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

W. R. McCOURT,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 8 March, 1945.

New South Wales.

ANNO NONO

GEORGII VI REGIS.

* *

Act No. , 1945.

An Act to make better provision for and in relation to town planning and country planning; for this purpose to amend the Local Government Act, 1919, and certain other Acts; and for purposes connected therewith.

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.

1. (1) This Act may be cited as the "Local Government (Town and Country Planning) Amendment Act, 1945." Short title.

(2) The Local Government Act, 1919, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

2. This Act is divided into Parts as follows:— Division into Parts.

PART I.—PRELIMINARY—*ss.* 1, 2.

PART II.—AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS—*ss.* 3, 4.

PART III.—AMENDMENTS OF SYDNEY CORPORATION ACT, 1932, AS AMENDED BY SUBSEQUENT ACTS—*s.* 5.

PART II.

AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS.

3. The Principal Act is amended— Amendment of Act No. 41, 1919.

(a) by inserting in section three next after the matter relating to Part XII, the words and symbols "Part XIIA—TOWN AND COUNTRY PLANNING SCHEMES—*ss.* 342A-342AT"; Sec. 3 (Division into Parts.)

(b) by inserting next after section three hundred and forty-two the following new Part:— New Part XIIA.

PART XIIA.

TOWN AND COUNTRY PLANNING SCHEMES.

DIVISION 1.—*Application of Part.*

342A. (1) Subject to the provisions of this Act— Application of Part XIIA.

(a) this Part shall apply to municipalities and shires, and to the city of Sydney;

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

(2)

(2) In the application of any provision of this Part to or in respect of the city of Sydney—

(a) a reference in that provision to an "area" shall be construed as a reference to the city of Sydney;

(b) a reference in that provision to a "council" shall be construed as a reference to the Municipal Council of Sydney;

(c) a reference in that provision to a "road" or a "public road" shall be construed as a reference to a public way within the meaning of the Sydney Corporation Act, 1932, as amended by subsequent Acts;

(d) a reference expressed or implied in that provision to an ordinance shall be conconstrued as a reference to by-laws made or deemed to have been made under the Sydney Corporation Act, 1932, as amended by subsequent Acts.

Definitions.

342B. In this Part unless the context or subject matter otherwise indicates or requires—

"Advisory Committee" means the Town and Country Planning Advisory Committee constituted under this Part.

"Building" includes any structure or any part thereof.

"Council" includes county council.

"Erection," "erect" and similar expressions in relation to building include any structural work or any alteration, addition or rebuilding.

"Land" means either land in fee simple or any easement, right, or privilege, in, over, or affecting, land and includes all lands of the Crown.

DIVISION 2.—*Preparation of schemes.*

Preparation of schemes.

342C. (1) (a) A council may, by resolution, decide to prepare a scheme with respect to any land within its area.

(b) Two or more councils may by resolution of the respective councils decide to join in preparing a scheme with respect to any land within their areas, and in such a case shall enter into an agreement for the purpose. The provisions of section five hundred and twenty-one of this Act shall extend to and in respect of such agreement.

(c) Any such resolution may specify the particular purposes or objects for or with respect to which the scheme shall be prepared and the scheme shall be prepared accordingly.

(2) (a) A resolution passed under subsection one of this section shall not take effect unless and until it is approved by the Minister and notice of such approval is published in the Gazette. Application for such approval shall be made as prescribed, and shall be accompanied by the prescribed particulars.

(b) In giving his approval the Minister may fix the period of time within which the scheme shall be prepared, and the scheme shall be prepared accordingly: Provided that the Minister may, from time to time, upon the application of the council or councils concerned, extend such period if it appears to him to be expedient so to do.

(3) Where a resolution to prepare a scheme has taken effect, the council or councils concerned shall, within the prescribed period, give notice of the resolution as prescribed.

Such notice shall contain a concise statement of the effect of the resolution, together with information as to the place and times at which a plan defining the land to which the resolution applies may be inspected.

(4)

(4) Where a resolution to prepare a scheme has taken effect the council or councils concerned may prepare one scheme with respect to the whole of the land to which the resolution applies or may prepare different schemes for different parts of the land.

Direction to council to prepare a scheme.

342D. (1) The Minister may from time to time by notice in writing direct any council to prepare a scheme with respect to any land within its area or direct two or more councils to act together in preparing a scheme with respect to any land in their areas, and the council or councils concerned shall comply with the direction.

(2) A direction under subsection one of this section may—

(a) specify the particular purposes or objects for or with respect to which the scheme shall be prepared;

(b) fix the period of time within which the scheme shall be prepared;

and the scheme shall be prepared accordingly: Provided that the Minister may, from time to time, upon the application of the council or councils concerned, extend such period if it appears to him to be expedient so to do.

(3) Where a direction is given under subsection one of this section the Minister shall publish a notice of that fact in the Gazette and in a newspaper circulating in the locality in which the land to which the direction relates is situated.

Such notice shall contain a concise statement of the effect of the direction, together with information as to the place and times at which a plan defining the land to which the direction relates may be inspected.

Appointment of planning committee.

342E. (1) Where a resolution under subsection one of section 342C of this Act has taken effect or a direction has been given by the Minister under subsection one of section 342D of this Act the council or councils concerned shall appoint a planning committee, which shall be constituted as prescribed, to prepare a scheme and shall also appoint or employ some person who possesses the prescribed qualifications in town planning or country planning to assist in the preparation of the scheme.

(2) The procedure for the calling of meetings of the planning committee and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by that committee.

(3) The Minister may arrange for the services of any officer or employee of the Crown who is skilled in any matter relating to town planning or country planning to be made available to assist the council or councils concerned under such conditions, including conditions for payment of remuneration, as may be agreed upon with the council or councils.

(4) The council or councils concerned may arrange, through the Minister, for the making or preparation by any officer or employee of the Crown of any survey or plan required for or in connection with the preparation of the scheme.

(5) The planning committee in preparing a scheme may accept, with or without modifications, a scheme proposed with respect to the whole or part of the land to which the resolution of the council or councils applies or the direction of the Minister relates, by or on behalf of all or any of the owners of that land.

Notice of scheme.

342F. (1) The scheme prepared by the planning committee shall be submitted to the council or councils concerned.

(2)

(2) The council or councils concerned—

(a) shall give notice as prescribed that the scheme has been submitted and shall in such notice—

(i) specify the address of the place or places at which copies of all maps, plans, specifications and other particulars relating to the scheme may be inspected;

(ii) specify the address of the council or councils concerned to which representations in connection with the scheme may be forwarded;

(b) shall forward particulars and a map or plan indicating in general terms the extent or nature of the scheme to all Departments of the Crown in right of the State or of the Commonwealth, all statutory bodies representing the Crown and all councils which appear to it or them to be affected by the scheme.

(3) Any person interested in any land affected by the scheme and any such Department, statutory body or council may, within a period of three months after the publication of notice of the scheme (or where the notice is published more than once, within a period of three months after the first publication thereof), make representations to the council or councils concerned in connection with the scheme.

(4) The council or councils concerned shall consider all representations made under this section and where any alteration of the scheme is considered necessary may refer the scheme back to the planning committee for alteration and resubmission.

(5)

(5) The council or councils concerned may adopt the scheme so submitted or resubmitted as the case may be.

Contents of scheme.

342G. (1) A scheme shall in the prescribed manner define the land to which it applies.

(2) A scheme may contain provisions for regulating and controlling the use of land and the purposes for which land may be used.

(3) Without prejudice to the generality of subsection two of this section a scheme may contain provisions for or in relation to all or any of the following matters, that is to say—

(a) the situation, opening, widening, deviating, classifying, and providing of roads;

(b) the restriction of ribbon development of land fronting adjoining or adjacent to a road by regulating all or any of the following matters, that is to say, the construction, forming or laying out of any means of access to or from the road, the erecting or making on the land of any building or permanent excavation which is within a specified distance from the road, or restricting or prohibiting the erection of any building intended for use for any purpose which is likely to cause increased vehicular traffic along the road, or traffic congestion on the road.

In this paragraph "building" includes neither fences, gates, posts, masts, ornaments or other similar structures or erections required for the purposes of farming or grazing or of any dwelling house or garden occupied with a dwelling house nor greenhouses or summerhouses required in connection with any such garden, nor temporary tents or scaffolding required

for

for any purpose, but save as aforesaid includes any structure or erection of whatsoever material and in whatsoever manner constructed and any part of a building;

(c) the minimum standards of construction of roads of different classes and of drains, culverts and bridges in or upon roads;

(d) the provision of water, gas, electricity and other public services;

(e) the reservation of sites for places of religious worship, the residences of ministers of religion and buildings for religious purposes;

(f) the reservation of sites for educational and hospital establishments and community centres for promotion of physical, mental, moral and cultural welfare;

(g) the regulation of building and of matters relating thereto;

(h) the reservation or provision of land for afforestation purposes or for recreation grounds, ornamental gardens, children's playgrounds, green belts, green wedges, and other open spaces;

(i) the planning of localities and the design and protection of buildings and structural elements so as to reduce the risk of fire and limit the spread of fire;

(j) the zoning of land and the prohibition in any zone of the erection, construction, carrying out or use of any structure or work upon the land or the use in any zone of any land for any specified purpose or for any purpose other than a specified purpose;

(k) the extinction or variation of private rights of way and other easements;

(l) the removal, alteration, or demolition of obstructions or obstructive works;

(m) the preservation or acquisition for public access use and enjoyment of the foreshores or banks of the ocean, harbours, rivers, lakes, lagoons, and the like, and the conservation of the natural beauty thereof;

(n) the preservation of places or objects of historical or scientific interest or natural beauty or advantage;

(o) the provision of amenities;

(p) securing the safety of persons and property from hostile attack;

(q) the location of public utility undertakings, shipping facilities, railways, tramways, canals, and sites for air ports, aerodromes, bridges, jetties, wharves and ferries, and works and matters ancillary thereto;

(r) securing co-operation between the council or councils concerned and the Government, or any person or body of persons;

(s) the acquisition of land for any purpose of the scheme;

(t) the apportionment between councils of any costs, expenses and disbursements incurred in carrying into effect and enforcing a scheme, and the recovery from any council of its share or proportion of the same;

(u) the recovery of betterment in accordance with Division 10 of this Part;

(v) any matter necessary or convenient for carrying out the scheme.

(4) A scheme may suspend either generally or in any particular case or class of cases the operation of any provision of this or any other Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or

or instrument by or under whatever authority made, to the extent to which that provision is inconsistent with any of the provisions of the scheme.

(5) (a) A scheme shall contain provisions specifying the responsible authority or responsible authorities which shall be charged with the functions of carrying into effect and enforcing the provisions of the scheme or such of those provisions as relate to any particular portion or portions of the land included in the scheme, or such of those provisions as are directed to particular objects or purposes.

Any responsible authority so specified shall be a council, or two or more councils acting together as prescribed.

(b) A scheme may contain provision for the appointment of a special committee, constituted as prescribed, to assist the responsible authority in carrying into effect and enforcing the scheme.

Such committee may include as members persons who are not members of the council or councils which are the responsible authority.

DIVISION 3.—*Approval of planning schemes.*

Submission of scheme to Minister.

342H. (1) The scheme prepared by the council or councils concerned shall be submitted to the Minister with such maps, plans, specifications, and particulars as may be required by the Minister or as may be prescribed.

(2) The scheme shall be submitted in the form of a draft ordinance.

The scheme may adopt wholly or partially or by reference any of the provisions contained in a set of standard or model provisions adopted by the Minister on the recommendation of the Advisory Committee.

Reference to Advisory Committee.

342I. The Minister shall refer any scheme so submitted to him to the Advisory Committee for report.

342J. (1) (a) The Minister shall consider the report of the Advisory Committee and he may then decide— Consideration of scheme.

(i) to proceed with the scheme without alteration;

(ii) to proceed with the scheme with such alterations as he deems expedient in the light of such report;

(iii) to refer the scheme back to the council or councils concerned for further consideration;

(iv) not to proceed with the scheme.

(b) Where a scheme has been altered in pursuance of paragraph (a) of this subsection a reference in subsections two, three and four of this section to "the scheme" shall be construed as a reference to the scheme as so altered.

(2) If the Minister decides to proceed with the scheme, he shall notify brief particulars thereof and state in the notification that full particulars of the scheme may be inspected at such places as are designated and that objections against the scheme or any part of it may be made to him in writing, in or to the effect of the prescribed form, on or before the date specified in the notification, by or on behalf of any person who has an estate or interest in land affected by the scheme or by any council, including the council or councils which submitted the scheme to him in any case where the scheme is altered in pursuance of subsection one of this section.

The Minister shall arrange for such particulars to be made available for public inspection at the places so designated.

(3) (a) On or before the date so specified any such person or council may, in the manner prescribed, object to the Minister against the scheme or any part of it and shall state the grounds of the objection.

(b)

(b) As soon as practicable after such date the Minister, after such inquiry as he deems sufficient, shall determine such objections.

(c) Each person or council by or on behalf of whom an objection is lodged shall be informed of the determination of the Minister upon such objection, and the council or councils which submitted the scheme shall also be informed of each such determination.

(4) Where an objection is allowed in part or in whole by the determination of the Minister the scheme shall be amended by the Minister so as to conform with such determination.

(5) Where no objection has been lodged with the Minister in accordance with the provisions of paragraph (a) of subsection three of this section or where the scheme has been amended in accordance with the provisions of subsection four of this section the Minister may recommend the Governor to make an ordinance prescribing the scheme accordingly.

Prescribed scheme.

342K. (1) The Governor, on the recommendation of the Minister made in pursuance of section 342J of this Act, may make an ordinance prescribing the scheme.

A scheme which has been embodied in an ordinance so made is in this Part hereinafter referred to as a "prescribed scheme".

(2) The Minister shall give notice, as prescribed, of the fact that the scheme has come into operation and that copies of the ordinance prescribing the scheme and of any maps, plans, specifications or other particulars referred to therein will be available for public inspection.

(3) (a) All maps, plans, specifications, or other particulars referred to in such ordinance shall be filed at the Department of Local Government, Sydney, and any reference in the ordinance to maps, plans, specifications, or

other

other particulars shall be deemed a reference to the maps, plans, specifications or other particulars so filed.

(b) Copies of the documents so filed—

(i) shall be made available at the Department of Local Government for public inspection upon payment of the prescribed fee;

(ii) shall be lodged with the Registrar-General and with the responsible authority and with the council of each area adjoining the land included in the prescribed scheme who shall file them for reference.

(c) Copies of the ordinance and of the maps, plans, specifications or other particulars shall be made available by the responsible authority during ordinary office hours for public inspection without fee.

DIVISION 4.—*Variation of prescribed schemes.*

Variation of prescribed scheme.

342L. A prescribed scheme may be varied by a subsequent scheme.

Any such variation may supplement or amend (otherwise than by extension of the land to which the scheme applies) the prescribed scheme.

DIVISION 5.—*Revocation of prescribed schemes.*

Revocation of prescribed schemes.

342M. The Minister may, after consideration of a report by the Advisory Committee, recommend the Governor to revoke a prescribed scheme, and the Governor may thereupon make an ordinance rescinding the ordinance by which the scheme was prescribed.

DIVISION 6.—*Carrying into effect and enforcing prescribed schemes.*

Powers, etc. of responsible authority.

342N. (1) The responsible authority specified in a prescribed scheme shall have and may exercise and discharge all the powers, authorities, duties

duties and functions conferred and imposed on the responsible authority by the prescribed scheme.

(2) Where a prescribed scheme provides expressly or impliedly that any act, matter or thing specified in the scheme shall or shall not be done except with the approval, consent or permission of the council which is the responsible authority, any person who is dissatisfied with the decision of the council upon an application for such approval, consent or permission or with any condition imposed by the council, may appeal against such decision or the imposition of such condition in accordance with the provisions of section three hundred and forty-one of this Act, and the provisions of that section shall extend, mutatis mutandis, to and in respect of any such appeal.

Carrying prescribed schemes into effect.

342o. The responsible authority may carry into effect the provisions of the prescribed scheme—

(a) by the acquisition of land and subsequent action in pursuance of the prescribed scheme;

(b) by causing any aligned public road to be realigned under the Public Roads Act, 1902, as amended by subsequent Acts, in order to widen the road and by applying the realignment method of acquisition, and by subsequent action in pursuance of the prescribed scheme;

(c) by taking such action as may be necessary to enforce the performance of any duty imposed by the prescribed scheme upon any owner or lessee, or public body or authority, including the State Government, or any statutory body or any council or person;

(d)

(d) by enforcing any agreement incorporated in the prescribed scheme, or made subsequent to the prescribed scheme, and relating to any matter dealt with in or arising out of the prescribed scheme;

(e) by exercising, in accordance with the prescribed scheme, its powers under this Act or, in the city of Sydney, the Sydney Corporation Act, 1932, as amended by subsequent Acts, to regulate the opening of any new roads, the subdivision of land, the erection of buildings or any other matter appropriate to the prescribed scheme;

(f) by any other method specifically provided for in the prescribed scheme;

(g) by the exercise of any power conferred upon the council which is the responsible authority by or under this or any other Act; or

(h) by any combination of two or more of these methods.

Enforcement of prescribed schemes.

342R. (1) The responsible authority, subject to the provisions of any prescribed scheme, may, after giving the prescribed notice—

(a) remove, pull down or alter, so as to bring into conformity with the provisions of the prescribed scheme, any building or other work which does not conform to those provisions or in the erection or carrying out of which any provision of the prescribed scheme has not been complied with or the demolition or alteration of which is necessary for carrying the prescribed scheme into effect; or

(b) where any land is being used in such a manner as to contravene any provision of the prescribed scheme, prohibit such use of the land; or

(c)

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

(2) Where any action by the responsible authority under subsection one of this section is made necessary by the default or wrongful act of any person, the responsible authority may recover any expenses thereby incurred from such person as a debt in any court of competent jurisdiction.

Delegation of powers.

342Q. (1) Where a prescribed scheme contains provision for the appointment of a special committee to assist the responsible authority in carrying into effect and enforcing the prescribed scheme, the responsible authority may delegate to such committee any of its powers, authorities, duties and functions in relation to such scheme, except such powers, authorities, duties or functions as may be prescribed from time to time.

(2) Any special committee to which any powers, authorities, duties or functions are delegated as aforesaid may, without confirmation by the responsible authority, exercise, perform, or carry out the same in like manner and with the same effect as the responsible authority could itself have exercised and performed the same.

(3) Any special committee shall be subject in all things to the responsible authority, and shall carry out all directions, general or special, of that authority given in relation to such committee or its affairs.

(4) The procedure for the calling of meetings of the special committee and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by that committee.

(5) The responsible authority may appoint a member of the special committee to be the chairman thereof; and if no such appointment is made, the committee may make the appointment. The responsible authority may from time to time remove such chairman and appoint another in his stead.

Notices relaxing temporary prohibition or restriction of building.

cf. 22 and 23 Geo. V, c. 48, ss. 15, 16.

342B. Where in a prescribed scheme the erection of buildings on any land is prohibited or restricted until such time as the responsible authority has given notice as provided in this section the following provisions shall have effect:—

(a) The responsible authority may, from time to time, by notice given as prescribed, in respect of the whole or any part of the land on which the erection of buildings is so prohibited or restricted, permit the erection of buildings, subject to such conditions (if any) as may be specified in the notice.

(b) No such notice shall be given unless and until the provisions thereof have been approved by the Minister.

(c) Any notice so given may be amended or revoked by a subsequent notice but, so long and in so far as it continues to be operative, shall be deemed to form part of the scheme to which it relates.

Where any such notice has been so amended, the notice as amended shall be the notice under this section.

Where any such notice has been revoked the prohibitions or restrictions set out in the prescribed scheme shall revive as from the date of such revocation.

(d) Without prejudice to the foregoing provisions of this section, it shall be the duty of the responsible authority within

within a period of three months from the expiration of every third year after the coming into operation of the prescribed scheme to consider the question of giving such a notice in respect of all or any of the land the erection of buildings upon which remains subject to the aforesaid prohibitions or restrictions.

Any person dissatisfied with the failure of the responsible authority to give such a notice within such period of three months in respect of land in which he has an estate or interest may appeal to the Minister within two months after the expiration of such period of three months, and the Minister on any such appeal may, if he thinks fit, give such a notice, and a notice so given by him shall have effect as if it were a notice given by the responsible authority and approved by the Minister.

(e) Any person who, pending the giving of a notice under this section, desires to commence the erection of a building the erection of which would contravene the aforesaid prohibitions or restrictions may, in accordance with such provisions, if any, as may be contained in the prescribed scheme, apply to the responsible authority for permission to erect the building specified in the application.

(f) The responsible authority shall, in deciding any such application, have regard to any injury likely to be caused to the applicant by the refusal of the application, as well as to any public advantage likely to result from the maintenance of the aforesaid prohibitions or restrictions, pending the giving of

of such a notice, and may, if it is satisfied that the proposed erection of the building will not contravene any permanent provisions of the prescribed scheme, grant the application unconditionally, or subject to such conditions as it may think proper to impose:

Provided that, where the responsible authority has power under this section to grant an application, it shall not refuse that application unless it is satisfied that other land suitable for the erection of such building as is specified in the application is available on reasonable terms and either—

(i) that the erection of such building would involve danger or injury to health by reason of the lack of roads, drains, sewers, water supply, or any public services and that the provision of the necessary services would be premature or likely to involve excessive expenditure of public money; or

(ii) that the erection of the building would be likely seriously to injure the amenity of the locality.

(g) Any person dissatisfied with the refusal of any such application, or by any conditions imposed by the responsible authority, may within twenty-eight days from the date on which he received notice of the decision of the responsible authority or such longer period as the Minister may allow, appeal to the Minister, and the Minister may dismiss or allow the appeal, either unconditionally, or subject to such conditions as he thinks proper to impose.

The

The decision of the Minister on an appeal under this paragraph shall be final and shall have effect as if it were the decision of the responsible authority.

DIVISION 7.—*Interim development.*

Commencement of Division.

342s. This Division shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Definitions.

342T. (1) In this Division—

"Council" includes two or more councils acting together in the preparation of a scheme.

"Development" in relation to any land includes the erection of any building, and the carrying out of any work, and any use of the land or building or work thereon for a purpose which is different from the purpose for which the land or building or work was last being used.

"Interim development" means development of land to which a scheme applies between the date upon which a resolution of the council or two or more councils acting together to prepare a scheme has taken effect or the date upon which notice of the fact that the Minister has directed the council or two or more councils to act together to prepare a scheme was published in the Gazette, and the date of the coming into operation of the scheme.

"Interim development application" means application for the permission of the council for the interim development of land.

(2) The provisions of this Division shall not apply in any case where the scheme for the preparation of which a resolution has taken

taken effect or a direction has been given by the Minister is a scheme varying a prescribed scheme.

Restriction of interim development.

342U. (1) Interim development shall not be carried out—

(a) except as may be permitted by ordinance; or

(b) except as may be permitted by the council under the authority of an ordinance and subject to such conditions, restrictions and provisions as may be contained in such ordinance.

(2) Ordinances may be made suspending either generally or in any particular case or class of cases the operation of any provision of this or any other Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made, to the extent to which that provision is inconsistent with any interim development permitted under this Division.

Permission for interim development.

342V. (1) Subject to the provisions of any such ordinance the council may, where an interim development application is made, grant the application unconditionally or subject to such conditions as it may think proper to impose or refuse to grant such application if it appears to the council that such development would be in contravention of the scheme if it had come into operation or would be in contravention of town planning or country planning principles or would interfere with the amenities of the neighbourhood, and the council shall be deemed to have refused the application unless within two months from the receipt of the application it gives notice to the applicant—

(a) that it has decided the application (and stating the reason for the refusal or for the imposition of conditions upon approval of the application); or

(b)

(b) that the application has been referred to the Minister for decision in accordance with the provisions of subsection three of this section; or

(c) that consideration of the application has been postponed in accordance with the provisions of subsection two of this section:

Provided that such period of two months may, at any time before the expiration thereof, be extended by agreement in writing made between the council and the applicant.

(2) The council may by notice served on the applicant postpone the consideration of any such application either generally or during such period as may be specified in the notice; but no such notice shall be so served until the applicant has been given a reasonable opportunity to show to the satisfaction of the council that the proposed development would be carried out immediately if the application were granted and has failed to do so:

Provided that—

(a) the applicant may within one month after the service of such notice appeal against the notice to the Land and Valuation Court or to the court of petty sessions for the district in which the land proposed to be developed is situated and the court, if satisfied that the proposed development would be carried out immediately if the application were granted, shall by order cancel the notice of postponement and in such case the period of two months referred to in subsection one of this section shall be deemed to commence from the date of such order;

(b) if with respect to any interim development application it appears to the Minister that there are exceptional reasons requiring the immediate determination thereof, he may, without prejudice to his power to require the application to be referred to him for decision in accordance with subsection three of this section, give directions requiring the council to determine the application, and, where a notice of postponement has been served with respect thereto, may by order in writing to the council cancel the notice, and in such case the period of two months referred to in subsection one of this section shall be deemed to commence from the date of such order.

(3) (a) If it appears to the Minister that it is expedient, having regard to considerations affecting the public interest, whether generally or in the locality concerned, that any interim development application, or any class or description of such applications, should be referred to him for decision, he may give directions to the council requiring that application, or applications of that class or description, to be so referred, and any decision of the Minister on an application so referred to him shall be deemed to be the decision of the council:

Provided that, before dealing with any application so referred to him, the Minister shall, if either the council or the applicant so desire, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

(b) The Minister may give directions to the council requiring it to furnish him with such information with respect to interim development applications received by it as he considers

considers necessary or expedient for the purpose of enabling him to exercise his functions under the last preceding paragraph.

(c) Provision may be made by ordinance requiring councils, before dealing with interim development applications, to consult with such authorities or persons as may be prescribed.

(4) In any case where an interim development application is refused or is granted subject to conditions, the council may, if it thinks fit, make a contribution towards any damage or expense which the applicant shows to the satisfaction of the council that he is likely to suffer by reason of the council's decision.

(5) An applicant who is dissatisfied with the refusal of the council to grant his application, or with any conditions imposed by the council, may, within one month from the date on which he received notice of the council's decision, or such longer period as the Minister may allow, appeal to the Minister, and the Minister, after taking into consideration any offer by the council to make a contribution under subsection four of this section, may dismiss the appeal or may allow the appeal either unconditionally or subject to such conditions as he thinks proper to impose, but the Minister, before deciding any such appeal, shall, if either the appellant or the council so desire, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

The decision of the Minister on an appeal under this subsection shall be final and shall have effect as if it were a decision of the council.

(6) Nothing in this section shall be construed as affecting the duty of a council to take into consideration with reasonable despatch

all

all interim development applications made to it, other than applications the consideration of which is postponed or which are referred to the Minister under the provisions of this section.

Revocation or modification of permission for interim development.

342w. (1) If at any time before a scheme comes into operation it appears to the Minister that it is expedient, having regard to the provisions then proposed to be included in that scheme, that any interim development permitted by ordinance under this Division should not be carried out or completed or should not be carried out or completed to the extent or in the manner permitted by the ordinance or that any power given to a council under the authority of an ordinance to grant permission for the carrying out of interim development should not be continued or should be curtailed, the Minister may recommend the Governor to rescind or alter the ordinance, and the Governor may rescind or alter the ordinance accordingly: Provided that before the Minister makes any such recommendation he shall, if either the council or any person who in his opinion will be affected by such alteration so desires, afford them an opportunity of appearing before and being heard by a person appointed by him for the purpose.

(2) (a) If at any time before a scheme comes into operation it appears to the council that it is expedient, having regard to the provisions then proposed to be included in that scheme, that any development for which permission has been granted on an interim development application should not be carried out or completed, or should not be carried out or completed to the extent or in the manner allowed by the permission, it may, with the consent of the Minister, by notice served in accordance with this subsection, revoke or modify the permission to such extent as appears to it to be necessary.

(b)

(b) The Minister may direct the council to submit to him for his consent a notice revoking or modifying any permission specified in the directions, or modifying any such permission in such manner as may be so specified and to serve such notice in accordance with this subsection.

(c) Where a council proposes or is directed to exercise its powers under this subsection, it shall serve the notice on all persons who in its opinion will be affected by the notice.

(d) If any such directions are not complied with within the time specified therein, the Minister may himself prepare and serve the notice, and such notice shall have effect as a notice under paragraph (a) of this subsection.

(e) The Minister, before consenting to or serving the notice referred to in the foregoing provisions of this subsection shall, if either the council or any such person so desires, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

Contribution.

342x. Where any permission for the development of land is revoked or modified under this Division, the council may make to any person a contribution towards any damage or expense which such person shows to the satisfaction of the council that he has suffered or is likely to suffer by reason of such revocation or modification.

Suspension of provisions of prescribed scheme.

342y. (1) In any case where—

(a) a resolution for the preparation of a scheme varying a prescribed scheme has taken effect; or

(b) the Minister has directed the preparation of such a scheme,

the

the Minister, if it appears to him expedient so to do—

(i) for securing that any development prohibited by the prescribed scheme may be carried out notwithstanding the provisions of that scheme; or

(ii) for securing that any development permitted by the prescribed scheme may be regulated,

may notify the suspension of the provisions of the prescribed scheme pending the coming into operation of the varying scheme and such provisions shall be suspended accordingly; and any such notification may suspend the provisions of the scheme either as respects the whole of the land to which the varying scheme is to apply or as respects any portion thereof specified in the notification, and either as respects all development or as respects development of any class specified in the notification.

(2) Where the provisions of a prescribed scheme are notified as suspended under this section, the provisions of this Division with respect to the control of interim development shall, as from the date of the notification, apply to development to which the notification relates and shall so apply as if the resolution of the council or the direction of the Minister had taken effect on that date.

Power to apply interim development provisions to any land.

342z. The Governor may, by proclamation, direct with respect to any land in any area that on and from a day appointed in that behalf such land shall be deemed to be included in a scheme for the preparation of which a resolution has taken effect, and the provisions of this Division shall apply with respect to such land as from the date of publication in the Gazette of such proclamation.

DIVISION

DIVISION 8.—*Scheme for the County of Cumberland.*

Commencement of Division.

342AA. This Division shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Scheme for County of Cumberland.

342AB. (1) (a) The Minister shall not later than three years after the commencement of this Division, with the advice and on the recommendation of the Advisory Committee, complete the preparation of a scheme in respect of all land within the areas wholly or partly included in the County of Cumberland.

(b) Such scheme shall include provision only for such matters, consistent with the provisions of this Part, as may from time to time be prescribed.

(2) (a) For the purposes of such scheme and of any matter in relation to the preparation thereof the Minister, in respect of such land, shall have and may exercise, perform and enjoy the powers, authorities, duties, functions, discretions and immunities of a council and while so doing shall be deemed to be a council.

(b) (i) It shall be the duty of the council and of every officer and servant of the council and of every committee appointed by the council under this Part and of every member of any such committee to furnish such information and afford such assistance as the Minister may require for the purposes aforesaid.

(ii) Any person authorised by the Minister in that behalf shall for such purposes have liberty at all reasonable times without charge to inspect any document, plan, map or record of the council or of any committee appointed by the council under this Part; and the servant or other person for the time being having the custody thereof shall not refuse or prevent

prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(c) It shall be the duty of every Government department, statutory body, authority and person to furnish such information and afford such assistance as the Minister may require for such purposes.

(d) The provisions of Division 7 of this Part shall, mutatis mutandis, apply, as from the commencement of this Division, in respect of all land within the areas wholly or partly included in the County of Cumberland.

(3) The scheme prepared by the Minister shall be deemed to be a scheme prepared and submitted to him jointly by the councils concerned in accordance with this Part, the provisions of sections 342J (other than paragraph (a) of subsection one) and 342K of this Act shall, mutatis mutandis, apply in respect of the scheme so prepared.

(4) The expenditure of the Minister incurred in pursuance of this section shall be defrayed in the first instance from moneys provided by Parliament or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose, but the amount thereof (less any remissions allowed by the Minister, which remissions the Minister with the approval of the Treasurer is hereby authorised to allow) shall be repaid by the councils concerned on demand to the Treasurer, in such proportions as the Minister may determine.

(5) The Treasurer may recover as a debt from any council the proportion so determined by the Minister to be repayable by that council.

(6) The amount of any liability to the Treasurer incurred by the council under this section may be paid out of the appropriate fund of the council and may be borrowed by way of ordinary loan under this Act, or as a loan for essential purposes in accordance with the provisions of the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may require.

(7) The scheme prescribed in pursuance of this section may be varied or revoked in accordance with the provisions of this Part, and any such variation may add to such scheme greater detail in respect of any land included therein.

DIVISION 9—*Compensation.*

Compensation.

342AC. (1) Subject to the provisions of this Part, any person—

(a) who has an estate or interest in land to which a prescribed scheme applies and such estate or interest is injuriously affected—

(i) by the coming into operation of any provision contained in the prescribed scheme; or

(ii) by the execution of any work under the prescribed scheme; or

(iii) by any restrictions imposed by or under the prescribed scheme;

(b)

(b) who suffers damage by reason of any action taken by or on behalf or at the order of the responsible authority for the enforcement or carrying into effect of the prescribed scheme;

(c) who has incurred expenditure—

(i) for the purpose of complying with any provision of the prescribed scheme; or

(ii) in making a claim under the provisions of this Act relating to compensation; or

(iii) in making an appeal under the provisions of this Act relating to betterment,

which expenditure is rendered abortive in whole or in part by suspension or variation or revocation of the prescribed scheme;

(d) who has, before the resolution to prepare a scheme has taken effect or the publication in the Gazette of the notice that the Minister has directed the council to prepare a scheme or, in the case of land to which the scheme referred to in Division 8 of this Part applies, before the commencement of that Division, incurred liability or expenditure in or in connection with the carrying out of any work which is either in whole or in part rendered abortive or abandoned by reason of the operation of this Part;

(e) who has incurred expenditure pursuant to any approval, permission or consent granted under the provisions of a prescribed scheme, which expenditure is rendered abortive in whole or in part by the revocation or modification of such approval, permission or consent;

(f) who has incurred expenditure pursuant to any permission given by an ordinance or by a council pursuant to an ordinance under Division 7 of this Part, which expenditure is rendered abortive in whole or in part by the rescission or alteration of such ordinance or the revocation or modification of such permission;

(g) who has incurred expenditure pursuant to any certificate given to him under section 342AS of this Act which expenditure is rendered abortive in whole or in part by reason of any error, omission, or inaccuracy in such certificate,

shall, if he makes a claim therefor within the time prescribed, be entitled to obtain, from the council which is the responsible authority concerned, compensation in respect of such injurious affection, damage, liability or expenditure.

(2) Compensation shall not be payable in the following cases:—

(a) in respect of any building erected or work done upon or contract made or other act or thing done with respect to land included in a prescribed scheme after the date upon which the resolution of the council has taken effect or the date of publication in the Gazette of the notice that the Minister has directed the council to prepare a scheme affecting such land, as the case may be, or where the prescribed scheme is the scheme referred to in Division 8 of this Part, after the commencement of that Division, unless the erection of such building or the doing of such work or the making of such contract or the doing

doing of such other act or thing was permitted under the provisions of Division 7 of this Part;

(b) where an estate or interest in land is injuriously affected by reason of any provision contained in the prescribed scheme if and in so far as the same provision or a provision substantially to the same effect was, at the date when the prescribed scheme came into operation, already in force by virtue of some Act, including this Act (except this Part);

(c) where an estate or interest in land is affected by any provision of the prescribed scheme which prescribes the space about buildings or limits the number of buildings to be erected, or prescribes the height, bulk, floor space, use, design, external appearance, or character of buildings;

(d) where an estate or interest in land is affected by any provision of the prescribed scheme prohibiting or restricting the use of that land unless the applicant establishes that some specified use of the land (which is prohibited or restricted by the prescribed scheme) was practicable immediately before the prescribed scheme came into operation and that there was at that time a demand for such use;

(e) in respect of any action taken by or on behalf or at the order of the council which is the responsible authority for the enforcement of the prescribed scheme in accordance with the provisions of section 342P of this Act except in a case where a building or work which the council has removed, pulled

pulled down or altered was an existing building or an existing work or the use of land which it has prohibited or restricted was an existing use;

(f) in respect of any thing done in contravention of a prescribed scheme;

(g) in respect of any thing done in contravention of Division 7 of this Part or of any decision or determination thereunder, or, as the case may be, in contravention of any decision or determination on any appeal under that Division.

For the purpose of paragraph (e) of this subsection—

"Existing building" and "existing work" mean respectively a building or work erected, constructed or carried out before the material date, and include also a building or work—

(i) begun before, but completed after, the material date; or

(ii) erected constructed or carried out pursuant to any permission under Division 7 of this Part:

Provided that a building or work shall not cease to be, or to be deemed to be, an existing building or work by reason of its alteration or extension in accordance with any provision of the scheme relating to the alteration or extension of existing buildings or works, and any such alteration or extension shall itself be deemed to be part of the existing building or work.

"Existing use" means a use of land for any purpose of a similar character to that for which it was last used before the material date or, in the case where there is a newly erected building on the land which has

not

not been used before that date, a use for any purpose for which the building was designed, and includes in any case any use of land permitted under Division 7 of this Part:

Provided that—

(i) if at any time after the material date the use of that land which, at that date, was the existing use thereof, is discontinued for a period of eighteen months, no use of that land at any subsequent date shall be deemed to be an existing use thereof;

(ii) where at the material date a person who was using any land for the purpose of mining, quarrying, the digging of clay, gravel or sand, or the deposit of waste materials or refuse, or any other purpose of a similar nature, was entitled also to use neighbouring land for any such purpose, the user under that title of that neighbouring land for any such purpose, whether before or after the material date, shall be deemed to be an existing use.

"Material date" means the date on which the resolution to prepare the scheme was passed or the date on which the Minister gave notice to the council in accordance with the provisions of subsection one of section 342D of this Act to prepare a scheme or, in respect of the scheme referred to in Division 8 of this Part, the date upon which that Division commenced:

Provided that, where a prescribed scheme (in this proviso referred to as the "original scheme") is revoked and replaced

replaced by a subsequent scheme, or is varied in accordance with this Part and any provisions of the scheme replacing or varying the original scheme is substantially to the same effect as a provision of the original scheme, the material date shall be the date on which the resolution to prepare the original scheme was passed or the date on which the Minister gave notice to the council in accordance with the provisions of subsection one of section 342D of this Act to prepare the original scheme or, in respect of the scheme referred to in Division 8 of this Part, the date upon which that Division commenced.

(3) Where an estate or interest in land is injuriously affected by reason of any provision contained in the prescribed scheme, then if such provision or a provision substantially to the same effect could, immediately before the prescribed scheme came into operation, have been validly included in any ordinance, proclamation, declaration, notification or other like instrument issued or made under the authority of this Act (other than this Part) or the Sydney Corporation Act, 1932, as amended by subsequent Acts, and—

(a) if no compensation would have been payable by reason of the inclusion of the provision in such ordinance, proclamation, declaration, notification or other instrument, no compensation shall be payable under this Division;

(b) if compensation would have been so payable the amount of compensation payable in respect of that provision of the scheme shall not be greater than the compensation which would have been so payable;

(4)

(4) In assessing compensation under this Division in respect of the injurious affection of an estate or interest in land the following provisions shall have effect:—

(a) The amount of the compensation shall, subject to this Division, be a sum equal to the difference between the market value of such estate or interest at the time of the coming into operation of the provision of the prescribed scheme, or the execution of the work under the prescribed scheme, or the prohibition or restriction imposed by or under the prescribed scheme, as the case may be, out of which the claim for compensation arose and what would have been the market value of that estate or interest if such provision had not come into operation, or such work had not been executed or such prohibition or restriction had not been imposed, as the case may be.

(b) There shall be taken into account any modification of the injurious affection that may be effected in consonance with the prescribed scheme.

(c) There shall be taken into account any benefit which may accrue to any land in which the claimant has an estate or interest—

(i) by reason of the coming into operation of the scheme; or

(ii) by reason of the construction or improvement by any other person, at any time after the scheme is prescribed, upon land adjacent to the land in respect of which compensation is claimed, of any work or service in pursuance of the provisions of the scheme.

(d)

(d) There shall be taken into account any contribution made by the council in accordance with the provisions of Division 7 of this Part.

(e) If the parcel of land in respect of which compensation is claimed has, since the date upon which the scheme was prescribed, become or ceased to be separate from other land, the amount of compensation shall not be enhanced by reason of its having become or ceased to be separate from other land.

(f) If the question arises out of the coming into operation of a varying scheme there shall be taken into account any amount which the council has paid or is liable to pay, or has recovered or is entitled to recover, in respect of that land, by reason of the coming into operation of the original scheme, or any other scheme varying it.

(5) (a) If any dispute or difference arises between any person claiming compensation under this Division and any council the question of whether such council is the responsible authority concerned and whether such person is entitled to compensation and, if so, to what amount, shall be decided— cf. Act No. 22, 1943, s. 18.

(i) where the claim does not exceed one hundred pounds—by a court of petty sessions holden before a stipendiary or police magistrate;

(ii) where the claim exceeds one hundred pounds—by the Land and Valuation Court.

