

SOUTH AUSTRALIA

CITY OF ADELAIDE DEVELOPMENT CONTROL ACT, 1976

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **16 January 1992**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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LEGISLATIVE HISTORY

CITY OF ADELAIDE DEVELOPMENT CONTROL ACT, 1976

being

City of Adelaide Development Control Act, 1976, No. 110 of 1976
[Assented to 16 December 1976]¹

as amended by

South Australian Heritage Act, 1978, No. 42 of 1978 [Assented to 6 April 1978]²

City of Adelaide Development Control Act Amendment Act, 1981, No. 12 of 1981 [Assented to 19 March 1981]³

Statutes Amendment (Administration of Courts and Tribunals) Act, 1981, No. 34 of 1981 [Assented to 19 March 1981]⁴

Statutes Amendment (Planning) Act, 1982, No. 62 of 1982 [Assented to 1 July 1982]⁵

City of Adelaide Development Control Act Amendment Act, 1984, No. 9 of 1984 [Assented to 19 April 1984]⁶

City of Adelaide Development Control Act Amendment Act, 1985, No. 76 of 1985 [Assented to 6 June 1985]⁷

City of Adelaide Development Control Act Amendment Act, 1986, No. 99 of 1986 [Assented to 11 December 1986]

City of Adelaide Development Control Act Amendment Act, 1987, No. 92 of 1987 [Assented to 10 December 1987]⁸

Statutes Amendment (State Heritage Conservation Orders) Act 1991 No. 77 of 1991 [Assented to 12 December 1991]⁹

¹ Came into operation 23 December 1976: *Gaz.* 23 December 1976, p. 2320.

² Came into operation 6 July 1978: *Gaz.* 6 July 1978, p. 5.

³ Came into operation 16 April 1981: *Gaz.* 16 April 1981, p. 1155.

⁴ Came into operation 1 July 1981: *Gaz.* 25 June 1981, p. 1896.

⁵ Came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1304

⁶ Came into operation 26 July 1984: *Gaz.* 26 July 1984, p. 334.

⁷ Came into operation 11 July 1985: *Gaz.* 11 July 1985, p. 92.

⁸ Came into operation 23 December 1987: *Gaz.* 23 December 1987, p. 1916.

⁹ Came into operation 16 January 1992: *Gaz.* 16 January 1992, p. 126.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to provide for the imposition of Development Control within the City of Adelaide in accordance with certain Principles; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *City of Adelaide Development Control Act, 1976*.

* * * * *

* * * * *

Interpretation

4. In this Act, unless the contrary intention appears—

* * * * *

"building" includes part of a building, a structure or part of a structure:

"the Commission" means the *City of Adelaide Planning Commission* established under section 11:

"the Council" means the Council of the Corporation of the City of Adelaide:

"Development" includes—

- (a) any work that is building work within the meaning of the *Building Act, 1971*;
- (b) the demolition of any buildings;
- (c) the change of use of any land;
- (d) any act in relation to land (whether or not of the same kind as the foregoing) that is prescribed as a development for the purposes of this definition:

"environmental impact statement", in relation to a Development means a statement of—

- (a) the expected effects of the Development on the environment;
- (b) the conditions (if any) that should be observed in order to avoid or satisfactorily manage and control any potentially adverse effects of the Development on the environment;
- (c) the economic, social or other consequences of carrying the Development into effect;

and

3.

- (d) any other particulars in relation to the Development required—
 - (i) by regulation;
 - or
 - (ii) by the Minister:

"item of State heritage" means an item that is included in the *Register of State Heritage Items* established pursuant to the *South Australian Heritage Act, 1978*, and includes an item that is on the interim list compiled pursuant to section 15 of that Act:

"land" includes any estate or interest in land, and any building on land:

"the municipality" means the municipality of the Council:

"the Principles" means the matter contained in a document relating to development control within the City of Adelaide designated The Principles of Development Control signed by the Minister for Planning and the Lord Mayor of the City of Adelaide and dated 21 October, 1976, and includes that matter as from time to time amended in accordance with this Act:

"the Tribunal" means the *City of Adelaide Planning Appeals Tribunal* established under section 27.

Concept of change in the use of land

4a. (1) For the purpose of determining whether a change in the use of land has occurred—

- (a) the commencement of a particular use of the land will, subject to paragraph (b), be regarded as a change in the use of the land if—
 - (i) the use supersedes a previous use of the land;
 - (ii) the commencement of the use follows upon a period of non-use;
 - or
 - (iii) the use is additional to a previously established use of the land which continues notwithstanding the commencement of the new use;
- (b) the revival of a use after a period of discontinuance will be regarded as a change in use if and only if—
 - (i) the period intervening between the discontinuance and revival of the use exceeds two years;
 - (ii) during the whole or a part of the period intervening between its discontinuance and revival, the use was superseded by some other use;
 - or

4.

- (iii) the Council or the Commission has made a declaration under subsection (2) and that declaration remains unrevoked.

