

# CONCURRENCE COPY

## BOTANY AND RANDWICK SITES DEVELOPMENT BILL, 1982

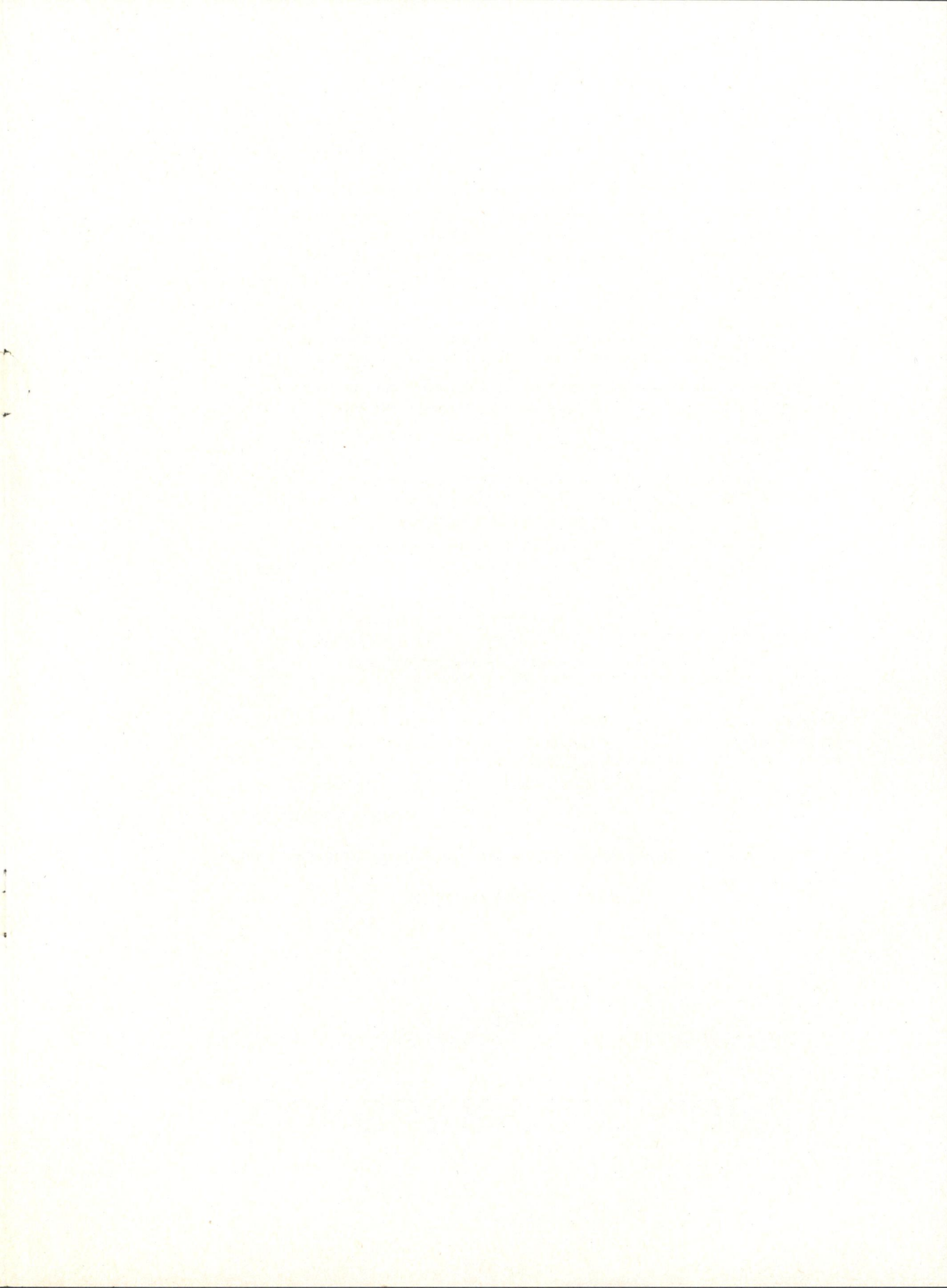
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### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are—

