

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1919.

A BILL

To provide for the pre-planning and re-planning of towns; for the carrying out of the plans; for betterment and compensation; and for the constitution and powers of a Town Planning Commission; to amend the Local Government Act and certain other Acts; and for purposes consequent thereon or incidental thereto.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

- Short title.** **1.** This Act may be cited as the "Town Planning Act, 1919."
- Division into Parts.** **2.** This Act is divided into Parts as follows:—
- PART I.—PRELIMINARY—*ss.* 1-4.
- PART II.—PREPARATION OF TOWN PLANNING SCHEMES—*ss.* 5-17.
- PART III.—OBJECTIONS TO SCHEMES—*ss.* 18-22.
- PART IV.—THE TOWN PLANNING COMMISSION—*ss.* 23-25.
- PART V.—APPEALS TO TOWN PLANNING COMMISSION—*ss.* 26-30.
- PART VI.—PROCLAMATION OF SCHEMES IN TOWN PLANNING ORDERS—*ss.* 31-37.
- PART VII.—CARRYING OUT TOWN PLANNING ORDERS—*ss.* 38-40.
- PART VIII.—COMPENSATION—*ss.* 41-49.
- PART IX.—BETTERMENT—*ss.* 50-51.
- PART X.—APPEALS RE NEW ROADS, SUBDIVISIONS, AND BUILDINGS—*ss.* 52-54.
- PART XI.—NEGLECT OF COUNCILS TO PREPARE SCHEMES—*s.* 55.
- PART XII.—SUPPLEMENTARY—*ss.* 56-59.
- PART XIII.—ORDINANCES—*s.* 60.
- Interpretation.** **3.** (1) This Act shall be read with the Local Government Act, and expressions which are defined in that Act shall where used in this Act have the meanings so defined, except where inconsistent with the context or subject-matter. (2)

(2) In this Act, unless inconsistent with the context or subject-matter,—

“By or under,” in relation to any Act, includes any ordinance, regulation, by-law, proclamation, notification, or order made under the Act.

“Commission” means town planning commission.

“Local Government Act” means the Local Government Act, 1906, as amended by any other Act, or any Act hereafter passed repealing and replacing that Act.

“Order” means town planning order.

“Scheme” means town planning scheme.

4. Subject to the provisions of this Act—

Application of Act.

(a) this Act shall apply to municipalities and shires, and to lands in the Western Division adjoining municipalities; and

(b) the powers and duties conferred and imposed upon a council under this Act shall apply in respect of each area to the council of the area.

PART II.

PREPARATION OF TOWN PLANNING SCHEMES.

5. (1) The council may appoint a town planning committee.

Town planning committee.

(2) The town planning committee may consist of members of the council or either wholly or in part of persons who are not members of the council.

(3) The persons appointed who are not members of the council shall (as far as may be practicable) be persons having some professional or special qualification needed or serviceable in connection with town planning.

(4) The council may supply the committee with such professional, clerical, and other assistance as may be necessary, and may defray the expense from the general fund.

(5)

(5) Where any land in respect of which a scheme is being prepared comes within the jurisdiction of any statutory body representing the Crown, the council shall invite the statutory body concerned to nominate a person to be appointed as a member of the town planning committee, and shall so appoint the person nominated.

(6) The council may ask for and the Minister may grant, if available, the assistance of any expert advisers on the staff of the town planning commission to consult with and advise the council and its town planning committee.

(7) The town planning committee may—

- (a) investigate and prepare town planning schemes;
- (b) inquire into and report upon such matters of town planning and housing of the people as the council may direct;
- (c) exercise the powers of entry on land conferred by the Local Government Act on the council;
- (d) call and examine witnesses; and
- (e) have such other powers, duties, and authorities as are conferred or imposed by this Act, or as may be prescribed by ordinance.

(8) The provisions of the Royal Commissioners Evidence Act, 1901, shall, *mutatis mutandis*, apply to the town planning committee for the purposes of this Act.

(9) Unless in exceptional circumstances, which shall be set out in the council's minutes, members of town planning committees shall not be paid for their services thereon.

(10) Every city, municipal or shire council whose area is affected, or adjoins land which is affected, by a scheme, every statutory body representing the Crown, and every company or person carrying on business or exercising rights by virtue of any general or special Act of Parliament, shall assist the council and its town planning committee by the supply of information, plans, and statistics, and by the grant of facilities for inspection and investigation.

6. (1) Before the council resolves that a town planning scheme shall be prepared in respect of the whole or any part of the area, the council shall refer the proposal to the town planning committee for report as to whether any such scheme is necessary or desirable in regard to the whole or part of the area affected, and, if so, what lands should be embraced in the scheme.