(2) Where—

- (a) a particular use of land has been discontinued for a period of six months or more immediately preceding the day on which the Council or Commission proposes to make a declaration under this subsection;

and

- (b) the revival of that use would in the opinion of the Council or Commission have an adverse effect upon the proper development of the locality in which the land is situated,

the Council or Commission may, by notice in writing served on the owner and the occupier of the land, declare that a revival of the use will be treated, for the purposes of this Act, as a form of Development.

(3) The owner or occupier may, within one month after service of a notice under subsection (2), or such extended period as may be allowed by the Tribunal, appeal to the Tribunal against the declaration.

(4) Upon an appeal under subsection (3), the Tribunal may confirm or revoke the declaration.

(5) For the purposes of this section, a particular use of land will be disregarded if the extent of the use is trifling or insignificant.

Extent to which the Crown is bound by this Act

5. (1) Subject to this section, this Act binds the Crown.

(2) Where a Minister of the Crown, or a prescribed instrumentality or agency of the Crown, proposes to undertake Development, it must, subject to subsection (3), give notice containing prescribed particulars of the proposal to the Commission and must not proceed with the Development without having considered the submissions (if any) that the Commission makes in relation to the proposal.

(3) Notice of a proposed Development is not required under subsection (2) if the Development is of a kind excluded from the provisions of this section by regulation.

(4) Except as provided by this section, this Act does not bind a Minister of the Crown or a prescribed instrumentality or agency of the Crown.

Non-application of Planning Act

6. (1) The *Planning Act, 1982*, does not apply in relation to land within the municipality.

(2) Notwithstanding subsection (1), the Development controls imposed in relation to the municipality under this Act may be depicted or represented on the Development Plan constituted under the *Planning Act, 1982*.

5.

PART II

THE PRINCIPLES

Amendment of the Principles

7. (1) The Principles are approved.

(2) The Council may from time to time, and must if requested by the Commission, prepare amendments to the Principles.

(3) After preparation of amendments the Council must by advertisement in the *Gazette* and in a daily newspaper circulating generally throughout the State give notice that a copy of those amendments will be open for inspection at the office of the Council for a period (being not less than two months from the day of publication of the advertisement in the *Gazette*) specified in the notice and that the Council will entertain written representations on the amendments or any part of them.

(4) The Council must make available a copy of the amendments for inspection during ordinary office hours at its office for the period specified in the notice.

(5) At any time within the period specified in the notice any person may lodge with the Council written representations on the amendments or any part of them.

(6) The Council—

(a) must consider the representations;

and

(b) having regard to the representations may amend the amendments as it thinks fit.

(7) Where the Council has amended the amendments a reference in section 8 to the amendments will be read as a reference to the amendments as so amended.

Council to forward amendments to Commission

8. After the Council has considered the representations it must submit the amendments to the Commission together with a summary of the representations (if any) received by the Council and a statement in writing describing the action taken or recommended by the Council regarding each representation.

Commission to consider amendments, representations and statement

9. The Commission must consider the amendments, summary (if any) and statement submitted to it under section 8 and, after consideration, forward them to the Minister together with its report.

Consideration of amendments

10. (1) The Minister must consider the amendments, summary (if any), statement and report forwarded under section 9 and forward them to the Governor together with the Minister's recommendations.

6.

(2) The Governor may—

- (a) approve of the amendments without amendment;
- (b) vary the amendments in the light of the summary (if any), statement, report and recommendations forwarded under subsection (1) and approve of the amendments as varied;
- (c) refer the amendments back to the Council for consideration of such further matters as are specified in the reference;

or

- (d) decline to proceed further with the amendments.

(3) Where the Governor approves of amendments or amendments as varied under subsection (2) the Governor will signify the approval by proclamation and upon publication of that proclamation the Principles are amended in accordance with that approval.

PART III

THE COMMISSION

The City of Adelaide Planning Commission

11. (1) *The City of Adelaide Planning Commission* is established.

(2) The Commission consists of eight members appointed by the Governor, four of them being persons nominated by the Council.

(3) The Governor may appoint from amongst the members of the Commission appointed on the nomination of the Council a member to be Chairman of the Commission.

(4) Subject to this section, a member of the Commission holds office for such term, not exceeding three years, as is specified in the instrument of appointment.

(5) The Governor must remove a member of the Commission, appointed on the nomination of the Council, from office if the Council by instrument in writing addressed to the Governor revokes the nomination of that member.

(6) The Governor may remove a member of the Commission from office on the ground of—

(a) mental or physical incapacity;

(b) dishonourable conduct;

or

(c) neglect of duty.

(7) The office of a member of the Commission becomes vacant if the member—

(a) dies;

(b) completes a term of office and is not reappointed;

(c) resigns by notice in writing addressed to the Minister;

or

(d) is removed from office by the Governor pursuant to subsection (5) or (6).

(8) The Governor may, subject to this section, make such appointments as may be necessary to fill any vacancy occurring in the membership of the Commission.

(9) The Governor may appoint a suitable person to be a deputy of a member of the Commission in the absence of that member from official duties and such a person while so appointed will be taken to be a member of the Commission.

Remuneration, etc.

