

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1929.

A BILL

To provide for the control and regulation of the erection, use and occupation of buildings within the City of Sydney; to provide for fire escapes and for the prevention of fire in buildings already erected; to amend the Sydney Corporation Act, 1902, and certain other Acts; to repeal the Height of Buildings (Metropolitan Police District) Act, 1912, and certain other Acts; and for purposes connected therewith.

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

PART I.

PRELIMINARY.

1. This Act may be cited as the "City of Sydney Building Act, 1929," and shall commence and come into operation on the day of , one thousand nine hundred and twenty-nine. Short title.

2. This Act shall be read and construed with the Sydney Corporation Act, 1902, as amended by subsequent Acts.

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

PART I.—PRELIMINARY—*ss.* 1-8.

PART II.—CONSTITUTION OF BUILDING ADVISORY COMMITTEE—*ss.* 9-13.

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SCHEDULE.

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4. (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed. R. peal. Schedule.

(2) All regulations and by-laws made under the authority of any Act hereby repealed and being in force at the commencement of this Act shall, so far as they are applicable to the city of Sydney, and are not inconsistent with this Act, remain in force until altered or repealed by regulations or by-laws made under the authority of this Act, be deemed to have been made under the authority of this Act.

5. This Act shall apply to the city of Sydney, but unless otherwise expressly provided, nothing in this Act shall apply to buildings erected or in the course of erection at the date of the commencement of this Act. Application.

6. Subject to section thirty-three of this Act, unless otherwise expressly provided, nothing in this Act shall affect any of the provisions of— Certain Acts not affected.

the Metropolitan Traffic Act, 1900 ;
the Metropolitan Water, Sewerage, and Drainage Act, 1924 ;
the Sydney Harbour Trust Act, 1900 (Act No. 1 of 1901) ;
the Public Health Act, 1902 ;
the Public Works Act, 1912 ;
the Fire Brigades Act, 1909 ;
the Theatres and Public Halls Act, 1908 ;
the Motor Traffic Act, 1909 ;
the Factories and Shops Act, 1912 ;
the Government Railways Act, 1912 ;
the Liquor Act, 1912 ;
the Explosives Act, 1905 ; or
the Inflammable Liquid Act, 1915,

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

7. In this Act, unless inconsistent with the context or subject-matter,— Definitions.

“ Board ” means the Board of Appeal constituted by this Act.

“ Builder ”

- “Builder” means the person who is employed to build or to execute work on a building, or where no person is so employed, the owner of the building.
- “Building” includes any structure or any part thereof.
- “By-law” means by-law made under this Act.
- “City Building Surveyor” or “surveyor” means the city building surveyor appointed under this Act, or the person for the time being appointed by the council as acting city building surveyor.
- “City of Sydney” means the area comprised within the present boundaries of the city or any proclaimed extensions or alterations thereof.
- “Committee” means the Building Advisory Committee as constituted by this Act.
- “Council” means the Municipal Council of Sydney.
- “Erect,” “erected,” “erection,” and similar expressions in relation to a building, include any structural work or any alteration, addition, repair or rebuilding.
- “Health officer” means the city health officer appointed under this Act, or the person for the time being appointed by the council as acting city health officer.
- “Owner”—the expression “owner” shall apply to every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement or in the occupation of any land or tenement otherwise than as a tenant from year to year or for any less term or as a tenant at will.
- “Party arch” means an arch separating adjoining buildings, storeys, or rooms belonging to different owners or occupied or constructed or adapted to be occupied by different persons, or separating a building from a public way or a private way leading to premises in other occupation.

London
Building
Act.

