

# **PLANNING AND DEVELOPMENT ACT 2004**

**Act No. 32 of 2004**

Proclaimed by [\[Proclamation No. 43 of 2004\]](#) w.e.f 1<sup>st</sup> December 2004

Part I, Section 5 of Part II, Sections 12 and 13 of Part III, Sections 62, 63(2), (4), (5) and (6), 64 and 65 of Part XI and Sections 67, 68(1)(f), 70 and 75(2) of Part XII

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[Sections 14 & 15 of Part III, Section 75(4) of Part XII]

Proclaimed by [\[Proclamation No. 12 of 2009\]](#) w.e.f 1<sup>st</sup> July 2009

[Section 19 of Part III]

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## AN ACT

**An Act to modernise town and country planning and make comprehensive provision with respect to land use planning and development in Mauritius**

### PART I – PRELIMINARY

#### 1. Short title

This Act may be cited as the **Planning and Development Act 2004**.

#### 2. Interpretation

(1) In this Act –

“action area plan” means a development plan referred to in section 14;

"advertisement" includes a sign, notice, device or representation , in the nature of an advertisement , visible from any public place or public reserve or from any navigable water;

"advertising structure" means a structure used or intended to be used principally for the display of an advertisement;

“authorised officer” means a person authorised by the permit authority under section 66;

"building" includes –

- (a) part of a building;
- (b) a manufactured home or part of a manufactured home, a movable dwelling, or a movable structure; and
- (c) a structure ,part of a structure or a temporary structure;

"building work" means any physical activity involved in the erection of a building;

"coastal frontage land" means that land -

- (a) the breadth of which shall be reckoned from the line of the seashore which is reached by high water at spring tide, and shall never be less than 81 metres and 21 centimetres; and
- (b) the boundary of which shall, as far as the locality admits, be parallel to the lines of the coast considered as a whole and without regard to its small irregularities;

"commencement of development", in relation to –

- (a) the erection of a building, the morcellement of land, or the carrying out of a work, means the physical commencement of building, engineering or construction work relating to the building, morcellement or work on the land to which the development permit applies before the date on which the development permit would otherwise lapse.;
- (b) the use of any land, building or work the subject of a development permit means the actual commencement of the use before the date on which the development permit would otherwise lapse;

“Commission” means the National Planning and Development Commission established under section 6;

“completion notice” means a completion notice served under section 33(2);

“development” –

- (a) means the carrying out of any building, engineering, mining, or other works or operations in, on, under or over land, or the making of any material change to the use of land or to any building or morcellement;
- (b) includes -
  - (i) the use of land;
  - (ii) morcellement;
  - (iii) the erection of a building;
  - (iv) the carrying out of a work;
  - (v) the demolition of a building or work;
  - (vi) any other act, matter or thing that is controlled by a planning instrument;

"development permit" –

- (a) means a permit granted under section 30;

- (b) includes a permit to do any act, matter or thing that is controlled by a planning instrument or for which a development permit is expressly required by or under this Act;

“development plan” means a local plan, an area action plan, or a subject plan;

“Director” means the Director of Environment appointed under section 8(2) of the Environment Protection Act 2002;

“EIA” and “preliminary environmental report” have the same meaning as in the Environment Protection Act 2002;

“engineering works” includes the formation or laying out of means of access to roads and the erection, construction and laying of pipes and electrical and telecommunication lines and cables above, on or under grounds;

“exempt development” means development referred to in section 23;

“fire safety” means provision for –

- (a) the safety of persons in the event of fire;
- (b) the prevention of fire;
- (c) the detection of fire;
- (d) the suppression of fire; or
- (e) the prevention of the spread of fire;

“international organisation” means an international organisation established under an international agreement to which Mauritius is or intends to be a party;

"land" includes –

- (a) the sea or an arm of the sea;
- (b) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or non-tidal;
- (c) a river, stream or watercourse, whether tidal or non-tidal; and
- (d) a building erected on the land;

“local authority” has the same meaning as in the Local Government Act 2003;

“local plan” means a development plan referred to in section 14;

“local planning area” means –

- (a) the area for which a development plan is being prepared; and
- (b) in the case where a development plan has been approved, the area to which it applies;

“make safe notices” means a notice issued by a permit authority under section 33(5);

“Minister” means the Minister to whom the subject of planning matters is assigned;

“morcellement” means the division of land into 2 or more plots;

"morcellement certificate" means a certificate referred to in section 46;

"morcellement work" means any physical activity authorised to be carried out under the conditions of a development permit authorising the division of land, as referred to in section 46(2)(b);

"National Development Strategy" means the National Development Strategy adopted under section 12;

"occupier" includes a tenant or other lawful occupant of premises, not being the owner;

"owner", in relation to any land, includes the owner of the land or the owner of the building found on the land;

"parastatal organisation" means any corporate body or association funded in whole, or at least as to 51 percent in part, from funds derived from taxation, grants or loans from Government or external public financial sources, whether that corporate body or association is required to meet its expenditure from income derived from its activities or is subsidised in whole or in part by public funds;

"permit application" means an application for a development permit;

"permit authority" means –

- (a) in the case of an application for a development permit for development other than State-significant development, a local authority; and
- (b) in the case of an application for a development permit for State-significant development, the Minister;



“Planning Appeals Tribunal” means the Planning Appeals Tribunal established under section 53;

"planning agreement" means an agreement provided for in section 35;

“planning authority” means the Minister or a local authority as the case may be;

“planning instrument” means a document created under this Act, including a National Development Strategy, planning policy guidance, simplified planning zone scheme and a development plan;

“planning policy guidance” means the planning policy guidance issued under section 13;

"premises" means –

- (a) a building of any description or any part of it and the appurtenances to it;
- (b) a manufactured home, moveable dwelling and associated structure;
- (c) land, whether built on or not;
- (d) a tent;
- (e) a swimming pool; or
- (f) a ship or vessel of any description including a houseboat;

“public utility services” includes services for the purpose of transport and telecommunications, for the supply of electricity, gas, water and the disposal of sewage;

“State-significant development” means any development prescribed as State-significant development pursuant to section 24;

“stop development notice” means a notice issued under section 50;

“subject plan” means a development plan referred to in section 14;

“Tribunal” means the Planning Appeals Tribunal established under section 53.

- (2) A reference in this Act to –
- (a) the use of land includes reference to a change of building use;
  - (b) the erection of a building includes reference to –
    - (i) the rebuilding of, the making of alterations to, or the enlargement or extension of, a building;
    - (ii) the placing or relocating of a building on land;
    - (iii) enclosing a public place in connection with the construction of a building;
    - (iv) erecting an advertising structure in, on or over a public road or public place; or
    - (v) extending a balcony, awning, sunshade or similar structure or an essential service pipe beyond the alignment of a public road or over a public place;
  - (c) the carrying out of a work includes reference to –

- (i) the rebuilding of, the making of alterations to, or the enlargement or extension of, a building work; or
    - (ii) enclosing a public place in connection with the carrying out of a work;
  - (d) a work includes reference to any physical activity in relation to land that is specified by regulations to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulations not to be a work for the purposes of this Act;
  - (e) the demolition of a building or work includes reference to enclosing a public place in connection with the demolition of a building or work;
  - (f) the morcellement of land includes a division of land by –
    - (i) by conveyance, transfer or partition; or
    - (ii) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition;
  - (g) the carrying out of development includes reference to the use of land or a building, the morcellement of land, the erection of a building, the carrying out of a work, the demolition of a building or work or the doing of any other act, matter or thing that is controlled by a planning instrument.
- (3) A reference in this Act to an original document includes a copy of the document which is kept, in electronic form.

- (4) Reference to a local authority means reference to the local authority which has jurisdiction over the area in which the proposed development will take place.

### **3. Objects of the Act**

The objects of this Act are -

- (a) to provide in relation to land development for –
- (i) the promotion and co-ordination of the orderly and economic use and development of land;
  - (ii) the proper management, development and conservation of natural and man-made resources for the purposes of promoting the social and economic welfare of the community and a better environment;
  - (iii) use of land for public purposes; and
  - (iv) ecologically sustainable development;
- (b) to provide for the appropriate sharing of responsibility for planning and development between the different levels of government;
- (c) to establish appropriate institutions, structures and processes to achieve effective planning and development;
- (d) to facilitate inter-agency co-operation in planning and development;
- (e) to encourage appropriate private sector participation in planning and development;
- (f) to safeguard the immediate and long-term public interest in the processes and effects of planning and development.

#### **4. Application of Act**

This Act shall bind the State.

### **PART II – ADMINISTRATION**

#### **5. Powers and duties of the Minister**

- (1) The Minister shall ensure consistency and continuity in the formulation and execution of policies and development plans designed to further the objects of this Act.
- (2) Without prejudice to the generality of subsection (1), the Minister shall –
  - (a) give such directions as are appropriate and as will be conducive to the efficient, effective, economical, impartial and transparent implementation of policy and administration by the Ministry of this Act;
  - (b) oversee the National Planning and Development Commission;
  - (c) appoint committees to advise him on any aspect of land use planning and development;
  - (d) take all such other necessary actions and decisions as will enable him to discharge the functions devolving on him for the purposes of this Act.

#### **6. The National Planning and Development Commission**

- (1) There is established for the purposes of this Act a National Planning and Development Commission.

- (2) The Commission shall consist of the following permanent members –
- (a) a Chairperson, who shall have proven experience in any field relating to the planning and development of land and who shall be appointed by the Prime Minister;
  - (b) a representative of the Ministry responsible for the subject of planning and development of land;
  - (c) the Director General of the Ministry responsible for the subject of economic development or his representative;
  - (d) the Permanent Secretary of the Ministry responsible for the subject of agriculture or his representative;
  - (e) the Permanent Secretary of the Ministry responsible for the subject of environment or his representative;
  - (f) the Permanent Secretary of the Ministry responsible for the subject of public infrastructure or his representative;
  - (g) one representative of the Rodrigues Regional Assembly;
  - (h) 2 persons who shall represent the local authorities in Mauritius;
  - (i) 3 persons who shall represent the private sector of the economy with special reference to commerce, industry, tourism, property development and construction and agriculture.
- (3) The Commission shall co-opt 3 persons drawn from professions and disciplines relating to land use planning and development, including architecture, planning, land economy, civil engineering and social planning.

- (4) Every member referred to in subsection (2), other than the Chairperson and the ex-officio members, shall be appointed by the Minister.
- (5) The Minister shall consult organisations representative of those sections of the private sector referred to in subsection (2)(i) and professional associations representative of those professions and disciplines referred to in subsection (3) on the names of persons from those organisations and associations to be considered for appointment to the Commission, but the Minister shall not be bound to make appointments to the Commission only from those persons whose names have been proposed.
- (6) Every member of the Commission shall be paid such fees as may be approved by the Minister.