Preliminary report.
cf. Housing, Town Planning, &c., Act, 1909 (Eng.), s. 54.

(2) If it appears to the town planning committee desirable that land outside the area should be included in the scheme the committee may so report; and the council may (subject to the provisions of this Act) include such land in the scheme.

Land outside area.

7. The town planning committee may propose to the council that a town planning scheme be prepared in respect of the whole or any part of the area, and may recommend the inclusion of land outside the area.

Preparation of schemes.
cf. Housing, T.P., &c., Act, 1909 (Eng.), s. 54.

8. (1) The council may in either case thereupon direct the town planning committee to prepare a scheme.

Direction to committee to prepare.

(2) The council may at any time approve or direct the inclusion in any town planning scheme of additional lands within its area.

9. (1) A council which proposes that a scheme shall be prepared affecting land outside as well as land within its area shall obtain the consent of the council (if any) in whose area the land is situate.

Schemes affecting more than one area.

(2) If that council withhold its consent the matter may be referred to the Minister for decision in accordance with the provisions of the Local Government Act relating to the settlement of disputes between councils.

(3) If consent be given, either by the council or the Minister, the land may be included in the scheme, but before proceeding with the preparation of the scheme the first-mentioned council shall make some agreement with the other council for joint action under the next following section, and subsequent action shall proceed in accordance with the agreement or any subsequent modification thereof agreed upon between the councils.

10.

Joint action.

10. (1) Where one council proposes to prepare a scheme affecting land which is in the area of another council—

- (a) the councils may take joint action as provided in the Local Government Act; or
- (b) the councils may as provided in the Local Government Act apply for the constitution of a county district and delegate their powers to the county council; or
- (c) one council may give its consent to the other council preparing the scheme; may (subject to agreement between the councils) appoint persons to be members of the other council's town planning committee, and may on the proclamation of a town planning order enforce that order so far as its area is affected thereby.

(2) Where one council proposes to prepare a scheme affecting land which is in the area of another council, and where within three months after it has given notice requesting the other council to agree, an agreement to follow one or other of the methods described in the last preceding subsection has not been made, a dispute shall be deemed to have arisen which shall be settled in the manner provided by the Local Government Act.

What shall be considered general objects of scheme.
cf. Housing, T.P., &c., Act, 1909 (Eng.), s. 54.

11. (1) In preparing a scheme the town planning committee shall give consideration to the probable requirements of the area during a period of not less than fifty years, or during such longer period as the council may direct.

(2) The general objects of any scheme shall be so to plan the development or reconstruction of the area, and particularly the part thereof directly affected by the scheme, as to secure the healthfulness, amenity, convenience, and commercial advancement of the area, to improve and develop it to the best possible advantage.

12. A scheme shall consist of a draft town plan-Form of scheme.
ning order in a form similar to a regulation suitable to
be made by the Governor; may include such plans, sec-
tions, specifications, and schedules as may be necessary;
and may be accompanied by an explanatory report.

13. A scheme may include all lands within the Lands included.
specified part of the area irrespective of ownership.

14. A scheme may provide (with relation both to What scheme may provide for.
the present and the future) for—

- (a) roads generally; and particularly the situation, cf. Housing, T.P., &c., Act, 1909 (Eng.), Sched. IV.
opening, alteration, widening, closing, divert-
ing, raising, lowering, aligning, realigning,
grading, regrading, classifying, reclassifying,
naming, renaming, repairing, constructing,
reconstructing, maintaining, draining, redrain-
ing, sewerage, re-sewerage, parking, beautifying,
gardening, and tree planting of roads, the
treatment of junctions and intersections of
roads, and the laying of sewers, pipes, and
wires in roads; and the placing of posts, poles,
monuments, fences, gateways, signs, notices,
and other objects on roads or land adjacent to
roads;
- (b) parks and open spaces generally; and particu-
larly gardens, playgrounds, sports grounds,
recreation grounds, drill grounds, aviation
grounds, island refuges, public squares, public
spaces of any shape, parkways, and public
reserves; and fences, railings, monuments,
buildings, or works therein;
- (c) public buildings and conveniences generally;
and particularly churches, schools, fountains,
refreshment kiosks, educational and recreational
institutions, libraries, theatres, places of public
entertainment, public comfort stations, and the
like;
- (d) subdivision of land generally; and particu-
larly the size and shape of separate parcels of
land, the pooling of the lands of several owners
and the re-division of lands among owners and
the vesting thereof subject or not subject to
rights

