An Act to regulate the construction, alteration and demolition of buildings; to establish standards to which buildings must conform; to repeal the Building Act, 1923-1965; to amend the Local Government Act, 1934-1969; and for other purposes.

[Assented to 8th April, 1971]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I
PRELIMINARY

1. This Act may be cited as the “Building Act, 1970-1971”.

2. This Act shall come into operation on a day to be fixed by proclamation.

3. This Act is arranged as follows:—

PART I—PRELIMINARY, ss. 1-7.

PART II—APPROVAL OF PROPOSED BUILDING WORK AND CLASSIFICATION OF BUILDINGS, ss. 8-13.

PART III—BUILDING SURVEYORS, ss. 14-19.

PART IV—BUILDING ACT REFEREES, ss. 20-33.
4. The following Acts and portions of Acts are repealed:

- the Building Act, 1923;
- the Building Act Amendment Act, 1929;
- section 898 of the Local Government Act, 1934-1969;
- so much of the second schedule to the Statute Law Revision Act, 1935, as relates to the Building Act Amendment Act, 1929;
- the Building Act Amendment Act, 1940;
- the Building Act Amendment Act, 1946;
- the Building Act Amendment Act, 1953;
- the Building Act Amendment Act, 1964;
- the Building Act Amendment Act, 1965.

5. (1) Subject to subsection (2) of this section, the provisions of this Act shall apply throughout each area within the State.

(2) The Governor may, by proclamation, declare—

(a) that this Act shall not apply within an area or portion of an area specified in the proclamation;

(b) that any specified portion of this Act shall not apply within an area or portion of an area specified in the proclamation;

or

(c) that this Act, or any specified portion of this Act, shall not apply in respect of any specified buildings, or class of buildings, within an area or portion of an area specified in the proclamation,

and the operation of this Act shall be modified accordingly.

(3) Where a council by which a petition may be presented under this subsection presents a petition to the Governor that a proclamation be made modifying the operation of this Act under subsection (2)
of this section in a manner specified in the petition, a proclamation shall be made modifying the operation of this Act in accordance with the petition of the council.

(4) A petition may be presented under subsection (3) of this section by a council to the area of which, or any portion of the area of which, the repealed Act did not, immediately before the commencement of this Act, apply.

(5) The Governor may by subsequent proclamation, vary or revoke a proclamation under this section.

6. In this Act, unless the contrary intention appears:—

"area" means a municipality or district as defined in the Local Government Act, 1934-1969, and includes an area in relation to which any body corporate is, by virtue of any Act, deemed to be, or vested with the powers of, a municipal or district council:

"building" includes a portion of a building:

"building surveyor" or "surveyor" means a person for the time being holding the office of building surveyor pursuant to Part III of this Act:

"building work" means work in the nature of—

(a) the erection, construction, underpinning, alteration of, addition to, or demolition of, any building or structure;

(b) the making of any excavation, or filling for, or incidental to, the erection, construction, underpinning, alteration of, addition to, or demolition of, any building or structure;

or

(c) any other work that may be prescribed,

but does not include work of a kind declared by regulation not to be building work for the purposes of this Act:

"clerk" means clerk of a council:

"council" means a municipal council or a district council, and includes any body corporate that is, by virtue of any Act, deemed to be, or vested with the powers of, a municipal council or a district council; the expression "the council" where used in relation to a building, or the performance or proposed performance of building work means the council of the area in which the building is situated or the building work is being, or is to be, performed:

"owner" in relation to any land, building or structure means any person having an estate or interest therein or the
occupier thereof; “adjoining owner” in relation to adjoining land or premises means an owner of land or premises adjoining the land or premises of a building owner; and “building owner” in relation to adjoining land or premises means the owner of the land or premises upon or in relation to which, building work is being or is to be carried out:

“party wall” means a wall built to separate two or more buildings, or a wall forming part of a building and built on the dividing line between adjoining premises for their common use.

“public place” means a public place within the meaning of the Local Government Act, 1934-1969:

“site” means the area upon which a building is built and the curtilage of the building as shown in a plan approved by the council under this Act or the repealed Act:

“the court” in relation to proceedings connected with any building structure or building work, means a court of summary jurisdiction having jurisdiction within the area in which the building or structure is situated or the building work is to be performed:

“the Planning Appeal Board” means the Planning Appeal Board constituted under the Planning and Development Act, 1966-1969:

“the repealed Act” means the Building Act, 1923-1965, repealed by this Act.

7. (1) A building or structure that was lawfully erected or constructed before the commencement of this Act or was deemed pursuant to the repealed Act to conform with the provisions of that Act shall be deemed to conform with this Act if—

(a) it conforms with the law of this State as in force at the time of its erection or construction;

or

(b) where it has been altered since the time of its erection or construction, the alteration has been made pursuant to the law of this State as in force at the time of the alteration, or pursuant to this Act.

(2) Notwithstanding the provisions of this Act, a building or structure of which the erection or construction was lawfully commenced before the commencement of this Act, or any building work for which approval is, or has been, given (whether before or after the commencement of this Act) pursuant to the repealed Act may be
completed or performed subject to and in accordance with the law of this State as in force immediately before the commencement of this Act.

(3) Any building work in the nature of an alteration to a building or structure erected or constructed before the commencement of this Act must conform with the provisions of this Act, but where the general safety and structural standard of a building or structure would not be impaired, the council may permit the building work to be carried out otherwise than in conformity with the provisions of this Act.

