

LOCAL GOVERNMENT (AMENDMENT) ACT.

Act No. 18, 1951.

An Act to make further provision with respect to the town and country planning scheme for the County of Cumberland; to confer certain additional powers upon the Cumberland County Council; to prescribe a new procedure for the acquisition of land by councils; for these and other purposes to amend the Local Government Act, 1919, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 27th June, 1951.]

George VI.
No. 18, 1951.

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

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Local Government (Amendment) Act, 1951."

(2) Short title, construction and division into Parts.

Local Government (Amendment) Act.**No. 18, 1951.**

(2) This Act shall be read and construed with the Local Government Act, 1919, as amended by subsequent Acts, which Act as so amended is in this Act referred to as the Principal Act.

(3) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—SCHEME FOR THE COUNTY OF CUMBERLAND.

PART III.—AMENDMENT OF PART XXV OF THE LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS.

PART IV.—GENERAL.

SCHEDULE.

PART II.**SCHEME FOR THE COUNTY OF CUMBERLAND.**

**Scheme for
the County
of
Cumberland.**

2. (1) The provisions set forth in the Schedule to this Act shall, notwithstanding the provisions of Part XIIA of the Principal Act relating to the preparation of town and country planning schemes, be the scheme required by Division 8 of the said Part to be prepared for the County of Cumberland.

Such scheme may be referred to as the County of Cumberland Planning Scheme.

(2) Such provisions shall be deemed to be an ordinance made by the Governor prescribing the scheme under section 342K of the Principal Act. Such ordinance shall, notwithstanding the provisions of subsection four of section 342AT of the Principal Act, take effect upon the day upon which His Majesty's assent to this Act is signified.

(3)

(3) The scheme embodied in such ordinance shall be a prescribed scheme to which the provisions of Part XIII_A of the Principal Act relating to prescribed schemes shall apply. No. 18, 1951.

(4) The Cumberland County Council may by a subsequent scheme vary the County of Cumberland Planning Scheme and for the purposes of any such variation the provisions of Part XIII_A of the Principal Act relating to variations of prescribed schemes shall apply, *mutatis mutandis*, to any variation of the County of Cumberland Planning Scheme.

Any such subsequent scheme shall include provision only for such matters consistent with the provisions of Part XIII_A of the Principal Act as may from time to time be prescribed by ordinance, which ordinance the Governor may make under the Principal Act.

3. In the application of subsection three of section 342K of the Principal Act to the County of Cumberland Planning Scheme the said subsection shall be deemed to be amended— Maps, plans and specifications.

(a) by omitting subparagraph (ii) of paragraph (b) and by inserting in lieu thereof the following subparagraphs:—

(ii) shall be lodged with the Registrar-General;

(iii) shall, in so far as they relate to land within the area of a council being a responsible authority and to the land adjoining such area, be lodged with such responsible authority.

(b) by inserting in paragraph (c) after the word “particulars” the words “lodged with a responsible authority pursuant to subparagraph (iii) of paragraph (b) of this subsection”.

4. (1) The Governor, under and subject to the provisions of Part XXIX of the Principal Act, may, notwithstanding that a request for such delegation has not been made by the councils concerned, delegate to the Cumberland County Council the power to exercise or perform Delegation of powers to Cumberland County Council.

No. 18, 1951. perform such powers and duties (including the power to levy rates and to borrow) which by law those councils or any one of them may exercise or perform and which are necessary for the purposes of carrying into effect and of enforcing those provisions of the County of Cumberland Planning Scheme or any other prescribed scheme in respect of which the Cumberland County Council is the responsible authority.

(2) Where a delegation has been made in pursuance of subsection one of this section, each council concerned shall have full power to exercise or discharge so much of any power or duty which by law may be exercised or discharged by a council in relation to town and country planning as has not been delegated to the Cumberland County Council.

(3) The Cumberland County Council shall in respect of the County of Cumberland Planning Scheme be, for the purposes of Division 9 of Part XIIA of the Principal Act, deemed to be "the council which is the responsible authority concerned" referred to in that division.

**Town and
Country
Planning
Fund.**

5. In the application of section 342AQ of the Principal Act to and in respect of the Cumberland County Council such section shall be deemed to be amended by inserting at the end of subsection two the following paragraphs:—

- (f) any purpose of a planning scheme of any council of any area wholly or partly included in the County of Cumberland;
- (g) any expenditure incurred by the Cumberland County Council in assisting the council of any area wholly or partly included in the County of Cumberland in the preparation of a planning scheme for such area.

PART III.

No. 18, 1951.

AMENDMENT OF PART XXV OF THE LOCAL GOVERNMENT ACT, 1919, AS AMENDED BY SUBSEQUENT ACTS.

6. The Principal Act is amended by omitting section five hundred and thirty-six and by inserting in lieu thereof the following new sections:—

Amendment of Act No. 41, 1919.

Subst. sec. 536 and new secs. 536A-536E.

536. (1) The council may, from time to time, with the approval of the Governor, cause a notice of the resumption or appropriation of any land, together with a description of such land, to be published in the Gazette and in a newspaper circulating in the area in which the land is located.

Method of resumption.

Act No. 58, 1932, s. 248.

(2) A plan of such land showing, as far as can be ascertained, the separate parcels thereof, and the names of the owners of the separate parcels, shall be filed by the council in the office of the council and a copy of the plan shall be lodged with the Surveyor-General at the Department of Lands, Sydney. Such plans shall be open for public inspection.

536A. Upon publication in the Gazette of any such notice and description, the land therein described shall, for the purposes and subject to the provisions of this Act, be vested in the council for an estate in fee simple in possession freed and discharged from all trusts, obligations, estates, interests, contracts, charges, rates, rights of way, or easements whatsoever.

Vesting. *Ibid.* s. 249.

536B. The owner of any land so resumed, or the person who, but for the provisions of this Act, would have been such owner, shall be entitled to receive compensation for such land.

Owner entitled to compensation. *Ibid.* s. 250.

536c. (1) For the purpose of ascertaining and dealing with such compensation and for other purposes subsidiary thereto the provisions of section forty-five, sections fifty-three to seventy-nine, both inclusive, sections one hundred and two, one hundred and three, one hundred and six, and one hundred and twenty-four, sections one hundred and twenty-six to one hundred and thirty-one, both inclusive, sections one hundred and thirty-five and one hundred and thirty-six

Compensation. *cf. Ibid.*

No. 18, 1951.

thirty-six of the Public Works Act, 1912, as amended by subsequent Acts, shall, without limiting the provisions of section 157A of the Conveyancing Act, 1919, as amended by subsequent Acts, apply, mutatis mutandis, to the resumption or appropriation of land by the council.

(2) Without prejudice to the generality of subsection one of this section, the Public Works Act, 1912, as amended by subsequent Acts, shall, for the purposes of that subsection and not otherwise, be deemed to be amended in the following manner:—

- (a) by omitting from the sections specified in subsection one of this section other than sections one hundred and three and one hundred and twenty-four the words “Constructing Authority” wherever occurring and by inserting in lieu thereof the word “council”;
- (b) (i) by omitting from section fifty-three the words “so seised, possessed or entitled as aforesaid”;
- (ii) by omitting from the same section the words “as in the preceding section mentioned” and by inserting in lieu thereof the words “and may claim compensation in respect of the land resumed and agree to, settle and determine with the council the amount of such compensation”;
- (iii) by inserting in subsection three of the same section after the word “release” the words “and to claim, agree to, and settle and determine with the council the amount of compensation”;
- (iv) by omitting subsection five of the same section;
- (c) (i) by omitting from section one hundred and two the words “and upon the Crown Solicitor”;
- (ii) by inserting at the end of the same section the following new subsection:—
 - (2) Upon receipt of such notice of claim the council shall obtain from its solicitor a report

report on the title of the land in respect of which the claim has been served upon it by the claimant. No. 18, 1951.

- (d) by omitting from section one hundred and three the words "Crown Solicitor he shall forward the same, together with his report thereon to the Constructing Authority, who" and by inserting in lieu thereof the words "council it";
- (e) by omitting section one hundred and twenty-four and by inserting in lieu thereof the following section:—

124. For the purpose of ascertaining the compensation to be paid regard shall in every case be had by the court not only to the value of the land taken but also to the damage (if any) caused by the severing of the lands taken from other lands of the owner or by the exercise of any statutory powers by the council otherwise injuriously affecting such other lands and the court shall assess the compensation according to what it finds to have been the value of such lands, estate or interest at the time the notice was published in the Gazette and without being bound in any way by the amount of the valuation notified to such claimant, and without reference to any alteration in such value arising from the construction of any works upon the land taken:

Provided that the court in ascertaining such compensation shall take into consideration and give effect to, by way of set-off or abatement, any enhancement in the value of the interest of any such owner in any land adjoining the land taken or severed therefrom by the construction of any works on the land taken, but in no case shall this proviso operate so as to require any payment to be made by such owner to the council in consideration of such enhancement of value as aforesaid:

Provided also that in the case of land under the surface taken or acquired by notice in the Gazette

No. 18, 1951.

