

Namibia

Town Planning Ordinance, 1954

Legislation as at 2000-07-19.

FRBR URI: /akn/na/act/ord/1954/18/eng@2000-07-19

PDF created on 2020-08-05 at 08:45.

There may have been updates since this file was created.

[Check for updates](#)



This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

www.laws.africa

info@laws.africa

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0).
Share widely and freely.

Table of Contents

Town Planning Ordinance, 1954	4
Ordinance 18 of 1954	4
1.	5
2.	5
3.	6
4.	6
5.	7
6.	7
7.	7
8.	7
9.	8
10.	8
11.	8
12.	8
13.	10
14.	10
15.	10
16.	11
17.	11
18.	11
19.	12
20.	13
21.	13
22.	13
23.	13
24.	13
25.	14
26.	14
27.	14
28.	15
29.	15
30.	16
31.	16
32.	16
33.	16
34.	18
35.	18
36.	19
37.	19
38.	19
39.	20
40.	20
41.	20
42.	21
43.	21
44.	21
45.	22
46.	22
47.	22
48.	23
48A. Prohibition of the erection of buildings	23
49.	24
50.	25
51.	25
FIRST SCHEDULE	25
MATTERS TO BE DEALT WITH IN SURVEYS	25

SECOND SCHEDULE	26
MATTERS TO BE DEALT WITH BY SCHEMES	26
THIRD SCHEDULE	27
LOCAL AUTHORITIES TO WHICH THE PROVISIONS OF THIS ORDINANCE APPLY	27



Republic of Namibia
Annotated Statutes

Town Planning Ordinance, 1954

Ordinance 18 of 1954

Published in [Official Gazette no. 1846](#) on 7 July 1954

Assented to on 21 June 1954

Commenced on 1 October 1960 by [Proclamation 66 of 1960](#)

[Up to date as at 14 July 2020]

[Amended by [Town Planning Amendment Ordinance, 1968 \(Ordinance 13 of 1968\)](#) on 1 October 1960]

[Amended by [Town Planning Amendment Ordinance, 1970 \(Ordinance 13 of 1970\)](#) on 8 July 1970]

[Amended by [Town Planning Amendment Ordinance, 1973 \(Ordinance 11 of 1973\)](#) on 3 July 1973]

[Amended by [Town Planning Further Amendment Ordinance, 1973 \(Ordinance 23 of 1973\)](#) on 28 November 1973]

[Amended by [Town Planning Amendment Ordinance, 1977 \(Ordinance 10 of 1977\)](#) on 8 June 1977]

[Amended by [Town Planning Amendment Ordinance, 1979 \(Ordinance 5 of 1979\)](#) on 27 March 1979]

[Amended by [Town Planning Amendment Act, 1993 \(Act 27 of 1993\)](#) on 16 December 1993]

[Amended by [Town Planning Amendment Act, 2000 \(Act 15 of 2000\)](#) on 19 July 2000]

ORDINANCE

To make provision for the preparation and carrying out of town planning schemes and for matters incidental thereto.

(Afrikaans text signed by the Administrator)

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa as follows:-

*[Ord. 13 of 1970 makes the following substitutions throughout the Ordinance: * "South West African Planning Advisory Board" for "Town and Regional Planning Commission"; and * "board" for "Commission" or "commission".*

*Ord. 11 of 1973 makes the following substitution throughout the Ordinance: * "Executive Committee" for "Administrator".*

*Act 27 of 1993 makes the following substitutions throughout the Ordinance: * “Minister” for “Executive Committee”; * “Parliament” for “Legislative Assembly”; * “Namibia” for “the Territory”; and* “State Revenue Fund” for “Territory Revenue Fund”; and directs that the word “Official” be deleted from the expression “Official Gazette” wherever it occurs.]*

1.

The intent or purpose of this Ordinance shall be:-

- (1) Every town planning scheme shall have for its general purpose a co-ordinated and harmonious development of the local authority area, or the area or areas situate therein, to which it relates (including, where necessary, the re-construction and re-development of any part which has already been sub-divided, whether there are or are not buildings thereon) in such a way as will most effectively tend to promote health, safety, order, amenity, convenience and general welfare, as well as efficiency and economy in the process of development and the improvement of communications.
- (2) A scheme shall contain such provisions as may be deemed necessary or expedient for regulating, restricting or prohibiting the development of the area to which the scheme applies and generally for carrying out any of the objects for which the scheme is made, and, in particular, for dealing with any of the matters mentioned in the Second Schedule to this Ordinance.

2.

In this Ordinance, unless the context otherwise indicates:-

“board” means the Namibia Planning Advisory Board referred to in section 9;

[definition of “board” inserted by Act 27 of 1993]

“building”, without in any way limiting the ordinary meaning of the word, includes -

- (a) any structure, whether it be of a permanent or temporary nature, erected or used for the housing or accommodation of human beings or for the storage, manufacture or sale of goods or materials or for the destruction or treatment of refuse or other waste materials;
- (b) a wall, swimming pool, swimming bath, reservoir, tower, bridge, chimney, mast, summer-house and hot-house and any structure appertaining thereto or erected or used in connection therewith;
- (c) any boundary fence or boundary wall;
- (d) any projection from a building;

[definition of “building” inserted by Ord. 11 of 1973]

“Deeds Registry”, in relation to land situated in the district of Rehoboth, means the deeds registry established by section 2 of the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976) and, in relation to any other land, the deeds registry of Windhoek referred to in section 1 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

[definition of “Deeds Registry” inserted by Act 15 of 2000]

[definition of “Executive Committee” inserted by Ord. 11 of 1973 and deleted by Act 27 of 1993]

“local authority” means a municipal council, town council or village council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992) or a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

[definition of “local authority” substituted by Ord. 11 of 1973, Act 27 of 1993 and Act 15 of 2000]

“local authority area” means -

- (a) in relation to a municipal council, town council or village council the area declared under section 3 of the Local Authorities Act, 1992 (Act No. 23 of 1992) to be a municipality, town or village, as the case may be, or deemed to be so declared;
- (b) in relation to a regional council, the area declared under section 31 of the Regional Council Act, 1992 (Act No. 22 of 1992) to be a settlement area and in respect of which the provisions of this Ordinance apply pursuant to section 4(1);

[The definition of "local authority area" is substituted by Act 15 of 2000. The correct name of Act 22 of 1992 is the "Regional Councils Act" (with "Councils" being plural).]

"public place" means any street (as defined in this section), square, recreation ground, garden, park or enclosed space which being situate in a local authority area, the local authority is vested with the ownership, control or management thereof by law, or deed of title, for the use and benefit of the public, or which the public has or acquires the right to use;

"Minister" means the of Regional and Local Government and Housing;

[definition of "Minister" inserted by Act 27 of 1993 and substituted by Act 15 of 2000]

"Registrar of Deeds" means the registrar of deeds responsible for the deeds registry referred to in the Deeds Registries Act, 1937 (Act No. 47 of 1937), or the registrar of deeds responsible for the deeds registry referred to in the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976);

[definition of "Registrar of Deeds" inserted by Act 15 of 2000]

"survey" means the collection, correlation, study and presentation of data on past and existing conditions in the area of a local authority or in any other area, and in particular with regard to the subjects mentioned in the First Schedule hereto;

[definition of "survey" amended by Ord. 13 of 1970]

"street" means any street, road, thoroughfare, foot pavement, footpath, sidewalk and lane and includes any bridge, subway, drain, canal, culvert or the like in or under a street;

"town planning scheme" or "scheme" means a planning scheme, including a regional planning

scheme, operative, approved, prepared or in the course of preparation in accordance with the provisions of this Ordinance, and includes a scheme supplementing, varying or revoking an approved scheme, and the map illustrating the scheme.

[definition of "'town planning scheme' or 'scheme'" amended by Ord. 13 of 1970]

3.