(4) Where approval is sought pursuant to this Act of any building work in the nature of an alteration of a building or structure erected or constructed before the commencement of this Act, and the building or structure is, in the opinion of the council, unsafe or structurally unsound, the council may require, as a condition of its approval of the building work, that the entire building or structure be brought into conformity with the requirements of this Act in all respects as if it were a building or structure erected or constructed after the commencement of this Act, or with so many of those requirements as will, in the opinion of the council, ensure that the building or structure will be rendered safe and will conform to a proper structural standard.

(5) An application for the approval of any building work under the provisions of the repealed Act that was not finally disposed of at the commencement of this Act, shall be disposed of under the repealed Act in all respects as if this Act had not been enacted.

(6) An application, reference or other matter for determination of referees under the repealed Act that had not been finally disposed of under the repealed Act at the commencement of this Act, may be heard and determined under the repealed Act in all respects as if this Act had not been enacted and effect shall be given to any decision or determination of the referees under the provisions of the repealed Act in all respects as if this Act had not been enacted.

(7) A referee, surveyor or other person holding office under the repealed Act immediately before the commencement of this Act shall be deemed to have been appointed to a corresponding office under this Act and shall continue to hold that office subject to the provisions of this Act.
PART II
APPROVAL OF PROPOSED BUILDING WORK
AND CLASSIFICATION OF BUILDINGS

8. (1) The owner of any land upon which building work is to be performed shall, before the building work is commenced, apply in writing to the council for approval of the building work and the application shall be accompanied by such particulars and plans, drawings and specifications of the building work, and such other documents relating thereto, as may be prescribed.

(2) The owner shall furnish the council with such calculations of stress, and such other technical details of or relating to the building work or the proposed building or structure, as may be prescribed, or as the building surveyor may, by written notice served upon the owner, require.

9. (1) The council shall deliver the plans, drawings and specifications to the surveyor, and shall obtain a report from him as to whether the proposed building work complies with this Act.

(2) The council shall consider the plans, drawings and specifications together with the report of the surveyor, and if the council is satisfied that the proposed building work complies with this Act it shall (except as otherwise expressly provided in this Act) by approving in writing the plans drawings and specifications, approve the building work.

(3) If the council refuses to approve any building work (either because the building work does not comply with this Act or pursuant to this section or any other provision of this Act) it shall give notice in writing to the owner stating the reasons for its refusal.

(4) The approval of any building work shall become void if the building work is not commenced within twelve months after the day on which the approval was given.

(5) The owner may, at any time, submit in accordance with the regulations, an application for approval of an alteration or modification of any plans, drawings and specifications, previously submitted to the council pursuant to this Act, and the council shall deal with the application in all respects as it deals with the original plans, drawings and specifications under this section.

(6) Where any proposed building work does not conform with this Act, but the council is of the opinion that it fails so to conform only in minor respects, the council may, upon the recommendation of the building surveyor, approve the building work notwithstanding that it does not conform with this Act and thereafter it shall be deemed so to conform.
10. (1) A person shall not begin to perform or proceed with the performance of any building work, or cause it to be performed, unless it has been approved in accordance with this Act.

Penalty: Four hundred dollars. Default penalty: Fifty dollars.

(2) A person shall not perform any building work, or cause it to be performed, otherwise than in accordance with plans, drawings and specifications approved in accordance with this Act.

Penalty: Four hundred dollars. Default penalty: Fifty dollars.

(3) A person in performing any building work shall comply with the provisions of this Act and shall ensure that the building work complies with the requirements of this Act.

Penalty: Four hundred dollars. Default penalty: Fifty dollars.

(4) A person shall not without the approval of the council sell, lease, or otherwise dispose of any land comprised within the site (not being the whole of the site) of a building if, in consequence, the remainder of the site would not constitute an appropriate site for that building in conformity with the requirements of the regulations.

Penalty: Four hundred dollars.

(5) It shall be a defence to a charge under subsection (1), (2) or (3) of this section that the building work to which the charge relates was of a minor nature and without adverse effect upon the structural soundness of the building or structure in respect of which the building work was performed.

11. (1) If any building work is performed—

(a) without the approval of the council;

or

(b) otherwise than in accordance with plans, drawings and specifications approved in accordance with this Act,

the council or the clerk may by notice in writing served upon—

(c) the owner of the land on which the building work is being performed;

or

(d) any person engaged in the performance of the building work,

require him to desist from the performance of the building work.

(2) If a person upon whom a notice has been served under subsection (1) of this section fails to comply with the notice he shall be
guilty of an offence and liable to a penalty of one hundred dollars for every day upon which the performance of the building work is continued after the service of the notice.

12. (1) Where by reason of an emergency endangering any person, building or structure any building work must be performed without approval as required by this Act, it shall, notwithstanding any other provision of this Act, be lawful to perform the building work subject to the condition that as soon as practicable after its commencement written notice of the building work is served upon the council.

(2) If the condition referred to in subsection (1) of this section is not complied with the owner of the land on which the building work is performed shall be guilty of an offence and liable to a penalty not exceeding one hundred dollars.

13. (1) A building erected after the commencement of this Act shall have a classification determined in accordance with the regulations.

(2) The council may assign to any building erected before the commencement of this Act a classification that conforms with the regulations.

(3) Where the council assigns a classification under subsection (2) of this section, the council shall give notice in writing to the owner of the building to which the classification has been assigned, of the classification assigned to the building.

(4) A classification shall not be assigned to a building erected before the commencement of this Act if as a result of the classification being assigned to the building, the building could not continue to be used for a purpose for which it was lawfully being used before assignment of the classification.

(5) The owner of a building shall not use the building, or permit it to be used, otherwise than for purposes appropriate to its classification (if any).

Penalty: Four hundred dollars. Default penalty: Fifty dollars.

