



ANNO VICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1975

No. 53 of 1975

**An Act to amend the Planning and Development Act,
1966-1973.**

[Assented to 10th April, 1975]

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

1. (1) This Act may be cited as the "Planning and Development Act Amendment Act (No. 2), 1975". Short titles.

(2) The Planning and Development Act, 1966-1973, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Planning and Development Act, 1966-1975".

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

3. Section 20 of the principal Act is repealed. Repeal of s. 20 of principal Act.

4. Section 22 of the principal Act is amended by striking out subsection (3) and inserting in lieu thereof the following subsections:— Amendment of principal Act, s. 22—

(3) The jurisdiction of the board may be exercised by the Chairman, an Associate Chairman, or a Commissioner authorized by the Chairman or an Associate Chairman—

(a) for the purpose of adjourning any proceedings;

(b) in determining any matter of practice or procedure in any proceedings;

(c) upon any application under subsection (12) of section 36a of this Act;

and

(d) in any other prescribed matter.

(3a) The jurisdiction of the board may be exercised by the secretary to the board, or a registrar acting on the authority of the Chairman or an Associate Chairman—

Constitution of the board when hearing appeals.

(a) for the purpose of adjourning any proceedings;

or

(b) in any other prescribed matter.

(3b) Where a Commissioner, the secretary or a registrar sits alone pursuant to subsection (3) or subsection (3a) of this section to exercise the jurisdiction of the board he may at any time, and shall at the request of any party to the proceedings, refer any question of law for the decision of the board.

(3c) Any question of law referred for the decision of the board under subsection (3b) of this section shall be decided by the Chairman or an Associate Chairman and his determination shall constitute the decision of the board upon that question.

Amendment of
principal Act,
s. 22c—
Hearings
before the
board to be
public except
in certain
circumstances.

5. Section 22c of the principal Act is amended—

(a) by striking out from subsection (2) paragraphs (f) and (g) and inserting in lieu thereof the following paragraphs:—

(f) give directions prohibiting or restricting the publication of evidence given before the board, or of the contents of any document produced to the board;

or

(g) give directions excluding any person from a hearing before the board while the evidence of a particular witness is being heard by the board or while submissions are being made to the board by or on behalf of a party.;

and

(b) by striking out from subsection (3) the passage “Five hundred dollars” and inserting in lieu thereof the passage “One thousand dollars”.

Amendment of
principal Act,
s. 23—
Procedures at
hearings.

6. Section 23 of the principal Act is amended by striking out paragraphs (b) and (c) and inserting in lieu thereof the following paragraphs:—

(b) the board shall not be bound by the rules of evidence and may inform itself upon any matter in any manner it thinks fit;

and

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

Amendment of
principal Act,
s. 23h—
Failure of
witness to be
sworn, etc.

7. Section 23h of the principal Act is amended by striking out the passage “Five hundred dollars” and inserting in lieu thereof the passage “One thousand dollars”.

Amendment of
principal Act,
s. 23i—
Contempt.

8. Section 23i of the principal Act is amended by striking out the passage “Five hundred dollars” and inserting in lieu thereof the passage “One thousand dollars”.

9. The following section is enacted and inserted in the principal Act immediately after section 23i thereof:—

Enactment of
s. 23j of
principal Act—

23j. (1) The board may make an order for costs in any proceedings in accordance with a scale prescribed for the purpose—

Costs.

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

or

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

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

10. Section 26 of the principal Act is amended—

Amendment of
principal Act,
s. 26—

(a) by striking out from subsection (1) the passage “consent, permission or approval” wherever it occurs and inserting in lieu thereof, in each case, the passage “consent, permission, approval, authorization or certification”;

Board to hear
appeals, etc.