- (1) This Ordinance shall apply to every local authority mentioned in the Third Schedule hereto, and to every other local authority to which the Ordinance shall apply in terms of the next succeeding section.
- (2) For the purposes of this ordinance every local authority mentioned in the third schedule shall be deemed to have taken a formal resolution to prepare a scheme and such resolution shall be deemed to have taken effect.

[section 3 amended by Ord. 13 of 1968 to insert subsection (2)]

4.

- (1) Subject to the provisions of sub-sections (2), (3) and (4) hereof, the Minister may from time to time, after consultation with the local authority concerned, by notice in the Gazette, apply the provisions of this Ordinance to any local authority not mentioned in the Third Schedule: Provided that if such local authority is a regional council such notice shall also specify the settlement area in respect of which this Ordinance shall apply.

[subsection (2) amended by Act 27 of 1993 and by Act 15 of 2000]

- (2) Before the power conferred by the preceding sub-section is exercised the Minister shall notify an intention to exercise such power:
 - (a) by written notice to the local authority concerned; and
 - (b) by notice once a week for three consecutive weeks in a newspaper circulating in the local authority area concerned, and once during this period in the Gazette.

[paragraph (b) amended by Act 27 of 1993]

- (3) It shall be competent for any person interested or the local authority concerned within thirty days of the publication of the said notice in the Gazette to present to the Minister a petition setting forth any objections to the exercise by the Minister of the power conferred upon him by sub-section (1).
- (4) Upon receipt of any such petition the Minister shall refer it to the board, for consideration and report, and, if no sufficient cause has been shown why the power proposed to be exercised shall not be exercised, the Minister may exercise such power.

[subsection (4) amended by Act 27 of 1993]

5.

Every local authority to which the provisions of this Ordinance have been applied by section 3 shall within a period of one year from the commencement of this Ordinance or within such further period or periods as the Minister may in his or her discretion allow, prepare and submit to the Minister, in such form as may be prescribed, a town-planning scheme, hereafter referred to as a scheme, in respect of all the land situated within the local authority area or such portion thereof as the Minister may decide and, with the consent of the Minister, specified land outside the boundaries of such local authority area.

[section 5 amended by Act 27 of 1993]

6.

Every local authority to which the provisions of this Ordinance have been applied in terms of sub-section (1) of section 4 shall within a period of three years from the date of the notice applying such provisions or within such further period as the Minister may in his or her discretion allow, prepare and submit to the Minister a scheme in respect of all the land situate within the local authority area or such portion thereof as the Minister may decide and, with the consent of the Minister, specified land outside the boundaries of such local authority area.

[section 6 amended by Act 27 of 1993]

7.

- (1) A local authority which has not been required to submit a scheme as aforesaid may on its own initiative prepare and submit to the Minister a scheme in respect of all or any of the land situate within the local authority area and, with the consent of the Minister, specified land outside the boundaries of such local authority area.

[subsection (1) amended by Act 27 of 1993]

- (2) Notice of intention to prepare a scheme hereunder for submission to the Minister shall be given by the local authority by means of an advertisement in two consecutive issues of the Gazette and once a week for three consecutive weeks in a newspaper circulating in the area in respect of which the scheme will be prepared. The provisions of this Ordinance shall then apply in and to the area in respect of which the scheme will be prepared as from the date of the said advertisement.

8.

- (1) For the purpose of the preparation of a scheme the local authority may appoint a town-planning committee (the members of which need not necessary be members of the local authority), and may further appoint a town-planning adviser or town planner and pay him.
- (2) Where two or more local authorities are desirous of acting jointly for any of the purposes of this Ordinance, they may concur in appointing a joint town-planning committee for these purposes. The costs of a joint town-planning committee shall be defrayed by the constituent local authorities in the proportions as may be agreed by them and, failing agreement, as may be directed by the Minister.

9.

- (1) The body corporate which immediately before the commencement of the Town Planning Amendment Act, 1993, existed under the name South West African Planning Advisory Board, shall continue to exist as a body corporate under the name Namibia Planning Advisory Board.

[Subsection (1) is amended by Ord. 13 of 1970 and substituted by Act 27 of 1993, which provides the following transitional provision in section 6(2):

“The change of name effected by the amendment under subsection (1)(a) [of Act 27 of 1993, which amends subsection (1)] shall not affect the rights, obligations and liabilities of the body corporate referred to in section 9 of the Ordinance, and any reference in any law, register, title deed or other document to the South West African Planning Advisory Board shall be construed as a reference to the Namibia Planning Advisory Board.”]

- (1A) The Board shall consist of not less than three and not more than ten members who shall be appointed by the Minister and of whom one shall be designated by the Minister as chairperson of the board.

[Subsection (1A) is inserted by Act 27 of 1993, which provides the following transitional provision in section 15:

“Any person who, at the commencement of this Act [Act 27 of 1993], holds office as a member of the board referred to in section 9 of the Ordinance [Ord. 18 of 1954] by virtue of his or her appointment under subsection (1) of that section before the amendment of that provision by this Act [Act 27 of 1993], shall be deemed to have been appointed under subsection (1A) of that section as inserted by this Act [Act 27 of 1993].”]

- (2) Subject to any regulation providing for the vacation of office by a member, each member (other than the chairman) shall hold office for such a period not exceeding three years, as the Minister may determine, but shall be eligible for re-appointment.
- (3) The Minister may, whenever he is satisfied that any member of the board is prevented by illness, absence or other cause, from performing the duties of his office, appoint any other person to act as the deputy of that member while he is so prevented, and such deputy shall during the period he so acts, perform the duties of the member in whose stead he was appointed to act: Provided that the Minister may nominate one member as the deputy chairman of the board and such deputy chairman shall act in the place of the chairman at any time in the absence of the chairman.

10.

The members of the board, other than those who are public servants or in the employ of the Administration, shall be entitled to such remuneration as the Minister may from time to time determine.

11.

[section 11 amended by Ord. 13 of 1970 and deleted by Act 27 of 1993]

12.

- (1) The board shall be entrusted with all matters relating to town planning schemes as are assigned to it by or in terms of this Ordinance, and shall in the performance of its functions, powers and duties under this

Ordinance, comply with such directions as may from time to time be given to it by the Minister.

(2) Without prejudice to the generality of the provision of sub-section (1), the functions of the board are:-

[introductory phrase of subsection (2) amended by Ord. 13 of 1970]

- (a) to advise the Minister in matters relating to the preparation and carrying into effect of town planning scheme;
- (b) to formulate in general terms town planning policy for Namibia with special reference to various types of development in their relation to roads, railways, residential, commercial and industrial areas, educational and other public institutions, townlands, place of recreation, open spaces, water supply, sanitation, soil suitability and the like, including also the administrative and financial implications which certain types of development would have in respect of local government control;
- (c) to undertake any survey within Namibia and to design plans in connection therewith;
[paragraph (c) substituted by Ord. 13 of 1970]
- (d) to encourage the study of town and regional planning;
- (e) to ensure as far as practicable that local authorities in the exercise of their powers in respect of town planning make use of such powers to the best advantage;
- (f) to advise and assist local authorities generally in connection with the preparation of town planning schemes;
- (g) to furnish any local authority with technical advice in regard to a town planning scheme; to prepare plans for any suggested scheme; to prepare estimates of the approximate cost of carrying out such scheme; and to tender such other advice as may be deemed necessary to enable such local authority to initiate such scheme and carry it out to completion upon its approval by the Minister;
- (gA) to advise the Minister on the desirability for and necessity of establishing townships;
[paragraph (gA) inserted by Ord. 11 of 1973]
- (gB) to advise the Minister on the subdivision of land situated outside an approved township or outside the townlands of such a township where either the subdivision or the remainder thus created is smaller than twenty-five hectares;
[paragraph (gB) inserted by Ord. 11 of 1973]
- (gC) to advise the Minister on the desirability for and necessity of deproclaiming townships.
[Paragraph (gC) is inserted by Ord. 11 of 1973. The full stop at the end should be a semicolon now that it is no longer the last paragraph in subsection (2).]
- (h) generally to exercise such powers and perform such functions as are conferred or imposed upon it by or in terms of this Ordinance: Provided that such powers shall only be exercised and such functions shall only be performed if the Minister so directs.