(6) If as a result of any building work, the type or standard of construction of a building of a particular classification would cease to conform with the requirements of this Act for a building of that classification, the council may refuse to approve the building work.
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PART III

BUILDING SURVEYORS

14. (1) For the purposes of this Act the council of each area shall appoint a building surveyor and may appoint such building inspectors and other officers and servants as it thinks fit.

(2) The building surveyor, building inspectors, officers and servants, appointed under subsection (1) of this section, shall be under the direction of the council and shall be paid by the council such salaries and fees as may be determined by the council.

(3) If the building surveyor or building inspector has any private interest in the performance of any building work he shall not act in pursuance of this Act in respect of that building work but shall inform the council of his interest, and the council shall thereupon appoint some other suitable person to act as building surveyor or building inspector in respect of that building work.

(4) The council shall provide and maintain an office or reasonable accommodation for the building surveyor.

15. Subject to this Act, all building work within an area shall be subject to the supervision of the surveyor.

16. The building surveyor or a building inspector may, at a reasonable times during the progress and within a period of one year after the completion of any building work affected by any provision of this Act, or by any term or condition on which the observance of any such provision has been dispensed with, enter and inspect any land or premises for the purpose of determining whether the building work complies with the requirements of this Act.

17. Where—

(a) in the performance of any building work anything is done in contravention of this Act, anything required by this Act is not done, or any condition subject to which the building work has been approved by the council is not complied with;

or

(b) the surveyor or a building inspector on surveying or inspecting any building work in respect of which approval has not been given as required by this Act finds it so far advanced that he cannot ascertain whether it complies with this Act,

the surveyor or a building inspector may serve on the builder engaged in the performance of the building work, or the owner of any land or premises upon which it is being performed, a notice of irregularity requiring him within a period stipulated in the notice—

(c) to cause anything done in contravention of this Act to be amended;
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(d) to do anything that is required to bring the building work into conformity with this Act or the conditions imposed by the council;

or

(e) to cause any part of a building structure or work that prevents the surveyor from ascertaining whether the building work has been performed in accordance with this Act to be cut into, laid open or pulled down so far as may be reasonably necessary in order to ascertain whether it does so comply.

18. (1) If a person on whom a notice of irregularity has been served fails to comply with that notice within the period stipulated therein, the court, on complaint of the council, may make an order against that person requiring him to comply, within a time stipulated in the order, with the notice or with such of the requirements therein as, in the opinion of the court, are duly authorized by this Act.

(2) If the order is not complied with, the building surveyor may, after giving seven days' notice to the person against whom the order is made, enter with a sufficient number of workmen upon the land or premises and do all such things as may be necessary for enforcing the order and for bringing the building, structure, or building work into conformity with the provisions of this Act.

(3) Any expense incurred by the building surveyor in acting pursuant to subsection (2) of this section may be recovered by the council, as a debt due to it, from the person against whom the order was made or from the owner of the land or premises.

19. (1) The council may by resolution confer upon an officer of the council (other than a building surveyor) such of the powers, functions, duties and obligations of a building surveyor as may be prescribed.

(2) An officer of the council in respect of whom such a resolution is made must be qualified, in accordance with the regulations, for appointment as a building surveyor or building inspector.

(3) An officer of the council in respect of whom such a resolution has been made shall have, and may exercise, perform and discharge, such powers, functions, duties and obligations as have been conferred upon him in pursuance of the resolution.

(4) Any such resolution of the council may be varied or revoked by subsequent resolution.
PART IV

BUILDING ACT REFEREES

20. (1) For the purposes of this Act, there shall be a panel of referees in respect of each area consisting of one or more persons appointed by the Minister and one or more persons appointed by the council.

(2) A person so appointed—
   
   (a) must be a registered architect, qualified civil engineer, building surveyor or chartered builder;

and

   (b) must not be a member or officer of the council.

(3) Subject to this Act, the council, if the referee was appointed by the council, or the Minister, if the referee was appointed by the Minister, may remove a referee appointed under this section and may appoint another qualified person in his place.

(4) Where the Minister, by notice in writing served personally or by post upon a council, requests it to appoint a referee under this section, and within one month after service of the notice the council has failed to appoint a referee, a referee or referees appointed for the area by the Minister shall, until such time as the council appoints a referee or referees, be the sole referee or referees for the area.

(5) Where any matter arises that is, in pursuance of this Act, to be heard and determined by referees, the clerk shall nominate two referees, at least one of whom has been appointed by the Minister, to hear and determine the matter.

(6) In this section—
   
   “Chartered builder” means a Fellow or Associate of The Australian Institute of Building.

21. (1) A referee shall not act as such with respect to any building or structure of which he is the owner, architect or builder, or in which he is in any manner directly or indirectly interested.

(2) In the event of a referee being so disqualified, the council, if the referee was appointed by the council, or the Minister, if the referee was appointed by the Minister, may, if it is necessary to do so, appoint another qualified person to act as referee in that matter.

22. The referees shall have subject to and for the purposes of this Act the powers of arbitrators under the Arbitration Act, 1891-1934.

23. The hearing of any proceedings by referees under this Act must commence wherever practicable within fourteen days after the institution of the proceedings.
24. (1) Where in any matter for which provision is made by or under this Act any difference arises between parties interested in that matter, or between any such party and the council or the surveyor, relating to—

(a) any act done or to be done in pursuance of this Act;

(b) the effect of any provision of this Act in specific circumstances;

(c) the manner in which the provisions of this Act are, or ought to be, carried into effect;

(d) whether the requirements of this Act in any matter relating to building work have been satisfied in a particular case, or what is necessary for the satisfaction of those requirements;

(e) the proportion or amount of the expense to be borne by the respective owners of premises separated or divided by a party wall;

or

(f) any other matter,

any party interested in that matter may, by notice in writing addressed to the clerk setting out the matters in respect of which a determination of the referees is sought, appeal to the referees for a determination of that matter.

