



**LAND USE PLANNING AND APPROVALS (CONSEQUENTIAL
AND MISCELLANEOUS AMENDMENTS) ACT 1993**

No. 68 of 1993

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**LAND USE PLANNING AND APPROVALS
(CONSEQUENTIAL AND MISCELLANEOUS
AMENDMENTS) ACT 1993**

No. 68 of 1993

AN ACT to amend certain enactments consequential upon the enactment of the *State Policies and Projects Act 1993* and the *Land Use Planning and Approvals Act 1993* and to provide for other matters

[Royal Assent 9 November 1993]

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 *Land Use Planning and Approvals (Consequential and Miscellaneous Amendments) Act 1993*.

Commencement

2—(1) Subject to subsection (2), this Act commences on the day on which the *Land Use Planning and Approvals Act 1993* commences.

(2) The amendments made to the *Local Government Act 1962* by section 7 (d) commence 12 months after the day on which the *Land Use Planning and Approvals Act 1993* commences.

Conveyancing and Law of Property Act 1884 amended

3—The *Conveyancing and Law of Property Act 1884** is amended as follows:—

- (a) by omitting from section 84C (9) “Part XVIII of the *Local Government Act 1962*” and substituting “the *Land Use Planning and Approvals Act 1993*”;
- (b) by omitting from section 84E (5) “Commissioner for Town and Country Planning” and substituting “Land Use Planning Review Panel, established under the *Land Use Planning and Approvals Act 1993*,”;
- (c) by omitting from section 84E (5) “Commissioner” and substituting “Land Use Planning Review Panel”.

Crown Lands Act 1976 amended

4—The *Crown Lands Act 1976*† is amended by inserting the following subsection after subsection (5) of section 8:—

(6) After the commencement of the *Land Use Planning and Approvals Act 1993*, any littoral or riparian reserve, within the meaning of the *Local Government Act 1962*, is deemed to be reserved under this section free of any limitation as to its use but any grant or sale of that reserve must be carried out in accordance with section 64 (1) (e) and (d) and (2).

* 47 Vict. No. 19. For this Act, as amended to 1 September 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, Nos. 9, 23 and 99 of 1982, Nos. 51 and 78 of 1985, No. 27 of 1988 and No. 23 of 1992.

† No. 28 of 1976. For this Act, as amended to 1 October 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, Nos. 87 and 99 of 1982, No. 29 of 1984, No. 88 of 1985, No. 98 of 1986, No. 10 of 1988, Nos. 5 and 35 of 1990 and Nos. 20 and 43 of 1991.

Defacement of Property Act 1898 amended

5—The *Defacement of Property Act 1898*‡ is amended by omitting from section 8AA (3) “Planning Appeal Board constituted by the *Local Government Act 1962*” and substituting “Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*”.

Environment Protection Act 1973 amended

6—The *Environment Protection Act 1973** is amended as follows:—

(a) by omitting from section 2 (1) the definition of “appeal board” and substituting the following definition:—

“**Appeal Tribunal**” means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

(b) by repealing section 37;

(c) by omitting from section 38 (1) “board” and substituting “Appeal Tribunal”;

(d) by omitting from section 38 (1D) “clerk of the appeal board” and substituting “Appeal Tribunal”;

‡ 62 Vict. No. 5. For this Act, as amended to 1 January 1980, see the continuing Reprint of Statutes. Subsequently amended by No. 99 of 1982, No. 29 of 1984, No. 51 of 1985 and No. 46 of 1991.

* No. 34 of 1973. For this Act, as amended to 1 January 1980, see the continuing Reprint of Statutes. Subsequently amended by Nos. 21, 48 and 94 of 1980, Nos. 9 and 64 of 1982, Nos. 29, 110 and 111 of 1984, Nos. 24, 81, 110 and 117 of 1985, No. 66 of 1987, No. 30 of 1989, Nos. 5 and 40 of 1990 and Nos. 23, 27 and 46 of 1991 and S.R. 1992, No. 181.

