

No. 15 of 2004

VIRGIN ISLANDS
PHYSICAL PLANNING ACT, 2004
ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Short title and commencement.
2. Interpretation.
3. Act binds the Crown.
4. Objects and purposes of Act.

PART II

ADMINISTRATION

5. Duties of Minister.
6. Planning Authority.
7. Chief Planner.
8. Exercise of functions of Chief Planner.
9. Limitation of personal liability.

PART III

NATIONAL PHYSICAL DEVELOPMENT PLANS

10. Proposal for development plan.
11. Scope and preparation of development plan.
12. Environmental protection area.
13. Environmental protection area management plan.
14. Public participation.
15. Consideration of draft development plan.
16. Approval of development plan.
17. Deposit of approved plan.
18. Modification or revocation of a plan.
19. Legal status of development plans.

PART IV

MANAGEMENT OF DEVELOPMENT OF LAND

20. Permission required to develop land.
21. Types of development permission.
22. Applications for development permission.
23. Requirement for further information.
24. Certificate of Non - Objection
25. Publicity for applications.
26. Environmental impact assessment
27. Consultation on applications.
28. Material planning considerations with respect to applications.
29. Determination of applications.
30. Applications inconsistent with development plan.
31. Conditions of development permission.
32. Development agreements.
33. Performance bonds.
34. Lapse of development permission.
35. Supplementary provisions as to grant of development permission.
36. Minor variation of development permission.
37. Modification or revocation of development permission.
38. Reference of application to Minister.

PART V

COMPLIANCE

39. Compliance notice.
40. Material planning considerations with respect to compliance notices.
41. Notice to apply for development permission.
42. Permission for retention of buildings or continuance of use.
43. Suspension of effect of compliance notice.
44. Stop order.
45. Injunctions.
46. Action by Authority for non-compliance with compliance notice.
47. Continuing operation of compliance notice.

PART VI

ENVIRONMENTAL PROTECTION

- 48. Compilation of a list in respect of buildings or sites which are of special interest.
- 49. Publication of list.
- 50. Approval of a list.
- 51. Listed building consent or listed site consent.
- 52. Interim preservation orders in respect of buildings or sites.
- 53. Preservation orders in respect of buildings or sites.
- 54. Plant preservation orders.
- 55. Amenity orders.
- 56. Control of advertisements.
- 57. Supplementary provisions as to advertisements.
- 58. Environmental protection area order.
- 59. Environmental protection area order for beaches.

PART VII

COMPENSATION AND ACQUISITION

- 60. Exclusion of compensation.
- 61. Public access and rights of way to beaches.
- 62. Acquisition of comprehensive planning area.
- 63. Acquisition of buildings or sites for the purposes of preservation.
- 64. Acquisition of land for planning purposes.

PART VIII

APPEALS

- 65. Establishment of Appeals Tribunal.
- 66. Right of appeal.
- 67. Notice of appeal.
- 68. Procedure at public examinations.
- 69. Record of proceedings of public examinations.
- 70. Appeals by written representations.
- 71. Decision and notification of appeal.
- 72. Appeals to the High Court.

PART IX
MISCELLANEOUS

- 73. Powers of entry.
- 74. Service of notices.
- 75. Power to require information.
- 76. Register of planning decisions.
- 77. Notifications of decisions to Registrar of Lands.
- 78. Death of person having claim or right.
- 79. Offences and penalties.
- 80. Regulations.
- 81. Repeals and savings.
- SCHEDULE 1
- SCHEDULE 2
- SCHEDULE 3
- SCHEDULE 4

I Assent

THOMAS MACAN
Governor
28th October, 2004

VIRGIN ISLANDS

No. 15 of 2004

An Act to make provision for the orderly and progressive development of land in both urban and rural areas and for the protection of the environment and improvement of the amenities thereof, for the grant of permission to develop land and for other powers of control over the use of land; to confer additional powers in respect of the acquisition and development of land for planning purposes; and for other matters connected therewith.

[Gazetted 17th December, 2004]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I

PRELIMINARY

1. (1) This Act may be cited as the Physical Planning Act, 2004.

Short title and
commencement.

(2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

2. (1) In this Act, unless the context otherwise requires,

Interpretation.

“adjoining land” means that portion of land extending a distance of one hundred feet landward from the spring high water mark or, where the land to that distance includes a cliff, to a distance of fifty feet landward from the seaward edge of the cliff top;

“advertisement” means any word, letter, model, sign, placard, board, notice, awning, blind, balloon, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, or calling attention to any person, matter, object or event, and (without prejudice to the preceding provisions of this definition) includes any hoarding, billboard, wall, fence, or similar structure used, adapted, designed, or intended for use, for display of advertisement and references to the display of advertisements shall be construed accordingly;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur or for the purpose of its use in farming the land), the use of land as grazing land, meadow land, for the cultivation of crops, as market gardens and nursery grounds, but does not include the use of land for fish-farming and “agricultural” shall have a corresponding meaning;

“amenity order” means an order made under section 55;

“Appeals Tribunal” means the Appeals Tribunal established under section 65;

“Authority” means the Planning Authority established under section 6;

“beach” means that area of the coastal zone from the seaward limit of the foreshore running inland to the vegetation line or other natural barrier whichever is closer to the landward limit of the foreshore, and a beach may consist of sand, stones, gravel, shingle, coral fragments or boulders;

“builder” means a person engaged as a contractor or otherwise in the erection, construction, alteration, improvement, maintenance, repair or demolition of buildings or works incidental to any of the foregoing;

“building” includes any erection, structure, chattel or movable structure in, on, over or under any land and any part of a building so defined (but does not include plant or machinery comprised in a building), an erection or structure permanently attached to the seabed or temporarily so attached for the purpose only of the exploitation of minerals in, on or under the seabed;

“building operations” includes the demolition of buildings or parts thereof, rebuilding operations, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder;

“building or work” means waste materials, refuse and other matters deposited on land, and references to the construction of buildings or works shall be construed accordingly;

“Chief Planner” means the person so appointed under section 7;

“clearing”, in relation to land, means the removal of buildings or parts thereof from the land, the removal of materials from the land, the leveling or grading of the surface of the land, the removal of vegetation and the carrying out of such other operations in relation to the land as may be prescribed;

“coastal waters” means

- (a) the sea, bays, sounds, lagoons and estuaries,
- (b) any pond or other body of water that is within the adjoining land or adjacent to the landward limit of the adjoining land, and
- (c) any body of water that is connected permanently or intermittently with the sea and which contains a measurable quantity of sea water,

and includes the sea-bed and the land below and along the banks, or otherwise adjacent to, the waters mentioned in paragraphs (a), (b) and (c);

“coastal zone” means all lands and waters of the Territory contained within the area bounded by the outer limit of the territorial sea and by the landward limit of the adjoining land, and includes coastal waters;

“compliance notice” means a notice issued under section 39;

“Court” means the High Court;

“Crown land” means land which belongs to and is vested in the Crown;

“development” means the carrying out of building, engineering, mining, earth moving or other operations, in, on, over or under land, the making of a material change in the use of a building or other land, the sub-division of land, or the use of land or of the external part of a building or structure for the purposes of display of advertisement which is not ordinarily used for that purpose, provided that the following shall not be deemed to constitute development:

- (a) the carrying out of works for the maintenance, improvement or other alteration of a building, if the works affect only the interior, and do not materially affect the external appearance, of the building;
- (b) the carrying out by the Government of works for the maintenance or improvement of a road if the works are carried out on land within the boundaries of the road;
- (c) the carrying out by the Government or by a statutory agency of works for the purpose of inspecting, repairing or renewing sewers, water mains, electric mains, pipes, cables or other apparatus, including the excavation of any road or other land for that purpose;
- (d) the use of a building or other land within the curtilage of a dwelling house for purposes incidental to the enjoyment of that dwelling house as such;
- (e) the use of land for the purposes of agriculture or forestry, but not including
 - (i) any building or engineering operation on the land;
 - (ii) the operation of a saw-mill on the land; or
 - (iii) the carrying out of any works or excavation on the land for the purposes of accommodation of livestock (not being livestock kept for the domestic needs or personal enjoyment of the occupants of the land), or for the storage of slurry or sewage sludge, within one hundred yards of the cartilage of a residential building, not being a residential building within an agricultural unit;
- (f) the erection of gates, fences, walls or other means of enclosure, not exceeding four feet in height where adjacent to a road or the sea, or six feet in any other case, and not constructed of asbestos, fiber glass or sheet metal
- (g) the enlargement, improvement or other alteration of a dwelling house, provided that
 - (i) the square footage of the enlargement does not exceed one tenth of the square footage of the ground floor of the house at the date of the development or of the

house at the commencement of this Act, whichever is larger;

- (ii) the enlargement is an integral part of the existing house;
 - (iii) the enlargement complies with the requirements of any planning regulations for the time being in force; and
 - (iv) written notice of intention to carry out such work is given to the Authority through the Chief Planner;
- (h) in the case of buildings or other land that are used for a purpose of a class specified in an Order made by the Minister under this section, the use thereof for any other purpose of the same class;

“development permission” means permission for development given under the provisions of Part IV;

“dwelling house” means premises constructed for use for the purpose of human habitation but does not include a building containing one or more flats, apartments, condominiums or townhouses, or a flat, apartment, condominium or townhouse contained in such a building;

“engineering operations” include the laying out, building and maintenance of roads, drains, runways and bridges, the preparation of land for carrying out of development, the clearing of land, the excavation of land, the dredging of watercourses or channels, the filling in of any cavity or excavation on land, the reclamation of land and the placing or assembly of a pen, cage, tank, pond or other structure in any part of inland or coastal waters or in, on, over or under any land for the purpose of fish-farming;

“environment” means all or any of

- (a) the media of land, water, and air, including all layers of the atmosphere,
- (b) organic and inorganic matter and living organisms including human beings,
- (c) the interacting systems that include components referred to in paragraphs (a) and (b),

within the territorial jurisdiction and control of the Territory;

“environmental impact assessment” means the process of collection, analysis, evaluation and review of information on the likely effects of a proposed development on the environment and the means to overcome adverse effects;

“environmental impact statement” means a document or series of documents which contains or contain the information on the likely effects of the proposed development on the environment and the means to overcome adverse effects, required by section 26;

“environmental protection area” means an area so designated in a development plan under section 12, or declared an environmental protection area by Order made under section 58;

“environmental protection area order” means an order made under section 58;

“fish-farming” means the breeding, rearing or keeping of fish or shellfish which involves the placing or assembly of a pen, cage, tank, pond or other structure in any part of inland or coastal waters or in, on, over or under any land for the purpose of fish-farming;

“foreshore” means that portion of the land of the Territory which lies between the mean low watermark and the mean high watermark of the sea;

“industrial development” means the development of land for the manufacture or partial manufacture of goods, articles or substances of any kind, or the assembly of manufactured goods or the turning into manufactured goods of articles which are partially manufactured or of substances in their natural state, or the repairing, finishing, cleaning, washing, packing or canning, adapting for sale or breaking up of any article;

“interim preservation order” means an order made under section 52;

“land” means any corporeal hereditament including a building and other things permanently affixed to land and includes the foreshore, sea-bed and land covered by water within the boundaries of the territorial waters of the Territory;

“lawful use” does not include use of any building or other land which was commenced in contravention of the provisions of this Act or of earlier planning control;

“list” means a list of buildings or sites of special architectural, cultural, historic or archaeological interest provided for under Part VI;

“listed building” means a building or part thereof which is included in a list made in accordance with section 48;

“listed site” means a site which is included in a list made in accordance with section 48;

“means of access” includes any means of access whether private or public, for vehicles or for pedestrians, and includes a street or road;

“mineral” means any substance in liquid, solid or gaseous form occurring naturally in, on or under land or on, in or under the sea-bed and formed by or subject to a geological process, including natural gas, petroleum and related substances such as asphalt, and including coal, salt, sand, gravel, quarry and pit material, gold, silver and rare and precious metals, but does not include water;

“mining operation” means

- (a) the carrying out in relation to any mineral, of any activity with a view to working, carrying away, treating or converting that mineral;
- (b) the search or exploration for any mineral with a view to carrying out any activity mentioned in paragraph (a) and the carrying out of any work necessary for such search or exploration;
- (c) the deposit of waste or refuse materials in consequence of or incidental to any activity mentioned in paragraph (a) or (b);

“Minister” means the Minister responsible for physical planning;

“mortgage” includes any charge or lien on any property for securing money or money’s worth;

“national development plan” means any development plan prepared under Part III and includes any modification or amendment thereof, and “plan” shall mean a development plan where the context so admits;

“owner”, in relation to land, means a person who is for the time being

- (a) the estate owner in respect of the freehold interest in the land;
or

- (b) entitled to a tenancy of the land granted for a term of years certain of which not less than ten years remain unexpired;

“permitted development” means development which is authorised by Order made by the Minister under subsection (2) of section 20;

“plant” includes any flower, shrub, tree and any herb, grass lichen, moss or other vegetation;

“plant preservation order” means a plant preservation order made under section 54;

“prescribed”, except in relation to matters expressly required or authorized by this Act to be prescribed in some other way, means prescribed by regulations;

“preservation order” means an order made under section 53;

“regulations” means regulations made under this Act;

“resources” means any social, cultural, historical, technological, biological, physical or chemical elements and processes, renewable or non-renewable, tangible or intangible, of economic or aesthetic importance which compose the surroundings of mankind;

“road” means any road whether public or private and includes a street, square, court, alley, lane, bridge, footpath, trace, passage or highway, whether thoroughfare or not, and a reference in this Act to a “road” shall be construed as a reference not only to the carriageway or that part of a road which is usually reserved for use by wheeled vehicles, but also to the total road reserve;

“road reserve” means all lands reserved for use for the purposes of bridges, sidewalks, footways, kerbs, verges, culverts, drainage or other roadworks and the adjoining reserves accessory to a road in addition to the carriageway or that part of a road which is usually reserved for use by wheeled vehicles;

“sea” means the Caribbean Sea, the Atlantic Ocean, and all areas subject to tidal action through any connection with the Caribbean Sea or the Atlantic Ocean;

“sea-bed” means the floor and subsoil of the sea between mean low watermark and the seaward limits of the territorial waters of the Territory;

“stop order” means an order made under section 44;

“sub-division” means the division of a parcel of land, other than buildings held under one ownership, into two or more parts whether such division is by conveyance, transfer, assignment, vesting order, plan of survey, plan of sub-division, or any other instrument for the purpose of sale, gift, partition, succession, lease, mortgage or for any other purpose and such sub-division constitutes development whether or not the use for which the sub-divided land is intended constitutes development and “sub-divide” shall be construed accordingly;

“unauthorised development” means any development for which a grant of development permission has not been obtained and which is not permitted development authorized by Order made by the Minister under subsection (2) of section 20, or development which is not in accordance with the conditions or limitations subject to which development permission was granted;

“use”, in relation to land, does not include the use of land by the carrying out of building or other operations on the land;

“waste material” includes garbage, refuse, spoil, mineral tailings, sludge, effluent and anything of whatever kind which has the appearance of being material abandoned, discarded or intended to be abandoned or discarded by the owner or former owner thereof, or the only value of which appears to be as scrap or for the utilization of parts thereof or the extraction of the residue of the substance of which it formerly formed part.

(2) For the avoidance of doubt, it is declared that

- (a) the use as two or more separate premises, for the purpose of dwelling, of any building previously used as one dwelling house involves a material change in the use of that building and of each part thereof so used;
- (b) the use for the display of an advertisement, of any land or of the external part of a building, which is not ordinarily used for that purpose, shall be deemed to involve a material change in the use of that land or part of the building;
- (c) the deposit of any waste material on land involves a material change in the use of the land, notwithstanding that the deposit is on a site which has been previously so used, if either the superficial area thereof or the height of the deposit is thereby extended or exceeds the level of any similar deposit on adjacent land.

3. This Act binds the Crown.

Act binds the
Crown.

Objects and
purposes of Act.