Gazette for the purpose of constructing a subterranean tunnel no compensation shall be allowed unless—

- (a) the surface of the overlying soil is disturbed; or
 - (b) the support to such surface is destroyed or injuriously affected by the construction of such tunnel; or
 - (c) any mines or underground workings in or adjacent to such land are thereby rendered unworkable or are so affected as aforesaid.
- (f) (i) by inserting at the end of subsection two of section one hundred and twenty-six the following further proviso:—
- Provided further that in every case where a claim is not served within ninety days from the publication in the Gazette of the notification of resumption or appropriation the compensation shall bear interest only from the date of service of the notice of claim.
- (ii) by omitting subsection three of the same section;
- (g) (i) by omitting from subsection one of section one hundred and thirty-five the words “such conveyances” and by inserting in lieu thereof the words “conveyances or assurances of lands taken”;
- (ii) by omitting from subsection two of the same section the words “incurred on the part as well of the vendor as of the purchaser”.

Appeals
as to
valuation.

536b. If the council and the claimant do not agree as to the amount of compensation the claim may be heard and determined as provided in section nine of the Land and Valuation Court Act, 1921-1940.

Ordinances.

536E. Ordinances may be made for carrying this Part into effect and in particular for and with respect to requiring notice of any proposed resumption to be

be given by the council to the owners of lands proposed to be resumed and prescribing the form of such notices. **No. 18, 1951.**

PART IV.

GENERAL.

7. Notwithstanding the provisions of Part III of this Act all applications made by councils before the date of commencement of this Act for the acquisition of land by appropriation or resumption under section five hundred and thirty-six of the Principal Act as enacted immediately before such commencement may be dealt with and completed by the Governor, the Minister or any officer or person in all respects as though this Act had not been passed. Applications for resumption already made.

8. The Principal Act is amended by omitting paragraphs (a) and (b) of subsection four of section 342A and by inserting in lieu thereof the words "by inserting after subsection one the following subsection:— Further amendment of Act No. 41, 1919. Sec. 342A. (Ordinances.)

(1A) A copy of the ordinance shall be sent by post to each Member of the Legislative Assembly and to each Member of the Legislative Council as soon as may be after the publication thereof."

SCHEDULE.

Sec. 2.

COUNTY OF CUMBERLAND PLANNING SCHEME.

PART I.

PRELIMINARY.

1. This Ordinance may be cited as the "County of Cumberland Planning Scheme Ordinance". Title.

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

Division into Parts.

PART I.—PRELIMINARY.

PART II.—RESERVATION OF AND RESTRICTIONS ON USE OF CERTAIN LAND.

PART

Local Government (Amendment) Act.**No. 18, 1951.**

PART III.—BUILDING RESTRICTIONS AND USE OF LAND.

PART IV.—MAINTENANCE, USE, ALTERATION, ENLARGEMENT AND
EXTENSION OF EXISTING BUILDINGS AND WORKS AND
CONTINUANCE OF EXISTING USE OF LAND.

PART V.—GENERAL AMENITY AND CONVENIENCE.

PART VI.—CONSENTS.

PART VII.—GENERAL PROVISIONS.

SCHEDULE.

Interpre-
tation.

3. In this Ordinance unless the context or subject matter otherwise indicates or requires—

“Appointed day” means the day upon which the Local Govern-
ment (Amendment) Act, 1951, commences.

“Building” includes any structure or any part thereof.

“County road” means any road indicated on the scheme map as
land shown white between black lines or shown broken white
between broken black lines irrespective of whether such road
is a main road within the meaning of the Main Roads Acts,
1924-1950.“Erection,” “erect” and similar expressions in relation to
building, include any structural work or any alteration,
addition, or rebuilding.“Existing building” and “existing work” mean respectively a
building or work erected, constructed or carried out before
the appointed day, and a building or work begun before,
but completed after, the appointed day.“Existing use” means a use of a building, work or land for
the purpose for which it was used immediately before the
appointed day.“Extractive industry” means an industry or undertaking, not
being a mine, which depends for its operations on the taking
of extractive material from the land upon which it is
situated.“Extractive material” means sand, gravel, clay, turf, soil, rock,
stone and similar substances.“Foreshore scenic protection area” means any land shown on
the scheme map by blue hatchings and any land declared
by proclamation to be a Foreshore Scenic Protection Area
for the purposes of this Ordinance.“Forestry” includes arboriculture, silviculture, forest protection,
dressing and preparation of wood and other forest products
and the establishment of roads required for the removal of
wood and other forest products and for forest protection.

“Industry” includes—

- (a) any manufacturing process within the meaning of
the Factories and Shops Act, 1912-1950;
- (b) the breaking up or dismantling of any goods or
any article for trade or sale or gain or as ancillary
to any business;

(c)

(c) the winning of extractive material.

No. 18, 1951.

“Land” includes any estate or interest in land (whether legal or equitable) and any easement, right or privilege in, over, or affecting land and also includes all lands of the Crown.

“Mine” means any place, open cut, shaft, tunnel, pit, drive, level or other excavation, drift, gutter, lead, vein, lode or reef whereon, wherein or whereby any operation is carried on for or in connection with the purpose of obtaining any metal or mineral by any mode or method, and any place adjoining on which any product of the mine is stacked, stored, crushed, or otherwise treated, but does not include a quarry.

“Public building” means a building designed, used or intended to be used by Government Departments, statutory bodies representing the Crown, or councils as offices or for administrative or other like purposes.

“Public utility undertaking” means any of the following undertakings carried on or permitted or suffered to be carried on by or by authority of any Government Department or under the authority of or in pursuance of any Commonwealth or State Act, that is to say—

- (a) railway, tramway, road transport, water transport, air transport, wharf, harbour or river undertakings;
- (b) undertakings for the supply of water, hydraulic power, electricity or gas or the provision of sewerage or drainage services;

and any reference to a person carrying on any public utility undertaking shall be deemed to include a reference to a council, county council, Government Department, corporation, firm or authority carrying on such undertaking.

“Scheme” means the County of Cumberland Planning Scheme.

“Scheme map” means the map, showing details of this scheme marked “COUNTY OF CUMBERLAND PLANNING SCHEME AS PREPARED AND SUBMITTED BY THE CUMBERLAND COUNTY COUNCIL AND AMENDED BY THE MINISTER” filed in the Department of Local Government, Sydney, and registered in the Plan Register of that Department Number 128.

“Special uses” include the use of land or buildings for—

- (a) public buildings or educational, cultural or medical purposes;
- (b) cemeteries, crematoria or abattoirs;

(c)

No. 18, 1951.

- (c) defence areas;
- (d) public utility undertakings.

“The Act” means the Local Government Act, 1919, as amended by subsequent Acts.

“Zone” means the land shown on the scheme map by distinctive colouring or edging or some other distinctive manner for the purpose of indicating the restrictions imposed by Part III of this Ordinance on the erection and use of buildings or works or the use of land in such zone.

Land to which scheme applies.

Cumberland County Council to be responsible authority for certain purposes.

4. This Ordinance applies to all land within the Cumberland County District.

5. In respect of the provisions of this Ordinance relating to—

- (a) Part II—Reservation of and Restrictions on Use of Certain Land;
- (b) Green Belt Zone;
- (c) Special Uses Zone;
- (d) the granting of any consent required by or under this Ordinance to the erection or use of buildings or the carrying out of works on lands of the Crown or on the lands of any public utility undertaking or the use of such lands;
- (e) places of scientific or historic interest;
- (f) controlled access roads and restriction of ribbon development,

the Cumberland County Council shall be the responsible authority and shall be charged with the functions of carrying into effect and enforcing such provisions.

Councils to be responsible authorities for certain purposes.

6. (1) In respect of the provisions of this Ordinance other than those enumerated in clause 5 the council shall be the responsible authority and shall be charged with the functions of carrying into effect and enforcing the provisions of this Ordinance other than those enumerated in clause 5.

(2) The powers, authorities, duties and functions conferred and imposed on the responsible authority by this clause shall apply in respect of each area to the council of the area.

PART II.

RESERVATION OF AND RESTRICTIONS ON USE OF CERTAIN LAND.

Division 1.

Application of Part.

7. This Part shall apply to all land shown on the scheme map in the following manner, viz.:—

- All land coloured dark green;
- All land coloured light green;

All

All land shown broken white between broken black lines and all land shown white between black lines; **No. 18, 1951.**

All land shown between triple broken black lines on grey background.

8. In this Part, unless the context or subject matter otherwise indicates or requires— **Definitions.**

“Built-up land” means all land other than vacant land;

“Vacant land” means land upon which immediately before the appointed day there were no buildings or upon which the only buildings were fences, green-houses, conservatories, garages, summer-houses, private boat-houses, fuel sheds, tool-houses, cycle sheds, aviaries, milking bails, hay-sheds, stables, fowl-houses, pig sties, barns or the like.

Division 2.

9. This Division shall apply only to land which is vacant land and the expression “land” where used in this Division means vacant land. **Application of Division.**

10. The several pieces of land specified in Column 1 of the Table to this clause are reserved for the purposes set out opposite such land in Column 2 of the Table. **Reservation of land.**

TABLE.

<i>Column 1.</i> Indication on scheme map of land reserved.	<i>Column 2.</i> Purposes for which land is reserved.
All land coloured dark green ... All land coloured light green ...	Parks and recreation areas. Foreshore reservations and places of natural beauty or advantage.
All land shown broken white between broken black lines and all land shown white between black lines.	New county roads and widening of existing county roads.
All land shown between triple broken black lines on grey background.	New railways.

