

# The Town Planning Act, 1961

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Date of commencement: 9th June, 1961.

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An Act to make provision for the preparation and carrying out of town planning schemes.

## Short title

1. This Act may be cited as the Town Planning Act, 1961.

## **Interpretation**

2. In this Act, unless the context otherwise requires:-

"approved scheme" means a town planning scheme approved by the Minister in accordance with this Act;

"Board" means the Town Planning Board established by the Minister in terms of this Act;

"local authority" means the administrative officer in charge of the district or any other person or body of persons appointed in writing for this purpose by the Minister;

"Minister" means the Minister responsible for the administration of towns;

"scheme in course of preparation" means a scheme the preparation of which has been authorised in terms of section 9.

## **Application (First Schedule)**

3. (1) This Act applies to the areas mentioned in the First Schedule.

(2) The Minister may, by notice published in the Gazette, amend the Schedule.

(Amended L.N.7/1967.)

## **Establishment and constitution of Town Planning Board**

4. (1) For the purpose of this Act there shall be established a Board to be known as the Town Planning Board which shall consist of the Permanent Secretary for Local Administration, who shall be chairman, the Chief Professional Officer of Public Works, and the Chief Medical Officer as ex officio members and two other persons to be appointed by the Minister by notice in the Gazette, hereinafter referred to as appointed members. (Amended P.42/1964.)

(2) An appointed member shall, subject to subsection (3), hold office for a period of three years and on expiry thereof shall be eligible for re-appointment to the Board.

(3) An appointed member shall be deemed to have vacated his office if he -

(a) dies;

(b) becomes insolvent;

(c) is declared by a court of competent jurisdiction to be of unsound mind;

(d) is convicted of a criminal offence and sentenced to imprisonment without the option of a fine;

(e) is absent from three consecutive meetings of the Board without the permission of the chairman; or

(f) resigns his office by writing, addressed to the Minister.

(4) If any appointed member vacates his office in terms of subsection (3), the Minister may thereupon appoint another person to fill the vacancy thereby arising for the remaining period of office of the vacating member.

## **Meetings of the Board**

5. (1) Meetings of the Board shall be held at such times and places as the chairman may determine.

(2) Where the chairman is for any reason unable to attend at any meeting of the Board the Minister may appoint another member to be chairman for the purposes of such meeting.

(3) The decision of the majority of the members present and voting shall be the decision of the Board and if there is an equality of votes the chairman shall have a casting vote in addition to his deliberative vote.

(4) No member of the Board shall be present during the consideration by the Board of any matter in which he has directly or indirectly a financial interest.

(5) At all meetings of the Board four members shall constitute a quorum.

(6) The Board may make rules, not inconsistent with this Act and subject to the approval of the Minister, for the proper conduct of its business and for meetings of the Board.

(7) The validity of any proceedings of the Board shall not be affected by a vacancy among the members thereof.

### **Expenses of appointed members**

6. There may be paid to appointed members of the Board such reasonable expenses in respect of their duties as the Minister may direct.

### **Functions, powers and duties of Board**

7. (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 Act and shall in the performance of its functions, powers and duties under this Act comply with such lawful directions as may from time to time be given to it by the Minister.

(2) Without prejudice to the generality of the provisions of subsection (1) the objects for which the Board is established are -

(a) to advise the Minister in matters relating to the preparation and carrying into effect of town planning schemes;

(b) to encourage the study of town planning;

(c) 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;

(d) to advise and assist local authorities generally in connection with town planning schemes and the layout of new townships;

(e) wherever so requested by the Minister to furnish any local authority with technical advice in regard to a town planning scheme.

### **General purpose of schemes (Second Schedule)**

8. (1) Every town planning scheme shall have for its general purpose a co-ordinated and harmonious development of the urban area or other area to which it relates, including where necessary the reconstruction and redevelopment of any part which has already been subdivided, 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 town planning 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 Act.

### **Authority for preparation of scheme**

9. Upon application being made to him by a local authority, the Minister may authorise the preparation of a town planning scheme for such areas as have been requested, but the Minister shall not authorise any such application unless he is satisfied -

(a) in the case of 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 land is so situated 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, nor 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. (Amended P.37/1962.)

