

TASMANIA.

TOWN AND COUNTRY PLANNING ACT 1944.

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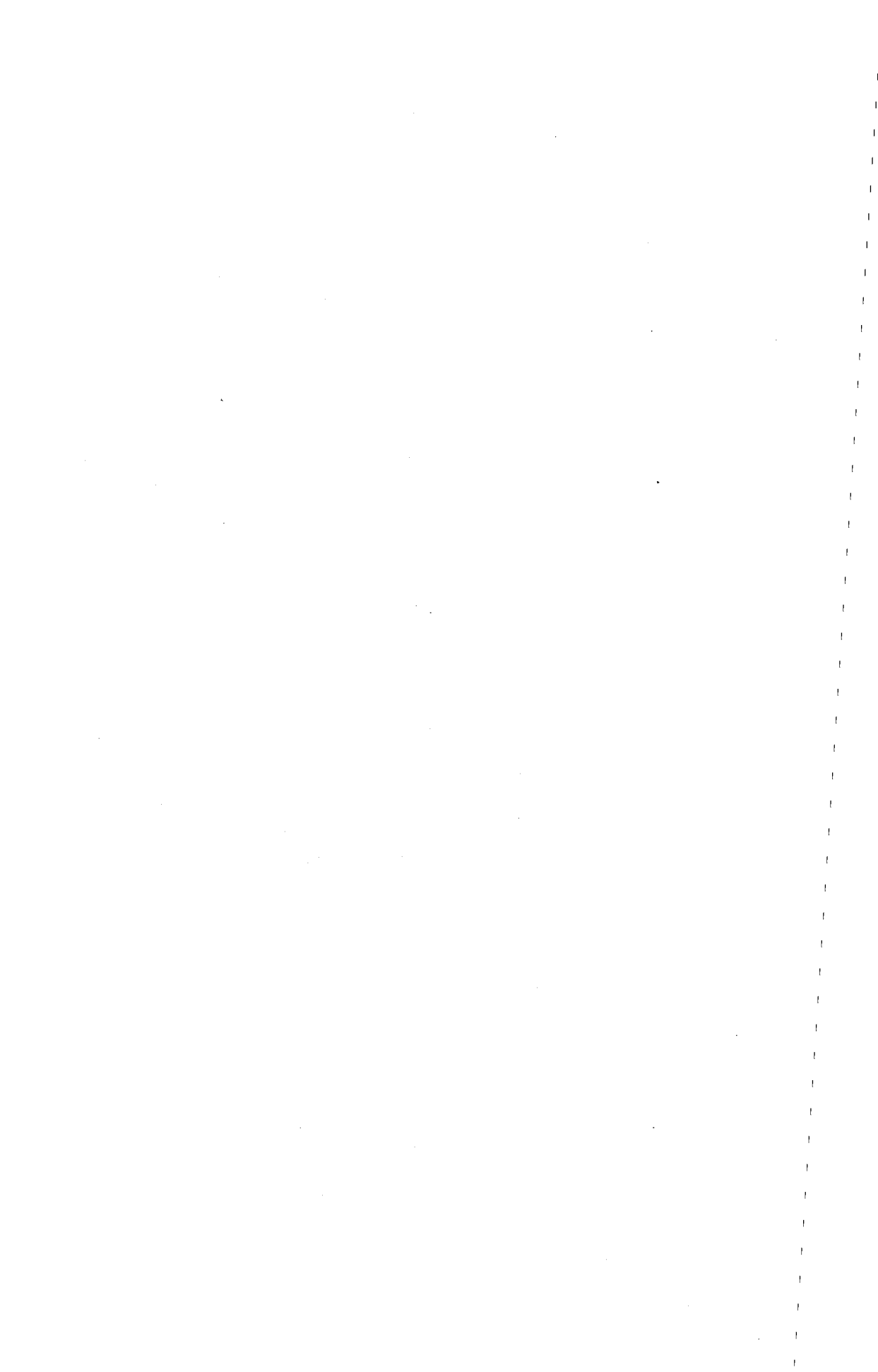
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1944.

ANNO SEPTIMO ET OCTAVO
 GEORGII VI. REGIS.

No. 99.

AN ACT to authorise the making and implementing of schemes with respect to the planning and development of land for urban, suburban, and rural purposes in certain matters. [14 July, 1944.]

A.D.
 1944

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:—

PART I.
 PRELIMINARY.

1—(1) This Act may be cited as the *Town and Country Planning Act 1944*. Short title and commencement.

(2) This Act shall commence on a date to be fixed by proclamation.