11. (1) Except as provided by subclauses two and three of this clause and by clause 12, no person shall— **Buildings, &c., not to be erected on reserved land without consent.**

(a) erect a building or carry out work of a permanent character or make any permanent excavation on land reserved under this Division other than a building or work or excavation required for or incidental to the purpose for which the land is so reserved;

(b) spoil or waste land reserved under this Division so as to destroy or impair its use for the purpose for which it is reserved.

No. 18, 1951.

(2) Where it appears to the responsible authority that the purpose for which the land is reserved cannot be carried into effect immediately after the appointed day the responsible authority may, with the consent of the council or statutory body concerned, approve in connection with such land the erection thereon of buildings and the carrying out of works and the making of excavations thereon.

(3) Any such approval may be subject to such conditions including conditions requiring the removal or alteration of the building or works or the reinstatement of the land or the removal of any waste materials or refuse, at any time either with or without compensation, as the responsible authority thinks fit.

(4) Nothing in this clause shall apply to any land which immediately before the appointed day was vested in any council, public body or trustees and is held by such council, body or trustees for the purpose for which such land is reserved under this Division.

(5) Nothing in this clause shall operate to prohibit the fencing of any land reserved under this Division.

Variation of boundaries of reserved land.

12. (1) This clause shall apply only to land reserved under this Division for the purpose of parks and recreation areas, foreshore reservations and places of natural beauty or advantage.

(2) Where in the opinion of the responsible authority—

(a) the development which has taken place before the appointed day in the immediate vicinity of any separate parcel of land or part thereof renders that parcel or part unsuitable for the purpose for which it is reserved; and

(b) the purpose for which the reservation is made will not be substantially prejudiced by the erection of a building;

the responsible authority may approve of the erection of a building on such parcel or part.

(3) (a) Where any such approval is given the responsible authority shall publish a notice in the Gazette notifying that the land therein described is not required for the purpose for which it has been reserved.

(b) Upon publication of such notice the land described therein shall cease to be reserved for the purpose for which it has been reserved under this Division.

(c) A copy of such notice shall be served on the Minister, the Registrar-General and the council.

Division 3.

Application of Division.

13. This Division shall apply only to land which is built-up land and the expression "land" where used in this Division means built-up land.

14. (1) This clause shall apply only to land coloured dark green and land coloured light green on the scheme map. **No. 18, 1951.**

Built-up land in recreation areas.

(2) Land shall not be used without the consent of the responsible authority for any purpose other than the purpose for which such land was used immediately before the appointed day.

15. (1) This clause shall apply only to land shown white between black lines and land shown between triple broken black lines on grey background.

Built-up land on proposed routes of roads and railways.

(2) Land shall not be used without the consent of the responsible authority for any purpose other than the purpose for which the land was used immediately before the appointed day.

(3) The erection of a building shall not be undertaken without the consent of the responsible authority.

Division 4.

16. This Division shall apply both to vacant land and built-up land. **Application of Division.**

17. The owner of any land reserved under Division 2 of this Part upon which the erection of any building or the carrying out of any work of a permanent character or the making of any permanent excavation is prohibited or the owner of any land so reserved on which the responsible authority has refused to approve of the erection of a building or the carrying out of any work of a permanent character or the making of any permanent excavation may, by notice in writing, require the responsible authority to acquire such land. **Acquisition of land.**

Upon receipt of any such notice the responsible authority shall acquire the land to which the notice relates.

18. (1) The responsible authority may and upon such terms and conditions as may be agreed upon transfer any land which has been acquired by it in pursuance of clause 17 to the council or the statutory body concerned. **Transfer of land.**

(2) The responsible authority may, with the consent of the council or of any public body or trustees, place any land acquired for parks and recreation areas, foreshore reservations or places of natural beauty or advantage under the care, control and management of such council, public body or trustees.

19. (1) Any council or statutory body concerned in any land to which this Part applies may from time to time notify the responsible authority of a schedule of proposals in conformity with this scheme which the council or statutory body, pursuant to any powers, authorities, duties and functions conferred by any Act, proposes to carry into effect in relation to such land. **Schedule of proposals.**

(2) Where any such notice has been given the responsible authority shall not thereafter incur any expense in respect of the acquisition or otherwise of the land which is required in connection with

No. 18, 1951. with such proposals and shall upon such terms and conditions as may be agreed transfer to the council or statutory body concerned any land which has been acquired by the responsible authority in connection with such proposals before the receipt of such notice.

Relocation
of county
roads and
railways.

20. (1) Any statutory body concerned may make application to the responsible authority for the relocation or alteration of the route of any county road or railway indicated on the scheme map and shall indicate the relocation or alteration required.

(2) The responsible authority may, with the concurrence of any statutory body concerned, relocate or alter the route of any such road or railway.

(3) Where an application is made under this clause or where the responsible authority proposes to relocate or alter the route of any county road or railway the responsible authority shall—

(a) notify brief particulars in the Gazette and in a newspaper circulating in the locality; and

(b) notify each owner of land affected by such proposed relocation or alteration of such proposal by registered letter addressed to the last known address of such owner.

Any such notification shall state that full particulars of the proposed relocation or alteration together with a plan or aerial photograph showing the land affected thereby may be inspected at such places as are designated and that objections against the proposal may be made in writing to the responsible authority on or before the date specified in the notice by any person who has an estate or interest in the land.

(4) On or before the date so specified any such person may make objection in writing to the responsible authority against the proposal to relocate or alter the route of any county road or railway.

(5) The responsible authority shall consider any such objection and after making any adjustments which may be considered desirable and which are concurred in by the statutory body concerned may with the approval of the Governor relocate or alter the route of the county road or railway.

(6) In this clause "statutory body concerned" means a statutory body which is responsible for the construction of the county road or railway in respect of which an application is made to the responsible authority and includes the Commissioner for Main Roads in respect of any road which is or which may be classified as a main road under the Main Roads Acts, 1924-1950.

Plans of
relocation
or altera-
tion.

21. (1) Where the route of a county road or railway has been relocated or altered under the provisions of clause 20 the responsible authority shall cause to be prepared four copies of a plan showing such relocation or alteration and the land which is required for the purposes of the county road or railway as so relocated or altered. The plans shall also indicate any land which is no longer required

required for the purpose of the county road or railway as relocated or altered and the zones in which such land shall be included or the purposes for which such land shall be reserved in accordance with this Part. **No. 18, 1951.**

(2) Such plans shall be sealed with the seal of the responsible authority and thereafter one plan shall be attached to the scheme map, one shall be forwarded to the Registrar-General, one to the Minister and the other shall be forwarded to the statutory body concerned.

(3) The responsible authority shall notify in the Gazette and in a newspaper circulating in the locality that the route of the county road or railway has been relocated or altered and that the plans have been forwarded to the authorities referred to in subclause two of this clause.

22. (1) The provisions of this clause shall take effect on the date of the notification referred to in clause 21. **Effect of relocation.**

(2) (a) The provisions of Divisions 2 and 3 of this Part relating to county roads or railways shall cease to apply to the land shown on the plans referred to in such notification as being no longer required for the purpose of the county road or railway as relocated or altered.

(b) Such land shall be deemed to be included in the zone indicated on such plans or reserved in accordance with the provisions of this Part and the provisions of this Ordinance relating to land included in a zone or so reserved shall apply to such land.

(3) (a) The provisions of this Part shall apply to any land shown on the plan referred to in such notification as being required for the purposes of the county road or railway as relocated or altered in all respects and to the like extent as if such land were land to which this Part applies and the provisions of Divisions 2 and 3 of this Part shall apply thereto in the case of vacant land and built-up land, respectively.

(b) Such land shall be deemed to be no longer included in a zone or reserved for purposes other than county roads or railways and the provisions of this Ordinance relating to land included in a zone or so reserved shall cease to apply to such land.

23. (1) A plan showing any land as being land to which this Part applies purporting to be certified under the hand of the servant of the responsible authority authorised in that behalf shall be prima facie evidence of the fact that such land is shown on the scheme map as land to which this Part applies. **Effect of plan.**

(2) In the case of land shown white between black lines and land between triple broken black lines on grey background such plan shall also be certified by the statutory body responsible for the county road or railway.

No. 18, 1951.

PART III.

BUILDING RESTRICTIONS AND USE OF LAND.

Interpreta-
tion.

24. In this Part, unless the context or subject matter otherwise indicates or requires—

“Agriculture” has the meaning ascribed to it in section 514A of the Act.

“Amenity building” means a building or part of a building used or designed for use for the personal comfort or convenience of or enjoyment of leisure by persons engaged in an industrial or commercial undertaking.

“Commercial premises” means any building or place, or portion of a building or place used or designed to be used as an office or for other business or commercial purposes or the storage of goods but does not include a place of instruction or place of assembly or a building used or designed for use for an industry or for a shop.

“Country dwelling” in relation to a Rural Zone and Green Belt Zone means a dwelling-house with not less than five acres of land, or such other area as may be fixed by the Governor by proclamation under this Ordinance, within its curtilage or a dwelling-house occupied in conjunction with not less than five acres (or such other area as may be fixed as aforesaid) of neighbouring land on which no buildings may be erected other than buildings ordinarily incidental to the enjoyment of a country dwelling-house.

