

**TOWN PLANNING AND DEVELOPMENT.**

19° Geo. V., No. XXXIX.

**No. 39 of 1928.**

Reprinted pursuant to the Amendments Incorporation Act, 1938, as amended by No. 16 of 1943\*, No. 41 of 1944†, No. 16 of 1945‡, and No. 29 of 1947§.

**AN ACT relating to the Planning and Development of Land for Urban, Suburban, and Rural purposes.**

[Assented to 28th December, 1928.]

**BE** it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Town Planning and Development Act, 1928-1947*, and shall come into operation on a date to be fixed by proclamation.

Short Title and commencement.¶ No. 39 of 1928, s. 1, as amended by No. 29 of 1947 s. 2.

2. In this Act, unless the context otherwise requires—

Interpretation. *Ibid.* s. 2.

“Board” means the Town Planning Board;

“Commissioner” means the Town Planning Commissioner appointed by the Governor;

“district” means a municipal district, or a road district;

“land” includes land, tenements, and hereditaments and any interest therein, and also houses, buildings, and other works and structures;

“local authority” means the Council of a Municipality, or the Board of a Road District;

“Minister” means the Minister for Works, or other Minister of the Crown charged for the time being with the administration of this Act;

\*Assented to 20th October, 1943; †Assented to 11th January, 1945; ‡Assented to 9th January, 1946; §Assented to 18th November, 1947; ¶Proclaimed to come into operation on 1/11/1929, see *Gazette*, 1/11/1929.

“responsible authority” means the local authority responsible for the enforcement of the observance of a scheme, or for the execution of any works which under a scheme, or this Act, are to be executed by a local authority;

“town planning” means either city, town, suburban, or rural planning and development, or all four.

PART I.—TOWN PLANNING.

Town  
Planning  
Commis-  
sioner.  
*Ibid.* s. 3.

3. (1) The Governor may appoint a person skilled in town planning as the Town Planning Commissioner, who shall be appointed for a term not exceeding five years, but shall be eligible for re-appointment at the expiration of his term of office.

(2) The Commissioner shall receive such salary as may, from time to time, be appropriated by Parliament for the purpose.

Town Plan-  
ning Board.  
*Ibid.* s. 4.

4. (1) There shall be a Board to be called the Town Planning Board.

(2) The Board shall consist of the Commissioner who, *ex officio*, shall be a member and the chairman of the Board, and three other members to be appointed by the Governor, such members being an architect, an engineer or a surveyor, and a person appointed by reason of his qualification in the business matters to be dealt with by the Board.

(3) The members of the Board, other than the Commissioner, shall be appointed for a period of three years, and shall be eligible for re-appointment, or may be removed from office by the Governor for disability, neglect of duty, or misconduct, or may at any time resign by writing addressed to the Minister.

(4) The Governor may appoint a qualified person to fill any casual vacancy in the membership of the Board, and the person so appointed shall hold office for the unexpired portion of the term of his predecessor.

(5) The powers of the Board shall not be affected by any vacancy in the membership thereof.

(6) The members of the Board, other than the Commissioner, shall be paid such allowances as prescribed, and all travelling expenses reasonably incurred by them in respect of their attendance at meetings of the Board and in transacting the business thereof.

(7) At all meetings of the Board three members shall constitute a quorum.

(8) In the event of the absence of the Commissioner from any meetings of the Board, the members present shall select one of their number to be the chairman for the purposes of that meeting.

(9) At any meeting of the Board, the decision of a majority of the members present shall be the decision of the Board, and the chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

(10) Subject to the regulations under this Act, the Board may regulate its own proceedings.

5. The functions of the Board shall be to advise the Minister in the administration of this Act, and to hold such inquiries, and do all such matters and things, as are in the Act and the regulations provided for in that behalf, or as may otherwise be properly required of it, or as may be necessary for effective administration, under the Minister, of this Act.

Function of  
the Board.  
*Ibid.* s. 5.

6. (1) A town planning scheme may be made, in accordance with the provisions of this Act, with respect to any land with the general object of improving and developing such land to the best possible advantage, and of securing suitable provision for traffic, transportation, disposition of shops, residence, and factory areas, proper sanitary conditions and convenience, parks, gardens and reserves, and of making suitable provision for the use of land for building or other purposes and for all or any of the purposes, provisions, powers or works contained in the First Schedule of this Act.

Town  
Planning  
Schemes.  
*Ibid.* s. 6.  
As amended  
by No. 29 of  
1947 s. 3.

(2) With those objects the scheme may provide for planning, replanning, or reconstructing the whole or any part of the area comprised in the scheme.

Preparation  
of scheme.  
No. 39 of  
1928 s. 7.

7. (1) A local authority may prepare a town planning scheme with reference to any land within its district, or with reference to land within its district and other land within any adjacent district, or may adopt, with or without modifications, any such scheme proposed by all or any of the owners of any land with respect to which the local authority might itself have prepared a scheme.

(2) A town planning scheme, prepared or adopted by a local authority, shall not have effect unless it is approved by the Minister, who may refuse to approve any scheme, or may refuse to approve a scheme except with such modifications, and on such conditions, as he may think fit.

