

- (e) from subsection (2) of section 52 the word "domestic" were omitted and the word "irrigation" were substituted therefor, and as if the words "including pipes for which the undertakers may refuse to supply water under section twenty" were omitted therefrom;
- (f) in subsection (1) of section 65, after the word "undertakers" (second occurring) the words "of their conduits or water channels on or above the surface" were inserted;
- (g) from paragraph (d) of subsection (1) of section 71 the words "in a pure and wholesome state" were omitted; and
- (h) after subsection (2) of section 71 the following subsection were inserted:—
- “(2A) Notwithstanding anything in subsection (2) of this section, where the water affected by any of the acts mentioned in that subsection will not be used for some purpose for which that Act makes it unsuitable, no offence against that subsection shall be deemed to have been committed.”.

TOWN AND COUNTRY PLANNING.

No. 40 of 1957.

AN ACT to amend the *Town and Country Planning Act 1944.* [1 November 1957.]

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:—

1—(1) This Act may be cited as the *Town and Country Planning Act 1957.* Short title and citation.

(2) The *Town and Country Planning Act 1944*, as subsequently amended, is in this Act referred to as the Principal Act.

2 Section three of the Principal Act is repealed and the following section is substituted therefor:—

“**3** In this Act, unless the contrary intention appears— Interpretation.

‘Commissioner’ means the Commissioner for Town and Country Planning appointed under this Act;

‘master plan’ means a master plan approved by the Commissioner under section thirty-five E.”.

3 Section four of the Principal Act is amended— Appointment of Commissioner.

(a) by omitting from paragraph (c) of subsection (2) the words “may be prescribed” and substituting therefor the words “the Minister may determine”; and

(b) by inserting at the end of paragraph (d) of that subsection the words "except for the purposes of subsection (1A) of section seventy-six of that Act".

Commissioner may provisionally approve scheme.

4 Section fifteen of the Principal Act is amended by omitting from subsection (3) the word "previously" and substituting therefor the word "provisionally".

Final approval of scheme.

5 Section eighteen of the Principal Act is amended by omitting subsection (2) and substituting therefor the following subsections:—

"(2) When the Commissioner finally approves a scheme, he shall—

- (a) seal it with his official seal; and
- (b) lodge a copy (which the local authority shall supply for that purpose) similarly sealed in the office of the Recorder of Titles.

"(2A) A scheme that has been finally approved shall come into effect on a date to be specified thereon by the Commissioner not being earlier than the date of lodgement in the office of the Recorder of Titles."

6 Section twenty-two of the Principal Act is repealed and the following section is substituted therefor:—

Acquisition of land.

"22 Where a local authority requires any land for the purposes of this Act it may purchase or take that land in accordance with the provisions of the *Public Authorities' Land Acquisition Act 1949*, which Act is incorporated with this Act."

7 Section twenty-four of the Principal Act is repealed and the following section is substituted therefor:—

Regulation of building, &c., pending approval of scheme.

"24—(1) A local authority which—

- (a) is by this Act under an obligation to prepare a planning scheme; or
- (b) not being under such an obligation has resolved pursuant to section twelve to prepare a scheme,

may at any time before the scheme has been approved by the Commissioner exercise the powers set forth in subsections (2) and (4) of this section.

(2) For the purposes of subsection (1) of this section a local authority may make orders, to be known as "interim orders", regulating the use of land in any part of its district and may issue dispensations, absolute or conditional, from the operation of its interim orders in such cases as it thinks proper.

(3) An interim order made under this section is enforceable against owners and occupiers of land by injunction in cases where it appears to the Supreme Court just and convenient so to do.

(4) For the purposes of subsection (1) of this section, in the cases set forth in subsection (5) of this section a local authority may—

- (a) refuse or grant conditionally its consent to—
 - (i) the erection of a building;
 - (ii) the carrying out of a work; or
 - (iii) an alteration of the purposes for which land is used,

within the area to be subject to the scheme; or

- (b) prohibit the erection of a building or the carrying out of a work within that area.