“Dwelling-house” means a building designed for use as a dwelling for a single family, together with such outbuildings as are ordinarily used therewith, and includes a dwelling in a row of two or more dwellings attached to each other such as are commonly known as semi-detached or terrace buildings.

“Generating works” means a building or place used or designed for use for the purpose of making or generating gas, electricity or other forms of energy.

“Hospital” means a building used or designed for use as a hospital, sanatorium, health centre or dispensary, nursing home, home for the aged, benevolent institution, or convalescent home, whether public or private, but does not include an institution.

“Institution” means a building used or designed for use wholly or principally for—

- (a) a hospital or sanatorium for the treatment of infectious or contagious diseases;
- (b) a home or other institution for mental defectives;
- (c) a mental hospital;
- (d) a penal or reformatory institution.

“Light

“Light industry” means an industry, not being an offensive or hazardous industry, in which the processes carried on, the transportation involved or the machinery or materials used do not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil, or otherwise. **No. 18, 1951.**

“Local light industry” means any light industry which—

- (a) is carried on in a building whether on one or more floors or in one or more buildings with a total floor space not exceeding 5,000 square feet;
- (b) does not require the provision of any essential service mains of a greater capacity than that required for the normal development of a living area zone;
- (c) does not, by the carriage of goods or materials, create traffic upon public roads in the neighbourhood likely to create congestion or danger or requiring roads of a higher standard than would be necessary for the normal development of a living area zone.

“Offensive or hazardous industry” means an industry which, by reason of the processes involved or the method of manufacture, or the nature of the materials used or produced requires isolation from other buildings and those trades which, for the time being, are declared noxious under the Noxious Trades Act, 1902.

“Place of assembly” means—

- (a) a building used or designed for use as a public hall, theatre, cinema, music hall, concert hall or dance hall;
- (b) a building used or designed for use in connection with a racecourse or racing track or ground for other sports or amusements which is intended to be ordinarily open to the public on payment of a charge;
- (c) a building used or designed for use as a non-residential club;
- (d) any other place of public assembly being a building whether or not used for purposes of gain not being a place of public worship, place of instruction or an institution.

“Place of instruction” means a building used or designed for use as a school, college, university, technical institute, academy, lecture hall or other educational centre and a public library or gallery, museum or gymnasium but does not include a building designed for use wholly or principally as a penal or reformatory institution.

“Place

No. 18, 1951.

“Place of public worship” means a building used or designed for use as a church, chapel or other place of public worship, and a building used or designed for use for the purpose of religious training.

“Residential building” means a building, other than a dwelling-house, designed for use for human habitation together with such outbuildings as are ordinarily used therewith, a residential flat building, a hostel, an hotel designed primarily for residential purposes and a residential club, but does not include any building mentioned, whether by inclusion or exclusion, in the definitions of “places of instruction” and “institution”.

“Rural industry” means any industry handling, treating, processing or packing primary products grown, reared or produced in the locality, and a workshop servicing plant or equipment used for rural purposes in the locality.

“Shop” means any building or place, or portion of a building or place, used or designed for use for the purpose of exposing or offering goods for sale by retail, and any premises which may be licensed by the council as a refreshment room and any premises licensed under the Liquor Act, 1912, as amended by subsequent Acts.

“Tourist establishment” means a building designed or substantially used or land substantially used for rendering service to or providing accommodation for travellers, tourists or persons engaged in recreational pursuits.

“Utility installation” means any building or work designed for use by a public utility undertaking but does not include a building designed wholly or principally as administrative or business premises or as a showroom.

“Village” means land zoned as a village, hamlet or rural settlement in a planning scheme.

Building designed for more than one use.

25. Where a building is used, or a proposed building is designed for more than one use it shall be treated for the purposes of this Part as being used or designed partially for each of those uses.

Erection or use of buildings.

26. The purposes—

- (a) for which buildings may be erected or used without the consent of the responsible authority;
- (b) for which buildings may be erected or used only with the consent of the responsible authority; and
- (c) for which buildings may not be erected or used;

in each of the zones specified in Part I or Part II of the Table to this clause are respectively shown in the third, fourth and fifth columns of the Table set out opposite thereto, but no building operations shall be undertaken on land within the zone specified in Part II of the Table unless a notice applying to the land has been given under paragraph (a) of section 342r of the Act and such notice is still operative or permission to erect a building has been granted under paragraph (e) of the said section.

TABLE

TABLE
PART I.

<i>Column I.</i> Zone.	<i>Column II.</i> Reference to scheme map.	<i>Column III.</i> Purposes for which buildings may be erected or used <i>without consent</i> of responsible authority.	<i>Column IV.</i> Purposes for which buildings may be erected or used only with the consent of the responsible authority.	<i>Column V.</i> Purposes for which buildings may not be erected or used.
1. Living Area	Light scarlet colour	Dwelling-houses	Residential buildings; places of public worship; places of assembly; places of instruction; public buildings; hospitals; shops; commercial premises, other than warehouses and bulk stores; professional chambers; local light industries; utility installations other than generating works; any other purpose not referred to in Column III or Column V.	Generating works; warehouses; bulk stores; industries other than local light industries; mines; institutions.

TABLE

TABLE—continued.
PART I—continued.

Column I. Zone.	Column II. Reference to scheme map.	Column III. Purposes for which buildings may be erected or used <i>without consent</i> of responsible authority.	Column IV. Purposes for which buildings may be erected or used only with the consent of the responsible authority.	Column V. Purposes for which buildings may not be erected or used.
2. Business and Commercial Centre (County).	Dark crimson colour superimposed with the words "County Centre".	.....	Residential buildings; dwellings; houses; public buildings; places of public worship; places of instruction; hospitals; places of assembly; shops; commercial premises; professional chambers; utility installations other than generating works and gas holders. Industries other than offensive or hazardous industries or extractive industries. Any other purpose not referred to in Column V.	Institutions; offensive or hazardous industries; mines; extractive industries; generating works and gas holders.

TABLE

TABLE—continued.
PART I—continued.

<i>Column I.</i> Zone.	<i>Column II.</i> Reference to scheme map.	<i>Column III.</i> Purposes for which buildings may be erected or used without consent of responsible authority.	<i>Column IV.</i> Purposes for which buildings may be erected or used only with the consent of the responsible authority.	<i>Column V.</i> Purposes for which buildings may not be erected or used.
3. Business and Commercial Centre (District).	Dark crimson colour .....	.....	Public buildings; places of public worship; places of instruction; hospitals; dwelling-houses; residential buildings; places of assembly; shops; commercial premises; professional chambers; utility installations other than generating works and gas holders; local light industries. Any other purposes except those for which buildings may not be erected or used under Column V.	Industries other than local light industries; mines; institutions; generating works and gas holders.

TABLE

No. 18, 1951.

TABLE—continued.
PART I—continued.

<p><i>Column I.</i> Zone.</p>	<p><i>Column II.</i> Reference to scheme map.</p>	<p><i>Column III.</i> Purposes for which buildings may be erected or used <i>without consent</i> of responsible authority.</p>	<p><i>Column IV.</i> Purposes for which buildings may be erected or used only with the consent of the responsible authority.</p>	<p><i>Column V.</i> Purposes for which buildings may not be erected or used.</p>
<p>4. Industrial Class "A."</p>	<p>Purple colour super-imposed with the letter "A."</p>	<p>.....</p>	<p>Any purposes except those for which buildings may not be erected or used under Column V.</p>	<p>Any offensive or hazardous industry except one for which the proposed site and layout of buildings is such as to render the industry inoffensive or non-hazardous to adjoining development and for which adequate facilities are available for the treatment and disposal of trade waste; dwelling-houses and residential buildings other than those required for use or occupation by persons whose residence is essential to the industry established or to be established in the zone; mines.</p>

TABLE

TABLE—continued.
PART I—continued.

<i>Column I.</i> Zone.	<i>Column II.</i> Reference to scheme map.	<i>Column III.</i> Purposes for which buildings may be erected or used <i>without consent</i> of responsible authority.	<i>Column IV.</i> Purposes for which buildings may be erected or used only with the consent of the responsible authority.	<i>Column V.</i> Purposes for which buildings may not be erected or used.
5. Industrial Area, Class "B."	Purple colour super-imposed with the letter "B."	.....	Any purposes except those for which buildings may not be erected or used under Column V.	Any industry other than light industry; institutions; mines; dwelling-houses and residential buildings other than those required for use or occupation by persons whose residence is essential to the industry established or to be established in the zone.
6. Industrial Area, Class "B" Reserved.	Purple colour super-imposed with white hatching and the letter "B."	.....	Any purposes except those for which buildings may not be erected or used under Column V.	Any industry other than any light industry which will not interfere with the amenities of the locality with particular reference to the present predominant use; mines; institutions; dwelling houses and residential buildings other than those required for use or occupation by persons whose residence is essential to the industry established or to be established in the zone.

TABLE

No. 18, 1951.

TABLE—continued.
PART I—continued.