“Party

- “Party wall” means wall used or built in order to be used as a separation of any building from any other building with a view to such buildings being occupied by different persons.
- “Party fence wall” means boundary wall or fence parting the ground belonging to different owners or occupied by different persons.
- “Party structure” means any partition wall separating vertically, or any partition floor or arch separating horizontally, storeys or rooms in separate occupations approached by distinct staircases or separate entrances from without, or separating a shop from the remaining portion of a building, or separating a building from a public way leading to premises in other occupation: Provided that an external fire escape stairs shall not be deemed a separate entrance when doors opening on to such stairs are capable of being opened from the inside only.
- “Person” includes a body corporate.
- “Prescribed” means prescribed by this Act or by regulation or by-law under this Act.
- “Public way” means any road, highway, street, square, lane, court, alley, or other public thoroughfare or place.
- “Regulation” means regulation made under this Act.
- 8.** The council may—
- (a) delegate to any committee thereof such of its powers, duties, and authorities under this Act as it thinks fit (other than this power of delegation) so that the powers, duties, and authorities so delegated may be exercised and performed by such committee as fully and effectively as by the council; and
 - (b) revoke any such delegation in whole or in part.

PART II.

BUILDING ADVISORY COMMITTEE AND OFFICERS.

9. (1) There shall be a committee which shall be ^{Appointment} called the Building Advisory Committee. _{of committee.}

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

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

- (a) One member, who shall be chairman, shall be the city building surveyor.
- (b) One member shall be the city health officer.
- (c) One member shall be a person chosen by the council.
- (d) One member shall be the chief officer of fire brigades.
- (e) One member shall be nominated for appointment by the Minister for the time being in charge of the Department of Labour and Industry.
- (f) One member shall be nominated for appointment by the Minister.
- (g) One member shall be nominated for appointment by the Metropolitan Water, Sewerage, and Drainage Board.
- (h) One member shall be nominated for appointment by the Fire Underwriters' Association of New South Wales.
- (i) One member shall be an architect nominated for appointment by the Institute of Architects of New South Wales.
- (j) One member shall be an engineer nominated for appointment by the Institution of Engineers of Australia.
- (k) One member shall be a master builder nominated for appointment by the Master Builders' Association of New South Wales.

(4)

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

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

(6) In the exercise and performance of its powers ^{evidence.} and duties under this Act the committee shall act on such evidence as in each case appears to it sufficient.

10. (1) The chairman shall preside at meetings of the ^{Chairman.} committee. In his absence the members present shall elect a chairman of the meeting.

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

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

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

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

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

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

12. (1) The procedure for the calling of the com- ^{Procedure,} mittee meetings and for the conduct of business at such ^{quorum, &c.} meetings shall, subject to any regulations or by-laws with regard thereto, be as fixed by resolution of the committee.

(2)

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

(3) All acts and proceedings of the committee shall be valid, notwithstanding any vacancy in the committee or any irregularity in the appointment or continuance in office of any member of the committee, and notwithstanding that any person not qualified may have acted as a member of the committee.

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

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

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

13. The person who at the date of the commencement of this Act holds the office of city surveyor shall be known as the city building surveyor under this Act and shall continue to hold office as if he were appointed under this Act.

PART III.

BUILDING REGULATION.

DIVISION 1.—*General.*

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

15. Subject to the provisions of this Act the city building surveyor shall under the council be charged with the execution of this Act.

16.

16. No building in the city shall be erected or used Prohibition.
except in accordance with the provisions of this Act.

17. The city building surveyor may disapprove of Illegal roads
and sub-
divisions.
the erection of any building upon any land—

- (a) fronting a road opened after the commencement Act No. 41,
1919, s. 307.
of this Act in a manner not in accordance
with the law for the time being in force; or
- (b) subdivided after the commencement of this
Act in a manner not in accordance with the
law for the time being in force; or
- (c) if the land has not been subdivided, and if by
the erection of the building the land would
become obviously adapted for separate occupa-
tion in two or more parts.

18. (1) The council may, subject to any by-laws, Building line.
Ibid. s. 308.
fix building lines.

(2) A building shall not be erected between
the building line and any public place or public reserve.

(3) In any case where a public-way less than
sixty-six feet wide is opened after the commencement of
this Act, the building line (whether fixed by the council
or not) shall be at a distance of not less than thirty-
three feet from the middle line of the road.

(4) Any approval given by the council before
the commencement of this Act for the erection of a
building fronting a road opened before the commence-
ment of this Act shall, notwithstanding the provisions
of this or any other Act, be deemed to have been and to
be valid.

