c) refuse the application.
- 20 (4) If the Tribunal affirms or varies a direction, or gives another direction in substitution for it, the Tribunal —
 - (a) may direct the appellant to comply with the direction, the direction as varied or the substituted direction; and
 - 25 (b) except where the direction is a direction to stop, and not recommence, a development or part of a development, is to specify in the direction the time within which the appellant must comply with the direction, being a time not less than 21 days after the direction is given.
- 30 (5) A person who —
 - (a) fails to comply with a direction given to the person under this section to stop, and not

recommence, a development or part of a development; or

- 5 (b) fails to comply with a direction given to the person under this section to remove, pull down, take up, or alter a development, to restore land as nearly as practicable to its condition immediately before the development started, or execute a work, within the time specified in the direction,

commits an offence.

10 Penalty: \$50 000 and a daily penalty of \$5 000.

10AB. Requirement to comply with scheme and conditions

- (1) A person who contravenes —

- 15 (a) a town planning scheme; or
(b) any condition imposed with respect to a development by a responsible authority pursuant to its powers under a town planning scheme,

commits an offence.

Penalty: \$50 000 and a daily penalty of \$5 000.

- 20 (2) Nothing in this section prejudices or affects sections 10 and 10AA.
(3) A person may be prosecuted for an offence under this section irrespective of whether or not a direction has been given under section 10.

25 ”.

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9. Section 18 amended

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

“

- 5 (2) A person may make representations to the Minister if the person is aggrieved by the failure of a responsible authority to —
- 10 (a) enforce effectively the observance of a town planning scheme in force under this Act, or any of the provisions of the scheme; or
- (b) execute any works, which under the scheme or this Act, the local government is required to execute.
- 15 (2a) If the Minister considers it appropriate to do so, the Minister may refer the representations to the Tribunal for its report and recommendations.
- (2b) For the purpose of making a report and recommendations on a referral under subsection (2a), Part V applies, with such modifications as may be necessary, as if the referral were an appeal.
- 20 (2c) If, after holding an inquiry or receiving a report and recommendations from the Tribunal, the Minister is satisfied that the local government has failed —
- 25 (a) to enforce effectively the observance of a scheme or a provision of a scheme; or
- (b) to execute any works which the local government is required under a scheme or this Act to execute,
- 30 the Minister may order the local government to do all things necessary to enforce the observance of the scheme or provision or to execute the works.

”.

10. Section 26 amended

- (1) Section 26(1)(a) is repealed and the following paragraph is inserted instead —

“

- 5 (a) An applicant may appeal under Part V
 against —
- (i) the refusal of the Commission to
 approve the plan, application for title,
10 transfer, conveyance, lease, licence to
 use and occupy or mortgage for which
 the applicant sought approval;
- (ii) the conditions affixed to the granting of
 approval of the plan, application for
15 title, transfer, conveyance, lease, licence
 to use and occupy or mortgage for
 which the applicant sought approval; or
- (iii) a decision of the Commission made
 under section 24(6) in respect of a
20 request made by the applicant.

”.

- (2) Section 26(1)(ab) and (ad) are amended by deleting “to the Minister” and inserting instead —

“ under Part V ”.

- 25 (3) Section 26(1)(c) is amended by deleting “Minister” and inserting instead —

“ Tribunal ”.

- (4) Section 26(1)(b) and (d) are deleted.

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11. Part V replaced

Part V is repealed and the following Part is inserted instead —

“

Part V — Appeals

5

Division 1 — Establishment of Tribunal

36. Establishment of Town Planning Appeal Tribunal

- (1) A tribunal called the Town Planning Appeal Tribunal is established.
- (2) The Tribunal is to have a seal.

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37. Members of Tribunal

- (1) The Governor is to appoint as members of the Tribunal —
 - (a) a President;
 - (b) a deputy President;
 - (c) senior members; and
 - (d) ordinary members.
- (2) The membership of the Tribunal is to comprise the number of persons that the Minister considers necessary to expeditiously deal with appeals.
- (3) A member may be appointed on a full-time or part-time basis.

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38. Qualifications of members

- (1) Each member is to be a person who, in the opinion of the Minister, has knowledge of and experience in one or more of the fields of urban and regional planning, architecture and urban design, engineering, surveying, environmental science, planning law, heritage matters, public administration, commerce and industry.

25

- (2) As far as practicable, the members appointed under section 37(1) are to between them have knowledge and experience covering all of the fields mentioned in subsection (1).
- 5 (3) A person is not to hold office as a member if that person is employed under Part 3 of the *Public Sector Management Act 1994* or is otherwise employed in a full-time capacity by an agency or instrumentality of the Crown.
- 10 (4) A person is not eligible for appointment as President or deputy President unless the person is a legal practitioner of not less than 8 years' practice and standing.
- (5) A person is not eligible for appointment as a senior member unless that person has, in the opinion of the Minister, extensive knowledge, or experience, in relation to a class of matter which may be dealt with by the Tribunal.
- 15

39. Further provisions concerning members

20 Schedule 3 has effect with respect to the tenure, remuneration and conditions of service of the members and the other matters provided for in that Schedule.

