



SUPPLEMENT

TO THE

NEW ZEALAND GAZETTE

OF

THURSDAY, OCTOBER 8, 1931.

Published by Authority.

WELLINGTON, MONDAY, OCTOBER 12, 1931.

Napier Town-planning Regulations, 1931.

BLEDISLOE, Governor-General.

ORDER IN COUNCIL.

At the Government House at Wellington, this 12th day of October, 1931.

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

IN exercise of the powers conferred by the Hawke's Bay Earthquake Act, 1931, His Excellency the Governor-General of the Dominion of New Zealand, acting by and with the advice and consent of the Executive Council of the said Dominion, doth hereby make the following regulations.

REGULATIONS.

PART I.—PRELIMINARY.

1. THESE regulations may be cited as "The Napier Town-planning Regulations, 1931."

2. These regulations shall apply within the Borough of Napier, and shall come into force on the day following the publication hereof in the *Gazette*.

3. These regulations shall be read in modification and extension of the Town-planning Act, 1926, and the Town-planning Amendment Act, 1929. Where provision for any matter is made by those Acts and provision for the same matter is made by these regulations, these regulations shall prevail. Except so far as express provision inconsistent therewith is made by these regulations, the provisions of those Acts shall continue to apply.

4. In these regulations, unless inconsistent with the context,—

- "The said Act" means the Town-planning Act, 1926 :
- "The Board" means the Town-planning Board constituted under the said Act, and includes any Committee of the Board exercising any powers delegated to them by the Board under these regulations :
- "The Council" means the Napier Borough Council, and includes the Committee of Management provided for in section 64 of the Hawke's Bay Earthquake Act, 1931 ; and where necessary means the Corporation of the Mayor, Councillors, and Burgesses of the Borough of Napier :
- "The Court" means the Hawke's Bay Adjustment Court established under the Hawke's Bay Earthquake Act, 1931 :

"Development area" means any area comprised in a scheme under these regulations :

"Director" means the Director of Town-planning appointed under the said Act, and includes a Deputy-Director of Town-planning :

"Owner" includes any person, body, or authority having power to subdivide or partition land :

"Scheme" means any town-planning scheme prepared under these regulations and includes any part of such a scheme.

PART II.—SPECIAL TOWN-PLANNING SCHEMES.

5. (1) Notwithstanding anything to the contrary in the said Act, the Council may by special order resolve that a scheme be prepared for a portion only of the area under its jurisdiction, and it shall not be necessary that the land comprised in any scheme be in one continuous area.

(2) Whilst the powers and duties of the Council are exercised and performed by the Committee of Management provided for in section 64 of the Hawke's Bay Earthquake Act, 1931, the power conferred by this regulation may be exercised by the Committee by means of an entry in the minute-book of the Committee signed by all the members of the Committee in lieu of a special order.

(3) Every scheme under these regulations shall provide for a distinctive name having reference to the locality affected or some street therein, and the year in which the scheme is first prepared, such as "The Napier Street Town-planning Scheme, 1931."

(4) Every such scheme shall provide for the date on which the same shall come into force.

6. (1) The Governor-General may, on the application of the Council, by Proclamation declare any scheme to be urgent.

(2) In respect of any scheme so declared to be urgent—

(a) The period allowed by subsection (3) of section 17 of the said Act for lodging objections shall be three weeks instead of three months :

(b) The publication of an advertisement prescribed by clause 7 of the Town-planning Regulations, 1927, may be effected twice in one week instead of once in each of three successive weeks :

(c) The period referred to in clause 10 of the Town-planning Regulations, 1927, shall be three weeks instead of three months.

7. On the provisional town-planning map for any scheme under these regulations there may be shown, in addition to the matters specified in subclause (2) of clause 4 of the

Town-planning Regulations, 1927, any provisions requiring or intended to secure uniformity of contiguous buildings in any one or more respects.

8. The validity of a scheme and the provisions thereof shall not be called in question by reason of any omission or irregularity in the procedure prescribed for its preparation, adoption, approval, or enactment, or on the ground that any provision thereof is not authorized by the said Act and these regulations, unless proceedings are instituted for that purpose and served on the Council within two months after notice of the final approval of the scheme by the Board has been published in the *Gazette*, nor shall the validity of a scheme be affected by any such omission or irregularity unless the Court is of opinion that such omission or irregularity was calculated to produce, or capable of producing, substantial injustice to any person.

9. The Board may delegate to a Committee of any three or more of its members any of the powers, duties, or discretions conferred on the Board by the said Act or by these regulations, and the exercise by any such Committee of any such powers, duties, or discretions shall be *prima facie* evidence that the same have been duly delegated.

