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**ELIZABETHAE II REGINAE**

A.D. 1987

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No. 47 of 1987

An Act to amend the Planning Act, 1982.

[Assented to 30 April 1987]

The Parliament of South Australia enacts as follows:

- Short title.           1. (1) This Act may be cited as the "Planning Act Amendment Act, 1987".
- (2) The Planning Act, 1982, is in this Act referred to as "the principal Act".
- Commencement.       2. This Act will come into operation on a day to be fixed by proclamation.
- Repeal of s. 4a and substitution of new section.       3. Section 4a of the principal Act is repealed and the following section is substituted:
- Concept of change in the use of land and continuation of an existing use.
- 4a. (1) For the purpose of determining whether a change in the use of land has occurred, the commencement or revival of a particular use of the land will, subject to subsection (2), be regarded as a change in the use of the land if—
- (a) the use supersedes a previous use of the land;
- (b) the commencement of the use or the revival of the use follows upon a period of non-use;
- or
- (c) the use is additional to a previously established use of the land which continues notwithstanding the commencement of the new use.
- (2) The revival of a use of land after a period of discontinuance will be regarded as the continuation of an existing use unless—
- (a) the period intervening between the discontinuance and revival of the use exceeds two years;
- (b) during the whole or a part of the period intervening between its discontinuance and revival, the use was superseded by some other use;

or

- (c) the relevant planning authority has made a declaration under subsection (3) and the declaration remains unrevoked.

(3) Where—

- (a) a particular use of land has been discontinued for a period of six months or more (being a period that extends up to the date on which the relevant planning authority acts under this subsection);

and

- (b) the revival of that use would in the opinion of the relevant planning authority have an adverse effect upon the proper development of the locality in which the land is situated,

the relevant planning authority 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 change in the use of the land.

(4) The owner or occupier may, within one month after service of a notice under subsection (3), or such extended period as may be allowed by the Tribunal, appeal to the Tribunal against the declaration.

(5) Upon an appeal under subsection (4), the Tribunal may confirm or revoke the declaration.

(6) For the purposes of this section, a particular use of land will be disregarded if the extent of the use is trifling or insignificant.

(7) In this section—

“relevant planning authority” means—

- (a) in relation to land that is not within the area of any council—the Commission;
- (b) in relation to land within the area of a council—the council or the Commission.

4. Section 41 of the principal Act is amended by striking out subsections (12), (13), (14) and (15) and substituting the following subsections:

Amendment of  
s. 41—  
Amendments to  
the Development  
Plan.

(12) Where the Minister has approved a supplementary development plan under subsection (11b) the Minister may refer the plan to the Joint Committee on Subordinate Legislation.

(13) If the Committee approves the plan, the Minister may refer the plan to the Governor.

(14) Before approving a plan the Committee should satisfy itself that adequate consideration has been given in the preparation of the plan to the interests of owners and occupiers of land who may wish to undertake development in the continuation of an existing use of land.

(15) If, at the expiration of 28 days from the day on which a supplementary development plan was referred to the Committee, the Committee has neither approved nor resolved not to approve the

plan, it will be conclusively presumed that the Committee has approved the plan.

(16) If the Committee resolves not to approve the plan, copies of the plan will be laid before both Houses of Parliament.

(17) If—

(a) the Committee resolves not to approve the plan;

but

(b) neither House of Parliament resolves, within six sitting days after the date of the copy of the plan being laid before the House, to disallow the plan,

the Minister may refer the plan to the Governor.

(18) Before referring a plan to the Governor under this section, the Minister may amend the plan in order to give effect to proposals for amendment made by the Joint Committee on Subordinate Legislation, or by either House of Parliament.

(19) Where a plan is referred to the Governor under this section the Governor may, by notice in the *Gazette*—

(a) declare the plan to be an authorized supplementary development plan;

and

(b) fix a day on which the plan will come into operation.

Amendment of  
s. 47—  
Conditions under  
which  
development may  
be undertaken.

5. Section 47 of the principal Act is amended by striking out subsection (8) and substituting the following subsection:

(8) No appeal lies against—

(a) a refusal of consent or concurrence under subsection (6);

or

(b) a condition attached to a consent under subsection (6),

except in relation to a proposed development that has, or will, become necessary by reason of a change, or a proposed change, in the law regulating an existing use of land.

Repeal of s. 56  
and substitution  
of new section.

6. Section 56 of the principal Act is repealed and the following sections are substituted:

Certain  
development may  
be undertaken in  
the continuation  
of an existing use.

56. (1) Division I does not prevent or otherwise affect the continuation of an existing use of land but, subject to subsection (2), a person is not entitled to undertake development for the purpose of the continuation of an existing use of land contrary to that Division.

(2) The consent of a planning authority is not required under Division I in relation to development of a prescribed kind undertaken for the purpose of the continuation of an existing use of land.

(3) Subject to subsection (4), planning authorization is not required under Division I in relation to a use of land declared by regulation to constitute development in a case where the use constitutes the continuation of an existing use of the land.

(4) Where a use referred to in subsection (3) involves an act or activity that constitutes development in its own right, planning

authorization is (subject to this Act) required under Division I in relation to that act or activity.

56a. (1) A development for which planning authorization has been granted may be undertaken and completed in accordance with that authorization notwithstanding an amendment to the Development Plan that takes effect after the date on which the application for the planning authorization was made.

Saving provision.

(2) An activity that becomes a development by virtue of an amendment to this Act, but was lawfully commenced within three years before the amendment took effect, may be continued and completed without any planning authorization, within three years after the date on which the amendment took effect.

(3) Where development of a particular kind may be undertaken without planning authorization an amendment to the Development Plan that prohibits, or requires consent to be obtained for, a development of that kind, does not prevent the continuation and completion, within three years after the date on which the amendment takes effect of a development of that kind lawfully commenced within three years before that date.

(4) Where—

(a) consent, approval or authorization is required under an Act or Acts (not being this Act) for a proposed activity or development;

and

(b) on the date on which an amendment to this Act takes effect or an amendment to the Development Plan that prohibits, or requires consent to be obtained for, a development of that kind takes effect, all the required consents, approvals and authorizations had been obtained but the activity or development had not been commenced,

the activity or development will, for the purposes of this section, be presumed to have commenced on the date of consent, approval or authorization or, where more than one was required, the date of the consent, approval or authorization that was last obtained.

(5) The relevant planning authority may, in order to avoid or reduce hardship, extend either or both of the limitation periods referred to in subsections (2) and (3).

(6) A reference in this section to an amendment to this Act extends to the making of a regulation declaring an activity to constitute development and the variation of such a regulation.

(7) In this section—

“activity” means an act or activity.

“relevant planning authority” means the relevant planning authority under Division I in relation to the development for which an extension of a limitation period is sought.

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

D. B. DUNSTAN, Governor