



*Tonga*

# **NATIONAL SPATIAL PLANNING AND MANAGEMENT ACT**

**Chapter 20.03**

**2020 Revised Edition**





# NATIONAL SPATIAL PLANNING AND MANAGEMENT ACT

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# NATIONAL SPATIAL PLANNING AND MANAGEMENT ACT<sup>1</sup>

2020 Revised Edition

**AN ACT TO PROVIDE A FRAMEWORK FOR PLANNING THE USE,  
DEVELOPMENT, MANAGEMENT AND PROTECTION OF LAND IN  
THE KINGDOM IN THE PUBLIC INTEREST AND FOR RELATED  
PURPOSES**

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

Commencement [various dates<sup>2</sup>]

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## 1 Title and commencement

- (1) This Act may be cited as the National Spatial Planning and Management Act.
- (2) This Act shall come into force on a date to be proclaimed by His Majesty in Privy Council.

## 2 Interpretation

In this Act, unless the context otherwise requires –

“**Agency**” means the Director and other staff of the Planning and Urban Management Division of the Ministry; or the chief executive officer and other staff of the Authority, if the Authority, with the consent of Cabinet, decides to provide its own permanent staffing arrangement outside the Ministry;

“**area**” includes two or more areas of land that are not adjoining;

“**Authority**” means the National Spatial Planning Authority established under section 3;

“**building**” includes –

- (a) a structure and part of a building or a structure; and
- (b) fences with a height not exceeding 6 feet, walls, out-buildings, service installations and other appurtenances of a building.

“**built environments**” means building and infrastructure constructed by human beings;

“**development**” includes the use of land (whether for a long term or temporary purpose), the erection of a building or other structure, the carrying out of a work, subdivision, and any other activity regulated under this Act;

“**development application**” means an application for consent under Part IV to carry out development;

“**development consent**” means consent under Part IV to carry out development;

“**District**” means a district as defined in the District and Town Officers Act;

“**land**” includes –

- (a) land covered with water; and
- (b) any estate, interest, easement, privilege or right in or over land;

“**management**” with regards to land under this Act, means to preserve, review and manage the use of land;

“**Minister**” means the Minister for Lands;

“**Ministry**” means the Ministry of Lands, Survey and Natural Resources;

“**plan**” means spatial plan;

“**Planning Tribunal**” and “**Tribunal**” means the Planning Tribunal established under Part V;

“**public authority**” means –

- (a) a Government ministry or department;
- (b) a public enterprise operating under the Public Enterprises Act; or
- (c) an authority constituted by or under an Act;



“**region**” means a collection of two or more districts;

“**relevant authority**” means a public authority considered by the Agency to have a function or functions relevant to a development application;

“**spatial plan**” means a sustainable management plan prepared for any area under PART III of this Act;

“**stakeholder**” means a person with an interest in land which may be affected by a sustainable management plan or a draft sustainable management plan or a development application;

“**subdivision**” means the division of land into two or more parts which can be disposed of separately;

“**use**” in relation to land includes use or proposed use for the purpose for which the land has been or is being or may be developed;

“**village**” means a village, settlement block, or township; and

“**work**” includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation, topsoil, sand and rock .

## PART II – NATIONAL SPATIAL PLANNING AUTHORITY

### 3 National Spatial Planning Authority

- (1) A National Spatial Planning Authority is hereby established.
- (2)
  - (a) The Minister for Lands shall be the National Spatial Planning Authority.
  - (b) There shall be an Advisory Committee consisting of the Estate Holder and member of the Legislative Assembly relevant to the plan and of no more than eight members appointed by Cabinet to advise the Authority on any planning matter referred to it by the Authority.
  - (c) The Chairman of the Advisory Committee shall be a person with appropriate qualification and experience on spatial planning matters.
  - (d) The membership of the Advisory Committee shall be for a term of three years, and any member may be reappointed.
  - (e) Members of the Advisory Committee may be remunerated according to Government policy.

- (3) The secretariat for the National Spatial Planning Authority shall be the Agency.
- (4) The secretariat for the National Spatial Planning Authority shall carry out directions of and be directly accountable to the Authority.

#### 4 Objectives

In the performance of any function, power or duty under this Act, the following objectives shall be pursued:

- (a) provide for the fair, orderly, economic and sustainable use, development and management of land including the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
- (b) enable land use and development planning and policy to be integrated with environmental, social, cultural, economic, conservation and resource management policies at national, regional, district, village and site specific levels;
- (c) create an appropriate urban structure and form for the development of the Kingdom so as to provide equitable and orderly access to transportation, recreational, employment and other opportunities;
- (d) secure a pleasant, efficient and safe working, living and recreational environment for people in the Kingdom;
- (e) protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;
- (f) balance the present and future interests of all persons; and
- (g) provide increased opportunity for public participation in planning and assessment.