[Paragraph (h) is amended by Ord. 13 of 1970. It is not entirely clear from Ord. 13 of 1970 if the proviso was intended to apply only to paragraph (h) or to the entire list of functions of the board in subsection (2). The relevant part of Ord. 13 of 1970 is section 4(c), which reads as follows (with the spacing of the substituted text reproduced as it appears in the Official Gazette):

"4. Section 12 (2) of the principal Ordinance is hereby amended -

(c) by the substitution in paragraph (h) -

(i) for the word 'duties' of the word 'functions';

(ii) for the word 'Ordinance.' of the following words:-

'Ordinance:

Provided that such powers shall only be exercised and such functions shall only be performed if the Administrator so directs.'"]

13.

- (1) For the purposes of, and in so far as it may be necessary for or incidental to the carrying out and the performance of its functions, powers and duties, the board shall, subject to the provisions of sub-section (2), have power -
 - (a) to appoint and employ such technical and other officers, workmen and servants as it may deem necessary, upon such terms and conditions as it may determine;
 - (b) to acquire by purchase, lease or otherwise land and other property of any description for any of its purposes and to construct and maintain, alter or improve buildings and make beneficial use of the same;
 - (c) to cause surveys, maps, drawings and estimates to be made by or through its officers, servants or agents;
 - (d) to insure with any company or person against any losses, damages, risks and liabilities which the board may incur; and
 - (e) to enter into any contract with any person or body of persons.
- (2) The exercise by the board of any of the powers mentioned in sub-section (1) shall be subject in every case to the prior approval, whether general or special, of the Minister.
- (3) Every contract made by the board shall be deemed to be duly executed if signed by the chairman or by one or more authorized members of the board and certified by the secretary to the board as having been authorized by resolution of the board.
- (4) *[subsection (4) inserted by Ord. 13 of 1970 and deleted by Act 27 of 1993]*
- (5) *[subsection (5) inserted by Ord. 13 of 1970 and deleted by Act 27 of 1993]*

14.

- (1) The Minister may from time to time out of moneys appropriated by the Parliament for such purpose, make grants of money to the board for any purpose connected with its functions, powers and duties, upon terms and conditions to be prescribed by him.
- (2) The Minister may also pay to the board such fees and other charges as may be levied and recovered under this Ordinance or any regulations made by the Minister in terms of this Ordinance.
- (3) The finances of the board shall be regulated in accordance with regulations made by the Minister in that behalf.

15.

In the preparation of a scheme under this Ordinance the local authority shall furnish a survey of the matters set out in the First Schedule hereto, and shall deal in detail with the matters set out in the Second Schedule hereto in this scheme.

16.

- (1) Subject to the provisions of this Ordinance, a local authority or a joint committee duly authorised in that behalf may, by resolution, decide to prepare a scheme with respect to any land within the area of such local authority or, as the case may be, the areas of the constituent local authorities.
- (2) A resolution passed under the foregoing sub-section shall not take effect unless and until it is approved by the Minister, and the Minister in giving his approval may vary the extent of the land to be included in the area to which the resolution applies, but the Minister shall not approve any such resolution unless he is satisfied -
 - (a) in the case of any land already built upon, that public improvements are likely to be made, or other development is likely to take place, within such a period of time and on such a scale as to make the inclusion of the land in a scheme expedient, or that the land comprises buildings or other objects of architectural, historic or artistic interest, or that the land is so situate that the general object of the scheme would be better secured by its inclusion; and
 - (b) in the case of land which is neither already built upon nor in course of development, not likely to be developed, that the land is so situated in relation to land which is already built upon, or in course of development, or on which development is likely to take place, as to make its inclusion in a scheme expedient, or that it comprises objects or places of natural interest or beauty.
- (3) A resolution of a local authority or joint committee to prepare a scheme may be revoked, either as to the whole or any part of the area to which it applies, by a subsequent resolution of the authority or committee or, if the Minister thinks that in the special circumstances of the case the resolution should be so revoked, by order of the Minister: Provided that -
 - (a) a resolution under this sub-section shall require the approval of the Minister, and the Minister may refuse to approve it except subject to such condition as he thinks fit to impose; and
 - (b) before making an order under this sub-section the Minister shall inform the local authority or joint committee, as the case may be, of the order which he proposes to make and, if within one month the authority or committee requests him so to do, he shall cause an enquiry to be held into the matter by the board.
- (4) The provisions of sub-section (3) shall not apply in the case of an approved scheme.

17.

- (1) Where a resolution to prepare a scheme has taken effect the local authority or, as the case may be, the joint committee which passed the resolution shall publish a notice of the resolution in two consecutive issues of the Gazette and in a newspaper circulating in the area or areas of the local authority or authorities concerned, at least once during each of two successive weeks, with an interval between each publication of at least six clear days, the first publication being not more than fourteen days after the receipt of the Minister's approval.
- (2) A notice required by sub-section (1) shall contain a concise statement of the effect of the resolution, together with information as to the place and times at which a map defining the area to which the resolution applies, may be inspected.

18.

- (1) Every scheme shall define the area to which it applies and specify in accordance with the provisions of the next succeeding sub-section, the authority or authorities who are to be responsible for enforcing and carrying into effect the provisions of the scheme, and -
 - (a) shall contain such provisions as are necessary or expedient for prohibiting or regulating the development of land in the area to which the scheme applies and generally for carrying out any of the object for which the scheme is made, and in particular for dealing with any of the matters

mentioned in the Second Schedule to this Ordinance; and

- (b) where it is expedient in order to promote proper planning or development, may provide for suspending the operation of any provision of law or any by-law or regulation made under any such law, in so far as such provision is similar to or inconsistent with any of the provisions of the scheme.
- (2) A scheme shall specify the authority which is to be responsible for all the purposes of the scheme and such authority may be the local authority which prepared the scheme or, where the scheme was prepared by a joint committee, either the constituent local authorities in their respective areas, or the joint committee.

19.

- (1) The provisions to be inserted in a scheme with respect to buildings and building operations may include provisions -
- (a) prescribing the space about buildings;
 - (b) limiting the number of buildings;
 - (c) regulating or enabling the local authority to regulate the size, height, design and external appearance of buildings;
 - (d) imposing restrictions upon the manner in which buildings may be used including, in the case of dwelling houses, the letting thereof in separate tenements; and
 - (e) prohibiting building operations or regulating such operations in respect of matters other than those specified in this sub-section:

Provided that, where a scheme contains a provision enabling the responsible authority to regulate the design or external appearance of buildings, the scheme must also provide that any person aggrieved by any decision of the responsible authority under such provision shall have a right of appeal to the Minister against such decision and the grounds of such an appeal may include the ground that compliance with the decision would involve an increase in the cost of the building which would be unreasonable having regard to the character of the locality and of the neighbouring buildings.