2 This Act shall apply to such parts of the State as may from time to time be specified by proclamation as from such dates as may be specified in the proclamation. Application of Act.

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Interpreta-
tion.

3 In this Act, unless the contrary intention appears, "Commissioner" means the Commissioner for Town and Country Planning appointed pursuant to this Act.

PART II.
**POWERS AND DUTIES OF COMMISSIONER FOR TOWN
AND COUNTRY PLANNING.**
Appointment
of Commis-
sioner.

4—(1) For the purposes of this Act, the Governor may appoint a Commissioner for Town and Country Planning who shall be a person of special ability and experience in town and country planning.

(2) The Commissioner—

- (a) shall hold office for such term not exceeding five years as may be specified in the instrument of appointment;
- (b) shall devote the whole of his time to the duties of his office and shall be paid by way of remuneration such amount as the Governor may determine, and as may be specified in the instrument of appointment, and such remuneration shall not be reduced during the period for which he is appointed, except with the consent of the Commissioner;
- (c) shall be entitled to such leave of absence for recreation and other purposes as may be prescribed;
- (d) shall not be subject to the provisions of the *Public Service Act 1923**; and
- (e) may be removed from office at any time by the Governor for misconduct, incompetence, neglect of duty or disability, or if he becomes bankrupt or applies to take or takes the benefit of any Act relating to bankruptcy or insolvency, or compounds with his creditors, or if he in any way participates in or claims to be entitled to participate in the profit of, or in any benefit or emolument arising from, any contract or agreement made by or on behalf of the State or any local authority.

Power to
summon and
examin
witnesses.

5 The Commissioner, when making any investigation or inquiry or upon the hearing of any claim or objection under this Act, shall have the same powers and authorities as if a commission in respect thereof had been issued to him by the Governor under Division II. of Part II. of the *Evidence Act 1910.*†

* 13 Geo. V. No. 25, as amended by 18 Geo. V. No. 18, 26 Geo. V. No. 61, 2 Geo. VI. No. 28, 4 Geo. VI. No. 18, 5 Geo. VI. No. 6, 5 Geo. VI. No. 64, 6 Geo. VI. No. 9, 6 Geo. VI. No. 54, 7 Geo. VI. No. 18, and by Statute Law Revision. (See Reprint of Statutes, Vol. VI., page 261.)

† 1 Geo. V. No. 20, as amended by 2 Geo. V. No. 17, 11 Geo. V. No. 34, 12 Geo. V. No. 3, 15 Geo. V. No. 35, 23 Geo. V. No. 58, 25 Geo. V. No. 21, 6 Geo. VI. No. 64, 7 Geo. VI. No. 40, and by Statute Law Revision. (See Reprint of Statutes, Vol. III., page 748.)

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6 The Commissioner may, with the consent of the Minister having the administration of the Department concerned, make use of the services of any officer or employee of any Department of the Public Service or, with the consent of the local authority, of any officer of such authority.

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Power to Commissioner to use services of certain officers.

7—(1) Before approving any scheme prepared pursuant to this Act, the Commissioner shall confer with, and take into consideration the views of, any local authority and any department or authority of the State which is affected by any provision of the scheme or concerned with the execution of any works in pursuance thereof.

Commissioner to confer with local authorities, &c., in certain cases.

(2) The Commissioner may, with the approval of the Minister, make use of the services of such persons as he considers advisable by reason of their knowledge of subjects or districts.

(3) A person whose services are used by the Commissioner in pursuance of subsection (2) shall be paid such allowance and expenses as may be prescribed.

8 The expenses of administering this Act shall be defrayed out of moneys provided by Parliament for that purpose.

Expenses of administration of Act.

9 The functions of the Commissioner shall be to hold all such inquiries, to give or make, as the case may be, all such decisions, orders, determinations, requirements, and consents, and to do all such other acts and things as are hereinafter in this Act provided for in that behalf, or as may otherwise be required of him, or as may in his opinion be necessary for the effective administration of this Act.

Functions of the Commissioner.

10 As soon as possible after his appointment the Commissioner shall cause to be prepared a plan showing all existing main roads, railways, aerodromes, and all probable requirements for main roads, railways, and aerodromes suitable for interstate and overseas traffic.

Traffic planning scheme.

PART III.

TOWN AND COUNTRY PLANNING SCHEMES.

11—(1) The Commissioner, with the approval of the Minister, may require—

Preparation of schemes.

- (a) any local authority to prepare a scheme for the development of a specified area; or
- (b) any two or more local authorities to unite as prescribed for the purpose of preparing a combined scheme for the whole, or for a defined portion of the total area within their several jurisdictions—

within the time specified in such requirement.

