

**SYDNEY CORPORATION (AMEND-
MENT) ACT.**

Act No. 9, 1934.

An Act to alter the law relating to the qualifications of citizens and the election of aldermen and Lord Mayor of the City of Sydney; to make further provisions for and in relation to the government of the said City; to alter the law relating to the qualifications of electors in municipalities and shires; to validate certain matters; to amend the Sydney Corporation Act, 1932, the Local Government Act, 1919, the Valuation of Land Act, 1916, the City of Sydney Improvement Act (Act 42 Vic. No. 25), and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 10th August, 1934.]

George V,
No. 9, 1934.

BE

No 9, 1934.

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

PART I.

PRELIMINARY.

Short title
and
citation.

1. (1) This Act may be cited as the "Sydney Corporation (Amendment) Act, 1934."

(2) The Sydney Corporation Act, 1932, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Sydney Corporation Act, 1932-1934.

Division
into Parts.

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

PART I.—PRELIMINARY.

PART II.—ELECTION OF ALDERMEN OF THE CITY.

PART III.—FRANCHISE—CITY OF SYDNEY.

PART IV.—POLLS OF RATEPAYERS AND CITIZENS OF THE CITY OF SYDNEY.

PART V.—ELECTION OF LORD MAYOR OF THE CITY OF SYDNEY.

PART VI.—CONDUCT OF ELECTIONS OF ALDERMEN OF THE CITY OF SYDNEY.

DIVISION 1.—*Nominations.*DIVISION 2.—*Mode of voting and counting votes.*DIVISION 3.—*Postal voting.*

PART VII.—CENOTAPH AND MONUMENTS IN PUBLIC WAYS IN THE CITY OF SYDNEY.

PART VIII.—PUBLIC WAYS IN THE CITY OF SYDNEY.

DIVISION 1.—*Public ways to vest in fee-simple in the council.*DIVISION 2.—*Realignment of public ways.*

PART IX.—VALUATIONS.

PART

PART X.—RATES—CITY OF SYDNEY.

PART XI.—AUDIT—CITY OF SYDNEY ACCOUNTS.

PART XII.—BORROWING POWERS—CITY OF SYDNEY.

PART XIII.—LEGAL PROCEEDINGS—CITY OF SYDNEY.

PART XIV. — MISCELLANEOUS AMENDMENTS OF
SYDNEY CORPORATION ACT, 1932.

PART XV. — TOWN PLANNING AND BUILDING
REGULATION.

DIVISION 1.—*Commencement.*

DIVISION 2.—*Town planning and building regula-
tion.*

DIVISION 3.—*Consequential repeals and amend-
ments.*

PART XVI.—AMENDMENTS OF LOCAL GOVERNMENT
ACT, 1919.

DIVISION 1.—*New municipalities and union of
areas.*

DIVISION 2.—*Qualification of electors.*

DIVISION 3.—*General rates—Rural lands in
municipalities.*

DIVISION 4.—*Priority of renewal loans.*

DIVISION 5.—*Postponement of certain payments.*

DIVISION 6.—*Depot rubbish.*

DIVISION 7.—*Sewerage works.*

PART II.

ELECTION OF ALDERMEN OF THE CITY.

Amendment
of Act No.
58, 1932,
s. 19.

3. (1) The Sydney Corporation Act, 1932, is amended—

(a) by omitting from subsection one of section nineteen the words “on the first day of December, one thousand nine hundred and thirty-three, and on the first day of December” and by inserting in lieu thereof the words “on the first Monday in December, one thousand nine hundred and thirty-four, and on the first Monday in December”;

(b) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

“(3) Four aldermen shall be elected for each ward of the City by the persons whose names are on the roll for such ward and who are qualified to vote.”

(c) by omitting section twenty-two;

(d) by omitting from subsection one of section twenty the words “on the ninth day of December” and by inserting in lieu thereof the words “on the second Tuesday after the first Monday in December.”

(2) (a) Lists and rolls of citizens for use at the election of aldermen to be held on the first Monday in December, one thousand nine hundred and thirty-four, shall be made in the manner provided by the Principal Act, as amended by this Act.

(b) The times at, during, and within which the several matters and the courts hereinafter mentioned may or shall be performed or held for the purpose of making such lists and rolls shall, in lieu of those mentioned in the Principal Act, and subject to any alteration, extension, or validation which the Governor may make in pursuance of section eighteen of the Principal Act, be as follows:—

(i) The date on or before which the collectors shall be appointed as provided in subsection one of section

section ten shall be a day not later than the seventh day after the date upon which His Majesty's assent to this Act is signified.

- (ii) The time during which the collectors shall make out lists of citizens entitled to be enrolled as provided in subsection one of section eleven shall be the period commencing on the date upon which the collectors are appointed pursuant to subparagraph (i) of this paragraph, and ending on the thirty-first day of August, one thousand nine hundred and thirty-four.
- (iii) The lists of citizens shall be exhibited in the manner prescribed in section twelve from the sixteenth day of September, one thousand nine hundred and thirty-four, to the thirtieth day of September, one thousand nine hundred and thirty-four, both days inclusive.
- (iv) Notices of claim or objection under section thirteen may be made at any time from the sixteenth day of September, one thousand nine hundred and thirty-four, to the thirtieth day of September, one thousand nine hundred and thirty-four, both days inclusive, and the duties to be performed under subsection two of the said section shall be performed as soon as possible after the said thirtieth day of September.
- (v) The revision courts to be held under section fourteen shall be held during the month of October, one thousand nine hundred and thirty-four.

(c) For the purposes of the election of aldermen to be held on the first Monday in December, one thousand nine hundred and thirty-four, and of the making of lists and rolls of citizens for use thereat, subsection one of section nine of the Principal Act, as amended by this Act, shall be read as if the words "the first day of May of the year in which a roll is to be prepared as hereinafter provided" were omitted and the words "the date on or before which collectors of lists are appointed in connection with the preparation

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of rolls for the election of aldermen, to be held on the first Monday in December, one thousand nine hundred and thirty-four," were inserted in lieu thereof.

(d) The rolls of citizens made in accordance with the provisions of this subsection shall be deemed to be rolls of citizens for all purposes made under the provisions of Part IV of the Principal Act.

Construction.

4. This Part of this Act shall be read and construed with the Sydney Corporation Act, 1932, as amended by subsequent Acts.

PART III.
FRANCHISE—CITY OF SYDNEY.**5. The Principal Act is further amended—**

- (a) (i) by omitting from paragraph (b) of subsection one of section nine the word "six" wherever occurring and by inserting in lieu thereof the word "twelve";
- (ii) by omitting from the same paragraph the words "of ten pounds" and by inserting in lieu thereof the words "unfurnished of twenty-six pounds";
- (iii) by inserting in the same paragraph after the word "upwards" the following words: "Where a person is in occupation of any such property otherwise than upon a rent, the yearly value unfurnished of the property shall be the amount per annum which might reasonably be expected to be obtained as rent therefor if the property were let unfurnished.

Where

Further amendment of Act No. 53, 1932, s. 9.

Where a person is in occupation of any such property upon a rent the yearly value unfurnished of the property shall be ascertained as follows:—

- (i) where the property is let unfurnished, the yearly value shall be the amount paid or agreed to be paid in respect of the occupancy, calculated on a yearly basis;
 - (ii) where the property is let furnished, the yearly value shall be four-fifths of the amount paid or agreed to be paid in respect of the occupancy, calculated on a yearly basis.”
- (b) (i) by omitting from paragraph (c) of the same subsection the word “ six ” and by inserting in lieu thereof the word “ twelve ”;
- (ii) by omitting from the same paragraph the words “ of ten pounds ” and by inserting in lieu thereof the words “ unfurnished of twenty-six pounds ”;
- (iii) by inserting at the end of the same paragraph the following words and new paragraph (d)—
- “ The clear yearly value of lodgings shall be ascertained as follows:—
- (i) where the lodgings are let unfurnished and the payment therefor does not include payment for any board, the clear yearly value shall be the amount paid or agreed to be paid for the lodgings, calculated on a yearly basis;
 - (ii) where the lodgings are let furnished and the payment therefor does not include payment for any board, the clear yearly value shall be four-fifths of the amount paid or agreed to be paid for the furnished lodgings, calculated on a yearly basis;
 - (iii)

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- (iii) where the lodgings are either furnished or unfurnished and the payment therefor includes payment for partial board, the clear yearly value of the lodgings shall be three-fifths of the amount paid or agreed to be paid for the lodgings and partial board calculated on a yearly basis;
 - (iv) where the lodgings are either furnished or unfurnished and the payment therefor includes payment for full board, the clear yearly value of the lodgings shall be two-fifths of the amount paid or agreed to be paid for the lodgings and full board calculated on a yearly basis.
 - (d) Any person who was a member of the Commonwealth Naval or Military Forces (including a member of the Imperial Reserve residing in New South Wales before the year one thousand nine hundred and fifteen) and who enlisted or was appointed for active service outside Australia in the Great War, 1914-1918, in connection with naval or military preparations or operations, or in connection with the army medical or nursing service, and has been continuously resident in the said ward during the period of three months next preceding the first day of May of the year in which a roll is to be prepared as hereinafter provided."
- (c) (i) by omitting from subsection three of the same section the words "of twenty pounds" wherever occurring and by inserting in lieu thereof the words "unfurnished of fifty-two pounds";
 - (ii) by omitting from the same subsection the words "ten pounds" wherever occurring and by inserting in lieu thereof the words "twenty-six pounds";
- (d)

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- (d) (i) by inserting in subsection four of the same section after the word and symbol " paragraph (c) " the words and symbol " or paragraph (d) " ;
- (ii) by inserting in subsection five of the same section after the words " those paragraphs " the words " or having a qualification under either of those paragraphs and also a qualification under paragraph (d) of that subsection. "

6. (1) The Principal Act is further amended—

Further amend-
ment of
Act No. 58
1932.

- (a) by inserting next after paragraph (a) of subsection one of section eleven the following paragraph:—

Sec. 11.
(Declaration
by
occupier).

- (a1) (i) A collector shall not enter the name of any person on the list as possessing a qualification referred to in paragraph (b) or paragraph (c) or paragraph (d) of subsection one of section nine of this Act, unless such person delivers to the collector or causes to be delivered or sent by post or otherwise to the collector, so as to reach him before the expiration of the period allowed for the making out of the lists, a declaration in or to the effect of the form prescribed in Schedule 4A to this Act.
- (ii) Each collector shall, when delivering the list to the Chamber Magistrate of the Central Police Court, as provided in paragraph (a) of this subsection, deliver all declarations received by him under subparagraph (i) of this paragraph to such chamber magistrate.
- (iii) Any person who makes a wilfully false statement in any such declaration shall be liable upon summary conviction to a penalty not exceeding ten pounds.

(b)

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New
Sched. 4A.

Sec. 11

(1) (a1).

Sec. 13 (1A).

- (b) by inserting next after the Fourth Schedule the following new Schedule:—

SCHEDULE 4A.

Sydney Corporation Act, 1932-1934, s. 9 (1) (b) (c)
and (d).

DECLARATION OF QUALIFICATION FOR ENROLMENT AS AN OCCUPIER OR LODGER OR RETURNED SAILOR OR SOLDIER, OR NURSE.

Surname

Other names (in full)

Place of occupation or residence in respect of which claim is made

Ward

I, the person abovenamed, hereby claim enrolment on the Citizens' Roll for the.....Ward of the City of Sydney, on the following grounds:—

(1) I am a natural born (or naturalised) (*strike out inappropriate words*) British subject of the full age of twenty-one years and upwards; and

(2) I am qualified for enrolment as..... (here insert "occupier," "lodger," "returned sailor," "returned soldier," or "returned nurse," as the case may be).

The relevant provisions of section 9 of the Sydney Corporation Act, 1932-1934, are printed on the back hereof and should be referred to.

I declare that to the best of my knowledge and belief the information stated above is true in every particular.

Signature of Claimant

(Date)

Witness to Signature

Address

Capacity in which witness signs

The witness must be either a justice of the peace, the town clerk of the City of Sydney, a clergyman, barrister, solicitor, legally qualified medical practitioner, bank manager, member of the police force, or any officer of the State or Commonwealth Public Service.

- (c) by inserting next after subsection one of section thirteen the following new subsection:—

(1A) Every such notice given by or on behalf of a person who claims to have his name inserted in the list by virtue of a qualification referred to in paragraph (b) or paragraph (c) or paragraph (d) of subsection one of section nine of this Act shall

Sec. 13.

(Occupier's
declaration.)

shall be accompanied by the declaration referred to in paragraph (a1) of subsection one of section eleven of this Act.

Any person who makes a wilfully false statement in any such declaration shall be liable upon summary conviction to a penalty not exceeding ten pounds.

- (d) by inserting at the end of subsection one of section fifteen the words "together with all declarations received by him in pursuance of paragraph (a1) of subsection one of section eleven, or subsection (1A) of section thirteen of this Act";

Sec. 15.
(Procedure at revision courts.)

- (e) by inserting at the end of the Sixth Schedule the following foot-note:—

Sixth Schedule.

NOTE.—Where the notice of claim is given by or on behalf of a person who claims to have his name inserted in the list by virtue of a qualification referred to in paragraph (b) or paragraph (c) or paragraph (d) of subsection one of section nine of the Sydney Corporation Act, 1932-1934, the notice shall, in pursuance of subsection (1A) of section thirteen of that Act, be accompanied by the declaration as to his qualification referred to in paragraph (a1) of subsection one of section eleven of that Act.

- (2) For the purposes only of the collection of lists of citizens, the revision of such lists and the preparation and completion of rolls of citizens in the year one thousand nine hundred and thirty-four, pursuant to the Principal Act as amended by this Act, and of matters necessary or incidental to such collection, revision, preparation and completion, the provisions of section five of this Act and of subsection one of this section shall commence on the date upon which His Majesty's assent to this Act is signified.

Commencement of s. 5 and s. 6 (1) (2).

And upon the completion of such rolls the provisions of section five of this Act and of subsection one of this section shall come into operation for all purposes whatsoever.

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PART IV.

POLLS OF RATEPAYERS AND CITIZENS OF THE CITY OF SYDNEY.

7. The Principal Act is further amended—

(a) by inserting next after Part IV the following new Part:—

PART IVA.

RATEPAYERS.

DIVISION 1.—Rolls of ratepayers.

18A. A person shall be entitled to be enrolled and to vote as a ratepayer if—

(a) he is enrolled on the citizens' roll; and either

(i) the qualification in respect of which he is enrolled on the citizens' roll is that referred to in paragraph (a) of subsection one of section nine of this Act; or

(ii) being a person whose qualification for enrolment on the citizens' roll is other than that referred to in paragraph (a) of subsection one of section nine of this Act, he is by virtue of any provision of this Act, or under any lease in writing or other document of title relating to property in respect of which he possesses such qualification, liable to pay to any person the whole or any part of any rates which may be made or levied under this Act in respect of such property;

(b) he retains the qualification under which he was enrolled on the citizens' roll.

18B. (1) When lists of citizens are being prepared, each collector shall include in the entry of the name and other particulars of each person entitled to be enrolled as a ratepayer, the word "ratepayer."

(2)

Further amendment of Act No 58, 1932. New Part IVA.

Qualification of ratepayer. cf. Act No. 41, 1919, s. 79.

Roll of ratepayers. Ibid. s. 80.

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(2) When the lists are being revised the entry or omission of the word "ratepayer" may be the subject of a claim or objection, and shall be subject to revision by the Revision Court.

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(3) A citizens' roll with the word "ratepayer" entered against various names as directed in this section shall be also a roll of ratepayers, and when so used all names thereon against which the word "ratepayer" is not entered shall be disregarded.

DIVISION 2.—Polls.

18c. (1) The council may for its information and guidance on any matter under this or any other Act take a poll of citizens or ratepayers as it thinks appropriate.

Optional
polls.
cf. Act No.
41, 1919,
s. 81.

(2) At any poll of ratepayers under this Act any person enrolled on the roll of ratepayers for the city shall, if he has the qualification under which he was enrolled (or any qualification which would entitle him to enrolment as a ratepayer), be a ratepayer and entitled to vote.

Ibid. s. 83.

18d. Where the council is required by this Act to take a poll of ratepayers, the decision shall be in accordance with the majority of the votes cast: Provided that in the case of the votes being equal the question shall be undetermined, and that if the decision of the poll is against the proposal voted upon, the same question or one substantially the same shall not be again submitted to a poll for a period of at least one year.

Compulsory
polls.
Ibid. s. 81

DIVISION 3.—Regulations.

18e. (1) The Governor may make regulations not inconsistent with this Act, prescribing all matters which are required or permitted by this Part of this Act to be prescribed, or which are necessary or convenient to be prescribed for carrying this Part of this Act into effect.

Regula-
tions.

(2)

(2) In particular, but without prejudice to the generality of the provisions of subsection one of this section, the Governor may make regulations for and with respect to—

- (a) the taking of polls of citizens and polls of ratepayers for any purpose of this Act;
- (b) the ordering of a recount of the votes at any poll; the payment of the cost of recount by the applicant or the council; the redeclaration of the result of a poll; and the consequences thereof;
- (c) the method of voting at any poll, and whether by post or by personal attendance at a polling-place;
- (d) the application, *mutatis mutandis*, to the taking of a poll, of the provisions of this Act relating to the conduct of an election of aldermen, either generally or with such amendments, omissions or additions as the regulations may prescribe.

(3) The regulations may impose a penalty not exceeding twenty pounds for any breach thereof. Such penalty shall be recoverable in a summary manner.

(4) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication or from a later date specified in such regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and, if not, then within fourteen sitting days after the commencement of the next session.

(5) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House, disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

(b)

- (b) by inserting in section one after the heading "PART IV—LISTS AND ROLLS OF CITIZENS, ss. 10–18" the heading "PART IV_A—RATEPAYERS—ss. 18_A–18_E."

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PART V.

ELECTION OF LORD MAYOR OF THE CITY OF SYDNEY.

8. The Principal Act is further amended—

Further amendment of Act No. 58, 1932.
Sec. 20.
(Election of Lord Mayor.)

- (a) by omitting from subsection one of section twenty the words "The person who at the date of the commencement of this Act holds the office of Lord Mayor shall continue to hold such office until the thirty-first day of December, one thousand nine hundred and thirty-two, and shall be eligible for re-election if still qualified," and by inserting in lieu thereof the words "The rules set out in Schedule 7_A to this Act shall apply to and in respect of any election of a Lord Mayor."
- (b) by inserting next after the Seventh Schedule the following new Schedule:—

New Schedule 7_A.

SCHEDULE 7_A.

Sec. 20.

ELECTION OF LORD MAYOR.

DIVISION 1.—*Nomination and Voting.*

1. The town clerk or, in his absence, the deputy town clerk shall be the returning officer for the election.

The returning officer shall be charged with the control and direction of all proceedings at an assembly of aldermen called for the purpose of electing a Lord Mayor.

Any direction not inconsistent with the rules in this Schedule, given by the returning officer to any person present at such assembly shall be carried into effect.

The returning officer's decision on any question arising at such assembly shall be final.

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2. (a) A nomination of an alderman for election to the office of Lord Mayor may be made without previous notice, by any other alderman.

(b) Each nomination shall be in writing signed by the nominator, and shall bear a statement signed by the alderman nominated, setting out that he consents to the nomination and will take the office of Lord Mayor if elected.

(c) Each nomination shall be delivered to the returning officer in the presence of the aldermen assembled.

3. If only one candidate is duly nominated, the returning officer shall declare that candidate to be elected.

4. If more candidates than one are duly nominated, an election shall be held.

5. (a) The returning officer shall prepare or cause to be prepared a sufficient number of ballot-papers for use at the election.

(b) Each ballot-paper shall contain the names of all the candidates duly nominated printed or written thereon.

A square shall be placed opposite the name of each candidate.