4. (1) The objects and purposes of this Act are

- (a) to foster the awareness that all persons and organisations owning, occupying and developing land have a duty to use that land with due regard for the wider interests of both present and future society as a whole;
- (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in the Territory;
- (c) to achieve orderly, economical and beneficial development and use of land and patterns of human settlement;
- (d) to assist in the orderly, efficient and equitable planning, allocation and development of the resources of the Territory taking account of all relevant social, economic and environmental factors so as to ensure that the most efficient, equitable and environmentally sustainable use is made of land in the interests of all the people of the Territory;
- (e) to provide for the orderly sub-division of land and the provision of services in relation to land;
- (f) to protect and conserve the cultural heritage of the Territory as it finds expression in the natural and the built environment; and
- (g) to facilitate a continuous improvement in the quality of life of all the people in the Territory.

(2) In implementing, applying and interpreting this Act, all persons shall have regard to, use their best efforts to further and give a broad and purposive interpretation to, the matters set out in subsection (1).

PART II

ADMINISTRATION

Duties of
Minister.

5. (1) The Minister is responsible for securing the objects and purposes set out in section 4 and in the exercise of the powers conferred on him, may do all things necessary for the purpose of carrying out his responsibilities under this Act.

(2) In addition to the several duties imposed on him by this Act, the Minister is responsible for the framing and implementation of comprehensive

policies with respect to the use and development of all land in the Territory in accordance with a development plan prepared under the provisions of Part III and shall in the framing and implementation of such policies have regard to the need to secure consistency.

(3) In exercising his functions, the Minister shall be guided by the principle that the provisions of this Act shall be applied uniformly, fairly and equally to all persons.

(4) Nothing in this section shall be construed as imposing upon the Minister either directly or indirectly any form of duty or liability enforceable in proceedings before any court.

6. (1) There is established a body to be known as the Planning Authority. Planning Authority.

(2) The constitution and procedures of the Authority shall be in accordance with Schedule 1. Schedule 1

(3) The Authority shall

- (a) advance the purposes of this Act as set out in section 4;
- (b) institute, complete, maintain and keep under review a study of matters pertinent to planning the use and development of the land of the Territory;
- (c) prepare or cause to be prepared development plans in accordance with Part III;
- (d) regulate development by the means provided by this Act, having regard to the need to secure consistency and conformity with the development plan;
- (e) prepare, and submit to the Minister subject reports on matters which the Authority or the Minister may from time to time consider necessary or desirable having regard to the provisions of section 4; and
- (f) do all other things necessary for carrying out the purposes and provisions of this Act as may be authorised by the Act.

(4) The Authority shall remain at all times responsible for the proper performance of its functions under this section, and may, for the purpose of such performance, as it thinks fit,

- (a) consult with or obtain advice from other authorities, persons or bodies of persons;
- (b) engage other persons to carry out work on its behalf;
- (c) delegate any of its functions under section 11 to any of the persons referred to in paragraph (a) or (b).

(5) Without restricting the generality of subsection (4), the Authority may delegate any of its duties to the Chief Planner.

(6) The Authority shall

- (a) be responsible for the implementation of the policies framed by the Minister under section 5; and
- (b) act in accordance with directions of a general or special nature which may be given from time to time by the Minister as to the policy to be followed in the exercise of its functions.

Chief Planner.

7. (1) A Chief Planner whose office shall be a public office shall be appointed by the Governor to exercise and perform the duties specified in subsections (2), (3) and (4).

(2) The Chief Planner shall be responsible to the Authority for the administration and operation of the system of planning for which this Act provides.

(3) The Chief Planner shall sign and issue all development permissions, refusals of development permission, compliance notices and other documents authorised by the Authority to be issued under the provisions of this Act.

(4) The Chief Planner has the powers conferred upon him by this Act and the duties that he is required by this Act or by the direction of the Authority to perform.

Exercise of
functions of
Chief Planner.

8. (1) Functions assigned to the Chief Planner by or under this Act may be exercised by any planning officer authorised by the Chief Planner in writing, either generally or specially, in that behalf.

(2) If authorised for the purpose by the Chief Planner in writing, any person exercising a function assigned to a planning officer by or under this Act shall be deemed, for the purpose of the exercise of that function, to be the proper officer for the exercise of that function, and shall be deemed to have the powers of a planning officer for the purposes of that function.

(3) Neither the Chief Planner nor any planning officer of the Authority, shall engage in any work, employment, contract, interest, activity or other involvement which is, or is likely to become, in conflict with his duties under this Act.

9. (1) No personal liability shall attach to the Minister, any member of the Authority, the Chief Planner or any other officer in respect of any thing done or omitted to be done, in good faith, in the implementation of the provisions of this Act.

Limitation of personal liability.

(2) Any sums of money, damages or costs which may be recovered against the authority or any of its members or officers for anything done or omitted to be done in the implementation of the provisions of this Act shall be paid out of the Consolidated Fund.

PART III

NATIONAL PHYSICAL DEVELOPMENT PLANS

10. (1) The Authority may, and if required by the Minister shall, submit to the Minister proposals for the preparation of a development plan.

Proposal for development plan.

- (2) A proposal for the preparation of a development plan shall include
- (a) a reasoned statement of the need for the plan;
 - (b) the main headings of the proposed contents of the plan;
 - (c) a suggested timetable for the preparation of the plan;
 - (d) proposals for obtaining representations from persons likely to be affected by or likely to wish to submit representations and views on the proposed plan during the course of its preparation;
 - (e) proposals for obtaining representations on the plan by sectoral agencies; and
 - (f) such other matters as are required by the Minister or are considered by the Authority to be necessary for a decision to be made on the proposal.

(3) Where the Minister rejects a proposal submitted under this section, he may require the Authority to submit a fresh or modified proposal for the same plan or a new proposal for a different plan.

Scope and
preparation of
development
plan.

11. (1) The Authority shall prepare or cause to be prepared and thereafter keep under review a development plan for the Territory as a whole, which shall be called a National Physical Development Plan.

(2) The Authority may prepare or cause to be prepared and thereafter keep under review a development plan for any specified part of the Territory, which shall be called by the name of the part of the Territory to which it relates.

(3) A development plan shall comprise a written statement and such maps, plans, drawings, diagrams and other graphic representations as the Authority considers necessary to illustrate and explain the plan with the degree of particularity the Authority considers to be appropriate to different parts of the Territory and to the nature of the development plan.

(4) Without restricting the generality of subsection (3), a development plan shall include

- (a) a statement of the principal aims and objectives with respect to the development and other use of land in the area;
- (b) a report on the existing conditions of the area, including
 - (i) the principal physical, social, economic and environmental characteristics of the area and the principal purposes for which land is used;
 - (ii) the size, composition and distribution of the population of the area;
 - (iii) the communications, transport systems and traffic in the area;
 - (iv) the public services and the physical and social infrastructure provided in the area;
 - (v) any other matters which may affect the development and other use of land in the area or which the Minister may direct;
- (c) a statement of the policies, proposals, and programmes for the future development and use of land in the area, including principles for regulating the use and development of land and

measures for the maintenance and improvement of the environment;

- (d) a reasoned justification of the policies and proposals for the future development and use of land in the area having regard to
 - (i) the report of the existing conditions of the area under paragraph (b);
 - (ii) an examination of the likely environmental effects of the proposals;
 - (iii) any specific policies of the Government which may affect the pattern of development in the area;
 - (iv) the current economic policies of the Government for the development of the Territory;
 - (v) the relationship between the proposals in the plan and other previously approved development plans which may affect the area;
 - (vi) the financial and other resources which are likely to be available for carrying out the proposals of the plan; and
- (e) a schedule setting out the stages by which the proposals of the plan may be implemented.

(5) A development plan may

- (a) define the sites of proposed roads, public and other buildings and works, or the allocation of land for agricultural, residential, industrial or other purposes of any class, and the conditions under which such development should be carried out;
- (b) designate any area as being an area which should not be developed due to its susceptibility to aircraft hazard or to flooding, erosion, subsidence, instability or other condition of the physical environment;
- (c) make proposals for the preservation of buildings, sites or other features of special architectural, cultural, historic or archaeological interest;

Schedule 2

- (d) provide for any of the matters set out in Schedule 2 as the Authority considers appropriate to the nature and scope of the proposed plan;
- (e) subject to the provisions of section 62, designate as a comprehensive planning area any area which in the opinion of the Authority needs to be planned as a whole for one or more of the purposes of development, redevelopment, improvement or conservation.

(6) As soon as may be practicable after the designation of land as a comprehensive planning area under subsection (5) (e), the Authority shall prepare or cause to be prepared a detailed plan for the relevant area showing the manner in which it is to be developed.

Environmental
protection area.

12. (1) The Authority may, and if so directed by the Minister shall, cause a survey to be made of the whole or any part of the Territory with a view to determining whether any area of the Territory ought to be designated an environmental protection area in a development plan.

(2) Before finally determining whether to recommend to the Minister that any area should be designated an environmental protection area in a development plan, the Authority shall

- (a) take such steps as in its opinion will ensure that adequate publicity is given to its proposals in the area to which the proposals relate;
- (b) provide persons living and working in the area and any other persons interested in the area with an opportunity of making representations and comments on the proposals;
- (c) consult the Ministers responsible for national parks, marine parks and protected areas and any other person, body or authority who appears to be interested in or to have special knowledge on environmental matters; and
- (d) take account of the representations and comments received on the proposals.

(3) In determining whether it is desirable to designate any area as an environmental protection area in a development plan, the Authority and the Minister shall have regard to

- (a) the survey prepared under subsection (1);

- (b) any representations or comments submitted by any person, body or authority on the proposals;
- (c) such of the following matters as may be relevant to the area;
 - (i) the flora and fauna of the area;
 - (ii) the natural features and beauty of the area;
 - (iii) any outstanding geological, physiographical, ecological, architectural, cultural, historic or archaeological features of the area which it is desirable to preserve and enhance;
 - (iv) any special scientific interest in the area;
 - (v) any special natural hazards to which the area is or may be subject;
 - (vi) the characteristics, circumstances and interests of the people living and working in the area.

13. (1) In consultation and co-ordination with the Chief Agricultural Officer and the Minister responsible for the Protection of Trees and Conservation of Soil and Water Ordinance, the National Parks Ordinance, the Marine Parks and Protected Areas Ordinance and the Fisheries Act, 1997, the Authority may prepare or cause to be prepared an environmental protection area management plan with respect to an area designated to be an environmental protection area in a development plan.

Environmental protection area management plan.
Cap. 86
Cap. 243
Cap. 85
Act No. 4 of 1997

(2) The purpose of a plan prepared under this section shall be to set out the policies and measures for the preservation, enhancement and management of the special features of the environmental protection area, including as may be relevant to the area to which the plan applies, policies and measures for

- (a) the preservation of marine and terrestrial flora and fauna, including the regulation of hunting and fishing;
- (b) the protection of water supplies, water catchment areas and mineral resources;
- (c) the prevention of erosion, landslides and flooding;
- (d) the control of fires;

- (e) the control of pollution;
- (f) the designation of special resource and use areas in the coastal zone;
- (g) the use and development of land so as to sustain the local economy of the environmental protection area;
- (h) the designation of permitted and prohibited land uses, development and other activities;
- (i) the prohibition, restriction or regulation of access to any area and the prevention of squatting;
- (j) the development of facilities for residents and visitors for the enjoyment of the special features of the environmental protection area;
- (k) the development of facilities for educational visits, study and research of the special features of the environmental protection area.

Act No. 12 of
1990
Cap. 261
Act No. 4 of
1997
Cap. 85

(3) In consultation and co-ordination with the Ministers responsible for the administration of the British Virgin Islands Ports Authority Act, the Power-Craft Ordinance, the Fisheries Act, 1997 and the Marine Parks and Protected Areas Ordinance, the Authority may designate in an environmental protection area, any area of the foreshore or the sea-bed as a special resource and use area, that is to say, an area where public use of certain lands and waters of the foreshore or sea-bed needs to be controlled or protected to ensure the safety and welfare of the public and for the preservation of the coastal environment, namely, areas

- (a) designated as protected swimming and surfing areas where other potentially conflicting uses are prohibited;
- (b) designated for
 - (i) anchoring,
 - (ii) mooring,
 - (iii) beaching,

of ships, yachts, motor-boats, boats and other water-craft, including restrictions on the numbers and kinds of ships, yachts, motor-boats, boats and other water-craft that may be

anchored, moored, or beached in any particular bay or other coastal area at one time;

(c) where the use of equipment for

(i) wind-surfing,

(ii) water-skiing, or

(iii) any other water-related sport, including sport-fishing,

is prohibited.

(4) Prohibited and permitted activities in special resource and use areas designated pursuant to this section shall be as specified in the development plan, or as prescribed.

14. (1) During the preparation of a development plan and before finally determining its content for submission to the Minister, the Authority shall take such steps as in its opinion will ensure

Public participation.

(a) that adequate publicity is given in the area to which the plan relates to the matters which it proposes to include in the plan;

(b) that persons who may be expected to desire an opportunity of making representations to the Authority with respect to those matters are made aware that they are entitled to an opportunity of doing so; and

(c) that such persons are given an adequate opportunity of making such representations.

(2) The Authority shall consider any representations made to it within the prescribed period.

15. (1) Where the Authority has prepared a draft development plan, it shall submit a copy to the Minister and deposit a copy at the offices of the Authority and at such other place or places as the Authority considers to be most effective for bringing it to the notice of persons residing, working or owning property in the area to which the draft development plan proposals relate, or who are likely to be affected by the proposals in the draft development plan.

Consideration of draft development plan.

(2) The Authority shall give notice in the *Gazette* and at least one local newspaper circulating in the Territory of the depositing of a draft development plan, and of the places where it may be examined, and shall give such other

publicity to and written or oral explanation of the draft development plan as, in its opinion, is best calculated to inform all persons affected or likely to be affected by the proposals in the draft development plan, and all persons of the right to make representations with regard to the proposals in the draft development plan.

(3) Any person may, within eight weeks of the publication in the *Gazette* and in a local newspaper of the notice referred to in subsection (2) make either oral or written representations on the draft development plan to the Authority.

(4) Where the Authority submits a draft development plan to the Minister, it shall be accompanied by a statement of the steps taken by the Authority to comply with the provisions of this section and section 14 and the particulars of the consultations held with other persons with respect to the proposals in the draft development plan.

(5) After the expiration of the period prescribed for making representations on a draft development plan, the Authority shall meet and consider the draft development plan and the representations and comments made, and shall forward the same together with its own recommendations and comments to the Minister.

Approval of
development
plan.

16. (1) The Minister, after considering a draft development plan which has been submitted to him under section 15 and all comments, representations and recommendations made in relation to the draft plan, shall

- (a) adopt the draft plan and submit it for the approval of the Executive Council;
- (b) require further work on, or revision of, the draft plan; or
- (c) require further consultations on the draft plan in whole or in part.

(2) Where the Minister determines that before a draft development plan is adopted, further work on, or revision of, or consultation on, the draft plan is required, he may require the Authority to undertake such further work, revision or consultation as may be necessary and to give such publicity to the matter as will enable persons likely to be affected or interested to make representations or comment to the draft plan.

(3) Unless the Minister otherwise directs, the provisions of section 15 shall apply to any modification, work or revision undertaken by the Authority under this section and to the re-submission of the draft plan or any modification thereof.

(4) Where a draft development plan (called a National Physical Development Plan) is approved by the Executive Council under subsection (1) (a) with or without modifications, the approved Plan shall be subject to an affirmative resolution of the Legislative Council.

17. (1) Where a development plan for a specified part of the Territory has been approved by the Executive Council, or a National Physical Development Plan has been approved by the Legislative Council, as the case may be, a copy of the plan shall be deposited at the Land Registry, and at public libraries and post offices in the parts of the Territory to which the plan relates, and the substance of the plan shall be publicized in the area or areas to which it applies, in such manner as the Authority may direct.

Deposit of approved plan.

(2) Notice of the approval by the Executive Council of a development plan for a specified part of the Territory or the approval by the Legislative Council of a National Physical Development Plan, as the case may be, shall be published in the *Gazette* and the plan shall come into effect on the date of such publication.