## **7. Functions of the Commission**

- (1) The Commission shall –
  - (a) advise the Minister on all matters relating to land use planning and development;
  - (b) make such recommendations as it deems necessary with a view to –
    - (i) amending this Act or any regulations made thereunder;
    - (ii) altering any National Development Strategy, for the more effective, efficient and economical operation of land use planning and development;
  - (c) prepare reports on the operation of land use planning and development on its own motion or when required by the Minister;

- (d) review and make recommendations to the Minister on any development plan referred to it;
  - (e) advise the Minister on any proposal for State-significant development, a planning agreement, or a departure application referred to it by the Minister;
  - (f) undertake such other functions as are conferred or imposed upon it by this Act or as it may be required by Minister to undertake or as may be prescribed.
- (2) In the exercise of its functions, the Commission shall at all times have regard to and aim to promote the public interest and may –
- (a) consult such person as it considers appropriate;
  - (b) commission such research and surveys as it deems fit;
  - (c) require any local authority to furnish such information, particulars and statistics as it deems fit.

## **8. Tenure of office of members of Commission**

- (1) Every member of the Commission, other than the ex-officio members, shall hold office for 3 years but may be re-appointed for another period of 3 years.
- (2) Any member of the Commission may resign from the Commission by sending or delivering to the Minister a letter of resignation.
- (3) A person shall cease to be a member of the Commission if he –
  - (a) is unable through a serious and continuous illness of a mental or physical nature to exercise the functions of his office;



- (b) has been convicted of a criminal offence which carries a penalty of not less than one year's imprisonment, whether or not the member has been sentenced to such a term of imprisonment;
  - (c) has been absent from 3 consecutive meetings of the Commission without the written permission of the Chairperson of the Commission.
- (4) A member of the Commission who commits any act of misconduct in the exercise of his functions may be censured by the Commission, or if the gravity of the matter is sufficiently serious, the Commission may by a vote of two-thirds of the members present and voting, with the approval of the Minister, remove the member from the Commission.
- (5) Where a member of the Commission ceases to be a member of the Commission, the Minister shall appoint a new member in accordance with section 6(4).

## **9. Meetings of the Commission**

- (1) The Commission shall meet at least once every month.
- (2) (a) Subject to paragraph (b), the Chairperson shall preside at all meetings of the Commission.
- (b) In his absence, the members present shall elect one of their number to preside at that meeting.
- (3) The quorum of the Commission shall be one half or the nearest whole number above one half of the permanent members of the Commission.
- (4) Decisions of the Commission shall be by resolution of the majority of permanent members present and voting and, in the case of an equality of

votes, the person presiding at the meeting shall, in addition to his deliberative vote, have a casting vote.

- (5) The co-opted members shall have no right to vote.
- (6) A member of the Commission who has a direct or indirect interest in a matter which is before the Commission shall declare that interest and shall not participate or vote at a meeting of the Commission in respect of that matter.
- (7) The Commission may establish such standing and ad hoc committees, with such functions, as it considers necessary or desirable to enable it to carry out its functions as expediently and as efficiently as possible.
- (8) Notwithstanding section 6(3), the Commission may co-opt persons to serve on the Commission and any committee established by the Commission but no co-opted member may vote on any matter coming before the Commission or any committee on which such co-opted member is sitting.
- (9) Subject to this section and to such provisions as may be prescribed, the Commission may regulate its own procedure.

## **10. Secretary of the Commission**

- (1) The Public Service Commission shall appoint –
  - (a) a Secretary to the Commission, who shall attend, and may speak at, the meetings of the Commission but shall not be a member of the Commission;
  - (b) an Assistant Secretary to the Commission, who shall assist the Secretary in his functions and who shall, in the Secretary's absence, perform the functions of the Secretary.

- (2) The Secretary shall –
  - (a) work closely with the Chairperson to ensure that the Commission performs its functions under this Act efficiently, as expediently and efficiently as possible;
  - (b) keep the minutes of the Commission; and
  - (c) perform all necessary administrative functions for and on behalf of the Commission.

#### **11. Staff of the Commission**

- (1) The Public Service Commission shall appoint such number of officers to serve the Commission as may be reasonably necessary for the purposes of this Act.
- (2) Public officers may be transferred or seconded to the Commission.
- (3) Every officer of the Commission shall be under the administrative control of the Secretary.
- (4) The Commission may, with the approval of the Minister, engage the services of such advisers as the Commission may determine are necessary or desirable to enable it to perform its functions and meet its objectives.
- (5) Every officer of the Commission shall be a public officer.
- (6) The Minister shall establish a Strategic Planning and Implementation Unit to provide technical support to the Commission.

## PART III – PLANNING

### 12. National Development Strategy

- (1) The Minister shall cause to be prepared, and shall adopt and maintain and keep under regular review a National Development Strategy, which shall –
  - (a) state the aims, objectives, policies and strategies through which the objects of this Act shall be achieved;
  - (b) consist of plans, policies and guidelines with mechanisms for their implementation, which aim at creating and stimulating investments in the public and private sectors so that economic growth and social development in relation to land development can be undertaken in a sustainable and equitable manner, so as to maintain and enhance the natural and built environment;
  - (c) outline the resources to be committed for its implementation.
- (2) The National Development Strategy shall prevail over any other planning instrument to the extent of any inconsistency.
- (3) The National Development Strategy shall be made available –
  - (a) for public inspection at the Ministry, the offices of the Commission and each local authority during normal office hours;
  - (b) for access on the website of the Ministry;
  - (c) for purchase by any member of the public.

- (4) Notice that a National Development Strategy has been adopted and is available for inspection shall be given in the Gazette and 2 daily newspapers.
- (5) The National Development Strategy shall take effect as from the date of publication of the notice in the Gazette.

### **13. Planning policy guidance**

- (1) The Minister may issue planning policy guidance to any local authority on any aspect of land use planning and development and their relationship to, and impact on, economic and social development, including –
  - (a) the form, scale, intensity, built form, location and general development criteria for different classes of development;
  - (b) the form, content and process of preparing development plans;
  - (c) policies and practices to be followed in connection with the implementation of development plans through the granting of development permits;
  - (d) State-significant development;
  - (e) planning agreements;
  - (f) conditions to be attached to development permits; and
  - (g) all other powers exercisable by local authorities under this Act.
- (2) Every local authority to which planning policy guidance is issued shall comply with such guidance.

- (3) A planning policy guidance shall prevail, to the extent of any inconsistency, over a development plan whether the development plan was made before or after the planning policy guidance.
- (4) Any planning policy guidance issued shall be available -
  - (a) to the public at a reasonable cost; and
  - (b) for access on the website of the Ministry.

#### **14. Development plans**

- (1) There shall be the following 3 types of development plans –
  - (a) local plans;
  - (b) action area plans; and
  - (c) subject plans.
- (2) (a) A local plan shall set out the policies, programmes and proposals for the future direction of development of the area of jurisdiction of a local authority.
- (b) Every local plan -
  - (i) shall be prepared by the local authority or, where the local authority informs the Minister that it cannot undertake this function or fails to prepare the local plan within such reasonable period as may be determined by the Minister, by the Minister;
  - (ii) shall apply to the whole or a part of the area of jurisdiction of that local authority.

- (3) (a) An action area plan shall set out –
    - (i) detailed programmes and proposals for the future development of an area for which the plan is being prepared; and
    - (ii) a detailed plan for the implementation of such programmes and proposals.
  - (b) Every action area plan shall be prepared –
    - (i) by the Minister;
    - (ii) by the Minister and the relevant local authority jointly;
    - (iii) by the Minister and one or more landowners who jointly own the whole area;
    - (iv) by the Minister, a local authority and one or more landowners; or
    - (v) with the approval of the Minister, by the relevant local authority and one or more landowners who jointly own the whole area.
  - (c) An action area plan may apply to the whole or part of the area under the jurisdiction of one or more local authorities.
- (4) (a) A subject plan shall set out policies, programmes and proposals for the future direction and development in respect to a specific subject matter.
  - (b) Every subject plan shall be prepared by the Minister for the whole

or a part of Mauritius.

- (5) Where more than one development plan applies to any area within jurisdiction of a local authority, an action area plan or subject plan shall prevail over a local plan to the extent of inconsistency, whether the local plan was made before or after the action area plan or subject plan.
- (6) Subject to this Act, the format, structure and subject matter of a local plan, an action area plan or subject plan shall be as determined by the Minister.

## **15. Purpose and content of development plan**

- (1) A development plan may be prepared for –
  - (a) the purposes of -
    - (i) providing a spatial framework for the co-ordination and implementation of national and local programmes and projects of development;
    - (ii) co-ordinating programmes and proposals for development with the identification of resources needed to implement such programmes and proposals;
    - (iii) providing policies and guidelines for the implementation of development control; or
  - (b) such other purposes as may be prescribed.
- (2) A development plan shall include such of the following matters as the Minister, or other planning authority, may deem necessary –



- (a) a report on the principal physical, economic, environmental and social conditions, resources and facilities of the planning area;
  - (b) the principal purposes for which land is used in the area;
  - (c) the size, composition and distribution of the population of the area;
  - (d) the communications and transport systems of the area;
  - (e) a statement, explanation and justification of policies and proposals for the future sustainable development of the area;
  - (f) identification of areas of land to be set aside for special planning and development measures, including any programmes of land readjustment;
  - (g) maps, plans, diagrams, tables and other visual aids showing present and proposed future uses of land, buildings and other resources in the area;
  - (h) such other matters as the Minister may direct or as may be prescribed.
- (3) A development plan may be supported by such background studies, reports and analyses of matters pertaining to the planning and development of the planning area, including references to such relevant policies of government, international conventions and agreements relating to human settlements and the environment that have been adopted by Mauritius, local authority questionnaires and profiles pertaining to the planning area as are considered by the planning authority to be desirable to explain and justify the development plan.

- (4) Every development plan shall comply with any planning policy guidance issued by the Minister under section 13, which is relevant to the subject matter of that development plan.
- (5) A development plan shall be prepared, with due regard to –
  - (a) national economic development plans and programmes;
  - (b) the National Development Strategy.
- (6) In determining the degree of detail and the scope of the content of a development plan, the planning authority shall have regard to the importance of preparing the plan in a timely manner and with a content and in a form which is comprehensible to the persons and communities in the local planning area to which the plan will apply.

## **16. Decision to prepare a development plan**

- (1) A local authority shall prepare such local plan, as may be deemed necessary for the sustainable planning and development of an area within its jurisdiction.
- (2) The Minister may prepare, or cause to be prepared, an action area plan or subject plan -
  - (a) on the advice of the Commission; or
  - (b) where the Minister deems it necessary for the sustainable planning, environmental, economic and social development of Mauritius.
- (3) (a) A planning authority may delegate, or contract out, the preparation of any development plan to a person in the public or private sector having appropriate qualifications, knowledge, skills and capability

in the field of town and country planning and associated disciplines.

- (b) Any person referred to in paragraph (a) -
  - (i) shall exercise the powers delegated to him or specified in the contract in accordance with the provisions of this Act and the terms of the delegation or, as the case may be, the contract;
  - (ii) shall prepare the development plan in accordance with the provisions of this Act.
- (4) A planning authority, which has delegated or contracted out the preparation of a development plan under subsection (3), shall remain responsible for the carrying out of its functions under this Act.

