

SOUTH AUSTRALIA

URBAN LAND TRUST ACT, 1981

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **5 March 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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URBAN LAND TRUST ACT, 1981

being

Urban Land Trust Act, 1981, No. 31 of 1981
[Assented to 19 March 1981]¹

as amended by

Urban Land Trust Act Amendment Act, 1984, No. 6 of 1984 [Assented to 19 April 1984]
Urban Land Trust Act Amendment Act, 1985, No. 50 of 1985 [Assented to 30 May 1985]²
Urban Land Trust (Urban Consolidation) Amendment Act 1992 No. 3 of 1992 [Assented to 5 March 1992]

¹ Came into operation 26 November 1981: *Gaz.* 26 November 1981, p. 2135.

² Came into operation 13 June 1985: *Gaz.* 13 June 1985, p. 2132.

An Act to continue the corporation known as the "South Australian Land Commission" in existence under the name the "South Australian Urban Land Trust"; to prescribe the powers and functions of the South Australian Urban Land Trust; to repeal the Land Commission Act, 1973-1977; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Urban Land Trust Act, 1981*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Arrangement

3. This Act is arranged as follows:—

PART I—PRELIMINARY

PART II—THE SOUTH AUSTRALIAN URBAN LAND TRUST

DIVISION I—ESTABLISHMENT AND CONSTITUTION OF THE TRUST

DIVISION II—POWERS AND FUNCTIONS OF THE TRUST

DIVISION III—STAFF, ETC.

PART III—FINANCIAL PROVISIONS

PART IV—MISCELLANEOUS

Repeal

4. The *Land Commission Act, 1973-1977*, is repealed.

Interpretation

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

"the Chairman" means the chairman of the Trust:

"the Fund" means The South Australian Urban Land Trust Fund maintained under Part III of this Act:

"land" includes any estate or interest in land and any easement, right, power, or privilege in, under, over, affecting or in connection with land:

"member" in relation to the Trust includes the Chairman:

"the repealed Act" means the *Land Commission Act, 1973-1977*, repealed by this Act:

"the Trust" means the corporation known as the "South Australian Land Commission" established under the repealed Act and continued in existence under this Act under the name "South Australian Urban Land Trust":

3.

"urban consolidation" means development directed towards the better utilization of urban land and existing public utilities and services.

PART II

THE SOUTH AUSTRALIAN URBAN LAND TRUST

DIVISION I—ESTABLISHMENT AND CONSTITUTION OF THE TRUST

Establishment of South Australian Urban Land Trust

6. (1) The corporation established under the repealed Act under the name "South Australian Land Commission" shall continue in existence under the name "South Australian Urban Land Trust".

(2) The Trust—

(a) shall continue to be a body corporate with perpetual succession and a common seal;

(b) shall be capable of suing and of being sued;

(c) shall be capable of holding, dealing with, and disposing of real and personal property;

(d) shall be capable of acquiring or incurring any other rights or liabilities;

(e) shall hold all its property for and on behalf of the Crown;

and

(f) shall have the powers, duties, functions and authorities conferred, imposed or prescribed by or under this Act.

(3) Where a document purports to bear the common seal of the Trust, it shall be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Trust has been duly affixed to that document.

(4) The change of the name of the corporation established under the repealed Act and continued in existence under this Act shall not affect its rights or obligations and any reference to the "South Australian Land Commission" in any Act, statutory instrument, document or writing of any kind shall, so far as the context admits, be construed as a reference to the "South Australian Urban Land Trust".

Vacation of offices of members of Land Commission

7. The members of the South Australian Land Commission holding office under the repealed Act immediately before the commencement of this Act shall, on the commencement of this Act, vacate their respective offices.

Constitution of the Trust

8. (1) The Trust shall consist of five members appointed by the Governor upon the nomination of the Minister, of whom—

(a) one shall be a person employed in private industry who in the opinion of the Minister has appropriate knowledge and experience of urban land development;

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- (b) one shall be a person who in the opinion of the Minister has appropriate knowledge and experience of local government;
- (c) one shall be a person who in the opinion of the Minister has appropriate knowledge and experience relating to the development and provision of community services;
- (ca) one shall be a person who in the opinion of the Minister has appropriate knowledge and experience of commercial finance;

and

- (d) one shall be an officer of a Department or agency of the Government of the State.