10. Any power conferred by the said Act on the Director of Town-planning may, for the purposes of these regulations and any scheme hereunder, be exercised by a person appointed by the Governor-General to act as Deputy Director of Town-planning either generally under any power authorizing him in that behalf or for the purposes of these regulations.

PART III.—BETTERMENT.

11. For the purposes of this part of these regulations the expression "betterment increase" in relation to any land means such ascertained or estimated increase in the value of that land as is peculiar to that land, alone or in common with any other land in a development area or elsewhere, and is attributable to the existence of a scheme, or to the carrying-out of any work authorized by the scheme, or to the enactment of any of the provisions thereof, and includes any increase in value fairly attributable to the anticipation of the provisions comprised in a scheme, notwithstanding that such increase be shown to have accrued prior to the date when the scheme came into force, but does not include a proportionate increase in value of the whole of the land in a development area attributable to the existence of a development scheme or to the enactment of any of the provisions thereof having general and equal application throughout the development area.

12. For the purpose of assessing betterment increase the value of land exclusive of such increase shall be the sum which the Court considers was its value on the 4th day of February, 1931.

13. The increase in value attributable to the matters set out in Regulation 11 hereof shall be deemed to include every such increase estimated to accrue within a period of five years from the date of coming into force of the scheme or a period of one year from the completion of the work by reason of which betterment increase is claimed to exist, whichever date is the later.

14. On compliance with the requirements hereinafter set out the Council shall be entitled to recover the full betterment increase of any land in the development area, notwithstanding that such land may at any time not be rateable property within the meaning of the Rating Act, 1925.

15. When the Council proposes to claim betterment increase in respect of any land it shall cause notice of its intention to make such claim to be served upon the owners and occupiers and any other person having an interest in such land, so far as they can be ascertained, and such notice shall set out whether the claim is (a) in respect of the carrying-out of any particular work, or (b) otherwise than in respect of the carrying-out of a particular work; and in the former case shall describe in general terms the work referred to, but it shall not be necessary in any such notice to state the amount which it is proposed to claim.

16. If betterment increase is claimed in respect of the carrying-out of any particular work such notice shall be served within three months after the commencement of such work, and if betterment increase is claimed otherwise than in respect of the carrying-out of any particular work such notice shall be served within three months after the date of coming into force of the scheme.

17. The Council may at any time after such notice has been served institute proceedings for recovery by way of betterment increase of such amount as it thinks proper, but no such proceedings shall be instituted against any person after the expiration of five years from the date of service of such notice upon that person.

18. The amount of any claim for betterment increase shall be decided by the Court, and the Court shall have jurisdiction to determine who are the owners of any land or the owners of any estate or interest in any land, and to apportion

amongst the respective owners of any estate or interest in such land the liability to pay the shares of any betterment increase awarded, having regard to the proportionate values of the respective estates and interests of such owners to the degree to which such values have been or are likely to be increased by the betterment increase, and to any other relevant considerations.

19. Every award shall set out the matters in respect of which the betterment increase referred to therein is intended to be awarded.

20. The fact that betterment increase has been awarded in respect of the carrying-out of any particular work, or otherwise than in respect of the carrying-out of any particular work, shall not prevent a further claim from being made for betterment increase in respect of any matter not taken into account in the previous award.

21. Any person having an interest in land in respect of which the Council has served a notice of its intention to claim betterment increase may at any time, in lieu of waiting for proceedings to be instituted by the Council, serve upon the Council a notice requiring that such claim and the existence of any right in the Council to make a claim for betterment increase be decided by the Court; and such notice shall have the same effect for the purpose of instituting proceedings as if it were a claim made by the Council.

22. Every person being an owner in fee of land in respect of which any betterment increase is awarded by the Court, and any other person having any estate or interest in the land whom the Court may in its discretion declare to be primarily liable, shall be primarily liable for payment thereof to the Council; and the amount of such betterment increase or any part thereof for the time being due and payable, with any interest accrued and payable, may from time to time be recovered by the Council as a debt in any Court of competent jurisdiction from any person primarily liable; and such primary liability shall not be affected by any apportionment of liability among the respective owners of any estate or interest in such land, but any person paying the same shall be entitled to contribution from such respective owners according to the Court's apportionment.

23. The amount of any betterment increase awarded by the Court shall, as the Court in its discretion may order, be payable either (a) forthwith, or (b) together with interest at such rate as the Court may order by equal annual sums payable on an annual date and over a period not exceeding twenty years, to be fixed by the Court.