- (a) to validate, to the extent (if any) of any invalidity—
  - (i) certain environmental planning instruments under the Environmental Planning and Assessment Act, 1979, including, in particular, Botany Local Environmental Plan No. 5 and Randwick Local Environmental Plan No. 9;
  - (ii) certain development applications made with respect to the land to which those environmental planning instruments apply; and
  - (iii) the consents granted to those development applications by the relevant consent authorities,(clause 3);
- (b) with respect to certain legal proceedings relating to the validity of those environmental planning instruments and other matters—
  - (i) to terminate those proceedings; and
  - (ii) to provide that, except in so far as the parties to those proceedings otherwise agree, each party to those proceedings shall bear his own costs,(clause 4);
- (c) to repeal the General Motors–Holden's Agreement Ratification Act, 1938, and make certain provisions consequent on the repeal (clause 5);
- (d) to require a consent authority, in determining a development application made with respect to the land to which Randwick Local Environmental Plan No. 9 applies, to take into consideration the provisions of a concept plan applying to that land (clause 6);
- (e) to enable the Minister to specify certain land within the Municipality of Botany or the Municipality of Randwick as the site of a bus depot and to enable the development of that site as a bus depot by the Urban Transit Authority without further consent (clause 7); and
- (f) to make other provisions of a minor, consequential or ancillary nature.





**BOTANY AND RANDWICK SITES DEVELOPMENT BILL,  
1982**

No. , 1982.

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**A BILL FOR**

An Act to validate certain environmental planning instruments, development applications and development consents under the Environmental Planning and Assessment Act, 1979; to terminate certain proceedings; to repeal the General Motors—Holden's Agreement Ratification Act, 1938; to facilitate the erection of a bus depot within the Municipality of Botany or the Municipality of Randwick; and for other purposes.

[MR BEDFORD—26 *August*, 1982.]

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*Botany and Randwick Sites Development.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**5 Short title.**

**1.** This Act may be cited as the "Botany and Randwick Sites Development Act, 1982".

**Interpretation.**

**2. (1)** In this Act—

10 "planning instruments" means—

- 15 (a) Interim Development Order No. 19—Municipality of Botany, published in Gazette No. 104 of 16th September, 1977, and any instruments published in the Gazette before 11th June, 1982, and amending or purporting to amend that Order;
- (b) Randwick Planning Scheme Ordinance, published in Gazette No. 46 of 28th April, 1978, and any instruments published in the Gazette before 15th June, 1982, and amending or purporting to amend that Ordinance;
- 20 (c) Botany Local Environmental Plan No. 5, published in Gazette No. 81 of 11th June, 1982; and
- (d) Randwick Local Environmental Plan No. 9, published in Gazette No. 82 of 15th June, 1982;

25 "Principal Act" means the Environmental Planning and Assessment Act, 1979;

"relevant instruments" means Botany Local Environmental Plan No. 5 and Randwick Local Environmental Plan No. 9.

**(2)** Expressions used in this Act shall, unless the contrary intention appears, have the same meanings respectively as they have in the Principal  
30 Act.



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*Botany and Randwick Sites Development.*

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**Validation.**

**3. (1)** To the extent (if any) of any invalidity, each planning instrument shall be deemed to have been validly made, and—

5 (a) shall be deemed to have had, during the period that commenced on the day on which it was made or purported to be made and ended immediately before the date of assent to this Act; and

(b) shall have, on and after the date of assent to this Act, the same force and effect as it would have had if—

10 (c) all the planning instruments had been validly made on the respective days on which they were made or purported to be made; and

(d) without affecting the generality of the foregoing provisions of this subsection—

15 (i) all conditions and preliminary steps precedent to the making of the planning instruments had been complied with and performed; and

(ii) the planning instruments formed part of this Act and this Act had been in force at all relevant times.

**(2)** To the extent (if any) of any invalidity—

20 (a) the development applications made or purported to be made under the Principal Act, and dated 31st May, 1982, and made by Westfield Developments Pty. Limited to Botany Municipal Council in relation to land to which Botany Local Environmental Plan No. 5 applies, are validated; and

25 (b) the grants of consent to those applications, either unconditionally or subject to conditions, before the date of assent to this Act are validated,

and no appeals or other proceedings lie in respect of the determination of that Council with respect to any of those applications, but nothing in this subsection prevents the applicant from appealing under section 97 of the 30 Principal Act with respect to any such determination.

**(3)** Subsection (1) has effect with respect to a planning instrument only in so far as the instrument applies or purports to apply to any of the land to which the relevant instruments apply or purport to apply.