(c) (i) Each alderman shall vote only once at the election.

(ii) Each alderman shall vote in person at the assembly.

(d) An alderman who desires to vote shall approach the returning officer for a ballot-paper; and the returning officer having marked a ballot-paper on the back with his signature, shall deliver it to such alderman.

(e) If an alderman satisfies the returning officer that he has spoilt his ballot-paper by mistake or accident and surrenders the spoilt ballot-paper to the returning officer, the returning officer shall deliver another ballot-paper to such alderman, and forthwith destroy the spoilt ballot-paper.

6. Each alderman shall mark his vote on the ballot-paper in the manner prescribed by rule eight of this Division of this Schedule and deliver it to the returning officer who shall thereupon announce the name of the alderman whose vote is recorded on such ballot-paper and read the ballot-paper to the assembly.

7. An alderman present at the assembly shall not leave the same before the completion of the election and the declaration of the result unless with the consent of the returning officer.

8. A voter shall mark his vote on the ballot-paper by placing the figure "1" in the square opposite the name of the candidate for whom he desires to give his first preference vote, and shall give contingent votes for all the remaining candidates by placing the figures "2," "3,"
"4,"

"4," and so on, as the case may require, in the squares opposite the names of such candidates respectively, so as to indicate by numerical sequence the order of his preference for them.

9. (1) A ballot-paper shall be informal if—

- (a) it does not bear the signature of the returning officer referred to in rule five; or
- (b) the figure "1" standing alone indicating a first preference for some candidate is not placed on the ballot-paper; or
- (c) the figure "1" standing alone indicating a first preference is placed opposite the name of more than one candidate; or
- (d) it has no vote indicated on it, or it does not indicate the voter's first preference for one candidate and his consecutive preferences for all the remaining candidates.

(2) A ballot-paper shall not be informal for any reason other than the reasons specified in subclause one of this rule, but shall have effect according to the voter's intention, so far as his intention is clear.

DIVISION 2.—Counting of Votes.

1. The returning officer shall examine the ballot-papers delivered to him, and shall reject all informal ballot-papers.

2. The returning officer shall proceed to count, in accordance with the rules in this Division of this Schedule, the votes recorded on the valid ballot-papers.

3. The returning officer shall count the total number of first preferences recorded on the valid ballot-papers for each candidate.

4. The returning officer shall then arrange the candidates on a list (in this Division of this Schedule referred to as "the order of preferences") in the order of the number of first preferences recorded for each candidate, beginning with the candidate for whom the greatest number of first preferences is recorded.

If the number of first preferences recorded for any two or more candidates (in this Division of this Schedule referred to as "equal candidates") is equal, the returning officer shall ascertain the number of second preferences recorded on all the ballot-papers for each of the equal candidates, and shall arrange the equal candidates as amongst themselves on the order of preferences in the order of the second preferences recorded for each such candidate, beginning with the candidate for whom the greatest number of second preferences is recorded.

If

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If the number of first and second preferences recorded for any two or more equal candidates is equal, the returning officer shall, in like manner, ascertain the number of third preferences recorded on all the ballot-papers for each of such last-mentioned equal candidates and arrange such candidates on the order of preferences accordingly, and so on until all the candidates are arranged in order on the order of preferences.

If the number of first, second, third, and all other preferences recorded for any two or more equal candidates is equal, the returning officer shall determine by lot the order in which such candidates are to be arranged on the order of preferences.

5. The candidate who, as a result of the count referred to in rule three of this Division of this Schedule has received the largest number of first preference votes shall, if that number constitutes an absolute majority of votes, be elected. And in such a case it shall not be necessary for the returning officer to arrange the candidates on the order of preferences as required by rule four of this Division of this Schedule.

6. If no candidate has received an absolute majority of first preference votes, the returning officer shall make a second count.

7. On the second count the candidate who has received the fewest number of first preference votes shall be excluded, and each ballot-paper counted to him shall be counted to the candidate next in the order of the voter's preference.

8. If a candidate then has an absolute majority of votes he shall be declared elected, but if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the fewest votes and counting each of his ballot-papers to the continuing candidate next in the order of the voter's preference shall be repeated by the returning officer until one candidate has received an absolute majority of votes.

9. The candidate who has received an absolute majority of votes shall be elected.

10. Where as the result of the counting two candidates only remain unexcluded, and each of such candidates is credited with an equal number of votes, one of such candidates shall be excluded in accordance with rule eleven of this Division of this Schedule, and the unexcluded candidate shall be elected.

11. (a) Where a candidate has to be excluded at any count and two or more candidates have an equal number of votes, such number being the fewest, regard shall be had to the total number of original votes credited to each of those candidates, and the candidate with the fewest such total number shall be excluded.

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(b) Where such total numbers of original votes are equal, regard shall be had to the total number of votes credited to each of those candidates at the earliest count at which they had an unequal number of votes, and the candidate with the fewest such total number at that count shall be excluded.

(c) Where those candidates had an equal number of votes at all counts, that one of those candidates who is lowest on the order of preferences shall be excluded.

12. (a) The provisions of this rule shall, in lieu of the provisions of rules four to eleven (both inclusive) of this Division of this Schedule, apply in any case where there are two and not more than two candidates for election.

(b) The candidate who as a result of the count referred to in rule three of this Division of this Schedule has received the largest number of first preference votes shall be elected.

13. In this Division of this Schedule the expression "an absolute majority of votes" means a greater number than one-half of the whole number of ballot-papers counted.

The expression "continuing candidate" means a candidate not already excluded at the count.

The expression "original vote" in regard to any candidate means a vote derived from a ballot-paper on which a first preference is recorded for that candidate.

The expression "determine by lot" means determine in accordance with the following directions, that is to say, the names of the candidates concerned having been written on similar slips of paper, and the slips having been folded so as to prevent identification and mixed and drawn at random, the candidates concerned shall as amongst themselves be arranged on the order of preferences in the order in which the slips containing their names are drawn, beginning with the candidate whose name is on the slip drawn first.

PART VI.

CONDUCT OF ELECTIONS OF ALDERMEN OF THE CITY OF SYDNEY.

DIVISION 1.—*Nominations.*

9. The Principal Act is further amended by omitting from subsection one of section twenty-eight the words "tenth day and until noon of the fifth day" and by inserting in lieu thereof the words "twentieth day and until noon of the fifteenth day."

Further
amendment of
Act No. 53,
1932.
Sec. 23.
(Nomination
of aldermen.)

DIVISION

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Further
amendment of
Act No. 58,
1932.Sec. 35 (2).
(Mode of
voting.)DIVISION 2.—*Mode of voting and counting votes.***10.** The Principal Act is further amended—

(a) (i) by omitting subsection two of section thirty-five and by inserting in lieu thereof the following subsection:—

(2) Such citizen shall take such ballot-paper into an inner compartment, and there without delay record his vote on the ballot-paper, and shall then fold up such ballot-paper so as to conceal the names, and immediately put it into the ballot-box, and thereupon he shall at once quit such booth or room, and shall not re-enter the same during the election.

(ii) by omitting subsection four of the same section, and by inserting in lieu thereof the following subsection:—

(4) A citizen shall record his vote on a ballot-paper as follows:—He shall vote for not less than the prescribed number of candidates by placing the figure “ 1 ” in the square opposite the name of the candidate for whom he votes as his first preference and by placing the figures “ 2,” “ 3,” “ 4 ” (and so on as the case requires) in the squares respectively opposite the names of so many other candidates as will, with the candidate for whom he votes as his first preference, complete the prescribed number.

The citizen may, in addition, indicate the order of his preference for as many more candidates as he pleases by placing in the squares respectively opposite their names other figures next in numerical order after the figures already placed by him on the ballot-paper.

In this subsection “ the prescribed number ” means a number equal to twice the number of the candidates to be elected, plus one,

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one, or, if there are fewer candidates than that number, the total number of candidates.

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- (b) by omitting from section thirty-eight the words "place a cross opposite the name of any person nominated upon such ballot-paper for whom the citizen shall declare his intention to vote" and by inserting in lieu thereof the words "mark the ballot-paper according to the instruction of such citizen"; Sec. 38. (Blind or illiterate citizens.)
- (c) (i) by inserting in subsection one of section forty after the word "ballot-papers" the words "including postal ballot-papers received up to the close of the poll"; Sec. 40. (Scrutiny.)
- (ii) by inserting after the same subsection the following new subsection:—
- (1A) The method of counting the votes to ascertain the result of the election shall be as prescribed in Schedule 10A to this Act. Mode of counting.
- (iii) by omitting from subsection two of the same section the word "second" and by inserting in lieu thereof the word "fourth";
- (d) by omitting from section forty-three the words "fourteen days" and by inserting in lieu thereof the words "one month"; Sec. 43. (Extraordinary vacancy.)
- (e) by omitting section forty-six and by inserting in lieu thereof the following sections:—
46. (1) A ballot-paper shall be informal and shall be rejected at the count, if— Informal ballot-papers. cf. C'wealth Electoral Act, 1918-1929, s. 133.
- (a) it is not authenticated by the initials required by subsection one of section thirty-five of this Act; or
- (b) the figure "1" standing alone indicating a first preference for some candidate is not placed on the ballot-paper; or
- (c) the figure "1" standing alone indicating a first preference is placed opposite the name of more than one candidate; or
- (d) it has upon it any mark or writing by which in the opinion of the returning officer the voter can be identified; or
- (e)

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(e) it has no vote indicated on it or it does not indicate the voter's first preference for one candidate and his consecutive preferences for so many other candidates as will, with the candidate for whom he votes as his first preference, be equal in number to the prescribed number as defined in subsection four of section thirty-five of this Act.

(2) A ballot-paper shall not be informal for any reason other than the reasons specified in this section, but shall be given effect to according to the voter's intention, so far as his intention is clear.

(3) Notwithstanding anything to the contrary in this Act at any election at which only one alderman is to be elected, and at which there are not more than two candidates, a ballot-paper shall not be informal by reason only of the fact that the voter has indicated his vote by placing in one square the figure "1" or a cross, and by leaving the other square blank, and in that case the cross shall be deemed to be equivalent to the figure "1."

Identification
of voter.
Cwealth
Electoral Act,
1913-1929,
s. 134.

46A. The returning officer or a presiding officer or poll clerk shall not place upon any ballot-paper any mark or writing which would enable any person to identify the voter by whom it is used.

Any person who contravenes any of the provisions of this section shall be liable to a penalty not exceeding ten pounds.

New s. 58A.

(f) by inserting next after section fifty-eight the following new section:—

Minister to
be informed
of elections.

58A. The town clerk shall report to the Minister within seven days the occurrence of a vacancy in the office of alderman or in the office of Lord Mayor, and shall similarly report the election of a person to fill such vacancy and the name of such person.

(g)

Sydney Corporation (Amendment) Act.

(g) by omitting the Ninth Schedule and by inserting in lieu thereof the following Schedule:—

No. 9, 1934.
Ninth
Schedule.

NINTH SCHEDULE.

Secs. 32, 35.
cf. C'wealth
Electoral Act,
1918-1929,
Schedule
Form E.

BALLOT-PAPER.

ELECTION of Aldermen (or an Alderman) on the day
of , 19 .
For Ward of the City of Sydney.

List of Candidates for Election.

Names.	Addresses.
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	

The number of aldermen to be elected is .

Directions.—In marking his vote on this ballot-paper the voter must place in the squares respectively opposite the names of at least [*here insert the number which represents twice the number of aldermen to be elected plus one, or, if the number of candidates is less than that number, the total number of candidates*] candidates, the figures "1," "2," "3," "4," and so on up to and inclusive of the number [*here insert the number which represents twice the number of aldermen to be elected plus one, or if the number of candidates is less than that number, the total number of candidates*], so as to indicate the order of his preference for such candidates, and if there are any more candidates may in addition indicate the order of his preference for as many of them as he pleases by placing in the squares respectively opposite their names other figures next in numerical order after those already used by him.

(h) by inserting after the Tenth Schedule the following new Schedule:—

New
Schedule
10A.

SCHEDULE 10A.

**METHOD OF COUNTING VOTES AT ELECTIONS OF
ALDERMEN.**

Sec. 40.

Division 1.

Where one alderman only is to be elected at an election in any ward, the votes shall be counted and the result of the

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the election ascertained by the returning officer, or under his direction and supervision, in accordance with the following provisions:—

- (a) The unrejected ballot-papers shall be arranged under the names of the respective candidates by placing in a separate parcel all those on which a first preference is indicated for the same candidate.
- (b) The total number of first preferences given for each candidate on such ballot-papers shall then be counted.
- (c) The candidate who has received the largest number of first preference votes shall, if that number constitutes an absolute majority of votes, be elected.
- (d) If no candidate has received an absolute majority of first preference votes a second count shall be made.
- (e) On the second count the candidate who has received the fewest first preference votes shall be excluded, and each unexhausted ballot-paper counted to him shall be counted to the candidate next in the order of the voter's preference.
- (f) If a candidate then has an absolute majority of votes he shall be declared elected, but if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the fewest votes and counting each of his unexhausted ballot-papers to the continuing candidate next in the order of the voter's preference shall be repeated until one candidate has received an absolute majority of votes.
- (g) The candidate who has received an absolute majority of votes shall be declared elected.

Division 2.

Where two aldermen are to be elected at an election in any ward, the votes shall be counted and the result of the election ascertained by the returning officer or under his direction and supervision, in accordance with the following provisions:—

- (a) One of the candidates shall be elected in accordance with the provisions of Division 1 of this Schedule.
- (b) All the unrejected ballot-papers shall be rearranged under the names of the respective candidates in accordance with the first preference indicated thereon, except that each ballot-paper on which a first preference for the elected candidate is indicated shall be placed in the parcel of the candidate next in the order of the voter's preference.

(c)

- (c) The number of ballot-papers in the parcel of each candidate shall then be counted and the total number of votes so counted to each candidate shall be ascertained.
- (d) If a candidate then has an absolute majority of votes he shall be elected, but if no candidate then has an absolute majority of votes, the count shall proceed as provided in paragraphs (d) (e) and (f) of Division 1 of this Schedule, until one candidate has received an absolute majority of votes:
Provided that in the application of paragraphs (d) and (e) of Division 1 of this Schedule, any reference to first preference votes shall be read as a reference to all the votes counted to a candidate in pursuance of this Division.
- (e) The candidate who has received an absolute majority of votes shall be elected.

Division 3.

Where three aldermen are to be elected at an election in any ward two of the candidates shall be elected in accordance with the provisions of Division 1 and Division 2 of this Schedule.

A third candidate (and where four aldermen are to be elected a fourth candidate) shall be elected in the manner provided in Division 2 of this Schedule as regards the election of the second candidate: Provided that a ballot-paper on which a first preference for any elected candidate is marked shall be placed in the parcel of the continuing candidate next in the order of the voter's preference.

Division 4.

1. In the process of counting under Division 1 or Division 2 or Division 3, as the case may be, of this Schedule, exhausted ballot-papers shall be set aside as finally dealt with and shall thenceforth not be taken into account in the election of a candidate under that particular Division.

2. (a) When a candidate is elected or excluded, each ballot-paper counted to him shall be deemed to be exhausted if there is not indicated upon it a next preference for one continuing candidate.

(b) "Next preference" in paragraph (a) of this rule includes the first of the subsequent preferences marked on the ballot-paper which is not given to an elected or excluded candidate: Provided that where there is a break in the consecutive numbering of preferences marked on a ballot-paper (other than a break necessitating the rejection of the ballot-paper as informal in pursuance of paragraph (e) of subsection one of section forty-six of this Act), only those preferences preceding the break shall be taken into account.

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3. (a) If on any count two or more candidates have an equal number of votes, and one of them has to be excluded, the returning officer shall determine by lot between them which of them shall be excluded.

(b) If in the final count for the election of a candidate, two candidates have an equal number of votes, the returning officer shall decide by his casting vote which shall be elected; but except as provided in this paragraph he shall not vote at the election.

4. In this Schedule—

“Continuing candidate” means a candidate not already elected or excluded from the count.

“An absolute majority of votes” means a greater number than one-half of the whole number of ballot-papers other than informal and exhausted ballot-papers. The casting vote of the returning officer given in pursuance of paragraph (b) of Rule 3 of this Division of this Schedule shall be included in reckoning an absolute majority of votes.

“Unrejected ballot-papers” means all ballot-papers not rejected as informal.

“Determine by lot” means determine in accordance with the following directions:—

The names of the candidates concerned having been written on similar slips of paper, and the slips having been folded so as to prevent identification, and mixed and drawn at random, the candidate or candidates shall, for the purpose of exclusion from the count, be excluded in the order in which their names are drawn.

DIVISION 3.—*Postal Voting.*

11. The Principal Act is further amended—

(a) by omitting section thirty-six and by inserting in lieu thereof the following section:—

36. (1) Any citizen who—

(a) does not reside within the city; or

(b) though he resides within the city will not throughout the hours of voting at the election be within ten miles by the nearest practicable route of the polling-booth; or

(c) though he resides within the city is seriously ill or infirm and by reason of such

Further amendment of Act No. 58, 1932.

Sec. 36.

Postal voting.

such illness or infirmity will be precluded from attending at the polling-booth to vote, or in the case of a woman will, by approaching maternity, be precluded from attending at the polling-booth to vote,

may not later than the fifth day before an election of aldermen or an alderman make application to the returning officer for a postal vote certificate and postal ballot-paper for the purpose of enabling him to vote by post at an election in any ward provided that he has not already made an application under this section in respect of the same election in that ward.

(2) The provisions of the Parliamentary Electorates and Elections Act, 1912-1929, relating to voting by post shall, mutatis mutandis, and with such alterations, additions, or omissions as may be prescribed by the by-laws, apply to and in respect of voting by post under this Act.

(3) The Governor may by proclamation published in the Gazette set out the provisions of the Parliamentary Electorates and Elections Act, 1912-1929, relating to voting by post, with such alterations, additions, or omissions as may be prescribed by the by-laws or as he may think necessary or convenient to adapt such provisions to the purposes of voting by post under this Act.

The provisions so proclaimed shall—

- (a) be set out in the form of a Schedule to be inserted in this Act;
- (b) be thereafter printed by the Government Printer as a Schedule to this Act in any reprint thereof; and
- (c) have the same force and effect as if the Schedule had been originally inserted in this Act, and as if subsection two of this section had referred to the Schedule as setting out the true and full meaning of the application of the Parliamentary Electorates and Elections Act, 1912-1929, to and in respect of voting by post under this Act.

Any

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Any proclamation under this subsection may from time to time be amended or be rescinded and substituted by a like proclamation, and a reference in this subsection to a proclamation shall be construed as a reference to the proclamation as amended, or the substituted proclamation, as the case may require.

(4) A reference in this section to the provisions of the Parliamentary Electorates and Elections Act, 1912-1929, relating to voting by post shall, if such provisions are amended or replaced, be construed as a reference to such provisions as so amended or replaced.

Tenth
Schedule.

(b) by omitting the Tenth Schedule. •

PART VII.

CENOTAPH AND MONUMENTS IN PUBLIC WAYS IN THE CITY OF SYDNEY.

Further
amendment
of Act No. 58,
1932.

New sec 114A.

Control of
Cenotaph,
monuments,
and the like.

12. The Principal Act is further amended by inserting next after section one hundred and fourteen the following new section:—

114A. (1) The council may control, manage, regulate, maintain and protect all public monuments, memorials, statues and the like erected or placed in any public way in the city either before or after the commencement of Part VIII of the Sydney Corporation (Amendment) Act, 1934, and whether such monuments, memorials, or statues were erected or placed by the council or by the Crown or by any other authority or person.