#### 5 Functions

The Authority shall be responsible for –

- (a) the implementation of the provisions of this Act in accordance with its objectives;
- (b) the exercise of the powers conferred by this Act so as to meet its objectives including:
  - (i) facilitating the preparation and approval of sustainable management plans;
  - (ii) ensuring that such plans are amended as appropriate and otherwise made as relevant as possible;

- (iii) undertaking development assessments in accordance with Part V, and giving approvals or declining to do so;
- (iv) preparing and approving development standards or guidelines provided for by this Act, or which may facilitate its implementation or advance its objectives;
- (v) issuing such orders and taking such other action as is provided for by this Act; and
- (vi) otherwise taking such enforcement action as is provided for;
- (c) the exercise of any other power or function conferred by law;
- (d) the promotion of strategic planning and coordinated action in relation to the sustainable use of land;
- (e) ensuring that the operation of this Act and the performance of the functions of the Authority are coordinated with the exercise by any other agencies of related functions and powers;
- (f) liaising with and assisting other ministries and agencies to meet the objectives of this Act;
- (g) the preservation of those buildings, areas or other places of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
- (h) the promotion of education and community awareness concerning urban and planning issues;
- (i) assisting with the coordination of the provision of infrastructure and services by ministries and public authorities for the benefit of the community;
- (j) ensuring that persons affected by the operation of this Act are given due notification and are accorded such rights as are provided for;
- (k) encouraging the resolution of outcomes, disagreements and disputes arising from the operations of this Act by the reaching of consensus decisions; and
- (l) facilitating such reviews of decisions as are provided for in this Act.

## 6 Delegation

The Authority may delegate its powers and functions, except this power of delegation, to any other authority, committee or person.

## 7 Application

This Act shall prevail over any built environments erected after this Act comes into force.

## PART III - SPATIAL PLANS

### 8 Spatial plans

A national, regional, district, village or site specific spatial plan may be made in accordance with this Part to achieve any of the objectives of this Act.

### 9 Preparation of plans

- (1) A plan may be prepared by the Agency with the approval of the Authority.
- (2) The Authority may instruct the Agency to prepare any plan.

### 10 Statement

- (1) A plan shall state the aims, objectives, policies and strategies whereby that plan is designed to achieve.
- (2) Except as provided in subsection (3), a statement referred to in subsection (1) does not affect the construction or effect of any other provision of the plan in which the statement is made.
- (3) Where a provision of a plan is genuinely capable of different interpretations, that interpretation which best meets the aims, objectives, policies and strategies stated in that plan shall be preferred.
- (4) A failure to comply in any respect with subsection (1) does not affect the validity, construction or effect of a plan.

### 11 Content of plan

- (1) A spatial plan shall, when the Authority deems fit —
  - (a) make any provision which relates to the use, development, protection or conservation of any land in a specific area;
  - (b) regulate the use or development of any land, whether by requiring development consent, imposing development standards, or otherwise;
  - (c) prohibit or regulate the use or development of any land;
  - (d) designate land as being reserved for public purposes;
  - (e) include strategic plans, policy statements, codes or guidelines relating to the use or development of land;
  - (f) set out requirements for the provision of public utility services to land;
  - (g) require specified things to be done to the satisfaction of the Authority;
  - (h) require specified information to be provided with an application for development consent; and

- (i) apply, adopt or incorporate any document which relates to the use, development or protection of land.
- (2) A provision of a plan may operate for a specified period.
- (3) If anything that is relevant to any matter referred to in subsection (1) comes under the jurisdiction of any other public authority and such jurisdiction is conferred by an Act, the provisions of that Act shall prevail and such matter may be included in a spatial plan subject to the exercise by the other public authority of its appropriate power.
- (4) The Authority may issue directions or guidelines as to the form and content of any plan.

## 12 Notification of intention to prepare a plan

Where the Agency is directed to prepare a plan, the Agency shall give public notice stating –

- (a) the Agency's proposal to prepare the plan;
- (b) the reasons for preparing the plan;
- (c) the aim and objectives of the proposed plan;
- (d) a description of the land to be affected by the proposed plan; and
- (e) any other matters which the Agency considers relevant.

## 13 Consultation

- (1) The Agency shall consult with all stakeholders where possible and shall provide them with all relevant information on the environment of the planning area so far as it relates to the aims and objectives of the proposed plan, including, where relevant, information on –
  - (a) population and development trends;
  - (b) current policy framework;
  - (c) land tenure;
  - (d) water catchments and drainage;
  - (e) provision of infrastructure;
  - (f) coastal low-lying areas, climate change or other hazards;
  - (g) environmental capacity, including land capability;
  - (h) heritage; and
  - (i) carrying capacity and foot prints capacity of the project (future proofing survey).
- (2) The Agency shall consider all information obtained from the consultation process.