(3) A town planning scheme, when approved of by the Minister and published in the *Gazette*, shall have full force and effect as if it were enacted by this Act.

(4) A town planning scheme may be varied, amplified, or revoked by a subsequent scheme prepared or adopted by the local authority, and approved by the Minister and published in the *Gazette*.

General  
provisions of  
schemes.  
*ibid.* s. 8.

8. (1) The Minister may, by regulation, prescribe a set of general provisions (or separate sets of general provisions adapted for areas of any special character) for carrying out the general objects of town planning schemes, and in particular for dealing with the matters set out in the First Schedule to this Act; and the general provisions, or set of general provisions, appropriate to the area for which a town planning scheme is made, shall take effect as part of every scheme, except so far as provision is made by the scheme, as approved by the Minister, for the variation or exclusion of any of those provisions.

(2) Special provisions shall, in addition, be inserted in every town planning scheme—

Special provisions.

- (a) defining in such manner as may be prescribed by regulations under this Act the area to which the scheme is to apply; and
- (b) defining the local authority to be responsible for enforcing the observance of the scheme, and for the execution of any works which, under the scheme or this Act, are to be executed by a local authority (in this Act referred to as the responsible authority); and
- (c) providing for any matters which may be dealt with by general provisions, and otherwise supplementing, excluding, or varying the general provisions; and also dealing with any special circumstances or contingencies for which adequate provision is not made by the general provisions.

(3) Where land included in a town planning scheme is in the districts of more than one local authority, or is in the district of a local authority by which the scheme was not prepared, the responsible authority may be one of those local authorities, or for certain purposes of the scheme one local authority, and for other purposes of the scheme another local authority.

9. (1) The Minister may make regulations for regulating the procedure to be observed—

Regulations as to procedure. *Ibid.* s. 9.

- (a) with respect to the preparation or adoption of a town planning scheme; and
- (b) with respect to obtaining the approval of the Minister to a scheme so prepared or adopted; and
- (c) with respect to the variation or revocation of a scheme; and
- (d) with respect to any inquiries, reports, notices, or other matters required in connection with the preparation or adoption or the approval of the scheme, or preliminary thereto, or in relation to the carrying

out of the scheme or enforcing the observance of the provisions thereof, or the variation or revocation of the scheme.

- (2) Provision shall be made by such regulations—
- (a) for securing that notice of the proposal to prepare or adopt a scheme shall be given, at the earliest stage possible, to any local authority interested in the land; and
  - (b) for securing that the local authority of the district in which any land proposed to be included in a scheme is situated, shall be furnished with a notice of any proposal to prepare or adopt such a scheme, and with a copy of the draft scheme before the scheme is made, and that such local authority shall be entitled to be heard at any inquiry held by the Minister in regard to the scheme.

Responsible authority may remove certain buildings, etc.  
*Ibid.*, s. 10.

10. (1) The responsible authority may, at any time after giving such notice as may be prescribed by a town planning scheme, and in accordance with the provisions of this Act—

- (a) remove, pull down, or alter any building or other work in the area included in the scheme, which has been commenced or continued after the approval of the scheme, and which is such as to contravene the scheme, or in the erection or carrying out of which any provision of the scheme has not been complied with; and
- (b) execute any work which it is the duty of any person to execute under the scheme, in any case where it appears to the responsible authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by the responsible authority under this section may be recovered from the person in default in such manner and subject to such conditions as may be provided by the scheme.

(3) If any question arises whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, such question shall be referred to the Minister as arbitrator, and the decision of the Minister shall be final and conclusive.

11. (1) Any person whose land or property is injuriously affected by the making of a town planning scheme shall, if such person makes a claim within the time, if any, limited by the scheme (such time not being less than six months after the date when notice of the approval of the scheme is published in the manner prescribed by the regulations), be entitled to obtain compensation in respect thereof from the responsible authority:

Compensation.  
*Ibid.* s. 11.

Provided that a person shall not be entitled to obtain compensation under this section on account of any building erected, or any contract made, or other thing done with respect to land included in a scheme after the date of the approval of a scheme, or after such other date as the Minister may fix for the purpose, being not earlier than the date of the approval of the scheme:

Provided also that the local authority may make agreements with owners for the development of their land during the time that the town planning scheme is being prepared.

(2) Whenever, by the expenditure of money by the responsible authority in the making and carrying out of any town planning scheme, any land or property is, within twelve months of the completion of the work, or of the section of the work affecting such land as the case may be, increased in value, the responsible authority shall be entitled to recover from any person whose land or property is so increased in value, one half of the amount of such increase, if the responsible authority makes a claim for that purpose within the time, if any, limited by the scheme, not being less than three months after the date when notice of the approval of the scheme is first published.

Betterment.

(3) Where a town planning scheme is altered or revoked by an order of the Minister under this Act, any person who has incurred expenditure for the purpose of complying with the scheme shall be entitled to compensation from the responsible authority, in so far as any such expenditure is rendered abortive by reason of the alteration or revocation of the scheme.