- rights and trusts, and the dealing with or disposal of lands acquired by the council or by any public or statutory body or authority, classifying, prescribing, and determining regulatory requirements in relation to the situation, width, design, method and cost of construction, alignment, and marking of any new road, having regard to the use which is likely to be made of the road and to the physical features of the land, adjusting or altering the boundaries of allotments of land or of roads, effecting exchanges of land, cancelling existing subdivisions, and adjusting rights between the owners of land affected by any such action;
- (e) allotting land for buildings and for open spaces; and particularly the classifying of the land in districts for various classes of buildings, the reclamation of land, and the condemnation of land unfit for building;
- (f) buildings generally; the special control and regulation of building; and particularly the prevention of the erection of ugly buildings which may destroy local amenities, the placing of new public buildings, the preservation of buildings of historical interest, harmony in the design of buildings, uniformity in height of buildings in particular roads, relating the height of buildings to the width of the road, limitation of number of houses per acre, prohibition of advertisement-boards, or other disfigurements; the demolition or alteration of buildings, and the classification of the district; and the regulation of the height, location, purpose, use, dimensions and character of buildings;
- (f) opening spaces around public buildings or monuments, railway stations, or the water front;
- (g) conservation of the natural beauties of the area generally; and particularly banks of watercourses, creeks and rivers, foreshores of tidal waters, lakes and other inland waters, hill slopes, summits and valleys; (h)

- (h) preservation of objects of historical, artistic, or scientific interest ;
- (i) probable routes of railways, tramways, and canals, sites for bridges, docks, wharves, jetties, harbours, piers, quarries ;
- (j) water supply, sewerage and drainage works, mains, and services ;
- (k) acquisition and reservation of areas for the growing of timber for the use and benefit of the council and the people of the area ;
- (l) sites and facilities for the establishment and operation of public utilities and trading undertakings of the council ;
- (m) purchase or resumption of land by the council ;
- (n) power for the council to alter or remove or require the alteration or removal of any work which obstructs the scheme ;
- (o) co-operation between the council and the owners of land ; and co-operation between owners of land ;
- (p) co-operation between the council and the Government of the State or of the Commonwealth and any other council and any public or statutory bodies or authorities ;
- (q) betterment charges payable by and compensation payable to owners and lessees, and the recovery thereof ;
- (r) recovery of expenses incurred in giving effect to the scheme ;
- (s) extinction or variation of any easement, statutory or otherwise, or any restrictive covenant ;
- (t) carrying out the scheme generally ; and particularly the time and manner in which, and the persons and authorities by whom, the scheme shall be carried out, and its observance be assured ;
- (u) carrying out and supplementing the provisions of this Act for enforcing town planning orders ;
- (v) applying, with the necessary modifications and adaptations, statutory enactments ; and the

cf. Housing,
T.P., &c.,
Act, 1909
(Eng.), s. 55 ;

the suspension so far as may be necessary for the proper carrying out of the scheme of any statutory enactments, by-laws, regulations, ordinances, notifications, proclamations, orders, or other provisions, under whatever authority made, which are in operation in the part of the area included in the scheme ;

Re agree-
ments, see
s. 16 post.

- (w) any matter with respect to which under this Act an agreement relating to a town planning scheme may be made ;
- (x) any matter necessary or incidental to town planning ;
- (y) limiting the number of apartment, tenement, detached, or other family dwelling-houses to the acre generally or in any particular locality, and the extent to which each subdivision, allotment, or parcel of land is to be built upon ;
- (z) providing for adequate light and air to the windows of each building, and prescribing other requirements so far as is reasonable for the purpose of securing the convenience and the amenity of the area and proper sanitary and hygienic conditions in connection with any buildings therein ;
- (aa) making, fixing, altering, and ascertaining building-lines irrespective of the width or alignment of any road, 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 road, shall not be less than that fixed by the scheme.
- (bb) classification of the area for residential, commercial, industrial, and other purposes respectively, including the provision of special areas for factories or for carrying on industries generally (or particular specified industries), and for warehouses, stores, stables, and other buildings used for commercial and industrial purposes,

- purposes, and fixing the sites for buildings required for any charitable, religious, or public purposes, or for public conveniences; and prohibiting the carrying on of any trade or manufacture, or the erection of any building in a particular part of the area other than in accordance with the provisions of the scheme;
- (cc) works ancillary to or consequent on the scheme;
 - (dd) power of entry and inspection;
 - (ee) the exercise of the power of the council to acquire land or buildings, or to make any agreement or proposal in respect thereto;
 - (ff) recovery of expenses incurred in giving effect to the scheme;
 - (gg) power for the council to raise money by rates or loans or otherwise, for the purposes of the scheme, and to accept and administer lands, moneys, and other gifts for such purposes;
 - (hh) limitation of time for the operation of the scheme.

15. A scheme when prepared shall be submitted to the council for its provisional approval, and if provisionally approved shall be dealt with as provided in this Act in relation to the proclamation of schemes in town planning orders.