(3) Copies of a plan shall be available for inspection and purchase, at all reasonable times at the offices of the Authority, at such price as may be prescribed.

18. (1) The Minister may at any time when he considers it appropriate, require the Authority to review or to prepare proposals for the modification or revocation of any plan, or part thereof.

Modification or revocation of a plan.

(2) Without prejudice to subsection (1), it shall be the duty of the Authority to keep under review the operation of any plan in light of changing circumstances in the Territory and in the area to which it applies, and the Authority may prepare proposals for the modification or revocation of any plan as it sees fit and shall submit the same to the Minister.

(3) The provisions of this Part with respect to the participation in, preparation, consideration and approval of, a development plan shall apply *mutatis mutandis* to the participation in, preparation, consideration and approval of, the modification or revocation of a plan.

(4) The modification or revocation of an approved development plan for a specified part of the Territory shall be submitted by the Minister for the approval of the Executive Council.

(5) The modification or revocation of an approved National Physical Development Plan shall be subject to an affirmative resolution of the Legislative Council.

(6) Notice of the modification or revocation of an approved plan shall be published in the *Gazette* and at least one local newspaper circulating in the Territory.

Legal status of development plans.

19. (1) Where two or more development plans have been approved which apply in whole or in part to the same area and there is any conflict or discrepancy between them, then

- (a) the plan drawn to the larger scale shall have precedence;
- (b) if the plans are drawn to the same scale, the later plan shall be deemed to have modified the earlier plan, unless there is an express provision to the contrary.

(2) Where a development plan has been approved,

- (a) it may be the reason for the compulsory acquisition of land designated in that approved development plan as a comprehensive planning area;
- (b) it shall be the duty of all public officers to have due regard to, and so far as is practicable be guided by, the plan in formulating and preparing any project of public investment and development in the Territory;
- (c) the Authority shall, in considering any application for development permission, give principal consideration to and be guided by the plan.

(3) Where a plan has been prepared but is not yet approved, subsection (2) (b) and (c) shall apply as if the plan had been approved.

(4) An approved development plan remains in effect until the date of the publication of a notice in the *Gazette* announcing its revocation.

PART IV

MANAGEMENT OF DEVELOPMENT OF LAND

Permission required to develop land.

20. (1) No person shall carry out any development of land except under and in accordance with the terms of a development permission granted in that behalf prior to the commencement of such development, on an application made in accordance with the regulations made under section 80, unless the development is permitted development authorised under subsection (2).

(2) The Minister may by Order grant permission to any class of development (hereinafter referred to as “permitted development”) specified in the Order either unconditionally or subject to such conditions or limitations as may be specified in the Order, without the requirement for the making of an application for grant of express development permission.

(3) Every Order made under subsection (2) shall be subject to an affirmative resolution of the Legislative Council.

(4) No department of Government, statutory body, or other agency of Government having responsibility for the issuing of any licence, permit, approval, consent or other document of authorisation pursuant to any other written law in connection with any matter related to or affecting the development of land, shall issue such licence, permit, approval, consent or other document of authorisation unless it has established that express development permission with respect to the proposed development has been granted under this Act, or is not required.

(5) A notice of the grant of development permission shall be displayed prominently and maintained on any land on which development as defined in this Act is taking place, unless that development is permitted development authorised by an Order made by the Minister under subsection (2).

(6) This Act does not exempt any development from the requirements imposed upon such development by any other written law.

21.(1) The Authority may grant development permission expressed to be an outline development permission subject to the conditions and limitations therein, the effect of which shall be to grant approval in principle to erect buildings but not to permit the commencement of building operations until detailed development permission has been granted in respect of the details of the development or part thereof, for which outline development permission was granted, and those details shall not form part of the grant of outline development permission.

Types of
development
permission.

(2) Where the Authority is of the opinion that an application for outline development permission ought not to be considered separately from further information required under section 23 (1) (a) and (b), it shall within thirty days of the receipt of the application notify the applicant that it is unable to entertain the application and shall invite the applicant to submit the required further information under that section.

(3) Notwithstanding subsection (1) and without restricting the generality of subsection (2), the Authority shall not entertain applications for outline development permission for development for which it is determined that environmental impact assessment is required under section 26, or for development which is subject to the provisions of Part VI.

(4) The Authority may grant development permission expressed to be a detailed development permission the effect of which is to permit the carrying out of operations in, on, over or under any land, the making of a material change in the use of any building or land or the sub-division of land, subject to the terms and conditions of the grant of detailed development permission.

Applications for development permission.

22. An application for a grant of development permission shall

- (a) be submitted to the Authority through the Chief Planner;
- (b) be made in such manner as may be prescribed under section 80;
- (c) include such information as may be required by the regulations or by directions given by the Authority or the Chief Planner; and
- (d) be accompanied by the prescribed fee.

Requirement for further information.

23. (1) Within such time as may be prescribed by the Chief Planner by notice in writing, an applicant for development permission shall

- (a) furnish the Chief Planner with such further information as may be specified in the notice;
- (b) at his own expense, cause an environmental impact statement provided for under section 26, or economic feasibility study, to be prepared of the proposed development and submitted to the Chief Planner.

(2) Where any further information required under subsection (1) (a) and (b) is furnished, the application shall be treated as having been made on the date when the information was received and the sixty day period provided for the determination of applications in section 29 (2) shall not commence until the date of receipt of the further information.

(3) Where an applicant does not furnish the Chief Planner with the further information required under subsection (1) (a) and (b) within the period prescribed in the notice or such longer period as may be granted by the Chief Planner, the Authority may decline to determine the application and may return the application to the applicant with a notice to that effect, or the Authority may refuse to grant development permission, as it thinks fit.

24. Every application for permission to develop land (other than an application submitted by the owner of the land) shall be accompanied by a certificate signed by the applicant that he has notified the owner of the land to which the application relates, or the owner's duly authorised representative, of the application and that the owner or his duly authorised representative does not object to the application.

Certificate of
Non – Objection.

25. (1) The Chief Planner may, and with respect to applications for certain classes of development which the Minister may by Order designate as likely to derogate from the amenities of the public or of adjacent or nearby properties shall, by written notice served on an applicant for a grant of development permission, require the applicant to do one or more of the following

Publicity for
applications.

- (a) publish details of his application at the times, places and in the manner specified in the notice;
- (b) give details of his application to the persons or authorities specified in the notice;
- (c) affix a notice in a secure manner and in a prominent position on the land to which the application relates notifying passers-by that an application to develop land has been submitted to the Authority and giving details of the application;
- (d) invite comments and representations on the application to be submitted to the Authority in writing within twenty-eight days of the publication or provision of the details of the application or of the affixing of the notice on the land, as the case may be.

(2) Without restricting the generality of subsection (1), the notice referred to in that subsection shall be served by the Chief Planner in respect of any application

- (a) for permission to carry out development of a listed site, or for consent to carry out works which will demolish, alter, or add to, in whole or in part a listed building or, destroy, damage, remove or disturb the features of special interest of a listed site, as the case may be, or to carry out similar development or works to a building or site to which an interim preservation order or a preservation order applies;
- (b) for permission to develop land in an environmental protection area;

- (c) for which it is determined by the Authority that environmental impact assessment is required;
- (d) for permission to carry out mining operations or mineral processing;
- (e) for permission to deposit, store or otherwise deal with toxic or hazardous waste;
- (f) for permission to develop any manufacturing process which will involve either directly or as waste, the production of toxic or other hazardous substances;
- (g) for permission to carry out development for keeping of poultry, pigs , goats or other livestock;
- (h) for permission to carry out development of the purposes of an auto-repair shop, garage, or gas-station;
- (i) for permission to carry out development for the purposes of a slaughter house, premises for the plucking of poultry or the processing of fish;
- (j) for permission to carry out development for the purposes of a casino, gambling hall, bingo hall, recreation club, music hall, dance hall, discotheque, theatre, cinema or sports hall, premises for the sale and consumption of intoxicating liquor, or premises for the sale of food.

(3) The Authority shall take into account any report, representation or comment submitted or made to it under this section.

(4) The Authority shall not determine an application for development permission falling within subsection (2), or otherwise prescribed, until all comments and representations received within the period specified in subsection (1) (d) have been considered.

Environmental
impact
assessment.
Schedule 3

26. (1) Unless the Authority otherwise determines, environmental impact assessment shall be required in respect of any application for development permission to which Schedule 3 applies.

(2) The Authority may require environmental impact assessment of any development, other than a development set out in Schedule 3, where it is of the opinion that significant adverse environmental impact could result.

(3) On receipt of an application for development permission, the Authority shall determine whether environmental impact assessment of the proposal is required having regard to

- (a) the nature of the development activity proposed;
- (b) the geographical extent, scale and location of the proposed development;
- (c) the extent and significance of the changes to the environment likely to be caused by the proposed development;
- (d) the extent of general knowledge about the nature of the proposed development and its likely impact on the environment;
- (e) any development plan for the area;
- (f) any other matter as may be prescribed.

(4) Where it determines that environmental impact assessment is required, the Authority shall, within thirty days of the receipt of an application for development permission, issue a written notice notifying the applicant or the person responsible that environmental impact assessment is required of the development proposal and setting out the terms of reference for the preparation of an environmental impact statement on the development proposal and the period within which the environmental impact statement shall be submitted to the Authority.

(5) Where the Authority issues a notice under subsection (4), the applicant, or as the case may be, the person responsible, shall submit to the Authority an environmental impact statement on the development proposal in such form and containing such information as may be prescribed, and the applicant or, as the case may be, the person responsible, shall comply with this requirement.

(6) In this section, “person responsible” includes any person at whose order or on whose behalf the development will be or is being undertaken.

(7) The Minister may make regulations prescribing the qualifications, skills, knowledge and experience which shall be possessed by persons preparing environmental impact statements and may cause a register of persons so qualified to be compiled and a person who is on such a register shall be deemed to be approved by the Minister to prepare environmental impact statements in respect of the Territory.

Consultation on applications.

27. (1) The Chief Planner may consult in writing any public officer or other person who appears to him to be able to provide information relevant to an application for development permission to enable the Chief Planner to advise the Minister or the Authority, as appropriate, with regard to the application and shall consult any authority as may be prescribed under section 80.

(2) An authority which receives a request in writing from the Chief Planner for its comments on an application for development permission shall reply to that request within twenty-eight days or such other period as may be agreed between the Chief Planner and the authority.

(3) Where the Chief Planner has not received a reply to a written request for comments on an application from an authority within the time specified or agreed, he may proceed to determine the application notwithstanding the absence of a reply from that authority .

(4) The Authority shall not determine the application for development permission until all comments requested and received in respect of the proposed development have been considered.

(5) Any public officer or other person such as is mentioned in subsection (1), or his representative, may be invited by the Authority to attend and speak at any meeting called to consider the relevant application.

Material planning considerations with respect to applications.

28. (1) In considering an application for development permission, the Authority shall give principal consideration to

- (a) an approved National Physical Development Plan for the whole Territory, if any;
- (b) an approved development plan applicable to the land to which the application relates, if any.

(2) In addition to the considerations referred to in subsection (1), the Authority shall take into account any of the following matters as appear to it to be relevant in order to make a proper decision on an application:

- (a) representations made with regard to the application or the probable effect of the proposed development;
- (b) views expressed by any authority consulted under section 27;
- (c) any statement of policy issued by the Minister;
- (d) any information, study or report provided by the applicant in response to a notice served under section 23;

- (e) the likely impact of the proposed development on the natural or built environment;
- (f) the likely impact of the proposed development on public health and safety;
- (g) the susceptibility of the land to any natural or man-made hazards;
- (h) the social and economic costs and benefits likely to accrue to the community as a result of the proposed development;
- (i) policies on the use of land for agricultural purposes which have been issued by the Minister responsible for agriculture;
- (j) the suitability of land for the purposes intended;
- (k) the quality and economy of the proposed development and of its design;
- (l) the proposals made in the application for the means of access to, from and within the development, and for the provision of utility services to development;
- (m) the availability of water, electricity and waste disposal services;
- (n) road traffic consideration;
- (o) the area of land required for the proposed development;
- (p) such other planning matters as the Chief Planner may advise as being relevant to the determination for the particular application.

(3) Advice given to the Authority by the Chief Planner under this section shall be in the form of a report on each application, summarising any relevant factors recommended to be taken into account in respect of that application and the suggested appropriate decision to be given on the application.

(4) The Authority may, in addition to the matters set out in subsection (2), take into account any other material planning considerations notwithstanding that the Chief Planner has not advised the Authority on such planning considerations.

Determination of applications.

29. (1) The Authority may

- (a) grant development permission unconditionally;
- (b) grant development permission subject to such conditions as it thinks fit; or
- (c) refuse development permission.

(2) Within sixty days of receipt of an application for development permission the Chief Planner shall notify the applicant in writing, of the determination of the application, providing in the case of paragraph (b) or (c) of subsection (1)

- (a) a statement of the reasons for the determination;
- (b) information on the applicant's right of appeal under Part VIII.

(3) Where no decision has been made within sixty days of receipt of the application the Chief Planner shall notify the applicant of the progress made on the application and the extended date by which the decision is likely to be made.

(4) The extended date referred to in subsection (3) shall not be longer than a period of thirty days from the expiration of the sixty-day period referred to in that subsection.

(5) Where no decision has been made by the extended date referred to in subsection (3), the application shall be referred to the Minister and shall be treated in the same manner as an application referred to the Minister under section 38.

Applications inconsistent with development plan.

30. (1) If it appears to the Authority that an application is inconsistent in some material respect with an approved development applicable to the area in which the development is proposed, but nevertheless it considers that permission should be granted, the Authority shall

- (a) publish a notice in the *Gazette* and at least one local newspaper circulating in the Territory notifying the public
 - (i) that an application which departs from an approved development plan has been received;
 - (ii) of the places where the application may be inspected by persons interested; and

- (iii) that a public inquiry to examine the application will be held at a place specified in the notice, and at a time not being less than twenty-eight days from the date of the notice;
- (b) invite comments and representations on any such application to be submitted to the Authority either orally at the public inquiry or in writing within a specified period not being less than twenty-eight days from the date of the notice; and
- (c) take into account any report, representation, or comment submitted to it under this section, including the findings of the public inquiry held under this section.

(2) Where the Authority has concluded its consideration of the comments received and the findings of the public inquiry held in respect of an application, it shall advise the Minister of its findings and recommendations thereon, giving its reasons therefor in writing, and shall determine the application in accordance with the views of the Minister, which shall be given to the Authority in writing together with the reasons therefor.

31. (1) Without prejudice to the generality of section 29 (1) (b), the Authority may impose conditions on a grant of development permission which relate to any matter referred to in section 28 or which arrange for

Conditions of development permission.

- (a) regulating the manner in which the development authorised by the permission is to be carried out, including
 - (i) the timing and phasing of the implementation of the development;
 - (ii) the dimensions, design, structure, or external appearance of any buildings or the number or disposition of any buildings on the land which is the subject of the development permission;
 - (iii) the location, design or materials of construction of any means of access from the development to a public road;
 - (iv) the disposal of sewage, effluent or trade waste from the development;
 - (v) the supply of water to the development;

- (vi) the landscaping of the development;
 - (vii) the preservation of trees, vegetation or other natural features of the land where the development is to take place;
 - (viii) the preservation of any buildings or sites of importance to the cultural heritage of the Territory;
 - (ix) the reservation of any part of the land on which the development is to take place for roads, open space or other public or communal purposes reasonably incidental to the development;
 - (x) the nature of the materials to be used in any building or engineering operations in the development;
 - (xi) the routing of any vehicles or vessels to be used for the purpose of or in connection with the development;
 - (xii) the removal of materials or waste from such land or adjacent land used for the purpose and the carrying out of any works required for the reinstatement, restoration, or preservation of the land and the environment when the development is completed;
- (b) regulating the development or use of any land under the ownership or control of the applicant (whether or not it is land in respect of which the application was made, provided that where such land is not included in land which is the subject of the development permission it shall be adjacent to the land which is the subject of the development permission) including the discontinuance of any existing uses of the land or requiring the carrying out of works including the demolition of any buildings on such land or the removal of plant and machinery from the land so far as appears to the Authority expedient for the purposes of or in connection with the development authorised by the permission;
- (c) requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised at the expiration of a specified period, and the carrying out of any works required for the reinstatement of the land at the expiration of that period;

- (d) regulating the use which may be made of any building or use of land authorised by the development permission notwithstanding an order made under section 20 (2);
- (e) controlling or prohibiting the display on the land comprising the development, of any advertisement, including the size, shape, colour or location of any such advertisement;
- (f) requiring continuous environmental monitoring of the development authorized by the development permission;
- (g) regulating the hours of work during which the development authorised by the permission may operate;
- (h) the retention of any existing development or use of land to which the application relates, for a specified period;
- (i) the payment of money or money's worth or the conveyance of land to the Crown in lieu of works required under the development permission;
- (j) the entering into a performance bond by the applicant with the Minister to guarantee the implementation of any of the conditions subject to which the grant of development permission is made.

