



ROSETTA LANDSLIP ACT 1992

No. 48 of 1992

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ROSETTA LANDSLIP ACT 1992

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AN ACT to make provision for the purchase and clearance of certain land affected by earth movements at Rosetta in the City of Glenorchy

[Royal Assent 21 December 1992]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Rosetta Landslip Act 1992*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Interpretation

3—In this Act, unless the context otherwise requires—

“**advisory committee**” means the committee established under section 5;

“**affected area**” means the area near the junctions of Officer Street, Hone Road and Crosby Road in Rosetta in the City of Glenorchy;

“**affected property**” means a property in the affected area that is within an area declared to be an A landslip area by an order-in-council made under section 431A of the *Local Government Act 1962*, and includes any improvements to any such property;

“**application**” means an application made to the Minister by an eligible owner for the Crown to purchase an affected property owned by that person;

“**the Bank**” means the bank registered under the *Trustee Banks Act 1985* and trading as the Trust Bank and previously trading as, variously, the Hobart Savings Bank, the Savings Bank of Tasmania and the SBT Bank;

“**the Council**” means the Mayor, Aldermen and Citizens of the City of Glenorchy;

“**eligible owner**” means a person who is the owner of the fee simple of an affected property but does not include—

(a) the Crown, the Bank or the Council; or

(b) a person who has instituted proceedings against the Crown, the Council or the Bank or a person acting on behalf of the Crown, the Council or the Bank in respect of any damage suffered or alleged to have been suffered as a result of any actual or potential earth movement in the affected area; or

(c) a person, one of whose predecessors in title was a person referred to in paragraph (b);

“**the Fund**” means the Rosetta Landslip Trust Fund established under section 12;

“**requisition**” means a notice requesting an eligible owner to provide the advisory committee with information in relation to an application made by that eligible owner;

“**send**” means send by post.

Act to bind Crown

4—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

Advisory committee

5—(1) There is established an advisory committee consisting of—

- (a) a presiding member, being a person nominated by the Department; and
- (b) the following members:—
 - (i) the Valuer-General or a person nominated by the Valuer-General;
 - (ii) the Secretary of the responsible Department in relation to the *Public Account Act 1986* or a person nominated by that Secretary;
 - (iii) a person appointed by the Council;
 - (iv) a person appointed by the Bank;
 - (v) a person appointed by the eligible owners.

(2) An eligible owner is not eligible to be a member of the advisory committee.

(3) The Department is to make a person available to the advisory committee to carry out the duties of secretary to the committee.

(4) The committee is to regulate its proceedings in such manner as it considers will best achieve the purposes of this Act.

Duty of advisory committee

6—(1) It is the duty of the advisory committee to advise the Minister on whether, in its opinion—

- (a) a dwelling on an affected property has become uninhabitable by virtue of earth movements; or
- (b) an eligible owner who owned his or her affected property at the time it became an affected property is suffering or is likely to suffer special financial hardship by virtue of actual or potential earth movements.

(2) The advisory committee must—

- (a) in making an assessment for the purposes of subsection (1) (a)—have regard to the criteria set out in Part 2 of Schedule 1; and
- (b) in making an assessment for the purposes of subsection (1) (b)—have regard to the criteria set out in Part 3 of Schedule 1.

(3) For the purposes of subsection (2), the advisory committee is not to regard any single criterion as being necessarily decisive.

(4) The advisory committee may at any time advise the Minister in respect of any matter arising under this Act and must do so if so requested by the Minister.

(5) For the purposes of carrying out its duty, the advisory committee may send requisitions to any eligible owner who makes an application.

Time limit for advising on applications

7—(1) In this section “**prescribed period**”, in relation to an application, means the period commencing on the day on which a requisition is posted to the eligible owner who made the application and ending on the day on which the information sought by the requisition is received by the advisory committee.

(2) Subject to subsection (3), if the advisory committee is required to carry out its duty under section 6 (1) in relation to an application, the committee must advise the Minister on the application within the period of 30 days immediately after the day on which it is received by the committee.

(3) The 30 day period referred to in subsection (2) is exclusive of any prescribed period.

Minister may make offers to purchase affected properties

8—(1) The Minister may make offers to purchase affected properties in accordance with this section.