Provisional approval by council.
See ss. 31, 32 post.

16. (1) Before the preparation of any town planning scheme, the town planning committee shall give notice by advertisement to the owners and lessees of land included in the scheme that a scheme affecting their land is about to be prepared, and inviting them to submit suggestions and proposals in connection therewith. So far as may be practicable, the committee shall post a copy of such advertisement to all owners of such land.

Notices to, and conferences and agreements with owners.

(2) The committee may confer with any or all such owners and lessees, and with public or statutory bodies and authorities, in relation to the scheme.

(3)

(3) The committee may in the name of the council make provisional agreements with such owners, lessees, bodies, or authorities, with respect to the scheme or any part thereof, and in particular with respect to—

- (a) the betterment of any land, and betterment rates payable by owners;
- (b) compensation payable to owners and lessees by the council or other owners or lessees;
- (c) compensation in land;
- (d) the pooling, redivision, and exchange of land;
- (e) the demolition or reconstruction of buildings or both;
- (f) the granting of land for public purposes;
- (g) the construction and drainage of roads;
- (h) the extinction or variation of easements, statutory or otherwise, or restrictive covenants;
- (i) the removal of obstructive works;
- (j) co-operation between owners, or owners and council; and
- (k) any matter necessary or incidental to the scheme.

(4) Such agreements, when made, may be included in the scheme or added as schedules thereto.

Preparation
by owners.

17. (1) The majority in number of the owners of the lands in any defined part of the area may prepare a town planning scheme for such defined part.

Conference with
town planning
committee.

(2) The owners may confer with the town planning committee with regard to the scheme.

Laying scheme
before council.

(3) The scheme when so prepared may be laid before the council accompanied by—

- (a) a list of the owners of the lands affected thereby;
- (b) such agreements as any of the owners may have made relating to the scheme; and
- (c) a petition signed by the majority of the owners praying that the scheme be adopted by the council.

How dealt
with.

(4) Thereafter the scheme may be dealt with similarly to a scheme prepared by the town planning committee: Provided that if the council provisionally adopt the scheme the owners submitting the scheme shall

shall pay to the council a sum of money estimated by the council to be sufficient to cover the expenses of the council in dealing with the scheme in accordance with this Act up to the point of its proclamation in a town planning order or its rejection.

PART III.

OBJECTIONS TO SCHEMES.

- 18.** Upon any town planning scheme being provisionally approved by the council—
- (a) copies thereof shall be printed—provided that the maps, sections, and plans may be abridged or reduced in such manner as the council may decide for the purpose of such printing ;
 - (b) the maps, sections, plans, and the like, forming part of the scheme, shall be publicly exhibited during the council's office hours at some place fixed by the council, and shall, except as elsewhere provided, be so exhibited until the period allowed for the lodging of objections has elapsed ;
 - (c) the council shall advertise once or more each week for not less than six weeks in a newspaper that such scheme has been prepared, that the maps, sections, plans, and the like, are on public view at such place aforesaid, that copies of the scheme are on sale at the same place at such sum not exceeding five shillings as the council may fix ; and that objections to the scheme may be lodged with the council on or before a stated date, not being less than six weeks from the date on which the first advertisement is published ;
 - (d) the council shall cause copies of the scheme to be sold accordingly ; and
 - (e) the council shall cause a public meeting of persons interested to be called at least once during
- Printing exhibition and advertisement of scheme.

during such period of six weeks, and to be held at some convenient place within the part of the area covered by the scheme, or if there be no convenient place within such part then at some convenient place as near thereto as practicable; and at such meeting shall cause the scheme to be explained and the maps, sections, plans, and the like, to be exhibited; and shall at such meeting or at any adjournment thereof held within the aforesaid period allow the persons attending to discuss the scheme.

19. (1) Within the aforesaid period any owner or lessee or person otherwise interested may serve on the council a formal objection to the scheme.

(2) Such objection shall state the reasons for the objection, and whether the objection would be removed by an alteration of the scheme; and, if so, what is the nature of the alteration.

20. (1) The council shall fix a time for hearing the objections, and notify each of the objectors thereof.

(2) The council shall either hear the objectors, or depute the matter for hearing and report to a committee of the council.

(3) Objections shall be heard in public, whether by council or committee.

(4) The Royal Commissioners' Evidence Act, 1901, shall apply, *mutatis mutandis*, to the council for the purpose of the hearing of objections and the investigation of town planning schemes.

21. The council may refer the scheme to the town planning committee for report upon the objections.

22. The council may, after the objections have been heard, reject, adopt, or alter and adopt the scheme.

PART IV.

THE TOWN PLANNING COMMISSION.

23. (1) There shall be a town planning commission ^{Town} ^{planning} ^{commission.} for the purposes of this Act.

(2) There shall be three permanent members of the commission appointed by the Governor.

(3) The Minister may from time to time appoint temporary members of the commission to act in relation to any specified town planning scheme or order, or for the hearing of any specified appeal.

(4) The permanent members of the commission shall be appointed subject to the provisions of this Act for a term of three years, and shall be eligible for reappointment.

(5) In case of the resignation of a permanent member the Governor may make an appointment for the remainder of the unexpired term.

(6) The members of the commission shall be paid by fees fixed by the Minister.

(7) In case of the illness or other incapacity or absence from the State or of any vacancy in the office of any member of the commission, the Minister may appoint some person to be a member of the commission only during such illness, incapacity, or absence, or until such vacancy is filled.

(8) The acts or proceedings of the commission shall not be invalid by reason only of—

(a) any vacancy in the membership of the commission; or

(b) any defect in the appointment of any member.

(9) The commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of suing and being sued, and of doing and suffering all such other acts and things as may be necessary or convenient for carrying out the purposes of this Act.

(10) A majority of the members for the time being of the commission shall constitute a quorum.

(11) Any meeting of the commission at which a quorum is present shall be competent to transact business.

(12)

(12) The commission may each year elect one of the permanent members to be the chairman.

(13) In the absence of the chairman from any meeting, the commission may elect any member to be chairman during such absence.

(14) The chairman shall preside at the meetings of the commission, and shall have a deliberative vote, and in case of an equality of votes, a casting vote.

Duties of
commission.

24. The town planning commission shall—

- (a) hear and report to the Minister upon appeals against town planning schemes ;
- (b) hear and give decisions (under Part X of this Act) upon appeals against the decisions of councils under the Local Government Act in relation to applications for approval to the opening of new roads, applications for approval to the subdivision of land, and applications for approval to build ;
- (c) report to the Minister upon any matter relating to town planning or the housing of the people which the Minister may refer to the commission for report ;
- (d) prepare a report upon its operations each year to be included in the report laid before Parliament by the Local Government Department.

Powers of
commission

25. (1) The commission may—

- (a) exercise the powers of entry upon land conferred by the Local Government Act on councils ;
- (b) call and examine witnesses ; and
- (c) have such other powers, duties, and authorities as are conferred or imposed by this Act, or as may be prescribed by ordinance.

(2) The provisions of the Royal Commissioners' Evidence Act, 1901, shall, *mutatis mutandis*, apply to the commission for the purposes of this Act.

PART V.

APPEALS TO TOWN PLANNING COMMISSION.

26. When any scheme has been adopted or altered and adopted the council may resolve that application be made under the seal of the council to the Minister to recommend the Governor to embody such scheme in a town planning order by proclamation. Application for Governor's approval.

27. The Minister shall thereupon give notice by advertisement in the Gazette and a newspaper that such application has been made, and that appeals against the scheme may be lodged with him on or before a stated date. Advertisement of application.

28. On or before the stated date any owner, lessee, or person otherwise interested may serve a written appeal on the Minister. Appeals.

29. (1) The Minister shall refer the scheme, together with all appeals received before the stated date, to the town planning commission for inquiry, report, and recommendation. Appeals to be referred to commission.

(2) Where appeals are not received before the stated date, the Minister may refer the scheme to the commission for inquiry, report, and recommendation.

30. The council shall be represented at and a party to such inquiry. Council a party.

PART VI.

PROCLAMATION OF SCHEMES IN TOWN PLANNING ORDERS.

31. Upon consideration of the report of the Commission, or if there be no appeals, the Minister may confer with the council upon the scheme and upon the appeals (if any), and may recommend the Governor to approve the scheme without alteration, or with such alterations as he may decide. Minister's decision.

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32.

Proclamation
of town plan-
ning order.

32. (1) The Governor may so approve, and may proclaim the scheme as approved with or without alteration as a town planning order under this Act.

(2) For the purposes of such proclamation any maps, sections, plans, and the like may be abridged or reduced.

Effect of
proclamation.
Status of
town plan-
ning order.

33. Upon proclamation a town planning order shall, subject to this Act, have the force of a statutory enactment:

cf. Housing,
T.P., &c.,
Act, 1909,
(Eng.), s. 55.

Provided that where a proposed town planning order contains provisions suspending any enactment contained in a public Act the order shall not come into force unless a draft thereof has been laid before each House of Parliament for a period of not less than forty days during the session of Parliament, and if either of those Houses before the expiration of those forty days passes a resolution against the proposed suspension, no further proceedings shall be taken on the scheme, without prejudice to the making of any new scheme.