(2) A condition may, in the case of development for commercial purposes, be imposed under this section requiring the developer to carry out any works or other development on land (including public roads) in the ownership or under the control of the Crown, even if the effect of the imposition of such a condition would be to require the developer to carry out works or development at his own cost for the public benefit.

(3) A development permission granted subject to any such condition as is referred to in subsection (1) (c) is in this Act referred to as “permission granted for a limited period only”.

(4) The Authority shall not, by virtue of anything said in or following discussions or negotiations which may have taken place between any proposed developer and the Chief Planner or any person acting on his behalf as to any proposed or contemplated development, be bound to grant development permission in relation to any such development nor, if development permission is granted in respect of any such development, shall anything so said in any way preclude the Authority from granting it subject to any conditions that the Authority may consider proper.

(5) No claim to compensation or damages shall lie against the Government, the Minister, the Authority, the Chief Planner or other public officer in respect of, or arising out of, or in connection with, any refusal of permission for development in relation to which subsection (4) applies, nor shall any such claim lie in respect of, or arising out of, or in connection with, the grant of any such permission subject to such conditions as the Minister or the Authority considers proper.

(6) No claim to compensation or damages shall lie against the Government, the Minister, the Authority, the Chief Planner or any other public officer in connection with or arising out of the grant by the Authority of development permission subject to conditions.

Development
agreements.

32. (1) On the advice of the Authority and the Chief Planner, and with the agreement of any other Government authority who may be a party to the agreement, the Minister may enter into an agreement containing such terms and conditions as he thinks fit with an applicant for development permission or with any other person interested in that land for the purpose of regulating the development of the land proposed by the application.

(2) Without restricting the generality of subsection (1), terms and conditions may be included in an agreement

- (a) covering any matter in respect of which conditions may be imposed on a grant of development permission;
- (b) providing for contribution (whether of works, money or land) by the applicant towards the provision of services, facilities (including their future maintenance) and amenities in the area in which the proposed development is to be carried out;
- (c) for the provision of security by the applicant for ensuring due compliance with the agreement.

(3) An agreement made under this section with any person interested in land may be enforced by the Minister against persons deriving title under that person in respect of that land as if the Minister were possessed of adjacent land and as if the agreement had been expressed to be made for the benefit of such land.

(4) An agreement made under this section shall not be entered into except by an instrument executed as a deed.

Performance
bonds.

33. (1) Where the Authority requires in a condition imposed on a grant of development permission under section 31, or where the Minister requires as a term of an agreement made under section 32, that an applicant or, as the case may

be, a person with whom the Minister makes an agreement, provide a bond as security for the performance of any condition subject to which permission to develop land was granted or for the performance of the agreement, the Authority or the Minister, as the case may be, shall require a charge on the land to which the permission or agreement relates as appears expedient and proper to ensure that the bond is enforced.

(2) The Minister may enforce a bond entered into by an applicant for permission to develop land under section 31, or by a person with whom the Minister has made an agreement under section 32, by all appropriate legal and equitable remedies.

(3) The charge provided for by subsection (1) shall be registered on the land Register under the Registered Land Ordinance. Cap. 229

(4) A charge securing the performance of conditions of a development permission or of the terms of an agreement under section 32 may not be discharged prior to the performance of the conditions of the permission or the terms of the agreement except by agreement made by deed between the Minister and the person or persons against whom it is enforceable.

(5) A person against whom a performance bond is enforceable may, when the performance is satisfied, apply to the Authority for the performance bond to be released.

(6) Where an application is made to the Authority under subsection (5), the Authority may determine

- (a) that the performance bond shall continue to have effect without modification;
- (b) that the performance bond shall continue to have effect with modifications; or
- (c) that the performance bond shall be released.

(7) On receipt from the Authority of a statutory declaration in the prescribed form that the property has been released from the charge, the Registrar of Lands shall enter a memorandum of satisfaction and release on the land Register, and thereupon the charge shall be deemed to have ceased accordingly.

(8) Where the Registrar of Lands enters a memorandum of satisfaction in whole, he shall furnish the person against whom it was enforceable with a copy of it.

Lapse of development permission.

34. (1) An outline development permission shall be granted subject to a condition that if detailed development permission covering the same development has not been applied for within one year of the grant of outline development permission, or such longer period as may be specified in the grant of outline development permission or as may be authorised by the Authority in any particular case, that outline development permission shall lapse and cease to have any force or effect.

(2) Where in accordance with the provisions of this section an outline development permission has expired, an application for detailed development permission in respect of that expired outline development permission may be refused without any liability to pay compensation.

(3) A detailed development permission may be granted subject to a condition that it shall lapse and cease to have effect if the development to which it relates has not been completed within three years of the grant of detailed development permission, or such longer period as may be authorised by the Authority in any particular case.

(4) Detailed development permission may provide for different parts of the development to commence at different times, and in such a case the provisions of subsection (3) shall apply to those separate parts of the development as if a grant of detailed development permission was made for each separate part or stage of the development.

(5) The Authority may serve written notice on a person who has commenced, but has not completed, within the time prescribed therefore, the development for which he has obtained permission, requiring that person to complete the development within the time specified in such notice, and stating that if the development is not completed within that period, the development permission will cease to have effect after the expiration of a further period specified in the notice.

(6) Upon expiration of the further period specified in a notice served under subsection (5) the grant of development permission shall cease to be valid or to have any effect and any further development or work carried out with respect to that development permission shall be a breach of planning control.

Supplementary provisions as to grant of development permission.

35. (1) Without prejudice to the provisions of this Part as to the lapse or modification or revocation of any grant of development permission such grant shall, except in so far as the grant otherwise provides, ensure for the benefit of the land concerned and of all persons for the time being entitled to an interest in the land.

(2) Where a grant of development permission is made for a limited period only in accordance with section 31 (1) (c), at the expiration of that period,

the use of the land for the purpose for which it was used before the grant of such permission for a limited period, may be resumed without express grant of development permission only if that use was a lawful use.

(3) Where a grant of development permission is made for the erection of a building, the grant shall specify the purposes for which the building may be used.

(4) Grant of development permission may include permission, with or without conditions, to retain on land buildings or works constructed or carried out thereon before the date of the application or for the continuance of any use of land instituted before that date (whether without permission granted under this Part or in accordance with permission granted for a limited period only).

(5) A condition in a permission granted under subsection (4), shall require the applicant to pay a sum of money to the Accountant General (to be paid into the Consolidated Fund) in respect of the buildings or works constructed or carried out before the date of the application or in respect of any use of land instituted before that date.

36. (1) The Chief Planner, acting on behalf of the Authority, may approve in writing a variation to a grant of development permission which he considers to be minor, in that it does not alter or affect the terms and conditions of the grant of development permission in any material respect, and in such event, the Chief Planner shall inform the Authority of the action which he has taken in that particular case.

Minor variation of development permission.

(2) A request for approval of variations to grant of development permission shall be submitted to the Chief Planner for his decision.

(3) The approval of a minor variation shall be recorded in the register of planning decisions.

(4) Where the Chief Planner is requested to approve a variation under this section but is of the opinion that the variation proposed is not a minor one, he shall refer the request to the Authority for determination and shall inform the applicant of that fact in writing.

37. (1) Subject to the provisions of this section, if it appears to the Authority, after consideration of such advice as may be given by the Chief Planner, that it is desirable that any grant of development permission ought to be modified or revoked, the Authority may, with the consent of the Minister, by written notice to the person entitled to the benefit of the permission, revoke or modify the development permission to such extent as it considers desirable.

Modification or revocation of development permission.

(2) The power conferred on the Authority by this section may be exercised

- (a) where the grant of permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) where the grant relates only to the making of a material change in the use of a building or other land, at any time before the change of use has taken place;
- (c) where the grant relates only to a sub-division of land at any time before the registration of the deed of sub-division under the Registered Land Ordinance has taken place.

Cap. 229

(3) The modification or revocation of a grant of development permission for the carrying out of building or other operations shall not affect so much of the operations as has been previously carried out.

(4) A notice of the modification or revocation of a grant of development permission under this section shall include

- (a) a statement of the reasons for the modification or revocation;
- (b) such directions as the Authority considers necessary for the bringing to an end of any development to which the notice relates;
- (c) information as to any claim for compensation that may arise in consequence of the modification or revocation, and the procedure for making any claim for compensation;
- (d) information as to the right of appeal under Part VIII; and
- (e) such other matters as may be prescribed.

(5) Upon the service of a notice under subsection (1), to the extent to which the modification or revocation so requires, the grant of the development permission concerned shall cease to be valid or to have effect, and any further development or work carried out contrary to such notice shall be a breach of planning control.

(6) Notwithstanding subsection (5), the Authority, after considering any representations made in respect of such a notice, may at any time cancel or withdraw that notice.

(7) An appeal shall lie, under Part VIII against the issue of a notice by the Authority under subsection (1), or against the refusal of the Authority to cancel or withdraw such notice under subsection (6).

(8) Pending the determination of any such appeal referred to in subsection (7), the notice concerned shall be deemed to be suspended in its operation, save that any further development or work carried out shall be a breach of planning control.

38. (1) The Minister may direct the Chief Planner to refer to him

Reference of application to Minister.

(a) any application for development permission;

(b) all such applications of any class specified by the Executive Council to be so referred.

(2) The Chief Planner shall refer to the Minister for his decision any application for development permission to which a direction made under subsection (1) relates.

(3) Where an application is referred to the Minister under this section, the provisions of this Part shall apply with necessary modifications as they apply to any application for development permission which falls to be determined by the Authority.

(4) In determining an application referred to him under this section, the Minister may consult with any body or person he sees fit.

(5) A determination of the Minister under this section shall be on such terms and conditions as the Minister may determine and may be accompanied by a written statement of the reasons for the determination of the application.

(6) The decision of the Minister on any application referred to him under this section shall be final.

(7) The Executive Council shall, by Order in the *Gazette* prescribe the types of developments to which this section applies.

PART V

COMPLIANCE

39. (1) Where it appears to the Authority that a breach of planning control has taken place, that is to say,

Compliance notice.

- (a) that any development of land has been carried out without the grant of development permission required under Part IV, or
- (b) that any conditions or limitations subject to which development permission was granted, have not been complied with,

the Authority may, if it considers it expedient to do so having regard to any development plan applicable to the land where the breach of planning control is alleged to have taken place, and to other material planning considerations such as are set out in sections 28 and 40, serve a compliance notice in accordance with subsection (2) requiring the breach to be remedied.

(2) A copy of the compliance notice shall be served on the owner and on the occupier of the land to which it relates, and may be served on

- (a) any other person having a material interest in the land, that is to say, an interest which in the opinion of the Authority is materially affected by the notice;
- (b) the authorised representatives of the persons referred to in paragraph (a); and
- (c) any other person carrying on, or who is in control of a person carrying on, activities on the land which are alleged to constitute the breach of planning control.

(3) The fact that the Authority fails to serve a compliance notice on any one or other of the persons mentioned in subsection (2) shall not invalidate any action or proceedings against any other of such persons.

(4) A compliance notice shall take effect on the date specified in it as the date on which it will take effect (in this Part referred to as “the specified date”).

(5) A copy of a compliance notice shall be served not later than fourteen days from the date of issue and not less than twenty-eight days before the specified date.

(6) A compliance notice shall state clearly

- (a) which breaches of planning control referred to in paragraphs (a) and (b) of subsection (1) are alleged to have taken place;
- (b) the particulars of development which appear to constitute the breach;

- (c) the person or persons on whom it is served in accordance with subsection (2);
- (d) the steps which the Authority requires to be taken to remedy the breach and the time within which they must be taken;
- (e) the powers of the Authority, in case of default in compliance with the notice, to enter upon the land and take the steps specified in accordance with paragraph (d);
- (f) the penalties which may be incurred if the steps specified in accordance with paragraph (d) are not taken; and
- (g) the opportunities which are available to the person or persons on whom the copy of the compliance notice was served, to appeal the notice

(7) The steps which the Authority may require to be taken by a person on whom a compliance notice has been served, to remedy the breach to which the compliance notice relates, may be one or more of the following

- (a) to submit an application for development permission for retention of the unauthorised development;
- (b) to cease any specified operations on the land which are alleged to be in breach of planning control;
- (c) to restore the land as near as may be to the appearance and state that it had before the breach took place, including replacement of soil or water, planting or replanting of trees and other vegetation;
- (d) to comply with any limitation or condition in a grant of development permission;
- (e) to demolish, remove or modify a building or works in whole or in part;
- (f) to carry out any building or other operations on the land to which the notice relates;
- (g) to discontinue any use of land or buildings;
- (h) to remove anything placed on the land without development permission;

- (i) to remove any advertisement or to display it in the place permitted by a grant of development permission;
- (j) to remove any unauthorised marks of identification in, on, or over land which have as their purpose the identification of a boundary of a sub-division alleged to constitute a breach of planning control;
- (k) to remove or prevent any damage to the land or amenities or the area which has been or is likely to be caused by the development which constitutes the breach of planning control;
- (l) to do or to refrain from doing or to take or to refrain from taking any actions similar to those listed in paragraphs (a) to (k) which would assist in the ending of the unauthorised development.

(8) The Authority may

- (a) withdraw a compliance notice (without prejudice to its power to issue another one in respect of the same breach of planning control) and shall if it does so, serve a notice of withdrawal on every person who was served with a copy of the compliance notice and the compliance notice shall cease to have effect as from its date of withdrawal;
- (b) modify a compliance notice and if it does so, the provisions of this section shall apply to any modification of a compliance notice made under this section as they apply to the compliance notice.

(9) The powers conferred by subsection (8) may be exercised whether or not the notice has taken effect.

Material
planning
considerations
with respect to
compliance
notices.

40. In considering whether or not a compliance notice shall be served and the terms of any such notice, the Authority shall, in addition to the matters specified in section 28, take into account such of the following matters as may be relevant in the circumstances of the particular case

- (a) any development plan applicable to the land where the breach of planning control is alleged to have taken place;
- (b) any statement of policy issued by the Minister which is relevant to the development;

- (c) the nature and extent of the development which constitutes the alleged breach;
- (d) the extent or likely extent of damage to the natural or built environment;
- (e) the extent to which the development constitutes a nuisance or a threat to public health and safety;
- (f) any objections and representations made by persons in the neighbourhood;
- (g) the length of time the breach of control has continued;
- (h) the benefits to the community (if any) resulting from the development;
- (i) any possible alternative measures which could be taken to remedy the unauthorised development;
- (j) the effect of the development on any public works;
- (k) whether it is necessary, desirable and convenient having regard to the public interest to serve or confirm a compliance notice;
- (l) any other material planning considerations.

41. (1) Where it appears to the Chief Planner that a breach of planning control has taken place, he may serve on the person or persons referred to in subsection (2) of section 39 a written notice requiring that

Notice to apply for development permission.

- (a) the development cease forthwith; and
- (b) an application for development permission be submitted in respect of the development.