(2) The council may make by-laws for carrying out the powers and authorities conferred upon it by subsection one of this section; in particular and without prejudice to the generality of the foregoing provision of this subsection the council may make by-laws for—

(a) regulating the use of any such monument, memorial, or statue;

(b)

- (b) preventing persons from lying, standing, sitting, walking, running, or climbing in or upon or about such monument, memorial or statue;
- (c) regulating and prohibiting the placing of vehicles, goods, articles, or things in or upon or about any such monument, memorial or statue or near or adjacent thereto;
- (d) regulating and prohibiting the exhibition or affixing of advertisements, placards, posters or papers in or upon or about any such monument, memorial, or statue, or near or adjacent thereto;
- (e) the protection and preservation of such monuments, memorials and statues, and securing the observance of respect in relation thereto.

(3) Any by-law made under the authority of this section may apply either generally to all such monuments, memorials and statues, or to any particular monument, memorial or statue or class thereof.

(4) The provisions of section two hundred and sixty-four and of subsection two of section two hundred and sixty-three of this Act shall apply to by-laws made under the authority of this section.

(5) A reference in this section to a monument, memorial or statue shall include a reference to the Cenotaph, situated in Martin Place in the City.

(6) The Returned Sailors and Soldiers Imperial League of Australia (New South Wales Branch) shall be deemed to be the guardian of the said Cenotaph. There shall be a custodian of the Cenotaph who shall be the person nominated by the Returned Sailors and Soldiers Imperial League of Australia (New South Wales Branch) and appointed for that purpose by the council.

(7) A reference in section two hundred and seventy-eight of this Act to an "officer appointed by the council in that behalf" shall in the case of any complaint

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complaint or legal proceedings for the breach of any provision relating to the Cenotaph in any by-law made under this section, be deemed to include a reference to the custodian of the Cenotaph.

PART VIII.

PUBLIC WAYS IN THE CITY OF SYDNEY.

DIVISION 1.—*Public ways to vest in fee-simple in the council.*

Further amendment of Act No. 58, 1932. New ss. 76A, 76B.

Public way vested in public body. cf. Act No. 41, 1919, s. 221.

cf. *Ibid.* s. 225.

Fee-simple. cf. *Ibid.* s. 232.

13. The Principal Act is further amended by inserting after section seventy-six the following new sections:—

76A. (1) Unless otherwise expressly provided this Part shall not apply to any public way which is by law vested in any statutory body representing the Crown.

(2) Where any land vested in a statutory body representing the Crown is used by the public as a road, street, lane, highway, thoroughfare, square, court or alley, the Governor, upon the request of the council, may, notwithstanding the provisions of any other Act, after considering the report of the statutory body affected, declare by proclamation published in the Gazette that such road, street, lane, highway, thoroughfare, square, court or alley shall be a public way.

(3) Subject to the provisions of this Act, this Part shall apply to every present or future public way.

76B. (1) (a) Except where otherwise expressly provided, every public way, and the soil thereof, and all materials of which the public way is composed, shall by virtue of this Act vest in fee-simple in the council, and the council, if it so desires, shall by virtue of this Act be entitled to be registered as the proprietor of the public way under the provisions of the Real Property Act, 1900.

(b).

(b) The vesting in fee-simple under this subsection shall be deemed to be not merely as regards so much of the soil below and of the air above as may be necessary for the ordinary use of the public way as a public way, but so as to confer on the council, subject to the provisions of this Act, the same estate and rights in and with respect to the site of the public way as a private person would have if he were entitled to the site as private land held in fee-simple with full rights both as to the soil below and to the air above.

(c) Unless otherwise expressly provided nothing in this subsection shall be deemed—

- (i) to affect any express or implied dedication to the public;
- (ii) to affect any existing right of the Crown or of any person in respect of any easement or under the provisions of any Act, except in so far as the council is authorised by or under this Act to control and regulate the digging up of public ways;
- (iii) to affect any right of the Crown or of any person in respect of any minerals below the surface of any public way;
- (iv) to authorise the council to grant, demise, dispose of, or alienate the public way or the soil or materials thereof;
- (v) to impose on the council any liability in respect of any rate under any Act or in respect of any dividing fence under the Dividing Fences Act, 1902, or any liability in any case where the council would not be subject to the liability if this Act conferred on the council the care, control, and management of the public way and did not vest the public way in fee-simple in the council;
- (vi) to prevent any land from being considered as adjoining within the meaning of section one hundred and twenty-four of the Public Works Act, 1912.

(d)

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(d) This subsection shall bind the Crown except in respect of any public way or part thereof which is within the boundaries of that piece or parcel of land situate in the City of Sydney, parish of St. Philip, county of Cumberland, comprising the lands appropriated and resumed under the Public Works Act, 1900, by proclamation appearing in the Government Gazette No. 1,203 of the twenty-ninth day of December, one thousand nine hundred, and described in the schedule thereto.

Proprietary
rights.
cf. Act No.
41, 1919,
s. 233.

(2) (a) Without affecting the generality of any other provision of this Act, the provisions of this subsection shall, subject to this Act, apply to every public way.

(b) All materials placed or laid on the public way in order to be used for the purposes thereof, including paving, guttering, kerbing, gutter-bridges, tree-guards, handrails, and the like, placed or laid by any person before or after the commencement of the Sydney Corporation (Amendment) Act, 1934, shall be the property of the council and may at any time be removed by the council.

(c) All trees, shrubs, plants, and the like, grown or growing in the public way, including trees, shrubs, plants, and the like, planted by any person before or after the commencement of Part IX of the Sydney Corporation (Amendment) Act, 1934, shall be the property of the council, and may, subject to any by-law, at any time be removed by the council.

(d) The council shall, in respect of any land alleged to be or to form part of a public way, have the right to lodge a caveat against the bringing of the land or any part thereof under the provisions of the Real Property Act, 1900.

(e) Where any public way is resumed by the Crown, the council shall be entitled to claim compensation therefor. Such compensation shall be limited to the capital sum spent by the council upon the construction of the public way, together with the sum, if any, paid by the council for purchase or resumption of the land therefor. In cases where the council finds it necessary to purchase or resume and construct a new public way to replace that resumed
by

No. 9, 1934.

by the Crown the council may in lieu of compensation as aforesaid claim as compensation the cost of the purchase or resumption and construction of such new public way.

(f) A person shall not use any public way, or the soil thereof, or permit the same to be used in derogation of or so as to affect the exercise of the rights or powers of the council.

(3) (a) The common law rule as to support shall obtain as between the council as the owner of any public way and the owners of land abutting thereon.

Lateral support of public ways.

cf. Act No. 41, 1919, s. 234.

(b) The council may throw the batter or make the slope of any public way upon any land adjoining the public way, subject, however, to the payment of compensation for any loss or injury sustained by any person interested in such land.

(4) The provisions of the Public Roads Act, 1902, in regard to the closing of roads shall extend to and include any public way, whether such public way was originally opened by the Crown or not: Provided that any surplus money left after the disposal of the land where a public way is closed shall be paid to the council.

Closing public ways.

cf. *Ibid.* s. 276.

(5) Notwithstanding the provisions of the Public Roads Act, 1902, a public way or part thereof shall not be closed unless the consent of the council has been first obtained.

Consent of council.

cf. *Ibid.* s. 252.

(6) Upon the closing of any public way under the provisions of the Public Roads Act, 1902, the fee simple of so much of the land on which such public way is situate as is vested in the council shall pass to the Crown, and such lands shall be Crown lands and may be dealt with under the said Act.

cf. *Ibid.* s. 238 (4).

DIVISION 2.—*Realignment of public ways.*

14. The Principal Act is further amended—

Further amendment of Act No. 58, 1932.

(a) by omitting from subsection five of section seventy-eight the words "Such value and damage shall be ascertained and such compensation shall be payable as at the date when such land is cleared of buildings and obstructions by the

Sec. 78 (5).

No. 9, 1934.

the owner or lessee, whether for the purpose of rebuilding to the new alignment or not, and, subject to the provisions of this section, from that date the land shall vest in the council for a public way," and by inserting in lieu thereof the words "Such value and damage shall be ascertained and such compensation shall be payable—

- (a) in the case of vacant land, as at the date when the notice referred to in subsection three of this section is served upon the owners of such land, and
- (b) in all other cases as at the date when such land is cleared of buildings and obstructions by the owner or lessee, whether for the purpose of building to the new alignment or not.

Subject to the provisions of this section, from the date upon which such compensation shall be payable the land shall vest in the council for a public way."

Sec. 73.
New subsecs.
(11)-(14).

cf. Act
No. 41, 1919,
s. 262
(9)-(11).

- (b) by inserting after subsection ten of the same section the following new subsections:—

(11) Where land is acquired by the realignment method the council may, notwithstanding anything contained in this Act, lease the whole or any part of such land to any landowner from whom the land is acquired or his sequels in title, for not more than ten years at any one time and subject to such conditions and reservations as the council may decide, at an annual rental not exceeding ten per centum of the compensation.

(12) The lessee of such land may erect thereon at his own expense a building not exceeding one storey in height, or other improvements of such materials and to such design as are approved by the council.

The council shall not be bound to require such structure to be erected of brick, stone, concrete, or other like materials of a permanent
nature

nature, notwithstanding the provisions of any Act, regulation, rule or by-law relating to building for the time being in force. No. 9, 1934.

(13) All buildings or other improvements so erected by the lessee shall remain the property of the lessee and shall be removed by him immediately upon or prior to the determination of the lease.

(14) No compensation shall be paid in respect of any injury, damage or disturbance arising from the re-entry by the council into possession of the land upon the expiration or determination of the lease.

PART IX.

VALUATIONS.

15. (1) The Principal Act is further amended by inserting at the end of subsection two of section one hundred and eighteen the following words:— Further amendment of Act No. 58, 1932, s. 118.

In estimating the fair average annual value of any property occupied for the purpose of any trade, business, or manufacture, such property shall not include any plant, machines, tools or other appliances which are not fixed to the property, or which are only so fixed that they may be removed from the property without structural damage thereto. (Average annual value; plant, machines, fixtures and fittings.)

(2) The Valuation of Land Act, 1916, as amended by subsequent Acts, is amended— Amendment of Valuation of Land Act, 1916.

(a) by inserting at the end of section fifty-nine the following new subsection:— Sec. 59.

(2) For the purposes of this section in determining the improved value of premises occupied for trade, business, or manufacturing purposes, such premises shall not include any plant, machines, tools, or other appliances which are not Improved value: plant, machines, fixtures and fittings.

No. 9, 1934.

not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto.

Sec. 60.

(b) by inserting at the end of section sixty the following new subsection:—

Assessed annual value: plant, machines, fixtures and fittings.

(2) For the purposes of this section in determining the assessed annual value of any premises occupied for trade, business, or manufacturing purposes, such premises shall not include any plant, machines, tools, or other appliances which are not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto.

Amendment of Act No. 41, 1919.

(3) The Local Government Act, 1919, as amended by subsequent Acts, is amended—

Sch. Three, Sec. 3.

(a) by inserting at the end of section three of Schedule Three the following new proviso:—

Improved value: plant, machines, fixtures, and fittings.

Provided that for the purposes of fixing the improved capital value under this section of any premises occupied for trade, business, or manufacturing purposes, such premises shall not include any plant, machines, tools, or other appliances which are not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto.

Sch. Three, Sec. 4.

(b) by inserting at the end of section four of the same Schedule the following new subsection:—

Assessed annual value: plant, machines, fixtures and fittings.

(2) For the purposes of fixing the assessed annual value under this section of any premises occupied for any trade, business, or manufacturing purposes, such premises shall not include any plant, machines, tools, or other appliances which are not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto.

PART X.

RATES—CITY OF SYDNEY.

16. The Principal Act is further amended—

Further amendment of Act No. 63, 1932.

(a) by inserting in subsection two of section one hundred and twenty-three after the words "previous assessment" the words "or any property which has become not ratable since the date of such assessment";

Sec. 123 (2). (Alteration of assessment books.)

(b) by inserting after section one hundred and twenty-six the following new section:—

New s. 126A.

126A. (1) Where property which was not ratable has become ratable, the rate thereon shall be proportionate to the portion of such year during which such land was ratable; and in any such case the first assessment made of the property after it becomes ratable shall be deemed to have come into force concurrently with the land becoming ratable.

Where property becomes ratable or not ratable. cf. Act No. 41, 1919, s. 139.

(2) Where property which was ratable has not been assessed because of omission from the assessment book the first assessment thereof after discovery of the omission shall come into force as from the first day of January of the then current year.

(3) Where property which was ratable becomes not ratable, part of the rate paid thereon proportionate to the period of the year during which the property is not ratable shall be refunded by the council.

(c) (i) by inserting in section one hundred and forty-four after the words "resolution of the council" where secondly occurring the following paragraph:—

Sec. 144 (Alteration of assessment books.)

Where property which was not ratable has become ratable property or where a valuation of ratable property has been omitted, a valuation of such property may

Sydney Corporation (Amendment) Act.

No. 9, 1934.

be made and entered; and where property which was ratable has become not ratable, the entry of valuation in relation thereto may be omitted.

- (ii) by inserting in the same section immediately before the word "notice" the words "or making of a valuation";

Sec. 145.
(Property which becomes not ratable.)
cf. Act No. 41, 1919, s. 139 (9).

- (d) by inserting at the end of section one hundred and forty-five the following paragraph:—

Where property which was ratable under this Division of this Part becomes not ratable, part of the rate paid thereon proportionate to the period of the year during which the property is not ratable shall be refunded by the council.

Sec. 138.
(Correction.)

- (e) (i) by omitting from section one hundred and thirty-eight the following words and symbols:

"(ii) land vested in the Railway Commissioners for New South Wales, or in the Metropolitan Water, Sewerage and Drainage Board;

(iii) such lands vested in the Sydney Harbour Trust Commissioners, and the houses and buildings erected thereon as are not leased or occupied for private purposes and by persons other than the said Commissioners, their officers or servants."

- (ii) by omitting from the same section the words "Unimproved capital value" and "owner" have the meanings given to 'unimproved value' and 'owner' respectively in the Land and Income Tax Assessment Act of 1895";

cf. Act No. 41, 1919, Sch. Three, cl. 2; and Act No. 2, 1916, ss. 6, 58 (2) and (3).

- (iii) by inserting at the end of the same section the following new subsection:—

(2) For the purposes of this Act the unimproved capital value of property shall be the capital sum which the fee-simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require, assuming

assuming that the improvements, if any, thereon or appertaining thereto, and made or acquired by the owner or his predecessor in title had not been made: No. 9, 1934.

Provided that there shall be a reasonable deduction for profitable expenditure by the owner or occupier on visible and effective improvements (if any) which although not upon the land have been constructed for its drainage, for its protection from inundation, or otherwise for its more beneficial use.

(f) by inserting next after subsection five of section one hundred and eighteen the following new subsection:— Sec. 118.
New subsec.
(5A).
(Correc-
tion.)

(5A) No land or building which is vested in the University of Sydney or in any college within such University, and is used for the purposes of education or for purposes incidental thereto or connected therewith, and is not under lease from such University or any such college, shall be liable to be assessed or rated in respect of any rate under this Act.

PART XI.

AUDIT—CITY OF SYDNEY ACCOUNTS.

17. (1) The Principal Act is further amended by omitting sections two hundred and forty and two hundred and forty-one and by inserting in lieu thereof the following sections:— Further
amendment
of Act No.
58, 1932,
ss. 240, 241.

240. (1) The council shall cause proper books of account to be kept in relation to the city fund and in relation to the electric light account kept in accordance with the Municipal Council of Sydney Electric Lighting Act, 1896-1928, and shall, on or before the thirtieth day of June in each year, prepare and submit to the Auditor-General under the hand of the City Treasurer statements of account and balance-sheets setting forth a true statement of the financial Books of
account.

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financial position and the transactions of the council for the whole of the year ending on the thirty-first day of December of the preceding year.

Such statements of account and balance-sheets shall be in a form approved by the Auditor-General.

The Auditor-General shall examine and audit the said statements of account and balance-sheets, and if found to be correct he shall so certify and sign the said statements of account and balance-sheets.

After such examination and audit the council shall forthwith transmit the said statements of account and balance-sheets to the Minister for presentation to Parliament.

(2) Such statements of account and balance-sheets shall be laid before both Houses of Parliament within fourteen sitting days after the receipt thereof by the Minister if Parliament is in session, and if not then within fourteen sitting days after the commencement of the next session.

**Audit of
accounts.**

241. (1) The books of account aforesaid shall be audited by the Auditor-General.

Subject to the provisions of this Part—

- (a) the Auditor-General shall, in respect of such audit have all the powers conferred on the Auditor-General by any law now or hereafter to be in force relating to the audit of public accounts; and
- (b) the Audit Act, 1902, and Acts amending the same shall apply to and in respect of the council and its officers and servants in the same manner as it applies to accounting officers of public departments.

(2) The books of account of the council shall at all reasonable times and without fee or reward be open for inspection by the Lord Mayor or any alderman or the Auditor-General; and any such person may also take copies of or make extracts from the said books during office hours without any payment.

Any citizen or any mortgagee or holder of debentures or inscribed stock may likewise inspect the said books of account and may take copies or extracts from same without payment.

Provided

Provided that the council may fix and collect a fee from any person who desires to inspect in any assessment book of the council the entries relating to land other than—

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cf. Act No. 41, 1919, s. 215.

- (a) land in respect of which he is the owner, lessee or occupier or the agent authorised in writing by the owner; or
- (b) land adjoining thereto.

(3) Any officer or servant of the council having charge of the said books of account refusing to permit any person to inspect or take copies or make extracts from such books in accordance with subsection two of this section shall be liable to a penalty not exceeding five pounds for every such offence.

(4) Any citizen may make objection before the Auditor-General to any of the accounts of the council.

(5) The council may make by-laws regulating the times and manner of inspection by citizens or mortgagees or holders of debentures or inscribed stock of the said books of account.

241A. (1) Without limiting the generality of the powers conferred by subsection one of section two hundred and forty-one, the Auditor-General may disallow any expenditure, transfer, or entry in the books of account of the council which has been incurred or made in contravention of any Act or any rule, regulation, or by-law.

Disallowance and surcharge. *Ibid.* s. 213.

(2) The Auditor-General may, subject to the provisions of section 283c of this Act, surcharge the amount of any such disallowance upon the Lord Mayor or aldermen or officers or servants of the council by whom the expenditure, transfer, or entry was incurred or made or ordered to be incurred or made.

(3) The Auditor-General may surcharge on the Lord Mayor or an alderman or any officer or servant of the council the amount of any deficiency or loss incurred by the culpable negligence or misconduct of such Lord Mayor, alderman, officer or servant, or of any sum which ought to have been but is not brought into account by such Lord Mayor, alderman, officer or servant.

(4)

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(4) Before surcharging the amount of any such disallowance on any person the Auditor-General shall, if practicable, extend to the person upon whom he proposes to make the surcharge an opportunity to advance any reasons why such surcharge should not be made.

(5) The Auditor-General may certify on the face of every account examined by him any money, books, deeds, papers, goods, or chattels found by him to be due from any person.

(6) Immediately upon surcharging any sum on any person the Auditor-General shall give notice to the person concerned.

(7) The Auditor-General may at any time withdraw and revoke any surcharge or disallowance made by him under this section.

(8) Any person upon whom a surcharge is made by the Auditor-General may, within one month after notice thereof, in accordance with subsection six of this section, appeal if the amount of the surcharge does not exceed five hundred pounds either to the Governor or to the Court of Petty Sessions holden at the Central Police Office or the District Court for the Metropolitan District; or if the amount of the surcharge exceeds five hundred pounds, to the Supreme Court. The decision of the Governor or the court, as the case may be, to confirm, reduce, or annul the surcharge shall be final and shall be carried into effect.

(9) If the person concerned do not within the period prescribed in subsection eight of this section appeal, or if on appeal the decision of the Governor or the court be against such person, the council, the Minister, or any ratepayer or creditor of the council may recover in a court of competent jurisdiction the amount of the surcharge (or any deficiency which may remain after the appropriation of any moneys in the possession of the council the property of such person); and the money so recovered shall be paid into the appropriate fund of the council.