Notice upon
Registrar-
General.

34. Upon the proclamation of a town planning order the council shall serve a copy thereof, including a full-size copy of the plans, sections, and specifications, upon the Registrar-General, who shall file the same in the records of his office.

Inspection of
plans.

35. The council shall permit any person on payment of a fee not exceeding one shilling to inspect during the council's office hours a full-size copy of any plans and sections forming part of a town planning order.

Amendment
of town plan-
ning orders.
cf. Housing
T.P., &c.,
Act, 1909
(Eng.),
s. 54 (6).

36. (1) A town planning order may be amended or revoked by a subsequent scheme and order prepared and proclaimed in accordance with this Act.

(2) The Governor may, by proclamation, correct any slip or error in any town planning order.

Revocation of
town plan-
ning orders.
Ibid.

37. The Minister may, on the application of the council, recommend the Governor to revoke a town planning order if under the special circumstances of the case, he considers that the order should be revoked; and the Governor may by proclamation revoke the order accordingly.

See also
s. 45.

PART VII.

CARRYING OUT TOWN PLANNING ORDERS.

38. The council may carry out any town planning order, either—

- (a) by purchase of land and subsequent action in pursuance of the order; or
- (b) by resumption of land and subsequent action in pursuance of the order; or
- (c) by the realignment method and subsequent action in pursuance of the order; or
- (d) by enforcing any duty laid by the order upon any owner or lessee, or public body, or authority, including the State Government, and any municipal or shire council; or
- (e) by enforcing any agreement included in any order, or made subsequent to the order, and relating thereto; or
- (f) by exercising in accordance with the order its powers under this Act and the Local Government Act, to regulate the opening of new roads, and the subdivision of land, and the erection of buildings; or
- (g) by any other method specifically provided in the order; or
- (h) by the exercise of any power conferred upon the council by or under this Act; or
- (i) by any combination of two or more of these methods.

39. After the proclamation of any town planning order no person shall place on any land to which such order applies any work or building, or any addition to or improvement in any work or building except in accordance with such order.

40. (1) The council in accordance with the provisions of any town planning order may, after giving the prescribed notice—

- (a) remove, pull down, or alter any building or other work in the area included in the order which is such as to contravene the order, or to contravene

Carrying out order.

For "re-alignment method" see Local Govt. Act.

Effect of town planning order. (Halifax Act.)

Power to enforce order.

cf. Housing, T.P., &c., Act, 1909 (Eng.), s 57.

contravene this Act, or in the erection or carrying out of which any provision made by or under this Act or the Local Government Act has not been complied with ; or

- (b) execute any work which it is the duty of any person to execute under the order in any case where it appears to the council that delay in the execution of the work would prejudice the efficient operation of the order.

(2) Any expenses incurred by the council under this section may be recovered in any court of competent jurisdiction from the persons in default.

PART VIII.

COMPENSATION.

Compensation for injurious effect of making of order.

cf. Housing, T.P., &c., Act, 1909 (Eng.), s. 58.

41. (1) Subject to this Act, any person whose property is within the area, or part thereof, covered by a town planning order, and is injuriously affected by the proclamation of the order shall, if he makes a claim for the purpose within three months after the proclamation of the order, be entitled to obtain compensation in respect thereof from the council.

(2) A person shall not be entitled to obtain compensation under this section on account of any building erected on or contract made or other thing done with respect to land included in a town planning order after the time at which notice of the proposal to prepare the scheme precedent to such order was given under Part III of this Act, or (if such notice was not given) after the time when the scheme was provisionally adopted by the council :

Provided that this subsection shall not apply as respects any work done before the proclamation of the order for the purpose of finishing a building begun, or of carrying out a contract entered into, before the aforesaid time.

42.

42. Any question as to whether any property is injuriously affected within the meaning of this Part, and as to the amount of the sum which is to be paid as compensation therefor, shall be determined by arbitration under the Arbitration Act, 1902, unless the parties agree upon some other method of determination.

Settlement of compensation.

cf. Housing, T.P., &c., Act, 1909 (Eng.), s. 58 (4).

43. Where property is alleged to be injuriously affected by reason of any provisions contained in a town planning order, compensation shall not be paid in respect thereof, if or so far as the provisions are such as are contained in this or any other Act or would have been enforceable if they had been contained in ordinances or regulations or by-laws made under this or any other Act.

Limitation of compensation.

cf. Housing, T.P., &c., Act, 1909 (Eng.), s. 59 (1).

44. Property shall not be deemed to be injuriously affected by reason of the making in a town planning order of any provisions which, with a view to securing the amenity of the area included in the scheme, or any part thereof, prescribe the space about buildings or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the council, having regard to the nature and situation of the land affected by the provisions, considers reasonable for the purpose.