(5) Notwithstanding the foregoing provisions
of this section, a building the front elevation of which
is to face a public-way and which is to be erected having
regard to the building line of that road may, if the
council approve, be erected without regard to the
building line of any other public-way.

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

DIVISION

DIVISION 2.—*Residential districts.*

20. (1) The Governor may on the application of ^{Residential districts.} the council—

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

Provided that this shall not apply to a residential flat building which has been erected, or the erection of which has been approved by the council before the date of the proclamation.

- (g) prohibit the use in the district of any land for the purpose of any trade, business, avocation or calling described in the proclamation.

(2) Any provision inserted in a proclamation in ^{Act No. 41, 1928, s. 9.} pursuance of the powers conferred by paragraphs (c), (d) or (g) of subsection one of this section may apply—

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

(3)

(3) (a) Where an application is made by the council to the Governor under this section the Minister shall give the prescribed notice of the proposal.

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

(c) The Minister may, if in his opinion the circumstances warrant, refer the proposal to a person appointed by him for inquiry and report.

(d) After considering any objections received to the proposal on the report of the officer appointed to hold the inquiry, if any, the Minister may submit the proposal to the Governor for decision.

(4) Nothing in this section shall preclude the continuance of the use of any building for any purpose for which the same was used immediately before the date of the proclamation aforesaid, or the alteration, enlargement, rebuilding, or extension of any building used for any such purpose whether or not such alteration, enlargement, rebuilding, or extension involve the use of adjoining land which immediately before the date of the proclamation was in the same ownership or for such other purpose as the council thinks reasonable in the circumstances. Act No. 33, 1927, s. 10 (b).

DIVISION 3.—Height of buildings.

21. (1) A building which is not exclusively used for purposes of public worship, or is not a chimney stack or sewer ventilator— Height. Act No. 58, 1912.

(a) shall not in any circumstances be erected or increased to a greater height than one hundred and fifty feet; Act No. 1, 1916.

(b) shall not be erected or increased to a greater height than one hundred feet without the issue of a permit by the city building surveyor nor unless the skyline of the building be approved by him and the chief officer of fire brigades first certifies to the city building surveyor that adequate provision has been made in respect of such building for protection against fire. (2)

(2) Subsection one of this section shall not apply to—

- (a) the erection or increase in height of any building as sanctioned by the city building surveyor before the passing of this Act, or to the rebuilding of any such building to the height as so sanctioned; or
- (b) the rebuilding to the same height as at the commencement of this Act of a building then existing and completed.

(3) In this section "height" in relation to a building means the measurement taken from the mean level at the building line of the footway (if any) immediately in front of the face of the building, or where the building faces the footways of more than one street, taken from the mean level of the building line of the footway which is lowest, or where there is no such footway, from the mean level of the ground, before excavation, such measurement in any such case to extend to the top of the highest portion of the building which is intended to be occupied or used by any person for any purpose: Provided that space for water tanks or reservoirs, lift or elevator machinery upon the top of a building, although intended to be so occupied, shall not, if constructed on a design approved by the city building surveyor, be taken into account in determining the height of the building.

Definition.
Act No. 1,
1916, s. 2.

22. If any person erects or increases or causes to be erected or increased the height of any building in contravention of this Division of this Part of this Act, or otherwise contravenes any of the provisions thereof, he shall be liable to a penalty not exceeding *fifty* pounds.

Penalties.
Act No. 58,
1912, s. 5.

The magistrate before whom any such conviction is had may further order that the defendant shall, within a time to be fixed by the order, take down and remove any part of the building in respect to which the contravention has occurred, and if the defendant neglects to comply with such order he shall be further liable to a penalty not exceeding *fifty* pounds for every day during which such neglect continues.

Penalties under this section may be recovered before a stipendiary magistrate.

DIVISION

DIVISION 4.—Applications, plans and specifications.

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

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

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

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

Certificate. Ibid. s. 311.

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

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

Application. Ibid. s. 312.