(10)

(10) If there are any moneys in the possession of the council the property of such person, the council may appropriate so much of them as may be necessary to satisfy the amount surcharged.

(11) If any surcharge on any person be not within six months after it is made satisfied by payment or annulled on appeal as hereinbefore provided, such person shall, during such further time as the amount of the surcharge remains unpaid, be thereby disqualified to hold office as Lord Mayor or alderman of the city.

(12) For the purpose of this section a "surcharge" shall be an entry in an account of the council made or caused to be made by the Auditor-General, and purporting to show the amount surcharged as an amount due by the person surcharged. Definition.

(13) Nothing in this or any other Act shall preclude any disallowance or surcharge being made, or the amount thereof being recovered or deducted before or after the expiration of six months from the time when the matter of the disallowance or surcharge arose.

241b. (1) The Auditor-General shall, as soon as practicable after the completion of his audit in each year make and sign and forward to the council and the Minister a report on and in relation to his audit of the books of account of the council for the preceding year. Report of Auditor-General.

(2) Such report shall include a statement as to—

- (a) whether or not in his opinion, due provision has been made for the repayment of loans; and
- (b) his decision upon any objection to the accounts made before him by any person; and
- (c) any breach of law revealed by his audit; and
- (d) any other matters which in his judgment call for notice.

(3) The Auditor-General shall certify whether in his opinion the accounts are full and fair statements properly drawn up so as to exhibit a full and true view of the council's affairs, and whether cf. Act No. 41, 1919, s. 211.

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whether they are in accordance with the books of the council and the law for the time being in force relating to such accounts.

He shall also certify the amount which the council may borrow by way of limited overdraft in pursuance of section 262c of this Act.

Powers of Auditor-General. cf. Act No. 41, 1919, s. 214.

241c. (1) For the purpose of any audit of accounts, the Auditor-General may take evidence upon oath or affirmation (which oath or affirmation he is hereby empowered to administer), and may, by summons under his hand, require such persons as he thinks fit to appear personally before him, at a time and place to be fixed in and by such summons, and to produce to him such books and papers as appear necessary for such audit, and may examine such witnesses as he thinks fit.

Enforcement of summons.

(2) Any person so required who, without just excuse,—

- (a) neglects or refuses to comply with such summons; or
- (b) refuses to be examined on oath or affirmation, or to take an oath or affirmation; or
- (c) refuses to answer such lawful questions as are put to him,

shall be liable to a term of imprisonment not exceeding twelve months, or a penalty not exceeding twenty pounds.

Reference to the Auditor-General.

241d. A reference in this Part of this Act to the Auditor-General shall be deemed to include a reference to a person acting as deputy of the Auditor-General, and to any officer of the public service appointed by the Auditor-General or such deputy to exercise and discharge on his behalf the powers, authorities, duties and functions conferred and imposed on the Auditor-General by this Part of this Act.

Cost of audit.

241e. Towards defraying the cost and expenses of the audit by the Auditor-General the council shall pay to the Consolidated Revenue Fund the amount involved as certified to by the Auditor-General at such periods as the Minister may decide.

(2)

(2) The Principal Act is further amended by omitting subsection two of section one hundred and twenty-seven.

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Further amendment of Act No. 58, 1932, s. 127.

PART XII.

BORROWING POWERS—CITY OF SYDNEY.

18. This Part of this Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

Commencement.

19. The Principal Act is further amended by inserting after Part XVI the following new Part:—

Further amendment of Act No. 58, 1932.

PART XVI A.

New Part XVI A.

SPECIAL PROVISIONS RELATING TO LOANS.

262A. The provisions of this Part shall have effect notwithstanding anything elsewhere in this Act contained.

Effect of this Part.

262B. (1) Except as provided in this or any other Act, the council shall not borrow for any purpose or in any way whatsoever.

Consent of Governor to loans.

(2) Except as provided in section 262c the council shall not borrow unless the loan has been previously authorised, that is to say, unless the Governor upon application made by the council has approved of the proposed loan.

cf. Act No. 41, 1919, s. 173.

262c. (1) The council shall not borrow by way of overdraft except in accordance with this section.

Limited overdraft.

(2) The council may borrow by way of limited overdraft for any of the purposes of this Act or of the Municipal Council of Sydney Electric Lighting Act, 1896-1928.

cf. *Ibid.* s. 174.

(3) (a) All sums lawfully borrowed under this section for the purposes of the Municipal Council of Sydney Electric Lighting Act, 1896-1928, shall be deemed to be secured upon the income from the Electric Light Account kept in accordance with that Act.

(b)

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(b) All sums lawfully borrowed under this section for the purposes of this Act shall be deemed to be secured upon the income of the City fund.

(4) Subject to this section the amount which may be borrowed by way of overdraft shall not exceed one-half of the income of the Electric Light Account or City fund as the case may be, as shown by the last audited accounts.

(5) No greater sum shall be borrowed under this section than the amount stated in a certificate of the Auditor-General given in pursuance of section 241B of this Act as being the amount which may be borrowed within the limits imposed by this section.

(6) In calculating the limit of overdraft under this section, any money received by the council from the Crown as a grant shall be excluded.

(7) The council may borrow and reborrow from time to time within the limits provided by this section.

cf. Act
No. 41, 1919,
s. 175 (2).

(8) A certificate in the form proscribed by regulations made under this Part of this Act purporting to be the certificate of the Auditor-General given in pursuance of section 241B of this Act, shall be conclusive as regards any lender that the amount mentioned therein may be lawfully borrowed by way of limited overdraft and that the provisions of this section with respect to such borrowing have been duly complied with, and such certificate shall continue to be operative as regards any lender until such lender shall receive a new certificate.

Temporary
power to
borrow by
way of
overdraft.
cf. *Ibid.*
s. 175 (5).

262D. Notwithstanding anything contained in this Act the council may, without the approval of the Governor, borrow and reborrow from time to time by way of overdraft under the authority and within the limits which exist immediately before the commencement of this Part. The power of the council to borrow and reborrow conferred by this section shall continue as regards the council only until the Auditor-General shall give a certificate in pursuance of section 241B of this Act, and as regards the lender, until the lender shall receive such certificate.

262E.

262E. (1) Where the council proposes to raise any loan, other than—

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Polls as
to loans.

- (a) a renewal loan;
- (b) a loan by way of overdraft; or
- (c) a loan for essential services,

the provisions of this section shall have effect.

(2) The proposal shall be submitted to the Minister.

The proposal so submitted shall contain such details as may be prescribed by regulations made under this Part of this Act (or in the absence of such regulations, as the council may determine), showing—

- (a) the purpose of the loan;
- (b) the amount of the loan and the rate of interest thereon;
- (c) the terms of repayment of the loan (including the scheme, if any, for repayment by instalments);
- (d) the total number of ratepayers on the roll for the city.

(3) The Minister shall cause a report to be made on the proposal by such person as he may appoint.

(4) The Minister, upon receipt of such report, may make such recommendations in relation to the proposal as he thinks fit.

(5) If, after considering any recommendation so made by the Minister, the council decides to proceed with the proposal, either in its original form, or as altered in accordance with the recommendations of the Minister (in which latter case the proposal as altered shall be deemed to be the proposal for the purposes of this section) the council shall, before making application to the Governor for his approval thereto, notify reasonable particulars of the proposal in accordance with regulations made under this Part of this Act, and allow one month during which any number of ratepayers not being less than fifteen per centum of the number of persons enrolled on the roll of ratepayers for the city may petition the council in accordance with regulations

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regulations made under this Part of this Act to take a poll of ratepayers as to whether the ratepayers approve of the loan.

(6) If a formal petition is lodged within the said period of one month the council shall forthwith arrange for and take a poll of the ratepayers of the city.

(7) If the decision of the poll is against the proposal it shall not be submitted to the Governor for his approval.

(8) If the decision of the poll is in favour of the proposal, or if a petition asking for a poll is not duly lodged, the proposal shall be submitted to the Governor through the Minister.

(9) Unless the proposal receives the approval of the Governor, it shall not be proceeded with.

(10) Where the Governor has approved of the proposal, but the council is unable to obtain the loan upon the terms approved, the Governor may, on application by the council through the Minister, consider an amended proposal, and may approve the same, or may direct that the amended proposal shall be referred for report to a person appointed by the Minister in accordance with subsection three of this section, as in the case of an original proposal, and where he so directs the provisions of this section shall apply to the proposal.

The amendments which may be made in a proposal may relate to the time or method of repayment, or the rate of interest, and any matter consequent thereon.

(11) In this section—

“ Renewal loan ” means a loan for the purpose of repaying or renewing any other loan and for paying the expenses incidental thereto;

“ Loan for essential services ” means a loan for any of the following purposes:—

(a) carrying out any order as to boundary works or discharging any liability under such order;

(b)

cf. Act
No. 41, 1919,
s. 181B.

cf. *Ibid.*
s. 176.

cf. *Ibid.*
ss. 177,
522 (5).

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- (b) establishing or extending a service for the removal and disposal of filth or refuse, and the acquisition of land, buildings, and plant therefor;
- (c) discharging any liability arising under a verdict or order of a court of law or equity;
- (d) the making of roads and the purchase and establishment of machinery and equipment for the making of public ways, or for the breaking of stone and the like purposes;
- (e) meeting any liabilities transferred to the council consequent upon alteration of boundaries; **Act No. 58, 1932, s. 289.**
- (f) the provision, improvement and embellishment of public parks and gardens;
- (g) the payment of expenses incidental to any of the above purposes or to the raising of the loan.

262f. (1) For securing repayment of the principal and interest on any moneys borrowed by the council under this or any other Act, the council may, notwithstanding the provisions of this or any other Act, issue inscribed stock as prescribed by regulations made under this Part of this Act, and may maintain inscribed stock registries in any country in which the principal is payable. **Inscribed stock.**

(2) Inscribed stock shall be transferable in the books of the council in accordance with such regulations.

(3) The due repayment of the inscribed stock and the interest thereon shall be a charge upon the corporate rates and revenues of the council from whatever source arising.

(4) Inscribed stock lawfully issued by the council under the authority of this Act shall both as regards the issue and any transfer thereof be deemed to be included in the general exemptions from stamp duty under Part III of the Second Schedule to the Stamp Duties Act, 1920-1933.

(5)

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(5) (a) Any stock inscribed by the council shall be a lawful investment for any moneys which any company, council, or body corporate by any Act of Parliament of New South Wales is authorised or directed to invest in addition to any other investment expressly provided for the investment of such moneys.

(b) No notice of any trust expressed or implied or constructive shall be received by the council or by any officer or servant of the council in relation to stock inscribed by the council.

(6) The council may on the application of any holder of its debentures cancel any such debentures so held by him, and may issue to such holder in lieu thereof inscribed stock of an equal face value bearing the same rate of interest and repayable upon the date originally fixed for repayment of the debentures so cancelled:

Provided that such cancellation and issue of inscribed stock shall not in any way affect the obligations of the council in relation to the sinking funds of the loans the debentures of which shall have been so cancelled, and in like manner and on like application the council may cancel inscribed stock and issue debentures of an equal face value in lieu thereof. The council as holder of any of its own debentures or inscribed stock shall have the like powers as any other holder under this section.

Application
of certain
borrowed
moneys.

262g. The moneys borrowed under section 262c of this Act by way of limited overdraft on the security of the City Fund shall be expended by the council for the following purposes, and for no other purposes:—

(a) for any of the purposes of this Act, expenditure on which is lawfully chargeable to the revenue of the City Fund, and which is included in the estimates of the income and expenditure of that fund for the year in which the expenditure is made;

(b) to repay the amount borrowed by way of overdraft on the security of the City Fund, and the interest chargeable thereon;

(c)

- (c) for any of the purposes of this Act, expenditure on which is lawfully chargeable to revenue in the City Fund, but which was not included in the estimates of income and expenditure of that fund for the year in which the expenditure is made, where such expenditure is needed to meet a definite emergency which could not reasonably have been foreseen when the estimates were prepared:

Provided that before any such expenditure is incurred, it shall be necessary for the council to pass a special resolution declaring that the emergency exists and cannot conveniently be met in any other way;

- (d) for the purpose of paying for works for which the council has obtained the Governor's approval to borrow, but for which it has not yet actually raised the loan.

262H. A person advancing money to the council shall not be bound to inquire into the application of the money advanced or be in any way responsible for the non-application or misapplication thereof by the council.

Protection
of
investors.
cf. Act No.
41, 1919,
s. 197.

262I. (1) The Governor may make regulations prescribing all matters which under this Part of this Act are permitted or required to be prescribed by regulations, or which are necessary or convenient to be prescribed for giving effect to this Part of this Act.

Regulations.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication or from a later date specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been

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been laid before such House, disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

Consequential amendment of Act No. 58, 1932, s. 1.

20. The Principal Act is further amended by inserting in section one immediately before the heading "PART XVII.—BY-LAWS—SS. 263-264" the heading "PART XVI A—SPECIAL PROVISIONS RELATING TO LOANS—SS. 262A-262I."

PART XIII.

LEGAL PROCEEDINGS—CITY OF SYDNEY.

Further amendment of Act No. 58, 1932. New ss. 283A-283E. Notice of action. cf. Act No. 41, 1919, s. 580. cf. Sydney Harbour Trust Act, 1901, s. 26. cf. s. 133 of C.T.W. & S. Act, 1880.

21. The Principal Act is further amended by inserting next after section two hundred and eighty-three the following new sections:—

283A. (1) A writ or other process in respect of any damage or injury to person or property shall not be sued out or served upon the council or any alderman or any officer or servant of the council or any person acting in his aid for anything done or intended to be done or omitted to be done under this Act, until the expiration of one month after notice in writing has been served on the council or the alderman, officer, servant or person as provided in this section.

(2) The notice shall state—

- (a) the cause of action;
- (b) the time and place at which the damage or injury was sustained;
- (c) the name and place of abode or business of the intended plaintiff and of his attorney (if any) in the case.

(3)

(3) In the case of damage to property any person who produces on demand his authority from the council shall be permitted to inspect the property damaged, and all facilities and information necessary to ascertain fully the value of the property damaged, the nature and extent of the damage, and the amount of money (if any) expended in repairing the same, shall be given to him.

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Representative of council to be permitted to inspect property injured.

(4) In the case of injury to the person any legally qualified medical practitioner, who produces on demand his authority from the council, shall be permitted to examine the person injured, and all facilities and information necessary to enable him to ascertain fully the nature and extent of the injury and the loss or expenses arising therefrom shall be given to him.

Medical practitioner to be permitted to examine person injured.

(5) At the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action that is not stated in the notice, and unless the notice has been served the plaintiff shall not be entitled to maintain the action:

Provided that at any stage of the proceedings the court or any judge of the court in which the action is pending may, if the court or judge deems it to be just or reasonable in the circumstances so to do—

- (a) amend any defect in the notice on such terms and conditions (if any) as the court or judge may fix;
- (b) direct that any non-compliance or insufficient compliance with this section shall not be a bar to the maintenance of the action.

(6) Every such action shall be commenced within twelve months next after the occurring of the cause of action and not afterwards.

Action to be commenced in twelve months.

(7) The council or any alderman, officer, servant or person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff, his attorney, or agent at any time within one month after service of notice of action, and in case the same is not accepted may plead the tender in bar.

Amends.

(8)

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General issue.
cf. Sydney
Harbour Trust
Act, 1901,
s. 26.
cf. Stage
Carriages Act,
1899, s. 14 (1).

Amends
tendered for
trespass be-
fore action
brought.
cf. Act No.
41, 1919,
s. 582.

Members
acting bona
fide not
personally
liable.
cf. *Ibid*
s. 583.

Suing for
penalty.
cf. *Ibid*.
s. 584.

Service.
cf. *Ibid*.
s. 585.

(8) The defendant in every such action may plead the general issue and at the trial thereof give this Act and the special matter in evidence.

283B. If any person commits any irregularity, trespass or other wrongful proceeding in the execution of this Act or by virtue of any power or authority given by or under this Act whereby any actionable damage is occasioned, and if before action brought in respect thereof such person makes tender of sufficient amends to the person injured, such last-mentioned person shall not recover in any such action.

283C. Any matter or thing done and any contract entered into by the council and any matter or thing done by the Lord Mayor or any alderman, officer or servant of the council or by any person acting under the direction of the council shall not if the matter or thing was done or the contract was entered into bona fide in pursuance of and for the purpose of executing this Act and for and on behalf of the council subject them or any of them personally to any action, liability, claim or demand.

283D. Subject to the provisions of this or any other Act any penalty or any surcharge recoverable against the council or against the Lord Mayor or any alderman, officer or servant of the council may be sued for without notice by any person.

283E. Any writ, summons, notice or document required to be served upon the council may be served by being given personally to the town clerk.

PART XIV.

No. 9, 1934.

MISCELLANEOUS AMENDMENTS OF SYDNEY CORPORATION ACT, 1932.

22. The Principal Act is further amended—

(a) by inserting at the end of section two the following new subsection:—

Further amendment of Act No. 58, 1932, Sec. 2.

(2) Any power given by this Act to regulate or to make regulations or by-laws for regulating shall be deemed to confer power to license, prevent, or prohibit.

Power to regulate. cf. Act No. 41, 1919, s. 530.

(b) by omitting section one hundred and ten and by inserting in lieu thereof the following section:—

Sec. 110. (Penalty for blasting.)

110. Any person who uses or causes to be used any explosive or explosive agent for blasting purposes within the city without having a written license therefor under the hand of the city surveyor shall, for every such offence, be liable to a penalty not exceeding ten pounds nor less than one pound.

Penalty for blasting without license.

(c) by omitting subsection four of section one hundred and sixteen;

Sec. 116. (Correction.)

(d) by omitting from subsection ten of section one hundred and eighteen the words “not exceeding six per centum,” and by inserting in lieu thereof the words “not less than five per centum”;

Sec. 118 (10). (Assessment unoccupied lands.)

(e) (i) by omitting from subsection two of section one hundred and twenty-two the words “one hundred and nineteen” and by inserting in lieu thereof the words “one hundred and twenty-one”;

Sec. 122. (Hearing of appeal.)

(ii) by inserting in subsection three of the same section after the word “newspapers” the words “and shall be given to the appellant”;

(iii) by omitting from subsection four of the same section the words “one hundred and nineteen” and by inserting in lieu thereof the words “one hundred and twenty-one”;

(f).

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Sec. 143.
 (Correc-
 tion.)
- (f) by omitting from section one hundred and forty-three the words “ two hundred and eighty-three ” and by inserting in lieu thereof the words “ two hundred and eighty-five ”;
- Sec. 204 (3).**
 (Garbage
 and
 refuse.)
- (g) (i) by omitting from subsection three of section two hundred and four the words “ and dispose of the same and pay the proceeds to the City Fund ” and by inserting in lieu thereof the following words “ the same or may dispose of the same in the manner provided in the next succeeding section. The proceeds of any such sale shall be paid into the City Fund ”;
- Sec. 205**
(1).
- (ii) by inserting in subsection one of section two hundred and five, after the word “ deposit ” the words “ or destruction ”;
- Sec. 205**
(2).
- (iii) by omitting subsection two of the same section and by inserting the following subsection in lieu thereof:—
- (2) (a) The council may receive at such places any nightsoil, filth, or refuse so collected and brought thereto or brought thereto by a person licensed under section two hundred and six of this Act or by any other council or by any other person or by any statutory body representing the Crown.
- (b) (i) All nightsoil brought to such places shall be disposed of by burying, treating, or disposing of the same in such manner as may be approved by the Board of Health, or by burning the same or by emptying the same into the sewers of the Metropolitan Water, Sewerage and Drainage Board in pursuance of any agreement made between that Board and the Council.
- (ii) All filth or putrescible refuse brought to such places shall be disposed of by burning or by completely covering the same with at least six inches of earth within twelve hours after reception at such places, or in such other manner as may be approved by the Board of Health.
- (iii)

(iii) All other refuse shall be disposed of or treated in such manner as not to create any nuisance but in no circumstances shall nightsoil, filth or refuse of any kind whatsoever be disposed of by being conveyed to sea, or by being thrown, cast or deposited in the sea.