The decision of the Court or magistrate shall be final and conclusive.

(b)

(b) The time within which claims under this section may be made and the manner of making such claims and any matter in connection therewith may be prescribed—

(i) in the case of claims made before the Land and Valuation Court—by rules of court of that Court;

(ii) in the case of claims made before a court of petty sessions holden before a police or stipendiary magistrate—by ordinance made under this Act.

(c) The council which is the responsible authority concerned, and the claimant may appear by solicitor or counsel at any inquiry held for the assessment of compensation under this section.

Recovery of compensation.

342AD. (1) Any amount payable to a claimant as compensation under this Part may be recovered from the council which is the responsible authority concerned as a debt in any court of competent jurisdiction.

Compensation subject to agreements, etc.

(2) The provisions of this Part as to compensation shall be subject to any special provisions respecting compensation included in the prescribed scheme or included in any agreement with the claimant or his predecessor in title incorporated in the prescribed scheme or made subsequently thereto; and the inclusion of any such provision or agreement in a scheme is hereby authorised.

Alternative rights in respect of compensation.

342AE. (1) Nothing in this Division shall deprive any person of any right to compensation that he may have independently of this Part.

cf. 7 & 8 Geo. VI, No. 99 (Tas.), s. 25 (3) (4).

(2) Where a person would be entitled to claim compensation in respect of any matter or thing under this Part and also under any other enactment, he shall not be entitled to receive compensation both under this Part and such

such other enactment, nor to receive any greater compensation under this Part than he would be entitled to receive under such other enactment.

DIVISION 10.—*Betterment.*

Valuation of betterment.

342AF. (1) The council of an area within which is situated land to which a prescribed scheme applies, shall where the prescribed scheme contains provision for the recovery of betterment in accordance with this Division—

(a) within such time, not exceeding five years after the prescribed scheme comes into operation, as is specified in such scheme require the Valuer-General to report whether any land which is for the time being ratable has been increased in value by the coming into operation of any provision contained in the prescribed scheme; or

(b) within twelve months after—

(i) the granting of any permission under the prescribed scheme for the erection of any building or the carrying out of any work or the use of any land; or

(ii) the completion by the council of any work under the prescribed scheme,

require the Valuer-General to report whether any land which is for the time being ratable has been increased in value by the granting of such permission or by the execution by the council of any such work.

Any report furnished by the Valuer-General under this subsection shall be accompanied by a list of the lands and of the increases in value thereof.

Such increases in value are in this Part referred to as betterment.

(2)

(2) (a) All lists furnished by the Valuer-General under subsection one of this section shall be stamped with the official stamp of or signed by the Valuer-General.

(b) There shall be payable by every council to which any such list is furnished fees therefor according to a scale which shall be fixed by the Governor from time to time.

(3) Notice of valuation of betterment shall be given in the same manner as notice of valuation of land (whether under this Act or the Sydney Corporation Act, 1932, as amended by subsequent Acts, or under the Valuation of Land Act, 1916, as amended by subsequent Acts, as the case may be), and the provisions of any such Act for the time being in operation in the area relating to appeals against valuations of land shall, mutatis mutandis, apply to and in respect of appeals against valuations of betterment.

Betterment charge.

342AG. (1) Subject to this Part, where the prescribed scheme contains provision for the recovery of betterment in accordance with this Part the council shall in respect of the betterment of any such land aforesaid impose a betterment charge: Provided that such a charge shall not be imposed in respect of the betterment of any land in relation to which any accruing benefit has been taken into account in assessing compensation under Division 9 of this Part.

(2) The total amount recoverable under a betterment charge on any separate parcel of land shall be such as to return to the council a sum equal to eighty per centum of the betterment on such separate parcel.

(3) (a) Any such charge shall be imposed each year for a term of years fixed by the prescribed scheme, or, where no term is so fixed, for a term of years fixed by the council when first imposing the charge.

(b)

(b) The amount of the charge so imposed shall be included, and the term of years so fixed shall be stated, in the rate notice in respect of the land in respect of which it is imposed.

(c) The charge so imposed may be recovered as a rate and shall be a charge upon the land in respect of which it is imposed as if it were a rate.

(4) The amount of the betterment charge shall be subject to any special provisions or agreements relating thereto included in the prescribed scheme, and the inclusion of any such provision or agreement in a scheme is hereby authorised.

DIVISION 11.—*Powers of Minister in case of failure of councils to prepare or carry into effect or enforce schemes.*

Powers of Minister in case of default by councils.

342AH. (1) In any case—

(a) where a resolution to prepare a scheme has taken effect but the council or councils concerned have not prepared the scheme within the period or extended period fixed under section 342C of this Act; or

(b) where the Minister under section 342D of this Act has directed a council or two or more councils acting together to prepare a scheme and the Minister is satisfied after due inquiry that the council or councils concerned have not effectively complied with the direction; or

(c) where the Minister is satisfied after due inquiry that the responsible authority is not effectively carrying into effect or enforcing a prescribed scheme or any provision thereof,

the

the Minister may, after notifying the council or councils concerned of his intention so to do—

(i) prepare or carry into effect or enforce the scheme or provision thereof as the case may be; or

(ii) direct the Advisory Committee to prepare or carry into effect or enforce the scheme or provision thereof as the case may be.

(2) (a) For the purposes of this section, the Minister and the Advisory Committee shall have and may exercise and perform and enjoy in and in relation to the land to which the resolution applies or the direction relates or the prescribed scheme applies, as the case may be, the powers, authorities, duties, functions, discretions and immunities of the council or councils within whose area or areas such land is situated except such powers, authorities, duties, functions, discretions and immunities as may be prescribed and while so doing shall be deemed to be such council or councils.

(b) (i) It shall be the duty of the council and of every officer and servant of the council to furnish such information as the Minister or the Advisory Committee may require for the purposes aforesaid.

(ii) Any person authorised in that behalf by the Minister or the Advisory Committee, as the case may be, shall for such purposes have liberty at all reasonable times to inspect any document, plan, map, or record of the council; and the servant or other person for the time being having the custody thereof shall not refuse or prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(3) Any expenditure of the Minister or the Advisory Committee incurred in pursuance of this section shall be defrayed in the first instance from moneys provided by Parliament or from moneys made available to the State

State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose, but the amount thereof (less any remissions allowed by the Minister, which remissions the Minister, with the approval of the Treasurer, is hereby authorised to allow) shall be repaid by the council concerned on demand to the Treasurer, and where more than one council is concerned, in such proportions as may be determined by the Minister.

(4) The Treasurer may recover as a debt any sums repayable by the council in accordance with subsection three of this section.

(5) The amount of any liability to the Treasurer incurred under this section may be paid out of the appropriate fund of the council concerned, and may be borrowed by way of ordinary loan under this Act, or as a loan for essential purposes in accordance with the provisions of the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may require.

DIVISION 12.—*Town and Country Planning Advisory Committee.*

342AI. (1) There shall be a Town and Country Planning Advisory Committee, which shall have and may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon the Advisory Committee by or under this Act. Constitution of Advisory Committee.

(2) (a) The Advisory Committee so constituted shall consist of seven members who shall be appointed by the Governor.

Of the members so appointed—

(i) one shall be an officer of a council and shall be appointed from a panel of four such officers nominated jointly as prescribed by the governing bodies of the Local

Local Government Association of New South Wales and the Shires Association of New South Wales;

(ii) one shall be an engineer and shall be appointed from a panel of four members of the Institution of Engineers, Australia (Sydney Division) nominated as prescribed by the governing body of that Division;

(iii) one shall be a registered architect and shall be appointed from a panel of four members of the Royal Australian Institute of Architects (New South Wales Chapter), nominated by the Council of that Chapter;

(iv) one shall be a registered surveyor and shall be appointed from a panel of four members of the Institution of Surveyors (New South Wales) nominated by the governing body of that Institution;

(v) one shall be an officer of the Department of Local Government, and shall be nominated for appointment by the person for the time being holding the office of or duly acting as Under Secretary of that Department;

(vi) two shall be persons who shall be appointed on the nomination of the Minister.

(b) The Governor may appoint one of the members to be the chairman of the Advisory Committee and one other member to be the vice-chairman of the Advisory Committee.

(c) No person shall be eligible for appointment as a member of the Advisory Committee unless the Minister is satisfied that he has adequate knowledge or experience of the principles or practice of town planning or country planning.

(3) (a) The Governor may from time to time appoint a deputy to act in the place of any member.

The deputy so appointed to act in the place of the member referred to in subparagraph (i), subparagraph (ii), subparagraph (iii) or subparagraph (iv) of paragraph (a) of subsection two of this section shall be a person whose name is on the same panel as the member for whom he is appointed deputy.

The deputy so appointed to act in the place of the member referred to in subparagraph (v) of the same paragraph shall be appointed on the nomination of the person for the time being holding the office of or duly acting as Under Secretary of the Department of Local Government.

The deputy so appointed to act in the place of either of the members referred to in subparagraph (vi) of the same paragraph shall be appointed on the nomination of the Minister.

(b) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a deputy to act in the place of a member; and all acts and things done or omitted to be done by a deputy when so acting as aforesaid shall have the same consequences as if the same had been done or omitted by the member in whose place the deputy is acting.

(4) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of a member of the Advisory Committee, or of a deputy member, and a member or deputy member shall not, in his capacity as such member or deputy member, be subject to the provisions of the Public Service Act, 1902, or any Act amending that Act.

(5) (a) Each member of the Advisory Committee shall, subject to this section, hold office for a term of five years from the date of his

his appointment or such shorter term as may be specified by the Governor in the instrument of appointment, and shall if otherwise qualified be eligible for reappointment upon the expiration of his term of office: Provided that a person appointed to fill the vacant office of a member shall hold office only for the residue of his predecessor's term of office, but shall if otherwise qualified be eligible for reappointment.

(b) A member or deputy member shall be deemed to have vacated his office if he—

(i) dies;

(ii) resigns his office in writing under his hand addressed to the Governor;

(iii) being one of the members referred to in subparagraphs (i) to (v) both inclusive of paragraph (a) of subsection two of this section, ceases to hold the qualification by virtue of which he was appointed; or

(iv) is removed from office by the Governor.

(c) The Governor may, for any cause which appears to him sufficient, remove any member or deputy member from office.

(6) (a) Every panel constituted under subsection two of this section shall be constituted in the manner and within the time prescribed, and the nominations for the panel shall be accompanied by the written consent of each person whose name is included in the panel to serve on the Advisory Committee if appointed.

(b) If within the time prescribed a valid nomination of a panel has not been made by the authority or authorities entitled to nominate such panel, the Governor may constitute a panel consisting of persons having the appropriate qualification, and may appoint any person whose name is included in the panel so constituted to be a member or deputy member, as the case may be, of the Advisory Committee.

(7) No act or proceeding of the Advisory Committee shall be invalidated or prejudiced by reason only of the fact that at the time such act or proceeding was done or taken or commenced there was a vacancy in the office of any one or more members.

(8) The procedure for the calling of meetings of the Advisory Committee, and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by the Advisory Committee.

(9) Four members of the Advisory Committee shall form a quorum and any duly convened meeting of the Advisory Committee at which a quorum is present shall be competent to transact any business of the Advisory Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Advisory Committee.

(10) (a) At any meeting of the Advisory Committee the chairman, or in his absence the vice-chairman, shall preside.

(b) If the chairman and vice-chairman are both absent from any meeting the members present may elect one of their number to preside at the meeting; and the member so elected while so presiding shall have the powers, authorities, duties and functions of the chairman.

(c) If there is an equality of votes in such an election it shall be decided by lot which of the members having an equal number of votes shall preside.

(11) (a) At any meeting of the Advisory Committee the decision of a majority of the members present shall be the decision of the Advisory Committee.

(b) The chairman or the vice-chairman or member presiding shall have a deliberative vote and, where the members present

present at any meeting are equally divided in opinion upon any matter, shall have a second or casting vote.

(12) The office of member or deputy member of the Advisory Committee shall not, for the purpose of any Act, be deemed to be an office or place of profit under the Crown.

Remuneration of members.

342AJ. (1) The chairman, vice-chairman and members of the Advisory Committee and any deputy member, whilst acting in the place of a member, shall be entitled to receive such remuneration (whether by way of fees or allowance or otherwise) and such travelling and out-of-pocket expenses as may from time to time be fixed by the Governor.

(2) Where the chairman or vice-chairman or any member or deputy member of the Advisory Committee is an officer of the Public Service or of a statutory body representing the Crown he shall, notwithstanding the provisions of any Act or of any rule or regulation made under any Act, be entitled to receive remuneration under this section, in addition to any remuneration to which he is otherwise entitled.

Annual report.

342AK. (1) The Advisory Committee shall, not later than the thirtieth day of September in each year, cause a report of its work during the year ended on the thirtieth day of June then next preceding to be prepared and forwarded to the Minister for presentation to Parliament.

(2) The report shall contain such information as may be prescribed or, if not so prescribed, as may be directed by the Minister.

DIVISION 13.—*Functions of the Advisory Committee.*

Functions of Advisory Committee.

342AL. (1) (a) The Advisory Committee shall consider and furnish reports to and advise the Minister upon any matter or proposal relating to town planning or country planning which may be referred to the Advisory Committee by the

the Minister and on such other matters relating to town planning or country planning as may be prescribed.

(b) The Advisory Committee may, of its own motion, submit for the consideration of the Minister any proposal in connection with any matter relating to town planning or country planning.

(c) The Advisory Committee may advise any council considering a town planning or country planning scheme or a proposal for such a scheme upon any matter relating thereto, subject to such conditions (if any) as may be prescribed.

(d) Where in the opinion of the Advisory Committee it is necessary or desirable so to do for any of the purposes of this Part, such Committee may conduct an investigation or inquiry.

(2) For the purposes of conducting any investigation or inquiry under this Part the members of the Advisory Committee and the chairman thereof or the vice-chairman or member presiding shall have the powers, authorities, protections and immunities conferred on commissioners and the chairman of a commission respectively by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts, and the provisions of that Act, as so amended, with the exception of section thirteen, and of Division 2 of Part II, and the provisions of section one hundred and fifty-two of the Justices Act, 1902-1940, shall, mutatis mutandis, apply to and in respect of any such investigation or inquiry and any witness or person summoned by or appearing before the Advisory Committee.

(3) (a) (i) It shall be the duty of each council and of every officer and servant of a council and of every committee appointed by a council under this Part and of every member of any

any such committee to furnish such information as the Advisory Committee may require for any purpose of or connected with the exercise or discharge of its powers, authorities, duties and functions under this Part.

(ii) Any person authorised in that behalf by the Advisory Committee shall for such purposes have liberty at all reasonable times to inspect any document, plan, map or record of the council or of any committee appointed by the council under this Part; and the servant or other person for the time being having the custody thereof shall not refuse or prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(b) It shall be the duty of every Government department, statutory body, authority and person to furnish such information as the Advisory Committee may require for any purpose of or connected with the exercise or discharge of its powers, authorities, duties and functions under this Part.

Certain approvals to be given only after report of Advisory Committee.

342AM. Where by this Act the approval of the Governor or the Minister may be or is required to be given to any matter or proposal relating to a town planning or country planning scheme, such approval shall not be given unless and until the Advisory Committee has made a report to the Minister thereon.

DIVISION 14.—*Finance.*

Advances.

342AN. (1) (a) The Minister may, with the approval of the Treasurer, from moneys provided by Parliament for the purpose, or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose, make advances to councils for

or in connection with the exercise or discharge of their powers, authorities, duties or functions under or in pursuance of this Part.

(b) In any case where the Minister so requires the council shall enter into an agreement securing the repayment of the advance by yearly or half-yearly instalments with interest at such rate as the Minister, with the approval of the Treasurer, may determine.

(c) If any such instalment is not paid on the due date there shall be added thereto a sum equal to ten per centum thereof, and such instalment, together with such additional sum, may be recovered by the Minister as a debt: Provided that the Minister may, with the approval of the Treasurer, on cause shown, remit part or the whole of such instalment or additional sum.

(2) (a) The Minister may, with the approval of the Treasurer, enter into an agreement with a council to pay to the council, in each year during such period as may be specified in the agreement, the sum or sums ascertained from time to time upon such basis or upon such considerations as the Minister may determine, for or towards meeting the liability of the council in respect of any borrowing for any purpose of this Part or in respect of any loan or loans raised by a council for the purpose of repaying or renewing the whole or any part of the original loan or of any renewal loan in respect thereof.

The agreement may include such terms, conditions or provisions not inconsistent with this Part as the Minister may determine and may, if the Minister so determines, provide for the repayment, in instalments or otherwise, of the sums paid to the council thereunder.

(b) Such sums as, from time to time, become due and payable by the Minister under any agreement authorised by this subsection shall be paid from moneys provided by

Parliament for the purpose or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose.

Estimates.

342AO. The council shall, once in each year, within the time and in the manner prescribed, prepare and furnish to the Minister estimates of income and expenditure in relation to the exercise or discharge of its powers, authorities, duties and functions in relation to town or country planning.

Loans.

342AP. The council may borrow by way of ordinary loan (or loan for essential services, in the case of the Municipal Council of Sydney) for any of the purposes of this Part.

Town and Country Planning Fund.

342AQ. (1) The council (other than the Municipal Council of Sydney) shall create a separate fund subsidiary to the general fund to be known as the Town and Country Planning Fund, and the Municipal Council of Sydney shall open a separate account within the City Fund to be known as the Town Planning Account.

Such separate fund or separate account, as the case may be, shall consist of the following assets:—

(a) all moneys received or receivable in respect of any of the purposes of this Part;

(b) all moneys borrowed in respect of any of the purposes of this Part;

(c) the proceeds of any rate levied in respect of such borrowings;

(d) the proceeds of any betterment charge imposed in pursuance of this Part;

(e) all moneys transferred from any other fund of the council to the general fund in accordance with this Act in respect of any of the purposes of this Part;

(f) all moneys transferred from any other account in the general fund or City Fund, as the case may be, in respect of any of the purposes of this Part.

(2) Such separate fund or separate account, as the case may be, may be applied to any of the following purposes:—

(a) any of the purposes of this Part;

(b) transfers to any reserve or sinking fund for loan repayment in respect of moneys borrowed in respect of any of the purposes of this Part;

(c) payment of principal, interest and expenses in respect of moneys borrowed as aforesaid;

(d) any purpose of this Act or the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may be, related or incidental or ancillary to town planning or country planning;

(e) any purpose authorised by or under this Part for the application of the fund.

DIVISION 15.—*Miscellaneous.*

Appointment of officers and employees.

342AR. (1) The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint such officers and employees as may be necessary for the administration of this Part.

(2) For the purpose of exercising and discharging the powers, authorities, duties and functions conferred and imposed on the Advisory Committee by or under this Part the Advisory Committee may, with the approval

of

of the Minister for the time being charged with the administration of this Act and of the Minister of the department concerned and the Public Service Board, on such terms as may be arranged, make use of the services of any of the officers or employees of the Public Service, or with the approval of the Minister for the time being charged with the administration of this Act and of the statutory body concerned, on such terms as may be arranged, make use of the services of any officer, employee or servant of the statutory body.

Certificates of compliance.

342AS. (1) Any person may apply to the council for a certificate under this section with respect to any land within the area of the council.

(2) The council may issue a certificate that on the date specified in the certificate any land within its area is or is not land to which a prescribed scheme or a scheme in course of preparation or a resolution applies or a direction to prepare a scheme relates.

(3) Ordinances may be made authorising the council to issue certificates under this section with respect to such matters as may be prescribed.

In particular and without prejudice to the generality of the foregoing provisions of this subsection an ordinance may authorise the council to issue a certificate setting forth that—

(a) any permission or authority which the council is required or permitted to give, modify or revoke by or under this Part or a prescribed scheme was on a specified day given, modified or revoked;

(b) any instrument or plan does not on the date specified in the certificate contravene the provisions of a prescribed scheme.

(4)

(4) For the purpose of any proceedings for an offence under this Part taken against a person who has obtained a certificate under this section, such certificate shall, in favour of such person, be conclusively presumed to be true and correct.

(5) For the purposes of the registration of any plan or instrument intended to affect or evidence the title to any land a certificate given under this section shall, in favour of the person to whom the certificate is so given and of the Registrar-General, the Crown Solicitor or other person registering or certifying title, be conclusively presumed to be true and correct.

DIVISION 16.—*Ordinances.*

Ordinances.

342AT. (1) Ordinances may be made for carrying this Part into effect.

(2) In particular and without prejudice to the generality of subsection one of this section, ordinances may be made for and with respect to—

(a) the manner of preparing and the details to be specified in maps, plans, specifications and the like and in estimates of cost of schemes;

(b) the making of provisional agreements between the council and the owners and lessees of land affected by a scheme, and with public authorities or statutory bodies in relation to a scheme;

(c) requiring councils, statutory bodies, companies, firms or persons carrying on business or exercising rights by virtue of any Act to assist any council which is engaged in the preparation of a scheme by the supply of information, plans and statistics and by the granting of facilities for inspection and investigation;

(d)

(d) the form, time, manner and mode of giving notices and advertisements;

(e) any matter necessary or convenient to be prescribed for or in relation to the carrying into effect or enforcing the observance of prescribed schemes;

(f) requiring councils to keep registers of permits, authorities and the like granted under this Part;

(g) the payment of travelling and out-of-pocket expenses of members of any committee (other than the Advisory Committee) appointed under this Part;

(h) (i) prescribing the conditions upon which certificates of qualification in town planning or country planning may be issued to persons who apply therefor and the amount of any fees which may be charged in that connection;

(ii) prescribing the manner and circumstances in and under which such certificates may be suspended or cancelled;

(iii) providing for and prescribing the manner of keeping a register of the names of persons who are for the time being lawful holders of such certificates.

(3) An ordinance may prescribe the qualifications for membership of any committee (other than the Advisory Committee) appointed under this Part and may make provision for the appointment, as members of any committee, of representatives of bodies concerned in industrial or commercial pursuits, or in research, or in the promotion of community activities or amenities.

4. The Principal Act is further amended— Further amendment of Act No. 41, 1919.

(a) by inserting at the end of section three hundred and thirty-two the following word and new paragraph:— Sec. 332. (Subjects for consideration—new roads.)

and

(k) the provisions of any town planning or country planning scheme;

(b) by inserting next after paragraph (i) of section three hundred and thirty-three the following word and new paragraph:— Sec. 333. (Subjects for consideration—subdivisions.)

and

(j) the provisions of any town planning or country planning scheme.

PART III.

Amendments of Sydney Corporation Act, 1932, as amended by subsequent Acts.

5. The Sydney Corporation Act, 1932, as amended by subsequent Acts, is amended— Amendment of Act No. 58, 1932.

(a) by inserting at the end of section three hundred and three the following word and new paragraph:— Sec. 303. (Subjects for consideration—new public ways.)

and

(j) the provisions of any town planning or country planning scheme in course of preparation or prescribed under the Local Government Act, 1919, as amended by subsequent Acts;

(b) by inserting at the end of section three hundred and four the following word and new paragraph:— Sec. 304 (Subjects for consideration—subdivisions.)

and

(i) the provisions of any town planning or country planning scheme in course of preparation or prescribed under the Local Government Act, 1919, as amended by subsequent Acts.

[3*s*. 9*d*.] Sydney: Thomas Henry Tennant, Government Printer—1945.

No. , 1945.

A BILL

To make better provision for and in relation to town planning and country planning; for this purpose to amend the Local Government Act, 1919, and certain other Acts; and for purposes connected therewith.

[Mr. Cahill;—8 *February*, 1945.]

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.

1. (1) This Act may be cited as the "Local Government (Town and Country Planning) Amendment Act, 1945." Short title.

(2) The Local Government Act, 1919, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

2. This Act is divided into Parts as follows:— Division into Parts.

PART I.—PRELIMINARY—*ss.* 1, 2.

PART II.—AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS—*ss.* 3, 4.

PART III.—AMENDMENTS OF SYDNEY CORPORATION ACT, 1932, AS AMENDED BY SUBSEQUENT ACTS—*s.* 5.

PART II.

AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS.

3. The Principal Act is amended— Amendment of Act No. 41, 1919.

(a) by inserting in section three next after the matter relating to Part XII, the words and symbols "Part XIIA—TOWN AND COUNTRY PLANNING SCHEMES—*ss.* 342A-342AT"; Sec. 3 (Division into Parts.)

(b) by inserting next after section three hundred and forty-two the following new Part:— New Part XIIA.

PART XIIA.

TOWN AND COUNTRY PLANNING SCHEMES.

DIVISION 1.—*Application of Part.*

342A. (1) Subject to the provisions of this Act— Application of Part XIIA.

(a) this Part shall apply to municipalities and shires, and to the city of Sydney;

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

(2)

(2) In the application of any provision of this Part to or in respect of the city of Sydney—

(a) a reference in that provision to an "area" shall be construed as a reference to the city of Sydney;

(b) a reference in that provision to a "council" shall be construed as a reference to the Municipal Council of Sydney;

(c) a reference in that provision to a "road" or a "public road" shall be construed as a reference to a public way within the meaning of the Sydney Corporation Act, 1932, as amended by subsequent Acts;

(d) a reference expressed or implied in that provision to an ordinance shall be conconstrued as a reference to by-laws made or deemed to have been made under the Sydney Corporation Act, 1932, as amended by subsequent Acts.

Definitions.

342B. In this Part unless the context or subject matter otherwise indicates or requires—

"Advisory Committee" means the Town and Country Planning Advisory Committee constituted under this Part.

"Building" includes any structure or any part thereof.

"Council" includes county council.

"Erection," "erect" and similar expressions in relation to building include any structural work or any alteration, addition or rebuilding.

"Land" means either land in fee simple or any easement, right, or privilege, in, over, or affecting, land and includes all lands of the Crown.

DIVISION 2.—*Preparation of schemes.*

Preparation of schemes.

342c. (1) (a) A council may, by resolution, decide to prepare a scheme with respect to any land within its area.

(b) Two or more councils may by resolution of the respective councils decide to join in preparing a scheme with respect to any land within their areas, and in such a case shall enter into an agreement for the purpose. The provisions of section five hundred and twenty-one of this Act shall extend to and in respect of such agreement.

(c) Any such resolution may specify the particular purposes or objects for or with respect to which the scheme shall be prepared and the scheme shall be prepared accordingly.

(2) (a) A resolution passed under sub-section one of this section shall not take effect unless and until it is approved by the Minister and notice of such approval is published in the Gazette. Application for such approval shall be made as prescribed, and shall be accompanied by the prescribed particulars.

(b) In giving his approval the Minister may fix the period of time within which the scheme shall be prepared, and the scheme shall be prepared accordingly: Provided that the Minister may, from time to time, upon the application of the council or councils concerned, extend such period if it appears to him to be expedient so to do.

(3) Where a resolution to prepare a scheme has taken effect, the council or councils concerned shall, within the prescribed period, give notice of the resolution as prescribed.

Such notice shall contain a concise statement of the effect of the resolution, together with information as to the place and times at which a plan defining the land to which the resolution applies may be inspected.

(4)

(4) Where a resolution to prepare a scheme has taken effect the council or councils concerned may prepare one scheme with respect to the whole of the land to which the resolution applies or may prepare different schemes for different parts of the land.

Direction to council to prepare a scheme.

342D. (1) The Minister may from time to time by notice in writing direct any council to prepare a scheme with respect to any land within its area or direct two or more councils to act together in preparing a scheme with respect to any land in their areas, and the council or councils concerned shall comply with the direction.

(2) A direction under subsection one of this section may—

(a) specify the particular purposes or objects for or with respect to which the scheme shall be prepared;

(b) fix the period of time within which the scheme shall be prepared;

and the scheme shall be prepared accordingly: Provided that the Minister may, from time to time, upon the application of the council or councils concerned, extend such period if it appears to him to be expedient so to do.

(3) Where a direction is given under subsection one of this section the Minister shall publish a notice of that fact in the Gazette and in a newspaper circulating in the locality in which the land to which the direction relates is situated.

Such notice shall contain a concise statement of the effect of the direction, together with information as to the place and times at which a plan defining the land to which the direction relates may be inspected.

Appointment of planning committee.

342E. (1) Where a resolution under subsection one of section 342C of this Act has taken effect or a direction has been given by the Minister under subsection one of section 342D of this Act the council or councils concerned shall appoint a planning committee, which shall be constituted as prescribed, to prepare a scheme and shall also appoint or employ some person who possesses the prescribed qualifications in town planning or country planning to assist in the preparation of the scheme.

(2) The procedure for the calling of meetings of the planning committee and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by that committee.

(3) The Minister may arrange for the services of any officer or employee of the Crown who is skilled in any matter relating to town planning or country planning to be made available to assist the council or councils concerned under such conditions, including conditions for payment of remuneration, as may be agreed upon with the council or councils.

(4) The council or councils concerned may arrange, through the Minister, for the making or preparation by any officer or employee of the Crown of any survey or plan required for or in connection with the preparation of the scheme.

(5) The planning committee in preparing a scheme may accept, with or without modifications, a scheme proposed with respect to the whole or part of the land to which the resolution of the council or councils applies or the direction of the Minister relates, by or on behalf of all or any of the owners of that land.

Notice of scheme.

342F. (1) The scheme prepared by the planning committee shall be submitted to the council or councils concerned.

(2)

(2) The council or councils concerned—

(a) shall give notice as prescribed that the scheme has been submitted and shall in such notice—

(i) specify the address of the place or places at which copies of all maps, plans, specifications and other particulars relating to the scheme may be inspected;

(ii) specify the address of the council or councils concerned to which representations in connection with the scheme may be forwarded;

(b) shall forward particulars and a map or plan indicating in general terms the extent or nature of the scheme to all Departments of the Crown in right of the State or of the Commonwealth, all statutory bodies representing the Crown and all councils which appear to it or them to be affected by the scheme.

(3) Any person interested in any land affected by the scheme and any such Department, statutory body or council may, within a period of three months after the publication of notice of the scheme (or where the notice is published more than once, within a period of three months after the first publication thereof), make representations to the council or councils concerned in connection with the scheme.

(4) The council or councils concerned shall consider all representations made under this section and where any alteration of the scheme is considered necessary may refer the scheme back to the planning committee for alteration and resubmission.

(5)

(5) The council or councils concerned may adopt the scheme so submitted or resubmitted as the case may be.

Contents of scheme.

342G. (1) A scheme shall in the prescribed manner define the land to which it applies.

(2) A scheme may contain provisions for regulating and controlling the use of land and the purposes for which land may be used.

(3) Without prejudice to the generality of subsection two of this section a scheme may contain provisions for or in relation to all or any of the following matters, that is to say—

(a) the situation, opening, widening, deviating, classifying, and providing of roads;

(b) the restriction of ribbon development of land fronting adjoining or adjacent to a road by regulating all or any of the following matters, that is to say, the construction, forming or laying out of any means of access to or from the road, the erecting or making on the land of any building or permanent excavation which is within a specified distance from the road, or restricting or prohibiting the erection of any building intended for use for any purpose which is likely to cause increased vehicular traffic along the road, or traffic congestion on the road.

In this paragraph "building" includes neither fences, gates, posts, masts, ornaments or other similar structures or erections required for the purposes of farming or grazing or of any dwelling house or garden occupied with a dwelling house nor greenhouses or summerhouses required in connection with any such garden, nor temporary tents or scaffolding required

for

for any purpose, but save as aforesaid includes any structure or erection of whatsoever material and in whatsoever manner constructed and any part of a building;

(c) the minimum standards of construction of roads of different classes and of drains, culverts and bridges in or upon roads;

(d) the provision of water, gas, electricity and other public services;

(e) the reservation of sites for places of religious worship, the residences of ministers of religion and buildings for religious purposes;

(f) the reservation of sites for educational and hospital establishments and community centres for promotion of physical, mental, moral and cultural welfare;

(g) the regulation of building and of matters relating thereto;

(h) the reservation or provision of land for afforestation purposes or for recreation grounds, ornamental gardens, children's playgrounds, green belts, green wedges, and other open spaces;

(i) the planning of localities and the design and protection of buildings and structural elements so as to reduce the risk of fire and limit the spread of fire;

(j) the zoning of land and the prohibition in any zone of the erection, construction, carrying out or use of any structure or work upon the land or the use in any zone of any land for any specified purpose or for any purpose other than a specified purpose;

(k) the extinction or variation of private rights of way and other easements;

(l) the removal, alteration, or demolition of obstructions or obstructive works;

(m) the preservation or acquisition for public access use and enjoyment of the foreshores or banks of the ocean, harbours, rivers, lakes, lagoons, and the like, and the conservation of the natural beauty thereof;

(n) the preservation of places or objects of historical or scientific interest or natural beauty or advantage;

(o) the provision of amenities;

(p) securing the safety of persons and property from hostile attack;

(q) the location of public utility undertakings, shipping facilities, railways, tramways, canals, and sites for air ports, aerodromes, bridges, jetties, wharves and ferries, and works and matters ancillary thereto;

(r) securing co-operation between the council or councils concerned and the Government, or any person or body of persons;

(s) the acquisition of land for any purpose of the scheme;

(t) the apportionment between councils of any costs, expenses and disbursements incurred in carrying into effect and enforcing a scheme, and the recovery from any council of its share or proportion of the same;

(u) the recovery of betterment in accordance with Division 10 of this Part;

(v) any matter necessary or convenient for carrying out the scheme.

(4) A scheme may suspend either generally or in any particular case or class of cases the operation of any provision of this or any other Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or

or instrument by or under whatever authority made, to the extent to which that provision is inconsistent with any of the provisions of the scheme.

(5) (a) A scheme shall contain provisions specifying the responsible authority or responsible authorities which shall be charged with the functions of carrying into effect and enforcing the provisions of the scheme or such of those provisions as relate to any particular portion or portions of the land included in the scheme, or such of those provisions as are directed to particular objects or purposes.

Any responsible authority so specified shall be a council, or two or more councils acting together as prescribed.

(b) A scheme may contain provision for the appointment of a special committee, constituted as prescribed, to assist the responsible authority in carrying into effect and enforcing the scheme.

Such committee may include as members persons who are not members of the council or councils which are the responsible authority.

DIVISION 3.—*Approval of planning schemes.*

Submission of scheme to Minister.

342H. (1) The scheme prepared by the council or councils concerned shall be submitted to the Minister with such maps, plans, specifications, and particulars as may be required by the Minister or as may be prescribed.

(2) The scheme shall be submitted in the form of a draft ordinance.

The scheme may adopt wholly or partially or by reference any of the provisions contained in a set of standard or model provisions adopted by the Minister on the recommendation of the Advisory Committee.

Reference to Advisory Committee.

342I. The Minister shall refer any scheme so submitted to him to the Advisory Committee for report.

Consideration of scheme.

342J. (1) (a) The Minister shall consider the report of the Advisory Committee and he may then decide—

(i) to proceed with the scheme without alteration;

(ii) to proceed with the scheme with such alterations as he deems expedient in the light of such report;

(iii) to refer the scheme back to the council or councils concerned for further consideration;

(iv) not to proceed with the scheme.

(b) Where a scheme has been altered in pursuance of paragraph (a) of this subsection a reference in subsections two, three and four of this section to "the scheme" shall be construed as a reference to the scheme as so altered.

(2) If the Minister decides to proceed with the scheme, he shall notify brief particulars thereof and state in the notification that full particulars of the scheme may be inspected at such places as are designated and that objections against the scheme or any part of it may be made to him in writing, in or to the effect of the prescribed form, on or before the date specified in the notification, by or on behalf of any person who has an estate or interest in land affected by the scheme or by any council, including the council or councils which submitted the scheme to him in any case where the scheme is altered in pursuance of subsection one of this section.

The Minister shall arrange for such particulars to be made available for public inspection at the places so designated.

(3) (a) On or before the date so specified any such person or council may, in the manner prescribed, object to the Minister against the scheme or any part of it and shall state the grounds of the objection.

(b)

(b) As soon as practicable after such date the Minister, after such inquiry as he deems sufficient, shall determine such objections.

(c) Each person or council by or on behalf of whom an objection is lodged shall be informed of the determination of the Minister upon such objection, and the council or councils which submitted the scheme shall also be informed of each such determination.

(4) Where an objection is allowed in part or in whole by the determination of the Minister the scheme shall be amended by the Minister so as to conform with such determination.

(5) Where no objection has been lodged with the Minister in accordance with the provisions of paragraph (a) of subsection three of this section or where the scheme has been amended in accordance with the provisions of subsection four of this section the Minister may recommend the Governor to make an ordinance prescribing the scheme accordingly.

Prescribed scheme.

342K. (1) The Governor, on the recommendation of the Minister made in pursuance of section 342J of this Act, may make an ordinance prescribing the scheme.

A scheme which has been embodied in an ordinance so made is in this Part hereinafter referred to as a "prescribed scheme".

(2) The Minister shall give notice, as prescribed, of the fact that the scheme has come into operation and that copies of the ordinance prescribing the scheme and of any maps, plans, specifications or other particulars referred to therein will be available for public inspection.

(3) (a) All maps, plans, specifications, or other particulars referred to in such ordinance shall be filed at the Department of Local Government, Sydney, and any reference in the ordinance to maps, plans, specifications, or other

other particulars shall be deemed a reference to the maps, plans, specifications or other particulars so filed.

(b) Copies of the documents so filed—

(i) shall be made available at the Department of Local Government for public inspection upon payment of the prescribed fee;

(ii) shall be lodged with the Registrar-General and with the responsible authority and with the council of each area adjoining the land included in the prescribed scheme who shall file them for reference.

(c) Copies of the ordinance and of the maps, plans, specifications or other particulars shall be made available by the responsible authority during ordinary office hours for public inspection without fee.

DIVISION 4.—*Variation of prescribed schemes.*

Variation of prescribed scheme.

342L. A prescribed scheme may be varied by a subsequent scheme.

Any such variation may supplement or amend (otherwise than by extension of the land to which the scheme applies) the prescribed scheme.

DIVISION 5.—*Revocation of prescribed schemes.*

Revocation of prescribed schemes.

342M. The Minister may, after consideration of a report by the Advisory Committee, recommend the Governor to revoke a prescribed scheme, and the Governor may thereupon make an ordinance rescinding the ordinance by which the scheme was prescribed.

DIVISION 6.—*Carrying into effect and enforcing prescribed schemes.*

Powers, etc. of responsible authority.

342N. (1) The responsible authority specified in a prescribed scheme shall have and may exercise and discharge all the powers, authorities, duties

duties and functions conferred and imposed on the responsible authority by the prescribed scheme.

(2) Where a prescribed scheme provides expressly or impliedly that any act, matter or thing specified in the scheme shall or shall not be done except with the approval, consent or permission of the council which is the responsible authority, any person who is dissatisfied with the decision of the council upon an application for such approval, consent or permission or with any condition imposed by the council, may appeal against such decision or the imposition of such condition in accordance with the provisions of section three hundred and forty-one of this Act, and the provisions of that section shall extend, mutatis mutandis, to and in respect of any such appeal.

Carrying prescribed schemes into effect.

342o. The responsible authority may carry into effect the provisions of the prescribed scheme—

(a) by the acquisition of land and subsequent action in pursuance of the prescribed scheme;

(b) by causing any aligned public road to be realigned under the Public Roads Act, 1902, as amended by subsequent Acts, in order to widen the road and by applying the realignment method of acquisition, and by subsequent action in pursuance of the prescribed scheme;

(c) by taking such action as may be necessary to enforce the performance of any duty imposed by the prescribed scheme upon any owner or lessee, or public body or authority, including the State Government, or any statutory body or any council or person;

(d)

(d) by enforcing any agreement incorporated in the prescribed scheme, or made subsequent to the prescribed scheme, and relating to any matter dealt with in or arising out of the prescribed scheme;

(e) by exercising, in accordance with the prescribed scheme, its powers under this Act or, in the city of Sydney, the Sydney Corporation Act, 1932, as amended by subsequent Acts, to regulate the opening of any new roads, the subdivision of land, the erection of buildings or any other matter appropriate to the prescribed scheme;

(f) by any other method specifically provided for in the prescribed scheme;

(g) by the exercise of any power conferred upon the council which is the responsible authority by or under this or any other Act; or

(h) by any combination of two or more of these methods.

Enforcement of prescribed schemes.

342P. (1) The responsible authority, subject to the provisions of any prescribed scheme, may, after giving the prescribed notice—

(a) remove, pull down or alter, so as to bring into conformity with the provisions of the prescribed scheme, any building or other work which does not conform to those provisions or in the erection or carrying out of which any provision of the prescribed scheme has not been complied with or the demolition or alteration of which is necessary for carrying the prescribed scheme into effect; or

(b) where any land is being used in such a manner as to contravene any provision of the prescribed scheme, prohibit such use of the land; or

(c)

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

(2) Where any action by the responsible authority under subsection one of this section is made necessary by the default or wrongful act of any person, the responsible authority may recover any expenses thereby incurred from such person as a debt in any court of competent jurisdiction.

Delegation of powers.

342Q. (1) Where a prescribed scheme contains provision for the appointment of a special committee to assist the responsible authority in carrying into effect and enforcing the prescribed scheme, the responsible authority may delegate to such committee any of its powers, authorities, duties and functions in relation to such scheme, except such powers, authorities, duties or functions as may be prescribed from time to time.