#### **17. Procedure for preparation of local plans**

- (1) Where a local authority or the Minister prepares a draft local plan, the local authority or the Minister shall –
  - (a) place the draft local plan on deposit so as to enable representations and comments to be made on that plan;
  - (b) give notice in the Gazette and in 2 daily newspapers of the deposit of the draft local plan, specifying –
    - (i) the place or places at which, the dates on which, and the times during which the draft local plan may be inspected and copies of the whole or parts of the draft local plan may be made by the public;

- (ii) the period, being not less than 28 days from the date on which the draft local plan is first placed on deposit, during which written submissions may be made to the planning authority with respect to the draft local plan.
- (2) Any person may, during the period referred to in subsection (1), make written representations to the planning authority with respect to the draft local plan.
- (3) The planning authority shall consider all representations made under subsection (2) within 42 days of the closing date for the receipt of written representations, but shall not be bound to alter the draft development plan in the light of any representation made.

#### **18. Approval of local plan**

- (1) Subject to this section, the Minister may approve or amend a draft local plan.
- (2) A local authority which has prepared a draft local plan in accordance with section 17 shall submit that draft local plan to the Minister, together with a report on any representation received under section 17(2) and the response made by the local authority to such representations, including the reasons why any such representations were not accepted.
- (3) The Minister shall refer every draft local plan and accompanying report submitted to him under subsection (2) to the Commission, together with his comments and suggestions for amendments on that draft local plan.
- (4) The Commission shall consider the material referred to it under subsection (3) for the purpose of making a recommendation to the Minister as to whether that local plan should be approved.

- (5) In considering any draft local plan referred to it under subsection (3), the Commission may exercise any of the powers conferred on it by section 7(2).
- (6) The Commission shall submit a report to the Minister on any draft local plan referred to it –
  - (a) within 28 days of its receipt of that draft local plan; or
  - (b) where the Commission considers that the matters in the draft plan are of such significance that it needs more time to report on the plan, within such time, being not more than an additional period of 28 days, as may be agreed between the Minister and the Commission.
- (7) The report submitted to the Minister by the Commission shall state whether, in the opinion of the Commission, the draft local plan –
  - (a) complies with this Act;
  - (b) is consistent with –
    - (i) the National Development Strategy;
    - (ii) any relevant planning policy guidance;
  - (c) relates to and forms a coherent whole with any other approved development plan applicable to the local planning area or any contiguous local planning area;
  - (d) is likely to make a positive contribution to the advancement of the economic and social development of the area of the local authority to which the draft local plan applies;

- (e) should, in all the circumstances of the case, be approved with or without any amendment, which may be suggested by the Commission.
- (8) The Minister may, after considering the report of the Commission, approve a local plan, with or without any amendments suggested by the Commission.
- (9) The approved local plan shall be made available -
  - (a) for public inspection at the Ministry and the offices of the relevant local authority during normal office hours;
  - (b) for access on the website of the Ministry;
  - (c) for purchase by any member of the public.
- (10) Notice that a local plan has been approved and is available for inspection shall be given in the Gazette and 2 daily newspapers.
- (11) The local plan shall take effect as from the date of the publication of the notice referred to in subsection (10) in the Gazette.

## **19. Preparation of action area plans and subject plans**

- (1) The Minister -
  - (a) may after consultation with such other stake-holders as he determines, cause to be prepared a draft action area plan or subject plan with respect to the land development of such area or relating to such subject specified by the Minister, being a matter which, in the opinion of the Minister, is of significance for environmental, social or economic planning for Mauritius; and

- (b) shall refer the draft action area plan or subject plan to the Commission for its recommendations.
- (2) On receipt of the recommendations of the Commission on the draft action area plan or subject plan, the Minister may -
  - (a) approve the draft action area plan or subject plan with such amendments to the draft action area plan or subject plan as he deems necessary;
  - (b) decide not to proceed with the draft action area plan or draft subject plan.
- (3) The approved action area plan or subject plan shall be made available -
  - (a) for public inspection at the Ministry and the offices of the relevant local authority during normal office hours;
  - (b) for access on the website of the Ministry;
  - (c) for purchase by any member of the public.
- (4) Notice that an action area plan or subject plan has been approved and is available for inspection shall be given in the Gazette and 2 daily newspapers.
- (5) The action area plan or subject plan shall take effect as from the date of the publication of the notice referred to in subsection (4) in the Gazette.

## **20. Review and revision of development plan**

- (1) A planning authority shall keep an approved development plan under continuous review and may make such minor amendments to that plan so

as to ensure that the plan continues to provide a sound basis for the development of the local planning area for which it was made.

- (2) At least once every 5 years after the date of the approval of that development plan or at such time prior to the end of that period of 5 years as the Minister may, after receiving any advice to that effect from the Commission, direct, the planning authority shall prepare a revision of the approved development plan or such part thereof, which, in the opinion of the planning authority or by the direction of the Minister, requires a revision.
- (3) In determining whether an approved development plan or any part thereof requires a revision, the planning authority or the Commission shall have regard –
  - (a) to any significant change in any policy of Government, which renders any policy, or proposal in the approved development plan, out of date or otherwise unnecessary or undesirable to pursue;
  - (b) to the extent to which the development that has taken place since the approved development plan was first prepared complies with or departs from such plan;
  - (c) in any case where the development that has taken place represents a departure from the approved development plan, the extent and type of such development that has taken place, where it has taken place and its effect on the economy, the environment and the social development of the local planning area;
  - (d) to whether there is any significant pressure for development within the local planning area and if so, for what kind of development;
  - (e) to any development and pressure for development in areas contiguous to the local planning area;



- (f) to the views of the community representatives in the local planning areas on the need for, or desirability of a revised development plan;
  - (g) to such other matters as may be prescribed.
- (4) The Minister shall not be obliged to act in accordance with the advice of the Commission received under subsection (2), but in determining whether to give any direction to a planning authority to revise an approved development plan or part thereof, the Minister shall be bound to have regard to the matters specified in subsection (3).
- (5) Any review or revision of a development plan shall be effected in the same manner as for the preparation, approval and publication of a development plan.

## **PART IV – CONTROL OF DEVELOPMENT**

### **SUB-PART A – CATEGORIES OF DEVELOPMENT**

#### **21. Categories of development**

Development shall be categorised as –

- (a) exempt development; or
- (b) development that requires a permit.

#### **22. Permit required to develop land**

Subject to section 23, no development shall be undertaken unless the owner of the land on which the development is to take place has obtained a development permit.

### **SUB-PART B – EXEMPT DEVELOPMENT**

#### **23. Exempt development**

- (1) Any development or class of development, specified in the First Schedule shall be known as exempt development.
- (2) The owner of the land on which any exempt development is to take place shall not be required to obtain a development permit under this Act.
- (3) Subsections (1) and (2) do not apply to -
  - (a) development at or within the curtilage of the building or site identified under the National Heritage Fund Act; or
  - (b) development on land identified under a planning instrument as areas of landscape value; or
  - (c) development that would be in breach of a condition of a current development permit; or
  - (d) development that is identified as bad neighbour development under a planning instrument.

### **SUB-PART C – DEVELOPMENT REQUIRING PERMIT**

#### **24. State-significant development**

- (1) The type or class of development specified in the Second Schedule shall, on account of its national planning significance be known as State-significant development.
- (2) Every application for a development permit to undertake State-significant development shall be made to the Minister.
- (3) Where an application for a development permit to undertake State significant development has been made to a local authority, the application shall be referred to the Minister.
- (4) In determining an application for a development permit for State-significant development, the Minister shall -
  - (a) refer the application to the Commission for its advice and shall take any such advice into account when determining the application; or
  - (b) in the case of a proposal by the Government to develop land, comply with Part VII.
- (5) The Commission shall submit its advice to the Minister within 28 days of the referral made under subsection (3).

## **25. Development other than State-significant development**

- (1) The Minister, on the recommendation of the Commission, may direct a local authority to refer a particular application for a development permit made to it for determination by the Minister if the Minister considers that the direction is necessary or expedient in the public interest having regard to matters of national planning significance.
- (2) On giving the direction, the Minister, subject to subsection (3), becomes the permit authority for the application to the exclusion of the local

authority and may determine the application in accordance with this Act and any applicable planning instrument.

- (3) A direction under subsection (1) may require the local authority to perform specified functions in relation to the application and the local authority shall perform those functions in accordance with the direction.
- (4) The local authority shall deliver the permit application to the Minister within 5 days after receiving the Minister's direction.

## **26. Application for development permit**

- (1) Every application for a development permit shall be made to a permit authority by the owner of the land on which the development is to take place.
- (2) The application shall be –
  - (a) submitted in triplicate, or in such number of copies as the permit authority may require, in such form as may be prescribed;
  - (b) accompanied by such fee as may be prescribed;
  - (c) signed by the applicant;
  - (d) sent, otherwise than by facsimile or email transmission, or delivered to the permit authority; and
  - (e) accompanied by such plans, maps and other information as may be prescribed;
  - (f) accompanied by any relevant application for EIA licence or a preliminary environmental report, as may be required under the Environment Protection Act 2002.

- (3) Where the application is illegible, substantially incomplete or unclear as to the development for which permission is sought, the permit authority shall, within 14 days of the receipt of the application –
  - (a) reject the permit application; and
  - (b) inform the applicant of its decision.
- (4) An application that is rejected under subsection (3) shall be deemed, for the purposes of this Act, to not have been made.
- (5) The permit authority -
  - (a) may, within 14 days of the submission of an application, request in writing an applicant to submit such additional information, within such reasonable period, as it shall specify;
  - (b) shall not register and process the application until the information requested has been submitted or a satisfactory explanation provided as to why it is not practical or possible to submit that information.
- (6) Where the applicant -
  - (a) fails or refuses to provide the additional information requested under subsection (5)(a); or
  - (b) fails or refuses to provide a satisfactory explanation as to why it is not practical or possible to submit the information requested,

the permit authority shall refuse the application and shall inform the applicant accordingly within 7 days of its decision.

- (7) (a) Subject to paragraph (b), an application may be amended or varied at any time before it is determined by the permit authority.
- (b) Any amendment or variation resulting in a significant change to the application shall be clearly described in the document of amendment or variation, and subsection (6) shall apply to any such amendment or variation.
- (8) (a) An application may be withdrawn by the applicant at any time before it is determined by the permit authority.
- (b) Upon withdrawal of the application, the permit authority shall not be required to refund the whole or any part of the prescribed fee.

## **27. Register of applications**

Every permit authority shall maintain a register of applications for development permits in the prescribed form, which shall be available for inspection and copying by members of the public at specified times during normal office hours.

## **28. Representations**

- (1) The applicant shall give notice of his application in such manner and in respect of such class of applications as may be prescribed.
- (2) Any interested person may submit written representations concerning the application for the development permit notified under subsection (1) in the manner prescribed.

