

**LOCAL GOVERNMENT (APPEALS) AMENDMENT
ACT.**

New South Wales.



ANNO VICESIMO

ELIZABETHÆ II REGINÆ

Act No. 78, 1971.

An Act to constitute a Local Government Appeals Tribunal and define its powers, authorities, duties and functions; for this purpose to amend the Local Government Act, 1919, and certain other Acts; and for purposes connected therewith. [Assented to, 21st December, 1971.]

BE

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No. 78, 1971 **B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title and commencement. **1.** (1) This Act may be cited as the "Local Government (Appeals) Amendment Act, 1971".

(2) The Local Government Act, 1919, is in this Act referred to as the Principal Act.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 41, 1919. **2.** The Principal Act is amended by inserting next after section 342AT the following new Part :—

New Part XIIB.

PART XIIB.**APPEALS.****DIVISION 1.—***Constitution of Local Government Appeals Tribunal.*

Definitions. 342AU. In this Part—

"appeal" means an appeal, objection or reference made to the Tribunal under any of the provisions of this or any other Act;

"board" means a Board of Appeal constituted under this Part;

"party", in relation to any appeal to the Tribunal, means the person or body whose decision is the subject of the appeal, the person making the appeal or any Department of the Crown in right of

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of the State or of the Commonwealth, or any body constituted under an Act or an Act of the Commonwealth, permitted to appear as a party pursuant to paragraph (h) of subsection two of section 342BF of this Act; No. 78, 1971

“senior chairman” means—

- (a) where one person is appointed to the Tribunal under paragraph (a) of subsection one of section 342AV of this Act— that person; and
- (b) where more than one person is so appointed to the Tribunal—the person so appointed who is designated senior chairman in accordance with subsection one of section 342AW of this Act,

and, during any period during which that person is unavailable through absence, illness or any other cause, includes a person appointed or designated pursuant to subsection two of section 342AW of this Act to act as senior chairman.

342AV. (1) There shall be a Local Government Appeals Tribunal, which shall consist of— Local Gov-
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- (a) one or more persons—
 - (i) who has or have, in the opinion of the Minister, special knowledge of and experience in law, local government administration or town planning administration; and
 - (ii) who shall be nominated for appointment to the Tribunal by the Minister;
- (b) one or more persons—
 - (i) who has or have the prescribed qualifications in town planning or country planning; and

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- (ii) who shall be nominated for appointment to the Tribunal by the Minister;
- (c) one or more persons—
 - (i) who is or are officers; and
 - (ii) who is or are included in a panel of officers nominated jointly by the governing bodies of the Local Government Association of New South Wales and the Shires Association of New South Wales;
- (d) one or more persons—
 - (i) who or each of whom is registered as an architect under the Architects Act, 1921; and
 - (ii) who is or are included in a panel of persons so registered nominated by the Royal Australian Institute of Architects, New South Wales Chapter;
- (e) one or more persons—
 - (i) who has or have qualifications as civil engineers and has or have special qualifications, or has or have had special experience, in the structural design of buildings; and
 - (ii) who is or are included in a panel of persons having those qualifications and special qualifications or experience, nominated by the Institution of Engineers, Australia (Sydney Division);
- (f) one or more persons—
 - (i) who has or have qualifications as civil engineers and has or have special qualifications, or has or have had special experience, in the design of local government works; and

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- (ii) who is or are included in a panel of persons having those qualifications and special qualifications or experience, nominated by the Institution of Engineers, Australia (Sydney Division);
- (g) one or more persons—
- (i) who is or are members of the Master Builders' Association; and
- (ii) who is or are included in a panel of members of that Association nominated by that Association; and
- (h) one or more persons—
- (i) who or each of whom is registered as a surveyor under the Surveyors Act, 1929; and
- (ii) who is or are included in a panel of persons so registered nominated by the Institution of Surveyors, Australia, New South Wales Division.

(2) The number of persons who shall be appointed to be members of the Tribunal pursuant to each paragraph of subsection one of this section shall be such as may from time to time be determined by the Minister.

(3) The members of the Tribunal shall be appointed by the Governor and shall, subject to this Part, hold office for five years from the date of their appointment and be eligible for re-appointment.

(4) The nomination of the members of each panel referred to in paragraphs (c), (d), (e), (f), (g) and (h) of subsection one of this section—

- (a) shall be made in such manner and within such period as may from time to time be fixed by the Minister and notified by him to the body entitled to make the nomination;

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- (b) shall include such number of persons as may be notified by the Minister to the body entitled to make the nomination; and
- (c) shall be accompanied by the written consent of the persons nominated to serve, if appointed, as members of the Tribunal.

(5) Where the nomination of the members of any such panel does not comply with subsection four of this section, the Governor may appoint, instead of persons who are required, under the paragraph of subsection one of this section which refers to that panel, to be appointed from that panel, persons who have been nominated by the Minister and who have the status or qualifications referred to in subparagraph (i) of that paragraph.

(6) A member of the Tribunal appointed pursuant to paragraph (a) or (b) of subsection one of this section shall devote the whole of his time to the duties of his office.

(7) A member of the Tribunal, other than a member appointed pursuant to paragraph (a) or (b) of subsection one of this section, shall be entitled to receive such remuneration (whether by way of fees, allowances or otherwise) and such travelling and out-of-pocket expenses as may be prescribed.

(8) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of any member of the Tribunal and a member of the Tribunal shall not, except as provided by subsection nine of this section, be subject, in his capacity as such a member, to the provisions of the Public Service Act, 1902.