12. A member of the Commission is entitled to receive such remuneration, allowances and expenses as may be determined by the Governor in relation to that member.

Chairman, etc.

13. (1) The Chairman, if present at a meeting of the Commission, must preside at that meeting.

(2) If the Chairman is not present at a meeting of the Commission, the members of the Commission present may elect one of their number to preside at that meeting.

(3) At any meeting of the Commission, five members constitute a quorum and no business may be transacted unless a quorum is present.

(4) Any decision of the Commission must be supported by the majority of votes cast at the meeting.

(5) In the event of equality of votes upon any matter the matter will be decided by the Minister and for the purposes of this Act such a decision will be taken to be a decision of the Commission.

Acts of Commission

14. (1) No act or proceeding of the Commission is invalid or illegal by reason only of the number of members of the Commission not being complete at the time of the act or proceeding.

(2) Every act or proceeding of the Commission is, notwithstanding any defect in the nomination or appointment of a member of the Commission, as valid and effective as if that member had been validly appointed to the Commission.

Staff

15. (1) A Secretary and such other officers as are necessary for the purposes of the Commission will be appointed under and subject to Part III of the *Government Management and Employment Act, 1985*.

(2) With the consent—

(a) of the Minister administering any department of the Public Service of the State, the Commission may make use of the services of any officer of that department;

and

(b) of the Council, the Commission may make use of the services of any employee of the Council.

Powers and functions

16. The Commission has and may exercise such powers and functions as are conferred or assigned to it by or under this Act.

Delegation

17. (1) The Commission may by instrument in writing delegate any of its powers or functions (except this power of delegation) in relation to minor matters to any member of the Commission or the Secretary or any officer or employee of the Commission.

(2) A delegation under subsection (1) is revocable at will and no delegation prevents the exercise of any power or function by the Commission.

Advice to Minister

18. The Commission must consider and report to the Minister or the Council (as the case may require) on any matter relating to the planning and development of the City of Adelaide referred to it by the Minister or the Council.

Information in relation to Development applications

19. (1) The Council must if requested by the Commission furnish to the Commission such information, as to the substance of applications received by the Council under Part IV, as is specified in the request.

(2) Where the Minister is satisfied that the Government of the State has a substantial interest in the result of an application to the Council under Part IV, the Minister may request (by writing setting out the grounds upon which the request is based) the Council to refer the application to the Commission for determination.

(3) Upon receipt of a request referred to in subsection (2) the Council must refer that application to the Commission together with such advice or recommendation as it thinks fit and—

(a) the Commission must deal with the application forthwith;

and

(b) the Council may take no further action on the application.

(4) Part IV applies, with the necessary modifications, to and in relation to any application referred to the Commission as if—

(a) references in that Part to the Council were references to the Commission;

and

(b) references in that Part to the Commission were references to the Minister.

Application by Council for approval

20. (1) Where the Council proposes to undertake a Development which, if it were undertaken by a person other than the Council, would require the approval of the Council under Part IV, that Part applies with the necessary modifications to and in relation to that Development as if—

(a) references in that Part to the Council were references to the Commission;

and

(b) references in that Part to the Commission were references to the Minister.

(2) The Commission must forthwith deal with the application of the Council made pursuant to subsection (1).

PART IV

DEVELOPMENT CONTROL

* * * * *

* * * * *

Approval required for Development

23. (1) A person must not undertake a Development in the municipality without the approval of the Council.

Penalty: \$20 000.

Default Penalty: \$1 000.

(2) A person must not contravene or fail to comply with a condition attached to the Council's approval of a Development.

Penalty: \$10 000.

Default Penalty: \$500.

(3) Where a person has undertaken a Development within the municipality without the approval of the Council, the Council may subsequently give its approval to that Development.

(4) An approval granted under subsection (3) does not extinguish liability to conviction and penalty under subsection (1) in respect of the Development to which the approval relates.

Application for approval

24. (1) An application for—

(a) approval to undertake a Development;

or

(b) approval of a Development undertaken without approval,

must—

(c) be in a form, and include information, required by the Council;

and

(d) be accompanied by the prescribed fee.

(2) The Council may waive payment of whole or part of the application fee.

(3) The Council may request an applicant to provide additional information in relation to the application and the Council is not obliged to decide the application until it has received that information.

(4) Every application under this section in relation to a Development that will directly affect, or has directly affected, an item of State heritage must be referred by the Council to the Minister responsible for State heritage.

(5) The Council cannot approve a Development that will directly affect, or has directly affected, an item of State heritage without the concurrence of the Commission.

(6) In deciding whether to grant an application, the Council must have regard to the Principles and the regulations.

(7) The Council's approval of a Development will be subject to such conditions (if any) as it thinks fit to impose, and any such condition is binding on, and enforceable against, the person by whom the Development is undertaken, and any person who acquires the benefit of the approval.

(8) The Council must deal with applications under this section as expeditiously as possible.

Matters to be considered by Commission before concurring in Development

24a. (1) The Commission cannot decide whether to concur in the approval by the Council of a Development that will directly affect, or has directly affected, an item of State heritage until it has received the representations (if any) that the Minister responsible for State heritage desires to make in relation to the Development.