(b) by striking out from subsection (2) the passage “confirm or reverse” and inserting in lieu thereof the passage “confirm, vary or reverse”;

(c) by striking out subsection (3) and inserting in lieu thereof the following subsection:—

(3) Subject to rules of court made under the Supreme Court Act, 1935-1974, any party to proceedings before the board may within thirty days after the date of the board's determination or decision appeal against the determination or decision to the Land and Valuation Court, and, on any such appeal, the Court may confirm, vary or reverse the decision of the board, and make such orders (including orders as to costs) as it thinks just.;

and

(e) by inserting after subsection (4) the following subsection:—

(5) Where a person appeals, or purports to appeal, under this Act to the board or to the Land and Valuation Court, and it appears to the board or the Court—

(a) that some irregularity has occurred affecting either the appeal, or purported appeal, or the decision or purported decision against which the appeal, or purported appeal, has been brought;

(b) that it would conduce to the expeditious administration of justice if the powers conferred by this section were exercised,

the board or the Court may cure the irregularity by ordering that, subject to the fulfilment of such terms and conditions (if any) as may be stipulated by the board or Court, the requirements of this Act, or any other Act or law, be dispensed with to the extent necessary for that purpose.

Amendment of
principal Act,
s. 27—
Provisions as
to appeals to
the board.

11. Section 27 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsections:—

(2a) Two or more appeals may be instituted by a single notice under subsection (2) of this section where the decisions subject to appeal arise from a single application or from applications relating to a single matter.

(2b) The board may order appeals to be heard together, or separately, as it thinks fit.;

(b) by striking out subsection (5) and inserting in lieu thereof the following subsection:—

(5) The board shall fix a convenient time and place for hearing each appeal and shall give such notice as it considers reasonable of the time and place so fixed to the parties to the appeal.;

and

(c) by striking out subsection (10) and inserting in lieu thereof the following subsection:—

(10) The board shall give reasons in writing for every determination, and those reasons may be published concurrently with the announcement of the determination or at some subsequent date, but where the reasons are published subsequently the time for appeal against the determination of the board shall run from the date on which those reasons are published.

Amendment of
principal Act,
s. 27a—
Special powers
of the board.

12. Section 27a of the principal Act is amended by striking out paragraphs (a), (b) and (c) of subsection (1) and inserting in lieu thereof the following paragraphs:—

(a) at or before the hearing to direct that any objector, or other person, who ought, in the opinion of the board, to be bound by, or to have the benefit of, its determination be joined as parties to the proceedings;

and

(b) to allow the amendment of any matter before the board.

Amendment of
principal Act,
s. 36—
Planning
regulations.

13. Section 36 of the principal Act is amended—

(a) by striking out paragraph (f) of subsection (4) and inserting in lieu thereof the following paragraph:—

(f) make provision for an appeal to the board against any decision made in pursuance of a planning regulation.;

(b) by striking out from paragraph (u) of subsection (4) the passage “two hundred dollars” and inserting in lieu thereof the passage “five hundred dollars”;

and

(c) by striking out from paragraph (u) of subsection (4) the passage “fifty dollars” and inserting in lieu thereof the passage “one hundred dollars”.

14. Section 36a of the principal Act is amended—

(a) by striking out from subsection (1) the passage “and upon payment of the prescribed fee, lodge” and inserting in lieu thereof the passage “lodge in duplicate”;

(b) by striking out from subsection (1) the passage “to the Authority or the council of its consent, permission or approval” and inserting in lieu thereof the passage “to the application”;

(c) by striking out subsection (2) and inserting in lieu thereof the following subsections:—

(2) The Authority or the council shall furnish the applicant with a copy of each objection to his application.

(2a) The Authority or the council shall allow the applicant an opportunity to answer in writing any objection that has been made to his application within ten days after he is furnished with a copy of the objection.;

(d) by striking out subsection (3) and inserting in lieu thereof the following subsection:—

(3) The Authority or the council shall consider each objection lodged with respect to an application, and any answer that the applicant may have made to the objection.;

(e) by inserting after the passage “an application” in subsection (6) the passage “(whether the objection was made by that person alone, or jointly with other persons)”;

(f) by inserting after subsection (8) the following subsection:—

(8a) Where an appeal has been commenced against a decision made under this Act by a council or the Authority, the council or the Authority shall lodge with the secretary to the board a list showing the names and addresses of all objectors to the application.;

(g) by striking out subsection (10);

(h) by striking out from subsection (13) the passage “of sections 26 and 27” and inserting in lieu thereof the passage “of Division 3 of Part II”;

and

(i) by inserting after subsection (13) the following subsection:—

(14) For the purposes of this section, the Authority or a council decides an application either where a decision is actually made or where a decision is, by operation of law, presumed to have been made.