(9) The provisions of the Public Service Act, 1902, and the regulations thereunder, (except in so far as they are inconsistent with any of the provisions of
this

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this Act) apply to and in respect of a member of the Tribunal appointed pursuant to paragraph (a) or (b) of subsection one of this section as if he had been appointed as such a member pursuant to the provisions of that Act and were an officer of the Public Service and any member so appointed shall unless he makes an election in accordance with subsection ten of this section be deemed to be an employee within the meaning of the Superannuation Act, 1916. No. 78, 1971

(10) A member of the Tribunal appointed pursuant to paragraph (a) or (b) of subsection one of this section who immediately before his appointment was a permanent servant within the meaning of the Local Government (Superannuation) Act, 1927, may within the prescribed time after his appointment elect to continue to make payments or contributions during the period he holds office as such a member as if he had remained such a permanent servant.

342AW. (1) Where more than one person is appointed to the Tribunal pursuant to paragraph (a) of subsection one of section 342AV of this Act, one of them shall, by an instrument in writing executed by the Minister, be designated as the senior chairman.

(2) The Minister may, by an instrument in writing—

- (a) where only one person is appointed to the Tribunal pursuant to paragraph (a) of subsection one of section 342AV of this Act—appoint a person having the qualifications referred to in subparagraph (i) of that paragraph; or
- (b) where there are two or more persons so appointed—designate one of those persons (other than the person designated as senior chairman),

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to act as senior chairman during any period the senior chairman is unavailable through absence, illness or any other cause.

Boards of Appeal.

342AX. (1) As soon as practicable after an appeal is made to the Tribunal under this or any other Act, the senior chairman shall constitute a Board of Appeal to deal with the appeal.

(2) A board shall consist of—

- (a) three members each of whom has been appointed to the Tribunal under paragraph (a), (b) or (c) of subsection one of section 342AV of this Act, so that one person appointed under each such paragraph is a member of the board; and
- (b) a number, determined in accordance with subsection five of this section, of other members selected from the persons appointed to the Tribunal under paragraphs (d), (e), (f), (g) and (h) of subsection one of section 342AV of this Act.

(3) The members of a board shall be appointed by instrument in writing executed by the senior chairman, who may appoint himself as a member of a board.

(4) The member of a board appointed to the Tribunal under paragraph (a) of subsection one of section 342AV of this Act shall be the chairman of that board.

(5) The number of members to be appointed to any board pursuant to paragraph (b) of subsection two of this section shall be as determined by the senior chairman, but not more than one member of any board shall be a person appointed to the Tribunal pursuant to any one of paragraphs (d), (e), (f), (g) and (h) of subsection one of section 342AV of this Act.

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(6) In appointing the members to be appointed to any board pursuant to paragraph (b) of subsection two of this section, the senior chairman shall have regard to the nature of the appeal with which the board is to deal and the qualifications of the members to be appointed pursuant to that paragraph. No. 78, 1971

342AY. (1) A servant of a council, a county council or the State Planning Authority of New South Wales shall not be appointed to the Tribunal. Disqualifica-
tion.

(2) A person who is over the age of sixty-five years shall not be appointed to the Tribunal pursuant to paragraph (a) or (b) of subsection one of section 342AV of this Act.

(3) Where a person is appointed to a board to deal with an appeal in the result of which he has, in any manner, a pecuniary interest, direct or indirect, or which relates to any matter in which he has acted, in any manner, on his own behalf or on behalf of another person, he—

- (a) shall inform the senior chairman that he has such an interest or has so acted; and
- (b) thereupon shall cease to be a member of that board.

(4) Where a person is appointed to a board to deal with an appeal which relates to any matter dealt with by—

- (a) a council, and that person is an officer of that council or of any county council of which that council is a constituent council; or
- (b) a county council, and that person is an officer of that county council or of any council which is a constituent council of that county council.

he—

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he—

- (c) shall inform the senior chairman that he is such an officer; and
- (d) thereupon shall cease to be a member of that board.

(5) A decision of a board is not vitiated by reason that a person acts as a member of the board in contravention of subsection three or four of this section or otherwise fails to comply with the provisions of either of those subsections.

Cessation
of term
of office.

342AZ. (1) A member of the Tribunal shall cease to hold office as such a member and as a member of any board to which he has been appointed—

- (a) if he dies;
- (b) if he holds any position of profit under or in the gift of any council or county council or the State Planning Authority of New South Wales;
- (c) if he becomes a bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes any assignment of his salary, remuneration, allowances or estate for their benefit;
- (d) if he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958;
- (e) if he is convicted in New South Wales of a crime or offence which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of a crime or offence which if committed in New South Wales would be a crime or offence so punishable;

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- (f) if having been appointed as a member of the Tribunal pursuant to paragraph (c), (d), (g) or (h) of subsection one of section 342AV of this Act, he ceases to have the status or qualifications specified in subparagraph (i) of the paragraph pursuant to which he was so appointed;
- (g) if he resigns his office by an instrument in writing under his hand addressed to the Governor and delivered to the Minister;
- (h) if he is removed from office by the Governor; or
- (i) where he is a person referred to in paragraph (a) or (b) of subsection one of section 342AV of this Act, on the day on which he attains the age of sixty-five years.

(2) The Governor may, for any cause which appears to him sufficient, remove any member of the Tribunal from office.

(3) For the purposes of paragraph (b) of subsection one of this section a person does not hold a position of profit under or in the gift of a council by reason only that he receives any allowance, fees or other benefit under Division 5 of Part IV of this Act.

(4) Notwithstanding the provisions of subsection one of this section, a member of the Tribunal who, pursuant to paragraph (f) of that subsection, ceases to hold office as a member of a board by reason of his ceasing to be an officer, may continue to act as a member of that board for the purposes only of—

- (a) any matter before that board the proceedings in which commenced before he ceased to be such an officer, if, before he ceased to be such an officer, he took part as a member of the board in those proceedings; and
- (b) making any decision arising out of those proceedings.