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*Botany and Randwick Sites Development.*

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(4) Without prejudice to the generality of the foregoing provisions of this section, this section has effect in relation to any act, matter or thing and in relation to any person in respect of any act, matter or thing, whether that act, matter or thing—

- 5 (a) occurred or occurs, arose or arises or came or comes into existence;  
or  
(b) was or is the subject of proceedings that were or are commenced, before, on or after the date of assent to this Act.

**Termination of proceedings.**

10 4. (1) Any proceedings in any court (including the proceedings in Gwynvill Southpoint Pty. Limited, Burns Philp Trustee Company (Canberra) Limited and Australian Mutual Provident Society v. The Council of the Municipality of Botany, the Minister for Planning and Environment, R. B. Smyth, Westfield Developments Pty. Limited and W.D.  
15 & H.O. Wills (Australia) Limited, No. 40075 of 1982, in the Land and Environment Court) pending immediately before the date of assent to this Act in relation to—

- (a) any of the planning instruments in so far as they apply to any of the land to which the relevant instruments apply;  
20 (b) any development application or grant of consent referred to in section 3 (2); or  
(c) any associated matters,  
are terminated.

(2) Except in so far as the parties to any proceedings referred to in  
25 subsection (1) otherwise agree, the costs of or incidental to the proceedings incurred by a party to the proceedings shall be borne by the party, and shall not be the subject of any contrary order of any court.

(3) Notwithstanding anything in subsection (2), the Treasurer may, in his absolute discretion, pay from the Consolidated Revenue Fund to any  
30 party to any proceedings referred to in subsection (1) the whole or any part of any amount that the Attorney General, on application made to him in



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*Botany and Randwick Sites Development.*

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writing by or on behalf of that party, certifies as being the costs of or incidental to the proceedings reasonably incurred by that party up to the time of their termination by subsection (1).

(4) Nothing in subsection (1) applies to an appeal under section 97  
5 of the Principal Act.

**Repeal of Act No. 34, 1938.**

5. (1) The General Motors-Holden's Agreement Ratification Act, 1938, is repealed.

(2) The restrictions referred to in section 7 of the General Motors-  
10 Holden's Agreement Ratification Act, 1938, are extinguished.

(3) The Registrar-General may make, in any register kept by him or in any instrument, document or record, such recordings, entries or notations consequent on the enactment of this section as he thinks fit.

**Concept plan.**

15 6. (1) In this section, "concept plan" means—

(a) the instrument (including any accompanying maps or plans) entitled "RALEIGH PARK RESIDENTIAL DEVELOPMENT, KENSINGTON, N.S.W. CONCEPT PLAN" and catalogued in the records of the office of the Department of Environment and  
20 Planning as Plan No. 4-16-5; or

(b) any instrument (including any accompanying maps or plans) approved under subsection (5),

with any amendments, alterations or variations approved under that subsection.

25 (2) In determining a development application made in respect of any land to which Randwick Local Environmental Plan No. 9 applies, the consent authority shall, in addition to the matters that by section 90 of the Principal Act are to be taken into consideration, take into consideration the provisions of the concept plan in so far as they apply to the land to  
30 which the application relates.

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*Botany and Randwick Sites Development.*

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5 (3) Any provisions of an Act (other than this Act and the Principal Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made shall, if the concept plan so provides, and to the extent (if any) specified in the concept plan, not apply to or in respect of the land to which Randwick Local Environmental Plan No. 9 applies.

(4) A development control plan under section 72 of the Principal Act has no force or effect to the extent that it is inconsistent with the concept plan.

10 (5) The Minister may, from time to time—

(a) approve any amendment, alteration or variation of the concept plan, as in force from time to time; and

15 (b) revoke the concept plan and, if he thinks fit, approve another instrument (including any accompanying maps or plans) as the concept plan for the purposes of this section.

(6) The concept plan shall be available for public inspection, without charge, at the office of the Department of Environment and Planning during ordinary office hours.

**Bus depot.**

20 7. (1) The Minister may, by order published in the Gazette, declare that such land within the Municipality of Botany or the Municipality of Randwick or both as is specified or described in the order may be developed by the Urban Transit Authority, or by any other persons nominated in the order, for the purpose of a bus depot.

