

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 20 March, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 34, 1975.

An Act to make further provisions with respect to the practice and procedure of the Local Government Appeals Tribunal; for this and other purposes to amend the Local Government Act, 1919, and the Strata Titles Act, 1973; to validate certain matters; and for purposes connected therewith. [Assented to, 16th April, 1975.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

H. G. COATES,
Acting Chairman of Committees of the Legislative Assembly.

Local Government (Appeals) Amendment.

BE 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. **1.** This Act may be cited as the "Local Government (Appeals) Amendment Act, 1975".

**Commence-
ment.** **2.** (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act.

(2) Sections 6 (e) and 7 (1) (f) shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal
Act.** **3.** The Local Government Act, 1919, is in this Act referred to as the Principal Act.

**Amendment
of Act No.
41, 1919.
(Part XI.—
Building
Regulation.)** **4.** (1) Part XI of the Principal Act is amended—

**Sec. 317D.
(Fire
escapes,
fire-fighting
equipment,
etc.)** (a) by inserting at the end of section 317D the following subsection:—

(3) A direction under this section—

(a) to carry out works shall specify the period within which the works are to be commenced and a further period within which the works are to be completed;

(b) to provide equipment shall specify the period within which the equipment is required to be provided; or

(c)

Local Government (Appeals) Amendment.

- (c) not to use a building for any purpose or any specified purposes shall specify the period at the expiration of which the building is not to be so used.
- (b) (i) by omitting from section 317E (b) the words **Sec. 317E.**
“the resolution of the council may be adopted (Notice to
by the board and that such person shall in all owners and
respects be finally bound by the adoption” and others.)
and by inserting instead the words “every person
entitled to object against the resolution shall
in all respects be finally bound by the
resolution”;
- (ii) by omitting section 317E (c) and (d) and by
inserting instead the following paragraphs :—
- (c) that, subject to any decision of the
board under section 317G, works to be
carried out in accordance with the
resolution shall be begun before the
expiration of such period as may be
specified in the notice (being the
period specified in the resolution) and
shall be completed within such further
period as may be so specified;
- (d) that, subject to any decision of the
board under section 317G, equipment
to be provided in accordance with the
resolution shall be provided before the
expiration of such period as may be
specified in the notice (being the
period specified in the resolution);
- (iii) by omitting from section 317E (e) the words
“if the resolution is adopted” and by inserting
instead the words “subject to any decision of
the board under section 317G”;
- (iv)

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(iv) by omitting from section 317E (e) the words "next following the date of adoption";

(v) by inserting in section 317E (e) after the word "notice" the words "(being the period specified in the resolution)";

Sec. 317G.
(Procedure.)

(c) (i) by omitting from section 317G the words "The board may, if no person objects, adopt the resolution of the council; but if" and by inserting instead the word "If";

(ii) by omitting from section 317G the words "adopt the resolution with or without modification, or may refuse to adopt it" and by inserting instead the words "confirm the resolution with or without modification, or may refuse to confirm it";

Sec. 317H.
(Extension of time.)

(d) by omitting from section 317H the word "adopting" and by inserting instead the word "confirming";

Sec. 317I.

(e) by omitting section 317I and by inserting instead the following section :—

Effect of resolution.

317I. Where—

(a) no objection is made to the Tribunal in accordance with section 317F against the council's resolution; or

(b) an objection is so made and the board confirms the council's resolution with or without modification,

every person entitled to object against the resolution shall in all respects be finally bound by the resolution or, as the case may be, by the resolution as so confirmed.

(f)

Local Government (Appeals) Amendment.

(f) (i) by omitting section 317J (1);

Sec. 317J.
(Completion
of work.)

(ii) by omitting from section 317J (2) the words
“If such works have not been begun and
completed or such equipment has not been
provided within such respective times” and by
inserting instead the following words :—

Where—

- (a) no objection is made to the Tribunal
in accordance with section 317F
against the council's resolution; or
- (b) an objection is so made and the board
confirms the council's resolution with
or without modification,

and the works or equipment specified in the
council's resolution have not been begun and
completed or provided within the respective
times specified in the resolution or, as the case
may be, in the resolution as so confirmed”;

(iii) by omitting section 317J (5) and by inserting
instead the following subsection :—

(5) The owner of a building on whom a
notice has been served under section 317E and
who fails—

- (a) where no objection is made to the
Tribunal in accordance with section
317F against the council's resolution
set forth in the notice, to comply with
a direction contained in the resolution;
or
- (b) where an objection is so made and the
board confirms the resolution set forth
in the notice with or without modifica-
tion, to comply with a direction
contained in the resolution as so
confirmed,

is guilty of an offence against this Act.

Penalty

Local Government (Appeals) Amendment.

Penalty: \$500 and, for each day the offence continues, a further \$50.

- (iv) by omitting from section 317J (6) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";
- (v) by omitting from section 317J (7) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";
- Sec. 317L. (Appeals.) (g) (i) by inserting in section 317L after the word "within" the words "a period of";
- (ii) by omitting from section 317L the word "Tribunal." and by inserting instead the following word and paragraphs :—

Tribunal—

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or a period of forty days after service of the application on the council had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

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(2) Notwithstanding the amendments made by subsection (1), a resolution passed by a council under section 317D of the Principal Act as in force before the date of assent to the Local Government (Appeals) Amendment Act, 1975, shall, if a notice relating to that resolution had before that date been served by the council pursuant to section 317E of the Principal Act as so in force, have effect and continue to be dealt with as if those amendments had not been made.

5. Part XII of the Principal Act is amended—

- (a) by inserting in section 341 after the word "within" the words "a period of";
- (b) by omitting from section 341 the word "Tribunal." and by inserting instead the following word and paragraphs :—

Further amendment of Act No. 41, 1919. (Part XII.—Town Planning.) Sec. 341. (Appeals.)

Tribunal—

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or a period of forty days after service of the application on the council had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

Local Government (Appeals) Amendment.

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

6. Part XIIA of the Principal Act is amended—

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

- (a) (i) by inserting in section 342N (2) after the word "within" the words "a period of";
- (ii) by omitting from section 342N (2) the word "Tribunal." and by inserting instead the following word and paragraphs :—

Tribunal—

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the responsible authority's decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the responsible authority's decision on the application was given before that date or a period of forty days after service of the application on the responsible authority had elapsed before that date without the responsible authority having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

(b)

Local Government (Appeals) Amendment.

- (b) (i) by inserting after section 342NA (2) the following subsection :—

Sec. 342NA.
(Modifica-
tion of
prescribed
schemes.)

(2A) Any person who would, but for any minimum requirements of a prescribed scheme, be entitled to carry out development without the approval, consent or permission of the responsible authority may lodge with the responsible authority an objection that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

- (ii) by omitting from section 342NA (3) the words "Any such objection" and by inserting instead the words "Any objection referred to in subsection (2) or (2A)";
- (iii) by inserting in section 342NA (4) after the matter "subsection (3)" the words "in respect of an objection referred to in subsection (2)";
- (iv) by omitting from section 342NA (4) the words "that subsection" and by inserting instead the matter "subsection (3)";
- (v) by inserting after section 342NA (4) the following subsection :—

(4A) Any direction given by the Tribunal under subsection (3) in respect of an objection referred to in subsection (2A) shall have effect according to its tenor.

- (c) by omitting from section 342v (5) (b) the word "Tribunal." and by inserting instead the following word and subparagraphs :—

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

Tribunal—

- (i) except as provided in subparagraph (ii), within twelve months after the date on which he received notice of the council's decision or after the expiration of the

period

Local Government (Appeals) Amendment.

period at the expiration of which the council is to be deemed, under subsection (1B), to have refused the application, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or

- (ii) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or the period, at the expiration of which the council is to be deemed, under subsection (1B), to have refused the application, had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

Sec. 342va.
(Modification of interim development orders.)

- (d) (i) by inserting after section 342va (2) the following subsection :—

(2A) Any person who would, but for any minimum requirements of an interim development order or Ordinance No. 105, be entitled to carry out development without the consent of the council, may lodge with the council an objection that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

- (ii) by omitting from section 342va (3) the words "Any such objection" and by inserting instead the words "Any objection referred to in subsection (2) or (2A)";

(iii)

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- (iii) by inserting in section 342VA (4) after the matter "subsection (3)" the words "in respect of an objection referred to in subsection (2)";
- (iv) by omitting from section 342VA (4) the words "that subsection" and by inserting instead the matter "subsection (3)";
- (v) by inserting after section 342VA (4) the following subsection :—

(4A) Any direction given by the Tribunal under subsection (3) in respect of an objection referred to in subsection (2A) shall have effect according to its tenor.

- (e) by omitting from section 342ZA (7) the words "may apply" and by inserting instead the words "shall be given notice of the appeal by the responsible authority or the council, as the case may be, and may, in the manner and within the time prescribed, apply to the Tribunal".

Sec. 342ZA.
(Objections to residential flat buildings and certain other development.)

7. (1) Part XIIb of the Principal Act is amended—

Further amendment of Act No. 41, 1919. (Part XIIb. —Appeals.)

- (a) by omitting section 342AX and by inserting instead the following section :—

342AX. (1) Subject to section 342BEA, as soon as practicable after—

Boards of Appeal.

- (a) an appeal is made to the Tribunal under this or any other Act;
- (b) a member of the Tribunal appointed under section 342BEA to arrange a conference in relation to an appeal reports to the senior chairman that the appeal has not been disposed of under section 342BEA (3); or

(c)

Local Government (Appeals) Amendment.

- (c) an appeal is remitted to the senior chairman under section 342BF (2) (m),

the senior chairman shall constitute a Board of Appeal to deal with the appeal.

(2) A board shall, at the discretion of the senior chairman exercised having regard to the nature of the appeal to be dealt with—

- (a) if the parties consent consist of any one member of the Tribunal; or

(b) consist of—

- (i) three members each of whom has been appointed to the Tribunal under paragraph (a), (b) or (c) of section 342AV (1) so that one person appointed under each such paragraph is a member of the board; and
- (ii) a number, determined in accordance with subsection (7), of other members selected from the persons appointed to the Tribunal under paragraphs (d), (e), (f), (g) and (h) of section 342AV (1).

(3) Notwithstanding subsection (2), where—

- (a) a member of the Tribunal has, in respect of an appeal, reported to the senior chairman as referred to in subsection (1) (b), the board constituted to deal with that appeal shall not, unless the parties consent, consist of or include that member; or
- (b) an appeal is remitted to the senior chairman under section 342BF (2) (m), the board constituted to deal with the appeal shall not, unless the parties consent, consist of one member of the Tribunal.

(4)

Local Government (Appeals) Amendment.

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

(5) A reference in this Act to the chairman of a board includes a reference to the member of the Tribunal who, under subsection (2) (a), constitutes a board.

(6) Where a board consists of members of the Tribunal as referred to in subsection (2) (b), the member of the board appointed to the Tribunal under section 342AV (1) (a) shall be chairman of that board.

(7) The number of members to be appointed to any board pursuant to subsection (2) (b) (ii) 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 section 342AV (1).

(8) In appointing the members to be appointed to any board pursuant to subsection (2) (b) (ii) 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 subsection (2) (b) (ii).

(b) (i) by omitting from section 342BB (3) the words "Subject to" and by inserting instead the words "Except where, pursuant to section 342AX (2) (a), a board consists of one member, and subject to";

Sec. 342BB.
(Sittings of
a board.)

(ii) by omitting from section 342BB (4) the words "and the parties to the matter before the board consent to that member's acting as chairman";

(-)

(iii)

Local Government (Appeals) Amendment.

(iii) by omitting from section 342BB (4) the words
“, 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”;

Sec. 342BEA. (c) by inserting after section 342BE the following
section :—

Conferences
between
parties.

342BEA. (1) The senior chairman may, without
having constituted a board to deal with an appeal,
appoint a member of the Tribunal to arrange a
conference, to be presided over by that member,
between the parties to the appeal with a view to
disposing of the appeal in accordance with this
section.

(2) The member of the Tribunal
appointed under subsection (1) shall as soon as
practicable after his appointment notify the parties
to the appeal of the time and place fixed by him for
the conference.

(3) Where the parties to the appeal
agree, at a conference, to the appeal being decided
in a particular manner or to the appeal being with-
drawn, the member of the Tribunal before whom
the conference is held may decide the appeal in the
manner agreed upon or permit the appeal to be
withdrawn, and the decision of that member shall,
for the purposes of this Part, be deemed to be a
decision of a board made in proceedings before a
board.

(4)

Local Government (Appeals) Amendment.

(4) Evidence of anything said or of any admission made in the course of a conference held pursuant to this section shall not unless the parties consent be admissible in proceedings before a board constituted to deal with the appeal.

(d) (i) by omitting section 342BF (2) (i) and by inserting instead the following paragraph :— (Powers of a board.)

(i) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), by the member constituting the board make any inquiry or inspection necessary or expedient for the purposes of the proceedings or where it consists of members of the Tribunal, as referred to in section 342AX (2) (b), appoint any one or more of its members to make any such inquiry or inspection;

(ii) by omitting from section 342BF (2) (k) the word "or" where thirdly occurring;

(iii) by inserting at the end of section 342BF (2) (1) the following word and paragraph :—
; or

(m) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), remit the appeal to the senior chairman to be dealt with by a board consisting of members of the Tribunal, as referred to in section 342AX (2) (b).