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

(2) The builder or owner or architect shall at the same time of applying for the certificate of approval deliver or send to the city building surveyor at his office a statement in writing signed by the applicant setting out the purpose or purposes for which such building and lands are intended to be used, and such building when erected and such lands shall not without the written consent of the city building surveyor first had and received and subject to any conditions or provisions imposed by the city building surveyor when granting such consent being fully complied with, be used for any other purpose whatsoever.

S.A. Act No. 1,600 of 1923, s. 8 (3).

(3) One copy of such plans and specifications shall become the property of the council, but shall not be used for any purpose other than giving effect to the provisions of this Act.

(4)

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

Illegible or incomplete plans.

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

Police Offences Act, 1901.

26. In respect of any application for approval of the erection of a building the city building surveyor shall take into consideration—

Subjects for consideration.

Act No. 41, 1919, s. 313.

- (a) drainage, ventilation, lighting, and the healthiness of the building ;
- (b) design, materials, stability, building line, and height ;
- (c) size, height, and lighting of rooms ; height of floor levels in relation to level road ;
- (d) size, height, and materials of party walls between buildings ;
- (e) the proportion of the site to be covered by the building and the provision of open spaces and light areas ;
- (f) the position of the building or any out-building or office in relation to other buildings or to the boundaries of the site ;
- (g) the provision of storage for water for domestic purposes ;
- (h) means of access generally, and particularly the means for the purposes of the removal of night-soil, garbage, or other refuse ;
- (i) height, materials, stability, design, and position of fences (if any) to be erected on or on the boundaries of the allotment on which the building is to be erected ;
- (j) provision for prevention of fires and fire escapes.

27. The city building surveyor shall consider each application and the plans and specifications accompanying it, and may, subject to the provisions of this Act, approve, or approve subject to conditions, or disapprove thereof.

Duty of city building surveyor. cf. Act No. 41, 1919, s. 314.

28. (1) Where an application is made to the city building surveyor under this Act for his approval of the erection of a building, or for his approval to a variation, addition to, or omission of any particulars shown in plans and specifications already approved by him, the city building surveyor shall within forty days after service of the application—

Approval or disapproval.

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

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

29. In the case of any application in respect of which the city building surveyor has any doubt whether the design of the external elevations of the proposed building is such that a building erected in accordance therewith may as regards skyline or harmony with neighbouring buildings or general appearance or otherwise prejudicially affect the amenities of any part of the city, the city building surveyor shall refer the question to the board, and shall act in accordance with the decision of the board.

Reference to board.

30. (1) If before or during the construction of any building it is desired to make any addition to the building other than is shown in the approved plans and specifications in respect of which the city building surveyor has granted his certificate, or to vary, add to,

Additions or variations.

or

or omit any particulars shown or mentioned in any such plans and specifications in any of the following respects, that is to say in respect of—

- (a) the thickness of the material composing any foundation, or wall, or structure sustaining the weight of any wall; or
- (b) any fireproof construction, or any means of escape from fire; or
- (c) any other particular materially affecting the stability of the building,

application for that purpose, giving the particulars prescribed, shall be made by the builder or the owner or his architect to the city building surveyor, who may grant or refuse his certificate as in the case of an original application.

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

31. (1) Where under any other Act it is necessary, before erecting, constructing, or altering a building, to obtain the approval or certificate of any public authority, other than the council or the city building surveyor, it shall not be necessary for any application to be lodged under such other Act, but the council or the city building surveyor shall refer the application, plans, and specifications lodged under this Act, or a copy thereof, to such other authority, and shall not approve or grant a certificate unless and until the provisions of such other Act have been complied with.

Approval from other authorities.

(2) This section shall not extend to any application required by any Act to be made to any court.

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

When certificate lapses.

33.

40

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

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

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

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

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

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

35. (1) Every building in course of construction or alteration shall be under the supervision of the city building surveyor.

Power and duties, city building surveyor.

(2) For the purposes of this section the city building surveyor shall survey the building, and cause the provisions of this Act and the by-laws to be duly observed.