Division 2 — How Tribunal is constituted

40. President determines how Tribunal is constituted

- 25 (1) Subject to this section, the President is to determine how the Tribunal is to be constituted for the purposes of each appeal.
- (2) For the purposes of each appeal, the Tribunal is to be constituted by one member or by 3 members.

s. 11

- (3) Except where a direction is given under subsection (4), an appeal —
- (a) against —
- 5 (i) the determination of, or conditions imposed in respect of, a planning application to commence a development of a value of less than \$250 000 or such other amount as is prescribed by the regulations;
- 10 (ii) the determination of, or conditions imposed in respect of, a planning application to commence a development of a single house on a single lot of a value that is less than \$500 000 or such other amount as is prescribed by the regulations, or any development ancillary to that development;
- 15 (iii) the determination of, or conditions imposed in respect of, an application for approval to subdivide a lot into not more than 3 lots; or
- 20 (iv) a determination or direction of a kind described in the regulations or rules;
- 25 (b) an appeal where the appellant has elected at the time of commencing the appeal to have the appeal determined by a single ordinary member, and the other parties to the appeal have agreed with that election;
- or
- 30 (c) of a kind described in the regulations or rules, is to be determined by the Tribunal constituted by a single ordinary member.

- 5 (4) If the President is of the opinion that an appeal referred to in subsection (3) is likely to raise complex or significant planning issues, the President may direct that the appeal is to be determined by the Tribunal constituted by a member who is not an ordinary member or by the Tribunal constituted by 3 members.
- 10 (5) When dealing with an appeal to the Tribunal from a decision referred to in section 8B or a decision relating to an environmental condition, the Tribunal is to be constituted by —
- 15 (a) a member who has knowledge of and experience in the field of environmental science; or
- (b) 3 members, of whom at least one is to have knowledge of and experience in the field of environmental science.
- (6) There may be more than one sitting of the Tribunal at the same time.

41. President responsible for administration

- 20 Subject to this Act, the regulations and the rules, the President —
- (a) is to direct the business of the Tribunal;
- (b) is responsible for the management of the administrative affairs of the Tribunal; and
- 25 (c) may determine the places and times for sittings of the Tribunal.

42. Delegation by President

- 30 (1) Subject to subsection (2), the President may delegate to any member or class of member or the Principal Registrar any function of the President under this Act, the regulations or the rules.

- (2) The President is not to delegate his or her functions under section 58 or 61 to a member or to the Principal Registrar unless that person is a legal practitioner.

Division 3 — The Principal Registrar and other officers

5 **43. Principal Registrar**

- (1) The Minister may appoint a person as Principal Registrar of the Tribunal.
- (2) The office of Principal Registrar is not an office in the Public Service and is not to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.
- (3) The Principal Registrar —
 - (a) is the executive officer of the Tribunal; and
 - (b) has the functions conferred by or under this Act, the regulations, the rules or any other Act.
- (4) The Principal Registrar may be appointed as a senior member of the Tribunal.
- (5) Schedule 4 has effect with respect to the tenure, remuneration and conditions of service of the Principal Registrar and the other matters provided for in that Schedule.

20 **44. President may give Principal Registrar directions**

- (1) The President may from time to time give directions to the Principal Registrar with respect to the performance of any of the Principal Registrar's functions, either generally or with respect to a particular matter, and the Principal Registrar is to give effect to any such direction.

- (2) Nothing in this section empowers the President to give directions to the Principal Registrar with respect to the performance of his or her functions as a member, if the Principal Registrar is a member.

5 **45. Other officers of the Tribunal**

There are to be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* —

- 10 (a) a Registrar of the Tribunal; and
 (b) such other officers as are necessary to assist in the administration of the Tribunal.

46. Functions of Registrar

The Registrar is to —

- 15 (a) assist the Principal Registrar in the administration of the Tribunal;
 (b) keep a register of all appeals made to the Tribunal; and
 (c) keep a register of decisions of the Tribunal on each appeal and keep copies of the reasons given for those decisions.

20 **Division 4 — Proceedings of Tribunal**

47. Appeals to Tribunal

- 25 (1) A person may appeal, or refer a matter, to the Appeal Tribunal if a right to appeal, or refer a matter, under this Part is conferred on the person by —
 (a) this Act or any town planning scheme in force under this Act;
 (b) the *Metropolitan Region Town Planning Scheme Act 1959* or the Metropolitan Region Scheme;

s. 11

- 5
- (c) the *Western Australian Planning Commission Act 1985* or any regional planning scheme within the meaning of that Act;
- (d) the *Heritage of Western Australia Act 1990*;
- (e) the *Strata Titles Act 1985*;
- (f) the *East Perth Redevelopment Act 1991*;
- (g) the *Subiaco Redevelopment Act 1994*;
- (h) the *Midland Redevelopment Act 1999*;
- 10 (i) the *Hope Valley-Wattleup Redevelopment Act 2000*; or
- (j) any other written law.
- (2) Where a person is entitled under the provisions of a town planning scheme in force under this Act, the Metropolitan Region Scheme or a regional planning scheme to appeal against the exercise by the responsible authority of a discretionary power, the appeal is to be made to the Tribunal under this Part.
- 15
- (3) Subsection (2) has effect despite any provision in a town planning scheme, Metropolitan Region Scheme or regional planning scheme that provides for the appeal to be otherwise made.
- 20