- (2) (a) Where the provisions of a scheme prohibit or restrict building operations on land situate in any undeveloped part or parts of the area pending the extension thereto of road, sewer, water supply, light or other necessary public services, the owner of any such land who desires to commence thereon any building operations which would contravene any such prohibition or restriction may, in accordance with such directions, if any, as may be contained in the scheme, apply to the responsible authority for its consent to the carrying out of the operations specified in the application.
- (b) The responsible authority shall in deciding any such application have regard to any injury likely to be caused to the applicant by the refusal of the application, as well as to any public advantage likely to result from the maintenance of the prohibition or restriction, and may if it is satisfied that the proposed operations will not contravene any permanent provisions of the scheme, grant the application unconditionally or subject to such conditions as it may think proper to impose: Provided that the responsible authority shall not refuse such application unless it is satisfied that other land suitable for such building operations as are specified in the application is available on reasonable terms and either -
- (i) that the operations would involve danger or injury to health by reason of the lack of roads, sewers, water supply or any public services and that the provision of the necessary services would be premature or likely to involve excessive expenditure of public money; or
 - (ii) that the operations would be likely seriously to injure the amenity of the locality.
- (c) No compensation shall be payable under this Ordinance in respect of the refusal by the responsible authority of any application made under this sub-section, but any person who is aggrieved by the

refusal of any such application aforesaid, or by any condition imposed by the responsible authority, may within twenty-eight days from the date on which he received notice of the decision of the responsible authority, or such longer period as the Minister may allow, appeal to the Minister in writing and the Minister may dismiss or allow the appeal, either unconditionally, or subject to such conditions as he thinks proper to impose.

- (3) A scheme may include a schedule setting out the use or uses to which any land or building was being put at any given date, and upon such scheme coming into operation it shall be presumed until the contrary is proved that such land or building was being put to the particular use mentioned at the said date.
- (4) The provisions to be inserted as aforesaid may -
 - (a) differ as respects different parts of the area to which the scheme applies; and
 - (b) be made applicable, either with or without modifications, to existing buildings as well as to future buildings.

20.

While a scheme is in course of preparation the local authority or joint committee may from time to time consult the board regarding any matter connected therewith: Provided that whenever thereto required by the board the local authority or, as the case may be, the joint committee shall disclose to the board its proposals so far as they are then known and if the board is of opinion that such proposals ought to be varied or modified the local authority or committee shall give effect to such variation or modification but subject to a right of appeal to the Minister whose decision shall be final.

21.

A scheme prepared by a local authority or joint committee shall require the approval of the Minister: Provided that before its submission to the Minister the draft scheme shall be adopted by the resolution of the local authority or joint committee at a meeting of which special notice indicating the business to be transacted has been given to each member.

22.

After the preparation of a scheme and its adoption as in section twenty-one provided, the same shall be submitted to the Minister under cover of an application for his approval of the scheme. The scheme shall be presented in such form as shall be prescribed by the regulations and shall be accompanied by such maps, plans, documents and other relevant matters as may be required in terms of the regulations.

23.

Upon the receipt of an application for his approval of a scheme the Minister shall refer the scheme to the board for its consideration and report, and the board shall forthwith cause a notice to be published in two successive issues of the Gazette and once a week for three weeks in a newspaper circulating in the area of the local authority or, in the case of a joint scheme, in a newspaper circulating in the respective areas of the constituent local authorities, to the effect that the scheme has been submitted for the approval of the Minister, that copies of the scheme and of the maps, plans, documents and other relevant matters are lying for inspection at the offices of the local authority or authorities, as the case may be, and of the board, and that objections to such scheme may be lodged with the board's secretary at any time within a stated period being not less than one month after the date of the last publication of the notice in the Gazette.

24.

Every owner or occupier of immovable property within the area to which the scheme applies or other person having a sufficient interest therein, shall have a right of objection to the scheme: Provided that any objection shall be in writing and shall set out briefly the grounds of objection and be lodged with the board's secretary

within the period referred to in section twenty-three.

25.

- (1) Upon the expiration of the period for the lodging of objections the board shall fix a date, time and place for the hearing of the application and if any objections which may have been lodged, and the board's secretary shall give to the local authority or, as the case may be, the joint committee, and any objector, at least fourteen days' notice of the date, time and place so fixed: Provided that if objections have been lodged the hearing of the application shall not be less than six weeks after a copy of all objections has been transmitted to the local authority or, as the case may be, the joint committee.
- (2) At the hearing of the application the local authority or joint committee, as the case may be, and any objector may be represented by counsel or attorney and the hearing shall be open to the public.
- (3) Upon the conclusion of the hearing of the application the board shall submit to the Minister a copy of the record of its proceedings and copies of all objections which may have been lodged, together with a report and any recommendations which it may deem proper to make in respect of the scheme.

26.

- (1) After consideration of the report and the recommendations submitted to him by the board the Minister may refuse to approve of the scheme, or he may approve it either with or without modifications: Provided that before refusing approval or making any modification he shall inform the local authority or joint committee, as the case may be, of his intended refusal or as the case may be, of the modification which he proposes to make and if, within a period of one month the local authority or joint committee requests him so to do, he shall delay his decision pending the submission to him by the local authority or joint committee of such representations as it may desire to make.
- (2) After the approval of a scheme the Minister shall give notice of such approval in the Gazette and such scheme shall come into operation upon the publication of such notice, and thereafter be referred to as an approved scheme.

[subsection (2) amended by Act 27 of 1993; the amendment markings are incomplete]

- (3) The Minister shall cause true copies of every approved scheme to be lodged with the Surveyor-General and the Registrar of Deeds.

27.

- (1) An approved scheme may be varied, otherwise than by way of extension of the area to which the scheme applies, or it may be revoked, by a subsequent scheme prepared and approved in accordance with this Ordinance and any regulations made thereunder: Provided that the Minister may, at the request of the local authority or joint committee, as the case may be, in respect of any such variation or revocation, grant exemption from compliance with the provisions of sections 7(2) and 15, subject to such conditions as the Minister may deem necessary.

[subsection (1) substituted by Ord. 10 of 1977]

- (2) The Minister, on an application made in accordance with the provisions of sub-section (3), may, if he thinks that in the special circumstances of the case a scheme ought to be varied or revoked, himself make a scheme varying or revoking that scheme: Provided that the Minister shall not make any variation in a scheme unless he is satisfied that it will not involve substantial additional expenditure by any responsible authority under the scheme which objects to the variation being made: Provided, further, that in the exercise of the authority conferred upon him by this sub-section the Minister shall comply with the provisions of the proviso to sub-section (1) of section twenty-six, mutatis mutandis.

A scheme made by the Minister under this sub-section shall, for the purposes of this Ordinance, be deemed to have been prepared by such local authority or joint committee as may be specified in the

scheme.

- (3) An application to the Minister under this section may be made by any authority which is a responsible authority for any purposes of the scheme which it is proposed to vary or revoke, or by any joint committee appointed for the purpose of preparing a scheme in respect of an area comprising land to which the first mentioned scheme applies, or by any other authority or person who appears to the Minister to be concerned.
- (4) Every approved scheme shall be reviewed periodically at intervals of not more than five years with a view to its variation or revocation in terms of sub-section (1): Provided that the Minister may on application extend the interval in any case upon such conditions as he may deem proper.
- (5) Notwithstanding anything hereinbefore contained if in an approved scheme errors or omissions are found which in his opinion are not of a material nature, the Minister may authorise their rectification without compliance with any of the provisions of this section.

28.