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(2) The Commissioner may at the request of a local authority prepare a scheme for the development of a specified area.

(3) In the event of the failure of a local authority to prepare a scheme when required to do so under subsection (1) the Commissioner with the consent of the Minister may prepare such a scheme or, in the event of a local authority failing to carry out the directions of the Commissioner to alter or amend a scheme as provided in section fifteen, the Commissioner may amend or vary a scheme, and the local authority shall pay to the Commissioner all costs incurred by the Commissioner in so doing.

(4) The Commissioner may recommend to the Minister that the whole or any part of the cost of the preparation of any scheme prepared by or on behalf of any local authority in pursuance of this section shall be defrayed by the State if the Commissioner is satisfied that the cost of the preparation of that scheme is excessive, having regard to the revenues of the local authority.

Local authority may submit scheme.

12—(1) Any local authority may prepare a planning scheme in respect of a specified area.

(2) The Commissioner may vary the area so specified and may state the time within which the scheme shall be submitted.

Contents of planning scheme.

13 Every planning scheme prepared pursuant to this Act shall, having regard to the present and to the probable future requirements of the area, make provision for all such of the matters referred to in the schedule as are relevant to such scheme with all such particularity as the Commissioner may require.

Planning schemes to be submitted to the Commissioner for approval.

14 Every planning scheme prepared by a local authority shall be prepared in accordance with the regulations, and having been provisionally approved by resolution of the local authority, shall be submitted for approval to the Commissioner.

Commissioner may provisionally approve scheme.

15—(1) Every planning scheme submitted to the Commissioner by a local authority, as required by this Act, may be provisionally approved by the Commissioner.

(2) Before provisionally approving any scheme the Commissioner may require the local authority to alter or amend the scheme in such manner as the Commissioner may direct.

(3) When a scheme has been previously approved by the Commissioner, as herein provided, the local authority shall, in manner prescribed, publicly notify the scheme and shall deposit in the office of the local authority for public inspection a copy of all maps, plans, and other particulars relating to the scheme, which shall, where necessary, be supplied by the Commissioner to the local authority.

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(4) Every owner and occupier of ratable property within the area affected by the scheme shall have a right of objection to the scheme, and may, by notice in writing addressed to the local authority, give notice of such objection and of the grounds thereof at any time within three months after the first public notification of the scheme as required by this section.

16—(1) As soon as practicable after the receipt of any objections under section fifteen, the local authority shall forward the same to the Commissioner, together with a statement of its opinion and views as to the merit of the several objections; and if the scheme has been prepared or altered by the Commissioner otherwise than at the request of the local authority, the local authority may itself object, as prescribed, to such scheme or alteration.

Objections to be submitted to Commissioner.

(2) The Commissioner shall hear and determine any objection in manner prescribed.

17—(1) On the hearing of any objection under this Act, the Commissioner may uphold the objection in whole, or in part, and may require the modification of the scheme accordingly, or may dismiss the objection.

Commissioner's determination in respect of objections to be final.

(2) The determination of the Commissioner in respect of any objection as aforesaid shall be final, except as provided by subsection (3).

(3) In any case where any objection to a scheme by a local authority is dismissed by the Commissioner, or where a local authority is dissatisfied with any modification in any scheme required by the Commissioner, the local authority, may appeal to a judge as prescribed.

(4) On the hearing of any appeal by a local authority in accordance with subsection (3), the judge may make such determination thereon as he thinks just, and it shall be the duty of the Commissioner to give effect to such determination.

18—(1) After all objections to a scheme, and any appeal under subsection (3) of section seventeen, have been disposed of, and the requirements of the Commissioner, or of the judge, if any, for the modification of the scheme have been complied with, the Commissioner, with the approval of the Minister, shall finally approve the scheme.

Final approval of scheme.

(2) A scheme when finally approved shall be signed by the Commissioner and shall come into effect on a date to be specified by him, not being earlier than the date of such final approval.

(3) Upon the final approval of a scheme, the local authority shall give public notice thereof as prescribed.

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(4) A copy of every scheme which has been finally approved as provided by this Act shall be laid before each House of Parliament within the first thirty sitting days of such House after such approval.

(5) A record of every scheme as finally approved shall be entered in the central plan register established under the *Survey Co-ordination Act 1944*.*

Operation of
town plan-
ning scheme.

19—(1) When a scheme has been finally approved as provided by this Act it shall be the duty of the local authority to give effect to, and to observe and to enforce the observance of, the requirements of the scheme in respect of all new works of any description thereafter undertaken within the area affected by the scheme whether by the local authority or by any other person; and without the consent in writing of the Commissioner, the local authority shall not thereafter undertake or permit, any alteration or modification of any existing works if such alteration or modification would tend to prevent or delay their being brought into conformity with the tenor of the approved scheme.