- (e) by omitting from section 38 (1E) “clerk of the appeal board” and substituting “Appeal Tribunal”;
- (f) by omitting from section 38 (1G) “clerk of the appeal board” and substituting “Appeal Tribunal”;
- (g) by omitting section 38 (2);
- (h) by omitting from section 38 (3) “appeal board” and substituting “Appeal Tribunal”;
- (i) by omitting from section 38 (4) “clerk to the appeal board” and “appeal board” and substituting “Appeal Tribunal” in each case;
- (j) by omitting from section 38 (6) “clerk of the appeal board” and substituting “Appeal Tribunal”;
- (k) by omitting from section 38A “clerk of the appeal board” (wherever occurring) and “he” and substituting “Appeal Tribunal” and “it” respectively;
- (l) by omitting from section 39 “appeal board” and substituting “Appeal Tribunal”;
- (m) by repealing sections 39A, 40 and 41.

Local Government Act 1962 amended

7—The *Local Government Act 1962** is amended as follows:—

- (a) by omitting from section 4 (1) the definition of “Commissioner”;
- (b) by inserting in section 4 (1) the following definition after the definition of “occupier”:—

“Panel” means the Land Use Planning Review Panel established under the *Land Use Planning and Approvals Act 1993*;
- (c) by omitting from section 4 (1) the definition of “master plan”;
- (d) by inserting after section 4 (1) the following subsections:—

* No. 67 of 1962. For this Act, as amended to 1 February 1989, see the continuing Reprint of Statutes. Subsequently amended by Nos. 3, 5, 36, 40, 44, 46 (expired), 48, 50 and 51 of 1990, No. 8, 32, 43 and 46 of 1991 and Nos. 46 and 56 of 1992.

(1AA) For the purpose of determining whether any land constitutes a block for subdivision purposes, a block is—

- (a) the whole of an existing lot on a plan lodged with the Recorder of Titles or the Registrar of Deeds not later than 12 months after the date of commencement of the *Land Use Planning and Approvals Act 1993*; or
- (b) the whole of an original Crown grant; or
- (c) the whole of the land that is identified by description in a folio of the Register kept under the *Land Titles Act 1980*; or
- (d) the whole of the land that is identified by description in a deed; or
- (e) a fragmented or subdivided portion of land referred to in paragraphs (a), (b), (c) or (d) that can be verbally identified for transfer, or retention in the folio of that Register, by description.

(1AB) Land is not to be regarded as a block for subdivision purposes if it is—

- (a) intersected by a highway, railway, tramway or any other way; or
 - (b) intersected by land of the Crown, the Commonwealth or another person; or
 - (c) a fragmented or subdivided portion of land referred to in paragraphs (a), (b), (c) or (d) of subsection (1AA), either being transferred, or being retained in the folio of the Register kept under the *Land Titles Act 1980*, that requires mathematical closure for description.
- (e) by repealing sections 433 and 435;
- (f) by omitting from section 462 (1) the definitions of “single building” and “subdivide” and substituting the following definition:—

“**subdivide**”, used in relation to a block of land, means to divide the surface of that block by creating estates or interests giving separate rights of occupation but does not apply to any such division of a building or of the land belonging and contiguous to a building between the occupiers of that building;

- (g) by omitting section 462 (3), (4), (5), (6), (7), (8), (9) and (10);
- (h) by omitting subsection (2) of section 463 and substituting the following subsection:—
- (2) Nothing in subsection (1) prevents the granting of a lease of land or an agreement to lease land for a term not exceeding 10 years or for a term not capable of exceeding 10 years.
- (i) by omitting paragraph (a) from section 465 (1);
- (j) by inserting “or” after “lot;” in paragraph (b) of section 465 (1);
- (k) by omitting from section 465 (1) (ba) “planning scheme finally approved under Part XVIII; or” and substituting “finally approved planning scheme or interim order; or”;
- (l) by omitting from section 465 (1) (c) “Minister” and substituting “Minister administering the *Roads and Jetties Act 1935*”;
- (m) by omitting from section 465 (2) “Minister” (wherever occurring) and substituting “Minister administering the *Roads and Jetties Act 1935*”;
- (n) by repealing section 466;
- (o) by omitting from section 468 (1) (b) “Governor by proclamation declares, a memorandum of which proclamation shall be entered by the Surveyor-General on the proper maps and records kept by him” and substituting “Minister administering the *Crown Lands Act 1976* declares by order”;
- (p) by omitting from section 468 (14) “section 463, 469, or 471” and substituting “section 463 or 469”;
- (q) by inserting after section 469 (10) the following subsection:—