(4) Any question as to whether any land or property is injuriously affected or increased in value within the meaning of this section, and as to the amount and manner of payment (whether by instalments or otherwise) of the sum which is to be paid as compensation under this section, or which the responsible authority is entitled to recover from a person whose land is increased in value shall be determined by arbitration under and in accordance with the Arbitration Act, 1895, unless the parties agree on some other method of determination.

Compensation not recoverable in certain cases.  
*Ibid.* s. 12.

12. (1) Where land or property is alleged to be injuriously affected by reason of any provisions contained in a town planning scheme, no compensation shall be payable in respect thereof if or so far as the provisions are also contained in any public, general or local Act, or in any order having the force of an Act of Parliament, in operation in the area, or are such as would have been enforceable without compensation, if they had been contained in by-laws lawfully made by the local authority.

(2) Land or property shall not be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme which, with a view to securing the amenity, health, or convenience of the area included in the scheme, or any part thereof, prescribe the space about, or limit the number of, or prescribe the height, location, purpose, dimensions, or general character of buildings, or any sanitary conditions in connection with buildings, or the quantity of land that may be taken for parks or open spaces, which the local authority, having regard to the nature and situation of the land affected by the provisions, considers reasonable for the purpose.

(3) When a person is entitled to compensation under this Act in respect to any matter or thing, and is also entitled to compensation in respect to the same matter or thing under any other enactment, he shall not be entitled to compensation in respect of that matter or thing both under this Act and that other enactment, and shall not be entitled to any greater compensation under this Act than he would be under such other enactment.

13. The responsible authority may, for the purpose of a town planning scheme, in the name and on behalf of such authority—

Power to acquire land.  
*Ibid.* s. 13.

- (a) purchase any land comprised in such scheme from any person who may be willing to sell the same; or
- (b) with the consent of the Governor, take compulsorily, under and subject to the Public Works Act, 1902-1945, any land comprised in such scheme, and whether situate within or without the boundaries of the district of such responsible authority.

14. Subject to the scheme, the responsible authority shall have all the powers of an owner in respect to such land, and may erect buildings thereon or otherwise improve and make use of same in such manner as the responsible authority may deem best.

Responsible authority to have the powers of an owner of land.  
*Ibid.* s. 14.

15. The responsible authority may grant to any person any easement in, upon, through, under, or over any land taken or acquired for town planning purposes, subject to such conditions and payments of such rents as the responsible authority may think fit: Provided that the grant of such easement shall be subject to revocation without compensation at any time when the responsible authority thinks fit, or in case of the breach of any condition under which easement may have been granted.

Responsible authority may grant easements.  
*Ibid.* s. 15.

16. (1) A local authority may with the consent of the Governor borrow, in addition to the sums which it is authorised to borrow under Part XXIV

Borrowing powers.  
*Ibid.* s. 16.

of the Municipal Corporations Act, 1906-1947, or under Part VII of the Road Districts Act, 1919-1947, any further sums required for the purposes of this Act or of any town planning scheme, including the cost of the preparation and adoption of such scheme.

(2) The provisions of the Municipal Corporations Act, 1906-1947, or the Road Districts Act, 1919-1947, as the case may be, shall apply to such loans, except those relating to the restriction of the amounts borrowed, and except that if and when a poll of owners of rateable land under the Municipal Corporations Act, 1906-1947, or of resident owners under the Road Districts Act, 1919-1947, as the case may be, is held, the local authority shall be at liberty to proceed with the loan unless forbidden to do so by a majority of the votes recorded at such poll, and any demand that the proposal be submitted to a vote of the owners or resident owners of rateable land shall be signed by not less than one per centum of the persons for the time being enrolled on the electoral roll for the municipality or road district, as the case may be.

Apportionment of expenses between local authorities.  
*Ibid.* s. 17.

17. (1) The Minister may order that any part of the expenses incurred by a local authority under this Act, or under any scheme made under this Act, shall be borne by some other local authority, and the amount so ordered shall thereupon be deemed to be a debt due to such local authority by such other local authority.

(2) In fixing the amount to be borne by such other local authority, the Minister shall have regard to the proportion of the expenses incurred in respect of anything done within the district of such other local authority in relation to a scheme under this Act, and the ratio of such proportion to the whole expense under this Act in relation to the scheme, and such other matters as are prescribed.

(3) There shall be an appeal to the Supreme Court against any order of the Minister under this section, subject to the Rules of Court regulating the procedure to be adopted for the purpose of any such appeal.

18. (1) If the Minister is satisfied on any representation that a local authority—

Obligation to prepare or adopt scheme.  
*Ibid.* s. 18.  
As amended by No. 29 of 1947 s. 4.

- (a) has failed to take the requisite steps for having a satisfactory town planning scheme prepared and approved, in a case where a town planning scheme ought to be made; or
- (b) has failed to adopt any scheme proposed by owners of any land, in a case where a town planning scheme ought to be adopted; or
- (c) has refused to consent to any modifications or conditions imposed by the Minister,—

the Minister may, as the case requires, order the local authority to prepare and submit for the approval of the Minister a town planning scheme, or to adopt a scheme, or to consent to the modifications or conditions so inserted:

Provided that, where the representation is that a local authority has failed to adopt a scheme, the Minister, in lieu of making such an order as aforesaid, may approve of the proposed scheme, subject to such modifications and conditions, if any, as the Minister may deem fit; and thereupon the scheme shall have effect as if it had been adopted by the local authority and approved by the Minister.