### **Notice of preparation of scheme**

10. (1) Where the Minister has authorised the preparation of a scheme in terms of section 9 the local authority shall publish a notice in a newspaper circulating in Swaziland and the Gazette, at least once during each of two successive weeks with an interval of at least six clear days between each publication, the first publication being not more than fourteen days after the receipt of the Minister's approval. (Amended P.37/1962.)

(2) The notice required by subsection (1) shall state that it is published in terms of this Act and shall give information as to the place and the time at which a map, defining the area to which the scheme is to apply, may be inspected.

### **Prohibition of works and uses pending approval of scheme**

11. (1) Where at any time after the publication of the notice referred to in section 10 it appears to the local authority that in the area to which the scheme in course of preparation 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 the course of preparation, the local authority may prohibit the construction, alteration or addition or other proposed work or may authorise it on specific conditions or may permit the construction on such conditions as will bring it into conformity with the scheme. (Amended P.37/1962.)

(2) If after publication of the notice referred to in section 10 it appears to the local authority that there has been an alteration in the use of any land or building situated in the area to which the scheme in course of preparation is to apply, and it appears to the local authority, 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, the local authority may prohibit such use. (Amended P.37/1962.)

(3) If in the circumstances mentioned in subsection (2) the local authority is satisfied that the use to which any land or building situated in the area to which the scheme in course of preparation is to apply 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 may prohibit such use:

Provided that no prohibition may be made in terms of this subsection in relation to any use to which the land or building was being put before the notice referred to in section 10 was published. (Amended P.37/1962.)

(4) Any person aggrieved by any decision or order of the local authority under this section may within twenty-eight days of such decision or order being made, give notice to the local authority of his intention to appeal to the Minister and shall within such time lodge his appeal, and upon consideration of the appeal, the Minister shall make such order as he may think fit:

Provided that, at any time after the expiry of two years from the making of any decision or order of the local authority, and whether or not any appeal has been made to the Minister, any such person may apply to the Minister to review such order or decision, whereupon the Minister may make such order as he may deem fit; and

Provided further that no appeal shall be entertained during such period of two years against the refusal of any plans of any building or work or use substantially the same as that which gave rise to the previous appeal. (Amended P.37/1962.)

### **Contents of schemes and authorities responsible for enforcement**

12. Every town planning scheme shall define the area to which it applies and specify the local authority responsible for enforcing and carrying into effect the provisions of the scheme (hereinafter referred to as the responsible authority); 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 objects for which the scheme is made, and in particular for dealing with any of the matters mentioned in the Second Schedule to this Act; and

(b) where it is expedient in order to promote proper planning or development, may provide for suspending the operation of the provisions of any regulation made under the Urban Areas Act, No. 8 of 1969 in so far as such provisions are less onerous than or are inconsistent with any of the provisions of the scheme.

### **Provisions with respect to buildings and building operations**

13. (1) The provisions to be inserted in any town planning 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 responsible 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 subsection:

Provided that, if a scheme contains a provision enabling the responsible authority to regulate the design or external appearance of buildings, the scheme shall also provide that any person aggrieved by any decision of the responsible authority 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) If the provisions of an approved town planning scheme prohibit or restrict building operations on land situate in any undeveloped part or parts of the area pending the extension thereto of road, sewers, water supply, light or other necessary public services, the owner of any land who desires to begin thereon any

building operations which would contravene any such provision or restriction may, in accordance with such directions, if any, as may be contained in such scheme, apply to the responsible authority for its consent to the carrying out of the operations specified in the application.

(3) 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, and may if it is satisfied that the proposed operations will not contravene any 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, 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 affect the amenity of the locality.

(4) No compensation shall be payable under this Act in respect of the refusal by the responsible authority of any application made under this subsection, but any person who is aggrieved by the refusal of any such application, 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, and the Minister may dismiss or allow the appeal, either unconditionally, or subject to such conditions as he thinks proper to impose.

(5) A town planning scheme may include a schedule setting out the use or uses to which any land or building was being put at a 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.

(6) The provisions to be so inserted may -

(a) differ with respect to different parts of the area to which the scheme applies; and

(b) be made applicable, either with or without modifications, to existing land or buildings as well as to future buildings.

### **Powers of Board in relation to schemes in course of preparation**

14. While a scheme is in course of preparation the local authority may from time to time consult the Board regarding any matter connected therewith:

Provided that whenever so required by the Board, the local authority 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 shall give effect to such variation or modification. (Amended P.37/1962.)