(2) One member of the Trust shall be appointed by the Governor to be chairman of the Trust.

Term and conditions of office of members

9. (1) A member of the Trust shall be appointed for such term of office, being not less than two years nor more than four years, and upon such conditions, as may be determined by the Governor and, upon the expiration of his term of office, shall be eligible for re-appointment.

(2) The Governor may appoint a suitable person to be a deputy of a member of the Trust, and such a person, while acting in the absence of that member, shall be deemed to be a member of the Trust, and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed a deputy.

(3) The Governor may remove a member of the Trust from office for—

- (a) any breach of, or non-compliance with, the conditions of his appointment;
- (b) mental or physical incapacity;
- (c) neglect of duty;

or

- (d) dishonourable conduct.

(4) The office of a member of the Trust shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by written notice addressed to the Minister;

or

- (d) he is removed from office by the Governor pursuant to subsection (3).

(5) Upon the office of a member of the Trust becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Trust becomes vacant before the expiration of the term for which he was appointed, the person appointed in his place shall be appointed only for the balance of the term of his predecessor.

Remuneration and expenses

10. (1) A member of the Trust shall be entitled to receive such remuneration and expenses as may be determined by the Governor.

(2) Any amount to which a member of the Trust is entitled under this section shall be paid out of the Fund.

Quorum, etc.

11. (1) Three members of the Trust shall constitute a quorum of the Trust, and no business shall be transacted at a meeting unless a quorum is present.

(2) A decision in which any three members of the Trust concur shall be a decision of the Trust.

(3) The Chairman shall preside at any meeting of the Trust at which he is present, and in the absence of the Chairman from a meeting of the Trust, the members present shall decide who is to preside at that meeting.

(4) The Trust shall meet for the transaction of business at least eight times in each year.

(5) Subject to this Act, the business of the Trust shall be conducted in such manner as the Trust determines.

Validity of acts of the Trust, etc.

12. (1) An act or proceeding of the Trust shall not be invalid by reason only of a vacancy in its membership, and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, any such act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

(2) No liability shall attach to a member of the Trust for any act or omission by him or by the Trust in good faith and in the exercise of his or its powers or functions, or in the discharge of his or its duties, under this Act.

(3) A liability that would, but for subsection (3), lie against a member of the Trust shall lie against the Crown.

Disclosure of interest by members of Trust

13. (1) A member of the Trust who is directly or indirectly interested in a contract, or proposed contract, made by, or in the contemplation of, the Trust—

(a) shall, as soon as he becomes aware of the contract or proposed contract, disclose the nature of his interest to the Trust;

and

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- (b) shall not take part in any deliberations or decision of the Trust with respect to the contract.

Penalty: \$2 000.

- (2) A disclosure made under this section shall be recorded in the minutes of the Trust.

(3) Where a member makes a disclosure of interest in respect of a contract or proposed contract in accordance with this section—

- (a) the contract is not void, or liable to be avoided, on any ground arising from the member's interest in the contract;

and

- (b) the member is not liable to account to the Trust for any profits derived from the contract.

DIVISION II—POWERS AND FUNCTIONS OF THE TRUST

Powers and functions of the Trust

14. (1) The functions of the Trust are to hold land and, as prevailing circumstances require, to make land available for, and otherwise assist in—

- (a) the orderly establishment and development of new urban areas;

and

- (b) urban consolidation in existing urban areas.