**14 Preparation of a draft plan**

When the Agency is satisfied that all information from the consultation process has been collected and assessed, a draft plan shall be prepared.

**15 Notification of draft plan**

When the draft plan has been prepared, the Agency shall give public notice stating —

- (a) the places at which, the dates on which, and the times during which the draft plan may be inspected by the public; and
- (b) that affected stakeholders may make written submissions to the Agency during the time specified in the notice.

**16 Submissions on draft plan**

- (1) Any stakeholder affected by the draft plan may, during the period specified in the notice, make submissions in writing to the Agency.
- (2) The Agency shall consider all submissions made to it and shall, wherever possible, reach consensus with stakeholders on the contents of the draft plan.

**17 Recommendations to Authority**

When the Agency has considered all submissions and has reached consensus or has made all reasonable attempts to reach consensus with the stakeholders, it shall provide the Authority with a report recommending that —

- (a) the draft plan be abandoned;
- (b) the plan making process be recommenced because the contents of the final plan are likely to be substantially different from the contents of the exhibited draft plan;
- (c) the draft plan be amended; or
- (d) the draft plan be approved unchanged.

**18 Decision by Authority**

- (1) The Authority shall consider the Agency's report on the draft plan and may decide to accept any of the Agency's recommendations or make any decision which in its opinion best achieves the objectives of this Act.
- (2) The decision of the Authority shall not come into effect until the expiration of 28 days from the date of public notification of that decision or, where the decision is appealed, until the Planning Tribunal has determined the appeal.

## 19 Notification

After the Authority had made its decision on the draft plan, the Agency shall give a public notice stating –

- (a) the Authority's decision;
- (b) that the draft plan will come into effect after the expiration of 28 days from the date of the notice; and
- (c) that any stakeholder who has previously made a submission to the Agency on the draft plan and who is dissatisfied with the Authority's decision may appeal to the Planning Tribunal during the period of 28 days from the date of the notice in the form and manner specified in the notice.

## 20 Appeal

- (1) Any stakeholder who has previously made a submission to the Agency on the draft plan and is dissatisfied with the Authority's decision may appeal to the Planning Tribunal within the prescribed time in the prescribed form and manner specified in the notice.
- (2) After hearing the appeal, the Planning Tribunal may confirm, amend, or cancel the decision of the Authority.

## 21 Effective date

Where the Authority decides to approve a plan and that decision is not appealed, or where the Planning Tribunal confirms the Authority's decision to approve the plan or directs the Authority to approve the plan, the final plan shall be signed by the Authority and Notice of Approval of the Plan shall be published in the Gazette and one other newspaper circulating in the Kingdom and shall take effect on and from the date of publication or a later date specified in the notice.

## 22 Relationship between plans

- (1) In the event of an inconsistency between plans, then, to the extent of the inconsistency and unless otherwise provided:
  - (a) there is no general presumption that a plan of one kind prevails over a plan of another kind; and
  - (b) the provisions of a later plan prevail over those of an earlier plan, whether of the same or a different kind.
- (2) A national plan prevails over a regional plan, or a district plan, or a village plan, or a site specific plan made before or after the national plan to the extent of any inconsistency, if the national plan expressly so provides.

- (3) A regional plan prevails over a district plan or a village plan or a site specific plan made before or after the regional plan to the extent of any inconsistency, if the regional plan expressly so provides.
- (4) A district plan prevails over a village plan or a site specific plan made before or after the district plan to the extent of any inconsistency, if the district plan expressly so provides.
- (5) A village plan prevails over a site specific plan made before or after the village plan to the extent of any inconsistency, if the village plan expressly so provides.
- (6) Nothing in this section prevents a plan from being expressly amended by a later plan, of the same or a different kind, to provide for the way in which an inconsistency between them is to be resolved.

### **23 Amendment of plans**

- (1) The Agency may prepare an amendment to any provision of a plan.
- (2) Any such amendment must first be approved by the Authority.
- (3) The procedure prescribed in this Part shall apply equally to an amendment, provided that in the case of a minor amendment the Authority may approve the recommendation of the Agency to amend the plan without the need to give notice or consult with stakeholders.

### **24 Review of plans**

The Agency may review a plan at any time that the Authority directs.

### **25 Availability of plans**

All plans shall be available for public inspection at the office of the Agency during normal business hours.

### **26 Validity of plans**

The validity of a sustainable management plan shall not be challenged on the ground that the law relating to the making of the plan has not been complied with except by legal proceedings commenced in the Supreme Court by a stakeholder within 28 days of the plan taking effect.