(2) Any special committee to which any powers, authorities, duties or functions are delegated as aforesaid may, without confirmation by the responsible authority, exercise, perform, or carry out the same in like manner and with the same effect as the responsible authority could itself have exercised and performed the same.

(3) Any special committee shall be subject in all things to the responsible authority, and shall carry out all directions, general or special, of that authority given in relation to such committee or its affairs.

(4) The procedure for the calling of meetings of the special committee and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by that committee. (5)

(5) The responsible authority may appoint a member of the special committee to be the chairman thereof; and if no such appointment is made, the committee may make the appointment. The responsible authority may from time to time remove such chairman and appoint another in his stead.

Notices relaxing temporary prohibition or restriction of building.

cf. 22 and 23 Geo. V, c. 48, ss. 15, 16.

342B. Where in a prescribed scheme the erection of buildings on any land is prohibited or restricted until such time as the responsible authority has given notice as provided in this section the following provisions shall have effect:—

(a) The responsible authority may, from time to time, by notice given as prescribed, in respect of the whole or any part of the land on which the erection of buildings is so prohibited or restricted, permit the erection of buildings, subject to such conditions (if any) as may be specified in the notice.

(b) No such notice shall be given unless and until the provisions thereof have been approved by the Minister.

(c) Any notice so given may be amended or revoked by a subsequent notice but, so long and in so far as it continues to be operative, shall be deemed to form part of the scheme to which it relates.

Where any such notice has been so amended, the notice as amended shall be the notice under this section.

Where any such notice has been revoked the prohibitions or restrictions set out in the prescribed scheme shall revive as from the date of such revocation.

(d) Without prejudice to the foregoing provisions of this section, it shall be the duty of the responsible authority within

within a period of three months from the expiration of every third year after the coming into operation of the prescribed scheme to consider the question of giving such a notice in respect of all or any of the land the erection of buildings upon which remains subject to the aforesaid prohibitions or restrictions.

Any person dissatisfied with the failure of the responsible authority to give such a notice within such period of three months in respect of land in which he has an estate or interest may appeal to the Minister within two months after the expiration of such period of three months, and the Minister on any such appeal may, if he thinks fit, give such a notice, and a notice so given by him shall have effect as if it were a notice given by the responsible authority and approved by the Minister.

(e) Any person who, pending the giving of a notice under this section, desires to commence the erection of a building the erection of which would contravene the aforesaid prohibitions or restrictions may, in accordance with such provisions, if any, as may be contained in the prescribed scheme, apply to the responsible authority for permission to erect the building specified in the application.

(f) The responsible authority shall, in deciding any such application, have regard to any injury likely to be caused to the applicant by the refusal of the application, as well as to any public advantage likely to result from the maintenance of the aforesaid prohibitions or restrictions, pending the giving of

of such a notice, and may, if it is satisfied that the proposed erection of the building will not contravene any permanent provisions of the prescribed scheme, grant the application unconditionally, or subject to such conditions as it may think proper to impose:

Provided that, where the responsible authority has power under this section to grant an application, it shall not refuse that application unless it is satisfied that other land suitable for the erection of such building as is specified in the application is available on reasonable terms and either—

(i) that the erection of such building would involve danger or injury to health by reason of the lack of roads, drains, sewers, water supply, or any public services and that the provision of the necessary services would be premature or likely to involve excessive expenditure of public money; or

(ii) that the erection of the building would be likely seriously to injure the amenity of the locality.

(g) Any person dissatisfied with the refusal of any such application, or by any conditions imposed by the responsible authority, may within twenty-eight days from the date on which he received notice of the decision of the responsible authority or such longer period as the Minister may allow, appeal to the Minister, and the Minister may dismiss or allow the appeal, either unconditionally, or subject to such conditions as he thinks proper to impose.

The

The decision of the Minister on an appeal under this paragraph shall be final and shall have effect as if it were the decision of the responsible authority.

DIVISION 7.—*Interim development.*

Commencement of Division.

342s. This Division shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Definitions.

342T. (1) In this Division—

"Council" includes two or more councils acting together in the preparation of a scheme.

"Development" in relation to any land includes the erection of any building, and the carrying out of any work, and any use of the land or building or work thereon for a purpose which is different from the purpose for which the land or building or work was last being used.

"Interim development" means development of land to which a scheme applies between the date upon which a resolution of the council or two or more councils acting together to prepare a scheme has taken effect or the date upon which notice of the fact that the Minister has directed the council or two or more councils to act together to prepare a scheme was published in the Gazette, and the date of the coming into operation of the scheme.

"Interim development application" means application for the permission of the council for the interim development of land.

(2) The provisions of this Division shall not apply in any case where the scheme for the preparation of which a resolution has taken

taken effect or a direction has been given by the Minister is a scheme varying a prescribed scheme.

Restriction of interim development.

342U. (1) Interim development shall not be carried out—

(a) except as may be permitted by ordinance; or

(b) except as may be permitted by the council under the authority of an ordinance and subject to such conditions, restrictions and provisions as may be contained in such ordinance.

(2) Ordinances may be made suspending either generally or in any particular case or class of cases the operation of any provision of this or any other Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made, to the extent to which that provision is inconsistent with any interim development permitted under this Division.

Permission for interim development.

342V. (1) Subject to the provisions of any such ordinance the council may, where an interim development application is made, grant the application unconditionally or subject to such conditions as it may think proper to impose or refuse to grant such application if it appears to the council that such development would be in contravention of the scheme if it had come into operation or would be in contravention of town planning or country planning principles or would interfere with the amenities of the neighbourhood, and the council shall be deemed to have refused the application unless within two months from the receipt of the application it gives notice to the applicant—

(a) that it has decided the application (and stating the reason for the refusal or for the imposition of conditions upon approval of the application); or

(b)

(b) that the application has been referred to the Minister for decision in accordance with the provisions of subsection three of this section; or

(c) that consideration of the application has been postponed in accordance with the provisions of subsection two of this section:

Provided that such period of two months may, at any time before the expiration thereof, be extended by agreement in writing made between the council and the applicant.

(2) The council may by notice served on the applicant postpone the consideration of any such application either generally or during such period as may be specified in the notice; but no such notice shall be so served until the applicant has been given a reasonable opportunity to show to the satisfaction of the council that the proposed development would be carried out immediately if the application were granted and has failed to do so:

Provided that—

(a) the applicant may within one month after the service of such notice appeal against the notice to the Land and Valuation Court or to the court of petty sessions for the district in which the land proposed to be developed is situated and the court, if satisfied that the proposed development would be carried out immediately if the application were granted, shall by order cancel the notice of postponement and in such case the period of two months referred to in subsection one of this section shall be deemed to commence from the date of such order;

(b) if with respect to any interim development application it appears to the Minister that there are exceptional reasons requiring the immediate determination thereof, he may, without prejudice to his power to require the application to be referred to him for decision in accordance with subsection three of this section, give directions requiring the council to determine the application, and, where a notice of postponement has been served with respect thereto, may by order in writing to the council cancel the notice, and in such case the period of two months referred to in subsection one of this section shall be deemed to commence from the date of such order.

(3) (a) If it appears to the Minister that it is expedient, having regard to considerations affecting the public interest, whether generally or in the locality concerned, that any interim development application, or any class or description of such applications, should be referred to him for decision, he may give directions to the council requiring that application, or applications of that class or description, to be so referred, and any decision of the Minister on an application so referred to him shall be deemed to be the decision of the council:

Provided that, before dealing with any application so referred to him, the Minister shall, if either the council or the applicant so desire, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

(b) The Minister may give directions to the council requiring it to furnish him with such information with respect to interim development applications received by it as he

considers

considers necessary or expedient for the purpose of enabling him to exercise his functions under the last preceding paragraph.

(c) Provision may be made by ordinance requiring councils, before dealing with interim development applications, to consult with such authorities or persons as may be prescribed.

(4) In any case where an interim development application is refused or is granted subject to conditions, the council may, if it thinks fit, make a contribution towards any damage or expense which the applicant shows to the satisfaction of the council that he is likely to suffer by reason of the council's decision.

(5) An applicant who is dissatisfied with the refusal of the council to grant his application, or with any conditions imposed by the council, may, within one month from the date on which he received notice of the council's decision, or such longer period as the Minister may allow, appeal to the Minister, and the Minister, after taking into consideration any offer by the council to make a contribution under subsection four of this section, may dismiss the appeal or may allow the appeal either unconditionally or subject to such conditions as he thinks proper to impose, but the Minister, before deciding any such appeal, shall, if either the appellant or the council so desire, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

The decision of the Minister on an appeal under this subsection shall be final and shall have effect as if it were a decision of the council.

(6) Nothing in this section shall be construed as affecting the duty of a council to take into consideration with reasonable despatch

all

all interim development applications made to it, other than applications the consideration of which is postponed or which are referred to the Minister under the provisions of this section.

Revocation or modification of permission for interim development.

342w. (1) If at any time before a scheme comes into operation it appears to the Minister that it is expedient, having regard to the provisions then proposed to be included in that scheme, that any interim development permitted by ordinance under this Division should not be carried out or completed or should not be carried out or completed to the extent or in the manner permitted by the ordinance or that any power given to a council under the authority of an ordinance to grant permission for the carrying out of interim development should not be continued or should be curtailed, the Minister may recommend the Governor to rescind or alter the ordinance, and the Governor may rescind or alter the ordinance accordingly: Provided that before the Minister makes any such recommendation he shall, if either the council or any person who in his opinion will be affected by such alteration so desires, afford them an opportunity of appearing before and being heard by a person appointed by him for the purpose.

(2) (a) If at any time before a scheme comes into operation it appears to the council that it is expedient, having regard to the provisions then proposed to be included in that scheme, that any development for which permission has been granted on an interim development application should not be carried out or completed, or should not be carried out or completed to the extent or in the manner allowed by the permission, it may, with the consent of the Minister, by notice served in accordance with this subsection, revoke or modify the permission to such extent as appears to it to be necessary.

(b)

(b) The Minister may direct the council to submit to him for his consent a notice revoking or modifying any permission specified in the directions, or modifying any such permission in such manner as may be so specified and to serve such notice in accordance with this subsection.

(c) Where a council proposes or is directed to exercise its powers under this subsection, it shall serve the notice on all persons who in its opinion will be affected by the notice.

(d) If any such directions are not complied with within the time specified therein, the Minister may himself prepare and serve the notice, and such notice shall have effect as a notice under paragraph (a) of this subsection.

(e) The Minister, before consenting to or serving the notice referred to in the foregoing provisions of this subsection shall, if either the council or any such person so desires, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

Contribution.

342x. Where any permission for the development of land is revoked or modified under this Division, the council may make to any person a contribution towards any damage or expense which such person shows to the satisfaction of the council that he has suffered or is likely to suffer by reason of such revocation or modification.

Suspension of provisions of prescribed scheme.

342y. (1) In any case where—

(a) a resolution for the preparation of a scheme varying a prescribed scheme has taken effect; or

(b) the Minister has directed the preparation of such a scheme,

the

the Minister, if it appears to him expedient so to do—

(i) for securing that any development prohibited by the prescribed scheme may be carried out notwithstanding the provisions of that scheme; or

(ii) for securing that any development permitted by the prescribed scheme may be regulated,

may notify the suspension of the provisions of the prescribed scheme pending the coming into operation of the varying scheme and such provisions shall be suspended accordingly; and any such notification may suspend the provisions of the scheme either as respects the whole of the land to which the varying scheme is to apply or as respects any portion thereof specified in the notification, and either as respects all development or as respects development of any class specified in the notification.

(2) Where the provisions of a prescribed scheme are notified as suspended under this section, the provisions of this Division with respect to the control of interim development shall, as from the date of the notification, apply to development to which the notification relates and shall so apply as if the resolution of the council or the direction of the Minister had taken effect on that date.

Power to apply interim development provisions to any land.

342z. The Governor may, by proclamation, direct with respect to any land in any area that on and from a day appointed in that behalf such land shall be deemed to be included in a scheme for the preparation of which a resolution has taken effect, and the provisions of this Division shall apply with respect to such land as from the date of publication in the Gazette of such proclamation.

DIVISION 8.—*Scheme for the County of Cumberland.*

Commencement of Division.

342AA. This Division shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Scheme for County of Cumberland.

342AB. (1) (a) The Minister shall not later than three years after the commencement of this Division, complete the preparation of a scheme in respect of all land within the areas wholly or partly included in the County of Cumberland.

(b) Such scheme shall include provision only for such matters, consistent with the provisions of this Part, as may from time to time be prescribed.

(2) (a) For the purposes of such scheme and of any matter in relation to the preparation thereof the Minister, in respect of such land, shall have and may exercise, perform and enjoy the powers, authorities, duties, functions, discretions and immunities of a council and while so doing shall be deemed to be a council.

(b) (i) It shall be the duty of the council and of every officer and servant of the council and of every committee appointed by the council under this Part and of every member of any such committee to furnish such information and afford such assistance as the Minister may require for the purposes aforesaid.

(ii) Any person authorised by the Minister in that behalf shall for such purposes have liberty at all reasonable times without charge to inspect any document, plan, map or record of the council or of any committee appointed by the council under this Part; and the servant or other person for the time being having the custody thereof shall not refuse or prevent

prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(c) It shall be the duty of every Government department, statutory body, authority and person to furnish such information and afford such assistance as the Minister may require for such purposes.

(d) The provisions of Division 7 of this Part shall, mutatis mutandis, apply, as from the commencement of this Division, in respect of all land within the areas wholly or partly included in the County of Cumberland.

(3) The scheme prepared by the Minister shall be deemed to be a scheme prepared and submitted to him jointly by the councils concerned in accordance with this Part.

(4) (a) The scheme so prepared shall be referred by the Minister to the Advisory Committee for report.

(b) After considering the report of the Advisory Committee the Minister may decide to proceed with the scheme with or without any alteration recommended by such committee and the provisions of sections 342J (other than paragraph (a) of subsection one) and 342K of this Act shall, mutatis mutandis, thereupon apply in respect of the scheme.

(5) The expenditure of the Minister incurred in pursuance of this section shall be defrayed in the first instance from moneys provided by Parliament or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose, but the amount thereof (less any remissions allowed by the Minister, which remissions the Minister with the approval of the

Treasurer

Treasurer is hereby authorised to allow) shall be repaid by the councils concerned on demand to the Treasurer, in such proportions as the Minister may determine.

(6) The Treasurer may recover as a debt from any council the proportion so determined by the Minister to be repayable by that council.

(7) The amount of any liability to the Treasurer incurred by the council under this section may be paid out of the appropriate fund of the council and may be borrowed by way of ordinary loan under this Act, or as a loan for essential purposes in accordance with the provisions of the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may require.

(8) The scheme prescribed in pursuance of this section may be varied or revoked in accordance with the provisions of this Part, and any such variation may add to such scheme greater detail in respect of any land included therein.

DIVISION 9—*Compensation.*

Compensation.

342AC. (1) Subject to the provisions of this Part, any person—

(a) who has an estate or interest in land to which a prescribed scheme applies and such estate or interest is injuriously affected—

(i) by the coming into operation of any provision contained in the prescribed scheme; or

(ii) by the execution of any work under the prescribed scheme; or

(iii) by any restrictions imposed by or under the prescribed scheme;

(b)

(b) who suffers damage by reason of any action taken by or on behalf or at the order of the responsible authority for the enforcement or carrying into effect of the prescribed scheme;

(c) who has incurred expenditure—

(i) for the purpose of complying with any provision of the prescribed scheme; or

(ii) in making a claim under the provisions of this Act relating to compensation; or

(iii) in making an appeal under the provisions of this Act relating to betterment,

which expenditure is rendered abortive in whole or in part by suspension or variation or revocation of the prescribed scheme;

(d) who has, before the resolution to prepare a scheme has taken effect or the publication in the Gazette of the notice that the Minister has directed the council to prepare a scheme or, in the case of land to which the scheme referred to in Division 8 of this Part applies, before the commencement of that Division, incurred liability or expenditure in or in connection with the carrying out of any work which is either in whole or in part rendered abortive or abandoned by reason of the operation of this Part;

(e) who has incurred expenditure pursuant to any approval, permission or consent granted under the provisions of a prescribed scheme, which expenditure is rendered abortive in whole or in part by the revocation or modification of such approval, permission or consent;

(f) who has incurred expenditure pursuant to any permission given by an ordinance or by a council pursuant to an ordinance under Division 7 of this Part, which expenditure is rendered abortive in whole or in part by the rescission or alteration of such ordinance or the revocation or modification of such permission;

(g) who has incurred expenditure pursuant to any certificate given to him under section 342AS of this Act which expenditure is rendered abortive in whole or in part by reason of any error, omission, or inaccuracy in such certificate,

shall, if he makes a claim therefor within the time prescribed, be entitled to obtain, from the council which is the responsible authority concerned, compensation in respect of such injurious affection, damage, liability or expenditure.

(2) Compensation shall not be payable in the following cases:—

(a) in respect of any building erected or work done upon or contract made or other act or thing done with respect to land included in a prescribed scheme after the date upon which the resolution of the council has taken effect or the date of publication in the Gazette of the notice that the Minister has directed the council to prepare a scheme affecting such land, as the case may be, or where the prescribed scheme is the scheme referred to in Division 8 of this Part, after the commencement of that Division, unless the erection of such building or the doing of such work or the making of such contract or the doing

doing of such other act or thing was permitted under the provisions of Division 7 of this Part;

(b) where an estate or interest in land is injuriously affected by reason of any provision contained in the prescribed scheme if and in so far as the same provision or a provision substantially to the same effect was, at the date when the prescribed scheme came into operation, already in force by virtue of some Act, including this Act (except this Part);

(c) where an estate or interest in land is affected by any provision of the prescribed scheme which prescribes the space about buildings or limits the number of buildings to be erected, or prescribes the height, bulk, floor space, use, design, external appearance, or character of buildings;

(d) where an estate or interest in land is affected by any provision of the prescribed scheme prohibiting or restricting the use of that land unless the applicant establishes that some specified use of the land (which is prohibited or restricted by the prescribed scheme) was practicable immediately before the prescribed scheme came into operation and that there was at that time a demand for such use;

(e) in respect of any action taken by or on behalf or at the order of the council which is the responsible authority for the enforcement of the prescribed scheme in accordance with the provisions of section 342P of this Act except in a case where a building or work which the council has removed, pulled

pulled down or altered was an existing building or an existing work or the use of land which it has prohibited or restricted was an existing use;

(f) in respect of any thing done in contravention of a prescribed scheme;

(g) in respect of any thing done in contravention of Division 7 of this Part or of any decision or determination thereunder, or, as the case may be, in contravention of any decision or determination on any appeal under that Division.

For the purpose of paragraph (e) of this subsection—

"Existing building" and "existing work" mean respectively a building or work erected, constructed or carried out before the material date, and include also a building or work—

(i) begun before, but completed after, the material date; or

(ii) erected constructed or carried out pursuant to any permission under Division 7 of this Part:

Provided that a building or work shall not cease to be, or to be deemed to be, an existing building or work by reason of its alteration or extension in accordance with any provision of the scheme relating to the alteration or extension of existing buildings or works, and any such alteration or extension shall itself be deemed to be part of the existing building or work.

"Existing use" means a use of land for any purpose of a similar character to that for which it was last used before the material date or, in the case where there is a newly erected building on the land which has not

not been used before that date, a use for any purpose for which the building was designed, and includes in any case any use of land permitted under Division 7 of this Part:

Provided that—

(i) if at any time after the material date the use of that land which, at that date, was the existing use thereof, is discontinued for a period of eighteen months, no use of that land at any subsequent date shall be deemed to be an existing use thereof;

(ii) where at the material date a person who was using any land for the purpose of mining, quarrying, the digging of clay, gravel or sand, or the deposit of waste materials or refuse, or any other purpose of a similar nature, was entitled also to use neighbouring land for any such purpose, the user under that title of that neighbouring land for any such purpose, whether before or after the material date, shall be deemed to be an existing use.

"Material date" means the date on which the resolution to prepare the scheme was passed or the date on which the Minister gave notice to the council in accordance with the provisions of subsection one of section 342D of this Act to prepare a scheme or, in respect of the scheme referred to in Division 8 of this Part, the date upon which that Division commenced:

Provided that, where a prescribed scheme (in this proviso referred to as the "original scheme") is revoked and replaced

replaced by a subsequent scheme, or is varied in accordance with this Part and any provisions of the scheme replacing or varying the original scheme is substantially to the same effect as a provision of the original scheme, the material date shall be the date on which the resolution to prepare the original scheme was passed or the date on which the Minister gave notice to the council in accordance with the provisions of subsection one of section 342D of this Act to prepare the original scheme or, in respect of the scheme referred to in Division 8 of this Part, the date upon which that Division commenced.

(3) Where an estate or interest in land is injuriously affected by reason of any provision contained in the prescribed scheme, then if such provision or a provision substantially to the same effect could, immediately before the prescribed scheme came into operation, have been validly included in any ordinance, proclamation, declaration, notification or other like instrument issued or made under the authority of this Act (other than this Part) or the Sydney Corporation Act, 1932, as amended by subsequent Acts, and—

(a) if no compensation would have been payable by reason of the inclusion of the provision in such ordinance, proclamation, declaration, notification or other instrument, no compensation shall be payable under this Division;

(b) if compensation would have been so payable the amount of compensation payable in respect of that provision of the scheme shall not be greater than the compensation which would have been so payable;

(4)

(4) In assessing compensation under this Division in respect of the injurious affection of an estate or interest in land the following provisions shall have effect:—

(a) The amount of the compensation shall, subject to this Division, be a sum equal to the difference between the market value of such estate or interest at the time of the coming into operation of the provision of the prescribed scheme, or the execution of the work under the prescribed scheme, or the prohibition or restriction imposed by or under the prescribed scheme, as the case may be, out of which the claim for compensation arose and what would have been the market value of that estate or interest if such provision had not come into operation, or such work had not been executed or such prohibition or restriction had not been imposed, as the case may be.

(b) There shall be taken into account any modification of the injurious affection that may be effected in consonance with the prescribed scheme.

(c) There shall be taken into account any benefit which may accrue to any land in which the claimant has an estate or interest—

(i) by reason of the coming into operation of the scheme; or

(ii) by reason of the construction or improvement by any other person, at any time after the scheme is prescribed, upon land adjacent to the land in respect of which compensation is claimed, of any work or service in pursuance of the provisions of the scheme.

(d)

(d) There shall be taken into account any contribution made by the council in accordance with the provisions of Division 7 of this Part.

(e) If the parcel of land in respect of which compensation is claimed has, since the date upon which the scheme was prescribed, become or ceased to be separate from other land, the amount of compensation shall not be enhanced by reason of its having become or ceased to be separate from other land.

(f) If the question arises out of the coming into operation of a varying scheme there shall be taken into account any amount which the council has paid or is liable to pay, or has recovered or is entitled to recover, in respect of that land, by reason of the coming into operation of the original scheme, or any other scheme varying it.

cf. Act No. 22, 1943, s. 18.

(5) (a) If any dispute or difference arises between any person claiming compensation under this Division and any council the question of whether such council is the responsible authority concerned and whether such person is entitled to compensation and, if so, to what amount, shall be decided—

(i) where the claim does not exceed one hundred pounds—by a court of petty sessions holden before a stipendiary or police magistrate;

(ii) where the claim exceeds one hundred pounds—by the Land and Valuation Court.

The decision of the Court or magistrate shall be final and conclusive.

(b)

(b) The time within which claims under this section may be made and the manner of making such claims and any matter in connection therewith may be prescribed—

(i) in the case of claims made before the Land and Valuation Court—by rules of court of that Court;

(ii) in the case of claims made before a court of petty sessions holden before a police or stipendiary magistrate—by ordinance made under this Act.

(c) The council which is the responsible authority concerned, and the claimant may appear by solicitor or counsel at any inquiry held for the assessment of compensation under this section.

Recovery of compensation.

342AD. (1) Any amount payable to a claimant as compensation under this Part may be recovered from the council which is the responsible authority concerned as a debt in any court of competent jurisdiction.

Compensation subject to agreements, etc.

(2) The provisions of this Part as to compensation shall be subject to any special provisions respecting compensation included in the prescribed scheme or included in any agreement with the claimant or his predecessor in title incorporated in the prescribed scheme or made subsequently thereto; and the inclusion of any such provision or agreement in a scheme is hereby authorised.

Alternative rights in respect of compensation.

342AE. (1) Nothing in this Division shall deprive any person of any right to compensation that he may have independently of this Part.

cf. 7 & 8 Geo. VI, No. 99 (Tas.), s. 25 (3) (4).

(2) Where a person would be entitled to claim compensation in respect of any matter or thing under this Part and also under any other enactment, he shall not be entitled to receive compensation both under this Part and such

such other enactment, nor to receive any greater compensation under this Part than he would be entitled to receive under such other enactment.

DIVISION 10.—*Betterment.*

Valuation of betterment.

342AF. (1) The council of an area within which is situated land to which a prescribed scheme applies, shall where the prescribed scheme contains provision for the recovery of betterment in accordance with this Division—

(a) within such time, not exceeding five years after the prescribed scheme comes into operation, as is specified in such scheme require the Valuer-General to report whether any land which is for the time being ratable has been increased in value by the coming into operation of any provision contained in the prescribed scheme; or

(b) within twelve months after—

(i) the granting of any permission under the prescribed scheme for the erection of any building or the carrying out of any work or the use of any land; or

(ii) the completion by the council of any work under the prescribed scheme,

require the Valuer-General to report whether any land which is for the time being ratable has been increased in value by the granting of such permission or by the execution by the council of any such work.

Any report furnished by the Valuer-General under this subsection shall be accompanied by a list of the lands and of the increases in value thereof.

Such increases in value are in this Part referred to as betterment.

(2)

(2) (a) All lists furnished by the Valuer-General under subsection one of this section shall be stamped with the official stamp of or signed by the Valuer-General.

(b) There shall be payable by every council to which any such list is furnished fees therefor according to a scale which shall be fixed by the Governor from time to time.

(3) Notice of valuation of betterment shall be given in the same manner as notice of valuation of land (whether under this Act or the Sydney Corporation Act, 1932, as amended by subsequent Acts, or under the Valuation of Land Act, 1916, as amended by subsequent Acts, as the case may be), and the provisions of any such Act for the time being in operation in the area relating to appeals against valuations of land shall, mutatis mutandis, apply to and in respect of appeals against valuations of betterment.

Betterment charge.

342AG. (1) Subject to this Part, where the prescribed scheme contains provision for the recovery of betterment in accordance with this Part the council shall in respect of the betterment of any such land aforesaid impose a betterment charge: Provided that such a charge shall not be imposed in respect of the betterment of any land in relation to which any accruing benefit has been taken into account in assessing compensation under Division 9 of this Part.

(2) The total amount recoverable under a betterment charge on any separate parcel of land shall be such as to return to the council a sum equal to eighty per centum of the betterment on such separate parcel.

(3) (a) Any such charge shall be imposed each year for a term of years fixed by the prescribed scheme, or, where no term is so fixed, for a term of years fixed by the council when first imposing the charge.

(b)

(b) The amount of the charge so imposed shall be included, and the term of years so fixed shall be stated, in the rate notice in respect of the land in respect of which it is imposed.

(c) The charge so imposed may be recovered as a rate and shall be a charge upon the land in respect of which it is imposed as if it were a rate.

(4) The amount of the betterment charge shall be subject to any special provisions or agreements relating thereto included in the prescribed scheme, and the inclusion of any such provision or agreement in a scheme is hereby authorised.

DIVISION 11.—*Powers of Minister in case of failure of councils to prepare or carry into effect or enforce schemes.*

Powers of Minister in case of default by councils.

342AH. (1) In any case—

(a) where a resolution to prepare a scheme has taken effect but the council or councils concerned have not prepared the scheme within the period or extended period fixed under section 342C of this Act; or

(b) where the Minister under section 342D of this Act has directed a council or two or more councils acting together to prepare a scheme and the Minister is satisfied after due inquiry that the council or councils concerned have not effectively complied with the direction; or

(c) where the Minister is satisfied after due inquiry that the responsible authority is not effectively carrying into effect or enforcing a prescribed scheme or any provision thereof,

the

the Minister may, after notifying the council or councils concerned of his intention so to do—

(i) prepare or carry into effect or enforce the scheme or provision thereof as the case may be; or

(ii) direct the Advisory Committee to prepare or carry into effect or enforce the scheme or provision thereof as the case may be.

(2) (a) For the purposes of this section, the Minister and the Advisory Committee shall have and may exercise and perform and enjoy in and in relation to the land to which the resolution applies or the direction relates or the prescribed scheme applies, as the case may be, the powers, authorities, duties, functions, discretions and immunities of the council or councils within whose area or areas such land is situated except such powers, authorities, duties, functions, discretions and immunities as may be prescribed and while so doing shall be deemed to be such council or councils.

(b) (i) It shall be the duty of the council and of every officer and servant of the council to furnish such information as the Minister or the Advisory Committee may require for the purposes aforesaid.

(ii) Any person authorised in that behalf by the Minister or the Advisory Committee, as the case may be, shall for such purposes have liberty at all reasonable times to inspect any document, plan, map, or record of the council; and the servant or other person for the time being having the custody thereof shall not refuse or prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(3) Any expenditure of the Minister or the Advisory Committee incurred in pursuance of this section shall be defrayed in the first instance from moneys provided by Parliament or from moneys made available to the State

State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose, but the amount thereof (less any remissions allowed by the Minister, which remissions the Minister, with the approval of the Treasurer, is hereby authorised to allow) shall be repaid by the council concerned on demand to the Treasurer, and where more than one council is concerned, in such proportions as may be determined by the Minister.

(4) The Treasurer may recover as a debt any sums repayable by the council in accordance with subsection three of this section.

(5) The amount of any liability to the Treasurer incurred under this section may be paid out of the appropriate fund of the council concerned, and may be borrowed by way of ordinary loan under this Act, or as a loan for essential purposes in accordance with the provisions of the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may require.

DIVISION 12.—*Town and Country Planning Advisory Committee.*

Constitution of Advisory Committee.

342AI. (1) There shall be a Town and Country Planning Advisory Committee, which shall have and may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon the Advisory Committee by or under this Act.

(2) (a) The Advisory Committee so constituted shall consist of seven members who shall be appointed by the Governor.

Of the members so appointed—

(i) one shall be an officer of a council and shall be appointed from a panel of four such officers nominated jointly as prescribed by the governing bodies of the Local

Local Government Association of New South Wales and the Shires Association of New South Wales;

(ii) one shall be an engineer and shall be appointed from a panel of four members of the Institution of Engineers, Australia (Sydney Division) nominated as prescribed by the governing body of that Division;

(iii) one shall be a registered architect and shall be appointed from a panel of four members of the Royal Australian Institute of Architects (New South Wales Chapter), nominated by the Council of that Chapter;

(iv) one shall be a registered surveyor and shall be appointed from a panel of four members of the Institution of Surveyors (New South Wales) nominated by the governing body of that Institution;

(v) one shall be an officer of the Department of Local Government, and shall be nominated for appointment by the person for the time being holding the office of or duly acting as Under Secretary of that Department;

(vi) two shall be persons who shall be appointed on the nomination of the Minister.

(b) The Governor may appoint one of the members to be the chairman of the Advisory Committee and one other member to be the vice-chairman of the Advisory Committee.

(c) No person shall be eligible for appointment as a member of the Advisory Committee unless the Minister is satisfied that he has adequate knowledge or experience of the principles or practice of town planning or country planning.

(3)

(3) (a) The Governor may from time to time appoint a deputy to act in the place of any member.

The deputy so appointed to act in the place of the member referred to in subparagraph (i), subparagraph (ii), subparagraph (iii) or subparagraph (iv) of paragraph (a) of subsection two of this section shall be a person whose name is on the same panel as the member for whom he is appointed deputy.

The deputy so appointed to act in the place of the member referred to in subparagraph (v) of the same paragraph shall be appointed on the nomination of the person for the time being holding the office of or duly acting as Under Secretary of the Department of Local Government.

The deputy so appointed to act in the place of either of the members referred to in subparagraph (vi) of the same paragraph shall be appointed on the nomination of the Minister.

(b) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a deputy to act in the place of a member; and all acts and things done or omitted to be done by a deputy when so acting as aforesaid shall have the same consequences as if the same had been done or omitted by the member in whose place the deputy is acting.

(4) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of a member of the Advisory Committee, or of a deputy member, and a member or deputy member shall not, in his capacity as such member or deputy member, be subject to the provisions of the Public Service Act, 1902, or any Act amending that Act.

(5) (a) Each member of the Advisory Committee shall, subject to this section, hold office for a term of five years from the date of his

his appointment or such shorter term as may be specified by the Governor in the instrument of appointment, and shall if otherwise qualified be eligible for reappointment upon the expiration of his term of office: Provided that a person appointed to fill the vacant office of a member shall hold office only for the residue of his predecessor's term of office, but shall if otherwise qualified be eligible for reappointment.

(b) A member or deputy member shall be deemed to have vacated his office if he—

(i) dies;

(ii) resigns his office in writing under his hand addressed to the Governor;

(iii) being one of the members referred to in subparagraphs (i) to (v) both inclusive of paragraph (a) of subsection two of this section, ceases to hold the qualification by virtue of which he was appointed; or

(iv) is removed from office by the Governor.

(c) The Governor may, for any cause which appears to him sufficient, remove any member or deputy member from office.

(6) (a) Every panel constituted under subsection two of this section shall be constituted in the manner and within the time prescribed, and the nominations for the panel shall be accompanied by the written consent of each person whose name is included in the panel to serve on the Advisory Committee if appointed.

(b) If within the time prescribed a valid nomination of a panel has not been made by the authority or authorities entitled to nominate such panel, the Governor may constitute a panel consisting of persons having the appropriate qualification, and may appoint any person whose name is included in the panel so constituted to be a member or deputy member, as the case may be, of the Advisory Committee.

(7)

(7) No act or proceeding of the Advisory Committee shall be invalidated or prejudiced by reason only of the fact that at the time such act or proceeding was done or taken or commenced there was a vacancy in the office of any one or more members.

(8) The procedure for the calling of meetings of the Advisory Committee, and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by the Advisory Committee.

(9) Four members of the Advisory Committee shall form a quorum and any duly convened meeting of the Advisory Committee at which a quorum is present shall be competent to transact any business of the Advisory Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Advisory Committee.

(10) (a) At any meeting of the Advisory Committee the chairman, or in his absence the vice-chairman, shall preside.

(b) If the chairman and vice-chairman are both absent from any meeting the members present may elect one of their number to preside at the meeting; and the member so elected while so presiding shall have the powers, authorities, duties and functions of the chairman.

(c) If there is an equality of votes in such an election it shall be decided by lot which of the members having an equal number of votes shall preside.

(11) (a) At any meeting of the Advisory Committee the decision of a majority of the members present shall be the decision of the Advisory Committee.

(b) The chairman or the vice-chairman or member presiding shall have a deliberative vote and, where the members

present at any meeting are equally divided in opinion upon any matter, shall have a second or casting vote.

(12) The office of member or deputy member of the Advisory Committee shall not, for the purpose of any Act, be deemed to be an office or place of profit under the Crown.

Remuneration of members.

342AJ. (1) The chairman, vice-chairman and members of the Advisory Committee and any deputy member, whilst acting in the place of a member, shall be entitled to receive such remuneration (whether by way of fees or allowance or otherwise) and such travelling and out-of-pocket expenses as may from time to time be fixed by the Governor.

(2) Where the chairman or vice-chairman or any member or deputy member of the Advisory Committee is an officer of the Public Service or of a statutory body representing the Crown he shall, notwithstanding the provisions of any Act or of any rule or regulation made under any Act, be entitled to receive remuneration under this section, in addition to any remuneration to which he is otherwise entitled.

Annual report.

342AK. (1) The Advisory Committee shall, not later than the thirtieth day of September in each year, cause a report of its work during the year ended on the thirtieth day of June then next preceding to be prepared and forwarded to the Minister for presentation to Parliament.

(2) The report shall contain such information as may be prescribed or, if not so prescribed, as may be directed by the Minister.

DIVISION 13.—*Functions of the Advisory Committee.*

Functions of Advisory Committee.

342AL. (1) (a) The Advisory Committee shall consider and furnish reports to and advise the Minister upon any matter or proposal relating to town planning or country planning which may be referred to the Advisory Committee by the

the Minister and on such other matters relating to town planning or country planning as may be prescribed.

(b) The Advisory Committee may, of its own motion, submit for the consideration of the Minister any proposal in connection with any matter relating to town planning or country planning.

(c) The Advisory Committee may advise any council considering a town planning or country planning scheme or a proposal for such a scheme upon any matter relating thereto, subject to such conditions (if any) as may be prescribed.

(d) Where in the opinion of the Advisory Committee it is necessary or desirable so to do for any of the purposes of this Part, such Committee may conduct an investigation or inquiry.

(2) For the purposes of conducting any investigation or inquiry under this Part the members of the Advisory Committee and the chairman thereof or the vice-chairman or member presiding shall have the powers, authorities, protections and immunities conferred on commissioners and the chairman of a commission respectively by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts, and the provisions of that Act, as so amended, with the exception of section thirteen, and of Division 2 of Part II, and the provisions of section one hundred and fifty-two of the Justices Act, 1902-1940, shall, mutatis mutandis, apply to and in respect of any such investigation or inquiry and any witness or person summoned by or appearing before the Advisory Committee.

(3) (a) (i) It shall be the duty of each council and of every officer and servant of a council and of every committee appointed by a council under this Part and of every member of any

any such committee to furnish such information as the Advisory Committee may require for any purpose of or connected with the exercise or discharge of its powers, authorities, duties and functions under this Part.

(ii) Any person authorised in that behalf by the Advisory Committee shall for such purposes have liberty at all reasonable times to inspect any document, plan, map or record of the council or of any committee appointed by the council under this Part; and the servant or other person for the time being having the custody thereof shall not refuse or prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(b) It shall be the duty of every Government department, statutory body, authority and person to furnish such information as the Advisory Committee may require for any purpose of or connected with the exercise or discharge of its powers, authorities, duties and functions under this Part.

Certain approvals to be given only after report of Advisory Committee.

342AM. Where by this Act the approval of the Governor or the Minister may be or is required to be given to any matter or proposal relating to a town planning or country planning scheme, such approval shall not be given unless and until the Advisory Committee has made a report to the Minister thereon.

DIVISION 14.—*Finance.*

Advances.

342AN. (1) (a) The Minister may, with the approval of the Treasurer, from moneys provided by Parliament for the purpose, or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose, make advances to councils for

or

or in connection with the exercise or discharge of their powers, authorities, duties or functions under or in pursuance of this Part.

(b) In any case where the Minister so requires the council shall enter into an agreement securing the repayment of the advance by yearly or half-yearly instalments with interest at such rate as the Minister, with the approval of the Treasurer, may determine.

(c) If any such instalment is not paid on the due date there shall be added thereto a sum equal to ten per centum thereof, and such instalment, together with such additional sum, may be recovered by the Minister as a debt: Provided that the Minister may, with the approval of the Treasurer, on cause shown, remit part or the whole of such instalment or additional sum.

(2) (a) The Minister may, with the approval of the Treasurer, enter into an agreement with a council to pay to the council, in each year during such period as may be specified in the agreement, the sum or sums ascertained from time to time upon such basis or upon such considerations as the Minister may determine, for or towards meeting the liability of the council in respect of any borrowing for any purpose of this Part or in respect of any loan or loans raised by a council for the purpose of repaying or renewing the whole or any part of the original loan or of any renewal loan in respect thereof.

The agreement may include such terms, conditions or provisions not inconsistent with this Part as the Minister may determine and may, if the Minister so determines, provide for the repayment, in instalments or otherwise, of the sums paid to the council thereunder.

(b) Such sums as, from time to time, become due and payable by the Minister under any agreement authorised by this subsection shall be paid from moneys provided by Parliament

Parliament for the purpose or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose.

Estimates.

342AO. The council shall, once in each year, within the time and in the manner prescribed, prepare and furnish to the Minister estimates of income and expenditure in relation to the exercise or discharge of its powers, authorities, duties and functions in relation to town or country planning.

Loans.

342AP. The council may borrow by way of ordinary loan (or loan for essential services, in the case of the Municipal Council of Sydney) for any of the purposes of this Part.

Town and Country Planning Fund.

342AQ. (1) The council (other than the Municipal Council of Sydney) shall create a separate fund subsidiary to the general fund to be known as the Town and Country Planning Fund, and the Municipal Council of Sydney shall open a separate account within the City Fund to be known as the Town Planning Account.

Such separate fund or separate account, as the case may be, shall consist of the following assets:—

(a) all moneys received or receivable in respect of any of the purposes of this Part;

(b) all moneys borrowed in respect of any of the purposes of this Part;

(c) the proceeds of any rate levied in respect of such borrowings;

(d) the proceeds of any betterment charge imposed in pursuance of this Part;

(e)

(e) all moneys transferred from any other fund of the council to the general fund in accordance with this Act in respect of any of the purposes of this Part;

(f) all moneys transferred from any other account in the general fund or City Fund, as the case may be, in respect of any of the purposes of this Part.