Property not injuriously affected.

cf. Housing, T.P., &c., Act, 1909 (Eng.), s. 59 (2).

45. Where any town planning order is amended or revoked under this Act, any person who has incurred expenditure for the purpose of complying with the order shall be entitled to receive from the council compensation in accordance with this Part in so far as any such expenditure is rendered abortive by reason of the amendment or revocation of the order.

Compensation on amendment or revocation of order.

See also s. 37. cf. Housing, T.P., &c., Act, 1909 (Eng.), s. 58 (6).

46. Any amount due from the council under this Part, as compensation to a person aggrieved, may be recovered as a debt before any court of competent jurisdiction.

Recovery of compensation. cf. Housing, T.P., &c., Act, 1909 (Eng.), s. 58 (5).

47. The provisions of this Part as to compensation shall be subject to any special provisions respecting compensation which may be included in any agreement with the claimant or his predecessor in title incorporated in the town planning order effected or made subsequent thereto.

Compensation subject to agreements, &c.

48.

Compensation
for re-alignment.
For compensa-
tion on
re-alignment,
see Local Govt.
Act.

Arbitration
re compensa-
tion.

48. Subject to this Act the provisions of this Part as to compensation shall not apply to any town planning order or to part of an order, so far as such order or part relates only to the re-alignment of roads.

49. (1) In any case where it is expressly provided that compensation may be claimed under this Act, such claim may, by agreement between the council and the person claiming such compensation, be referred to arbitration under the Arbitration Act, 1902.

(2) Failing such agreement within one month after notice of the claim is served on the council either party may refer the claim to a district court judge having jurisdiction in the locality in which the subject matter of the claim is situated, such judge shall act as sole arbitrator, and the claim shall be deemed to be submitted to him under the said Act.

(3) Such judge may hear and determine the matter and make such order with respect to the claim and the costs of the case as having regard to the circumstances of the case and to the public interest he may think just.

PART IX.

BETTERMENT.

Betterment.
cf. Housing,
T.P., &c.,
Act, 1909
(Eng.), s. 58
(4).

50. (1) Where any town planning order is proclaimed, the council may, within such time not exceeding five years after such proclamation as is specified in such order, require the valuer-general for reasonable payment to report whether any ratable land covered by the order has been increased in value by the proclamation of the order, and, if so, to supply a list of such lands and such increases.

(2) Such increase shall be called betterment.

(3) Notice of valuation of betterment shall be given in the same manner as notice of valuation of land (whether under the Local Government Act or under the Valuation of Land Act, 1916), and the provisions of any such

such Act for the time being in operation in the area relating to appeals against valuations of land shall, mutatis mutandis, apply to valuations of betterment.

(4) Before making a betterment rate it shall not be necessary to publish estimates or notices.

51. (1) Subject to this Act the council may make and levy a betterment local rate in respect of the betterment of any such land aforesaid. ^{Betterment rate.}

(2) A local rate under this Act may be made, levied, and recovered in accordance with the provisions of the Local Government Act relating to the making, levying, and recovery of rates (but without any right to demand or any duty to take a poll).

(3) Such rate shall be levied for a term of years fixed by the council when first making such rate; and such term of years shall be stated on the rate notice.

(4) The amount of the rate on each separate parcel of land shall be such as to return to the council by equal yearly instalments spread over the aforesaid term of years a sum equal to one-half of the betterment on such separate parcel.

(5) The amount of the betterment shall be subject to any special agreements relating thereto embodied in any town planning order.

(6) The proceeds of any betterment rate shall be paid into the appropriate fund, and applied—

- (a) to the loan repayment account of that fund, if the council is carrying out the town planning order partly or wholly by means of borrowed money; or
- (b) to the carrying out of the town planning order, in any other case.

PART X.

APPEALS RE NEW ROADS, SUBDIVISIONS, AND BUILDINGS.

Right to appeal.

52. (1) Any applicant under the Local Government Act for the approval of a council to the opening of a new road, or for approval to the subdivision of land, or for approval to build, who deems himself aggrieved by any decision or delay of the council may appeal.

(2) The appeal may be—

- (a) against the conditions attached to an approval except any condition relating to the classification of a road ;
- (b) against any disapproval ;
- (c) for approval, in any case where notice of approval or disapproval has not been given to the applicant within the period prescribed.

(3) The appeal shall be made within the time and in the manner prescribed.

Town planning commission to hear appeals.

53. (1) The town planning commission—

- (a) shall hear appeals against the decisions of councils lodged under this Part within the prescribed period ;
- (b) shall give such decisions and make such orders in relation to these appeals as, having regard to this Act, to the Ordinances, to the circumstances of the case, and to the public interest, it shall think just ;
- (c) may award such costs and expenses and make them payable by such person as to the commission may seem just and reasonable.