<p><i>Column I.</i> Zone.</p>	<p><i>Column II.</i> Reference to scheme map.</p>	<p><i>Column III.</i> Purposes for which buildings may be erected or used <i>without consent</i> of responsible authority.</p>	<p><i>Column IV.</i> Purposes for which buildings may be erected or used only with the consent of the responsible authority.</p>	<p><i>Column V.</i> Purposes for which buildings may not be erected or used.</p>
<p>7. Waterfront Industrial Area.</p>	<p>Purple colour superimposed with the letter "W."</p>	<p>.....</p>	<p>Any purposes except those for which buildings may not be erected or used under Column V.</p>	<p>Any industry other than any industry to which the special waterfront facilities available in such zone are indispensable; dwelling-houses and residential buildings other than those required for use or occupation by persons whose residence is essential to the industry established or to be established in the zone; places of public worship; places of assembly other than amenity buildings; places of instruction; hospitals; professional chambers; commercial premises other than warehouses and bulk stores.</p>

TABLE

TABLE—continued.
PART I—continued.

Column I. Zone.	Column II. Reference to scheme map.	Column III. Purposes for which buildings may be erected or used <i>without consent</i> of responsible authority.	Column IV. Purposes for which buildings may be erected or used only with the consent of the responsible authority.	Column V. Purposes for which buildings may not be erected or used.
8. Extractive Industrial Area.	Purple colour super-imposed with letter "E".	.....	Any extractive industry; any industry directly associated, connected with or dependent upon such an extractive industry established or to be established in such zone; any other purposes except those for which buildings may not be erected or used under Column V.	Any industry other than an industry referred to in Column IV; dwelling-houses and residential buildings other than those required for use or occupation by persons whose residence is essential to the industry established or to be established in the zone; places of public worship; places of assembly other than amenity buildings; places of instruction; hospitals; professional chambers; commercial premises, except where directly associated with an industry permitted under Column IV.

TABLE—continued.
PART I—continued.

Column I. Zone.	Column II. Reference to scheme map.	Column III. Purposes for which buildings may be erected or used <i>without consent</i> of responsible authority.	Column IV. Purposes for which buildings may be erected or used only with the consent of the responsible authority.	Column V. Purposes for which buildings may not be erected or used.
9. Offensive and Hazardous Industrial Area.	Purple colour super-imposed with the letter "O."	.....	Any offensive or hazardous industry; any industry directly associated with or dependent upon an offensive or hazardous industry established or to be established in such zone; any other purposes, except those for which buildings may not be erected or used under Column V.	Any industry other than an industry referred to in Column IV; dwelling-houses or residential buildings other than those required for use or occupation by persons whose residence is essential to the industry established or to be established in the zone; institutions; places of public worship; places of assembly other than amenity buildings; places of instruction; hospitals; professional chambers; commercial premises except where directly associated with an industry permitted under Column IV; mines.

TABLE—continued.
PART I—continued.

<p><i>Column I.</i> Zone.</p>	<p><i>Column II.</i> Reference to scheme map.</p>	<p><i>Column III.</i> Purposes for which buildings may be erected or used <i>without consent</i> of responsible authority.</p>	<p><i>Column IV.</i> Purposes for which buildings may be erected or used only with the consent of the responsible authority.</p>	<p><i>Column V.</i> Purposes for which buildings may not be erected or used.</p>
<p>10. Rural Area</p>	<p>Light brown colour</p>	<p>.....</p>	<p>Buildings required in connection with agriculture or forestry; dwelling-houses for rural workers residing on or adjacent to the places where they are employed as rural workers; country dwellings; rural industries; extractive industries; offensive or hazardous industries; tourist establishments; institutions; utility installations; hospitals; places of assembly; places of instruction; places of public worship; dwelling-houses, residential buildings, shops, commercial premises, amenity buildings and any local light industry where the site is within the boundaries of a village; mines.</p>	<p>Any purposes other than those referred to in Column IV.</p>

TABLE—continued.
PART I—continued.

Column I. Zone.	Column II. Reference to scheme map.	Column III. Purposes for which buildings may be erected or used <i>without consent</i> of responsible authority.	Column IV. Purposes for which buildings may be erected or used only with the consent of the responsible authority.	Column V. Purposes for which buildings may not be erected or used.
11. Green Belt Area ...	Lime green stippled .....	.....	The same purposes as are set out in Column IV for Rural Area Zone.	Any purposes other than those to which Column IV applies.
12. Undetermined Area	White edged with brown line.	.....	Any purpose .....	.....
13. Special Uses Area	Yellow, grey, yellow cross-hatched grey.	.....	Any purpose .....	.....

PART II.

14. Living Area (Restricted),	Light scarlet colour super-imposed with white hatchings.	The same purposes as are set out in Column III for Living Area Zone in Part I of this Table.	The same purposes as are set out in Column IV for Living Area Zone in Part I of this Table.	The same purposes as are set out in Column V for Living Area Zone in Part I of this Table.
-------------------------------	--	--	---	--

27. Where application is made to the responsible authority for its consent to the erection or use of a building in a zone in which a building of the type proposed may be erected and used only with its consent, the responsible authority shall decide whether to give or withhold consent, and in the former event what conditions, if any, shall be imposed:

No. 18, 1951.

Consideration of application for consent.

Provided that before determining any such application the responsible authority shall consider the provisions of any planning scheme (including this scheme) affecting the land and in any case where it appears to the responsible authority that the erection or use of such building would be in contravention of any such scheme or is likely to cause injury to the amenity of the neighbourhood including injury due to the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, grit, oil, waste water, waste products or otherwise the responsible authority may withhold consent.

28. (1) A building shall not without the consent of the responsible authority be erected or used in any zone for any purpose shown opposite that zone in the fourth column of the Table to clause 26.

Buildings prohibited.

(2) A building shall not be erected or used in any zone for any purpose shown opposite that zone in the fifth column of the Table to clause 26.

29. (1) Land, included in a zone, whether forming the site of a building or not, shall not be used for any purpose for which a building in the same zone may not be erected or used.

Use of land.

(2) Land, included in a zone, whether forming the site of a building or not, shall not be used without the consent of the responsible authority for any purpose for which a building in the same zone may be erected or used only with the consent of the responsible authority.

(3) The provisions of clause 27 relating to the consideration by the responsible authority of an application for its consent to the erection or use of a building in a zone shall, mutatis mutandis, apply to an application made to the responsible authority for its consent to the use of land.

(4) In this clause the expression "use" in relation to land includes the carrying out of work on land.

30. The provisions of this Part relating to the erection or use of buildings or the use of land in a Living Area Zone shall apply to and in respect of land within a village.

Villages.

31. Nothing in the foregoing provisions of this Part shall be construed—

Savings.

- (a) as empowering the responsible authority to consent to the erection or use of a building for the purpose of a residential flat building on any land which is situated within a residential district proclaimed under section 309 of the Act and in which the erection or use of any building for the purpose of a residential flat building is prohibited;

(b).

No. 18, 1951.

- (b) as restricting or prohibiting or enabling the responsible authority to restrict or prohibit—
- (i) the carrying out of development of any description specified in the Schedule to this Ordinance;
 - (ii) the practice by any occupant of a dwelling-house or residential building of a profession, or occupation which does not involve the use of the dwelling-house or residential building for the purpose of an industry.

PART IV.

MAINTENANCE, USE, ALTERATION, ENLARGEMENT AND EXTENSION OF EXISTING BUILDINGS AND WORKS, AND CONTINUANCE OF EXISTING USE OF LAND.

Power to prohibit maintenance or use of existing buildings and continuance of existing use of land.

32. An existing building or existing work may be maintained and may be used for its existing use and an existing use of land may be continued:

Provided that—

- (a) where there is an existing building or existing work the erection or carrying out of which would have contravened some provision of this Ordinance if it had taken place after the appointed day or had taken place after that day without the consent of the responsible authority; or
- (b) where there is an existing use of an existing building or existing work which would have contravened some provision of this Ordinance if such use had been commenced after the appointed day or had been continued after that day without the consent of the responsible authority; or
- (c) where an existing use of land would have contravened some provision of this Ordinance if it had been commenced after the appointed day or had been continued after that day without the consent of the responsible authority;

the responsible authority may subject to the provisions of clauses 33 and 34 serve on the owner and occupier of the building, work or land and on any other person who in the opinion of the responsible authority may be affected thereby, notice (in this Part of this Ordinance referred to as "warning notice") that, at the expiration of a period of one month or such longer period as is determined by the responsible authority and specified in the notice, the retention of the building or work or the continuance of the use of the building, work or land will be a contravention of the provisions of this Ordinance. Upon the expiration of the period specified in the warning notice the provisions of section 342P of the Act relating to the removal, pulling down or alteration of contravening buildings and the prohibition of contravening uses, and of sections 342AC, 342AD and 342AE of the Act relating to compensation shall apply accordingly.

Consultation on warning notices.

33. (1) (a) The responsible authority shall not without the approval of the Cumberland County Council first had and obtained
serve

serve any warning notice or take any action under section 342P of the Act in any case where such service or such action would render the Cumberland County Council liable to pay compensation under the provisions of section 342AC or 342AD of the Act. **No. 18, 1961**

(b) Where the Cumberland County Council in any case: (i) does not approve, or (ii) neglects within a period of one month from the making of a request in that regard to approve of the responsible authority serving a warning notice or taking action under section 342P of the Act, a difference within the meaning of section six hundred and fifty-four of the Act shall be deemed to have arisen and the responsible authority or the Cumberland County Council may submit such difference to the Minister for determination under that section.

