



ANNO VICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1976

No. 110 of 1976

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

[Assented to 16th December, 1976]

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

<u>PART I</u>	PART I PRELIMINARY
Short title.	1. This Act may be cited as the "City of Adelaide Development Control Act, 1976".
Commencement.	2. This Act shall come into operation on a day to be fixed by proclamation.
Arrangement of Act.	3. This Act is divided as follows:— PART I—PRELIMINARY PART II—THE PRINCIPLES PART III—THE COMMISSION PART IV—DEVELOPMENT CONTROL PART V—APPEALS PART VI—MISCELLANEOUS PART VII—TRANSITIONAL PROVISIONS.
Definitions.	4. In this Act, unless the contrary intention appears— "Appointed Day" means the day fixed pursuant to section 21 of this Act as the Appointed Day: "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 of this Act:

“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, 1970-1976;
- (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:

“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 designated The Principles on which development control within the City of Adelaide shall be based signed by the Honourable the Minister for Planning and the Right Honourable the Lord Mayor of the City of Adelaide and dated the twenty-first day of 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 of this Act.

5. This Act does not bind the Crown.

Position of
Crown.

6. (1) Save as expressly provided in this Act, and notwithstanding any other Act or law, on and from the Appointed Day nothing in Part III, Part IV and Part V of the Planning and Development Act, 1966-1975, shall apply to or in relation to land within the municipality.

Non-application
of Planning
and
Development
Act, 1966-1975.

(2) Nothing in subsection (1) of this section shall be deemed to prevent the State Planning Authority from depicting or representing on any authorized development plan the development controls imposed in relation to the municipality under this Act.

PART II

PART II

THE PRINCIPLES

7. (1) The Principles are approved.

Amendment of
the Principles.

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

(3) The Council after preparation of any amendments shall by advertisement in the *Gazette* and in a daily newspaper circulating generally throughout the State give notice that a copy of those amendments shall 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 thereof.

(4) The Council shall 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 thereof.

PART II

(6) The Council shall consider the representations and having regard thereto may amend the amendments as it thinks fit.

(7) Where the Council has amended the amendments a reference in section 8 of this Act to the amendments shall 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 shall 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 shall consider the amendments, summary (if any) and statement submitted to it under section 8 of this Act and shall after consideration forward them to the Minister together with its report thereon.

Consideration of amendments.

10. (1) The Minister shall consider the amendments, summary (if any), statement and report forwarded to him under section 9 of this Act and forward the same to the Governor together with his recommendations thereon.

(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 to him under subsection (1) of this section 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) not proceed further with the amendments.

(3) Where the Governor approves of amendments or amendments as varied under subsection (2) of this section he shall signify his approval by proclamation and upon publication of that proclamation the Principles shall be amended in accordance with that approval.

PART III**PART III****THE COMMISSION**

The City of Adelaide Planning Commission.

11. (1) There shall be a Commission entitled "The City of Adelaide Planning Commission".

(2) The Commission shall consist of eight members appointed by the Governor of whom four shall be 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 shall hold office for such term, not exceeding three years, as is specified in the instrument of his appointment.

(5) The Governor shall 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 shall become vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by notice in writing addressed to the Minister;
- or
- (d) he is removed from office by the Governor pursuant to subsection (5) or (6) of this section.

(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 the duties of his office and such a person while so appointed shall be deemed to be a member of the Commission.

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

Remuneration,
etc.

13. (1) The Chairman shall preside at any meeting of the Commission at which he is present.

Chairman, etc.

(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 shall constitute a quorum and no business shall 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 shall be decided by the Minister and for the purposes of this Act such a decision shall be deemed to be a decision of the Commission.

14. (1) No act or proceeding of the Commission shall be 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.

Acts of
Commission.

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

PART III

Staff.

15. (1) There shall be appointed under and subject to the Public Service Act, 1967-1975, a Secretary and such other officers as are necessary for the purposes of the Commission.

(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 Corporation of the City of Adelaide.

Powers and functions.

16. The Commission shall have and may exercise such powers and functions as are imposed or conferred upon 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) of this section is revocable at will and no delegation shall prevent the exercise of any power or function by the Commission.

Advice to Minister.

18. The Commission shall in relation to any matter relating to the planning and development of the City of Adelaide referred to it by the Minister or the Council consider and report to the Minister or, as the case may be, the Council thereon.

Information in relation to Development applications.

19. (1) The Council shall if requested by the Commission furnish to the Commission such information, as to the substance of applications received by the Council under Part IV of this Act, 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 of this Act, he 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 and the Commission shall forthwith deal with the application.

(3) Upon receipt of a request referred to in subsection (2) of this section the Council shall refer that application to the Commission together with such advice or recommendation as it thinks fit but shall thereafter take no further action on that application.

(4) Part IV of this Act shall, with the necessary modifications, apply to and in relation to any application referred to the Commission as if references therein to the Council were references to the Commission.