(2) In the performance of its functions under this Act, the Trust may—

- (a) with the prior specific approval of the Minister, acquire, in accordance with the provisions of the *Land Acquisition Act, 1969*, such land as the Trust considers necessary or expedient for the effective performance of its functions;

- (b) sell, grant, grant a lease or licence in respect of, mortgage, charge, encumber or otherwise deal with land;

(c) divide land for the purpose of making land available in parcels—

- (i) that are suitable for further division and development for residential, commercial or industrial purposes or for further development for commercial or industrial purposes;

or

- (ii) that are required for or in connection with the provision of public or community services, facilities or amenities,

and carry out any works necessary for that purpose;

8.

(d) enter into contracts or arrangements with any person or body of persons;

and

(e) exercise any other powers prescribed by this Act or necessary for or incidental to the performance of its functions.

(2a) The Trust may, with the approval of the Minister, engage in a project for the division, development and disposal of land for residential, commercial, industrial or community purposes (including division and development beyond the stages contemplated by subsection (2)) pursuant to an arrangement with some other person or persons under which the parties combine to provide the land, finance and other resources necessary to undertake and complete the project.

(2b) The Minister shall not grant an approval under subsection (2a) in respect of a project unless he is satisfied that the arrangement provides for substantial participation in the project by a person other than the Trust.

(2c) Subsection (2a) shall not apply except in relation to—

(a) the Development Area as defined by the *Tea Tree Gully (Golden Grove) Development Act, 1978*;

and

(b) any other land prescribed for the purposes of this section.

(3) The Trust shall not engage in the division or development of land except as provided in this section.

(4) The Trust may, notwithstanding the provisions of this section, with the approval of the Minister, complete any programme of division, development and disposal of land commenced before the commencement of this Act and, for that purpose, do anything that the South Australian Land Commission would have been authorized to do had this Act not been enacted.

(5) The Trust shall conduct its business in accordance with established principles of financial management and economy.

(6) In the performance of its functions under this Act, the Trust shall be subject to the general control and direction of the Minister and, in particular, without limiting the effect of the foregoing, shall comply with any directions given with a view to—

(a) the proper co-ordination of the Trust's activities with those of other public authorities;

(b) the planning of a desirable physical and social environment.

Provisions relating to acquisition of land

14a. (1) Where the Trust acquires land in pursuance of this Act and proposes to lease the land before it is made available for the establishment and development of new urban areas, it shall offer the person from whom the land was acquired the opportunity to lease the land on fair terms.

(2) The Trust shall not acquire by compulsory process—

- (a) any dwellinghouse that is occupied by the owner as his principal place of residence;
 - (b) any factory, workshop, warehouse, shop or other premises used for industrial or commercial purposes;
 - (c) any premises used as an office or rooms for the conduct of a business or profession;
- or
- (d) any land in respect of which subdivision development is being or has been carried out.

(3) Where a notice of intention to acquire land is served by or on behalf of the Trust on the proprietor of the land, being land that is adjacent to premises of a kind referred to in subsection (2)(a), (b) or (c) of which the same person is proprietor, the proprietor may, within 3 months after the date of service of that notice, serve personally or by post on the Trust a notice requesting the Trust to acquire those premises, and, in that event, the Trust may, if it proceeds with acquisition of the land, also acquire those premises whether by agreement or otherwise in accordance with the provisions of the *Land Acquisition Act, 1969*.

(4) Where a notice of intention to acquire land is served by or on behalf of the Trust on the proprietor of the land, being land that the proprietor proposes to use for subdivision development or commercial building development, and no such notice has previously been served in relation to that land, the proprietor may, within 3 months after the date of service of that notice, serve personally or by post upon the Trust a notice advising the Trust of the proprietor's wish to proceed with the development and containing the particulars required by the regulations in relation to the proposed development, and, in that event, but subject to subsection (5), the land to which the proposed development relates shall not be acquired by the Trust by compulsory process within the period of 2 years from the date of service of the proprietor's notice upon the Trust.