(2) In addition to any powers conferred on it by the *Local Government Act 1906*,† or any other Act, a local authority shall, subject to the provisions of subsection (4) hereof, have all such powers and authorities as may be reasonably necessary to enable it to give full effect to an approved scheme.

(3) The requirement of any Act as to the width of any street, or as to the position of the building line in relation thereto, shall not be binding on the local authority in giving effect to any provision of a town planning scheme.

(4) A local authority by resolution and with the consent of the Treasurer may borrow in addition to the sums which it is authorised to borrow under any other Act any further sums required for the purposes of this Act including the cost of preparation of and the giving effect to a scheme or may impose a special rate for this purpose.

Penalty for
contravention.

20 After the date on which a scheme under this Act comes into effect, no person shall execute or carry out any work or do any act or thing which is forbidden by such scheme or which will obstruct or impede the carrying out of such scheme.

Penalty: Fifty pounds and a daily penalty of two pounds.

Approved
scheme may
be modified
&c. with ap-
proval of
Commissioner.

21—(1) Any local authority at any time may, of its own motion, and shall if so required by the Commissioner, elaborate any of the provisions of its approved scheme or enlarge its scheme or may, with the approval of the Commissioner,

* 7 & 8 Geo. VI. No. 86.

† 6 Edw. VII. No. 31, as amended by 7 Edw. VII. No. 36, 8 Edw. VII. No. 35, 1 Geo. V. No. 20, 2 Geo. V. No. 65, 7 Geo. V. No. 13, 9 Geo. V. No. 44, 10 Geo. V. No. 18, 10 Geo. V. No. 55, 13 Geo. V. No. 49, 14 Geo. V. No. 61, 14 Geo. V. No. 69, 15 Geo. V. No. 39, 17 Geo. V. No. 52, 19 Geo. V. No. 37, 20 Geo. V. No. 63, 21 Geo. V. No. 40, 23 Geo. V. No. 36, 25 Geo. V. No. 9, 25 Geo. V. No. 45, 26 Geo. V. No. 64, 2 Geo. VI. No. 8, 2 Geo. VI. No. 33, 4 Geo. VI. No. 46, 5 Geo. VI. No. 20, 5 Geo. VI. No. 42, 6 Geo. VI. No. 26, 6 Geo. VI. No. 62, and by Statute Law Revision. (See Reprint of Statutes, Vol. V., page 4.)

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modify or alter any of the details of the scheme or substitute a new scheme for the approved scheme; and in particular a local authority may as part of a scheme adopt with or without modifications a scheme prepared by or on behalf of the owners of any land within the area affected by the scheme with respect to that land. A.D. 1944.

(2) The provisions of sections fifteen, sixteen, and seventeen as to modifications of and objections to a scheme and as to the approval of a scheme by the Commissioner shall apply with respect to every alteration or addition to the scheme and to every new scheme substituted for an approved scheme.

22—(1) Where any land is required by a local authority for the purposes of this Act, the local authority may apply to the Minister to acquire the same at the cost of the local authority in accordance with the provisions of the *Lands Resumption Act 1910*.* Acquisition of land.

(2) The Minister, if he approves such application, may submit the same to the Governor, and for the purpose of such acquisition the work for which such land is required shall be deemed to be a public work.

(3) The Governor, in the name and on behalf of His Majesty, may, by deed of grant, in accordance with the *Crown Lands Act 1935*,† convey and alienate any land so acquired to, and vest the same in, the local authority in fee simple without payment of any grant fee.

23 The Commissioner shall be paid by the local authority such fees as may be prescribed for services in relation to the preparation of planning schemes, and all such fees shall be paid into the Consolidated Revenue. Commissioner may charge fees.

24—(1) Any local authority which by this Act is under an obligation to prepare a planning scheme, and any local authority which not being under an obligation to prepare a scheme as aforesaid, has resolved pursuant to section twelve to prepare a scheme, may at any time before the scheme has been approved by the Commissioner absolutely or conditionally refuse its consent to the erection of any building or the carrying out of any work within its district or may prohibit the erection of such building or the carrying out of such work if it appears to such local authority that the erection of such building or the carrying out of such work would be in contravention of the scheme if it had been completed and approved, or would be in contravention of town planning principles or would interfere with the amenities of the neighbourhood. Pending approval of scheme local authority may prohibit erection of buildings, &c., which would contravene scheme.