(2) If the Minister is satisfied on any representation, after holding an inquiry, that a local authority has failed to enforce effectively the observance of a scheme, which has been confirmed, or any provisions thereof, or to execute any works, which, under the scheme or this Act the local authority is required to execute, the Minister may order the local authority to do all things necessary for enforcing the observance of the scheme, or any provision thereof effectively, or for executing any works which, under the scheme or this Act, the local authority is required to execute and shall cause a copy of the order to be served upon the local authority.

(3) The local authority may within twenty-eight days of service of the order referred to in the next preceding subsection appeal against the order of

the Minister to a Judge, who may confirm, vary or annul the Minister's order, and make such order as to the costs of the appeal as he shall deem proper, and the decision of the Judge shall be final and enforceable as an order or judgment of the Supreme Court.

(4) The Governor may make rules relating to the institution, conduct, determination of and all matters touching appeals referred to in the next preceding subsection and until rules be made by the Governor under this subsection the proceedings in those matters shall be as the Judge directs and subject to his direction may, as regards the summoning and attendance of witnesses, the production of documents and costs, be regulated by the appropriate Rules of the Supreme Court, the appropriate adaptations and alterations being made.

#### PART II.—CROWN LAND.

19. (1) Where any Crown land has been, or hereafter shall be, set aside or reserved under the Land Act, 1933-1946, as town, suburban, or village land, such land shall not be sold, leased, or disposed of until the Board shall have prepared, and the Minister shall have approved or refused to approve, a town planning scheme in respect of such land.

(2) The Board may prepare a town planning scheme in respect of any such land with the general objects set out in section six hereof, and such scheme shall, if approved by the Minister and published in the *Gazette*, have the same effect as if it had been lawfully prepared by a local authority, and approved under section seven.

(3) The foregoing provisions of this Act shall, so far as the same are consistent and applicable, apply to and in respect of any scheme so prepared, with the substitution of the Board for the responsible authority.

#### PART III.—ALIENATED LAND.

20. (1) No person shall lay out, grant, or convey a street, road, or way, or subdivide or sell lands as lots, until a plan of subdivision has been approved by the Board.

Planning of town and Suburban lands.  
No. 39 of 1928, s. 19.

Plans of subdivision to be approved.  
*Ibid.* s. 20.

(2) A plan of subdivision of any land shall not be received, registered, or deposited in the Office of Titles or Registry of Deeds or any other public office for the registration and depositing of such plans, whether constituted under the Transfer of Land Act, 1893-1946, or otherwise, unless such plan shall have been first approved by the Board.

(3) A plan containing one lot only shall be deemed a plan of subdivision provided that it is a portion of the land comprised in a certificate of title, registered conveyance, a Crown grant, or a lot on a registered plan.

21. (1) A transfer, conveyance, lease for any term exceeding twenty-one years, or mortgage of any piece of land containing less than half an acre in area, unless it comprises the whole of one or more lots shown on a plan registered in the Department of Lands and Surveys, or in the Office of Titles or Registry of Deeds, or comprises the whole of the land subject of a Crown grant, certificate of title or conveyance, shall not be received or registered in the Office of Titles or Registry of Deeds unless such transfer, conveyance, or mortgage shall have been first approved by the Board.

Certain transfers, etc., to be subject to approval. *Ibid.* s. 21. as amended by No. 16 of 1943, s. 2.

(2) The Registrar of Titles shall not receive any application from the registered proprietor of any land to issue in the name of such registered proprietor a certificate of title for a portion of land of a lesser area than half an acre, not being the whole of one or more lots shown on a registered plan in the Department of Lands and Surveys or Office of Titles, or the whole of the land the subject of a Crown grant, certificate of title or conveyance, unless such application has been approved by the Board.

22. (1) Every plan or amended plan of subdivision submitted to the Board for approval, shall be accompanied by two copies traced on cloth or such other copy or copies or such duplicate or duplicates as it may determine.

Conditions. *Ibid.* s. 22.

(2) The Board shall retain one of such copies or duplicates for reference purposes, and shall forward another to the local authority for the district in which the land comprised therein is situate.

(3) Every plan shall conform in all respects with the regulations in force in the Office of Titles and the owner of the land shall supply any additional information required by the Board as to levels, drainage, nature of soil, physical features, and such other particulars as may be prescribed.

23. Where a plan or an amended plan of subdivision of land, relates to land situate within an irrigation district constituted under the Rights in Water and Irrigation Act, 1914-1945, or within a drainage district constituted under the Land Drainage Act, 1925-1941, the following provisions shall apply, that is to say:—

- (a) The plan or amended plan of subdivision when submitted to the Board for approval shall have stated thereon clearly and legibly that the land comprised therein is situated within an irrigation district or within a drainage district, as the case may be, and give the name of such district.
- (b) On receipt of such plan or amended plan and before considering whether or not the same shall be approved, the Board shall refer the plan or amended plan to the irrigation board or the drainage board of the irrigation district or of the drainage district (as the case may require) in which the land comprised in such plan or amended plan is situated for examination, consideration and report to the Board.
- (c) The irrigation board or the drainage board concerned shall, as soon as reasonably may be, report in writing to the Board what (if any) additional irrigation works or drainage works will be required in the irrigation district or in the drainage district (as the case may be) by reason of such subdivision of land if the proposed subdivision of land is made or effected, and also state the estimated cost of carrying out such additional works.

Special powers where land proposed to be subdivided is situate within an irrigation district or a drainage district.  
No. 16 of 1945, s. 2.

- (d) Upon receipt of such report from the irrigation board or the drainage board concerned, the Board shall notify the applicant thereof in writing and require him to enter into or make with the irrigation board or the drainage board (as the case may require) a contract or arrangement satisfactory to the irrigation board or the drainage board for the carrying out of the additional works aforesaid and for the payment of the costs thereof, or for the carrying out of part of such additional works and payment of part of the cost thereof where the circumstances are such that in the opinion of the irrigation board or the drainage board it would be impracticable or inequitable that the applicant should be responsible for carrying out the whole of such additional works and paying the whole of the costs thereof, and the Board shall further require the applicant to notify the Board when such contract has been entered into or such arrangement made.
- (e) If any question shall arise between the applicant and the irrigation board or the drainage board as to the necessity or nature of such additional works aforesaid or any part thereof or the amount of the costs thereof, such question shall be referred to the Magistrate of the Local Court of the district in which the land is situated and the decision of such Magistrate shall be final and conclusive.
- (f) When the applicant has entered into a contract or made an arrangement with the irrigation board or the drainage board concerned as required by paragraph (d) of this section, such irrigation board or drainage board, as the case may be, shall forthwith notify the Board thereof in writing.
- (g) When the Board has received from the irrigation board or the drainage board concerned the notification provided for in paragraph (f) of this section, and not

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before, the Board may proceed to examine and consider the said plan or amended plan of subdivision in accordance with the other provisions of this Act and to determine whether or not the Board shall approve of the same.

- (h) The Board shall not be bound to approve of the plan or amended plan of subdivision merely by reason of the fact that the applicant has entered into a contract or made an arrangement with the irrigation board or the drainage board concerned in conformity with paragraph (d) of this section if the Board considers that upon other grounds authorised by this Act such plan or amended plan of subdivision should not be approved.

Objections  
and recom-  
mendations.  
No. 39 of  
1928, s. 23.

24. (1) When, in the opinion of the Board, the plan of subdivision may affect the powers or functions of any local authority or public body other than the Board, or any Government department, the Board shall forward the plan or a copy thereof to such local authority, public body, or Government department, as the case may be, for objections or recommendations.

(2) Any such local authority, public body, or Government department receiving such plan or copy thereof shall, within thirty days, forward it to the Board with a memorandum in writing containing objections or recommendations (if any) to the whole or part of such plan.

(3) The Board at any time after the expiration of the latest of the periods of thirty days as aforesaid and after consideration of any objections or recommendations (if any) made by any local authority, public body, or Government department with respect to such plan, or particulars as aforesaid, may approve or reject such plan, and may affix such conditions as the Board may think fit, which shall be carried out by the owner before the plan is approved by the Board.

25. Where, after the erection of a building on land the property of one owner, it is found that such building encroaches upon land the property of another owner to the extent of not more than three feet, and where the encroaching owner desires to purchase the land upon which the encroachment stands, the Board shall, upon the application of the owner of the land which is encroached upon, and upon being satisfied that there has not been collusion, but that everything has been done in good faith without intention to evade the law, approve of the necessary subdivision or transfer.

Encroachments.  
*Ibid.* s. 24.

26. (1) Any person may appeal to the Minister from the refusal of the Board to approve any plan, transfer, conveyance, lease for any term exceeding twenty-one years or mortgage, or from the conditions affixed to the granting of such approval, and if the appeal is allowed the plan, transfer, conveyance, lease for any term exceeding twenty-one years or mortgage shall be received, registered, or deposited as the Minister may direct. The decision of the Minister shall be final.

Appeals.  
*Ibid.* s. 25.  
as amended  
by No. 16 of  
1943, s. 3.

(2) The Minister may award such costs and expenses and make them payable by such person as the Minister may deem just and reasonable, and such costs and expenses may be recovered as a debt.

27. If any person contravenes by act or omission any provisions of this Part of this Act, he shall be guilty of an offence, and liable to a penalty not exceeding fifty pounds.

Penalty.  
*Ibid.* s. 26.

PART IV.—MISCELLANEOUS.

28. (1) When a portion of land is transferred to the Crown or a local authority for the purpose of extending or adding to a public street or road, such transferred portion shall be deemed to be dedicated to the public use, and to form part of the street or road, as and from the date of registration of the transfer in the Office of Titles.

Dedication to public use of land acquired to extend or improve streets.  
*Ibid.* s. 27.

(2) When a street or road corner shown on any plan registered in the Office of Titles or in the Department of Lands and Surveys is subsequently

rounded off or truncated, the portion of land so excised shall form part of the public street or road, and from the date of approval of the inspector of plans and surveys is hereby declared to be dedicated to the public use, and shall be under the control of the local authority.

Fees.  
*Ibid.* s. 28.

29. The Minister may prescribe a set or sets of fees to be charged in respect of anything to be done by the Commissioner or the Board under or in pursuance of this Act, and such fees shall be payable by the person at whose request or on whose application such matter is done.

Amendment  
of Municipal  
Corporations  
Act, and  
Road  
Districts Act.  
*Ibid.* s. 29.

30. (1) A subsection is inserted in section one hundred and seventy-nine of the Municipal Corporations Act, 1906, after subsection (52), as follows:—

\*(53) For carrying into effect all or any of the purposes mentioned in the Second Schedule to the Town Planning Act, 1928.

(2) Section four hundred and ninety-seven of the Municipal Corporations Act, 1906, and section seven of the Municipal Corporations Act Amendment Act, 1919, are hereby repealed.

(3) A subsection is inserted in section one hundred and ninety-six of the Road Districts Act, 1919, after subsection (49), as follows:—

†(50) For carrying into effect all or any of the purposes mentioned in the Second Schedule to the Town Planning Act, 1928.

(4) Subsections (2), (4), (6), (7), (8), and (9) of section one hundred and fifty-five, and sections one hundred and fifty-six and one hundred and fifty-seven of the Road Districts Act are hereby repealed.

Uniform  
general  
by-laws, etc.  
*Ibid.* s. 30,  
as amended  
by No. 29 of  
1947 s. 5.

31. (1) The Governor may make, and publish in the *Gazette*, uniform general by-laws, or separate sets of general by-laws adapted for areas of any special character, for carrying into effect all or any

\*Now subsection 52 of section 180 of the Municipal Corporations Act, 1906-1947;  
†Now subsection 59 of section 201 of the Road Districts Act, 1919-1947.

of the purposes mentioned in the Second Schedule to this Act, and such by-laws shall have the force of law in the district of any local authority which the Governor may from time to time prescribe, and shall supersede the by-laws made for the same or a similar purpose by the local authority of the district so prescribed; and the Governor may at any time repeal any by-law made under subsection (52) of section one hundred and eighty of the Municipal Corporations Act, 1906-1947, or under subsection (59) of section two hundred and one of the Road Districts Act, 1919-1947.

(2) When any by-law made under subsection (52) of section one hundred and eighty of the Municipal Corporations Act, 1906-1947, or under subsection (59) of section two hundred and one of the Road Districts Act, 1919-1947, or under the last preceding subsection of this section, is inconsistent with any town planning scheme approved before or after the making of such by-law, and having effect in the district, or in part of the district, in which such by-law is in force, then to the extent of such inconsistency, and in the part of the district in which such scheme has effect, the provisions of such scheme shall prevail.

(3) Where any property is injuriously affected or increased in value by the operation of any by-law made under subsection (52) of section one hundred and eighty of the Municipal Corporations Act, 1906-1947, or under subsection (59) of section two hundred and one of the Road Districts Act, 1919-1947, or under subsection (1) of this section the provisions of section eleven of this Act shall apply *mutatis mutandis* as if the by-law were a scheme made under this Act, and as if the resolution passing a by-law were a resolution to prepare or adopt a scheme.

32. Nothing in this Act shall be deemed to interfere with the right of His Majesty, or the Governor, or the Government of the State or a local authority to undertake, construct, or provide any public work, and to take land for the purposes of that work: Provided that, so far as, in the interests of the

Savings.  
*Ibid.* s. 31

public, it is reasonably possible, every such work shall be undertaken, constructed, or provided, and all land taken for the purpose of such work shall be taken, in such a manner as to be in keeping with the design and intent of every town planning scheme, and so as not to destroy the amenity of any town planning scheme made and approved under this Act and having effect in the district where, and at the time when, such work is undertaken, constructed, or provided, or such land is taken.

Power to suspend the operation of certain provisions of other Acts.  
*Ibid.* s. 32.

33. Where the carrying out of any provision of an approved scheme would conflict with any provisions, limitations, or conditions of or prescribed by any Act, the responsible authority may apply to the Governor for an order modifying or suspending the provisions of that Act, so far as may be necessary to enable effect to be given to the scheme; and thereupon the Governor may, in respect of that scheme but not otherwise, make an order accordingly for the suspension or modification of such provisions or any of them, subject to such conditions and limitations as he thinks fit to impose:

Provided that an Order in Council purporting to modify or suspend any provisions of any Act shall not take effect unless and until it has been approved by a resolution of both Houses of Parliament.

Regulations.  
*Ibid.* s. 33.

34. Subject to the regulations made by the Minister under the preceding provisions of this Act, the Governor may make such further regulations as are necessary to give effect to this Act.

Act to bind the Crown.  
*Ibid.* s. 34.