48. Commencement of appeal

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

49. Notice of hearings

- (1) The Principal Registrar is to give notice, in accordance with the regulations or rules, of the time and place for the hearing of the appeal to —
- 30 (a) each party to the appeal; and

- (b) each other person entitled to notice under the regulations or rules.
- (2) If a person, including a party, to whom notice has been given in accordance with the regulations or rules fails to attend, the hearing may be held in the absence of that person.

50. Determination of appeals

- (1) On an appeal the Tribunal may by order —
 - (a) affirm the determination or direction appealed against;
 - (b) vary the determination or direction appealed against;
 - (c) set aside the determination or direction appealed against; or
 - (d) set aside the determination or direction appealed against and make another determination or direction in substitution for it.
- (2) The Tribunal may also make any incidental or ancillary orders.
- (3) The power of the Tribunal to make an order includes a power to make the order subject to such conditions as the Tribunal thinks fit.

51. Procedure of Tribunal

- (1) In the performance of its functions the Tribunal, however constituted —
 - (a) is bound by the rules of natural justice;
 - (b) is not bound by the rules of evidence except to the extent that it adopts those rules;
 - (c) may inform itself of any matter as it thinks fit;

s. 11

- 5
- (d) is to deal with each appeal with as little formality and technicality, and determine each appeal with as much speed, as the requirements of this Act, the regulations and the rules and a proper consideration of the matter before it permit; and
- 10
- (e) subject to this Act, the regulations and the rules, may deal with appeals, and receive submissions and representations in relation to any appeal before it, as it thinks fit.
- (2) Without limiting subsection (1)(a), the Tribunal is to ensure that each party to an appeal before it is given a reasonable opportunity to —
- 15
- (a) present the case of that party;
- (b) inspect any document to which the Tribunal proposes to have regard in making a determination in that appeal; and
- (c) to make submissions in relation to those documents.
- 20
- (3) Except where otherwise provided by or under this Act, the regulations or the rules or otherwise determined by the Tribunal (as it is by this subsection authorised to do), a hearing of an appeal before the Tribunal is to be in public.
- 25
- (4) If the parties to an appeal agree, the Tribunal may conduct all or part of an appeal entirely on the basis of documents, without any physical appearance by the parties or their representatives or witnesses.
- 30
- (5) The parties, legal practitioners, witnesses and all other persons attending the Tribunal have the same rights and privileges and are subject to the same obligations and penalties as in the trial of an action at law in the Supreme Court.

- (6) The Tribunal has, until it has made its determination, all the powers of the Supreme Court insofar as may be necessary for hearing and determining an appeal.

52. Who presides

5 Where the Tribunal is constituted by more than one member —

- (a) if the President is a member, the President presides;
- 10 (b) if the President is not a member but the deputy President is, the deputy President presides;
- (c) if neither the President nor the deputy President is a member but a senior member is, the senior member presides or, if there is more than one, then the senior member nominated by the President for this purpose presides; and
- 15 (d) if the members are all ordinary members, then the member nominated by the President for this purpose presides.

53. Representation

- 20 (1) A party to an appeal may —
- (a) appear personally; or
- (b) subject to subsection (4), be represented by an agent or legal practitioner.
- (2) A person making a submission under section 57
- 25 may —
- (a) appear personally; or
- (b) be represented by an agent or, if any party to the appeal is entitled to be so represented, by a legal practitioner.

s. 11

- (3) An appellant in an appeal referred to in section 40(3) may, at the time the appeal is commenced, elect that no party to the appeal is to be represented by a legal practitioner.
- 5 (4) If an appellant makes an election under subsection (3), no party to the appeal is entitled to be represented by a legal practitioner unless —
- 10 (a) the President has given a direction under section 40(4) in respect of the appeal;
- (b) the President, having regard to whether the appeal involves a question of law, directs that the parties may be so represented;
- (c) the appellant is a legal practitioner; or
- (d) the appellant withdraws the election.

15 **54. Powers with respect to witnesses and evidence**

The Tribunal may —

- (a) summon a person required by a party or by the Tribunal to give evidence before it;
- (b) examine a person on oath or affirmation; and
- 20 (c) require a person to produce any documents, plans or other papers in the custody or control of the person.

55. Tribunal to invite submissions from Minister for the Environment before determining certain appeals

25 Before determining an appeal to the Tribunal from a decision referred to in section 8B or a decision relating to an environmental condition, the Tribunal is to invite the Minister for the Environment to make a submission in respect of that appeal.