(5) The Trust is not prevented by the operation of subsection (4) from acquiring land that the proprietor proposes to use for subdivision development unless—

- (a) the proprietor, before the date of service of the notice of intention to acquire, had obtained planning authorization under the *Planning Act, 1982*, authorizing subdivision development in respect of the land;

or

- (b) the proprietor—
 - (i) before the date of service of the notice of intention to acquire, had made due application for planning authorization under the *Planning Act, 1982*, authorizing subdivision development in respect of the land;

and

- (ii) within the 3 month period from the date of service of the notice of intention to acquire, obtains the planning authorization or satisfies the Minister, upon the basis of such evidence as he may require, that the granting of the planning authorization may be reasonably regarded as imminent.

(6) Where the Trust is prevented by the operation of subsection (4) from acquiring land by compulsory process within the period of 2 years referred to in that subsection and the proprietor makes substantial commencement of the subdivision development or commercial building development, as the case may be, within that period, the land shall not be acquired by the Trust by compulsory process after the expiration of that period.

(7) Where the Trust has been prevented by the operation of subsection (4) from acquiring land for any period but the land is subsequently acquired by the Trust by compulsory process within 3 years after the service of the first notice of intention to acquire the land served by or on behalf of the Trust, then, notwithstanding the provisions of the *Land Acquisition Act, 1969*, the compensation to which the proprietor of the land is entitled shall be assessed in all respects as if the acquisition had been effected as soon as practicable after the service of that first notice of intention to acquire the land.

(8) In this section—

"commercial building development", in relation to land, means development of the land by the construction on the land of premises that are to be used for industrial or commercial purposes:

"proprietor", in relation to land, means the proprietor of a legal or equitable estate of fee simple in the land:

"subdivision development", in relation to land, means development of the land for residential purposes by the carrying out on the land of works for the provision of roads and services to individual allotments of a size not more than 2 000 square metres.

Power of delegation

15. (1) The Trust may delegate to any member, officer or employee of the Trust any of its powers or functions under this Act.

(2) Any such delegation shall be revocable at will and shall not derogate from the power of the Trust to act itself in any matter.

DIVISION III—STAFF, ETC.

Officers and employees

16. (1) The Governor may, subject to and in accordance with the *Public Service Act, 1967-1978*, appoint such officers as he considers necessary or expedient for the proper administration of this Act.

(2) An officer so appointed shall, subject to this section, hold office in accordance with the provisions of the *Public Service Act, 1967-1978*.

(3) The Minister may by notice published in the *Gazette* determine—

(a) that specified provisions of the *Public Service Act, 1967-1978*, and of the regulations thereunder, shall not apply to or in relation to officers appointed pursuant to subsection (1);

and

(b) that provisions contained, or referred to, in the notice shall apply to and in relation to those officers in lieu of those provisions,

and the notice shall have effect in accordance with its terms.

(4) The Minister may, by notice published in the *Gazette*, vary or revoke a notice published under subsection (3).

(5) The Trust may, with the approval of the Minister, appoint such officers and employees as it considers necessary or expedient for the proper administration of this Act.

(6) A person appointed under subsection (5) shall hold office upon terms and conditions determined from time to time by the Governor, and the *Public Service Act, 1967-1978*, shall not apply to or in relation to persons so appointed.

Disclosure of interest by staff

16a. Where an officer or employee appointed for the purposes of the administration of this Act has a direct or indirect interest in a matter in relation to which he is required or authorized to act in the course of his duties, the officer or employee—

(a) shall, as soon as he becomes aware of the matter, disclose the nature of his interest to the Trust;

and

(b) shall not, unless the Trust otherwise determines, act in relation to the matter.

Penalty: \$2 000.

PART III

FINANCIAL PROVISIONS

Power of the Trust to borrow

17. (1) The Trust may borrow money from the Treasurer, or, with the consent of the Treasurer, from any other person for the purpose of carrying out any of its functions under this Act.

(2) Any liability incurred with the consent of the Treasurer under subsection (1) is hereby guaranteed by the Treasurer.

(3) Any liability incurred by the Treasurer under a guarantee arising by virtue of subsection (2) shall be satisfied out of the General Revenue of this State which is hereby, to the necessary extent, appropriated accordingly.

Establishment and control of the Fund

18. (1) The fund maintained under the repealed Act shall continue in existence under the name the "South Australian Urban Land Trust Fund" and shall be kept and maintained by the Trust.