(2) If the Minister desires to make representations in relation to the Development, the Minister must do so as expeditiously as possible.

(3) When deciding whether to concur in the approval of a Development the Commission must have regard to—

(a) the Principles and the regulations;

and

(b) the representations (if any) made by the Minister in relation to the Development.

Exceptions

25. (1) Subject to subsection (2), the Council must not approve—

(a) a Development of a kind expressed to be prohibited by use of the word "prohibited" in—

(i) section 3 or 4 of the Principles;

(ii) a use chart set out in the Principles;

or

(iii) a Statement of Desired Future Character set out in the Principles;

or

(b) a Development that would contravene the requirements of a diagram in the Principles, without the consent of the Commission.

(2) The consent of the Commission is not required under subsection (1) if the approval is subject to a condition—

(a) that requires the restoration of the land (within 12 months after the Development occurred) to the state in which it existed immediately before the Development;

and

(b) where the Development includes a change in the use of land—that requires—

(i) the revival of a previous use of the land;

or

(ii) that the land be put to some other use stipulated in the condition,

within 12 months after the Development occurs.

Conditions as to future restoration

25a. Without derogating from the power of the Council to attach conditions to its approval of a Development, the Council may approve a Development subject to a condition that at a future time, specified in the condition, the person who applied for the approval or who owns or occupies the land concerned at that time must—

(a) where the Development is constituted by a change of use—revive a previous use of the land or commence some other use stipulated in the condition;

(b) where the Development is constituted by a change of use and an alteration to the land—

(i) revive a previous use of the land or commence some other use stipulated in the condition;

and

(ii) restore the land to the state in which it existed immediately before the Development;

or

(c) where the Development is constituted by an alteration to the land—restore the land to the state in which it existed immediately before the Development.

Reasons for refusal, etc., to be given to applicant

25b. Where—

(a) the Council approves a Development subject to a condition or refuses to approve a Development;

or

(b) the Commission refuses a consent under this Part or refuses to concur in the approval by the Council of a Development that will directly affect, or has directly affected, an item of State heritage,

the Council or the Commission (as the case requires) must, within 30 days of the approval or refusal, furnish the applicant with a written statement of the reasons for the imposition of the condition or for the refusal.

Delegation by Council

26. (1) The Council may by instrument in writing delegate any of its powers and functions under this Act (except this power of delegation) to a Committee of the Council or any employee of the Council.

(2) A delegation under subsection (1) is revocable at will and no delegation prevents the exercise of any power or function by the Council.

PART IVA

DEVELOPMENTS OF MAJOR SOCIAL, ECONOMIC OR ENVIRONMENTAL
IMPORTANCE

Application of this Part to Development

26a. (1) The Governor may, if of the opinion that a proposed Development in the municipality is of major social, economic or environmental importance, by notice published in the *Gazette*, declare that this Part applies to that Development.

(2) The Governor may, by subsequent notice published in the *Gazette*, vary or revoke a declaration under subsection (1).

(3) Part IV does not apply to a proposed Development to which this Part applies.

(4) A person who—

(a) undertakes a Development to which this Part applies without the approval of the Governor;

or

(b) contravenes, or fails to comply with, a condition upon which the Governor's approval of a Development was granted,

is guilty of an offence.

Penalty: \$20 000.

Default Penalty: \$1 000.

Preparation of environmental impact statement

26b. (1) Where a declaration has been made under this Part, the Minister will—

(a) in consultation with the proponent, have prepared, or arrange for the preparation of, a draft environmental impact statement in relation to the proposed Development;

or

(b) require the proponent to prepare a draft environmental impact statement in relation to the proposed Development.

(2) The Minister must, by public advertisement, invite interested persons to make written submissions on the draft environmental impact statement within a period (being not less than six weeks from the date of publication of the advertisement).

(3) The Minister must give to the proponent copies of all submissions made within the period referred to in subsection (2) and must not proceed to accord official recognition to a draft environmental impact statement until the proponent has responded to those submissions to the Minister's satisfaction.

(4) The Minister must, after considering the submissions and the proponent's response, determine what (if any) amendments should be made to the environmental impact statement and, after those amendments have been made, signify by notice to the proponent that the statement is officially recognized.

(5) The Minister may from time to time amend, or require the amendment of, an environmental impact statement to which official recognition has been accorded under this section in order to correct an error or to make modifications that are desirable in view of more accurate or complete data or technological or other developments not contemplated at the time of the original recognition but where a proposed amendment would significantly affect the substance of the environmental impact statement it must not be made before interested persons have been invited, by public advertisement, to make written submissions on the proposed amendment and the Minister has considered the submissions (if any) received in response to the advertisement.

(6) The Minister may recover reasonable costs incurred by the Crown in relation to the preparation and publication of an environmental impact statement in respect of a Development as a debt due to the Crown from the proponent.

(7) Copies of draft and officially recognized environmental impact statements must be made available by the Minister to the Council and the Commission.