(11) Nothing in this section prevents the granting of a lease of land or an agreement to lease land for a term not exceeding 10 years or for a term not capable of exceeding 10 years.

- (r) by repealing sections 470 and 471;
- (s) by repealing section 471B;
- (t) by omitting from section 471C (2) (b) “Commissioner” and substituting “Panel”;
- (u) by omitting from section 472 (3) (e) and (g) “Minister on the recommendation of the Commissioner” (wherever occurring) and substituting “Panel”;
- (v) by omitting from section 472 (3) (f) “planning scheme finally approved under Part XVIII” and substituting “finally approved planning scheme or interim order”;
- (w) by omitting section 473A (3), (4) and (5);
- (x) by repealing section 475A;
- (y) by omitting from section 476 (1) “sections 463, 469 (1), 470 (1), or 471” and substituting “sections 463 or 469 (1)”;
- (z) by omitting from section 476 (1) (b) “or section 471”;
- (za) by omitting from section 476 (1) (b) “units;” and substituting “units.”;
- (zb) by omitting paragraph (c) of section 476 (1);
- (zc) by omitting from section 476 (2) “or section 471”;
- (zd) by omitting from section 477B (1) “of subdivision which shall include the land to be subdivided and the adjoining land to be added to” and substituting “of the resulting minimum lot delineating the boundaries of the sub-minimum lot and the adjoining land to which the sub-minimum lot is to be added”;
- (ze) by omitting from section 477B (4) (b) (i) “specified sub-minimum lots to be added to specified adjoining land” and substituting “the lot approved under this section to form a single parcel”;
- (zf) by omitting from section 477B (4) (b) (iii) “for the purpose only of enabling specified sub-minimum lots to be added to specified adjoining land” and substituting “to enable the portions of the lot approved under this section to form a single parcel”;

- (zg) by omitting from section 477B (4) (b) (iii) “, but so that the second of those purposes shall not be effective until the first of those purposes has been achieved”;
- (zh) by omitting from section 477B (14) “Commissioner” and substituting “Panel”;
- (zi) by omitting from section 481 (7), (8) and (14) “Commissioner” (wherever occurring) and substituting “Panel”;
- (zj) by omitting from section 486 (3) “Commissioner” and substituting “Panel”;
- (zk) by omitting paragraph (g) from section 695 (1) and substituting the following paragraph:—
- (g) whether the land is subject to a planning scheme or interim order under the *Land Use Planning and Approvals Act 1993*, and the nature of any zoning under that scheme or order;
- (zl) by repealing Part XVIII except for sections 757 and 758;
- (zm) by omitting from section 757 “Commissioner” (wherever occurring) and substituting “Panel”;
- (zn) by omitting from section 757 (4) “him” and substituting “the Panel”;
- (zo) by omitting from section 757 (7) “he” (three times occurring) and “his” and substituting “the Panel” and “the Panel’s” respectively;
- (zp) by omitting subsection (8) of section 757 and substituting the following subsection:—
- (8) The Panel must exercise its powers under subsection (7) in such a manner as to further the objectives set out in Schedule 1 of the *Land Use Planning and Approvals Act 1993*.
- (zq) by omitting section 757 (9);
- (zr) by omitting from section 757 (12) “him” and substituting “the Panel”;
- (zs) by omitting from section 758 “Commissioner” (wherever occurring) and “clerk to the Commissioner” (wherever occurring) and substituting “Panel” in each case;

- (zt) by omitting from section 758 (6) “himself” and “he” and substituting “itself” and “it”;
- (zu) by omitting from section 758 (8) “Commissioner’s” and substituting “Panel’s”;
- (zv) by inserting in section 791A (1) “and the *Land Use Planning and Approvals Act 1993*” after “this Act”;
- (zw) by repealing Schedule 7.