(2) The Cumberland County Council may at any time direct a responsible authority to serve a warning notice and to take action under section 342P of the Act after the expiration of the period specified in the warning notice in respect of any building, work or use to which the section applies and upon the responsible authority failing within a period of one month from the service of the direction to comply with such direction a difference within the meaning of section six hundred and fifty-four of the Act shall be deemed to have arisen, and the Cumberland County Council or the responsible authority may submit such difference to the Minister for determination under that section.

34. (1) If an existing building or existing work is such that had it been erected or carried out after the appointed day its erection or carrying out would have been permissible with the consent of the responsible authority, or if an existing use of an existing building or existing work would have been permissible with such consent had the building been erected or the work carried out after that date, or if an existing use of land is such that if it had been commenced after that date it would have been permissible with the consent of the responsible authority, the owner or occupier of or any person having an estate or interest in, the building or work or land may apply to the responsible authority for its consent to the retention of the building or work or to the continuance of the existing use of the building, work or land, as the case may be.

Existing buildings and uses of land for which approval may be sought.

Any application under this subclause may be made at any time before service on the applicant of a warning notice or at any time after service of such notice and before the prescribed notice under section 342P of the Act takes effect.

(2) In any case where the application under this clause is made to the responsible authority the operation of a warning notice whether served before or after the making of the application shall be suspended pending the decision of the responsible authority on such application and, in any case where an appeal against the decision of the responsible authority is made as hereinafter provided, the operation of the notice shall be suspended pending the determination of the appeal.

An

No. 18, 1951. An appeal may be made by the applicant against the decision of the responsible authority under this clause in accordance with the provisions of section 341 of the Act, and the provisions of that section shall extend, mutatis mutandis, to and in respect of any such appeal.

(3) If consent is given under this clause to the retention of the building or work or to the continuance of the existing use of the building, work or land, the responsible authority shall not serve a warning notice, and in the case where any such notice may have been already served, such notice shall cease to have effect.

Alterations and extensions of existing buildings.

35. (1) Notwithstanding the foregoing provisions of this Ordinance, an existing building, the erection of which would have contravened some provision of this Ordinance if it had taken place after the appointed day or had taken place after the appointed day without the consent of the responsible authority, may be altered, enlarged, or extended, or added to by the erection of new buildings, provided—

- (a) the responsible authority having regard to the circumstances of the case and the public interest approves the alteration, enlargement, extension or addition unconditionally or subject to conditions;
- (b) the use of the building as altered, enlarged, extended or added to is not likely to cause injury to the amenity of the neighbourhood, including injury due to the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, grit, oil, waste water, waste products or otherwise; and
- (c) any alteration, enlargement, extension or addition is restricted to land on which the existing building is erected or to adjoining land which immediately before the appointed day was in the same ownership.

(2) The responsible authority before approving the alteration, enlargement, extension of or addition to any building under this clause shall consult with the Cumberland County Council and shall give consideration to the representations of that council in connection therewith.

(3) In giving approval under this clause the responsible authority may impose conditions for the removal or pulling down of any alteration, enlargement, extension or addition to which such approval relates or excluding any right to compensation in respect of such alteration, enlargement, extension or addition in the event of action being taken under section 342P of the Act in relation to the building.

Buildings used for more than one purpose.

36. The right conferred by this Part of this Ordinance to continue the use of an existing building shall where such building was immediately before the appointed day used for more than one purpose include a right to alter the proportion in which the several parts of such building were used immediately before that day.

PART

PART V.

No. 18, 1951.

GENERAL AMENITY AND CONVENIENCE.

37. (1) The Governor, on the application of the Cumberland County Council and for the purposes of this Ordinance, may, by proclamation, declare any land adjacent to any harbour, bay, river, ocean, lake, estuary, or lagoon to be a Foreshore Scenic Protection Area: Provided that before making any application under this clause the Cumberland County Council shall consult with the council.

Foreshore
Scenic
Protection
Area.

(2) Where any land has been declared by proclamation to be a Foreshore Scenic, Protection Area the Cumberland County Council shall cause to be prepared and to be sealed with the seal of the County Council plans showing such land. One plan shall be attached to the scheme map, one plan shall be forwarded to the Minister, one to the Registrar-General and one to the council.

38. (1) The Governor, on the application of the responsible authority, may, by proclamation, declare any land, building or work to be a place of scientific or historic interest.

Places of
scientific
or historic
interest.

(2) A copy of such proclamation shall be served by the responsible authority on the owner and occupier of any such land, building or work.

(3) Where any land, building or work has been declared a place of scientific or historic interest, a person shall not make any alterations or additions to the land, building or work or demolish such building or work without the consent of the responsible authority.

(4) The responsible authority may acquire any such land, building or work for the purpose of preserving it for public use and enjoyment.

(5) Where any land, building or work has been declared under this clause to be a place of scientific or historic interest the owner of such land, building or work may, by notice in writing, require the responsible authority to acquire the land, building or work.

Upon receipt of any such notice the responsible authority shall acquire the land, building or work to which the notice relates.

(6) The responsible authority may with the consent of the council or trustees or any authority established for that purpose place any such land, building or work under the care, control and management of such council, trustees or authority.

39. (1) The responsible authority may by resolution fix building lines (in this clause called foreshore building lines) in respect of any land fronting any harbour, bay, river, ocean, lake, estuary or lagoon.

Foreshore
building
lines.

(2) A foreshore building line shall, when fixed by the responsible authority, be marked upon a plan or clearly described in the resolution and such plan or resolution shall be open for inspection by the public during the office hours of the responsible authority.

(3)

Local Government (Amendment) Act.**No. 18, 1951.**

(3) A building shall not be erected between such building line and the harbour, bay, river, ocean, lake, estuary or lagoon in respect of which the line is fixed.

(4) The responsible authority may alter or abolish any such building line where the levels or depth of the allotment or other exceptional conditions of the site make it necessary or expedient to do so.

Preservation of trees.

40. (1) Where it appears to the responsible authority that it is expedient in the interests of amenity to make provision for the preservation of any tree or groups of trees, it may for that purpose by resolution make an order (hereinafter referred to as a tree preservation order) with respect to such tree or group of trees as may be specified in the order, and may by like resolution rescind any such order.

(2) Any tree preservation order may prohibit the ringbarking, cutting down, topping, lopping or wilful destruction of trees except with the consent of the responsible authority and any such consent may be given subject to conditions.

(3) The responsible authority shall serve a copy of the order upon the owner and occupier of the land on which the tree or group of trees stands.

(4) A person, upon whom a copy of a tree preservation order has been served, shall not execute or cause or permit to be executed any work in contravention of the order: Provided that nothing in this subclause shall prohibit the ringbarking, cutting down, lopping or topping of any tree which is dying or dead or has become dangerous.

(5) The powers conferred upon the responsible authority by this clause shall not extend to any trees within a State forest or land reserved from sale as a timber or forest reserve under the Forestry Act, 1916-1949.

PART VI.**CONSENTS.****Submission of plans.**

41. (1) Any application for the consent of the responsible authority under the provisions of this Ordinance shall be made in writing to the responsible authority and shall be accompanied by the following plans and particulars:—

- (a) if the application is for consent to the use of a building or work or to the use of land, a plan in triplicate sufficient to identify the land to which the application relates and particulars in writing in triplicate of the purpose for which the building, work or land is used at the date of the application and the purpose for which consent is sought;
- (b) if the application is for consent to the erection of a building or the carrying out of a work, a plan in triplicate sufficient to identify the land to which the application relates and particulars,

Local Government (Amendment) Act.

135

particulars, illustrated by maps and drawings in triplicate, sufficient to describe the building or work, its location on the site and the purpose for which it is to be used: **No. 18, 1951.**

Provided that if an application relates only to the alteration, enlargement, extension of or addition to a building it shall be sufficient to show on the plan the site of the building and the alteration, enlargement, extension or addition in relation to such building and to furnish particulars relating only to the alteration, enlargement, extension or addition.

(2) Where, in pursuance of the Act (except Part XIIA thereof) or of an Ordinance made under the Act (except the said Part), an application is made to the responsible authority for its approval to erect a building such application shall, if the matter to which it relates requires the consent of the responsible authority under this Ordinance, be deemed to be an application for such consent, unless the application does not contain the information and particulars required by subclause one of this clause and the responsible authority so informs the applicant on or before giving its decision under the Act (except Part XIIA thereof) or under an Ordinance made under the Act (except the said Part).

(3) (a) The responsible authority may grant the application unconditionally or subject to such conditions as it may think proper to impose or refuse to grant such application. **Consent.**

(b) The responsible authority shall cause notice to be given to the applicant of its decision and in the case of a consent given subject to conditions or of a refusal, the reasons therefor shall be indicated in the notice.

(4) An application shall be deemed to be refused if the responsible authority neglects or delays to give within forty days after service of the application a decision with respect thereto.

42. (1) Where application is or is deemed to be made to the responsible authority for consent—

Consideration of certain applications.

- (a) to erect a building or to use land within a Foreshore Scenic Protection Area, the responsible authority shall in considering such application have regard to the aesthetic character of the proposed building or use as it would affect the view to and from the adjacent waterway and its foreshores;
- (b) to erect a building or to use land within a Green Belt Area Zone the responsible authority shall in considering such application have regard to the appearance of the proposed building or land when used for the proposed purpose in relation to any plan of aesthetic, scenic or roadside control prepared by the responsible authority;
- (c) to erect a building or to use land in a Special Uses Area Zone the responsible authority shall in considering such application have regard to the purpose for which the land is zoned and the preservation of existing amenities;

(d)

No. 18, 1951.