* 1 Geo. V. No. 11, as amended by 10 Geo. V. No. 24, 22 Geo. V. No. 22, 26 Geo. V. No. 40, 4 Geo. VI. No. 11, and by Statute Law Revision. (See Reprint of Statutes, Vol. VI., page 3.)

† 26 Geo. V. No. 35, as amended by 3 Geo. VI. No. 8, 4 Geo. VI. No. 47, 7 Geo. VI. No. 57, and by Statute Law Revision (See Reprint of Statutes, Vol. IV., page 996.)

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(2) Any person injuriously affected by any determination of a local authority under this section may appeal from that determination to the Commissioner.

(3) Every such appeal shall be made, heard, and determined in manner prescribed.

(4) The determination of the Commissioner for the purposes of this section on any question relating to principles of town planning shall be conclusive and shall bind the local authority and the appellants.

Persons injuriously affected may claim compensation.

25—(1) Subject to the provisions of this Act, any person—

- (a) having any estate or interest in land, buildings, or other improvements affected by the operation of any planning scheme;
- (b) injuriously affected by the operation of section twenty-four; or
- (c) who for the purpose of complying with any provision in the scheme has incurred an expenditure which is rendered abortive by any subsequent variation or revocation of the scheme—

shall, if he makes a claim within the prescribed time, and subject to the provisions of this section, be entitled to full compensation for all loss thereby sustained by him.

(2) Compensation shall not be payable under this section if it is claimed in respect of—

- (a) the operation of any provision in a planning scheme if such provision could have been made and enforced without liability to pay compensation by any local or statutory authority independently of this Act;
- (b) any provision of a scheme regulating the space about buildings or limiting the number of buildings that may be erected within any area or regulating the bulk, floor space, height, coverage, use or design, external appearance, or character of buildings;
- (c) any provision of a scheme which regulates or enables the local authority to regulate the height of any fence, wall, or hedge near corners or bends of any public street or near the intersection of any such street;
- (d) any provision of a scheme which requires, in the case of the erection of any building intended to be used for the purpose of business or industry, the provision of accommodation for loading, unloading, or fuelling vehicles with a view to preventing obstruction of traffic on public streets;
- (e) any building erected or any contract made or other thing done in contravention of any scheme after the approval of that scheme by the Commissioner; or

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(f) any buildings erected or any contract made or other thing done in contravention of any determination of a local authority under section twenty-four, or as the case may be in contravention of any determination of the Commissioner on appeal from the determination of a local authority under that section. A.D. 1944.

(3) Nothing in this section shall deprive any person of any right to compensation that he may have independently of this Act.

(4) Where a person would be entitled to claim compensation in respect of any matter or thing under this Act and also under any other enactment, he shall not be entitled to receive compensation both under this Act and such other enactment, nor to receive any greater compensation under this Act than he would be entitled to receive under such other enactment.

26—(1) Claims for compensation under section twenty-five shall be made to the local authority concerned and the local authority shall endeavour to reach an agreement with the claimant as to the amount of such compensation. Claims for compensation.

(2) If no such agreement can be reached the claim shall be referred by the local authority, as prescribed, to the Commissioner, or, if the local authority so elects or the person claiming to be entitled to compensation so requires, to a judge.

(3) The procedure on any claim for compensation under this section shall be as prescribed.

(4) The Commissioner or judge, as the case may be, may reject the claim or may determine the amount of the compensation which shall be payable, and may make an order for the payment thereof.

(5) Upon the hearing of any claim as provided by this section, the Commissioner or judge, as the case may be, may make such order as he thinks fit as to the costs of the proceedings and may fix the amount of such costs.

27—(1) The local authority, at any time within one month after the date of the determination of the amount of compensation under this Act in respect of any property injuriously affected by the scheme, may give notice to the claimant of its intention to withdraw or modify all or any of the provisions of the scheme which gave rise to his claim for compensation. Power to withdraw or modify a scheme after compensation determined.

(2) Where such notice has been given the local authority shall, within three months from the date of the notice, submit for the approval of the Commissioner a varying scheme carrying into effect such withdrawal or modification as aforesaid and upon the varying scheme, as approved by the Commissioner, with or without modifications, coming into operation and upon payment by the authority of the claimant's costs of and in connection with the making of the claim, the order of the Commissioner or a judge, as the case may be,

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A.D. 1944. shall be discharged, as prescribed, without prejudice to the right of the claimant to make a further claim for compensation under this Act in respect of the scheme as varied.

(3) An order for payment of compensation under this Act in respect of any property injuriously affected shall not be enforceable before the expiration of one month from the date thereof or, if the notice has been given by the local authority under subsection (1) hereof, until after the expiration of three months from the date of such notice or, if within that period a varying scheme is submitted to the Commissioner, until that scheme has either come into operation or been disapproved by the Commissioner.