(iv) by inserting at the end of section 342BF (3) (a) the word "or";

(v) by omitting section 342BF (3) (b);

(vi)

Local Government (Appeals) Amendment.

(vi) by inserting after section 342BF (5) the following subsection :—

(6) Notwithstanding any other provision of this section, if an appeal relates to any application made to a council or responsible authority and that council or responsible authority may not approve of, consent to, or deal with, or grant a permission in respect of, the application except after consultation with, or with the concurrence or approval of, any person or body, other than the Minister, a board may determine the appeal notwithstanding that the consultation has not taken place or that the concurrence or approval has not been sought, or having been sought, has not been given.

Sec. 342BGA.

(e) by inserting after section 342BG the following section :—

Production
of docu-
ments and
inspection
of land
before
hearing of
appeal
commences.

342BGA. (1) Where an appeal has been made to the Tribunal, the senior chairman, if a board has not been constituted to deal with the appeal, or the chairman of the board, if a board has been so constituted, may, before the board commences to deal with the appeal, by notice in writing served on any person, order that person—

- (a) to produce any document specified in the notice or any document of a class or description so specified to any party to the appeal so specified during such times on such days and at such places as may be so specified; or
- (b) to permit any party to the appeal specified in the notice to enter and inspect any land so specified or any part of any land so specified, being land or a part of land to which the appeal relates during such times and on such days as may be so specified.

(2)

Local Government (Appeals) Amendment.

(2) A reference in subsection (1) to a party to an appeal includes, in respect of an order under that subsection made by the senior chairman, a reference to an objector entitled to apply, under section 342ZA (7), for leave to appear and be heard as if he were a party to the appeal.

- (f) (i) by omitting section 342BI (1) and (2) and by inserting instead the following subsections :—

Sec. 342BI.
(Records of
boards.)

(1) Proceedings before a board shall be recorded but any such record which is made by means of shorthand, stenotype or sound-recording apparatus shall not be transcribed unless the senior chairman directs that the recording be transcribed or the transcription is otherwise required by law or on the application of a party to the appeal.

(2) Any transcription so made shall be supplied to any party to the appeal upon payment of the prescribed fee corresponding to the fee referred to in section 73 (2) of the Justices Act, 1902, for copies of depositions.

(2A) Every decision of a board shall be in the form of an instrument in writing signed by the chairman of that board and, where any of the parties or objectors in an appeal notifies the board before it gives its decision on the appeal that reasons for its decision are required or where the chairman of the board considers it appropriate, the instrument shall, except in the case of a decision on an objection or reference, include the reasons for the decision of the board.

- (ii) by omitting from section 342BI (5) the words "and an extract from the minutes of the board's proceedings so far as they relate to that decision,";

(g)

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Sec. 342BJ.
(Costs.)

(g) (i) by omitting from section 342BJ (1) the words "proceedings before a board and of the decision thereon" and by inserting instead the words "appeal to the Tribunal, including any expenses incurred by the Tribunal or a board in connection with the appeal,";

(ii) by omitting from section 342BJ (3) the words "enforced and recovered in like manner as costs awarded in a court of summary jurisdiction" and by inserting instead the words "recovered as a debt in any court of competent jurisdiction";

(iii) by inserting after section 342BJ (3) the following subsections :—

(4) Any costs payable to the Tribunal under this section may be recovered in accordance with subsection (3) on behalf of the Tribunal by any person authorised in writing by the senior chairman to take proceedings for their recovery.

(5) A certificate purporting to be signed by the chairman of a board and containing a statement as to any matters relating to the award of costs under this section is admissible as prima facie evidence of those matters.

(2) Notwithstanding the amendments made by subsection (1), paragraph (d) (vi) excepted, where a board has, before the date of assent to this Act, been constituted to deal with an appeal and that appeal has not been completed, that appeal shall be dealt with in all respects as if those amendments had not been made.

Local Government (Appeals) Amendment.

8. Part XXIII of the Principal Act is amended by omitting from section 510 (3) the words "may appeal to the Tribunal against the decision of the council." and by inserting instead the following matter :—

Further amendment of Act No. 41, 1919. (Part XXIII. —Miscellaneous Powers.) Sec. 510. (Advertise-ments.)

may—

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- (b) where the council's decision was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow,

appeal to the Tribunal against that decision.

9. The Strata Titles Act, 1973, is amended—

Amendment of Act No. 68, 1973. Sec. 40. (Appeal against local council refusing approval.)

- (a) by inserting in section 40 (4) after the word "within" the words "a period of";
- (b) by omitting from section 40 (4) the words "may appeal to the Local Government Appeals Tribunal constituted under Part XIIb of the Local Government Act, 1919." and by inserting instead the following matter :—

may—

- (c) except as provided in paragraph (d), within twelve months after the date on which he received notice of the local council's decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or

(d)

Local Government (Appeals) Amendment.

- (d) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the local council's decision on the application was given before that date or a period of forty days after service of the application had elapsed before that date without the local council having notified its approval of the application, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow,

appeal to the Local Government Appeals Tribunal constituted under Part XII^B of the Local Government Act, 1919.

Saving.

10. (1) A decision on an appeal made before the commencement of this Act by a board of appeal constituted under Part XII^B of the Local Government Act, 1919, shall be as valid and effectual as it would have been had the amendment made by section 7 (1) (d) (vi) been in force when the decision was made.

(2) Subsection (1) does not apply to or in respect of the decision of a board of appeal in an appeal in the proceedings referred to in the Schedule in the Supreme Court of New South Wales.

SCHEDULE

Local Government (Appeals) Amendment.

SCHEDULE

Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd and Anor. A.L.D. 13 of 1974.

The Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd and Anor. C.A. 133 of 1974.

Ward v. Warringah Shire Council and Local Government Appeals Tribunal. A.L.D. 58 of 1974 and C.A. 191 of 1974.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
Lieutenant-Governor.

*Government House,
Sydney, 16th April, 1975.*

W. W. STREET,
Lieutenant Governor.

LOCAL GOVERNMENT (APPEALS) AMENDMENT BILL.

*Schedule of Amendments referred to in Legislative Council's
Message of 19 March, 1975*

- No. 1.—Page 2, clause 4, lines 21 to 23 inclusive. *Omit* all words on these lines, *insert* **“within which the works are to be commenced and a further period within which the works are to be completed;”**.
- No. 2.—Page 12, clause 7, line 8. *Before* “consist” *insert* **“if the parties consent”**.
- No. 3.—Page 18, clause 7, lines 27, 28 and 29. *Omit* “where a board has, before the date of assent to the Local Government (Appeals) Amendment Act, 1975,” *insert* **“paragraph (d) (vi) excepted, where a board has, before the date of assent to this Act,”**.
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1. The first of these is the fact that the

the second of these is the fact that the

the third of these is the fact that the

the fourth of these is the fact that the

the fifth of these is the fact that the

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 6 March, 1975*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

A. W. SAXON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 19 March, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. , 1975.

An Act to make further provisions with respect to the practice and procedure of the Local Government Appeals Tribunal; for this and other purposes to amend the Local Government Act, 1919, and the Strata Titles Act, 1973; to validate certain matters; and for purposes connected therewith.

BE

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NOTE.—The words to be *omitted* are ruled through; those to be *inserted* are printed in **black letter**.

Local Government (Appeals) Amendment.

BE 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:—

1. This Act may be cited as the "Local Government Short title.
(Appeals) Amendment Act, 1975".

2. (1) Except as provided in subsection (2), this Act Commence-
shall commence on the date of assent to this Act. ment.

10 (2) Sections 6 (e) and 7 (1) (f) shall commence
on such day as may be appointed by the Governor in respect
thereof and as may be notified by proclamation published in
the Gazette.

3. The Local Government Act, 1919, is in this Act Principal
15 referred to as the Principal Act. Act.

4. (1) Part XI of the Principal Act is amended—
Amendment
of Act No.
41, 1919.
(Part XI.—
Building
Regulation.)

(a) by inserting at the end of section 317D the following
subsection :—

(3) A direction under this section—

20 (a) to carry out works shall specify the period
(being not less than three months) with-
in which the works are required to be
carried out; within which the works are to
be commenced and a further period within
25 which the works are to be completed;

(b) to provide equipment shall specify the period
within which the equipment is required to
be provided; or

(c)

Sec. 317D.
(Fire
escapes,
fire-fighting
equipment,
etc.)

Local Government (Appeals) Amendment.

(c) not to use a building for any purpose or any specified purposes shall specify the period at the expiration of which the building is not to be so used.

5 (b) (i) by omitting from section 317E (b) the words Sec. 317E.
 “the resolution of the council may be adopted (Notice to
 by the board and that such person shall in all owners and
 respects be finally bound by the adoption” and others.)
 and by inserting instead the words “every person
 10 entitled to object against the resolution shall
 in all respects be finally bound by the
 resolution”;

(ii) by omitting section 317E (c) and (d) and by
 inserting instead the following paragraphs :—

15 (c) that, subject to any decision of the
 board under section 317G, works to be
 carried out in accordance with the
 resolution shall be begun before the
 expiration of such period as may be
 20 specified in the notice (being the
 period specified in the resolution) and
 shall be completed within such further
 period as may be so specified ;

25 (d) that, subject to any decision of the
 board under section 317G, equipment
 to be provided in accordance with the
 resolution shall be provided before the
 expiration of such period as may be
 specified in the notice (being the
 30 period specified in the resolution) ;

(iii) by omitting from section 317E (e) the words
 “if the resolution is adopted” and by inserting
 instead the words “subject to any decision of
 the board under section 317G”;

(iv)

Local Government (Appeals) Amendment.

- (iv) by omitting from section 317E (e) the words
"next following the date of adoption";
- (v) by inserting in section 317E (e) after the
word "notice" the words "(being the period
specified in the resolution)";
- (c) (i) by omitting from section 317G the words "The
board may, if no person objects, adopt the
resolution of the council; but if" and by
inserting instead the word "If";
- (ii) by omitting from section 317G the words
"adopt the resolution with or without modifi-
cation, or may refuse to adopt it" and by
inserting instead the words "confirm the
resolution with or without modification, or may
refuse to confirm it";
- (d) by omitting from section 317H the word "adopting"
and by inserting instead the word "confirming";
- (e) by omitting section 317I and by inserting instead
the following section :—
- 317I. Where—
- (a) no objection is made to the Tribunal in
accordance with section 317F against the
council's resolution; or
- (b) an objection is so made and the board con-
firms the council's resolution with or
without modification,
- every person entitled to object against the resolution
shall in all respects be finally bound by the resolu-
tion or, as the case may be, by the resolution as so
confirmed.
- (f)

Effect of
resolution.

Local Government (Appeals) Amendment.

(f) (i) by omitting section 317J (1);

Sec. 317J.
(Completion
of work.)

(ii) by omitting from section 317J (2) the words
"If such works have not been begun and
completed or such equipment has not been
provided within such respective times" and by
inserting instead the following words :—

Where—

(a) no objection is made to the Tribunal
in accordance with section 317F
against the council's resolution; or

(b) an objection is so made and the board
confirms the council's resolution with
or without modification,

and the works or equipment specified in the
council's resolution have not been begun and
completed or provided within the respective
times specified in the resolution or, as the case
may be, in the resolution as so confirmed";

(iii) by omitting section 317J (5) and by inserting
instead the following subsection :—

(5) The owner of a building on whom a
notice has been served under section 317E and
who fails—

(a) where no objection is made to the
Tribunal in accordance with section
317F against the council's resolution
set forth in the notice, to comply with
a direction contained in the resolution;
or

(b) where an objection is so made and the
board confirms the resolution set forth
in the notice with or without modifica-
tion, to comply with a direction
contained in the resolution as so
confirmed,

is guilty of an offence against this Act.

Penalty

Local Government (Appeals) Amendment.

Penalty : \$500 and, for each day the offence continues, a further \$50.

- (iv) by omitting from section 317J (6) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";
- (v) by omitting from section 317J (7) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";
- (g) (i) by inserting in section 317L after the word "within" the words "a period of";
- (ii) by omitting from section 317L the word "Tribunal." and by inserting instead the following word and paragraphs :—

Sec. 317L.
(Appeals.)

Tribunal—

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or a period of forty days after service of the application on the council had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

Local Government (Appeals) Amendment.

(2) Notwithstanding the amendments made by subsection (1), a resolution passed by a council under section 317D of the Principal Act as in force before the date of assent to the Local Government (Appeals) Amendment Act, 1975, shall, if a notice relating to that resolution had before that date been served by the council pursuant to section 317E of the Principal Act as so in force, have effect and continue to be dealt with as if those amendments had not been made.

5. Part XII of the Principal Act is amended—

- 10 (a) by inserting in section 341 after the word “within” the words “a period of”;
- (b) by omitting from section 341 the word “Tribunal.” and by inserting instead the following word and paragraphs :—

Further amendment of Act No. 41, 1919. (Part XII.—Town Planning.) Sec. 341. (Appeals.)

15 Tribunal—

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council’s decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- 20
- (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council’s decision on the application was given before that date or a period of forty days after service of the application on the council had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.
- 25
- 30
- 35

Local Government (Appeals) Amendment.