(2) Such costs and expenses may be recovered as a debt.

(3) The decision of the commission on an appeal against a council's decision shall be final.

(4) The decision shall be forwarded to the council and to the appellant in writing.

(5) Any provisions of the Local Government Act providing for an appeal against the decision of a council in relation to any of the matters referred to in this Part are hereby repealed.

54.

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54. (1) The council shall give effect to the decision of the town planning commission, and for the purposes of the Local Government Act the decision of the commission on an appeal shall be deemed to be the decision of the council. Enforcing decisions.

(2) Nothing in this section shall deprive an applicant of any legal rights to which he may be otherwise entitled.

PART XI.

NEGLECT OF COUNCILS TO PREPARE SCHEMES.

55. (1) The commission may report to the Minister respecting any locality where in its opinion a town planning scheme is necessary. Reserve power of Governor.

(2) The Minister may lay the report before the council whose area is affected thereby.

(3) If, within three months thereafter, the council has not—

- (a) directed the preparation of a scheme ; and
- (b) appointed a town planning committee ; and
- (c) advised the Minister in writing of the action taken,

the Governor may by proclamation direct the commission to prepare a scheme.

(4) Thereupon the commission shall, in relation to the council's area and to the administration of this Act, and for the purposes of such scheme and of any consequent order, be charged with the duties of the council, and may exercise the powers and functions of the council.

(5) The expenditure of the commission in the exercise of its powers and duties under this Part shall be defrayed in the first instance from consolidated revenue, but shall be repaid thereto by the council, subject to any remission which the Minister is hereby empowered to allow.

(6) The Minister may recover the amount of such expenses (less any such remission) as a debt.

(7) The Governor may by proclamation repeal any proclamation under this section, but such repeal shall not operate to repeal any action taken by the commission; and any such action shall be deemed to be action taken by the council.

PART XII.

SUPPLEMENTARY.

Covenants.

56. Where the title to any land contains covenants, and such covenants are contrary to any requirement by or under this Act, such covenants shall be void to the extent that they are so contrary.

Town
planning
competitions.

57. The council may instruct the town planning committee to arrange the terms and conditions of competitive designs for town planning schemes, and may offer prizes for such designs as may be selected by the committee, and may pay such sums as may be necessary for prize designs out of the general fund.

Incorporation of Local
Government
Act.

58. The powers of a council under the Local Government Act may be used for the carrying out and enforcement of this Act, as though this Act were incorporated therein.

Disputes.

59. Any failure of councils to agree in relation to matters affected by the provisions of this Act, or any failure of a council to consent to any request lawfully made by another council in pursuance of this Act may be referred by either council to the Minister for decision, in accordance with the provisions of the Local Government Act relating to the settlement of disputes between councils.

PART

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PART XIII.

ORDINANCES.

60. Ordinances may be made under the Local Ordinances. Government Act for carrying this Part into effect, and in particular for and with respect to—

- (a) the manner of preparing and the details to be specified in maps, sections, specifications, and estimates of town planning schemes ;
- (b) the procedure to be adopted in the preparation of town planning schemes, in relation to objections and protests against such schemes, inquiries respecting such schemes, and the obtaining of the Governor's approval to such schemes ;
- (c) the form, time, and manner of giving notices and advertisements ;
- (d) the carrying out or enforcing the observance of the provisions of town planning orders ;
- (e) the notices to be given to persons interested as to the enactment of town planning orders ;
- (f) inquiries and reports as to the beginning and the progress and completion of works and other action under any town planning order ;
- (g) a set of general provisions which shall take effect as part of every town planning scheme or order except so far as provision is made by the scheme or order for the variation or exclusion of any of those provisions ; cf. Housing, T.P., &c., Act, 1909 (Eng.), s. 55.
- (h) separate sets of general provisions, adapted for areas of any special character, which shall take effect as part of every town planning scheme or order for an area of the special character to which such provisions are adapted except so far as provision is made by the scheme or order for the variation or exclusion of any of those provisions ; Ibid. s. 55.
- (i) hearing and deciding objections or suggestions by persons interested in regard to any town planning schemes ;
- (j)

- (j) securing co-operation with owners of land as to matters dealt with in this Act;
 - (k) the manner of preparing town planning schemes;
 - (l) the demolition of buildings on land included in a town planning order;
 - (m) publication of notices in connection with town planning schemes and orders;
 - (n) co-operation with any government, and with any public, private, or statutory body, in matters dealt with in this Act;
 - (o) conditions necessary to be laid down for town planning competitions; and
 - (p) generally for the purpose of carrying out this Act.
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