- (1) Upon the coming into operation of an approved scheme the responsible authority shall observe and enforce the observance of all the provisions of the scheme.
- (2) Subject to the provisions of this Ordinance, the responsible authority may at any time -
 - (a) remove, pull down or alter, so as to bring it into conformity with the provisions of the scheme, any building or other structural work which was in existence when the scheme came into operation and which does not conform to those provisions, or the demolition or alteration of which is necessary for carrying the scheme into effect; or
 - (b) remove, pull down or alter so as to bring it into conformity with the provisions of the scheme, any building or other structural work erected or carried out in contravention of any provision of the scheme; or
 - (c) where any building or land is being used in such a manner as to contravene any provision of the scheme, prohibit it from being used; or
 - (d) where any land has since the scheme came into operation been put to any use which contravenes any provision of the scheme, reinstate the land; or
 - (e) execute any work which it is the duty of any person to execute under the scheme in any case where delay in the execution of the work has occurred and the efficient operation of the scheme has been or will be thereby prejudiced; or
 - (f) generally do anything necessary to give effect to the scheme.
- (3) Before taking any action under sub-section (2) the responsible authority shall serve a notice on the owner and on the occupier of the building or land in respect of which the action is proposed to be taken and on any other person who, in its opinion, may be affected thereby, specifying the nature of, and the grounds upon which it proposes to take that action.
- (4) Where a building or work which the responsible authority proposes to remove, pull down or alter under this section was in existence, or where a building or land the use of which it proposes to prohibit was being put to use for the same purpose, before the scheme came into operation, the responsible authority shall serve the notices referred to in sub-section (3) not less than six months before it takes any action and, in any other case, one month before it takes any action.
- (5) Except where the responsible authority removes, pulls down or alters a building or work which was in existence before the scheme came into operation, any expenses reasonably incurred by the responsible authority under sub-section (2) may be recovered as a civil debt from the person in default.

29.

The responsible authority may with the prior approval of the Minister purchase or exchange other land by agreement for any land or any interest in land to which the scheme applies, which it requires for any of the purposes of the scheme. If it is unable to purchase by agreement such land or interest in land it may, with prior approval of the Minister, under the provisions of the Expropriation of Lands Ordinance, 1937, expropriate the same as though it were a municipal council.

30.

- (1) Subject to the provisions of this Ordinance, the responsible authority under an approved scheme may by written notice call upon any owner of land in the area to which the scheme applies -
 - (a) to take such steps as may be necessary to vary the existing sub-division or lay-out of such land in order to bring it into conformity with the provisions of the scheme;
 - (b) to cause any necessary amendment of the plan or diagram of the land and any necessary alteration or endorsement of the deed of title and any necessary entry in the Deeds Registry to be made or recorded in the Office of the Surveyor-General and in the Deeds Registry; and
 - (c) to effect any transfers of land which may be rendered necessary by the provisions of the scheme.
- (2) Upon being satisfied that it is proper to do so the Surveyor-General and the Registrar of Deeds shall give effect to the requirements of paragraph (b) of sub-section (1).
- (3) Any expense necessarily incurred by an owner of land referred to in sub-section (1) shall be borne by the responsible authority.

31.

The Surveyor-General shall not approve any general plan of the lay-out of any land or the diagram of any sub-division of land, if such land is situate in any area to which an approved scheme applies and such lay-out or sub-division is inconsistent with any of the provisions of the scheme: Provided that if such lay-out or sub-division is shown in greater detail in the general plan or diagram than in the scheme, it shall not be deemed to be inconsistent with the scheme if it has been approved by the responsible authority.

32.

Subject to the provisions of this Ordinance, any person -

- (a) whose property is injuriously affected by the coming into operation of any provision contained in a scheme, or by the execution of any work under a scheme, being a provision or work which infringes or curtails his legal rights in respect of that property; or
- (b) who suffers damage by reason of any action taken by a responsible authority under section twenty-eight; or
- (c) who for the purpose of complying with any provision contained in a scheme, or in making or resisting a claim under the provisions of this Ordinance relating to compensation and betterment, has incurred expenditure which is rendered abortive by a subsequent variation or revocation of the scheme;

shall if he makes claim within the time limited for the purpose by this Ordinance, be entitled to recover as compensation from the responsible authority, the amount by which his property is decreased in value and in the case of property on which he has carried on a trade or business or profession, the amount of any resulting injury to that trade or business or profession, or the amount of his damage, or, so far as it was reasonably incurred, the amount of the abortive expenditure, as the case may be.

33.

- (1) Except as is hereinafter otherwise provided, compensation shall not be payable in respect of the injurious affection of property by the coming into operation of any provision of a scheme which -

- (a) prescribes the space about buildings;
- (b) fixes building lines;
- (c) regulates the position of buildings on each lot in relation to other buildings;
- (d) regulates or empowers the responsible authority to regulate the character, size, height, harmony, design or external appearance of buildings, including the materials used in the construction of buildings;
- (e) limits the number of buildings which may be erected on any lot;
- (f) prescribes the maximum area which may be built upon on any lot;
- (g) restricts the manner in which buildings may be used;
- (h) regulates, in the interests of safety, the height and position of existing and proposed walls, fences or hedges near the corners or bends of streets;
- (i) with a view to preventing obstruction of traffic requires that at any building, excluding a dwelling house -
 - (i) areas where persons who are employed or resident on the premises, can park their vehicles; or
 - (ii) areas where vehicles can be loaded, unloaded or fuelled; or
 - (iii) areas where persons who are employed or resident on the premises can park their vehicles as well as areas where vehicles can be loaded, unloaded or fuelled,
 shall be provided on such premises;

[paragraph (i) substituted by Ord. 11 of 1973]
- (j) prohibits or restricts building operations permanently on the ground that, by reason of the situation or nature of the land, the erection of buildings thereon would be likely to involve danger to life or danger or injury to health, or excessive expenditure of public money in the provision of roads, sewers, water supply or other public services;
- (k) prohibits (otherwise than by way of prohibition of building operations) the use of land for a purpose likely to involve danger to life or danger or injury to health or serious detriment to the neighbourhood, or restricts (otherwise than by way of restriction of building operations) the use of land so far as may be necessary for preventing such danger, injury or detriment;
- (l) limits the number or prescribes the sites of new roads entering an existing road or the site of a proposed road:

Provided that compensation shall be payable where by fixing any building line in terms of a provision of a scheme referred to in paragraph (b), the area of the land of any owner fronting the street or the proposed street will be diminished to such an extent as to render it substantially less suitable for the erection of a building or buildings in conformity with the provisions of the scheme, whether by reason of the shape of the land, or otherwise, and also upon the enforcement of a provision of a scheme referred to in paragraph (g), which requires that any building shall be used in a manner different from that in which it was being used at the date upon which the resolution to prepare the scheme took effect and such use has been continuous up to the date of such enforcement.

- (2) Compensation shall not be payable in respect of the operation of any provision in an approved scheme if such provision could have been made and enforced without liability to pay compensation by the local authority concerned under any other law.
- (3) Where a person is entitled to compensation under this Ordinance respect of any matter or thing, and he would be entitled to compensation in respect of the same matter or thing under any other law, he shall not be entitled to compensation in respect of that matter or thing both under this Ordinance and that other

law, and he shall not be entitled to any greater compensation under this Ordinance than he would be entitled to under that other law.

- (4) A person shall not be entitled to recover compensation under this Ordinance in respect of any action taken by a responsible authority under section twenty-eight except in a case where a building or work which the responsible authority has removed, pulled down or altered was already in existence before the scheme came into operation.
- (5) Compensation shall not be payable in respect of any building erected or any work done in contravention of any provision of any approved scheme.
- (6) Where any provision in a scheme is revoked by a subsequent scheme, no compensation shall be payable in respect of any property on the ground that it has been injuriously affected by any provision contained in the subsequent scheme, if and in so far as that later provision is the same or substantially the same as the earlier provision so revoked, but, if at the date when the revocation, of that earlier provision becomes operative -
 - (a) there is still outstanding any claim for compensation duly made thereunder; or
 - (b) the time originally limited for making such a claim has not expired;

any such outstanding claim and any such claim made within the time so limited shall be entertained and determined and may be enforced in the same manner in all respects as if all the provisions of the earlier scheme had continued in operation.

34.