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 of this Act, that Part shall with the necessary modifications apply to and in relation to that Development as if references therein to the Council were references to the Commission.

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

PART IV

PART IV

DEVELOPMENT CONTROL

21. The Governor may, by notice published in the *Gazette*, fix a day to be the Appointed Day for the purposes of this Act. Appointed Day.

22. This Part does not apply to any Development—

(a) for which every consent, permission or approval required under the Planning and Development Act, 1966-1976, had been obtained prior to the Appointed Day;

and

(b) which is undertaken in pursuance of that consent, permission or approval.

Part not to apply to certain developments.

23. (1) On or after the Appointed Day a person shall not undertake a Development within the municipality unless that Development has been approved of by the Council. Approval of Development.

Penalty: One thousand dollars.

Default Penalty: Two hundred dollars.

(2) For the purposes of proceedings for an offence against subsection (1) of this section a Development that is undertaken in breach or contravention of any condition to which the approval of that Development is subject shall be deemed to have been undertaken without that approval.

(3) Where a person is convicted of an offence that is a contravention of subsection (1) of this section the court before which that person is convicted may in addition to imposing the penalties provided for by subsection (1) of this section by order direct the person to take such action as is in the opinion of the court necessary to restore, so far as is practicable, the land the subject of the Development to the same state as it would have been if the Development had not been undertaken.

(4) A person the subject of an order under subsection (3) of this section shall not refuse or fail to comply with that order.

(5) Where a person is convicted of an offence that is a contravention of subsection (4) of this section that person shall be liable to a penalty not exceeding three times the amount certified under subsection (6) of this section as being the monetary benefit accruing to the person as a consequence of undertaking the Development in relation to which the order was made or one thousand dollars whichever is the greater amount.

(6) For the purposes of subsection (5) of this section a certificate under the hand of a prescribed person shall be *prima facie* evidence of the amount of the monetary benefit referred to in that subsection.

(7) In this section "prescribed person" means—

(a) where the relevant Development was undertaken in breach or contravention of an approval given by the Commission, the Secretary of the Commission;

and

(b) in any other case, the Clerk of the Council.

PART IV**Applications
for approval.**

24. (1) An application for approval to undertake a Development within the municipality shall be in a form approved of by the Council and contain the particulars required by that form and be accompanied by the fee prescribed in relation to the application or applications of that class.

(2) The Council may in any particular case, from time to time, require the applicant to provide such further information in relation to the application as the Council specifies and the Council shall not be obliged to proceed further with the application until the required information is so supplied.

(3) After consideration of the proposed Development subject to subsection (4) of this section the Council may—

- (a) approve the Development unconditionally;
- (b) approve the Development subject to conditions;
- or
- (c) refuse to approve the Development.

(4) Before granting or refusing its approval of any proposed Development or imposing any conditions in relation to a proposed Development the Council shall have regard to—

- (a) any relevant regulation under this Act;
- and
- (b) the Principles.

(5) Where the Council pursuant to this section or section 25 of this Act approves a proposed Development subject to any condition or refuses to approve a proposed Development it shall forthwith in writing inform the applicant of its decision and at the request of the applicant furnish him within thirty days of receipt of that request with a written statement of the reasons for the imposition of that condition or refusing its approval.

(6) The Council shall deal with applications made to it under this Part as expeditiously as is possible.

Exceptions.

25. (1) Notwithstanding anything in section 24 of this Act where a proposed Development is not in conformity with a relevant regulation under this Act but the Council is satisfied that, notwithstanding that lack of conformity the proposed Development does not conflict with the Principles it may, with the consent of the Commission—

- (a) approve of the Development unconditionally;
- or
- (b) approve of the Development subject to conditions.

(2) Where pursuant to section 19 or section 20 of this Act, references, in this Part, to the Council are to be read as references to the Commission, the reference in subsection (1) of this section to the Commission shall be read as a reference to the Minister.

**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 Corporation of the City of Adelaide.

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

PART V

APPEALS

27. (1) There shall be a Tribunal which shall be called the "City of Adelaide Planning Appeals Tribunal". The Tribunal.

(2) The Tribunal shall be constituted of the Chairman or an Associate Chairman of the Planning Appeal Board continued under the Planning and Development Act, 1966-1976, appointed by the Governor.

28. (1) Subject to subsection (2) of this section, a person who was an applicant under Part IV of this Act may if he is aggrieved by— Appeals.

- (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,

within thirty days of receiving the written statement referred to in subsection (5) of section 24 of this Act, appeal to the Tribunal.

(2) An appeal referred to in subsection (1) of this section may not be commenced after the expiration of the period of twelve months next following the day on which the relevant decision was made.

29. (1) The Tribunal shall not proceed to determine an appeal referred to in section 28 of this Act unless it is satisfied that— Conference of parties.