(2) The Chief Planner shall send a copy of a notice served under subsection (1) to the Authority within three days of its service.

42. (1) Any person on whom a compliance notice is served may, within the period specified in subsection (4) of section 39, apply to the Authority for development permission in accordance with Part IV.

Permission for retention of buildings or continuance of use.

- (a) for the retention on the land of any building or works to which the compliance notice relates; or
- (b) for the continuance of any use of the land to which the compliance notice relates.

(2) Where the Authority grants development permission in respect of an application made in conformity with a notice issued under section 41, the Authority may grant development permission with retrospective effect to the date when the development commenced, or such other date as the Authority considers to be appropriate in the particular case.

Suspension of
effect of
compliance
notice.

43. Where, before the specified date,

- (a) an application is made to the Authority for permission for the retention on the land of any buildings or works to which the compliance notice relates, or for the continuance of any use of the land to which the compliance notice relates, or
- (b) notice of an appeal is given under section 66 by a person on whom the compliance notice was served.

the compliance notice shall be suspended and shall not take effect pending the determination of the application or appeal.

Stop order.

44.(1) Where the Authority considers it expedient in the interests of public health, public safety or the integrity of the environment that a breach of planning control should cease before the expiry of the period for compliance with a compliance notice, the Authority may, at the same time that they serve a copy of the compliance notice or afterwards, being at any time before the specified date, serve an order to stop the breach.

(2) A stop order shall refer to, and have annexed to it, a copy of the compliance notice to which it relates and shall prohibit any person on whom the stop order is served from carrying out or continuing any specified activities on the land, being activities either alleged in the compliance notice to constitute a breach of planning control or so closely associated therewith as to constitute substantially the same activities, and shall direct that person to immediately cease and desist from the activities prohibited.

(3) The activities which may be the subject of a stop order shall include the depositing of refuse or waste materials on land or causing environmental damage or activities affecting the health or safety of persons where such activities constitute a breach of planning control alleged in the compliance notice.

(4) A stop order may be served by the Authority on any person who appears to it to have an interest in the land or to be concerned with the carrying out or the continuance of any activities thereon.

(5) A stop order shall

- (a) take effect from the date of its service;
- (b) without prejudice to subsection (7) cease to have effect when
 - (i) the compliance notice to which it relates is withdrawn or quashed;
 - (ii) the compliance period expires;
 - (iii) notice of the withdrawal of the stop order is served under subsection (7).

(6) A stop order shall not be invalid by reason that the compliance notice to which it relates was not served as required by section 39 if it is shown that the Authority took all such steps as were reasonably practicable to effect proper service.

(7) The Authority may at any time withdraw a stop order (without prejudice to their power to serve another) by serving notice to that effect on the person on whom the stop order was served and the stop order shall cease to have effect as from the date of its withdrawal.

(8) It is declared that

- (a) the Authority need not provide any person with an opportunity to make representation prior to the making of a stop order;
- (b) there shall be no right of appeal to the Appeals Tribunal against the making of a stop order;
- (c) an appeal against the compliance notice to which it relates shall not suspend the operation of a stop order;
- (d) a person on whom a stop order is served may appeal to the Court against the making of the stop order within twenty-eight days of the service of the order and the Court may confirm the stop order with or without modification, or quash it in whole or in part;

- (e) the making of an appeal referred to in paragraph (d) shall not suspend the operation of a stop order, and the stop order shall remain in full force and effect pending the determination of the appeal;
- (f) no compensation shall be payable in respect of the prohibition in a stop order of any activity which at any time when the order is in force, constitutes, or contributes to, a breach of planning control.

Injunctions.

45. Whether or not the Authority has exercised or is proposing to exercise any other remedy under this Act, the Minister may in any case that he thinks fit, refer the case to the Attorney General who may apply to the Court

- (a) for an injunction to restrain any violation of the provisions of this Act;
- (b) for an order to enforce any compliance notice or stop order issued under this Act.

Action by
Authority for
non-compliance
with compliance
notice.

46. (1) If a person on whom a compliance notice was served, fails or refuses to take the steps required by the compliance notice to remedy the breach of planning control within the period specified in the compliance notice, the Authority may authorise the Chief Planner to enter the land with such assistance as may be necessary and take those steps in respect of the unauthorized development to enforce the compliance notice as it may see fit.

(2) Where the Authority has exercised any power under subsection (1), the Minister may recover as a civil debt, from the person on whom the notice has been served, those expenses reasonably incurred by the Authority in the exercise of such power.

(3) If the person referred to in subsection (2), having been entitled to appeal under section 66, has failed to make such an appeal he shall not be entitled in any proceedings to dispute the validity of the action taken by the Authority or the Chief Planner upon any ground that could have been entertained on such an appeal.

(4) Nothing in this Part shall be construed as requiring development permission to be obtained for the resumption of a previous use of the land to which the compliance notice relates, being a purpose for which it could lawfully have been used if the development in respect of which a compliance notice was served under section 39 had not been carried out.

47. (1) Compliance with the requirements of a compliance notice shall not discharge the compliance notice.

Continuing
operation of
compliance
notice.

(2) Without restricting the generality of subsection (1), where development is carried out by way of reinstating or restoring buildings or works that have been demolished or altered in accordance with a compliance notice, the compliance notice shall, notwithstanding that its terms are no longer wholly apt for the purpose, be deemed to apply in relation to any buildings or works so reinstated or restored as it applied in relation to such buildings or works before they were demolished or altered, and sections 46 (1), (2) and (3) shall apply accordingly.

(3) Without affecting the operation of section 46, a person who carries out any development on land by way of reinstating or restoring buildings or works that have been demolished or altered in accordance with a compliance notice commits an offence.

PART VI

ENVIRONMENTAL PROTECTION

48. (1) In this Part, “building or site of special interest” means

Compilation of a
list in respect of
buildings or sites
which are of
special interest.

- (a) any building,
- (b) part of a building,
- (c) group of buildings, or
- (d) site,

which appears, or which is determined in accordance with the provisions of this Part, to be of special architectural, cultural, historic, or archaeological interest.

(2) The Authority may, and if so directed by the Minister shall, cause a survey of the whole or any part of the Territory to be made with a view to determining whether, having regard to the importance of preserving the architectural, cultural, historic and archaeological heritage of the Territory any building, or part thereof, or group of buildings, or site ought to be preserved or protected, as hereinafter provided.

(3) For the purposes of this Part, a group of buildings may be protected if by reason of their proximity and relationship to each other, it is considered desirable that the group as a whole should be preserved.

(4) The Authority shall compile, or cause to be compiled, or adopt the compilation of a list of buildings or sites of special interest in any area, and may amend, add to or delete from any list so compiled and submit that list or amended list to the Minister for his approval.

(5) The list shall identify the buildings or sites of special interest by reference to a map and shall include a description of the special features of architectural, cultural, historic or archaeological interest.

(6) Prior to compiling, adopting or amending any list, the Authority shall consult with the Minister responsible for national heritage and with the National Parks Trust and such other persons or bodies of persons as appear to it appropriate as having special knowledge of, or interest in, buildings or sites of special interest.

Publication of
list.

49. (1) As soon as may be after the compilation of a list or the amendment of a list, and before submitting the list for the approval of the Minister, the Authority shall

- (a) publish a notice in the *Gazette* and in at least one local newspaper circulating in the Territory, announcing the compilation of the list or amendment of the list and of the place or places where the list may be inspected and the notice shall invite representations to be made to the Authority within twenty-eight days in respect of the matters contained therein;
- (b) serve notice on every owner and occupier of a building or site which has been placed on or excluded from a list of buildings or sites of special interest informing them of that fact.

(2) Without prejudice to the provisions of Part IV with respect to the grant of development permission but subject to this section, so long as a building or site (not being a building or site to which a preservation order applies) is included in a list or amended list under this section, no person shall

- (a) execute or cause or permit to be executed any operations or works for the demolition, alteration or extension of the building, in any manner which would materially affect its character as a building of special interest, or
- (b) execute or cause or permit to be executed any operations or works in, on, under or over the site in any manner which would destroy, damage, remove or disturb the features of the site which are of special interest or otherwise materially affect its character as a site of special interest,

unless no less than sixty days prior to the execution of the works, notification of the proposed works has been given in writing to the Authority.

(3) Nothing in subsection (2) shall render unlawful the execution of any works which are urgently required in the interests of safety or health, or for the preservation of the building, site, or neighbouring property, provided that notice in writing thereof has been given to the Authority as soon as may be after the necessity for the work arises.

50. (1) The Authority shall consider all representations received within the period specified in section 49 (1) (a) with respect to a list or the amendment of a list, and shall submit to the minister

Approval of a list.

- (a) a summary of the representations received;
- (b) the recommendations of the Authority on the representations; and
- (c) the Authority's views of the items to be included in or excluded from the list, as the case may be.

(2) The Minister, having considered the matters set out in subsection (1), shall determine the items to be included in the list.

(3) As soon as may be after the approval of a list under this section, the Authority on being informed of that fact by the Minister, shall serve a notice in the prescribed form on every owner and occupier of the buildings or sites affected, that the buildings or sites have been included in or excluded from the list, as the case may be.

51. (1) Without prejudice to the provisions of Part IV relating to applications for grant of development permission, no person shall, without the prior written consent of the Authority,

Listed building consent or listed site consent.

- (a) execute or cause or permit to be executed any works for the demolition, alteration or extension of a listed building in any manner which would materially affect its character as a building of special interest;
- (b) execute or cause or permit to be executed any works in, on, under or over a listed site in any manner which would destroy, damage, remove or disturb the features of the site that are of special interest or would otherwise materially affect its character as a site of special interest.

(2) Nothing in subsection (1) shall render unlawful the execution of works which were urgently required in the interests of safety, health or the preservation of the building or site, provided that written notice of the need for the works had been given to the Authority as soon as reasonably practicable.

(3) An application for the consent of the Authority to execute works which would materially affect the character of a listed building or listed site as a building of special interest, or as a site of special interest, as the case may be, shall be made in the manner prescribed.

(4) Works which would materially affect the character of a listed building or listed site as a building of special interest or as a site of special interest, are authorized if

- (a) prior written consent for their execution has been granted by the Authority;
- (b) the works are executed in accordance with the terms of the consent and of any conditions which may be attached to it.

(5) In considering an application for consent under subsection (3) the Authority shall have particular regard to the desirability of preserving the building or site and any features of special interest which it possesses.

(6) There shall be a right of appeal under section 66 against the refusal of consent to carry out works on a listed building or in, on, under, or over a listed site, but where such an appeal is made, the refusal of listed building consent or listed site consent remains in full force and effect notwithstanding the making of the appeal, pending the determination of the appeal.

Interim
preservation
orders in respect
of buildings or
sites.

52. (1) Where it appears to the Authority on its own initiative, or on the representation made to the Authority or to the Minister by a person or body of persons, that it is desirable having regard to the importance of preserving the architectural, cultural, historic or archaeological heritage of the Territory, to make provision for the preservation of any building, group of buildings, or site of special architectural, cultural, historic or archaeological interest in the Territory, (not being a building, group of buildings or site listed under section 48) the Authority may for that purpose make an interim preservation order restricting

- (a) the demolition, alteration or extension of a building, or group of buildings; or
- (b) the destruction, damage, removal or disturbance of the features of a site that are of special interest.

(2) A copy of an interim preservation order shall

- (a) be served on every owner and occupier of the building, group of buildings, or site concerned;
- (b) be affixed in a prominent place on each building or site to which the order applies;
- (c) specify the building, group of buildings or site to which it relates;
- (d) state the effect of the interim order and when it comes into effect; and
- (e) invite the owners and occupiers and any other person with an interest in the building, group of buildings or site to make representations within twenty-eight days of the service or the affixing of the interim preservation order.

(3) An interim preservation order shall be in force for a period of ninety days and shall cease to have any effect at the termination of that period unless it is confirmed by the Minister before the termination of that period.

(4) Where an interim preservation order has been made in respect of a building, group of buildings, or site and while it is in force, any person who executes or causes or permits the execution of

- (a) works for the demolition, alteration or extension of that building or group of buildings,
- (b) works which would destroy, damage, remove or disturb the features of the site that are of special interest,
- (c) any other works other than essential repairs or maintenance on that building, group of buildings or in, on, under or over that site, without first obtaining permission from the Authority,

commits an offence.

(5) In considering whether to grant, with or without conditions, or to refuse consent for the works set out in subsection (4), in addition to any other matters which, under the provisions of this Act, it is required to take into account, the Authority shall have regard to

- (a) the matters mentioned in section 48 (3) and subsection (1) of this section;

- (b) the desirability of allowing such economic activity within the building, group of buildings or site as will facilitate its continued preservation and use;
- (c) the quality of architectural design of any proposed additions to, or new buildings within the cartilage of, the building, group of buildings or site.

(6) Notice of the service of an interim preservation order and of the opportunity for any member of the public to make written representations on, or objections to the interim preservation order within twenty-eight days of the date of the notice, shall be published in at least one local newspaper circulating in the Territory.

(7) After considering the representations of the owners and occupiers and any other representation made under subsection (6) and the comments of the Authority on any such representation, the Minister may confirm with or without modifications or cancel, the interim preservation order.

Preservation
orders in
respect of
buildings or
sites.

53. (1) An interim preservation order shall from the date of the confirmation, with or without modifications thereto, become a preservation order.

(2) Notice of the making of a preservation order shall be published in the *Gazette* and in at least one local newspaper circulating in the Territory.

(3) A preservation order shall

- (a) be served on every owner and occupier of the building, group of buildings or site to which it applies;
- (b) specify the building, group of buildings or site to which it applies;
- (c) state the effect of the order and when it comes into effect; and
- (d) inform the owner and occupier of the building, group of buildings or site of the opportunities for making an appeal against the order under section 66 (2) (f).

(4) Where an appeal is made against a preservation order, the order shall remain in full force and effect notwithstanding the making of the appeal.

(5) The provisions of section 52 (4) apply to a preservation order as they apply to an interim preservation order.

54. (1) Where the Authority, after consultation with the Minister responsible for the environment, is of the opinion that it is desirable for amenity, environmental, landscape, scientific or similar reasons that any plant or group or species of plants, ought to be preserved, the Authority may make a provisional plant preservation order or a plant preservation order with respect to such plant, group or species of plant. Plant preservation orders.

(2) A provisional plant preservation order shall be in force for a period of ninety days and shall cease to have any effect at the termination of that period unless it is confirmed by the Authority before the termination of that period.

(3) A person who without the permission, with or without conditions, of the Authority, cuts down, tops, lops, digs up or destroys the plant, group or species of plant, to which a provisional plant preservation order or a plant preservation order applies, commits an offence.

(4) No provisional plant preservation order or plant preservation order made under this section shall apply to the cutting down, topping or lopping of plants or trees that are dying or dead or have become dangerous, or the cutting down, topping or lopping of any plants or trees in compliance with any obligation imposed by or under any enactment or so far as may be necessary for the prevention or abatement of a nuisance.

(5) A copy of a provisional plant preservation order shall

- (a) be served on every owner and occupier of the land on which the plant, group or species of plants, to which the order applies is situated;
- (b) specify the plant, or group or species of plant, to which it applies;
- (c) define the position of the plant, group or species of plant, by reference to a map which shall be available for inspection at a place specified in the order;
- (d) state the effect of the provisional plant preservation order and when it comes into effect; and
- (e) inform the owner and occupier and any other person with an interest in the land on which the plant or group or species of plant, is situated, of the opportunities for making an appeal against the provisional plant preservation order under section 66 (2) (g).

(6) Where an appeal is made against a provisional plant preservation order or a plant preservation order, the order shall remain in full force and effect notwithstanding the making of the appeal.

(7) The Authority before determining whether to confirm the provisional plant preservation order shall take into consideration any appeal made in accordance with section 66 (2) (g).

(8) Notice of the confirmation of a provisional plant preservation order shall be published in the *Gazette* and in at least one local newspaper circulating in the Territory.

Amenity
orders.