Betterment
increase.
—
Vict. Act
No. 3720,
sec. 688,
et. seq.

28—(1) For the purposes of this Act, when used in relation to any property, the expression—

“initial valuation” means the value of the property, assuming that no scheme is in existence or contemplated;

“betterment increase” means such ascertained or estimated increase in the value of that property, above the initial valuation, as is attributable to the approval of a scheme, or to the operation of any provision of a scheme, or to the carrying out of any work under a scheme.

(2) For the purpose of ascertaining or estimating betterment increase in respect of any property, the local authority may appoint some independent person (in this section referred to as “the valuer”) to make an initial valuation of such property.

(3) In making the initial valuation, the valuer—

(a) shall separately distinguish and assess the value of the land apart from the value of any existing buildings thereon, and shall also value the land and buildings as a whole;

(b) shall not take into consideration any increased value accruing or supposed to accrue to such land or building from or in consequence of the preparation or adoption of a scheme, but shall only take into consideration the value independently of the scheme and as if the scheme had not been contemplated;

(c) shall also separately value the interest of the owner of such property and of every lessee of the whole or any part of the property for a term having not less than five years unexpired at the date of the valuation—

excluding from each such valuation any trade interest.

(4) Such initial valuation shall be deposited with the local authority and shall be open to inspection in the office of the

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clerk of the local authority during office hours by any person A.D. 1944. interested in such property or by his agent authorised in writing.

(5) If either the owner of such property or the local authority objects to such initial valuation, the matter shall be referred by the local authority to the Chief Valuer appointed under the *Land Valuation Act 1909*,* and his decision as to the amount of the initial valuation shall be final.

(6) The local authority shall, if it gives notice for that purpose within the time prescribed in subsection (7), be entitled to recover from the owner of the property for the time being one-half of the betterment increase.

(7) The local authority may at any time before the expiration of twelve months after the date upon which a scheme comes into effect, give notice in the prescribed manner of intention to claim betterment increase from the owner for the time being of the property in respect of which the claim has been made, and such notice shall set out whether the claim is in respect of the—

- (a) approval or operation of the scheme, or of any specified provision thereof; or
- (b) carrying out of any particular work under the scheme and specified in such notice.

(8) At any time and from time to time before the expiration of five years after the date upon which the scheme comes into effect or the same period after the completion of any work so specified, whichever is the later, the local authority may claim from any person on whom notice of intention has been given as provided in subsection (7) hereof, or from any successor in title of such person, such amount by way of betterment increase as it thinks proper.

(9) Any person who has been served with a notice of intention to claim betterment increase may, at any time, require the local authority to make its claim for any betterment increase which may have accrued since the date of the initial valuation, but any claim made by the local authority under this subsection shall not prejudice its right to make a further claim for betterment increase from that person or from any successor in title of that person within the time stated in subsection (8) hereof.

29—(1) In any claims under section twenty-eight the local authority in whose district the land is situated shall be the claimant, and the several owners of the lands affected or likely to be affected by the operation of the scheme shall be the respondents. Claims for betterment increase.

(2) A claim for betterment increase shall be made by serving a notice in the prescribed form upon the respondent.

* 9 Edw. VII. No. 7, as amended by 3 Geo. V. No. 38, 4 Geo. VI. No. 2, 6 Geo. VI. No. 60, 7 Geo. VI. No. 10, and by Statute Law Revision. (See Reprint of Statutes, Vol. I., page 204.)

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(3) Within sixty days after the receipt of a claim as aforesaid the respondent shall give notice in writing to the claimant that he—

(a) admits the claim in full, in which case the sum claimed shall become a debt due to the local authority and shall be payable as hereinafter provided; or

(b) refuses to admit the claim—

and in default of such notice he shall be deemed not to admit the claim.

(4) If the respondent does not admit the claim the claimant may, not later than sixty days after the last day of the period in which notice is required to be given, lodge his claim with the Commissioner, and shall notify the Commissioner that the claim is contested.

(5) Notwithstanding anything contained in this section, a claimant may elect to make a claim for betterment increase to a judge, and, in that case, this section and section thirty shall be read as if "judge" were substituted for "Commissioner" wherever occurring therein.

Procedure on claims for compensation or betterment increase.

30—(1) The Commissioner, on receipt of any claim for betterment increase, shall fix a time and place for the hearing of such claim and cause notice thereof to be served on the parties concerned.

(2) The Commissioner, on the application of the relevant parties, may direct that two or more claims shall be heard together.