(2) Such separate fund or separate account, as the case may be, may be applied to any of the following purposes:—

(a) any of the purposes of this Part;

(b) transfers to any reserve or sinking fund for loan repayment in respect of moneys borrowed in respect of any of the purposes of this Part;

(c) payment of principal, interest and expenses in respect of moneys borrowed as aforesaid;

(d) any purpose of this Act or the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may be, related or incidental or ancillary to town planning or country planning;

(e) any purpose authorised by or under this Part for the application of the fund.

DIVISION 15.—*Miscellaneous.*

Appointment of officers and employees.

342AR. (1) The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint such officers and employees as may be necessary for the administration of this Part.

(2) For the purpose of exercising and discharging the powers, authorities, duties and functions conferred and imposed on the Advisory Committee by or under this Part the Advisory Committee may, with the approval of

of the Minister for the time being charged with the administration of this Act and of the Minister of the department concerned and the Public Service Board, on such terms as may be arranged, make use of the services of any of the officers or employees of the Public Service, or with the approval of the Minister for the time being charged with the administration of this Act and of the statutory body concerned, on such terms as may be arranged, make use of the services of any officer, employee or servant of the statutory body.

Certificates of compliance.

342AS. (1) Any person may apply to the council for a certificate under this section with respect to any land within the area of the council.

(2) The council may issue a certificate that on the date specified in the certificate any land within its area is or is not land to which a prescribed scheme or a scheme in course of preparation or a resolution applies or a direction to prepare a scheme relates.

(3) Ordinances may be made authorising the council to issue certificates under this section with respect to such matters as may be prescribed.

In particular and without prejudice to the generality of the foregoing provisions of this subsection an ordinance may authorise the council to issue a certificate setting forth that—

(a) any permission or authority which the council is required or permitted to give, modify or revoke by or under this Part or a prescribed scheme was on a specified day given, modified or revoked;

(b) any instrument or plan does not on the date specified in the certificate contravene the provisions of a prescribed scheme.

(4)

(4) For the purpose of any proceedings for an offence under this Part taken against a person who has obtained a certificate under this section, such certificate shall, in favour of such person, be conclusively presumed to be true and correct.

(5) For the purposes of the registration of any plan or instrument intended to affect or evidence the title to any land a certificate given under this section shall, in favour of the person to whom the certificate is so given and of the Registrar-General, the Crown Solicitor or other person registering or certifying title, be conclusively presumed to be true and correct.

DIVISION 16.—*Ordinances.*

Ordinances.

342AT. (1) Ordinances may be made for carrying this Part into effect.

(2) In particular and without prejudice to the generality of subsection one of this section, ordinances may be made for and with respect to—

(a) the manner of preparing and the details to be specified in maps, plans, specifications and the like and in estimates of cost of schemes;

(b) the making of provisional agreements between the council and the owners and lessees of land affected by a scheme, and with public authorities or statutory bodies in relation to a scheme;

(c) requiring councils, statutory bodies, companies, firms or persons carrying on business or exercising rights by virtue of any Act to assist any council which is engaged in the preparation of a scheme by the supply of information, plans and statistics and by the granting of facilities for inspection and investigation;

(d)

(d) the form, time, manner and mode of giving notices and advertisements;

(e) any matter necessary or convenient to be prescribed for or in relation to the carrying into effect or enforcing the observance of prescribed schemes;

(f) requiring councils to keep registers of permits, authorities and the like granted under this Part;

(g) the payment of travelling and out-of-pocket expenses of members of any committee (other than the Advisory Committee) appointed under this Part;

(h) (i) prescribing the conditions upon which certificates of qualification in town planning or country planning may be issued to persons who apply therefor and the amount of any fees which may be charged in that connection;

(ii) prescribing the manner and circumstances in and under which such certificates may be suspended or cancelled;

(iii) providing for and prescribing the manner of keeping a register of the names of persons who are for the time being lawful holders of such certificates.

(3) An ordinance may prescribe the qualifications for membership of any committee (other than the Advisory Committee) appointed under this Part and may make provision for the appointment, as members of any committee, of representatives of bodies concerned in industrial or commercial pursuits, or in research, or in the promotion of community activities or amenities.

4. The Principal Act is further amended— Further amendment of Act No. 41, 1919.

(a) by inserting at the end of section three hundred and thirty-two the following word and new paragraph:— Sec. 332. (Subjects for consideration—new roads.)

and

(k) the provisions of any town planning or country planning scheme;

(b) by inserting next after paragraph (i) of section three hundred and thirty-three the following word and new paragraph:— Sec. 333. (Subjects for consideration—subdivisions.)

and

(j) the provisions of any town planning or country planning scheme.

PART III.

Amendments of Sydney Corporation Act, 1932, as amended by subsequent Acts.

5. The Sydney Corporation Act, 1932, as amended by subsequent Acts, is amended— Amendment of Act No. 58, 1932.

(a) by inserting at the end of section three hundred and three the following word and new paragraph:— Sec. 303. (Subjects for consideration—new public ways.)

and

(j) the provisions of any town planning or country planning scheme in course of preparation or prescribed under the Local Government Act, 1919, as amended by subsequent Acts;

(b) by inserting at the end of section three hundred and four the following word and new paragraph:— Sec. 304 (Subjects for consideration—subdivisions.)

and

(i) the provisions of any town planning or country planning scheme in course of preparation or prescribed under the Local Government Act, 1919, as amended by subsequent Acts.

Sydney: Thomas Henry Tennant, Government Printer—1945.

[3*s.* 9*d.*]

Local Government (Town and Country Planning) Amendment Bill.

EXPLANATORY NOTE.

THE object of this Bill is to amend the Local Government Act so as to provide for—

(1) The preparation of town and country planning schemes by Municipal and Shire Councils, throughout the State, including the Municipal Council of Sydney.

(2) The preparation by the Minister of an initial scheme for all Municipalities and Shires, including the City of Sydney, wholly or partly included in the County of Cumberland, the supplementary planning of which will be carried out by the Councils of those areas.

(3) The making of Ordinances under the Act giving approved schemes the force of law and enabling them to be carried into effect and enforced by the Municipal or Shire Councils concerned.

(4) The control of the development of land during the period that such schemes are in course of preparation.

(5) The payment of compensation to persons whose interests in land are injuriously affected by such schemes, and in certain other circumstances.

(6) The constitution of a Town and Country Planning Advisory Committee to advise and assist the Minister and the Municipal and Shire Councils in connection with such schemes and the administration of the Act.

(7) Purposes connected with the foregoing.

63117 46—

PROOF

No. , 1945.

A BILL

To make better provision for and in relation to town planning and country planning; for this purpose to amend the Local Government Act, 1919, and certain other Acts; and for purposes connected therewith.

[Mr. Cahill;—8 *February*, 1945.]

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.

1. (1) This Act may be cited as the "Local Government (Town and Country Planning) Amendment Act, 1945." Short title.

(2) The Local Government Act, 1919, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

2. This Act is divided into Parts as follows:— Division into Parts.

PART I.—PRELIMINARY—*ss.* 1, 2.

PART II.—AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS—*ss.* 3, 4.

PART III.—AMENDMENTS OF SYDNEY CORPORATION ACT, 1932, AS AMENDED BY SUBSEQUENT ACTS—*s.* 5.

PART II.

AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS.

3. The Principal Act is amended— Amendment of Act No. 41, 1919.

(a) by inserting in section three next after the matter relating to Part XII, the words and symbols "Part XIIA—TOWN AND COUNTRY PLANNING SCHEMES—*ss.* 342A-342AT"; Sec. 3 (Division into Parts.)

(b) by inserting next after section three hundred and forty-two the following new Part:— New Part XIIA.

PART XIIA.

TOWN AND COUNTRY PLANNING SCHEMES.

DIVISION 1.—*Application of Part.*

342A. (1) Subject to the provisions of this Act— Application of Part XIIA.

(a) this Part shall apply to municipalities and shires, and to the city of Sydney;

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

(2)

(2) In the application of any provision of this Part to or in respect of the city of Sydney—

(a) a reference in that provision to an "area" shall be construed as a reference to the city of Sydney;

(b) a reference in that provision to a "council" shall be construed as a reference to the Municipal Council of Sydney;

(c) a reference in that provision to a "road" or a "public road" shall be construed as a reference to a public way within the meaning of the Sydney Corporation Act, 1932, as amended by subsequent Acts;

(d) a reference expressed or implied in that provision to an ordinance shall be conconstrued as a reference to by-laws made or deemed to have been made under the Sydney Corporation Act, 1932, as amended by subsequent Acts.

Definitions.

342B. In this Part unless the context or subject matter otherwise indicates or requires—

"Advisory Committee" means the Town and Country Planning Advisory Committee constituted under this Part.

"Building" includes any structure or any part thereof.

"Council" includes county council.

"Erection," "erect" and similar expressions in relation to building include any structural work or any alteration, addition or rebuilding.

"Land" means either land in fee simple or any easement, right, or privilege, in, over, or affecting, land and includes all lands of the Crown.

DIVISION 2.—*Preparation of schemes.*

Preparation of schemes.

342c. (1) (a) A council may, by resolution, decide to prepare a scheme with respect to any land within its area.

(b) Two or more councils may by resolution of the respective councils decide to join in preparing a scheme with respect to any land within their areas, and in such a case shall enter into an agreement for the purpose. The provisions of section five hundred and twenty-one of this Act shall extend to and in respect of such agreement.

(c) Any such resolution may specify the particular purposes or objects for or with respect to which the scheme shall be prepared and the scheme shall be prepared accordingly.

(2) (a) A resolution passed under sub-section one of this section shall not take effect unless and until it is approved by the Minister and notice of such approval is published in the Gazette. Application for such approval shall be made as prescribed, and shall be accompanied by the prescribed particulars.

(b) In giving his approval the Minister may fix the period of time within which the scheme shall be prepared, and the scheme shall be prepared accordingly: Provided that the Minister may, from time to time, upon the application of the council or councils concerned, extend such period if it appears to him to be expedient so to do.

(3) Where a resolution to prepare a scheme has taken effect, the council or councils concerned shall, within the prescribed period, give notice of the resolution as prescribed.

Such notice shall contain a concise statement of the effect of the resolution, together with information as to the place and times at which a plan defining the land to which the resolution applies may be inspected.

(4)

(4) Where a resolution to prepare a scheme has taken effect the council or councils concerned may prepare one scheme with respect to the whole of the land to which the resolution applies or may prepare different schemes for different parts of the land.

Direction to council to prepare a scheme.

342D. (1) The Minister may from time to time by notice in writing direct any council to prepare a scheme with respect to any land within its area or direct two or more councils to act together in preparing a scheme with respect to any land in their areas, and the council or councils concerned shall comply with the direction.

(2) A direction under subsection one of this section may—

(a) specify the particular purposes or objects for or with respect to which the scheme shall be prepared;

(b) fix the period of time within which the scheme shall be prepared;

and the scheme shall be prepared accordingly: Provided that the Minister may, from time to time, upon the application of the council or councils concerned, extend such period if it appears to him to be expedient so to do.

(3) Where a direction is given under subsection one of this section the Minister shall publish a notice of that fact in the Gazette and in a newspaper circulating in the locality in which the land to which the direction relates is situated.

Such notice shall contain a concise statement of the effect of the direction, together with information as to the place and times at which a plan defining the land to which the direction relates may be inspected.

Appointment of planning committee.

342E. (1) Where a resolution under subsection one of section 342C of this Act has taken effect or a direction has been given by the Minister under subsection one of section 342D of this Act the council or councils concerned shall appoint a planning committee, which shall be constituted as prescribed, to prepare a scheme and shall also appoint or employ some person who possesses the prescribed qualifications in town planning or country planning to assist in the preparation of the scheme.

(2) The procedure for the calling of meetings of the planning committee and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by that committee.

(3) The Minister may arrange for the services of any officer or employee of the Crown who is skilled in any matter relating to town planning or country planning to be made available to assist the council or councils concerned under such conditions, including conditions for payment of remuneration, as may be agreed upon with the council or councils.

(4) The council or councils concerned may arrange, through the Minister, for the making or preparation by any officer or employee of the Crown of any survey or plan required for or in connection with the preparation of the scheme.

(5) The planning committee in preparing a scheme may accept, with or without modifications, a scheme proposed with respect to the whole or part of the land to which the resolution of the council or councils applies or the direction of the Minister relates, by or on behalf of all or any of the owners of that land.

Notice of scheme.

342F. (1) The scheme prepared by the planning committee shall be submitted to the council or councils concerned.

(2)

(2) The council or councils concerned—

(a) shall give notice as prescribed that the scheme has been submitted and shall in such notice—

(i) specify the address of the place or places at which copies of all maps, plans, specifications and other particulars relating to the scheme may be inspected;

(ii) specify the address of the council or councils concerned to which representations in connection with the scheme may be forwarded;

(b) shall forward particulars and a map or plan indicating in general terms the extent or nature of the scheme to all Departments of the Crown in right of the State or of the Commonwealth, all statutory bodies representing the Crown and all councils which appear to it or them to be affected by the scheme.

(3) Any person interested in any land affected by the scheme and any such Department, statutory body or council may, within a period of three months after the publication of notice of the scheme (or where the notice is published more than once, within a period of three months after the first publication thereof), make representations to the council or councils concerned in connection with the scheme.

(4) The council or councils concerned shall consider all representations made under this section and where any alteration of the scheme is considered necessary may refer the scheme back to the planning committee for alteration and resubmission.

(5)

(5) The council or councils concerned may adopt the scheme so submitted or resubmitted as the case may be.

Contents of scheme.

342G. (1) A scheme shall in the prescribed manner define the land to which it applies.

(2) A scheme may contain provisions for regulating and controlling the use of land and the purposes for which land may be used.

(3) Without prejudice to the generality of subsection two of this section a scheme may contain provisions for or in relation to all or any of the following matters, that is to say—

(a) the situation, opening, widening, deviating, classifying, and providing of roads;

(b) the restriction of ribbon development of land fronting adjoining or adjacent to a road by regulating all or any of the following matters, that is to say, the construction, forming or laying out of any means of access to or from the road, the erecting or making on the land of any building or permanent excavation which is within a specified distance from the road, or restricting or prohibiting the erection of any building intended for use for any purpose which is likely to cause increased vehicular traffic along the road, or traffic congestion on the road.

In this paragraph "building" includes neither fences, gates, posts, masts, ornaments or other similar structures or erections required for the purposes of farming or grazing or of any dwelling house or garden occupied with a dwelling house nor greenhouses or summerhouses required in connection with any such garden, nor temporary tents or scaffolding required for

for any purpose, but save as aforesaid includes any structure or erection of whatsoever material and in whatsoever manner constructed and any part of a building;

(c) the minimum standards of construction of roads of different classes and of drains, culverts and bridges in or upon roads;

(d) the provision of water, gas, electricity and other public services;

(e) the reservation of sites for places of religious worship, the residences of ministers of religion and buildings for religious purposes;

(f) the reservation of sites for educational and hospital establishments and community centres for promotion of physical, mental, moral and cultural welfare;

(g) the regulation of building and of matters relating thereto;

(h) the reservation or provision of land for afforestation purposes or for recreation grounds, ornamental gardens, children's playgrounds, green belts, green wedges, and other open spaces;

(i) the planning of localities and the design and protection of buildings and structural elements so as to reduce the risk of fire and limit the spread of fire;

(j) the zoning of land and the prohibition in any zone of the erection, construction, carrying out or use of any structure or work upon the land or the use in any zone of any land for any specified purpose or for any purpose other than a specified purpose;

(k) the extinction or variation of private rights of way and other easements;

(l) the removal, alteration, or demolition of obstructions or obstructive works;

(m) the preservation or acquisition for public access use and enjoyment of the foreshores or banks of the ocean, harbours, rivers, lakes, lagoons, and the like, and the conservation of the natural beauty thereof;

(n) the preservation of places or objects of historical or scientific interest or natural beauty or advantage;

(o) the provision of amenities;

(p) securing the safety of persons and property from hostile attack;

(q) the location of public utility undertakings, shipping facilities, railways, tramways, canals, and sites for air ports, aerodromes, bridges, jetties, wharves and ferries, and works and matters ancillary thereto;

(r) securing co-operation between the council or councils concerned and the Government, or any person or body of persons;

(s) the acquisition of land for any purpose of the scheme;

(t) the apportionment between councils of any costs, expenses and disbursements incurred in carrying into effect and enforcing a scheme, and the recovery from any council of its share or proportion of the same;

(u) the recovery of betterment in accordance with Division 10 of this Part;

(v) any matter necessary or convenient for carrying out the scheme.

(4) A scheme may suspend either generally or in any particular case or class of cases the operation of any provision of this or any other Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or

or instrument by or under whatever authority made, to the extent to which that provision is inconsistent with any of the provisions of the scheme.

(5) (a) A scheme shall contain provisions specifying the responsible authority or responsible authorities which shall be charged with the functions of carrying into effect and enforcing the provisions of the scheme or such of those provisions as relate to any particular portion or portions of the land included in the scheme, or such of those provisions as are directed to particular objects or purposes.

Any responsible authority so specified shall be a council, or two or more councils acting together as prescribed.

(b) A scheme may contain provision for the appointment of a special committee, constituted as prescribed, to assist the responsible authority in carrying into effect and enforcing the scheme.

Such committee may include as members persons who are not members of the council or councils which are the responsible authority.

DIVISION 3.—*Approval of planning schemes.*

Submission of scheme to Minister.

342H. (1) The scheme prepared by the council or councils concerned shall be submitted to the Minister with such maps, plans, specifications, and particulars as may be required by the Minister or as may be prescribed.

(2) The scheme shall be submitted in the form of a draft ordinance.

The scheme may adopt wholly or partially or by reference any of the provisions contained in a set of standard or model provisions adopted by the Minister on the recommendation of the Advisory Committee.

Reference to Advisory Committee.

342I. The Minister shall refer any scheme so submitted to him to the Advisory Committee for report.

342J. (1) (a) The Minister shall consider the report of the Advisory Committee and he may then decide— Consideration of scheme.

(i) to proceed with the scheme without alteration;

(ii) to proceed with the scheme with such alterations as he deems expedient in the light of such report;

(iii) to refer the scheme back to the council or councils concerned for further consideration;

(iv) not to proceed with the scheme.

(b) Where a scheme has been altered in pursuance of paragraph (a) of this subsection a reference in subsections two, three and four of this section to "the scheme" shall be construed as a reference to the scheme as so altered.

(2) If the Minister decides to proceed with the scheme, he shall notify brief particulars thereof and state in the notification that full particulars of the scheme may be inspected at such places as are designated and that objections against the scheme or any part of it may be made to him in writing, in or to the effect of the prescribed form, on or before the date specified in the notification, by or on behalf of any person who has an estate or interest in land affected by the scheme or by any council, including the council or councils which submitted the scheme to him in any case where the scheme is altered in pursuance of subsection one of this section.

The Minister shall arrange for such particulars to be made available for public inspection at the places so designated.

(3) (a) On or before the date so specified any such person or council may, in the manner prescribed, object to the Minister against the scheme or any part of it and shall state the grounds of the objection.

(b) As soon as practicable after such date the Minister, after such inquiry as he deems sufficient, shall determine such objections.

(c) Each person or council by or on behalf of whom an objection is lodged shall be informed of the determination of the Minister upon such objection, and the council or councils which submitted the scheme shall also be informed of each such determination.

(4) Where an objection is allowed in part or in whole by the determination of the Minister the scheme shall be amended by the Minister so as to conform with such determination.

(5) Where no objection has been lodged with the Minister in accordance with the provisions of paragraph (a) of subsection three of this section or where the scheme has been amended in accordance with the provisions of subsection four of this section the Minister may recommend the Governor to make an ordinance prescribing the scheme accordingly.

Prescribed scheme.

342K. (1) The Governor, on the recommendation of the Minister made in pursuance of section 342J of this Act, may make an ordinance prescribing the scheme.

A scheme which has been embodied in an ordinance so made is in this Part hereinafter referred to as a "prescribed scheme".

(2) The Minister shall give notice, as prescribed, of the fact that the scheme has come into operation and that copies of the ordinance prescribing the scheme and of any maps, plans, specifications or other particulars referred to therein will be available for public inspection.

(3) (a) All maps, plans, specifications, or other particulars referred to in such ordinance shall be filed at the Department of Local Government, Sydney, and any reference in the ordinance to maps, plans, specifications, or other

other particulars shall be deemed a reference to the maps, plans, specifications or other particulars so filed.

(b) Copies of the documents so filed—

(i) shall be made available at the Department of Local Government for public inspection upon payment of the prescribed fee;

(ii) shall be lodged with the Registrar-General and with the responsible authority and with the council of each area adjoining the land included in the prescribed scheme who shall file them for reference.

(c) Copies of the ordinance and of the maps, plans, specifications or other particulars shall be made available by the responsible authority during ordinary office hours for public inspection without fee.

DIVISION 4.—*Variation of prescribed schemes.*

Variation of prescribed scheme.

342L. A prescribed scheme may be varied by a subsequent scheme.

Any such variation may supplement or amend (otherwise than by extension of the land to which the scheme applies) the prescribed scheme.

DIVISION 5.—*Revocation of prescribed schemes.*

Revocation of prescribed schemes.

342M. The Minister may, after consideration of a report by the Advisory Committee, recommend the Governor to revoke a prescribed scheme, and the Governor may thereupon make an ordinance rescinding the ordinance by which the scheme was prescribed.

DIVISION 6.—*Carrying into effect and enforcing prescribed schemes.*

Powers, etc. of responsible authority.

342N. (1) The responsible authority specified in a prescribed scheme shall have and may exercise and discharge all the powers, authorities, duties

duties and functions conferred and imposed on the responsible authority by the prescribed scheme.

(2) Where a prescribed scheme provides expressly or impliedly that any act, matter or thing specified in the scheme shall or shall not be done except with the approval, consent or permission of the council which is the responsible authority, any person who is dissatisfied with the decision of the council upon an application for such approval, consent or permission or with any condition imposed by the council, may appeal against such decision or the imposition of such condition in accordance with the provisions of section three hundred and forty-one of this Act, and the provisions of that section shall extend, mutatis mutandis, to and in respect of any such appeal.

Carrying prescribed schemes into effect.

342o. The responsible authority may carry into effect the provisions of the prescribed scheme—

(a) by the acquisition of land and subsequent action in pursuance of the prescribed scheme;

(b) by causing any aligned public road to be realigned under the Public Roads Act, 1902, as amended by subsequent Acts, in order to widen the road and by applying the realignment method of acquisition, and by subsequent action in pursuance of the prescribed scheme;

(c) by taking such action as may be necessary to enforce the performance of any duty imposed by the prescribed scheme upon any owner or lessee, or public body or authority, including the State Government, or any statutory body or any council or person;

(d)

(d) by enforcing any agreement incorporated in the prescribed scheme, or made subsequent to the prescribed scheme, and relating to any matter dealt with in or arising out of the prescribed scheme;

(e) by exercising, in accordance with the prescribed scheme, its powers under this Act or, in the city of Sydney, the Sydney Corporation Act, 1932, as amended by subsequent Acts, to regulate the opening of any new roads, the subdivision of land, the erection of buildings or any other matter appropriate to the prescribed scheme;

(f) by any other method specifically provided for in the prescribed scheme;

(g) by the exercise of any power conferred upon the council which is the responsible authority by or under this or any other Act; or

(h) by any combination of two or more of these methods.

Enforcement of prescribed schemes.

342P. (1) The responsible authority, subject to the provisions of any prescribed scheme, may, after giving the prescribed notice—

(a) remove, pull down or alter, so as to bring into conformity with the provisions of the prescribed scheme, any building or other work which does not conform to those provisions or in the erection or carrying out of which any provision of the prescribed scheme has not been complied with or the demolition or alteration of which is necessary for carrying the prescribed scheme into effect; or

(b) where any land is being used in such a manner as to contravene any provision of the prescribed scheme, prohibit such use of the land; or

(c)

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

(2) Where any action by the responsible authority under subsection one of this section is made necessary by the default or wrongful act of any person, the responsible authority may recover any expenses thereby incurred from such person as a debt in any court of competent jurisdiction.

Delegation of powers.

342Q. (1) Where a prescribed scheme contains provision for the appointment of a special committee to assist the responsible authority in carrying into effect and enforcing the prescribed scheme, the responsible authority may delegate to such committee any of its powers, authorities, duties and functions in relation to such scheme, except such powers, authorities, duties or functions as may be prescribed from time to time.

(2) Any special committee to which any powers, authorities, duties or functions are delegated as aforesaid may, without confirmation by the responsible authority, exercise, perform, or carry out the same in like manner and with the same effect as the responsible authority could itself have exercised and performed the same.

(3) Any special committee shall be subject in all things to the responsible authority, and shall carry out all directions, general or special, of that authority given in relation to such committee or its affairs.

(4) The procedure for the calling of meetings of the special committee and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by that committee. (5)

(5) The responsible authority may appoint a member of the special committee to be the chairman thereof; and if no such appointment is made, the committee may make the appointment. The responsible authority may from time to time remove such chairman and appoint another in his stead.

Notices relaxing temporary prohibition or restriction of building.

cf. 22 and 23 Geo. V, c. 48, ss. 15, 16.

342B. Where in a prescribed scheme the erection of buildings on any land is prohibited or restricted until such time as the responsible authority has given notice as provided in this section the following provisions shall have effect:—

(a) The responsible authority may, from time to time, by notice given as prescribed, in respect of the whole or any part of the land on which the erection of buildings is so prohibited or restricted, permit the erection of buildings, subject to such conditions (if any) as may be specified in the notice.

(b) No such notice shall be given unless and until the provisions thereof have been approved by the Minister.

(c) Any notice so given may be amended or revoked by a subsequent notice but, so long and in so far as it continues to be operative, shall be deemed to form part of the scheme to which it relates.

Where any such notice has been so amended, the notice as amended shall be the notice under this section.

Where any such notice has been revoked the prohibitions or restrictions set out in the prescribed scheme shall revive as from the date of such revocation.

(d) Without prejudice to the foregoing provisions of this section, it shall be the duty of the responsible authority within

within a period of three months from the expiration of every third year after the coming into operation of the prescribed scheme to consider the question of giving such a notice in respect of all or any of the land the erection of buildings upon which remains subject to the aforesaid prohibitions or restrictions.

Any person dissatisfied with the failure of the responsible authority to give such a notice within such period of three months in respect of land in which he has an estate or interest may appeal to the Minister within two months after the expiration of such period of three months, and the Minister on any such appeal may, if he thinks fit, give such a notice, and a notice so given by him shall have effect as if it were a notice given by the responsible authority and approved by the Minister.

(e) Any person who, pending the giving of a notice under this section, desires to commence the erection of a building the erection of which would contravene the aforesaid prohibitions or restrictions may, in accordance with such provisions, if any, as may be contained in the prescribed scheme, apply to the responsible authority for permission to erect the building specified in the application.

(f) The responsible authority shall, in deciding any such application, have regard to any injury likely to be caused to the applicant by the refusal of the application, as well as to any public advantage likely to result from the maintenance of the aforesaid prohibitions or restrictions, pending the giving of

of such a notice, and may, if it is satisfied that the proposed erection of the building will not contravene any permanent provisions of the prescribed scheme, grant the application unconditionally, or subject to such conditions as it may think proper to impose:

Provided that, where the responsible authority has power under this section to grant an application, it shall not refuse that application unless it is satisfied that other land suitable for the erection of such building as is specified in the application is available on reasonable terms and either—

(i) that the erection of such building would involve danger or injury to health by reason of the lack of roads, drains, sewers, water supply, or any public services and that the provision of the necessary services would be premature or likely to involve excessive expenditure of public money; or

(ii) that the erection of the building would be likely seriously to injure the amenity of the locality.

(g) Any person dissatisfied with the refusal of any such application, or by any conditions imposed by the responsible authority, may within twenty-eight days from the date on which he received notice of the decision of the responsible authority or such longer period as the Minister may allow, appeal to the Minister, and the Minister may dismiss or allow the appeal, either unconditionally, or subject to such conditions as he thinks proper to impose.

The

The decision of the Minister on an appeal under this paragraph shall be final and shall have effect as if it were the decision of the responsible authority.

DIVISION 7.—*Interim development.*

Commencement of Division.

342s. This Division shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Definitions.

342T. (1) In this Division—

"Council" includes two or more councils acting together in the preparation of a scheme.

"Development" in relation to any land includes the erection of any building, and the carrying out of any work, and any use of the land or building or work thereon for a purpose which is different from the purpose for which the land or building or work was last being used.

"Interim development" means development of land to which a scheme applies between the date upon which a resolution of the council or two or more councils acting together to prepare a scheme has taken effect or the date upon which notice of the fact that the Minister has directed the council or two or more councils to act together to prepare a scheme was published in the Gazette, and the date of the coming into operation of the scheme.

"Interim development application" means application for the permission of the council for the interim development of land.

(2) The provisions of this Division shall not apply in any case where the scheme for the preparation of which a resolution has taken

taken effect or a direction has been given by the Minister is a scheme varying a prescribed scheme.

Restriction of interim development.

342U. (1) Interim development shall not be carried out—

(a) except as may be permitted by ordinance; or

(b) except as may be permitted by the council under the authority of an ordinance and subject to such conditions, restrictions and provisions as may be contained in such ordinance.

(2) Ordinances may be made suspending either generally or in any particular case or class of cases the operation of any provision of this or any other Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made, to the extent to which that provision is inconsistent with any interim development permitted under this Division.

Permission for interim development.

342V. (1) Subject to the provisions of any such ordinance the council may, where an interim development application is made, grant the application unconditionally or subject to such conditions as it may think proper to impose or refuse to grant such application if it appears to the council that such development would be in contravention of the scheme if it had come into operation or would be in contravention of town planning or country planning principles or would interfere with the amenities of the neighbourhood, and the council shall be deemed to have refused the application unless within two months from the receipt of the application it gives notice to the applicant—

(a) that it has decided the application (and stating the reason for the refusal or for the imposition of conditions upon approval of the application); or

(b)

(b) that the application has been referred to the Minister for decision in accordance with the provisions of subsection three of this section; or

(c) that consideration of the application has been postponed in accordance with the provisions of subsection two of this section:

Provided that such period of two months may, at any time before the expiration thereof, be extended by agreement in writing made between the council and the applicant.

(2) The council may by notice served on the applicant postpone the consideration of any such application either generally or during such period as may be specified in the notice; but no such notice shall be so served until the applicant has been given a reasonable opportunity to show to the satisfaction of the council that the proposed development would be carried out immediately if the application were granted and has failed to do so:

Provided that—

(a) the applicant may within one month after the service of such notice appeal against the notice to the Land and Valuation Court or to the court of petty sessions for the district in which the land proposed to be developed is situated and the court, if satisfied that the proposed development would be carried out immediately if the application were granted, shall by order cancel the notice of postponement and in such case the period of two months referred to in subsection one of this section shall be deemed to commence from the date of such order;

(b) if with respect to any interim development application it appears to the Minister that there are exceptional reasons requiring the immediate determination thereof, he may, without prejudice to his power to require the application to be referred to him for decision in accordance with subsection three of this section, give directions requiring the council to determine the application, and, where a notice of postponement has been served with respect thereto, may by order in writing to the council cancel the notice, and in such case the period of two months referred to in subsection one of this section shall be deemed to commence from the date of such order.

(3) (a) If it appears to the Minister that it is expedient, having regard to considerations affecting the public interest, whether generally or in the locality concerned, that any interim development application, or any class or description of such applications, should be referred to him for decision, he may give directions to the council requiring that application, or applications of that class or description, to be so referred, and any decision of the Minister on an application so referred to him shall be deemed to be the decision of the council:

Provided that, before dealing with any application so referred to him, the Minister shall, if either the council or the applicant so desire, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

(b) The Minister may give directions to the council requiring it to furnish him with such information with respect to interim development applications received by it as he considers

considers necessary or expedient for the purpose of enabling him to exercise his functions under the last preceding paragraph.

(c) Provision may be made by ordinance requiring councils, before dealing with interim development applications, to consult with such authorities or persons as may be prescribed.

(4) In any case where an interim development application is refused or is granted subject to conditions, the council may, if it thinks fit, make a contribution towards any damage or expense which the applicant shows to the satisfaction of the council that he is likely to suffer by reason of the council's decision.

(5) An applicant who is dissatisfied with the refusal of the council to grant his application, or with any conditions imposed by the council, may, within one month from the date on which he received notice of the council's decision, or such longer period as the Minister may allow, appeal to the Minister, and the Minister, after taking into consideration any offer by the council to make a contribution under subsection four of this section, may dismiss the appeal or may allow the appeal either unconditionally or subject to such conditions as he thinks proper to impose, but the Minister, before deciding any such appeal, shall, if either the appellant or the council so desire, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

The decision of the Minister on an appeal under this subsection shall be final and shall have effect as if it were a decision of the council.

(6) Nothing in this section shall be construed as affecting the duty of a council to take into consideration with reasonable despatch all

all interim development applications made to it, other than applications the consideration of which is postponed or which are referred to the Minister under the provisions of this section.

Revocation or modification of permission for interim development.

342w. (1) If at any time before a scheme comes into operation it appears to the Minister that it is expedient, having regard to the provisions then proposed to be included in that scheme, that any interim development permitted by ordinance under this Division should not be carried out or completed or should not be carried out or completed to the extent or in the manner permitted by the ordinance or that any power given to a council under the authority of an ordinance to grant permission for the carrying out of interim development should not be continued or should be curtailed, the Minister may recommend the Governor to rescind or alter the ordinance, and the Governor may rescind or alter the ordinance accordingly: Provided that before the Minister makes any such recommendation he shall, if either the council or any person who in his opinion will be affected by such alteration so desires, afford them an opportunity of appearing before and being heard by a person appointed by him for the purpose.

(2) (a) If at any time before a scheme comes into operation it appears to the council that it is expedient, having regard to the provisions then proposed to be included in that scheme, that any development for which permission has been granted on an interim development application should not be carried out or completed, or should not be carried out or completed to the extent or in the manner allowed by the permission, it may, with the consent of the Minister, by notice served in accordance with this subsection, revoke or modify the permission to such extent as appears to it to be necessary.

(b) The Minister may direct the council to submit to him for his consent a notice revoking or modifying any permission specified in the directions, or modifying any such permission in such manner as may be so specified and to serve such notice in accordance with this subsection.

(c) Where a council proposes or is directed to exercise its powers under this subsection, it shall serve the notice on all persons who in its opinion will be affected by the notice.

(d) If any such directions are not complied with within the time specified therein, the Minister may himself prepare and serve the notice, and such notice shall have effect as a notice under paragraph (a) of this subsection.

(e) The Minister, before consenting to or serving the notice referred to in the foregoing provisions of this subsection shall, if either the council or any such person so desires, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

Contribution.

342x. Where any permission for the development of land is revoked or modified under this Division, the council may make to any person a contribution towards any damage or expense which such person shows to the satisfaction of the council that he has suffered or is likely to suffer by reason of such revocation or modification.

Suspension of provisions of prescribed scheme.

342y. (1) In any case where—

(a) a resolution for the preparation of a scheme varying a prescribed scheme has taken effect; or

(b) the Minister has directed the preparation of such a scheme,

the

the Minister, if it appears to him expedient so to do—

(i) for securing that any development prohibited by the prescribed scheme may be carried out notwithstanding the provisions of that scheme; or

(ii) for securing that any development permitted by the prescribed scheme may be regulated,

may notify the suspension of the provisions of the prescribed scheme pending the coming into operation of the varying scheme and such provisions shall be suspended accordingly; and any such notification may suspend the provisions of the scheme either as respects the whole of the land to which the varying scheme is to apply or as respects any portion thereof specified in the notification, and either as respects all development or as respects development of any class specified in the notification.

(2) Where the provisions of a prescribed scheme are notified as suspended under this section, the provisions of this Division with respect to the control of interim development shall, as from the date of the notification, apply to development to which the notification relates and shall so apply as if the resolution of the council or the direction of the Minister had taken effect on that date.

Power to apply interim development provisions to any land.

342z. The Governor may, by proclamation, direct with respect to any land in any area that on and from a day appointed in that behalf such land shall be deemed to be included in a scheme for the preparation of which a resolution has taken effect, and the provisions of this Division shall apply with respect to such land as from the date of publication in the Gazette of such proclamation.

DIVISION

DIVISION 8.—*Scheme for the County of Cumberland.*

Commencement of Division.

342AA. This Division shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Scheme for County of Cumberland.

342AB. (1) (a) The Minister shall not later than three years after the commencement of this Division, complete the preparation of a scheme in respect of all land within the areas wholly or partly included in the County of Cumberland.

(b) Such scheme shall include provision only for such matters, consistent with the provisions of this Part, as may from time to time be prescribed.

(2) (a) For the purposes of such scheme and of any matter in relation to the preparation thereof the Minister, in respect of such land, shall have and may exercise, perform and enjoy the powers, authorities, duties, functions, discretions and immunities of a council and while so doing shall be deemed to be a council.

(b) (i) It shall be the duty of the council and of every officer and servant of the council and of every committee appointed by the council under this Part and of every member of any such committee to furnish such information and afford such assistance as the Minister may require for the purposes aforesaid.

(ii) Any person authorised by the Minister in that behalf shall for such purposes have liberty at all reasonable times without charge to inspect any document, plan, map or record of the council or of any committee appointed by the council under this Part; and the servant or other person for the time being having the custody thereof shall not refuse or prevent

prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(c) It shall be the duty of every Government department, statutory body, authority and person to furnish such information and afford such assistance as the Minister may require for such purposes.

(d) The provisions of Division 7 of this Part shall, mutatis mutandis, apply, as from the commencement of this Division, in respect of all land within the areas wholly or partly included in the County of Cumberland.

(3) The scheme prepared by the Minister shall be deemed to be a scheme prepared and submitted to him jointly by the councils concerned in accordance with this Part.

(4) (a) The scheme so prepared shall be referred by the Minister to the Advisory Committee for report.

(b) After considering the report of the Advisory Committee the Minister may decide to proceed with the scheme with or without any alteration recommended by such committee and the provisions of sections 342J (other than paragraph (a) of subsection one) and 342K of this Act shall, mutatis mutandis, thereupon apply in respect of the scheme.

(5) The expenditure of the Minister incurred in pursuance of this section shall be defrayed in the first instance from moneys provided by Parliament or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose, but the amount thereof (less any remissions allowed by the Minister, which remissions the Minister with the approval of the Treasurer

Treasurer is hereby authorised to allow) shall be repaid by the councils concerned on demand to the Treasurer, in such proportions as the Minister may determine.

(6) The Treasurer may recover as a debt from any council the proportion so determined by the Minister to be repayable by that council.

(7) The amount of any liability to the Treasurer incurred by the council under this section may be paid out of the appropriate fund of the council and may be borrowed by way of ordinary loan under this Act, or as a loan for essential purposes in accordance with the provisions of the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may require.

(8) The scheme prescribed in pursuance of this section may be varied or revoked in accordance with the provisions of this Part, and any such variation may add to such scheme greater detail in respect of any land included therein.

DIVISION 9—*Compensation.*

Compensation.

342AC. (1) Subject to the provisions of this Part, any person—

(a) who has an estate or interest in land to which a prescribed scheme applies and such estate or interest is injuriously affected—

(i) by the coming into operation of any provision contained in the prescribed scheme; or

(ii) by the execution of any work under the prescribed scheme; or

(iii) by any restrictions imposed by or under the prescribed scheme;

(b)

(b) who suffers damage by reason of any action taken by or on behalf or at the order of the responsible authority for the enforcement or carrying into effect of the prescribed scheme;

(c) who has incurred expenditure—

(i) for the purpose of complying with any provision of the prescribed scheme; or

(ii) in making a claim under the provisions of this Act relating to compensation; or

(iii) in making an appeal under the provisions of this Act relating to betterment,

which expenditure is rendered abortive in whole or in part by suspension or variation or revocation of the prescribed scheme;

(d) who has, before the resolution to prepare a scheme has taken effect or the publication in the Gazette of the notice that the Minister has directed the council to prepare a scheme or, in the case of land to which the scheme referred to in Division 8 of this Part applies, before the commencement of that Division, incurred liability or expenditure in or in connection with the carrying out of any work which is either in whole or in part rendered abortive or abandoned by reason of the operation of this Part;

(e) who has incurred expenditure pursuant to any approval, permission or consent granted under the provisions of a prescribed scheme, which expenditure is rendered abortive in whole or in part by the revocation or modification of such approval, permission or consent;

(f)

(f) who has incurred expenditure pursuant to any permission given by an ordinance or by a council pursuant to an ordinance under Division 7 of this Part, which expenditure is rendered abortive in whole or in part by the rescission or alteration of such ordinance or the revocation or modification of such permission;

(g) who has incurred expenditure pursuant to any certificate given to him under section 342AS of this Act which expenditure is rendered abortive in whole or in part by reason of any error, omission, or inaccuracy in such certificate,

shall, if he makes a claim therefor within the time prescribed, be entitled to obtain, from the council which is the responsible authority concerned, compensation in respect of such injurious affection, damage, liability or expenditure.