(d) to erect a building or to use land adjacent to any railway or county road, the responsible authority shall in considering such application have regard to the appearance of the proposed building or land when used for the proposed purpose when viewed from the railway or county road or from any park and recreation area adjacent thereto;

(e) to erect any building or to use any land for the purpose of any extractive industry, the responsible authority shall in considering such application have regard to the necessity of imposing conditions to secure the reinstatement of the land, the removal of waste materials or refuse and the securing of public safety and amenity of the neighbourhood.

(2) Without in any way limiting the conditions which may be imposed by the responsible authority when granting its consent under this Ordinance the responsible authority may impose such conditions as it may consider necessary or desirable to achieve the objects of this clause.

**Con-
sulta-
tion.**

43. (1) The responsible authority, before determining any application made to it under this Ordinance for consent to erect or use a building or use land within a Foreshore Scenic Protection Area or to erect or use a building or to use land within a Waterfront Industrial Area Zone, shall consult with the Cumberland County Council and shall take into consideration any representations made by that council in relation thereto.

(2) Where the Cumberland County Council is the responsible authority it shall before determining any such application consult with the council and shall take into consideration any representations made by the council in relation thereto.

(3) The responsible authority before determining any application made to it under this Ordinance relating to land of the Crown shall consult with the Minister and shall take into consideration any representations made by the Minister in relation to such application.

PART VII.

GENERAL PROVISIONS.

**Refund of
rates.**

44. Where a person is entitled to compensation for injurious affection to land within the meaning of Part XIIA of the Act the responsible authority may take into account any rates levied by the council and paid by the claimant in respect of such land between the twelfth day of July, one thousand nine hundred and forty-six, and the appointed day, and if in the opinion of the responsible authority the claimant has suffered hardship as a result of any restriction on interim development, the responsible authority may in addition to the amount of such compensation pay such person the whole or such part of such rates as the responsible authority thinks fit.

45.

45. A road which forms a junction or intersection with a county road shall not be opened without the consent of the Cumberland County Council. **No. 18, 1951.**
County roads.

46. (1) The Governor may proclaim any county road or any part of a county road to be a controlled access road and in the like manner amend or revoke any such proclamation. **Controlled access roads.**

(2) A copy of any proclamation made under subclause one of this clause shall be published in the Gazette and in a newspaper circulating in the locality in which the controlled access road is situated and shall be served on the responsible authority.

(3) A person shall not enter or leave a controlled access road except by a means of access or route provided for that purpose.

(4) The council or any person shall not, without the consent of the responsible authority, open, construct, form or lay out any means of access to or from a controlled access road:

Provided that the responsible authority shall not without the approval of the Commissioner for Main Roads consent to the opening, construction, forming or laying out of any means of access to or from a controlled access road which is or which may be a main road within the meaning of the Main Roads Acts, 1924-1950: Provided also that in the event of the Commissioner for Main Roads refusing in any case to approve, a difference within the meaning of section six hundred and fifty-four of the Act shall be deemed to have arisen and the responsible authority or the Commissioner for Main Roads may submit such difference to the Minister for determination under that section.

(5) The responsible authority may erect and maintain fences or posts across any side road or other means of access for the purpose of preventing access to a controlled access road.

(6) A person shall not drive any loose sheep, cattle, horses or other animals on or along a controlled access road.

(7) The provisions of this clause shall not apply to or in respect of any main road which is proclaimed a motorway under Part VA of the Main Roads Acts, 1924-1950.

47. (1) The provisions of this clause shall apply to any county road or to any main road within the meaning of the Main Roads Acts, 1924-1950, or to any part of a county road or main road to which road or part such provisions are applied by the Governor by proclamation. **Restriction of ribbon development.**

(2) The Governor, in respect of any land fronting, adjoining or adjacent to a road to which the provisions of this clause apply, may by proclamation—

- (a) prohibit the erection of buildings or any specified class of buildings or buildings intended for use for specified purposes within such distance of the road as may be set out in the proclamation;
- (b) direct that, in respect of the erection of buildings or any specified class of buildings or buildings intended for use for specified

Nov 18, 1951.

specified purposes within such distance of the road as may be set out in the proclamation, unless the responsible authority is satisfied that either—

- (i) the character of the building or the use to which the building is to be put is such as not to be likely to cause traffic congestion on the road; or
- (ii) satisfactory arrangements have been made for limiting traffic congestion on the road;

the responsible authority shall as a condition of its consent to the erection of any such building require the provision and maintenance of such means of entrance and egress and of such accommodation for the loading or unloading of vehicles or picking up and setting down of passengers or the fuelling of vehicles as may be determined by the responsible authority for the purpose of limiting such congestion;

- (c) prohibit the making of any permanent excavation within such distance of the road as may be set out in the proclamation;
- (d) prohibit the subdivision of any land which provides for the creation of separate parcels of land with a length of frontage to the road less than that specified in the proclamation.

For the purposes of this subclause "building" has the meaning ascribed to it in paragraph (b) of subsection three of section 342g of the Act.

(3) Any proclamation made under subclause (2) of this clause—

- (a) may apply generally to all buildings or particularly to any specified class of buildings or buildings intended for use for specified purposes;
- (b) may specify different distances for different buildings or for different classes of buildings or buildings intended for use for different purposes or different distances for different roads or different distances for different parts of the same road.

(4) Any such proclamation may be amended, varied or revoked by a similar proclamation.

(5) A proclamation made under this clause shall be published in the Gazette and in a newspaper circulating in the locality in which the road is situated.

A copy of any such proclamation shall be served on the responsible authority and on the council of the area in which the road is situated.

**Restriction
on certain
development.**

48. Where immediately before the appointed day any land within a Living Area Zone was used for the purpose of winning extractive materials, no new excavation for that purpose shall after that date be made or opened within fifty feet of the boundary of the land and no excavation in existence at that date shall be extended into land within fifty feet of such boundary. The boundary of any land for the purpose

purpose of this clause shall be the external boundary of all contiguous land which immediately before the appointed day was in the same ownership. **No. 18, 1951.**

49. The responsible authority may acquire land for any purpose of this scheme. **Acquisition of land.**

50. (1) Where the responsible authority has acquired any land which is reserved or zoned for any purpose under this Ordinance and where it appears to the responsible authority that such purpose cannot be carried into effect immediately following such acquisition the responsible authority may let such land by way of lease under and subject to the provisions of the Act. **Leasing of certain lands.**

(2) In determining the term of any such lease regard shall be had to the time when the land is likely to be required for the purpose for which it is reserved or the time when the purposes of the zoning are likely to be carried into effect.

(3) Any such lease may authorise the erection of buildings, the carrying out of works and the making of excavations for any purposes but in any such case where such purposes are inconsistent with the purposes for which the land is reserved or zoned under this Ordinance the lease shall require the removal of any such buildings or works or the reinstatement of the land before the end of the term.

51. (1) Notwithstanding anything contained in this Ordinance the responsible authority shall not consent to the erection of any building, or to the use of land, which erection or use is required for the purposes of a local light industry situated within a zone in which no industry other than a local light industry is permitted if the industry by reason of such erection or use would cease to be a local light industry. **Industrial expansion.**

(2) In this clause "local light industry" has the meaning ascribed to it in Part III of this Ordinance.

52. (1) The Governor on the application of the Cumberland County Council may by proclamation amend the definition of "country dwelling" included in clause 24 by substituting for the area of five acres mentioned therein an area other than five acres. **Country dwellings.**

(2) Any such proclamation may apply generally to all land in a Rural Area Zone and in a Green Belt Area Zone or may apply to particular land in any such zone and may specify different areas in respect of particular land in any such zone.

53. Nothing in this Ordinance shall prevent the erection of a building or the carrying out of works in accordance with the terms of the Town and Country Planning (General Interim Development) Ordinance or of any permission granted under Division 7 of Part XIIA of the Act and under that Ordinance, if the erection of the building or the carrying out of the works has been commenced, but not completed, before the appointed day or is substantially commenced within a period of twelve months from that day: **Application of scheme to development completed at commencement of scheme.**

Provided that the Cumberland County Council or a responsible authority with the approval of the Cumberland County Council, may within

No. 18, 1951. within two months after the appointed day serve on any person to whom approval has been given to erect a building or carry out works or who is erecting a building or carrying out works pursuant to any such approval which erection or carrying out would but for this clause be a contravention of this Ordinance or be permissible only with the consent of the responsible authority a notice prohibiting the erection or continuance of the erection of the building or the carrying out of the works or continuance thereof, and upon the service of such notice the erection of or continuance of the erection of the building or the carrying out of the works or continuance thereof shall be a contravention of this Ordinance:

Provided further that the Cumberland County Council may within two months after the appointed day require the responsible authority to serve such notices as aforesaid as the Cumberland County Council may specify and upon the failure of the responsible authority to serve such notices a difference within the meaning of section six hundred and fifty-four of the Act shall be deemed to have arisen and the responsible authority or the Cumberland County Council may submit such difference to the Minister for determination under that section.