### **27 Development standards**

In relation to the carrying out of development, including any matter identified in a plan, the Authority may cause to be prepared and may approve a set of development



standards by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point;
- (b) the proportion or percentage of the area of a site which a building or work may occupy;
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work;
- (d) the cubic content and floor space of a building;
- (e) the intensity and density of the use of any land, building or work;
- (f) the provision of public access, open space, landscaped space, tree planting and other treatment for the conservation, protection or enhancement of the environment;
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading and unloading of vehicles;
- (h) the volume, nature and type of traffic generated by the development;
- (i) road patterns;
- (j) surface and wastewater;
- (k) drainage;
- (l) the carrying out of earthworks;
- (m) the effects of development on patterns of wind, sunlight, daylight and shadows;
- (n) the provision of services, facilities and amenities demanded by development;
- (o) the emission of pollution and means for its prevention, control and mitigation; and
- (p) such other matters as may be prescribed.

## 28 Publication

The Authority shall publish notice of the approval of the set of development standards in the Gazette and one other newspaper circulating in the Kingdom.

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## PART IV - PLANNING AND DEVELOPMENT ASSESSMENT

### 29 Development needing consent

- (1) All development needs consent under this Act unless a plan or regulations provide otherwise.
- (2) Development needing consent shall not be carried out unless:
  - (a) such consent has been obtained and is in force; and
  - (b) the development is carried out in accordance with the consent.

### 30 Development not needing consent

- (1) Development specified in a plan or regulations as not needing consent may be carried out without consent under this Act.
- (2) A plan or regulations may provide that development of a specified class or description that is of minimal environmental impact is exempt development.
- (3) If a development is exempt development, the development may be carried out, in accordance with the plan or regulations, on land to which the provision applies without the need for development consent.

### 31 Prohibited development

A plan or regulations may provide that a specified development is prohibited.

### 32 Application for development consent

- (1) Where development consent is required, a person shall apply to the Authority for consent to carry out a development.
- (2) The development application shall –
  - (a) be made in the prescribed form;
  - (b) be accompanied by the prescribed fee;
  - (c) be accompanied by any information required by the Authority, a plan or the regulations; and
  - (d) otherwise be in accordance with this Act.

### 33 Applicant not the owner

Where the applicant for development consent is not the owner of the land to which the development application applies, the application shall –

- (a) be signed by the owner of the land; or

- (b) include a declaration by the applicant that the owner of the land approves of the applicant's application.

### **34 Action on application**

- (1) The Authority shall consider every development application.
- (2) The Authority may require an applicant to provide it or a relevant authority with more information before it deals with the development application.

### **35 Changes to applications**

Changes to a development application after the applicant has submitted it to the Agency shall be in accordance with this Act or any regulations.

### **36 Submission of a development plan**

- (1) Where circumstances so require, the Authority may require the applicant to submit with the development application a development plan which assesses the strategic planning, land use and development setting of the proposal.
- (2) A development plan under subsection (1) shall show, and is not limited to, -
  - (a) site analysis;
  - (b) building envelopes;
  - (c) property boundaries;
  - (d) existing environment;
  - (e) arrangements for –
    - (i) electricity;
    - (ii) roads;
    - (iii) water;
    - (iv) effluent disposal; and
    - (v) telecommunications;
    - (f) made and unmade roads;
    - (g) access and egress;
    - (h) how the proposed development relates to the existing or likely use and development of adjoining and nearby land; and
    - (i) where there is a subdivision, how the balance of the land may be utilised.
- (3) Where the Authority decides that a development plan should be submitted with a development application, the format, structure, subject matter and any

procedure for the preparation of the development plan shall be specified in writing by the Authority to the applicant.

- (4) The development plan shall generally conform to the provisions of any plan, or draft plan, which may apply to the land to which the development application relates.
- (5) Site inspections may be carried out before, during and after consultation and construction schedules.

### **37 Environmental Impact Assessment**

An application shall be accompanied by any environment impact assessment required under any applicable environmental legislation.

### **38 Notification of application**

- (1) As soon as practicable after a development application is made for consent to carry out development, the Authority shall:
  - (a) cause a notice of the application to be publicly notified: and
  - (b) give written notice of the application –
    - (i) to such persons as appear to it to own or occupy the land adjoining the land to which the application relates, unless, in its opinion, such persons would not be detrimentally affected by the granting of development consent;
    - (ii) if practicable, to such other persons as appear to it to own or occupy land the use or enjoyment of which, in its opinion, may be detrimentally affected if the development is carried out;
    - (iii) to such other persons as are required to be notified by a plan or the regulations; and
    - (iv) to any other person that it considers may be detrimentally affected by the granting of development consent.
- (2) Notwithstanding subsection (1), where the Authority considers that the circumstances are appropriate, it may request that all or any of the notices referred to in that subsection be given by the applicant.
- (3) The Authority may give any further notice that it considers appropriate of an application for a use or development which is likely to be of interest or concern to the community.