### **Minister's approval of scheme required**

15. Subject to section 11, no scheme prepared by or on behalf of a local authority shall have force or effect until approved by the Minister. (Amended P.37/1962.)

### **Application for Minister's approval**

16. Every scheme shall be submitted to the Minister for his approval in such form and accompanied by such plans, maps and other documents as may be prescribed.

### **Reference of scheme to Board**

17. Upon receipt of an application under section 16, the Minister shall refer the scheme to the Board which shall forthwith cause a notice to be published at least once during each of three successive weeks in the Gazette and in a newspaper circulating in Swaziland to the effect that a scheme has been submitted for his approval, that copies of the scheme and of maps, plans, documents and other relevant matters may be inspected at the office of the local authority, and that objections to such scheme may be lodged with the Board at the office of the Minister 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.

### **Objections**

18. Every owner or occupier of immovable property within the area to which a scheme which has been submitted for approval 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 within the period referred to in section 17.

### **Hearing of application**

19. (1) Upon the expiry of the period for the lodging of objections, the Board shall fix a date, time and place for the hearing of the application and of any objections which may have been lodged, and shall give the local authority, 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. (Amended P.37/1962.)

(2) At the hearing of the application the local authority, and any objector may be represented by counsel or attorney or agent, and the hearing shall be open to the public. (Amended P.37/1962.)

### **Approval and coming into effect of schemes**

20. (1) Upon the conclusion of the hearing the Board shall transmit to the Minister the record of the proceedings and copies of all objections lodged and shall make to the Minister such representations on the application as it may see fit, and upon consideration of the documents submitted to him, the Minister may approve the scheme, refuse to approve the scheme or approve the scheme with modifications: (Amended P.37/1962.)

Provided that before refusing approval or making any modifications the Minister shall inform the local authority and the Board of his intended refusal or any modifications he proposes to make and if, within a period of one month, the local authority requests him so to do, the Minister shall delay his decision pending the submission to him by the local authority or the Board, as the case may be, of such representations as it may desire to make. (Amended P.37/1962.)

(2) After the approval of a scheme the Minister shall notify such approval by notice in the Gazette and such scheme shall come into operation upon promulgation of such notice, and thereafter be referred to as an approved scheme.

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

### **Variation and revocation of approved schemes**

21. (1) An approved scheme may be varied, modified or revoked with the approval of the Minister in accordance with the provisions of sections 16 to 20 inclusive.

(2) The Minister, on an application made in accordance with subsection (3) may, if he thinks that in the special circumstances of the case an approved scheme ought to be varied, himself make a scheme varying the approved 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 of the scheme; and

Provided further that no revocation or alteration of an approved scheme shall be made by the Minister unless sections 16 to 20 inclusive have been complied with.

(3) An application to the Minister under this section may be made by any authority responsible for any purposes of the scheme which it is proposed to vary or revoke 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:

Provided that the Minister may on application extend the interval in any case upon such conditions as he may deem proper.

(5) Notwithstanding anything in this section, 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.

### **Variation and revocation of schemes in course of preparation**

22. Any provision or regulation in any scheme in the course of preparation may be varied or revoked by the local authority without the prior approval of the Minister. (Amended P.37/1962.)

### **Enforcement of schemes**

23. (1) Upon the coming into operation of an approved scheme the responsible authority shall observe and enforce observance of all the provisions of the scheme.

(2) Subject to this Act, the responsible authority may at any time -

(a) remove, pull down or alter, so as to bring 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 the provisions of the scheme, or the demolition or alteration of which is necessary for carrying the scheme into effect; or (Amended P.37/1962.)

(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) if any building or land is being used in such manner as to contravene any provision of the scheme, forbid such use; or

(d) if any building or land has since the scheme came into operation been put to any use which contravenes any provision of the scheme, forbid such use; 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 in the opinion of the responsible authority thereby prejudiced; or

(f) generally do anything necessary to give effect to the scheme.

(3) Before taking any action under subsection (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 effected thereby, specifying the nature of, and the ground upon which it proposes to take that action.

(4) If 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 purposes before the scheme came into operation, the responsible authority shall serve the notices referred to in subsection (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 expense reasonably incurred by the responsible authority under subsection (2) may be recovered as a civil debt from the person in default.