25 (2) Notwithstanding anything in any planning instrument or in any other environmental planning instrument, the Urban Transit Authority, and any other persons nominated pursuant to subsection (1), or any of them, may carry out development for the purpose of a bus depot, without the necessity for consent under the Principal Act being obtained therefor, on the 30 land for the time being specified or described pursuant to subsection (1).



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*Botany and Randwick Sites Development.*

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- (3) The provisions of subsection (2) shall—
- (a) to the extent (if any) that they apply in relation to land within the Municipality of Botany—be deemed to be contained in Interim Development Order No. 19—Municipality of Botany; and
  - 5 (b) to the extent (if any) that they apply in relation to land within the Municipality of Randwick—be deemed to be contained in Randwick Planning Scheme Ordinance.

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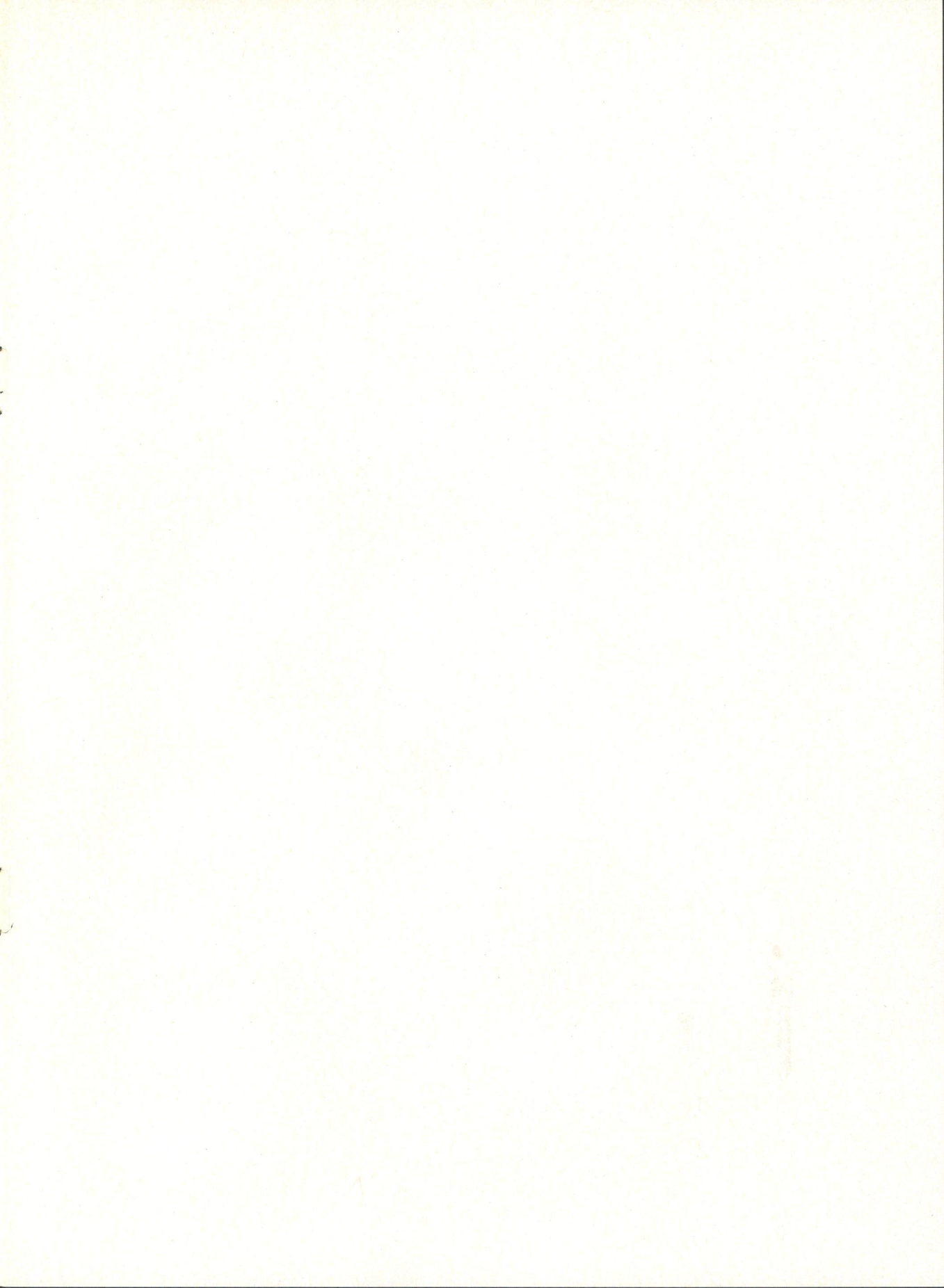
BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982