36. (1) If any building or wall or anything affixed thereto within the city be deemed by the city building surveyor (who may for that purpose enter upon the premises and examine the same) to be in a ruinous or dangerous state, he shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing, signed by him, to be served upon the owner of such building or wall, if he be known and resident within the city, by leaving the same at his usual place of abode or business, and shall also cause such notice to be put on the door or other conspicuous part of the premises, or otherwise to be served on the tenant thereof, if any, by leaving the same on the premises, requiring such owner or tenant to take down, secure, or repair such building, wall, or other thing, as the case may be, within a reasonable time to be named in such notice.

Dangerous buildings.
Act No. 35,
1902, s. 84.

(2) If such owner or tenant does not commence within seven days after service thereof, and complete the work therein required to be done within thirty days to the satisfaction of the said surveyor, the said surveyor shall, if so directed by the council, cause all or so much of such required works as he may deem necessary to be done, and all the expenses thereof shall be paid by the owner or tenant.

(3) If the tenant is compelled to pay such expenses he may recover the amount against the owner in an action for money paid to his use.

DIVISION 5.—*Enforcement of law.*

37. Where any building after the coming into force of this Act or of any by-law under this Act is partly or wholly erected, built or constructed contrary to the provisions thereof—

Power of council in case of breach of law. cf. Municipal Corpn. Act, 1908, s. 496 (N.Z.).

- (a) the city building surveyor may give to the owner or builder or leave at the building two clear days' notice in writing directing the owner or builder to bring the same into conformity with this Act or the by-law, or may require the pulling down or removal of the building; and
- (b) if default is made in compliance with such notice, and notwithstanding the imposition or recovery of any penalty, the council by its servants may enter upon the building with a sufficient number of workmen and demolish and pull down the building or any part or parts thereof, and do any other act necessary for the purpose, and remove the materials thereof to some convenient place.

38. Where in pursuance of this Act or any by-law the city building surveyor lawfully orders or directs any person to perform any work or do any act or thing, and such person fails to perform such work or do such act or thing as and when so ordered or directed, the council may cause such work to be performed or such act

Surveyor may perform required work.

act or thing to be done, and may in any court of competent jurisdiction recover from the said person the expenses so incurred as a debt due to the council.

39. (1) If any person does or causes to be done any work in connection with the erection of a building without the certificate of the city building surveyor under this Act, he shall be liable to a penalty not exceeding *fifty* pounds and a further penalty not exceeding *ten* pounds for each day during which such work is done after notice from the city building surveyor. Penalties. cf. Act No. 41, 1919, s. 317.

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

- (a) makes any addition to any building other than as shown or mentioned in the plans and specifications in respect of which the certificate was granted; or
- (b) varies, adds to, or omits any particulars shown or mentioned in the plans and specifications in respect of which the certificate was granted, in any of the following respects—
 - (i) the thickness of the material composing any foundations or walls or any structure sustaining the weight of any wall;
 - (ii) any fire-proof construction, or any means of escape from fire;
 - (iii) any other particular materially affecting the stability of the building which may be prescribed by the by-laws,

without the certificate of approval in writing of the city building surveyor, he shall be liable to a penalty not exceeding *fifty* pounds.

40. (1) Where the city building surveyor with lawful authority pulls down or demolishes any building or part of a building he may sell the materials thereof, or so much of the same as is pulled down, and apply the proceeds of such sale in and towards payment of the expenses incurred in respect of such building, and the council shall pay any surplus arising from such sale to the owner of such building on demand. May sell materials. cf. Act No. 35, 1902, s. 85.

(2)

(2) The council shall have the same remedies for compelling payment of so much of the said expenses as remain due after application of such proceeds as for compelling payment of the whole amount.

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

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

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

Penalties
extended to
persons
causing
offences.
Act No. 41,
1919, s. 637.

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

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

Recovery of
penalties.
Ibid. s. 639.

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

PART IV.

EXISTING BUILDINGS.

44. This Part shall apply only to buildings in the city of Sydney, erected or in the course of erection before the coming into operation of this Act.