(2) Compensation shall not be payable in the following cases:—

(a) in respect of any building erected or work done upon or contract made or other act or thing done with respect to land included in a prescribed scheme after the date upon which the resolution of the council has taken effect or the date of publication in the Gazette of the notice that the Minister has directed the council to prepare a scheme affecting such land, as the case may be, or where the prescribed scheme is the scheme referred to in Division 8 of this Part, after the commencement of that Division, unless the erection of such building or the doing of such work or the making of such contract or the doing

doing of such other act or thing was permitted under the provisions of Division 7 of this Part;

(b) where an estate or interest in land is injuriously affected by reason of any provision contained in the prescribed scheme if and in so far as the same provision or a provision substantially to the same effect was, at the date when the prescribed scheme came into operation, already in force by virtue of some Act, including this Act (except this Part);

(c) where an estate or interest in land is affected by any provision of the prescribed scheme which prescribes the space about buildings or limits the number of buildings to be erected, or prescribes the height, bulk, floor space, use, design, external appearance, or character of buildings;

(d) where an estate or interest in land is affected by any provision of the prescribed scheme prohibiting or restricting the use of that land unless the applicant establishes that some specified use of the land (which is prohibited or restricted by the prescribed scheme) was practicable immediately before the prescribed scheme came into operation and that there was at that time a demand for such use;

(e) in respect of any action taken by or on behalf or at the order of the council which is the responsible authority for the enforcement of the prescribed scheme in accordance with the provisions of section 342P of this Act except in a case where a building or work which the council has removed, pulled

pulled down or altered was an existing building or an existing work or the use of land which it has prohibited or restricted was an existing use;

(f) in respect of any thing done in contravention of a prescribed scheme;

(g) in respect of any thing done in contravention of Division 7 of this Part or of any decision or determination thereunder, or, as the case may be, in contravention of any decision or determination on any appeal under that Division.

For the purpose of paragraph (e) of this subsection—

"Existing building" and "existing work" mean respectively a building or work erected, constructed or carried out before the material date, and include also a building or work—

(i) begun before, but completed after, the material date; or

(ii) erected constructed or carried out pursuant to any permission under Division 7 of this Part:

Provided that a building or work shall not cease to be, or to be deemed to be, an existing building or work by reason of its alteration or extension in accordance with any provision of the scheme relating to the alteration or extension of existing buildings or works, and any such alteration or extension shall itself be deemed to be part of the existing building or work.

"Existing use" means a use of land for any purpose of a similar character to that for which it was last used before the material date or, in the case where there is a newly erected building on the land which has not

not been used before that date, a use for any purpose for which the building was designed, and includes in any case any use of land permitted under Division 7 of this Part:

Provided that—

(i) if at any time after the material date the use of that land which, at that date, was the existing use thereof, is discontinued for a period of eighteen months, no use of that land at any subsequent date shall be deemed to be an existing use thereof;

(ii) where at the material date a person who was using any land for the purpose of mining, quarrying, the digging of clay, gravel or sand, or the deposit of waste materials or refuse, or any other purpose of a similar nature, was entitled also to use neighbouring land for any such purpose, the user under that title of that neighbouring land for any such purpose, whether before or after the material date, shall be deemed to be an existing use.

"Material date" means the date on which the resolution to prepare the scheme was passed or the date on which the Minister gave notice to the council in accordance with the provisions of subsection one of section 342D of this Act to prepare a scheme or, in respect of the scheme referred to in Division 8 of this Part, the date upon which that Division commenced:

Provided that, where a prescribed scheme (in this proviso referred to as the "original scheme") is revoked and replaced

replaced by a subsequent scheme, or is varied in accordance with this Part and any provisions of the scheme replacing or varying the original scheme is substantially to the same effect as a provision of the original scheme, the material date shall be the date on which the resolution to prepare the original scheme was passed or the date on which the Minister gave notice to the council in accordance with the provisions of subsection one of section 342D of this Act to prepare the original scheme or, in respect of the scheme referred to in Division 8 of this Part, the date upon which that Division commenced.

(3) Where an estate or interest in land is injuriously affected by reason of any provision contained in the prescribed scheme, then if such provision or a provision substantially to the same effect could, immediately before the prescribed scheme came into operation, have been validly included in any ordinance, proclamation, declaration, notification or other like instrument issued or made under the authority of this Act (other than this Part) or the Sydney Corporation Act, 1932, as amended by subsequent Acts, and—

(a) if no compensation would have been payable by reason of the inclusion of the provision in such ordinance, proclamation, declaration, notification or other instrument, no compensation shall be payable under this Division;

(b) if compensation would have been so payable the amount of compensation payable in respect of that provision of the scheme shall not be greater than the compensation which would have been so payable;

(4)

(4) In assessing compensation under this Division in respect of the injurious affection of an estate or interest in land the following provisions shall have effect:—

(a) The amount of the compensation shall, subject to this Division, be a sum equal to the difference between the market value of such estate or interest at the time of the coming into operation of the provision of the prescribed scheme, or the execution of the work under the prescribed scheme, or the prohibition or restriction imposed by or under the prescribed scheme, as the case may be, out of which the claim for compensation arose and what would have been the market value of that estate or interest if such provision had not come into operation, or such work had not been executed or such prohibition or restriction had not been imposed, as the case may be.

(b) There shall be taken into account any modification of the injurious affection that may be effected in consonance with the prescribed scheme.

(c) There shall be taken into account any benefit which may accrue to any land in which the claimant has an estate or interest—

(i) by reason of the coming into operation of the scheme; or

(ii) by reason of the construction or improvement by any other person, at any time after the scheme is prescribed, upon land adjacent to the land in respect of which compensation is claimed, of any work or service in pursuance of the provisions of the scheme.

(d)

(d) There shall be taken into account any contribution made by the council in accordance with the provisions of Division 7 of this Part.

(e) If the parcel of land in respect of which compensation is claimed has, since the date upon which the scheme was prescribed, become or ceased to be separate from other land, the amount of compensation shall not be enhanced by reason of its having become or ceased to be separate from other land.

(f) If the question arises out of the coming into operation of a varying scheme there shall be taken into account any amount which the council has paid or is liable to pay, or has recovered or is entitled to recover, in respect of that land, by reason of the coming into operation of the original scheme, or any other scheme varying it.

cf. Act No. 22, 1943, s. 18.

(5) (a) If any dispute or difference arises between any person claiming compensation under this Division and any council the question of whether such council is the responsible authority concerned and whether such person is entitled to compensation and, if so, to what amount, shall be decided—

(i) where the claim does not exceed one hundred pounds—by a court of petty sessions holden before a stipendiary or police magistrate;

(ii) where the claim exceeds one hundred pounds—by the Land and Valuation Court.

The decision of the Court or magistrate shall be final and conclusive.

(b)

(b) The time within which claims under this section may be made and the manner of making such claims and any matter in connection therewith may be prescribed—

(i) in the case of claims made before the Land and Valuation Court—by rules of court of that Court;

(ii) in the case of claims made before a court of petty sessions holden before a police or stipendiary magistrate—by ordinance made under this Act.

(c) The council which is the responsible authority concerned, and the claimant may appear by solicitor or counsel at any inquiry held for the assessment of compensation under this section.

Recovery of compensation.

342AD. (1) Any amount payable to a claimant as compensation under this Part may be recovered from the council which is the responsible authority concerned as a debt in any court of competent jurisdiction.

Compensation subject to agreements, etc.

(2) The provisions of this Part as to compensation shall be subject to any special provisions respecting compensation included in the prescribed scheme or included in any agreement with the claimant or his predecessor in title incorporated in the prescribed scheme or made subsequently thereto; and the inclusion of any such provision or agreement in a scheme is hereby authorised.

Alternative rights in respect of compensation.

342AE. (1) Nothing in this Division shall deprive any person of any right to compensation that he may have independently of this Part.

cf. 7 & 8 Geo. VI, No. 99 (Tas.), s. 25 (3) (4).

(2) Where a person would be entitled to claim compensation in respect of any matter or thing under this Part and also under any other enactment, he shall not be entitled to receive compensation both under this Part and such

such other enactment, nor to receive any greater compensation under this Part than he would be entitled to receive under such other enactment.

DIVISION 10.—*Betterment.*

Valuation of betterment.

342AF. (1) The council of an area within which is situated land to which a prescribed scheme applies, shall where the prescribed scheme contains provision for the recovery of betterment in accordance with this Division—

(a) within such time, not exceeding five years after the prescribed scheme comes into operation, as is specified in such scheme require the Valuer-General to report whether any land which is for the time being ratable has been increased in value by the coming into operation of any provision contained in the prescribed scheme; or

(b) within twelve months after—

(i) the granting of any permission under the prescribed scheme for the erection of any building or the carrying out of any work or the use of any land; or

(ii) the completion by the council of any work under the prescribed scheme,

require the Valuer-General to report whether any land which is for the time being ratable has been increased in value by the granting of such permission or by the execution by the council of any such work.

Any report furnished by the Valuer-General under this subsection shall be accompanied by a list of the lands and of the increases in value thereof.

Such increases in value are in this Part referred to as betterment.

(2)

(2) (a) All lists furnished by the Valuer-General under subsection one of this section shall be stamped with the official stamp of or signed by the Valuer-General.

(b) There shall be payable by every council to which any such list is furnished fees therefor according to a scale which shall be fixed by the Governor from time to time.

(3) Notice of valuation of betterment shall be given in the same manner as notice of valuation of land (whether under this Act or the Sydney Corporation Act, 1932, as amended by subsequent Acts, or under the Valuation of Land Act, 1916, as amended by subsequent Acts, as the case may be), and the provisions of any such Act for the time being in operation in the area relating to appeals against valuations of land shall, mutatis mutandis, apply to and in respect of appeals against valuations of betterment.

Betterment charge.

342AG. (1) Subject to this Part, where the prescribed scheme contains provision for the recovery of betterment in accordance with this Part the council shall in respect of the betterment of any such land aforesaid impose a betterment charge: Provided that such a charge shall not be imposed in respect of the betterment of any land in relation to which any accruing benefit has been taken into account in assessing compensation under Division 9 of this Part.

(2) The total amount recoverable under a betterment charge on any separate parcel of land shall be such as to return to the council a sum equal to eighty per centum of the betterment on such separate parcel.

(3) (a) Any such charge shall be imposed each year for a term of years fixed by the prescribed scheme, or, where no term is so fixed, for a term of years fixed by the council when first imposing the charge.

(b)

(b) The amount of the charge so imposed shall be included, and the term of years so fixed shall be stated, in the rate notice in respect of the land in respect of which it is imposed.

(c) The charge so imposed may be recovered as a rate and shall be a charge upon the land in respect of which it is imposed as if it were a rate.

(4) The amount of the betterment charge shall be subject to any special provisions or agreements relating thereto included in the prescribed scheme, and the inclusion of any such provision or agreement in a scheme is hereby authorised.

DIVISION 11.—*Powers of Minister in case of failure of councils to prepare or carry into effect or enforce schemes.*

Powers of Minister in case of default by councils.

342AH. (1) In any case—

(a) where a resolution to prepare a scheme has taken effect but the council or councils concerned have not prepared the scheme within the period or extended period fixed under section 342C of this Act; or

(b) where the Minister under section 342D of this Act has directed a council or two or more councils acting together to prepare a scheme and the Minister is satisfied after due inquiry that the council or councils concerned have not effectively complied with the direction; or

(c) where the Minister is satisfied after due inquiry that the responsible authority is not effectively carrying into effect or enforcing a prescribed scheme or any provision thereof,

the

the Minister may, after notifying the council or councils concerned of his intention so to do—

(i) prepare or carry into effect or enforce the scheme or provision thereof as the case may be; or

(ii) direct the Advisory Committee to prepare or carry into effect or enforce the scheme or provision thereof as the case may be.

(2) (a) For the purposes of this section, the Minister and the Advisory Committee shall have and may exercise and perform and enjoy in and in relation to the land to which the resolution applies or the direction relates or the prescribed scheme applies, as the case may be, the powers, authorities, duties, functions, discretions and immunities of the council or councils within whose area or areas such land is situated except such powers, authorities, duties, functions, discretions and immunities as may be prescribed and while so doing shall be deemed to be such council or councils.

(b) (i) It shall be the duty of the council and of every officer and servant of the council to furnish such information as the Minister or the Advisory Committee may require for the purposes aforesaid.

(ii) Any person authorised in that behalf by the Minister or the Advisory Committee, as the case may be, shall for such purposes have liberty at all reasonable times to inspect any document, plan, map, or record of the council; and the servant or other person for the time being having the custody thereof shall not refuse or prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(3) Any expenditure of the Minister or the Advisory Committee incurred in pursuance of this section shall be defrayed in the first instance from moneys provided by Parliament or from moneys made available to the State

State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose, but the amount thereof (less any remissions allowed by the Minister, which remissions the Minister, with the approval of the Treasurer, is hereby authorised to allow) shall be repaid by the council concerned on demand to the Treasurer, and where more than one council is concerned, in such proportions as may be determined by the Minister.

(4) The Treasurer may recover as a debt any sums repayable by the council in accordance with subsection three of this section.

(5) The amount of any liability to the Treasurer incurred under this section may be paid out of the appropriate fund of the council concerned, and may be borrowed by way of ordinary loan under this Act, or as a loan for essential purposes in accordance with the provisions of the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may require.

DIVISION 12.—*Town and Country Planning Advisory Committee.*

342AI. (1) There shall be a Town and Country Planning Advisory Committee, which shall have and may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon the Advisory Committee by or under this Act. Constitution of Advisory Committee.

(2) (a) The Advisory Committee so constituted shall consist of seven members who shall be appointed by the Governor.

Of the members so appointed—

(i) one shall be an officer of a council and shall be appointed from a panel of four such officers nominated jointly as prescribed by the governing bodies of the Local

Local Government Association of New South Wales and the Shires Association of New South Wales;

(ii) one shall be an engineer and shall be appointed from a panel of four members of the Institution of Engineers, Australia (Sydney Division) nominated as prescribed by the governing body of that Division;

(iii) one shall be a registered architect and shall be appointed from a panel of four members of the Royal Australian Institute of Architects (New South Wales Chapter), nominated by the Council of that Chapter;

(iv) one shall be a registered surveyor and shall be appointed from a panel of four members of the Institution of Surveyors (New South Wales) nominated by the governing body of that Institution;

(v) one shall be an officer of the Department of Local Government, and shall be nominated for appointment by the person for the time being holding the office of or duly acting as Under Secretary of that Department;

(vi) two shall be persons who shall be appointed on the nomination of the Minister.

(b) The Governor may appoint one of the members to be the chairman of the Advisory Committee and one other member to be the vice-chairman of the Advisory Committee.

(c) No person shall be eligible for appointment as a member of the Advisory Committee unless the Minister is satisfied that he has adequate knowledge or experience of the principles or practice of town planning or country planning.

(3)

(3) (a) The Governor may from time to time appoint a deputy to act in the place of any member.

The deputy so appointed to act in the place of the member referred to in subparagraph (i), subparagraph (ii), subparagraph (iii) or subparagraph (iv) of paragraph (a) of subsection two of this section shall be a person whose name is on the same panel as the member for whom he is appointed deputy.

The deputy so appointed to act in the place of the member referred to in subparagraph (v) of the same paragraph shall be appointed on the nomination of the person for the time being holding the office of or duly acting as Under Secretary of the Department of Local Government.

The deputy so appointed to act in the place of either of the members referred to in subparagraph (vi) of the same paragraph shall be appointed on the nomination of the Minister.

(b) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a deputy to act in the place of a member; and all acts and things done or omitted to be done by a deputy when so acting as aforesaid shall have the same consequences as if the same had been done or omitted by the member in whose place the deputy is acting.

(4) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of a member of the Advisory Committee, or of a deputy member, and a member or deputy member shall not, in his capacity as such member or deputy member, be subject to the provisions of the Public Service Act, 1902, or any Act amending that Act.

(5) (a) Each member of the Advisory Committee shall, subject to this section, hold office for a term of five years from the date of his

his appointment or such shorter term as may be specified by the Governor in the instrument of appointment, and shall if otherwise qualified be eligible for reappointment upon the expiration of his term of office: Provided that a person appointed to fill the vacant office of a member shall hold office only for the residue of his predecessor's term of office, but shall if otherwise qualified be eligible for reappointment.

(b) A member or deputy member shall be deemed to have vacated his office if he—

(i) dies;

(ii) resigns his office in writing under his hand addressed to the Governor;

(iii) being one of the members referred to in subparagraphs (i) to (v) both inclusive of paragraph (a) of subsection two of this section, ceases to hold the qualification by virtue of which he was appointed; or

(iv) is removed from office by the Governor.

(c) The Governor may, for any cause which appears to him sufficient, remove any member or deputy member from office.

(6) (a) Every panel constituted under subsection two of this section shall be constituted in the manner and within the time prescribed, and the nominations for the panel shall be accompanied by the written consent of each person whose name is included in the panel to serve on the Advisory Committee if appointed.

(b) If within the time prescribed a valid nomination of a panel has not been made by the authority or authorities entitled to nominate such panel, the Governor may constitute a panel consisting of persons having the appropriate qualification, and may appoint any person whose name is included in the panel so constituted to be a member or deputy member, as the case may be, of the Advisory Committee.

(7) No act or proceeding of the Advisory Committee shall be invalidated or prejudiced by reason only of the fact that at the time such act or proceeding was done or taken or commenced there was a vacancy in the office of any one or more members.

(8) The procedure for the calling of meetings of the Advisory Committee, and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by the Advisory Committee.

(9) Four members of the Advisory Committee shall form a quorum and any duly convened meeting of the Advisory Committee at which a quorum is present shall be competent to transact any business of the Advisory Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Advisory Committee.

(10) (a) At any meeting of the Advisory Committee the chairman, or in his absence the vice-chairman, shall preside.

(b) If the chairman and vice-chairman are both absent from any meeting the members present may elect one of their number to preside at the meeting; and the member so elected while so presiding shall have the powers, authorities, duties and functions of the chairman.

(c) If there is an equality of votes in such an election it shall be decided by lot which of the members having an equal number of votes shall preside.

(11) (a) At any meeting of the Advisory Committee the decision of a majority of the members present shall be the decision of the Advisory Committee.

(b) The chairman or the vice-chairman or member presiding shall have a deliberative vote and, where the members

present at any meeting are equally divided in opinion upon any matter, shall have a second or casting vote.

(12) The office of member or deputy member of the Advisory Committee shall not, for the purpose of any Act, be deemed to be an office or place of profit under the Crown.

Remuneration of members.

342AJ. (1) The chairman, vice-chairman and members of the Advisory Committee and any deputy member, whilst acting in the place of a member, shall be entitled to receive such remuneration (whether by way of fees or allowance or otherwise) and such travelling and out-of-pocket expenses as may from time to time be fixed by the Governor.

(2) Where the chairman or vice-chairman or any member or deputy member of the Advisory Committee is an officer of the Public Service or of a statutory body representing the Crown he shall, notwithstanding the provisions of any Act or of any rule or regulation made under any Act, be entitled to receive remuneration under this section, in addition to any remuneration to which he is otherwise entitled.

Annual report.

342AK. (1) The Advisory Committee shall, not later than the thirtieth day of September in each year, cause a report of its work during the year ended on the thirtieth day of June then next preceding to be prepared and forwarded to the Minister for presentation to Parliament.

(2) The report shall contain such information as may be prescribed or, if not so prescribed, as may be directed by the Minister.

DIVISION 13.—*Functions of the Advisory Committee.*

Functions of Advisory Committee.

342AL. (1) (a) The Advisory Committee shall consider and furnish reports to and advise the Minister upon any matter or proposal relating to town planning or country planning which may be referred to the Advisory Committee by the

the Minister and on such other matters relating to town planning or country planning as may be prescribed.

(b) The Advisory Committee may, of its own motion, submit for the consideration of the Minister any proposal in connection with any matter relating to town planning or country planning.

(c) The Advisory Committee may advise any council considering a town planning or country planning scheme or a proposal for such a scheme upon any matter relating thereto, subject to such conditions (if any) as may be prescribed.

(d) Where in the opinion of the Advisory Committee it is necessary or desirable so to do for any of the purposes of this Part, such Committee may conduct an investigation or inquiry.

(2) For the purposes of conducting any investigation or inquiry under this Part the members of the Advisory Committee and the chairman thereof or the vice-chairman or member presiding shall have the powers, authorities, protections and immunities conferred on commissioners and the chairman of a commission respectively by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts, and the provisions of that Act, as so amended, with the exception of section thirteen, and of Division 2 of Part II, and the provisions of section one hundred and fifty-two of the Justices Act, 1902-1940, shall, mutatis mutandis, apply to and in respect of any such investigation or inquiry and any witness or person summoned by or appearing before the Advisory Committee.

(3) (a) (i) It shall be the duty of each council and of every officer and servant of a council and of every committee appointed by a council under this Part and of every member of any

any such committee to furnish such information as the Advisory Committee may require for any purpose of or connected with the exercise or discharge of its powers, authorities, duties and functions under this Part.

(ii) Any person authorised in that behalf by the Advisory Committee shall for such purposes have liberty at all reasonable times to inspect any document, plan, map or record of the council or of any committee appointed by the council under this Part; and the servant or other person for the time being having the custody thereof shall not refuse or prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(b) It shall be the duty of every Government department, statutory body, authority and person to furnish such information as the Advisory Committee may require for any purpose of or connected with the exercise or discharge of its powers, authorities, duties and functions under this Part.

Certain approvals to be given only after report of Advisory Committee.

342AM. Where by this Act the approval of the Governor or the Minister may be or is required to be given to any matter or proposal relating to a town planning or country planning scheme, such approval shall not be given unless and until the Advisory Committee has made a report to the Minister thereon.

DIVISION 14.—*Finance.*

Advances.

342AN. (1) (a) The Minister may, with the approval of the Treasurer, from moneys provided by Parliament for the purpose, or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose, make advances to councils for

or

or in connection with the exercise or discharge of their powers, authorities, duties or functions under or in pursuance of this Part.

(b) In any case where the Minister so requires the council shall enter into an agreement securing the repayment of the advance by yearly or half-yearly instalments with interest at such rate as the Minister, with the approval of the Treasurer, may determine.

(c) If any such instalment is not paid on the due date there shall be added thereto a sum equal to ten per centum thereof, and such instalment, together with such additional sum, may be recovered by the Minister as a debt: Provided that the Minister may, with the approval of the Treasurer, on cause shown, remit part or the whole of such instalment or additional sum.

(2) (a) The Minister may, with the approval of the Treasurer, enter into an agreement with a council to pay to the council, in each year during such period as may be specified in the agreement, the sum or sums ascertained from time to time upon such basis or upon such considerations as the Minister may determine, for or towards meeting the liability of the council in respect of any borrowing for any purpose of this Part or in respect of any loan or loans raised by a council for the purpose of repaying or renewing the whole or any part of the original loan or of any renewal loan in respect thereof.

The agreement may include such terms, conditions or provisions not inconsistent with this Part as the Minister may determine and may, if the Minister so determines, provide for the repayment, in instalments or otherwise, of the sums paid to the council thereunder.

(b) Such sums as, from time to time, become due and payable by the Minister under any agreement authorised by this subsection shall be paid from moneys provided by

Parliament for the purpose or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose.

Estimates.

342AO. The council shall, once in each year, within the time and in the manner prescribed, prepare and furnish to the Minister estimates of income and expenditure in relation to the exercise or discharge of its powers, authorities, duties and functions in relation to town or country planning.

Loans.

342AP. The council may borrow by way of ordinary loan (or loan for essential services, in the case of the Municipal Council of Sydney) for any of the purposes of this Part.

Town and Country Planning Fund.

342AQ. (1) The council (other than the Municipal Council of Sydney) shall create a separate fund subsidiary to the general fund to be known as the Town and Country Planning Fund, and the Municipal Council of Sydney shall open a separate account within the City Fund to be known as the Town Planning Account.

Such separate fund or separate account, as the case may be, shall consist of the following assets:—

(a) all moneys received or receivable in respect of any of the purposes of this Part;

(b) all moneys borrowed in respect of any of the purposes of this Part;

(c) the proceeds of any rate levied in respect of such borrowings;

(d) the proceeds of any betterment charge imposed in pursuance of this Part;

(e) all moneys transferred from any other fund of the council to the general fund in accordance with this Act in respect of any of the purposes of this Part;

(f) all moneys transferred from any other account in the general fund or City Fund, as the case may be, in respect of any of the purposes of this Part.

(2) Such separate fund or separate account, as the case may be, may be applied to any of the following purposes:—

(a) any of the purposes of this Part;

(b) transfers to any reserve or sinking fund for loan repayment in respect of moneys borrowed in respect of any of the purposes of this Part;

(c) payment of principal, interest and expenses in respect of moneys borrowed as aforesaid;

(d) any purpose of this Act or the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may be, related or incidental or ancillary to town planning or country planning;

(e) any purpose authorised by or under this Part for the application of the fund.

DIVISION 15.—*Miscellaneous.*

Appointment of officers and employees.

342AR. (1) The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint such officers and employees as may be necessary for the administration of this Part.

(2) For the purpose of exercising and discharging the powers, authorities, duties and functions conferred and imposed on the Advisory Committee by or under this Part the Advisory Committee may, with the approval

of

of the Minister for the time being charged with the administration of this Act and of the Minister of the department concerned and the Public Service Board, on such terms as may be arranged, make use of the services of any of the officers or employees of the Public Service, or with the approval of the Minister for the time being charged with the administration of this Act and of the statutory body concerned, on such terms as may be arranged, make use of the services of any officer, employee or servant of the statutory body.

Certificates of compliance.

342AS. (1) Any person may apply to the council for a certificate under this section with respect to any land within the area of the council.

(2) The council may issue a certificate that on the date specified in the certificate any land within its area is or is not land to which a prescribed scheme or a scheme in course of preparation or a resolution applies or a direction to prepare a scheme relates.

(3) Ordinances may be made authorising the council to issue certificates under this section with respect to such matters as may be prescribed.

In particular and without prejudice to the generality of the foregoing provisions of this subsection an ordinance may authorise the council to issue a certificate setting forth that—

(a) any permission or authority which the council is required or permitted to give, modify or revoke by or under this Part or a prescribed scheme was on a specified day given, modified or revoked;

(b) any instrument or plan does not on the date specified in the certificate contravene the provisions of a prescribed scheme.

(4)

(4) For the purpose of any proceedings for an offence under this Part taken against a person who has obtained a certificate under this section, such certificate shall, in favour of such person, be conclusively presumed to be true and correct.

(5) For the purposes of the registration of any plan or instrument intended to affect or evidence the title to any land a certificate given under this section shall, in favour of the person to whom the certificate is so given and of the Registrar-General, the Crown Solicitor or other person registering or certifying title, be conclusively presumed to be true and correct.

DIVISION 16.—*Ordinances.*

Ordinances.

342AT. (1) Ordinances may be made for carrying this Part into effect.

(2) In particular and without prejudice to the generality of subsection one of this section, ordinances may be made for and with respect to—

(a) the manner of preparing and the details to be specified in maps, plans, specifications and the like and in estimates of cost of schemes;

(b) the making of provisional agreements between the council and the owners and lessees of land affected by a scheme, and with public authorities or statutory bodies in relation to a scheme;

(c) requiring councils, statutory bodies, companies, firms or persons carrying on business or exercising rights by virtue of any Act to assist any council which is engaged in the preparation of a scheme by the supply of information, plans and statistics and by the granting of facilities for inspection and investigation;

(d)

(d) the form, time, manner and mode of giving notices and advertisements;

(e) any matter necessary or convenient to be prescribed for or in relation to the carrying into effect or enforcing the observance of prescribed schemes;

(f) requiring councils to keep registers of permits, authorities and the like granted under this Part;

(g) the payment of travelling and out-of-pocket expenses of members of any committee (other than the Advisory Committee) appointed under this Part;

(h) (i) prescribing the conditions upon which certificates of qualification in town planning or country planning may be issued to persons who apply therefor and the amount of any fees which may be charged in that connection;

(ii) prescribing the manner and circumstances in and under which such certificates may be suspended or cancelled;

(iii) providing for and prescribing the manner of keeping a register of the names of persons who are for the time being lawful holders of such certificates.

(3) An ordinance may prescribe the qualifications for membership of any committee (other than the Advisory Committee) appointed under this Part and may make provision for the appointment, as members of any committee, of representatives of bodies concerned in industrial or commercial pursuits, or in research, or in the promotion of community activities or amenities.

4. The Principal Act is further amended— Further amendment of Act No. 41, 1919.

(a) by inserting at the end of section three hundred and thirty-two the following word and new paragraph:— Sec. 332. (Subjects for consideration—new roads.)

and

(k) the provisions of any town planning or country planning scheme;

(b) by inserting next after paragraph (i) of section three hundred and thirty-three the following word and new paragraph:— Sec. 333. (Subjects for consideration—subdivisions.)

and

(j) the provisions of any town planning or country planning scheme.

PART III.

Amendments of Sydney Corporation Act, 1932, as amended by subsequent Acts.

5. The Sydney Corporation Act, 1932, as amended by subsequent Acts, is amended— Amendment of Act No. 58, 1932.

(a) by inserting at the end of section three hundred and three the following word and new paragraph:— Sec. 303. (Subjects for consideration—new public ways.)

and

(j) the provisions of any town planning or country planning scheme in course of preparation or prescribed under the Local Government Act, 1919, as amended by subsequent Acts;

(b) by inserting at the end of section three hundred and four the following word and new paragraph:— Sec. 304. (Subjects for consideration—subdivisions.)

and

(i) the provisions of any town planning or country planning scheme in course of preparation or prescribed under the Local Government Act, 1919, as amended by subsequent Acts.

Sydney: Thomas Henry Tennant, Government Printer—1945.

New South Wales.

ANNO NONO

GEORGII VI REGIS.

* *

Act No. 21, 1945.

An Act to make better provision for and in relation to town planning and country planning; for this purpose to amend the Local Government Act, 1919, and certain other Acts; and for purposes connected therewith. [Assented to, 5th April, 1945.]

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.

1. (1) This Act may be cited as the "Local Government (Town and Country Planning) Amendment Act, 1945." Short title.

(2) The Local Government Act, 1919, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

Division into Parts.

2. This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—*ss.* 1, 2.

PART II.—AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS—*ss.* 3, 4.

PART III.—AMENDMENTS OF SYDNEY CORPORATION ACT, 1932, AS AMENDED BY SUBSEQUENT ACTS—*s.* 5.

PART II.

AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS.

Amendment of Act No. 41, 1919.

3. The Principal Act is amended—

Sec. 3. (Division into Parts.)

(a) by inserting in section three next after the matter relating to Part XII, the words and symbols "Part XIIA—TOWN AND COUNTRY PLANNING SCHEMES—*ss.* 342A-342AT";

New Part XIIA.

(b) by inserting next after section three hundred and forty-two the following new Part:—

PART XIIA.

TOWN AND COUNTRY PLANNING SCHEMES.

DIVISION 1.—*Application of Part.*

Application of Part XIIA.

342A. (1) Subject to the provisions of this Act—

(a) this Part shall apply to municipalities and shires, and to the city of Sydney;

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

(2)

(2) In the application of any provision of this Part to or in respect of the city of Sydney—

(a) a reference in that provision to an "area" shall be construed as a reference to the city of Sydney;

(b) a reference in that provision to a "council" shall be construed as a reference to the Municipal Council of Sydney;

(c) a reference in that provision to a "road" or a "public road" shall be construed as a reference to a public way within the meaning of the Sydney Corporation Act, 1932, as amended by subsequent Acts;

(d) a reference expressed or implied in that provision to an ordinance shall be construed as a reference to by-laws made or deemed to have been made under the Sydney Corporation Act, 1932, as amended by subsequent Acts.

Definitions.

342B. In this Part unless the context or subject matter otherwise indicates or requires—

"Advisory Committee" means the Town and Country Planning Advisory Committee constituted under this Part.

"Building" includes any structure or any part thereof.

"Council" includes county council.

"Erection," "erect" and similar expressions in relation to building include any structural work or any alteration, addition or rebuilding.

"Land" includes any estate or interest in land (whether legal or equitable) and any easement, right, or privilege, in, over, or affecting, land and also includes all lands of the Crown.

DIVISION 2.—*Preparation of schemes.*

Preparation of schemes.

342c. (1) (a) A council may, by resolution, decide to prepare a scheme with respect to any land within its area.

(b) Two or more councils may by resolution of the respective councils decide to join in preparing a scheme with respect to any land within their areas, and in such a case shall enter into an agreement for the purpose. The provisions of section five hundred and twenty-one of this Act shall extend to and in respect of such agreement.

(c) Any such resolution may specify the particular purposes or objects for or with respect to which the scheme shall be prepared and the scheme shall be prepared accordingly.

(2) (a) A resolution passed under subsection one of this section shall not take effect unless and until it is approved by the Minister and notice of such approval is published in the Gazette. Application for such approval shall be made as prescribed, and shall be accompanied by the prescribed particulars.

(b) In giving his approval the Minister may fix the period of time within which the scheme shall be prepared, and the scheme shall be prepared accordingly: Provided that the Minister may, from time to time, upon the application of the council or councils concerned, extend such period if it appears to him to be expedient so to do.

(3) Where a resolution to prepare a scheme has taken effect, the council or councils concerned shall, within the prescribed period, give notice of the resolution as prescribed.

Such notice shall contain a concise statement of the effect of the resolution, together with information as to the place and times at which a plan defining the land to which the resolution applies may be inspected.

(4)

(4) Where a resolution to prepare a scheme has taken effect the council or councils concerned may prepare one scheme with respect to the whole of the land to which the resolution applies or may prepare different schemes for different parts of the land.

Direction to council to prepare a scheme.

342D. (1) The Minister may from time to time by notice in writing direct any council to prepare a scheme with respect to any land within its area or direct two or more councils to act together in preparing a scheme with respect to any land in their areas, and the council or councils concerned shall comply with the direction.

(2) A direction under subsection one of this section may—

(a) specify the particular purposes or objects for or with respect to which the scheme shall be prepared;

(b) fix the period of time within which the scheme shall be prepared;

and the scheme shall be prepared accordingly: Provided that the Minister may, from time to time, upon the application of the council or councils concerned, extend such period if it appears to him to be expedient so to do.

(3) Where a direction is given under subsection one of this section the Minister shall publish a notice of that fact in the Gazette and in a newspaper circulating in the locality in which the land to which the direction relates is situated.

Such notice shall contain a concise statement of the effect of the direction, together with information as to the place and times at which a plan defining the land to which the direction relates may be inspected.

Appointment of planning committee.

342E. (1) Where a resolution under subsection one of section 342C of this Act has taken effect or a direction has been given by the Minister under subsection one of section 342D of this Act the council or councils concerned shall appoint a planning committee, which shall be constituted as prescribed, to prepare a scheme and shall also appoint or employ some person who possesses the prescribed qualifications in town planning or country planning to assist in the preparation of the scheme.

(2) The procedure for the calling of meetings of the planning committee and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by that committee.

(3) The Minister may arrange for the services of any officer or employee of the Crown who is skilled in any matter relating to town planning or country planning to be made available to assist the council or councils concerned under such conditions, including conditions for payment of remuneration, as may be agreed upon with the council or councils.

(4) The council or councils concerned may arrange, through the Minister, for the making or preparation by any officer or employee of the Crown of any survey or plan required for or in connection with the preparation of the scheme.

(5) The planning committee in preparing a scheme may accept, with or without modifications, a scheme proposed with respect to the whole or part of the land to which the resolution of the council or councils applies or the direction of the Minister relates, by or on behalf of all or any of the owners of that land.

Notice of scheme.

342F. (1) The scheme prepared by the planning committee shall be submitted to the council or councils concerned.

(2)

(2) The council or councils concerned—

(a) shall give notice as prescribed that the scheme has been submitted and shall in such notice—

(i) specify the address of the place or places at which copies of all maps, plans, specifications and other particulars relating to the scheme may be inspected;

(ii) specify the address of the council or councils concerned to which representations in connection with the scheme may be forwarded;

(b) shall forward particulars and a map or plan indicating in general terms the extent or nature of the scheme to all Departments of the Crown in right of the State or of the Commonwealth, all statutory bodies representing the Crown and all councils which appear to it or them to be affected by the scheme.

(3) Any person interested in any land affected by the scheme and any such Department, statutory body or council may, within a period of three months after the publication of notice of the scheme (or where the notice is published more than once, within a period of three months after the first publication thereof), make representations to the council or councils concerned in connection with the scheme.

(4) The council or councils concerned shall consider all representations made under this section and where any alteration of the scheme is considered necessary may refer the scheme back to the planning committee for alteration and resubmission.

(5) The council or councils concerned may adopt the scheme so submitted or resubmitted as the case may be.

Contents of scheme.

342G. (1) A scheme shall in the prescribed manner define the land to which it applies.

(2) A scheme may contain provisions for regulating and controlling the use of land and the purposes for which land may be used.

(3) Without prejudice to the generality of subsection two of this section a scheme may contain provisions for or in relation to all or any of the following matters, that is to say—

(a) the situation, opening, widening, deviating, classifying, and providing of roads;

(b) the restriction of ribbon development of land fronting adjoining or adjacent to a road by regulating all or any of the following matters, that is to say, the construction, forming or laying out of any means of access to or from the road, the erecting or making on the land of any building or permanent excavation which is within a specified distance from the road, or restricting or prohibiting the erection of any building intended for use for any purpose which is likely to cause increased vehicular traffic along the road, or traffic congestion on the road.

In this paragraph "building" includes neither fences, gates, posts, masts, ornaments or other similar structures or erections required for the purposes of farming or grazing or of any dwelling house or garden occupied with a dwelling house nor greenhouses or summerhouses required in connection with any such garden, nor temporary tents or scaffolding required for

for any purpose, but save as aforesaid includes any structure or erection of whatsoever material and in whatsoever manner constructed and any part of a building;

(c) the minimum standards of construction of roads of different classes and of drains, culverts and bridges in or upon roads;

(d) the provision of water, gas, electricity and other public services;

(e) the reservation of sites for places of religious worship, the residences of ministers of religion and buildings for religious purposes;

(f) the reservation of sites for educational and hospital establishments and community centres for promotion of physical, mental, moral and cultural welfare;

(g) the reservation of sites for ambulance stations, fire brigade stations, police stations, court houses and buildings for the use of Government Departments and of statutory bodies representing the Crown and for residences for the officers of any such Department or statutory body;

(h) the reservation of sites for water reservoirs;

(i) the regulation of building and of matters relating thereto;

(j) the reservation or provision of land for afforestation purposes or for recreation grounds, ornamental gardens, children's playgrounds, green belts, green wedges, and other open spaces;

(k) the planning of localities and the design and protection of buildings and structural elements so as to reduce the risk of fire and limit the spread of fire;

(l) the zoning of land and the prohibition in any zone of the erection, construction, carrying out or use of any structure or work upon the land or the use in any zone of any land for any specified purpose or for any purpose other than a specified purpose;

(m) the extinction or variation of private rights of way and other easements;

(n) the removal, alteration, or demolition of obstructions or obstructive works;

(o) the preservation or acquisition for public access use and enjoyment of the foreshores or banks of the ocean, harbours, rivers, lakes, lagoons, and the like, and the conservation of the natural beauty thereof;

(p) the preservation of places or objects of historical or scientific interest or natural beauty or advantage;

(q) the provision of amenities;

(r) securing the safety of persons and property from hostile attack;

(s) the location of public utility undertakings, shipping facilities, railways, tramways, canals, and sites for air ports, aerodromes, bridges, jetties, wharves and ferries, and works and matters ancillary thereto;

(t) securing co-operation between the council or councils concerned and the Government, or any person or body of persons;

(u) the acquisition of land for any purpose of the scheme;

(v) the apportionment between councils of any costs, expenses and disbursements incurred in carrying into effect and enforcing a scheme, and the recovery from any council of its share or proportion of the same;

(w) the recovery of betterment in accordance with Division 10 of this Part;

(x) any matter necessary or convenient for carrying out the scheme.

(4) A scheme may suspend either generally or in any particular case or class of cases the operation of any provision of this or any other Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made, to the extent to which that provision is inconsistent with any of the provisions of the scheme.

(5) (a) A scheme shall contain provisions specifying the responsible authority or responsible authorities which shall be charged with the functions of carrying into effect and enforcing the provisions of the scheme or such of those provisions as relate to any particular portion or portions of the land included in the scheme, or such of those provisions as are directed to particular objects or purposes.

Any responsible authority so specified shall be a council, or two or more councils acting together as prescribed.

(b) A scheme may contain provision for the appointment of a special committee, constituted as prescribed, to assist the responsible authority in carrying into effect and enforcing the scheme.

Such committee may include as members persons who are not members of the council or councils which are the responsible authority.

DIVISION 3.—*Approval of planning schemes.*

Submission of scheme to Minister.