### **Purchase or expropriation of land**

24. (1) The responsible authority may with the approval of the Minister purchase, or exchange by agreement, any land or interest in land which is needed for any of the purposes of an approved scheme.

(2) If the responsible authority is not able to acquire such land or interest in land, it may with the approval of the Minister acquire such land or interest in land in terms of the Acquisition of Property Act, No. 10 of 1961.

### **Duties of owners of land affected by scheme**

25. (1) Subject to this Act, 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 to —

(a) take such steps as may be necessary to vary the existing subdivision or layout of such land in order to bring it into conformity with the provisions of the scheme;

(b) 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 Office to be made or recorded in the office of the Surveyor-General and in the Deeds Office; and

(c) 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 subsection (1)(b) hereof.

(3) Any expense necessarily incurred by an owner of land referred to in subsection (1) shall be borne by the responsible authority.

### **Subdivision of land to conform to scheme**

26. The Surveyor-General shall not approve any general plan of the layout of any land or the diagrams of any subdivision of land, if such land is situate in an area to which an approved scheme applies and such layout or subdivision is inconsistent with any of the provisions of the approved scheme:

Provided that if such layout or subdivision 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.

## **Compensation for injurious affection**

27. Subject to this Act, any person -

(a) whose property is injuriously affected by the coming into operation of any provision contained in any scheme, or by the execution of any work under any 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 23; or

(c) who for the purpose of complying with any provision contained in any scheme, or in making or resisting a claim under the provisions of this Act, 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 prescribed for the purpose of this Act, 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 loss 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.

## **Exclusion and limitation of compensation**

28. (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 built upon any lot;

(f) prescribes the maximum area which may be built upon 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) in the case of the erection of any building intended to be used for purposes of business or industry, requires the provision of accommodation for the parking of motor vehicles of persons employed or residing on the premises or for loading, unloading or of fuelling vehicles with a view to preventing obstruction of traffic on any road;

(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 -

(i) if 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; or

(ii) 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 Minister's authority 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 responsible authority concerned under any other law.

(3) If a person is entitled to compensation under this Act in 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 Act and such other law, and he shall not be entitled to any greater compensation under this Act than he would be entitled to under such other law.

(4) No person shall be entitled to recover compensation under this Act in respect of any action taken by a responsible authority under section 23 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 or work done in contravention of any provision of an approved scheme.

(6) If any scheme is varied 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 the latter provision is the same or substantially the same as the earlier provision so varied, but, if at the date when the variation of that earlier provision becomes operative —

(a) there is still outstanding any claim for compensation duly made thereunder; or

(b) the time originally prescribed for making such a claim has not expired;

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

### **Claiming of compensation**

29. (1) A claim under this Act 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 this section, a claim under this Act for compensation shall be made within twelve months after the date on which the provision giving rise to the claim came into operation, or if the claim is a claim for compensation in respect of any action taken by a responsible authority under section 23 or in respect of

expenditure rendered abortive by the variation of a scheme, within six months after the date on which the action was completed or the variation of the scheme became operative.

(3) If 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 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 Swaziland or any other reasonable cause.

### **Recovery of betterment by responsible authority**

30. (1) If, by virtue of the coming into operation of any scheme, property is increased in value, the responsible authority may 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, make a claim in that behalf and 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 in value.

(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 installments spread over a period not exceeding thirty years as may be agreed or determined under this Act, and where payment is made by installments, interest at such rate as may from time to time be fixed by the Minister shall be chargeable on the aggregate amount of the installments for the time being outstanding:

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 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 31 provided.

### **Determination of claims for compensation or betterment**

31. Any question arising under this Act 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 any amount in respect of an increase in the value of any property, or the amount and manner of payment, whether immediately or by installments spread over a period not exceeding thirty years;

shall, unless the authority and all persons concerned otherwise agree, be referred and determined by arbitration according to the law in force in Swaziland for the time being governing arbitration.

### **Notice to withdraw or modify scheme**

32. (1) The responsible authority may, at any time within three months from the date of an award of compensation under this Act 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) If such notice has been given, the responsible authority shall within six weeks from the date of the notice submit for the approval of the Minister in accordance with the provisions of sections 16 to 20, a

scheme giving effect to the withdrawal or modification aforesaid, and upon the scheme, as approved by the Minister, with or without modification, coming into operation, and upon payment of the claimant's costs of and in connection with the arbitration proceedings, the arbitration award shall be superseded without prejudice, subject however, to the right of the claimant to make a further claim for compensation under section 27(c) or in respect of the scheme as varied.