56. Tribunal to have regard to certain matters

- (1) In determining any appeal the Appeal Tribunal is to have due regard to relevant planning considerations including —
- 5 (a) any approved statement of planning policy prepared under section 5AA; and
- (b) any management programme for the time being in force under Part 3 of the *Swan River Trust Act 1988*, which may affect the subject matter of the appeal.
- 10
- (2) In the case of an appeal that relates to land to which the *Heritage of Western Australia Act 1990* applies, and whether or not a statement of planning policy provides for the conservation of that land, the Tribunal —
- 15 (a) is to refer the matter to the Heritage Council for advice;
- (b) may receive or hear submissions made on behalf of the Heritage Council;
- (c) may join the Heritage Council as a party to the appeal; and
- 20 (d) is to have due regard to the objects of the *Heritage of Western Australia Act 1990*.
- (3) In determining an appeal against the determination of, or conditions imposed in respect of, an application for approval to subdivide a lot into not more than 3 lots, the Tribunal may have regard to claims of hardship raised by the appellant and proved to the satisfaction of the Tribunal, if the Tribunal is of the opinion that such regard will not affect the application of sound planning principles.
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- 30

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57. Tribunal may receive or hear submissions from persons who are not parties

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The Tribunal may receive or hear submissions from a person who is not a party to an appeal in respect of the appeal if the Tribunal is of the opinion that that person has a sufficient interest in the appeal.

58. Questions of law

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If the Tribunal is constituted without a member who is a legal practitioner, a question of law arising in the appeal may be decided in accordance with the opinion of the President.

59. Written reasons for determination and publication of reasons

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The Tribunal is to —

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- (a) give to each party to an appeal written reasons for the determination of the Tribunal on the appeal;
- (b) publish those reasons in the manner prescribed by the regulations; and
- (c) upon payment of a fee determined in the manner prescribed by the regulations, supply a copy of those reasons to any other person.

60. Costs

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(1) Each party to an appeal is to bear their own costs of the appeal except to the extent that provision is otherwise made under subsection (2) or (3).

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(2) Where in the opinion of the Tribunal a party to an appeal has behaved unreasonably, vexatiously or frivolously in relation to the appeal, the Tribunal may order that that party pay such costs as the Tribunal thinks fit to any other party who has not so behaved.

- (3) The Tribunal may award such costs as it thinks fit against an appellant who withdraws an appeal, and in favour of any other party to the appeal.
- (4) If any costs ordered by the Tribunal to be paid by a party are not paid, the party so entitled may recover the costs from the party against whom the order was made in a court of competent jurisdiction.

61. Review by President

- (1) The Tribunal constituted by the President may, of its own motion or upon an application made under subsection (3), review a direction, determination or order of the Tribunal, when constituted without a member who is a legal practitioner, upon a matter involving a question of law.
- (2) The Tribunal constituted by the President may —
- (a) affirm the direction, determination or order; or
 - (b) revoke the direction, determination or order and substitute another direction, determination or order that the Tribunal could have made in relation to that matter.
- (3) An application for review of a direction, determination or order upon a matter involving a question of law may be made, in accordance with the regulations or rules, by a party to the appeal within one month after the direction, determination or order is given to the party.

62. Appeal to Supreme Court on question of law

- (1) Subject to subsection (2), a person aggrieved by a direction, determination, or order of the Tribunal in proceedings to which the person was a party may appeal to the Supreme Court against the direction, determination, or order.

s. 11

- 5
- (2) No appeal lies against a direction, determination, or order of the Tribunal except on a question of law.
 - (3) An appeal under this section is to be instituted within the time, and in accordance with the procedure, prescribed by rules of the Supreme Court.
 - (4) The Supreme Court may make such order as to costs as it thinks fit in relation to an appeal to the Supreme Court under this section.

63. Determination of Tribunal final

10 On an appeal to the Tribunal the determination of the Tribunal is final except as provided in sections 61 and 62.

Division 5 — Intervention by Minister

64. Minister may make submissions

- 15
- (1) Where it appears to the Tribunal that an appeal may be determined in a way which will have a substantial effect on the future planning of the area in which the land the subject of the appeal is situated the Tribunal may invite the Minister to make a submission as to the matters the Minister considers to be relevant to the issues before the Tribunal.

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 - (2) Where it appears to the Minister that an appeal may be determined in a way which will have a substantial effect on the future planning of the area in which the land the subject of the appeal is situated the Minister may make a submission as to the matters which the Minister considers to be relevant to the issues before the Tribunal.

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 - (3) A submission may be made by the Minister in writing or orally on behalf of the Minister by a representative who appears at a hearing of the appeal, and may be

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made at any time before the determination of the appeal.