342H. (1) The scheme prepared by the council or councils concerned shall be submitted to the Minister with such maps, plans, specifications, and particulars as may be required by the Minister or as may be prescribed. The scheme

scheme so submitted shall be accompanied by a copy of the scheme prepared by the planning committee and the representations (if any) or a copy thereof submitted for the consideration of the council or councils concerned pursuant to subsection three of section 342F of this Act and a statement indicating the result of the consideration of each of such representations.

(2) The scheme shall be submitted in the form of a draft ordinance.

The scheme may adopt wholly or partially or by reference any of the provisions contained in a set of standard or model provisions adopted by the Minister on the recommendation of the Advisory Committee.

Reference to Advisory Committee.

342I. The Minister shall refer any scheme together with all documents and information relating thereto which have been so submitted to him to the Advisory Committee for report.

Consideration of scheme.

342J. (1) (a) The Minister shall consider the report of the Advisory Committee and he may then decide—

(i) to proceed with the scheme without alteration;

(ii) to proceed with the scheme with such alterations as he deems expedient in the light of such report;

(iii) to refer the scheme back to the council or councils concerned for further consideration;

(iv) not to proceed with the scheme.

(b) Where a scheme has been altered in pursuance of paragraph (a) of this subsection a reference in subsections two, three and four of this section to "the scheme" shall be construed as a reference to the scheme as so altered.

(2)

(2) If the Minister decides to proceed with the scheme, he shall notify brief particulars thereof and state in the notification that full particulars of the scheme may be inspected at such places as are designated and that objections against the scheme or any part of it may be made to him in writing, in or to the effect of the prescribed form, on or before the date specified in the notification, by or on behalf of any person who has an estate or interest in land affected by the scheme or by any council, including the council or councils which submitted the scheme to him in any case where the scheme is altered in pursuance of subsection one of this section.

The Minister shall arrange for such particulars to be made available for public inspection at the places so designated.

(3) (a) On or before the date so specified any such person or council may, in the manner prescribed, object to the Minister against the scheme or any part of it and shall state the grounds of the objection.

(b) As soon as practicable after such date the Minister, after such inquiry as he deems sufficient, shall determine such objections:

Provided that in any case where the objection is made by a council specified in the scheme as a responsible authority the Minister shall cause a public inquiry to be held and a report to be made to him with respect to the objection; and where in any such case it is a ground of the objection that provision has been included in the scheme by the Minister by alteration of the scheme or has been included in a scheme prepared under the authority of section 342AH of this Act which is likely to involve the objecting council in undue expenditure, and it is stated in such report that the inclusion of such provision in the scheme will be likely to have that effect, the Minister shall allow the objection

to

to the extent which he deems sufficient in the circumstances of the case to avoid involving the council in such undue expenditure.

(c) Each person or council by or on behalf of whom an objection is lodged shall be informed of the determination of the Minister upon such objection, and the council or councils which submitted the scheme shall also be informed of each such determination.

(4) Where an objection is allowed in part or in whole by the determination of the Minister the scheme shall be amended by the Minister so as to conform with such determination.

(5) Where no objection has been lodged with the Minister in accordance with the provisions of paragraph (a) of subsection three of this section or where the scheme has been amended in accordance with the provisions of subsection four of this section the Minister may recommend the Governor to make an ordinance prescribing the scheme accordingly.

Prescribed scheme.

342K. (1) The Governor, on the recommendation of the Minister made in pursuance of section 342J of this Act, may make an ordinance prescribing the scheme.

A scheme which has been embodied in an ordinance so made is in this Part hereinafter referred to as a "prescribed scheme"

(2) The Minister shall give notice, as prescribed, of the fact that the scheme has come into operation and that copies of the ordinance prescribing the scheme and of any maps, plans, specifications or other particulars referred to therein will be available for public inspection.

(3) (a) All maps, plans, specifications, or other particulars referred to in such ordinance shall be filed at the Department of Local Government, Sydney, and any reference in the ordinance

ordinance to maps, plans, specifications, or other particulars shall be deemed a reference to the maps, plans, specifications or other particulars so filed.

(b) Copies of the documents so filed—

(i) shall be made available at the Department of Local Government for public inspection upon payment of the prescribed fee;

(ii) shall be lodged with the Registrar-General and with the responsible authority and with the council of each area adjoining the land included in the prescribed scheme who shall file them for reference.

(c) Copies of the ordinance and of the maps, plans, specifications or other particulars shall be made available by the responsible authority during ordinary office hours for public inspection without fee.

DIVISION 4.—*Variation of prescribed schemes.*

342L. A prescribed scheme may be varied by a subsequent scheme. Variation of prescribed scheme.

Any such variation may supplement or amend (otherwise than by extension of the land to which the scheme applies) the prescribed scheme.

DIVISION 5.—*Revocation of prescribed schemes.*

342M. The Minister may, after consideration of a report by the Advisory Committee, recommend the Governor to revoke a prescribed scheme, and the Governor may thereupon make an ordinance rescinding the ordinance by which the scheme was prescribed. Revocation of prescribed schemes.

DIVISION 6.—*Carrying into effect and enforcing prescribed schemes.*

342N. (1) The responsible authority specified in a prescribed scheme shall have and may exercise and discharge all the powers, authorities, duties Powers, etc., of responsible authority.

duties and functions conferred and imposed on the responsible authority by the prescribed scheme.

(2) Where a prescribed scheme provides expressly or impliedly that any act, matter or thing specified in the scheme shall or shall not be done except with the approval, consent or permission of the council which is the responsible authority, any person who is dissatisfied with the decision of the council upon an application for such approval, consent or permission or with any condition imposed by the council, may appeal against such decision or the imposition of such condition in accordance with the provisions of section three hundred and forty-one of this Act, and the provisions of that section shall extend, mutatis mutandis, to and in respect of any such appeal.

Carrying prescribed schemes into effect.

342o. The responsible authority may carry into effect the provisions of the prescribed scheme—

(a) by the acquisition of land and subsequent action in pursuance of the prescribed scheme;

(b) by causing any aligned public road to be realigned under the Public Roads Act, 1902, as amended by subsequent Acts, in order to widen the road and by applying the realignment method of acquisition, and by subsequent action in pursuance of the prescribed scheme;

(c) by taking such action as may be necessary to enforce the performance of any duty imposed by the prescribed scheme upon any owner or lessee, or public body or authority, including the State Government, or any statutory body or any council or person;

(d)

(d) by enforcing any agreement incorporated in the prescribed scheme, or made subsequent to the prescribed scheme, and relating to any matter dealt with in or arising out of the prescribed scheme;

(e) by exercising, in accordance with the prescribed scheme, its powers under this Act or, in the city of Sydney, the Sydney Corporation Act, 1932, as amended by subsequent Acts, to regulate the opening of any new roads, the subdivision of land, the erection of buildings or any other matter appropriate to the prescribed scheme;

(f) by any other method specifically provided for in the prescribed scheme;

(g) by the exercise of any power conferred upon the council which is the responsible authority by or under this or any other Act; or

(h) by any combination of two or more of these methods.

Enforcement of prescribed schemes.

342P. (1) The responsible authority, subject to the provisions of any prescribed scheme, may, after giving the prescribed notice—

(a) remove, pull down or alter, so as to bring into conformity with the provisions of the prescribed scheme, any building or other work which does not conform to those provisions or in the erection or carrying out of which any provision of the prescribed scheme has not been complied with or the demolition or alteration of which is necessary for carrying the prescribed scheme into effect; or

(b) where any land is being used in such a manner as to contravene any provision of the prescribed scheme, prohibit such use of the land; or

(c)

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

(2) Where any action by the responsible authority under subsection one of this section is made necessary by the default or wrongful act of any person, the responsible authority may recover any expenses thereby incurred from such person as a debt in any court of competent jurisdiction.

Delegation of powers.

342Q. (1) Where a prescribed scheme contains provision for the appointment of a special committee to assist the responsible authority in carrying into effect and enforcing the prescribed scheme, the responsible authority may delegate to such committee any of its powers, authorities, duties and functions in relation to such scheme, except such powers, authorities, duties or functions as may be prescribed from time to time.

(2) Any special committee to which any powers, authorities, duties or functions are delegated as aforesaid may, without confirmation by the responsible authority, exercise, perform, or carry out the same in like manner and with the same effect as the responsible authority could itself have exercised and performed the same.

(3) Any special committee shall be subject in all things to the responsible authority, and shall carry out all directions, general or special, of that authority given in relation to such committee or its affairs.

(4) The procedure for the calling of meetings of the special committee and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by that committee. (5)

(5) The responsible authority may appoint a member of the special committee to be the chairman thereof; and if no such appointment is made, the committee may make the appointment. The responsible authority may from time to time remove such chairman and appoint another in his stead.

Notices relaxing temporary prohibition or restriction of building.

cf. 22 and 23 Geo. V, c. 48, ss. 15, 16.

342R. Where in a prescribed scheme the erection of buildings on any land is prohibited or restricted until such time as the responsible authority has given notice as provided in this section the following provisions shall have effect:—

(a) The responsible authority may, from time to time, by notice given as prescribed, in respect of the whole or any part of the land on which the erection of buildings is so prohibited or restricted, permit the erection of buildings, subject to such conditions (if any) as may be specified in the notice.

(b) No such notice shall be given unless and until the provisions thereof have been approved by the Minister.

(c) Any notice so given may be amended or revoked by a subsequent notice but, so long and in so far as it continues to be operative, shall be deemed to form part of the scheme to which it relates.

Where any such notice has been so amended, the notice as amended shall be the notice under this section.

Where any such notice has been revoked the prohibitions or restrictions set out in the prescribed scheme shall revive as from the date of such revocation.

(d) Without prejudice to the foregoing provisions of this section, it shall be the duty of the responsible authority within

within a period of three months from the expiration of every third year after the coming into operation of the prescribed scheme to consider the question of giving such a notice in respect of all or any of the land the erection of buildings upon which remains subject to the aforesaid prohibitions or restrictions.

Any person dissatisfied with the failure of the responsible authority to give such a notice within such period of three months in respect of land in which he has an estate or interest may appeal to the Minister within two months after the expiration of such period of three months, and the Minister on any such appeal may, if he thinks fit, give such a notice, and a notice so given by him shall have effect as if it were a notice given by the responsible authority and approved by the Minister.

(e) Any person who, pending the giving of a notice under this section, desires to commence the erection of a building the erection of which would contravene the aforesaid prohibitions or restrictions may, in accordance with such provisions, if any, as may be contained in the prescribed scheme, apply to the responsible authority for permission to erect the building specified in the application.

(f) The responsible authority shall, in deciding any such application, have regard to any injury likely to be caused to the applicant by the refusal of the application, as well as to any public advantage likely to result from the maintenance of the aforesaid prohibitions or restrictions, pending the giving of

of such a notice, and may, if it is satisfied that the proposed erection of the building will not contravene any permanent provisions of the prescribed scheme, grant the application unconditionally, or subject to such conditions as it may think proper to impose:

Provided that, where the responsible authority has power under this section to grant an application, it shall not refuse that application unless it is satisfied that other land suitable for the erection of such building as is specified in the application is available on reasonable terms and either—

(i) that the erection of such building would involve danger or injury to health by reason of the lack of roads, drains, sewers, water supply, or any public services and that the provision of the necessary services would be premature or likely to involve excessive expenditure of public money; or

(ii) that the erection of the building would be likely seriously to injure the amenity of the locality.

(g) Any person dissatisfied with the refusal of any such application, or by any conditions imposed by the responsible authority, may within twenty-eight days from the date on which he received notice of the decision of the responsible authority or such longer period as the Minister may allow, appeal to the Minister, and the Minister may dismiss or allow the appeal, either unconditionally, or subject to such conditions as he thinks proper to impose.

The

The decision of the Minister on an appeal under this paragraph shall be final and shall have effect as if it were the decision of the responsible authority.

DIVISION 7.—*Interim development.*

Commencement of Division.

342s. This Division shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Definitions.

342T. (1) In this Division—

"Council" includes two or more councils acting together in the preparation of a scheme.

"Development" in relation to any land includes the erection of any building, and the carrying out of any work, and any use of the land or building or work thereon for a purpose which is different from the purpose for which the land or building or work was last being used.

"Interim development" means development of land to which a scheme applies between the date upon which a resolution of the council or two or more councils acting together to prepare a scheme has taken effect or the date upon which notice of the fact that the Minister has directed the council or two or more councils to act together to prepare a scheme was published in the Gazette, and the date of the coming into operation of the scheme or the date upon which the Minister notifies in the Gazette that he has decided not to proceed with the scheme as the case may be.

"Interim development application" means application for the permission of the council for the interim development of land.

(2)

(2) The provisions of this Division shall not apply in any case where the scheme for the preparation of which a resolution has taken effect or a direction has been given by the Minister is a scheme varying a prescribed scheme.

Restriction of interim development.

342u. (1) Interim development shall not be carried out—

(a) except as may be permitted by ordinance; or

(b) except as may be permitted by the council under the authority of an ordinance and subject to such conditions, restrictions and provisions as may be contained in such ordinance.

(2) Ordinances may be made suspending either generally or in any particular case or class of cases the operation of any provision of this or any other Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made, to the extent to which that provision is inconsistent with any interim development permitted under this Division.

Permission for interim development.

342v. (1) Subject to the provisions of any such ordinance the council may, where an interim development application is made, grant the application unconditionally or subject to such conditions as it may think proper to impose or refuse to grant such application if it appears to the council that such development would be in contravention of the scheme if it had come into operation or would be in contravention of town planning or country planning principles or would interfere with the amenities of the neighbourhood, and the council shall be deemed to have refused the application unless within two months from the receipt of the application it gives notice to the applicant—

(a) that it has decided the application (and stating the reason for the refusal or for the

the imposition of conditions upon approval of the application); or

(b) that the application has been referred to the Minister for decision in accordance with the provisions of subsection three of this section; or

(c) that consideration of the application has been postponed in accordance with the provisions of subsection two of this section:

Provided that such period of two months may, at any time before the expiration thereof, be extended by agreement in writing made between the council and the applicant.

(2) The council may by notice served on the applicant postpone the consideration of any such application either generally or during such period as may be specified in the notice; but no such notice shall be so served until the applicant has been given a reasonable opportunity to show to the satisfaction of the council that the proposed development would be carried out immediately if the application were granted and has failed to do so:

Provided that—

(a) the applicant may within one month after the service of such notice appeal against the notice to the Land and Valuation Court and the court, if satisfied that the proposed development would be carried out immediately if the application were granted, shall by order cancel the notice of postponement and in such case the period of two months referred to in subsection one of this section shall be deemed to commence from the date of such order;

(b)

(b) if with respect to any interim development application it appears to the Minister that there are exceptional reasons requiring the immediate determination thereof, he may, without prejudice to his power to require the application to be referred to him for decision in accordance with subsection three of this section, give directions requiring the council to determine the application, and, where a notice of postponement has been served with respect thereto, may by order in writing to the council cancel the notice, and in such case the period of two months referred to in subsection one of this section shall be deemed to commence from the date of such order.

(3) (a) If it appears to the Minister that it is expedient, having regard to considerations affecting the public interest, whether generally or in the locality concerned, that any interim development application, or any class or description of such applications, should be referred to him for decision, he may give directions to the council requiring that application, or applications of that class or description, to be so referred, and any decision of the Minister on an application so referred to him shall be deemed to be the decision of the council:

Provided that, before dealing with any application so referred to him, the Minister shall, if either the council or the applicant so desire, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

(b) The Minister may give directions to the council requiring it to furnish him with such information with respect to interim development applications received by it as he considers

considers necessary or expedient for the purpose of enabling him to exercise his functions under the last preceding paragraph.

(c) Provision may be made by ordinance requiring councils, before dealing with interim development applications, to consult with such authorities or persons as may be prescribed.

(4) In any case where an interim development application is refused or is granted subject to conditions, the council may, if it thinks fit, make a contribution towards any damage or expense which the applicant shows to the satisfaction of the council that he is likely to suffer by reason of the council's decision.

(5) An applicant who is dissatisfied with the refusal of the council to grant his application, or with any conditions imposed by the council, may, within one month from the date on which he received notice of the council's decision, or such longer period as the Minister may allow, appeal to the Minister, and the Minister, after taking into consideration any offer by the council to make a contribution under subsection four of this section, may dismiss the appeal or may allow the appeal either unconditionally or subject to such conditions as he thinks proper to impose, but the Minister, before deciding any such appeal, shall, if either the appellant or the council so desire, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

The decision of the Minister on an appeal under this subsection shall be final and shall have effect as if it were a decision of the council.

(6) Nothing in this section shall be construed as affecting the duty of a council to take into consideration with reasonable despatch all

all interim development applications made to it, other than applications the consideration of which is postponed or which are referred to the Minister under the provisions of this section.

Revocation or modification of permission for interim development.

342w. (1) If at any time before a scheme comes into operation the Advisory Committee furnishes a report to the Minister, and in such report recommends that having regard to the provisions then proposed to be included in that scheme, any interim development permitted by ordinance under this Division should not be carried out or completed or should not be carried out or completed to the extent or in the manner permitted by the ordinance or that any power given to a council under the authority of an ordinance to grant permission for the carrying out of interim development should not be continued or should be curtailed, the Minister may recommend the Governor to rescind or alter the ordinance, and the Governor may rescind or alter the ordinance accordingly: Provided that before the Minister makes any such recommendation he shall, if either the council or any person who in his opinion will be affected by such alteration so desires, afford them an opportunity of appearing before and being heard by a person appointed by him for the purpose. Where, as a result of such hearing, the Minister considers it necessary or expedient so to do, he may refer the matter to the Advisory Committee for further consideration and report.

(2) (a) If at any time before a scheme comes into operation it appears to the council that it is expedient, having regard to the provisions then proposed to be included in that scheme, that any development for which permission has been granted on an interim development application should not be carried out or completed, or should not be carried out or completed

to

to the extent or in the manner allowed by the permission, it may with the approval of the Minister, by notice served in accordance with this subsection, revoke or modify the permission to such extent as appears to it to be necessary.

(b) The Minister may direct the council to submit to him for his consent a notice revoking or modifying any permission specified in the directions, or modifying any such permission in such manner as may be so specified and to serve such notice in accordance with this subsection.

(c) Where a council proposes or is directed to exercise its powers under this subsection, it shall serve the notice on all persons who in its opinion will be affected by the notice.

(d) If any such directions are not complied with within the time specified therein, the Minister may himself prepare and serve the notice, and such notice shall have effect as a notice under paragraph (a) of this subsection.

(e) The Minister, before consenting to or serving the notice referred to in the foregoing provisions of this subsection shall, if either the council or any such person so desires, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

Contribution.

342x. Where any permission for the development of land is revoked or modified under this Division, the council may make to any person a contribution towards any damage or expense which such person shows to the satisfaction of the council that he has suffered or is likely to suffer by reason of such revocation or modification.

Suspension of provisions of prescribed scheme.

342y. (1) In any case where—

(a) a resolution for the preparation of a scheme varying a prescribed scheme has taken effect; or

(b)

(b) the Minister has directed the preparation of such a scheme,

the Minister, if after consideration of a report furnished by the Advisory Committee it appears to him expedient so to do—

(i) for securing that any development prohibited by the prescribed scheme may be carried out notwithstanding the provisions of that scheme; or

(ii) for securing that any development permitted by the prescribed scheme may be regulated,

may notify the suspension of the provisions of the prescribed scheme pending the coming into operation of the varying scheme and such provisions shall be suspended accordingly; and any such notification may suspend the provisions of the scheme either as respects the whole of the land to which the varying scheme is to apply or as respects any portion thereof specified in the notification, and either as respects all development or as respects development of any class specified in the notification.

(2) Where the provisions of a prescribed scheme are notified as suspended under this section, the provisions of this Division with respect to the control of interim development shall, as from the date of the notification, apply to development to which the notification relates and shall so apply as if the resolution of the council or the direction of the Minister had taken effect on that date.

Power to apply interim development provisions to any land.

342z. The Governor may, from time to time, by ordinance direct with respect to any land in any area that on and from a day appointed in that behalf such land shall be deemed to be included in a scheme for the preparation of which a resolution has taken effect, and the provisions of this Division shall apply with respect to such land

land as from the date upon which the ordinance takes effect and while the ordinance remains in force.

DIVISION 8.—*Scheme for the County of Cumberland.*

Constitution of Cumberland County Council.

342AA. (1) (a) The Governor under and subject to the provisions of Part XXIX of this Act may constitute the areas (including the City of Sydney) wholly or partly included in the County of Cumberland a county district under the name "The Cumberland County District" and may, notwithstanding that a request for such delegation has not been made by the councils concerned, delegate to the council of such county district (under the name "The Cumberland County Council") such powers and duties (including the power to borrow) of the councils concerned for or in relation to town planning and country planning as are necessary for the purposes of the preparation of the scheme referred to in section 342AB of this Act and as are set out in the proclamation constituting the county district or in any later proclamation.

cf. s. 564 (4A) (a).

(b) Where a delegation has been made in pursuance of paragraph (a) of this subsection, each council concerned shall have full power to exercise or discharge so much of any power or duty which by law may be exercised by a council in relation to town and country planning as has not been delegated to the county council.

(2) As soon as practicable after the first general election of delegates to the Cumberland County Council the Minister shall publish in the Gazette a notification that the election of such delegates has been duly completed.

Scheme for Cumberland County Council.

342AB. (1) The Cumberland County Council pursuant to such delegation shall, within a period expiring not later than three years after the

the constitution of the county district, prepare and submit to the Minister in accordance with the provisions of this Part a scheme in respect of all land within the county district: Provided that the Minister may, upon the application of the Cumberland County Council, extend such period if it appears to him expedient so to do.

(2) Such scheme shall include provision only for such matters, consistent with the provisions of this Part, as may from time to time be prescribed.

(3) In the application of the provisions of Division 7 of this Part to and in respect of land to which the scheme referred to in this Division applies a reference in that Division to "the date upon which notice of the fact that the Minister has directed the council or two or more councils to act together to prepare a scheme was published in the Gazette" shall be construed as a reference to the date upon which the notification referred to in subsection two of section 342AA was published.

(4) It shall be the duty of every Government Department, statutory body, authority and person for the purposes of this section to furnish such information and afford such assistance to the Cumberland County Council as the Minister, at the request of the county council, may require.

DIVISION 9—*Compensation.*

Compensation.

342AC. (1) Subject to the provisions of this Part, any person—

(a) who has an estate or interest in land to which a prescribed scheme applies and such estate or interest is injuriously affected—

(i) by the coming into operation of any provision contained in the prescribed scheme; or

(ii)

(ii) by the execution of any work under the prescribed scheme; or

(iii) by any restrictions imposed by or under the prescribed scheme;

(b) who is engaged in any profession, trade or calling upon land to which a prescribed scheme applies and whose profession, trade or calling is injuriously affected—

(i) by the coming into operation of any provision contained in the prescribed scheme; or

(ii) by the execution of any work under the prescribed scheme; or

(iii) by any restrictions imposed by or under the prescribed scheme;

(c) who suffers damage by reason of any action taken by or on behalf or at the order of the responsible authority for the enforcement or carrying into effect of the prescribed scheme;

(d) who has incurred expenditure—

(i) for the purpose of complying with any provision of the prescribed scheme: or

(ii) in making a claim under the provisions of this Act relating to compensation; or

(iii) in making an appeal under the provisions of this Act relating to betterment,

which expenditure is rendered abortive in whole or in part by suspension or variation or revocation of the prescribed scheme;

(e) who has, before the resolution to prepare a scheme has taken effect or the publication in the Gazette of the notice that the Minister has directed the council

council to prepare a scheme or, in the case of land to which the scheme referred to in Division 8 of this Part applies, before the publication of the notification referred to in subsection two of section 342AA of this Act incurred liability or expenditure in or in connection with the carrying out of any work which is either in whole or in part rendered abortive or abandoned by reason of the operation of this Part;

(f) who has incurred expenditure pursuant to any approval, permission or consent granted under the provisions of a prescribed scheme, which expenditure is rendered abortive in whole or in part by the revocation or modification of such approval, permission or consent;

(g) who has incurred expenditure pursuant to any permission given by an ordinance or by a council pursuant to an ordinance under Division 7 of this Part, which expenditure is rendered abortive in whole or in part by the rescission or alteration of such ordinance or the revocation or modification of such permission;

(h) who has incurred expenditure pursuant to any certificate given to him under section 342AS of this Act which expenditure is rendered abortive in whole or in part by reason of any error, omission, or inaccuracy in such certificate,

shall, if he makes a claim therefor within the time prescribed, be entitled to obtain, from the council which is the responsible authority concerned, compensation in respect of such injurious affection, damage, liability or expenditure.

(2) Compensation shall not be payable in the following cases:—

(a) in respect of any building erected or work done upon or contract made or other act or thing done with respect to land included in a prescribed scheme after the date upon which the resolution of the council has taken effect or the date of publication in the Gazette of the notice that the Minister has directed the council to prepare a scheme affecting such land, as the case may be, or where the prescribed scheme is the scheme referred to in Division 8 of this Part, after the publication of the notification referred to in subsection two of section 342AA of this Act, unless the erection of such building or the doing of such work or the making of such contract or the doing of such other act or thing was permitted under the provisions of Division 7 of this Part;

(b) where an estate or interest in land is injuriously affected by reason of any provision contained in the prescribed scheme if and in so far as the same provision or a provision substantially to the same effect was, at the date when the prescribed scheme came into operation, already in force by virtue of some Act, including this Act (except this Part);

(c) where an estate or interest in land is affected by any provision of the prescribed scheme which prescribes the space about buildings or limits the number of buildings to be erected, or prescribes the height, bulk, floor space, use, design, external appearance, or character of buildings;

(d)

(d) where an estate or interest in land is affected by any provision of the prescribed scheme prohibiting or restricting the use of that land unless the applicant establishes that some specified use of the land (which is prohibited or restricted by the prescribed scheme) was practicable immediately before the prescribed scheme came into operation and that there was at that time a demand for such use;

(e) in respect of any action taken by or on behalf or at the order of the council which is the responsible authority for the enforcement of the prescribed scheme in accordance with the provisions of section 342P of this Act except in a case where a building or work which the council has removed, pulled down or altered was an existing building or an existing work or the use of land which it has prohibited or restricted was an existing use;

(f) in respect of any thing done in contravention of a prescribed scheme;

(g) in respect of any thing done in contravention of Division 7 of this Part or of any decision or determination thereunder, or, as the case may be, in contravention of any decision or determination on any appeal under that Division.

For the purpose of paragraph (e) of this subsection—

"Existing building" and "existing work" mean respectively a building or work erected, constructed or carried out before the material date, and include also a building or work—

(i) begun before, but completed after, the material date; or

(ii)

(ii) erected constructed or carried out pursuant to any permission under Division 7 of this Part:

Provided that a building or work shall not cease to be, or to be deemed to be, an existing building or work by reason of its alteration or extension in accordance with any provision of the scheme relating to the alteration or extension of existing buildings or works, and any such alteration or extension shall itself be deemed to be part of the existing building or work.

"Existing use" means a use of land for any purpose of a similar character to that for which it was last used before the material date or, in the case where there is a newly erected building on the land which has not been used before that date, a use for any purpose for which the building was designed, and includes in any case any use of land permitted under Division 7 of this Part:

Provided that—

(i) if at any time after the material date the use of that land which, at that date, was the existing use thereof, is discontinued for a period of eighteen months, no use of that land at any subsequent date shall be deemed to be an existing use thereof;

(ii) where at the material date a person who was using any land for the purpose of mining, quarrying, the digging of clay, gravel or sand, or the deposit of waste materials or refuse, or any other purpose of a similar nature, was entitled also to use neighbouring

neighbouring land for any such purpose, the user under that title of that neighbouring land for any such purpose, whether before or after the material date, shall be deemed to be an existing use.

"Material date" means the date on which the resolution to prepare the scheme was passed or the date on which the Minister gave notice to the council in accordance with the provisions of subsection one of section 342D of this Act to prepare a scheme or, in respect of the scheme referred to in Division 8 of this Part, the date upon which the notification referred to in subsection two of section 342AA of this Act was published:

Provided that, where a prescribed scheme (in this proviso referred to as the "original scheme") is revoked and replaced by a subsequent scheme, or is varied in accordance with this Part and any provisions of the scheme replacing or varying the original scheme is substantially to the same effect as a provision of the original scheme, the material date shall be the date on which the resolution to prepare the original scheme was passed or the date on which the Minister gave notice to the council in accordance with the provisions of subsection one of section 342D of this Act to prepare the original scheme or, in respect of the scheme referred to in Division 8 of this Part, the date upon which the notification referred to in subsection two of section 342AA of this Act was published.

(3) Where an estate or interest in land is injuriously affected by reason of any provision contained in the prescribed scheme, then

then if such provision or a provision substantially to the same effect could, immediately before the prescribed scheme came into operation, have been validly included in any ordinance, proclamation, declaration, notification or other like instrument issued or made under the authority of this Act (other than this Part) or the Sydney Corporation Act, 1932, as amended by subsequent Acts, and—

(a) if no compensation would have been payable by reason of the inclusion of the provision in such ordinance, proclamation, declaration, notification or other instrument, no compensation shall be payable under this Division;

(b) if compensation would have been so payable the amount of compensation payable in respect of that provision of the scheme shall not be greater than the compensation which would have been so payable;

(4) In assessing compensation under this Division in respect of the injurious affection of an estate or interest in land the following provisions shall have effect:—

(a) The amount of the compensation shall, subject to this Division, be a sum equal to the difference between the market value of such estate or interest at the time of the coming into operation of the provision of the prescribed scheme, or the execution of the work under the prescribed scheme, or the prohibition or restriction imposed by or under the prescribed scheme, as the case may be, out of which the claim for compensation arose and what would have been the market value of that estate or interest if such provision had not come into operation, or such work had not

been

been executed or such prohibition or restriction had not been imposed, as the case may be.

(b) There shall be taken into account any modification of the injurious affection that may be effected in consonance with the prescribed scheme.

(c) There shall be taken into account any benefit which may accrue to any land in which the claimant has an estate or interest—

(i) by reason of the coming into operation of the scheme; or

(ii) by reason of the construction or improvement by any other person, at any time after the scheme is prescribed, upon land adjacent to the land in respect of which compensation is claimed, of any work or service in pursuance of the provisions of the scheme.

(d) There shall be taken into account any contribution made by the council in accordance with the provisions of Division 7 of this Part.

(e) If the parcel of land in respect of which compensation is claimed has, since the date upon which the scheme was prescribed, become or ceased to be separate from other land, the amount of compensation shall not be enhanced by reason of its having become or ceased to be separate from other land.

(f) If the question arises out of the coming into operation of a varying scheme there shall be taken into account any amount which the council has paid or is liable to pay, or has recovered or is entitled to recover, in respect of that land, by reason of the coming into operation

operation of the original scheme, or any other scheme varying it.

(g) An amount may be included to reimburse any person claiming compensation under this Division for the costs and expenses reasonably incurred by him in preparing and enforcing his claim for compensation.

cf. Act No. 22, 1943, s. 18.

(5) (a) If any dispute or difference arises between any person claiming compensation under this Division and any council the question of whether such council is the responsible authority concerned and whether such person is entitled to compensation and, if so, to what amount, shall be decided—

(i) where the claim does not exceed one hundred pounds—by a court of petty sessions holden before a stipendiary or police magistrate;

(ii) where the claim exceeds one hundred pounds—by the Land and Valuation Court.

The decision of the Court or magistrate shall be final and conclusive.

(b) The time within which claims under this section may be made and the manner of making such claims and any matter in connection therewith may be prescribed—

(i) in the case of claims made before the Land and Valuation Court—by rules of court of that Court;

(ii) in the case of claims made before a court of petty sessions holden before a police or stipendiary magistrate—by ordinance made under this Act.

(c) The council which is the responsible authority concerned, and the claimant may appear by solicitor or counsel at any inquiry held for the assessment of compensation under this section.

342AD. (1) Any amount payable to a claimant as compensation under this Part may be recovered from the council which is the responsible authority concerned as a debt in any court of competent jurisdiction. Recovery of compensation.

(2) The provisions of this Part as to compensation shall be subject to any special provisions respecting compensation included in the prescribed scheme or included in any agreement with the claimant or his predecessor in title incorporated in the prescribed scheme or made subsequently thereto; and the inclusion of any such provision or agreement in a scheme is hereby authorised. Compensation subject to agreements, etc.

342AE. (1) Nothing in this Division shall deprive any person of any right to compensation that he may have independently of this Part. Alternative rights in respect of compensation.

(2) Where a person would be entitled to claim compensation in respect of any matter or thing under this Part and also under any other enactment, he shall not be entitled to receive compensation both under this Part and such other enactment, nor to receive any greater compensation under this Part than he would be entitled to receive under such other enactment. cf. 7 & 8 Geo. VI, No. 99 (Tas.), s. 25 (3) (4).

Division 10.—*Betterment.*

342AF. (1) The council of an area within which is situated land to which a prescribed scheme applies, shall where the prescribed scheme contains provision for the recovery of betterment in accordance with this Division— Valuation of betterment.

(a) within such time, not exceeding five years after the prescribed scheme comes into operation, as is specified in such scheme require the Valuer-General to report whether any land which is for the

the time being ratable has been increased in value by the coming into operation of any provision contained in the prescribed scheme; or

(b) within twelve months after—

(i) the granting of any permission under the prescribed scheme for the erection of any building or the carrying out of any work or the use of any land; or

(ii) the completion by the council of any work under the prescribed scheme,

require the Valuer-General to report whether any land which is for the time being ratable has been increased in value by the granting of such permission or by the execution by the council of any such work.

Any report furnished by the Valuer-General under this subsection shall be accompanied by a list of the lands and of the increases in value thereof.

Such increases in value are in this Part referred to as betterment.

(2) (a) All lists furnished by the Valuer-General under subsection one of this section shall be stamped with the official stamp of or signed by the Valuer-General.

(b) There shall be payable by every council to which any such list is furnished fees therefor according to a scale which shall be fixed by the Governor from time to time.

(3) Notice of valuation of betterment shall be given in the same manner as notice of valuation of land (whether under this Act or the Sydney Corporation Act, 1932, as amended by subsequent Acts, or under the Valuation of Land Act, 1916, as amended by subsequent Acts,

as

as the case may be), and the provisions of any such Act for the time being in operation in the area relating to appeals against valuations of land shall, mutatis mutandis, apply to and in respect of appeals against valuations of betterment.

Betterment charge.

342AG. (1) Subject to this Part, where the prescribed scheme contains provision for the recovery of betterment in accordance with this Part the council shall in respect of the betterment of any such land aforesaid impose a betterment charge: Provided that such a charge shall not be imposed in respect of the betterment of any land in relation to which any accruing benefit has been taken into account in assessing compensation under Division 9 of this Part.

(2) The total amount recoverable under a betterment charge on any separate parcel of land shall be such as to return to the council a sum equal to eighty per centum of the betterment on such separate parcel.

(3) (a) Any such charge shall be imposed each year for a term of years fixed by the prescribed scheme, or, where no term is so fixed, for a term of years fixed by the council when first imposing the charge.

(b) The amount of the charge so imposed shall be included, and the term of years so fixed shall be stated, in the rate notice in respect of the land in respect of which it is imposed.

(c) The charge so imposed may be recovered as a rate and shall be a charge upon the land in respect of which it is imposed as if it were a rate: Provided that in any case where the council is satisfied that enforcement of the payment of the charge would cause undue hardship the council may allow payment to be postponed for such period as it may determine and may from time to time extend such period.

(4)

(4) The amount of the betterment charge shall be subject to any special provisions or agreements relating thereto included in the prescribed scheme, and the inclusion of any such provision or agreement in a scheme is hereby authorised.

DIVISION 11.—*Powers of Minister in case of failure of councils to prepare or carry into effect or enforce schemes.*

Powers of Minister in case of default by councils.

342AH. (1) In any case—

(a) where a resolution to prepare a scheme has taken effect but the council or councils concerned have not prepared the scheme within the period or extended period fixed under section 342C of this Act; or

(b) where the Minister under section 342D of this Act has directed a council or two or more councils acting together to prepare a scheme and the Minister is satisfied after due inquiry that the council or councils concerned have not effectively complied with the direction; or

(c) where the Minister is satisfied after due inquiry that the responsible authority is not effectively carrying into effect or enforcing a prescribed scheme or any provision thereof,

the Minister may, after notifying the council or councils concerned of his intention so to do—

(i) prepare or carry into effect or enforce the scheme or provision thereof as the case may be; or

(ii) direct the Advisory Committee to prepare or carry into effect or enforce the scheme or provision thereof as the case may be.

(2) (a) For the purposes of this section, the Minister and the Advisory Committee shall have and may exercise and perform and enjoy

enjoy in and in relation to the land to which the resolution applies or the direction relates or the prescribed scheme applies, as the case may be, the powers, authorities, duties, functions, discretions and immunities of the council or councils within whose area or areas such land is situated except such powers, authorities, duties, functions, discretions and immunities as may be prescribed and while so doing shall be deemed to be such council or councils.

(b) (i) It shall be the duty of the council and of every officer and servant of the council to furnish such information as the Minister or the Advisory Committee may require for the purposes aforesaid.

(ii) Any person authorised in that behalf by the Minister or the Advisory Committee, as the case may be, shall for such purposes have liberty at all reasonable times to inspect any document, plan, map, or record of the council; and the servant or other person for the time being having the custody thereof shall not refuse or prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(3) Any expenditure of the Minister or the Advisory Committee incurred in pursuance of this section shall be defrayed in the first instance from moneys provided by Parliament or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose, but the amount thereof (less any remissions allowed by the Minister, which remissions the Minister, with the approval of the Treasurer, is hereby authorised to allow) shall be repaid by the council concerned on demand to the Treasurer, and where more than one council is concerned, in such proportions as may be determined by the Minister.

(4)

(4) The Treasurer may recover as a debt any sums repayable by the council in accordance with subsection three of this section.

(5) The amount of any liability to the Treasurer incurred under this section may be paid out of the appropriate fund of the council concerned, and may be borrowed by way of ordinary loan under this Act, or as a loan for essential purposes in accordance with the provisions of the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may require.

DIVISION 12.—*Town and Country Planning Advisory Committee.*

Constitution of Advisory Committee.

342AI. (1) There shall be a Town and Country Planning Advisory Committee, which shall have and may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon the Advisory Committee by or under this Act.

(2) (a) The Advisory Committee so constituted shall consist of eight members who shall be appointed by the Governor.

Of the members so appointed—

(i) one shall be an officer of a council and shall be appointed from a panel of four such officers nominated jointly as prescribed by the governing bodies of the Local Government Association of New South Wales and the Shires Association of New South Wales;

(ii) one shall be an engineer and shall be appointed from a panel of four members of the Institution of Engineers, Australia (Sydney Division) nominated as prescribed by the governing body of that Division;

(iii)

(iii) one shall be a registered architect and shall be appointed from a panel of four members of the Royal Australian Institute of Architects (New South Wales Chapter), nominated by the Council of that Chapter;

(iv) one shall be a registered surveyor and shall be appointed from a panel of four members of the Institution of Surveyors (New South Wales) nominated by the governing body of that Institution;

(v) one shall be an officer of the Department of Local Government, and shall be nominated for appointment by the person for the time being holding the office of or duly acting as Under Secretary of that Department;

(vi) two shall be persons who shall be appointed on the nomination of the Minister;

(vii) one shall be the Commissioner for Main Roads or a person nominated by him.

(b) The Governor may appoint one of the members to be the chairman of the Advisory Committee and one other member to be the vice-chairman of the Advisory Committee.

(c) No person shall be eligible for appointment as a member of the Advisory Committee unless the Minister is satisfied that he has adequate knowledge or experience of the principles or practice of town planning or country planning.

(3) (a) The Governor may from time to time appoint a deputy to act in the place of any member.

The deputy so appointed to act in the place of the member referred to in subparagraph (i), subparagraph (ii), subparagraph (iii) or subparagraph

subparagraph (iv) of paragraph (a) of subsection two of this section shall be a person whose name is on the same panel as the member for whom he is appointed deputy.

The deputy so appointed to act in the place of the member referred to in subparagraph (v) of the same paragraph shall be appointed on the nomination of the person for the time being holding the office of or duly acting as Under Secretary of the Department of Local Government.

The deputy so appointed to act in the place of either of the members referred to in subparagraph (vi) of the same paragraph shall be appointed on the nomination of the Minister.

The deputy so appointed to act in the place of the member referred to in subparagraph (vii) of the same paragraph shall be appointed on the nomination of the Commissioner for Main Roads.

(b) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a deputy to act in the place of a member; and all acts and things done or omitted to be done by a deputy when so acting as aforesaid shall have the same consequences as if the same had been done or omitted by the member in whose place the deputy is acting.

(4) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of a member of the Advisory Committee, or of a deputy member, and a member or deputy member shall not, in his capacity as such member or deputy member, be subject to the provisions of the Public Service Act, 1902, or any Act amending that Act.

(5) (a) Each member of the Advisory Committee shall, subject to this section, hold office for a term of five years from the date of his

his appointment or such shorter term as may be specified by the Governor in the instrument of appointment, and shall if otherwise qualified be eligible for reappointment upon the expiration of his term of office: Provided that a person appointed to fill the vacant office of a member shall hold office only for the residue of his predecessor's term of office, but shall if otherwise qualified be eligible for reappointment.