(2) The Minister—

- (a) must, within the period of 30 days immediately after receiving the advice of the advisory committee given in accordance with section 6 (1) in respect of an application; and

- (b) may, at any time after receiving the advice of the advisory committee given in accordance with that section in any other case—

determine whether or not to make the relevant eligible owner an offer to purchase the affected property owned by that person.

(3) If the Minister determines to make an eligible owner an offer to purchase an affected property the Minister must—

- (a) make that offer in writing; and
(b) send it to that person within the period of 14 days immediately after the day on which the Minister makes that determination.

(4) If the Minister determines not to make an offer to purchase an affected property that is the subject of an application, the Minister must send notice of the determination to the eligible owner who made the application within the period of 14 days immediately after the day on which the Minister makes that determination.

Terms and conditions of offers

9—(1) In this section “**assessed value**”, in relation to an affected property, means the value that the property (exclusive of any chattels) would have had if—

- (a) any dwelling or other structure on the property were undamaged by earth movements; and
(b) the value of the property and other properties in the area were not affected by actual or potential earth movements—

as assessed by the Valuer-General.

(2) An offer to purchase property in accordance with section 8 is to provide—

- (a) that the purchase price is to be 75% of the assessed value of the property at the date of the offer; and

- (b) that the property is to be transferred by the owner free of any mortgage or other charge and free of any lease or licence giving any person the right to occupy the whole or any part of the property (other than necessary easements for services to other properties)—

and may be made subject to such other terms and conditions, including conditions providing for the salvaging of materials, fixtures and fittings from the property, as the Minister considers appropriate.

Affected property may be purchased, &c., by Crown

10—(1) If an offer to purchase an affected property made under section 8 is accepted, the Crown must purchase the property in accordance with the offer.

(2) Notwithstanding the *Crown Lands Act 1976*, if, as a result of an offer made and accepted in accordance with this Act, an affected property is purchased by the Crown, the Crown may sell or otherwise transfer that property to the Council on such terms and conditions as agreed between the Crown and the Council.

Covenants to be of no effect

11—(1) A covenant—

- (a) restricting the use of an affected property; or
- (b) requiring the owner of an affected property to undertake any work or other obligation—

ceases to have effect immediately before any purchase of the property by the Crown under section 10 (1).

(2) Subsection (1) does not apply in respect of a covenant relating to the provision of necessary services to other properties.

Rosetta Landslip Trust Fund

12—(1) There is established in the Special Deposits and Trust Fund established by the *Public Account Act 1986* a fund known as the Rosetta Landslip Trust Fund.

(2) There is to be paid into the Fund money to be used in respect of earth movements in the affected area.

(3) There is to be paid out of the Fund—

- (a) the cost of purchasing an affected property in accordance with this Act; and
- (b) the cost of demolishing any building or other structure on any affected property, and any costs incurred to make a property purchased in accordance with this Act safe; and
- (c) any payment made in accordance with any agreement made between an eligible owner, the Crown, the Council and the Bank; and
- (d) in respect of monies in the Fund to which the Bank has not been a contributor—any payment made in accordance with any agreement made between the Crown and the Council; and
- (e) any other amount agreed by the Crown, the Council and the Bank.

(4) Notwithstanding the *Local Government Act 1962*, the Council is authorized to contribute to the Fund.

(5) Notwithstanding the *Trustee Banks Act 1985*, the Bank has power to contribute to the Fund.

(6) Contributions by the Crown to the Fund are, by this section, appropriated against the Consolidated Fund without further appropriation.

Indemnity

13—(1) If the Crown purchases an affected property in accordance with section 10 (1) the person from whom the property was purchased has no right of action against—

- (a) the Crown; or
- (b) the Council; or
- (c) the Bank; or
- (d) a person acting on behalf of the Crown, the Council or the Bank—

in respect of any damage suffered by that person as a result of any actual or potential earth movement on the affected property or on any other property.

(2) A person has no right of action against—

- (a) the Crown; or

- (b) the Council; or
- (c) the Bank; or
- (d) a person acting on behalf of the Crown, the Council or the Bank—

in respect of any action taken in good faith by, or on behalf of, the Crown, the Council or the Bank to survey, remedy, prevent or alleviate any actual or potential earth movement in the affected area, and whether taken before or after the commencement of this Act.