**39 Referral to relevant authorities**

- (1) Before the Authority determines a development application, the Agency may consult with every public authority considered by the Agency to be a relevant authority for applications of that kind.
- (2) The Agency may advise the relevant authority of any plan or draft plan relating to the land the subject of the development application.
- (3) A relevant authority shall consider every development application referred to it and may tell the Agency in writing that:
  - (a) it does not object to the granting of development consent;
  - (b) it does not object if the development consent is subject to the conditions specified by the relevant authority; or
  - (c) it objects to the granting of the development consent on any specified ground.
- (4) The relevant authority may also give the Agency its comments on the application.

**40 Submissions on development applications**

- (1) Any person who may be affected by a development application may make a submission, by way of objection or otherwise, to the Agency.
- (2) A submission to the application by way of objection shall state how the objector would be affected by the grant of development consent.
- (3) The Agency may reject an objection that it considers has been made primarily to secure or maintain a direct or indirect commercial advantage for the objector.

**41 Matters to be considered**

In determining a development application, the Authority shall consider –

- (a) all submissions received, including objections;
- (b) any decision and comments of a relevant authority;
- (c) the provisions of any plan or draft plan;
- (d) the contents of any development plan which the Agency has requested the applicant to supply;
- (e) any strategic plan, development standards, guideline, or the like, which has been adopted by a public authority;
- (f) the potential environmental effects of any development proposal, including any environmental impact assessment which has been prepared;

- (g) potential social and economic effects;
- (h) likely effects on cultural and natural heritage;
- (i) the sustainability of the proposed development;
- (j) suitability of the site for the proposed development, including consideration of natural hazards such as flooding, earthquake, cyclone, subsidence, slip, drainage and erosion;
- (k) the character of the proposed development, including its bulk, size and shape;
- (l) adequacy of arrangements relating to waste water, sanitation and access to the proposed development;
- (m) provision of private and public open space;
- (n) adequacy of arrangements made for the parking of vehicles generated by the proposed development;
- (o) proposed safety features of the development, including fire safety features;
- (p) adequacy of the structure of buildings and other structures to fulfil the purpose for which they are to be used;
- (q) the public interest;
- (r) the objectives of this Act, including the need to reach consensus; and
- (s) any other relevant matter.

## 42 Decision on application

The Authority may decide to –

- (a) grant a development consent;
- (b) grant a development consent subject to conditions; or
- (c) refuse to grant a development consent on any ground it thinks fit.

## 43 Conditions

- (1) The Authority may include in development consent any condition that it thinks fit, including a condition that –
  - (a) a plan requires to be included;
  - (b) specified matters are to be done to the satisfaction of the Authority or a relevant authority;
  - (c) the development consent is not to come into effect unless a specified development is cancelled or amended;
  - (d) the use be for a specified time;
  - (e) the land be restored to a specified state at the end of a specified time;

- (f) the development is to be carried out in stages over the periods specified in the development consent, including the need to obtain any further development consent for each stage;
  - (g) the owner of the land or the applicant is to enter into an agreement with the Authority requiring specified outcomes that the development shall achieve;
  - (h) plans, drawings and other documents be prepared by the applicant and lodged with the Agency for approval before the use or development or a specified part of it starts;
  - (i) requires changes to be made to any plan or drawing forming part of the application for the development consent.
- (2) The Authority shall not include in a development consent a condition which is inconsistent with —
- (a) the contents of a plan;
  - (b) current building regulations; or
  - (c) a determination by the Planning Tribunal in respect of an area to which the development consent applies.

#### **44 Development consent where there are no submissions**

Where no person has made a submission on the development application and the Authority decides in favour of the application, a notice of development consent shall be issued to the applicant.

#### **45 Development consent where there are submissions**

- (1) The Authority shall give the applicant and each person who made a submission a notice of its decision to grant a development consent.
- (2) The notice shall set out any conditions to which the development consent shall be subjected to.

#### **46 Refusal of development application**

- (1) The Authority shall give the applicant and each person who made a submission a notice of its decision to refuse the development application.
- (2) The notice shall set out the grounds on which the development application is refused, and may state whether those grounds were those of the Authority or a relevant authority.

## 47 Advice on right of appeal

A notice issued pursuant to section 45 or 46 shall include advice that the applicant or a person who has made a submission on the development application and who is dissatisfied with the decision of the Authority has the right to appeal to the Planning Tribunal within 28 days of the issue of the notice.