24. The Government Actuary shall, on payment of a reasonable fee, furnish to the Council such tables as may be necessary, showing the fixed annual sum required to discharge the amount in the period fixed by the Court, with interest at the rate ordered by the Court, and the amount required to redeem any annual instalment of such fixed sum prior to its due date, or the method of ascertaining the amount so required.

25. Any person primarily liable for the same may pay any annual instalment prior to its due date, and interest payable to the Council on the sum so paid shall abate accordingly, but the person making such payment shall remain entitled to interest from any person from whom he is entitled to contribution according to the Court's apportionment.

26. Where the Court orders that the amount of any betterment increase be payable by equal annual sums over a period of years, the annual sum so fixed shall for all purposes be deemed to be a special rate duly made and levied by the Council on the land affected and the provisions of the Rating Act, 1925, shall, *mutatis mutandis*, apply accordingly, but it shall not be necessary for the Council to provide any valuation roll or rate-book in respect of each annual payment.

27. In any case where the provisions of the last preceding regulation hereof apply the amount of betterment increase shall not be registrable as a charge against the land affected: Provided that nothing herein shall affect the priority of such sum as a special rate duly made and levied by the Council.

28. On the subdivision of any land subject to payment of an annual sum under this Part of these regulations, such sum may be apportioned among the several subdivisions by agreement in writing made between the Council and the owner or owners thereof, or, in default of such agreement, by a certificate of the Valuer-General, acting at the request of the Council and at its expense.

29. Nothing in this Part of these regulations shall limit the operation of section 193 of the Municipal Corporations Act, 1920; but any amounts paid or payable to the Council pursuant to that section may be taken into account in determining the amount of any betterment increase for the purposes of this Part of these regulations.

PART IV.—COMPENSATION.

30. Any person having any estate or interest in any land taken for any purpose comprised in a scheme, or injuriously affected by the taking of any land or the carrying-out of any work comprised in a scheme, shall be entitled to full compensation for the same from the Council.

31. Claims for compensation under the last preceding regulation shall be made and determined within the time and in the manner provided by the Public Works Act, 1928, in respect of lands taken under that Act or injuriously affected, as the case may be, by a Compensation Court constituted as provided by that Act.

32. Any person having any estate or interest in any land injuriously affected otherwise than as aforesaid by the operation of any provision in a scheme, whether by reason of a restriction on the use of the land or otherwise, shall be entitled to full compensation for the same from the Council, subject to the provisions hereinafter contained, to be made and determined under Part V of these regulations.

33. No claim for compensation under the last preceding regulation shall be made after a period of twelve months from the date of coming into force of the scheme.

34. The value of land taken or injuriously affected shall be assessed for the purpose of ascertaining the amount of compensation—

- (a) At its value on the 4th day of February, 1931;
- (b) Together with any increase in value, either between that date and the date of coming into force of the scheme or between that date and the commencement of the work in respect of which compensation is claimed, as the case may be, if such increase in value be general throughout the development area; but
- (c) Exclusive of any particular increase in value attributable to the existence of the scheme, or to the carrying-out of any work authorized by the scheme, or to the enactment of any provisions thereof, or to the anticipation of the provisions comprised in a scheme, whether or not such particular increase be shown to have accrued prior to the date when the scheme came into force; and
- (d) Exclusive of any increase in the cost of executing the work in respect of which land has been taken or injuriously affected if the Court is of opinion that such increase is due to anything done by the claimant since the 4th day of February, 1931, upon or under such land with the purpose and effect of rendering the execution of such work more difficult or costly.

35. Compensation shall not be payable in any of the following cases, that is to say:—

- (1) In respect of any land taken for a road the right to make a road over which is otherwise reserved to the Crown, and has not lapsed or become barred;
- (2) In respect of the operation of any provision that could have been made and enforced without liability to pay compensation by any local or public authority independently of these regulations;
- (3) In respect of any building or other structure erected or any contract made or other thing done after the date of coming into force of a scheme otherwise than in completion of any erection or of the doing of any other thing begun prior to the last-mentioned date;
- (4) In respect of any provision of a scheme restricting the use of land in any locality, if such provision is imposed by way of general restriction, whether or not subject to particular exceptions:

Provided that compensation shall nevertheless be payable in respect of any provision of a scheme having substantially the effect of a by-law made under section 189 of the Municipal Corporations Act, 1920, and in respect of any provision of a scheme restricting the use of land so as to facilitate visibility of traffic at corners of roads or streets.

36. The Council may at any time within one month after the date of any award of compensation (whether for land taken, for land injuriously affected by the taking of land, or the carrying-out of a work, or for land otherwise injuriously affected by the operation of any provision in a scheme) give notice to the claimant of its intention to abandon or modify the proposed taking, or the proposed work, or the provision in question of the scheme.