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(5) Where a person is appointed to the Tribunal in the place of a member of the Tribunal who has vacated his office as such a member by reason of the operation of subsection one of this section, that person shall hold office as a member of the Tribunal for the balance of the term of office of the member who has so vacated his office.

Procedure where member of a board ceases to hold office during an appeal.

342BA. (1) Where a person (in this subsection referred to as a "former member") ceases to be a member of a board by reason of the operation of subsection three or four of section 342AY, or subsection one of section 342AZ, of this Act, the following provisions shall have effect :—

(a) where—

(i) the board has not commenced to deal with the appeal which it was appointed to deal with; or

(ii) the board has commenced to deal with that appeal and all the parties consent to the senior chairman so doing,

the senior chairman may appoint another person, appointed to the Tribunal pursuant to the paragraph of subsection one of section 342AV of this Act pursuant to which that former member was appointed to the Tribunal, to be a member of that board, but if there is no such other person available or eligible to act as a member of that board, the senior chairman may request the Minister to nominate a person having the like status or qualifications as that former member and may appoint the person so nominated to be a member of that board; or

(b) where the board has commenced to deal with that appeal and any of the parties does not consent as referred to in subparagraph (ii) of paragraph (a) of this subsection, the senior chairman shall dissolve that board and appoint another board to deal with that appeal.

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(2) A person appointed as a member of a No. 78, 1971 board pursuant to paragraph (a) of subsection one of this section may act as a member of that board in all respects as if he had been a member of that board since its constitution.

342BB. (1) The chairman of a board shall preside at the sittings of that board. Sittings
of a
board.

(2) Where the voting on any question at a sitting of a board is equal, the person presiding at that sitting shall have a casting vote as well as a deliberative vote.

(3) Subject to subsections four and five of this section, four members of a board shall form a quorum.

(4) During the absence of the chairman of a board from any sitting of a board, the member appointed to the Tribunal pursuant to paragraph (b) of subsection one of section 342AV of this Act may, if that member forms part of the quorum and the parties to the matter before the board consent to that member's acting as chairman, preside at that sitting and that member shall, when so presiding, have all the powers and authorities of a chairman of a board, but if the parties do not so consent—

- (a) the remaining members of the board present at that sitting may adjourn the sitting and for that purpose shall form a quorum; or
- (b) the senior chairman may appoint another board to deal with the appeal.

(5) If less than four members attend any sitting of a board, and the parties to any matter before that board so consent, the remaining members of the board present at that sitting shall form a quorum.

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Board's
decision
to be
decision
of the
Tribunal.

Preserva-
tion of
rights
of certain
members of
the
Tribunal.

342BC. The decision of the board on an appeal shall be the decision of the Tribunal.

342BD. (1) In this section, "full-time member" means a member of the Tribunal appointed pursuant to paragraph (a) or (b) of subsection one of section 342AV of this Act.

(2) Where a full-time member was, immediately before his first appointment as a member of the Tribunal, an officer of the Public Service, has continuously been such a member and ceases to be such a member, otherwise than pursuant to subsection one (paragraph (g) excepted) of section 342AZ of this Act, he shall, if he is under the age of sixty years, be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before that appointment.

(3) Any officer of the Public Service or any person who is an employee within the meaning of the Superannuation Act, 1916, or any permanent servant within the meaning of the Local Government (Superannuation) Act, 1927, who has made an election referred to in subsection ten of section 342AV of this Act, being an officer, person or permanent servant who is appointed as a full-time member, shall retain any rights which have accrued or are accruing to him as such an officer, employee or permanent servant and shall continue to make payments or contributions and shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he had continued to be such an officer, employee or permanent servant during his service with the Tribunal, and for the purposes of this subsection his service as a full-time member shall be deemed to be service for the purpose of the Act under which he continues to contribute or by which that entitlement is conferred.

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(4) A full-time member shall not, in respect **No. 78, 1971** of the same period of service, be entitled to claim more than one benefit referred to in subsection three of this section.

(5) Where a full-time member makes payments or contributions as referred to in subsection three of this section, the Minister shall pay to the State Superannuation Board or Local Government Superannuation Board, as the case may be, such amounts as would have been payable to that Board if the full-time member had remained an employee within the meaning of the Superannuation Act, 1916, or a permanent servant within the meaning of the Local Government (Superannuation) Act, 1927, and had continued to be employed by the employer by whom he was employed immediately before his appointment as a full-time member and as if he were receiving from that employer the same salary and allowances as is or are being paid to him as a full-time member.

DIVISION 2.—Powers, authorities, duties and functions of the Local Government Appeals Tribunal.

342BE. (1) Appeals to the Tribunal shall be made in **Procedure.** the manner prescribed and be accompanied by such fees and deposits towards costs as may be prescribed.

(2) The practice and procedure relating to appeals to the Tribunal, and the conduct of appeals before a board, shall be such as may be prescribed.

342BF. (1) A board shall for the purposes of hearing **Powers of a board.** and determining an appeal have all the powers, authorities, duties, functions and discretions which the person or body whose decision is the subject of the appeal had in respect of the matter the subject of the appeal.