Amendment of
principal Act,
s. 36a—

Appeal to
board against
certain acts
done pursuant
to planning
regulations.

Amendment of
principal Act,
s. 41—

Where land is
declared to be
subject to
interim
development
control.

15. Section 41 of the principal Act is amended—

(a) by striking out from subsection (5) the passage “or, where the Authority has by notice published in the *Gazette* delegated its power under this subsection to a council within whose area the land is situated (power to make or revoke such delegation being hereby conferred on the Authority), without the consent in writing of that council” and inserting in lieu thereof the passage “or of a council that is, in pursuance of a delegation under this section, empowered to grant that consent”;

(b) by striking out from subsection (5) the passage “Five hundred dollars” and inserting in lieu thereof the passage “Two thousand dollars”;

(c) by inserting after subsection (5) the following subsections:—

(5a) The Authority may, by instrument in writing, delegate subject to such exceptions, limitations and conditions as may be specified in the instrument power to grant or refuse consent under this section in relation to applications for such consent that relate to land within the area of the council.

(5b) The Authority may, by instrument in writing, vary or revoke a delegation under this section.

(5c) Where the Authority has delegated to a council its power under this section to grant or refuse consent to an application for such consent, and the council fails to exercise the delegated power in relation to an application within a reasonable time after the application was made, the Authority may itself act in the matter and determine the application.

(d) by striking out subsection (6) and inserting in lieu thereof the following subsection:—

(6) Subsection (5) of this section does not apply to—

(a) the construction, conversion or alteration of any building or structure on any land by any person or body who or which is required and authorized by or under any Act to carry out that construction, conversion or alteration;

(b) a change in the use of any land, building or structure of a kind declared by regulation to be exempt from the provisions of this section;

(c) the construction, conversion or alteration of a building or structure of a kind declared by regulation to be exempt from the provisions of this section;

or

(d) an alteration to a building or structure being an alteration of a kind declared by regulation to be exempt from the provisions of this section.;

and

(e) by inserting after subsection (8) the following subsections:—

(9) Notwithstanding that land ceases to be subject to this section, any condition attached to a consent under this section (either before or after the commencement of the Planning and Development Act Amendment Act (No. 2), 1975) shall, unless revoked by the Authority, or the council by which the condition was imposed be observed by the holder of any estate or interest in the land to which the condition relates and any other person who obtains the benefit of the consent in all respects as if the land continued to be subject to this section.

(10) A person who contravenes a condition attached to a consent under this section shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

16. Section 42g of the principal Act is amended by striking out from subsection (11) the passage "one thousand" and inserting in lieu thereof the passage "two thousand".

Amendment of principal Act, s. 42g—
Planning directive.

17. Section 42h of the principal Act is amended by striking out from subsection (12) the passage "one thousand" and inserting in lieu thereof the passage "two thousand".

Amendment of principal Act, s. 42h—
Approval for building work.

18. The following section is enacted and inserted in the principal Act immediately after section 42j thereof:—

Enactment of s. 42k of principal Act—

42k. The provisions of Division 3 of Part II of this Act shall, *mutatis mutandis*, apply as far as they are applicable and not inconsistent with the provisions of this Part to an appeal under this Part.

Appeals under this Part.

19. Section 44 of the principal Act is amended by striking out from subsection (1) the passage "Four hundred dollars" and inserting in lieu thereof the passage "One thousand dollars".

Amendment of principal Act, s. 44—

Land not to be sold, etc., except in all allotments.

20. Section 45a of the principal Act is amended by striking out from subsection (5) the passage "and in section 45b of this Act".

Amendment of principal Act, s. 45a—

Plans of subdivision of land in prescribed localities within Metropolitan Planning Area.

21. Section 45b of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 45b of principal Act and enactment of section in its place—

45b. (1) Subject to this section, no plan shall be submitted to, or accepted by, the Director if it purports to create an allotment within the Hills Face Zone.