55. (1) In any case in which the Authority considers that any land is

- (a) unsightly and injurious to the amenity of the area, and visible to persons using a public road or any other area to which the public has a right of access, or
- (b) likely to be or is offensive to persons residing in the immediate neighbourhood of such land, by reason of any waste, rubbish, derelict or abandoned machinery or articles or materials of any kind, or the dilapidated state of any structure or building thereon,

it may prepare and submit to the Minister a draft amenity order.

(2) An amenity order shall state clearly,

- (a) the land to which it applies, and the owner or occupier thereof;
- (b) any matter that is required to be cleared;
- (c) in the case of an order requiring clearance, the matter which must be destroyed, or the place, being an authorized place for the disposal of rubbish, to which it must be removed, as appropriate;
- (d) if screening is required to be carried out, the requirements to effect the screening;
- (e) in the case of a building, the manner in which the building is required to be repaired, painted or demolished, in whole or in part;

- (f) where the Authority is aware that the occupier of land to which an amenity order relates is not the owner, the action that is required to be taken by the occupier and the action to be taken by the owner;
- (g) the time, not being less than twenty-eight days from the date of service of the order upon the owner or occupier, for compliance with the order;
- (h) the opportunities for making an appeal against the order under section 66 (2) (h).

(3) A draft amenity order prepared by the Authority under subsection (1) shall be accompanied by a statement of the Authority in support of the proposed action.

(4) Where the order is approved by the Minister, copies shall be served on the owner or occupier of the land concerned, or if no such person can be found, may be served by affixing a copy of the order in a conspicuous place on the land concerned.

(5) If any person upon whom an amenity order is served fails to comply with the requirements of the order, within the time specified in that order or any extension thereof approved by the Authority, the Authority may arrange for the work to be carried out at the expense of the person who is in default, and the Minister may recover the cost of so doing as a civil debt from the person in default.

56. (1) Subject to this section, provision may be made by regulations for restricting or regulating the display of advertisements so far as appears to the Minister to be expedient in the interest of amenity or public safety, and without restricting the generality of the foregoing, any such regulations may provide

Control of advertisements.

- (a) for regulating the dimensions, appearance and position of advertisements that may be displayed, the sites on which the advertisements may be displayed, and the manner in which they may be affixed to land;
- (b) for the Minister to grant permission for the display of any class of advertisement specified in the regulations, either unconditionally or subject to such conditions or limitations as may be specified in the regulations, without the requirement for the making of an application for express grant of development permission;

- (c) for enabling the Authority to require the removal of any advertisement that is being displayed in contravention of the regulations, or the discontinuance of the use for the display of advertisements of any site that is being used for that purpose in contravention of the regulations, and for that purpose for applying any of the provisions of Part V with respect to compliance notices, subject to such adaptations and modifications as may be specified in the regulations;
- (d) for the constitution, for the purposes of the regulations, of such advisory panels as may be prescribed by the regulations, and for determining the manner in which the expenses of any such panels are to be defrayed.

(2) Regulations made under this section may be made so as to apply to advertisements that are being displayed on the date on which the regulations come into force, or to the use for the display of advertisements of any site that was being used for that purpose on that date.

(3) Regulations made under this section may provide for exempting therefrom

- (a) the continued display of any such advertisement as referred to in subsection (2), and
- (b) the continued use for the display of advertisements of any such site as referred to in subsection (2)

during such period as may be prescribed in that behalf, and different periods may be so prescribed for the purposes of different provisions of the regulations.

(4) Regulations made under this section may direct that any enactment affecting the display of advertisements in force on the day when the regulations made under this section come into operation, shall not apply to the display of advertisements in any area to which the regulations made under this section apply.

(5) Regulations made under this section may make different provisions with respect to different areas, and in particular, may make special provision

- (a) with respect to environmental protection areas;
- (b) with respect to areas defined for the purposes of the regulations as areas of special control, being areas which appear to the Minister to require special protection on the grounds of amenity.

(6) In exercising the powers conferred by this section the Minister shall,

- (a) in the interests of amenity, determine the suitability of sites for the display of advertisements having regard to any development plan applicable to the area and to the general characteristics of the locality including the presence of any feature of architectural, cultural, historic, archaeological, scientific or similar interest and the natural beauty of scenic value of the locality;
- (b) in the interest of public safety, have regard to the safety of persons who may use any road, dock, harbour or airfield and in particular shall consider whether any display of advertisements thereon is likely to hinder or obscure any road or traffic sign or any aid to navigation by air or water.

57. (1) Without prejudice to the generality of sections 56 and 79, the Authority may remove or obliterate any billboard, placard, poster, wall painting or other advertisement which in its opinion is displayed in contravention of the regulations.

Supplementary provisions as to advertisements.

(2) Every billboard, placard, poster, wall painting or other advertisement shall display legibly and prominently and identify at all times

- (a) the name of the person who displayed it or caused it to be displayed;
- (b) the date and permit number of the grant of development permission to use the building or other land for the purposes of the display of advertisement.

(3) Where a billboard, placard, poster, wall painting or other advertisement identifies the person who displayed it or caused it to be displayed, the Authority shall not exercise the power conferred by subsection (1) unless it has first given that person notice in writing that

- (a) in the opinion of the Authority it is displayed in contravention of the regulations;
- (b) the Authority requires him to remove or obliterate it within a period specified in the notice not being less than two days from the date of service of the notice;

- (c) that on the expiry of the period specified in the notice, if steps have not been taken to remove or obliterate it, the Authority intends to take those steps.

(4) Where the Authority has exercised the power conferred by subsection (1), the Minister may recover as a civil debt from the person on whom the notice was served, the expenses reasonably incurred by the Authority in the exercise of the power.

Environmental protection area order.

58. (1) Where the Minister is of the opinion that it is desirable to afford special protection to an area designated as an environmental protection area in a development plan on account of the matters set out in section 12 (3), he may by Order declare that area an environmental protection area.

(2) An Order made under subsection (1) may

- (a) prohibit any development within the area or any part thereof;
- (b) designate any part of the environmental protection area as being an area in which, subject to the grant of development permission, only certain development or classes of development may be permitted;
- (c) authorise the carrying out in the environmental protection area of such works and the doing on the land of such other things as may be expedient for the protection of the area as an environmental protection area;
- (d) provide for control over use of land within the environmental protection area for purposes of agriculture or forestry;
- (e) without prejudice to the provisions of Part IV, require that any person who proposes to undertake any activity or enterprise in the environmental protection area (not being an activity or an enterprise involving development) of a description or category as may be prescribed shall, not less than sixty days before commencing, notify the Authority of his proposals and furnish the Authority with such documents and information as it may require;
- (f) require that environmental impact assessment be undertaken with respect to any proposal to carry out in the environmental protection area any activity, enterprise, works or development referred to in paragraphs (b) to (e);

- (g) restrict or prohibit the entry into the area of any person or the movement of, or any activity carried out by, any person in the area.

59. (1) Where the Minister is of the opinion that it is desirable to afford special protection to any beach designated as an environmental protection area in a development plan on account of the matters set out in section 12 (3), he may by Order, declare that beach an environmental protection area.

Environmental protection area order for beaches.

(2) An Order made under subsection (1) may

- (a) provide for the preservation of any ponds or wetlands along that beach;
- (b) provide for the protection of the coral reef along that beach;
- (c) provide for any of the matters mentioned in section 58 (2) with any necessary amendments.

(3) Upon the declaration of a beach as an environmental protection area under this section, all permits issued under the Beach Protection Ordinance in relation to that beach shall cease to have effect and no permits shall be issued under that Ordinance in relation to that beach as long as the beach remains an environmental protection area.

Cap. 233

PART VII

COMPENSATION AND ACQUISITION

60. (1) No compensation shall be payable by the Authority or by the Government in consequence of any decision or order given by the Authority or by the Minister

Exclusion of compensation

- (a) in respect of the refusal of permission for any development which consists or includes the making of any material change in the use of any building or other land;
- (b) in respect of any decision on an application for permission to display an advertisement;
- (c) for the refusal of permission to develop land where one of the reasons is that the land is unsuitable on account of its liability to flooding or subsidence.

(2) Compensation shall not be payable in respect of the imposition, on the granting of permission to develop land, of any condition relating to

- (a) the density or disposition of buildings on such land;
- (b) the dimensions, design, structure or external appearance of any building or the materials to be used in its construction;
- (c) the manner in which any land is to be laid out for the purposes of the development, including the provision of facilities for the parking, loading, unloading or fuelling of vehicles on the land;
- (d) the location or design of any means of access to a highway or the material to be used in the construction thereof;
- (e) the use of any buildings or other land;
- (f) prohibiting or regulating the sale or sub-division of land;
- (g) prohibited or restricted building operations only pending the coming into operation of a general scheme approved by Government for the development of any area;
- (h) prohibited or restricted building operations permanently on the grounds 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.

(3) Compensation shall not be payable in respect of a refusal to grant permission to develop in respect of any of the following developments in an area on or near an airfield:

- (a) any excavation on an airfield or within one thousand yards of the perimeter thereof;
- (b) any dwelling-house, building exceeding ten feet in height, works exceeding ten feet in height or deposit of waste material where the deposit exceeds ten feet in height, if the house, building, works or deposit is in an airfield or within two miles of the perimeter thereof; or

- (c) any building or works exceeding thirty-five feet in height within an area of more than two miles and less than three miles from the perimeter of an airfield.

61. (1) There shall be at least one public landward access to every beach in the Territory.

Public access and rights of way to beaches.

(2) Where there is no alternative public landward access, traditional public use of a private landward access through an existing private development shall be sufficient grounds for establishing a public way over that access for the purpose of access to the beach by the public.

(3) Where the only landward access to a beach is through an existing private development where traditional public use pursuant to subsection (2) has not been established, the Crown may acquire the right to public use of that landward access by gift, agreement, compulsory acquisition, or in exchange for other property, interest, or financial exemption, or by such other means as the Minister may recommend.

(4) Where a proposed development is likely to adversely affect the public's ability to access a beach from the landward side, any development permission shall require as a condition, a public landward access to the beach through the development at all times free of charge.

(5) For the purposes of this section,

- (a) "traditional public use" means peaceable, open and uninterrupted enjoyment for a period of twenty years or more; and
- (b) public landward access shall be motorable unless the Minister otherwise determines.

62. (1) Where any land is designated in a development plan made under Part III as a comprehensive planning area, that land may be acquired compulsorily by the Minister for public purposes within the meaning of the Land Acquisition Ordinance.

Acquisition of comprehensive planning area. Cap. 222

(2) A development plan shall not designate any land as a comprehensive planning area if it appears to the Authority that the acquisition is not likely to take place within seven years from the date on which the plan is approved.

(3) Where any land is designated by a development plan as a comprehensive planning area, then if at the expiration of seven years from the date on which the plan, or the amendment of the plan, by virtue of which the land

was first so designated came into operation, any of that land has not been acquired by the Minister, any owner of an interest in the land may serve on the Minister a notice requiring the interest of the owner in the land to be acquired and if, within six months after the service of that notice the interest of the owner in the land has not been so acquired, the development plan shall have effect, after the expiration of the six months, as if the land in which the interest subsists was not subject to compulsory purchase.

Acquisition of buildings or sites for the purposes of preservation.

63. (1) Where it appears to the Minister that reasonable steps are not being taken for the proper preservation of a building or site which is the subject of a preservation order, the Minister may either by agreement with the owner, or compulsorily, acquire the building or site and any contiguous or adjacent land which appears to him to be required for preserving the building or site and its amenities or for affording access to it or for its proper control or management.

(2) The compulsory purchase of a building or site under subsection (1) shall not commence unless, at least two months previously, the Authority has served on the owner of the building or site, and has not withdrawn, a notice to repair,

- (a) specifying the repairs which the Authority considers reasonably necessary for the proper preservation of the building or site;
- (b) explaining the effect of subsection (1).

(3) The Minister shall consult with the Minister responsible for national heritage and with the National Parks Trust before he confirms a compulsory purchase order for the acquisition of a listed building or listed site under this section.

(4) The Minister shall not make or confirm a compulsory purchase order under this section for the acquisition of any listed building or listed site, or a building or site which is the subject of a preservation order, unless he is satisfied that it is expedient to make provision for the preservation of the building or site and to authorise its compulsory acquisition for that purpose.

Acquisition of land for planning purposes.

64. (1) Without prejudice to the provisions of sections 61, 62 and 63, the Minister may acquire by agreement or compulsorily any land within the Territory which is suitable for and is required in order to secure one or more of the following purposes:

- (a) the provision of public open space;

- (b) the making of a new road or the widening of an existing road designated in an approved development plan made under Part III;
- (c) for giving in exchange for land appropriated for other planning purposes;
- (d) for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

(2) In considering whether or not to acquire any land for planning purposes, the Minister shall have regard to

- (a) the provision of any approved development plan so far as material;
- (b) whether planning permission for any development of the land is in force;
- (c) any other considerations such as are set out in section 28 so far as would be material for the purpose of determining an application for development permission on the land.

(3) The Land Acquisition Ordinance shall apply to the compulsory acquisition of land under this Part Cap. 222

PART VIII

APPEALS

65.(1) There is established an Appeals Tribunal which has the jurisdiction, power and authority conferred upon it by this Part and by any regulations. Establishment of Appeals Tribunal.

(2) It shall be the primary function of the Appeals Tribunal to examine the issues between the parties and to determine the merits of an appeal having regard to the purposes of this Act set out in section 4, the need to secure consistency in the execution of policy, any approved development plan relevant to the issues and any other material planning considerations.

(3) The constitution and procedures of the Appeals Tribunal shall be in accordance with Schedule 4. Schedule 4

Right of appeal.

66. (1) Any applicant who is dissatisfied with a decision of the Authority set out in subsection (2), or an owner of land whose interest in that land may be affected by a decision of the Authority set out in subsection (2), may appeal to the Appeals Tribunal against that decision in the manner prescribed in this Part.

(2) An appeal shall lie to the Appeals Tribunal against any decision made by the Authority under this Act

- (a) refusing a grant of development permission;
- (b) imposing conditions on a grant of development permission;
- (c) modifying or revoking a grant of development permission;
- (d) enquiring the completion of a development within a time limit;
- (e) refusing listed building consent or listed site consent under section 51;
- (f) imposing a preservation order, except that no appeal shall lie against an interim preservation order;
- (g) making a provisional plant preservation order or a plant preservation order;
- (h) making an amenity order on any of the grounds mentioned in section 67 (3);
- (i) issuing a compliance notice or as to the terms thereof.

(3) Subject to any provisions to the contrary in this Act, any person wishing to appeal under subsection (2) shall,

- (a) within forty-two days of the decision which is to be appealed against under subsection (2) (a), (b) (c) or (e),
- (b) within forty-two days of the date on which the notice or order which is to be appealed against under subsection (2), (d) (f), (g) or (h) was served,
- (c) within the period specified in the notice as the period at the end of which the notice is to take effect in the case of a notice which is to be appealed against under subsection (2) (i),

send a notice of appeal to the secretary of the Appeals Tribunal who shall forthwith on receipt thereof send a copy of such notice to the Minister and the Authority.

(4) Where notice is given of an appeal to the Appeals Tribunal against a compliance notice within the period ending with the specified date in the compliance notice, or against an amenity order within the period specified in subsection (3), the compliance notice or the amenity order, as the case may be, shall be of no effect pending the determination of the appeal.

67. (1) A notice given under section 66 (3) shall set out

Notice of appeal.

- (a) concisely the decision appealed against;
- (b) a description of the land affected by the decision;
- (c) the name of the appellant;
- (d) the interest of the appellant in the land affected by the decision; and
- (e) concisely the grounds on which the appellant wishes to appeal against the decision.

(2) An appeal against a compliance notice may be made on any of the grounds that

- (a) permission was granted under Part IV for the development to which the compliance notice relates;
- (b) no such permission was required in respect thereof; or
- (c) the conditions subject to which such permission was granted have been complied with.