(2) The following moneys shall be paid into the Fund:

- (a) any moneys paid to the Trust by the Government of the Commonwealth;
- (b) any moneys appropriated for the purposes of the Trust by Parliament;
- (c) any moneys borrowed by the Trust under this Act;
- (d) the proceeds of any sale or dealing in land by the Trust;
- (e) the rent derived from the leasing of land by the Trust;
- (f) any income derived from investment of the Fund;
- (g) any moneys received by the Trust by way of gift, bequest or otherwise;
- (h) any other moneys received by the Trust.

(3) The Fund shall be applied by the Trust in the performance of its functions under this Act, including the provision of financial assistance for public or community services, facilities or amenities in new urban areas.

(4) Subject to this Act, the Trust may draw upon, and otherwise deal with, the Fund in such manner as may be approved by the Treasurer.

Investment of moneys in the Fund

19. The Trust may, with the approval of the Treasurer, invest any of the moneys standing to the credit of the Fund that are not immediately required for the purposes of this Act in such manner as may be approved by the Treasurer.

Accounts and audit

20. (1) The Trust shall cause proper accounts to be kept of its financial affairs and shall in respect of each financial year prepare a statement of accounts in a form approved by the Treasurer.

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Trust.

(3) The Auditor-General shall have and may exercise in respect of the moneys and accounts of the Trust and the persons dealing therewith the powers that are vested in the Auditor-General by the *Audit Act, 1921-1975*, in respect of public accounts and accounting officers.

PART IV

MISCELLANEOUS

Report

21. (1) The Trust shall as soon as practicable after the thirtieth day of June in each year submit a report to the Minister upon the conduct of the business of the Trust during the financial year ending on that day together with the audited statement of accounts of the Trust for that financial year.

(2) The Minister shall, as soon as practicable after receipt of the report and audited statement of accounts cause copies of the report and statement to be laid before each House of Parliament.

Powers of entry, etc.

21a. (1) A person authorized in writing by the Trust to do so may enter upon any land and conduct any survey, valuation, test or examination that the Trust considers necessary or expedient for the purposes of this Act.

(2) A person shall not enter upon any land under this section unless he has given reasonable notice of his intention to do so to the occupier of the land.

(3) A person shall not hinder any authorized person in the execution of his powers under subsection (1).

Penalty: \$1 000.

(4) The Trust shall be liable to pay to the owner of any estate or interest in land that has been entered in pursuance of this section compensation for any damage or disturbance caused by the entry or by any survey, test or examination conducted on the land in pursuance of this section.

(5) The Land and Valuation Court may, upon the application of any interested persons, assess and order payment of compensation for which the Trust is liable under subsection (4).

(6) In subsection (5)—

"the Land and Valuation Court" means the Land and Valuation Court established under the *Supreme Court Act, 1935*.

Summary proceedings

21b. Proceedings for an offence against this Act shall be disposed of summarily.

Regulations

22. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

(a) provide for the manner in which meetings of the Trust are to be convened;

(b) regulate the proceedings of the Trust;

15.

(c) lay down conditions upon which the Trust may acquire, deal with, or dispose of land or other property;

and

(d) otherwise regulate the transaction of business by the Trust.

APPENDIX

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 5:	definition of "urban consolidation" inserted by 3, 1992, s. 2
Section 8(1):	amended by 50, 1985, s. 3
Section 13:	substituted by 50, 1985, s. 4
Section 14(1):	substituted by 3, 1992, s. 3
Section 14(2):	amended by 50, 1985, s. 5(a)
Section 14(2a) - (2c):	inserted by 6, 1984, s. 2
Section 14(3):	substituted by 50, 1985, s. 5(b)
Section 14(6):	amended by 50, 1985, s. 5(c)
Section 14a:	inserted by 50, 1985, s. 6
Section 16a:	inserted by 50, 1985, s. 7
Sections 21a and 21b:	inserted by 50, 1985, s. 8