- 5 (4) When a written submission has been made by the Minister, a copy is to be given to the parties who are in any case to be given an opportunity of making further submissions to the Tribunal.
- (5) In this section —
 - 10 (a) where the area in which the land the subject of the appeal is situate includes or comprises land or waters that are within or abut the management area within the meaning of the *Swan River Trust Act 1988*, “**Minister**” includes the Minister to whom the administration of that Act is committed; and
 - 15 (b) where the area in which the land the subject of the appeal is situate includes, or is included in, or abuts any land or water to which an entry in the Register maintained under section 46 of the *Heritage of Western Australia Act 1990* relates,
 - 20 “**Minister**” includes the Minister to whom the administration of that Act is committed.

65. Minister may call in appeal

- 25 (1) This section applies to an appeal if the Minister considers that the appeal raises issues of such State or regional importance that it would be appropriate for the appeal to be determined by the Minister.
- (2) The Minister may direct —
 - 30 (a) the Principal Registrar to refer an appeal to which this section applies to the Minister for determination; or
 - (b) the Tribunal to hear the appeal but, without determining it, refer it with recommendations to the Minister for determination.

s. 11

- (3) The Minister cannot give a direction under subsection (2) —
- (a) in respect of an appeal made under the *Heritage of Western Australia Act 1990*;
 - 5 (b) more than 14 days after notice of the appeal was lodged with the Tribunal; or
 - (c) after a final determination has been made in relation to the appeal.
- (4) The Minister, within 14 days after a direction is given, is to cause a copy of it to be published in the *Gazette* and, as soon as is practicable, is to cause a copy of it to be laid before each House of Parliament.
- 10
- 66. Determination of appeal by Minister**
- (1) In determining an appeal the Minister is not limited to planning considerations but may make the determination having regard to any other matter affecting the public interest.
- 15
- (2) When the Minister determines an appeal that determination has effect according to its tenor.
- (3) Where an appeal is referred to the Minister under section 65(2)(b) the Registrar is to —
- 20
- (a) give a copy of the recommendations that accompanied the referral to each party to the appeal within a reasonable time after the referral; and
 - 25 (b) make a copy of the recommendations available during office hours for inspection by any person without charge.
- (4) The Minister is to —
- 30
- (a) give to each party written reasons for the determination of the Minister on the appeal;

- (b) as soon as is practicable, cause a copy of those reasons to be laid before each House of Parliament;
 - (c) upon payment of a fee determined in the manner prescribed by the regulations, supply a copy of those reasons to any other person.
- 5
- (5) The decision of the Minister is final.

Division 6 — Miscellaneous

67. Judicial notice of seal and signatures

10 All courts, judges and persons acting judicially are to take notice of —

- (a) the seal of the Tribunal;
- (b) the signature of the President, deputy President, any other member and the Principal Registrar;
- 15 and
- (c) the fact that that person is or was the President, deputy President, member or Principal Registrar, as the case may be, at the relevant time.

68. Immunity of Tribunal and officers

20 No liability attaches to a member or the Principal Registrar or any other officer of the Tribunal for any act or omission by that person, or by the Tribunal, in good faith, and in the exercise or purported exercise of
25 that person's functions, or the functions of the Tribunal, under this Act.

s. 12

69. Rules

The President is to make such rules under this Act regulating —

- 5
- (a) the practice and procedure to be followed in, or for the purposes of, an appeal;
 - (b) the forms to be used in relation to an appeal;
 - (c) the practice and procedure to be followed in the mediation and conciliation of an appeal, and other matters related to mediation and
 - 10 conciliation;
 - (d) any other matters,

as are necessary or convenient for the efficient operation of the Tribunal.

70. Regulations

- 15
- (1) The Governor may make such regulations as are necessary or convenient for giving effect to the provisions of this Part in respect of appeals.
 - (2) Without limiting subsection (1) the Governor may make regulations for or with respect to the
 - 20 following —
 - (a) fees payable in respect of any appeal;
 - (b) any matter for or with respect to which rules may be made.
 - (3) If a regulation is inconsistent with a rule, the regulation
 - 25 prevails to the extent of the inconsistency.

”.

12. Review of *Town Planning and Development Act 1928*

- 30
- (1) The Minister is to carry out a review of the operation of the *Town Planning and Development Act 1928*, as amended by this Act, on the second anniversary of the coming into operation of section 11 of this Act.

- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament.

13. First Schedule amended

- 5 The First Schedule item 27A is amended by deleting “Minister” and inserting instead —
“ Tribunal ”.

14. Schedules 3 and 4 inserted

- 10 After the Second Schedule the following Schedules are inserted —

“

Schedule 3 — The Tribunal

[s. 39]

1. Term of office

- 15 (1) Subject to this clause and clause 2 —
- 20 (a) the President, deputy President and a senior member other than the Principal Registrar hold office for a term of 5 years and, upon the expiration of the term are eligible for reappointment for one or more terms of 5 years;
 - (b) the Principal Registrar, if appointed as a senior member, holds office for so long as he or she holds the office of Principal Registrar; and
 - 25 (c) an ordinary member holds office for a term of 3 years and, upon expiration of the term, is eligible for reappointment for one or more terms of 3 years.
- 30 (2) Notwithstanding anything in this Act, where the term of office of a member has expired or the member has resigned, the member may, with the approval of the Minister, continue in office for the purpose of completing the hearing and determination of any appeal that member has entered upon.

s. 14

2. Removal and resignation

(1) The Governor may remove a member from office on the grounds of —

- 5
- (a) mental or physical incapacity to carry out satisfactorily the duties of a member;
 - (b) neglect of duty; or
 - (c) misconduct.