(5) The cases in which the powers mentioned in subsection (4) of this section may be used are where it appears to the local authority that the erection of the building, the carrying out of the work, or the alteration of the purposes for which land is used would—

- (a) be in contravention of—

- (i) town planning principles; or
- (ii) a planning scheme prepared or being prepared by it; or

- (b) interfere with the amenities of the neighbourhood.

(6) Any person injuriously affected by—

- (a) an interim order or a dispensation from an interim order made under this section;

- (b) a determination of the local authority under subsection (4) of this section; or

- (c) a determination of a local authority to approve or permit the erection of a building, the carrying out of a work, or the alteration of the use of land under this or any other Act or under any by-law of the local authority,

may appeal against that order, dispensation, or determination to the Commissioner.

(7) In the case of an appeal against a determination where the appellant is not the person directly affected by the determination the person who is directly affected thereby shall be made a respondent to the appeal.

(8) Any person who may be injuriously affected by the upholding or quashing of an order, dispensation, or determination appealed against may be made a party to the appeal as an appellant or a respondent.

(9) Subject to this section, appeals under this section shall be made, heard, and determined as prescribed.

(10) A determination of the Commissioner for the purposes of this section on any question of the principles of town planning or their application is conclusive and binds the local authority and all other parties to the appeal.

(11) Interim orders, conditional consents, and prohibitions under this section—

- (a) shall be made under the common seal of the local authority;

- (b) shall be lodged in the office of the Recorder of Titles;

- (c) shall not take effect until paragraph (b) of this subsection has been complied with; and
- (d) may be served on all persons directly affected by their operation.”.

8 After Part III of the Principal Act the following Parts are inserted:—

“ PART IIIA.

“ MASTER PLANS.

**Creation of
master
planning
authorities.**

“ 35A—(1) On the petition of any two or more adjoining local authorities the Governor may, by proclamation, establish a master planning authority.

(2) A master planning authority shall—

- (a) consist of representatives of the petitioning local authorities, comprising three for a city and two for any other municipality; and
- (b) be a body corporate with perpetual succession and a common seal by such name as the Governor may specify in the proclamation and able to sue and be sued by that name.

(3) A master planning authority may—

- (a) make contracts for the purposes of this Act as if those purposes were trading purposes for which it was incorporated;
- (b) accept trusts of property for any purposes of this Act to be carried out in the districts of its constituent local authorities or any of them; and
- (c) make by-laws for the purposes of this Act binding its members, officers, and servants and providing for penalties, not exceeding five pounds, for breaches of the by-laws.

Membership.

“ 35B—(1) The members of a master planning authority shall be appointed by instrument under the common seal of the local authority that they represent and hold office until their instrument of appointment is revoked by a similar instrument.

(2) Except as provided in subsection (3) of this section, a member of a master planning authority shall not vote upon any matter in which he is directly or indirectly interested otherwise than as—

- (a) a member of the general public;
- (b) an elector of, or ratepayer to, a local authority; or
- (c) a shareholder in an incorporated company in which there are more than twenty members and of which he is not a director or officer.

(3) Where a member is interested in a matter only as mentioned in paragraphs (a), (b), and (c) of subsection (2) and as—

- (a) the owner or occupier of land the present use of which will not be affected; or
- (b) the occupier of a dwelling the future use of which will be affected,

by the decision of the matter, he may vote thereon after disclosing his interest, and that disclosure shall be recorded in the authority's minutes.

(4) A person who votes contrary to this section with intent to obtain a benefit for himself or a person with whom he is connected or associated is guilty of a crime.

(5) A person who knowingly votes contrary to this section shall be deemed to have the intent mentioned in subsection (4) of this section unless he proves the contrary.

(6) The members of a master planning authority may receive from the authority such allowances and repayment of expenses as may be prescribed, and the regulations made for that purpose may differentiate between office-bearers and other members.

“35C—(1) A master planning authority may obtain Finance. money for the purposes of this Act from its constituent local authorities in such proportion as it thinks fit, by demand under its common seal delivered to the clerk of the local authority affected thereby.