(3) An appeal made against an amenity order may be on any of the following grounds:

- (a) the person upon whom an order has been served is not an owner or occupier of the land to which the order applies;
- (b) the person upon whom the notice has been served has no control over and no authority to remove, destroy or demolish any matter or building referred to in the order;

- (c) the time within which the order must be complied with is not reasonably sufficient for the purpose;
 - (d) the work specified in the order is unreasonable in character or extent or is unnecessary;
 - (e) that having regard to the character and condition of land and buildings in the immediate neighbourhood, the order is unreasonable.
- (4) A notice given under section 66 (3) shall be accompanied by
- (a) a copy of all papers and documents submitted by the appellant or any person acting on his behalf to the Authority;
 - (b) a copy of the decision appealed against; and
 - (c) a plan sufficiently identifying the location and boundaries of the land affected by the decision.
- (5) On receipt of a copy of the notice given under section 66 (3), the Appeals Tribunal shall reject the notice of appeal if
- (a) it appears not to comply with subsection (1);
 - (b) the appellant appears not to have any sufficient interest in the land to justify him appealing against the decision.
- (6) Where a notice of appeal is not rejected under subsection (5), the Appeals Tribunal may direct that the appeal be dealt with by public examination or by written representations and shall, within twenty-eight days of receipt of the notice of appeal, notify the appellant and the Authority accordingly.
- (7) The Appeals Tribunal shall take the following matters into consideration before deciding whether the appeal may be dealt with by written representations or by public examination:
- (a) whether the public interest requires that all persons (including the appellant) who may have a view to express in relation to the matter to which the appeal relates should have an opportunity of having their views taken into account, of submitting evidence and of examining witnesses called by others;

- (b) without prejudice to the generality of paragraph (a), whether it would be reasonably practicable to deal with the appeal by way of written representations;
- (c) the public importance of the matter to which the appeal relates.

(8) Where the Appeals Tribunal decides that a public examination shall be held, it shall notify the appellant and the Authority of that fact and

- (a) the appellant shall serve on the Authority and on the Appeals Tribunal a statement of his case within fourteen days of receipt of such notification, or such longer period not exceeding twenty-eight days of such receipt as the Appeals Tribunal may, upon application in writing, determine, and
- (b) the Authority shall serve on the appellant and on the Appeals Tribunal its response to the appellant's statement of his case within fourteen days of receipt of the statement of case, or such longer period not exceeding twenty-eight days of such receipt as the Appeals Tribunal may, upon application in writing, determine,

and the Appeals Tribunal shall thereafter notify the appellant and the Authority of the time and place at which the public examination shall be held and shall publish a notice in the *Gazette* and in at least one local newspaper circulating in the Territory announcing the public examination and the time and place at which it will be held.

(9) Unless the Appeals Tribunal directs that a public examination shall be held in relation to an appeal, the appeal shall be dealt with by written representations.

68.(1) Subject to the provisions of this Act and any regulations, the Appeals Tribunal may determine the procedure to be followed at any public examination directed under section 67 as appears to it convenient to enable the functions referred to in section 65 (2) to be fulfilled without being bound to adopt such procedure as might be appropriate in a court, provided that the Appeals Tribunal shall

Procedure at public examinations.

- (a) at all times have regard to the rules of natural justice in the conduct of the proceedings for the determination of the appeal; and

- (b) ensure, when hearing evidence of one party, that the other party has had an opportunity to consider that evidence and to make comment or representation on it.
- (2) Without prejudice to the generality of subsection (1)
 - (a) the Appeals Tribunal may hold a pre-examination review of the issues with the Authority and the appellant and may issue directions in writing to both parties concerning
 - (i) the form and procedure to be adopted at the examination;
 - (ii) the dates and likely duration of the examination;
 - (iii) the Appeals Tribunal's identification of the issues to be examined;
 - (iv) the evidence required;
 - (v) whether third party agencies and persons who made representations or were consulted on the application are required to give evidence;
 - (vi) the incidence of the burden of proof, and the standard of proof required;
 - (vii) the exchange of proof of evidence;
 - (viii) the dates of any proposed site visits, giving both parties an opportunity to be present at the site visits;
 - (ix) any other matters which the Appeals Tribunal considers necessary for the fair and expeditious examination of the appeal;
 - (c) there may be given and received in evidence at a public examination any material which the Appeals Tribunal may consider relevant to the subject matter of the examination whether or not it would be admissible in a court of law;
 - (d) evidence at a public examination may be given on oath or affirmation or as unsworn evidence or partly as sworn evidence and partly as unsworn evidence, as the Appeals Tribunal may think fit;

- (e) any interested party may appear in person or may be represented by another person acting with his authority, whether or not that other person is a legal practitioner.

69.(1) A record shall be kept of all public examinations held by the Appeals Tribunal.

Record of proceedings of public examinations.

(2) The record under this section shall contain

- (a) the name and address of any person heard at the public examination and, where any such person was represented by another, the name and address of that representative;
- (b) the name and address of any person giving evidence at the public examination;
- (c) a summary of the evidence given by each person at the public examination;
- (d) an inventory of all exhibits (including models, maps, plans, drawing, sketches, diagrams, photographs, petitions, and written statements) received in evidence at the examination;
- (e) the Appeals Tribunal's findings of fact in relation to any relevant matter;
- (f) a full and clear account of the reasoning of the Appeals Tribunal on which its decision is based; and
- (g) the determination of the Appeals Tribunal as to the manner in which the Appeal should be disposed of.

(3) Every record under this section shall be accompanied by all documents referred to in paragraph (d) of subsection (2).

70.(1) Whenever the Appeals tribunal has directed that an appeal to which section 66 relates shall be dealt with by written representations, the secretary to the Appeals Tribunal shall send a copy of the direction to the appellant and to the Authority and each of them shall within thirty days thereafter send to the Appeals Tribunal and to the other of them such written representations as they wish to make in relation to the appeal (hereinafter referred to as "written representations").

Appeals by written representations.

(2) Within twenty-eight days of the receipt of the written representations of the other, or within the thirty days period specified in subsection (1), whichever is the later, the appellant and the Authority shall send to

the Appeals Tribunal and to the other of them in writing such further representations as they may wish to make arising out of the written representations of the other.

(3) The Appeals Tribunal in deciding an appeal by written representations, shall not

- (a) receive any oral evidence; or
- (b) consider any representations in writing other than those provided by subsections (1) and (2) unless it has given the appellant or the Authority (as the circumstances require) a full and sufficient opportunity of answering them in writing.

(4) The record to be kept of the proceedings under this section shall contain

- (a) the names and addresses of the parties;
- (b) a summary of the written representations submitted;
- (c) an inventory of all models, maps, plans, drawings, sketches, diagrams, photographs, petitions, and written statements submitted with the written representations;
- (d) the Appeals Tribunal's findings of fact in relation to any relevant matter;
- (e) a full and clear account of the reasoning of the Appeals Tribunal on which its decision is based; and
- (f) the determination of the Appeals Tribunal as to the manner in which the appeal should be disposed of.

(5) The Appeals Tribunal shall, following the expiration of the period specified in subsection (2), decide the appeal and in doing so shall have like powers to those under section 71 (1).

Decision and
notification of
appeal.

71. (1) The Appeals Tribunal, after hearing an appeal, may

- (a) allow the appeal in part, or in whole and quash the decision, notice or order of the Authority;
- (b) if it allows the appeal in part, do so by varying the decision, notice or order of the Authority in any manner and subject to any conditions or limitations it thinks fit;

- (c) correct any procedural defect or error of law in the decision, notice or order of the Authority appealed against;
- (d) dismiss the appeal and confirm the decision, notice or order of the Authority.

(2) As soon as reasonably practicable after the decision of the Appeals Tribunal, the secretary of the Appeals Tribunal shall send to the appellant, the Authority and the Minister, written notification of the determination of the appeal together with reasons for the determination.

(3) Where an appeal made under section 66 (2) (i) is dismissed, or the compliance notice is varied, the Appeals Tribunal may, if it thinks fit, direct that the compliance notice shall not come into force until a specified date, not being later than twenty-eight days from the determination of the appeal.

72. (1) Subject to the provisions of this Act, no appeal shall lie against a decision of the Authority in a matter to which section 66 relates otherwise than as provided for by sections 66 to 71 nor shall any such decision or order be reviewable in any manner by any court.

Appeals to the High Court.

(2) Save as otherwise provided in this section, the decision of the Appeals Tribunal shall be final.

(3) An appeal shall lie to the Court from a decision of the Appeals Tribunal on a point of law but not on any matter of fact and not in any manner upon the merits of the policies applied by the Authority or the Appeals Tribunal in reaching the relevant decision.

(4) An appeal to which subsection (3) relates shall be filed in the Court within twenty-eight days of the notification of the decision of the Appeals Tribunal.

PART IX

MISCELLANEOUS

73. (1) Subject to subsection (2), the Minister, any member of the Authority, the Chief Planner or any person authorised by him in writing may during reasonable hours enter on any land or in any building

Powers of entry.

- (a) to inspect or survey the land, or any building for the purpose of the preparation of any development plan, or to decide on

whether or not any development plan should be prepared under the provisions of Part III;

- (b) to obtain information relevant to the determination of any application for development permission or for any other consents, or permits provided for under this Act;
- (c) to determine whether any breach of planning control is being or has been undertaken on the land or in any building thereon;
- (d) to determine whether any order or interim order should be made under Part VI or for the exercise of any powers conferred by any such order;
- (e) for the purposes of determining whether or not any compensation is payable under Part VII, or as to the amount thereof;
- (f) to ensure compliance with this Act and any regulations.

(2) Any person who intends to enter on any land or building for the purposes of subsection (1) shall, except where the circumstances are such that giving a written notice would defeat the purpose for which entry is sought, give the owner or occupier not less than twenty-four hours written notice of his intention so to do and the intended purpose of such entry, and if the person entering requires to search and bore for the purpose of examining the nature of the sub-soil, that fact shall be stated in the notice.

(3) Before exercising any powers under this section, the Chief Planner or any other person concerned, shall provide evidence of his identity and authority to the occupier or other person who is or appears to be in control of the land or building concerned.

(4) The powers conferred by this section shall be deemed to extend to permit the Chief Planner or other person concerned to make such examination and inquiries as are necessary to achieve the purposes for which the entry was authorised.

(5) If any damage is caused by reason of the exercise of any right of entry conferred by this section, or in the making of any survey for the purpose for which such right of entry was conferred, or by the wrongful or negligent use of powers conferred, or alleged to have been conferred, by this section, the Authority as soon as may be after such entry, shall in the manner prescribed, pay compensation to the person injured thereby.

74. (1) Any notice or other document required or authorised to be given or served under this Act or under any regulation, order, direction or other instrument made under this Act may be served on or given to the person concerned

Service of notices.

- (a) by delivering it to that person;
- (b) by leaving it at the usual or last known place of abode of that person;
- (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode or business or, where an address for service has been given by that person, to that address;
- (d) in the case of a body corporate, or unincorporated body, by delivering it to the secretary or other officer of that body at its registered or principal office in the Territory, or by sending it in a prepaid registered letter addressed to the secretary or other officer of that body at that office;
- (e) where a facsimile number has been provided by a person, by a facsimile transmission which provides confirmation of receipt.

(2) Where the notice or other document is required to be served on or given to a person as having an interest in premises, or on any person as the owner or occupier of premises and either the name of that person cannot be ascertained after reasonable inquiry, or it appears that any part of the land is unoccupied, the notice shall be deemed to be duly served if it

- (a) is addressed to “the owner of”; or “the occupier of” or “the owner and occupier of”; or “any person having an interest in”; as the case may be, the premises or that part of the land (describing it); and
- (b) is marked in such a manner that it is plainly identifiable as a communication of importance; and
- (c) is sent in a prepaid registered letter to the premises and is not returned to the Authority; or
- (d) is delivered to some adult person on those premises; or
- (e) is affixed securely and prominently to some conspicuous part of the premises.

(3) In any case where a notice or other document has been served by a means other than personal delivery, it shall be deemed to have been served, given or delivered four days after it was left, mailed or affixed, as the case may be, or if it was sent by facsimile transmission, on the day after it was so sent.

Power to require information.

75. For the purpose of enabling the Minister, the Authority or the Chief Planner to make an order or serve a notice or other document under the provisions of this Act, the Chief Planner may require the owner or the occupier of any premises, and any person who either directly or indirectly, receives rent in respect of any land or premise, to state in writing the nature of his interest therein, and the name and address of any other person known to him to have an interest therein, whether as a freeholder, mortgagee, lessee or otherwise

Register of planning decisions.

76. (1) The Chief Planner shall maintain a register of all

- (a) applications for a grant of development permission;
- (b) decisions on applications referred to in paragraph (a) and any conditions attached to development permissions;
- (c) development agreements under section 32;
- (d) performance bonds under section 33;
- (e) notices of modification or revocation of grant of development permission;
- (f) compliance notices, stop orders, and injunctions;
- (g) claims for compensation under section 73 (5);
- (h) decisions on appeals against any decisions, orders or notices made or actions taken under this Act.

(2) Any person who so requests shall be provided by the Chief Planner with a copy of any entry in the register upon payment of the prescribed fee.

(3) The register required to be maintained under subsection (1) shall include an index which shall be in the form of a map and both the register and the index may be kept in an electronic data storage and retrieval system whether by use of a computer or otherwise.

Notifications of decisions to Registrar of Lands.

77. (1) The Chief Planner shall notify the Registrar of Lands giving full details, with respect to the parcels of land affected, of every

- (a) decision on applications for grant of development permission and any conditions attached to development permissions;
- (b) development agreement;
- (c) performance bond;
- (d) modification or revocation of a grant of development permission;
- (e) compliance notice;
- (f) listed building or listed site;
- (g) preservation order or interim preservation order;
- (h) plant preservation order;
- (i) amenity order;
- (j) claim for compensation under section 73 (5);
- (k) decision on appeals against decisions, orders or notices made or actions taken under this Act.

(2) The Registrar of Lands shall duly record the matters referred to in subsection (1) on the Land Register.

78. Any reference in this Act to any person having a claim for or a right to the payment of compensation, or to appeal against any decision given under this Act, upon the death of that person before the determination of the matter at issue, shall be construed as if such reference were a reference to that person's personal representatives.

Death of person having claim or right.

79. (1) A person commits an offence if he

Offences and penalties.

- (a) fails to comply with the requirements of section 20;
- (b) fails to comply with the requirements of
 - (i) a compliance notice issued under section 39;
 - (ii) a stop order issued under section 44;
 - (iii) the provisions of sections 49 (2) and 51 (1) regarding listed buildings and listed sites;

- (iv) an amenity order made under section 55;
 - (v) the advertisement regulations made under section 56;
- (c) assaults, hinders or obstructs the Authority, a public officer or any other person in the exercise of any powers, or the performance of any duties, under this Act;
 - (d) willfully gives false information, relating to any matter in respect of which he is required to give information under this Act;
 - (e) having been required to give information in pursuance of section 75, without reasonable excuse fails to give that information within twenty-eight days of being so required, or such longer period as the Chief Planner may allow in any particular case;
 - (f) fails to comply with any regulations made with respect to the control of any activities in any environmental protection area;
 - (g) contravenes any other provisions of this Act or the regulations made under it.
- (2) A person who commits an offence under subsection (1) is liable
- (a) on summary conviction, to a fine not exceeding twenty-five thousand dollars and on a second or subsequent offence to a fine not exceeding fifty thousand dollars; and
 - (b) on conviction on indictment, to a fine not exceeding fifty thousand dollars, and on a second or subsequent offence, to a fine not exceeding one hundred thousand dollars.
- (3) In determining the amount of any fine to be imposed on a person convicted of an offence under subsection (1), the Court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to the person in consequence of the offence.
- (4) For the purposes of subsection (1) (a) (v), a person shall be deemed to display an advertisement if
- (a) the advertisement is displayed on the land of which he is the owner or occupier; or

- (b) the advertisement gives publicity to his goods, trade, business or other concerns.

(5) A person shall not be guilty of an offence under subsection (1) (a) (v) by reason only that an advertisement is displayed on land of which he is the owner or occupier, or that his goods, trade, business or other concerns are given publicity by the advertisement, if he proves that it was displayed without his knowledge or consent.