(8) The Council and the Commission must keep copies of draft and officially recognized environmental impact statements available for public inspection and for purchase at their respective offices.

Governor's approval

26c. (1) In deciding whether to approve a proposed Development under this Part the Governor will have regard to—

(a) the Principles and the regulations;

and

(b) the environmental impact statement prepared in relation to the proposed Development.

(2) The Governor will not approve a proposed Development unless an environmental impact statement in relation to the Development has been prepared and accorded official recognition under this Part.

(3) An approval under this section may be conditional or unconditional and is binding on, and enforceable against, the person by whom the Development is undertaken, and any person who acquires the benefit of the approval.

(4) The Governor may, when determining what conditions should be attached to an approval, attach conditions that must be complied with in the future.

(5) The Governor's approval is not required in relation to Development lawfully commenced before publication of the notice by virtue of which the Development became subject to this Part.

(6) There is no appeal from a decision of the Governor under this section.

16.

PART V

APPEALS

The Tribunal

27. (1) The *City of Adelaide Planning Appeals Tribunal* is established.

(2) The Tribunal is constituted of a District Court Judge.

Appeals

28. (1) Subject to subsection (2), a person who was an applicant under Part IV may, if aggrieved by—

- (a) the refusal of the Council or the Commission to grant that approval;
 - (b) the imposition by the Council or the Commission of any condition in relation to that approval;
 - (ba) the refusal of the Commission to concur in the approval by the Council of a Development that will directly affect, or has directly affected, an item of State heritage;
- or
- (c) the refusal of a consent by the Commission,

within 30 days of receiving the written statement referred to in section 25b, appeal to the Tribunal.

(2) An appeal referred to in subsection (1) may not be commenced after the expiration of 12 months from the day on which the relevant decision was made.

Conference of parties

29. (1) The Tribunal will not proceed to determine an appeal referred to in section 28 unless it is satisfied that—

- (a) the appellant and the Council or the Commission (as the case may require) have conferred together at a meeting and that after that conference the appellant is still aggrieved by the decision of the Council or the Commission;
- or
- (b) that no useful purpose would be served by such a conference.

(2) A party to a conference referred to in subsection (1) may be represented at the conference by a person of the party's choice.

(3) For the purpose of a conference referred to in subsection (1), the Council or the Commission may reconsider the decision that is the subject of the appeal and may, if it thinks fit, vary that decision or revoke it and substitute any decision that it could have made on the original application for approval, consent or concurrence.

Commencement of appeal

30. An appeal under this Act is commenced by notice delivered to the Tribunal setting out with reasonable particularity the substance of the matter appealed against and the grounds of the appeal.

Action by Council or Commission

31. Within 14 days of the delivery of a notice referred to in section 30 or within such further time as the Tribunal allows the Council or the Commission (as the case requires) must furnish to the Tribunal such information as the Tribunal requires relating to the matter under appeal.

Appeals

32. (1) Subject to this Act, the Tribunal will hear and determine an appeal referred to in section 28 and may by its determination—

- (a) disallow the appeal and uphold the decision appealed against;
- (b) remit the matter under appeal for reconsideration by the Council or the Commission together with such directions as it considers appropriate;
- (c) substitute for the decision any decision which the Tribunal considers the Council or the Commission should have made in the first instance.

(1a) The Tribunal must, when determining an appeal under this Act, have regard to matters to which the Council or Commission was required to have regard in the first instance.

(2) At the hearing of an appeal under this Act—

- (a) the Tribunal may take evidence on oath or affirmation and for that purpose may administer or cause to be administered an oath or affirmation;
- (b) the procedure will, subject to this Act, be determined by the Tribunal as it thinks fit;
- (c) the Tribunal will not be bound by the rules of evidence and may inform itself upon any matter in any manner it thinks fit;

and

- (d) the proceedings will be conducted according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(3) A determination of the Tribunal under this Part is final and without appeal.

No personal liability

33. A person constituting the Tribunal is not personally liable for anything done personally or by the Tribunal in good faith in the exercise or purported exercise of functions or duties under this Act or any other law.

Rights of counsel and other persons

34. (1) A barrister, solicitor or other agent, when appearing at a hearing before the Tribunal has the same rights, protection and immunities as a barrister when appearing for a party before a local court.

(2) A person appearing as a witness at a hearing before the Tribunal has the same protection, and is, in addition to the penalties provided for by this Act, liable to the same penalties as a witness in proceedings before a local court.

(3) A person appearing as a witness at a hearing before the Tribunal must not, without lawful excuse, fail or refuse when required by the Tribunal to be sworn or to make affirmation or to produce books or documents or to answer any question unless the answer to the question would tend to incriminate that person.

Penalty: \$1 000.

Contempt, etc.

35. A person must not—

- (a) wilfully insult or disturb the Tribunal in the exercise of its functions or performance of its duties under this Act;
 - (b) wilfully interrupt the proceedings of the Tribunal;
 - (c) use insulting language towards the Tribunal when functioning as such;
 - (d) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Tribunal is sitting for the purpose of any hearing;
 - (e) fail to comply with a notice referred to in section 37(1);
- or
- (f) do any other act or thing before the Tribunal when hearing an appeal which would, if the Tribunal were a Court of Record, constitute a contempt of that Court.