## **29. Consultation**

- (1) A permit authority shall, in considering whether to grant a development permit, consult –

- (a) where an application involves or is likely to involve any provider of public utility services, with any such provider;
  - (b) where an application has or is likely to have significant environmental effects and the applicant is to be required to prepare a preliminary environmental report or an EIA, with the Director;
  - (c) where an application has or is likely to have a significant impact on roads or traffic management, with the Ministry responsible for the subject of roads;
  - (d) where the application has or is likely to have a significant impact on agricultural development, with the Ministry responsible for the subject of agriculture;
  - (e) where an application to develop land affects or is likely to affect the land of or services provided by a neighbouring local authority, with that neighbouring local authority;
  - (f) in any case where the Minister has issued a direction to a permit authority to consult with any person named in the direction, with that person;
  - (g) such other person as it considers necessary.
- (2) Where a permit authority consults any person in accordance with subsection (1), it shall refer a copy of the application and all relevant information to that person.
- (3) The person shall, within 28 days of receipt of the application referred under subsection (2) communicate to the permit authority any written comment it may have on that application.

- (4) A permit authority shall, in determining an application made to it under this Sub-Part, consider any comment made under subsection (3).
- (5) If, at the end of the period specified in subsection (3), the person does not respond, it shall be presumed that that person does not have any comment on the application and the permit authority may proceed to determine the application.

### **30. Determination of application for development permit**

- (1) After considering an application for a development permit under section 26, the permit authority shall either –
  - (a) grant unconditionally;
  - (b) grant subject to conditions; or
  - (c) refuse,the permit and shall give reasons for any determination so made.
- (2) A development permit shall specify a period not exceeding 3 years during which it shall be valid.
- (3) A permit authority shall not consider and determine an application for a development permit until it has received an EIA licence or an approved preliminary environmental report where such licence or report is necessary in respect of the development.
- (4) (a) Where an application is made for a development permit and the proposed development is in line with –
  - (i) an approved development plan; or



- (ii) where there is no approved development plan, a draft development plan or planning policy guidance applicable to that type or class of development,

the permit authority shall grant the development permit.

- (b) Notwithstanding paragraph (a), where an application is made in respect of land which -

- (i) is transferred to

- (A) an occupier of a former sugar estate camp owned by a planter or a miller; or

- (B) an employee who has voluntarily terminated his contract of employment in the context of a factory closure taking place after 1 July 1997, pursuant to section 24 of the Cane Planters and Millers Arbitration and Control Board Act, or the VRS pursuant to section 23 of the Sugar Industry Efficiency Act 2001.

- (ii) is converted pursuant to section 11, 14, 29(1)(c)(ii) or 29(1)(d) of the Sugar Industry Efficiency Act 2001 in connection with the implementation of the VRS or a factory closure, as the case may be, under the Sugar Industry Efficiency Act 2001; or

- (iii) is converted by a specified entity or by the Trust or a body controlled by it under the Sugar Industry Efficiency Act 2001,

and the proposed development is not in line with the planning instruments referred in paragraph (a)(i) and (ii), the permit authority may grant a development permit.

- (5) In considering an application for a development permit, a planning authority shall have regard to –
- (a) the National Development Strategy;
  - (b) any approved development plan;
  - (c) any draft local plan that has been placed on deposit;
  - (d) any planning policy guidance applicable to applications of that type or to that local planning area;
  - (e) any other considerations relating to the development of the area in which the land the subject of the application is located, which appear to the permit authority to be material to the application.
  - (f) any Preliminary Environmental Report or Environmental Impact Assessment report or licence under the Environment Protection Act 2002; and
  - (g) any draft action area plan or draft subject plan.
- (6) Without prejudice to the generality of subsection (5)(e), material considerations may include –
- (a) any effect on the economy and on employment in the area, the social and cultural development of the area, the natural environment of the area and the conservation of the built environment in the area;

- (b) traffic, parking and access considerations;
  - (c) the suitability of the site for the development;
  - (d) any building or site declared under the National Heritage Fund Act; or
  - (e) the public interest.
- (7) Subject to subsection (8), where no decision is taken by the permit authority –
- (a) in the case of a local authority, within 42 days;
  - (b) in the case of the Minister, within 70 days,
- of the date of receipt of an application for a development permit, or the date on which any additional information requested is supplied, whichever is the later, the permit authority shall notify the applicant in writing within 5 days after the expiry of the time limit referred to in paragraph (a) or (b) of the non-determination of the application setting out the reasons therefore and the applicant may appeal to the Tribunal in accordance with Part X;
- (8) Subsection (7) shall not apply where the permit authority and the applicant agree to extend the period within which the permit authority may take its decision.
- (9) The permit authority shall, within 5 days of determining an application for a development permit, notify its determination to –
- (a) the applicant;
  - (b) any other interested person.

- (10) For the purposes of this section, “specified entity”, “Trust” and “VRS” have the same meaning as in the Sugar Industry Efficiency Act 2001.

### **31. Nature and effect of development permit**

- (1) Subject to this Act, a development permit that authorises a morcellement of land may authorise the carrying out of any work in, on, under or over the land in connection with the morcellement, including the construction of roads and drainage systems.
- (2) A development permit to develop land may authorise –
- (a) the retention on land of buildings or works constructed or carried out on the land before the date of the application for such development permit; or
  - (b) the continuance of any use of land commenced before the date of the development permit, whether the use commenced without the prior grant of a development permit under this or any other Act or in accordance with a development permit granted for a limited period only.
- (3) A development permit shall attach to and run with the land to which it relates and shall bind the owner, the owner’s successor in title, any occupier of that land and any person otherwise entitled or purporting to take any benefit from that permit.

### **32. Conditions**

- (1) A development permit may be granted subject to such conditions as appear to the permit authority to be likely to contribute to the effective and orderly development of land in accordance with the grant of a development permit and without prejudice to the generality of these provisions, conditions may deal with all or any of the following matters –

- (a) any matter referred to in section 31, which is relevant to the development for which a development permit has been granted;
- (b) the timing and phasing of a development;
- (c) landscaping and the preservation of trees and other natural resources on or contiguous to the land on which the development is to take place;
- (d) the preservation of any buildings on the site of or in connection with or contiguous to the development;
- (e) the modification or removal of any existing buildings or other structures on the site and the cessation of any existing development on the site;
- (f) measures to be taken and works to be carried out to protect public health, safety and convenience during the carrying out of the development;
- (g) the contribution including the financial contribution which the developer will be required to make to the provision of infrastructure, public utility services, roads, car parking and social and community facilities in connection with the development;
- (h) the design of and the materials to be used in the construction of the development;
- (i) the removal of waste from the site of the development during and after any building or engineering operations;

- (j) the use of land in the ownership or under the control of the developer, contiguous to the land being developed, for any purpose connected to that development;
  - (k) any development and use of land ancillary to the development for which a development permit has been granted and in particular any housing or other facilities provided for those persons working on the development;
  - (l) any action to ensure that any proposals for the containment of environmental damage likely to be caused by the development made in a preliminary environmental report or an EIA are complied with;
  - (m) the submission of any additional information or details to the permit authority prior to the commencement of the development permit;
  - (n) the surrender of any prior development permit;
  - (o) the payment of security for works to be undertaken under a permit.
- (2) In determining whether to impose any condition on a grant of development permit, a permit authority shall have regard to any relevant planning policy guidance and as to whether such condition would be reasonable, practicable, clear, fairly and properly related to the development, not unduly onerous, necessary and enforceable.

### **33. Time and completion of development**

- (1) A development permit shall lapse and shall cease to have any effect if the development to which it relates has not been physically commenced within 3 years of the date of the grant of that development permit.

- (2) A permit authority may, subject to subsection (3), serve a notice, to be known as a completion notice, on a person who has commenced but has not within 3 years of the date of that commencement completed a development for which he obtained planning permission, and require that person to complete that development within the time specified in the notice.
- (3) A completion notice shall not be issued with respect to a residential development comprising a single dwelling house, or an alteration or extension to an existing single dwelling house.
- (4)
  - (a) A permit authority may, on an application made by the holder of the development permit, extend the time limits referred to in subsection (1) for a further one-year period.
  - (b) The permit authority shall give and record reasons for the grant or refusal of any such request for extension.
- (5) Where a completion notice has been served on a person under subsection (2) and the person on whom the notice is served does not or is unable to comply with the notice, the permit authority shall issue a make safe notice in the prescribed form.
- (6) Where a make safe notice has been served under subsection (5) and the person on whom the notice is served fails to comply with the notice he shall commit an offence under this Act.

#### **34. Departure applications**

- (1) Where a permit authority is satisfied that any proposed development which is not authorised under an approved development plan in respect of any land, other than coastal frontage land –

- (a) is not of a scale which is significant in relation to the approved development plan from the provisions of which it is a departure; and
- (b) is not of more than local significance,

it shall refer the application forthwith to the Minister who may approve the application where he considers that it is in the public interest.

- (2) The Minister shall, in deciding whether to approve the application, consult the Commission.

### **35. Planning agreements**

- (1) Subject to this section, a permit authority may agree a planning agreement with any person proposing to develop any land, concerning the development of such land, for the purposes of this Act.
- (2) Without prejudice to the generality of subsection (1), a planning agreement may provide for –
  - (a) the area of land to be developed and the rate and timing at which the land is to be developed;
  - (b) the nature, scope, design and landscaping of the development;
  - (c) the community facilities and physical infrastructure to be provided for the development and for any land contiguous to the development and the timing for the construction of, or the payment for the provision of the facilities and infrastructure, the need for which is generated by the development proposed;
  - (d) the nature, scope and cost of any benefits to be provided for any community likely to be adversely affected by the development;



- (e) the manner in which any adverse impact on the natural or built environment caused by the development will be mitigated or avoided;
- (f) where any person is likely to be required to move from where he is living or where he is using land for his livelihood by the development, the arrangements to be made by the developer to provide that person with alternative living accommodation and alternative methods of obtaining his livelihood or other forms of compensation;
- (g) the hours during which construction work, including demolition connected to, or on the development, may take place;
- (h) the security which the developer will be required to provide to guarantee performance of the agreement;
- (i) the insurance which the developer will be required to provide to cover for risks connected to the development;
- (j) where the development is a joint venture between the developer and the Government or a parastatal body, the contribution of capital and other resources to be made by each party and the manner in which obligations, liabilities and benefits, including any profits and losses will be shared between the parties;
- (k) the method of settling any disputes arising out of the agreement;
- (l) the time period within which the obligations of the parties are to be carried out and the time period in which the agreement shall lapse if the development is not commenced.

- (3) In negotiating any planning agreement with a developer, the permit authority may consult such person as it deems fit.
- (4) Every planning agreement shall be entered into a register of planning agreements, which shall be maintained by the permit authority in the prescribed form and which shall be available for inspection and copying by members of the public at specified times during office hours.
- (5) No planning agreement with respect to State-significant development shall be entered into unless the Minister has sought and obtained the advice of the Commission on the proposed agreement.
- (6) A permit authority may vary, amend or terminate a planning agreement by a subsequent planning agreement with any person who was a party to the original agreement or any successor in title to the land.