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 inserting in section 342N (2) after the word “within” the words “a period of”;

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

5 (ii) by omitting from section 342N (2) the word
“Tribunal.” and by inserting instead the
following word and paragraphs :—

Tribunal—

10 (a) except as provided in paragraph
(b), within twelve months after the
date on which he received notice of
the responsible authority’s decision
or after the expiration of that period
of forty days, as the case may be or
15 within such longer period as the
senior chairman of the Tribunal may
in special circumstances allow; or

20 (b) where the application was made
before the date of assent to the Local
Government (Appeals) Amendment
Act, 1975, and either the respon-
sible authority’s decision on the
application was given before that
date or a period of forty days after
25 service of the application on the
responsible authority had elapsed
before that date without the respon-
sible authority having given its
decision with respect thereto, within
twelve months after that date or
30 within such longer period as the
senior chairman of the Tribunal may
in special circumstances allow.

(b)

Local Government (Appeals) Amendment.

- (b) (i) by inserting after section 342NA (2) the following subsection :—

Sec. 342NA.
(Modifica-
tion of
prescribed
schemes.)

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(2A) Any person who would, but for any minimum requirements of a prescribed scheme, be entitled to carry out development without the approval, consent or permission of the responsible authority may lodge with the responsible authority an objection that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

- (ii) by omitting from section 342NA (3) the words "Any such objection" and by inserting instead the words "Any objection referred to in subsection (2) or (2A)";

- (iii) by inserting in section 342NA (4) after the matter "subsection (3)" the words "in respect of an objection referred to in subsection (2)";

- (iv) by omitting from section 342NA (4) the words "that subsection" and by inserting instead the matter "subsection (3)";

- (v) by inserting after section 342NA (4) the following subsection :—

(4A) Any direction given by the Tribunal under subsection (3) in respect of an objection referred to in subsection (2A) shall have effect according to its tenor.

- (c) by omitting from section 342v (5) (b) the word "Tribunal." and by inserting instead the following word and subparagraphs :—

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

30

Tribunal—

35

- (i) except as provided in subparagraph (ii), within twelve months after the date on which he received notice of the council's decision or after the expiration of the

period

Local Government (Appeals) Amendment.

5 period at the expiration of which the council is to be deemed, under subsection (1B), to have refused the application, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or

10 (ii) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or the period, at the expiration of which the council is to be deemed, under subsection
15 (1B), to have refused the application, had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date or within such longer
20 period as the senior chairman of the Tribunal may in special circumstances allow.

(d) (i) by inserting after section 342VA (2) the following subsection :—

25 (2A) Any person who would, but for any minimum requirements of an interim development order or Ordinance No. 105, be entitled to carry out development without the consent of the council, may lodge with the council an
30 objection that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

(ii) by omitting from section 342VA (3) the words
35 "Any such objection" and by inserting instead the words "Any objection referred to in subsection (2) or (2A)";

(iii)

Sec. 342VA.
(Modifica-
tion of
interim develop-
ment
orders.)

Local Government (Appeals) Amendment.

- (iii) by inserting in section 342VA (4) after the matter "subsection (3)" the words "in respect of an objection referred to in subsection (2)";
- 5 (iv) by omitting from section 342VA (4) the words "that subsection" and by inserting instead the matter "subsection (3)";
- (v) by inserting after section 342VA (4) the following subsection :—
- 10 (4A) Any direction given by the Tribunal under subsection (3) in respect of an objection referred to in subsection (2A) shall have effect according to its tenor.
- 15 (e) by omitting from section 342ZA (7) the words "may apply" and by inserting instead the words "shall be given notice of the appeal by the responsible authority or the council, as the case may be, and may, in the manner and within the time prescribed, apply to the Tribunal".
- Sec. 342ZA. (Objections to residential flat buildings and certain other development.)
7. (1) Part XII B of the Principal Act is amended—
- Further amendment of Act No. 41, 1919. (Part XII B. —Appeals.)
- 20 (a) by omitting section 342AX and by inserting instead the following section :—
- Sec. 342AX. Boards of Appeal.
- 342AX. (1) Subject to section 342BEA, as soon as practicable after—
- 25 (a) an appeal is made to the Tribunal under this or any other Act;
- (b) a member of the Tribunal appointed under section 342BEA to arrange a conference in relation to an appeal reports to the senior chairman that the appeal has not been disposed of under section 342BEA (3); or
- 30 (c)

Local Government (Appeals) Amendment.

(c) an appeal is remitted to the senior chairman under section 342BF (2) (m),

the senior chairman shall constitute a Board of Appeal to deal with the appeal.

5 (2) A board shall, at the discretion of the senior chairman exercised having regard to the nature of the appeal to be dealt with—

(a) **if the parties consent** consist of any one member of the Tribunal; or

10 (b) consist of—

(i) three members each of whom has been appointed to the Tribunal under paragraph (a), (b) or (c) of section 342AV (1) so that one person appointed under each such paragraph is a member of the board; and

15 (ii) a number, determined in accordance with subsection (7), of other members selected from the persons appointed to the Tribunal under paragraphs (d), (e), (f), (g) and (h) of section 342AV (1).

20 (3) Notwithstanding subsection (2), where—

(a) a member of the Tribunal has, in respect of an appeal, reported to the senior chairman as referred to in subsection (1) (b), the board constituted to deal with that appeal shall not, unless the parties consent, consist of or include that member; or

30 (b) an appeal is remitted to the senior chairman under section 342BF (2) (m), the board constituted to deal with the appeal shall not, unless the parties consent, consist of one member of the Tribunal.

(4)

Local Government (Appeals) Amendment.

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

5 (5) A reference in this Act to the chairman of a board includes a reference to the member of the Tribunal who, under subsection (2) (a), constitutes a board.

10 (6) Where a board consists of members of the Tribunal as referred to in subsection (2) (b), the member of the board appointed to the Tribunal under section 342AV (1) (a) shall be chairman of that board.

15 (7) The number of members to be appointed to any board pursuant to subsection (2) (b) (ii) 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), 20 (g) and (h) of section 342AV (1).

25 (8) In appointing the members to be appointed to any board pursuant to subsection (2) (b) (ii) 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 subsection (2) (b) (ii).

(b) (i) by omitting from section 342BB (3) the words "Subject to" and by inserting instead the words "Except where, pursuant to section 342AX (2) (a), a board consists of one member, and subject to";

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(ii) by omitting from section 342BB (4) the words "and the parties to the matter before the board consent to that member's acting as chairman";

(iii)

Local Government (Appeals) Amendment.

(iii) by omitting from section 342BB (4) the words
“, 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”;

(c) by inserting after section 342BE the following Sec. 342BEA.
section :—

342BEA. (1) The senior chairman may, without
having constituted a board to deal with an appeal,
appoint a member of the Tribunal to arrange a
conference, to be presided over by that member,
between the parties to the appeal with a view to
disposing of the appeal in accordance with this
section.

Conferences
between
parties.

(2) The member of the Tribunal
appointed under subsection (1) shall as soon as
practicable after his appointment notify the parties
to the appeal of the time and place fixed by him for
the conference.

(3) Where the parties to the appeal
agree, at a conference, to the appeal being decided
in a particular manner or to the appeal being with-
drawn, the member of the Tribunal before whom
the conference is held may decide the appeal in the
manner agreed upon or permit the appeal to be
withdrawn, and the decision of that member shall,
for the purposes of this Part, be deemed to be a
decision of a board made in proceedings before a
board.

(4)

Local Government (Appeals) Amendment.

5 (4) Evidence of anything said or of any admission made in the course of a conference held pursuant to this section shall not unless the parties consent be admissible in proceedings before a board constituted to deal with the appeal.

(d) (i) by omitting section 342BF (2) (i) and by inserting instead the following paragraph :— Sec. 342BF. (Powers of a board.)

10 (i) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), by the member constituting the board make any inquiry or inspection necessary or expedient for the purposes of the proceedings or where it consists of members of the Tribunal, as referred to in section 15 342AX (2) (b), appoint any one or more of its members to make any such inquiry or inspection;

20 (ii) by omitting from section 342BF (2) (k) the word "or" where thirdly occurring;

(iii) by inserting at the end of section 342BF (2) (l) the following word and paragraph :—
; or

25 (m) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), remit the appeal to the senior chairman to be dealt with by a board consisting of members of the Tribunal, as referred to in section 30 342AX (2) (b).

(iv) by inserting at the end of section 342BF (3) (a) the word "or";

(v) by omitting section 342BF (3) (b);

(vi)

Local Government (Appeals) Amendment.

(vi) by inserting after section 342BF (5) the following subsection :—

5 (6) Notwithstanding any other provision of this section, if an appeal relates to any application made to a council or responsible authority and that council or responsible authority may not approve of, consent to, or deal with, or grant a permission in respect of, the application except after consultation with, 10 or with the concurrence or approval of, any person or body, other than the Minister, a board may determine the appeal notwithstanding that the consultation has not taken place or that the concurrence or approval has not been sought, or having been sought, has 15 not been given.

(e) by inserting after section 342BG the following section :—

20 342BGA. (1) Where an appeal has been made to the Tribunal, the senior chairman, if a board has not been constituted to deal with the appeal, or the chairman of the board, if a board has been so constituted, may, before the board commences to deal with the appeal, by notice in writing served on any 25 person, order that person—

(a) to produce any document specified in the notice or any document of a class or description so specified to any party to the appeal so specified during such times on 30 such days and at such places as may be so specified; or

(b) to permit any party to the appeal specified in the notice to enter and inspect any land so specified or any part of any land so 35 specified, being land or a part of land to which the appeal relates during such times and on such days as may be so specified.

(2)

Local Government (Appeals) Amendment.

(2) A reference in subsection (1) to a party to an appeal includes, in respect of an order under that subsection made by the senior chairman, a reference to an objector entitled to apply, under section 342ZA (7), for leave to appear and be heard as if he were a party to the appeal.

(f) (i) by omitting section 342BI (1) and (2) and by inserting instead the following subsections :— Sec. 342BI.
(Records of
boards.)

(1) Proceedings before a board shall be recorded but any such record which is made by means of shorthand, stenotype or sound-recording apparatus shall not be transcribed unless the senior chairman directs that the recording be transcribed or the transcription is otherwise required by law or on the application of a party to the appeal.

(2) Any transcription so made shall be supplied to any party to the appeal upon payment of the prescribed fee corresponding to the fee referred to in section 73 (2) of the Justices Act, 1902, for copies of depositions.

(2A) Every decision of a board shall be in the form of an instrument in writing signed by the chairman of that board and, where any of the parties or objectors in an appeal notifies the board before it gives its decision on the appeal that reasons for its decision are required or where the chairman of the board considers it appropriate, the instrument shall, except in the case of a decision on an objection or reference, include the reasons for the decision of the board.

(ii) by omitting from section 342BI (5) the words "and an extract from the minutes of the board's proceedings so far as they relate to that decision,";

Local Government (Appeals) Amendment.

- (g) (i) by omitting from section 342BJ (1) the words *Sec. 342BJ.*
“proceedings before a board and of the (Costs.)
decision thereon” and by inserting instead the
words “appeal to the Tribunal, including any
5 expenses incurred by the Tribunal or a board
in connection with the appeal,”;
- (ii) by omitting from section 342BJ (3) the words
“enforced and recovered in like manner as
costs awarded in a court of summary jurisdic-
10 tion” and by inserting instead the words
“recovered as a debt in any court of competent
jurisdiction”;
- (iii) by inserting after section 342BJ (3) the
following subsections :—
- 15 (4) Any costs payable to the Tribunal
under this section may be recovered in
accordance with subsection (3) on behalf of
the Tribunal by any person authorised in
writing by the senior chairman to take
20 proceedings for their recovery.
- (5) A certificate purporting to be signed
by the chairman of a board and containing a
statement as to any matters relating to the
award of costs under this section is admissible
25 as prima facie evidence of those matters.
- (2) Notwithstanding the amendments made by sub-
section (1), ~~where a board has, before the date of assent~~
~~to the Local Government (Appeals) Amendment Act,~~
30 ~~1975, paragraph (d) (vi) excepted, where a board has,~~
before the date of assent to this Act, been constituted to deal
with an appeal and that appeal has not been completed, that
appeal shall be dealt with in all respects as if those
amendments had not been made.

Local Government (Appeals) Amendment.

8. Part XXIII of the Principal Act is amended by omitting from section 510 (3) the words "may appeal to the Tribunal against the decision of the council." and by inserting instead the following matter :—

Further amendment of Act No. 41, 1919. (Part XXIII. —Miscellaneous Powers.) Sec. 510. (Advertisements.)

5 may—

(a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or

(b) where the council's decision was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow,

appeal to the Tribunal against that decision.

9. The Strata Titles Act, 1973, is amended—

Amendment of Act No. 68, 1973. Sec. 40. (Appeal against local council refusing approval.)

(a) by inserting in section 40 (4) after the word "with-in" the words "a period of";

(b) by omitting from section 40 (4) the words "may appeal to the Local Government Appeals Tribunal constituted under Part XIIb of the Local Government Act, 1919." and by inserting instead the following matter :—

may—

(c) except as provided in paragraph (d), within twelve months after the date on which he received notice of the local council's decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or

(d)

Local Government (Appeals) Amendment.