(3) No award of compensation under this Act in respect of the injurious affection of any property shall be enforceable before the expiry of six weeks from the date thereof, or, if a notice has been given by the responsible authority under subsection (1), until after the expiry of three months from the date of the notice, or, if within that period a varying scheme is submitted to the Minister, until such scheme has either come into operation or been disapproved by the Minister.

### **Payment of compensation to mortgagees**

33. (1) If compensation is awarded under this Act 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 preference, in satisfaction or reduction of any principal debt or interest secured by their 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 a court of competent jurisdiction determining the amount so owing.

Restriction on establishment of private townships in town planning areas.

34. After an application 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 after the scheme has been approved, the responsible authority. (Amended P.37/1962.)

### **Financial**

35. (1) The Minister may from time to time out of moneys appropriated by Government for the purpose, set aside such sums of money on such conditions as he may prescribe, to enable a local authority to undertake the preparation of a scheme or to carry out and enforce an approved scheme. (Amended P.37/1962.)

(2) 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 Act, shall be applied in such manner as the Minister may direct.

### **Regulations**

36. The Minister may make regulations generally for carrying into effect the provisions of this Act and in particular and without prejudice to the generality of the foregoing -

(a) prescribing anything which under this Act requires to be prescribed;

(b) providing for the punishment of any person who -

(i) commits an offence against the regulations; or

(ii) contravenes or fails to comply with orders issued under any regulation which provides that such contravention or failure shall be an offence;

(iii) contravenes or fails to comply with any condition or requirement of any scheme, licence, permit or authority which provides that such contravention or failure shall be an offence:

Provided that -

(a) the regulations shall provide that punishment may be imposed for each offence created by the regulations;

(b) the regulations may provide for such punishment by means of a fine not exceeding one hundred emalangeni, or in default of payment, to imprisonment for a term not exceeding six months, and in the case of a continuing offence, to an additional fine not exceeding six emalangeni for every day on which the contravention continues:

Provided that in the case of a continuing offence an additional fine not exceeding six emalangeni for every day on which the contravention continues may be imposed but no such fine shall in any one prosecution or within any one month exceed one hundred emalangeni.

## **Offences**

37. Any person shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeni or, in default of payment, to imprisonment not exceeding six months, who -

(a) executes any work or uses any land or building contrary to any prohibition imposed by a local authority or the Board, as the case may be, under section 11 or contrary to any condition subject to which authority to execute any such work was granted; or

(b) in any application made under this Act or in any proceedings before the Minister under section 19, knowingly makes any false or misleading statement:

Provided that in the case of a continuing offence an additional fine not exceeding six emalangeni for every day on which the contravention continues may be imposed but no such fine shall in any one prosecution or within any one month exceed one hundred emalangeni.

## **First Schedule**

(Section 3)

The urban areas of Mbabane and Manzini, as from time to time declared under the provisions of section 2 of the Urban Areas Act, No. 8 of 1969. (Amended G.N.84/1962; L.N.7/1967.)

The urban areas of Hlatikulu, Nhlanguano, Pigg's Peak and Siteki. (Added L.N.105/1980.)

The urban areas of Nhlanguano, Siteki, Pigg's Peak, Matsapha, Mankayane, Hlatikulu, Lavumisa, Ngwenya, Vuvulane and Ezulwini. (Added L.N.19/1997.)

## **Second Schedule**

matters to be dealt with by schemes

(Section 8)

1. The preparation of a contour or topographical map of the area.

2. Streets with particular reference to -

- (a) their grades and widths and their intersection 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 advertisement 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 for public benefit.

9. The reservation of land for Government and municipal purposes of public benefit.

10. The demarcation or zoning of areas to be used exclusively or mainly for residential, commercial, industrial and other special purposes.

11. The areas of lots and the alteration of existing lots with the view to improvement in the design or layout of any portion of the area.

12. Buildings, structures and erections with particular reference to the matters mentioned in section 13.

13. The disposal of land acquired by the responsible authority or a local authority.

14. Land to be employed solely for agricultural and similar purposes.

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. Any other matter or thing provided in the Act or reasonably incidental thereto or to any matter hereinbefore mentioned.