(3) At any such hearing any party may be represented by counsel.

(4) Upon the hearing of any claim, the Commissioner may reject the claim or may determine the amount of betterment increase which shall be payable, and may make such order as to the costs of the proceedings as he may think just, and may fix the amount of such costs.

(5) The procedure with regard to the institution, hearing, and determination of claims for betterment increase shall be as prescribed and subject to the regulations or so far as they do not extend the Commissioner shall determine the procedure to be followed.

Recovery of moneys.

31 Any moneys ordered by the Commissioner to be paid by any person to any other person as provided by this Act shall be recoverable by action in any court of competent jurisdiction.

Appeal from decision of the Commissioner.

32—(1) Except as provided by this section, any person aggrieved by any decision or determination of the Commissioner in respect of any claim for compensation or betterment increase may appeal therefrom, as prescribed, to a judge and the judge may make such order thereon as he may think just.

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(2) This section shall not apply in any case where a local authority or a person has elected to make a claim to a judge in accordance with section twenty-six or section twenty-nine. A.D. 1944.

(3) Any order or determination of a judge under this Part shall be final and without appeal.

33 The Governor, by order in council, may direct that this Act shall be binding on any statutory instrumentality or authority either generally or in any particular case, and thereupon the same shall apply accordingly. Act to bind statutory authorities in certain cases.

34—(1) Subject to the provisions of section twenty-seven, all compensation payable under this Act shall be payable by the local authority to the claimant upon the determination of the amount thereof. Payment and recovery of compensation and betterment increase.

(2) One-half of the amount of the betterment increase in the value of any rateable property shall constitute a debt payable to the local authority and shall be recoverable, with interest thereon computed at the rate of four pounds per centum per annum by equal periodical instalments extending over such period as the local authority may allow in that behalf, being not more than twenty years in any case; except where for the purpose of avoiding undue hardship the local authority may extend the time within which payment is required to be made.

(3) Notwithstanding anything contained in this section, a local authority may defer the payment of any amount on account of betterment increase, or any part thereof, until such time as the person by whom the betterment increase is payable, in the opinion of the local authority, derives direct benefit from the scheme or from any work thereunder.

(4) Any person by whom betterment increase is payable may at any time pay to the local authority the full amount payable by him with interest to the date of payment.

(5) The amount payable to a local authority in respect of the betterment increase in the value of any property shall, save as hereinafter otherwise provided, be payable by the owner of that property: Provided that where at the date of the valuation there subsists any leasehold estate in such property or any freehold estate less than the fee simple, the Commissioner, or a judge, as the case may be, shall, on the application and at the expense of the owner, apportion the amount of the betterment increase between the fee simple and such other estate or estates; and the amount payable to the local authority in respect of the betterment increase shall be apportioned in the same manner among the several owners of such estates.

(6) The amount due to the local authority and for the time being outstanding in respect of any betterment increase shall constitute a charge on the property in respect of which it is payable.

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(7) In any such case it shall be the duty of the local authority, after the amount payable by the owner or other person has been determined, to file with the Recorder of Titles or Registrar of Deeds, as the case may require, a memorandum under the seal of the local authority setting forth a description of the land so charged, the amount payable, the amount of each annual instalment, and the date fixed for the payment thereof; and the Registrar of Deeds or the Recorder of Titles, as the case may be, shall without fee register the memorandum against such land.

(8) The registration of such memorandum shall be deemed and taken to be actual notice to all persons of the existence of the charge.

(9) For the purpose of enforcing any charge registered under this section the Supreme Court, or a judge, may on summons make such order as it or he thinks fit, either for the sale of the property, subject to the charge, or for the appointment of a receiver, or otherwise howsoever, and any order for such sale shall be carried into effect by the sheriff in the same manner as in the case of a writ of sale, with any modifications that may be necessary or may be provided by rules of the court in that behalf.

(10) When any such charge has been satisfied in full the local authority shall deposit with the Registrar of Deeds or the Recorder of Titles a memorandum of satisfaction under the seal of the local authority, and the Registrar of Deeds or the Recorder of Titles shall, without fee, register the same against the title of the land.

(11) On the subdivision into two or more allotments of any land subject to a charge under this section, the charge in respect thereof shall be apportioned among the several allotments by the local authority, and a memorandum of satisfaction may, on payment in full of so much of the charge as is apportioned to any allotment be registered against the title of that allotment.

(12) Notwithstanding anything contained in this section, a local authority may recover the amount of any betterment increase in accordance with the provisions of the *Rates and Charges Recovery Act 1936*.