- 5 (d) where the application was made before
the date of assent to the Local Govern-
ment (Appeals) Amendment Act, 1975,
and either the local council's decision on
the application was given before that date
or a period of forty days after service
of the application had elapsed before that
date without the local council having
10 notified its approval of the application,
within twelve months after that date or
within such longer period as the senior
chairman of the Tribunal may in special
circumstances allow,
15 appeal to the Local Government Appeals
Tribunal constituted under Part XIIb of the
Local Government Act, 1919.

10. (1) A decision on an appeal made before the com- Saving.
mencement of this Act by a board of appeal constituted under
Part XIIb of the Local Government Act, 1919, shall be as
20 valid and effectual as it would have been had the amendment
made by section 7 (1) (d) (vi) been in force when the
decision was made.

(2) Subsection (1) does not apply to or in respect of
the decision of a board of appeal in an appeal in the pro-
25 ceedings referred to in the Schedule in the Supreme Court of
New South Wales.

Local Government (Appeals) Amendment.

SCHEDULE

Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd and
Anor. A.L.D. 13 of 1974.

The Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd
and Anor. C.A. 133 of 1974.

- 5 Ward v. Warringah Shire Council and Local Government Appeals
Tribunal. A.L.D. 58 of 1974 and C.A. 191 of 1974.

BY AUTHORITY

WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975

[24c]

Local Government (General) Amendment

SCHEDULE

1. Council of the City of Portmarnock v. Portmarnock P.C. 1974
ALD. 12 of 1974
2. The Council of the City of Portmarnock v. Portmarnock P.C. 1974
and Anor. CA. 123 of 1974
3. Ward v. Westminster City Council and Local Government Appeal
Division. ALD. 22 of 1974 and CA. 191 of 1974

BY AUTHORITY
WEST GERRARD (PRINTING) LTD. SOUTH WALES

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 6 March, 1975*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. , 1975.

An Act to make further provisions with respect to the practice and procedure of the Local Government Appeals Tribunal; for this and other purposes to amend the Local Government Act, 1919, and the Strata Titles Act, 1973; to validate certain matters; and for purposes connected therewith.

BE

Local Government (Appeals) Amendment.

BE 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
5 follows:—

1. This Act may be cited as the "Local Government Short title.
(Appeals) Amendment Act, 1975".

2. (1) Except as provided in subsection (2), this Act Commence-
shall commence on the date of assent to this Act. ment.

10 (2) Sections 6 (e) and 7 (1) (f) shall commence
on such day as may be appointed by the Governor in respect
thereof and as may be notified by proclamation published in
the Gazette.

3. The Local Government Act, 1919, is in this Act Principal
15 referred to as the Principal Act. Act.

4. (1) Part XI of the Principal Act is amended— Amendment
of Act No.
41, 1919.
(Part XI.—
Building
Regulation.)

(a) by inserting at the end of section 317D the following Sec. 317D.
subsection :— (Fire
escapes,
fire-fighting
equipment,
etc.)

20 (3) A direction under this section—
(a) to carry out works shall specify the period
(being not less than three months) within
which the works are required to be carried
out;

25 (b) to provide equipment shall specify the period
within which the equipment is required to
be provided; or

(c)

Local Government (Appeals) Amendment.

(c) not to use a building for any purpose or any specified purposes shall specify the period at the expiration of which the building is not to be so used.

5 (b) (i) by omitting from section 317E (b) the words Sec. 317E.
 "the resolution of the council may be adopted (Notice to
 by the board and that such person shall in all owners and
 respects be finally bound by the adoption" and others.)
 and by inserting instead the words "every person
 10 entitled to object against the resolution shall
 in all respects be finally bound by the
 resolution";

(ii) by omitting section 317E (c) and (d) and by inserting instead the following paragraphs :—

15 (c) that, subject to any decision of the
 board under section 317G, works to be
 carried out in accordance with the
 resolution shall be begun before the
 expiration of such period as may be
 20 specified in the notice (being the
 period specified in the resolution) and
 shall be completed within such further
 period as may be so specified ;

25 (d) that, subject to any decision of the
 board under section 317G, equipment
 to be provided in accordance with the
 resolution shall be provided before the
 expiration of such period as may be
 30 specified in the notice (being the
 period specified in the resolution) ;

(iii) by omitting from section 317E (e) the words
 "if the resolution is adopted" and by inserting
 instead the words "subject to any decision of
 the board under section 317G";

(iv)

Local Government (Appeals) Amendment.

- (iv) by omitting from section 317E (e) the words
“next following the date of adoption”;
- (v) by inserting in section 317E (e) after the
word “notice” the words “(being the period
specified in the resolution)”;
- (c) (i) by omitting from section 317G the words “The Sec. 317G.
board may, if no person objects, adopt the (Procedure.)
resolution of the council; but if” and by
inserting instead the word “If”;
- (ii) by omitting from section 317G the words
“adopt the resolution with or without modifi-
cation, or may refuse to adopt it” and by
inserting instead the words “confirm the
resolution with or without modification, or may
refuse to confirm it”;
- (d) by omitting from section 317H the word “adopting” Sec. 317H.
and by inserting instead the word “confirming”; (Extension
of time.)
- (e) by omitting section 317I and by inserting instead Sec. 317I.
the following section :—
- 317I. Where—
- (a) no objection is made to the Tribunal in
accordance with section 317F against the
council’s resolution; or
- (b) an objection is so made and the board con-
firms the council’s resolution with or
without modification,
- every person entitled to object against the resolution
shall in all respects be finally bound by the resolu-
tion or, as the case may be, by the resolution as so
confirmed.
- (f)

Local Government (Appeals) Amendment.

(f) (i) by omitting section 317J (1);

Sec. 317J.
(Completion
of work.)

5 (ii) by omitting from section 317J (2) the words
"If such works have not been begun and
completed or such equipment has not been
provided within such respective times" and by
inserting instead the following words :—

Where—

10 (a) no objection is made to the Tribunal
in accordance with section 317F
against the council's resolution; or

(b) an objection is so made and the board
confirms the council's resolution with
or without modification,

15 and the works or equipment specified in the
council's resolution have not been begun and
completed or provided within the respective
times specified in the resolution or, as the case
may be, in the resolution as so confirmed";

20 (iii) by omitting section 317J (5) and by inserting
instead the following subsection :—

(5) The owner of a building on whom a
notice has been served under section 317E and
who fails—

25 (a) where no objection is made to the
Tribunal in accordance with section
317F against the council's resolution
set forth in the notice, to comply with
a direction contained in the resolution ;
or

30 (b) where an objection is so made and the
board confirms the resolution set forth
in the notice with or without modifica-
tion, to comply with a direction
contained in the resolution as so
35 confirmed,

is guilty of an offence against this Act.

Penalty

Local Government (Appeals) Amendment.

Penalty : \$500 and, for each day the offence continues, a further \$50.

- 5 (iv) by omitting from section 317J (6) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";
- (v) by omitting from section 317J (7) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";
- 10 (g) (i) by inserting in section 317L after the word "within" the words "a period of"; Sec. 317L.
(Appeals.)
- (ii) by omitting from section 317L the word "Tribunal." and by inserting instead the following word and paragraphs :—

Tribunal—

- 15 (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision or after the expiration of that period of forty
- 20 days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- 25 (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or a period
- 30 of forty days after service of the application on the council had elapsed before that date without the council having given its decision with respect thereto, within twelve
- 35 months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

Local Government (Appeals) Amendment.

(2) Notwithstanding the amendments made by subsection (1), a resolution passed by a council under section 317D of the Principal Act as in force before the date of assent to the Local Government (Appeals) Amendment Act, 1975, shall, if a notice relating to that resolution had before that date been served by the council pursuant to section 317E of the Principal Act as so in force, have effect and continue to be dealt with as if those amendments had not been made.

5. Part XII of the Principal Act is amended—

- 10 (a) by inserting in section 341 after the word “within” the words “a period of”;
- (b) by omitting from section 341 the word “Tribunal.” and by inserting instead the following word and paragraphs :—

Further amendment of Act No. 41, 1919. (Part XII.—Town Planning.) Sec. 341. (Appeals.)

15 Tribunal—

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council’s decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- 20 (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council’s decision on the application was given before that date or a period of forty days after service of the application on the council had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.
- 25
- 30
- 35

Local Government (Appeals) Amendment.

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 inserting in section 342N (2) after the word “within” the words “a period of”;
(ii) by omitting from section 342N (2) the word “Tribunal.” and by inserting instead the following word and paragraphs :—

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

Tribunal—

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the responsible authority’s decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or
- (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the responsible authority’s decision on the application was given before that date or a period of forty days after service of the application on the responsible authority had elapsed before that date without the responsible authority having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

(b)

Local Government (Appeals) Amendment.

- (b) (i) by inserting after section 342NA (2) the following subsection :—

Sec. 342NA.
(Modifica-
tion of
prescribed
schemes.)

5 (2A) Any person who would, but for any
minimum requirements of a prescribed scheme,
be entitled to carry out development without
the approval, consent or permission of the
responsible authority may lodge with the
responsible authority an objection that
10 compliance with those minimum requirements
is unreasonable or unnecessary in the
circumstances of the case.

15 (ii) by omitting from section 342NA (3) the words
“Any such objection” and by inserting instead
the words “Any objection referred to in sub-
section (2) or (2A)”;

(iii) by inserting in section 342NA (4) after the
matter “subsection (3)” the words “in respect
of an objection referred to in subsection (2)”;

20 (iv) by omitting from section 342NA (4) the words
“that subsection” and by inserting instead the
matter “subsection (3)”;

(v) by inserting after section 342NA (4) the
following subsection :—

25 (4A) Any direction given by the Tribunal
under subsection (3) in respect of an objection
referred to in subsection (2A) shall have effect
according to its tenor.

- 30 (c) by omitting from section 342v (5) (b) the word
“Tribunal.” and by inserting instead the following
word and subparagraphs :—

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

Tribunal—

35 (i) except as provided in subparagraph (ii),
within twelve months after the date on
which he received notice of the council’s
decision or after the expiration of the
period

Local Government (Appeals) Amendment.

period at the expiration of which the council is to be deemed, under subsection (1B), to have refused the application, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or

- (ii) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or the period, at the expiration of which the council is to be deemed, under subsection (1B), to have refused the application, had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

- (d) (i) by inserting after section 342VA (2) the following subsection :—

(2A) Any person who would, but for any minimum requirements of an interim development order or Ordinance No. 105, be entitled to carry out development without the consent of the council, may lodge with the council an objection that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

Sec. 342VA.
(Modifica-
tion of
interim
develop-
ment
orders.)

- (ii) by omitting from section 342VA (3) the words "Any such objection" and by inserting instead the words "Any objection referred to in subsection (2) or (2A)";

(iii)

Local Government (Appeals) Amendment.

- (iii) by inserting in section 342vA (4) after the matter "subsection (3)" the words "in respect of an objection referred to in subsection (2)";
- 5 (iv) by omitting from section 342vA (4) the words "that subsection" and by inserting instead the matter "subsection (3)";
- (v) by inserting after section 342vA (4) the following subsection :—
- 10 (4A) Any direction given by the Tribunal under subsection (3) in respect of an objection referred to in subsection (2A) shall have effect according to its tenor.
- 15 (e) by omitting from section 342ZA (7) the words "may apply" and by inserting instead the words "shall be given notice of the appeal by the responsible authority or the council, as the case may be, and may, in the manner and within the time prescribed, apply to the Tribunal".
- Sec. 342ZA. (Objections to residential flat buildings and certain other development.)
7. (1) Part XIIb of the Principal Act is amended—
- Further amendment of Act No. 41, 1919. (Part XIIb. —Appeals.)
- 20 (a) by omitting section 342AX and by inserting instead the following section :—
- Sec. 342AX. Boards of Appeal.
- 342AX. (1) Subject to section 342BEA, as soon as practicable after—
- 25 (a) an appeal is made to the Tribunal under this or any other Act;
- (b) a member of the Tribunal appointed under section 342BEA to arrange a conference in relation to an appeal reports to the senior chairman that the appeal has not been disposed of under section 342BEA (3); or
- 30 (c)

Local Government (Appeals) Amendment.

(c) an appeal is remitted to the senior chairman under section 342BF (2) (m),

the senior chairman shall constitute a Board of Appeal to deal with the appeal.

5

(2) A board shall, at the discretion of the senior chairman exercised having regard to the nature of the appeal to be dealt with—

(a) consist of any one member of the Tribunal; or

10

(b) consist of—

15

(i) three members each of whom has been appointed to the Tribunal under paragraph (a), (b) or (c) of section 342AV (1) so that one person appointed under each such paragraph is a member of the board; and

20

(ii) a number, determined in accordance with subsection (7), of other members selected from the persons appointed to the Tribunal under paragraphs (d), (e), (f), (g) and (h) of section 342AV (1).

25

(3) Notwithstanding subsection (2), where—

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(a) a member of the Tribunal has, in respect of an appeal, reported to the senior chairman as referred to in subsection (1) (b), the board constituted to deal with that appeal shall not, unless the parties consent, consist of or include that member; or

35

(b) an appeal is remitted to the senior chairman under section 342BF (2) (m), the board constituted to deal with the appeal shall not, unless the parties consent, consist of one member of the Tribunal.