Penalty: \$100.

Registrar

36. (1) There shall be a Registrar of the Tribunal appointed under and in accordance with Part III of the *Government Management and Employment Act, 1985*.

(2) The office of Registrar of the Tribunal may be held in conjunction with any other office of the Public Service of the State.

Attendance before the Tribunal, etc.

37. (1) The Registrar of the Tribunal acting under the direction of the Tribunal may, by notice in writing signed by the Registrar, require any person to attend before the Tribunal at a time and place specified in the notice and give evidence before the Tribunal or produce to the Tribunal any books or documents specified in the notice concerning any matter relating to the appeal, the subject of a hearing.

(2) The Tribunal may inspect any books and documents produced to the Tribunal and retain them for such reasonable periods as the Tribunal thinks fit and make copies of or take extracts from any such books or documents as in the opinion of the Tribunal are relevant to the appeal or matter.

Costs

38. (1) The Tribunal may make an order for costs in any proceedings in accordance with a scale prescribed for the purpose—

(a) where, in the opinion of the Tribunal, the proceedings are frivolous or vexatious or founded upon trivial grounds;

or

(b) where, in the opinion of the Tribunal, the proceedings have been instituted or prosecuted for the purpose of delay or obstruction.

(2) Where a party to proceedings before the Tribunal applies for an adjournment of the hearing of those proceedings, the Tribunal may grant that application upon such terms as it considers just and may make an order for costs in accordance with the scale prescribed for the purpose against any party in favour of any other party to the proceedings.

Powers of entry

39. The Tribunal or any person authorized by the Tribunal may at all reasonable times enter and remain on any premises or place within the municipality for the purpose of the exercise or discharge of the powers and functions of the Tribunal under this Act.

PART VA

CIVIL ENFORCEMENT PROCEEDINGS

Civil enforcement proceedings

39a. (1) Where a person contravenes or fails to comply with a provision of this Act, the Council or the Commission may apply to a District Court for an order under this section.

(2) The application may be made *ex parte* and, if the Court is satisfied on the application that the respondent has a case to answer, it will issue a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.

(3) If—

(a) after hearing—

(i) the applicant and the respondent;

and

(ii) any other person who has, in the opinion of the Court, a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings,

the Court is satisfied, on the balance of probabilities, that the respondent to the application has contravened or failed to comply with a provision of this Act;

or

(b) the respondent fails to appear in response to the summons, or having appeared, does not exercise the right to be heard,

the Court may by order—

(c) require the respondent to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the contravention of, or failure to comply with, this Act;

(d) require the respondent to make good the contravention or default in a manner, and within a period, specified by the Court.

(4) Any person with a legal or equitable interest in land to which an application under this section relates is entitled to appear and be heard in proceedings based on the application before a final order is made.

(5) If, on an application under this section, or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings, or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

(6) An interim order—

(a) may be made on an *ex parte* application;

(b) may be made subject to such conditions as the Court thinks fit;

and

(c) will not operate after proceedings in which it is made are finally determined.

(7) A person who contravenes, or fails to comply with an order, or an interim order, under this section is (without prejudice to the Court's power to punish for contempt of the order) guilty of an offence.

Penalty: \$10 000.

Default Penalty: \$1 000.

(8) Where the respondent to an application fails to comply with an order under subsection (3)(d) within the period specified by the Court, the Council or the Commission may, by leave of the Court, cause any work contemplated by the order to be carried out, and may recover the costs of that work, as a debt, from the respondent.

(9) The Court may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for approval that should have been, but was not, made under this Act or to permit the respondent to remedy any other default.

(10) The Court may make such orders in relation to the costs of proceedings under this section as it thinks just.

Commencement of proceedings

39b. (1) Proceedings under this Part may be commenced at any time within twelve months after the date of the alleged contravention of, or failure to comply with, a provision of this Act or, with the authorization of the Attorney-General, at any later time within five years after that date.

(2) An apparently genuine document purporting to be signed by the Attorney-General and to authorize the commencement of proceedings under this Part will be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the authorization.

Appeals

39c. (1) Subject to the rules of the Supreme Court, an appeal lies against—

(a) an order of a District Court made in the exercise of the jurisdiction conferred by this Part;

or

(b) a decision by a District Court not to make an order under this Part,

to the Land and Valuation Court.

(2) An appeal under this section must be instituted within 30 days of the date of the decision or order subject to appeal, or such longer period as may be allowed by the Land and Valuation Court.

(3) The Land and Valuation Court may, on the hearing of an appeal exercise one or more of the following powers, as the case requires:

- (a) affirm, vary or quash the order appealed against, or substitute an order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the District Court for further hearing or consideration or for rehearing.

PART VI

MISCELLANEOUS

Agreements relating to preservation or development of land

39d. (1) The Council may enter into an agreement with any person relating to the development, preservation or conservation of land within the municipality of which that person is the owner.