Land within the Hills Face Zone.

(2) The Governor may, if he is satisfied upon the advice of the Director that it is in the public interest and not contrary to the provisions, principles and objects of any authorized development plan, exempt any land, by proclamation, from the provisions of this section.

(3) The Governor may, by subsequent proclamation, revoke a proclamation under this section.

(4) Any plan relating to land within the Hills Face Zone submitted to the Director before the first day of March, 1975, shall be dealt with in all respects as if the amendments to this Act made by the Planning and Development Act Amendment Act (No. 2), 1975, had not been made.

(5) This section shall not apply to a plan of re-subdivision that purports to create a number of allotments from land that is already subdivided into an equal or greater number of allotments.

(6) In this section—

“the Hills Face Zone” means the Zone shown as the Hills Face Zone on the Metropolitan Development Plan or any Zone that, by virtue of a planning regulation relating to the Metropolitan Development Plan, supersedes that Zone.

Amendment of principal Act, s. 59—
Penalty for dividing land otherwise than in accordance with plans.

22. Section 59 of the principal Act is amended by striking out from subsection (3) the passage “four hundred dollars” and inserting in lieu thereof the passage “one thousand dollars”.

Enactment of s. 59a of principal Act—

23. The following section is enacted and inserted in the principal Act after section 59:—

Transfer of rights.

59a. Where a person has applied for approval of a plan of subdivision or re-subdivision under this Part he may, by instrument in writing, transfer his interest in the application to some other person and that other person shall then be subrogated to the rights of the original applicant in respect of the application.

Amendment of principal Act, s. 62—
Regulations.

24. Section 62 of the principal Act is amended—

(a) by striking out from paragraph (h) of subsection (2) the passage “two hundred dollars” and inserting in lieu thereof the passage “five hundred dollars”;

and

(b) by striking out from paragraph (h) of subsection (2) the passage “fifty dollars” and inserting in lieu thereof the passage “one hundred dollars”.

Enactment of s. 63b of principal Act—

25. The following section is enacted and inserted in the principal Act immediately after section 63a:—

Acquisition of land within Hills Face Zone.

63b. (1) The Authority may, with the approval of the Minister, acquire land by agreement within the Hills Face Zone.

(2) In this section—

“the Hills Face Zone” means the Zone shown as the Hills Face Zone on the Metropolitan Development Plan or any Zone that, by virtue of a planning regulation relating to the Metropolitan Development Plan, supersedes that Zone.

Amendment of principal Act, s. 79—
Regulations.

26. Section 79 of the principal Act is amended by striking out from paragraph (d) of subsection (2) the passage “one hundred dollars” and inserting in lieu thereof the passage “two hundred dollars”.

27. Section 80 of the principal Act is amended—

(a) by striking out the passage “five hundred dollars” and inserting in lieu thereof the passage “one thousand dollars”;

and

(b) by striking out the passage “fifty dollars” and inserting in lieu thereof the passage “one hundred dollars”.

Amendment of
principal Act,
s. 80—
Penalty for
continuing
offences.

28. The following section is enacted and inserted in the principal Act immediately after section 81 thereof:—

Enactment of
s. 82 of
principal Act—

82. (1) Subject to subsection (3) of this section, where an application is made to a planning authority for a consent, permission, approval, authorization, or certification that it is empowered to give under this Act, the law to be applied by the 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), shall be the law in force as at the time the application was made.

Law governing
proceedings
under this Act.

(2) For the purposes of this section a planning authority makes a decision under this Act either where a decision is actually made or where a decision is, by operation of law, presumed to have been made.

(3) This section does not apply in respect of an application for approval of a plan of subdivision or re-subdivision relating to land within the Hills Face Zone.

(4) In this section—

“planning authority” means—

(a) the Authority;

(b) a council;

(c) the Director;

(d) the City of Adelaide Development Committee;

or

(e) any other prescribed person or body.

“the Hills Face Zone” means the Zone shown as the Hills Face Zone on the Metropolitan Development Plan or any Zone that, by virtue of a planning regulation relating to the Metropolitan Development Plan, supersedes that Zone.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor