

Approved for Reprint 8th March, 1973.

WESTERN AUSTRALIA.

TOWN PLANNING AND DEVELOPMENT.

19° Geo. V., No. XXXIX.

No 39 of 1928.¹

(Affected by Acts No. 15 of 1945, s. 3; No. 78 of 1959, No. 56 of 1964,
s. 5; No. 113 of 1965.)

[As amended by Acts:

No. 16 of 1943, assented to 20th October, 1943;
No. 41 of 1944, assented to 11th January, 1945;
No. 16 of 1945, assented to 9th January, 1946;
No. 29 of 1947, assented to 18th November, 1947;
No. 79 of 1953, assented to 18th January, 1954;
No. 73 of 1954,² assented to 14th January, 1955;
No. 63 of 1955, assented to 19th December, 1955;
No. 79 of 1956, assented to 17th January, 1957;
No. 68 of 1957, assented to 6th December, 1957;
No. 79 of 1957, assented to 23rd December, 1957;
No. 61 of 1958, assented to 24th December, 1958;
No. 49 of 1959, assented to 20th November, 1959;
No. 64 of 1961,³ assented to 28th November, 1961;
No. 45 of 1962, assented to 1st November, 1962;
No. 98 of 1965, assented to 17th December, 1965;
No. 25 of 1967, assented to 27th October, 1967;
No. 31 of 1969, assented to 16th May, 1969;
No. 117 of 1970,⁴ assented to 10th December, 1970;
No. 34 of 1972, assented to 16th June, 1972;

and reprinted pursuant to the Amendments Incorporation Act,
1938.]^{*}

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

[Assented to 28th December, 1928.]

BE it enacted—

1. This Act may be cited as the *Town Planning and Development Act, 1928-1972*, and shall come into operation on a date to be fixed by proclamation.¹

Short title
and com-
mencement.
Amended by
No. 34 of 1972,
s. 1.

¹ Proclaimed to come into operation on 1/11/1929; see *Gazette*, 1/11/1929.

² Limitation Act Amendment Act, proclaimed to come into operation 1st March, 1955; see *Gazette* 18/2/55, p. 343.

³ Proclaimed to come into operation, 1st January, 1962; see *Gazette* 22/12/61, p. 3860.

⁴ Proclaimed to come into operation 15th February, 1971; see *Gazette* 12/2/71, p. 378.

* In this reprint

(i) references in the marginal and foot notes to the 1951 reprint are references to the reprint of the *Town Planning and Development Act, 1928-1947*, contained in Vol. 4 of the Reprinted Acts of the Parliament of W.A. (1951);

(ii) the numbering or lettering of Parts, sections, subsections, paragraphs, etc., as adopted in the 1951 reprint, is retained.

Interpre-
tation.

Amended by
No. 79 of
1953, s. 2;
No. 63 of
1955, s. 2;
No. 79 of
1956, s. 2;
No. 61 of
1958, s. 2;
No. 49 of
1959, s. 2;
No. 64 of
1961, s. 3.

2.¹ In this Act, unless the context otherwise requires—

“Authority” means The Metropolitan Region Planning Authority constituted under the Metropolitan Region Town Planning Scheme Act, 1959;

“Board” means the Town Planning Board;

“building line” means the line between which and any public place or public reserve a building may not be erected, fixed by a local authority or the Authority, as the case may be, and shown on or described in a plan for a town planning scheme approved by the Minister or the Metropolitan Region Scheme made by the Authority and includes a building line or a new building line prescribed by a by-law of any Local Authority;

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

“development” means the use or development of any land and includes the erection, construction, alteration or carrying out, as the case may be, of any building, excavation or other works on any land;

“District” means a municipal 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;

“lot” means a defined portion of land—

depicted on a plan or diagram publicly exhibited in the public office of the Department of Lands and Surveys, or

¹ Amendment to section 2 effected by No. 61 of 1958, section 2, operates retrospectively to the commencement of the Town Planning and Development Act Amendment Act, 1956, i.e., 17th January, 1957.

deposited in the Office of Titles or Registry of Deeds and for which a separate Crown Grant or Certificate of Title has been or can be issued; or depicted on a subdivisional plan or diagram, whether so exhibited or deposited or not, but which is, whether before or after the coming into operation of the Town Planning and Development Act Amendment Act, 1956, approved by the Board and includes the whole of the land the subject—

- (a) of a Crown Grant issued under the Land Act, 1933; or
- (b) of a Certificate of Title issued under the Transfer of Land Act, 1893; or
- (c) of a survey into a lot pursuant to a direction given under section seventeen of the Land Act, 1933; or
- (d) of a part-lot shown on a plan of subdivision or diagram deposited in the Department of Lands and Surveys, Office of Titles, or Registry of Deeds; or
- (e) of a conveyance registered under the Registration of Deeds Act, 1856;

“metropolitan region” means the area of land comprised within the limits of the districts of the local authorities specified in the Third Schedule to this Act;

“public authority” means a Minister of the Crown acting in his official capacity, a State Government Department, State trading concern, State instrumentality, State public utility and any other person or body, whether corporate or not, who or which, under the authority of any Act, administers or carries on for the benefit of the State, a social service or public utility;

Cf. N.Z.,
No. 52 of
1926, s. 2.

“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;

Cf. S.A.,
No. 1452,
s. 4.

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

PART I.—TOWN PLANNING.

Town
Planning
Commis-
sioner.
Cf. N.Z.
No. 52 of
1926, s. 5.

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
Planning
Board.
Amended by
No. 79 of
1953, s. 3.

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, but—

(a) after the coming into operation of the Town Planning and Development Act Amendment Act, 1953, the term of appointment is for a period of two years; and

- (b) the term of the appointments which but for this paragraph would have expired on the fourth day of November, one thousand nine hundred and fifty-three is continued until appointments for the term of two years as mentioned in paragraph (a) of this subsection are made.

(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

Functions of
the Board.

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.

Protection of members of the Board. Added by No. 79 of 1953, s. 4.

5A. (1) Where a matter or thing is done by the Board or a member of the Board if the matter or thing is done in good faith in or about the exercise or purported exercise of any of the powers conferred upon and exercisable by it or him by or under the provisions of this Act the member or any other member of the Board is not personally liable in respect thereof.

(2) [*Repealed by Limitation Act, 1935-1954, s. 48A.*]

Town Planning Schemes. Amended by No. 29 of 1947, s. 3; No. 79 of 1953, s. 5. [Cf. N.Z., No. 52 of 1926, s. 3.]

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, factory and other areas, proper sanitary conditions and conveniences, 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.

(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. Amended by No. 61 of 1953, s. 3. [Cf. N.Z., No. 52 of 1926, s. 13.]

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 or amplified by an amendment to the scheme, or revoked by a subsequent scheme prepared or adopted by the local authority, and approved by the Minister and the amendment to the scheme or, as the case may be, the subsequent scheme published in the *Gazette*.

7A. (1) (a) Pending the consideration by the Governor, or such other authority as the Governor may appoint, of a proposed town planning scheme for the metropolitan region, the Minister may, with the approval of the Governor, and in accordance with the provisions of this section, make such interim development order or orders as are necessary for regulating, restricting or prohibiting the development of any land within the metropolitan region or such part or parts thereof as are affected by, and specified in, the order.

Interim development: metropolitan region.
Added by No. 63. of 1955, s. 3.
Amended by No. 79 of 1956, s. 3; No. 68 of 1957, s. 2; No. 61 of 1958, s. 4; No. 49 of 1959, s. 3; No. 64 of 1961, s. 4; No. 45 of 1962, s. 2; No. 113 of 1965, s. 8.

(b) During the operation of an interim development order a person shall not carry out or cause to be carried out any development within the metropolitan region contrary to the terms of the order; but nothing in an interim development order shall prevent the continuance of the use of any land or building for the purposes for which the land or building was being lawfully used, or the carrying out of any development for which immediately prior to the coming into operation of the order, a permit or permits, if any, required under this or any other Act authorising the development to be carried out had been obtained and were current.

(2) (a) Upon the approval by the Governor of an interim development order, the Minister shall cause to be published once in the *Gazette* and three times in a daily newspaper circulating in the metropolitan region a notice containing a summary of the order and stating that copies of the order shall be made available by the Minister for inspection by any person free of charge at the offices of the Authority and of the local authorities within the area or areas affected by the order.

(b) Subject to the provisions of subsection (3) of this section, an interim development order has effect, from and after the date of publication in the *Gazette* of the notice in accordance with the provisions of paragraph (a) of this subsection, as though its provisions were enacted by this Act.

(c) Every interim development order shall be laid before each House of Parliament within six sitting days of the House next following the date of publication in the *Gazette* of the notice referred to in paragraph (a) of this subsection, and if either House passes a resolution revoking that order, of which resolution notice was given at any time within fourteen sitting days of that House after the order was laid before it the order shall, on the passing of the resolution, cease to have effect notwithstanding the provisions of paragraph (b) of this subsection; but the revocation shall not affect the operation of the order, or any claim for compensation, with respect to anything done or omitted pursuant to the order, prior to the revocation.

(3) (a) Subject to the provisions of paragraphs (b) and (c) of this subsection, an interim development order made under the provisions of this section shall cease to have effect on the thirty-first day of December, one thousand nine hundred and sixty-three unless prior to that date

(i) it is extended with or without qualification by a resolution adopted by both Houses of Parliament; or

- (ii) a town planning scheme for the metropolitan region is made in accordance with the provisions of this Act and comes into operation.

(b) Where an interim development order is extended by a resolution adopted by both Houses of Parliament, it shall have effect for such further period and subject to such qualifications or conditions as are specified in the resolution.

(c) An interim development order relating to the metropolitan region or any part of it shall cease to have effect when a town planning scheme for the metropolitan region, made in accordance with the provisions of this Act, comes into operation.

(4) Subject to any special provisions contained in any interim development order, the Authority shall administer every interim development order made pursuant to the provisions of this section.

(5) An interim development order may

- (a) (i) require a person, before commencing to carry out any specified development within the metropolitan region, to obtain the Authority's permission in writing in accordance with the provisions of paragraph (b) of this subsection;
 - (ii) regulate, restrict or prohibit any specified class of development within the metropolitan region or such part or parts thereof as are specified in the order;
 - (iii) exempt from the operation of the order any specified class of development within the metropolitan region or such part or parts thereof as are specified in the order;
- (b) provide that the Authority's permission in writing for the carrying out of any development referred to in the order shall be

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obtained through the local authority in whose district the development is proposed to be carried out and that the permission, if granted, may be subject to such conditions as the Authority deems necessary to impose, including, without limiting the generality of the conditions

- (i) a condition limiting the period during which the development may be carried out; and
 - (ii) a condition requiring the cessation of the development and the removal of any structure or building erected pursuant to that permission, at the expiry of the period so limited;
- (c) provide that the Authority may refuse to grant to an applicant its permission for the carrying out of any specified class of development within the metropolitan region or such part or parts thereof as are specified in the order, the refusal being communicated to the applicant through the local authority;
- (d) subject to the provisions of paragraph (b) of subsection (1) of this section suspend, vary, supplement or supersede any of the provisions of a town planning scheme relating to any part of the metropolitan region approved by the Minister in accordance with the provisions of this Act or any of the by-laws in force pursuant to the provisions of the Local Government Act, 1960, or any Act for which that Act is in substitution;
- (e) confer on a local authority within whose district the order operates any of the functions, powers, rights or duties of the Authority under the provisions of this subsection or of subsections (7) or (8) of this section.

(6) (a) Where a person is aggrieved by the refusal of a permit or by the conditions subject to which a permit is granted, he may within sixty days after the refusal is communicated to him or the permit is granted to him, appeal to the Minister who may hear the appeal himself or appoint a person or persons to hear the appeal and report thereon to the Minister and the Minister, after considering the report, if any, shall make his decision thereon and communicate it to the applicant. The Minister's decision is final. But no appeal shall be made or entertained in respect of any development which contravenes any provisions of a town planning scheme or of any by-laws of a local authority which are not superseded by the interim development order.

(b) Where the Authority, or a local authority exercising the powers of the Authority, fails to grant its permission within a period of sixty days after the receipt by the local authority of an application for permission to carry out any development referred to in this section, the applicant may regard the failure as a refusal of permission and may within thirty days after the expiry of the period referred to appeal to the Minister as provided in paragraph (a) of this subsection.

(7) (a) A person who contravenes or fails to comply with the provisions of an interim development order except as provided in this section commits an offence: Penalty—one hundred dollars.

(b) Proceedings under this subsection may be instituted by the Authority or by a local authority exercising the powers of the Authority.

(8) (a) The Authority or a local authority exercising the powers of the Authority may by notice in writing served on the owner or owners of any land to which an interim development order refers, or such of them as can with reasonable diligence be

ascertained, either personally or by registered letter posted to their last known place of residence, direct him or them to remove, pull down, take up, or alter any building or work or cease any development commenced, continued or carried out in contravention of the provisions of the order on that land and subject to the provisions of paragraph (b) of this subsection, if the owner or owners, as the case may be, fail or refuse to comply with the notice within the time specified in the notice, the Authority or authority, as the case may be, may itself remove, pull down, take up or alter the building, work or development accordingly.

(b) The owner or owners on whom a notice is served in accordance with the provisions of paragraph (a) of this subsection may within the period specified in the notice, such period being not less than thirty days, appeal to the Minister against any direction contained in the notice and the Minister shall after considering the appeal, confirm or vary the direction and the owner or owners shall comply with the direction as so confirmed or varied.

(c) Any expenses incurred by the Authority or authority under the provisions of paragraph (a) of this subsection may be recovered from the owner or owners of the land on which the building or work was so commenced, continued or carried out as a debt due to it by the owner or owners.

(9) (a) Where a public authority or a local authority desires to carry out within an area to which a current interim development order relates any work or undertaking which is not exempted by the provisions of the order but which in the opinion of the Authority would not be in conformity with the proposed town planning scheme for the metropolitan region, and where, after consultation with that authority, agreement is not reached with respect to the co-ordination of the work or undertaking with the proposals to be included in the scheme, the Authority or the authority may submit

the matter to the Minister for determination by the Governor and the Governor may by Order in Council prohibit absolutely or for such period as he thinks fit, or restrict or regulate, or permit, the carrying out of the work or undertaking or any part thereof subject to such conditions as he may specify in the Order in Council and the Order in Council shall have effect accordingly subject to any provision of law inconsistent with it.

(b) Where a consultation between the Authority and a public authority takes place as provided in paragraph (a) of this subsection, the Authority shall also consult the local authority in whose district the work or undertaking is proposed to be carried out.

(10) (a) The Minister may at any time, with the approval of the Governor, revoke an interim development order by notice published in the *Gazette*. A notice revoking an interim development order shall also be published three times in a daily newspaper circulating in the metropolitan region.

(b) The Minister may at any time, with the approval of the Governor, make an order amending an interim development order and the provisions of subsection (2) of this section apply *mutatis mutandis* to any order amending an interim development order as though the amending order were an interim development order.

(11) A town planning scheme relating to any part of the metropolitan region and which is operating therein and any by-laws in force made pursuant to the provisions of the Local Government Act, 1960, or any Act for which that Act is in substitution shall remain in force subject to the provisions of any interim development order and where any of the provisions of the town planning scheme or of the by-laws is inconsistent with any of the provisions of the interim development order, the provisions of the interim development order shall prevail.

(12) (a) No compensation for injurious affection to any land within the metropolitan region or for loss arising from any other cause shall be payable under this Act as a result of the operation of an interim development order unless—

(i) the Authority

refuses an application made pursuant to the order for permission to carry out development on the land; or

grants permission for the carrying out of the development on the land subject to conditions

on the ground that the proposed town planning scheme for the metropolitan region is to include that land within a reservation for public purposes; and

(ii) an appeal, if lawfully made by the claimant under the provisions of subsection (6) of this section, has been disallowed in whole or in part by the Minister.

(b) Where compensation is claimed under paragraph (a) of this subsection, the compensation shall be determined by arbitration in accordance with the Arbitration Act, 1895, or by some other method agreed upon by the parties and the compensation, if any, so determined shall be paid to the claimant by such public authority as the Governor deems proper; but in lieu of the payment of compensation determined under this subsection, the Authority may, at the option of the Governor, or shall at the request of the claimant purchase the land injuriously affected at a price not exceeding the value of the land at the time of the refusal of permission or of the grant of permission subject to conditions, without regard to any increase in value attributable wholly or in part to the proposed town planning scheme for the metropolitan region.

7AA. (1) A town planning scheme which—

(a) has been prepared by a responsible authority;

- (b) has been approved by the Minister and published in the *Gazette*; and
- (c) contains zoning or land use provisions in relation to a district, or part of a district, shall be examined—
 - (d) if the Minister after consulting the local authority affected by notice in the *Gazette* so directs, in accordance with that direction; or
 - (e) in each fifth year following the date on which it was last published in the *Gazette* with the approval of the Minister.

(2) (a) The examination required by subsection (1) of this section shall be effected by way of a report to the Minister by the local authority on the operation of the scheme.

(b) Where a report of the local authority recommends a review of the scheme, or the Minister after considering a report advises the local authority that a review is desirable, the scheme shall be reviewed within the period of six months or such longer period as the Minister may in writing agree from the date of the report or the date of the Minister's advice as the case may be.

(3) The review of a town planning scheme in accordance with the provisions of subsection (2) of this section shall be effected by way of the making of a new town planning scheme for the land to which the scheme relates, prepared in accordance with the provisions of this Act, and any reference in this Act to a scheme prepared in accordance with section seven of this Act shall be read and construed as including a reference to a scheme prepared on review in accordance with this section.

(4) Where two or more town planning schemes are consolidated the provisions of this section apply to those schemes as so consolidated with effect from the date on which they were last published in the *Gazette* as a consolidated scheme with the approval of the Minister.

Interim
develop-
ment.
Added by
No. 45 of
1962, s. 3.
Amended by
No. 113 of
1965, s. 8.

7B. (1) (a) Pending the consideration by the Minister of a proposed town planning scheme for a district or part of a district which district or which part is situated outside the metropolitan region; the Minister may with the approval of the Governor, in accordance with this section, make such interim development order or orders as are necessary for regulating, restricting or prohibiting the development of any land within the district or such part or parts thereof as are affected by, and specified in, the order.

(b) During the operation of an interim development order made under this section a person shall not carry out or cause to be carried out any development within a district or part of a district to which the order applies contrary to the terms of the order; but nothing in an interim development order prevents the continuance of the use of any land or building for the purposes for which the land or building was being lawfully used, or the carrying out of any development for which, immediately prior to the coming into operation of the order, a permit or permits, if any required by or under this or any other Act authorising the development to be carried out had been obtained and were current.

(2) (a) Upon the approval by the Governor of an interim development order, the local authority in whose district the order applies shall cause to be published in the *Gazette* and three times in a daily newspaper circulating in that district, a notice containing a summary of the order and stating that copies of the order will be made available by the Minister for inspection by any person free of charge at the offices of the Board and of the local authority or local authorities within the area or areas affected by the order.

(b) Subject to the provisions of subsection (3) of this section, an interim development order made under this section has effect from the date of publication in the *Gazette* of the notice in accordance with the provisions of paragraph (a) of this subsection, as though its provisions were enacted by this Act.

(3) An interim development order made under this section that applies to a district or part of a district ceases to have effect in that district or that part—

- (a) when a town planning scheme made in accordance with this Act comes into force with respect to that district or that part;
- (b) when the order is revoked by the Minister, by notice of revocation published in the *Gazette* under subsection (10) of this section; or
- (c) twelve months from the date the order applies to the district or the part unless the Minister from time to time, with the approval of the Governor, by notice published in the *Gazette*, extends the operation of the order for a further period not exceeding twelve months.

(4) An interim development order made under this section shall be administered by the council or councils of a municipality specified in the order.

(5) An interim development order made under this section may—

- (a) (i) require a person, before commencing to carry out any specified development within the district or part of a district to which the order applies, to obtain the permission of the council administering the order in writing in accordance with the provisions of paragraph (b) of this subsection;
- (ii) regulate, restrict or prohibit any specified class of development within the district or such part or parts thereof as are specified in the order;
- (iii) exempt from the operation of the order any specified class of development within the district or the part or parts thereof as are specified in the order;

- (b) provide that the permission of the council in writing for the carrying out of any development referred to in the order, if granted, may be granted subject to such conditions as the council deems necessary to impose, including, without limiting the generality of the conditions,—
 - (i) a condition limiting the period during which the development may be carried out; and
 - (ii) a condition requiring the cessation of the development and the removal of any structure or building erected, pursuant to that permission, at the expiry of the period so limited;
- (c) provide that the council administering the order may refuse to grant to an applicant its permission for the carrying out of any specified class of development within the district or such part or parts thereof as are specified in the order;
- (d) subject to the provisions of paragraph (b) of subsection (1) of this section, suspend, vary, supplement or supersede any of the provisions of any of the by-laws in force under the Local Government Act, 1960, in the district or part of the district to which the interim development order applies.

(6) (a) Subject to paragraph (c) of this subsection, when a person is aggrieved by the refusal of any such permit or by the conditions subject to which a permit is granted, he may within sixty days after the refusal is communicated to him, or the permit is granted to him, appeal to the Minister who may—

- (i) hear the appeal himself; or
 - (ii) appoint a person or persons to hear the appeal and report thereon to the Minister,
- and the Minister, after considering the report, if any, shall make his decision thereon and communicate it to the applicant.

(b) The decision of the Minister given under paragraph (a) of this subsection is final.

(c) No appeal shall be made or heard in respect of any development that contravenes any provision of a town planning scheme or of any by-laws of a local authority that are not superseded by the interim development order.

(d) Where a council administering an interim development order fails to grant its permission within a period of sixty days after the receipt by it of an application for permission to carry out any development referred to in this section, the applicant may regard the failure as a refusal of permission and may appeal to the Minister as provided in paragraph (a) of this subsection.

(7) A person who contravenes or fails to comply with the provisions of an interim development order made under this section, except as provided in this section, commits an offence.

Penalty: One hundred dollars.

(8) (a) The council administering an interim development order may by notice in writing served on the owner or owners of any land to which the interim development order refers, or such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last known place of residence, direct him or them—

(i) to remove, pull down, take up, or alter any building or work; or

(ii) cease any development commenced, continued or carried out in contravention of the provisions of the order on that land,

and subject to the provisions of paragraph (b) of this subsection, if the owner or owners, as the case may be, fail or refuse to comply with the notice within the time specified therein, the council may itself remove, pull down, take up or alter the building, work or development accordingly.

(b) The owner or owners on whom a notice is served in accordance with the provisions of paragraph (a) of this subsection may within the period specified in the notice, such period being not less than thirty days, appeal to the Minister against any direction contained in the notice and the Minister shall after considering the appeal, confirm or vary the direction and the owner or owners shall comply with the direction as so confirmed or varied.

(c) Any expenses incurred by the Council under the provisions of paragraph (a) of this subsection may be recovered from the owner or owners of the land on which the building or work was so commenced, continued or carried out as a debt due to it by the owner or owners.

(9) Where a public authority or local authority desires to carry out, within an area to which a current interim development order relates, any work or undertaking that is not exempted by the provisions of the order but which, in the opinion of the council administering that order, would not be in conformity with the proposed town planning scheme for the district in which the area is situated, if, after consultation between that authority and the council, agreement is not reached with respect to the co-ordination of the work or undertaking with the proposals to be included in the scheme, the council may submit the matter to the Minister for determination by the Governor and the Governor may by Order in Council—

(a) prohibit absolutely or for such period as he thinks fit; or

(b) restrict, or regulate, or permit,

the carrying out of the work or undertaking or any part thereof subject to such conditions as he may specify in the Order in Council which order has effect accordingly subject to any provision of law inconsistent therewith.

(10) (a) The Minister may at any time revoke an interim development order made under this section by notice published in the *Gazette* and that notice

shall also be published three times in a daily newspaper circulating in the district to which the order applies.

(b) The Minister may at any time make an order amending an interim development order and the provisions of subsection (2) of this section apply *mutatis mutandis* to any order amending an interim development order as though the amending order were an interim development order.

(11) A town planning scheme relating to a district or part of a district and that is operating therein and any by-laws in force made under the Local Government Act, 1960, or any Act for which that Act is in substitution remains in force subject to the provisions of any interim development order applying to that district or that part and where any of the provisions of the town planning scheme or of the by-laws are inconsistent with any of the provisions of the interim development order, the provisions of the interim development order prevail.

(12) (a) No compensation for injurious affection to any land within a district or for loss arising from any other cause is payable under this Act as a result of the operation of an interim development order unless—

(i) the council administering the interim development order—

refuses an application made pursuant to the order for permission to carry out development on the land; or

grants permission for the carrying out of the development on the land subject to conditions

on the ground that the proposed town planning scheme for the district is to include that land within a reservation for public purposes; and

- (ii) an appeal, if lawfully made by the claimant under the provisions of subsection (6) of this section, has been disallowed in whole or in part by the Minister.

(b) Where compensation is claimed under paragraph (a) of this subsection, the compensation shall be determined by arbitration in accordance with the Arbitration Act, 1895, or by some other method agreed upon by the parties, but instead of the payment of compensation determined under this subsection, the council may, and shall at the request of the claimant, purchase the land injuriously affected at a price not exceeding the value of the land at the time of the refusal of permission or of the grant of permission subject to conditions, without regard to any increase in value attributable wholly or in part to the proposed town planning scheme for the district in which the land is situated.

General provisions of schemes. [Cf. N.Z., No. 52 of 1926, s. 16.]

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.

Special provisions.

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

- (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—

- (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.

Regulations as to procedure. Amended by No. 98 of 1965, s. 2; No. 113 of 1965, s. 8. [Cf. N.Z., No. 52 of 1926, s. 35.]

(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.

(3) Regulations made under this section may prescribe penalties not exceeding two hundred dollars for offences against the regulations.

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.

Responsible authority may remove certain buildings, etc.

Amended by No. 79 of 1953, s. 6; No. 98 of 1965, s. 3; No. 113 of 1965, s. 8. [Cf. N.Z., No. 52 of 1926, s. 34.]

(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.

(4) (a) A person who contravenes or fails to comply with the provisions of a town planning scheme is guilty of an offence.

Penalty for
contravening
scheme.

Penalty: Five hundred dollars.

(b) Where a person contravenes the provisions of a town planning scheme by using land contrary to those provisions, he is liable to a fine of five hundred dollars, and in the case of a continuing offence to a further fine not exceeding twenty dollars in respect of each day on which the offence continues after conviction.

(5) The provisions of the last preceding subsection do not prejudice or affect the other provisions of this section.

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.
[Cf. N.Z.,
No. 52 of
1926, ss. 29,
30.]

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.

Betterment.

(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.

(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.

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

Compensation not recoverable in certain cases.

Amended by No. 79 of 1956, s. 4. [Cf. N.Z., No. 52 of 1926, s. 29 (2).]

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.

(2a) (a) In this subsection, unless the context otherwise requires, the expression—

“appointed day” means the day on which the Town Planning and Development Act Amendment Act, 1956, comes into operation;¹

“land” includes any building or structure on land;

“non-conforming use” means a use of land which, though lawful immediately prior to the coming into operation of a town planning scheme, is not in conformity with any provision of that scheme which deals with a matter specified in clause ten of the First Schedule to this Act;

“public purpose” means a purpose which serves or is intended to serve the interests of the public or a section of the public and includes a public work within the meaning of the expression “public work” in the Public Works Act, 1902.

¹ i.e., 17th January, 1957.

(b) Subject to the provisions of paragraph (c) of this subsection, land shall not be deemed to be injuriously affected by reason of any provision of a town planning scheme which comes into force on or after the appointed day, and which deals with any of the matters specified in clause ten of the First Schedule to this Act, unless the scheme

(i) permits development on that land for no purpose other than a public purpose;

or

(ii) prohibits wholly or partially the continuance of any non-conforming use of that land or the erection, alteration or extension on the land of any building in connection with or in furtherance of, any non-conforming use of the land, which, but for that prohibition, would not have been an unlawful erection, alteration or extension under the laws of the State or the by-laws of the local authority within whose district the land is situated.

(c) Notwithstanding the provisions of paragraph (b) of this subsection a provision of a town planning scheme which prescribes any requirement to be complied with in respect of a class or kind of building shall not be deemed to have the effect of so prohibiting the erection, alteration or extension of a building of that class or kind in connection with, or in furtherance of non-conforming use.

(d) Where a town planning scheme, which comes into operation on or after the appointed day, wholly or partially prohibits the continuance of any non-conforming use of any land or the erection, alteration or extension of any building in connection with or in furtherance of a non-conforming use of any land, no compensation for injurious affection is payable in respect of any part of the land which immediately prior to the coming into operation of the scheme, does not comprise

(i) the lot or lots on which the non-conforming use is in fact being carried on; or

if the prohibition relates to a building or buildings standing on one lot,

- (ii) the lot on which the building stands or the buildings stand; or

if the prohibition relates to a building or buildings standing on more than one lot,

- (iii) the land on which the building stands or the buildings stand and such land, which is adjacent to the building or buildings, and not being used for any other purpose authorised by the scheme, as is reasonably required for the purpose for which the building or buildings is or are being used.

(e) Notwithstanding the provisions of section eleven of this Act, if any question arises under paragraph (d) of this subsection as to whether at any particular date, any land does or does not comprise the lot or lots on which a non-conforming use is being carried on, or is or is not being used for any purpose authorised by a scheme, or is or is not reasonably required for the purpose for which any building is being used that question shall, on the application of the claimant or the responsible authority be determined by arbitration under and in accordance with the Arbitration Act, 1895, unless the parties agree on some other method of determination.

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

- (a) purchase any land comprised in such scheme from any person who may be willing to sell the same; or

Power to acquire land.
Amended by No. 68 of 1957, s. 3.

- (b) with the consent of the Governor, take compulsorily, under and subject to the Public Works Act, 1902-1945,¹ (but subject to subsection (2) of this section), any land comprised in such scheme, and whether situate within or without the boundaries of the district of such responsible authority.

(2) When any land is taken compulsorily under the powers conferred by this section the provisions of

- (a) subsections (2) to (7) inclusive of section seventeen; and
 (b) section seventeen A;

of the Public Works Act, 1902-1956,¹ shall not apply to or in respect of the land or the taking or in any manner whatsoever, and that Act shall be read and construed as if the said provisions were deleted.

Responsible authority to have the powers of an owner of land.

14. Subject to the scheme, the responsible authority shall have all the powers of an owner in respect of 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 may grant easements.

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.

¹ Now Public Works Act, 1902-1972.

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 XXVI of the Local Government Act, 1960, 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.

Borrowing powers.
Amended by No. 64 of 1961, s. 5.

(2) The provisions of the Local Government Act, 1960, 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 ratepayers under the Local Government Act, 1960, is held, the local authority shall be at liberty to proceed with the loan unless forbidden to do so by the result of such poll, and any demand that the proposal be submitted to a vote of the ratepayers 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.

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.

Apportionment of expenses between local authorities.

(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.

Obligation
to prepare
or adopt
scheme.

Amended by
No. 29 of
1947, s. 4.
[Cf. N.Z.,
No. 52 of
1926, s. 13;
9 Edw. VII.,
c. 44, s. 61.]

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

- (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, 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.

Planning of town and suburban lands. Amended by No. 61 of 1958, s. 5.

(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.

(4) (a) Where a town planning scheme has been prepared, approved, and published in accordance with the provisions of subsection (2) of this section

and where any Crown land the subject of the town planning scheme has been sold, leased or disposed of, the Board, with the approval of the Minister—

- (i) may suspend, vary, supplement, or supersede, any of the provisions of the town planning scheme; or
- (ii) may agree with a local authority to be jointly responsible with that local authority, as the responsible authority under and for the purposes of the town planning scheme either with respect to all, or part, of the town planning scheme; or
- (iii) may agree with a local authority that the local authority shall be substituted as the responsible authority under and for the purposes of the town planning scheme, either with respect to all, or part, of the town planning scheme, and after the provisions of paragraph (b) of this subsection have been complied with, the provisions of subsection (4) of section seven of this Act apply to the town planning scheme.

(b) Where the Board exercises a power conferred on the Board by the provisions of paragraph (a) of this subsection and as a result of the exercise of that power a town planning scheme is amended the Minister shall cause notice of the amendment to the scheme to be published in the *Gazette*.

PART III.—ALIENATED LAND.

20.¹ (1) (a) Subject to section twenty B of this Act a person shall not, without the approval of the Board, lay out, grant or convey a street, road or way, or either lease or grant a license to use or occupy land for any term exceeding ten years including any option to extend or renew the term or period, or lease and grant a license to use or

Plans of subdivision to be approved. Amended by No. 79 of 1956, s. 5; No. 79 of 1957, s. 2; No. 61 of 1958, s. 6; No. 98 of 1965, s. 4; No. 25 of 1967, s. 2; No. 31 of 1969, s. 2; No. 34 of 1972, s. 3.

¹ Amendment to section 20 effected by No. 61 of 1958, section 2 operates retrospectively to the commencement of the Town Planning and Development Act Amendment Act (No. 2), 1957, but without prejudice to the validity of any lease validly granted prior to the commencement of the Town Planning and Development Act Amendment Act (No. 2), 1958.

occupy land for terms in the aggregate exceeding ten years, including any option to renew or extend the terms or periods, or sell land or grant any option of purchase of land except as a lot or as lots, or subdivide any lot, or amalgamate any lot with any other lot whether within the same district or otherwise; and the Board may give its approval under this paragraph subject to conditions which shall be carried out before the approval becomes effective.

(b) Where, after payment of consideration for any transaction relating to any land, it is found that the transaction cannot be completed—

- (i) within a period of six months after the date of entering into the transaction; or
- (ii) within such further period as is stipulated in the transaction, or in a subsequent agreement in writing made by all the parties to the transaction, or when the subsequent agreement is made after the death of any of those parties, by the surviving party or parties and the legal personal representative of any deceased party,

because the land cannot be dealt with as a lot or as lots the person who paid the consideration is entitled to a refund of the consideration from the person to whom it was paid.

(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, 1893-1946,¹ 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.

¹ Now Transfer of Land Act, 1893-1972.

(4) Where the Board has approved a plan of subdivision of land upon condition that portion thereof be set aside and vested in the Crown for parks, recreation grounds or open spaces generally, if the local authority in whose district the portion is situated and the Board approve, the owner of the land may, in lieu thereof, pay to that local authority a sum that represents the value of the portion.

(5) For the purposes of subsection (4) of this section, the value of the portion shall be such percentage of the unimproved value of the land of which the portion forms part as valued, at the cost of the owner of the land, by the Commissioner of State Taxation appointed under the Land Tax Assessment Act, 1907, as at the date of approval of the plan of subdivision of the land by the Board, as the area of the portion bears to the area of that land.

(6) All money received by a local authority under subsection (4) of this section shall be paid into a separate account of the local authority and shall be applied—

- (a) for the purchase of land by the local authority for parks, recreation grounds or open spaces generally, in the locality in which the land included in the plan of subdivision referred to in that subsection is situated;
- (b) in repaying any loans raised by the local authority for the purchase of any such land; or
- (c) with the approval of the Minister, for the improvement or development of any such land as parks, recreation grounds or open spaces generally.

Pedestrian
accessways,
rights-of-
way, certain
reserves to
vest in
Crown.
Added by
No. 45 of
1962, s. 4.

20A. When the Board has approved, under this Act, a subdivision of land subject to the condition that certain portions of that land

shown on a diagram or plan of survey relating to the subdivision

shall vest in the Crown for the purpose of a pedestrian accessway, right-of-way or reserve for drainage or recreation, if, after the commencement of this section, the diagram or plan of subdivision of the land as so approved is received, registered or deposited in the Office of Titles or Registry of Deeds and is approved by the Inspector of Plans and Surveys or other officer appointed for the purpose, the Registrar of Titles or the Registrar of Deeds shall, in accordance with the condition, on the date of the lastmentioned approval, vest in the Crown

any land shown on the diagram or plan as being reserved for the purpose of a pedestrian accessway, right-of-way or reserve for drainage or recreation

without any conveyance, transfer or assignment or the payment of any fee.

20B. (1) Where an agreement to sell or to grant an option to purchase, or to lease or grant or lease and grant a license to use or occupy any portion of a lot has been entered into without the approval of the Board to the subdivision of the land comprising that lot having been first obtained, as required by subsection (1) of section twenty of this Act, the agreement shall be deemed not to have been entered into in contravention of that subsection, if—

- (a) the agreement is made after the coming into operation of the Town Planning and Development Act Amendment Act, 1967;
- (b) the agreement is entered into subject to the approval of the Board to the subdivision of the land being obtained; and
- (c) an application for the approval of the Board to the subdivision is made within a period of three months after the date of the agreement,

and nothing in that subsection renders the agreement illegal or void by reason only that the agreement was entered into before the approval of the Board to the subdivision was obtained.

Savings of certain agreements. Added by No. 25 of 1967, s. 3. Amended by No. 31 of 1969, s. 3.

(2) Without prejudice to the operation of paragraph (b) of subsection (1) of section twenty of this Act, the agreement referred to in subsection (1) of this section has no effect, unless and until the Board gives its approval to the subdivision so referred to, within a period of six months after the date of the agreement or within such further period as is stipulated in that agreement, or in a subsequent agreement, in writing made by all the parties to the first mentioned agreement, or when the subsequent agreement is made after the death of any of those parties, by the surviving party or parties and the legal personal representative of any deceased party.

Certain transfers, etc., to be subject to approval. Amended by No. 16 of 1943, s. 2; No. 79 of 1953, s. 7; No. 79 of 1957, s. 3; No. 61 of 1958, s. 7; No. 31 of 1969, s. 4.

21. (1) A transfer, conveyance, lease or mortgage of any land shall not be received or registered in the Office of Titles or Registry of Deeds unless—

- (a) it has been first approved in writing by the Board; or
- (b) the land comprises the whole of one or more lots, or the land comprises part of a lot included in a plan of subdivision that has been approved by the Board; or
- (c) in the case of a lease, that the term is not more than ten years including any option to extend or renew the term, and that the lease does not contain or purport to contain an option to purchase land other than the whole of one or more lots.

(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, not being the whole of one or more lots, unless such application has been approved by the Board.

Conditions.

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.

(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 situated.

(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, 1914-1945,¹ or within a drainage district constituted under the Land Drainage Act, 1925-1941,² the following provisions shall apply, that is to say:—

Special powers where land proposed to be subdivided is situate within an irrigation district or a drainage district. Added as S. 22A. by No. 16 of 1945, s. 2. Renumbered s. 23 in 1951 reprint

- (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

¹ Now Rights in Water and Irrigation Act, 1914-1971.

² Land Drainage Act, 1925-1972.

Town Planning and Development.

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.

- (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 (e)¹ of this section, and not 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.

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.

Objections and recommendations. No. 39 of 1928, s. 23, renumbered as s. 24 in 1951 reprint.

¹ Semble this is a reference to paragraph (f), not paragraph (e).

(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.

Encroachments
No. 39 of
1928, s. 24,
renumbered
as s. 25 in
1951 reprint.

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.

Appeals.
No. 39 of
1928, s. 25.
Renumbered
as s. 26 in
1951 reprint.
Amended by
No. 16 of
1943, s. 3;
No. 79 of
1953, s. 8;
No. 79 of
1957, s. 4;
No. 61 of
1958, s. 8.

26. (1) (a) Any person may appeal to the Minister from the refusal of the Board to approve any plan, transfer, conveyance, lease, license to use and occupy, or mortgage, or from the conditions affixed to the granting of such approval.

(b) The Minister may allow the appeal with or without conditions, affix further conditions, or reject the appeal either in whole or in part.

(c) Where the appeal is allowed the plan, transfer, conveyance, lease, license to use and occupy, or mortgage shall be received, registered, or deposited, subject to such conditions, if any, as the Minister may direct.

(d) The decision of the Minister is final.

(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 five hundred dollars.

Penalty.
No. 39 of
1928, s. 26,
renumbered
as s. 27 in
1951 reprint.
Amended by
No. 98 of
1965, s. 5;
No. 113 of
1965, s. 8.

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.
No. 39 of
1928, s. 27,
renumbered
as s. 28 in
1951 reprint.

(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.

28A. (1) Where a person (in this section called "the subdivider") subdivides land into a lot or lots and the lot or lots or some of those lots front or abut a road that—

Subdivider
of land to
pay his
proportion
of costs of
road on to
which
subdivided
road fronts.
Added by
No. 64 of
1961, s. 6.
Amended by
No. 98 of
1965, s. 6;
No. 34 of
1972, s. 4.

(a) has been constructed and surfaced at the cost of a person who has subdivided land that fronts or abuts the road (in this section called "the original subdivider"); or

- (b) has been constructed and surfaced jointly at the cost of the municipality and the original subdivider, or is required to be so jointly constructed and surfaced,

the subdivider shall pay to the municipality in accordance with this section half of the cost of constructing and surfacing that portion of the road on to which the lot or lots front or abut.

(2) The subdivider shall pay to the municipality—

- (a) where the portion of the road remains to be either constructed or surfaced or both after the date of the subdivision referred to in subsection (1) of this section by the subdivider, half of the actual cost thereof as estimated by the council of the municipality; or
- (b) where the portion of the road has been constructed and surfaced at the date of that subdivision, half of the cost thereof as assessed by the council of the municipality as at that date.

(2a) (a) Where a subdivider to whom subsection (1) of this section applies, has provided more or less than half of the portion of the road referred to in that subsection, the amount that he is liable to pay to the municipality under that subsection, shall be reduced or increased, as the case requires by the value of the portion of the land so provided that is in excess of, or less than, the half.

(b) For the purpose of this subsection the value referred to in paragraph (a) of this subsection shall be such value as is agreed upon by the subdivider and the municipality as being the value of the portion on the day immediately preceding the day on which the portion of the road in respect of which the subdivider is liable to contribute, is or was constructed, or in default of such agreement such value as is assessed at the joint cost of the subdivider and the municipality by a person appointed by the Minister competent to value the portion.

(3) The subdivider shall within fourteen days of a written demand being made on him by the council of the municipality in that behalf, pay to the municipality the half of the cost of the portion of the road as determined under subsection (2) of this section.

(4) The council of the municipality shall—

- (a) if the portion of the road has been constructed and surfaced at the cost of the original subdivider, pay such sum into its Trust Fund; or
- (b) if the portion of the road has been so constructed and surfaced at the cost of the municipality and at the cost of the original subdivider, or is required to be so constructed and surfaced, pay half of such sum into its Municipal Fund and half into its Trust Fund.

(5) (a) Any payment made into the Trust Fund of the municipality pursuant to subsection (4) of this section in respect of a portion of a road on which a lot fronts or abuts shall be paid as soon as practicable by the council of the municipality, to the person who is the owner of the lot, being a lot contained in a subdivision by the original subdivider, that fronts or abuts the portion and in relation to which the council is satisfied that no payment from the Trust Fund has been made to any person in respect of the portion of the road on account of the construction and surfacing thereof.

(b) The amount of the payment to the owner shall be such proportion of the amount paid into the Trust Fund as the length of the frontage of his lot or lots fronting or abutting on that portion of the road bears to the length of the portion of the road in respect of which the payment into the Trust Fund was made.

(6) (a) A person on whom a demand has been made by a municipality under subsection (3) of this section who is aggrieved by the demand, may within

fourteen days after its receipt by him appeal to the Minister against the demand by serving on the Minister and the municipality written notice of appeal stating the general grounds of the appeal.

(b) The Minister shall hear the appeal, in such manner as he may determine, as soon as practicable after the service on him of the notice of appeal and may either dismiss the appeal or cancel or vary the demand and give the municipality such directions as he thinks fit as respects the demand.

(c) The decision of the Minister on the appeal is final and effect shall be given to the decision according to its tenor.

(7) Any amount required to be paid by a municipality or a person pursuant to this section may be recovered in a court of competent jurisdiction by the municipality or the person to whom the amount is payable as a debt due to it or him, as the case may be.

(8) Where a subdivider is liable under this section to pay to a council of a municipality the amount of half the cost of constructing and surfacing that portion of a road on to which a lot fronts or abuts, the amount as determined under this section is, by force of this section, a charge on the land comprising the lot.

(9) The charge referred to in subsection (8) of this section shall be entered by the council of the municipality in the register of orders kept by it in accordance with the provisions of section six hundred and ninety-four of the Local Government Act, 1960, and when so entered is subject to that section.

(10) A council of a municipality may, pursuant to section six hundred and ninety-three of the Local Government Act, 1960, lodge and withdraw a caveat in respect of the charge referred to in subsection (8) of this section.

(11) Where any money that is paid into a Trust Fund of a municipality pursuant to subsection (4) of this section, is not paid out to any person within a period of six years from the date on which it was paid into that Fund, the municipality shall, within fourteen days thereafter, pay the money to the Treasurer to be placed to the credit of the Unclaimed Moneys Fund established under the Unclaimed Moneys Act, 1912, and thereupon the provisions of that Act, to the extent to which they are capable of being applied, apply to the money.

(12) This section shall not apply to any road that has been constructed or surfaced or both at the cost of a municipality.

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.

Fees.
No. 39 of
1928, s. 28,
renumbered
as s. 29 in
1951 reprint.

30. [*Repealed by No. 64 of 1961, Section 7.*]

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 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 section two hundred and forty-eight of the Local Government Act, 1960.

Uniform
general
by-laws, etc.
No. 39 of
1928, s. 30,
renumbered
as s. 31 in
1951 reprint.
Amended by
No. 29 of
1947, s. 5;
No. 64 of
1961, s. 8.

(2) When any by-law made under section two hundred and forty-eight of the Local Government Act, 1960, 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 section two hundred and forty-eight of the Local Government Act, 1960, or under subsection (1) of this section, the provisions of section eleven or twelve 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.

Savings.
No. 39 of
1928, s. 31,
renumbered
as s. 32 in
1951 reprint.
Amended by
No. 63 of
1955, s. 4.

32. Nothing in this Act, except the provisions of section seven A, shall be deemed to interfere with the right of Her 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 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.
No. 39 of
1928, s. 32,
renumbered
as s. 33 in
1951 reprint.
[Cf. N.Z.,
No. 52 of
1926, s. 22
(4).]

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.

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 and in particular for prescribing penalties not exceeding two hundred dollars for offences against the regulations.

Regulations.
No. 39 of 1928, s. 33, renumbered as s. 34 in 1951 reprint. Amended by No. 98 of 1965, s. 7; No. 113 of 1965, s. 8.

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

Act to bind the Crown.
No. 39 of 1928, s. 34, renumbered as s. 35 in 1951 reprint.

PART V.—APPEALS.

36. Notwithstanding the provisions of—

- (a) any other Part of this Act;
- (b) any planning scheme that has effect under section seven of this Act;
- (c) the Metropolitan Region Town Planning Scheme Act, 1959; or
- (d) the Metropolitan Region Scheme,

Part V.
Added by No. 117 of 1970, s. 3. Application of this Part. Added by No. 117 of 1970, s. 3.

this Part applies to and in relation to all appeals within the meaning of this Part.

37. In this Part—

“appeal” means—

- (a) an appeal to the Minister under—
 - (i) a town planning scheme that has effect under section seven of this Act, if the appeal is in

Interpretation.
Added by No. 117 of 1970, s. 3.

respect of the exercise of a discretionary power by the responsible authority under the scheme;

(ii) subsection (1) of section twenty-six of this Act; and

(iii) subsection (6) of section twenty-eight A of this Act;

(b) a reference to the Minister under subsection (3) of section ten of this Act; and

(c) an appeal to the Minister under clause thirty-three of the Metropolitan Region Scheme;

“Court” means a Town Planning Court constituted under section forty-three of this Act;

“member” means a member of a Court;

“Metropolitan Region Scheme” has the same meaning as it has in section six of the Metropolitan Region Town Planning Scheme Act, 1959;

“party” means a party to an appeal;

“prescribed” means prescribed in regulations;

“President” means President of a Court; and

“regulations” means regulations made under this Part.

Commencement of appeal.
Added by No. 117 of 1970, s. 3.

38. An appeal is commenced by giving notice, including the grounds of the appeal, in the time and manner prescribed, to the persons and bodies prescribed.

Alternative appeals.
Added by No. 117 of 1970, s. 3.

39. (1) Subject to section forty-two of this Act an appeal may be made to the Minister or to a Court but the commencement of an appeal to one extinguishes any right of appeal to the other.

(2) When the Minister or a Court, as the case may be, makes a determination on an appeal that determination has effect according to its tenor.

40. (1) There shall be a committee called the Town Planning Appeal Committee.

Town
Planning
Appeal
Committee.
Added by
No. 117 of
1970, s. 3.

(2) The Committee shall consist of such persons as the Governor may, from time to time, appoint.

(3) The Minister, if he thinks fit, may require any person on the Committee to consider, and report and make a recommendation to him upon, any appeal to the Minister and that person shall do so as soon as practicable thereafter, and the Minister, after considering the report and recommendation of that person, shall determine the appeal.

(4) A person on the Committee shall receive such remuneration and allowances as the Governor, from time to time, determines and any cost incurred by or in respect of such a person in carrying out his functions under subsection (3) of this section shall be paid out of the Consolidated Revenue Fund which is hereby appropriated accordingly.

41. On an appeal to the Minister, the Minister may award such costs as he thinks fit and any costs so awarded may, as a debt due, be recovered in a court of competent jurisdiction.

Costs of
appeal to
Minister.
Added by
No. 117 of
1970, s. 3.

42. (1) The Minister shall, in the prescribed time and manner, be given notice of the commencement of an appeal to a Court.

Appeal to
a Court.
Added by
No. 117 of
1970, s. 3.

(2) Where an appeal to a Court is commenced it shall not be further maintained until at least fourteen days after notice has been given to the Minister under subsection (1) of this section.

(3) Within fourteen days after receiving a notice under subsection (1) of this section the Minister may, by giving notice in the prescribed manner, object to a Court hearing the appeal on the grounds that upholding the appeal would be contrary to town planning principles, in general or in respect of land the subject of the appeal, and would tend to prejudice the public interest.

(4) Where the Minister objects, under subsection (3) of this section to a Court hearing the appeal—

- (a) the appeal shall not be further maintained until at least thirty days after the Minister so objects;
- (b) the Governor may, within thirty days after the Minister so objects, make a declaration that upholding the appeal would be contrary to town planning principles, in general or in respect of land the subject of the appeal, and would tend to prejudice the public interest and thereupon the appeal shall not be heard or determined by a Court but, if the appellant so elects in the time and manner prescribed, the appeal shall become an appeal to the Minister who shall determine it;
- (c) if the Governor does not, within thirty days after the Minister so objects, make a declaration under paragraph (b) of this subsection, the appeal may be heard and determined by a Court.

Establishment and constitution of a Court. Added by No. 117 of 1970, s. 3.

43. (1) For the purposes of this Part there shall be constituted from time to time a Court to be known as a Town Planning Court.

Cf No. 30 of 1918, s. 4.

(2) A Court shall consist of a President who shall be a Judge appointed by the Chief Justice of Western Australia, and two members, one to be appointed by each of the two parties to the appeal, but so that each of those members is, in the opinion of

the President, an appropriate person, by reason of qualifications or experience, to participate in the hearing and determination of the appeal.

(3) If either party objects to the appointment of any member other than the President, the President may, unless the objection appears to be frivolous or unreasonable, upon the application of that party, order the member to be discharged from the Court, and the party having appointed him shall, within ten days after the order, appoint another member, failing which the President shall forthwith appoint another member, to be a member of the Court instead of the member so discharged, but so that the member so appointed is, in the opinion of the President, an appropriate person, by reason of qualifications or experience, to participate in the hearing and determination of the appeal.

(4) If before the determination of an appeal to a Court any member of the Court dies or becomes incapable of acting, or resigns or refuses to act—

- (a) in the case of the President, some other Judge, appointed by the Chief Justice of Western Australia, shall take his place; and
- (b) in the case of any other member, the person having appointed him shall forthwith appoint, or if he fails to do so, the President shall appoint, another person to act as a member of the Court instead of that first-mentioned member, but so that the member so appointed is in the opinion of the President, an appropriate person, by reason of qualifications or experience, to participate in the hearing and determination of the appeal,

and the appeal shall proceed and be determined as if no change in members of the Court had taken place.

44. A Court shall hear and determine an appeal referred to it under this Part and the regulations.

Sittings
of Court.
Added by
No. 117 of
1970, s. 3.

45. The President shall appoint the time and place for the sittings of the Court and may adjourn its sittings from time to time and shall, not less than twenty-one days before the first sitting on an appeal, cause a notice of the time and place for that sitting to be given to each other member and to each party.

Hearing to
proceed in
absence of
parties.
Added by
No. 117 of
1970, s. 3.

46. (1) Where a party—

- (a) after a notice of the first sitting of a Court on an appeal is given to him in accordance with section forty-five of this Act; or
- (b) with knowledge of the time and place appointed for any subsequent sitting of the Court on the appeal,

fails to appear at the time and place appointed, the Court may proceed to hear and determine the appeal in his absence.

(2) A party may appear before a Court personally, or by counsel or a solicitor.

Court
to examine
witnesses,
etc.
Added by
No. 117 of
1970, s. 3.

47. (1) A Court may summon all persons required by a party or by the Court to give evidence before it, and may examine those persons on oath or affirmation, and may require the production of any documents, plans, or other papers in the custody or control of any party.

(2) The parties and their counsel, solicitors, witnesses, and all other persons attending a Court shall have the same rights and privileges, and shall be subject to the same obligations, fines, and penalties, as in the trial of an action at law in the Supreme Court.

(3) A Court has, until it has made its determination, all the powers of the Supreme Court so far as may be necessary for hearing and determining the appeal to it.

48. (1) On an appeal to a Court a determination of a majority of the members thereof is the determination of the Court but the President alone shall determine any questions of law.

Appeals to be determined by majority. Added by No. 117 of 1970, s. 3.

(2) The President and one other member form a quorum but where such a quorum is divided on a question of fact the hearing of the appeal shall be adjourned until all three members are present.

(3) The President has jurisdiction to hear and determine all interlocutory proceedings before the Court and for that purpose, has the same powers he has as a Judge and may sit in chambers and alone.

49. If a Court is unable, by a majority, to agree upon a determination of an appeal, the President shall dissolve the Court and cause notice thereof to be given to each party to the appeal and there shall, under this Part, be constituted a fresh Court, which shall rehear the appeal.

If Court unable to agree. Added by No. 117 of 1970, s. 3.

50. (1) The President, if he thinks fit, may on his own motion or on the application of any party, state a case for the decision of the Full Court of the Supreme Court on any question of law arising on the appeal.

Case stated. Added by No. 117 of 1970, s. 3.

(2) A decision of the Full Court of the Supreme Court on a case stated under subsection (1) of this section binds the Court in making its determination on the appeal.

(3) The Full Court of the Supreme Court may make such order as to costs as it thinks fit in relation to a case stated under subsection (1) of this section.

51. On an appeal to a Court, the Court may award such costs as it thinks fit, and any costs so awarded may, as a debt due, be recovered in a court of competent jurisdiction.

Costs of appeal to Court. Added by No. 117 of 1970, s. 3.

Determina-
tion of Court
final.
Added by
No. 117 of
1970, s. 3.

52. On an appeal to a Court the determination of the Court is final and conclusive and, except as provided by section fifty of this Act, shall not be subject to question or review in any other court and no proceedings by or before the Court shall be restrained by injunction, prohibition, or other process or proceedings in any other court, or by removal or *certiorari* or otherwise into any other court and no action shall be maintained or brought against any member of the Court in respect of any act or decision done or made in the honest belief that it was within the jurisdiction of that Court.

Proceedings
before a
Court.
Added by
No. 117 of
1970, s. 3.

53. All proceedings before a Court, other than interlocutory proceedings, shall be conducted in public unless the Court determines, as it is hereby authorised to do, that any part of the proceedings shall be in camera.

Remunera-
tion of
members.
Added by
No. 117 of
1970, s. 3.

54. (1) The President, while acting as such, shall continue to receive the salary and other allowances that he is, under the Judges' Salaries and Pensions Act, 1950 and otherwise, entitled to receive as a Judge.

(2) A member other than the President shall receive such remuneration and allowances as the Governor determines, from time to time, for such a member.

(3) Any cost incurred by or in respect of a member in carrying out his functions as a member shall be paid out of the Consolidated Revenue Fund which is hereby appropriated accordingly.

Regulations.
Added by
No. 117 of
1970, s. 3.

55. (1) The Governor may make such regulations as are necessary or convenient for giving effect to the provisions of this Part and, without limiting the generality of the foregoing, may make regulations prescribing—

- (a) the time and manner of giving notice, and the persons and bodies to be given notice of, an appeal;

- (b) the time and manner of referring an appeal to a Court;
- (c) the time and manner of giving any other notice, and the persons and bodies to be given any other notice, required under this Part or the regulations;
- (d) the time and manner of maintaining an appeal;
- (e) the procedure to be followed on an appeal;
- (f) the fees to be paid in relation to an appeal; and
- (g) the forms to be used in relation to an appeal.

(2) The regulations may differ according to the type of appeal and to whether the appeal is to the Minister or a Court.

THE FIRST SCHEDULE.

Sec. 6 and 8.

MATTERS WHICH MAY BE DEALT WITH BY GENERAL PROVISIONS.

Amended by
No. 41 of
1944, s. 2;
No. 79 of
1953, s. 9;
No. 45 of
1962, s. 5.

1. Streets, roads, and rights-of-way generally including probable new routes and junctions; 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, public and private camping grounds and reserves, 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, notwithstanding the provisions of section two hundred and twenty-five of the Municipal Corporations Act, 1906-1951,¹ and of section one hundred and forty-six of the Road Districts Act, 1919-1951,² 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 costs of completion or alignment of any street, road, or right-of-way; and
- (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 re-division of such land among such owners or among such other persons as may be provided for in the scheme;
- (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;

¹ Municipal Corporations Act, 1906-1959. Repealed by Local Government Act, 1960.

² Road Districts Act, 1919-1959. Repealed by Local Government Act, 1960.

- (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;
- (h) in the case of buildings to be used for business or industry, the provision of accommodation or the location of the building on the site for the purpose of loading, unloading, servicing, parking or fuelling vehicles, with a view to preventing the obstruction of traffic on public streets or roads.

8. Limiting the number of buildings, rooms, dwelling units, or other accommodation units to the acre generally or in any particular locality, or on any subdivision, allotment, or parcel of land, particularly or generally 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 the making, fixing, and altering building lines generally and providing that buildings generally or a building of any specified class shall not be built nearer to a building line or an ocean or waterway than is prescribed in a town planning scheme.

10. Classification or zoning of the scheme area for various types, kinds or classes of residences, flats, trade, business, industry, commercial, recreation, educational or other public or institutional purposes, and including areas for agricultural or rural use and for any other general or particular purposes, whether of the same class or kind as the class or kind before enumerated or not and fixing the sites or areas for any of the purposes included in this Schedule and prohibiting in any of these zones or classification any building or use of land of or for a general or particular nature or purpose.

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 or 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.

THE SECOND SCHEDULE.

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

Sec. 31.
Amended by
No. 41 of
1944, s. 3;
No. 79. of
1953, s. 10;
No. 61 of
1958, s. 9;
No. 64 of
1961, s. 9.

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 buildings, rooms, dwelling units or other accommodation units to the acre generally or in any particular locality, or on any subdivision, allotment or parcel of land, particularly or generally, 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. Classification or zoning reclassifying or re-zoning the area for residence, flats, trade, business, industry, commercial recreation, educational or other public or institutional purposes, and including areas for agricultural or rural use and for any other general or particular purposes, whether of the same class or kind as the class or kind before enumerated or not, and fixing the sites or areas for any of the purposes included in this Schedule and prohibiting in any of these zones or classification any building or use of land of or for a general or particular nature or purpose.

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 without adequate sanitary arrangements. or prohibiting or regulating the erection and use of buildings, advertisement hoardings, 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 be not less than that fixed by the by-laws according to the prospective traffic requirements of such street, road, or right-of-way, and the making, fixing and altering building lines generally and providing that buildings generally or a building of any specified class shall not be built nearer to a building line or an ocean or water-way than is prescribed in a town planning by-law.

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.

THE THIRD SCHEDULE.¹

Section 2.

METROPOLITAN REGION.

Local Authorities included in the Region.

CITIES:

Fremantle.
Melville.
Nedlands.
Perth
South Perth.
Stirling.
Subiaco.

"Metropolitan Region."
Added by
No. 63 of
1955, s. 5.
Repealed
and
re-enacted
by No. 64 of
1961, s. 10.

¹ The names of the bodies originally contained in this Schedule have been varied to the names set out in the Schedule as printed above to accord with the changes in the names or status of certain of these bodies effected by Orders in Council made under the Local Government Act, 1960 as amended. See *Government Gazettes* 3/11/61, p. 3086; 26/1/62, p. 221-222; 28/9/62, p. 2680-2681; 3/5/68, p. 1245; 20/2/70, p. 477; 30/10/70, p. 3346; 4/12/70, p. 3707; 24/12/70, p. 3842.

TOWNS:

Canning.
Claremont.
Cockburn.
Cottesloe.
East Fremantle.
Mosman Park.

SHIRES:

Armadale-Kelmscott.
Bassendean.
Bayswater.
Belmont.
Gosnells.
Kalamunda.
Kwinana.
Mundaring.
Peppermint Grove.
Rockingham.
Serpentine-Jarrahdale.
Swan.
Wanneroo.