## 48 Appeal

- (1) An applicant or a person who has made a submission on the development application and who is dissatisfied with the decision of the Authority may appeal to the Planning Tribunal within 28 days of the issue of the notice of the decision.
- (2) An appeal shall be filed with the Planning Tribunal.
- (3) After hearing the appeal, the Planning Tribunal may make any order as in the circumstances may appear to the Tribunal to be just, including an order —
  - (a) directing that development consent shall not be granted;
  - (b) granting development consent and directing the Authority to issue the consent;
  - (c) granting development consent, directing that the consent shall or shall not, as the case may be, contain any specified conditions and directing the Authority to issue the consent;
  - (d) confirming a requirement placed on a development application;
  - (e) changing a requirement placed on a development application;
  - (f) directing the Authority to consider a development application as made without a requirement having been complied with;
  - (g) directing that a consent shall or shall not contain any specified condition;
  - (h) directing that any time limit shall or shall not be extended; or
  - (i) cancelling a consent.

## 49 When a development consent begins and expires

- (1) A development consent operates, as the case may require, from the date —
  - (a) specified in the development consent; or
  - (b) of the decision of the Planning Tribunal.
- (2) A development consent expires, as the case may require, if —
  - (a) the development or any stage of it does not start within the time specified in the notice of development consent;
  - (b) no time is specified in the notice of development consent, within two years after the issue of the development consent; or



- (c) the use is discontinued for a period of two years.

## **50 Extension of time for development consent**

- (1) The owner or occupier of the land to which the development consent applies may request the Authority for an extension of time for the development consent within three months before the expiry of the consent or within three months after the consent has expired and the Authority may in its discretion grant an extension of time for the development consent.
- (2) If the time is extended after the development consent has lapsed, the extension operates from the day the development consent expires.

## **51 Validity of development consents**

A person who has made a submission in accordance with section 40 and has been given a notice under section 46 may bring proceedings in the Supreme Court challenging the validity of the development consent on the ground that the law relating to the granting of the development consent has not been complied with, provided that the proceedings shall be brought within 28 days of the issue of the notice.

## **52 Correction of mistakes**

The Authority may correct a development consent issued by it if the consent contains —

- (a) a clerical mistake or an error arising from any accidental slip or omission; or
- (b) an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the consent.

## **53 Continuing uses**

- (1) Subject to subsections (2) and (3), nothing in any plan or amendment of such plan shall –
  - (a) prevent the continuance of the use of any land (upon which no buildings or works are erected) for the purposes for which it was being lawfully used before the coming into operation of the plan or amendment;
  - (b) prevent the use of any building (which was erected before the coming into operation of the plan or amendment) for any purpose for which the building was lawfully being used immediately before the coming into operation of the plan or any amendment;

- (c) prevent the use of any works (which were constructed before the coming into operation of the plan or amendment) for any purpose for which they were being lawfully used immediately before the coming into operation of the plan or amendment; or
  - (d) require the removal or alteration of any lawfully constructed building or works.
- (2) Subsection (1) does not apply to a use of land or works –
- (a) which has stopped for a continuous period of two years; or
  - (b) which has stopped for two or more periods which together total two years in any period of three years.
- (3) Any application for renewal of trading licence or other permit shall be in writing, if such renewal relates to any activity that is inconsistent with a spatial plan or amendment thereof.

#### 54 Amenity of an area or place

- (1) Notwithstanding section 53(1), where the amenity of an area or place, whether such area or place is subject to a development consent (either public or private) or otherwise, is in the opinion of the Authority compromised by:
- (a) excessive noise;
  - (b) excessive dust;
  - (c) visually offensive signage, material or structures;
  - (d) poor airspace, lighting or ventilation;
  - (e) excessive traffic generation;
  - (f) smell, fumes, vapours;
  - (g) waste materials, including bulk material, hazardous or inflammable used goods and property;
  - (h) waste water, sewage and drainage; or
  - (i) stray and domestic animals.

and in the view of the Authority the matters referred to in paragraphs (a) – (j) are inconsistent with the objectives of this Act or any standards made under this Act, the Authority may require the owner or occupier by Order under section 66, to cease or to undertake the work or activity specified by the Authority in the Order to remove or minimise the nuisance impacting on the amenity of the area or place.

- (2) Where:
- (a) an owner or occupier of land who has been served with an Order under subsection (1) fails to comply with the Order within the time specified in the Order; or

- (b) the Authority considers on reasonable grounds that action must be taken as a matter of urgency to remove or minimise the negative effects of any matter referred to in subsection (1),

the Authority may take such action or cause such action to be taken as the Authority reasonably determines to remove or minimise such negative effects and the reasonable costs of the Authority in taking or causing such action shall be recoverable by the Authority against the said owner or occupier, or both, as the case may be, in any court of competent jurisdiction as a debt due to the Authority.

- (3) Under subsection (2) the Authority may:
  - (a) enter any land, building or works, if necessary by the use of reasonable force;
  - (b) require any member of the Police to assist the Authority or any person acting for the Authority under this section; and
  - (c) remove any person who is obstructing or attempting to obstruct the Authority or any person acting for the Authority under this section, if necessary by the use of reasonable force.