(2) If upon any appeal to the referees relating to any building that has been erected or partly erected, the referees find that the building does not comply with this Act but that it could be so altered that the objects of this Act would be effectually attained, the referees may direct in their determination that such building work, specified in the determination, be carried out as is necessary in their opinion to ensure that the objects of this Act will be effectually attained.

(3) The clerk shall supply the referees nominated to hear and determine the matter with copies of the notice under subsection (1) of this section and any other documents relating to the appeal.

25. (1) Where the referees are unable to agree upon any material matter, they shall refer the matter for the decision of an umpire who shall be a person appointed by the referees, or in default of appointment by the referees within a reasonable time, by the Minister.

(2) For the purposes of this Act, the umpire shall have and may exercise the powers of the referees, and the provisions of this Act with regard to referees shall, mutatis mutandis and so far as they are applicable, extend and apply to an umpire.

(3) A member or officer of the council shall not be appointed an umpire.
26. (1) Where the referees are required or permitted to exercise, perform or discharge any power, function, duty or obligation in pursuance of this Act, it may with the consent of all parties (unless express provision to the contrary is made) be exercised, performed or discharged validly and effectually by any one of the referees.

(2) Subject to this Act, the referees, or either of them, may make any inquiry or survey that they think necessary or expedient in order to determine any matter.

27. (1) Where it is proposed that any building work be carried out, and the owner of the land or premises on which the building work is to be carried out, the builder, or the architect has lodged with the council a notice in writing claiming:—

(a) that any provision of this Act is inapplicable or inappropriate to the particular building work;

(b) that the operation of any provision of this Act will adversely and unnecessarily affect the conduct of business;

or

(c) that the adoption of some specified modification to the provisions of this Act so far as they relate to the particular building work would achieve the objects of this Act as effectually, or more effectually, than if they were not so modified,

the matter shall be determined by the council.

(2) The council may direct, subject to such conditions as it may determine, that the provisions of this Act shall apply in respect of that building work with such modifications as are specified in its determination, and the provisions of this Act shall apply accordingly.

(3) The owner, builder or architect may appeal to referees against any decision or determination of the council under this section and the referees may upon hearing the appeal vary the decision or determination of the council in any manner that they think fit.

28. (1) If a party to any matter for determination by referees fails to appear at the hearing of the matter, the referees may proceed to hear and determine the matter in his absence.

(2) The authority of referees to hear and determine any matter is revocable only with the consent of all parties to the matter.
29. The referees shall—

(a) keep proper minutes of all their proceedings;
and

(b) send copies of the minutes, certified under their hands, to the clerk of the council and the Minister.

30. (1) Every determination of the referees must be in writing, signed by the referees, and lodged with the clerk who shall file it in the office of the council.

(2) A determination of the referees—

(a) may by leave of the Supreme Court, or a Judge, be enforced in the same manner as a judgment or order of that court;
and

(b) shall, subject to this Act, be binding and conclusive.

(3) A person may, on payment to the clerk of the prescribed fee, inspect any such determination and take a copy thereof, or make extracts therefrom.

(4) In any proceedings of a judicial nature a determination of the referees signed by them, or sealed with the seal of the council shall be prima facie evidence that the determination has been duly made.

31. A referee shall be entitled to receive, in accordance with the regulations, from the Minister or the council such fees, allowances and expenses as may be prescribed.

32. A party to any matter to be heard and determined by referees shall pay to the council such fees as may be prescribed.

33. A referee must before he first commences to act as a referee make a declaration in the prescribed manner and form.
PART V

DANGEROUS AND DEFECTIVE EXCAVATIONS, BUILDINGS AND STRUCTURES

34. (1) If the surveyor has reasonable cause to suspect that any excavation, building or structure in the area is in a dangerous, ruinous, dilapidated or neglected condition, he may make a survey or inspection of the excavation, building or structure.

(2) It shall be lawful for the surveyor or a building inspector at any reasonable time, to enter into or upon any excavation, building or structure, or upon any land on which the excavation, building or structure is situated, for the purpose of making a survey or inspection under this section.

35. (1) If after completing the survey or inspection, the surveyor is satisfied that a building or structure is—

(a) in a dangerous condition;

(b) in a ruinous or dilapidated condition;

or

(c) by reason of neglect in a bad state of repair or prejudicial to persons or property in the neighbourhood,

the council may cause notice to be served upon the owner of the building or structure, or the land on which it is situated, requiring him to carry out any building work specified in the notice, to the satisfaction of the council, and within the time specified in the notice.

(2) The building work specified in the notice may consist in the demolition or the removal of a building or structure, or may be such as will ensure, in the opinion of the council, that the building or structure will be rendered safe or secure and will be in a proper state of repair.

(3) If after completing the survey or inspection the surveyor is satisfied that an excavation is in a dangerous or neglected condition, or prejudicial to persons or property in the neighbourhood, the council may cause notice to be served on the owner of the land on which the excavation is situated requiring him to fill in the excavation or to carry out such building work to the satisfaction of the council as may be specified in the notice.

(4) If the surveyor is of the opinion that the building or structure is dangerously overloaded, the council may cause notice to be served on the owner of the building or structure, or the land on which it is situated, requiring him forthwith to remove the load, or so much thereof as is necessary to make the building or structure safe.

(5) A person upon whom a notice has been served under this section shall comply with the notice.