**Betterment
fund.**

35—(1) All moneys received by a local authority under the last preceding section in respect of the betterment increase in the value of any property shall be paid into a special fund to be called the Betterment Fund.

(2) The Betterment Fund shall to the extent thereof be applied by the local authority towards the payment of claims for compensation under sections twenty-five and twenty-six and otherwise for defraying any expenses of the local authority incurred in respect of a scheme.

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(3) Any moneys in the Betterment Fund that are not immediately required for the purposes thereof may be invested by the local authority—

- (a) in Commonwealth Government securities;
- (b) on deposit in any bank lawfully carrying on the business of banking in Tasmania; or
- (c) in any other securities authorised by the Governor.

(4) Separate accounts shall be kept by the local authorities of all moneys paid into or out of the Betterment Fund and all such accounts shall be subject to the provisions of the *Audit Act 1918*.*

PART IV.

MISCELLANEOUS.

36—(1) Except as hereinafter provided, every local authority shall, after the expiration of six months after the date of the appointment of the Commissioner, submit to him all plans for the subdivision of any land situated within its boundary.

Approval of
subdivision
plans.

(2) A local authority may approve of a plan of subdivision of land without reference to the Commissioner if—

- (a) the plan has been submitted to the local authority not later than six months after the appointment of the Commissioner, and if it complies with the provisions of every Act relating to the subdivision of land within the area concerned;
- (b) a scheme for the area concerned has been approved by the Commissioner, and the proposed plan of subdivision does not contravene such scheme;
- (c) the local authority has submitted to the Commissioner a scheme relating to such area and the Commissioner has not within three months thereafter approved the scheme, or notified the local authority, in writing, of his disapproval, giving his reasons therefor; or
- (d) the Commissioner has in any case authorised the local authority, as prescribed, to deal with the plan.

(3) In all cases where a local authority may approve of a plan of subdivision without reference to the Commissioner, it shall, within one month of such approval, forward a copy to him.

(4) Except as provided by this section, no plan for the subdivision of any land shall be approved by a local authority except with the consent of the Commissioner.

* 9 Geo. V. No. 3, as amended by 12 Geo. V. No. 75, 14 Geo. V. No. 52, 14 Geo. V. No. 69, 18 Geo. V. No. 62, 1 Geo. VI. No. 63, 3 Geo. VI. No. 34, and by Statute Law Revision. (See Reprint of Statutes, Vol. I., page 237.)

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(5) The Commissioner may require amendments to any plans submitted to him, or may refuse to permit land to be subdivided, or its present use changed, except for the erection of such buildings as may be required in connection with its present use.

(6) A local authority may approve of any plan notwithstanding that any building lines or streets or proposed streets shown thereon are not in conformity with the provisions of the *Building Act 1937*,* or of any Act relating to the subdivision of land in its area, if there is endorsed on such plan a certificate by the Commissioner to the effect that compliance with the Act, in relation to those matters is not, in the circumstances, necessary or advisable, and that the plan is in all other respects in conformity with such Acts.

(7) No person shall be deemed to have committed a breach of the provisions of any such Act in relation to such matters if he has in all respects conformed to the requirements of any plan approved by the Commissioner in respect of which a certificate has been issued under subsection (6).

(8) For the purposes of this section, any division of land, whether into two or more allotments, shall be deemed to be a subdivision of that land, notwithstanding that only one or any number less than the whole of the allotments may be intended for disposal by sale, or lease, or otherwise.

Regulations.

37 The Governor may make regulations for the purposes of this Act.

THE SCHEDULE.

MATTERS WHICH MAY BE DEALT WITH IN TOWN AND COUNTRY PLANNING SCHEMES.

1. Roads, streets, private streets, private ways, and footways, including proposals for the closing, alteration, or diversion of any existing road, street, private street, private way, or footway, and proposals for new roads, streets, private streets, private ways, or footways; the fixing of building-lines; foreshores, but not below high-water mark.

2. Buildings, with particular reference to their position on allotment and in relation to any road or street or to other buildings, their density, character, height, harmony in design of facades.

3. The reservation of land for afforestation purposes, or for recreation grounds, ornamental gardens, parks, children's playgrounds, and other open spaces.

4. The preservation of objects of historical interest or natural beauty.

5. Systems of sewerage, drainage, and sewage-disposal.

6. Systems of lighting and water-supply.

7. The definition of areas to be used exclusively or principally for specified purposes or classes of purposes.

9. Ancillary or consequential works.

8. Provision of amenities.

* 1 Geo. VI. No. 73, as amended by 4 Geo. VI. No. 13, and 7 Geo. VI. No. 39.