



ANNO TRICESIMO QUARTO

# ELIZABETHAE II REGINAE

A.D. 1985

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No. 76 of 1985

An Act to amend the City of Adelaide Development Control Act, 1976.

[Assented to 6 June 1985]

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 "City of Adelaide Development Control Act Amendment Act, 1985". Short title.

(2) The City of Adelaide Development Control Act, 1976, is in this Act referred to as "the principal Act".

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

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

3. Section 3 of the principal Act is amended—

(a) by inserting after the item:

PART IV—DEVELOPMENT CONTROL

the item:

PART IVA

DEVELOPMENT OF MAJOR SOCIAL, ECONOMIC OR  
ENVIRONMENTAL IMPORTANCE:

(b) by inserting after the item:

PART V—APPEALS

the item:

PART VA—CIVIL ENFORCEMENT PROCEEDINGS.

4. Section 4 of the principal Act is amended by inserting after the definition of "Development" the following definition:

Amendment of  
s. 3—  
Arrangement of  
Act.

Amendment of  
s. 4—  
Definitions.

“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

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

Repeal of section 5 and substitution of new sections.

5. Section 5 of the principal Act is repealed and the following sections are substituted:

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 shall, 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 shall be regarded as a change in use if and only if—

- (i) the period intervening between the discontinuance and revival of the use exceeds 2 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

(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 6 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 shall be disregarded if the extent of the use is trifling or insignificant.

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

Extent to which the Crown is bound by this Act.

(2) Where a Minister of the Crown, or a prescribed instrumentality or agency of the Crown, proposes to undertake Development, it shall, subject to subsection (3), give notice containing prescribed particulars of the proposal to the Commission and shall 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.

6. Sections 23 and 24 of the principal Act are repealed and the following sections are substituted:

Repeal of ss. 23 and 24 and substitution of new sections.

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

Approval required for Development.

Penalty: \$20 000.

Default Penalty: \$1 000.

(2) A person shall 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,  
shall—

(c) be in a form, and shall 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 Devel-  
opment that will directly affect, or has directly affected, an item of  
State heritage shall be referred by the Council to the Minister respon-  
sible for State heritage.

(5) The Council shall not 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 shall  
have regard to the Principles and the regulations.

(7) The Council's approval of a Development shall be subject to  
such conditions (if any) as it thinks fit to impose, and any such  
condition shall be 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 shall deal with applications under this section  
as expeditiously as possible.

Amendment of  
s. 24a—  
Matters to be  
considered by  
Commission  
before concurring  
in Development.

7. Section 24a of the principal Act is amended—

(a) by striking out the word "proposed" wherever it occurs;

and

(b) by inserting in subsection (1) after the passage "that will directly  
affect" the passage ", or has directly affected,".

Amendment of  
s. 25—  
Exceptions.

8. Section 25 of the principal Act is amended—

(a) by striking out from subsection (1) the word "proposed" wherever  
it occurs;

and

(b) by striking out subsection (2) and substituting the following sub-  
section:

(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 occurred;

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 occurred.

9. Section 25a of the principal Act is repealed and the following section is substituted:

Repeal of s. 25a  
and substitution  
of new section.

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 shall—

Conditions as to  
future restoration.

(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.

10. Section 25b of the principal Act is amended—

(a) by striking out the word “proposed” wherever it occurs;

and

(b) by inserting in paragraph (b) after the passage “will directly affect” the passage “, or has directly affected,”.

Amendment of  
s. 25b—  
Reasons for  
refusal, etc., to be  
given to  
applicant.

Insertion of new  
Part IVA.

11. The following Part is inserted after section 26 of the principal Act:

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;

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

shall be 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 shall—

(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 shall, by public advertisement, invite interested persons to make written submissions on the draft environmental impact statement within a period (being not less than 6 calendar weeks from the date of publication of the advertisement).

(3) The Minister shall give to the proponent copies of all submissions made within the period referred to in subsection (2) and shall 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 shall, after considering the submissions and the proponents 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 shall not be made before interested persons have been invited, by public advertisement, to make written submission 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 shall be made available by the Minister to the Council and the Commission.

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

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

Governor's  
approval.

(a) the Principles and the regulations;

and

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

(2) The Governor shall 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 shall be 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 shall be no appeal from a decision of the Governor under this section.

12. Section 28 of the principal Act is amended by striking out from paragraph (ba) of subsection (1) the passage "a proposed Development that will directly affect" and substituting the passage "a Development that will directly affect, or has directly affected,".

Amendment of  
s. 28—  
Appeals.

Amendment of  
s. 29—  
Conference of  
parties.

13. Section 29 of the principal Act is amended by inserting after subsection (2) the following subsection:

(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.

Insertion of new  
Part V.A.

14. The following Part is inserted after section 39 of the principal 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 shall 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 shall be 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) shall 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 shall (without prejudice to the Court's power to punish for contempt of the order) be 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 works contemplated by the order to be carried out, and may recover the costs of those works, 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.

39b. (1) Proceedings under this Part may be commenced at any time within 12 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 5 years after that date.

Commencement  
of proceedings.

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

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

Appeals.

(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 re-hearing.

Insertion of new sections 39d and 39e.

15. The following sections are inserted in Part VI after section 39c of the principal Act:

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 works for which provision is made by agreement under this section.

(3) An owner of land shall not 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 shall, 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 shall, 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 adver-

tising 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) No order shall 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 shall be guilty of an offence.

Penalty: \$500.

Default Penalty: \$100.

(4) The costs referred to in subsection (3) (a) shall, until paid, be 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.

Repeal of s. 40  
and substitution  
of new section.

**16.** Section 40 of the principal Act is repealed and the following section is substituted:

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 shall be entered unless the occupier has been given reasonable notice of the proposed entry.

(2) No person shall obstruct a person in 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.

Repeal of s. 42  
and substitution  
of new section.

**17.** Section 42 of the principal Act is repealed and the following section is substituted:

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

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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.

(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) shall be the provisions of the Principles as in force at the time the application was made.

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

D. B. DUNSTAN, Governor