(4)

Local Government (Appeals) Amendment.

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

5 (5) A reference in this Act to the chairman of a board includes a reference to the member of the Tribunal who, under subsection (2) (a), constitutes a board.

10 (6) Where a board consists of members of the Tribunal as referred to in subsection (2) (b), the member of the board appointed to the Tribunal under section 342AV (1) (a) shall be chairman of that board.

15 (7) The number of members to be appointed to any board pursuant to subsection (2) (b) (ii) 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 section 342AV (1).

20 (8) In appointing the members to be appointed to any board pursuant to subsection (2) (b) (ii) 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 subsection (2) (b) (ii).

30 (b) (i) by omitting from section 342BB (3) the words "Subject to" and by inserting instead the words "Except where, pursuant to section 342AX (2) (a), a board consists of one member, and subject to";

Sec. 342BB.
(Sittings of
a board.)

(ii) by omitting from section 342BB (4) the words "and the parties to the matter before the board consent to that member's acting as chairman";

(iii)

Local Government (Appeals) Amendment.

- (iii) by omitting from section 342BB (4) the words
 “, but if the parties do not so consent—
- 5 (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”;
- 10 (c) by inserting after section 342BE the following Sec. 342BEA.
 section :—
- 15 342BEA. (1) The senior chairman may, without ^{Conferences} having constituted a board to deal with an appeal, ^{between} appoint a member of the Tribunal to arrange a ^{parties.} conference, to be presided over by that member,
 between the parties to the appeal with a view to
 disposing of the appeal in accordance with this
 section.
- 20 (2) The member of the Tribunal
 appointed under subsection (1) shall as soon as
 practicable after his appointment notify the parties
 to the appeal of the time and place fixed by him for
 the conference.
- 25 (3) Where the parties to the appeal
 agree, at a conference, to the appeal being decided
 in a particular manner or to the appeal being with-
 drawn, the member of the Tribunal before whom
 the conference is held may decide the appeal in the
 manner agreed upon or permit the appeal to be
 withdrawn, and the decision of that member shall,
 30 for the purposes of this Part, be deemed to be a
 decision of a board made in proceedings before a
 board.

(4)

Local Government (Appeals) Amendment.

5 (4) Evidence of anything said or of any admission made in the course of a conference held pursuant to this section shall not unless the parties consent be admissible in proceedings before a board constituted to deal with the appeal.

(d) (i) by omitting section 342BF (2) (i) and by inserting instead the following paragraph :— Sec. 342BF. (Powers of a board.)

10 (i) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), by the member constituting the board make any inquiry or inspection necessary or expedient for the purposes of the proceedings or where it consists of members of the Tribunal, as referred to in section 15 342AX (2) (b), appoint any one or more of its members to make any such inquiry or inspection;

20 (ii) by omitting from section 342BF (2) (k) the word "or" where thirdly occurring;

(iii) by inserting at the end of section 342BF (2) (l) the following word and paragraph :—
; or

25 (m) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), remit the appeal to the senior chairman to be dealt with by a board consisting of members of the Tribunal, as referred to in section 30 342AX (2) (b).

(iv) by inserting at the end of section 342BF (3) (a) the word "or";

(v) by omitting section 342BF (3) (b);

(vi)

Local Government (Appeals) Amendment.

(vi) by inserting after section 342BF (5) the following subsection :—

5 (6) Notwithstanding any other provision of this section, if an appeal relates to any application made to a council or responsible authority and that council or responsible authority may not approve of, consent to, or deal with, or grant a permission in respect of, the application except after consultation with, 10 or with the concurrence or approval of, any person or body, other than the Minister, a board may determine the appeal notwithstanding that the consultation has not taken place or that the concurrence or approval has not been sought, or having been sought, has 15 not been given.

(e) by inserting after section 342BG the following section :—

20 342BGA. (1) Where an appeal has been made to the Tribunal, the senior chairman, if a board has not been constituted to deal with the appeal, or the chairman of the board, if a board has been so constituted, may, before the board commences to deal with the appeal, by notice in writing served on any 25 person, order that person—

Production of documents and inspection of land before hearing of appeal commences.

(a) to produce any document specified in the notice or any document of a class or description so specified to any party to the appeal so specified during such times on 30 such days and at such places as may be so specified; or

(b) to permit any party to the appeal specified in the notice to enter and inspect any land so specified or any part of any land so 35 specified, being land or a part of land to which the appeal relates during such times and on such days as may be so specified.

(2)

Local Government (Appeals) Amendment.

5 (2) A reference in subsection (1) to a party to an appeal includes, in respect of an order under that subsection made by the senior chairman, a reference to an objector entitled to apply, under section 342ZA (7), for leave to appear and be heard as if he were a party to the appeal.

(f) (i) by omitting section 342BI (1) and (2) and by inserting instead the following subsections :— Sec. 342BI.
(Records of boards.)

10 (1) Proceedings before a board shall be recorded but any such record which is made by means of shorthand, stenotype or sound-recording apparatus shall not be transcribed unless the senior chairman directs that the recording be transcribed or the transcription is
15 otherwise required by law or on the application of a party to the appeal.

(2) Any transcription so made shall be supplied to any party to the appeal upon payment of the prescribed fee corresponding to the fee referred to in section 73 (2) of the
20 Justices Act, 1902, for copies of depositions.

(2A) Every decision of a board shall be in the form of an instrument in writing signed by the chairman of that board and, where any
25 of the parties or objectors in an appeal notifies the board before it gives its decision on the appeal that reasons for its decision are required or where the chairman of the board considers it appropriate, the instrument shall, except in
30 the case of a decision on an objection or reference, include the reasons for the decision of the board.

(ii) by omitting from section 342BI (5) the words
35 "and an extract from the minutes of the board's proceedings so far as they relate to that decision,";

Local Government (Appeals) Amendment.

- (g) (i) by omitting from section 342BJ (1) the words Sec. 342BJ.
 “proceedings before a board and of the (Costs.)
 decision thereon” and by inserting instead the
 words “appeal to the Tribunal, including any
 expenses incurred by the Tribunal or a board
 in connection with the appeal,”;
- (ii) by omitting from section 342BJ (3) the words
 “enforced and recovered in like manner as
 costs awarded in a court of summary jurisdic-
 tion” and by inserting instead the words
 “recovered as a debt in any court of competent
 jurisdiction”;
- (iii) by inserting after section 342BJ (3) the
 following subsections :—
- (4) Any costs payable to the Tribunal
 under this section may be recovered in
 accordance with subsection (3) on behalf of
 the Tribunal by any person authorised in
 writing by the senior chairman to take
 proceedings for their recovery.
- (5) A certificate purporting to be signed
 by the chairman of a board and containing a
 statement as to any matters relating to the
 award of costs under this section is admissible
 as prima facie evidence of those matters.

(2) Notwithstanding the amendments made by sub-
 section (1), where a board has, before the date of assent to
 the Local Government (Appeals) Amendment Act, 1975,
 been constituted to deal with an appeal and that appeal has
 not been completed, that appeal shall be dealt with in all
 respects as if those amendments had not been made.

Local Government (Appeals) Amendment.

8. Part XXIII of the Principal Act is amended by omitting from section 510 (3) the words "may appeal to the Tribunal against the decision of the council." and by inserting instead the following matter :—

Further amendment of Act No. 41, 1919. (Part XXIII. —Miscellaneous Powers.) Sec. 510. (Advertisements.)

5 may—

(a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or

(b) where the council's decision was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, within twelve months after that date or within such longer period as the senior chairman of the Tribunal may in special circumstances allow,

appeal to the Tribunal against that decision.

9. The Strata Titles Act, 1973, is amended—

Amendment of Act No. 68, 1973. Sec. 40. (Appeal against local council refusing approval.)

(a) by inserting in section 40 (4) after the word "with-in" the words "a period of";

(b) by omitting from section 40 (4) the words "may appeal to the Local Government Appeals Tribunal constituted under Part XIIb of the Local Government Act, 1919." and by inserting instead the following matter :—

may—

(c) except as provided in paragraph (d), within twelve months after the date on which he received notice of the local council's decision or after the expiration of that period of forty days, as the case may be or within such longer period as the senior chairman of the Tribunal may in special circumstances allow; or

(d)

Local Government (Appeals) Amendment.

- 5 (d) where the application was made before
the date of assent to the Local Govern-
ment (Appeals) Amendment Act, 1975,
and either the local council's decision on
the application was given before that date
or a period of forty days after service
of the application had elapsed before that
date without the local council having
10 notified its approval of the application,
within twelve months after that date or
within such longer period as the senior
chairman of the Tribunal may in special
circumstances allow,
- 15 appeal to the Local Government Appeals
Tribunal constituted under Part XIIIB of the
Local Government Act, 1919.

10. (1) A decision on an appeal made before the com- **Saving.**
mencement of this Act by a board of appeal constituted under
Part XIIIB of the Local Government Act, 1919, shall be as
20 valid and effectual as it would have been had the amendment
made by section 7 (1) (d) (vi) been in force when the
decision was made.

(2) Subsection (1) does not apply to or in respect of
the decision of a board of appeal in an appeal in the pro-
25 ceedings referred to in the Schedule in the Supreme Court of
New South Wales.

SCHEDULE

Local Government (Appeals) Amendment.

SCHEDULE

Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd and Anor. A.L.D. 13 of 1974.

The Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd and Anor. C.A. 133 of 1974.

- 5 Ward v. Warringah Shire Council and Local Government Appeals Tribunal. A.L.D. 58 of 1974 and C.A. 191 of 1974.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975

[24c]

1051

No. , 1975.

A BILL

To make further provisions with respect to the practice and procedure of the Local Government Appeals Tribunal; for this and other purposes to amend the Local Government Act, 1919, and the Strata Titles Act, 1973; to validate certain matters; and for purposes connected therewith.

[SIR CHARLES CUTLER—25 *February*, 1975.]

BE

Local Government (Appeals) Amendment.

5 **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:—

1. This Act may be cited as the "Local Government Short title. (Appeals) Amendment Act, 1975".

2. (1) Except as provided in subsection (2), this Act Commence- shall commence on the date of assent to this Act. ment.

10 (2) Sections 6 (e) and 7 (1) (f) shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

15 3. The Local Government Act, 1919, is in this Act Principal referred to as the Principal Act. Act.

4. (1) Part XI of the Principal Act is amended— Amendment of Act No. 41, 1919. (Part XI.— Building Regulation.)

(a) by inserting at the end of section 317D the following subsection :— Sec. 317D. (Fire escapes, fire-fighting equipment, etc.)

20 (3) A direction under this section—
(a) to carry out works shall specify the period (being not less than three months) within which the works are required to be carried out;

25 (b) to provide equipment shall specify the period within which the equipment is required to be provided; or

(c)

Local Government (Appeals) Amendment.

(c) not to use a building for any purpose or any specified purposes shall specify the period at the expiration of which the building is not to be so used.

5 (b) (i) by omitting from section 317E (b) the words Sec. 317E.
 “the resolution of the council may be adopted (Notice to
 by the board and that such person shall in all owners and
 respects be finally bound by the adoption” and others.)
 10 by inserting instead the words “every person
 entitled to object against the resolution shall
 in all respects be finally bound by the
 resolution”;

(ii) by omitting section 317E (c) and (d) and by
 inserting instead the following paragraphs :—

15 (c) that, subject to any decision of the
 board under section 317G, works to be
 carried out in accordance with the
 resolution shall be begun before the
 expiration of such period as may be
 20 specified in the notice (being the
 period specified in the resolution) and
 shall be completed within such further
 period as may be so specified ;

25 (d) that, subject to any decision of the
 board under section 317G, equipment
 to be provided in accordance with the
 resolution shall be provided before the
 expiration of such period as may be
 specified in the notice (being the
 30 period specified in the resolution) ;

(iii) by omitting from section 317E (e) the words
 “if the resolution is adopted” and by inserting
 instead the words “subject to any decision of
 the board under section 317G”;

(iv)

Local Government (Appeals) Amendment.

- (iv) by omitting from section 317E (e) the words
“next following the date of adoption”;
- (v) by inserting in section 317E (e) after the
word “notice” the words “(being the period
specified in the resolution)”;
- (c) (i) by omitting from section 317G the words “The
board may, if no person objects, adopt the
resolution of the council; but if” and by
inserting instead the word “If”;
- (ii) by omitting from section 317G the words
“adopt the resolution with or without modifi-
cation, or may refuse to adopt it” and by
inserting instead the words “confirm the
resolution with or without modification, or may
refuse to confirm it”;
- (d) by omitting from section 317H the word “adopting”
and by inserting instead the word “confirming”;
- (e) by omitting section 317I and by inserting instead
the following section :—
- 317I. Where—
- (a) no objection is made to the Tribunal in
accordance with section 317F against the
council’s resolution; or
- (b) an objection is so made and the board con-
firms the council’s resolution with or
without modification,
- every person entitled to object against the resolution
shall in all respects be finally bound by the resolu-
tion or, as the case may be, by the resolution as so
confirmed.
- (f)

Sec. 317G.
(Procedure.)

Sec. 317H.
(Extension
of time.)

Effect of
resolution.

Local Government (Appeals) Amendment.

(f) (i) by omitting section 317J (1);

Sec. 317J.
(Completion
of work.)