35. Except where otherwise provided, this Act shall bind the Crown.

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**THE FIRST SCHEDULE.**

**MATTERS WHICH MAY BE DEALT WITH BY GENERAL PROVISIONS.**

No. 39 of  
1928.  
First  
Schedule.  
as amended  
by No. 41 of  
1944, s. 2.

Sec. 6 and 8

1. Streets, roads, and rights-of-ways generally; and particularly the levels alteration, widening, closing, diverting, raising, lowering, aligning, re-aligning, grading, re-grading, classifying, re-classifying, naming, re-naming, constructing, re-constructing, maintaining, repairing, draining, re-draining, sewerage, re-sewerage, beautifying, gardening, and tree planting of streets, roads and rights-of-way, the junctions and intersections of streets, roads, rights-of-way and the excision of their corners, the laying of sewers, pipes and wires, and the placing of lamps, lamp posts, tramway poles, monuments, fences, gateways, public signs, notices, and other objects in or on land adjacent to streets, roads and rights-of-way.

2. Parks and open spaces generally, and particularly public reserves, gardens, playgrounds, sports and recreation grounds, drill grounds, aviation grounds, public squares and other open public spaces, and fences, railings, monuments, statues, buildings, and other erections or works on parks, open spaces, public squares, and other public places.

3. Gardens and park spaces for the use of particular parts of the area, and park ways for general use.

4. Public conveniences generally; and particularly churches, schools, educational and recreational institutions, libraries, public buildings, theatres and other places of public entertainment, fountains, public comfort stations, and refreshment kiosks and other buildings.

5. The subdivision of land generally; and in particular any requirements deemed necessary—

(a) in regard to new subdivisions or re-subdivisions of any land (or maps, plans, sections, or particulars thereof) contained within the scheme area, including drainage, size and shape of allotments (or separate parcels of land), and access thereto;

(b) for the classification of, and prescribing and determining any requirements in regard to the length or width of any street, road or right-of-way according to the use to which such street, road or right-of-way is likely to be put, or according to the physical features of the land, together with the design, method of construction, and cost of completion or alignment of any street, road, or right-of-way; and

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- (c) for dealing with or disposing of land acquired under this Act by a responsible authority, or by any Council or other public body or any person.

6. The replanning and reconstruction of the scheme area, or any part thereof, including any provisions necessary for—

- (a) the pooling of the lands of several owners (or any lands, roads, streets, or rights-of-way adjacent or near thereto);
- (b) the redivision of such land among such owners;
- (c) providing and making new roads, streets or rights-of-way;
- (d) adjusting and altering the boundaries of any such lands, roads, streets, or rights-of-way.
- (e) effecting such exchanges of land, or cancellation of existing subdivisions as may be necessary or convenient for the purposes aforesaid;
- (f) adjustment of rights between such owners or other persons interested in such lands, roads, streets, or rights-of-way;
- (g) the vesting of such lands, roads, streets, or rights-of-way, subject or not subject to any rights or trusts; and any other provisions necessary for giving effect to the purposes aforesaid.

7. Buildings generally, and in particular—

- (a) the height, location, purpose, dimensions, or the general character of buildings;
- (b) the special control and regulation of buildings;
- (c) the demolition or alteration of buildings;
- (d) the prevention of the erection of ugly buildings which may destroy local amenities;
- (e) the prohibition or regulation of the placing or subject to section eleven or a reasonable time limit, the continuance of advertisements, advertising hoardings, illuminated signs and other advertising devices and erections, or other disfigurements;
- (f) the placing of new public buildings;
- (g) harmony in the exterior designs of buildings.

8. Limiting the number of apartment, tenement, detached, or other dwelling houses to the acre generally or in any particular locality, and the extent to which each subdivision, allotment, or parcel of land is to be built upon, and providing for adequate light and air to the windows of each house, and prescribing other requirements so far as is reasonable for the purpose of securing the convenience and amenity of the scheme area and proper sanitary and hygienic conditions in connection with any building therein.

9. The making, fixing, and altering and ascertaining of building lines irrespective of the width or alignment of any street, road, or right-of-way, to secure as far as practicable, having regard to the physical features of the site and the depth of the existing subdivisions, that the distance between the buildings to be erected, or buildings likely to be reconstructed; on opposite sides of any street, road or right-of-way, shall not be less than that fixed by the scheme, according to the prospective traffic requirements of such street, road or right-of-way, and not less in the case of any street or road than 66 feet or more than 198 feet, except pursuant to agreement between the owners and the responsible authority that the distance is to exceed 198 feet.

10. Classification of the scheme area for residential, commercial, industrial, and other purposes respectively, including the provision of special areas for residential tenement houses or flats, for factories, or for carrying on industries generally, and for shops, warehouses, stores, stables and other buildings used for commercial or industrial purposes, and fixing the sites for buildings required for any charitable, religious, or public purposes, or for public conveniences as mentioned in paragraph 4 hereof; and prohibiting the carrying on of any trade or manufacture, or the erection of any building, in a particular part of the area other than in accordance with the provisions of the scheme.

11. Conservation of the natural beauties of the area, including lakes and other inland waters, banks of rivers, foreshores of harbours, and other parts of the sea, hill slopes and summits, and valleys.

