

Town and Country Planning (Transfer of Functions) Bill

EXPLANATORY MEMORANDUM

PART I.—INTRODUCTORY

Clause 1 cites the short title of the Act.

Clause 2 provides for the various provisions of the Act to come into operation on a day or respective days to be fixed by proclamation.

PART II.—PROVISIONS RELATING TO THE *TOWN AND COUNTRY PLANNING ACT 1961*

Division 1—Introductory

Clause 3 identifies the *Town and Country Planning Act 1961* as the Principal Act for this Part.

Division 2—Amendments to the *Town and Country Planning Act 1961*

Clause 4 amends section 53 to provide that the Minister for Planning and Environment, instead of the Board of Works, may prepare a planning scheme or interim development order for the Melbourne Metropolitan Area.

Clause 5 inserts a proposed new section 53A to enable the council of a municipality in the metropolitan area to be a responsible authority for the preparation and submission for approval of a planning scheme to amend the Melbourne Metropolitan Planning Scheme.

Clause 6 substitutes a new section 56 in the Principal Act to provide for the Minister to examine a planning scheme to amend the Melbourne Metropolitan Planning Scheme prepared by a municipal council prior to its exhibition. The Minister may agree to the exhibition of the scheme with or without modification or refuse to agree to its exhibition. Reasons for the decision are to be given to the Council.

This clause also inserts a new section 56A which will require that before exhibiting a planning scheme to amend the Melbourne Metropolitan Planning Scheme or making an interim development order in relation to the metropolitan area, the responsible authority shall advise the Board of Works. The responsible authority shall include any drainage and flood mitigation requirements of the Board in the proposed scheme or order. The Board may require that specified permit applications are to be referred to the Minister in accordance with section 59.

Clause 7 inserts a new Part IIIF.—Yarra Development in the Principal Act. These provisions were previously located in Part XI. of the *Melbourne Metropolitan Board of Works Act 1958* and provide for the preparation of Concept Plans for the Yarra Region as defined.

Proposed section 59M sub-clause (1) sets out the interpretations which apply to this Part. Most of the interpretations are either identical or similar to those previously contained in the *Melbourne and Metropolitan Board of Works Act 1958*. Some modifications have been made to maintain consistency with the Principal Act.

“Yarra Region” has been redefined to include any area declared by the Governor in Council and does not limit the region to 30 m from the banks of the Yarra or Maribyrnong Rivers (as defined), as previously applied in the Melbourne and Metropolitan Board of Works Act.

Sub-clause (2) enables the Governor in Council on the recommendation of the Minister to declare contiguous land to be part of the Yarra Region.

Sub-clause (3) limits the area of the Yarra Region to the river valleys of the Yarra River and Maribyrnong River (as defined).

Sub-clause (4) deems any Concept Plan previously prepared by the Melbourne and Metropolitan Board of Works to have been prepared pursuant to this Part.

Proposed section 59N enables the Minister to prepare a Concept Plan and provides for consultation with government departments, public authorities, councils and owners or occupiers of land, and procedures for public exhibition of a proposed Concept Plan.

Proposed section 59O requires the Minister to consider any submissions made during public exhibition and to consult with the Minister administering the Melbourne and Metropolitan Board of Works Act on any proposed modifications or variations to the Concept Plan.

Proposed section 59P enables the Governor in Council to publish by Order in the *Government Gazette* approval of a Concept Plan and requires the Secretary for Planning and Environment to give notice of approval in a newspaper circulating in the Region.

Proposed section 59Q requires the Secretary for Planning and Environment to provide copies of the approved Concept Plan as specified and advise owners or occupiers of land of the approval of the Concept Plan.

Proposed section 59R requires a copy of the Concept Plan to be laid before both Houses of Parliament.

Proposed section 59S enables the Governor in Council to publish an Order in the *Government Gazette* which revokes, amends or varies an approved Concept Plan.

Proposed section 59T enables the Minister to prepare an amending Concept Plan for the Region or part of the Region.

Proposed section 59U enables the Minister to delegate his powers under proposed sub-sections 59N (1)–(3) to any public authority or to the chief administrator of any government department.

Proposed section 59V requires government departments which propose to carry out any development to conform to the approved Concept Plan and to submit proposals to the Minister for certification to specify the aspects of the development which are consistent with the approved Concept Plan. The Governor in Council may, on the advice of the Minister, declare that this section does not apply to certain classes of development.

Proposed section 59W requires the Minister to prepare a planning scheme to amend the Melbourne Metropolitan Planning Scheme to conform to and implement the Concept Plan. The procedures to be used in this instance are specified in the section.

Proposed section 59X provides that a planning scheme prepared pursuant to proposed section 59W may include control over the use and development of the bed, soil and banks of the Yarra and Maribyrnong Rivers (as defined).