- (a) the appellant and the Council or the Commission, as the case may be, have conferred together at a meeting and that after that conference the appellant is still aggrieved by the decision of Council or the Commission;

or

- (b) that no useful purpose would be served by such a conference.

(2) It shall be sufficient compliance with subsection (1) of this section if at a conference referred to in that subsection the Council or the Commission is represented by such persons as are, in any particular case, approved of by the Tribunal.

30. An appeal referred to in section 28 of this Act shall be 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. Commencement of appeal.

31. Within fourteen days of the delivery of a notice referred to in section 30 of this Act or within such further time as the Tribunal allows the Council or the Commission, as the case may be, shall furnish to the Tribunal such information as the Tribunal requires relating to the matter the subject of the appeal to which the notice relates. Action by Council or Commission.

32. (1) Subject to this Act, the Tribunal shall hear and determine the appeal and shall have regard to sections 24 or 25 of this Act as the case requires and may by its determination— Appeals.

- (a) disallow the appeal and uphold the decision appealed against;

PART V.

- (b) remit the matter the subject of 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.

(2) At the hearing of an appeal—

- (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 shall, subject to this Act, be determined by the Tribunal as it thinks fit;
 - (c) the Tribunal shall 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 shall 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 shall be final and without appeal.

No personal liability.

33. (1) A person constituting the Tribunal shall not be personally liable for anything done by it or him in good faith in the exercise or purported exercise of its or his 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 shall have the same rights, protection and immunities as a barrister has 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 shall 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 other than a question the answer to which would tend to incriminate him.

Penalty: One thousand dollars.

Contempt, etc.

35. A person shall 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 subsection (1) of section 37 of this Act;

or

(f) before the Tribunal hearing an appeal, do any other Act or thing which would, if the Tribunal were a Court of Record, constitute a contempt of that Court.

Penalty: One hundred dollars.

36. (1) There shall be a Registrar of the Tribunal who shall be appointed by the Governor under and in accordance with the Public Service Act, 1967-1975. Registrar.

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

37. (1) The Registrar of the Tribunal acting under the direction of the Tribunal may, by notice in writing signed by him, 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 touching 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.

38. (1) The Tribunal 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 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.

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. Powers of entry.

PART VI

PART VI

MISCELLANEOUS

40. (1) Any person authorized by the Council or the Commission may, for the purposes of determining whether this Act is being or has been complied with, at any reasonable time enter upon and inspect any land within the municipality. Powers of entry.

(2) A person shall not, without reasonable excuse, proof of which shall lie upon him, obstruct any person authorized under subsection (1) of this section in the exercise of a power conferred on him by that subsection.

Penalty: Two hundred dollars.

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 shall be guilty of a further offence against this Act if the offence continues after he is so convicted 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 his failure to comply with any provision of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1) of this section shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the period has elapsed.

Continuation of existing use.

42. Nothing in this Act shall be construed as preventing the continued use of any land within the municipality for the purposes for which the land was being lawfully used on the Appointed Day.

Summary proceedings.

43. (1) Proceedings in respect of an offence against this Act shall be disposed of summarily.

(2) Notwithstanding any other Act or law, proceedings for an offence against this Act may be commenced within twelve months from the day on which it is alleged that the offence was committed.

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

(2) Without limiting the generality of subsection (1) of this section 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;

or

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

(3) On and after the expiration of the sixth month next following the commencement of this Act, the Governor shall not make a regulation under this section unless the Minister has certified that—

- (a) the substance of the proposed regulation has been publically 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.

PART VII

PART VII

TRANSITIONAL PROVISIONS

45. (1) The Planning and Development Act, 1966-1975, is amended in the manner set out in the schedule to this Act.

Amendment of
the Planning
and Develop-
ment Act.

(2) The Planning and Development Act, 1966-1975, as amended by this Act, may be cited as the "Planning and Development Act, 1966-1976".

46. Any proceedings under the Planning and Development Act, 1966-1976, in relation to any matter or thing within the municipality that were pending immediately before the Appointed Day may be continued and completed in all respects as if this Act had not been enacted and the Planning and Development Act, 1966-1976, will apply and have effect accordingly.

Pending
proceedings.

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

D. NICHOLLS, Governor

THE SCHEDULE

AMENDMENTS TO THE PLANNING AND DEVELOPMENT ACT, 1966-1975

Section 42j of the Planning and Development Act, 1966-1975, is repealed and the following section is enacted and inserted in its place:—

42j. (1) This Part shall expire on the day fixed as the Appointed Day under section 21 of the City of Adelaide Development Control Act, 1976.

Expiry of
this Part.

(2) Upon the expiry of this Part, this Part shall be deemed to have been repealed by an Act.

Section 63 of the Planning and Development Act, 1966-1975, is amended by inserting in subsection (2) after the passage "made under this Act" the passage "or under the Principles as defined for the purposes of the City of Adelaide Development Control Act, 1976".