(h) by inserting in paragraph (f) of subsection one of section two hundred and thirty-four after the word "premises" the words "and the use of stables now or hereafter erected";

Sec. 234
(1) (f).
(Regulation
of stables.)

(i) by inserting next after section two hundred and forty-six the following new section:—

New s.
246A.

246A. (1) The power to resume lands conferred upon the council by section two hundred and forty-six of this Act shall be deemed to extend and always to have extended to the resumption of lands of the Crown or lands vested in a statutory body representing the Crown where at the date of publication of the notice of resumption in the Gazette such lands formed the whole or part of a road, highway, street, square, lane, court, alley or other thoroughfare or place used for the passage of the public through or along the same and in respect of which the council has at any time prior to the publication of the said notice of resumption expended money in the formation, paving, maintenance, lighting, cleansing or draining the same.

Resumption
of streets,
etc., vested
in Crown.

(2) This section shall not extend to such of the lands of the Crown purported to have been resumed by the council before the date upon which His Majesty's assent to the Sydney Corporation (Amendment) Act, 1934, is signified, and in respect of which the council has obtained from the Crown subsequently to the date of publication in the Gazette of the relevant notice of resumption, a Crown grant, which grant shall have full force and effect as if this section had not been enacted.

(j) by omitting from section two hundred and forty-eight the word "four" and by inserting in lieu thereof the word "two";

Sec. 248.
(Notices of
resump-
tion.)
(k)

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Sec. 254.
(Powers of
the council.)

- (k) by inserting at the end of paragraph (g) of subsection one of section two hundred and fifty-four, the following proviso:—

Provided that this paragraph shall not be deemed to authorise the sale of any land resumed by the council either before or after the date upon which His Majesty's assent to the Sydney Corporation (Amendment) Act, 1934, is signified, unless the approval of the Governor has been first obtained thereto.

Sec. 262.
(Interest on
compensation
money.)

- (l) by omitting from section two hundred and sixty-two the words "six per centum" and by inserting in lieu thereof the words "four per centum";

Sec. 263.
(By-laws.)

- (m) by inserting at the end of subsection two of section two hundred and sixty-three the following words "The council may by any such by-laws fix a minimum as well as a maximum penalty";

Sec. 269.
(Contracts.)

- (n) (i) by inserting in section two hundred and sixty-nine after the word "Act" the words "or by any other Act";

- (ii) by inserting at the end of the same section the following new subsections:—

(2) Every such contract may be made, varied or discharged as follows (that is to say)—

cf. L.G.
Act, 1928
(Vic.), ss.
501-502;
Local
Authorities
Act (Qld.),
ss. 56 and
58.

- (a) any contract which if made between private persons would be by law required to be in writing and under seal the council may make in writing and under the common seal of the council and in the same manner may vary or discharge the same;

- (b) any contract which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith or which if made between private persons would be by law valid although made by parol only and not reduced into writing the council may make in writing signed by the Lord Mayor or the Town Clerk or Deputy Town Clerk or any other officer of the
- the

the council acting by the authority and on behalf of the council and in the same manner may vary or discharge the same.

No. 9, 1934.

(3) All contracts made according to the provisions herein contained shall be effectual in law and shall be binding on the council and all other parties thereto, their successors, heirs, executors or administrators (as the case may be), and in case of default in the execution of any such contract either by the council or by any other party thereto such actions or suits may be maintained thereon and damages and costs recovered by or against the council or the other parties failing in the execution thereof as might have been maintained and recovered had the same contracts been made between private persons only.

(4) (a) Except in cases of emergency before any contract for the execution of any work or the furnishing of any goods to the amount of one thousand pounds or upwards is entered into by the council, fourteen clear days' notice at the least shall be given in a daily newspaper expressing the purpose of such contract and inviting any person willing to undertake the same to make proposals for that purpose to the council.

Tenders to be called for by advertisement for contracts of £1,000 or over. cf. Local Government Act, 1928 (Vic.), s. 502; Local Authorities Act (Qld.), s. 58.

(b) The council shall accept the proposal which on a view of all the circumstances appears to the council to be most advantageous, and shall take security for the due and faithful performance of every such contract or the council may decline to accept any such proposal.

(o) by inserting next after section two hundred and seventy-four the following new section:—

New sec. 274A.

274A. If the council neglects or refuses to do anything which by or under this Act it is directed or required to do, it shall for every such offence be liable to a penalty not exceeding fifty pounds.

Penalty on council for neglect. cf. Act No. 41, 1919, s. 634 (1).

(p)

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Sec. 278, new
subsec. (2).

Initiating
proceedings.
cf. Act No.
41, 1919,
s. 588 (2).

New
sec. 285A.

Public
inquiries.
cf. *Ibid.*
s. 649.

(p) by inserting in section two hundred and seventy-eight the following new subsection:—

(2) Nothing in this section shall prevent any person from taking proceedings against the council, or any civic officer or any officer or servant of the council for the recovery of any penalty or in respect of any offence under the provisions of this Act or any regulation or by-law in force for the time being.

(q) by inserting next after section two hundred and eighty-five the following new section:—

285A. (1) The Governor may appoint any one or more persons a commissioner to hold a public inquiry and to report to the Governor with respect to—

(a) any matter relating to the carrying out of the provisions of this or any other Act conferring powers or imposing duties on the council; and

(b) any act or omission of the Lord Mayor or of any alderman or of any officer or servant of the council or of any person elected or appointed to any office or position under this or any other Act conferring powers or imposing duties on the council—such act or omission having relation to the carrying out of the provisions of the Act referred to, or to the office or position held by the Lord Mayor, alderman, officer, servant, or person under the said Act, or to the powers or duties of that office or position.

(2) The person holding the inquiry shall have the powers conferred by the Royal Commissions Act, 1923, on a commissioner appointed under Division 1 of Part II of that Act, and the said Act, section thirteen and Division 2 of Part II excepted, and the provisions of section one hundred and fifty-two of the Justices Act, 1902, shall, *mutatis mutandis*, apply to any witness or person summoned by or appearing before such person.

(r)

- (r) by omitting from subsection two of section twenty-three the words “the last preceding section” and by inserting in lieu thereof the words “subsection one of this section”; No. 9, 1934.
Sec. 23.
(Correc-
tion.)
- (s) by omitting from section one hundred and thirty-eight the word “Part” where firstly and secondly occurring, and by inserting in lieu thereof the word “Division”; Sec. 138.
(Correc-
tion.)
- (t) by omitting from paragraph (d) of subsection one of section two hundred and fifty-five the word “subsections” wherever occurring and by inserting in lieu thereof the words “subparagraphs of this subsection.” Sec. 255 (1)
(d).
(Correc-
tion.)

23. (1) The Principal Act is further amended—

Further
amendment of
Act No. 53,
1932.

- (a) by inserting immediately before section two hundred and forty-six, and after the heading “PART XVI—RESUMPTION,” the short heading “DIVISION 1—*Acquisition and compensation*”; Part XVI.
Corrections.
- (b) by inserting immediately before section two hundred and fifty-five the short heading “DIVISION 2—*Certain borrowing powers*”;
- (c) by inserting immediately before section two hundred and sixty-one the short heading “DIVISION 3—*Raising of loans in any country*”;
- (d) by inserting immediately before section two hundred and sixty-two the short heading “DIVISION 4—*Rate of interest on compensation*”;
- (e) (i) by omitting from subsection one of section two hundred and fifty-five the words “All sums lawfully borrowed under this Act” and by inserting in lieu thereof the words “All sums lawfully borrowed under this Division of this Part of this Act”; Sec. 255 (1).
- (ii) by omitting from paragraph (a) of the same subsection the word “Act” and by inserting in lieu thereof the words “Division of this Part of this Act”;

(f)

Sydney Corporation (Amendment) Act.

- No. 9, 1934.**
Sec. 256. (f) (i) by omitting from section two hundred and fifty-six the word "Act" where firstly occurring and by inserting in lieu thereof the words "Division of this Part of this Act";
- (ii) by inserting in the same section after the word "council" the words "by other provisions of this Act or";
- Sec. 257.** (g) by omitting from section two hundred and fifty-seven the word "Act" and by inserting in lieu thereof the words "Division of this Part of this Act";
- Sec. 258 (d).** (h) by omitting from paragraph (d) of section two hundred and fifty-eight the word "Act" and by inserting in lieu thereof the words "Division of this Part of this Act";
- Sec. 259.** (i) by omitting from section two hundred and fifty-nine the word "Act" wherever occurring and by inserting in lieu thereof the words "Division of this Part of this Act";
- Sec. 261 (1).** (j) (i) by omitting from paragraph (b) of subsection one of section two hundred and sixty-one the word "Act" where secondly occurring and by inserting in lieu thereof the word "section";
- (ii) by omitting from paragraph (c) of the same subsection the word "Act" where secondly and thirdly occurring and by inserting in lieu thereof the word "section";
- Sec. 261 (2).** (k) by omitting from subsection two of section two hundred and sixty-one the word "Act" and by inserting in lieu thereof the word "section";
- Sec. 261 (3).** (l) by omitting from subsection three of section two hundred and sixty-one the word "Act" where firstly and secondly occurring and by inserting in lieu thereof the word "section";
- Sec. 261 (5).** (m) by omitting from subsection five of section two hundred and sixty-one the word "Act" and by inserting in lieu thereof the word "section."
- (2)

(2) The Principal Act is further amended by inserting in section one immediately after the heading **PART XVI—RESUMPTION—ss. 246-262** the following sub-headings:—

No. 9, 1934.
Consequen-
tial amend-
ment of Act
No. 58, 1932,
s. 1.

- DIVISION 1—*Acquisition and compensation.*
- DIVISION 2—*Certain borrowing powers.*
- DIVISION 3—*Raising of loans in any country.*
- DIVISION 4—*Rate of interest on compensation.*

PART XV.

TOWN PLANNING AND BUILDING REGULATION.

DIVISION 1.—*Commencement.*

24. This Part of this Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

Commence-
ment.

DIVISION 2.—*Town planning and building regulation.*

25. The Principal Act is further amended—

Further
amendment of
Act No. 58,
1932, s. 1.

(a) by inserting in section one after the heading “Part XVIII—MISCELLANEOUS PROVISIONS AND PROCEDURE—ss. 265-293” the following new headings:—

PART XIX—TOWN PLANNING.

DIVISION 1.—*Interpretation.*

DIVISION 2.—*General powers.*

DIVISION 3.—*New public ways and subdivisions.*

DIVISION 4.—*Appeals.*

PART XX—BUILDING REGULATION.

DIVISION 1.—*Preliminary.*

DIVISION 2.—*Building Advisory Committee and officers.*

DIVISION 3.—*Building regulation.*

DIVISION

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DIVISION 4.—*Appeals.*DIVISION 5.—*Existing buildings.*DIVISION 6.—*By-laws.*DIVISION 7.—*Notices.*DIVISION 8.—*Enforcement of law.*New Parts
XIX and
XX.(b) by inserting after Part XVIII the following
new Parts:—

PART XIX.

TOWN PLANNING.

DIVISION 1.—*Interpretation.*Interpreta-
tion.294. In this Part of this Act, unless the context or
subject matter otherwise indicates or requires—cf. Act
No. 41, 1919,
s. 4.“Subdivision,” “subdivide,” and similar expres-
sions mean and refer to dividing land into
parts, whether the dividing is—(a) by sale, conveyance, transfer, or parti-
tion; or(b) by any agreement dealing or instrument
inter vivos (other than a lease for a
period not exceeding five years without
option of renewal) rendering different
parts thereof immediately available for
separate occupation or disposition; or(c) by procuring the issue of a certificate
of title under the Real Property Act,
1900, in respect of a part of the land,
whether the land is thereby divided or
not;

but do not include—

(a) any division of land by following the
boundaries of lots or portions in a
Crown plan; or(b) any severance of land by the opening of
a public way; or(c) any division of land upon disposal by
the Crown made either before or after
the commencement of this Part of this
Act; or

(d)

- (d) any division of land in accordance with the boundaries of lots in any subdivision lawfully made either before or after the commencement of this Part.

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DIVISION 2.—*General Powers.*

295. Subject to the provisions of this Act, the council may control and regulate, and may undertake—

Power to pre-plan and to re-plan.
cf. Act No. 41, 1919, s. 321.

- (a) the planning of new public ways and subdivisions;
- (b) the rearrangement of existing public ways and of parcels of land; and
- (c) the improvement and embellishment of the city.

DIVISION 3.—*New public ways and subdivisions.*

296. A public way shall not be opened and land shall not be subdivided except in accordance with the provisions of this Act.

New public ways and subdivisions.
cf. *Ibid.* s. 323.

297. At any junction or intersection made by opening any public way, the person opening the public way shall make provision for the planning of the corners formed at such junction or intersection to the satisfaction of the council in such manner as will facilitate the flow of traffic.

Treatment of corners.
cf. *Ibid.* s. 325.

298. (1) Subject to the provisions of this Act a public way shall not be opened, and in a case where a subdivision provides for the opening of a public way land shall not be subdivided until—

Conditions to be observed before opening new public ways or subdivisions.
cf. *Ibid.* s. 327.

- (a) an application in respect thereof accompanied by plans and specifications thereof has been approved under this Act; and
- (b) the public ways have been constructed and drained to the satisfaction of the council in accordance with the approved application, plans, and specifications, and with any conditions attached to any such approval; and
- (c) the applicant has placed in the public way permanent survey marks in the position and manner and of the character prescribed; and
- (d)

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- (d) the town clerk has certified to the applicant that the requirements of this Act, other than the requirement for the registration of plans, have been complied with; and
- (e) a plan of the public way or of any subdivision containing the public way (such plan bearing the signatures of all necessary parties, a statement containing such particulars as may be necessary to identify the title to the land comprised in such plan, and a notation of approval under the seal of the council and being accompanied by the aforesaid certificate) has been registered in the office of the Registrar-General.

(2) In a case where a subdivision does not provide for the opening of a public way, land shall not be subdivided until—

- (a) an application in respect thereof, accompanied by plans, has been approved under this Act; and
- (b) the town clerk has certified to the applicant that the requirements of this Act other than the requirement for the registration of plans have been complied with; and
- (c) a plan of the subdivision (such plan bearing a statement containing such particulars as may be necessary to identify the title to the land comprised in such plan, and a notation of approval and being accompanied by the aforesaid certificate) has been registered in the office of the Registrar-General.

(3) Nothing in this section shall be deemed to render any agreement to sell, let, or otherwise dispose of any land illegal or void by reason merely that it is entered into before an application in respect of the subdivision has been approved by the council, but the agreement shall be deemed to be made subject to such approval being obtained.

299. Any applicant, instead of executing the work of constructing and draining the public ways, as hereinbefore provided, may either—

- (a) pay to the council such sum as may be agreed upon with the council as the cost of executing such

Certain
alternative
conditions.
cf. Act No.
41, 1919,
s. 328.

such work, and agree with the council as to when such work shall be executed by the council; or

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- (b) give to the council security to the satisfaction of the council that he will execute such work within such time as may be fixed by the council.

300. Where approval has been given as aforesaid, the town clerk may give his certificate that the requirements of this Act have been complied with in respect of any separate part of any proposed public way or subdivision, if the work of construction and draining to be executed upon such part has been done to the satisfaction of the council, and if the applicant has, with regard to the remainder of such work, either made payment as aforesaid or given security as aforesaid.

Opening new public way or subdivision by instalments. cf. Act No. 41, 1919, s. 329.

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

Exceptional case of subdivision. cf. *Ibid.* s. 330.

302. (1) Applications under this Part shall be submitted to the council.

Decisions on applications, and notices to applicants.

(2) The council may approve of any such application, or approve subject to conditions, or disapprove.

cf. *Ibid.* s. 331.

(3) The council shall cause notice to be given to the applicant of its decision.

(4) In the case of an approval given subject to conditions or of a disapproval, the reasons therefor shall be indicated in the notice.

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Subjects for
consideration
re new
public ways.
cf. Act No.
41, 1919,
s. 332.

303. In respect of any application for approval of the opening of a public way the council shall take into consideration—

- (a) the situation and planning of the public way in relation to public convenience, present and prospective, to inter-communication with neighbouring localities within or without the city; and
- (b) the method of draining the public way necessary in the circumstances, present and prospective, and the disposal of the drainage; and
- (c) whether or not the owner will transfer or convey to the council in fee-simple for a nominal consideration any necessary drainage reserves; and
- (d) the character of construction of the public way necessary in the circumstances, present and prospective, and the necessity for the erection of public way signs as part of the work of such construction; and
- (e) whether or not kerbing, guttering, and foot-paths should be provided; and
- (f) the treatment of junctions or intersections of public ways; and
- (g) whether the district is a residential district; and
- (h) the necessity for the planting of trees with tree-guards in the public way; and
- (i) if any proposed new public way will be a lane, whether or not a lane should be permitted, in the circumstances.

Subjects for
consideration
re sub-
divisions.
cf. *Ibid.*
s. 333.

304. In respect of any application for approval of a subdivision of land (whether the subdivision involves the opening of a public way or not) the council shall take into consideration—

- (a) the size and shape of each separate parcel; and
- (b) the length of frontage to a public way of each separate parcel; and
- (c) the situation and planning of the separate parcels in relation to public convenience, present and prospective; and

(d)

- (d) the existing and proposed means of access to each separate parcel; and
- (e) whether the district is or probably will be a residential district; and
- (f) the amount of public garden and recreation space to be provided in the land to be subdivided; and
- (g) the drainage of the land, the drains proposed to be constructed, and whether any land and drains are to be vested in the council; and
- (h) whether the land has been declared unsuitable for building upon under the provisions of the Public Health Act, 1902-1932, or any Act amending or replacing that Act.

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305. (1) The council may, when giving its approval for the opening of any new public way, specify in the approval and cause to be indicated on the plan the position in which water and gas mains shall be placed when laid in the public way, and the position where the gutters or drains are to be constructed. The council shall before fixing the position of mains as aforesaid seek the advice of the persons or bodies engaged in the supply of water and gas.

Preservation of public ways by laying pipes before construction of public ways. cf. Act No. 41, 1919, s. 334.

(2) When water or gas mains are thereafter laid in such public way by any person, whether under the authority of any statute or otherwise, they shall, unless the council otherwise permit, be laid in the positions so indicated.

(3) Where any person opens a new public way or subdivides any land fronting any existing public way which is not yet constructed in some permanent manner, the council may require such person to make such provision (by laying conduits across the public way at suitable intervals) as will enable gas and water service pipes to be laid to connect the mains with the various parcels of land fronting the public way and owned by that person without digging up the constructed carriage-way of the public way. Any such conduits shall be laid in such manner as the council may require, provided that before specifying its requirements under this subsection the council shall seek the advice of the

D

persons

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persons or bodies engaged in supplying gas and water as to the most suitable form of conduit, the method of laying it, and incidental matters.

(4) The laying of pipes hereunder shall be deemed to be a portion of the work of the construction and drainage of a new public way under this Part, and the other provisions of this Part shall apply thereto accordingly.

Lapsing of approval.
cf. Act No. 41, 1919, s. 335.

306. (1) Any approval given under this Part shall lapse at the end of two years from the date thereof, or such longer period as may be fixed in the approval, if the requirements of this Part have not been complied with in respect of—

- (a) the construction and draining of public ways; and
- (b) the giving of security; and
- (c) the making of payments to the council in respect of the making, draining, and marking of public ways.