This Part and any planning scheme shall not apply to any drainage works or flood protection works carried out by the Board of Works or any other public authority in the Region.

Clause 8. A number of consequential amendments are proposed to interpretations to delete reference to the Board of Works and refer to the Minister for Planning and Environment. The interpretation “Responsible Authority” has also been amended to enable a municipal council to prepare and submit for approval an amendment to the Melbourne Metropolitan Planning Scheme.

Clause 9 amends sections 4, 11B and 11C of the Principal Act to enable the Minister to delegate his powers and functions to a committee of officers of the Ministry.

Clause 10 consequentially amends section 12 (13) of the Principal Act in relation to Part III. of the Principal Act which is incorporated into the sub-section.

Clause 11 inserts proposed new sections 12AA, 12AB and 12AC into the Principal Act which set out the procedures for a regional planning authority to prepare a planning scheme which were previously included in Part III. of the Principal Act.

Clause 12 substitutes a new section 25 of the Principal Act to require a responsible authority or any other person, where the responsible authority owns land, to apply to the Minister to obtain a planning permit to use or develop any land or to do or carry out any other matter or thing.

Sub-section (2) will provide that in these circumstances a further permit is not required from the responsible authority.

Sub-section (3) requires the Minister to request the recommendation of a responsible authority on an application for a permit under this section, where that application is made by another person.

Sub-section (4) sets out the procedures for applications for such permits and enables the Minister to revoke or modify any permit.

Sub-section (5) will enable the Minister to enforce the scheme or any permit granted to a person other than the responsible authority.

Sub-section (6) is a transitional provision where the responsible authority ceases to own land in respect of which a permit has been issued.

Sub-section (7) is a transitional provision consequential to sub-section (1).

Clause 13 inserts a proposed new sub-section 42 (5C) into the Principal Act which clearly empowers the Crown or a public authority to pay compensation in accordance with sub-section 42 (5B). Also inserts a proposed new sub-section 42 (5D) to deem land reserved by the Board of Works for its purposes to have been reserved by the Minister at the written request of the Board, and a proposed new sub-section 42 (5E) providing for the determination by the Governor in Council of any question which arises under sub-section 42 (5D) of the Principal Act or sub-section 21 (2) of this Act. Sub-section 43 (2) of the Principal Act is amended and a new sub-section 43 (4) is substituted and a proposed new sub-section (6) is inserted in consequence of amendments previously made to sub-sections 41 (3) and 42 (5B) and are relevant to the new sub-section 42 (5D). Proposed new sub-section 43 (5) clearly empowers an acquiring authority to pay compensation under sub-section 43 (4).

Clause 14 consequentially amends clause 57 of the Principal Act to substitute for references to the “Board of Works”, “the Director of Administration” and “planning scheme of the Board of Works”, references to “Minister”, “Secretary for Planning and Environment” and “Melbourne Metropolitan Planning Scheme”.

Clause 15 amends section 58 of the Principal Act to ensure that these provisions apply only to the Melbourne Metropolitan Planning Scheme and inserts a new sub-section (10A) to enable municipal councils to be party to an appeal where the Minister directed the council to grant or refuse a planning permit.

Clause 16 substitutes a proposed new section 59. This provides for the referral to the Board of Works of permit applications specified pursuant to proposed new section 56A, for the Board to make recommendations to the Minister and for the determination of applications after consideration of the Board’s recommendation by the Minister.

Clause 17 repeals section 59AA–59AD of the Principal Act which provides for the preparation, administration and enforcement of local development schemes and amends section 52A (4) (c) and (5).

Clause 18 paragraph (a) deletes the Table of Parts in the Principal Act to accord with current drafting procedures.

Paragraphs (b) and (c) amend section 24 of the Principal Act to make them apply to planning schemes and remove the requirement for the Minister for Planning and Environment to consult with the Board of Works prior to the revocation of permits previously issued by the Board.

Paragraph (d) amends section 28 (1w) to enable a municipality to provide access to a responsible authority to its rate records and the Board of Works to provide such access to the Minister.

Paragraphs (e) and (f) delete references to the Board of Works in sections 31 and 38 of the Principal Act.

Paragraph (g) substitutes references to “Minister” for “Board of Works” in section 54 of the Principal Act.

Division 3—Transitional Provisions Relating to the Transfer of Planning Functions

Clause 19 contains interpretations for this Division.

Clause 20 transfers the debts, liabilities, contractual arrangements, proceedings and continuing actions of the Board of Works as a responsible authority to the Minister and construes references to the Board of Works as references to the Minister.

Clause 21 contains savings and transitional provisions in respect of planning matters savings and including responsibility for compensation on land reserved for planning purposes formerly the responsibility of the Board of Works and now the responsibility of the Minister. Also provides that section 17 (1AC) of the Principal Act is not to apply to certain interim development orders of the Minister.