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(2) In any proceedings before it a board may do all or any of the following things, as to it seems proper, that is to say, a board may—

- (a) if at the time and place appointed for the conduct of the proceedings—
 - (i) the person initiating the appeal does not appear—dismiss the appeal;
 - (ii) that person does, but any other party does not, appear—commence and conclude the hearing of the proceedings and make its decision, in the absence of that other party,
or adjourn the proceedings for such period as it thinks fit;
- (b) if all the parties to the proceedings consent, make its decision in the absence of the parties having regard to documentary evidence and written submissions exchanged by the parties and lodged with the board;
- (c) adjourn the proceedings for such period as it thinks fit;
- (d) permit, if in its opinion the circumstances so warrant and subject to any adjournment it thinks proper, an appeal to proceed where the appeal is expressed to have been made under a provision of an Act other than the provision of the Act under which it should have been made;
- (e) treat, if in its opinion the circumstances so warrant and subject to any adjournment it thinks proper, any decision, the subject of or relevant to the appeal, which was given on erroneous grounds, as having been made on other grounds;
- (f) permit, whether for the purpose of paragraph (d) or (e) of this subsection or otherwise and subject to any adjournment it thinks proper, the

amendment

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amendment of any notice, particulars or other No. 78, 1971 matter relating to the proceedings in which any error, uncertainty, defect or omission is apparent;

- (g) permit the appeal to be withdrawn;
- (h) permit any Department of the Crown in right of the State or of the Commonwealth, or any body constituted by or under an Act or an Act of the Commonwealth, to appear as a party in the proceedings;
- (i) appoint one or more of its members to make any inquiry or any inspection which appears to be necessary or expedient for the purposes of the proceedings;
- (j) except as may be provided by subsection two of section 342BE of this Act, regulate its own procedure;
- (k) by its decision confirm, amend, vary or disallow any decision appealed against or dismiss the appeal; or
- (l) if the appeal relates to any application made to a council or responsible authority, determine, subject to subsections one and five of this section, the application in such manner as it thinks fit.

(3) Notwithstanding any other provision of this Part, a member of the Tribunal appointed pursuant to paragraph (a) of subsection one of section 342AV of this Act and a member of the Tribunal appointed pursuant to paragraph (b) of that subsection may together—

- (a) permit an appeal to be withdrawn;
- (b) adopt, pursuant to section 317G of this Act, a resolution of a council where no person objects; and

(c)

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(c) where the parties to an appeal agree in writing to the appeal being decided in a particular manner, decide the appeal in that manner,

and any decision made under this subsection by any two such members shall be deemed to be a decision of a board made in proceedings before a board.

(4) In the exercise and discharge of its powers, authorities, duties, functions and discretions a board shall not be bound to follow strict legal procedure or to observe the rules of law governing the admission of evidence.

(5) In making its decision a board shall have regard to this Act, the ordinances, the circumstances of the case and the public interest.

**Additional
powers of
a board
—provision
of ease-
ments.**

342BG. (1) Where, on any appeal in respect of an application under Part XII of this Act, a board is satisfied that it is necessary, for the drainage of the land to which the application relates or the disposal of that drainage, that a drainage easement should be provided over other land, the board may, by its decision, in addition to exercising any of the powers conferred by section 342BF of this Act, require the applicant to pay to the council, or to give to the council security to its satisfaction for, such sum as may be determined by the board as being the cost of acquisition by the council of such an easement specified by the board in its decision and the cost of any works, so specified, within the easement.

(2) Before making any decision under subsection one of this section, the board shall notify the owner of any land over which it appears to that board that it may be necessary for an easement to be provided, or on which it may be necessary for any works to be

constructed.

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constructed, as referred to in subsection one of this **No. 78, 1971** section, and that owner may object to the provision of the easement and the construction of the works.

(3) The board shall afford each such objector an opportunity to appear before it personally or by counsel, solicitor or agent, in support of his objections and shall consider all such objections.

342BH. (1) The parties to any matter before a board shall, subject to any objection, which shall be determined by the board, submit to be examined by the board in relation to such matter and shall, subject as aforesaid, produce before the board all books, deeds, papers, accounts, writing and documents within their possession or power respectively which may be required. **Evidence.**

(2) The chairman of a board may, by notice in writing served on any person, order the attendance before the board of that person for the purpose of giving evidence or producing documents.

(3) The witnesses in any matter before a board shall, if the board thinks fit, be examined on oath or affirmation.

(4) The chairman of a board may, for the purpose of proceedings before the board, make an order for the examination on oath or affirmation of any party in the matter, or any witness whose evidence, by reason of absence or intention to depart from New South Wales, or illness, age, distance of residence or other cause, would otherwise be liable to be lost, and give all such directions as to the time, place and manner of the examination and other matters connected therewith as the chairman thinks fit, and every such order may be made or issued in like manner as orders are made for the examination of witnesses in any cause in the Supreme Court or as near thereto as may be.

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(5) All evidence taken under any such order shall be received by the board, saving all just exceptions, in like manner as evidence taken under any order made or issued by the Supreme Court in any proceedings, other than criminal proceedings, in that Court is received in that Court.

(6) Any person who wilfully and corruptly gives false evidence before the board shall be guilty of perjury as if the evidence had been given on oath in court, and may be dealt with, prosecuted and punished accordingly.

Records of boards.

342BI. (1) Each board shall keep minutes of its proceedings, which shall include a statement of the facts, evidence and submissions disclosed, given or made in the proceedings and, except in the case of proceedings on an objection or reference, the reasons for the board's decisions.

(2) Every decision of a board shall be in the form of an instrument in writing signed by the chairman and one other member of the board which made the decision.

(3) The decision of a board upon any appeal, other than an objection or reference, shall, for the purpose of this Act or an ordinance, be deemed to be the final decision of the person or body whose decision is the subject of the appeal and shall be given effect to accordingly.

(4) A board shall have power to correct, in an instrument of any decision made by that board, any clerical mistake and any ambiguity or uncertainty arising from any accidental slip or omission.

(5) True copies of each instrument of decision, and an extract from the minutes of the board's proceedings so far as they relate to that decision, certified under the hand of the senior chairman or of a person appointed

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appointed by the senior chairman for that purpose, shall be forwarded to the person or body whose decision is the subject of the appeal and to each of the other parties to the proceedings. **No. 78, 1971**

(6) Any document forwarded to a council or responsible authority pursuant to subsection five of this section shall be filed in the office of that council or responsible authority.