(2) The Council has power to carry out on private land any work for which provision is made by agreement under this section.

(3) An owner of land cannot enter into an agreement under this section without the consent of all other persons having a legal interest in the land.

(4) The Registrar-General will, on the application of the Council made with the consent of the owner of the land, register such an agreement and enter a memorial of the agreement on the certificate of title or other instrument of title to the land.

(5) Where a memorial of an agreement has been entered under subsection (4), the agreement is, on transfer of title to the land, binding on, and enforceable by or against, the successors in title to the owner who entered into the agreement.

(6) The Registrar-General will, if satisfied on the application of the Council or the owner of the land that an agreement in relation to which a memorial has been entered under this section has been rescinded or amended, enter a memorial of the rescission or amendment on the certificate of title or other instrument of title to the land.

(7) An agreement under this section may provide for remission of rates that would otherwise be payable to the Council on the land but except as so provided such an agreement does not affect the statutory obligations of an owner of land.

Advertisements

39e. (1) Where, in the opinion of the Council, an advertisement or advertising hoarding—

(a) does not conform with the Principles;

or

(b) disfigures the natural beauty of a locality within the municipality or otherwise detracts from the amenity of such a locality,

the Council may, by notice in writing served on the advertiser, or the owner or occupier of the land on which the advertisement or advertising hoarding is situated, order the removal or obliteration of the advertisement or the removal of the advertising hoarding (or both) within a period specified in the notice (being a period of not less than 30 days from the date of service of the notice).

(2) An order cannot be made under subsection (1) in relation to—

(a) an advertisement, the display of which is authorized under the *Local Government Act, 1934*;

(b) an advertisement required to be displayed by or under any other Act;

or

(c) an advertisement for the sale or lease of land situated on the land concerned.

(3) Subject to subsection (7), where a person on whom a notice is served under subsection (1) fails to comply with the notice within the time allowed in the notice—

(a) the Council may itself enter on the land and take the necessary steps for carrying out the requirements of the notice and may recover the costs of so doing, as a debt, from the person on whom the notice was served;

and

(b) the person on whom the notice was served is guilty of an offence.

Penalty: \$500.

Default Penalty: \$100.

(4) The costs referred to in subsection (3)(a) are, until paid, a charge on the land on which the advertisement or advertising hoarding was situated.

(5) A notice under this section—

(a) need not name the person to whom it is addressed;

and

(b) may be served—

(i) personally;

(ii) by post;

or

(iii) where the identity or whereabouts of the person on whom it is to be served is not readily ascertainable—by affixing it in a prominent position on the advertisement or advertising hoarding to which it relates.

(6) Where approval has been given under this Act for the erection or display of an advertisement, no further licence or other authorization in respect of the erection or display of the advertisement is required under the *Local Government Act, 1934*.

(7) A person against whom an order is made under this section may within 30 days after service of the notice or such longer period as may be allowed by the Tribunal appeal against the order and on such an appeal the Tribunal may confirm, vary or quash the order that is the subject of the appeal and make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.

(8) In this section—

"advertisement" means an advertisement or sign that is visible from a street, road or public place or by passengers carried by any form of public transport:

"advertiser", in relation to an advertisement, means the person whose goods or services are advertised in the advertisement:

"advertising hoarding" means a structure for the display of an advertisement or advertisements:

"sign" includes a light, banner, flag, pennant or streamer:

"structure" includes any object erected, fixed or placed on land.

Power to inspect land and premises

40. (1) A person authorized in writing by the Council or Commission, may, at any reasonable time, enter upon and inspect land for any purpose connected with the administration of this Act, but no building may be entered unless the occupier has been given reasonable notice of the proposed entry.

(2) A person must not obstruct the exercise of a power conferred by this section.

Penalty: \$200.

(3) Proceedings for an offence under subsection (2) may be heard by a District Court and the Court may (whether it convicts the defendant or not) order the defendant or any other person to permit a person named in the order to enter upon and inspect the land concerned.

(4) Notice under subsection (1)—

(a) need not name the person to whom it is addressed;

and

(b) may be given—

(i) personally;

(ii) by post;

or

(iii) by fixing it in a prominent position on the building to which it relates.

Default penalties

41. (1) Where in, or at the foot of, any section or part of a section of this Act there appears the expression "Default Penalty", it signifies that any person who is convicted of an offence against this Act in relation to that section or part is guilty of a further offence against this Act if the offence continues after the conviction and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part as the amount of the default penalty.

(2) Where any offence is committed by a person by reason of failure to comply with a provision of this Act by or under which the person is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1), will be taken to continue for so long as the thing so required or directed to be done remains undone, notwithstanding that the period has elapsed.

Law governing proceedings under this Act

42. (1) Where an application is made under this Act for approval to undertake a Development, the law to be applied by the relevant authority in deciding the application, and the law to be applied in resolving any issues arising from the decision in any proceedings (whether brought under this Act or not), is the law in force as at the time the application was made.

(2) The provisions of the Principles that are relevant to the consideration of an application for approval to undertake a Development and to the resolution of issues arising in subsequent proceedings based on that application (whether brought under this Act or not) are the provisions of the Principles as in force at the time the application was made.