Penalty: Two hundred dollars. Default penalty: Twenty dollars.
(6) If in the opinion of the surveyor any excavation, building or structure is in a dangerous condition, the council may, whether notice has been served under this section or not, cause such building work to be carried out in relation to the excavation, building or structure as will render it safe and secure, and cause such fences or other structures to be erected as may be necessary for the protection of the public.

(7) If in the opinion of the surveyor a building or structure is dangerously overloaded the council may, whether notice has been served under this section or not, cause any load to be removed from the building or structure.

(8) Any person acting under the direction of the council may enter and remain in any land, building or structure for the purposes of carrying out any building work or removing any load under subsection (6) or (7) of this section.

(9) The council may recover any expenses incurred under this section as a debt due to it from the owner of the building or structure or of the land upon which the excavation, building or structure is situated, in any court of competent jurisdiction.

36. (1) If the owner upon whom a notice has been served under this Part disputes the propriety of any requisition contained in the notice, he may apply to referees for an order that the requisitions contained in the notice be varied or struck out.

(2) The referees may make such order upon an application under subsection (1) of this section as they think just in the circumstances.

(3) Where an application is made to the referees under this section, the time within which the building work must be performed shall not run pending the disposal of the application.

37. Where the surveyor has certified that a building or structure is dangerous to any persons residing therein, the court may, upon the application of the council, order that those persons be removed from that building or structure by a member of the police force.

38. (1) If a building or structure does not conform with the provisions of this Act or any building work has been performed contrary to the provisions of this Act, the council may, by notice in writing served upon the owner of the land on which the building or structure has been erected or constructed, or the building work performed, require him to bring it into conformity with the provisions of this Act or to demolish the building or structure.

(2) The owner shall comply with the notice or demolish the building or structure within the time fixed in the notice.

Penalty: Two hundred dollars. Default penalty: Twenty dollars.
39. (1) If the council is of the opinion that a building or structure affects seriously and adversely the health or amenity of the local environment within which it is situate, the council may apply to the referees for a determination under this section.

(2) Notice of the application must be served upon the owner of the land on which the building or structure is situate at least fourteen days before the application is to be heard.

(3) If the referees are satisfied that the building or structure affects seriously and adversely the health or amenity of the local environment within which the building or structure is situate, they may determine that building work specified in the determination should be carried out in relation to the building or structure within a time specified in the determination.

(4) If the owner of the land on which the building or structure is situate does not, within the time specified in the determination carry out the building work determined upon by the referees, the council may cause the building work to be carried out and any person authorized in writing by the council may enter upon the building or structure or the land upon which it is situate, and carry out the building work.

(5) Any costs incurred by the council in carrying out building work under subsection (4) of this section may be recovered from the owner of the land on which the building or structure is situate as a debt due to the council in any court of competent jurisdiction.
PART VI

PARTY WALLS

40. (1) Where lands of different owners adjoin and are unbuilt on at the line of junction, and either owner desires to build a party wall, or to convert any existing structure into a party wall, on any part of the line of junction, the following provisions shall have effect:—

(a) the building owner must serve notice on the adjoining owner, describing the intended wall;

(b) if the adjoining owner consents to the building of the party wall, the wall shall be built in such position as shall be agreed upon between the two owners;

(c) the expense of building the party wall shall be borne by the two owners in due proportion, taking into consideration the use that is likely to be made of the wall by each owner;

(d) a party wall shall not be built by the building owner without the consent of the adjoining owner; and

(e) the owners shall grant easements of support in respect of the party wall over their respective lands and shall cause the easements to be registered under the Real Property Act, 1886-1969, or the Registration of Deeds Act, 1935-1962, as the case may require, and the building owner shall, in the absence of contrary agreement, be liable for the expenses of and incidental to such registration.

(2) Where a party wall was lawfully built before the commencement of this Act, and conforms with the law of this State, as in force at the time of its erection, either owner may require the adjoining owner to grant and cause to be registered under the Real Property Act, 1886-1969, or the Registration of Deeds Act, 1935-1962, as the case may require, an easement of support over his land in respect of the party wall and the adjoining owner shall comply with that requirement.

41. (1) A building owner shall have the following rights in addition to, and without prejudice to, any rights that he may have under any other Act or at common law:—

(a) a right to make good, underpin, or repair any party wall that is defective or out of repair;

(b) a right to pull down and rebuild any party wall that is so far defective or out of repair that it is necessary or expedient to pull it down;

(c) a right to pull down a party wall that does not conform with the provisions of this Act and to build a party wall that does so conform;
(d) a right to raise and underpin a party wall;

(e) a right to pull down a party wall that is of insufficient strength for a proposed building and to rebuild a party wall of sufficient strength for that purpose;

(f) a right to cut into a party wall;

and

(g) a right to perform such other building work in relation to the party wall as may be permitted by the regulations.

(2) The rights conferred by subsection (1) of this section shall be exercisable only in accordance with the provisions of this Act.

(3) For the purposes of subsection (1) of this section, a party wall erected before the commencement of this Act shall be deemed to conform with the provisions of this Act if it conforms with the law of this State, as in force at the time of its erection.

(4) The building owner shall be liable to make good any damage to adjacent premises, the furniture, or contents thereof, by reason of the exercise of any right conferred under this section.

(5) The building owner shall not, except with the consent in writing of the adjoining owner and of the adjoining occupier exercise any of his rights under this section unless at least six weeks before doing so, he has served personally or by post on the adjoining owner and occupier a notice in writing stating the nature and particulars of the proposed building work and when it is to be commenced.