(7) Any person on payment of the prescribed fee may inspect a copy of any document so filed in the office of a council or responsible authority and may take copies thereof or make extracts therefrom.

(8) In any legal proceedings, a document purporting to be a copy of an instrument of a board's decision, shall, if certified under the hand of a person purporting to be the senior chairman or of a person purporting to have been appointed by the senior chairman for that purpose, be prima facie evidence of the decision of the board referred to in the document.

342BJ. (1) Except where otherwise in this Act provided, the costs of any proceedings before a board and of the decision thereon shall be in the discretion of the board which may direct to and by whom and in what manner those costs or any part thereof shall be paid. **Costs.**

(2) Where, pursuant to—

- (a) paragraph (g) of subsection two of section 342BF of this Act, a board; or
- (b) paragraph (a) of subsection three of that section, any two members of the Tribunal,

permits or permit the withdrawal of an appeal, that board or those two members, as the case may be, may make such order as to costs as to it or them seems proper.

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(3) Any such costs may be enforced and recovered in like manner as costs awarded in a court of summary jurisdiction.

Appeal to
Supreme
Court on
point of
law.

342BK. (1) Any party to any proceedings before a board may, subject to this section, appeal to the Supreme Court against any decision of the board on a question of law.

(2) An appeal under subsection one of this section shall not, except with the leave of the Supreme Court applied for within twenty-one days after the date of the board's decision on the question of law, be made unless—

- (a) the question of law was raised during the proceedings before the board; and
- (b) notice was given to the board during the proceedings that the party appealing intended to appeal if the board decided the question of law contrary to the manner put by that party.

(3) An appeal under subsection one of this section may be made—

- (a) where it is made otherwise than pursuant to the leave of the Supreme Court—within twenty-one days after the date of the board's decision on the question of law; or
- (b) where it is made pursuant to the leave of the Supreme Court—within twenty-one days after the grant of that leave,

and shall be made in accordance with rules of Court.

(4) Within the same period of twenty-one days a copy of the process originating the appeal shall be served on the board and each other party to the proceedings by the party making such application.

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(5) The Supreme Court shall hear and determine the question of law arising on the appeal and shall—

- (a) remit the decision of the court thereon to the Tribunal; or
- (b) make such other order in relation to the appeal as to it seems fit.

(6) The board whose decision is appealed against and a member of that board shall not be liable to any costs in respect of the decision or the appeal.

(7) This section has effect notwithstanding anything contained in the Supreme Court Act, 1970, or in any Act amending or replacing that Act.

342BL. (1) Where—

- (a) any clerical mistake has, in the opinion of the senior chairman, occurred, or any ambiguity or uncertainty has, in the opinion of the senior chairman, arisen from any accidental slip or omission, in an instrument of decision of a board (in this section referred to as “the original board”); or
- (b) a decision on a question of law that arose out of an appeal to a board (in this section referred to as “the original board”), has been remitted to the Tribunal,

Board's power to correct mistakes, &c., or to deal with remitted appeals.

the senior chairman shall, in accordance with subsection two of this section, constitute a board which shall—

- (c) have power to correct the clerical mistake or the ambiguity or uncertainty; or
- (d) in addition to having the powers, authorities, duties, functions and discretions conferred or imposed on boards by any other provision of this

Part

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Part have power to deal with or complete dealing with the appeal out of which the question of law arose,

as the case may be.

(2) A board constituted for the purpose of subsection one of this section shall as nearly as practicable be composed of the same members as the original board.

Further amend-
ment of
Act No. 41,
1919.
(Part I.—
Prelimin-
ary.)

3. Part I of the Principal Act is amended—

Sec. 3.
(Division
into
Parts.)

(a) by inserting in section three next after the matter relating to Part XIIA the words and symbols “PART XII B.—APPEALS—ss. 342AU–342BL.”;

Sec. 4.
(Defini-
tions.)

(b) by inserting in section four next after the definition of “Treasurer” the following new definition :—

“Tribunal” means the Local Government Appeals Tribunal constituted under Part XII B of this Act.

Further amend-
ment of
Act No. 41,
1919.
(Part XI.—
Building
Regulation.)

4. Part XI of the Principal Act is amended—

Sec. 314.
(Duty of
council.)

(a) by inserting in subsection three of section three hundred and fourteen after the word “notice” the words “which shall also indicate that the applicant has a right of appeal under this Act against the decision of the council”;

(b)

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- (b) by omitting from the heading to Division 4B the words "*Cities of Sydney, Newcastle and Greater Wollongong*—"; No. 78, 1971
Division
4B.
(Heading.)
- (c) by omitting section 317C and by inserting in lieu thereof the following section :— Subst. sec.
317C.
- 317C. In this Division, "board", in relation to an objection made under this Division, means the Board of Appeal constituted under Part XIIB of this Act to deal with that objection. Definition.
- (d) by omitting from paragraph (a) of section 317E the words "appear before the board to raise objections to" and by inserting in lieu thereof the words "object to the Tribunal against"; Sec. 317E.
(Notice to
owners.)
- (e) by omitting Divisions 4C and 4D and the headings thereto and by inserting in lieu thereof the following Division and heading thereto :— Subst.
Division 4C
and
repealed
Division
4D.

DIVISION 4C.—*Appeals.*

317K. In this Division—

Definitions.

"applicant", in relation to an application under this Part for approval to erect a building, means any person entitled to make that application;

"approval" means an approval under this Part or the ordinances made for the purposes of this Part.