(2) The council may if good cause be shown grant an extension or renewal of such approval beyond such period.

(3) Subsections one and two of this section shall apply to any extension or renewal under this section as if such extension or renewal were an original approval.

Cancellation by request.

(4) Such approval may also be cancelled by the council upon application by the holder of the approval at any time before the plan of the public way or subdivision is registered in the office of the Registrar-General.

(5) On such lapse or cancellation the council shall refund any unexpended balance of moneys paid to the council in respect of the execution of works in connection with such approval.

Registration of plan.
cf. *Ibid.* s. 336.

307. (1) As soon as the plan of any public way or of any subdivision containing a public way has been registered in the office of the Registrar-General as prescribed, the public way shall be deemed to be opened as a public way and thereby to be dedicated accordingly.

(2) Such plan shall show the positions of the permanent marks placed in the public way in accordance

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accordance with this Act; and the person opening the public way shall at the same time lodge with the Surveyor-General a copy of such plan.

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(3) Any public way so dedicated shall vest in the council in fee-simple by virtue of such registration and of this Act.

Fee-simple.

(4) The provisions elsewhere contained in this Act relating to the vesting of a public way in the council in fee-simple shall, mutatis mutandis, apply to any public way vested in accordance with this section.

See also s. 76B ante.

(5) Nothing in this section shall affect or prejudice any estate, right, title or interest of any person who is not a party to the opening and dedication of the public way unless the opening and dedication might have been lawfully made by the parties thereto without his concurrence.

Limitation.

308. (1) Nothing in this Part shall preclude the opening of any public way in accordance with any approval which was before the commencement of this Part given under this Act.

Savings as to roads.
cf. Act No. 41, 1919, s. 337.

(2) Nothing in this Part shall preclude the subdivision of any land in accordance with any approval which was before the commencement of this Part given under this Act or the City of Sydney Improvement Act.

(3) A subdivision which has not been approved by the council under this Act shall not after the commencement of this Part be made except in accordance with the provisions of this Part.

Subdivision.

(4) A separate parcel of land shall not be subdivided into further separate parcels or allotments except under the provisions of this Part.

Separate parcel.

309. (1) In the case of a public way on land under the Real Property Act, 1900, opened after the commencement of this Part the Registrar-General shall not number any plan which is not substantially in accordance with an approved plan, accompanied by the prescribed certificate, under this Part, and he may refuse to register a transfer of any land which in his opinion has frontage to any such public way.

Numbering of plans under Real Property Act, 1900.
Refusal of registration of transfers.
cf. *Ibid.* s. 338.

(2)

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(2) In the case of the subdividing after the commencement of this Part of land under the Real Property Act, 1900, the Registrar-General shall not number any plan under that Act which is not substantially in accordance with an approved plan accompanied by the prescribed certificate under this Part, and he may refuse to register a transfer of any land which in his opinion forms part of a subdivision not complying with the requirements of this Act.

Penalty.
cf. Act No.
41, 1919,
s. 339.

310. (1) Any person who opens any public way or subdivides any land otherwise than in accordance with the provisions of this Part, shall be liable to a penalty not exceeding one hundred pounds.

(2) A contravention of this or any other section of this Part shall not invalidate or be deemed to have invalidated any instrument intended to affect or evidence the title to any land.

Public garden
and recrea-
tion spaces.
cf. *Ibid.*
s. 340A.

311. Where in the subdivision of land provision is made for public garden and recreation space, such space shall be conveyed or transferred to the council if the council at any time so requires.

Drainage
reserves.
cf. *Ibid.*
s. 340B.

312. Where in the subdivision of land provision is made for a drainage reserve, such reserve shall be conveyed or transferred to the council if the council at any time so requires.

DIVISION 4.—*Appeals.*

Town plan-
ning appeals
cf. *Ibid.*
s. 341.

313. (1) Any applicant for approval—

- (a) to open any new public way,
- (b) to subdivide any land,

may appeal to the District Court of the Metropolitan District against the decision of the council or any neglect or delay of the council to give within forty days after service of his application a decision with respect thereto.

(2) The judge of such court may summon witnesses, hear evidence and determine the matter having regard to this Act, the by-laws, the circumstances of the case and the public interest.

(3) The decision of the judge of such court upon any such appeal shall be final and shall be binding

binding upon the council and the appellant and for the purposes of this Act shall be deemed to be the final decision of the council.

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(4) If in any decision under this section costs are awarded such costs may be enforced and recovered in like manner to costs awarded in a judgment of the District Court.

PART XX.

BUILDING REGULATION.

DIVISION 1.—*Preliminary.*

314. (1) This Part shall apply to the city of Sydney, but unless otherwise expressly provided, nothing in this Part shall apply to buildings erected or in the course of erection at the date of the commencement of this Part. Application.

(2) Where approval has, before the commencement of this Part, been given for the erection or alteration of any building, such erection or alteration may, notwithstanding this Part, be commenced and carried to completion if substantially commenced within a period of six months and carried to completion within a period of three years from such commencement.

315. Unless otherwise expressly provided, nothing in this Part shall affect any of the provisions of— Certain Acts not affected.

- the Metropolitan Traffic Act, 1900;
- the Metropolitan Water, Sewerage, and Drainage Act, 1924–1930;
- the Sydney Harbour Trust Act, 1900–1931;
- the Public Health Act, 1902–1932;
- the Public Works Act, 1912;
- the Fire Brigades Act, 1909–1927;
- the Theatres and Public Halls Act, 1908;
- the Motor Traffic Act, 1909–1930;
- the Factories and Shops Act, 1912–1931;
- the Government Railways Act, 1912–1932;

the

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the Liquor Act, 1912;
 the Explosives Act, 1905;
 the Inflammable Liquid Act, 1915-1931; or
 the Height of Buildings (Metropolitan Police
 District) Act, 1912,

or any Acts amending the same or take away powers vested in any person or body by any of the said Acts, or by any by-laws or regulations made thereunder.

Definitions.

316. In this Part, unless inconsistent with the context or subject-matter,—

“Advertisement” includes any sign, notice, device, or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water.

“Advertisement hoarding” means a structure used or intended to be used for advertising, that is to say, for the display of advertisements relating to goods or business other than those sold or conducted on the premises upon which such structure is or is intended to be erected, and includes any structure used or intended to be used for the display of advertisements relating to goods or business sold or conducted on the premises if the display of such advertisements be paid for by any person other than the owner of the business or be the subject of any lease or agreement between such owner and any other person.

“Board” means the Board of Appeal constituted under this Part.

“Builder” means the person who is employed to build or to execute work on a building, or where no person is so employed or can be found, the owner of the building.

“Building” includes any structure or any part thereof.

“Building line” means the line between which and any public way or public park or garden a building shall not be erected.

“By-law” means by-law made under this Part.

“City

- “ City Building Surveyor ” means the city building surveyor appointed under the City of Sydney Improvement Act or the person for the time being acting in his stead. No. 9, 1934.
- “ Committee ” means the Building Advisory Committee as constituted under this Part.
- “ Erect,” “ erected,” “ erection,” and similar expressions in relation to a building, include any structural work or any alteration, addition, repair or rebuilding.
- “ Health officer ” means the city health officer appointed under this Act, or the person for the time being acting in his stead.
- “ Party arch ” means an arch separating adjoining buildings, storeys, or rooms belonging to different owners or occupied or constructed or adapted to be occupied by different persons, or separating a building from a public way or a private way leading to premises in other occupation. London Building Act.
- “ Party wall ” means wall used or built in order to be used as a separation of any building from any other building with a view to such buildings being occupied by different persons.
- “ Party fence wall ” means boundary wall or fence parting the ground belonging to different owners or occupied by different persons.
- “ Party structure ” means any partition wall separating vertically, or any partition floor or arch separating horizontally, storeys or rooms in separate occupations approached by distinct staircases or separate entrances from without, or separating a shop from the remaining portion of a building, or separating a building from a public way leading to premises in other occupation: Provided that an external fire escape stairs shall not be deemed a separate entrance when doors opening on to such stairs are capable of being opened from the inside only. Adelaide Building Act.
- “ Prescribed ”

No. 9, 1934.

“ Prescribed ” means prescribed by this Part or by by-law made thereunder.

“ Proper servant ” means any servant generally or specially authorised by the council in respect of or whose duty it is to deal with or to act in regard to any acts, matters, or things in relation to which the expression is used.

317. The council may—

Delegation
of powers.

(a) delegate to any committee thereof such of its powers, duties, and authorities under this Part as it thinks fit (other than this power of delegation) so that the powers, duties, and authorities so delegated may be exercised and performed by such committee as fully and effectively as by the council; and

(b) revoke any such delegation in whole or in part.

DIVISION 2.—*Building Advisory Committee and officers.*

Appoint-
ment of
building
advisory
committee.

318. (1) There shall be a committee which shall be called the Building Advisory Committee.

(2) The council shall appoint the members of the committee who shall hold office for three years.

(3) The committee shall consist of the following members, that is to say—

(a) One member, who shall be chairman, shall be the city building surveyor.

(b) One member shall be the city health officer.

(c) One member shall be a person chosen by the council.

(d) One member shall be the chief officer of fire brigades.

(e) One member shall be nominated for appointment by the Minister for the time being in charge of the Department of Labour and Industry.

(f)

- (f) One member shall be nominated for appointment by the Minister for the time being administering the Theatres and Public Halls Act, 1908.
- (g) One member shall be nominated for appointment by the Metropolitan Water, Sewerage, and Drainage Board.
- (h) One member shall be nominated for appointment by the Fire and Accident Underwriters' Association of New South Wales.
- (i) One member shall be an architect nominated for appointment by the Institute of Architects of New South Wales.
- (j) Two members shall be engineers nominated for appointment by the Institution of Engineers, Australia, one of whom shall be a structural engineer.
- (k) Two members shall be master builders nominated for appointment by the Master Builders' Association of New South Wales.
- (l) Two members shall be nominated for appointment by the Building Trades Unions.
- (m) One member shall be an architect nominated for appointment by the Board of Architects of New South Wales.
- (n) One member shall be a person nominated for appointment by the Health Inspectors' Association of Australia (New South Wales Branch).
- (o) One member shall be nominated for appointment by the Board of Health.
- (p) Any other member or members not exceeding two in number that the council considers desirable.

(4) Every nomination made under subsection three of this section shall be made in the manner and within the time prescribed by by-laws, and shall be accompanied by the written consent of the person nominated to serve on the committee if appointed.

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(5) If within the time prescribed a valid nomination has not been made by the person or body entitled to make the nomination, the council may appoint a person to be the representative on the committee of such person or body.

Chairman.

319. (1) The chairman shall preside at meetings of the committee. In his absence the members present shall elect a chairman of the meeting.

(2) The chairman shall have a deliberative and, if the voting be equal, a casting vote.

Functions
of
committee.

320. (1) The committee may, and shall if required by the council, consider and make recommendations as to all or any of the following matters:—

(a) the advisability or suitability of by-laws already in force;

(b) the advisability or otherwise of making by-laws under this Part in respect of any particular subject or matter; and

(c) any amendments of existing statutes or by-laws and proposals for future statutes or by-laws, which in the opinion of the committee are necessary or advisable for carrying into effect any of the objects or purposes of this Part, or of any other object or purpose affecting the erection, use, and occupation of buildings or the safety of the public.

(2) For the purposes of this section the committee may call such witnesses and take such evidence as it considers necessary.

Procedure
quorum, etc.

321. (1) The procedure for the calling of the committee meetings and for the conduct of business at such meetings shall, subject to any by-laws with regard thereto, be as fixed by resolution of the committee.

(2) Eight members of the committee shall form a quorum, and any duly convened meeting at which a quorum is present shall be competent to transact any business of the committee.

(3) All acts and proceedings of the committee shall be valid, notwithstanding any vacancy in the committee or any irregularity in the appointment

or

or continuance in office of any member of the committee, and notwithstanding that any person not qualified may have acted as a member of the committee.

(4) The committee shall keep proper minutes of its proceedings and lodge the same or true copies thereof certified under the hand of the chairman of the meeting with the town clerk.

(5) The committee shall each year submit a report to the council through the town clerk giving briefly and concisely information as to its work and as to its general decisions in the course thereof.

(6) The town clerk shall make available to the committee the services of such officers or clerks of the council as he deems necessary.

DIVISION 3.—*Building regulation.*
General.

322. For the purposes and subject to the provisions of this Part the council shall have power to control and regulate the erection, demolition, and use and occupation of buildings in the city.

Powers of council.

323. Subject to the provisions of this Part and of any by-laws the city building surveyor shall under the council be charged with the execution of this Part.

City Building surveyor to execute Part.

324. No building in the city shall be erected except in accordance with the provisions of this Part and of any by-law made thereunder.

Prohibition.

325. The city building surveyor may disapprove of the erection of any building upon any land—

Illegal public ways and subdivisions. Act No. 41, 1919, s. 307.

- (a) fronting a public way opened after the commencement of this Part in a manner not in accordance with the law for the time being in force; or
- (b) subdivided after the commencement of this Part in a manner not in accordance with the law for the time being in force; or
- (c) if the land has not been subdivided, and if by the erection of the building the land would become obviously adapted for separate occupation in two or more parts.

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Levels.

326. Every building erected on land within the city shall be constructed with due regard to the levels as fixed in accordance with the law, of the public-ways to which the land has frontage.

Residential districts.

Residential
districts.
Act No. 41,
1919, s. 309.

327. (1) The Governor may by proclamation or proclamations on the application of the council—

- (a) declare any defined portion of the city to be a residential district;
- (b) alter or abolish a residential district;
- (c) prohibit the erection in such residential district of any building for use for the purposes of such trades, industries, manufactures, shops, and places of public amusement as may be described in the proclamation;
- (d) prohibit the use of any building in such residential district for any such purposes;
- (e) prohibit the erection or use of advertisement hoardings in such residential district;
- (f) prohibit the use in the district of any land for the purpose of any specified trade, business, avocation or calling described in the proclamation.

Act No. 41,
1928, s. 9.

(2) Any provision inserted in a proclamation in pursuance of the powers conferred by paragraphs (c) or (d) of subsection one of this section may apply—

- (a) generally to all or any trades, industries, manufactures, shops, and places of public amusement;
- (b) particularly to the trades, industries, manufactures, shops, and places of public amusement described in the proclamation;
- (c) to all trades, industries, manufactures, shops, and places of public amusement other than those described in the proclamation.

(3) (a) An application made by the council to the Governor under this section shall be submitted to the Minister, who shall give the prescribed notice of the proposal.

(b)

(b) Within the time fixed in such notice objection to the proposal may be lodged with the Minister by any person interested.

(c) The Minister may, if in his opinion the circumstances warrant it, refer the proposal to a stipendiary magistrate for inquiry and report. The stipendiary magistrate so appointed may take evidence upon oath or affirmation (which oath or affirmation he is hereby empowered to administer), and may, by summons under his hand require such person as he thinks fit to appear personally before him, at a time and place to be fixed in and by such summons, and to produce to him such books and papers as appear necessary for the purposes of the inquiry, and may examine such witnesses as he thinks fit.

Any person so required, who, without just excuse—

- (i) neglects or refuses to comply with such summons; or
- (ii) refuses to be examined on oath or affirmation or to take an oath or affirmation; or
- (iii) refuses to answer such lawful questions as are put to him,

shall be liable to a penalty not exceeding twenty pounds.

(d) After considering any objections received to the proposal or the report of the person appointed to hold the inquiry, if any, the Minister shall submit the proposal together with any modification approved by the council to the Governor for decision.

(4) Nothing in this section shall preclude the continuance of the use of any building for any purpose for which the same was used immediately before the date of the proclamation aforesaid, or the alteration, enlargement, rebuilding, or extension of any building used for any such purpose whether or not such alteration, enlargement, rebuilding, or extension involve the use of adjoining land which immediately before the date of the proclamation was in the same ownership or for such other purpose as the council thinks reasonable in the circumstances.

Act No. 33,
1927, s. 10
(b).

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Building line in residential districts.

328. The council, subject to any by-laws may, in any residential district declared under this Part, fix building lines.

Applications, plans and specifications.

Buildings to conform to Act.
cf. Act No. 41, 1919, s. 310.

329. Subject to the provisions of this Part and of any by-law, every building hereafter erected in the city shall be erected to the satisfaction of the city building surveyor—

- (a) in conformity with this Part and the by-laws; and
- (b) in conformity with the approved application plans and specifications in respect of which the city building surveyor has given his certificate for the erection of the building.

Certificate.
cf. *Ibid.* s. 311.

330. (1) A building shall not be erected until the approval of the city building surveyor is first had and obtained by a certificate under his hand.

(2) The certificate shall set out the terms, if any, upon which the approval is granted.

Applica-
tion.
cf. *Ibid.* s. 312.

331. (1) Application for the certificate of approval of the city building surveyor shall—

- (a) be made by the owner or his agent in the prescribed manner;
- (b) be accompanied by the number and the form of such plans and specifications as may be prescribed;
- (c) be accompanied by the prescribed fee.

(2) One copy of such plans and specifications shall become the property of the council, but shall not be used for any purpose other than giving effect to the provisions of this Act or of any by-law made thereunder.

Illegible or incomplete plans.

(3) Any plans and specifications may within seven days of receipt by the city building surveyor be returned by him if they are not clear and easily legible, or if they do not contain sufficient information, and in such case the application shall be deemed to have been made on the day when plans and specifications free from those defects are lodged with the city building surveyor.

(4)

(4) Section fifty-three of the Police Offences Act, 1901, shall not apply to the city.

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Police Offences Act, 1901.

332. (1) The city building surveyor shall consider each application for approval of the erection of a building and the plans and specifications accompanying it, and may, subject to the provisions of this Part and of any by-laws made thereunder, approve, or approve subject to conditions, or disapprove thereof.

Duty of city building surveyor. cf. Act No. 41, 1919, ss. 313 and 314.

(2) The city building surveyor shall not approve any application unless such application and the plans and specifications conform in all respects with the provisions of this Part and of any by-laws.

333. In the case of any application in respect of which the city building surveyor has any doubt whether the design of the external elevations of the proposed building is such that the architectural treatment proposed for the erection of the building to the height and size described in the application may prejudicially affect the amenities of any part of the city, the city building surveyor or the applicant may unless in the meanwhile an agreement has been reached between the city building surveyor and such applicant refer the question to the board, and the decision of the board shall be final and conclusive.

Reference to board of appeal.

334. (1) Where an application is made to the city building surveyor for approval of the erection of a building, or for approval to a variation, addition to, or omission of any particulars shown in plans and specifications already approved by him, the city building surveyor shall within such time after service of the application as may be prescribed by by-laws made under this part—

Approval or disapproval.

- (a) where he approves, or approves subject to conditions, give a certificate to the applicant. The certificate shall set out any conditions attached to the approval;
- (b) where he disapproves, notify the applicant in writing to that effect.

(2)

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(2) Where the application has been approved subject to conditions or has been disapproved, the certificate or notification shall be accompanied by a written statement setting out the reasons for the imposition of the conditions or for the disapproval, as the case may be.

Additions
or
variations.

335. (1) If before or during the construction of any building it is desired to make any addition to the building other than is shown in the approved plans and specifications in respect of which the city building surveyor has granted his certificate, or to vary, add to, or omit any particulars shown or mentioned in any such plans and specifications application for that purpose, giving the particulars prescribed, shall be made by the builder or the owner or his agent to the city building surveyor, who may grant or refuse his certificate as in the case of an original application.

(2) The city building surveyor may require any approved addition or variation or omission to be shown and mentioned on the plans and specifications and in the copies thereof in the hands of the council before granting his certificate for the addition or variation or omission.

When
certificate
lapses.

336. Any certificate or approval given under this Part or under any by-laws made thereunder, shall be void if the building work to which it refers is not substantially commenced within twelve months after the date of the certificate.