(ii) by omitting from section 317J (2) the words
"If such works have not been begun and
completed or such equipment has not been
provided within such respective times" and by
inserting instead the following words :—

Where—

(a) no objection is made to the Tribunal
in accordance with section 317F
against the council's resolution; or

(b) an objection is so made and the board
confirms the council's resolution with
or without modification,

and the works or equipment specified in the
council's resolution have not been begun and
completed or provided within the respective
times specified in the resolution or, as the case
may be, in the resolution as so confirmed";

(iii) by omitting section 317J (5) and by inserting
instead the following subsection :—

(5) The owner of a building on whom a
notice has been served under section 317E and
who fails—

(a) where no objection is made to the
Tribunal in accordance with section
317F against the council's resolution
set forth in the notice, to comply with
a direction contained in the resolution;
or

(b) where an objection is so made and the
board confirms the resolution set forth
in the notice with or without modifica-
tion, to comply with a direction
contained in the resolution as so
confirmed,

is guilty of an offence against this Act.

Penalty

Local Government (Appeals) Amendment.

Penalty : \$500 and, for each day the offence continues, a further \$50.

5 (iv) by omitting from section 317J (6) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";

(v) by omitting from section 317J (7) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";

10 (g) (i) by inserting in section 317L after the word "within" the words "a period of"; Sec. 317L.
(Appeals.)

(ii) by omitting from section 317L the word "Tribunal." and by inserting instead the following word and paragraphs :—

Tribunal—

15 (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision or after the expiration of that period of forty days, as the case may be; or

20 (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or a period of forty days after service of the application on the council had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date.

(2)

Local Government (Appeals) Amendment.

(2) Notwithstanding the amendments made by subsection (1), a resolution passed by a council under section 317D of the Principal Act as in force before the date of assent to the Local Government (Appeals) Amendment Act, 1975, shall, if a notice relating to that resolution had before that date been served by the council pursuant to section 317E of the Principal Act as so in force, have effect and continue to be dealt with as if those amendments had not been made.

5. Part XII of the Principal Act is amended—

10 (a) by inserting in section 341 after the word “within” the words “a period of”;

(b) by omitting from section 341 the word “Tribunal.” and by inserting instead the following word and paragraphs :—

Further
amendment
of Act No.
41, 1919.
(Part XII.—
Town
Planning.)
Sec. 341.
(Appeals.)

15 Tribunal—

(a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council’s decision or after the expiration of that period of forty days, as the case may be; or

20 (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council’s decision on the application was given before that date or a period of forty days after service of the application on the council had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date.

Local Government (Appeals) Amendment.

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 inserting in section 342N (2) after the word “within” the words “a period of”; Sec. 342N.
(Powers,
etc., of
responsible
authority.)

- 5 (ii) by omitting from section 342N (2) the word
“Tribunal.” and by inserting instead the
following word and paragraphs :—

Tribunal—

- 10 (a) except as provided in paragraph
(b), within twelve months after the
date on which he received notice of
the responsible authority’s decision
or after the expiration of that period
of forty days, as the case may be; or
- 15 (b) where the application was made
before the date of assent to the Local
Government (Appeals) Amendment
Act, 1975, and either the respon-
sible authority’s decision on the
20 application was given before that
date or a period of forty days after
service of the application on the
responsible authority had elapsed
before that date without the respon-
sible authority having given its
25 decision with respect thereto, within
twelve months after that date.

(b)

Local Government (Appeals) Amendment.

- (b) (i) by inserting after section 342NA (2) the following subsection :—

Sec. 342NA.
(Modifica-
tion of
prescribed
schemes.)

5 (2A) Any person who would, but for any
minimum requirements of a prescribed scheme,
be entitled to carry out development without
the approval, consent or permission of the
responsible authority may lodge with the
responsible authority an objection that
10 compliance with those minimum requirements
is unreasonable or unnecessary in the
circumstances of the case.

(ii) by omitting from section 342NA (3) the words
"Any such objection" and by inserting instead
the words "Any objection referred to in sub-
15 section (2) or (2A)";

(iii) by inserting in section 342NA (4) after the
matter "subsection (3)" the words "in respect
of an objection referred to in subsection (2)";

20 (iv) by omitting from section 342NA (4) the words
"that subsection" and by inserting instead the
matter "subsection (3)";

(v) by inserting after section 342NA (4) the
following subsection :—

25 (4A) Any direction given by the Tribunal
under subsection (3) in respect of an objection
referred to in subsection (2A) shall have effect
according to its tenor.

- (c) by omitting from section 342v (5) (b) the word
"Tribunal." and by inserting instead the following
30 word and subparagraphs :—

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

Tribunal—

(i) except as provided in subparagraph (ii),
within twelve months after the date on
which he received notice of the council"
35 decision or after the expiration of the
period

Local Government (Appeals) Amendment.

period at the expiration of which the council is to be deemed, under subsection (1B), to have refused the application, as the case may be; or

- 5 (ii) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or
10 the period, at the expiration of which the council is to be deemed, under subsection (1B), to have refused the application, had elapsed before that date without the council having given its decision with
15 respect thereto, within twelve months after that date.

- (d) (i) by inserting after section 342VA (2) the following subsection :—

- 20 (2A) Any person who would, but for any minimum requirements of an interim development order or Ordinance No. 105, be entitled to carry out development without the consent of the council, may lodge with the council an objection that compliance with those minimum
25 requirements is unreasonable or unnecessary in the circumstances of the case.

- (ii) by omitting from section 342VA (3) the words "Any such objection" and by inserting instead the words "Any objection referred to in subsection (2) or (2A)";

- 30 (iii) by inserting in section 342VA (4) after the matter "subsection (3)" the words "in respect of an objection referred to in subsection (2)";

- 35 (iv) by omitting from section 342VA (4) the words "that subsection" and by inserting instead the matter "subsection (3)";

(v)

Sec. 342VA.
(Modification of
interim develop-
ment
orders.)

Local Government (Appeals) Amendment.

(v) by inserting after section 342VA (4) the following subsection :—

5 (4A) Any direction given by the Tribunal under subsection (3) in respect of an objection referred to in subsection (2A) shall have effect according to its tenor.

10 (e) by omitting from section 342ZA (7) the words "may apply" and by inserting instead the words "shall be given notice of the appeal by the responsible authority or the council, as the case may be, and may, in the manner and within the time prescribed, apply to the Tribunal".

Sec. 342ZA. (Objections to residential flat buildings and certain other development.)

7. (1) Part XIIIB of the Principal Act is amended—

Further amendment of Act No. 41, 1919. (Part XIIIB. —Appeals.)

15 (a) by omitting section 342AX and by inserting instead the following section :—

Sec. 342AX.

342AX. (1) Subject to section 342BEA, as soon as practicable after—

Boards of Appeal.

(a) an appeal is made to the Tribunal under this or any other Act;

20 (b) a member of the Tribunal appointed under section 342BEA to arrange a conference in relation to an appeal reports to the senior chairman that the appeal has not been disposed of under section 342BEA (3); or

25 (c) an appeal is remitted to the senior chairman under section 342BF (2) (m),

the senior chairman shall constitute a Board of Appeal to deal with the appeal.

(2)

Local Government (Appeals) Amendment.

(2) A board shall, at the discretion of the senior chairman exercised having regard to the nature of the appeal to be dealt with—

- 5 (a) consist of any one member of the Tribunal;
or
- (b) consist of—
 - 10 (i) three members each of whom has been appointed to the Tribunal under paragraph (a), (b) or (c) of section 342AV (1) so that one person appointed under each such paragraph is a member of the board; and
 - 15 (ii) a number, determined in accordance with subsection (7), of other members selected from the persons appointed to the Tribunal under paragraphs (d), (e), (f), (g) and (h) of section 342AV (1).

20 (3) Notwithstanding subsection (2), where—

- 25 (a) a member of the Tribunal has, in respect of an appeal, reported to the senior chairman as referred to in subsection (1) (b), the board constituted to deal with that appeal shall not, unless the parties consent, consist of or include that member; or
- 30 (b) an appeal is remitted to the senior chairman under section 342BF (2) (m), the board constituted to deal with the appeal shall not, unless the parties consent, consist of one member of the Tribunal.

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

(5)

Local Government (Appeals) Amendment.

(5) A reference in this Act to the chairman of a board includes a reference to the member of the Tribunal who, under subsection (2) (a), constitutes a board.

5 (6) Where a board consists of members of the Tribunal as referred to in subsection (2) (b), the member of the board appointed to the Tribunal under section 342AV (1) (a) shall be chairman of that board.

10 (7) The number of members to be appointed to any board pursuant to subsection (2) (b) (ii) 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),
15 (g) and (h) of section 342AV (1).

(8) In appointing the members to be appointed to any board pursuant to subsection (2) (b) (ii) the senior chairman shall have regard to
20 the nature of the appeal with which the board is to deal and the qualifications of the members to be appointed pursuant to subsection (2) (b) (ii).

(b) (i) by omitting from section 342BB (3) the words "Subject to" and by inserting instead the words "Except where, pursuant to section 342AX (2) (a), a board consists of one member, and subject to";
25

(ii) by omitting from section 342BB (4) the words "and the parties to the matter before the board consent to that member's acting as chairman";
30

(iii)

Local Government (Appeals) Amendment.

(iii) by omitting from section 342BB (4) the words
“, but if the parties do not so consent—

5 (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”;

10 (c) by inserting after section 342BE the following Sec. 342BEA.
section :—

15 342BEA. (1) The senior chairman may, without Conferences
having constituted a board to deal with an appeal, between
appoint a member of the Tribunal to arrange a parties.
conference, to be presided over by that member,
between the parties to the appeal with a view to
disposing of the appeal in accordance with this
section.

20 (2) The member of the Tribunal
appointed under subsection (1) shall as soon as
practicable after his appointment notify the parties
to the appeal of the time and place fixed by him for
the conference.

25 (3) Where the parties to the appeal
agree, at a conference, to the appeal being decided
in a particular manner or to the appeal being with-
drawn, the member of the Tribunal before whom
the conference is held may decide the appeal in the
manner agreed upon or permit the appeal to be
withdrawn, and the decision of that member shall,
30 for the purposes of this Part, be deemed to be a
decision of a board made in proceedings before a
board.

(4)

Local Government (Appeals) Amendment.

(4) Evidence of anything said or of any admission made in the course of a conference held pursuant to this section shall not unless the parties consent be admissible in proceedings before a board constituted to deal with the appeal.

- (d) (i) by omitting section 342BF (2) (i) and by inserting instead the following paragraph :— Sec. 342BF.
(Powers of
a board.)

(i) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), by the member constituting the board make any inquiry or inspection necessary or expedient for the purposes of the proceedings or where it consists of members of the Tribunal, as referred to in section 342AX (2) (b), appoint any one or more of its members to make any such inquiry or inspection;

- (ii) by omitting from section 342BF (2) (k) the word "or" where thirdly occurring;

- (iii) by inserting at the end of section 342BF (2) (1) the following word and paragraph :—
; or

(m) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), remit the appeal to the senior chairman to be dealt with by a board consisting of members of the Tribunal, as referred to in section 342AX (2) (b).

- (iv) by inserting at the end of section 342BF (3) (a) the word "or";

- (v) by omitting section 342BF (3) (b);

(vi)

Local Government (Appeals) Amendment.

(vi) by inserting after section 342BF (5) the following subsection :—

5 (6) Notwithstanding any other provision of this section, if an appeal relates to any application made to a council or responsible authority and that council or responsible authority may not approve of, consent to, or deal with, or grant a permission in respect of, the application except after consultation with, 10 or with the concurrence or approval of, any person or body, other than the Minister, a board may determine the appeal notwithstanding that the consultation has not taken place or that the concurrence or approval has not been sought, or having been sought, has 15 not been given.

(e) by inserting after section 342BG the following Sec. 342BGA. section :—

20 342BGA. (1) Where an appeal has been made to the Tribunal, the senior chairman, if a board has not been constituted to deal with the appeal, or the chairman of the board, if a board has been so constituted, may, before the board commences to deal with the appeal, by notice in writing served on any 25 person, order that person—

(a) to produce any document specified in the notice or any document of a class or description so specified to any party to the appeal so specified during such times on 30 such days and at such places as may be so specified; or

(b) to permit any party to the appeal specified in the notice to enter and inspect any land so specified or any part of any land so 35 specified, being land or a part of land to which the appeal relates during such times and on such days as may be so specified.

(2)

Local Government (Appeals) Amendment.

5 (2) A reference in subsection (1) to a party to an appeal includes, in respect of an order under that subsection made by the senior chairman, a reference to an objector entitled to apply, under section 342ZA (7), for leave to appear and be heard as if he were a party to the appeal.

- (f) (i) by omitting section 342BI (1) and (2) and by inserting instead the following subsections :—

Sec. 342BI.
(Records of
boards.)

10 (1) Proceedings before a board shall be recorded in such manner as the senior chairman directs but any such record which is made by means of shorthand, stenotype or sound-recording apparatus shall not be transcribed unless the senior chairman directs that the
15 recording be transcribed or the transcription is otherwise required by law.

20 (2) Any transcription so made shall be supplied to any party to the appeal upon payment of the prescribed fee corresponding to the fee referred to in section 73 (2) of the Justices Act, 1902, for copies of depositions.