12. The preservation of historic buildings and objects of historical or scientific interest.

13. Probable routes for railways, tramways, and canals and probable sites for bridges, docks, harbours, piers, quarries, and lighting, water, drainage and sewerage, or any other private or public work or undertaking authorised by statute.

14. Works ancillary to or consequent on the scheme.

15. The extinction or variation of any right-of-way or easement, public or private, or of any restrictive covenant or covenants affecting land.

16. Power of entry and inspection.

17. Facilities for the operation of public utilities and trading undertakings of any local authority or authorised public body, or of any society or public utility.

18. The exercise of the power of the responsible authority to acquire land or buildings, or to make any agreement or proposal in respect thereto.

19. Power to limit the height, at the corner of any street, road, right-of-way, of any wall, fence, hedge, tree or shrub or other obstruction, not being an authorised building.

20. Power of the responsible authority to remove, alter, or demolish any building which obstructs the observance or carrying out of the scheme.

21. Power of a responsible authority to make agreements with owners and of owners to make agreements with one another.

22. Co-operation of the responsible authority and the owners of land and co-operation between owners of land.

23. Co-operation between the responsible authority and the Government of the State or the Commonwealth, or any public statutory bodies or authorities, including Councils and Road Boards.

24. The recovery of expenses incurred in giving effect to the scheme.

25. The carrying out and completion of the scheme generally, and particularly the time and manner in which, and the persons and authorities by whom or by which the scheme, or any part thereof, shall be carried out and completed and its observance ensured.

26. Any matter with respect to which under this Act an agreement relating to a scheme may be made.

27. Limitation of time for the operation of a scheme.

28. Any matter necessary or incidental to town planning or housing.

The mention of particular matters in this schedule shall not be held to prejudice or affect the generality of any other matter.

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## THE SECOND SCHEDULE.

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### MATTERS FOR WHICH TOWN PLANNING BY-LAWS MAY BE MADE BY A LOCAL AUTHORITY.

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1. Purchasing or reserving land for new main thoroughfares which it is desired to keep free of buildings by agreement between the owners of such land and the responsible authority or by co-operation between two or more local authorities with regard to the lines, widths and direction of thoroughfares which connect adjacent parts of their respective areas.

2. Limiting the number of apartment, tenement, or detached or other family dwelling houses to the acre generally or in any particular locality, and the extent to which each subdivision, allotment or parcel of land is to be built upon, and providing for adequate light and air to the windows of each house, and prescribing other requirements so far as is reasonable for the purpose of securing the convenience or amenity of the area to which by-laws apply, and proper sanitary and hygienic conditions in connection with any buildings therein.

3. (i) Classifying or reclassifying the area into districts for residences, factories, business or noxious trades or for any other commercial or industrial purposes; provided that the Council shall have power to declare any district a mixed district for the combining of any two or more of the classifications.

(ii) Classifying or reclassifying part of a district classified for residences for residential tenement houses or flats and prohibiting the erection of residential tenement houses or flats in any other part of such district.

4. Prohibiting any district or part of it from being used for any purpose other than that for which it has been classified.

5. Prescribing the height, location, purpose and dimensions or the general character of buildings to be erected or reconstructed as far as is reasonable for securing proper sanitary and hygienic conditions, convenience, or amenity of the area to which the town planning by-laws are to apply.

6. Prohibiting the carrying on of any noxious trades or manufactures, or the erection or use of any buildings with adequate sanitary arrangements, or prohibiting or regulating the erection and use of buildings, advertisement hoarding, or structures for advertising purposes which are such as to be injurious to the amenity or natural beauty of the area to which the town planning by-laws are to apply.

7. Prescribing and determining any requirements deemed necessary in regard to new subdivisions or re-subdivisions of any land (or maps, plans, sections, or particulars thereof) contained within the area to which it is intended that the town planning by-laws shall apply, including drainage, size and shape of allotments (or separate parcels of land) and access thereto; also for the classification of and the prescribing and determining of any requirements in regard to the length or width of any street, road, or right-of-way according to the use such street, road, or right-of-way is likely to be put, or according to the physical features of the land, together with the design, method of construction, and completion of alignment, of any street, road or right-of-way.

8. The making, fixing, altering and ascertaining of building lines irrespective of the width or alignment of any street, road, or right-of-way, to secure as far as practicable, having regard to the physical features of the site and the depths of the existing subdivisions of land, that the distance between the buildings to be erected, or buildings likely to be reconstructed on the opposite sides of any street, road, or right-of-way, shall not be less than that fixed by the by-laws according to the prospective traffic requirements of such street, road, or right-of-way, and not less in the case of any street, or road than 66 feet, nor more than 198 feet except pursuant to agreement between the owners and the local authority that the distance is to exceed 198 feet.

9. Limiting of open spaces, recreation grounds, or sites for public buildings, by purchase or agreement between owners of lands and the local authority.

10. Limiting the height, at the corner of any street, road, or right-of-way of any wall, fence, hedge, tree or shrub or other obstruction not being an authorised building.

11. Providing for the authority or authorities responsible for carrying the town planning by-laws into effect and enforcing their observance.