### **36. Rectification of development permit**

- (1) A permit authority, on its own motion or upon application being made by the applicant, may rectify a development permit granted by it to correct an error, misdescription or miscalculation where it is satisfied that -
  - (a) the development to which the permit relates is substantially the same as the development for which the permit was originally granted;
  - (b) the rectification is not likely to injuriously affect any interested party.
- (2) An applicant who is dissatisfied with the determination of an application for rectification of a permit, or the failure of the permit authority to determine such an application within 42 days after the application is made, may appeal to the Tribunal.

**37. Revocation and amendment of development permit**

- (1) The permit authority may revoke or amend a development permit where –
  - (a) it is satisfied that the permit is inconsistent with a subsequently approved or subsequently prepared draft development plan; and
  - (b) the permit relates to –
    - (i) the carrying out of building or other operations at any time before these operations have been completed; or
    - (ii) a change in the use of land, at any time before the change has been completed.
- (2) Prior to determining whether to revoke or amend a development permit in respect of a State-significant development, the Minister may seek the advice of the Commission on the proposed revocation or amendment, and the Commission shall give its advice within 28 days of any such request being made to it.
- (3) Any person aggrieved by a revocation or amendment of a development permit may make a claim to the permit authority for compensation with respect to any prejudice suffered by him within 3 months of notice given to him of the revocation or amendment of the development permit, as the case may be.
- (4) The permit authority shall consult the Chief Government Valuer before making a proposal to the claimant on the amount of compensation payable.
- (5) Where the claimant is dissatisfied with the amount of compensation proposed by the permit authority, the claimant may, within 21 days of being notified of the proposal, appeal to the Tribunal.

## PART V – CONTINUATION OF EXISTING USES

### 38. Continuance of non-conforming and other lawful Existing Uses

- (1) Notwithstanding this Act or any planning instrument, no development permit shall be required for the continuance of use of a building, work or land for a purpose for which it was lawfully used immediately before the coming into force of any planning instrument.
- (2) Nothing in subsection (1) shall authorise –
  - (a) the continuance of any existing use in breach of any permit in force under this Act; or
  - (b) the continuance of any existing use, where that use is abandoned.
- (3) Without limiting the generality of subsection (2)(b), any use shall be presumed, unless the contrary is established, to be abandoned if the building, work or land ceases to be used for a continuous period of 12 months.

### 39. Requirement for development permit

Nothing in section 38 shall authorise –

- (a) any alteration or extension to, or rebuilding of a building or work;
- (b) any increase in the area of the use made of the land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned; or

- (c) any enlargement, expansion or intensification of a use referred to in that section,

unless a development permit is granted subject to any restrictions as may be prescribed.

#### **40. Saving of existing development permit**

Nothing in a planning instrument shall prohibit any development, or require a further development permit to authorise the carrying out of development, which is the subject of a development permit granted before or after the coming into operation of this Act.

### **PART VI – SPECIAL POWERS**

#### **41. Preservation of buildings or sites**

- (1) The Minister may cause a survey of the buildings or sites in any area of Mauritius to be made with a view to determining whether in accordance with Regulations that may be prescribed the preservation of any building or site is desirable for architectural, environmental, cultural or historical reasons.
- (2) Where, after considering the survey and after consulting the Commission, the Minister is of the opinion that any building or site ought to be preserved for a reason specified in subsection (1), the Minister shall refer the matter to the National Heritage Fund Board established under section 5 of the National Heritage Fund Act and recommend that the building or site be declared a national heritage under that Act.

#### **42. Simplified planning zone**

- (1) A simplified planning zone is an area in respect of which a simplified planning zone scheme is in force.
- (2) The approval of a simplified planning zone scheme shall have the effect of granting, in relation to the zone or any part of it specified in the scheme, a development permit –
  - (a) for development specified in the scheme; or
  - (b) for development of any class so specified.
- (3) A development permit under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations and exceptions as may be specified in the scheme.
- (4) Nothing in a simplified planning zone scheme shall affect the right of any person –
  - (a) to do anything not amounting to development; or
  - (b) to carry out exempt development or development for which a development permit has been granted otherwise than under the scheme.

#### **43. Making and approval of simplified planning zone scheme**

- (1) A simplified planning zone scheme may be made and approved by the Minister in respect of any area of land –
  - (a) designated in a development plan for the purpose of effecting rapid development of the land;
  - (b) designated in a development plan to be developed as an export processing zone or for similar industrial, commercial or service

functions under any scheme or programme either national or international, applicable to Mauritius designed to facilitate the export of goods and services;

- (c) undergoing rapid development.
- (2) The Minister may direct a local authority to prepare and submit to him for approval a simplified planning zone scheme within such time frame as may be directed by the Minister.
- (3) A simplified planning zone scheme shall consist of a map and a written statement and such diagrams, illustrations and descriptive matter as the Minister thinks appropriate.
- (4) A simplified planning zone scheme shall specify –
- (a) the development or classes of development permitted by the scheme;
  - (b) the land in relation to which permission is granted; and
  - (c) any condition, limitation or exception subject to which a development permit is granted,
- and shall contain such other matters as may be prescribed.
- (5) Prior to the approval of a simplified planning zone scheme, the Minister shall refer the scheme to the Commission for its advice and the Commission shall submit advice to the Minister on the scheme within 42 days of the receipt of the scheme by the Commission.
- (6) Where the Minister approves a scheme –

- (a) notice of the approval of the scheme shall be published in the Gazette;
  - (b) a copy of the notice shall be posted in the offices of the local authority; and
  - (c) the substance of the scheme shall be publicised in the area of jurisdiction of the local authority.
- (7) The Minister may, where he considers it expedient to do so, alter or amend a scheme, and this section shall apply to any such alteration or amendment of the scheme as it applies to the making of a scheme.

## **PART VII – DEVELOPMENT BY GOVERNMENT**

### **44. Application of this Part**

- (1) Notwithstanding any other provision of this Act, but subject to any other enactment, the Minister may, subject to this Part, authorise any development by Government or by any international organisation or foreign government.
- (2) In deciding whether to authorise any development under subsection (1), the Minister shall consider –
  - (a) the National Development Strategy;
  - (b) any approved development plan applicable in the area where the proposed development is to take place;
  - (c) any planning policy guidance applicable to that planning area;



- (d) any EIA or approved preliminary environmental report completed in respect of the proposed development;
  - (e) any other relevant matter.
- (3) Any development under this Part by a parastatal body shall not, for the purposes of this Act, be treated as development by Government.

#### **45. Procedure on proposals for development by Government**

- (1) (a) Where Government proposes to undertake a development, the Minister responsible for the relevant department or Ministry shall forward the proposal to the Minister.
- (b) Any foreign government or international organisation intending to undertake development shall forward the proposal for development to the Minister to whom responsibility for the subject of foreign affairs is assigned, who shall refer the proposal to the Minister.
- (2) The Minister shall, as soon as practicable, forward the proposal to the local authority.
- (3) The local authority shall, within 35 days of the receipt of the proposal for development, submit any representations that it may have on that proposal to the Minister.
- (4) Where the representations of the local authority are to the effect that the development should not take place within its area of jurisdiction, the Minister shall refer the proposal to the Commission, together with the representations of the local planning authority and such other comment on the proposal as he deems necessary.

- (5) The Commission shall, within 42 days of the receipt of the proposal from the Minister, make such recommendations as it considers appropriate to the Minister.
- (6) The Minister may authorise the development, with or without amendments, after taking into account the recommendations of the Commission.

## **PART VIII – CERTIFICATION OF DEVELOPMENT**

### **46. Morcellement certificate**

- (1) Where a person wishing to develop a plot of land into a morcellement has obtained a development permit, he shall apply to the local authority for a morcellement certificate in such form and manner as may be prescribed.
- (2) A local authority shall not issue a morcellement certificate unless –
  - (a) it is satisfied that the applicant has complied with all the conditions specified in the development permit;
  - (b) in relation to a morcellement that involves morcellement works –
    - (i) the morcellement works have been completed to the satisfaction of the local authority; or
    - (ii) the local authority has reached an agreement with the applicant that it shall carry out the morcellement works subject to the applicant meeting all the costs likely to be incurred for carrying out the works.
- (3) A local authority may issue a morcellement certificate for part of the land which is the subject-matter of a morcellement to authorise subdivision of

that part subject to the requirements of the development permit issued for that purpose in respect of that part of the land.

- (4) Subsection (1) shall apply to a person who –
- (a) has obtained a development permit prior to the coming into operation of this Act and has not completed the development on the coming into operation of this Act; and
  - (b) does not hold a morcellement permit issued under the repealed Morcellement Act.
- (5) No morcellement certificate shall be required in relation to any land which is divided for the purpose of -
- (a) a sale to Government or a compulsory acquisition under the Land Acquisition Act;
  - (b) a mortgage or a fixed charge;
  - (c) a sale or a donation of not more than one lot where that lot is excised from another lot for the purpose of the sale or the donation and -
    - (i) either lot is not further parcelled out within 12 months of such sale or donation without a morcellement permit;
    - (ii) not more than 3 excisions in all are made out of the original lot without a morcellement permit;
  - (d) a division in kind between
    - (i) co-heirs;

(ii) ascendants and descendants.

(6) Subsection (1) shall not apply to a company holding an investment certificate in respect of a project under the Integrated Resort Scheme prescribed under Investment Promotion Act.

**47. Currency of morcellement certificate**

A morcellement certificate shall cease to have effect where the development permit authorising the carrying out of the development to which the certificate relates expires, is modified or revoked.

**PART IX – ENFORCEMENT**

**48. Orders that may be made by permit authority**

(1) The permit authority may order the owner of, or such other person managing the premises, to -

(a) cease using premises for such purpose as may be specified in the order, where the premises are being used –

(i) for a purpose that is not permitted under the National Development Strategy, a planning policy guidance, a simplified planning zone, or a development plan;

(ii) without a development permit, where such permit is required; or

(iii) in breach of a development permit;

(b) take such measures as may be specified in the order to ensure or promote adequate fire safety or fire safety awareness, or to

ensure that the premises do not constitute a significant fire hazard;

- (c) take such measures as may be necessary to comply with this Act, where the building has been unlawfully erected or does not comply with this Act.
- (2) The permit authority may order –
- (a) the owner of a building to demolish or remove the building where the building –
    - (i) is erected without a prior development permit where a permit is required;
    - (ii) is erected in breach of the development permit, the National Development Strategy, a planning policy guidance, a Simplified Planning Zone Scheme or a development plan;
  - (b) the owner of, or person managing, the premises to repair or make such structural reparations as may be specified in the order, where the building is or is likely to become a danger to its occupants or to the public or to become a source of nuisance;
- (3) Where any advertisement is unsightly, objectionable or injurious to the amenity of the surrounding natural landscape, or the advertising structure on which the advertisement is placed is erected in breach of this Act or any other enactment, the permit authority may order –
- (a) the person who caused the advertisement to be displayed or the advertising structure to be erected; or

(b) the owner or occupier of the premises on which the advertisement is displayed or the advertising structure is erected,

to alter, demolish or remove the advertisement or advertising structure, as the case may be.