(3) Where an order has been made (whether before or after the commencement of this subsection) under Part V of the *South Australian Heritage Act 1978* in respect of an item of State heritage that was at the time of the making of the order the subject of an application under this Act for approval to undertake a Development—

(a) the item will be taken to have been an item of State heritage for the purposes of this section at the time the application was made;

and

(b) the order will be taken to have been in force for the purposes of this section at that time.

Summary procedure

43. (1) An offence against this Act is a summary offence.

(2) Proceedings in respect of an offence against this Act may be commenced at any time within twelve months after the commission of the alleged offence, or, with the authorization of the Attorney-General, at any later time within five years after the Commission of the alleged offence.

(3) An apparently genuine document purporting to be signed by the Attorney-General and to authorize the commencement of proceedings in respect of an offence against this Act is, in the absence of proof to the contrary, proof of that authorization.

Regulations

44. (1) Subject to subsection (3), the Governor may make such regulations as are necessary or expedient for the purposes of this Act and for giving effect to and implementing the Principles.

(2) Without limiting the generality of subsection (1), a regulation may—

(a) provide for and prescribe any matter or thing relating to the practice and procedure of the Tribunal in the determination of appeals;

(b) provide for and prescribe any matter or thing relating to applications to, the practice of or proceedings before, the Council or the Commission;

(c) restrict, prohibit or regulate any Development or any aspect of a Development within the municipality or any part of the municipality;

or

(d) provide for the keeping of a register of heritage items situated within the municipality.

(3) The Governor cannot make a regulation under this section unless the Minister has certified that—

(a) the substance of the proposed regulation has been publicly exhibited at the Town Hall in the City of Adelaide for a period of not less than one month;

and

(b) the Minister has considered all objections to that proposed regulation.

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APPENDIX

Legislative History

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 5 April 1988. A schedule of these alterations was laid before Parliament on 29 March 1988.

Section 2:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 3:	amended by 62, 1982, s. 3(2) (Sched. Pt. II); 76, 1985, s. 3; deleted in pursuance of the <i>Acts Republication Act, 1967</i> : see Summary of Provisions
Section 4:	definition of "Appointed Day" deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted definition of "environmental impact statement" inserted by 76, 1985, s. 4 definition of "item of State heritage" inserted by 9, 1984, s. 3
Section 4a:	inserted by 76, 1985, s. 5
Section 5:	substituted by 76, 1985, s. 5
Section 6:	amended by 42, 1978, s. 25; substituted by 62, 1982, s. 3(2) (Sched. Pt. II)
Section 19(4):	amended by 12, 1981, s. 3
Section 20(1):	amended by 12, 1981, s. 4
Section 21:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 22:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 23:	amended by 12, 1981, s. 5; substituted by 76, 1985, s. 6
Section 24:	amended by 12, 1981, s. 6; 9, 1984, s. 4; substituted by 76, 1985, s. 6
Section 24a:	inserted by 9, 1984, s. 5
Section 24a(1):	amended by 76, 1985, s. 7
Section 24a(2) and (3):	amended by 76, 1985, s. 7(a)
Section 25(1):	amended by 12, 1981, s. 7(a); 76, 1985, s. 8(a); substituted by 92, 1987, s. 3
Section 25(2):	substituted by 12, 1981, s. 7(b); 76, 1985, s. 8(b)
Section 25a:	inserted by 12, 1981, s. 8; substituted by 76, 1985, s. 9
Section 25b:	inserted by 12, 1981, s. 8; amended by 9, 1984, s. 6; 76, 1985, s. 10
	Part IVA comprising ss. 26a - 26c and heading inserted by 76, 1985, s. 11
Section 27(2):	substituted by 34, 1981, s. 50
Section 28(1):	amended by 12, 1981, s. 9; 9, 1984, s. 7; 76, 1985, s. 12
Section 29(2):	substituted by 12, 1981, s. 10
Section 29(3):	inserted by 76, 1985, s. 13
Section 30:	amended by 99, 1986, s. 2
Section 32(1):	amended by 12, 1981, s. 11; 9, 1984, s. 8; 99, 1986, s. 3(a)
Section 32(1a):	inserted by 99, 1986, s. 3(b)
Section 32(2):	amended by 99, 1986, s. 3(c)
	Part VA comprising ss. 39a - 39c and heading inserted by 76, 1985, s. 14

29.

Sections 39d and 39e:

inserted by 76, 1985, s. 15

Section 40:

substituted by 76, 1985, s. 16

Section 42:

substituted by 76, 1985, s. 17

Section 42(3):

inserted by 77, 1991, s. 4

Section 43(2):

substituted by 12, 1981, s. 12

Section 43(3):

inserted by 12, 1981, s. 12

Section 44(2):

amended by 9, 1984, s. 9

Part VII comprising ss. 45, 46 and heading repealed by
62, 1982, s. 3(2) (Sched. Pt. II)

The Schedule:

repealed by 62, 1982, s. 3(2) (Sched. Pt. II)