## **PART V - PLANNING TRIBUNAL**

### **55 Tribunal**

- (1) There shall be a Planning Tribunal which shall consist of a President and other Members appointed from time to time by the King in Council, after receiving advice from Judicial Appointments and Discipline Panel.
- (2) The President shall be a person who is qualified to be appointed a Judge of the Supreme Court, and the other Members of the Tribunal shall be such persons as the King in Council considers to be fit and proper for service as Tribunal Members.
- (3) The President and other Members of the Tribunal shall, subject to any contractual arrangements, hold office during good behaviour.
- (4) The quorum for the Planning Tribunal shall be three including the Chairman or acting Chairman.

### **56 Acting Appointments**

The King in Council, after receiving advice from the Judicial Appointments and Discipline Panel, may appoint an acting President or acting Member of the Tribunal in the event of the temporary absence or inability of the President of a Member.

**57 Assessors**

- (1) The Tribunal may, where it requires assistance with matters of a professional, technical or specialised nature, appoint any person who in its opinion has or have expert knowledge of those matters to be an assessor for the purposes of the appeal.
- (2) Any assessor appointed under subsection (1) shall sit with the Tribunal and in all respects act as an extra member thereof for the hearing and determination of the appeal, except that the assessor shall have no vote in the determination of the appeal.

**58 Evidence**

- (1) On the hearing of any proceedings, the Tribunal may summon witnesses, examine witnesses on oath or otherwise, receive such evidence as it thinks fit, and receive any statement, document, information, or matter which in the opinion of the Tribunal may assist it to deal with the matters before it, whether or not the same would be admissible in a court of law.
- (2) The Tribunal may order any person to provide any document which it deems to be relevant to the hearing.

**59 Onus of proof**

In any proceedings the onus of proof shall rest upon the party bringing the proceedings.

**60 Hearing**

- (1) At the hearing of any proceedings any party may be represented by counsel.
- (2) At the hearing of any proceedings, the person bringing the proceedings shall be entitled to be present.
- (3) Appeals affecting more than one appellant shall not be heard together, unless the Tribunal so directs.
- (4) The Tribunal shall regulate its own procedure, make rules of procedure, and direct the forms to be used.
- (5) Proceedings before the Tribunal shall not be held invalid for want of form.

**61 Decision**

- (1) The Tribunal shall decide any proceeding on the merits of the case.
- (2) The Tribunal may confirm, amend, or cancel a decision to which an appeal relates.

- (3) A decision of a majority of the members shall be the decision of the Tribunal.

## **62 Costs**

- (1) On the hearing of any proceeding, the Tribunal may make such order as to costs as it thinks proper.
- (2) Where, in the opinion of the Tribunal, any proceeding is frivolous or vexatious, or should not have been brought, the person bringing the proceedings may be ordered by the Tribunal to pay the cost of the proceedings in whole or in part.

## **63 Final decision**

The decision of the Tribunal shall be final.

## **64 Offence to attempt to influence Tribunal**

Any person who in any way attempts to improperly influence the Tribunal or any member of the Tribunal commits an offence, and shall be liable on conviction to a term of imprisonment not exceeding three years or to a fine not exceeding \$10,000, or both.

## **65 Remuneration of Tribunal members**

The King in Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall determine the remuneration in consultation with the Remuneration Authority and other terms of service of the President and Members of the Tribunal and any acting President or acting Member, and shall have the power to dismiss them.

# **PART VI - ENFORCEMENT AND LEGAL PROCEEDINGS**

## **66 Order by the Authority**

- (1) The Authority may issue an Order and cause the same to be served on any person specified in subsection (2) to do or refrain from doing a thing specified in the Order within a specified time, if a use or development of land contravenes or has contravened, or, unless prevented by the order, will contravene this Act, a plan, or a condition of a development consent.
- (2) An Order under subsection (1) may be issued to one or more of the following persons —

- (a) the owner of the land;
- (b) the occupier of the land;
- (c) any other person who has an interest in the land; and
- (d) any other person by whom or on whose behalf the use or development was, is being, or is to be carried out.

## 67 Enforcement measures

Where a person fails to comply with the terms of an Order issued under section 66, the Authority may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order, and the costs thereof shall be recoverable as a debt to the Authority.

## 68 Power of entry

- (1) Any officer authorised in writing by the Authority may enter any land, dwelling, building or premises at any reasonable time to carry out and enforce this Act, the regulations, a sustainable management plan, a condition of development consent, or an order under section 66 or, if the said authorised officer or other person has a reasonable suspicion, to find out whether any of the matters referred to in this section has been or is being contravened.
- (2) In exercising any power under section 66 and this section, the Authority or any officer authorised in writing by the Authority may exercise the powers detailed in section 54(3).