Exemption from stamp duty

14—An eligible owner—

- (a) whose affected property is purchased by the Crown in accordance with section 10 (1); and
- (b) who enters into an agreement to purchase a replacement property within the period of 12 months immediately after the completion of the purchase of that affected property by the Crown—

is not required to pay any duty under the *Stamp Duties Act 1931* in respect of the purchase of that replacement property or in respect of any mortgage agreement entered into by that eligible owner in connection with that purchase.

Regulations

15—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may prescribe any matters that the advisory committee must have regard to, either generally or in relation to specified circumstances, in advising the Minister under the Act.

Saving

16—If, before the commencement of this Act, an offer to purchase a property in the affected area had been made by the Crown that offer, whether or not accepted before the commencement of this Act, has effect as if it were an offer to purchase the property made in accordance with this Act.

Administration of Act

17—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Economic Development; and
- (b) the Department responsible to the Minister for Economic Development in relation to the administration of this Act is the Tasmanian Development Authority.

SCHEDULE 1

Section 6 (2)

ASSESSMENT CRITERIA

PART 1

INTERPRETATION

In this Schedule—

“building regulations” means the *Building Regulations 1978*;

“government” includes any body or authority, whether incorporated or not, that is established or constituted by or under an enactment of the State or of the Commonwealth;

“services” includes telephone, electricity, drainage, sewerage and stormwater services.

PART 2

ASSESSMENT CRITERIA IN RESPECT OF SECTION 6 (1) (a)

1. Structural Safety

(a) Has the dwelling on the affected property suffered such structural damage as a result of earth movements that it is no longer safe to be used as a residence?

(b) Has the dwelling on the affected property suffered such structural damage as a result of earth movements that, by reason of the rate or nature of the earth movements, it is in imminent danger of becoming unsafe to be used as a residence?

(c) Does the dwelling on the affected property substantially fail to comply with the building regulations generally?

(d) Has the Council made a declaration or order, or issued a notice, under any of its statutory powers—

(i) in relation to the structural safety or habitability of the affected property; or

(ii) by reason of any contribution the affected property is making, or is likely to make, to the rate of the landslip—

and, if so, what is the nature and effect of that declaration, order or notice?

2. Suitability for occupancy

- (a) Is there any evidence that the occupants of, or visitors to, the affected property are exposed to a risk of personal injury as a result of damage caused to the property by earth movements?
- (b) Does the dwelling on the affected property substantially fail, as a result of damage caused by earth movements, to comply with the building regulations relating to fire safety?
- (c) Is the dwelling on the affected property incapable, as a result of damage caused by earth movements, of being secured by standard security measures such as the locking of doors and windows?
- (d) Is the dwelling on the affected property weatherproof?
 - (i) Do the doors and windows close?
 - (ii) Is the cladding structurally intact?
 - (iii) Is the roofing intact?
- (e) What is the condition of services to the affected property?
 - (i) Are the services intact and usable?
 - (ii) Are any services that have been damaged as a result of earth movements repairable at reasonable cost?

3. Health

- (a) Is there any evidence that the occupants of, or visitors to, the affected property are exposed to a health risk as a result of damage caused to the property by earth movements?
 - (b) Is there any evidence that the owner of the property, or any member of the owner's immediate family, is suffering emotional stress as a result of the earth movements and their effects?
 - (c) Does the dwelling on the affected property substantially fail, as a result of damage caused by earth movements, to comply with the building regulations relating to sanitation, sewerage and drainage and light and ventilation?
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PART 3

ASSESSMENT CRITERIA IN RESPECT OF SECTION 6 (1) (b)

1. Financial

- (a) What would it cost to reinstate the dwelling on the property as related to the estimated period of time that it would subsequently be suitable for use as a residence before suffering further major damage from earth movements?
- (b) Is the owner being prevented from taking up employment or business opportunities as a result of being unable to sell or lease the property?
- (c) Does the property have to be sold for pressing family, social or business reasons?
- (d) What is the cost to government of maintaining services to the property?