(40c)











**BOTANY AND RANDWICK SITES DEVELOPMENT ACT,  
1982, No. 99**

**New South Wales**



ANNO TRICESIMO PRIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 99, 1982.**

An Act to validate certain environmental planning instruments, development applications and development consents under the Environmental Planning and Assessment Act, 1979; to terminate certain proceedings; to repeal the General Motors–Holden’s Agreement Ratification Act, 1938; to facilitate the erection of a bus depot within the Municipality of Botany or the Municipality of Randwick; and for other purposes. [Assented to, 29th September, 1982.]

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*Botany and Randwick Sites Development.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

1. This Act may be cited as the "Botany and Randwick Sites Development Act, 1982".

**Interpretation.**

2. (1) In this Act—

"planning instruments" means—

- (a) Interim Development Order No. 19—Municipality of Botany, published in Gazette No. 104 of 16th September, 1977, and any instruments published in the Gazette before 11th June, 1982, and amending or purporting to amend that Order;
- (b) Randwick Planning Scheme Ordinance, published in Gazette No. 46 of 28th April, 1978, and any instruments published in the Gazette before 15th June, 1982, and amending or purporting to amend that Ordinance;
- (c) Botany Local Environmental Plan No. 5, published in Gazette No. 81 of 11th June, 1982; and
- (d) Randwick Local Environmental Plan No. 9, published in Gazette No. 82 of 15th June, 1982;

"Principal Act" means the Environmental Planning and Assessment Act, 1979;

"relevant instruments" means Botany Local Environmental Plan No. 5 and Randwick Local Environmental Plan No. 9.

(2) Expressions used in this Act shall, unless the contrary intention appears, have the same meanings respectively as they have in the Principal Act.



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*Botany and Randwick Sites Development.*

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**Validation.**

**3. (1)** To the extent (if any) of any invalidity, each planning instrument shall be deemed to have been validly made, and—

(a) shall be deemed to have had, during the period that commenced on the day on which it was made or purported to be made and ended immediately before the date of assent to this Act; and

(b) shall have, on and after the date of assent to this Act, the same force and effect as it would have had if—

(c) all the planning instruments had been validly made on the respective days on which they were made or purported to be made; and

(d) without affecting the generality of the foregoing provisions of this subsection—

(i) all conditions and preliminary steps precedent to the making of the planning instruments had been complied with and performed; and

(ii) the planning instruments formed part of this Act and this Act had been in force at all relevant times.

**(2)** To the extent (if any) of any invalidity—

(a) the development applications made or purported to be made under the Principal Act, and dated 31st May, 1982, and made by Westfield Developments Pty. Limited to Botany Municipal Council in relation to land to which Botany Local Environmental Plan No. 5 applies, are validated; and

(b) the grants of consent to those applications, either unconditionally or subject to conditions, before the date of assent to this Act are validated,

and no appeals or other proceedings lie in respect of the determination of that Council with respect to any of those applications, but nothing in this subsection prevents the applicant from appealing under section 97 of the Principal Act with respect to any such determination.

**(3)** Subsection (1) has effect with respect to a planning instrument only in so far as the instrument applies or purports to apply to any of the land to which the relevant instruments apply or purport to apply.

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*Botany and Randwick Sites Development.*

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(4) Without prejudice to the generality of the foregoing provisions of this section, this section has effect in relation to any act, matter or thing and in relation to any person in respect of any act, matter or thing, whether that act, matter or thing—

(a) occurred or occurs, arose or arises or came or comes into existence;  
or

(b) was or is the subject of proceedings that were or are commenced, before, on or after the date of assent to this Act.