317L. Any applicant for an approval aggrieved by any decision of a council on his application or by any neglect or delay by the council to give within forty days after service on the council of the application a decision with respect thereto, may appeal to the Tribunal. Appeals.

317M.

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Objections
to applica-
tion of
provision
of
ordinances.

317M. (1) An applicant for an approval may lodge with the council an objection that the ordinances relating to the erection of buildings do not make appropriate provision with respect to the erection of the building the subject of the application or that compliance with any provision of those ordinances is unreasonable or unnecessary in the particular circumstances of the case.

(2) Any such objection shall be referred to the Tribunal which, if it is of the opinion that the objection is well founded and that the building would be of a satisfactory construction if a direction were to be given under this subsection, may, by instrument in writing, direct that—

(a) such provisions of any ordinance relating to the erection of buildings as are specified in the direction—

(i) shall not apply; or

(ii) shall apply with such modifications as are specified in the direction,

in respect of the erection of that building; or

(b) such requirements as are specified in the direction shall apply to the erection of the building,

or give directions under both paragraphs (a) and (b) of this subsection.

(3) Any direction given by the Tribunal under subsection two of this section shall, if the council's approval to the application for the erection of the building referred to in the direction is given, have effect according to its tenor and, in the case of a direction referred to in subparagraph (ii) of paragraph (a), or in paragraph (b), of that subsection, be embodied in that approval as a condition thereof.

(f)

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- (f) by omitting paragraph (32) of section three hundred and eighteen. **No. 78, 1971**

Sec. 318.
(Ordinances.)

5. Part XII of the Principal Act is amended—

Further amendment of Act No. 41, 1919. (Part XII.—Town Planning.)

- (a) (i) by omitting from paragraph (bi) of subsection one of section three hundred and twenty-seven the words “the Board of Subdivision Appeals constituted under Division 3 of this Part has pursuant to subsection (1A) of section 341L of this Act made a requirement, as referred to in that subsection,” and by inserting in lieu thereof the words “the Tribunal has made a requirement referred to in subsection one of section 342BG of this Act”;

Sec. 327.
(Conditions to be observed before opening new roads or subdivisions.)

- (ii) by omitting from paragraph (ai) of subsection two of the same section the words “the Board of Subdivision Appeals constituted under Division 3 of this Part has pursuant to subsection (1A) of section 341L of this Act made a requirement, as referred to in that subsection,” and by inserting in lieu thereof the words “the Tribunal has made a requirement referred to in subsection one of section 342BG of this Act”;

- (b) (i) by omitting from subsection one of section 327c the words “the Board of Subdivision Appeals constituted under Division 3 of this Part has pursuant to subsection (1A) of section 341L of this Act made a requirement, as referred to in that subsection,” and by

Sec. 327c.
(Council to carry out certain drainage works.)

inserting

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inserting in lieu thereof the words “the Tribunal has made a requirement referred to in subsection one of section 342BG of this Act”;

(ii) by omitting from the same subsection the words “that Board” and by inserting in lieu thereof the words “the Tribunal”;

(iii) by omitting from the same subsection the words “Board’s award” and by inserting in lieu thereof the words “Tribunal’s decision”;

Sec. 331.
(Decisions on applications, and notices to applicants.)

(c) by inserting in subsection four of section three hundred and thirty-one after the word “notice” the words “which shall also indicate that the applicant has a right of appeal under this Act against the decision of the council”;

Sec. 331A.
(Procedure where plan of subdivision relates to land within the area of operations of the Metropolitan Water Sewerage and Drainage Board.)

(d) (i) by omitting paragraph (b) of subsection one of section 331A and by inserting in lieu thereof the following paragraph:—

(b) on an appeal against the decision or all of the decisions of the council in respect of an application under this Division (other than an application relating only to the opening of a public road) in respect of any such land, the Tribunal has made a decision, other than a decision dismissing the appeal against the decision or all of the decisions of the council;

(ii) by omitting from the same subsection the word “award” wherever occurring and by inserting in lieu thereof the words “decision of the Tribunal”;

(e)

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- (e) by omitting Division 3 and the heading thereto and by inserting in lieu thereof the following Division and heading thereto :—

No. 78, 1971
Subst.
Division 3.

DIVISION 3.—*Appeals.*

341. Any applicant for approval to open a public road or to subdivide land, who is aggrieved by any decision of a council on his application made under this Part, or under any ordinance made thereunder or by any neglect or delay of the council to give within forty days after service on the council of the application a decision with respect thereto, may appeal to the Tribunal.

- (f) by omitting paragraph (e) of section three hundred and forty-two.

Sec. 342.
(Ordinances.)

6. Part XIIA of the Principal Act is amended—

Further amendment of Act No. 41, 1919.
(Part XIIA.—Town and Country Planning Schemes.)

- (a) (i) by omitting from subsection two of section 342N the words “Land and Valuation Court” and by inserting in lieu thereof the word “Tribunal”;

Sec. 342N.
(Powers, etc., of responsible authority.)

- (ii) by omitting subsections three, four, five and six of the same section and by inserting in lieu thereof the following subsections :—

(3) A responsible authority to which an application is made under a prescribed scheme for an approval, consent or permission shall cause notice of its decision on the application to be given to the applicant.

(4)

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(4) Where the responsible authority refuses to grant an application referred to in subsection three of this section or grants it subject to conditions, the reasons for the responsible authority's decision shall be indicated in the notice given under that subsection, which shall also indicate that the applicant has a right of appeal under this Act against the decision of the responsible authority.

New sec.
342NA.

(b) by inserting next after section 342N the following new section :—

Modifica-
tion of
prescribed
schemes.