***Public Lands (Administration and Forests) Act 1991* amended**

8—The *Public Lands (Administration and Forests) Act 1991** is amended as follows:—

- (a) by omitting from section 5 (2) “environmental” and substituting “resource”;
- (b) by omitting from Part 1 of Schedule 1 “environmental” (wherever occurring) and substituting “resource”.

***Survey Co-ordination Act 1944* amended**

9—The *Survey Co-ordination Act 1944*† is amended by omitting paragraph (d) of section 20A (2) and substituting the following paragraph:—

- (d) one shall be a person nominated by the Land Use Planning Review Panel, established under the *Land Use Planning and Approvals Act 1993*, and appointed by the Governor; and

Removal of doubts in relation to prior schemes, &c.

10—(1) Any planning scheme or interim order finally approved under Part XVIII of the *Local Government Act 1962* and in force at the commencement of this Act is valid and effective, from the day on which it was finally approved, in relation to land that is, or has been, Crown land or vested in a State authority.

* No. 42 of 1991.

† 7 & 8 Geo. VI No. 86. For this Act, as amended to 1959, see the Reprint of Statutes (1826-1959), Vol. 6, p. 195. Subsequently amended by No. 31 of 1964, No. 55 of 1965, No. 28 of 1976, No. 99 of 1982, Nos. 29 and 93 of 1984, No. 5 of 1990 and No. 43 of 1991.

(2) For the purposes of subsection (1), “**State authority**” means a body or authority, whether incorporated or not, that is established or constituted under an Act or under the Royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another State authority.

Savings and transitional provisions

11—The savings and transitional provisions set out in Schedule 1 have effect.

SCHEDULE 1

Section 10

SAVINGS AND TRANSITIONAL PROVISIONS**Interpretation**

1—(1) In this Schedule—

“**modification**” includes elaboration, enlargement, alteration or substitution;

“**prior scheme**” means a planning scheme made or deemed to have been made under Part XVIII of the *Local Government Act 1962*.

(2) Unless the contrary intention appears, words and expressions used in the *Land Use Planning and Approvals Act 1993* have the same respective meanings in this Schedule.

Provisions in relation to schemes

2—On and from the commencement of this Act—

(a) a prior scheme continues in force as if it were a planning scheme made under the *Land Use Planning and Approvals Act 1993*; and

(b) a scheme provisionally approved under section 727 (1) of the *Local Government Act 1962* is taken to be a draft planning scheme certified under section 24 of the *Land Use Planning and Approvals Act 1993*; and

(c) a scheme publicly notified under section 727 (3) of the *Local Government Act 1962* is taken to be a draft planning scheme publicly exhibited under section 25 of the *Land Use Planning and Approvals Act 1993*; and

(d) an objection to a scheme, notice of which has been given under section 727 (4) of the *Local Government Act 1962*, is taken to be a representation submitted under section 26 (1) of the *Land Use Planning and Approvals Act 1993*; and

- (e) the objections to a scheme and the statement of a municipality as to the merit of the several objections forwarded to the Commissioner under section 728 (1) of the *Local Government Act 1962* are taken to be a report forwarded to the Panel under section 26 (2) of the *Land Use Planning and Approvals Act 1993*; and
- (f) a report forwarded to the Commissioner under section 728 (2) of the *Local Government Act 1962* in relation to a scheme is taken to be a report forwarded to the Panel under section 26 (2) of the *Land Use Planning and Approvals Act 1993*; and
- (g) a hearing which has been held and determined by the Commissioner under section 729 of the *Local Government Act 1962* in relation to an objection to a scheme is taken to be a hearing which has been held and determined by the Panel under section 27 (2) of the *Land Use Planning and Approvals Act 1993* in relation to a representation; and
- (h) a decision in relation to a scheme made by the Commissioner under section 729A of the *Local Government Act 1962* is taken to be a decision of the Panel under section 28 (1) (b) (ii) of the *Land Use Planning and Approvals Act 1993*; and
- (i) a scheme finally approved by the Commissioner under section 730 of the *Local Government Act 1962* is taken to be a planning scheme finally approved by the Panel under section 29 of the *Land Use Planning and Approvals Act 1993*.