(4) The permit authority may order any owner or occupier of land on which a building is to be erected or demolished, or any work is to be carried out or demolished, to install on or around the building such structure or appliance as may be necessary to protect persons or property, whether in a private or in a public place.

#### **49. Orders in respect of State land**

Any order under this Part in respect of State land shall be issued by the Minister.

#### **50. Stop development notice**

Where a permit authority is of the opinion that any development is having such deleterious consequences on the natural or the built environment or is causing such a serious nuisance to the persons living or working in the neighbourhood that it is necessary to stop that development forthwith, it may issue and serve a stop development notice on the person owning or occupying the land on which the development is being carried out and on every person who appears to the permit authority to be responsible for the development.

#### **51. Issuing of Enforcement Orders and Stop Development Notice**

An enforcement order and a stop development order issued under this Part by a permit authority shall specify -

(a) the activity that has to cease and the time within which it has to be ceased;

- (b) the steps that are required to be taken to render any land specified safe and secure;
- (c) the powers of the permit authority to enter on the land and carry out any of the steps specified in paragraph (b);
- (d) the penalties which may be imposed if any step specified under paragraph (b) is not taken within the time specified or at all; and
- (e) the right of the person on whom a notice or order has been served to appeal against the notice or order.

**52. Notice for unauthorised activity**

- (1) Where it appears to a permit authority that development is being carried out without a development permit it may, by written notice served on the owner and occupier of the land or the building in respect of which there has been such development, require that person to apply for a development permit.
- (2) In determining whether to serve a written notice under subsection (1), the permit authority shall take into account such matters as may be prescribed.
- (3) A development permit certificate issued following the service of a written notice under subsection (1) shall be deemed to take effect from the date on which the activity to which it relates was commenced, or is considered by the permit authority to be likely to have commenced.
- (4) Subsection (3) shall apply to such conditions, including modification of the development, as the permit authority may impose.
- (5) The permit authority may require an applicant for a development permit under this section to pay such surcharge as may be prescribed.

## PART X – PLANNING APPEALS TRIBUNAL

### 53. Planning Appeals Tribunal

- (1) There is established for the purpose of this Act a Planning Appeals Tribunal which shall consist of -
  - (c) (a) a Chairperson who shall be a law practitioner of not less than 10 years' standing, appointed by the Public Service Commission ; and
  - (b) a Deputy Chairperson who shall be a law practitioner of not less than 10 years' standing, appointed by the Public Service Commission;
  - (c) a barrister of not less than 3 years' standing, appointed by the Attorney-General;
  - (d) such other members, with at least 5 years' experience in a field related to town or country planning, environmental planning, environmental science, land valuation, architecture, engineering, surveying or building construction, the management of natural resources or urban design or heritage, as may be appointed by the Attorney-General, after consultation with the Minister.
- (2) Every member of the Tribunal appointed under subsection (1)(c) and (d) –
  - (a) may be appointed on a part-time basis by the Attorney-General;
  - (b) shall be paid such fees as may be approved by the Attorney General.



- (3) A member is disqualified from appearing as an expert witness, or as a representative of any party, before the Tribunal.
- (4) No member shall be deemed to hold a public office by reason only of his appointment under subsection (1)(c) or (d).

#### **54. Records and seal of the Tribunal**

- (1) The Tribunal shall keep a register of all appeals lodged before it and its decisions thereon.
- (2) The register shall be kept in the Registry of the Tribunal and shall be available for consultation by the public.
- (3) There shall be a seal of the Tribunal, and any document required by or under this or any other Act or law to be sealed or stamped with the seal of the Tribunal shall be so sealed or stamped.

#### **55. Jurisdiction of the Tribunal**

The Tribunal shall -

- (a) hear and determine appeals against any -
  - (i) decision taken or notice or order issued by a permit authority;
  - (ii) decision of a local authority in respect of a morcellement;
  - (iii) non-determination of an application for a development permit under section 30(7);
- (b) have power to exercise such jurisdiction as is conferred under this Act;

#### **56. Staff of Tribunal**

- (1) The staff of the Tribunal shall consist of a Secretary, an Assistant Secretary and such other officers as may be required, who shall be public officers.
- (2) The Secretary shall be –
  - (a) responsible for the conduct of the business of the Tribunal and shall have such other functions as may be prescribed;
  - (b) the administrative head of the Tribunal and shall exercise supervision over the other staff of the Tribunal.
- (3) In the absence of the Secretary of the Tribunal, the Assistant Secretary of the Tribunal and, in his absence, such other officer as may be designated by the Chairperson of the Tribunal, shall perform the functions of the Secretary.

#### **57. Appeal to the Tribunal**

- (1) Any person having a right of appeal under this Act may appeal to the Tribunal, within 42 days of the decision being notified to him, by filing with the Secretary a written notice of appeal together with the grounds of appeal.
- (2) Where a person has failed to appeal to the Tribunal within the time specified in subsection (1), the Tribunal may, on good cause being shown, extend the period for filing the notice of appeal and grounds of appeal.

#### **58. Proceedings of Tribunal**

- (1) Subject to this section and such rules as may be made by the Supreme Court, the Tribunal shall regulate its own procedure.

- (2) The Tribunal shall sit at such place and time as the Chairperson of the Tribunal may determine.
- (3) All proceedings of the Tribunal shall -
  - (a) be held in public; and
  - (b) be conducted with as little formality and technicality as possible.
- (4) Any party before the Tribunal may appear in person, or be represented by a barrister or attorney.
- (5) The Tribunal may -
  - (a) make such orders for requiring the attendance of persons and the production of articles or documents, as it thinks necessary or expedient;
  - (b) take evidence on oath and may, for that purpose, administer oaths;
  - (c) on its own motion, summon and hear any person as a witness.
- (6) Any person who –
  - (a) fails to attend the Tribunal after having been required to do so under subsection (5)(a);
  - (b) refuses to –
    - (i) take an oath before the Tribunal;

- (ii) answer fully and satisfactorily, to the best of his knowledge and belief, any question lawfully put to him in any proceedings before the Tribunal; or
  - (iii) produce any article or document, when required to do so by the Tribunal;
- (c) knowingly gives false evidence or evidence which he knows to be misleading, before the Tribunal;
- (d) at any sitting of the Tribunal -
  - (i) insults the Chairperson, the Deputy Chairperson or any member of the Tribunal;
  - (ii) wilfully interrupts the proceedings;
- (e) commits a contempt of the Tribunal,

shall commit an offence.

## **59. Determination of Tribunal**

- (1) For the purpose of hearing and determining any appeal under section 55, the Tribunal may sit in one or more divisions.
- (2) The Chairperson, or Deputy Chairperson, of the Tribunal shall preside at every sitting of the Tribunal.
- (3) Every division of the Tribunal shall consist of the Chairperson, or Deputy Chairperson of the Tribunal and such number of members as the Chairperson may determine.

- (4) Every appeal before the Tribunal shall be determined by the opinion of the majority of the members present but, where the members present are equally divided in their opinions, that of the Chairperson or Deputy Chairperson of the Tribunal, as the case may be, shall prevail.
- (5) The ruling of the Chairperson or the Deputy Chairperson of the Tribunal on any point of law shall be binding on the other members of the Tribunal.
- (6) Where the Chairperson, Deputy Chairperson or any member of the Tribunal has a direct interest in any cause or matter, which is the subject of the proceedings before the Tribunal, he shall not take part in those proceedings.
- (7)
  - (a) Subject to paragraph (b), any appeal shall be by way of a rehearing, and fresh evidence or material, in addition to or substitution for, the evidence given on the making of the original decision, may be given on appeal.
  - (b) The Tribunal may, where the parties agree, determine an appeal by considering only written submissions made by or on behalf of the parties.
  - (c) The Tribunal may, of its own motion or on application of either party, make such visit to, or inspection or viewing of, a building, premises or site in relation to an appeal, as it may deem fit.
- (8)
  - (a) Notwithstanding subsection (4), the Tribunal in considering an appeal, shall endeavour by all reasonable and equitable means, to effect an amicable settlement.
  - (b) Any agreement reached between the parties in relation to an appeal before the Tribunal shall be deemed to be a determination of the Tribunal.

- (9) In making its decision, the Tribunal shall have regard to the public interest.
- (10) Any appeal before the Tribunal shall be dealt with as expeditiously as possible and the Tribunal shall endeavour to dispose of the appeal within 6 months from the date the appeal was lodged.
- (11) (a) The Tribunal may make such order as to costs as it may determine.
  - (b) An order made under paragraph (a) shall be enforced in the same manner as an order for costs in proceedings before a Judge of the Supreme Court.
  - (c) No order under paragraph (a) shall be made against the Minister.

#### **60. Appeal to the Supreme Court**

- (1) Any party to any proceedings before the Tribunal may appeal against a final decision of the Tribunal on a question of law.
- (2) Any party wishing to appeal before the Supreme Court shall, within 21 days of the determination of the Tribunal -
  - (a) lodge with, or send by registered post, to the Secretary, a written application requiring the Tribunal to state and sign a case for the opinion of the Supreme Court on the grounds specified in the case; and
  - (b) at the same time, serve or forward a copy of his application by registered post to the other party.
- (3) An appeal to the Supreme Court shall be prosecuted in the manner provided by rules made by the Chief Justice.

**61. Rules of the Tribunal**

The Supreme Court may make rules for the purpose of instituting and conducting appeal proceedings before the Tribunal.

**PART XI – Compensation****62. Grant of compensation**

Subject to this Act, any person –

- (a) whose property is injuriously affected by the coming into operation of a planning instrument; or
- (b) who, for the purpose of complying with any provision contained in any planning instrument has incurred expenditure which is rendered abortive by a subsequent revocation or modification of the planning instrument,

shall, where he makes a claim within 3 months of the coming into operation of the planning instrument, be entitled to recover as compensation from the planning authority the amount by which his property is decreased in value, or, so far as it was reasonably incurred, the amount of the abortive expenditure as the case may be.

**63. No compensation in certain cases**

- (1) No compensation shall be payable in respect of the refusal of a permit authority to permit the erection of a building or the development of any land under section 30.
- (2) No compensation shall be payable in respect of a building, the erection of which was begun after the date of the coming into operation of a planning

instrument, unless the erection was begun under, and erected in accordance with a development permit issued by a permit authority.