## 69 Enforcement by court

- (1) In this section:
  - (a) a reference to a breach of this Act is a reference to:
    - (i) a contravention of or failure to comply with this Act; or
    - (ii) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act; and
  - (b) a reference to this Act includes a reference to the following:
    - (i) the regulations;
    - (ii) a plan; or
    - (iii) a development consent granted under this Act, including a condition subject to which such consent is granted.
- (2) The Authority or any interested person may bring proceedings in the Supreme Court for an order to remedy or restrain a breach of this Act.
- (3) Proceedings under this section may be brought by an interested person on their own behalf or on their own behalf and other persons (with their consent) or a

body corporate or unincorporated body (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

- (4) Where the Supreme Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Supreme Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.
- (5) Without limiting the powers of the Supreme Court under subsection (4), an order made under that subsection may:
  - (a) where the breach of this Act comprises a use of any building, work or land, restrain that use;
  - (b) where the breach of this Act comprises the erection of a building or the carrying out of a work, require the demolition or removal of that building or work; or
  - (c) where the breach of this Act has the effect of altering the condition or state of any building, work or land, require the reinstatement, so far as is practicable, of that building, work or land, as the case may be, to the condition or state the building, work or land was in immediately before the breach was committed.
- (6) Where a breach of this Act would not have been committed but for the failure to obtain a development consent, the Supreme Court, upon application being made by the defendant, may:
  - (a) adjourn the proceeding to enable a development application to be made to obtain that consent; and
  - (b) in its discretion, by interlocutory order, restrain the continuance of the commission of the breach while the proceedings are so adjourned.

## 70 Offences

- (1) Any person who —
  - (a) carries out development that needs development consent without obtaining such consent, or who uses or develops land in contravention of or fails to comply with a plan, or a development consent; or
  - (b) contravenes any provision of this Act,is guilty of an offence and is liable to a fine not exceeding \$100,000 or imprisonment not exceeding 10 years or both, and, in the case of continuing offences to a further fine not exceeding \$500 for every day or part of a day during which such offence continues.
- (2) In addition to any other penalty, the court may order that any offending structure or works be demolished.

**71 Offences by corporations**

- (1) Where a person charged with an offence against this Act or the regulations is a body corporate, any person who is concerned or takes part in the management of that body corporate at the time the offence is committed may be charged with the same offence.
- (2) Where a body corporate is convicted of an offence against this Act, a person charged under this section with the same offence may also be convicted of the offence and is liable to the penalty for that offence unless that person proves that the act or omission constituting the offence took place without that person's knowledge or consent.

**72 Obstruction of authorised persons**

Every person who obstructs, hinders, impedes, resists, or opposes a person authorised under section 68 in the exercise of any powers conferred on the authorised person by or pursuant to this Act commits an offence against this Act and is liable upon conviction to a fine not exceeding \$10,000.

**73 Immunity from action**

No action for damages shall be sustainable against any authorised person for any act or anything done or carried out in good faith in exercising any powers under this Act.

## PART VII – MISCELLANEOUS

**74 Act binds the Crown**

This Act binds the Crown.

**75 Annual report**

The Authority shall report to Cabinet and Legislative Assembly on its activities for each calendar year, and such annual report shall include –

- (a) the audited accounts; and
- (b) any spatial plan completed during that year.

**76 Funding of the Authority**

The funds available to the Authority shall be –

- (a) moneys allocated by the Legislative Assembly for that purpose;



- (b) moneys paid to and for it by an external agency or government for general purposes, for a specific purpose, or for the remuneration and benefit of specialists engaged by the Authority.

#### **77 Accounting and audit**

- (1) The Authority shall keep proper accounts and other records in relation to its finances.
- (2) The accounts of the Authority shall be audited annually by the Auditor General.

#### **78 Public Enterprises Act not to apply**

For the avoidance of any doubt, the provisions of the Public Enterprises Act do not apply to the Authority.

#### **79 Charges and fees**

Charges or fees payable shall be those prescribed by regulations.

#### **80 Regulations**

- (1) The Authority, with the consent of Cabinet, may make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.
- (2) Any regulation may impose a fine not exceeding \$1000.

**ENDNOTES**

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<sup>1</sup> Act 7 of 2012

Commencement of certain sections by Proclamation at G6/2014

<sup>2</sup> By G 6/2014 the following sections were brought into force on 1<sup>st</sup> March 2014 – the remainder of the Act came into force as at 30 June 2017 by G 10/2017 –

1. Section 3(1);
2. Section 3(2)(a);
3. Section 3(3);
4. Section 3(4);
5. Section 4;
6. Section 5;
7. Section 6;
8. Section 7;
9. Section 73;
10. Section 74;
11. Section 75;
12. Section 76;
13. Section 77;
14. Section 78;
15. Section 79; and
16. Section 80.