Application.

45.

44

45. If it appears to the city building surveyor that reasonably sufficient means of escape or egress from any building or any part of such building in the event of fire are not provided therein or in connection therewith, the city building surveyor—

Surveyor to make report and recommendations.
cf. Vict. 13 Geo. V, No. 3267, s. 5.

- (a) shall make a report thereon to the council in writing; and
- (b) shall in every such report make recommendations specifying what works (including alterations of the building or any part thereof, or the provision of means of escape or egress) ought in his opinion to be carried out in or in connection with the building or any part thereof, so as to make reasonably sufficient provision for escape and egress therefrom in the event of fire.

46. The council—

- (a) shall take into consideration every report and the recommendations therein;
- (b) may approve the report, with or without modification of the recommendations;
- (c) may refuse to approve the report; or
- (d) may refer the matter to the city building surveyor for further report and recommendations.

Committee to consider report and recommendations.
cf. *Ibid.* s. 6.

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

Notice to owners.
cf. *Ibid.* s. 7.

- (a) that on a date mentioned in the notice (being not less than one month from the service thereof) the person on whom the notice is served or any person on his behalf may appear before the board to raise objections to the recommendations as approved by the council;
- (b)

- (b) that in default of any such person so objecting the recommendations as approved by the council may be adopted by the board and that such person shall in all respects be finally bound by the adoption ;
- (c) that the works to be carried out in accordance with the recommendations as approved by the council, if adopted shall be begun at a time to be specified in the notice (not being less than twelve months from the date of the service of the notice).

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

Right of appearance.
cf. Vict. 13 Geo. V, No. 3267, s. 7 (2).

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

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

- (a) if no person objects, may adopt the recommendations as approved ; and
- (b) if any person objects, shall inquire into and consider the matter in the presence of such person if he attends ; and after hearing any objections may adopt the recommendations as approved by the council, with or without modification, or may refuse to adopt them.

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

Extension of time.
cf. *Ibid.* s. (4).

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

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

PART V.

APPEALS.

DIVISION 1.—*Constitution of Board of Appeal.*

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

53. The Governor shall appoint the members of the board, who shall hold office for three years. Appoint-ment.

54. The board shall consist of three members, that is to say— Members.

- (a) One member, who shall be the chairman ;
- (b) One member, who shall be an architect and a member of the Institute of Architects of New South Wales ;
- (c) One member, who shall be an engineer and a member of the Institution of Engineers of Australia.

55. The members of the board shall be entitled to receive out of the city fund such fees as may be prescribed. Fees.

56. The chairman shall preside at the sittings of the board and shall have a deliberative, and, if the voting be equal, a casting vote. Chairman.

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

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

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

59. The Governor shall appoint the members of the panel, who shall hold office for three years. Appoint-ment.

60. The panel shall consist of five members, that is Members.
to say—

- (a) One member, who shall be known as the deputy chairman of the Board of Appeal ;
- (b) Two members, who shall be architects and members of the Institute of Architects of New South Wales ;
- (c) Two members, who shall be engineers and members of the Institution of Engineers of Australia.

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

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

(2) Upon any vacation of office or position under this section, except under paragraph (g), the Governor shall forthwith appoint a new member to fill the vacant office or position.

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

62.

48

62. Before any member of the board acts as such he shall make the following declaration to be administered by a judge of the Supreme Court or a judge of the District Court or a stipendiary magistrate :—

I, A.B., do solemnly and sincerely declare that I will diligently, faithfully, and impartially execute my duties as a member of the Board of Appeal under the City of Sydney Building Act, 1929.

DIVISION 2.—Jurisdiction of board.

63. Any party who feels himself aggrieved by any decision of the city building surveyor or of the council under this Act may appeal to the board.

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

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

65. Nothing in this division shall deprive any person of any legal rights to which he may otherwise be entitled.

DIVISION 3.—Procedure.