(2) The amount demanded under this section from any local authority shall not, except with the consent of all its constituent local authorities, exceed in any financial year the amount that would be produced by a rate of one halfpenny in the pound on the annual value of all ratable property in that authority's municipal district.

(3) A demand under this section shall be delivered during the month of May in any year, and if not satisfied within the next five months may be sued upon subject only to proof of due delivery.

(4) A master planning authority shall keep such accounts in such form as the Auditor-General may require, and all its accounts are subject to the *Audit Act 1918*.

“35D A master planning authority may borrow by over- Borrowing. draft of its current account any sum not exceeding half the maximum amount it might demand in the financial year next ensuing, pursuant to section thirty-five C, and for better securing repayment may bind itself to demand a definite amount and assign its right to receive the amount demanded.

“35E—(1) Upon its creation, a master planning authority Master plans. shall prepare a master plan for the area of the districts of its constituent local authorities.

(2) A master plan shall be made with regard for the present and probable future requirements of the area and may provide for—

- (a) communications;
- (b) areas the use of which is to be restricted in respect of purpose, or which are to remain unbuilt on;
- (c) public buildings, facilities, and amenities; and
- (d) areas and sites for things and processes that would constitute nuisances if done among houses or offices.

(3) Sections fourteen to eighteen apply to master plans as if—

- (a) a master plan were a planning scheme; and
- (b) a master planning authority were a local authority.

(4) In preparing a master plan, the master planning authority shall consult the Minister, and each of its constituent local authorities, and every statutory authority which has or may be expected to have lands or works within the area affected by the master plan.

(5) It is the duty of—

- (a) every servant of the Crown, subject to the approval of the relevant Minister;
- (b) every statutory authority and, subject to the approval of that authority, each of its servants; and
- (c) every local authority and, subject to the approval of that authority, each of its servants,

to supply such information as is available to him or it and to permit the copying of plans and documents in his or its possession or control when required by the master planning authority for the purposes of this Act.

(6) Each constituent local authority has the same right of objection and appeal in respect of a master plan as if it were the owner or occupier of ratable property within the area affected by the plan and may, notwithstanding subsection (2) of section seventeen as applied by subsection (3) of this section, appeal as provided in subsection (3) of section seventeen where an objection by it is dismissed by the Commissioner.

Effect of
master plan.

“ 35F—(1) When a master plan comes into effect—

- (a) the Commissioner, each constituent local authority, and the master planning authority which prepared the plan shall conform to that master plan in the administration of this Act and in the preparing, approving, and carrying out of any planning scheme affecting the area to which the master plan applies;
- (b) the Commissioner shall not approve any planning scheme affecting an area to which the master plan applies until he has obtained a report on the planning scheme from the authority which prepared the master plan; and

- (c) the master planning authority which prepared the plan shall afford a local authority preparing a planning scheme affecting the area to which the master plan applies such advice and information as that local authority requires.

(2) Where information afforded under paragraph (c) of subsection (1) of this section is not available to the master planning authority when required by the local authority the former may require the latter to give security for payment by it of the master planning authority's necessary expenditure before complying with the local authority's request.

" 35G—(1) At any time before a master plan takes effect the master planning authority making it may make orders, to be known as 'interim orders', regulating the use of land in any part of the districts of its constituent local authorities. Interim orders.

(2) The administration of an interim order, including the exercise of discretion thereunder, may be delegated to a constituent local authority.

(3) Before making an interim order a master planning authority shall consult any constituent local authority affected by its operation.

(4) An interim order—

- (a) shall be made under the common seal of the master planning authority;

- (b) shall be lodged in the office—

- (i) of the Recorder of Titles; and

- (ii) of each constituent local authority affected by its operation;

- (c) shall not take effect until paragraph (b) of this subsection has been complied with; and

- (d) may be served on any person directly affected by its operation.

(5) Every constituent local authority shall exercise its powers under section twenty-four so as to give effect to the interim orders of the master planning authority.