(2) A member may resign office by written notice delivered to the Minister.

10 **3. Leave of absence**

The President may grant leave of absence to a member on such terms and conditions as the President thinks fit but leave of absence is not to be granted for a period exceeding 6 months.

15 **4. Deputy President**

The deputy President is to act as President during the unavailability or absence of the President and while so acting may perform the functions of the President.

5. Acting members

20 (1) If the deputy President is required to act as President but the deputy President —

- 25
- (a) is unavailable or absent; or
 - (b) disqualifies himself or herself in respect of a particular appeal by reason of the possibility of conflict of interest,

30 the Minister may appoint a person who has the same qualification for appointment as is required of the President to act in the place of the President during the unavailability or absence or in the particular appeal as the case may be, and for such further time as is necessary to complete any hearing and determination of any appeal that person has entered upon.

- 5
- (2) Where a member who is deputy President is performing the functions of the President, the Minister may appoint another eligible person to act in the place of the deputy President.
- (3) If another member is unavailable or absent, the Minister may appoint a person to act in the place of that member during the unavailability or absence, and for such further time as is necessary to complete any hearing and determination of any appeal that person has entered upon.
- 10
- (4) While acting in the place of a member, the acting member has all of the functions, powers and immunities of the member.
- (5) No act or omission of a person acting in the place of another under this clause or clause 4 is to be questioned on the ground that the occasion for the appointment or so acting had not arisen or had ceased.
- 15

6. Remuneration, allowances and conditions of service

- 20
- (1) Subject to the *Salaries and Allowances Act 1975*, a member is to be paid such remuneration and allowances in respect of the performance of his or her functions as the Minister from time to time determines in his or her case.
- (2) Subject to this Schedule, the Minister may determine other terms and conditions of service (if any) that apply to a member.
- 25
- (3) A determination is only to be made after having regard to the recommendation of the Minister for Public Sector Management.

Schedule 4 — The Principal Registrar

[s. 43]

1. Term of office

- 30
- Subject to this clause and clause 2, the Principal Registrar holds office for a term, not exceeding 5 years, specified in the instrument of appointment and is eligible for reappointment.

s. 14

2. Removal and resignation

- (1) The Minister may remove the Principal Registrar from office on the grounds of —
- (a) mental or physical incapacity to carry out satisfactorily the duties of a member;
 - (b) neglect of duty; or
 - (c) misconduct.
- (2) The Principal Registrar may resign office by written notice delivered to the Minister.

3. Salary, entitlements and conditions of service

- (1) Subject to the *Salaries and Allowances Act 1975*, the Principal Registrar —
- (a) is to be paid salary and allowances at a rate per year determined by the Minister; and
 - (b) has the same annual leave, sick leave and long service leave entitlements as a permanent officer of the Public Service.
- (2) Subject to this Schedule, the Minister may determine other terms and conditions of service (if any) that apply to the Principal Registrar.
- (3) A determination is only to be made after having regard to the recommendation of the Minister for Public Sector Management.

4. Acting Principal Registrar

- (1) If the Principal Registrar is unavailable or absent, the Minister may appoint a person to act in the place of the Principal Registrar during the unavailability or absence.
- (2) While acting in the place of the Principal Registrar, the acting Principal Registrar has all of the functions, powers and immunities of the Principal Registrar.

- (3) No act or omission of a person acting in the place of another under this section is to be questioned on the ground that the occasion for the appointment or for so acting had not arisen or had ceased.

5

”.

Part 3 — Transitional provisions

15. Interpretation

In this Part —

5 “**commencement day**” means the day on which section 11 of this Act comes into operation;

“**new Part**” means Part V of the *Town Planning and Development Act 1928* as inserted by this Act;

10 “**repealed Part**” means Part V of the *Town Planning and Development Act 1928* as repealed by section 11 of this Act.

16. Interpretation Act 1984 not affected

The provisions of this Part do not affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 11 of this Act.

15 **17. Current appeals**

(1) In this section —

“**appeal**” means an appeal within the meaning of section 37 of the repealed Part.

20 (2) Subject to subsection (4), an appeal commenced before the commencement day but not finally determined on or before that day, may be dealt with and determined under the repealed Part as if section 11 of this Act were not in operation.

25 (3) Despite section 19(2)(a), a person who is a member of the Town Planning Appeal Tribunal under the repealed Part immediately before the commencement day may continue in office for the purpose of dealing with and determining an appeal commenced before commencement day but not finally determined on or before that day.