37. Where such notice has been given, the council shall, within three months thereafter, submit to the claimant and to the Board provisions varying the scheme by way of such abandonment or modification as aforesaid, and upon approval by the Board of such provisions (whether with or without modification), and upon notification by the council to the claimant of such approval, and of the provisions so approved, the award of compensation shall be discharged, but without prejudice to the claimant's right—

- (a) To a reasonable sum for his costs of and in connection with the discharged claim;
- (b) To a claim for compensation in respect of the period up to the date when the approval by the Board of such conditions was notified by the Council to the claimant;
- (c) To a further claim for compensation in respect of any matter arising out of the provisions so approved in like manner as if such provisions were originally part of the scheme.

38. No award of compensation under these regulations shall be enforceable until after the expiration of one month from the making thereof, or, if notice of abandonment or modification has within that period been given, then until after the Board has given its decision as to any provisions submitted varying the scheme by way of such abandonment or modification, and such decision has been notified to the claimant.

39. The Court shall have jurisdiction to determine who are the owners of any land or the owners of any estate or interest in any land for the purpose of a claim to compensation, and to apportion the benefit of any compensation amongst the respective owners of any estate or interest in such land.

PART V.—ASSESSMENT OF CLAIMS.

40. This part of these regulations applies to cases in which a claim for betterment increase or compensation is to be decided by the Hawke's Bay Adjustment Court pursuant to these regulations.

41. If in any case the amount of the claim does not exceed £500, the presiding Judge may appoint a Magistrate to be President of the Court in his stead.

42. Except as hereby expressly provided, the provisions of Part I of the Hawke's Bay Earthquake Act, 1931, relating to the Court and the procedure and powers thereof, shall, so far as applicable, apply to the Court when exercising the jurisdiction conferred by these regulations, but the provisions of section 24 and subsection (2) of section 25 thereof shall not apply.

43. The Court shall have power, at its discretion, on the application of any party, to state a case for the opinion of the Supreme Court on any question of law arising in the course of its proceedings, and to fix the costs of proceedings as between party and party, and give directions as to the payment of such costs, either as part of an award or by separate order.

44. The Council, in lieu of waiting for a claim to be served upon it as respondent in respect of any matter, may at any time serve upon any person whom it considers is or may be entitled to make any such claim a notice requiring that such claim, and the existence of any right in such person to make a claim in respect of that matter, be decided by the Court, and such notice shall have the same effect for the purpose of instituting proceedings as if it were a claim made by the person so served.

45. The Council or any person instituting or served with a claim or other proceedings may at any time within ten days after service of such proceedings apply to the Court, upon notice to all parties affected, for an order that any other claim or proceedings be dealt with by the Court together with, and at the same time as the first-mentioned claim or proceedings, and on the hearing of such application the Court may make such order as in its discretion it thinks fit.

46. The Court may, on the application of any party and at any stage of the proceedings, nevertheless order that any one or more of such claims or other proceedings be dealt with separately, and may make such further orders as it thinks necessary for that purpose:

Provided that the Court shall not, except on special grounds, so order in any case—

- (a) Where claims or proceedings relate to different interests in the same land or parts thereof;
- (b) Where claims or proceedings relate to adjoining or neighbouring lands and are based on substantially similar grounds.

47. Although notice has not been given within the time hereinbefore prescribed desiring that two or more claims or proceedings be dealt with by the Court together and at the same time, nevertheless any party to any claim or proceedings may at any time apply to the Court for an order that such claims or proceedings be so dealt with, and the Court, if it thinks fit, may order accordingly, and may make such further orders as it deems necessary for that purpose.

48. Any claims or proceedings referred to the Court to be dealt with together as hereinbefore provided, shall be heard together or wholly or partly in succession as the Court thinks most convenient, and one decision may be given relating to two or more claims or proceedings.

49. Any period fixed by these regulations within which compensation or betterment must be claimed, may be extended to a date to be fixed by the Court on application made in a summary manner either before or after the expiration of the period so fixed, and upon notice to the party from whom the claim is to be made:

Provided that no such extension shall be granted unless reasonable cause for the delay be shown:

Provided also that in granting any extension the Court may impose on the applicant such conditions as it thinks fit.

50. Any claim that might be the subject of an award of the Court under these regulations may be settled, compromised, abandoned, adjusted, and agreed upon whether as to amount, terms of payment, or other terms or conditions, by mutual agreement of the parties concerned.

F. D. THOMSON,

Clerk of the Executive Council.

(I.A. 34/343.)