66. Appeals and references to the board shall be made in the manner prescribed.

67. Subject to this Act and to the regulations and by-laws made under this Act, every appeal shall be deemed to be a submission to arbitration under the Arbitration Act, 1902, and the provisions of that Act, so far as applicable, and with such modifications and substitutions as are necessary, shall extend and apply accordingly.

68.

City of Sydney Building.

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

Powers of board.
Vict.
13 Geo. V,
No. 3267,
s. 11.

- 69.** (1) The board shall—

Minutes.
Ibid. s. 12.

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

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

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

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

PART

PART VI.

REGULATIONS AND BY-LAWS.

70. The Governor may make regulations for carrying ^{Regulations.} this Act into effect and without limiting the generality of the foregoing power may in such regulations prescribe the conditions to be complied with before the certificate of the chief officer of fire brigades is given under section twenty-four of this Act and may fix the fee which shall be payable for such certificate.

71. The council may make by-laws for and relating ^{By-law} to the following matters and subjects or matters and subjects incidental thereto, so far as the same are not expressly provided for in this Act :—

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

(1)

-
- (l) the position of the building or any outbuilding or office in relation to other buildings or to the boundaries of the site ;
 - (m) the position of the building in relation to the sky-line ;
 - (n) the architectural harmony of the building in relation to the neighbouring or adjoining buildings ;
 - (o) the control and regulation of buildings, balconies, verandahs, awnings, and structures of every kind abutting on or extending over any public place, and any projections over any building line or over the land of an adjoining owner ;
 - (p) the erection of party walls, party fence walls, party arches, and party structures, and the demolition, alteration, or rebuilding of existing party walls, party fence walls, party arches, and party structures (including in each case the position, design, materials, stability, thickness, and height of the wall or fence wall, or arch or structure, as the case may be) and regulating the erection of fences on or on the boundaries of any land, and the height, materials, stability, design and position of existing fences on or on the boundaries of any land ;
 - (q) the control and regulation of fixtures attached to and projections from the outside of existing and future buildings ;
 - (r) defining the respective rights, duties, and obligations of owners and occupiers of adjoining buildings or lands in relation to external walls, party fence walls, jambs, flues, or recesses in walls or chimneys on the line of junction, and providing for the recovery by an owner from an adjoining owner of a fair proportion of the cost of the erection or alteration of such walls, jambs, flues, recesses, or chimneys ;
 - (s) preventing the making of openings in external walls of a building abutting on the lands of other owners without the consent of such owners ;
 - (t)

- (t) the minimum area and frontage of land upon which any building or any class of buildings may be erected ;
- (u) the conveniences to be provided in dwelling-houses ;
- (v) preventing building on flooded and unhealthy land ;
- (w) requiring and regulating the enclosure of unenclosed land by suitable walls or fences ;
- (x) requiring licensing and regulating the erection, maintenance, and use of hoards and fences on public places for the protection of the public during building operations ;
- (y) permitting licensing and regulating the enclosure and use of any public place for the erection of scaffolding, depositing of building materials, or carrying out of operations necessary to the erection of buildings on the land adjoining such public place ;
- (z) the erection of scaffolding over any building now erected or hereafter to be erected for the purpose of building operations on any adjoining building ;
- (aa) excavations ;
- (bb) the alteration or demolition of existing buildings ;
- (cc) underpinning and shoring of adjoining buildings ;
- (dd) authorising the city building surveyor to order the pulling down, opening, or cutting into any work for the purpose of facilitating inspection where the city building surveyor has reason to believe or suspect that anything has been done in contravention of this Act or of the by-laws ;
- (ee) the securing or the demolition of ruinous or dangerous buildings or walls ;
- (ff) preventing the use or occupation of any building erected or altered otherwise than in accordance with this Act or the by-laws ;
- (gg) providing for the alteration and repair of skylights and roof lights on existing buildings ;
- (hh)

City of Sydney Building.