- 5 (4) If an appeal has been made to the Minister after 1 July 2001 but not finally determined before the commencement day, the appeal may be referred by the Minister to the Town Planning Appeal Tribunal for determination and the Tribunal has the same powers and functions in relation to the appeal as if the appeal had been made to the Tribunal after the commencement day.

18. References to Committee

- 10 (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 to the Town Planning Appeal Committee that reference is to be read and construed as a reference to an appeal to the Tribunal within the meaning of the *Town Planning and Development Act 1928* as amended by this Act.
- 15 (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 or determination of the Town Planning Appeal Committee that reference is to be read and construed as a reference to a decision or determination of the Tribunal within the meaning of the *Town Planning and Development Act 1928* as amended by this Act.
- 20

19. Existing appointments

- (1) On and after the commencement day —
- 25 (a) the Chairman of the Appeal Tribunal under the repealed Part immediately before the commencement day is taken to have been appointed as President of the Tribunal under and subject to the *Town Planning and Development Act 1928* as amended by this Act and is to be taken to have been so appointed for a term expiring on the day on which his term as Chairman would, but for this Act, have expired;
- 30 (b) the Registrar of the Appeal Tribunal under the repealed Part immediately before the commencement day is taken to be the Registrar of the Tribunal for the purposes of

s. 20

the *Town Planning and Development Act 1928* as amended by this Act under and subject to Part 3 of the *Public Sector Management Act 1994*.

- 5 (2) On the commencement day any person who immediately before that day held the office of —
- (a) a member or deputy member of the Appeal Tribunal under the *Town Planning and Development Act 1928*; or
 - (b) a member of the Town Planning Appeal Committee under the *Town Planning and Development Act 1928*,
- 10 vacates that office.

20. Transitional regulations

- 15 (1) If there is no sufficient provision in this Part for dealing with a matter that needs to be dealt with for the purpose of the transition from the repealed Part to the new Part, regulations may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- 20 (2) Regulations under subsection (1) may provide that specific provisions of the *Town Planning and Development Act 1928* as amended by this Act or of subsidiary legislation made under that Act —
- (a) do not apply; or
 - (b) apply with or without specified modifications,
- to or in relation to any matter or thing.
- 25 (3) Regulations made under subsection (1) may have effect before the day on which they are published in the *Gazette*.
- (4) To the extent that a regulation made under subsection (1) has effect before the day of its publication in the *Gazette*, it does not —
- 30 (a) affect in a manner prejudicial to any person (other than the State), the right of that person existing before the day of its publication; or

- (b) impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of its publication.

Part 4 — Consequential amendments

21. Constitution Acts Amendment Act 1899

Schedule V Part 3 of the *Constitution Acts Amendment Act 1899** is amended by deleting “The Town Planning Appeal Committee constituted under the *Town Planning and Development Act 1928*.”

[* Reprinted as at 8 June 2001.]

22. East Perth Redevelopment Act 1991

(1) Section 47(2) of the *East Perth Redevelopment Act 1991** is amended by deleting “, within the period specified in the notice, appeal to the Minister against the direction, and on such an appeal the Minister may confirm, vary or cancel the direction.” and inserting instead —

“
appeal under Part V of the Town Planning Act against the direction.
”.

[* Reprinted as at 27 August 1999.]

(2) Section 47(4) of the *East Perth Redevelopment Act 1991* is amended as follows:

(a) by deleting “Minister may, where he or she confirms or varies the direction under subsection (2)” and inserting instead —

“
Town Planning Appeal Tribunal may, where it confirms or varies the direction
”;

(b) by deleting “given by the Minister” and inserting instead —

“ given by the Town Planning Appeal Tribunal ”.

23. *Heritage of Western Australia Act 1990*

Section 60(1) of the *Heritage of Western Australia Act 1990** is amended as follows:

- (a) by deleting “hear and”;
- 5 (b) by deleting “under section 38” and inserting instead —
“ of the referral as if it were an appeal under Part V ”.

[* *Reprinted as at 1 June 2001.*]

24. *Hope Valley-Wattleup Redevelopment Act 2000*

- 10 (1) Section 31(2) of the *Hope Valley-Wattleup Redevelopment Act 2000** is amended by deleting “, within the period specified in the notice, appeal to the Minister against the direction, and on the appeal the Minister may confirm, vary or cancel the direction.” and inserting instead —

15 “
appeal under Part V of the Town Planning Act against the direction.
”.

[* *Act No. 77 of 2000.*]

- 20 (2) Section 31(4) of the *Hope Valley-Wattleup Redevelopment Act 2000* is amended by deleting “Minister confirms or varies the direction under subsection (2), the Minister” and inserting instead —

25 “
Town Planning Appeal Tribunal confirms or varies the direction, the Town Planning Appeal Tribunal
”.

s. 25

25. Metropolitan Region Town Planning Scheme Act 1959

- (1) The amendments in this section are to the *Metropolitan Region Town Planning Scheme Act 1959**.

[* Reprinted as at 4 February 2000.

5 For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 283.]

- (2) Section 33A(2)(b)(i) is amended by deleting “Minister” and inserting instead —

“ Commission ”.