- (3) No compensation shall be payable in respect of a condition imposed in respect of permission granted under section 30 to develop land or to construct, demolish, alter, extend, repair or renew buildings.
- (4) No compensation shall be payable in respect of any provision in the planning instrument which -
  - (a) prescribes the locations of buildings, the extent of the yards, gardens and curtilage of buildings;
  - (b) imposes any sanitary conditions in connection with buildings;
  - (c) limits the number of buildings or the number of buildings of a specified class which may be constructed, erected on or made in or under any area;
  - (d) restricts, within the limits, the erection of buildings along main roads in any area;
  - (e) prohibits or regulates morcellement;
  - (f) regulates or empowers any person to regulate the size, height, spacing, design, colour and materials of buildings;
  - (g) controls restricts or prohibits the objects which may be affixed to buildings;
  - (h) 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 or



injury to health or excessive expenditure of public money in the provision of roads, sewers, water supply or other public services;

- (i) prohibits, otherwise than by way of prohibition of building operations, the use of land for a purpose likely to involve danger or injury to health, or 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;
- (j) restricts the purposes for, and the manner in which, land or buildings may be used or occupied, or reserves or allocates any particular land or all land in any particular area for buildings of a specified class or classes or to be used for a specified purpose;
- (k) in the interests of safety, regulates or empowers any person to regulate the height and position of proposed walls, fences or hedges near the corners or bends of roads;
- (l) limits the number, or prescribes the sites, of new roads entering a road or the site of a proposed road;
- (m) in the case of the erection of a building intended to be used for purposes of business or industry, requires the provision of accommodation for parking, loading, unloading or fuelling vehicles, with a view to preventing obstruction of traffic on a road;
- (n) prohibits, restricts or controls, either generally or in particular places, the exhibition, whether on the ground, on a building or a temporary erection of all or any particular forms of advertisements or other public notices;
- (o) prevents, remedies or removes injury to amenities arising from the ruinous or neglected condition of a building or by the objectionable

or neglected condition of any land attached to a building or abutting on a road or situate in a residential area; or

- (p) regulates the erection of advertising structures.
- (5) (a) Where any provision of a planning instrument is revoked or modified by a later planning instrument, 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 later planning instrument if, and in so far as, that later provision is the same, or substantially the same, as the revoked or modified provision.
- (b) Where at the date the revocation or modification of that earlier provision becomes operative –
- (i) there is still outstanding a claim for compensation duly made under it; or
  - (ii) the claim is not made within a period of 3 months from the date of the revocation or the modification,

any such outstanding claim and any such claim made within that period shall be entertained and determined, and may be enforced, in the same manner in all respects as if all the provisions of the earlier planning instrument had continued in operation, unless the claim is in respect of a restriction removed by the later planning instrument.

- (6) Nothing in subsection (4) shall preclude an owner from claiming compensation for loss or injury arising from -
- (a) being prevented by the operation of a planning instrument from maintaining an existing building or from continuing to use the building for the purpose for which it was used on such date; or

- (b) where a permanent building, which was in existence at any time within 2 years immediately before the date of the coming into operation of the planning instrument, has been demolished or been destroyed by fire or otherwise, being prevented by the operation of the planning instrument from erecting on the site of the demolished or destroyed building a new building which substantially replaces the demolished or destroyed building or from using the new building for the purpose for which the demolished or destroyed building was last used.

#### **64. Claim for compensation**

- (1) A claim for compensation shall be made by serving upon the planning authority a notice in writing stating the grounds of the claim and the amount claimed.
- (2) Subject to subsection (3), no claim for compensation shall be entertained unless written notice has been served on the planning authority -
  - (a) within 3 months after the date on which the planning instrument came into operation or within such longer period as may be specified in the planning instrument; or
  - (b) in respect of expenditure rendered abortive by the revocation or modification of a planning instrument, within 3 months after the date on which the revocation or modification of the planning instrument became operative.

#### **65. Determination of claim**

A dispute arising under this Act as to -

- (a) the right of a claimant to recover compensation; or

- (b) the amount and manner of payment of any compensation recoverable,

shall, upon the application of any party concerned, be heard and determined by the Tribunal.

## **PART XII – MISCELLANEOUS**

### **66. Entry and inspection of premises**

- (1) For the purpose of enabling a permit authority or the Commission to exercise its functions under this Act, the permit authority may authorise a person in writing to enter such land or premises as it may specify.
- (2) The authorised officer may enter any land, except residential premises, at reasonable hours, after having given the owner thereof 24 hours' notice of his intention to enter the land.
- (3) Subject to subsection (4), no authorised officer shall enter any residential premises unless –
  - (a) he has given to the owner or occupier of the residential premises 24 hours' notice in writing of his proposed entry; and
  - (b) he has obtained the consent of the owner or occupier of the residential premises.
- (4) (a) Where the owner or occupier of residential premises refuses to give his consent to entry by the authorised officer, the authorised officer may apply to the Magistrate for a warrant authorising him to enter those premises.

- (b) The Magistrate, upon being satisfied that the authorised officer should enter the residential premises and exercise the powers conferred upon him under this section, issue a warrant authorising the authorised officer to enter the said residential premises and exercise those powers.
- (5) Any person authorised to enter land under subsection (1) may –
- (a) inspect the land and carry out such examination of the land and any article or matter found on the land;
  - (b) establish any contravention of this Act or any planning instrument;
  - (c) take samples or photographs in connection with the inspection of the land; or
  - (d) require any person at the premises to furnish information relating to the matter, the subject of the inspection.
- (6) Reasonable force may be used for the purpose of gaining entry to any land or premises under a power conferred under subsection (1) but only if such force is specifically authorised in writing by the permit authority or Commission under that subsection before the entry occurs.
- (7) A person authorised to enter land under subsection (1) or (4) may not do so unless he is in possession of the authorisation or warrant and produces it to the owner of the land on request.

## **67. Confidentiality and misuse of information**

- (1) No person shall disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made –

- (a) with the consent of the person from whom the information was obtained;
  - (b) in connection with the administration or execution of this Act; or
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings.
- (2) No person acting in the administration or execution of this Act shall use, either directly or indirectly, information which he has acquired, in that capacity, for the purpose of gaining either directly or indirectly an advantage for himself or his relative.
- (3) For the purposes of subsection (2) –

“information” means information that is not generally known, but, if generally known, might reasonably be expected to affect materially the market value or price of any land;

“relative” has the same meaning as in the Prevention of Corruption Act 2002.

## **68. Offences and penalties**

- (1) Any person who -
- (a) develops any land without, or in breach of, a development permit;
  - (b) develops land into a morcellement without obtaining a development permit or a morcellement certificate required under this Act;
  - (c) fails to comply with a make safe notice under section (33)6;

- (d) contravenes an order issued under section 48;
- (e) contravenes a stop development notice under section 50; or
- (f) contravenes section 67,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2 million rupees or imprisonment for a term not exceeding 5 years or both.

- (2) Any person who commits an offence under section 58(6) shall, on conviction, be liable to a fine not exceeding 10,000 rupees or to imprisonment for a term not exceeding one year or both.
- (3) The Court may, in addition to any penalty, order the pulling down or removal of any building or other form of development, at the expense of the offender.

#### **69. Copyright protection**

Where an applicant uses any document or instrument in breach of copyright, he shall be presumed to have indemnified any person processing the application and making use of such supporting document or instrument, against any claim or action in respect of that breach.

#### **70. Exclusion of liability**

No liability, civil or criminal, shall attach to the Minister, the Commission, any local authority, any of their agents or employees or any public officer in respect of loss arising from the exercise in good faith of his or its functions under this Act.

#### **71. Service of order or notice**

- (1) An order or notice issued under this Act shall be served –

- (a) personally on the person affected, or in the case of a body corporate, at its registered address; or
  - (b) by registered post sent to, or by leaving a copy at the last known address of the person affected.
- (2) Where service cannot be effected by the means referred to in subsection (1), the service shall be effected by affixing a copy of the order or notice at the place where the development which is the subject matter of the order is being carried out.
- (3) A certificate of an authorised officer as to service under subsection (1) shall be prima facie evidence of effective service of the order or notice on the person affected.

## **72. Regulations**

- (1) The Minister may make regulations as he thinks fit for the purposes of this Act.
- (2) Without prejudice to the generality of subsection (1), the regulations may provide for –
  - (a) information, particulars and statistics to be furnished to the Commission by local authorities and the time and mode of furnishing and the manner of verifying them;
  - (b) the form, time, manner and mode of giving notices and orders under this Act;
  - (c) matters in relation to the making of development plans, planning instruments, simplified planning zone schemes, development permits, morcellement certificates and other documents; and



- (d) the amendment of any Schedule to this Act.

### **73. Repeal**

The following enactments are repealed -

- (a) the Town and Country Planning Act 1954;
- (b) the Town and Country Planning Act 1990;
- (c) the Town and Country Planning Act 1995;
- (d) the Morcellement Act 1990.

### **74. Consequential amendments**

- (1) The Local Government Act 2003 is amended -
  - (a) in section 98 -
    - (i) in subsection (1), by deleting the words “Town and Country Planning Act” and replacing them by the words “**Planning and Development Act 2004**”;
    - (ii) by deleting subsection (4)(b)(i);
    - (iii) in subsection (4)(b)(ii), by deleting the words “the Town and Country Planning Act” and replacing them by the words “the **Planning and Development Act 2004**”;
    - (iv) in subsection (5) –

- (A) in paragraph (a), by deleting at the end of the paragraph the word “and”;
  - (B) by inserting immediately after paragraph (a), the following new paragraph –
    - (aa) examine, process and approve applications for development permits in accordance with Part IV of the **Planning and Development Act 2004**;
  - (C) in paragraph (b)(i), by deleting the words “Town and Country Planning Act” and replacing them by the words “**Planning and Development Act 2004**”;
- (b) in section 100, by deleting the words “Town and Country Planning Act” and replacing them by the words “**Planning and Development Act 2004**”;
- (c) in section 104 -
- (i) in subsection (i), by deleting the words “Every application” and replacing them by the words “Subject to subsection (3), every application”;
  - (ii) by adding immediately after subsection (2), the following new subsection -
    - (3) Every application to a local authority for a development permit under the **Planning and Development Act 2004** with respect to non-State-significant development shall be made in accordance with Part IV of that Act.

- (d) in section 105 -
- (i) in subsection (8), by deleting the words “a development permit under the Town and Country Planning Act or”;
  - (ii) by adding immediately after subsection (10), the following new subsection -

(11) Notwithstanding any provision of this section, every application for a development permit with respect to a non-State-significant development under the **Planning and Development Act 2004** shall be processed by the Permits and Licences Committee in accordance with Part IV of the **Planning and Development Act 2004**.

- (e) in section 106(3), by deleting the words “a development permit under the Town and Country Planning Act or”;
- (f) by adding immediately after section 106, the following new section

**106A. Appeal to Planning Appeals Tribunal**

Any person aggrieved by a decision of a Permits and Licences Committee in relation to an application for a development permit may appeal to the Planning Appeals Tribunal in accordance with Part X of the **Planning and Development Act 2004**.

- (2) The Sugar Industry Efficiency Act 2001 is amended -
- (a) in section 14(3), by deleting the words “letter of intent under section 6 of the Morcellement Act 1990” and replacing them by the

words “a development permit for a morcellement under the **Planning and Development Act 2004**”;

- (b) by repealing section 25.