- (hh) regulating or prohibiting the erection of any structure of calico or canvas or any other textile material;
- (ii) the testing of building materials;
- (jj) requiring the making of provision for the safety of window cleaners; and for that purpose regulating the construction of windows, the equipment of window cleaners, and the cleaning of windows;
- (kk) any of the matters which the city building surveyor is by this Act directed to take into consideration in respect of any application for approval to erect a building;
- (ll) any of the powers conferred or duties imposed upon the city building surveyor;
- (mm) any matter which by this Act is required or permitted to be prescribed, or which is necessary or convenient to be prescribed for giving effect to this Act or any Act administered by the council;
- (nn) preventing obstruction of any person acting under the authority of the council or under the provisions of this Act or of any by-law;
- (oo) preventing destruction, injury, damage, interference or misuse by any person in respect of any public place or any work, undertaking or property of or under the control or management of the council;
- (pp) enforcing and securing the observance of the provisions of this Act or of any by-law;
- (qq) the control and regulation of the placing, stacking or storing in, upon, or near a building, of timber, lathwood, firewood, casks, barrels, cases or inflammable matter;
- (rr) the establishment, maintenance, regulation and control of automobile parking stations;
- (ss) the construction, design, material, position and supports of water tanks over five hundred gallons within or over or about any building;
- (tt) the use and or occupation of buildings when erected or during the course of erection;
- (uu)

- (uu) to authorise the board, with the consent of the council, to obtain the services of architects, consulting engineers, and other experts of not less than ten years standing for the purpose of assisting it or the city building surveyor in giving effect to this Act and the by-laws.

72. Any such by-law may provide—

Additional provision re by-law.

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

73. Any such by-law may—

General provision as to by-l

- (a) impose a penalty for any breach thereof and also distinct penalties in case of successive breaches thereof, but no such penalty shall exceed *fifty* pounds ;

(b)

- (b) impose also a daily penalty for any continuing breach thereof not exceeding *five* pounds per day;
- (c) fix a maximum as well as a minimum penalty;
- (d) authorise any matter or thing to be from time to time determined, applied, or regulated by the council by resolution or by the building advisory committee or by the city building surveyor or proper servant either generally or for any class of cases or in any particular case;
- (e) provide for payment of fees where under the provisions of this Act, or any regulation or by-law made thereunder, the council supplies any service, product, or commodity; makes any registration; grants any certificate, permit, or license; gives any permission; furnishes any information; admits to any building or enclosure; or receives any application for its approval;
- (f) provide for the payment of fees to any persons whose services are obtained for the purposes of giving effect to this Act and the by-laws.

74. Every by-law shall be approved by the Governor.

75. (1) Every regulation and by-law shall—

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

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

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

(3) Subject to the provisions of this section a by-law shall have the force of law.

76.

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

- (a) the repeal or omission of certain words or figures ; or
- (b) the substitution of certain words or figures in lieu of any repealed or omitted words or figures ; or
- (c) the insertion of certain words or figures,

Incorporation
of amend-
ments.

Act No. 41,
1919, s. 578.

the by-law as so amended may be printed by the Government Printer in the form certified as correct by the Attorney-General.

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

PART VII.

MISCELLANEOUS.

77. The Sydney Corporation Amendment Act, Amending 1905, is amended by inserting after paragraph (a) of Act No. 39, subsection one of section twelve the following new paragraphs :—

1905, s. 12.

- (a1) regulating, restricting or preventing the exhibition of advertisements in such places, and in such manner or by such means as to affect injuriously the amenities of a public park or pleasure promenade or to disfigure the natural beauty of a landscape ;
- (a2) regulating and controlling all advertisements attached to or painted on any hoardings or on any building or on any fence, rock, cliff, or tree.

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

—C

79.

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

- (a) by delivering the same to such person or (if the person is absent from New South Wales) to his agent; or
- (b) by leaving the same at his usual or last known place of abode; or
- (c) by forwarding the same by post in a prepaid letter addressed to such person at his usual or last known place of abode.

SCHEDULE.

Name of Act.	Extent of Repea
City of Sydney Improvement Act, 1879.	To the extent that it is inconsistent with the provisions of this Act or any regulations or by-laws made thereunder.
Height of Buildings (Metropolitan Police District) Act, 1912.	So far as it relates to the city of Sydney