(6) Where a building owner proposes to exercise any of the rights conferred on him under this section, the adjoining owner may, by notice in writing served personally or by post upon the building owner, require him to carry out such other building work on or in relation to the party wall as may be reasonably necessary for the convenience of the adjoining owner and the building owner shall comply with that requisition where the execution of the required building work would not be injurious to the building owner or cause him undue inconvenience or delay.

(7) The adjoining owner shall be liable for all expenses incurred by the building owner in pursuance of his requisition under subsection (6) of this section.

(8) The building owner must take such precautions in the exercise of any rights conferred on him under this section, as will ensure that the adjoining land or premises are properly protected.

(9) A building owner must not exercise any right conferred on him under this section in such manner, or at such time as will cause unnecessary inconvenience to the adjoining owner or occupier and must prosecute any building work permitted under this section with due diligence.
(10) If after the expiration of fourteen days from the service of a notice under this section, the person upon whom the notice has been served has not consented to the proposals contained in the notice, the building owner may make an application to the court for an order that the consent of that person be dispensed with, and the court may make such orders in the circumstances as it thinks just.

42. (1) A building owner, his agents or servants, may at any reasonable time enter and remain upon the land or premises of the adjoining owner for the purpose of performing any building work in accordance with this Part and may remove any impediment and perform any act that the nature of the building work requires.

(2) The building owner shall serve personally or by post upon the adjoining owner at least fourteen days before he enters upon the land or premises of the adjoining owner, or in the case of an emergency as early as possible, notice of his intention to enter upon the land or premises of the adjoining owner, stating the time at which he proposes so to enter that land or those premises.

(3) Where the premises of the adjoining owner are closed, the building owner, his agents or servants, accompanied by a member of the police force, may break into the premises of the adjoining owner.

43. (1) The expense of building a party wall, or carrying out any building work in pursuance of this Act in relation to a party wall shall be borne in due proportion by the adjoining owners having regard to the use that each owner is to make of the party wall.

(2) The building owner shall, within one month after the completion of any building work in respect of which a contribution is payable by the adjoining owner, serve personally or by post upon the adjoining owner, an account showing the cost of the building work and the proportion of that cost that the building owner claims to be payable by the adjoining owner.

(3) If after the expiration of one month from the service of the account, the account remains unpaid, the building owner may by action in any court of competent jurisdiction seek a determination of the amount payable to him by the adjoining owner, and recover that amount as a debt.
44. Where under any provision of this Act the council is invested with a discretion to approve, permit, or consent to any act, matter or thing, the approval, permission, or consent of the council may be given subject to such reasonable conditions as the council may determine.

45. (1) Subject to this Act, the council may by resolution delegate to any committee of its members, or to any of its officers, such of its powers and duties under this Act as it thinks fit and may, by subsequent resolution, vary or revoke any such delegation.

(2) The delegation of any powers or duties under subsection (1) of this section shall not derogate from the power of the council to act in any matter itself.

46. The fees and other moneys paid to or recovered by the council under this Act shall be applied (so far as may be necessary for the purpose) to the expenses incurred by the council in the administration of this Act.

47. A fine imposed for any offence under this Act shall be paid to the council of the area in which the offence was committed.

48. A person required to perform any building work in connection with a building or structure by a notice or order under this Act, or any persons acting on behalf of such a person, may, after giving seven days' notice to the occupier of the building or structure, enter upon the building or structure and the land on which it is situated and do anything that may be necessary or expedient to comply with the notice or order.

49. (1) Where a building owner proposes to carry out building work of a prescribed nature within a prescribed distance from the land or premises of an adjoining owner, the following provisions shall apply:—

(a) the building owner shall, at least one month before the building work is commenced, cause to be served upon the adjoining owner a notice of his intention to perform the building work, and of the nature thereof;

(b) the building owner shall take such precautions as may be prescribed to protect the adjoining land or premises, and shall, at the request of the adjoining owner, carry out such other building work in relation to the adjoining land or premises as he is authorized by the regulations to require; and
(c) nothing in this section shall relieve the building owner from liability for injury resulting from the performance of any building work.

(2) If the building owner fails to comply with the provisions referred to in subsection (1) of this section he shall be guilty of an offence and liable to a penalty not exceeding four hundred dollars.

(3) The building owner may apply to the referees for a determination of what proportion (if any) of the expense incurred by the building owner in the performance of building work requested by the adjoining owner pursuant to subsection (1) of this section should be borne by the adjoining owner, and the building owner may recover an amount determined by the referees from the adjoining owner as a debt due to him in any court of competent jurisdiction.

50. (1) A person shall not, without a licence granted by the council, erect any building or structure that may encroach or project upon, over or under any public place.

Penalty: Four hundred dollars.

(2) The council may grant or refuse to grant a licence under this section, and may grant a licence subject to such conditions as it thinks fit and specifies in the licence.

(3) Where the council refuses to grant a licence, or grants a licence subject to conditions, under this section, it shall cause notice of its refusal or the conditions to be served upon the applicant and the applicant may within one month of the day on which the notice is served, apply by summons to the court which shall make such order as it considers just in the circumstances.

(4) It shall be competent for the court to order that the council grant a licence subject to such conditions (if any) as the court thinks appropriate, or that any condition upon which a licence is granted by the council be struck out or amended as the court thinks fit.

51. (1) Except as provided in this section, this Act does not bind the Crown.

(2) Where a building is to be erected by or on behalf of the Crown in the area of a council, a notice shall, before the erection of the building is commenced, be sent to the council notifying the council of the fact that the building is to be erected.

(3) The council shall, in addition, be supplied with a plan delineating the site of the proposed building and the position of the building in relation to the site.

52. (1) This Act does not affect, or exempt any person from the obligation to comply with, the provisions of any other Act or regulations under any other Act.
(2) Where under any other Act, or the regulations under any other Act, any building work is permitted or required, that building work must, unless the contrary intention appears, be performed subject to and in conformity with the provisions of this Act.