Clause 22 is a transitional arrangement for delegations made by the Board of Works which are to be deemed to have been made by the Minister.

Clause 23 is a transitional arrangement to enable the completion by the Minister of any Concept Plan prepared and exhibited by the Board of Works but not approved.

Division 4—Transitional Provisions Relating to Planning Schemes and Local Development Schemes

Clause 24 contains interpretations for this Division.

Clause 25 provides for the revocation of all local development schemes on the first anniversary of the day on which section 17 comes into operation.

Clause 26 provides for the revocation of all planning schemes (other than the Melbourne Metropolitan Planning Scheme) and interim development orders within the metropolitan area on the second anniversary of the day on which section 17 comes into operation.

Clause 27 is a transitional provision for making local development schemes exhibited prior to the commencement of section 17, including the making of agreements under section 52A of the Principal Act and for amending existing local development schemes. It also enables the Minister until the first anniversary of the day section 17 comes into operation to recommend to the Governor in Council amendments of the Melbourne Metropolitan Planning Scheme to incorporate the provisions of a local development scheme.

Clause 28 is a transitional provision until the second anniversary of the day section 17 comes into operation to enable the Minister to recommend to the Governor in Council amendments to the Melbourne Metropolitan Planning Scheme to incorporate the provisions of any other planning scheme or any interim development order in force in the metropolitan area.

Clause 29 this clause enables the Governor in Council to amend the Melbourne Metropolitan Planning Scheme in accordance with a recommendation made pursuant to clause 27 (2) or clause 28 and for the amendment to come into operation. Upon the making of an amendment the relevant planning scheme, interim development order or local development scheme shall be revoked.

Clause 30 is a transitional and savings provision allowing all matters of a continuing nature done under a revoked planning scheme or interim development order to be completed under the Melbourne Metropolitan Planning Scheme.

PART III.—AMENDMENTS TO THE MELBOURNE AND METROPOLITAN BOARD OF WORKS ACT 1958

Division 1—Introductory

Clause 31 defines the Melbourne and Metropolitan Board of Works Act as the principal Act for this Part.

Division 2—Changes to the Metropolitan Improvement Fund

Clause 32 inserts a new sub-section 219 (4) into the Principal Act to require the payment annually to the Treasurer of such amount as a contribution towards the cost of metropolitan planning as is determined by the Treasurer after consulting with the Minister. The Treasurer is to include in the annual budget papers a statement in respect of the amount paid to the Treasurer from the fund. Sections 220 and 221 of the Principal Act are consequentially amended to repeal references to the Town and Country Planning Act.

Division 3—General Amendments

Clause 33 amends sections 187 and 199 of the Principal Act to increase the amount which the Board of Works may borrow from \$2 000 000 000 to \$2 500 000 000.

Clause 34 substitutes section 201 of the Principal Act so that the interpretation of metropolitan area relates to a Schedule in the Principal Act instead of incorporating by reference the interpretation in the Town and Country Planning Act. The Governor in Council may vary the metropolitan area.

Clause 35 amends section 213 of the Principal Act to extend the area over which the Board of Works may provide places of amusement, recreation &c. to include lands which are contiguous to the metropolitan area.

Clause 36 inserts a proposed new section 213A into the Principal Act to enable the Board of Works with the consent of the council concerned to purchase lands reserved for recreational purposes of a municipality and sell that land to the council or exchange the land on an agreed basis.

Clause 37 inserts a proposed new section 216 into the Principal Act to enable the Board of Works to develop the bed banks and soil of rivers creeks and watercourses vested in it under Part X. of the Principal Act and contiguous land for recreational purposes. Also provides for the maintenance of works or facilities provided by the Board under this section including enabling the Board to enter into agreements.

Clause 38 substitutes section 217 of the Principal Act allowing the Board of Works to provide financial assistance to councils, public authorities or other bodies for provision or maintenance of land and facilities for recreational purposes.

Clause 39 inserts a proposed new section 238 into the Principal Act to allow the Governor in Council to appoint the Board of Works to be a Committee of Management for land reserved under section 14 of the *Crown Land (Reserves) Act 1978* and to place land reserved under section 4 of that Act under the control of the Board. Section 215 of the Principal Act is consequentially repealed.

Clause 40 inserts a proposed new section 242 into the Principal Act to enable the Board of Works to enter into agreements with respect to the maintenance and management of land on behalf of the Board. It also inserts a new section 242A enabling the Board to appoint advisory committees and consultative committees. Members of a committee may be paid as the Board may determine. Proposed new section 242B enables the Board for the purposes of carrying out its functions under Part X. of the Principal Act to recommend amendments to planning instruments to the Minister for Planning and Environment. Proposed new section 242C provides that the Board may prepare development plans in relation to its functions under Part VI. or Part X. of the Principal Act. Proposed new section 242D enables the Board for the purposes of sections 242B and 242C to undertake investigations, surveys and consultations.

