

TASMANIA.



1944.

ANNO OCTAVO ET NONO
 GEORGII VI. REGIS.

No. 27.

ANALYSIS.

1. Short title.
2. Amendment of section 43.
3. Amendment of section 49.
4. Amendment of section 72A.
5. Realignment of streets.

 AN ACT to amend the *Hobart Corporation Act*
 1930. [14 December, 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:—

1 This Act may be cited as the *Hobart Corporation Act* Short title.
 1944.

2 Subsection (1) of section forty-three of the *Hobart* Splaying of
 corners
*Corporation Act 1930** is amended—

(a) by deleting the words “to the extent of” in para-
 graph I. and substituting therefor the words
 “for a distance not exceeding”; and

(b) by deleting the words “and in no case less than
 ten feet, measured along the diagonal or chord
 of the curve” in that paragraph.

* 21 Geo. V. No. 64, as amended by 22 Geo. V. No. 47, 25 Geo. V. No. 69, 26 Geo. V.
 No. 84, 2 & 3 Geo. VI. No. 72, 3 & 4 Geo. VI. No. 42, 4 Geo. VI. No. 8,
 5 Geo. VI. No. 27, 6 Geo. VI. No. 18, 6 Geo. VI. No. 56, 7 Geo. VI. No. 67

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Cost of construction to be repaid by adjoining owners.

3 Section forty-nine of the *Hobart Corporation Act 1930* is hereby amended by deleting the words "paragraphs II. and III." in the last two lines of subsection (1) and substituting therefor the words and numeral "paragraph II. of subsection (2)".

Definitions of "allotment," "subdivide."

4 The *Hobart Corporation Act 1930* is amended by inserting at the end of section seventy-two A, the following subsection (13)—

"(13) For the purposes of Parts VI. and VIA.—

'allotment', used in relation to land, means any piece of land which has not been subdivided and all of which is in the same ownership; and

'subdivide', used in relation to land, means to divide such land for the purposes of—

- (a) the sale, transfer, or conveyance, of any part thereof;
- (b) the partition of such land amongst different persons;
- (c) any agreement, dealing, or instrument, *inter vivos*, for the disposition of such land in separate lots, or of any part thereof;
- (d) any lease of any part of such land which is, or by reason of any right of renewal may be, for a period exceeding twenty-one years; or
- (e) the division of such land among beneficiaries by any testamentary devise or disposition made after the commencement of this provision,

and includes any division of such land shown on a subdivision plan approved by the Council under this Act, deposited in the Lands' Titles Office under the *Real Property Act 1862*, or registered as provided by the *Registration of Deeds Act 1935*."

Realignment of streets.

5 The *Hobart Corporation Act 1930* is amended by inserting after Part VIA. thereof the following new Part—

"PART VIB.

RE-ALIGNMENT OF STREETS.

"72C—(1) In addition to any other powers conferred upon it by this Act the Council, for the purpose of widening or improving any street or part thereof, may fix a new alignment for such street or part thereof as provided by this Part.

Power to council to determine new alignment.

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(2) Where the Council proposes to carry out the re-alignment of any street or part thereof under this Part it shall— A.D. 1944.

- (a) cause to be prepared by a duly qualified surveyor a survey plan of the street or part thereof to which such proposal relates, setting out the new alignment proposed and the precise measurements of all private lands proposed to be included as part of such street;
- (b) publish in the *Gazette* and in a newspaper a notice of re-alignment in the prescribed form which shall contain a notification that a copy of the survey plan required by paragraph (a) hereof may be inspected at the Town Hall, Hobart; and
- (c) serve on every owner of land thereby affected a copy of such notice, together with a copy of the relevant portion of such plan, as provided by section thirty-three as if such notice were a notification under section thirty-one,

and thereupon all such private lands shall be subject to the provisions of this Part.

“72D—(1) In default of agreement between the Council and the owner of any land affected by a re-alignment notice under section seventy-two C as to the amount of compensation, if any, to be payable to such owner in respect of the proposed re-alignment, the same shall be determined in accordance with the provisions of Part V. as herein modified as if such notice were a notification of acquisition under section thirty-one. Ascertainment of compensation.

(2) In the application of the provisions of Part V. for the purposes of this Part—

- (a) the provisions of section thirty-two shall not have effect;
- (b) the date of gazettal of the notice of re-alignment shall be deemed to be the date of the publication of the notification mentioned in section thirty-three;
- (c) no compensation shall be payable except as provided by this Part; and
- (d) the provisions of section thirty-six shall be construed subject to the express provisions of this Part.

(3) If the Council considers that the compensation to be payable in respect of any re-alignment proposal would be excessive it may abandon such proposal or any part thereof.

(4) Upon the determination of all claims for compensation in respect of any notice of re-alignment the Council shall—

- (a) publish in the *Gazette* and in a newspaper within sixty days after such determination a notice setting forth the decision of the Council to—
 - (i) proceed with the proposed re-alignment;

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- (ii) proceed with a part of the same specified in such notice and to abandon the remainder; or
 - (iii) abandon the same,
- as the case may be;
- (b) serve on every owner of land to which the notice of re-alignment related a copy of the notice prescribed by paragraph (a) hereof in accordance with the provisions of section thirty-three; and
 - (c) pay to every owner of any such land as aforesaid in respect of which the Council has abandoned the proposal for re-alignment all costs properly incurred by such owner by reason of the notice of re-alignment, including the costs of the reference and award, if any, arising therefrom.