25 (2A) Every decision of a board shall be in the form of an instrument in writing signed by the chairman of that board and, where any of the parties or objectors in an appeal notifies the board before it gives its decision on the appeal that reasons for its decision are required or where the chairman of the board considers it appropriate, the instrument shall, except in
30 the case of a decision on an objection or reference, include the reasons for the decision of the board.

- 35 (ii) by omitting from section 342BI (5) the words "and an extract from the minutes of the board's proceedings so far as they relate to that decision,";

Local Government (Appeals) Amendment.

5 (g) (i) by omitting from section 342BJ (1) the words Sec. 342BJ.
“proceedings before a board and of the (Costs.)
decision thereon” and by inserting instead the
words “appeal to the Tribunal, including any
expenses incurred by the Tribunal or a board
in connection with the appeal,”;

10 (ii) by omitting from section 342BJ (3) the words
“enforced and recovered in like manner as
costs awarded in a court of summary jurisdic-
tion” and by inserting instead the words
“recovered as a debt in any court of competent
jurisdiction”;

(iii) by inserting after section 342BJ (3) the
following subsections :—

15 (4) Any costs payable to the Tribunal
under this section may be recovered in
accordance with subsection (3) on behalf of
the Tribunal by any person authorised in
writing by the senior chairman to take
20 proceedings for their recovery.

25 (5) A certificate purporting to be signed
by the chairman of a board and containing a
statement as to any matters relating to the
award of costs under this section is admissible
as prima facie evidence of those matters.

(2) Notwithstanding the amendments made by sub-
section (1), where a board has, before the date of assent to
the Local Government (Appeals) Amendment Act, 1975,
been constituted to deal with an appeal and that appeal has
30 not been completed, that appeal shall be dealt with in all
respects as if those amendments had not been made.

Local Government (Appeals) Amendment.

8. Part XXIII of the Principal Act is amended by omitting from section 510 (3) the words "may appeal to the Tribunal against the decision of the council." and by inserting instead the following matter :—

Further amendment of Act No. 41, 1919. (Part XXIII. —Miscellaneous Powers.) Sec. 510. (Advertisements.)

5 may—

(a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision ; or

10 (b) where the council's decision was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, within twelve months after that date,

appeal to the Tribunal against that decision.

9. The Strata Titles Act, 1973, is amended—

Amendment of Act No. 68, 1973. Sec. 40. (Appeal against local council refusing approval.)

15 (a) by inserting in section 40 (4) after the word "within" the words "a period of";

20 (b) by omitting from section 40 (4) the words "may appeal to the Local Government Appeals Tribunal constituted under Part XIIb of the Local Government Act, 1919." and by inserting instead the following matter :—

may—

25 (c) except as provided in paragraph (d), within twelve months after the date on which he received notice of the local council's decision or after the expiration of that period of forty days, as the case may be ; or

30 (d) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975,

and

Local Government (Appeals) Amendment.

5 and either the local council's decision on
the application was given before that date
or a period of forty days after service
of the application had elapsed before that
date without the local council having
notified its approval of the application,
within twelve months after that date,
10 appeal to the Local Government Appeals
Tribunal constituted under Part XIIb of the
Local Government Act, 1919.

10. (1) A decision on an appeal made before the com- Saving.
mencement of this Act by a board of appeal constituted under
Part XIIb of the Local Government Act, 1919, shall be as
valid and effectual as it would have been had the amendment
15 made by section 7 (1) (d) (vi) been in force when the
decision was made.

(2) Subsection (1) does not apply to or in respect of
the decision of a board of appeal in an appeal in the pro-
ceedings referred to in the Schedule in the Supreme Court of
20 New South Wales.

SCHEDULE

Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd and
Anor. A.L.D. 13 of 1974.

25 The Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd
and Anor. C.A. 133 of 1974.

Ward v. Warringah Shire Council and Local Government Appeals
Tribunal. A.L.D. 58 of 1974 and C.A. 191 of 1974.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975
[24c]

LOCAL GOVERNMENT (APPEALS) AMENDMENT BILL, 1975

EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to provide for resolutions of councils relating to fire precautions to be reviewed by the Local Government Appeals Tribunal only when an objection is lodged;
 - (b) to limit to twelve months the time during which certain appeals may be made to the Tribunal;
 - (c) to amend the procedure and practice of the Tribunal by providing that—
 - (i) one member of the Tribunal may deal with certain appeals;
 - (ii) before a board is constituted to deal with an appeal, a conference, presided over by a member of the Tribunal, between the parties to the appeal may be arranged with a view to disposing of the appeal and, if agreement is reached, the appeal may be disposed of in accordance with that agreement;
 - (iii) a full-time member of the Tribunal with town planning qualifications may, in the absence of the regular chairman, act as chairman of a board without the consent of the parties;
 - (iv) orders may be made for the production of documents or the inspection of land before the hearing of an appeal is commenced; and
 - (v) reasons for a board's decision shall be given only when requested by a party or where the chairman of the board considers it appropriate;
 - (d) to extend to development which may be undertaken without the consent of the responsible authority the Tribunal's powers to modify certain specified minimum requirements of planning schemes and interim development orders;
 - (e) to validate certain decisions of the Tribunal where councils whose decisions were appealed against failed to consult with other authorities before giving their decisions; and
 - (f) to make other provisions of a consequential or ancillary character.
-

PROOF

No. , 1975.

A BILL

To make further provisions with respect to the practice and procedure of the Local Government Appeals Tribunal; for this and other purposes to amend the Local Government Act, 1919, and the Strata Titles Act, 1973; to validate certain matters; and for purposes connected therewith.

[SIR CHARLES CUTLER—25 *February*, 1975.]

BE

Local Government (Appeals) Amendment.

5 **BE** 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:—

1. This Act may be cited as the "Local Government Short title. (Appeals) Amendment Act, 1975".

2. (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act. Commence-
ment.

10 (2) Sections 6 (e) and 7 (1) (f) shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

15 3. The Local Government Act, 1919, is in this Act Principal referred to as the Principal Act. Act.

4. (1) Part XI of the Principal Act is amended— Amendment
of Act No.
41, 1919.
(Part XI.—
Building
Regulation.)

(a) by inserting at the end of section 317D the following subsection :— Sec. 317D.
(Fire
escapes,
fire-fighting
equipment,
etc.)

(3) A direction under this section—

20 (a) to carry out works shall specify the period (being not less than three months) within which the works are required to be carried out;

25 (b) to provide equipment shall specify the period within which the equipment is required to be provided; or

(c)

Local Government (Appeals) Amendment.

(c) not to use a building for any purpose or any specified purposes shall specify the period at the expiration of which the building is not to be so used.

5 (b) (i) by omitting from section 317E (b) the words Sec. 317E.
 "the resolution of the council may be adopted (Notice to
 by the board and that such person shall in all owners and
 respects be finally bound by the adoption" and others.)
 10 by inserting instead the words "every person
 entitled to object against the resolution shall
 in all respects be finally bound by the
 resolution";

(ii) by omitting section 317E (c) and (d) and by inserting instead the following paragraphs :—

15 (c) that, subject to any decision of the
 board under section 317G, works to be
 carried out in accordance with the
 resolution shall be begun before the
 expiration of such period as may be
 20 specified in the notice (being the
 period specified in the resolution) and
 shall be completed within such further
 period as may be so specified ;

25 (d) that, subject to any decision of the
 board under section 317G, equipment
 to be provided in accordance with the
 resolution shall be provided before the
 expiration of such period as may be
 specified in the notice (being the
 30 period specified in the resolution) ;

(iii) by omitting from section 317E (e) the words
 "if the resolution is adopted" and by inserting
 instead the words "subject to any decision of
 the board under section 317G";

(iv)

Local Government (Appeals) Amendment.

- (iv) by omitting from section 317E (e) the words
“next following the date of adoption”;
- 5 (v) by inserting in section 317E (e) after the
word “notice” the words “(being the period
specified in the resolution)”;
- (c) (i) by omitting from section 317G the words “The Sec. 317G.
board may, if no person objects, adopt the (Procedure.)
resolution of the council; but if” and by
inserting instead the word “If”;
- 10 (ii) by omitting from section 317G the words
“adopt the resolution with or without modifi-
cation, or may refuse to adopt it” and by
inserting instead the words “confirm the
15 resolution with or without modification, or may
refuse to confirm it”;
- (d) by omitting from section 317H the word “adopting” Sec. 317H.
and by inserting instead the word “confirming”; (Extension
of time.)
- (e) by omitting section 317I and by inserting instead Sec. 317I.
the following section :—
- 20 317I. Where—
- (a) no objection is made to the Tribunal in
accordance with section 317F against the
council’s resolution; or
- 25 (b) an objection is so made and the board con-
firms the council’s resolution with or
without modification,
- every person entitled to object against the resolution
shall in all respects be finally bound by the resolu-
tion or, as the case may be, by the resolution as so
30 confirmed.
- (f)

Effect of
resolution.

Local Government (Appeals) Amendment.

(f) (i) by omitting section 317J (1);

Sec. 317J.
(Completion
of work.)

5 (ii) by omitting from section 317J (2) the words
"If such works have not been begun and
completed or such equipment has not been
provided within such respective times" and by
inserting instead the following words :—

Where—

10 (a) no objection is made to the Tribunal
in accordance with section 317F
against the council's resolution; or

(b) an objection is so made and the board
confirms the council's resolution with
or without modification,

15 and the works or equipment specified in the
council's resolution have not been begun and
completed or provided within the respective
times specified in the resolution or, as the case
may be, in the resolution as so confirmed";

20 (iii) by omitting section 317J (5) and by inserting
instead the following subsection :—

(5) The owner of a building on whom a
notice has been served under section 317E and
who fails—

25 (a) where no objection is made to the
Tribunal in accordance with section
317F against the council's resolution
set forth in the notice, to comply with
a direction contained in the resolution;
or

30 (b) where an objection is so made and the
board confirms the resolution set forth
in the notice with or without modifica-
tion, to comply with a direction
contained in the resolution as so
35 confirmed,

is guilty of an offence against this Act.

Penalty

Local Government (Appeals) Amendment.

Penalty : \$500 and, for each day the offence continues, a further \$50.

- 5 (iv) by omitting from section 317J (6) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";
- (v) by omitting from section 317J (7) the matter "subsection (1)" and by inserting instead the matter "subsection (5)";
- 10 (g) (i) by inserting in section 317L after the word "within" the words "a period of"; Sec. 317L.
(Appeals.)
- (ii) by omitting from section 317L the word "Tribunal." and by inserting instead the following word and paragraphs :—
- Tribunal—
- 15 (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision or after the expiration of that period of forty
- 20 days, as the case may be; or
- 25 (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or a period of forty days after service of the application on the council had elapsed before that date without the
- 30 council having given its decision with respect thereto, within twelve months after that date.

Local Government (Appeals) Amendment.

(2) Notwithstanding the amendments made by subsection (1), a resolution passed by a council under section 317D of the Principal Act as in force before the date of assent to the Local Government (Appeals) Amendment Act, 1975, shall, if a notice relating to that resolution had before that date been served by the council pursuant to section 317E of the Principal Act as so in force, have effect and continue to be dealt with as if those amendments had not been made.

5. Part XII of the Principal Act is amended—

- 10 (a) by inserting in section 341 after the word “within” the words “a period of”;
- (b) by omitting from section 341 the word “Tribunal.” and by inserting instead the following word and paragraphs :—

Further amendment of Act No. 41, 1919. (Part XII.—Town Planning.) Sec. 341. (Appeals.)

15 Tribunal—

- (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council’s decision or after the expiration of that period of forty days, as the case may be; or
- 20 (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council’s decision on the application was given before that date or a period of forty days after service of the application on the council had elapsed before that date without the council having given its decision with respect thereto, within twelve months after that date.
- 25
- 30

Local Government (Appeals) Amendment.

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 inserting in section 342N (2) after the word “within” the words “a period of”; Sec. 342N. (Powers, etc., of responsible authority.)

- 5 (ii) by omitting from section 342N (2) the word “Tribunal.” and by inserting instead the following word and paragraphs :—

Tribunal—

- 10 (a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the responsible authority’s decision or after the expiration of that period of forty days, as the case may be; or
- 15 (b) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the responsible authority’s decision on the application was given before that date or a period of forty days after service of the application on the responsible authority had elapsed before that date without the responsible authority having given its
- 20 decision with respect thereto, within
- 25 twelve months after that date.

(b)

Local Government (Appeals) Amendment.

- (b) (i) by inserting after section 342NA (2) the following subsection :—

Sec. 342NA.
(Modifica-
tion of
prescribed
schemes.)

5

(2A) Any person who would, but for any minimum requirements of a prescribed scheme, be entitled to carry out development without the approval, consent or permission of the responsible authority may lodge with the responsible authority an objection that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

10

- (ii) by omitting from section 342NA (3) the words "Any such objection" and by inserting instead the words "Any objection referred to in subsection (2) or (2A)";

15

- (iii) by inserting in section 342NA (4) after the matter "subsection (3)" the words "in respect of an objection referred to in subsection (2)";

20

- (iv) by omitting from section 342NA (4) the words "that subsection" and by inserting instead the matter "subsection (3)";

- (v) by inserting after section 342NA (4) the following subsection :—

25

(4A) Any direction given by the Tribunal under subsection (3) in respect of an objection referred to in subsection (2A) shall have effect according to its tenor.