- (1) Where by the coming into operation of any provision contained in a scheme, or by the execution by a responsible authority of any work under a scheme, any property is increased in value, the responsible authority, if within twelve months after the date on which the provision came into operation, or such longer period as may be specified in the scheme, or within twelve months after the completion of the work, as the case may be, it makes a claim in that behalf, may recover from the person whose property is so increased in value an amount not exceeding seventy-five per cent. of the amount of that increase.
- (2) Any sum recoverable under this section may be paid immediately or, subject to the amount being secured by a mortgage bond, may be paid by such instalments spread over a period not exceeding thirty years as may be agreed or determined under this Ordinance, and where payment is made by instalments interest at such rate as may from time to time be fixed by the Minister shall be chargeable on the aggregate amount of the instalments for the time being outstanding, subject to the payment of the balance of the amount owing at any time upon not less than six months' notice in writing, together with interest up to the date of payment: Provided that in any case of undue hardship being shown to his satisfaction, the Minister may order that payment under the mortgage bond inclusive or exclusive of interest as fixed by the Minister as aforesaid, shall be deferred until such time as the Minister may determine but subject to such conditions as he may prescribe.
- (3) Any question arising as to the right of a responsible authority to recover any amount in respect of an increase in the value of any property, or the amount and manner of payment shall be dealt with as in section thirty-five provided.

35.

Any question arising under this Ordinance as to -

- (a) the right of a claimant to recover compensation or the amount thereof; or
- (b) the right of a responsible authority to recover an amount in respect of an increase in the value of any property, or the amount and manner of payment, whether immediately or by instalments spread over a period not exceeding thirty years;

shall, unless the authority and all persons concerned otherwise agree, be determined under the provisions of the

Arbitration Proclamation, 1926.

36.

- (1) A claim under this Ordinance for compensation shall be made by serving upon the responsible authority or person from whom the amount alleged to be payable is claimed a notice in writing stating the grounds of the claim and the amount claimed.
- (2) Subject to the provisions of this Ordinance a claim under this Ordinance for compensation may be made within twelve months after the date on which the provision giving rise to the claim came into operation, or, the claim is a claim for compensation in respect of an action taken by a responsible authority under section twenty-eight or in respect of expenditure rendered abortive by the variation or revocation of a scheme, within six month after the date on which the action was completed or the variation or revocation of the scheme became operative.
- (3) Where it is alleged that property has been injuriously affected by the execution of any work, the period within which a claim in respect of that injurious affection may be made shall be a period of six months after the completion of the work.
- (4) Notwithstanding the provisions of this section, the Minister may extend the period within which a claim for compensation may be made, if he is satisfied that the failure to make the claim within the prescribed period was due to absence from Namibia or any other reasonable cause.

37.

- (1) The responsible authority may, at any time within three months from the date of an award of compensation under this Ordinance in respect of the injurious affection of any property, give notice to the claimant of its intention to withdraw or modify all or any of the provisions of the scheme which give rise to the claim for compensation.
- (2) Where such a notice has been given, the responsible authority shall, within six weeks from the date of the notice, submit for the approval of the Minister a varying scheme carrying into effect such withdrawal or modification as aforesaid, and upon the varying scheme as approved by the Minister, with or without modifications, coming into operation, and upon payment by the authority of the claimant's costs of and in connection with the proceedings under the Arbitration Proclamation 1926, shall be discharged, without prejudice, however, the right of the claimant to make a further claim for compensation under paragraph (c) of section thirty-two in respect of the scheme as varied.
- (3) No award of compensation under this Ordinance in respect of the injurious affection of any property shall be enforceable before the expiration of six weeks from the date thereof, or, if a notice has been given by the authority under sub-section (1) of this section, until after the expiration of three months from the date of the notice, or, if within that period a varying scheme is submitted to the Minister, until that scheme has either come into operation or been disapproved by the Minister.

38.

- (1) If compensation is awarded under this Ordinance to the owner of any land which is subject to a mortgage, the responsible authority shall pay to the mortgagee or, if more than one, to the mortgagees in the order of their priority, in satisfaction or reduction of any principal or interest secured by mortgages, the compensation awarded to the owner of such land or, where the compensation is more than sufficient to satisfy the total sum so secured, a sufficient portion thereof: Provided that with the approval of any mortgagee the amount of compensation which would otherwise be payable to him shall be paid to the owner.
- (2) If there is any dispute as to the amount for the time being owing on the security of any mortgage on land, the compensation payable to the owner of such land shall be held by the responsible authority until one or other of the parties to such dispute has obtained a final order of court determining the amount so owing.

39.

- (1) Where at any time after a resolution to prepare a scheme has taken effect it appears to the local authority or, as the case may be, the joint committee, that in the area to which the scheme is to apply, any projected building or alteration of or addition to any building or any other proposed work of any nature or description whatsoever would not conform to or would interfere with the amenities of the neighbourhood, or would be in contravention of the scheme in course of preparation, the local authority or, as the case may be, the joint committee may prohibit the construction, alteration or addition or other proposed work or may authorise the same on specified conditions: Provided that no authority shall be granted which would operate in conflict with any of the provisions of the scheme in course of preparation.
- (2) Where a resolution to prepare a scheme has taken effect and the local authority or, as the case may be, the joint committee is satisfied that since the date upon which the resolution took effect there has been an alteration in the use of any land or building situate in the area to which the scheme is to apply, and it appears to the local authority or, as the case may be, the joint committee that such new use does not conform to or interferes with the amenities of the neighbourhood or is in contravention of any provision of the scheme in course of preparation, such local authority or joint committee may prohibit such use.
- (3) If in the circumstances mentioned in sub-section (2), the local authority or, as the case may be, the joint committee is satisfied that the use to which any land or building situate in the area to which the scheme is to apply, is being put does not conform to or conflicts with the use to which such land or building may be put under the scheme in course of preparation, the local authority or, as the case may be, the joint committee may prohibit such use: Provided that no prohibition may be made in terms of this sub-section in relation to any use to which the land or building was being put before the resolution to prepare the scheme took effect.
- (4) Any person aggrieved by any decision or order of the local authority or, as the case may be, the joint committee under this section may, within twenty-eight days of such decision or order being made, give notice to the local authority or the joint committee of his intention to appeal to the Minister and upon appeal to him the Minister may make such order as he thinks fit: Provided that, at any time after the expiry of two years from the making of any decision or order of the local authority, or, as the case may be, the joint committee, and whether or not any appeal shall have been made to the Minister, any such person may apply to the Minister to review such decision or order, whereupon he, the Minister, may make such order as he may deem fit.
- (5) If any building, alteration, addition or other work is carried out in contravention of any prohibition or condition imposed under this section the local authority or, as the case may be, the joint committee may cause such building, alteration, addition or other work to be pulled down, demolished and destroyed, and may recover the expenses thereby incurred by it from the person responsible for the construction of the building, or the alteration, addition or other work, irrespective of any criminal proceedings which may have been or may be instituted under section forty-eight.
- (6) No compensation shall be payable in respect of the exercise by a local authority or joint committee of its powers under this section.

40.

After a resolution to prepare a scheme has taken effect no application to establish a private township upon land situate in the area to which the scheme is to apply shall be considered except after consultation with the local authority or, as the case may be, the joint committee, or, after the scheme has been approved, the responsible authority.

41.

- (1) Any expenses incurred by a local authority under this Ordinance may be defrayed from the general rate or out of moneys borrowed for the purpose with the prior approval of the Minister.
- (2) It shall be lawful for a local authority to contribute towards the expenses of any authority in or in

connection with matters preliminary to a scheme, or in connection with the preparation or carrying into execution of a scheme.

42.

All sums received by a responsible authority by way of betterment, or as proceeds of sale of any land purchased under the powers conferred by this Ordinance, shall be applied in such manner as the Minister may approve, towards the discharge of any debt of the responsible authority, or otherwise for any purpose for which capital money may be applied.

43.