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

“

- (5) As soon as practicable after receiving submissions in relation to a proposed amendment, the Commission shall consider, and make a report and recommendation to the Minister on, those submissions.

15

”.

- (4) Section 33A(9) is repealed.

- (5) Section 35F(2) is amended by deleting “section 53(2)” and inserting instead —

20

“ section 56(2) ”.

- (6) Section 43(3) is repealed and the following subsections are inserted instead —

“

- (3) An owner on whom a notice is served under this section may appeal under Part V of the Town Planning Act against any direction contained in the notice.

25

- (3a) If the Town Planning Appeal Tribunal confirms or varies the direction, the Town Planning Appeal Tribunal may, by notice in writing served on the owner, direct the owner to comply with the direction as so confirmed or varied,

30

within a period of not less than 40 days after the service
of the notice, as is specified in the notice.

”.

(7) Section 43(5)(a) is amended as follows:

- 5 (a) in subparagraph (i) by inserting after “directions” the
 following —
 “ within the time specified in the notice ”;
- (b) in subparagraph (ii) by deleting “(3),” and inserting
 instead —
10 “ (3); or ”;
- (c) by deleting “within the time specified in the notice; or”.

(8) Section 43(5)(b) is amended by deleting “Minister” and
inserting instead —

“ Town Planning Appeal Tribunal ”.

15 **26. *Midland Redevelopment Act 1999***

(1) Section 54(2) of the *Midland Redevelopment Act 1999** is
amended by deleting “, within the period specified in the notice,
appeal to the Minister against the direction, and on the appeal
the Minister may confirm, vary or cancel the direction.” and
20 inserting instead —

“
 appeal under Part V of the Town Planning Act against
 the direction.

”.

25 [* *Act No. 38 of 1999.*]

(2) Section 54(4) of the *Midland Redevelopment Act 1999* is
amended by deleting “Minister confirms or varies the direction
under subsection (2), the Minister” and inserting instead —

30 “
 Town Planning Appeal Tribunal confirms or varies the
 direction, the Town Planning Appeal Tribunal

”.

- (5) Section 26(7) is amended as follows:
- (a) by deleting “this section, other than an appeal to the Town Planning Appeal Tribunal,” and inserting instead —
5 “ subsection (4) ”;
 - (b) by deleting “or (5)”.
- (6) Section 26(8) is amended by deleting “(4) or”.
- (7) Section 26(9) is amended by deleting “relevant”.
- (8) Section 26(10) is amended by deleting “a Minister” and
10 inserting instead —
“ the Minister ”.
- (9) Section 26(11) is amended by deleting “a Minister” and
inserting instead —
“ the Minister ”.
- 15 (10) 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 —
20 “
under Part V of the *Town Planning and Development
Act 1928*
”.
- (11) Section 27(4) and (5) are repealed.
- 25 (12) Section 27(7) is amended as follows:
- (a) by deleting “Minister or the” in the 4 places where it
occurs;
 - (b) by deleting “, as the case may be,”.
- (13) Section 27(8) is amended by deleting “Minister or the”.

s. 28

(14) Section 27(9) is amended as follows:

- (a) by deleting “Minister or the” in the 3 places where it occurs;
- (b) by deleting “, as the case requires,”.

5 (15) Section 27(10)(a) is amended by deleting “Minister or the”.

28. Subiaco Redevelopment Act 1994

(1) Section 54(2) of the *Subiaco Redevelopment Act 1994** is amended by deleting “, within the period specified in the notice, appeal to the Minister against the direction, and on the appeal the Minister may confirm, vary or cancel the direction.” and inserting instead —

“

appeal under Part V of the Town Planning Act against the direction.

15

”.

[* Reprinted as at 25 February 2000.]

(2) Section 54(4) of the *Subiaco Redevelopment Act 1999* is amended by deleting “Minister confirms or varies the direction under subsection (2), the Minister” and inserting instead —

20

“

Town Planning Appeal Tribunal confirms or varies the direction, the Town Planning Appeal Tribunal

”.

29. Western Australian Planning Commission Act 1985

25 (1) The amendments in this section are to the *Western Australian Planning Commission Act 1985**.

[* Reprinted as at 16 March 2001.]

(2) Section 37E(2) is amended by deleting “section 53(2)” and inserting instead —

30

“ section 56(2) ”.

- (3) Section 37J(4) and (5) are repealed and the following subsections are inserted instead —

“

- 5 (4) An owner on whom a notice is served under this section may appeal under Part V of the Town Planning Act against any direction contained in the notice.
- 10 (5) If the Town Planning Appeal Tribunal confirms or varies the direction, the Town Planning Appeal Tribunal may, by notice in writing served on the owner, direct the owner to comply with the direction as so confirmed or varied, within a period of not less than 40 days after the service of the notice, as is specified in the notice.

”.

- 15 (4) Section 37J(7)(b) is amended by deleting “Minister” and inserting instead —

“ Town Planning Appeal Tribunal ”.

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