53. Nothing in this Act prejudices the exercise of civil rights by or against a builder or any other person.

54. (1) Any notice or other document that the council or building surveyor is authorized or required to serve under this Act must be served—

(a) personally or by post;

(b) by delivering it to some person resident upon the premises to which it relates;

or

(c) if the whereabouts of the owner of the premises is unknown and there is no person ordinarily resident therein, by affixing it in some prominent place upon the premises.

(2) Any notice or other document that the council or building surveyor is required or authorized to serve on the owner of any land, building or structure may be sufficiently addressed if addressed to the "owner" (without specification of his name) of the land, building or structure described in the notice or document.

(3) Any notice or other document that is to be served upon the council or building surveyor under this Act must be served—

(a) by post;

or

(b) by leaving it at the office of the council with some person apparently responsible to the council.

55. (1) Proceedings for offences under this Act shall be disposed of summarily.

(2) Proceedings in respect of a building or structure shall be unaffected by any change or alteration to the building or structure since the proceedings were commenced.

(3) Proceedings for an offence under this Act may be commenced at any time before the expiration of twelve months from the date of the alleged commission of the offence.

56. Where any provision of this Act provides for the imposition of a default penalty the council may cause to be served upon any person who is in default under that section a notice of the default requiring him to remedy the default within a period allowed in the notice and if he fails so to remedy the default within the period so specified he shall be liable to a penalty not exceeding the amount fixed as a default penalty for every day during which the default continues after that period.
57. (1) In any proceedings for an offence against this Act, an allegation in a complaint that an act has been done without the consent or approval of the council shall be prima facie evidence of the matter alleged.

(2) A document purporting to be a copy of a by-law made by a council under this Act and purporting to be signed by the clerk of the council, shall, without further proof, be received as prima facie evidence of the existence, contents and validity of the by-law.

(3) A certificate in writing purporting to be signed by the clerk or the surveyor and stating that any place within the area of the council is a public place or a fire zone shall, without further proof, be received as prima facie evidence that that place is a public place or a fire zone, as the case may be.

58. (1) A court may at the hearing of a complaint for an offence under this Act, or upon the application of the council, if it is satisfied that a building or structure does not conform with the provisions of this Act order the owner of the land on which the building or structure is situated to bring it into conformity with the provisions of this Act or to demolish it.

(2) If the order is not complied with within the time fixed by the court, any persons authorized in writing by the council may enter upon any land or premises on or in which the building or structure is situated and do anything that may be necessary or expedient to comply with the order of the court.

(3) Any costs or expenses incurred under subsection (2) of this section may be recovered by the council from the person against whom the order was made as a debt due to the council.

59. (1) The council shall preserve—

(a) all plans submitted for the approval of the council;

(b) all material documents connected with matters heard and determined by referees;

and

(c) such other documents that may be prescribed,

and shall maintain a register or registers of those plans and documents.

(2) Subject to subsection (3) of this section any plans or other documents lodged with the council pursuant to this Act may, notwithstanding the provisions of Part III of the Libraries and Institutes Act, 1939-1967, be destroyed after the expiration of five years from the date of lodgment.

(3) The council shall preserve the plans, or copies of the plans, delineating the site of any prescribed building or class of buildings.
PART VIII

BY-LAWS AND REGULATIONS

60. (1) Subject to this Act, the council may make such by-laws as it thinks necessary or expedient with respect to any of the following matters:

(a) the issue of licences with respect to encroachments on, over or under public places;

(b) the prohibition or regulation of the use of any cranes, hoists or other machinery in, over or under any public place;

(c) the prohibition, within a locality defined in the by-laws, of the erection, construction, alteration of or addition to, any building or structure of a specified class or any building or structure other than a building or structure of a specified class, and the prohibition of the use of any land within any such locality in a manner or for a purpose prohibited by the by-laws;

(d) the prohibition within a locality defined in the by-laws of the use of buildings or structures for any purpose specified in the by-law or otherwise than for purposes specified in the by-law, but any such by-law shall not prevent—

(i) the use of a building or structure existing at the commencement of the by-law for any purpose for which it was lawfully used before the commencement of the by-law;

or

(ii) the alteration of or addition to any such existing building or structure for any such purpose;

(e) the restriction or prohibition, within a locality defined in the by-laws, of any specified type of construction.

(f) the fixation of the building line for any class of buildings with reference to the street alignment;

(g) the declaration of any land described in the by-law to be a restricted site for the purposes of this Act;

and

(h) the prohibition of the erection of any building or building of a specified class within a locality specified in the by-law on account of the insalubrity of the locality.

(2) Where any such by-law is inconsistent or incompatible with a planning regulation made pursuant to the Planning and Development Act, 1966-1969, the planning regulation shall prevail to the extent of the inconsistency or incompatibility.
(3) The powers conferred under paragraphs (c), (d), (e) and (f) of subsection (1) of this section shall not be exercisable in respect of any land that is included within an authorized development plan under the Planning and Development Act, 1966-1969.

(4) Any by-law under this section must be made subject to, and in accordance with, Division 1 of Part XXXIX of the Local Government Act, 1934-1969.