Voluntary
surrender
of land by
owner.

“72E—(1) The owner of any land fronting on any street may fix, with the approval of the Council, a new alignment, for any part of such street on which the land of such owner abuts.

(2) Such owner shall execute, as prescribed, and lodge with the Council a consent in the prescribed form authorising the incorporation as part of such street of the part of the land of such owner which is specified therein, subject to the payment of such compensation, if any, as may be therein specified.

(3) The approval, by the Council, of any such consent may be conditional upon the decision of the Council in respect of any proposed re-alignment of the street thereby affected and the Council shall not be bound to act upon such consent if any such proposal or the relevant part thereof is abandoned by the Council.

(4) If the Council decides to proceed with such re-alignment, or to act upon such consent independently of any other proposal, it shall cause a survey plan to be prepared as provided by section seventy-two C, showing the measurements of the land of such owner to be included in such street.

Effect of
notice or
consent on
title.

“72F—(1) If the Council decides to proceed with any proposed re-alignment it shall cause a certified copy of every consent or re-alignment notice relating thereto to be—

- (a) filed with the Recorder of Titles if any land comprised within the proposed new alignment is subject to the *Real Property Act 1862*, together with a survey plan comprising so much of the land as is subject to that Act; and
- (b) registered in the Registry of Deeds if any of such land is not subject to the said Act,

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and shall, where necessary, cause to be prepared separate survey plans showing the respective portions of the lands affected which are subject to the said Act and the portions not so subject. A.D. 1944.
—

(2) The Recorder of Titles on receipt of any such consent or notice and survey plan shall—

- (a) enter a memorial thereof on the relevant folium of the register and cause to be marked on the diagram of the land comprised in the title affected particulars of the portion thereof to which the consent or notice relates; and
- (b) require the holder of the certificate or other instrument of title to produce the same for the endorsement thereon of the relevant particulars of such consent or notice, and in default of compliance with such requirement enforce the same in accordance with the provisions of section one hundred and thirty-six of the *Real Property Act* 1862 as if such certificate or instrument contained a misdescription of the land therein comprised.

(3) Registration of a consent or notice as provided by this section shall be effected by lodging in the Registry of Deeds a memorial thereof signed by the Town Clerk and setting forth—

- (a) the date of the consent or the gazettal of the notice;
- (b) the names and addresses of the owners of the lands affected thereby;
- (c) a copy of the consent or notice; and
- (d) the name and locality of the street or part thereof to which the consent or notice relates,

and a copy of the survey plan of the land affected shall be endorsed thereon on which shall be indicated, where required, the portions, if any, of the land shown thereon which are subject to the *Real Property Act* 1862.

(4) A copy of every survey plan prepared for the purposes of this Part shall be lodged at the Town Hall and shall be open for inspection by any person without charge.

“72G—(1) The Council shall pay compensation as provided by this section in respect of land taken or to be taken for the purposes of re-alignment under this Part. Compensation
for land taken
or to be taken.

(2) Such compensation shall be determined by agreement between the owner of the land and the Council or in accordance with the provisions of Part V. and shall be payable as hereinafter provided.

(3) In relation to any allotment of land which is vacant or on which there is no church, dwelling-house, factory, garage, office, shop, stable, store, warehouse, workshop, or Vacant land.

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A.D. 1944. — similar building which is between the old alignment and the new alignment or within twenty feet from the new alignment the compensation to be paid shall be—

- (a) determined forthwith;
- (b) assessed as at the date of the notice in the *Gazette*;
- (c) limited to the amount, if any, by which such land will be depreciated by setting back the street alignment and widening the street; and
- (d) paid—
 - (i) when the owner sells the remainder of the land;
 - (ii) when the owner requires to fence the remainder of the land and has erected a substantial fence or wall on the new alignment in conformity with the future levels of the street;
 - (iii) when the Council requires the land for widening the street; or
 - (iv) at such earlier date as the Council may decide.

Built-on
land.

(4) Where there is any building on the land between the old alignment and the new alignment, the Council shall pay compensation, determined as aforesaid, to the owner of such building, when—

- (a) the owner sells the remainder of the land comprised in the allotment on which such building is erected;
- (b) such land is cleared of buildings and obstructions by the owner or lessee;
- (c) the building is destroyed or substantially destroyed by fire or other cause;
- (d) the Council requires to proceed with the widening of the street,

or at such earlier date as the Council may determine.

(5) If an owner subdivides his land and sells an allotment forming part thereof and such allotment fronts on the new alignment the compensation shall be apportioned and paid only in relation to that allotment as provided by subsection (4) hereof.

(6) All claims for compensation in relation to the proposed re-alignment shall be determined without unnecessary delay and the determination thereof shall be finalised within two years after the filing or registration of the notice of re-alignment under section seventy-two F or within such further time, if any, as a judge may have allowed in respect of any claim pending at the expiration of that period.