Clause 41 contains amendments to Part XI. of the Principal Act consequential to the provisions of clause 7 of the Bill relating to Yarra Development. It also enables the Board of Works for the purpose of implementing a Concept Plan to carry out development and manage and maintain such development.

Clause 42 amends the Principal Act to create the office of deputy general manager and to make other changes to references to offices in the administration of the Board.

Clause 43 inserts a new Third Schedule into the Principal Act to describe the metropolitan area consequential to clause 34.

PART IV.—TRANSFER OF CERTAIN STAFF OF BOARD OF WORKS

Clause 44 contains interpretations for this Part.

Clause 45 provides for the Minister for Planning and Environment after consultation with the Minister administering the Melbourne and Metropolitan Board of Works Act to determine which officers of the Board of Works are to become officers of the public service.

Clause 46 provides for those officers determined pursuant to clause 45 to become public servants.

Clause 47 provides for transferred officers who are contributors to the Melbourne and Metropolitan Board of Works Superannuation Scheme to remain in that scheme unless they elect within six months to cease to be a contributor to that scheme and become a contributor to the State Superannuation Fund.

It also provides for the State to make payments to the trustees of the Board Superannuation Scheme for officers who transfer to the public service and remain in the Board Scheme.

Clause 48 makes similar provisions to clause 47 in respect of contributors to the Board Provident Fund and also provides that transferred officers may elect within six months to contribute to the Board Superannuation Scheme. Also enables contributors to the Board Provident Fund to become contributors to the Board Superannuation Scheme.

Clause 49 makes provision to gratuities beneficiaries under the Board Gratuity Scheme to elect to become contributors to the State Superannuation Fund.

It also provides for the State to contribute to payment of gratuity entitlements.

Clause 50 provides that transferred officers may continue to be members of the MMBW Sick and Funeral Fund.

Clause 51 provides that a married woman who is not a contributor to the Board Superannuation Scheme or the Board Provident Fund shall not become a contributor to the State Superannuation Fund unless she elects within six months to do so.

Clause 52 provides that transferred officers who continue to contribute to the Board Superannuation Scheme may retire at the same ages at which they could as officers or employees of the Board.

PART V.—TRANSITIONAL PROVISIONS CONCERNING CERTAIN LANDS OWNED BY BOARD OF WORKS

Clause 53 contains interpretations for this Part.

Clause 54 provides for the Minister administering the Town and Country Planning Act, the Minister administering the Melbourne and Metropolitan Board of Works Act the Minister administering the Transport Act and the Minister administering the Local Government Act to determine which land purchased by the Board of Works from the Metropolitan Improvement Fund is to be retained by the Board of Works and which land is to be transferred to the Crown or another public authority.

Clause 55 provides that after the making of a determination pursuant to clause 54, transfers by the Board of Works to a public authority are to be on the recommendation of the Minister for Property and Services and the Minister responsible for the public authority. Transfers by the Board to the Crown are to be on the recommendation of the Minister for Property and Services and the Minister for Conservation, Forests and Lands.

Clause 56 provides for the Treasurer to determine details of payment, if any, to be made to the Board of Works in respect of land transferred pursuant to clause 55.

Clause 57 makes provision with respect to any land which has not been transferred pursuant to clause 55 within three years. The Treasurer, the Minister for Property and Services and the Minister administering the Melbourne and Metropolitan Board of Works Act shall determine whether the Board of Works is to retain the land or whether it is to be transferred to the Crown or a particular public authority and the payments, if any, to be made to the Board of Works.

Clause 58 provides that the Registrar-General, the Registrar of Titles and any other person dealing with the Board of Works pursuant to this Part shall not be concerned to see whether the dealing is authorized by this Part or be affected by notice that it is not so authorized.

PART VI.—AMENDMENTS TO OTHER ACTS

Clause 59 amends section 14 of the *Geelong Regional Commission Act 1977* in consequence of amendments in Part II. of the Bill.

Clause 60 amends section 569B of the *Local Government Act 1958* in consequence of amendments in Part II. of the Bill.

Clause 61 amends section 17 of the *Historic Buildings Act 1981* in consequence of amendments in Part II. of the Bill.

Clause 62 amends the Town and Country Planning (Outdoor Advertising) Act 1975 in consequence of amendments in Part II. of the Bill.

Clause 63 amends section 14 of the Crown Land (Reserves) Act 1978 in consequence of amendments in Part III. of the Bill.

Clause 64 amends the Local Government (General Amendment) Act 1982 in consequence of amendments in Part II. of the Bill.