Application
of scheme to
development
before
commencement
of scheme.

54. (1) Any development which was carried out between the twelfth day of July, one thousand nine hundred and forty-six, and the appointed day otherwise than in accordance with the terms of the Town and Country Planning (General Interim Development) Ordinance or of any permission granted under Division 7 of Part XIIA of the Act and under that Ordinance and which does not conform with the provisions of this Ordinance shall be deemed to be in contravention of this Ordinance.

(2) The provisions of Part IV of this Ordinance shall apply to and in respect of any such development.

Compensa-
tion.

(3) (a) Where for the purpose of carrying the provisions of this Ordinance into effect any land on which any such development has been undertaken is acquired by the responsible authority or any other statutory body whether under the provisions of the Act or of any other Act, the compensation payable in respect of such acquisition shall be assessed on the assumption that such development had not been made.

(b) The provisions of section 342A~~E~~ of the Act and the provisions of the Act or any other Act, which provide for the payment of and the assessment of compensation in respect of the acquisition of land, to the extent to which such provisions would, but for paragraph (a) of this subclause, apply to any development referred to in this clause are hereby suspended.

(4) In this clause "development" has the meaning ascribed to it in section 342T of the Act.

Fulfilment
of
conditions.

55. Where permission to erect any building or to carry out any work or to use any building, work or land or to do any other act or thing has been granted under Division 7 of Part XIIA of the Act
or

or under any Ordinance made under that Part, and conditions have been imposed which are not inconsistent with the provisions of this Ordinance, the conditions shall have effect as if they were conditions imposed under this Ordinance and may be enforced accordingly. **No. 18, 1951.**

56. The responsible authority shall keep available for public inspection during ordinary office hours without fee, a register of consents, permissions, orders, authorities and the like granted by the responsible authority or on appeal from any decision of the responsible authority under any provision of the Act or this Ordinance and of any conditions attached thereto. **Register.**

57. (1) In respect of any land included in zones numbered 4 to 9 inclusive shown in the Table to clause 26 the operation of— **Suspension of Acts, &c.**

- (a) section three hundred and nine of the Act and any proclamation made under that section; and
- (b) section 4b of the Housing Act, 1912-1949, and of any notifications made under that section;

is hereby suspended to the extent to which such sections, proclamations or notifications are inconsistent with any of the provisions of this Ordinance or with any consent given thereunder.

(2) In respect of any land which is comprised in any zone, other than within a Living Area Zone, shown in the Table to clause 26 the operation of any covenant, agreement, or instrument imposing restrictions as to the erection and use of buildings for certain purposes or as to the user of land for certain purposes is hereby suspended to the extent to which such covenant, agreement or instrument is inconsistent with any of the provisions of this Ordinance or with any consent given thereunder.

(3) The operation of Division 7 of Part XIIA of the Act is hereby suspended to the extent to which such Division relates to the restriction of development of land to which this Ordinance applies.

58. If any difference arises between the Cumberland County Council and the council with respect to the fulfilment and exercise of the duties, powers, privileges or authorities of the Cumberland County Council or the council under this Ordinance the same shall be deemed to be a difference within the meaning of section six hundred and fifty-four of the Act and the Cumberland County Council or the council may submit such difference to the Minister for determination under that section. **Differences between authorities.**

59. Any person who contravenes any of the provisions of this Ordinance or who fails to comply with any of those provisions or with the terms of any notice or direction issued or given thereunder or with the terms and conditions imposed by any consent or approval given thereunder shall be guilty of an offence and shall be liable to a penalty not exceeding fifty pounds and also a daily penalty not exceeding five pounds per day for any continuance of the offence. **Penalty.**

SCHEDULE.

No. 18, 1951.

SCHEDULE.

Clause 81.

1. The carrying out by persons carrying on public utility undertakings, being railway undertakings, on land comprised in their undertaking, of any development required in connection with the movement of traffic by rail, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, works and plant, except—

- (a) the construction of railways, railway stations and bridges over roads;
- (b) the erection of any buildings outside the limits of a railway or railway station;
- (c) the erection within the limits of a railway station, but not wholly within the interior of a station, of residential buildings, offices, or buildings (hereinafter referred to as factory buildings") to be used for manufacturing or repairing work;
- (d) the reconstruction or alteration of buildings outside the limits of a railway or railway station, and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of railway stations or bridges, or of residential buildings, offices or factory buildings within the limits of a railway or railway station, but not wholly within the interior of a station;
- (e) the formation or alteration of any means of access to a road.

2. The carrying out by persons carrying on public utility undertakings, being road transport undertakings, on land comprised in their undertakings, of any development required in connection with the movement of traffic by road, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, works and plant, except—

- (a) erection of buildings and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings;
- (b) the formation or alteration of any means of access to a road.

3. The carrying out by persons carrying on public utility undertakings, being water transport undertakings, on land comprised in their undertakings, of any development required in connection with the movement of traffic by water, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, wharves, works and plant required for that purpose, except—

- (a) the erection of buildings and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings;
- (b) the formation or alteration of any means of access to a road.

4. The carrying out by persons carrying on public utility undertakings, being wharf, harbour or river undertakings, on land comprised in their undertakings, of any development required for the purpose

purpose of shipping or in connection with the embarking, loading, No. 18, 1951.
 discharging or transport of passengers, livestock or goods at a
 wharf or harbour or the movement of traffic by a railway forming
 part of the undertaking, including the construction, reconstruction,
 alteration, maintenance and repair of ways, buildings, works and
 plant except—

- (a) the construction of bridges, the erection of any other buildings, and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of bridges or of buildings;
- (b) the formation or alteration of any means of access to a road.

5. The carrying out by persons who are carrying on public utility undertakings, being air transport undertakings, on land comprised in their undertakings, of any development required in connection with the movement of traffic by air, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, wharves, works and plant required for that purpose, except—

- (a) the erection of buildings and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings;
- (b) the formation or alteration of any means of access to a road.

6. The carrying out by persons who are carrying on public utility undertakings, being water, hydraulic power, electricity and gas undertakings, of any of the following development, being development required for the purpose of their undertakings, that is to say—

- (a) development of any description at or below the surface of the ground;
- (b) the installation of any plant inside a building or the installation or erection within the premises of a generating station or sub-station established before the appointed day of any plant or other structures or erections required in connection with the station or sub-station;
- (c) the installation or erection of any plant or other structure or erections by way of addition to or replacement or extension of plant, structures or erections already installed or erected, including the installation in an electrical transmission line of sub-stations, feeder-pillars, pole transformers and kiosks or transformer housings, but not including the erection of overhead lines for the supply of electricity or pipes above the surface of the ground for the supply of water, or the installation of sub-stations, feeder-pillars or transformer housings of stone, concrete or brickwork;
- (d) the provision of overhead lines in pursuance of any statutory obligation to provide a supply of electricity;
- (e) the erection by the Metropolitan Water, Sewerage and Drainage Board of service reservoirs on land acquired or in process of being acquired for the purposes thereof before
 the

No. 18, 1951.

the appointed day, provided reasonable notice of the proposed erection is given to the responsible authority;

(f) any other development except—

(i) the erection of buildings, the installation or erection of plant or other structures or erections, and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings;

(ii) the formation or alteration of any means of access to a road.

7. The carrying out by the owner or lessee of a mine, on the mine, of any development required for the purposes of the mine, except—

(a) the erection of buildings (not being plant or other structures or erections required for the mining, working, treatment or disposal of minerals), and the reconstruction, alteration or extension, so as materially to affect the design or external appearance thereof, of buildings;

(b) the formation or alteration of any means of access to a road.

8. The carrying out of any development required in connection with the improvement, maintenance or repair of watercourses or drainage works and the construction by the Metropolitan Water, Sewerage and Drainage Board of any stormwater channel commenced before the appointed day, provided the Board gives the responsible authority reasonable notice of its intention to construct such stormwater channel.

9. The carrying out by the Metropolitan Water, Sewerage and Drainage Board of any development required in connection with the provision, improvement, maintenance and repair of sewers (other than sewage treatment works) upon, below or above the surface of the ground, provided the Board gives the responsible authority reasonable notice of its intention to carry out such development.

10. The carrying out of any development required in connection with the reconstruction, maintenance or repair of roads other than main roads within the meaning of the Main Roads Acts, 1924-1950, within the existing limits of such roads or the construction, maintenance or repair of any county road: Provided that such reconstruction shall not be carried out with a view to altering the classification of any road.

11. The carrying out by the Commissioner for Main Roads of any development required in connection with the provision, improvement, maintenance and repair of any main road within the meaning of the Main Roads Acts, 1924-1950, except the construction of a main road (not being a county road) or the widening of a main road.

12. The carrying out of any forestry work by the Forestry Commission, School Forest Trusts, Community Forest Authorities empowered

empowered under relevant Acts to undertake afforestation, roading, protection, cutting and marketing of timber and other forest development and utilisation within areas dedicated for forestry purposes under such Acts. **No. 18, 1951.**

13. The use of land and the use of existing buildings of the Crown for the purpose for which such land and buildings were used immediately before the appointed day and the alteration, addition or rebuilding of such buildings, including the erection of new buildings, except alterations, additions or rebuilding involving or required in connection with a change in use of the buildings or land.