- (1) If the Minister is satisfied after such enquiry as he may deem necessary, that a scheme ought to be prepared by a local authority with respect to any land, he may by order require the local authority to prepare a scheme and to take such other steps as may be necessary for bringing it into operation, and the order of the Minister shall have the same effect as a resolution to prepare a scheme for the area to which the order relates passed by the local authority and approved by the Minister.
- (2) If the local authority fails to prepare a scheme to the satisfaction of the Minister within such time as may be specified in the order, or to take any other steps which it is required by this Ordinance, or by the regulations made under this Ordinance, to take, the Minister may direct and empower the board to act in the place and at the expense of that local authority for the preparation of a scheme or in combination with any other local authority or authorities in the preparation of a joint scheme.
- (3) If the Minister is satisfied after such enquiry as he may deem necessary, that a responsible authority has failed to enforce effectively the observance of a scheme which has come into operation or any provisions of such scheme (whether being a scheme made under this Ordinance, or being a scheme made under any Ordinance repealed by this Ordinance) or to execute any work or to do any thing which under the scheme or this Ordinance the responsible authority is required to execute or do, the Minister may by order which shall be enforceable by mandamus, require the responsible authority to do all things necessary for remedying its default and for carrying into execution the scheme or, if he thinks fit, he may direct and empower the board to act in the place and at the expense of the responsible authority.
- (4) Any expenses incurred by the board in exercising under this section any powers of a local authority or a responsible authority shall be paid, in the first instance, out of moneys provided by the Parliament, but the amount of those expenses as certified by the Minister shall, on demand, be paid by the local authority or, as the case may be, the responsible authority to the Minister and shall be recoverable as a debt due to the Administration.
- (5) The payment of any such expenses as aforesaid shall, to such extent as may be sanctioned by the Minister, be a purpose for which a local authority may borrow money in accordance with the provisions of section forty one.
- (6) In the exercise of any powers conferred upon it under this section the board shall have all the powers and shall be charged with all duties conferred or imposed upon the local authority or, as the case may be, the responsible authority in respect of the preparation of a scheme or the enforcement of a scheme, or both.
- (7) The provisions of this section shall apply, mutatis mutandis, if after such enquiry as he may deem necessary, the Minister is satisfied that two or more local authorities ought to combine in the preparation of a joint scheme, in which event upon the exercise by the Minister of the authority conferred upon him by sub-section (2) the board shall exercise the powers and perform the duties of a joint committee.

44.

- (1) Upon application made to it by a local authority or by two or more local authorities, the board may, with the prior approval of the Minister, undertake the preparation of a scheme or, as the case may be, a joint scheme, and for that purpose shall have all the powers and be charged with all the duties of the local authority or, as the case may be, a joint committee, under this Ordinance.

- (2) The provision of sub-sections (4) and (5) of section forty-three shall apply in respect of any expenses incurred by the board in complying with any application made under sub-section (1).

45.

The Minister may from time to time out of moneys appropriated by the Parliament for the purpose, advance moneys to any local authority on such conditions as he may prescribe, to enable it to undertake the preparation of a scheme or to carry out and enforce an approved scheme, or for both such purposes, or, alternatively, the Minister may in any special circumstance make a grant of money to any local authority upon conditions to be prescribed by him for any such purpose or purposes.

46.

All expenses incurred by the board in connection with applications for the approval by the Minister of resolutions to prepare schemes, or for the approval by the Minister of schemes, shall be borne by the applicant in every case: Provided that the board may meet such expenses out of its own moneys or out of moneys appropriated by the Parliament for the purpose and advanced by the Minister to the board, and recover the same from the applicant concerned.

47.

- (1) Notwithstanding anything contained in any other law, the ownership of every public place as defined in section 2 which is situate in a local authority area, shall, if it does not already do so, vest in the local authority for the use and benefit of the public, but if any such public place is situate outside a local authority area the ownership thereof shall vest in the State in trust for any future local authority pending the inclusion of such public place in a local authority area when the ownership thereof shall vest in the local authority for the use and benefit of the public: Provided that -

- (a) in respect of any public place the dominium whereof vests in the State, the local authority or, as the case may be, the Minister shall be vested only with the control and management thereof;

[paragraph (a) amended by Ord. 11 of 1973 to substitute "State" for "Crown"]

- (b) every public place shall be held by the local authority or, as the case may be, the State, for the purposes for which it was set apart or which it was intended to serve or which it may by immemorial usage have come to serve;

- (c) such vesting shall not be deemed to impose any greater liability upon the local authority or, as the case may be, the State in regard to the repair and maintenance of public places than is imposed by any other law.

[Subsection (1) is amended by Act 27 of 1993, which (amongst other things) repeats the amendment made to paragraph (a) by Ord. 11 of 1973 (to substitute "State" for "Crown").]

- (2) Whenever any land constitutes or is claimed to constitute a public place by virtue of the right of the public to use it but is not shown or is not shown as a public place upon any general plan or diagram filed of record in the Office of the Surveyor-General or the Deeds Registry and it is desired to have the position of such land defined for any purpose, or if any question or dispute shall arise as to whether any land constitutes a public place, it shall be lawful for the Minister, upon the application of the local authority within whose area such land is situated, or at his own instance, to appoint a commission of three persons to enquire into and report upon such matter.

- (3) *[subsection (3) deleted by Ord. 13 of 1970]*

- (4) Upon receipt of the report of the commission the Minister shall decide the matter in issue and such decision shall be final and binding upon all parties concerned; provided that the effect of such decision shall be notified for public information by notice in the Gazette.

- (5) If the effect of any decision referred to in subsection (4) is that the land in question constitutes a public

place the ownership of which vests in the local authority within whose area such public place is situate, or in any other case of the State in trust, the local authority or the Minister shall cause a diagram thereof to be prepared and submitted to the Surveyor-General for approval and upon the approval of that diagram may proceed under the Deeds Registries Act, 1937 (Act 47 of 1937) or the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976), for the purpose of securing transfer of such public place.

[subsection (5) amended by Act 27 of 1993 and by Act 15 of 2000, which also inserts the superfluous word "of" in the phrase "in any other case of the State in trust"; the phrase, which seems to refer to the vesting of ownership, may have been intended to be "in any other case in the State in trust".]

- (6) The costs and charges incurred by any commission in the discharge of its powers and duties and any other costs and charges incurred in carrying out any of the provisions of this section shall be a charge against the revenue fund of the local authority by or on whose behalf such costs or charges were incurred, but otherwise they shall be borne by the State Revenue Fund.

[section 47 amended by Ord. 11 of 1973 to substitute "commission" for "board" throughout]

48.

Any person who -

- (a) after a scheme has come into operation -
- (i) executes any work or does any other matter or thing contrary to any provision of the scheme without such approval as it may be competent for the responsible authority to grant, or contrary to any condition subject to which such approval was given; or
 - (ii) fails to comply with any provision of the scheme with which it is his duty to comply; or
 - (iii) fails to comply with the requirements of any notice lawfully issued under the scheme and duly served upon him; or
 - (iv) uses any land or building in a manner contrary to any provision of the scheme or;
- (b) executes any work or uses any land or building contrary to any prohibition imposed by a local authority or joint committee under sub-section (1), (2) or (3) of section thirty-nine, or contrary to any condition subject to which authority to execute such work was granted; or
- (c) in any application made under this Ordinance, or in any proceedings before the board under section twenty-five, makes any false or misleading statement which he knows to be false or which he does not know to be true;

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months: Provided that in the case of a continuing offence an additional fine not exceeding R50 for every day upon which the contravention continued may be imposed.

[section 47 amended by Ord. 5 of 1979 and by Act 27 of 1993]

48A. Prohibition of the erection of buildings

- (1) If the Minister after consultation with the board is of the opinion that the steps taken or intended to be taken in connection with the erection of a building or buildings on any land, other than for bona fide farming operations, form or are likely to form the nucleus of a township, it may, notwithstanding the provisions of any other law, prohibit the erection of any such building or buildings on such land by causing a suitable notice to owners of such land to be published in two consecutive editions of the Gazette and once a week for two consecutive weeks in an Afrikaans and in an English newspaper circulating in the district in which the land is situated, and where the address of an owner of such land is known, by causing a suitable written notice to be sent to his address by certified mail.