## **75. Saving and transitional provisions**

- (1) The following bodies shall be dissolved 3 months after the coming into operation of this Act or within such extended period as the Ministry may approve -
  - (a) the Town and Country Planning Board established under section 3 of the Town and Country Planning Act;
  - (b) any planning committee appointed under section 10 of the Town and Country Planning Act; and
  - (c) the Morcellement Board established under section 4 of the Morcellement Act.
- (2) Notwithstanding subsection (1), the Town and Country Planning Board shall continue in existence and shall retain –
  - (a) all the powers, and exercise all the functions of the Commission for so long as the Commission has not been constituted;
  - (b) its appellate jurisdiction under the repealed Town and Country Planning Act for so long as the Tribunal has not been constituted.
- (3) Subject to any express provision of this Act, anything that –
  - (a) was done and commenced under a provision of an enactment that is amended or repealed by this Act; and

- (b) has effect or is not completed immediately before the amendment or repeal of the provision,

shall continue to have effect, or may be completed, as the case may be, under and in accordance with this Act.
- (4) An outline or detailed scheme approved or adopted under the Town and Country Planning Act and in force immediately before the commencement of this Act shall be taken to be a development plan approved under section 15 of this Act and –
  - (a) shall continue in full force and effect under this Act; and
  - (b) may be amended or repealed in accordance with this Act.
- (5)
  - (a) Any development permit granted under section 7 of the repealed Town and Country Planning Act which is in force immediately before the coming into operation of this Act shall be taken to be a development permit granted under this Act and shall continue in force on the same conditions and with the same effect as if this Act had not come into force in accordance with this Act.
  - (b) The permit authority in respect of a permit referred to in subsection (1) shall be taken to be the local authority of the area in which the land to which the permit applies is situated.
- (6) A letter of intent, or a morcellement permit issued under the repealed Morcellement Act and in force immediately before the commencement of this Act shall continue to have full force and effect, as if it were a development permit or a morcellement certificate, as the case may be, under this Act, for a period of 3 years from the coming into operation of this Act.

- (7) (a) Every application made under an enactment repealed or amended by this Act, and pending on the coming into operation of this Act shall be dealt with by the permit authority as if this Act had not come into force.
- (b) A development permit or morcellement permit issued pursuant to paragraph (a) shall be deemed to be a development permit or morcellement permit issued under this Act.
- (8) Upon the dissolution of the Town and Country Planning Board, any appeal pending before the Board shall be removed to the Tribunal and be determined as if it were an appeal brought under this Act.
- (9) (a) Every person on the staff of the Town and Country Planning Board immediately before the dissolution of the Board shall, as from that date, be entitled to be offered appointment in the public service on terms and conditions, including accrued pension rights, which are not less favourable than those obtained by him before the date of the dissolution of the Board.
- (b) The period of service with the Town and Country Planning Board of every person exercising his right to be transferred to the public service under paragraph (a) shall be deemed to be an unbroken period of service in the public service.
- (c) No person on the staff of the Town and Country Planning Board shall, on account of his transfer to the Public Service under paragraph (a), be entitled to claim that his contract of service has been terminated in breach of any enactment.
- (d) Any disciplinary enquiry or proceedings, pending or in process against any person on the staff of the Town and Country Planning Board shall, as from the date of dissolution of the Board, be taken up and determined by the Public Service Commission as if the

enquiry or proceedings had been started under the Public Service Commission Regulations.

- (e) Any person on the staff of the Town and Country Planning Board who –
- (i) refuses in writing an offer of transfer made to him;
  - (ii) fails to accept in writing an offer of transfer made to him, within one month of such offer;
  - (iii) having accepted the offer of transfer and been appointed in the public service ceases to be in the public service for any reason,

shall be deemed to have retired from the Town and Country Planning Board.

## 76. Commencement

Proclaimed by [\[Proclamation No. 43 of 2004\]](#) w.e.f 1<sup>st</sup> December 2004

**Part I, Section 5 of Part II, Sections 12 and 13 of Part III, Sections 62, 63(2), (4), (5) and (6), 64 and 65 of Part XI and Sections 67, 68(1)(f), 70 and 75(2) of Part XII**

Proclaimed by [\[Proclamation No. 16 of 2006\]](#) w.e.f 15th September 2006

**[Sections 14 & 15 of Part III, Section 75(4) of Part XII]**

Proclaimed by [\[Proclamation No. 12 of 2009\]](#) w.e.f 1<sup>st</sup> July 2009

**[Section 19 of Part III]**

- (1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.
- (2) Different dates may be fixed for the coming into operation of different sections of this Act.

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**FIRST SCHEDULE**

(section 23)

**Exempt Development**

<b>CLASS OF DEVELOPMENT</b>	<b>TO</b>	<b>ACHIEVE</b>
	<b>CONDITIONS</b>	<b>EXEMPTION</b>

**Agriculture**

Agricultural use of the land.

**Residential Development**

<p>Air conditioning units for dwellings houses and other residential buildings.</p>		<p>Either attached to an external wall or mounted on the ground. Building work must not reduce structural integrity of the building and the work must not be visible from a public place.</p>
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<p>Carrying out of works for the maintenance, improvement, extension, or other alteration of any dwelling house which does not increase the overall cubic content of the dwelling house together with any other building forming part of or required for uses incidental to the use of the dwelling house which is within the curtilage of the dwelling house by more than twenty-five percent</p>		<p>All work to comply with the Building Act and any approval or permit required under the Building Act is obtained prior to work commencing.</p>
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		<p>Applies only to alterations to a previously completed or approved building</p> <p>Works must not reduce window configuration for light and ventilation needs, reduce doorways for ingress or egress or enclose open areas</p>
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<p>Canopies, Awnings and Storm Blinds</p>		<p>Attached to a dwelling, a maximum area of 10 square metres.</p>
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Replacement or Repair of Existing roof and walls to dwelling and associated structures

No reduction in existing window or door openings, their location or size

No structural alteration proposed

No change to the roof height, pitch or profile

All stormwater is directed to a suitable system

Use of any building or other land within the curtilage of a dwelling house as such.

Deck and pergolas

Maximum area of 20 square metres

Building work must not reduce structural integrity of the building and any approval or permit required under the Building Act is obtained prior to work commencing

Fence

Maximum height above ground level of 1.2 metres where located between the dwelling and the street frontage and along the street frontage and a maximum of 1.8 metres where located on side boundaries behind the front of the dwelling. Not to obstruct views. Masonry fences are to be structurally adequate.

### **Non residential buildings**

Carrying out of works or the maintenance, improvement or other alteration of any building other than a dwelling house being works which do not increase the cubic content of a building by more than ten percent or do not materially affect the external appearance of the building;

Work to comply with the Building Act.

Work not to affect the structural integrity of the building

Applies only to alterations to a previously completed or approved building

Works must not reduce window configuration for light and ventilation needs, reduce doorways for ingress or egress or enclose open areas.

### **Other structures**

#### Satellite Dish

Maximum diameter 1.5m. Must not reduce the structural adequacy or integrity of the building or involve structural alterations to the building. The dish must not interfere with the views from surrounding properties.

#### Water Heaters

Includes solar systems. They must not reduce the structural adequacy or integrity of the building or involve structural alterations to the building. The heater must not interfere with the views from surrounding properties

#### Water tanks

Overflow to a suitable stormwater system. Tank to be installed to manufacturers specification.

### **Morcellement**

#### Morcellement

In circumstances only to:

- widen a public road,
- create a public reserve,
- consolidate allotments,
- make an adjustment to a boundary between allotments, being an adjustment that does not create another allotment and where each allotment may be developed consistent with the development/local plan applicable to the land.

A relevant statutory certificate has been obtained in relation to the provision of

water and sewer

### **Change of Use**

Change of use of a building but not the nature of the use:

- From a shop to another shop
- From an office to another office
- From a community, social or sporting activity to another community, social or sporting activity
- From industry to another industry

The current use of the building must have been lawfully commenced.

No extension of hours beyond the existing hours of operation.

The new use must comply with the terms of the development permit issued for the use of the building or land.

The new use must not generate any additional demand for carparking or traffic generation beyond that required by the current use.

### **Public Domain Works**

Bus Shelters and Street Furniture

Structurally adequate construction.

Not to obstruct the line of sight of vehicular traffic.

A maximum height of 2.7m above the footpath.

Children's play equipment, Park Furniture and Ancillary Sporting Structures

Structurally adequate construction.

Be consistent with the environmental policy of the relevant local plan for the land to be developed.

### **Public Roads**

The carrying out of any works required for the maintenance or improvement of a road.

Works being carried out on land within the boundaries of the road.

### **Utility Undertakings**

The carrying out by any local authority or any organisation or statutory authority or company providing public utility services of any works for the purpose of inspecting, repairing, replacing or renewing any sewers, drains, pipes,

Emergency and routine maintenance work.

Development of any description at or below the surface of the ground.

The installation of any plant or equipment inside an existing building.

cables, power lines, dishes, masts or other apparatus; Provision of overhead service lines in pursuance of any statutory power to supply electricity or telecommunication services.

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## **SECOND SCHEDULE**

(section 24)

### **State Significant Development**

The following developments or class of developments are for the purpose of this Act known as state significant development.

1. Block making plant manufacturing above 10,000 blocks per day.
2. Brewery or Distillery producing alcohol or alcoholic products that have an intended production capacity of more than 30 tonnes per day or 10,000 tonnes per year.
3. Bulk processing, storage and handling of petroleum, petroleum products, liquid gas, coal and petro-chemical products.
4. Hospital.
5. Aircraft facilities (including terminals, buildings for the parking, servicing or maintenance of aircraft, installations or movement areas) for the landing, taking-off or parking of aeroplanes, seaplanes or helicopters.
6. Conversion of forest land to another land use.
7. Desalination plant.
8. Development, production, release, use, marketing and application of Genetically Modified Organisms.
9. Fishing port.
10. Golf course.
11. Harbour dredging operation, construction and development.
12. Highway and mass transit system.

13. Lagoon dredging and re-profiling of seabeds including creation of bathing areas.
14. Hotel development including integrated tourist resorts.
15. Petroleum refinery.
16. Power station.
17. Rock quarrying.
18. Sewage treatment plant.
19. Shipyard and dry dock.
20. Sugar factory or refinery.
21. Undersea walk.
22. Waste disposal facility.
23. Wine industry.
24. Hazardous and offensive industry.
25. Aquaculture being the commercial breeding, hatching, rearing or cultivation of marine, estuarine or fresh water organisms, including aquatic plants or animals such as fin fish, crustaceans, molluscs or other aquatic invertebrates.
26. Ceramic or glass industries (being industries that manufacture bricks, tiles, pipes, pottery, ceramics, refractories or glass by means of a firing process) that have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per year.
27. Commercial or retail developments comprising more than 4,000 square metres of gross floor space.
28. Education facilities being a university, technical college, secondary school or primary school but not involving minor alterations or additions to the education facilities.
29. Industrial parks involving the development of 10,000 square metres of land or more by way of division of land, erection of buildings or the provision of infrastructure for future development and occupation or the development or more than 4,000 square metres of gross industrial floor space.
30. Morcellement that involves the division of more than 3 hectares of land.
31. Wharves or wharf-side facilities at which cargo is loaded onto vessels, or unloaded from vessels, or temporarily stored.
32. Marinas or other related land or water shoreline facilities that moor, park or store vessels (excluding rowing boats, dinghies or other small craft) at fixed

or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles on hardstand areas.

33. Placement, storage or landfill of hazardous or offensive waste material.