(b) A member or deputy member shall be deemed to have vacated his office if he—

(i) dies;

(ii) resigns his office in writing under his hand addressed to the Governor;

(iii) being one of the members referred to in subparagraphs (i) to (v) both inclusive of paragraph (a) of subsection two of this section, ceases to hold the qualification by virtue of which he was appointed; or

(iv) is removed from office by the Governor.

(c) The Governor may, for any cause which appears to him sufficient, remove any member or deputy member from office.

(6) (a) Every panel constituted under subsection two of this section shall be constituted in the manner and within the time prescribed, and the nominations for the panel shall be accompanied by the written consent of each person whose name is included in the panel to serve on the Advisory Committee if appointed.

(b) If within the time prescribed a valid nomination of a panel has not been made by the authority or authorities entitled to nominate such panel, the Governor may constitute a panel consisting of persons having the appropriate qualification, and may appoint any person whose name is included in the panel so constituted to be a member or deputy member, as the case may be, of the Advisory Committee.

(7) No act or proceeding of the Advisory Committee shall be invalidated or prejudiced by reason only of the fact that at the time such act or proceeding was done or taken or commenced there was a vacancy in the office of any one or more members.

(8) The procedure for the calling of meetings of the Advisory Committee, and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by the Advisory Committee.

(9) Five members of the Advisory Committee shall form a quorum and any duly convened meeting of the Advisory Committee at which a quorum is present shall be competent to transact any business of the Advisory Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Advisory Committee.

(10) (a) At any meeting of the Advisory Committee the chairman, or in his absence the vice-chairman, shall preside.

(b) If the chairman and vice-chairman are both absent from any meeting the members present may elect one of their number to preside at the meeting; and the member so elected while so presiding shall have the powers, authorities, duties and functions of the chairman.

(c) If there is an equality of votes in such an election it shall be decided by lot which of the members having an equal number of votes shall preside.

(11) (a) At any meeting of the Advisory Committee the decision of a majority of the members present shall be the decision of the Advisory Committee.

(b) The chairman or the vice-chairman or member presiding shall have a deliberative vote and, where the members present

present at any meeting are equally divided in opinion upon any matter, shall have a second or casting vote.

(12) The office of member or deputy member of the Advisory Committee shall not, for the purpose of any Act, be deemed to be an office or place of profit under the Crown.

Remuneration of members.

342AJ. (1) The chairman, vice-chairman and members of the Advisory Committee and any deputy member, whilst acting in the place of a member, shall be entitled to receive such remuneration (whether by way of fees or allowance or otherwise) and such travelling and out-of-pocket expenses as may from time to time be fixed by the Governor.

(2) Where the chairman or vice-chairman or any member or deputy member of the Advisory Committee is an officer of the Public Service or of a statutory body representing the Crown he shall, notwithstanding the provisions of any Act or of any rule or regulation made under any Act, be entitled to receive remuneration under this section, in addition to any remuneration to which he is otherwise entitled.

Annual report.

342AK. (1) The Advisory Committee shall, not later than the thirtieth day of September in each year, cause a report of its work during the year ended on the thirtieth day of June then next preceding to be prepared and forwarded to the Minister for presentation to Parliament.

(2) The report shall contain such information as may be prescribed or, if not so prescribed, as may be directed by the Minister.

DIVISION 13.—*Functions of the Advisory Committee.*

Functions of Advisory Committee.

342AL. (1) (a) The Advisory Committee shall consider and furnish reports to and advise the Minister upon any matter or proposal relating to town planning or country planning which may

may be referred to the Advisory Committee by the Minister and on such other matters relating to town planning or country planning as may be prescribed.

(b) The Advisory Committee may, of its own motion, submit for the consideration of the Minister any proposal in connection with any matter relating to town planning or country planning.

(c) The Advisory Committee may advise any council considering a town planning or country planning scheme or a proposal for such a scheme upon any matter relating thereto, subject to such conditions (if any) as may be prescribed.

(d) Where in the opinion of the Advisory Committee it is necessary or desirable so to do for any of the purposes of this Part, such Committee may conduct an investigation or inquiry.

(2) For the purposes of conducting any investigation or inquiry under this Part the members of the Advisory Committee and the chairman thereof or the vice-chairman or member presiding shall have the powers, authorities, protections and immunities conferred on commissioners and the chairman of a commission respectively by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts, and the provisions of that Act, as so amended, with the exception of section thirteen, and of Division 2 of Part II, and the provisions of section one hundred and fifty-two of the Justices Act, 1902-1940, shall, mutatis mutandis, apply to and in respect of any such investigation or inquiry and any witness or person summoned by or appearing before the Advisory Committee.

(3) (a) (i) It shall be the duty of each council and of every officer and servant of a council and of every committee appointed by a

council

council under this Part and of every member of any such committee to furnish such information as the Advisory Committee may require for any purpose of or connected with the exercise or discharge of its powers, authorities, duties and functions under this Part.

(ii) Any person authorised in that behalf by the Advisory Committee shall for such purposes have liberty at all reasonable times to inspect any document, plan, map or record of the council or of any committee appointed by the council under this Part; and the servant or other person for the time being having the custody thereof shall not refuse or prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(b) It shall be the duty of every Government department, statutory body, authority and person to furnish such information as the Advisory Committee may require for any purpose of or connected with the exercise or discharge of its powers, authorities, duties and functions under this Part.

Certain approvals to be given only after report of Advisory Committee.

342AM. Where by this Act the approval of the Governor or the Minister may be or is required to be given to any matter or proposal relating to a town planning or country planning scheme, such approval shall not be given unless and until the Advisory Committee has made a report to the Minister thereon.

DIVISION 14.—*Finance.*

Advances.

342AN. (1) (a) The Minister may, with the approval of the Treasurer, from moneys provided by Parliament for the purpose, or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent

inconsistent with the application of such moneys for the purpose, make advances to councils for or in connection with the exercise or discharge of their powers, authorities, duties or functions under or in pursuance of this Part.

(b) In any case where the Minister so requires the council shall enter into an agreement securing the repayment of the advance by yearly or half-yearly instalments with interest at such rate as the Minister, with the approval of the Treasurer, may determine.

(c) If any such instalment is not paid on the due date there shall be added thereto a sum equal to ten per centum thereof, and such instalment, together with such additional sum, may be recovered by the Minister as a debt: Provided that the Minister may, with the approval of the Treasurer, on cause shown, remit part or the whole of such instalment or additional sum.

(2) (a) The Minister may, with the approval of the Treasurer, enter into an agreement with a council to pay to the council, in each year during such period as may be specified in the agreement, the sum or sums ascertained from time to time upon such basis or upon such considerations as the Minister may determine, for or towards meeting the liability of the council in respect of any borrowing for any purpose of this Part or in respect of any loan or loans raised by a council for the purpose of repaying or renewing the whole or any part of the original loan or of any renewal loan in respect thereof.

The agreement may include such terms, conditions or provisions not inconsistent with this Part as the Minister may determine and may, if the Minister so determines, provide for the repayment, in instalments or otherwise, of the sums paid to the council thereunder.

(b)

(b) Such sums as, from time to time, become due and payable by the Minister under any agreement authorised by this subsection shall be paid from moneys provided by Parliament for the purpose or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose.

Estimates.

342AO. The council shall, once in each year, within the time and in the manner prescribed, prepare and furnish to the Minister estimates of income and expenditure in relation to the exercise or discharge of its powers, authorities, duties and functions in relation to town or country planning.

Loans.

342AP. The council may borrow by way of ordinary loan (or loan for essential services, in the case of the Municipal Council of Sydney) for any of the purposes of this Part.

Town and Country Planning Fund.

342AQ. (1) The council (other than the Municipal Council of Sydney) shall create a separate fund subsidiary to the general fund to be known as the Town and Country Planning Fund, and the Municipal Council of Sydney shall open a separate account within the City Fund to be known as the Town Planning Account.

Such separate fund or separate account, as the case may be, shall consist of the following assets:—

(a) all moneys received or receivable in respect of any of the purposes of this Part;

(b) all moneys borrowed in respect of any of the purposes of this Part;

(c) the proceeds of any rate levied in respect of any of the purposes of this Part and including any rate levied in respect of such borrowings;

(d)

(d) the proceeds of any betterment charge imposed in pursuance of this Part;

(e) all moneys transferred from any other fund of the council to the general fund in accordance with this Act in respect of any of the purposes of this Part;

(f) all moneys transferred from any other account in the general fund or City Fund, as the case may be, in respect of any of the purposes of this Part.

(2) Such separate fund or separate account, as the case may be, may be applied to any of the following purposes:—

(a) any of the purposes of this Part;

(b) transfers to any reserve or sinking fund for loan repayment in respect of moneys borrowed in respect of any of the purposes of this Part;

(c) payment of principal, interest and expenses in respect of moneys borrowed as aforesaid;

(d) any purpose of this Act or the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may be, related or incidental or ancillary to town planning or country planning;

(e) any purpose authorised by or under this Part for the application of the fund.

DIVISION 15.—*Miscellaneous.*

Appointment of officers and employees.

342AR. (1) The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint such officers and employees as may be necessary for the administration of this Part.

(2)

(2) For the purpose of exercising and discharging the powers, authorities, duties and functions conferred and imposed on the Advisory Committee by or under this Part the Advisory Committee may, with the approval of the Minister for the time being charged with the administration of this Act and of the Minister of the department concerned and the Public Service Board, on such terms as may be arranged, make use of the services of any of the officers or employees of the Public Service, or with the approval of the Minister for the time being charged with the administration of this Act and of the statutory body concerned, on such terms as may be arranged, make use of the services of any officer, employee or servant of the statutory body.

Certificates of compliance.

342AS. (1) Any person may apply to the council for a certificate under this section with respect to any land within the area of the council.

(2) The council may issue a certificate that on the date specified in the certificate any land within its area is or is not land to which a prescribed scheme or a scheme in course of preparation or a resolution applies or a direction to prepare a scheme relates.

(3) Ordinances may be made authorising the council to issue certificates under this section with respect to such matters as may be prescribed.

In particular and without prejudice to the generality of the foregoing provisions of this subsection an ordinance may authorise the council to issue a certificate setting forth that—

(a) any permission or authority which the council is required or permitted to give, modify or revoke by or under this Part or a prescribed scheme was on a specified day given, modified or revoked;

(b)

(b) any instrument or plan does not on the date specified in the certificate contravene the provisions of a prescribed scheme.

(4) For the purpose of any proceedings for an offence under this Part taken against a person who has obtained a certificate under this section, such certificate shall, in favour of such person, be conclusively presumed to be true and correct.

(5) For the purposes of the registration of any plan or instrument intended to affect or evidence the title to any land a certificate given under this section shall, in favour of the person to whom the certificate is so given and of the Registrar-General, the Crown Solicitor or other person registering or certifying title, be conclusively presumed to be true and correct.

DIVISION 16.—*Ordinances.*

Ordinances.

342AT. (1) Ordinances may be made for carrying this Part into effect.

(2) In particular and without prejudice to the generality of subsection one of this section, ordinances may be made for and with respect to—

(a) the manner of preparing and the details to be specified in maps, plans, specifications and the like and in estimates of cost of schemes;

(b) the making of provisional agreements between the council and the owners and lessees of land affected by a scheme, and with public authorities or statutory bodies in relation to a scheme;

(c)

(c) requiring councils, statutory bodies, companies, firms or persons carrying on business or exercising rights by virtue of any Act to assist any council which is engaged in the preparation of a scheme by the supply of information, plans and statistics and by the granting of facilities for inspection and investigation;

(d) the form, time, manner and mode of giving notices and advertisements;

(e) any matter necessary or convenient to be prescribed for or in relation to the carrying into effect or enforcing the observance of prescribed schemes;

(f) requiring councils to keep registers of permits, authorities and the like granted under this Part;

(g) the payment of travelling and out-of-pocket expenses of members of any committee (other than the Advisory Committee) appointed under this Part;

(h) (i) prescribing the conditions upon which certificates of qualification in town planning or country planning may be issued to persons who apply therefor and the amount of any fees which may be charged in that connection;

(ii) prescribing the manner and circumstances in and under which such certificates may be suspended or cancelled;

(iii) providing for and prescribing the manner of keeping a register of the names of persons who are for the time being lawful holders of such certificates.

(3) An ordinance may prescribe the qualifications for membership of any committee (other than the Advisory Committee) appointed under this Part and may make provision for the appointment, as members of any committee, of representatives of bodies concerned in industrial or commercial pursuits, or in research, or in the promotion of community activities or amenities.

(4) With respect to an ordinance prescribing a scheme under this Part or an ordinance made in relation to any of the matters referred to in subsection two of section 342U of this Act, section five hundred and seventy-seven of this Act shall have and take effect as if it were amended as follows, that is to say—

(a) by omitting paragraph (b) of subsection one of that section;

(b) by omitting subsection two of that section and by inserting in lieu thereof the following subsections:—

(2) A copy of the ordinance shall be sent by post to each Member of the Legislative Assembly and to each Member of the Legislative Council as soon as may be after the publication thereof.

(2A) An ordinance shall not be capable of coming into effect until a resolution approving the ordinance is passed by both Houses of Parliament.

(2B) An ordinance shall take effect on the day upon which a resolution approving the same is passed by both Houses of Parliament, or where such resolution is passed on different days in the respective Houses, then upon the later of such days.

4. The Principal Act is further amended— Further amendment of Act No. 41, 1919.

(a) by inserting at the end of section three hundred and thirty-two the following word and new paragraph:— Sec. 332. (Subjects for consideration—new roads.)

and

(k) the provisions of any town planning or country planning scheme;

(b) by inserting next after paragraph (i) of section three hundred and thirty-three the following word and new paragraph:— Sec. 333. (Subjects for consideration—subdivisions.)

and

(j) the provisions of any town planning or country planning scheme.

PART III.

Amendments of Sydney Corporation Act, 1932, as amended by subsequent Acts.

5. The Sydney Corporation Act, 1932, as amended by subsequent Acts, is amended— Amendment of Act No. 58, 1932.

(a) by inserting at the end of section three hundred and three the following word and new paragraph:— Sec. 303. (Subjects for consideration—new public ways.)

and

(j) the provisions of any town planning or country planning scheme in course of preparation or prescribed under the Local Government Act, 1919, as amended by subsequent Acts;

(b) by inserting at the end of section three hundred and four the following word and new paragraph:— Sec. 304. (Subjects for consideration—subdivisions.)

and

(i) the provisions of any town planning or country planning scheme in course of preparation or prescribed under the Local Government Act, 1919, as amended by subsequent Acts.

By Authority:
Reprinted by
THOMAS HENRY TENNANT, Government Printer, Sydney, 1946

[2*s*.]

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

W. R. McCOURT,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 22 March, 1945.

New South Wales.

ANNO NONO

GEORGII VI REGIS.

* *

Act No. 21, 1945.

An Act to make better provision for and in relation to town planning and country planning; for this purpose to amend the Local Government Act, 1919, and certain other Acts; and for purposes connected therewith. [Assented to, 5th April, 1945.]

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.

1. (1) This Act may be cited as the "Local Government (Town and Country Planning) Amendment Act, 1945." **Short title.**

(2)

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

G. BOOTH,
Chairman of Committees of the Legislative Assembly.

(2) The Local Government Act, 1919, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

Division into Parts.

2. This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—*ss.* 1, 2.

PART II.—AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS—*ss.* 3, 4.

PART III.—AMENDMENTS OF SYDNEY CORPORATION ACT, 1932, AS AMENDED BY SUBSEQUENT ACTS—*s.* 5.

PART II.

AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS.

Amendment of Act No. 41, 1919.

3. The Principal Act is amended—

Sec. 3. (Division into Parts.)

(a) by inserting in section three next after the matter relating to Part XII, the words and symbols "Part XIIA—TOWN AND COUNTRY PLANNING SCHEMES—*ss.* 342A-342AT";

New Part XIIA.

(b) by inserting next after section three hundred and forty-two the following new Part:—

PART XIIA.

TOWN AND COUNTRY PLANNING SCHEMES.

DIVISION 1.—*Application of Part.*

Application of Part XIIA.

342A. (1) Subject to the provisions of this Act—

(a) this Part shall apply to municipalities and shires, and to the city of Sydney;

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

(2)

(2) In the application of any provision of this Part to or in respect of the city of Sydney—

(a) a reference in that provision to an "area" shall be construed as a reference to the city of Sydney;

(b) a reference in that provision to a "council" shall be construed as a reference to the Municipal Council of Sydney;

(c) a reference in that provision to a "road" or a "public road" shall be construed as a reference to a public way within the meaning of the Sydney Corporation Act, 1932, as amended by subsequent Acts;

(d) a reference expressed or implied in that provision to an ordinance shall be construed as a reference to by-laws made or deemed to have been made under the Sydney Corporation Act, 1932, as amended by subsequent Acts.

Definitions.

342B. In this Part unless the context or subject matter otherwise indicates or requires—

"Advisory Committee" means the Town and Country Planning Advisory Committee constituted under this Part.

"Building" includes any structure or any part thereof.

"Council" includes county council.

"Erection," "erect" and similar expressions in relation to building include any structural work or any alteration, addition or rebuilding.

"Land" includes any estate or interest in land (whether legal or equitable) and any easement, right, or privilege, in, over, or affecting, land and also includes all lands of the Crown.

DIVISION 2.—*Preparation of schemes.*

Preparation of schemes.

342c. (1) (a) A council may, by resolution, decide to prepare a scheme with respect to any land within its area.

(b) Two or more councils may by resolution of the respective councils decide to join in preparing a scheme with respect to any land within their areas, and in such a case shall enter into an agreement for the purpose. The provisions of section five hundred and twenty-one of this Act shall extend to and in respect of such agreement.

(c) Any such resolution may specify the particular purposes or objects for or with respect to which the scheme shall be prepared and the scheme shall be prepared accordingly.

(2) (a) A resolution passed under subsection one of this section shall not take effect unless and until it is approved by the Minister and notice of such approval is published in the Gazette. Application for such approval shall be made as prescribed, and shall be accompanied by the prescribed particulars.

(b) In giving his approval the Minister may fix the period of time within which the scheme shall be prepared, and the scheme shall be prepared accordingly: Provided that the Minister may, from time to time, upon the application of the council or councils concerned, extend such period if it appears to him to be expedient so to do.

(3) Where a resolution to prepare a scheme has taken effect, the council or councils concerned shall, within the prescribed period, give notice of the resolution as prescribed.

Such notice shall contain a concise statement of the effect of the resolution, together with information as to the place and times at which a plan defining the land to which the resolution applies may be inspected.

(4)

(4) Where a resolution to prepare a scheme has taken effect the council or councils concerned may prepare one scheme with respect to the whole of the land to which the resolution applies or may prepare different schemes for different parts of the land.

Direction to council to prepare a scheme.

342D. (1) The Minister may from time to time by notice in writing direct any council to prepare a scheme with respect to any land within its area or direct two or more councils to act together in preparing a scheme with respect to any land in their areas, and the council or councils concerned shall comply with the direction.

(2) A direction under subsection one of this section may—

(a) specify the particular purposes or objects for or with respect to which the scheme shall be prepared;

(b) fix the period of time within which the scheme shall be prepared;

and the scheme shall be prepared accordingly: Provided that the Minister may, from time to time, upon the application of the council or councils concerned, extend such period if it appears to him to be expedient so to do.

(3) Where a direction is given under subsection one of this section the Minister shall publish a notice of that fact in the Gazette and in a newspaper circulating in the locality in which the land to which the direction relates is situated.

Such notice shall contain a concise statement of the effect of the direction, together with information as to the place and times at which a plan defining the land to which the direction relates may be inspected.

Appointment of planning committee.

342E. (1) Where a resolution under subsection one of section 342C of this Act has taken effect or a direction has been given by the Minister under subsection one of section 342D of this Act the council or councils concerned shall appoint a planning committee, which shall be constituted as prescribed, to prepare a scheme and shall also appoint or employ some person who possesses the prescribed qualifications in town planning or country planning to assist in the preparation of the scheme.

(2) The procedure for the calling of meetings of the planning committee and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by that committee.

(3) The Minister may arrange for the services of any officer or employee of the Crown who is skilled in any matter relating to town planning or country planning to be made available to assist the council or councils concerned under such conditions, including conditions for payment of remuneration, as may be agreed upon with the council or councils.

(4) The council or councils concerned may arrange, through the Minister, for the making or preparation by any officer or employee of the Crown of any survey or plan required for or in connection with the preparation of the scheme.

(5) The planning committee in preparing a scheme may accept, with or without modifications, a scheme proposed with respect to the whole or part of the land to which the resolution of the council or councils applies or the direction of the Minister relates, by or on behalf of all or any of the owners of that land.

Notice of scheme.

342F. (1) The scheme prepared by the planning committee shall be submitted to the council or councils concerned.

(2)

(2) The council or councils concerned—

(a) shall give notice as prescribed that the scheme has been submitted and shall in such notice—

(i) specify the address of the place or places at which copies of all maps, plans, specifications and other particulars relating to the scheme may be inspected;

(ii) specify the address of the council or councils concerned to which representations in connection with the scheme may be forwarded;

(b) shall forward particulars and a map or plan indicating in general terms the extent or nature of the scheme to all Departments of the Crown in right of the State or of the Commonwealth, all statutory bodies representing the Crown and all councils which appear to it or them to be affected by the scheme.

(3) Any person interested in any land affected by the scheme and any such Department, statutory body or council may, within a period of three months after the publication of notice of the scheme (or where the notice is published more than once, within a period of three months after the first publication thereof), make representations to the council or councils concerned in connection with the scheme.

(4) The council or councils concerned shall consider all representations made under this section and where any alteration of the scheme is considered necessary may refer the scheme back to the planning committee for alteration and resubmission.

(5) The council or councils concerned may adopt the scheme so submitted or resubmitted as the case may be.

Contents of scheme.

342G. (1) A scheme shall in the prescribed manner define the land to which it applies.

(2) A scheme may contain provisions for regulating and controlling the use of land and the purposes for which land may be used.

(3) Without prejudice to the generality of subsection two of this section a scheme may contain provisions for or in relation to all or any of the following matters, that is to say—

(a) the situation, opening, widening, deviating, classifying, and providing of roads;

(b) the restriction of ribbon development of land fronting adjoining or adjacent to a road by regulating all or any of the following matters, that is to say, the construction, forming or laying out of any means of access to or from the road, the erecting or making on the land of any building or permanent excavation which is within a specified distance from the road, or restricting or prohibiting the erection of any building intended for use for any purpose which is likely to cause increased vehicular traffic along the road, or traffic congestion on the road.

In this paragraph "building" includes neither fences, gates, posts, masts, ornaments or other similar structures or erections required for the purposes of farming or grazing or of any dwelling house or garden occupied with a dwelling house nor greenhouses or summerhouses required in connection with any such garden, nor temporary tents or scaffolding required

for

for any purpose, but save as aforesaid includes any structure or erection of whatsoever material and in whatsoever manner constructed and any part of a building;

(c) the minimum standards of construction of roads of different classes and of drains, culverts and bridges in or upon roads;

(d) the provision of water, gas, electricity and other public services;

(e) the reservation of sites for places of religious worship, the residences of ministers of religion and buildings for religious purposes;

(f) the reservation of sites for educational and hospital establishments and community centres for promotion of physical, mental, moral and cultural welfare;

(g) the reservation of sites for ambulance stations, fire brigade stations, police stations, court houses and buildings for the use of Government Departments and of statutory bodies representing the Crown and for residences for the officers of any such Department or statutory body;

(h) the reservation of sites for water reservoirs;

(i) the regulation of building and of matters relating thereto;

(j) the reservation or provision of land for afforestation purposes or for recreation grounds, ornamental gardens, children's playgrounds, green belts, green wedges, and other open spaces;

(k) the planning of localities and the design and protection of buildings and structural elements so as to reduce the risk of fire and limit the spread of fire;

(l)

(l) the zoning of land and the prohibition in any zone of the erection, construction, carrying out or use of any structure or work upon the land or the use in any zone of any land for any specified purpose or for any purpose other than a specified purpose;

(m) the extinction or variation of private rights of way and other easements;

(n) the removal, alteration, or demolition of obstructions or obstructive works;

(o) the preservation or acquisition for public access use and enjoyment of the foreshores or banks of the ocean, harbours, rivers, lakes, lagoons, and the like, and the conservation of the natural beauty thereof;

(p) the preservation of places or objects of historical or scientific interest or natural beauty or advantage;

(q) the provision of amenities;

(r) securing the safety of persons and property from hostile attack;

(s) the location of public utility undertakings, shipping facilities, railways, tramways, canals, and sites for air ports, aerodromes, bridges, jetties, wharves and ferries, and works and matters ancillary thereto;

(t) securing co-operation between the council or councils concerned and the Government, or any person or body of persons;

(u) the acquisition of land for any purpose of the scheme;

(v) the apportionment between councils of any costs, expenses and disbursements incurred in carrying into effect and enforcing a scheme, and the recovery from any council of its share or proportion of the same;

(w)

(w) the recovery of betterment in accordance with Division 10 of this Part;

(x) any matter necessary or convenient for carrying out the scheme.

(4) A scheme may suspend either generally or in any particular case or class of cases the operation of any provision of this or any other Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made, to the extent to which that provision is inconsistent with any of the provisions of the scheme.

(5) (a) A scheme shall contain provisions specifying the responsible authority or responsible authorities which shall be charged with the functions of carrying into effect and enforcing the provisions of the scheme or such of those provisions as relate to any particular portion or portions of the land included in the scheme, or such of those provisions as are directed to particular objects or purposes.

Any responsible authority so specified shall be a council, or two or more councils acting together as prescribed.

(b) A scheme may contain provision for the appointment of a special committee, constituted as prescribed, to assist the responsible authority in carrying into effect and enforcing the scheme.

Such committee may include as members persons who are not members of the council or councils which are the responsible authority.

DIVISION 3.—*Approval of planning schemes.*

Submission of scheme to Minister.

342H. (1) The scheme prepared by the council or councils concerned shall be submitted to the Minister with such maps, plans, specifications, and particulars as may be required by the Minister or as may be prescribed. The

scheme

scheme so submitted shall be accompanied by a copy of the scheme prepared by the planning committee and the representations (if any) or a copy thereof submitted for the consideration of the council or councils concerned pursuant to subsection three of section 342F of this Act and a statement indicating the result of the consideration of each of such representations.

(2) The scheme shall be submitted in the form of a draft ordinance.

The scheme may adopt wholly or partially or by reference any of the provisions contained in a set of standard or model provisions adopted by the Minister on the recommendation of the Advisory Committee.

Reference to Advisory Committee.

342I. The Minister shall refer any scheme together with all documents and information relating thereto which have been so submitted to him to the Advisory Committee for report.

Consideration of scheme.

342J. (1) (a) The Minister shall consider the report of the Advisory Committee and he may then decide—

(i) to proceed with the scheme without alteration;

(ii) to proceed with the scheme with such alterations as he deems expedient in the light of such report;

(iii) to refer the scheme back to the council or councils concerned for further consideration;

(iv) not to proceed with the scheme.

(b) Where a scheme has been altered in pursuance of paragraph (a) of this subsection a reference in subsections two, three and four of this section to "the scheme" shall be construed as a reference to the scheme as so altered.

(2)

(2) If the Minister decides to proceed with the scheme, he shall notify brief particulars thereof and state in the notification that full particulars of the scheme may be inspected at such places as are designated and that objections against the scheme or any part of it may be made to him in writing, in or to the effect of the prescribed form, on or before the date specified in the notification, by or on behalf of any person who has an estate or interest in land affected by the scheme or by any council, including the council or councils which submitted the scheme to him in any case where the scheme is altered in pursuance of subsection one of this section.

The Minister shall arrange for such particulars to be made available for public inspection at the places so designated.

(3) (a) On or before the date so specified any such person or council may, in the manner prescribed, object to the Minister against the scheme or any part of it and shall state the grounds of the objection.

(b) As soon as practicable after such date the Minister, after such inquiry as he deems sufficient, shall determine such objections:

Provided that in any case where the objection is made by a council specified in the scheme as a responsible authority the Minister shall cause a public inquiry to be held and a report to be made to him with respect to the objection; and where in any such case it is a ground of the objection that provision has been included in the scheme by the Minister by alteration of the scheme or has been included in a scheme prepared under the authority of section 342AH of this Act which is likely to involve the objecting council in undue expenditure, and it is stated in such report that the inclusion of such provision in the scheme will be likely to have that effect, the Minister shall allow the objection

to

to the extent which he deems sufficient in the circumstances of the case to avoid involving the council in such undue expenditure.

(c) Each person or council by or on behalf of whom an objection is lodged shall be informed of the determination of the Minister upon such objection, and the council or councils which submitted the scheme shall also be informed of each such determination.

(4) Where an objection is allowed in part or in whole by the determination of the Minister the scheme shall be amended by the Minister so as to conform with such determination.

(5) Where no objection has been lodged with the Minister in accordance with the provisions of paragraph (a) of subsection three of this section or where the scheme has been amended in accordance with the provisions of subsection four of this section the Minister may recommend the Governor to make an ordinance prescribing the scheme accordingly.

Prescribed scheme.

342K. (1) The Governor, on the recommendation of the Minister made in pursuance of section 342J of this Act, may make an ordinance prescribing the scheme.

A scheme which has been embodied in an ordinance so made is in this Part hereinafter referred to as a "prescribed scheme".

(2) The Minister shall give notice, as prescribed, of the fact that the scheme has come into operation and that copies of the ordinance prescribing the scheme and of any maps, plans, specifications or other particulars referred to therein will be available for public inspection.

(3) (a) All maps, plans, specifications, or other particulars referred to in such ordinance shall be filed at the Department of Local Government, Sydney, and any reference in the ordinance

ordinance to maps, plans, specifications, or other particulars shall be deemed a reference to the maps, plans, specifications or other particulars so filed.

(b) Copies of the documents so filed—

(i) shall be made available at the Department of Local Government for public inspection upon payment of the prescribed fee;

(ii) shall be lodged with the Registrar-General and with the responsible authority and with the council of each area adjoining the land included in the prescribed scheme who shall file them for reference.

(c) Copies of the ordinance and of the maps, plans, specifications or other particulars shall be made available by the responsible authority during ordinary office hours for public inspection without fee.

DIVISION 4.—*Variation of prescribed schemes.*

342L. A prescribed scheme may be varied by a subsequent scheme. Variation of prescribed scheme.

Any such variation may supplement or amend (otherwise than by extension of the land to which the scheme applies) the prescribed scheme.

DIVISION 5.—*Revocation of prescribed schemes.*

342M. The Minister may, after consideration of a report by the Advisory Committee, recommend the Governor to revoke a prescribed scheme, and the Governor may thereupon make an ordinance rescinding the ordinance by which the scheme was prescribed. Revocation of prescribed schemes.

DIVISION 6.—*Carrying into effect and enforcing prescribed schemes.*

342N. (1) The responsible authority specified in a prescribed scheme shall have and may exercise and discharge all the powers, authorities, duties Powers, etc., of responsible authority.

duties and functions conferred and imposed on the responsible authority by the prescribed scheme.

(2) Where a prescribed scheme provides expressly or impliedly that any act, matter or thing specified in the scheme shall or shall not be done except with the approval, consent or permission of the council which is the responsible authority, any person who is dissatisfied with the decision of the council upon an application for such approval, consent or permission or with any condition imposed by the council, may appeal against such decision or the imposition of such condition in accordance with the provisions of section three hundred and forty-one of this Act, and the provisions of that section shall extend, mutatis mutandis, to and in respect of any such appeal.

Carrying prescribed schemes into effect.

342o. The responsible authority may carry into effect the provisions of the prescribed scheme—

(a) by the acquisition of land and subsequent action in pursuance of the prescribed scheme;

(b) by causing any aligned public road to be realigned under the Public Roads Act, 1902, as amended by subsequent Acts, in order to widen the road and by applying the realignment method of acquisition, and by subsequent action in pursuance of the prescribed scheme;

(c) by taking such action as may be necessary to enforce the performance of any duty imposed by the prescribed scheme upon any owner or lessee, or public body or authority, including the State Government, or any statutory body or any council or person;

(d)

(d) by enforcing any agreement incorporated in the prescribed scheme, or made subsequent to the prescribed scheme, and relating to any matter dealt with in or arising out of the prescribed scheme;

(e) by exercising, in accordance with the prescribed scheme, its powers under this Act or, in the city of Sydney, the Sydney Corporation Act, 1932, as amended by subsequent Acts, to regulate the opening of any new roads, the subdivision of land, the erection of buildings or any other matter appropriate to the prescribed scheme;

(f) by any other method specifically provided for in the prescribed scheme;

(g) by the exercise of any power conferred upon the council which is the responsible authority by or under this or any other Act; or

(h) by any combination of two or more of these methods.

Enforcement of prescribed schemes.

342P. (1) The responsible authority, subject to the provisions of any prescribed scheme, may, after giving the prescribed notice—

(a) remove, pull down or alter, so as to bring into conformity with the provisions of the prescribed scheme, any building or other work which does not conform to those provisions or in the erection or carrying out of which any provision of the prescribed scheme has not been complied with or the demolition or alteration of which is necessary for carrying the prescribed scheme into effect; or

(b) where any land is being used in such a manner as to contravene any provision of the prescribed scheme, prohibit such use of the land; or

(c)

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

(2) Where any action by the responsible authority under subsection one of this section is made necessary by the default or wrongful act of any person, the responsible authority may recover any expenses thereby incurred from such person as a debt in any court of competent jurisdiction.

Delegation of powers.

342Q. (1) Where a prescribed scheme contains provision for the appointment of a special committee to assist the responsible authority in carrying into effect and enforcing the prescribed scheme, the responsible authority may delegate to such committee any of its powers, authorities, duties and functions in relation to such scheme, except such powers, authorities, duties or functions as may be prescribed from time to time.

(2) Any special committee to which any powers, authorities, duties or functions are delegated as aforesaid may, without confirmation by the responsible authority, exercise, perform, or carry out the same in like manner and with the same effect as the responsible authority could itself have exercised and performed the same.

(3) Any special committee shall be subject in all things to the responsible authority, and shall carry out all directions, general or special, of that authority given in relation to such committee or its affairs.

(4) The procedure for the calling of meetings of the special committee and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by that committee.

(5)

(5) The responsible authority may appoint a member of the special committee to be the chairman thereof; and if no such appointment is made, the committee may make the appointment. The responsible authority may from time to time remove such chairman and appoint another in his stead.

Notices relaxing temporary prohibition or restriction of building.

cf. 22 and 23 Geo. V, c. 48, ss. 15, 16.

342R. Where in a prescribed scheme the erection of buildings on any land is prohibited or restricted until such time as the responsible authority has given notice as provided in this section the following provisions shall have effect:—

(a) The responsible authority may, from time to time, by notice given as prescribed, in respect of the whole or any part of the land on which the erection of buildings is so prohibited or restricted, permit the erection of buildings, subject to such conditions (if any) as may be specified in the notice.

(b) No such notice shall be given unless and until the provisions thereof have been approved by the Minister.

(c) Any notice so given may be amended or revoked by a subsequent notice but, so long and in so far as it continues to be operative, shall be deemed to form part of the scheme to which it relates.

Where any such notice has been so amended, the notice as amended shall be the notice under this section.

Where any such notice has been revoked the prohibitions or restrictions set out in the prescribed scheme shall revive as from the date of such revocation.

(d) Without prejudice to the foregoing provisions of this section, it shall be the duty of the responsible authority within

within a period of three months from the expiration of every third year after the coming into operation of the prescribed scheme to consider the question of giving such a notice in respect of all or any of the land the erection of buildings upon which remains subject to the aforesaid prohibitions or restrictions.

Any person dissatisfied with the failure of the responsible authority to give such a notice within such period of three months in respect of land in which he has an estate or interest may appeal to the Minister within two months after the expiration of such period of three months, and the Minister on any such appeal may, if he thinks fit, give such a notice, and a notice so given by him shall have effect as if it were a notice given by the responsible authority and approved by the Minister.

(e) Any person who, pending the giving of a notice under this section, desires to commence the erection of a building the erection of which would contravene the aforesaid prohibitions or restrictions may, in accordance with such provisions, if any, as may be contained in the prescribed scheme, apply to the responsible authority for permission to erect the building specified in the application.

(f) The responsible authority shall, in deciding any such application, have regard to any injury likely to be caused to the applicant by the refusal of the application, as well as to any public advantage likely to result from the maintenance of the aforesaid prohibitions or restrictions, pending the giving of

of such a notice, and may, if it is satisfied that the proposed erection of the building will not contravene any permanent provisions of the prescribed scheme, grant the application unconditionally, or subject to such conditions as it may think proper to impose:

Provided that, where the responsible authority has power under this section to grant an application, it shall not refuse that application unless it is satisfied that other land suitable for the erection of such building as is specified in the application is available on reasonable terms and either—

(i) that the erection of such building would involve danger or injury to health by reason of the lack of roads, drains, sewers, water supply, or any public services and that the provision of the necessary services would be premature or likely to involve excessive expenditure of public money; or

(ii) that the erection of the building would be likely seriously to injure the amenity of the locality.

(g) Any person dissatisfied with the refusal of any such application, or by any conditions imposed by the responsible authority, may within twenty-eight days from the date on which he received notice of the decision of the responsible authority or such longer period as the Minister may allow, appeal to the Minister, and the Minister may dismiss or allow the appeal, either unconditionally, or subject to such conditions as he thinks proper to impose.

The

The decision of the Minister on an appeal under this paragraph shall be final and shall have effect as if it were the decision of the responsible authority.

DIVISION 7.—*Interim development.*

Commencement of Division.

342s. This Division shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Definitions.

342T. (1) In this Division—

"Council" includes two or more councils acting together in the preparation of a scheme.

"Development" in relation to any land includes the erection of any building, and the carrying out of any work, and any use of the land or building or work thereon for a purpose which is different from the purpose for which the land or building or work was last being used.

"Interim development" means development of land to which a scheme applies between the date upon which a resolution of the council or two or more councils acting together to prepare a scheme has taken effect or the date upon which notice of the fact that the Minister has directed the council or two or more councils to act together to prepare a scheme was published in the Gazette, and the date of the coming into operation of the scheme or the date upon which the Minister notifies in the Gazette that he has decided not to proceed with the scheme as the case may be.

"Interim development application" means application for the permission of the council for the interim development of land.

(2)

(2) The provisions of this Division shall not apply in any case where the scheme for the preparation of which a resolution has taken effect or a direction has been given by the Minister is a scheme varying a prescribed scheme.

Restriction of interim development.

342U. (1) Interim development shall not be carried out—

(a) except as may be permitted by ordinance; or

(b) except as may be permitted by the council under the authority of an ordinance and subject to such conditions, restrictions and provisions as may be contained in such ordinance.

(2) Ordinances may be made suspending either generally or in any particular case or class of cases the operation of any provision of this or any other Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made, to the extent to which that provision is inconsistent with any interim development permitted under this Division.

Permission for interim development.

342V. (1) Subject to the provisions of any such ordinance the council may, where an interim development application is made, grant the application unconditionally or subject to such conditions as it may think proper to impose or refuse to grant such application if it appears to the council that such development would be in contravention of the scheme if it had come into operation or would be in contravention of town planning or country planning principles or would interfere with the amenities of the neighbourhood, and the council shall be deemed to have refused the application unless within two months from the receipt of the application it gives notice to the applicant—

(a) that it has decided the application (and stating the reason for the refusal or for the

the imposition of conditions upon approval of the application); or

(b) that the application has been referred to the Minister for decision in accordance with the provisions of subsection three of this section; or

(c) that consideration of the application has been postponed in accordance with the provisions of subsection two of this section:

Provided that such period of two months may, at any time before the expiration thereof, be extended by agreement in writing made between the council and the applicant.

(2) The council may by notice served on the applicant postpone the consideration of any such application either generally or during such period as may be specified in the notice; but no such notice shall be so served until the applicant has been given a reasonable opportunity to show to the satisfaction of the council that the proposed development would be carried out immediately if the application were granted and has failed to do so:

Provided that—

(a) the applicant may within one month after the service of such notice appeal against the notice to the Land and Valuation Court and the court, if satisfied that the proposed development would be carried out immediately if the application were granted, shall by order cancel the notice of postponement and in such case the period of two months referred to in subsection one of this section shall be deemed to commence from the date of such order;

(b)

(b) if with respect to any interim development application it appears to the Minister that there are exceptional reasons requiring the immediate determination thereof, he may, without prejudice to his power to require the application to be referred to him for decision in accordance with subsection three of this section, give directions requiring the council to determine the application, and, where a notice of postponement has been served with respect thereto, may by order in writing to the council cancel the notice, and in such case the period of two months referred to in subsection one of this section shall be deemed to commence from the date of such order.