342NA. (1) In this section—

“development” has the meaning ascribed thereto by subsection one of section 342T of this Act;

“minimum requirements” means those provisions of a prescribed scheme by or under which requirements are specified in respect of—

- (a) the area or frontage of any land, the dimensions of any land or building or work or the distance of any building or work from any specified point;
- (b) the proportion or percentage of a site which a building or work may occupy or the ratio between the part of a site not occupied by a building or work and the part so occupied;
- (c) the height, cubic content or floor space of a building or the number of persons who may occupy a building;
- (d) the space required for the parking, standing or loading of vehicles; or
- (e) the road pattern in any subdivision of land.

(2)

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(2) An applicant for an approval, No. 78, 1971 consent or permission of a responsible authority under a prescribed scheme may, if the application could, but for any minimum requirements of the prescribed scheme, be granted by the responsible authority, lodge with the responsible authority an objection that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

(3) Any such objection shall be referred to the Tribunal which, if it is of the opinion that the objection is well founded and that the planning of the land to which the prescribed scheme applies would not be detrimentally affected if a direction were to be given under this subsection may, if the responsible authority so agrees, direct by instrument in writing that—

- (a) such of the minimum requirements as are specified in the direction—
 - (i) shall not apply; or
 - (ii) shall apply with such modifications as are specified in the instrument,in respect of the application for the approval, consent or permission; or
- (b) such other requirements as are specified in the direction shall apply in respect of the development to which the application relates.

or give directions under both paragraphs (a) and (b) of this subsection.

(4) Any direction given by the Tribunal under subsection three of this section shall, if the application for the responsible authority's approval, consent or permission is granted, have effect according to its tenor and, in the case of a direction referred

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referred to in subparagraph (ii) of paragraph (a), or in paragraph (b), of that subsection, be embodied in that approval, consent or permission as a condition thereof.

(5) Any act, matter or thing done or carried out in conformity with a direction given under subsection three of this section shall not, by reason only of its being so done or carried out, be deemed not to be in conformity with any prescribed scheme and a person is not guilty of an offence against a prescribed scheme or this Act by reason only of his doing or carrying out any act, matter or thing in conformity with such a direction.

Sec. 342v.
(Permission
for interim
develop-
ment.)

- (c) (i) by inserting at the end of subsection (1B) of section 342v the following new paragraph :—

A notice under paragraph (a) or (c) of this subsection (other than a notice of an unconditional approval) shall indicate that the applicant has a right of appeal under this Act against the decision of the council.

- (ii) by omitting from paragraph (a) of the proviso to subsection two of the same section the words "Land and Valuation Court and the court" and by inserting in lieu thereof the words "Tribunal which";
- (iii) by omitting from the same proviso the words "subsection one of" wherever occurring and by inserting in lieu thereof the words "subsection (1B) of";
- (iv) by omitting subsection five of the same section and by inserting in lieu thereof the following subsections :—

(5) An applicant who is dissatisfied with the refusal of the council to grant his application, or with any conditions imposed by the council, may—

(a)

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- (a) where the application is one referred No. 78, 1971 to in subparagraph (i) or (ii) of paragraph (a) of subsection three of this section within one month after the date on which he received notice of the council's decision, or such longer period as the Authority may in any particular case allow, appeal to the Authority; and
- (b) in any other case, appeal to the Tribunal.

(5A) Where an appeal is made to the Authority under subsection five of this section, the Authority, after taking into consideration any offer by the council to make a contribution under subsection four of this section, shall furnish to the Minister a report on the appeal containing a recommendation as to whether the appeal should, in the opinion of the Authority, be dismissed or allowed either unconditionally or subject to such conditions as may be specified in the report, and the reasons for such recommendations, but the Authority, before making any such report shall, if either the appellant or the council so desires, afford him or it an opportunity of appearing personally, or by counsel, solicitor or agent, before, and being heard by, a person appointed by the Authority for the purpose.

(5B) Where pursuant to subsection (5A) of this section the Authority makes a report to the Minister, the Minister may—

- (a) dismiss the appeal;
- (b) allow the appeal either unconditionally or subject to such conditions as he thinks proper to impose;

(c)

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(c) where the appeal is against the imposition of conditions, refuse to approve the application referred to in the appeal; or

(d) return the report to the Authority for further consideration and hearing, if necessary, and recommendation to the Minister.

(5C) The decision of the Minister under subsection (5B) of this section shall be final and, except in the case of a decision referred to in paragraph (d) of that subsection, shall have effect as if it were a decision of the council.

New sec.
342VA.

(d) by inserting next after section 342v the following new section :—

Modifica-
tion of
interim
develop-
ment orders.

342VA. (1) In this section—

“council” includes an interim development authority within the meaning of Ordinance No. 105 made under this Act;

“minimum requirements” means those provisions of an ordinance relating to interim development, or an interim development order, by or under which requirements are specified in respect of—

(a) the area or frontage of any land, the dimensions of any land or building or work or the distance from any specified point;

(b) the proportion or percentage of a site which a building or work may occupy or the ratio between the

part

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part of the site not occupied by a building or work and the part so occupied;

- (c) the height, cubic content or floor space of a building or the number of persons who may occupy a building;
- (d) the space required for the parking, standing or loading of vehicles; or
- (e) the road pattern in any subdivision of land.

(2) An applicant for an approval, consent or permission of a council under an interim development order or Ordinance No. 105 may, if the application could, but for any minimum requirements of the interim development order or that ordinance, be granted by the council, lodge with the council an objection that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

(3) Any such objection shall be referred to the Tribunal which, if it is of the opinion that the objection is well founded and that the planning of the area in which is situated land to which the application relates would not be detrimentally affected if a direction were to be given under this subsection may, if the council so agrees, direct by instrument in writing that—

- (a) such of the minimum requirements as are specified in the direction—
 - (i) shall not apply; or
 - (ii) shall apply with such modifications as are specified in the instrument,

in

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in respect of the application for the approval, consent or permission; or

(b) such other requirements as are specified in the direction shall apply in respect of the development to which the application relates,

or give directions under both paragraphs (a) and (b) of this subsection.