Use or
occupation.
Act No. 41,
1919, s. 316.

337. (1) The council may either generally or in any particular case prohibit the use or occupation, without its permission, of any building until it has been completed in accordance with the approved plans and specifications.

(2) Application for permission under this section shall be made as prescribed.

(3) The council may grant or refuse permission, or may grant permission subject to conditions, as it may deem proper in the circumstances of the case.

338. Where a plan has been approved by the city building surveyor, fencing or other structures not shown upon the plan shall not at any time, without the consent of the city building surveyor, be erected so as to restrict the use in connection with the building of the unoccupied area of the allotment.

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Fences.
Act No. 33,
1927, s. 10
(d).

339. The city building surveyor or his representative may, for the purposes of this Part and of any by-laws, enter upon any building in course of erection, and upon the land upon which such building is being erected, and may make inspections, and for that purpose order the cutting into, demolition, or opening of any work, and take such other measures as he may deem necessary for the purpose of facilitating any such inspection.

Power to
inspect, etc.
Act No. 41,
1919, ss. 318
(18) and
524 (1) (a)
(b).

DIVISION 4.—*Appeals.*

Constitution of Board of Appeal.

340. There shall be a board which shall be called the Board of Appeal.

Board of
Appeal.

341. The Governor shall appoint the members of the board, who shall hold office for three years.

Appoint-
ment.

342. (1) The board shall consist of four members, that is to say—

Members.

- (a) One member, who shall be the chairman;
- (b) One member, who shall be an architect selected by the Governor from three architects who shall be nominated by the Institute of Architects of New South Wales;
- (c) One member, who shall be a structural engineer selected by the Governor from three structural engineers who shall be nominated by the Institution of Engineers, Australia;
- (d) One member, who shall be a master builder selected by the Governor from three master builders who shall be nominated by the Master Builders' Association of New South Wales.

(2) An employee of the council shall not be a member of the board.

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Chairman.

343. (1) The chairman shall preside at the sittings of the board and shall have a deliberative, and, if the voting be equal, a casting vote.

(2) Three members of the board shall form a quorum.

Disquali-
fication.

344. (1) A member of the board shall be disqualified from acting and shall not act as a member on an appeal to the board or on any reference to the board under this Part with respect to any building of which he is the owner, architect, engineer, or in which he is in any manner, directly or indirectly, interested.

(2) Where a member is disqualified under this section his place on the board at the hearing of the particular matter to which the disqualification extends shall be taken by a deputy or temporary member of the same profession or calling to be selected by the Lord Mayor and town clerk, from the members of the panel hereinafter constituted.

Panel.

345. There shall be a panel which shall be called the Board of Appeal Panel.

Appoint-
ment.

346. The Governor shall appoint the members of the panel, who shall hold office for three years.

Members.

347. The panel shall consist of ten members, that is to say—

- (a) One member, who shall be known as the deputy chairman of the Board of Appeal;
- (b) Three members, who shall be architects selected by the Governor from six architects who shall be nominated by the Institute of Architects of New South Wales;
- (c) Three members, who shall be structural engineers selected by the Governor from six structural engineers who shall be nominated by the Institution of Engineers, Australia;
- (d) Three members, who shall be master builders selected by the Governor from six master builders who shall be nominated by the Master Builders' Association of New South Wales.

348. (1) Every nomination for the appointment of a person as a member of the board or of the panel shall be made in the manner and within the time prescribed by the by-laws, and shall be accompanied by the written consent of the person nominated to serve on the board or panel as the case may be, if appointed.

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Failure of nomination.

(2) If within the time prescribed the necessary nomination for membership of the board or panel, as the case may be, has not been validly made by the body entitled to make such nomination, the Governor may appoint a person or persons as the case may require from amongst the members of such body, as representative or representatives of such body on the board or the panel.

349. (1) A member of the board or of the panel shall cease to hold his office—

Cessation of term of office.

- (a) if he holds any position of profit under or in the gift of the council;
- (b) if he becomes bankrupt, compounds with his creditors, or assigns his estate for the benefit of his creditors;
- (c) if he becomes an insane person, an insane patient, or an incapable person within the meaning of the Lunacy Act of 1898;
- (d) if he is convicted of a felony or misdemeanour;
- (e) if being summoned he is absent from three consecutive sittings of the board or panel without leave granted by the board or panel;
- (f) if he resigns his office in writing under his hand delivered to the chairman of the board or to the town clerk;
- (g) if he receives notice in writing from the town clerk that he has been removed from office by the Governor;
- (h) if his successor has been duly appointed.

(2) Upon any vacation of office or position under this section, except under paragraph (h), the Governor shall forthwith appoint a new member to be nominated in accordance with the provisions of section

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section three hundred and forty-two or section three hundred and forty-seven as the case may require to fill the vacant office or position.

(3) Where the vacancy has arisen before the expiration of the triennial period herein provided for, the person appointed to fill the vacancy shall hold office or position for the residue of his predecessor's term.

Declaration.

350. Before any member of the board, or any member of the panel who takes the place of a member of the board, acts in such office, he shall make the following declaration to be administered by a judge of the Supreme Court or a judge of the District Court or a stipendiary magistrate:—

I, A.B., do solemnly and sincerely declare that I will diligently, faithfully, and impartially execute my duties as a member of the Board of Appeal under Part XX of the Sydney Corporation Act, 1932-1934.

Jurisdiction of board.

Appeal.

351. Any party who feels himself aggrieved by any decision of the city building surveyor under this Part or under any by-law made thereunder may appeal to the board. The person making the appeal shall lodge therewith the fee prescribed for appeals to the board.

Reference
of
objections.
Vict. Act,
9 Geo. V,
No. 2981,
s. 14.

352. (1) Where in the case of any particular building proposed to be erected the builder or architect thereof lodges with the city building surveyor an objection in writing to the effect that with respect to that building any of the provisions of the by-laws are inapplicable or will needlessly affect with injury the course and operation of business or will defeat the objects of such by-laws and that by the adoption of a modification of such provisions such objects will be attained either better or as effectually the objection shall be referred to the board.

(2) If the board is of opinion that the objection is well founded it may direct with respect to such building such modification of such provisions to be made as will give effect to the purposes of the said by-laws.

Procedure.

Procedure.

353. Appeals and references to the board shall be made and enforced in the manner prescribed. Procedure.

354. (1) Subject to this Part and to any by-laws made thereunder, every appeal shall be deemed to be a submission to arbitration under the Arbitration Act, 1902, and the provisions of that Act, so far as applicable, shall mutatis mutandis apply accordingly. Appeal deemed submission to arbitration.
Viet. Act, 13 Geo. V, No. 3267, s. 10.

(2) For the purpose of this Division, the board shall be deemed to be arbitrators within the meaning of the said Act.

355. On any appeal under this Part the board may— Powers of board.
Ibid. s. 11.

- (a) if the appellant does not appear at the time appointed for the hearing of the appeal, proceed with the hearing and make its award notwithstanding the absence of any of the parties;
- (b) appoint one of its members to make any inquiry or any survey which appears to it to be necessary or expedient for the purposes of the appeal;
- (c) regulate its own proceedings;
- (d) by its award confirm, amend, vary, or disallow all or any of the decisions appealed from;
- (e) postpone the time for beginning any works, or may, for a further period not exceeding one year, extend the period for completing the same.

356. (1) The board shall—

- (a) keep proper minutes of its proceedings; and Minutes.
Ibid. s. 12.
- (b) lodge the same or true copies thereof certified under the hand of the chairman with the town clerk.

(2) Every decision, adoption, or award of the board shall be in writing signed by the members of the board, and a true copy thereof certified under the hand of the chairman shall be lodged with the town clerk, who shall cause the copy lodged with him to be filed in the office of the council.

(3).

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(3) Any person on payment of a fee of two shillings and sixpence may inspect the copy of the decision, adoption, or award so filed in the office of the council and may take copies thereof or make extracts therefrom.

(4) In any proceedings in any court or before any judge or justice a copy of a decision, adoption, or award of the board shall, if certified under the hand of the chairman, be prima facie evidence of the matters therein contained.

DIVISION 5.—*Existing buildings.*

Applica-
tion.

357. This Division of this Part shall apply only to buildings in the city of Sydney, erected or in the course of erection before the commencement of this Part.

Surveyor to
make report
and recom-
mendations.
cf. Vict.
Act, 13 Geo.
V, No. 3267
s. 5.

358. (1) If it appears to the city building surveyor that, in the event of fire, sufficient—

- (a) means of escape or egress,
- (b) automatic sprinklers or drenchers,

are not provided in or in connection with any building, the city building surveyor shall make a report thereon to the council.

(2) In every such report the city building surveyor shall make recommendations specifying—

- (a) what works (including alterations of the building or of any part thereof or of the provision of means of escape or egress),
- (b) what provision of automatic sprinklers or drenchers

should in his opinion be carried out or made in or in connection with any such building so as to make reasonably sufficient provision for such means of escape or egress, or such automatic sprinklers and drenchers.

Committee
to consider
report and
recom-
mendations.
Ibid. s. 6.

359. The council—

- (a) shall take into consideration every report and the recommendations therein;
- (b) may approve the report, with or without modification of the recommendations;
- (c) may refuse to approve the report; or
- (d)

- (d) may refer the matter to the city building surveyor for further report and recommendations.

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Notice to owners.

cf. Vict. Act, 13 Geo. V, No. 3267, s. 7.

360. Where the council has (whether with or without modification) approved of any such recommendations with respect to any building, it shall cause to be served upon the owner of the building and upon all other persons, if any, who in the opinion of the council may be affected by the recommendations a notice in writing setting forth the recommendations as so approved, and stating—

- (a) that on a date mentioned in the notice (being not less than one month from the service thereof) the person on whom the notice is served or any person on his behalf may appear before the board to raise objections to the recommendations as approved by the council;
- (b) that in default of any such person so objecting the recommendations as approved by the council may be adopted by the board and that such person shall in all respects be finally bound by the adoption;
- (c) that the works to be carried out in accordance with the recommendations as approved by the council, if adopted shall be begun at a time to be specified in the notice (not being less than twelve months from the date of the service of the notice).

361. The owner of the building and any person who may be affected by the recommendations as approved by the council (whether such person has been served with a notice or not) may by himself or by any person on his behalf appear before the board on the date mentioned in the notice or any date to which consideration of the matter is adjourned and object to the recommendations or any of them, but in no case shall it be necessary for notice to be given of any adjournment of such consideration.

Right of appearance.
cf. *Ibid.*
s. 7 (2).

362. Upon the date mentioned in the notice or on any date to which the consideration of the matter may be adjourned, the board—

Procedure.
cf. *Ibid.*
s. 7 (3).

- (a) if no person objects, may adopt the recommendations as approved; and

(b)

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- (b) if any person objects, shall inquire into and consider the matter in the presence of such person if he attends; and after hearing any objections may adopt the recommendations as approved by the council, with or without modification, or may refuse to adopt them.

Extension
of time.
cf. Vict. Act,
13 Geo. V,
No. 3267,
s. 7 (4).

363. The board at the time of adopting the recommendations as approved by the council, with or without modification, or any part of them, may extend the time specified in the notice for beginning or for completing any of the works to which the notice relates.

Adoption
final.
cf. *Ibid.*
s. 7 (5).

364. Upon adoption every person upon whom the notice has been served or who has appeared and raised objections shall in all respects be finally bound by the adoption.

DIVISION 6.—*By-laws.*

By-laws.

365. (1) The council may make by-laws for and relating to the following matters and subjects or matters and subjects incidental thereto, so far as the same are not expressly provided for in this Part:

- (a) applications for a certificate from the city building surveyor;
- (b) the form, number, and contents of plans and specifications;
- (c) the division of buildings into classes;
- (d) the proportion of the site to be covered by any building, and the provision of open spaces and light areas about buildings;
- (e) the roof and basement drainage and the ventilation, lighting, and healthiness of buildings;
- (f) the design, loading and stresses, materials, stability, building line, and height of buildings;
- (g) the distance from the middle line of any public way within which buildings shall not be erected;
- (h) fixing the building line for various classes of buildings in respect of various public ways;
- (i) regulating or preventing the erection of dwelling-houses so that the front elevation thereof faces any lane or pathway;

(j)

- (j) the size, height, and lighting of rooms in buildings;
- (k) fire prevention, fire extinguishing apparatus, and fire escapes in existing and future buildings, including the provision and closing of fire resisting doors, shutters and windows, and the keeping of such escapes, fire resisting doors, shutters and windows, free from obstruction;
- (l) the position of the building or any outbuilding or office in relation to other buildings or to the boundaries of the site;
- (m) the architectural harmony of the building in relation to the neighbouring or adjoining buildings;
- (n) the control and regulation of buildings, balconies, verandahs, awnings, and structures of every kind abutting on or extending over any public place, and any projections over any building line or over the land of an adjoining owner;
- (o) the erection of party walls, party fence walls, party arches, and party structures, and the demolition, alteration, or rebuilding of existing party walls, party fence walls, party arches, and party structures (including in each case the position, design, materials, stability, thickness, and height of the wall or fence wall, or arch or structure, as the case may be) and regulating the erection of fences on or on the boundaries of any land, and the height, materials, stability, design and position of existing fences on or on the boundaries of any land;
- (p) the control and regulation of fixtures attached to and projections from the outside of existing and future buildings;
- (q) defining the respective rights, duties and obligations of owners and occupiers of adjoining buildings or lands in relation to external walls, party walls, party fence walls, jambs, flues, or recesses in walls or chimneys on the line of junction, and providing for the recovery.

recovery by an owner from an adjoining owner of a fair proportion of the cost of the erection or alteration of such walls, jambs, flues, recesses, or chimneys;

- (r) preventing the making of openings in external walls of a building abutting on the lands of other owners without the consent of such owners;
- (s) the minimum area and frontage of land upon which any building or any class of buildings may be erected;
- (t) the conveniences to be provided in buildings;
- (u) requiring the provision, maintenance, and operation of mechanical means of ventilation in buildings in circumstances where satisfactory natural means of ventilation are not provided;
- (v) preventing building on flooded and unhealthy land;
- (w) requiring and regulating the enclosure of unenclosed land by suitable walls or fences;
- (x) requiring licensing and regulating the erection, maintenance, and use of hoards and fences in public places for the protection of the public during building operations;
- (y) permitting licensing and regulating the enclosure and use of any public place for the erection of scaffolding, depositing of building materials, or carrying out of operations necessary to the erection of buildings on the land adjoining such public place;
- (z) the erection of scaffolding over any building now erected or hereafter to be erected for the purpose of building operations on any adjoining building;
- (aa) excavations;
- (bb) the alteration or demolition of existing buildings;
- (cc) underpinning and shoring of adjoining buildings;
- (dd)

- (dd) authorising the city building surveyor to order the pulling down, opening, or cutting into any work for the purpose of facilitating inspection where the city building surveyor has reason to believe or suspect that anything has been done in contravention of this Part or of the by-laws;
- (ee) the securing or the demolition of ruinous or dangerous buildings or walls;
- (ff) preventing the use or occupation of any building erected or altered otherwise than in accordance with this Part or the by-laws;
- (gg) providing for the alteration and repair of skylights and roof lights on existing buildings;
- (hh) regulating or prohibiting the erection of any structure of calico or canvas or any other textile material;
- (ii) the testing of building materials and of the foundations of completed or partially completed structures;
- (jj) requiring the making of provision for the safety of window cleaners; and for that purpose regulating the construction of windows, the equipment of window cleaners, and the cleaning of windows;
- (kk) any of the matters which the city building surveyor is by this Part directed to take into consideration in respect of any application for approval to erect a building;
- (ll) any of the powers conferred or duties imposed upon the city building surveyor;
- (mm) any matter which by this Part is required or permitted to be prescribed, or which is necessary or convenient to be prescribed for giving effect to this Part or any enactment relating to buildings administered by the council;
- (nn) preventing obstruction of any person acting under the authority of the council or under the provisions of this Part or of any by-law;
- (oo)

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- (oo) preventing destruction, injury, damage, interference or misuse by any person in respect of any public place or any work, undertaking or property of or under the control or management of the council;
- (pp) enforcing and securing the observance of the provisions of this Part or of any by-law;
- (qq) the control and regulation of the placing, stacking or storing in, upon, or near a building, of timber, lathwood, firewood, casks, barrels, cases or inflammable matter and the erection of incinerators, chimneys, heating appliances, cooling towers and the like, in, upon or near a building;
- (rr) the establishment, maintenance, regulation and control of automobile parking stations;
- (ss) the construction, design, material, position and supports of water tanks over five hundred gallons within or over or about any building;
- (tt) the use and or occupation of buildings when erected or during the course of erection;
- (uu) to authorise the board, with the consent of the council, to obtain the services of architects, consulting engineers, and other experts of not less than ten years standing for the purpose of assisting it or the city building surveyor in giving effect to this Part and the by-laws;
- (vv) the means of access generally, and particularly the means of access for the removal of nightsoil, garbage, and other refuse;
- (ww) the height, materials, stability, design, and position of fences (if any) to be erected on or on the boundaries of the allotment on which the building is to be erected;
- (xx) prescribing, controlling, permitting, prohibiting and regulating (notwithstanding anything contained in the City of Sydney Improvement Act as amended by other Acts) the projections into and construction in any public way of the footings and foundations of buildings (including buildings erected by the council itself) beyond the building line of such

such public way within the city and the reservations and conditions upon and subject to which such footings and foundations may be so projected.

(2) The council shall, before making any by-laws under this Part, obtain from the Building Advisory Committee a report and recommendation on the subject of the proposed by-law, and shall give consideration to such report and recommendation.

366. Any such by-law may provide—

Additional provisions re by-laws.

- (a) that the whole or any portion thereof shall apply to any specified class or classes of buildings, or to special, temporary, or wooden buildings;
- (b) that the whole or any portion thereof shall apply to the whole of the city or to any specified portion or portions thereof;
- (c) for dispensing upon such terms as the council thinks fit with any of the requirements thereof which are inapplicable, or in the opinion of the council or of the proper servant, inappropriate, and where the objects of the by-law can be obtained by the adoption of any other suitable means;
- (d) for the practice and procedure in respect to applications, notices, orders, permits, licenses, and matters arising under the by-law;
- (e) for the conditions under which buildings of one class may be in whole or in part converted into buildings of another class;
- (f) for the entry by the owner, his servants, agents, or workmen, on any premises at reasonable hours for the execution of any work or the doing of anything which he is required by the by-law to execute or do;
- (g) for the powers and duties of the council's servants and workmen under the by-law; and
- (h) generally for carrying into effect the purposes of the by-law.

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General
provisions
as to
by-laws.

367. Any such by-law may—

- (a) impose a penalty for any breach thereof and also distinct penalties in case of successive breaches thereof, but no such penalty shall exceed fifty pounds;
- (b) impose also a daily penalty for any continuing breach thereof not exceeding five pounds per day;
- (c) fix a maximum as well as a minimum penalty;
- (d) authorise any matter or thing to be from time to time determined, applied, or regulated by the council by resolution or by the city building surveyor or proper servant either generally or for any class of cases or in any particular case;
- (e) provide for payment of fees where under the provisions of this Part, or any by-law made thereunder, the council supplies any service, product, or commodity; makes any registration; grants any certificate, permit, or license; gives any permission; furnishes any information; admits to any building or enclosure; or receives any application for its approval;
- (f) provide for the payment of fees to any persons whose services are obtained for the purposes of giving effect to this Part and the by-laws.

Publication
and com-
mencement.
Act No. 41,
1919, s. 577.

368. (1) Any by-law made by the council under the provisions of this Part shall—

- (a) be submitted to the Governor for his approval;
- (b) when approved by the Governor, be published in the Gazette;
- (c) take effect from the date of publication or from a later date to be specified in the by-law; and
- (d) be laid before both Houses of Parliament within fourteen sittings days after publication if Parliament is in session, and, if not, then within fourteen sitting days after the commencement of the next session.