(3) (a) If it appears to the Minister that it is expedient, having regard to considerations affecting the public interest, whether generally or in the locality concerned, that any interim development application, or any class or description of such applications, should be referred to him for decision, he may give directions to the council requiring that application, or applications of that class or description, to be so referred, and any decision of the Minister on an application so referred to him shall be deemed to be the decision of the council:

Provided that, before dealing with any application so referred to him, the Minister shall, if either the council or the applicant so desire, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

(b) The Minister may give directions to the council requiring it to furnish him with such information with respect to interim development applications received by it as he considers

considers necessary or expedient for the purpose of enabling him to exercise his functions under the last preceding paragraph.

(c) Provision may be made by ordinance requiring councils, before dealing with interim development applications, to consult with such authorities or persons as may be prescribed.

(4) In any case where an interim development application is refused or is granted subject to conditions, the council may, if it thinks fit, make a contribution towards any damage or expense which the applicant shows to the satisfaction of the council that he is likely to suffer by reason of the council's decision.

(5) An applicant who is dissatisfied with the refusal of the council to grant his application, or with any conditions imposed by the council, may, within one month from the date on which he received notice of the council's decision, or such longer period as the Minister may allow, appeal to the Minister, and the Minister, after taking into consideration any offer by the council to make a contribution under subsection four of this section, may dismiss the appeal or may allow the appeal either unconditionally or subject to such conditions as he thinks proper to impose, but the Minister, before deciding any such appeal, shall, if either the appellant or the council so desire, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

The decision of the Minister on an appeal under this subsection shall be final and shall have effect as if it were a decision of the council.

(6) Nothing in this section shall be construed as affecting the duty of a council to take into consideration with reasonable despatch all

all interim development applications made to it, other than applications the consideration of which is postponed or which are referred to the Minister under the provisions of this section.

Revocation or modification of permission for interim development.

342w. (1) If at any time before a scheme comes into operation the Advisory Committee furnishes a report to the Minister, and in such report recommends that having regard to the provisions then proposed to be included in that scheme, any interim development permitted by ordinance under this Division should not be carried out or completed or should not be carried out or completed to the extent or in the manner permitted by the ordinance or that any power given to a council under the authority of an ordinance to grant permission for the carrying out of interim development should not be continued or should be curtailed, the Minister may recommend the Governor to rescind or alter the ordinance, and the Governor may rescind or alter the ordinance accordingly: Provided that before the Minister makes any such recommendation he shall, if either the council or any person who in his opinion will be affected by such alteration so desires, afford them an opportunity of appearing before and being heard by a person appointed by him for the purpose. Where, as a result of such hearing, the Minister considers it necessary or expedient so to do, he may refer the matter to the Advisory Committee for further consideration and report.

(2) (a) If at any time before a scheme comes into operation it appears to the council that it is expedient, having regard to the provisions then proposed to be included in that scheme, that any development for which permission has been granted on an interim development application should not be carried out or completed, or should not be carried out or completed

to

to the extent or in the manner allowed by the permission, it may with the approval of the Minister, by notice served in accordance with this subsection, revoke or modify the permission to such extent as appears to it to be necessary.

(b) The Minister may direct the council to submit to him for his consent a notice revoking or modifying any permission specified in the directions, or modifying any such permission in such manner as may be so specified and to serve such notice in accordance with this subsection.

(c) Where a council proposes or is directed to exercise its powers under this subsection, it shall serve the notice on all persons who in its opinion will be affected by the notice.

(d) If any such directions are not complied with within the time specified therein, the Minister may himself prepare and serve the notice, and such notice shall have effect as a notice under paragraph (a) of this subsection.

(e) The Minister, before consenting to or serving the notice referred to in the foregoing provisions of this subsection shall, if either the council or any such person so desires, afford them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

Contribution.

342x. Where any permission for the development of land is revoked or modified under this Division, the council may make to any person a contribution towards any damage or expense which such person shows to the satisfaction of the council that he has suffered or is likely to suffer by reason of such revocation or modification.

Suspension of provisions of prescribed scheme.

342y. (1) In any case where—

(a) a resolution for the preparation of a scheme varying a prescribed scheme has taken effect; or

(b)

(b) the Minister has directed the preparation of such a scheme,

the Minister, if after consideration of a report furnished by the Advisory Committee it appears to him expedient so to do—

(i) for securing that any development prohibited by the prescribed scheme may be carried out notwithstanding the provisions of that scheme; or

(ii) for securing that any development permitted by the prescribed scheme may be regulated,

may notify the suspension of the provisions of the prescribed scheme pending the coming into operation of the varying scheme and such provisions shall be suspended accordingly; and any such notification may suspend the provisions of the scheme either as respects the whole of the land to which the varying scheme is to apply or as respects any portion thereof specified in the notification, and either as respects all development or as respects development of any class specified in the notification.

(2) Where the provisions of a prescribed scheme are notified as suspended under this section, the provisions of this Division with respect to the control of interim development shall, as from the date of the notification, apply to development to which the notification relates and shall so apply as if the resolution of the council or the direction of the Minister had taken effect on that date.

Power to apply interim development provisions to any land.

342z. The Governor may, from time to time, by ordinance direct with respect to any land in any area that on and from a day appointed in that behalf such land shall be deemed to be included in a scheme for the preparation of which a resolution has taken effect, and the provisions of this Division shall apply with respect to such land

land as from the date upon which the ordinance takes effect and while the ordinance remains in force.

DIVISION 8.—*Scheme for the County of Cumberland.*

Constitution of Cumberland County Council.

342AA. (1) (a) The Governor under and subject to the provisions of Part XXIX of this Act may constitute the areas (including the City of Sydney) wholly or partly included in the County of Cumberland a county district under the name "The Cumberland County District" and may, notwithstanding that a request for such delegation has not been made by the councils concerned, delegate to the council of such county district (under the name "The Cumberland County Council") such powers and duties (including the power to borrow) of the councils concerned for or in relation to town planning and country planning as are necessary for the purposes of the preparation of the scheme referred to in section 342AB of this Act and as are set out in the proclamation constituting the county district or in any later proclamation.

cf. s. 564 (4A) (a).

(b) Where a delegation has been made in pursuance of paragraph (a) of this subsection, each council concerned shall have full power to exercise or discharge so much of any power or duty which by law may be exercised by a council in relation to town and country planning as has not been delegated to the county council.

(2) As soon as practicable after the first general election of delegates to the Cumberland County Council the Minister shall publish in the Gazette a notification that the election of such delegates has been duly completed.

Scheme for Cumberland County Council.

342AB. (1) The Cumberland County Council pursuant to such delegation shall, within a period expiring not later than three years after the

the constitution of the county district, prepare and submit to the Minister in accordance with the provisions of this Part a scheme in respect of all land within the county district: Provided that the Minister may, upon the application of the Cumberland County Council, extend such period if it appears to him expedient so to do.

(2) Such scheme shall include provision only for such matters, consistent with the provisions of this Part, as may from time to time be prescribed.

(3) In the application of the provisions of Division 7 of this Part to and in respect of land to which the scheme referred to in this Division applies a reference in that Division to "the date upon which notice of the fact that the Minister has directed the council or two or more councils to act together to prepare a scheme was published in the Gazette" shall be construed as a reference to the date upon which the notification referred to in subsection two of section 342AA was published.

(4) It shall be the duty of every Government Department, statutory body, authority and person for the purposes of this section to furnish such information and afford such assistance to the Cumberland County Council as the Minister, at the request of the county council, may require.

DIVISION 9—*Compensation.*

Compensation.

342AC. (1) Subject to the provisions of this Part, any person—

(a) who has an estate or interest in land to which a prescribed scheme applies and such estate or interest is injuriously affected—

(i) by the coming into operation of any provision contained in the prescribed scheme; or

(ii)

(ii) by the execution of any work under the prescribed scheme; or

(iii) by any restrictions imposed by or under the prescribed scheme;

(b) who is engaged in any profession, trade or calling upon land to which a prescribed scheme applies and whose profession, trade or calling is injuriously affected—

(i) by the coming into operation of any provision contained in the prescribed scheme; or

(ii) by the execution of any work under the prescribed scheme; or

(iii) by any restrictions imposed by or under the prescribed scheme;

(c) who suffers damage by reason of any action taken by or on behalf or at the order of the responsible authority for the enforcement or carrying into effect of the prescribed scheme;

(d) who has incurred expenditure—

(i) for the purpose of complying with any provision of the prescribed scheme: or

(ii) in making a claim under the provisions of this Act relating to compensation; or

(iii) in making an appeal under the provisions of this Act relating to betterment,

which expenditure is rendered abortive in whole or in part by suspension or variation or revocation of the prescribed scheme;

(e) who has, before the resolution to prepare a scheme has taken effect or the publication in the Gazette of the notice that the Minister has directed the council

council to prepare a scheme or, in the case of land to which the scheme referred to in Division 8 of this Part applies, before the publication of the notification referred to in subsection two of section 342AA of this Act incurred liability or expenditure in or in connection with the carrying out of any work which is either in whole or in part rendered abortive or abandoned by reason of the operation of this Part;

(f) who has incurred expenditure pursuant to any approval, permission or consent granted under the provisions of a prescribed scheme, which expenditure is rendered abortive in whole or in part by the revocation or modification of such approval, permission or consent;

(g) who has incurred expenditure pursuant to any permission given by an ordinance or by a council pursuant to an ordinance under Division 7 of this Part, which expenditure is rendered abortive in whole or in part by the rescission or alteration of such ordinance or the revocation or modification of such permission;

(h) who has incurred expenditure pursuant to any certificate given to him under section 342AS of this Act which expenditure is rendered abortive in whole or in part by reason of any error, omission, or inaccuracy in such certificate,

shall, if he makes a claim therefor within the time prescribed, be entitled to obtain, from the council which is the responsible authority concerned, compensation in respect of such injurious affection, damage, liability or expenditure.

(2)

(2) Compensation shall not be payable in the following cases:—

(a) in respect of any building erected or work done upon or contract made or other act or thing done with respect to land included in a prescribed scheme after the date upon which the resolution of the council has taken effect or the date of publication in the Gazette of the notice that the Minister has directed the council to prepare a scheme affecting such land, as the case may be, or where the prescribed scheme is the scheme referred to in Division 8 of this Part, after the publication of the notification referred to in subsection two of section 342AA of this Act, unless the erection of such building or the doing of such work or the making of such contract or the doing of such other act or thing was permitted under the provisions of Division 7 of this Part;

(b) where an estate or interest in land is injuriously affected by reason of any provision contained in the prescribed scheme if and in so far as the same provision or a provision substantially to the same effect was, at the date when the prescribed scheme came into operation, already in force by virtue of some Act, including this Act (except this Part);

(c) where an estate or interest in land is affected by any provision of the prescribed scheme which prescribes the space about buildings or limits the number of buildings to be erected, or prescribes the height, bulk, floor space, use, design, external appearance, or character of buildings;

(d)

(d) where an estate or interest in land is affected by any provision of the prescribed scheme prohibiting or restricting the use of that land unless the applicant establishes that some specified use of the land (which is prohibited or restricted by the prescribed scheme) was practicable immediately before the prescribed scheme came into operation and that there was at that time a demand for such use;

(e) in respect of any action taken by or on behalf or at the order of the council which is the responsible authority for the enforcement of the prescribed scheme in accordance with the provisions of section 342P of this Act except in a case where a building or work which the council has removed, pulled down or altered was an existing building or an existing work or the use of land which it has prohibited or restricted was an existing use;

(f) in respect of any thing done in contravention of a prescribed scheme;

(g) in respect of any thing done in contravention of Division 7 of this Part or of any decision or determination thereunder, or, as the case may be, in contravention of any decision or determination on any appeal under that Division.

For the purpose of paragraph (e) of this subsection—

"Existing building" and "existing work" mean respectively a building or work erected, constructed or carried out before the material date, and include also a building or work—

(i) begun before, but completed after, the material date; or

(ii)

(ii) erected constructed or carried out pursuant to any permission under Division 7 of this Part:

Provided that a building or work shall not cease to be, or to be deemed to be, an existing building or work by reason of its alteration or extension in accordance with any provision of the scheme relating to the alteration or extension of existing buildings or works, and any such alteration or extension shall itself be deemed to be part of the existing building or work.

"Existing use" means a use of land for any purpose of a similar character to that for which it was last used before the material date or, in the case where there is a newly erected building on the land which has not been used before that date, a use for any purpose for which the building was designed, and includes in any case any use of land permitted under Division 7 of this Part:

Provided that—

(i) if at any time after the material date the use of that land which, at that date, was the existing use thereof, is discontinued for a period of eighteen months, no use of that land at any subsequent date shall be deemed to be an existing use thereof;

(ii) where at the material date a person who was using any land for the purpose of mining, quarrying, the digging of clay, gravel or sand, or the deposit of waste materials or refuse, or any other purpose of a similar nature, was entitled also to use neighbouring

neighbouring land for any such purpose, the user under that title of that neighbouring land for any such purpose, whether before or after the material date, shall be deemed to be an existing use.

"Material date" means the date on which the resolution to prepare the scheme was passed or the date on which the Minister gave notice to the council in accordance with the provisions of subsection one of section 342D of this Act to prepare a scheme or, in respect of the scheme referred to in Division 8 of this Part, the date upon which the notification referred to in subsection two of section 342AA of this Act was published:

Provided that, where a prescribed scheme (in this proviso referred to as the "original scheme") is revoked and replaced by a subsequent scheme, or is varied in accordance with this Part and any provisions of the scheme replacing or varying the original scheme is substantially to the same effect as a provision of the original scheme, the material date shall be the date on which the resolution to prepare the original scheme was passed or the date on which the Minister gave notice to the council in accordance with the provisions of subsection one of section 342D of this Act to prepare the original scheme or, in respect of the scheme referred to in Division 8 of this Part, the date upon which the notification referred to in subsection two of section 342AA of this Act was published.

(3) Where an estate or interest in land is injuriously affected by reason of any provision contained in the prescribed scheme, then

then if such provision or a provision substantially to the same effect could, immediately before the prescribed scheme came into operation, have been validly included in any ordinance, proclamation, declaration, notification or other like instrument issued or made under the authority of this Act (other than this Part) or the Sydney Corporation Act, 1932, as amended by subsequent Acts, and—

(a) if no compensation would have been payable by reason of the inclusion of the provision in such ordinance, proclamation, declaration, notification or other instrument, no compensation shall be payable under this Division;

(b) if compensation would have been so payable the amount of compensation payable in respect of that provision of the scheme shall not be greater than the compensation which would have been so payable;

(4) In assessing compensation under this Division in respect of the injurious affection of an estate or interest in land the following provisions shall have effect:—

(a) The amount of the compensation shall, subject to this Division, be a sum equal to the difference between the market value of such estate or interest at the time of the coming into operation of the provision of the prescribed scheme, or the execution of the work under the prescribed scheme, or the prohibition or restriction imposed by or under the prescribed scheme, as the case may be, out of which the claim for compensation arose and what would have been the market value of that estate or interest if such provision had not come into operation, or such work had not been

been executed or such prohibition or restriction had not been imposed, as the case may be.

(b) There shall be taken into account any modification of the injurious affection that may be effected in consonance with the prescribed scheme.

(c) There shall be taken into account any benefit which may accrue to any land in which the claimant has an estate or interest—

(i) by reason of the coming into operation of the scheme; or

(ii) by reason of the construction or improvement by any other person, at any time after the scheme is prescribed, upon land adjacent to the land in respect of which compensation is claimed, of any work or service in pursuance of the provisions of the scheme.

(d) There shall be taken into account any contribution made by the council in accordance with the provisions of Division 7 of this Part.

(e) If the parcel of land in respect of which compensation is claimed has, since the date upon which the scheme was prescribed, become or ceased to be separate from other land, the amount of compensation shall not be enhanced by reason of its having become or ceased to be separate from other land.

(f) If the question arises out of the coming into operation of a varying scheme there shall be taken into account any amount which the council has paid or is liable to pay, or has recovered or is entitled to recover, in respect of that land, by reason of the coming into operation

operation of the original scheme, or any other scheme varying it.

(g) An amount may be included to reimburse any person claiming compensation under this Division for the costs and expenses reasonably incurred by him in preparing and enforcing his claim for compensation.

cf. Act No. 22, 1943, s. 18.

(5) (a) If any dispute or difference arises between any person claiming compensation under this Division and any council the question of whether such council is the responsible authority concerned and whether such person is entitled to compensation and, if so, to what amount, shall be decided—

(i) where the claim does not exceed one hundred pounds—by a court of petty sessions holden before a stipendiary or police magistrate;

(ii) where the claim exceeds one hundred pounds—by the Land and Valuation Court.

The decision of the Court or magistrate shall be final and conclusive.

(b) The time within which claims under this section may be made and the manner of making such claims and any matter in connection therewith may be prescribed—

(i) in the case of claims made before the Land and Valuation Court—by rules of court of that Court;

(ii) in the case of claims made before a court of petty sessions holden before a police or stipendiary magistrate—by ordinance made under this Act.

(c) The council which is the responsible authority concerned, and the claimant may appear by solicitor or counsel at any inquiry held for the assessment of compensation under this section.

Recovery of compensation.

342AD. (1) Any amount payable to a claimant as compensation under this Part may be recovered from the council which is the responsible authority concerned as a debt in any court of competent jurisdiction.

Compensation subject to agreements, etc.

(2) The provisions of this Part as to compensation shall be subject to any special provisions respecting compensation included in the prescribed scheme or included in any agreement with the claimant or his predecessor in title incorporated in the prescribed scheme or made subsequently thereto; and the inclusion of any such provision or agreement in a scheme is hereby authorised.

Alternative rights in respect of compensation.

342AE. (1) Nothing in this Division shall deprive any person of any right to compensation that he may have independently of this Part.

cf. 7 & 8 Geo. VI, No. 99 (Tas.), s. 25 (3) (4).

(2) Where a person would be entitled to claim compensation in respect of any matter or thing under this Part and also under any other enactment, he shall not be entitled to receive compensation both under this Part and such other enactment, nor to receive any greater compensation under this Part than he would be entitled to receive under such other enactment.

DIVISION 10.—*Betterment.*

Valuation of betterment.

342AF. (1) The council of an area within which is situated land to which a prescribed scheme applies, shall where the prescribed scheme contains provision for the recovery of betterment in accordance with this Division—

(a) within such time, not exceeding five years after the prescribed scheme comes into operation, as is specified in such scheme require the Valuer-General to report whether any land which is for the

the time being ratable has been increased in value by the coming into operation of any provision contained in the prescribed scheme; or

(b) within twelve months after—

(i) the granting of any permission under the prescribed scheme for the erection of any building or the carrying out of any work or the use of any land; or

(ii) the completion by the council of any work under the prescribed scheme,

require the Valuer-General to report whether any land which is for the time being ratable has been increased in value by the granting of such permission or by the execution by the council of any such work.

Any report furnished by the Valuer-General under this subsection shall be accompanied by a list of the lands and of the increases in value thereof.

Such increases in value are in this Part referred to as betterment.

(2) (a) All lists furnished by the Valuer-General under subsection one of this section shall be stamped with the official stamp of or signed by the Valuer-General.

(b) There shall be payable by every council to which any such list is furnished fees therefor according to a scale which shall be fixed by the Governor from time to time.

(3) Notice of valuation of betterment shall be given in the same manner as notice of valuation of land (whether under this Act or the Sydney Corporation Act, 1932, as amended by subsequent Acts, or under the Valuation of Land Act, 1916, as amended by subsequent Acts,

as

as the case may be), and the provisions of any such Act for the time being in operation in the area relating to appeals against valuations of land shall, mutatis mutandis, apply to and in respect of appeals against valuations of betterment.

Betterment charge.

342AG. (1) Subject to this Part, where the prescribed scheme contains provision for the recovery of betterment in accordance with this Part the council shall in respect of the betterment of any such land aforesaid impose a betterment charge: Provided that such a charge shall not be imposed in respect of the betterment of any land in relation to which any accruing benefit has been taken into account in assessing compensation under Division 9 of this Part.

(2) The total amount recoverable under a betterment charge on any separate parcel of land shall be such as to return to the council a sum equal to eighty per centum of the betterment on such separate parcel.

(3) (a) Any such charge shall be imposed each year for a term of years fixed by the prescribed scheme, or, where no term is so fixed, for a term of years fixed by the council when first imposing the charge.

(b) The amount of the charge so imposed shall be included, and the term of years so fixed shall be stated, in the rate notice in respect of the land in respect of which it is imposed.

(c) The charge so imposed may be recovered as a rate and shall be a charge upon the land in respect of which it is imposed as if it were a rate: Provided that in any case where the council is satisfied that enforcement of the payment of the charge would cause undue hardship the council may allow payment to be postponed for such period as it may determine and may from time to time extend such period.

(4)

(4) The amount of the betterment charge shall be subject to any special provisions or agreements relating thereto included in the prescribed scheme, and the inclusion of any such provision or agreement in a scheme is hereby authorised.

DIVISION 11.—*Powers of Minister in case of failure of councils to prepare or carry into effect or enforce schemes.*

Powers of Minister in case of default by councils.

342AH. (1) In any case—

(a) where a resolution to prepare a scheme has taken effect but the council or councils concerned have not prepared the scheme within the period or extended period fixed under section 342C of this Act; or

(b) where the Minister under section 342D of this Act has directed a council or two or more councils acting together to prepare a scheme and the Minister is satisfied after due inquiry that the council or councils concerned have not effectively complied with the direction; or

(c) where the Minister is satisfied after due inquiry that the responsible authority is not effectively carrying into effect or enforcing a prescribed scheme or any provision thereof,

the Minister may, after notifying the council or councils concerned of his intention so to do—

(i) prepare or carry into effect or enforce the scheme or provision thereof as the case may be; or

(ii) direct the Advisory Committee to prepare or carry into effect or enforce the scheme or provision thereof as the case may be.

(2) (a) For the purposes of this section, the Minister and the Advisory Committee shall have and may exercise and perform and enjoy

enjoy in and in relation to the land to which the resolution applies or the direction relates or the prescribed scheme applies, as the case may be, the powers, authorities, duties, functions, discretions and immunities of the council or councils within whose area or areas such land is situated except such powers, authorities, duties, functions, discretions and immunities as may be prescribed and while so doing shall be deemed to be such council or councils.

(b) (i) It shall be the duty of the council and of every officer and servant of the council to furnish such information as the Minister or the Advisory Committee may require for the purposes aforesaid.

(ii) Any person authorised in that behalf by the Minister or the Advisory Committee, as the case may be, shall for such purposes have liberty at all reasonable times to inspect any document, plan, map, or record of the council; and the servant or other person for the time being having the custody thereof shall not refuse or prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(3) Any expenditure of the Minister or the Advisory Committee incurred in pursuance of this section shall be defrayed in the first instance from moneys provided by Parliament or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose, but the amount thereof (less any remissions allowed by the Minister, which remissions the Minister, with the approval of the Treasurer, is hereby authorised to allow) shall be repaid by the council concerned on demand to the Treasurer, and where more than one council is concerned, in such proportions as may be determined by the Minister.

(4) The Treasurer may recover as a debt any sums repayable by the council in accordance with subsection three of this section.

(5) The amount of any liability to the Treasurer incurred under this section may be paid out of the appropriate fund of the council concerned, and may be borrowed by way of ordinary loan under this Act, or as a loan for essential purposes in accordance with the provisions of the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may require.

DIVISION 12.—*Town and Country Planning Advisory Committee.*

Constitution of Advisory Committee.

342AI. (1) There shall be a Town and Country Planning Advisory Committee, which shall have and may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon the Advisory Committee by or under this Act.

(2) (a) The Advisory Committee so constituted shall consist of eight members who shall be appointed by the Governor.

Of the members so appointed—

(i) one shall be an officer of a council and shall be appointed from a panel of four such officers nominated jointly as prescribed by the governing bodies of the Local Government Association of New South Wales and the Shires Association of New South Wales;

(ii) one shall be an engineer and shall be appointed from a panel of four members of the Institution of Engineers, Australia (Sydney Division) nominated as prescribed by the governing body of that Division;

(iii)

(iii) one shall be a registered architect and shall be appointed from a panel of four members of the Royal Australian Institute of Architects (New South Wales Chapter), nominated by the Council of that Chapter;

(iv) one shall be a registered surveyor and shall be appointed from a panel of four members of the Institution of Surveyors (New South Wales) nominated by the governing body of that Institution;

(v) one shall be an officer of the Department of Local Government, and shall be nominated for appointment by the person for the time being holding the office of or duly acting as Under Secretary of that Department;

(vi) two shall be persons who shall be appointed on the nomination of the Minister;

(vii) one shall be the Commissioner for Main Roads or a person nominated by him.

(b) The Governor may appoint one of the members to be the chairman of the Advisory Committee and one other member to be the vice-chairman of the Advisory Committee.

(c) No person shall be eligible for appointment as a member of the Advisory Committee unless the Minister is satisfied that he has adequate knowledge or experience of the principles or practice of town planning or country planning.

(3) (a) The Governor may from time to time appoint a deputy to act in the place of any member.

The deputy so appointed to act in the place of the member referred to in subparagraph (i), subparagraph (ii), subparagraph (iii) or subparagraph

subparagraph (iv) of paragraph (a) of subsection two of this section shall be a person whose name is on the same panel as the member for whom he is appointed deputy.

The deputy so appointed to act in the place of the member referred to in subparagraph (v) of the same paragraph shall be appointed on the nomination of the person for the time being holding the office of or duly acting as Under Secretary of the Department of Local Government.

The deputy so appointed to act in the place of either of the members referred to in subparagraph (vi) of the same paragraph shall be appointed on the nomination of the Minister.

The deputy so appointed to act in the place of the member referred to in subparagraph (vii) of the same paragraph shall be appointed on the nomination of the Commissioner for Main Roads.

(b) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a deputy to act in the place of a member; and all acts and things done or omitted to be done by a deputy when so acting as aforesaid shall have the same consequences as if the same had been done or omitted by the member in whose place the deputy is acting.

(4) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of a member of the Advisory Committee, or of a deputy member, and a member or deputy member shall not, in his capacity as such member or deputy member, be subject to the provisions of the Public Service Act, 1902, or any Act amending that Act.

(5) (a) Each member of the Advisory Committee shall, subject to this section, hold office for a term of five years from the date of his

his appointment or such shorter term as may be specified by the Governor in the instrument of appointment, and shall if otherwise qualified be eligible for reappointment upon the expiration of his term of office: Provided that a person appointed to fill the vacant office of a member shall hold office only for the residue of his predecessor's term of office, but shall if otherwise qualified be eligible for reappointment.

(b) A member or deputy member shall be deemed to have vacated his office if he—

(i) dies;

(ii) resigns his office in writing under his hand addressed to the Governor;

(iii) being one of the members referred to in subparagraphs (i) to (v) both inclusive of paragraph (a) of subsection two of this section, ceases to hold the qualification by virtue of which he was appointed; or

(iv) is removed from office by the Governor.

(c) The Governor may, for any cause which appears to him sufficient, remove any member or deputy member from office.

(6) (a) Every panel constituted under subsection two of this section shall be constituted in the manner and within the time prescribed, and the nominations for the panel shall be accompanied by the written consent of each person whose name is included in the panel to serve on the Advisory Committee if appointed.

(b) If within the time prescribed a valid nomination of a panel has not been made by the authority or authorities entitled to nominate such panel, the Governor may constitute a panel consisting of persons having the appropriate qualification, and may appoint any person whose name is included in the panel so constituted to be a member or deputy member, as the case may be, of the Advisory Committee.

(7)

(7) No act or proceeding of the Advisory Committee shall be invalidated or prejudiced by reason only of the fact that at the time such act or proceeding was done or taken or commenced there was a vacancy in the office of any one or more members.

(8) The procedure for the calling of meetings of the Advisory Committee, and for the conduct of business at such meetings shall, subject to any ordinance in relation thereto, be as determined by the Advisory Committee.

(9) Five members of the Advisory Committee shall form a quorum and any duly convened meeting of the Advisory Committee at which a quorum is present shall be competent to transact any business of the Advisory Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Advisory Committee.

(10) (a) At any meeting of the Advisory Committee the chairman, or in his absence the vice-chairman, shall preside.

(b) If the chairman and vice-chairman are both absent from any meeting the members present may elect one of their number to preside at the meeting; and the member so elected while so presiding shall have the powers, authorities, duties and functions of the chairman.

(c) If there is an equality of votes in such an election it shall be decided by lot which of the members having an equal number of votes shall preside.

(11) (a) At any meeting of the Advisory Committee the decision of a majority of the members present shall be the decision of the Advisory Committee.

(b) The chairman or the vice-chairman or member presiding shall have a deliberative vote and, where the members present

present at any meeting are equally divided in opinion upon any matter, shall have a second or casting vote.

(12) The office of member or deputy member of the Advisory Committee shall not, for the purpose of any Act, be deemed to be an office or place of profit under the Crown.

Remuneration of members.

342AJ. (1) The chairman, vice-chairman and members of the Advisory Committee and any deputy member, whilst acting in the place of a member, shall be entitled to receive such remuneration (whether by way of fees or allowance or otherwise) and such travelling and out-of-pocket expenses as may from time to time be fixed by the Governor.

(2) Where the chairman or vice-chairman or any member or deputy member of the Advisory Committee is an officer of the Public Service or of a statutory body representing the Crown he shall, notwithstanding the provisions of any Act or of any rule or regulation made under any Act, be entitled to receive remuneration under this section, in addition to any remuneration to which he is otherwise entitled.

Annual report.

342AK. (1) The Advisory Committee shall, not later than the thirtieth day of September in each year, cause a report of its work during the year ended on the thirtieth day of June then next preceding to be prepared and forwarded to the Minister for presentation to Parliament.

(2) The report shall contain such information as may be prescribed or, if not so prescribed, as may be directed by the Minister.

DIVISION 13.—*Functions of the Advisory Committee.*

Functions of Advisory Committee.

342AL. (1) (a) The Advisory Committee shall consider and furnish reports to and advise the Minister upon any matter or proposal relating to town planning or country planning which may

may be referred to the Advisory Committee by the Minister and on such other matters relating to town planning or country planning as may be prescribed.

(b) The Advisory Committee may, of its own motion, submit for the consideration of the Minister any proposal in connection with any matter relating to town planning or country planning.

(c) The Advisory Committee may advise any council considering a town planning or country planning scheme or a proposal for such a scheme upon any matter relating thereto, subject to such conditions (if any) as may be prescribed.

(d) Where in the opinion of the Advisory Committee it is necessary or desirable so to do for any of the purposes of this Part, such Committee may conduct an investigation or inquiry.

(2) For the purposes of conducting any investigation or inquiry under this Part the members of the Advisory Committee and the chairman thereof or the vice-chairman or member presiding shall have the powers, authorities, protections and immunities conferred on commissioners and the chairman of a commission respectively by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts, and the provisions of that Act, as so amended, with the exception of section thirteen, and of Division 2 of Part II, and the provisions of section one hundred and fifty-two of the Justices Act, 1902-1940, shall, mutatis mutandis, apply to and in respect of any such investigation or inquiry and any witness or person summoned by or appearing before the Advisory Committee.

(3) (a) (i) It shall be the duty of each council and of every officer and servant of a council and of every committee appointed by a

council

council under this Part and of every member of any such committee to furnish such information as the Advisory Committee may require for any purpose of or connected with the exercise or discharge of its powers, authorities, duties and functions under this Part.

(ii) Any person authorised in that behalf by the Advisory Committee shall for such purposes have liberty at all reasonable times to inspect any document, plan, map or record of the council or of any committee appointed by the council under this Part; and the servant or other person for the time being having the custody thereof shall not refuse or prevent the person so authorised from having access thereto or taking copies thereof or extracts therefrom.

(b) It shall be the duty of every Government department, statutory body, authority and person to furnish such information as the Advisory Committee may require for any purpose of or connected with the exercise or discharge of its powers, authorities, duties and functions under this Part.

Certain approvals to be given only after report of Advisory Committee.

342AM. Where by this Act the approval of the Governor or the Minister may be or is required to be given to any matter or proposal relating to a town planning or country planning scheme, such approval shall not be given unless and until the Advisory Committee has made a report to the Minister thereon.

DIVISION 14.—*Finance.*

Advances.

342AN. (1) (a) The Minister may, with the approval of the Treasurer, from moneys provided by Parliament for the purpose, or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent

inconsistent with the application of such moneys for the purpose, make advances to councils for or in connection with the exercise or discharge of their powers, authorities, duties or functions under or in pursuance of this Part.

(b) In any case where the Minister so requires the council shall enter into an agreement securing the repayment of the advance by yearly or half-yearly instalments with interest at such rate as the Minister, with the approval of the Treasurer, may determine.

(c) If any such instalment is not paid on the due date there shall be added thereto a sum equal to ten per centum thereof, and such instalment, together with such additional sum, may be recovered by the Minister as a debt: Provided that the Minister may, with the approval of the Treasurer, on cause shown, remit part or the whole of such instalment or additional sum.

(2) (a) The Minister may, with the approval of the Treasurer, enter into an agreement with a council to pay to the council, in each year during such period as may be specified in the agreement, the sum or sums ascertained from time to time upon such basis or upon such considerations as the Minister may determine, for or towards meeting the liability of the council in respect of any borrowing for any purpose of this Part or in respect of any loan or loans raised by a council for the purpose of repaying or renewing the whole or any part of the original loan or of any renewal loan in respect thereof.

The agreement may include such terms, conditions or provisions not inconsistent with this Part as the Minister may determine and may, if the Minister so determines, provide for the repayment, in instalments or otherwise, of the sums paid to the council thereunder.

(b) Such sums as, from time to time, become due and payable by the Minister under any agreement authorised by this subsection shall be paid from moneys provided by Parliament for the purpose or from moneys made available to the State of New South Wales by the Parliament of the Commonwealth of Australia upon terms which are not inconsistent with the application of such moneys for the purpose.

Estimates.

342AO. The council shall, once in each year, within the time and in the manner prescribed, prepare and furnish to the Minister estimates of income and expenditure in relation to the exercise or discharge of its powers, authorities, duties and functions in relation to town or country planning.

Loans.

342AP. The council may borrow by way of ordinary loan (or loan for essential services, in the case of the Municipal Council of Sydney) for any of the purposes of this Part.

Town and Country Planning Fund.

342AQ. (1) The council (other than the Municipal Council of Sydney) shall create a separate fund subsidiary to the general fund to be known as the Town and Country Planning Fund, and the Municipal Council of Sydney shall open a separate account within the City Fund to be known as the Town Planning Account.

Such separate fund or separate account, as the case may be, shall consist of the following assets:—

(a) all moneys received or receivable in respect of any of the purposes of this Part;

(b) all moneys borrowed in respect of any of the purposes of this Part;

(c) the proceeds of any rate levied in respect of any of the purposes of this Part and including any rate levied in respect of such borrowings;

(d)

(d) the proceeds of any betterment charge imposed in pursuance of this Part;

(e) all moneys transferred from any other fund of the council to the general fund in accordance with this Act in respect of any of the purposes of this Part;

(f) all moneys transferred from any other account in the general fund or City Fund, as the case may be, in respect of any of the purposes of this Part.

(2) Such separate fund or separate account, as the case may be, may be applied to any of the following purposes:—

(a) any of the purposes of this Part;

(b) transfers to any reserve or sinking fund for loan repayment in respect of moneys borrowed in respect of any of the purposes of this Part;

(c) payment of principal, interest and expenses in respect of moneys borrowed as aforesaid;

(d) any purpose of this Act or the Sydney Corporation Act, 1932, as amended by subsequent Acts, as the case may be, related or incidental or ancillary to town planning or country planning;

(e) any purpose authorised by or under this Part for the application of the fund.

DIVISION 15.—*Miscellaneous.*

Appointment of officers and employees.

342AR. (1) The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint such officers and employees as may be necessary for the administration of this Part.

(2)

(2) For the purpose of exercising and discharging the powers, authorities, duties and functions conferred and imposed on the Advisory Committee by or under this Part the Advisory Committee may, with the approval of the Minister for the time being charged with the administration of this Act and of the Minister of the department concerned and the Public Service Board, on such terms as may be arranged, make use of the services of any of the officers or employees of the Public Service, or with the approval of the Minister for the time being charged with the administration of this Act and of the statutory body concerned, on such terms as may be arranged, make use of the services of any officer, employee or servant of the statutory body.

Certificates of compliance.

342AS. (1) Any person may apply to the council for a certificate under this section with respect to any land within the area of the council.

(2) The council may issue a certificate that on the date specified in the certificate any land within its area is or is not land to which a prescribed scheme or a scheme in course of preparation or a resolution applies or a direction to prepare a scheme relates.

(3) Ordinances may be made authorising the council to issue certificates under this section with respect to such matters as may be prescribed.

In particular and without prejudice to the generality of the foregoing provisions of this subsection an ordinance may authorise the council to issue a certificate setting forth that—

(a) any permission or authority which the council is required or permitted to give, modify or revoke by or under this Part or a prescribed scheme was on a specified day given, modified or revoked;

(b)

(b) any instrument or plan does not on the date specified in the certificate contravene the provisions of a prescribed scheme.

(4) For the purpose of any proceedings for an offence under this Part taken against a person who has obtained a certificate under this section, such certificate shall, in favour of such person, be conclusively presumed to be true and correct.

(5) For the purposes of the registration of any plan or instrument intended to affect or evidence the title to any land a certificate given under this section shall, in favour of the person to whom the certificate is so given and of the Registrar-General, the Crown Solicitor or other person registering or certifying title, be conclusively presumed to be true and correct.

DIVISION 16.—*Ordinances.*

Ordinances.

342AT. (1) Ordinances may be made for carrying this Part into effect.

(2) In particular and without prejudice to the generality of subsection one of this section, ordinances may be made for and with respect to—

(a) the manner of preparing and the details to be specified in maps, plans, specifications and the like and in estimates of cost of schemes;

(b) the making of provisional agreements between the council and the owners and lessees of land affected by a scheme, and with public authorities or statutory bodies in relation to a scheme;

(c)

(c) requiring councils, statutory bodies, companies, firms or persons carrying on business or exercising rights by virtue of any Act to assist any council which is engaged in the preparation of a scheme by the supply of information, plans and statistics and by the granting of facilities for inspection and investigation;

(d) the form, time, manner and mode of giving notices and advertisements;

(e) any matter necessary or convenient to be prescribed for or in relation to the carrying into effect or enforcing the observance of prescribed schemes;

(f) requiring councils to keep registers of permits, authorities and the like granted under this Part;

(g) the payment of travelling and out-of-pocket expenses of members of any committee (other than the Advisory Committee) appointed under this Part;

(h) (i) prescribing the conditions upon which certificates of qualification in town planning or country planning may be issued to persons who apply therefor and the amount of any fees which may be charged in that connection;

(ii) prescribing the manner and circumstances in and under which such certificates may be suspended or cancelled;

(iii) providing for and prescribing the manner of keeping a register of the names of persons who are for the time being lawful holders of such certificates.

(3) An ordinance may prescribe the qualifications for membership of any committee (other than the Advisory Committee) appointed under this Part and may make provision for the appointment, as members of any committee, of representatives of bodies concerned in industrial or commercial pursuits, or in research, or in the promotion of community activities or amenities.

(4) With respect to an ordinance prescribing a scheme under this Part or an ordinance made in relation to any of the matters referred to in subsection two of section 342U of this Act, section five hundred and seventy-seven of this Act shall have and take effect as if it were amended as follows, that is to say—

(a) by omitting paragraph (b) of subsection one of that section;

(b) by omitting subsection two of that section and by inserting in lieu thereof the following subsections:—

(2) A copy of the ordinance shall be sent by post to each Member of the Legislative Assembly and to each Member of the Legislative Council as soon as may be after the publication thereof.

(2A) An ordinance shall not be capable of coming into effect until a resolution approving the ordinance is passed by both Houses of Parliament.

(2B) An ordinance shall take effect on the day upon which a resolution approving the same is passed by both Houses of Parliament, or where such resolution is passed on different days in the respective Houses, then upon the later of such days.

4. The Principal Act is further amended— Further amendment of Act No. 41, 1919.

(a) by inserting at the end of section three hundred and thirty-two the following word and new paragraph:— Sec. 332. (Subjects for consideration—new roads.)

and

(k) the provisions of any town planning or country planning scheme;

(b) by inserting next after paragraph (i) of section three hundred and thirty-three the following word and new paragraph:— Sec. 333. (Subjects for consideration—subdivisions.)

and

(j) the provisions of any town planning or country planning scheme.

PART III.

AMENDMENTS OF SYDNEY CORPORATION ACT, 1932, AS AMENDED BY SUBSEQUENT ACTS.

5. The Sydney Corporation Act, 1932, as amended by subsequent Acts, is amended— Amendment of Act No. 53, 1932.

(a) by inserting at the end of section three hundred and three the following word and new paragraph:— Sec. 303. (Subjects for consideration—new public ways.)

and

(j) the provisions of any town planning or country planning scheme in course of preparation or prescribed under the Local Government Act, 1919, as amended by subsequent Acts;

(b) by inserting at the end of section three hundred and four the following word and new paragraph:— Sec. 304. (Subjects for consideration—subdivisions.)

and

(i) the provisions of any town planning or country planning scheme in course of preparation or prescribed under the Local Government Act, 1919, as amended by subsequent Acts.

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

WAKEHURST,
Governor.

Government House,
Sydney, 5th April, 1945.