(6) An interim order is enforceable against owners and occupiers of land by injunction in cases where it appears to the Supreme Court just and convenient so to do.

(7) A master planning authority may issue dispensations, absolute or conditional, from the operation of interim orders in such cases as it thinks proper.

(8) Subsections (6) to (10) of section twenty-four apply to the cases of an interim order and a dispensation from an order under this section as if they were made or given under that section.

" 35H Section twenty-one applies in respect of a master plan as if the master planning authority were a local authority and as if the master plan were a scheme. Modification of master plans.

Alteration
of constitution
of master
planning
authority.

“ 35J—(1) The Governor may, by proclamation, on the petition of a local authority, vary the constitution of a master planning authority by adding to its constituent local authorities or by withdrawing one or more of them.

(2) A constituent local authority—

(a) shall not petition to withdraw from a master planning authority until it has been a constituent thereof for at least three years; and

(b) may be added only on its own petition and the recommendation of the master planning authority.

(3) Where a constituent local authority is withdrawn from a master planning authority—

(a) the interim orders of that master planning authority cease to operate in its municipal district; and

(b) no modification or alteration of a master plan having effect within the district of that local authority shall, after its withdrawal, have effect within its municipal district,

except upon its resolution to that effect.

(4) If all or all but one of the original constituent local authorities of a master planning authority have been withdrawn, the Governor shall, by proclamation, abolish that master planning authority, and the Auditor-General shall apportion the liabilities and assets of the authority among its last remaining constituent local authorities with power to include in the apportionment any other constituent local authority that has contributed to its assets.

(5) In making an apportionment under subsection (4) of this section the Auditor-General shall have regard to the separate contribution made by each local authority.

(6) For the purposes of this section, the Governor may appoint a liquidator of an abolished master planning authority, and in him vest by virtue of his appointment all rights and liabilities of the abolished authority and, subject to the Auditor-General's apportionment, he shall wind up the affairs of the abolished authority and dispose of its property as the Minister may direct.

(7) Upon the abolition of a master planning authority any interim order or master plan made by it ceases to operate or have effect except so far as it is continued in force in the district of a former constituent local authority by resolution of that local authority.

Master plans,
&c., to bind
Crown, &c.

“ 35K The use of land in an area in which a master plan has taken effect or to which an interim order applies shall not be changed by the Crown or by any public authority otherwise than in conformity with the master plan or interim order, as the case may be, except pursuant to the written consent of the master planning authority concerned or, in the case only of the Crown and of a marine board or harbour trust, pursuant to an order-in-council directing the change.

“ PART IIIB.

“ MUNICIPAL FURTHERANCE OF PLANNING SCHEMES.

“ 35L In this Part ‘ development ’ means—

Interpretation.

- (a) changing the use of land in accordance with a provision for the purposes of paragraph 7 of the schedule by altering or changing the use of existing buildings or by erecting new buildings; and
- (b) erecting new buildings or altering existing buildings in accordance with a provision for the purposes of paragraph 2 of the schedule:

and includes dividing up land in conformity with the intended use, position, or character of such buildings.

“ 35M—(1) Where it appears to a local authority that a planning scheme cannot take effect wholly or in part because a landowner cannot or will not, or no landowners concerned can and will, develop land or make land available for development as planned, it may cause a notice, to be known as a ‘ development notice ’, to be given to the landowner or each of the landowners.

Power of local authority to require development.

(2) A development notice shall call on the landowner to whom it is given to develop the land therein specified in the way and within the time therein specified or to make it available within a time therein specified to a person of substance who has covenanted with the corporation of which the local authority is the council to develop the land.

“ 35N—(1) A landowner to whom a development notice has been given may appeal therefrom to a police magistrate on the ground that to give the notice is unreasonable or that any requirement thereof is unreasonable, and the police magistrate may quash or vary the notice as he thinks reasonable in all the circumstances, and may award costs.

Appeal.

(2) An appeal under this section shall be instituted by giving a notice of appeal in triplicate, stating the grounds of the appeal, to the clerk of petty sessions whose office is nearest to the office of the local authority within thirty days after receipt of the development notice.