(2)

(2) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after any by-law has been laid before such House disallowing the by-law or any part thereof, such by-law or part shall thereupon cease to have effect.

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369. (1) Where any by-law is amended by—

(a) the repeal or omission of certain words or figures; or

(b) the substitution of certain words or figures in lieu of any repealed or omitted words or figures; or

(c) the insertion of certain words or figures, the by-law as so amended may be printed by the Government Printer in the form certified as correct by the Attorney-General.

Incorporation of amendments. cf. Act No. 41, 1919, s. 577.

(2) The provisions of the Amendments Incorporation Act, 1906, shall, *mutatis mutandis*, apply to any by-law so amended.

DIVISION 7.—*Notices.*

370. Any notice or other document under this Part required to be served upon the council shall be served in the manner prescribed.

Service on council.

371. Except where otherwise expressly provided by this Part, any notice or other document under this Part required or authorised to be given or served to or upon any person may be served—

Service of notice, etc.

(a) by delivering the same to such person or (if the person is absent from New South Wales) to his agent; or

(b) by leaving the same at such person's usual or last-known place of abode; or

(c) by forwarding the same by post in a pre-paid letter addressed to such person at his usual or last-known place of abode.

DIVISION 8.—*Enforcement of law.*

372. Where any building after the commencement of this Part, or of any by-law under this Part is partly or wholly erected, built or constructed contrary to the provisions thereof the city building surveyor, if the council approve, may give to the owner or builder or leave at the building two clear days'

Power of council in case of breach of law. cf. Municipal Corpns. Act, 1908, s. 296 (N.Z.).

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Buildings
prejudicial
to public or
to other
buildings.

days' notice in writing directing the owner or builder to bring the same into conformity with this Part or the by-laws, or may require the pulling down or removal of the building.

If default is made in compliance with such notice, and notwithstanding the imposition or recovery of any penalty, the council by its servants may enter upon the building with a sufficient number of workmen and demolish the building or any part or parts thereof, and do any other act necessary for the purpose, and remove the materials thereof to some convenient place.

373. (1) If any building is in a condition unfit for human occupation or habitation, or is in a condition prejudicial to the property in or the inhabitants of the neighbourhood of such building, the council may, if the city building surveyor or the city health officer give to the council a certificate in writing of such condition as aforesaid in respect of any building, order the owner to demolish or as an alternative to re-erect such building or any part thereof, or otherwise to put the same or any part thereof into a state of repair and good condition to the satisfaction of the council within a reasonable time to be fixed by the order.

(2) If the order is not obeyed the council may with all convenient speed enter upon the building and the land upon which it stands and execute the order.

(3) Where the order directs the demolition of a building or any part thereof the council, if executing the order, may remove the materials to a convenient place, and (unless the expenses of the council under this section in relation to such building are paid to it within fourteen days after such removal) sell the same, if and as it in its discretion thinks fit.

(4) All expense incurred by the council in relation to any such demolition or sale as aforesaid may be deducted by the council out of the proceeds of the sale, and the surplus (if any) shall be paid by the council on demand to the owner of the building; and if such building or any part thereof is not taken
down

down and such materials are not sold by the council, or if the proceeds of the sale are insufficient to defray the said expenses, the council may recover such expenses or the deficiency from the owner of the building, together with all costs in respect thereof in a summary manner, but without prejudice to the owner's right to recover the same from any lessee or other person liable for the expenses of repairs.

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374. Where in pursuance of this Part or any by-law the city building surveyor lawfully orders or directs any person to perform any work or do any act or thing, and such person fails to perform such work or do such act or thing as and when so ordered or directed, the council may cause such work to be performed or such act or thing to be done, and may in any court of competent jurisdiction recover from the said person the expenses so incurred as a debt due to the council.

Surveyor may perform required work.
Act No. 41, 1919, s. 632.

375. (1) If any person does or causes to be done any work in connection with the erection of a building without the certificate of the city building surveyor under this Act, he shall be liable to a penalty not exceeding fifty pounds and a further penalty not exceeding ten pounds for each day during which such work is done after notice from the city building surveyor.

Penalties. cf. *Ibid.* s. 317.

(2) If any person, in the course of erection of any building as to which a certificate has been given by the city building surveyor under this Part—

(a) makes any addition to any building other than as shown or mentioned in the plans and specifications in respect of which the certificate was given; or

(b) varies, adds to, or omits any particulars shown or mentioned in the plans and specifications in respect of which the certificate was given,

without the certificate of approval in writing of the city building surveyor, he shall be liable to a penalty not exceeding fifty pounds, and a further penalty not exceeding ten pounds for each day during which such work is done after notice from the city building surveyor.

E

376.

Sydney Corporation (Amendment) Act.

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Penalties.
cf. Act No.
41, 1919,
s. 633.

376. Every person who contravenes or fails to comply with any provision of this Part or of any by-law made thereunder shall, if no penalty is otherwise expressly provided therefor, be liable to a penalty not exceeding twenty pounds, and in the case of a continuing offence to a further daily penalty not exceeding five pounds.

Penalties
extended
to persons
causing
offences.
Ibid. s. 637.

377. Every penalty imposed by or under this Part in the case of any person committing an offence shall extend and apply also to any person—

- (a) who causes the commission of the offence; or
- (b) by whose order or direction the offence is committed; or
- (c) who aids, abets, counsels or procures or by act or omission is directly or indirectly concerned in the commission of the offence.

Recovery of
penalties.
Ibid. s. 639.

378. (1) Any penalty imposed by this Part or by any by-law may be recovered in a summary way before any stipendiary or police magistrate or any two justices in petty sessions.

(2) Where the penalty is a daily penalty, it may be recovered either under a separate information or complaint for each day or under an information or complaint for the sum of the daily penalties.

DIVISION 3.—*Consequential repeals and amendments.*Repeal.
42 Vic.
No. 25.

26. (1) The City of Sydney Improvement Act (Act 42 Vic. No. 25) is hereby repealed to the extent to which it is inconsistent with Part XX of the Principal Act as amended or any by-law made thereunder.

(2) All rules, regulations and by-laws made under the authority of any enactment repealed by subsection one of this section and in force at the commencement of this Part of this Act shall, so far as they are applicable to the City of Sydney and are not inconsistent with Part XX of the Principal Act as amended, remain in force until altered or repealed by by-laws made under the authority of Part XX of the Principal Act as amended and be deemed to have been made under the authority of that Part.

PART XVI.

AMENDMENTS OF LOCAL GOVERNMENT ACT, 1919.

DIVISION 1.—*New municipalities and union of areas.*

27. The Local Government Act, 1919, as amended by subsequent Acts is amended—

Amendment
of Act No. 41,
1919.

(a) by inserting after section 20A the following new section:—

New s. 20B.

20B. (1) Where a new area is constituted by the union of two or more areas in accordance with paragraph (e) of section sixteen the provisions of this section shall have effect.

Liability of
council on
union of
areas.

(2) The council of the united area shall be and remain liable for all outstanding loans to and all liabilities and obligations of the respective councils of the areas united and shall be bound by and shall observe and perform all conditions relating to the said loans and to the maintenance and/or creation of reserves for the repayment thereof.

(3) The limited overdraft accounts of each of the councils of the areas united may, subject to the respective rights of the banks granting the same, be operated upon by the council of the united area in place of and to the same extent as the respective councils of the areas united could have operated on the same until the estimates of the next year are published or until the audit of accounts for the next year, and such council of the united area shall be and remain liable to the respective banks for the moneys from time to time owing on each such limited overdraft account.

(4) Each security given by the councils of the areas united for any loans shall be deemed to be a security given by the council of the united area, and shall remain valid and effectual to the same extent as it was valid and effectual immediately before the union of areas: Provided that, notwithstanding subsection two of section one hundred and eighty-eight of this Act,

Act,

No. 9, 1934.

Act, each security shall as between the respective holders thereof retain the same priority in regard to the income the subject of such security as existed at the time of the union, and for that purpose the council of the united area shall continue to keep a separate account of the income in respect of which each such security was given until an agreement shall be made between the council of the united area and the holders of securities of the areas united as provided by subsection five of this section.

(5) As soon as practicable after the constitution of the new area the Minister shall require the council of the united area to agree with the holders of securities given by the councils of the areas united as to the order of priority of their respective securities.

Until an agreement has been made and executed by all the security holders, each security holder shall continue to have security over the income the subject of such security as he held security over immediately before the union of such areas.

Sec. 21.
(Governor's
Proclamation.)

(b) by inserting at the end of paragraph (q2) of subsection one of section twenty-one the following proviso and new paragraphs :—

Provided that this paragraph shall not apply where the whole of two or more areas are united in accordance with paragraph (e) of section sixteen.

(q3) provide in the case of the constitution of a new area by the union of two or more areas or of areas and parts of areas in accordance with paragraph (e) of section sixteen or in a case where a new area has been already constituted by the union of two or more areas or of areas and parts of areas in accordance with the said paragraph—

(i) for the alteration or variation of the banking arrangements of the councils of the areas which are united

united in whole or in part and for the making by the council of the new area of further or other arrangements with its creditors within the limits of the borrowing powers of the councils of the areas which are so united ;

- (ii) that all acts and things done by the council of the new area pursuant to any proclamation made under this paragraph shall be as valid and effectual as if the provisions of this Act relating to loans made to the councils of the areas which are united in whole or in part had been complied with and that the council of the new area may give fresh securities in respect of any fresh arrangements made by it in accordance with any proclamation made under this paragraph;
- (q4) provide for the application of the whole of the provisions of section 20B or such part or parts thereof as may be deemed necessary in any case where a new area has already been constituted by the union of two or more areas in accordance with paragraph (e) of section sixteen before the date upon which His Majesty's assent to the Sydney Corporation (Amendment) Act, 1934, is signified;
- (c) by omitting from subsection two of section twenty the words and symbols "paragraphs (a), (b), (e) or (f)" and by inserting in lieu thereof the words and symbols "paragraphs (a), (b) or (f) of section sixteen or where it is proposed to unite an area or areas to a part or parts of areas under paragraph (e)";
- (d) by omitting from the same subsection the words "the following provisions" and by inserting in lieu thereof "subsections four to ten both inclusive."

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DIVISION 2.—*Qualification of electors.*

Further amend-
ment of Act
No. 41, 1919.
Sec. 54 (d)
(Residence
qualification).

28. (1) The Local Government Act, 1919, as amended by subsequent Acts is further amended by omitting from paragraph (d) of section fifty-four the words "six months" and by inserting in lieu thereof the words "twelve months."

Commence-
ment of
section.

(2) For the purposes only of the preparation of an original roll required to be prepared for each area under the Local Government Act, 1919, as amended by subsequent Acts, during the year one thousand nine hundred and thirty-four, and of any matters necessary or incidental to such preparation, the provisions of subsection one of this section shall be deemed to have commenced and to have effect on and from the thirty-first day of May one thousand nine hundred and thirty-four.

And upon the completion of the preparation of such original roll in any area the provisions of subsection one of this section shall come into effect in that area for all purposes whatsoever.

DIVISION 3.—*General rates—Rural lands in municipalities.*

Further
amendment
of Act
No. 41, 1919.
Sec. 118.

Urban farm
lands—lower
rate.

29. The Local Government Act, 1919, as amended by subsequent Acts, is further amended by inserting at the end of section one hundred and eighteen the following new subsections—

(2) In any municipality which is wholly outside the County of Cumberland the general rate leviable in respect of urban farm land shall be less in amount than the general rate leviable in respect of other land in the municipality; and in making the general rate the council of the municipality shall fix the amount in the pound of the rate to be levied in respect of urban farm land.

The maximum amount in the pound of such general rate levied in respect of urban farm land shall be not more than—

(a) one-half of the amount in the pound of the general rate levied in respect of other land in the area; or

(b)

- (b) the amount in the pound of the general rate levied in the shire adjoining such municipality (if any), or if there be more than one of such shires the highest amount in the pound of the general rate levied in any of such shires,

whichever is the greater; but no such general rate in respect of such urban farm land shall be less than one penny in the pound on the unimproved capital value thereof.

The onus of proof that land is urban farm land shall lie upon the ratepayer and the council's decision with regard thereto may be the subject of an appeal by him to the Land and Valuation Court in the manner provided by section one hundred and thirty-three of this Act, if the Valuation of Land Act, 1916, applies to the area, or to the Land and Valuation Court or court of petty sessions in the manner provided by section eighteen of Schedule Three of this Act, if the Valuation of Land Act, 1916, does not apply, and the provisions of the said section one hundred and thirty-three, or of sections eighteen to twenty-two of the said Schedule Three as the case may require shall, *mutatis mutandis*, apply with respect to such appeal.

(3) (a) Any number, being not less than fifty, of the owners of urban farm land situated in any municipality the area of which is wholly or partly within the County of Cumberland may petition the Governor for the extension of subsection two of this section to such municipality.

The petition shall contain such details and particulars as are prescribed.

A copy of the petition shall be lodged with the council of the municipality within the time and in the manner prescribed.

The Governor may on receipt of the petition appoint such person as he thinks fit to hold a public inquiry as to the desirability of complying with the request in the petition, and to report thereon.

After

After considering the report of such person the Governor may, if he thinks fit, by proclamation published in the Gazette, extend the provisions of subsection two of this section to the municipality mentioned in the petition; and as from the first day of January next following the date of the publication of the proclamation in the Gazette the provisions of subsection two of this section shall extend and apply to and in respect of such municipality.

(b) Application may be made to the Governor for the revocation of any such proclamation, by the council of the municipality to which such proclamation refers.

The council shall cause such public notice of the application to be given as is prescribed.

The Governor may on receipt of the application appoint such person as he thinks fit to hold a public inquiry as to the desirability of granting the application, and to report thereon.

After considering the report of such person the Governor may, if he thinks fit, by notification published in the Gazette, revoke the proclamation mentioned in the application; and as from the first day of January next following the publication of such notification in the Gazette, the provisions of subsection two of this section shall cease to extend to the municipality referred to in the proclamation so revoked.

(c) The provisions of subsection two of section six hundred and forty-nine of this Act shall apply to any person holding an inquiry under this subsection.

(4) In this section "urban farm land" means parcel of ratable land in a municipality which is valued as one assessment and exceeds five acres in area, and which is wholly or mainly used for the time being by the occupier for carrying on one or more of the businesses or industries of grazing, dairying, pig-farming, poultry-farming, viticulture, orcharding, bee-keeping, horticulture, or vegetable-growing or the growing of crops of any kind.

DIVISION

DIVISION 4.—*Priority of renewal loans.*

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30. The Local Government Act, 1919, as amended by subsequent Acts, is further amended by inserting at the end of subsection two of section one hundred and eighty-two the words "but a loan raised for the purpose of renewing a special, ordinary or renewal loan shall rank in priority in the same order as the loan thereby renewed."

Further amendment of Act No. 41, 1919, s. 182 (2).

DIVISION 5.—*Postponement of certain payments.*

31. (1) The Local Government Act, 1919, as amended by subsequent Acts, is further amended by inserting next after section one hundred and ninety-two the following new section:—

Further amendment of Act No. 41, 1919. New s. 192A.

192A. (1) Notwithstanding anything contained in this or any other Act it shall be lawful for the council, with the approval of the Governor, to enter into an agreement at any time prior to the first day of January, one thousand nine hundred and thirty-six, with the holder of any debenture, debenture coupon, mortgage deed, or bond issued by the council and in existence at the date of the commencement of this section, whereby the terms and conditions of such debenture, coupon, mortgage deed, or bond may be varied by the postponement for a period to be approved by the Governor, of the date for the payment of the principal sum or any part thereof already payable or to become payable or of any interest already payable or which may become payable under or by virtue of such debenture, or coupon, or mortgage deed, or bond.

Agreements for temporary concessions in repayment of loans and/or interest thereon. of Act 4081, 1932 (Vic.), s. 3.

(2) Subject to subsection five of this section, any such agreement shall when made be of the same force and effect as if the terms thereof formed part of and were contained in the debenture, or coupon, or mortgage deed, or bond to which such agreement relates.

Effect of agreement.

(3) A debenture, coupon, mortgage deed or bond, affected by any such agreement, shall be produced by the holder thereof to the council at such place as the holder directs, and the council shall cause to be conspicuously endorsed upon such debenture, or coupon, or mortgage deed, or bond in such

Endorsement on debentures, coupons, mortgage deeds, or bonds.

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a manner as to render such endorsement incapable of being deleted or removed without interfering with the text of such debenture, or coupon, or mortgage deed, or bond, the following words and figures:—

Subject to written agreement dated.....
19..... made under section 192A of the Local Government Act, 1919, as amended by subsequent Acts.

Payment of interest on postponed principal or interest payments.

(4) If any such agreement is entered into providing for the postponement of the date for the payment of principal or interest as aforesaid, it shall be lawful for the council to agree to pay and to pay to the holder of the debenture or coupon or mortgage deed or bond affected by the agreement interest on the principal or interest the payment of which is so postponed at such rate as may be agreed upon between the council and the holder not being greater than the rate payable at the date of the agreement under the debenture or coupon or mortgage deed or bond as the case may be.

In the application of this subsection to a coupon the rate of interest payable at the date of the agreement under the coupon shall be the rate of interest payable at the date of the agreement under the debenture to which such coupon was or is annexed.

Effect on agreement of appointment of receiver.

(5) In the event of default occurring in the payment by a council of any moneys secured by a debenture, coupon, mortgage deed, or bond which is not affected by any agreement under this section, and such default results in the appointment of a receiver at the instance of the holder of such debenture, coupon, mortgage deed, or bond, any agreement made pursuant to this section by such council with any other holder of a debenture, coupon, mortgage deed, or bond shall from the date of the appointment of such receiver have no further force, operation or effect; but the council shall remain liable to pay any interest which has accrued under such agreement to the date of its ceasing to have any further force, operation or effect as aforesaid, and such interest shall remain as fully and effectually secured as if the said agreement had remained in full force, operation and effect, and shall have the same

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same priority as the moneys secured by the debenture or coupon or mortgage deed or bond the subject matter of such agreement.

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DIVISION 6.—*Depot rubbish.*

32. The Local Government Act, 1919, as amended by subsequent Acts is further amended by inserting after section two hundred and eighty-four the following new section:—

Further amendment of Act No. 41, 1919. New s. 284A.

284A. In no circumstances shall depot rubbish be disposed of by being conveyed to sea, or by being thrown, cast or deposited in the sea.

Depot rubbish not to be taken to sea.

DIVISION 7.—*Sewerage works.*

33. (1) The Local Government Act, 1919, as amended by subsequent Acts, is further amended by inserting at the end of subsection two of section three hundred and seventy-three the following provisos:—

Further amendment of Act No. 41, 1919, s. 373 (2). (Sewerage works.)

Provided that any works of sewerage or works incidental thereto under this Part which are situated or are to be situated either wholly or in part outside the area of the council, may be constructed, managed and operated by the Minister for Public Works or the council, as the case may require, notwithstanding the fact that the council of any area in which such works are situated or are to be situated either wholly or in part has not consented to such construction, management or operation:

Provided further that before commencing the construction of any new works outside the area of the council after His Majesty's assent to the Sydney Corporation (Amendment) Act, 1934, has been signified the Minister for Public Works shall give notice in writing to the council of the area in which such works are proposed to be constructed, and shall, before proceeding with the proposal, investigate and consider any objection which such council may make to the construction and operation of such works in its area.

The word "works" in this section includes any alteration, enlargement, rebuilding or extension of any existing works.

(2)

No. 9, 1934.

(2) The first proviso inserted in subsection two of section three hundred and seventy-three of the Local Government Act, 1919, by subsection one of this section shall be deemed to have commenced upon the date of the commencement of the Local Government Act, 1919.