Provisions in relation to prior modifications to prior schemes

3—On and from the commencement of this Act—

- (a) a modification made under Part XVIII of the *Local Government Act 1962* of a scheme made or deemed to have been made under that Part continues in force as if it were an amendment made under the *Land Use Planning and Approvals Act 1993* to a planning scheme; and

- (b) a modification provisionally approved under section 727 (1) of the *Local Government Act 1962* of a prior scheme is taken to be a draft amendment certified under section 36 of the *Land Use Planning and Approvals Act 1993*; and
- (c) a modification publicly notified under section 727 (3) of the *Local Government Act 1962* of a prior scheme is taken to be a draft amendment publicly exhibited under section 38 of the *Land Use Planning and Approvals Act 1993*; and
- (d) an objection to a modification, notice of which is given under section 727 (4) of the *Local Government Act 1962*, of a prior scheme is taken to be a representation submitted under section 39 (1) of the *Land Use Planning and Approvals Act 1993*; and
- (e) the objections to a modification of a prior scheme and the statement of a municipality as to the merit of the several objections forwarded to the Commissioner under section 728 (1) of the *Local Government Act 1962* are taken to be a report forwarded to the Panel under section 39 (2) of the *Land Use Planning and Approvals Act 1993*; and
- (f) a report forwarded to the Commissioner under section 728 (2) of the *Local Government Act 1962* in respect of a modification of a prior scheme is taken to be a report forwarded to the Panel under section 39 (2) of the *Land Use Planning and Approvals Act 1993*; and
- (g) a hearing which has been held and determined by the Commissioner under section 729 of the *Local Government Act 1962* in relation to an objection to a modification of a prior scheme is taken to be a hearing which has been held and determined by the Panel under section 40 (2) of the *Land Use Planning and Approvals Act 1993* in relation to a representation; and

- (h) a modification finally approved by the Commissioner under section 732 of the *Local Government Act 1962* of a prior scheme is taken to be an amendment finally approved by the Panel under section 42 of the *Land Use Planning and Approvals Act 1993* to a planning scheme.

Provisions in relation to interim orders

4—On and from the commencement of this Act—

- (a) an order made or deemed to have been made under Part XVIII of the *Local Government Act 1962* continues in force as if it had been made under the *Land Use Planning and Approvals Act 1993* for a period of 2 years or such longer period as the Panel may allow from the day on which it came into operation under the *Local Government Act 1962*; and
- (b) an order made by a municipality under section 734 (2) (a) of the *Local Government Act 1962* is taken to be a draft interim order prepared by the municipality under section 45 (1) of the *Land Use Planning and Approvals Act 1993*; and
- (c) an order approved by the Commissioner under section 734 (2A) (a) of the *Local Government Act 1962* is taken to be an interim order approved under section 45 (8) (a) of the *Land Use Planning and Approvals Act 1993*; and
- (d) an order publicly notified under section 734 (2A) (b) of the *Local Government Act 1962* is taken to be an interim order notified under section 45 (9) of the *Land Use Planning and Approvals Act 1993*.

Provisions in relation to dispensations

5—On and from the commencement of this Act—

- (a) a dispensation made under Part XVIII of the *Local Government Act 1962* continues in force as if it had been made under the *Land Use Planning and Approvals Act 1993*; and

- (b) an application to the Commissioner for approval under section 734 (2) (b) of the *Local Government Act 1962* is taken to be an application under section 47 (2) of the *Land Use Planning and Approvals Act 1993*; and
- (c) the approval of the Commissioner under section 734 (2) (b) of the *Local Government Act 1962* is taken to be the approval of the Panel under section 47 (3) of the *Land Use Planning and Approvals Act 1993* and is subject to the terms and conditions approved by the Commissioner; and
- (d) a dispensation granted by a municipality under section 734 (2) (b) of the *Local Government Act 1962* is taken to be a dispensation granted by the municipality under section 47 (8) of the *Land Use Planning and Approvals Act 1993*.