(3) A clerk of petty sessions who receives a notice of appeal under this section shall ascertain when a police magistrate can hear the appeal and shall endorse a note thereof on the notice of appeal and send by registered post one copy of the notice so endorsed to the appellant whose address is shown thereon and deliver a copy of the notice of appeal so endorsed to the clerk of the respondent local authority.

(4) For the purposes of this section it shall be deemed unreasonable to require something that will—

- (a) impose on a landowner a substantial burden without any expectation of recouping himself; or

(b) bring loss to a landowner which is excessive in all the circumstances.

(5) The decision of a police magistrate under this section is binding on the parties to the appeal, and is final except where there is a change of relevant circumstances.

Development
by owner.

“ 35P—(1) Within thirty days after receiving a development notice or, if he has appealed against it under section thirty-five N, within thirty days after the determination of the appeal, a landowner who has received a development notice may notify the local authority in writing that—

(a) he will develop the land as specified in the notice;
or

(b) he will make it available as so specified.

(2) A notice under subsection (1) of this section operates as a covenant by the landowner with the corporation of which the local authority is the council that he will do what is therein stated.

(3) Where a notice is given under paragraph (b) of subsection (1) of this section the obligation to produce a person of substance to tender a covenant to develop to the corporation is on the party giving it, and the corporation may refuse to accept the tendered covenant on the ground that the covenantor is of insufficient substance to perform the covenant.

(4) A local authority may enforce a covenant under this section as if it were owner of all land in its municipal district, other than the land to which the development notice relates, subject to terms of twenty years still to run.

Development
by local
authority.

“ 35Q—(1) Where a landowner fails to give notice under section thirty-five P the local authority may purchase or take the land to which the notice relates in accordance with the provisions of the *Public Authorities' Land Acquisition Act 1949*.

(2) The local authority shall—

(a) develop land acquired under this section and then sell or lease it; or

(b) lease it on a building lease with an option of purchase on completion of the building.

(3) The powers conferred by subsection (2) of this section shall be exercised—

(a) in furtherance of, and in conformity with, the planning scheme in pursuance of which the land was acquired; and

(b) as if the local authority were a trustee of the land acquired by it.

Position of
tenants.

“ 35R—(1) When a landowner who receives a development notice under section thirty-five M is unable to comply with it because of the rights of his tenant in the land, he may act in accordance with sections thirty-five M to thirty-five P subject

to the rights of his tenant, and if he gives notice under section thirty-five P, the local authority may give notice to the tenant and any tenants under him requiring them to join with the landowner in carrying out his obligations under section thirty-five P.

(2) A tenant who receives a notice under subsection (1) of this section may, within thirty days thereafter, notify the local authority in writing that he will join as required and—

(a) if he does so—

(i) the landowner's obligations under section thirty-five P are not subject to the rights of that tenant; and

(ii) if the landowner and that tenant and any other tenants concerned cannot agree on their future rights and obligations in respect of one another, any one of them may apply to a judge in chambers in a summary way, and the judge may settle those rights and obligations as appears to him just and may provide for the costs of the application; and

(b) if he does not do so, the local authority may purchase or take his interest in the land in accordance with the provisions of the *Public Authorities' Land Acquisition Act 1949* at the cost of and for the benefit of, the landowner.

(3) When a landowner receives a development notice he shall forthwith give a copy to his tenant and the tenant shall forthwith give a copy to his tenant (if any) and so on to the end of the chain of tenants.

(4) A tenant of land affected by a development notice has the same right of appeal under section thirty-five N as the landowner and may recover damages from any person whose contravention of subsection (3) of this section defeats his right of appeal.”.

DECEASED PERSONS' ESTATES DUTIES.

No. 41 of 1957.

AN ACT to amend the *Deceased Persons' Estates Duties Act 1931*. [1 November 1957.]

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:—

1—(1) This Act may be cited as the *Deceased Persons' Estates Duties Act 1957*.

Short title, citation, and commencement.