[subsection (1) substituted by Ord. 10 of 1977, with effect from 1 December 1976]

- (2) Subject to the provisions of subsections (3) and (4) any person who erects any such building or buildings or causes any such building or buildings to be erected on such land in defiance of such prohibition, shall be guilty of an offence, and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months.
- [subsection (2) amended by Act 27 of 1993; punctuation changes not indicated by amendment markings]*
- (3) Whenever the Minister has in terms of subsection (1) prohibited the erection of a building or buildings on land, any person who wishes to erect such building or buildings on such land shall apply to the Minister for permission to do so and the Minister shall refer such application to the board for consideration.
- (4) After consideration and after such inquiry or inspection as the board may deem necessary, the board shall report to the Minister on the application or on any matter connected therewith which it may deem necessary to bring to the notice of the Minister and the Minister may refuse or grant such application whether unconditionally or subject to such conditions as it may in its discretion prescribe, and its decision shall be final.
- (5) Whenever the Minister has in terms of subsection (1) prohibited the erection of a building or buildings on land, a copy of such prohibition shall be lodged with the Registrar of Deeds who shall cause a note of such prohibition to be made in his registers and to be endorsed on the office copy of the title deed concerned, and if at any time the original of such title deed is lodged in his registry for any purpose, he shall cause a similar note to be endorsed thereon.
- (6) Every prohibition that has before the deletion of section 22 of the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963) in terms of subsection (1) of that section been imposed on the owner or lessee of land whereby the erection of a building or buildings on such land is prohibited shall be deemed to be a prohibition against the erection of such building or buildings imposed in terms of subsection (1) of this section.

[section 48A inserted, with a heading, by Ord. 11 of 1973 and substituted by Ord. 23 of 1973]

49.

- (1) The Minister may make regulations with respect to -
- (a) the fees, travelling and subsistence allowance payable to members of the board when absent on the business of the board;
 - (b) the fees and charges payable to the board for services rendered by it under this Ordinance to local authorities, with authority to provide for the remission of same in particular cases;
 - (c) the finances of the board, the audit of their accounts including powers of surcharge on the part of the auditor;
 - (d) the procedure to be followed in connection with -
 - (i) resolutions to prepare schemes and applications for the approval of such resolutions;
 - (ii) the preparation of schemes and applications for their approval;
 including the submission in either case of maps, plans, documents and other information relevant thereto;
 - (e) the occasions when and the manner in which the public shall be consulted in respect of resolutions to prepare schemes and during the preparation of schemes;
 - (f) the procedure to be followed upon the hearing of matter referred to in section twenty-five;
 - (g) the fees (if any) to be charged in respect of any act, matters or thing required or authorized to be done under this Ordinance or any regulations made thereunder and the purposes to which they shall be applied;

- (h) any matter which is by this Ordinance required or authorized to be prescribed; and
 - (i) generally any matter which he considers it necessary or expedient to prescribe for the more efficient administration and carrying into effect of the objects of this Ordinance.
- (2) For the purpose of assisting him in the making of regulations in respect of any of the matters mentioned in paragraphs (d), (e) and (f) of sub-section (1), the Minister shall appoint a board to be known as the town planning regulations board consisting of not less than three or more than five members of which one member shall be appointed as the chairman.
- (3) The regulations may prescribe penalties for any contraventions thereof or default in complying therewith, not exceeding in any case a fine of R2 000, or to imprisonment for a period not exceeding six months.

[subsection (3) amended by Act 27 of 1993]

50.

All fines and estreated bails recovered in respect of offences against the provisions of this Ordinance, or the regulations made thereunder, shall be payable to the local authority or the responsible authority at whose instance the prosecutions were instituted, but otherwise to the State Revenue Fund.

51.

This Ordinance shall be known as the Town Planning Ordinance, 1954, and shall come into operation upon a date to be declared by the Minister by proclamation.

FIRST SCHEDULE

MATTERS TO BE DEALT WITH IN SURVEYS

1. A brief history of the growth of the local authority area with special reference to population, traffic, built-up areas, commercial and industrial areas, etc.
2. Physical Characteristics, with particular reference to topography and contours, geology, rainfall, temperature, winds. etc.
[The word "Characteristics" should not be capitalised, and the full stop after the word "winds" should be a comma.]
3. Land utilization, with maps illustrating usages and different activities of the area, i.e. residential, commerce, industry, public buildings, open spaces, parks, recreation grounds, etc., and areas and percentages or usages to be calculated.
4. Land ownership, with maps illustrating private, municipal, administration and railway ownership, and areas and percentages of ownership to be calculated.
5. Population and densities, with particular reference to growth of population, various races, various densities - e.g.: number of people per hectare/acre in residential areas, number of people per dwelling units, number of dwelling units per hectare/acre, etc.
6. Communications, including the growth of road pattern, increase in number of vehicles, traffic volumes and densities, parking, analysis of junctions, cross roads, stop streets etc.
7. Public utilities: water supply, electricity, telephones, sewerage, etc.
8. Social Services: nature of facilities and whether sufficient or otherwise, of schools, hospitals, clubs, swimming baths, recreation, cinemas, theatres, etc.
[The word "Services" should not be capitalised.]
9. Height of buildings and plot ratio, calculation of floor space, site areas and ground coverage, in

- commercial areas, and calculation of the ratio between floor space and site areas.
10. Buildings of special historic, architectural or artistic interest, with a view to their maintenance and preservation in the interests of the public.
 11. Age and condition of buildings.
 12. Commerce and industry: Growth of commercial and industrial areas, nature of shops, nature of industries whether heavy or light, employment figures, transport to and from industries.
 13. Native and Coloured Locations or residential areas.

SECOND SCHEDULE

MATTERS TO BE DEALT WITH BY SCHEMES

1. A contour or topographical map of the area.
2. Streets with particular reference to -
 - (a) their grades and widths and their intersections with other streets;
 - (b) the volume and character of the traffic which they may be expected to carry in the future, and measures to ensure the safety of the travelling public;
 - (c) the closing or deviation of existing streets; and
 - (d) the cultivation of trees and the like and the provision of ornamental works intended to improve the appearance of streets.
3. The extinction or variation of private rights of way and of servitudes generally.
4. The prohibition, regulation or control of advertisements in public places or within public view.
5. Lighting and water supply.
6. Sewerage, drainage and sewage disposal
7. The prohibition, regulation or control of the deposit or disposal of waste materials and refuse.
8. The reservation of land for new roads or the widening or other improvement of existing roads or for purposes of recreation or for parks and other open spaces, aerodromes, the parking of vehicles and other matters generally of a public nature.
9. The reservation of land for Administration and local authority purposes of a public nature.
10. The demarcation or zoning of areas to be used exclusively or mainly for residential, business, industrial and other specified purposes.
11. The extent of erven to be laid off and the alteration of existing erven with the view to improvement in the design or lay out of any portion of the area.
12. Building, structures and erections with particular reference to the matters mentioned in section nineteen.
13. The disposal of land acquired by the responsible authority or by a local authority.
14. Land to be employed solely for agricultural and similar purposes and the application thereto of differential rating.
15. The preservation of buildings or other objects of architectural, historic or artistic interest and places of natural interest or beauty.
16. Powers of entry and inspection.
17. Power of the responsible authority to remove, alter or demolish any obstructive work.

18. Application with the necessary modifications and adaptations of provisions of ordinances or of by-laws or regulations made thereunder.
19. Any other matter or thing provided in the Ordinance or reasonably incidental thereto or to any matter hereinbefore mentioned.

THIRD SCHEDULE

LOCAL AUTHORITIES TO WHICH THE PROVISIONS OF THIS ORDINANCE APPLY

Windhoek.