(6) Where an offence under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or of any person who was purporting to act in such capacity, he as well as the body corporate, shall be guilty of that offence and are liable to be proceeded against and punished accordingly.

(7) Proceedings in respect of an offence alleged to have been committed under this Act may be brought, with the approval of the Authority, by the Chief Planner, provided that if it is considered that the gravity of the offence requires that it be tried on indictment, proceedings shall only be brought by the Attorney General.

80. (1) The Minister may make regulations for carrying into effect the provisions of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for

- (a) development which may be permitted by Order made by the Minister under subsection (2) of section 20, without the requirement of express grant of the development permission;
- (b) the designation of use classes by an Order made by the Minister under paragraph (h) of the definition of “development” in section 2 (1);
- (c) the procedures to be followed and the form of any form, notice, order or other document authorised or required by this Act to be served, made or issued, in connection with
 - (i) applications for a grant of development permission;
 - (ii) consultations on applications for development permission;

- (iii) the modification or revocation of a grant of development permission;
- (iv) compliance notices;
- (v) claims for compensation;
- (d) the procedures for environmental impact assessment and the form of environmental impact statements;
- (e) the regulation of subdivision of land;
- (f) the making up of undeveloped private streets;
- (g) the procedures for the conduct of public enquiries held under section 30;
- (h) the fees payable under this Act;
- (i) the qualifications required of persons signing forms, plans and drawings on behalf of any applicant for development permission and the qualifications required of persons preparing environmental impact statements;
- (j) the control of advertisements;
- (k) public access to and use of beaches;
- (l) the preservation of buildings, sites or plants;
- (m) the form of the register to be maintained under section 76.

(3) For the purpose of subsection (2)(k), the Minister may, by Order published in the *Gazette* and in a local newspaper circulating in the Territory, amend the definition of “beach” under section 2(1) in such manner as he considers fit.

(4) An Order made under subsection (3) shall be subject to a negative resolution of the Legislative Council.

81. (1) The Land Development (Control) Ordinance and Land Development (Control) (Validation) Act, 1992 are repealed.

(2) Notwithstanding subsection (1),

- (a) any subsidiary legislation made under the Land Development (Control) Ordinance and in force immediately prior to the

coming into force of this Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act;

- (b) any form used, and any requirement as to the particulars to be entered in any form used for the purposes of the Land Development (Control) Ordinance, shall continue in force as though prescribed under this Act until other forms or particulars are so prescribed;
- (c) where a period of time specified in the Land Development (Control) Ordinance is current at the coming into force of this Act, this Act shall have effect as if the corresponding provision thereof had been in force when the period began to run;
- (d) all grants of development permission, conditions imposed and proceedings taken under the Land Development (Control) Ordinance shall remain valid and the proceedings shall be continued under that Ordinance as if this Act had not been passed.

SCHEDULE 1

[Section 6]

CONSTITUTION AND PROCEDURES OF THE PLANNING AUTHORITY

1. (1) The Authority shall consist of ten members appointed by the Minister, of whom Membership of Authority.

- (a) the following persons shall be *ex-officio* members:
 - (i) the Chief Planner;
 - (ii) the Director of Public Works Department;
 - (iii) the Director of Disaster Management;
 - (iv) the Chief Conservation and Fisheries Officer;
- (b) six members, one of whom shall be nominated by the Leader of the Opposition, shall be persons not in the public service

who shall be appointed from among persons who have knowledge and experience in

- (i) land development matters;
- (ii) environmental, coastal and marine matters;
- (iii) agriculture;
- (iv) commerce and industry
- (v) economic and financial matters;
- (vi) Crown lands;
- (vii) housing;
- (viii) infrastructure and utilities;
- (ix) any other area of public interest that the Minister considers relevant to physical planning.

(2) The Minister shall by instrument in writing appoint a chairman and a deputy chairman of the Authority from amongst the non *ex-officio* members and the deputy chairman shall in the absence of the chairman, perform the functions of the chairman.

(3) A member appointed under sub-paragraph (1) (b) shall hold office for not less than two years nor more than three years in the first instance, as may be specified in the instrument of his appointment, but shall be eligible for reappointment, provided that no such member shall hold office for more than six years consecutively, and appointments shall be made in a manner which staggers the dates of expiration.

(4) In the case of the first appointments to the Authority, the chairman shall be appointed for a term of not less than three years, and of the remaining five non *ex-officio* members three shall be appointed for two years and two for three years.

(5) Every appointment made under sub-paragraphs (1) and (2) shall be notified in the *Gazette* and in one local newspaper circulating in the Territory.

(6) The Chief Planner shall be the chief executive officer of the Authority.

(7) In the event of the temporary incapacity of a member, whether by reason of illness or other sufficient cause, or the temporary absence from the Territory of any member, the Minister may appoint some other person to act as a temporary member for so long as the incapacity or absence continues.

(8) Any member, save an *ex-officio* member, of the Authority may at any time, by notice in writing to the Minister, resign his office.

(9) The Minister may remove from office any member of the Authority for inability, misbehaviour, or on the ground of any employment or interest which is incompatible with the functions of a member of the Authority or for any other good cause.

2. (1) The Authority shall meet at least once in every month and at such other times as may be necessary for the transaction of business, at such places and times and on such dates as the Authority may determine. Meetings of the Authority.

(2) The chairman shall convene a special meeting of the Authority within seven days of receipt of a requisition for that purpose addressed to him in writing and signed by any five members of the Authority, and on any other occasion when he is directed in writing by the Minister so to do.

(3) The chairman shall preside at meetings of the Authority.

(4) The chairman, or in his absence the deputy chairman, and five other members shall form a quorum, provided that where any member is disqualified by virtue of paragraph 4 from taking part in any deliberation or decision at any meeting of the Authority, that member shall be disregarded for the purpose of constituting a quorum or decision.

3. The decision of the Authority with regard to any question shall be determined by a majority of votes of the members present and voting at a meeting of the Authority, and in the event of an equality of votes the chairman shall, in addition to his own original vote, have a casting vote. How decisions to be taken.

4. There shall be an item of business on the agenda of each meeting which shall be named "declaration of interest" and under this item Declaration of interest.

(a) the chairman shall draw the attention of members and officers in attendance, to the law relating to conflict of interest; and

(b) members and officers in attendance shall declare their interest in any item of business on the agenda.

(2) In respect of any item of business on which they have declared an interest, the chairman, or where he has taken the chair, the vice chairman, or where a member has taken the chair, that member, shall vacate the chair for that item of business.

(3) A member or an officer in attendance who has declared an interest in an item of business to be discussed at a meeting shall, when that item of business is reached on the agenda, leave the meeting while that item of business is being discussed and shall take no part directly or indirectly in any decision, deliberation, discussion, consideration or other like activity on that matter.

(4) Where, owing to the number of members who have declared an interest in an item of business at a meeting, the Authority lacks a quorum to transact that item of business, that item of business shall be deferred to the subsequent meeting, and the fact shall be recorded in the minutes and reported to the Minister.

Validity of
Authority's
actions.

5. The validity of anything done under this Act shall not be affected solely by reason of

- (a) the existence of any vacancy in the membership, or any defect in the constitution of the Authority; or
- (b) an omission or irregularity in respect of any meeting or proceedings of the Authority.

Defraying of
expenses.

6. The expenses of the Authority shall be defrayed out of sums provided for the purpose in the annual estimates of revenue and expenditure for the Territory as approved by the Legislative Council and shall be a charge on the Consolidated Fund.

SCHEDULE 2

[Section 11 (5) (d)]

MATTERS FOR WHICH PROVISION MAY BE MADE IN DEVELOPMENT PLANS

PART I

ROADS

1. Reservation of land for roads and establishment of public rights of way including public rights of way to and over beaches.

2. Closing or diversion of existing roads and public and private rights of way.
3. Construction of new roads and alteration of existing roads.
4. The line, width, level, construction, access to and egress from and the general dimensions and character of roads, whether new or existing.
5. Providing for and generally regulating the construction or execution of works incidental to the making or improvement of any road, including the erection of bridges, culverts, gullies, fencing, barriers, shelters, the provision of artificial lighting, and seats and the planting or protecting of grass, trees and shrubs on or adjoining such road.

PART II

BUILDING AND OTHER STRUCTURES

1. Regulating and controlling, either generally or in particular areas, all or any of the following matters:
 - (a) the size and height of buildings and fences;
 - (b) building lines, coverage and the space about buildings;
 - (c) the objects which may be affixed to buildings;
 - (d) the purposes for and the manner in which buildings may be used or occupied, including in the case of dwelling houses, the letting thereof in separate tenements;
 - (e) the prohibition of building or other operations on any land, or regulating such operations.
2. Allocating any particular land, or all land in any particular area, for buildings of a specified class or classes or prohibition or restricting either permanently or temporarily, the making of any building or any particular class or classes of buildings on any specified land.
3. Limiting the number of buildings or the number of buildings of a specified class which may be constructed, erected or made, on, in or under any area.

PART III

COMMUNITY PLANNING

1. Providing for the control of land by zoning or designating specific uses.
2. Regulating the layout of housing areas, including density, spacing, grouping and orientation of houses in relation to roads, open spaces and other buildings.
3. Determining the provision and sitting of community facilities, including shops, schools, churches, meeting halls, play centres and recreation grounds in relation to the number and sitting of houses.

PART IV

AMENITIES

1. Preservation of buildings, caves, sites and objects of artistic, architectural, cultural, historic or archaeological interest.
2. Allocation of land for burial grounds and crematoria.
3. Allocation of lands
 - (a) for communal parks;
 - (b) for game and bird sanctuaries;
 - (c) for the protection of marine life;
 - (d) for national parks and environmental protection area.
4. Preservation or protection of forests, woods, trees, shrubs, plants and flowers.
5. Protection of coastal zone, designation of marine parks, special resource and special use areas.
6. Prohibiting, restricting or controlling, either generally or in particular place, the exhibition, whether on the ground, or any building or any temporary erection, whether on land or in water, or the air, of all or any particular forms of advertisement or other public notices.

7. Preventing, remedying or removing injury to amenities arising from the ruinous or neglected condition of any building or fence, or by the objectionable or neglected condition of any land attached to a building or fence or abutting on a road or situate in a residential area.

8. Prohibiting, regulating and controlling the deposit or disposal of waste materials and refuse, the disposal of sewage and the pollution of rivers, lakes, ponds, gullies, beaches and the seashore.

PART V

PUBLIC SERVICES

Facilitating the establishment, extension or improvement of works by statutory or other undertakers in relation to power, lighting, water supply, sewerage, drainage, sewage disposal, refuse disposal or other public services.

PART VI

TRANSPORT AND COMMUNICATIONS

1. Facilitating the establishment, extension or improvement of systems of transport whether by land, water or air.

2. Allocating sites for use in relation to transport, and the reservation of land for that purpose.

3. Providing for the establishment, extension or improvement of telegraphic, telephonic wireless or radar communication, the allocating of sites for use in relation to such communication, and the reservation of land for that purpose.

PART VII

MISCELLANEOUS

1. Providing for and regulating the making of agreements for the purpose of a development plan by the Minister with another authority or owners and other persons, and by another authority with such persons and by such persons with one another.

2. Subdivision of land and in particular, but without restricting the generality of the foregoing,

- (a) regulating the type of development to be carried out and the size and form of plots;
 - (b) requiring the allocation of land for any of the public services referred to in Part V or for any other purposes referred to in this Schedule for which land may be allocated;
 - (c) prescribing the character and type of public services or other works which shall be undertaken and completed by any applicant for permission to sub-divide as a condition of the grant of such permission;
 - (d) co-ordinating the sub-division of contiguous properties in order to give effect to any scheme of development appertaining to such properties.
3. Making any provisions necessary for
- (a) adjusting and altering the boundaries and areas of any towns;
 - (b) enabling the establishment of satellite towns and new towns;
 - (c) effecting such exchanges of land or cancellation of existing sub-division plans as may be necessary or convenient for the purposes referred to in sub-sub-paragraphs (a) and (b).

SCHEDULE 3

[Section 26 (1)]

MATTERS FOR WHICH ENVIRONMENTAL IMPACT ASSESSMENT SHALL BE REQUIRED

- 1. Hotels of more than twelve rooms;
- 2. any industrial plant which in the opinion of the Authority is likely to cause significant adverse environmental impact;
- 3. quarrying and other mining activities;
- 4. marinas;
- 5. airports, ports and harbours;

6. dams and reservoirs;
7. hydro-electric projects and power plants;
8. desalination plants;
9. water purification plants;
10. sanitary land fill operations, solid waste disposal sites, toxic waste disposal sites and other similar sites;
11. gas pipeline installations;
12. any development projects generating or potentially generating emissions, aqueous effluent, solid waste, noise vibration or radioactive discharges;
13. any development involving the storage and use of hazardous materials.
14. coastal zone developments;
15. development in wetlands, marine parks, national parks, conservation areas, environmental protection areas or other sensitive environmental areas.

SCHEDULE 4

[Section 65 (3)]

CONSTITUTION AND PROCEDURES OF THE APPEALS TRIBUNAL

1. (1) The Appeals Tribunal shall consist of five members, appointed by the Minister from among persons who possess

Membership of Appeals Tribunal.

 - (a) training and experience in physical planning, architecture, engineering, environmental, coastal and marine matters or law; or
 - (b) such other training and experience as the Minister thinks fit.
- (2) The Minister shall appoint one of the members to be chairman.

(3) A member shall hold office for a period not exceeding four years and shall be eligible for reappointment.

(4) The names of all members of the Appeals Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette* and a local newspaper circulating in the Territory.

(5) Any member of the Appeals Tribunal may resign his office at any time by notice in writing to the Minister.

(6) The Minister may remove from office any member of the Appeals Tribunal for inability, misbehaviour, or on the ground of any employment or interest which is incompatible with the functions of a member of the Appeals Tribunal.

Staff of Appeals
Tribunal.

2. (1) The Minister shall appoint a secretary to the Appeals Tribunal and such other officers as may be necessary to provide assistance to the Appeals Tribunal.

(2) The acts of the Appeals Tribunal shall be authenticated by the signature of the chairman or secretary of the Appeals Tribunal.

Meetings of
Appeals
Tribunal.

3. (1) The Appeals Tribunal shall meet on such occasions as may be expedient for the hearing of appeals and at such places, times and on such days as the Appeals Tribunal may determine.

(2) The chairman shall preside at all meetings of the Appeals Tribunal.

(3) A quorum of the Appeals Tribunal shall consist of a majority of members, that is to say, three members, which shall include the chairman.

(4) The decisions of the Appeals Tribunal shall be by a majority of votes of members present and voting, and in the event of an equality of votes, the chairman shall have a casting vote in addition to his own original vote.

Declaration of
interest.

4. (1) It shall be the duty of a member of the Appeals Tribunal who is in any way directly or indirectly interested in a matter coming before the Appeals Tribunal to declare the nature of his interest in the matter as soon as it is practicable for him to do so, and he shall remove himself from any meeting of the Tribunal on that matter, and take no part directly or indirectly in any decision, deliberation, discussion, consideration or similar activity of the Appeals Tribunal on that matter.

(2) Where the Appeals Tribunal lacks a quorum in relation to an appeal owing to the number of members, who have declared an interest in that appeal, the Minister shall, for the purpose of that appeal, revoke the appointment of those members and appoint other persons in their stead.

5. For each sitting of the Appeals Tribunal the members, other than *ex-officio* members, shall be paid such remuneration as may be prescribed by the Minister, and such remuneration shall be a charge on the Consolidated Fund. Remuneration.

6. The validity of any proceedings of the Appeals Tribunal shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof. Validity of proceedings.

7. Subject to the provisions of this Schedule, the procedures of the Appeals Tribunal shall be such as may be determined by the Tribunal. Procedures of Appeals Tribunal.

Passed by the Legislative Council this 14th day of October, 2004.

V. INEZ ARCHIBALD,
Speaker.

DENNISTON FRASER,
Clerk of the Legislative Council.