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“72H—(1) The owner of any allotment of land of which portion has become subject to this Part, may continue to occupy and, subject to this Part, use such portion until the compensation payable by the Council has been paid, or if it has been agreed or determined that no compensation is payable, then until sixty days after a notice in writing has been given to the owner by the Council stating that it requires such portion.

A.D. 1944.
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 Rights of
 occupancy
 pending
 widening
 of street.

(2) When the compensation has been paid, or after such period of sixty days, as the case may be, the owner shall be divested of his title to the land between the old alignment and the new alignment, and such land, subject to the provisions of this Part, shall become part of the street to which the aforesaid consent or notice relates, freed and discharged from all estates and interests previously subsisting therein, and any further occupation and use of such land by such owner shall be under the authority of a licence granted by the Council on such terms and conditions as the Council may think fit.

(3) Where compensation has been paid by the Council, or no compensation is payable, the Council may grant to the owner of any such allotment as aforesaid a licence to occupy and use the portion of the original allotment of which he has been divested on such terms and conditions as the Council may think fit.

(4) Every such licence shall be—

(a) for such period not exceeding ten years at any one time; and

(b) subject to the payment periodically of such amount,

as the Council may determine, but the payment in respect of any year shall not exceed ten pounds per centum of the amount paid as compensation to such owner in respect of the land to which the licence relates.

(5) The Council, subject to any conditions it may impose, may permit the holder of any licence under this section to erect on the land held thereunder any building of not more than one storey, or such other improvements as the Council may approve; and if such land is within a brick area the Council may dispense with the requirement that any such structure shall be of brick, stone, concrete, or like material.

(6) Where any allotment is reduced by reason only of the re-alignment to dimensions below the requirements of the *Building Act 1937* the Council shall acquire the whole of such allotment unless, in the opinion of the Council, it is desirable that such requirements should be modified in respect thereof and the Council may then modify such requirements accordingly.

“72 I—(1) The adoption or carrying out of any proposal for re-alignment shall not prejudice or affect any right the Council may have to recover from any owner the whole or

Matters
 arising from
 re-alignment
 operations.

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A.D. 1944. any part of the cost of construction of any street, except in so far as the same relates to an allotment the whole of which is acquired by the Council as provided by section seventy-two H.

(2) The amount to be paid by any owner for or towards the construction of any street shall not be increased by reason of the re-alignment of such street, except that in the case of a private street which is widened under the provisions of section seventy-two E the Council may require the owner to bear any additional cost thereby entailed.

(3) When any street is being widened pursuant to the provisions of this Part the Council shall re-erect any existing fences on the new alignment, and shall provide such walls, steps, and ramps as may be necessary to give access and conditions equal to those existing and in use on the date of the notice in the *Gazette*.

(4) If the widening of a street consequent on re-alignment will necessitate the removal of any hedge not exceeding ten feet in height and the owner desires that a new hedge be grown within the new alignment in readiness for such widening, the Council shall as far as is reasonably possible supply plants of the same species as those in the existing hedge, or such other plants as shall be mutually agreed upon.

(5) If at the date of the re-alignment notice there is a dwelling-house on any allotment of land affected thereby but such allotment has no substantial wall or fence on the old alignment, the Council in such cases as may be prescribed may contribute and pay to the owner of such allotment such proportion of the cost expended by him on the erection of a substantial wall or fence on the new alignment as to the Council may seem equitable.

(6) Where any land adjoining the new alignment determined for any street under this Part is above or below the level fixed for such street and in the opinion of the Council it is desirable that—

(a) such land should be graded to the level of such street, or to any less extent; or

(b) a retaining wall should be erected on such land, in lieu of, or in addition to, such grading,

the Council may deal with such land accordingly and for that purpose may enter on such land and erect and maintain thereon such works and retaining walls, if any, as it may think necessary for the purposes aforesaid.

(7) Before exercising the powers conferred upon it by subsection (6) hereof the Council shall serve on the owner of the land a notice in the prescribed form of its intention so to do and thereupon—

(a) the compensation, if any, payable to such owner shall be determined in accordance with the provisions of this Part; and

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(b) the date of service of such notice shall be deemed A.D. 1944. —
to be the date of the gazettal of notification for
the purposes of section thirty-three.

“72J—(1) Except as provided by this section, no owner of any land or building or work affected by re-alignment shall construct, build, place, reconstruct, rebuild, replace, or repair any building or work, or portion of a building or work, standing upon the land between the old and the new alignment. Building on
frontages.

(2) The Council may permit any owner to effect minor repairs, replacements, and improvements not of a substantial nature to provide for the reasonable preservation and temporary use of any existing building or work if, in the opinion of the Council, the same will not defeat or interfere with the intended operation of this Part.

(3) If portion of any building between the old and new alignments is damaged by fire, the Council may permit that portion to be restored as nearly as practicable to the same condition as it was in immediately prior to such damage, but so that such restoration shall not involve the Council in payment of additional compensation.

(4) The Council may permit an owner at his own risk to effect improvements to the front elevation of a building if such improvements will not involve the Council in payment of additional compensation.”