Provisions in relation to applications for discretionary planning approvals

6—On and from the commencement of this Act—

- (a) an application for a planning approval under section 733B (1) of the *Local Government Act 1962* lodged before a specification under this clause takes effect is to be dealt with as if the *Land Use Planning and Approvals Act 1993* had not been enacted; and
- (b) a planning authority must, not later than 3 months after the commencement of section 49 of the *Land Use Planning and Approvals Act 1993*, specify in respect of each scheme or order made under Part XVIII of the *Local Government Act 1962* those applications for planning approvals which are to be treated as applications for permits for the purposes of section 57 (1) of the *Land Use Planning and Approvals Act 1993*; and
- (c) a planning authority must give notice of the specification to the Panel which may approve or reject it; and
- (d) if it approves the specification, the Panel must publish the specification in the *Gazette* and in such other manner as it considers necessary; and

- (e) on publication the specification takes effect as if it were an amendment of the scheme or order; and
- (f) a specification is to be laid before each House of Parliament within the first 10 sitting days of the House after it has been published; and
- (g) if either House of Parliament passes a resolution, of which notice has been given within the first 15 sitting days of such House after a specification is laid before it, that the specification be disallowed—
 - (i) the specification is of no effect except in relation to any right of appeal accrued by virtue of the operation of the specification; and
 - (ii) an application for a planning approval under section 733B (1) of the *Local Government Act 1962* is to be dealt with as if the *Land Use Planning and Approvals Act 1993* had not been enacted.

Provisions in relation to applications for planning approvals

7—On and from the commencement of this Act—

- (a) an application for a planning approval under a scheme or order made under Part XVIII of the *Local Government Act 1962* is to be treated as an application for a permit under the *Land Use Planning and Approvals Act 1993*; and
- (b) where a scheme or an order under Part XVIII of the *Local Government Act 1962* requires a planning approval in respect of use or development, that requirement is to be treated as a requirement for a permit in respect of that use or development.

Provisions in relation to planning approvals

8—On and from the commencement of this Act—

- (a) where a corporation has refused to grant a planning approval under Part XVIII of the *Local Government Act 1962* or has granted a planning approval subject to conditions or restrictions and the appeal period specified in section 733D (2) of the *Local Government Act 1962* has not expired, the applicant may appeal to the Appeal Tribunal within 14 days after the commencement of the *Land Use Planning and Approvals Act 1993*, as if the decision of the corporation was a decision referred to in section 61 (4) of the *Land Use Planning and Approvals Act 1993*; and
- (b) where a corporation has granted a planning approval under Part XVIII of the *Local Government Act 1962* and the appeal period specified in section 733D (2) of the *Local Government Act 1962* has not expired, any person who, in respect of the application for that planning approval, made such representations as are referred to in section 733B (5) of the *Local Government Act 1962* may appeal to the Appeal Tribunal within 14 days after the commencement of the *Land Use Planning and Approvals Act 1993* as if the decision of the corporation was a decision referred to in section 61 (5) of the *Land Use Planning and Approvals Act 1993*; and
- (c) where an appeal has been lodged under Part XVIII of the *Local Government Act 1962* before the commencement of the *Resource Management and Planning Appeal Tribunal Act 1993*, the provisions of that Part continue to apply to the appeal as if the relevant provisions of that Part had not been repealed.

Provisions in relation to environment protection appeals

9—Where an appeal has been lodged under the *Environment Protection Act 1973* before the commencement of the *Resource Management and Planning Appeal Tribunal Act 1993*, the provisions of the *Environment Protection Act 1973* continue to apply to the appeal as if the relevant provisions of that Act had not been repealed.

*[Second reading presentation speech made in:—
House of Assembly on 11 May 1993
Legislative Council on 17 August 1993]*