**Termination of proceedings.**

4. (1) Any proceedings in any court (including the proceedings in Gwynvill Southpoint Pty. Limited, Burns Philp Trustee Company (Canberra) Limited and Australian Mutual Provident Society v. The Council of the Municipality of Botany, the Minister for Planning and Environment, R. B. Smyth, Westfield Developments Pty. Limited and W.D. & H.O. Wills (Australia) Limited, No. 40075 of 1982, in the Land and Environment Court) pending immediately before the date of assent to this Act in relation to—

(a) any of the planning instruments in so far as they apply to any of the land to which the relevant instruments apply;

(b) any development application or grant of consent referred to in section 3 (2); or

(c) any associated matters,

are terminated.

(2) Except in so far as the parties to any proceedings referred to in subsection (1) otherwise agree, the costs of or incidental to the proceedings incurred by a party to the proceedings shall be borne by the party, and shall not be the subject of any contrary order of any court.

(3) Notwithstanding anything in subsection (2), the Treasurer may, in his absolute discretion, pay from the Consolidated Revenue Fund to any party to any proceedings referred to in subsection (1) the whole or any part of any amount that the Attorney General, on application made to him in



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*Botany and Randwick Sites Development.*

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writing by or on behalf of that party, certifies as being the costs of or incidental to the proceedings reasonably incurred by that party up to the time of their termination by subsection (1).

(4) Nothing in subsection (1) applies to an appeal under section 97 of the Principal Act.

**Repeal of Act No. 34, 1938.**

5. (1) The General Motors-Holden's Agreement Ratification Act, 1938, is repealed.

(2) The restrictions referred to in section 7 of the General Motors-Holden's Agreement Ratification Act, 1938, are extinguished.

(3) The Registrar-General may make, in any register kept by him or in any instrument, document or record, such recordings, entries or notations consequent on the enactment of this section as he thinks fit.

**Concept plan.**

6. (1) In this section, "concept plan" means—

- (a) the instrument (including any accompanying maps or plans) entitled "RALEIGH PARK RESIDENTIAL DEVELOPMENT, KENSINGTON, N.S.W. CONCEPT PLAN" and catalogued in the records of the office of the Department of Environment and Planning as Plan No. 4-16-5; or
- (b) any instrument (including any accompanying maps or plans) approved under subsection (5),

with any amendments, alterations or variations approved under that subsection.

(2) In determining a development application made in respect of any land to which Randwick Local Environmental Plan No. 9 applies, the consent authority shall, in addition to the matters that by section 90 of the Principal Act are to be taken into consideration, take into consideration the provisions of the concept plan in so far as they apply to the land to which the application relates.

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*Botany and Randwick Sites Development.*

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(3) Any provisions of an Act (other than this Act and the Principal Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made shall, if the concept plan so provides, and to the extent (if any) specified in the concept plan, not apply to or in respect of the land to which Randwick Local Environmental Plan No. 9 applies.

(4) A development control plan under section 72 of the Principal Act has no force or effect to the extent that it is inconsistent with the concept plan.

(5) The Minister may, from time to time—

- (a) approve any amendment, alteration or variation of the concept plan, as in force from time to time; and
- (b) revoke the concept plan and, if he thinks fit, approve another instrument (including any accompanying maps or plans) as the concept plan for the purposes of this section.

(6) The concept plan shall be available for public inspection, without charge, at the office of the Department of Environment and Planning during ordinary office hours.

**Bus depot.**

7. (1) The Minister may, by order published in the Gazette, declare that such land within the Municipality of Botany or the Municipality of Randwick or both as is specified or described in the order may be developed by the Urban Transit Authority, or by any other persons nominated in the order, for the purpose of a bus depot.

(2) Notwithstanding anything in any planning instrument or in any other environmental planning instrument, the Urban Transit Authority, and any other persons nominated pursuant to subsection (1), or any of them, may carry out development for the purpose of a bus depot, without the necessity for consent under the Principal Act being obtained therefor, on the land for the time being specified or described pursuant to subsection (1).



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*Botany and Randwick Sites Development.*

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- (3) The provisions of subsection (2) shall—
- (a) to the extent (if any) that they apply in relation to land within the Municipality of Botany—be deemed to be contained in Interim Development Order No. 19—Municipality of Botany; and
  - (b) to the extent (if any) that they apply in relation to land within the Municipality of Randwick—be deemed to be contained in Randwick Planning Scheme Ordinance.

*In the name and on behalf of Her Majesty I assent to this Act.*

J. A. ROWLAND,  
*Governor.*

*Government House,  
Sydney, 29th September, 1982.*