- (c) by omitting from section 342v (5) (b) the word "Tribunal." and by inserting instead the following word and subparagraphs :—

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

30

Tribunal—

- (i) except as provided in subparagraph (ii), within twelve months after the date on which he received notice of the council's decision or after the expiration of the

35

period

Local Government (Appeals) Amendment.

period at the expiration of which the council is to be deemed, under subsection (1B), to have refused the application, as the case may be; or

- 5 (ii) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, and either the council's decision on the application was given before that date or
10 the period, at the expiration of which the council is to be deemed, under subsection (1B), to have refused the application, had elapsed before that date without the council having given its decision with
15 respect thereto, within twelve months after that date.

- (d) (i) by inserting after section 342VA (2) the following subsection :—

20 (2A) Any person who would, but for any minimum requirements of an interim development order or Ordinance No. 105, be entitled to carry out development without the consent of the council, may lodge with the council an objection that compliance with those minimum
25 requirements is unreasonable or unnecessary in the circumstances of the case.

- (ii) by omitting from section 342VA (3) the words "Any such objection" and by inserting instead the words "Any objection referred to in subsection (2) or (2A)";
- 30 (iii) by inserting in section 342VA (4) after the matter "subsection (3)" the words "in respect of an objection referred to in subsection (2)";
- (iv) by omitting from section 342VA (4) the words
35 "that subsection" and by inserting instead the matter "subsection (3)";

(v)

Sec. 342VA.
(Modifica-
tion of
interim
develop-
ment
orders.)

Local Government (Appeals) Amendment.

(v) by inserting after section 342VA (4) the following subsection :—

5 (4A) Any direction given by the Tribunal under subsection (3) in respect of an objection referred to in subsection (2A) shall have effect according to its tenor.

10 (e) by omitting from section 342ZA (7) the words “may apply” and by inserting instead the words “shall be given notice of the appeal by the responsible authority or the council, as the case may be, and may, in the manner and within the time prescribed, apply to the Tribunal”. Sec. 342ZA.
(Objections to residential flat buildings and certain other development.)

7. (1) Part XIIIB of the Principal Act is amended—

Further amendment of Act No. 41, 1919. (Part XIIIB. —Appeals.)

15 (a) by omitting section 342AX and by inserting instead the following section :— Sec. 342AX.

342AX. (1) Subject to section 342BEA, as soon as practicable after— Boards of Appeal.

(a) an appeal is made to the Tribunal under this or any other Act;

20 (b) a member of the Tribunal appointed under section 342BEA to arrange a conference in relation to an appeal reports to the senior chairman that the appeal has not been disposed of under section 342BEA (3) ; or

25 (c) an appeal is remitted to the senior chairman under section 342BF (2) (m),

the senior chairman shall constitute a Board of Appeal to deal with the appeal.

(2)

Local Government (Appeals) Amendment.

(2) A board shall, at the discretion of the senior chairman exercised having regard to the nature of the appeal to be dealt with—

- 5 (a) consist of any one member of the Tribunal;
or
- (b) consist of—
 - 10 (i) three members each of whom has been appointed to the Tribunal under paragraph (a), (b) or (c) of section 342AV (1) so that one person appointed under each such paragraph is a member of the board; and
 - 15 (ii) a number, determined in accordance with subsection (7), of other members selected from the persons appointed to the Tribunal under paragraphs (d), (e), (f), (g) and (h) of section 342AV (1).

20 (3) Notwithstanding subsection (2),
where—

- 25 (a) a member of the Tribunal has, in respect of an appeal, reported to the senior chairman as referred to in subsection (1) (b), the board constituted to deal with that appeal shall not, unless the parties consent, consist of or include that member; or
- 30 (b) an appeal is remitted to the senior chairman under section 342BF (2) (m), the board constituted to deal with the appeal shall not, unless the parties consent, consist of one member of the Tribunal.

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

(5)

Local Government (Appeals) Amendment.

(5) A reference in this Act to the chairman of a board includes a reference to the member of the Tribunal who, under subsection (2) (a), constitutes a board.

5 (6) Where a board consists of members of the Tribunal as referred to in subsection (2) (b), the member of the board appointed to the Tribunal under section 342AV (1) (a) shall be chairman of that board.

10 (7) The number of members to be appointed to any board pursuant to subsection (2) (b) (ii) 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
15 pursuant to any one of paragraphs (d), (e), (f), (g) and (h) of section 342AV (1).

(8) In appointing the members to be appointed to any board pursuant to subsection (2) (b) (ii) the senior chairman shall have regard to
20 the nature of the appeal with which the board is to deal and the qualifications of the members to be appointed pursuant to subsection (2) (b) (ii).

(b) (i) by omitting from section 342BB (3) the words "Subject to" and by inserting instead the words "Except where, pursuant to section 342AX (2) (a), a board consists of one member, and subject to";
25

(ii) by omitting from section 342BB (4) the words "and the parties to the matter before the board consent to that member's acting as chairman";
30

(iii)

Local Government (Appeals) Amendment.

(iii) by omitting from section 342BB (4) the words
“, 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”;

(c) by inserting after section 342BE the following Sec. 342BEA.
section :—

342BEA. (1) The senior chairman may, without
having constituted a board to deal with an appeal,
appoint a member of the Tribunal to arrange a
conference, to be presided over by that member,
between the parties to the appeal with a view to
disposing of the appeal in accordance with this
section.

(2) The member of the Tribunal
appointed under subsection (1) shall as soon as
practicable after his appointment notify the parties
to the appeal of the time and place fixed by him for
the conference.

(3) Where the parties to the appeal
agree, at a conference, to the appeal being decided
in a particular manner or to the appeal being with-
drawn, the member of the Tribunal before whom
the conference is held may decide the appeal in the
manner agreed upon or permit the appeal to be
withdrawn, and the decision of that member shall,
for the purposes of this Part, be deemed to be a
decision of a board made in proceedings before a
board.

(4)

Local Government (Appeals) Amendment.

5 (4) Evidence of anything said or of any admission made in the course of a conference held pursuant to this section shall not unless the parties consent be admissible in proceedings before a board constituted to deal with the appeal.

(d) (i) by omitting section 342BF (2) (i) and by inserting instead the following paragraph :— Sec. 342BF. (Powers of a board.)

10 (i) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), by the member constituting the board make any inquiry or inspection necessary or expedient for the purposes of the proceedings or where it consists of members of the Tribunal, as referred to in section 15 342AX (2) (b), appoint any one or more of its members to make any such inquiry or inspection;

20 (ii) by omitting from section 342BF (2) (k) the word "or" where thirdly occurring;

(iii) by inserting at the end of section 342BF (2) (1) the following word and paragraph :—
; or

25 (m) where it consists of one member of the Tribunal, as referred to in section 342AX (2) (a), remit the appeal to the senior chairman to be dealt with by a board consisting of members of the Tribunal, as referred to in section 30 342AX (2) (b).

(iv) by inserting at the end of section 342BF (3) (a) the word "or";

(v) by omitting section 342BF (3) (b);

(vi)

Local Government (Appeals) Amendment.

(vi) by inserting after section 342BF (5) the following subsection :—

5 (6) Notwithstanding any other provision of this section, if an appeal relates to any application made to a council or responsible authority and that council or responsible authority may not approve of, consent to, or deal with, or grant a permission in respect of, the application except after consultation with, 10 or with the concurrence or approval of, any person or body, other than the Minister, a board may determine the appeal notwithstanding that the consultation has not taken place or that the concurrence or approval has not been sought, or having been sought, has 15 not been given.

(e) by inserting after section 342BG the following Sec. 342BGA. section :—

20 342BGA. (1) Where an appeal has been made to the Tribunal, the senior chairman, if a board has not been constituted to deal with the appeal, or the chairman of the board, if a board has been so constituted, may, before the board commences to deal with the appeal, by notice in writing served on any 25 person, order that person—

(a) to produce any document specified in the notice or any document of a class or description so specified to any party to the appeal so specified during such times on such days and at such places as may be so specified; or

30 (b) to permit any party to the appeal specified in the notice to enter and inspect any land so specified or any part of any land so specified, being land or a part of land to which the appeal relates during such times and on such days as may be so specified.

(2)

Local Government (Appeals) Amendment.

5 (2) A reference in subsection (1) to a party to an appeal includes, in respect of an order under that subsection made by the senior chairman, a reference to an objector entitled to apply, under section 342ZA (7), for leave to appear and be heard as if he were a party to the appeal.

(f) (i) by omitting section 342BI (1) and (2) and by inserting instead the following subsections :— Sec. 342BI.
(Records of boards.)

10 (1) Proceedings before a board shall be recorded in such manner as the senior chairman directs but any such record which is made by means of shorthand, stenotype or sound-recording apparatus shall not be transcribed unless the senior chairman directs that the
15 recording be transcribed or the transcription is otherwise required by law.

(2) Any transcription so made shall be supplied to any party to the appeal upon payment of the prescribed fee corresponding to the fee referred to in section 73 (2) of the
20 Justices Act, 1902, for copies of depositions.

(2A) Every decision of a board shall be in the form of an instrument in writing signed by the chairman of that board and, where any of the parties or objectors in an appeal notifies the board before it gives its decision on the
25 appeal that reasons for its decision are required or where the chairman of the board considers it appropriate, the instrument shall, except in the case of a decision on an objection or reference, include the reasons for the decision of the board.
30

(ii) by omitting from section 342BI (5) the words "and an extract from the minutes of the board's proceedings so far as they relate to that decision,";
35

Local Government (Appeals) Amendment.

5 (g) (i) by omitting from section 342BJ (1) the words Sec. 342BJ.
“proceedings before a board and of the (Costs.)
decision thereon” and by inserting instead the
words “appeal to the Tribunal, including any
expenses incurred by the Tribunal or a board
in connection with the appeal,”;

10 (ii) by omitting from section 342BJ (3) the words
“enforced and recovered in like manner as
costs awarded in a court of summary jurisdic-
tion” and by inserting instead the words
“recovered as a debt in any court of competent
jurisdiction”;

(iii) by inserting after section 342BJ (3) the
following subsections :—

15 (4) Any costs payable to the Tribunal
under this section may be recovered in
accordance with subsection (3) on behalf of
the Tribunal by any person authorised in
writing by the senior chairman to take
20 proceedings for their recovery.

25 (5) A certificate purporting to be signed
by the chairman of a board and containing a
statement as to any matters relating to the
award of costs under this section is admissible
as prima facie evidence of those matters.

(2) Notwithstanding the amendments made by sub-
section (1), where a board has, before the date of assent to
the Local Government (Appeals) Amendment Act, 1975,
been constituted to deal with an appeal and that appeal has
30 not been completed, that appeal shall be dealt with in all
respects as if those amendments had not been made.

Local Government (Appeals) Amendment.

8. Part XXIII of the Principal Act is amended by omitting from section 510 (3) the words "may appeal to the Tribunal against the decision of the council." and by inserting instead the following matter :—

Further amendment of Act No. 41, 1919. (Part XXIII. —Miscellaneous Powers.) Sec. 510. (Advertisements.)

5 may—

(a) except as provided in paragraph (b), within twelve months after the date on which he received notice of the council's decision; or

10 (b) where the council's decision was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975, within twelve months after that date,

appeal to the Tribunal against that decision.

9. The Strata Titles Act, 1973, is amended—

Amendment of Act No. 68, 1973. Sec. 40. (Appeal against local council refusing approval.)

15 (a) by inserting in section 40 (4) after the word "within" the words "a period of";

20 (b) by omitting from section 40 (4) the words "may appeal to the Local Government Appeals Tribunal constituted under Part XIIB of the Local Government Act, 1919." and by inserting instead the following matter :—

may—

25 (c) except as provided in paragraph (d), within twelve months after the date on which he received notice of the local council's decision or after the expiration of that period of forty days, as the case may be; or

30 (d) where the application was made before the date of assent to the Local Government (Appeals) Amendment Act, 1975,

and

Local Government (Appeals) Amendment.

5 and either the local council's decision on
the application was given before that date
or a period of forty days after service
of the application had elapsed before that
date without the local council having
notified its approval of the application,
within twelve months after that date,
10 appeal to the Local Government Appeals
Tribunal constituted under Part XIIB of the
Local Government Act, 1919.

10. (1) A decision on an appeal made before the com- Saving.
mencement of this Act by a board of appeal constituted under
Part XIIB of the Local Government Act, 1919, shall be as
valid and effectual as it would have been had the amendment
15 made by section 7 (1) (d) (vi) been in force when the
decision was made.

(2) Subsection (1) does not apply to or in respect of
the decision of a board of appeal in an appeal in the pro-
ceedings referred to in the Schedule in the Supreme Court of
20 New South Wales.

SCHEDULE

Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd and
Anor. A.L.D. 13 of 1974.

25 The Council of the City of Parramatta v. Palmyra Freeholds Pty Ltd
and Anor. C.A. 133 of 1974.

Ward v. Warringah Shire Council and Local Government Appeals
Tribunal. A.L.D. 58 of 1974 and C.A. 191 of 1974.