61. The Governor may, upon the recommendation of the Building Advisory Committee, make such regulations as are contemplated by this Act or as he deems necessary or expedient for the purposes of this Act and without limiting the generality of the foregoing, those regulations may—

(a) prescribe the qualifications that must be held by persons to be appointed building surveyors or building inspectors for the purposes of this Act and make any provision for the education, training and examination of persons who desire to obtain the qualifications necessary for appointment as a building surveyor or building inspector;

(b) restrict or prohibit the employment by a council of a building surveyor or building inspector in duties unconnected with the administration of this Act;

(c) provide that a council may with the approval of the Minister, declare any portion of the area to be a fire zone;

(d) provide that a register of fire zones be kept by a council and made accessible for public inspection;

(e) prescribe any requirements with which any building or building work within a fire zone must conform;

(f) provide for the classification of buildings and the manner in which a dispute as to the classification may be resolved;

(g) provide for the issue of certificates of classification;

(h) provide that where a building or structure erected or constructed before the commencement of this Act is demolished, destroyed, or taken down to a prescribed extent it must be rebuilt or reconstructed in complete accordance with the provisions of this Act;

(i) prescribe the circumstances in which a number of buildings may or shall be treated, for the purposes of this Act, as constituting a single united building;

(j) prescribe the manner and form in which an application is to be made under Part II of this Act and the manner in which such an application is to be dealt with;
(k) prescribe and provide for the payment and recovery of fees, and expenses, in connection with any matter arising under this Act;

(l) regulate, restrict or prohibit the use of specified materials for the purpose of building work, and invest a prescribed person or authority with discretionary power to regulate, restrict or prohibit the use of any materials for the purpose of building work;

(m) prescribe and provide for the making of tests, of, or relating to, buildings, structures, building work or materials to be used for the purposes of building work;

(n) regulate, restrict or prohibit the performance of building work on a restricted site or the erection or construction of any building or structure or class of building or structure on a restricted site;

(o) regulate, restrict or prohibit the performance of building work or the erection or construction of a building or structure within a prescribed distance from a street or other public place and invest the council with discretion to dispense with compliance with any such regulation and otherwise to regulate the position of any building or structure;

(p) prescribe any precautions to be taken during the construction or demolition of a building or the performance of any other building work;

(q) prescribe the height to which a building may be erected, which height may vary according to the position of the building, the width of any road upon which it abuts, or any other matter;

(r) regulate, restrict or prohibit the erection or construction of buildings or structures, or the performance of building work on, over or under a public place and prescribe standards to which any such building, structure or building work must conform;

(s) make any provision, restriction or prohibition that may reduce the likelihood of fire in, or the spread of fire from, any building or structure or conduce to the safety of the building or structure or its occupants in the event of fire;

(t) prescribe the maximum loadings, stresses, load factors and deformations permissible in respect of any building or structure or any class of building or structure and invest the building surveyor with discretionary power to prohibit the erection or construction of buildings or structures that may be or become unsafe by reason of excessive loading, stress or deformation;
(u) make any provision, restriction or prohibition relating to the construction of foundations, footings, piling, caissons, walls, masonry, floors, roofs, and regulate structural concreting and steelwork, timber construction, veneer-on-timber construction and any other kind of construction;

(v) require, and prescribe the method of storm water drainage from a building or any building site;

(w) require or prohibit the use of certain devices for the disposal of garbage or other waste and generally regulate the disposal of garbage or other waste;

(x) prescribe standards of weather-proofing or damp-proofing with which any building work must conform;

(y) prescribe measures to be taken for the prevention of damage to buildings or structures by termites, rodents or other pests;

(z) prescribe the minimum height or dimensions of rooms or any class of rooms and minimum standards of lighting and ventilation to which they must conform;

(za) prescribe standards of sound-proofing in relation to buildings or building work;

(zb) make such provision as may be necessary or expedient to ensure that the construction of a building will meet prescribed standards of health and amenity;

(ze) regulate, restrict or prohibit the installation of lifts, fire extinguishing sprinklers or other apparatus in any building or structure or class of building or structure;

(zd) restrict or prohibit the use or occupation of a building or structure before all building work contemplated by the plans drawings and specifications approved by the council has been completed or before the satisfaction of such other conditions as may be stipulated in the regulations;

(ze) regulate restrict or prohibit the affixure or construction of awnings or other attachments to buildings;

(zf) make any special provision, restriction or prohibition in relation to a prescribed building or structure or prescribed class of building or structure;

(zg) prescribe penalties not exceeding two hundred dollars and default penalties not exceeding fifty dollars for breach of, or non-compliance with, any regulation.
PART IX

THE BUILDING ADVISORY COMMITTEE

62. (1) There shall be a committee entitled the "Building Advisory Committee".

(2) The committee shall consist of six members appointed by the Governor on the recommendation of the Minister.

(3) The Governor shall, on the recommendation of the Minister, appoint one of the members of the committee to be chairman of the committee.

(4) The committee—

(a) may from time to time recommend any alteration to this Act that may, in the opinion of the committee, be necessary or desirable;

(b) shall report to the Minister upon any proposals for the amendment of this Act that are referred to the committee by the Minister;

(c) shall perform and discharge such functions and duties as may be entrusted to the committee by the Minister;

and

(d) shall generally advise the Minister upon the administration of this Act.

(5) A member of the committee shall be appointed for a term, not exceeding three years, specified in the instrument of his appointment, and, at the expiration of a term of appointment shall be eligible for re-appointment.

(6) The members of the committee shall be entitled to be paid from moneys provided by Parliament for that purpose such fees, allowances and expenses as may be determined by the Minister.

(7) The Governor may, subject to, and in accordance with the Public Service Act, 1967-1968, appoint a secretary to the committee and such other officers and servants as he thinks fit.
(8) The Minister may from time to time fix fees and charges to be paid to the Treasurer by a person submitting matters for the consideration of the committee and the Treasurer may recover any such fees and charges from the person by whom they are payable in any court of competent jurisdiction.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. W. HARRISON, Governor.