(4) Any direction given by the Tribunal under subsection three of this section shall, if the application for the council's approval, consent or permission is granted, have effect according to its tenor and, in the case of a direction referred to in subparagraph (ii) of paragraph (a), or in paragraph (b), of that subsection, be embodied in that approval, consent or permission as a condition thereof.

(5) Any act, matter or thing done or carried out in conformity with a direction given under subsection three of this section shall not, by reason only of its being so done or carried out, be deemed not to be in conformity with any interim development order or with Ordinance No. 105 and a person is not guilty of an offence against this Act by reason only of his doing or carrying out any act, matter or thing in conformity with such a direction.

Further amendment of Act No. 41, 1919. (Schedules.)

7. The Principal Act is further amended by omitting Schedule Ten.

8.

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8. The Local Government (Regulation of Flats) Act, No. 78, 1971
1955, is amended—

Amendment
of Act
No. 50,
1955.

- (a) by inserting at the end of section two the following new subsection :—
- Sec. 2.
(Applica-
tions for
approval of
council to
alter and
add to
existing
buildings.)
- (3) Where the council refuses to approve of an application under this section it shall give to the applicant notice of its decision, which notice shall also indicate that the applicant has a right of appeal under this section against that decision.
- (b) (i) by omitting from paragraph (a) of subsection one of section three the words “Minister may allow, appeal to the Minister” and by inserting in lieu thereof the words “Local Government Appeals Tribunal constituted under Part XIIb of the Principal Act may allow, appeal to that Tribunal”;
- Sec. 3.
(Appeals.)
- (ii) by omitting paragraph (b) of the same subsection;
- (iii) by omitting from paragraph (c) of the same subsection the word “Minister” and by inserting in lieu thereof the words “Local Government Appeals Tribunal”.

9. The Local Government (Town and Country Planning) Amendment Act, 1962, is amended—

Amendment
of Act
No. 7,
1962.

- (a) by inserting in subsection one of section seven after the word “shall” the words “, subject to subsection (1A) of this section,”;
- Sec. 7.
(Savings—
interim
develop-
ment.)

(b)

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No. 78, 1971 (b) by inserting next after subsection one of the same section the following new subsection :—

(1A) Any appeal which, but for the provisions of this subsection, could have been made under the provisions of the Principal Act as continued in force by subsection one of this section shall be made and dealt with under the provisions of subsections five, (5A), (5B) and (5C) of section 342v of the Principal Act, as amended by the Local Government (Appeals) Amendment Act, 1971.

Amendment of Act No. 22, 1970. Sec. 5. (References in this Act to development consents.)

10. The Land Development Contribution Management Act, 1970, is amended by omitting from subparagraph (iii) of paragraph (a) of section five the words "Land and Valuation Court or a court of petty sessions" and by inserting in lieu thereof the words "Local Government Appeals Tribunal constituted under Part XII_B of the Local Government Act, 1919."

Pending appeals, etc.

11. (1) Any appeal or objection made under the Principal Act or under any other Act before the commencement of this Act to the Land and Valuation Court, the Cumberland, Newcastle and Wollongong Board of Appeal, the Country Board of Appeal, the Board of Subdivision Appeals, the State Planning Authority of New South Wales or the Minister which, if made after that commencement, could be made only to the Tribunal, shall—

- (a) if the hearing of the appeal or objection has commenced, continue to be heard and dealt with in all respects as if this Act had not been enacted; or
- (b) if the hearing of the appeal or objection has not commenced, be deemed to be an appeal or objection made to the Tribunal.

(2)

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(2) For the purpose only of continuing to hear and deal with an appeal or objection as referred to in paragraph (a) of subsection one of this section, the provisions of the Act under which the appeal or objection was made, as in force immediately before the commencement of this Act, relating to—

- (a) the Land and Valuation Court, the Cumberland, Newcastle and Wollongong Board of Appeal, the Country Board of Appeal, the Board of Subdivision Appeals, the State Planning Authority of New South Wales and the Minister;
- (b) the members of that Court or of those Boards;
- (c) any such appeal or objection; and
- (d) appeals from the decision of any such Board or the Minister on such an appeal or objection,

shall continue in force notwithstanding any other provision of this Act.

(3) The decision of the Land and Valuation Court, the Cumberland, Newcastle and Wollongong Board of Appeal, the Country Board of Appeal, the Board of Subdivision Appeals, the State Planning Authority of New South Wales or the Minister on any appeal or objection referred to in paragraph (a) of subsection one of this section shall have the same force and effect as it would have had if this Act had not been enacted.

(4) The Registrar of the Land and Valuation Court shall as soon as practicable after the commencement of this Act forward to the Tribunal all documents held by him and relating to any appeal or objection referred to in paragraph (b) of subsection one of this section.

(5) Where an appeal or objection under the Principal Act or under any other Act against a decision or resolution made or passed before the commencement of this Act had not been made before that commencement but could,

but

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No. 78, 1971 but for the enactment of this Act, have been made, immediately before that commencement, to the Land and Valuation Court, the Cumberland, Newcastle and Wollongong Board of Appeal, the Country Board of Appeal, the Board of Subdivision Appeals, the State Planning Authority of New South Wales or the Minister, an appeal or objection against that decision or resolution may, if, had that decision or resolution been made or passed after that commencement, an appeal or objection could have been made to the Tribunal, be made to the Tribunal under the provisions of the Principal Act, as amended by this Act.

J. F. WILSON