

(Reprint No. 1)

SOUTH AUSTRALIA

PLANNING ACT, 1982

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 15 November 1991.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since its last reprinting on 1 February 1988.

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SCHEDULE

PLANNING ACT, 1982

being

Planning Act, 1982, No. 3 of 1982 [Assented to 21 January 1982]¹

as amended by

Statutes Amendment (Planning) Act, 1982, No. 62 of 1982 [Assented to 1 July 1982]²
Planning Act Amendment Act, 1982, No. 100 of 1982 [Assented to 23 December 1982]³
Planning Act Amendment Act, 1984, No. 10 of 1984 [Assented to 3 May 1984]⁴
Planning Act Amendment Act (No. 2), 1984, No. 11 of 1984 [Assented to 3 May 1984]⁵
Planning Act Amendment Act (No. 3), 1984, No. 70 of 1984 [Assented to 8 November 1984]⁶
Planning Act Amendment Act (No. 4), 1984, No. 92 of 1984 [Assented to 11 December 1984]
Planning Act Amendment Act, 1985, No. 41 of 1985 [Assented to 18 April 1985]
Statutes Amendment (Remuneration) Act, 1985, No. 59 of 1985 [Assented to 30 May 1985]⁷
Planning Act Amendment Act (No. 2), 1985, No. 71 of 1985 [Assented to 6 June 1985]⁸
Planning Act Amendment Act (No. 3), 1985, No. 73 of 1985 [Assented to 6 June 1985]⁸
Planning Act Amendment Act (No. 4), 1985, No. 88 of 1985 [Assented to 3 October 1985]⁹
Planning Act Amendment Act, 1986, No. 38 of 1986 [Assented to 28 August 1986]
Planning Act Amendment Act (No. 2), 1986, No. 49 of 1986 [Assented to 11 September 1986]¹⁰
Planning Act Amendment Act, 1987, No. 47 of 1987 [Assented to 30 April 1987]¹¹
Planning Act Amendment Act (No. 2), 1987, No. 64 of 1987 [Assented to 29 October 1987]¹²
Planning Act Amendment Act (No. 3), 1987, No. 107 of 1987 [Assented to 17 December 1987]¹³
Aboriginal Heritage Act, 1988, No. 12 of 1988 [Assented to 17 March 1988]¹⁴

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

¹ Came into operation (except ss. 5-8, 17-39, 46-70, 73 and 74) 20 May 1982: *Gaz.* 20 May 1982, p. 1716; remainder of Act came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1304.

² Came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1304.

³ Came into operation 20 May 1982: s. 2.

⁴ Came into operation (except s. 7(a) and (b)) 3 May 1984: s. 2; s. 7(a) and (b) had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

⁵ Came into operation 6 August 1984: *Gaz.* 26 July 1984, p. 332.

⁶ Came into operation 29 November 1984: *Gaz.* 29 November 1984, p. 1700.

⁷ Came into operation 13 June 1985: *Gaz.* 13 June 1985, p. 2132.

⁸ Came into operation 15 August 1985: *Gaz.* 8 August 1985, p. 334.

⁹ Came into operation 1 November 1985: *Gaz.* 24 October 1985, p. 1175.

¹⁰ Came into operation 18 September 1986: *Gaz.* 18 September 1986, p. 853.

¹¹ Came into operation 25 May 1987: *Gaz.* 21 May 1987, p. 1329.

¹² Came into operation 1 February 1988: *Gaz.* 10 December 1987, p. 1797.

¹³ Came into operation 1 July 1988, being the day on which the Waste Management Act, 1987, came into operation: *Gaz.* 30 June 1988, p. 2051: s. 2.

¹⁴ Came into operation 1 March 1989: *Gaz.* 9 February 1989, p. 354.

An Act to provide for planning, and to regulate development, within the State; to repeal the Planning and Development Act, 1966, and the Control of Advertisements Act, 1916; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

Short title

1. This Act may be cited as the *Planning Act, 1982*.

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*	*	*	*	*	*	*	*	*	*

Interpretation

4. (1) In this Act, unless the contrary intention appears—

“the Advisory Committee” means the *Advisory Committee on Planning* constituted under this Act:

“allotment” has the same meaning as in Part XIXAB of the *Real Property Act, 1886*:

“amendment” includes an addition, excision or substitution:

“amenity” of a locality includes any quality or condition of the locality that conduces to its harmony, pleasantness or enjoyment:

“area”, in relation to a council, means the area in relation to which the council is constituted:

“building” means—

(a) a building or structure;

or

(b) a portion of a building or structure,

whether temporary or permanent, moveable or immovable:

“the Chairman”, in relation to the Tribunal, the Commission or the Advisory Committee means the person for the time being holding or acting in the relevant office:

“the Commission” means the South Australian Planning Commission constituted under this Act:

“council” means a municipal or district council constituted under the *Local Government Act, 1934*:

“development”, in relation to land, means—

(a) the erection, construction, conversion, alteration of, or addition to, a building on the land;

(b) a change in the use of the land;

(c) the construction (except by the Crown, a council or other public authority) of a road, street or thoroughfare on the land (including any excavation or other preliminary or associated works);

- (d) prescribed mining operations on the land;
- (e) where the land is an allotment—the division of the allotment (except by strata plan);
- (f) where the land is an item of the State heritage or is, or forms part of, a State Heritage Area—the demolition, conversion, alteration of, or addition to, the item or the State Heritage Area;

or

- (g) an act or activity in relation to land declared by regulation to constitute development,

but does not include an act or activity in relation to land that is excluded by regulation from the ambit of this definition:

“the Development Plan” means the Development Plan under Part IV:

“division” of an allotment means—

- (a) the division, subdivision or resubdivision of the allotment;
- (b) the grant or acceptance of a lease or licence, or the making of an agreement for a lease or licence—
 - (i) by virtue of which a person becomes, or may become, entitled to possession or occupation of part only of an allotment—
 - (A) that comprises a dwelling and curtilage;
 - or
 - (B) on which there is no building that is suitable, and is used, for human occupation;
 - (ii)—the term of which exceeds six years or such longer term as may be prescribed;
 - or
 - in respect of which a right or option of renewal or extension exists so that the lease, licence or agreement may operate by virtue of renewal or extension for a total period exceeding six years or such longer period as may be prescribed;
- and
- (iii) that is not a lease or licence, or an agreement for a lease or licence that confers a right of possession or occupation subject to the granting of prior planning authorization;
- (c) the grant or acceptance of a lease or licence, or the making of an agreement for a lease or licence, of a class prescribed by regulation;
- or
- (d) the occupation of part only of an allotment by a person in the following circumstances:
 - (i) the person is, under a lease or licence, or an agreement for a lease or licence, entitled to occupy that part of the allotment subject to the granting of prior planning authorization under this Act;
 - and
 - (ii) the lease, licence or agreement is one to which paragraph (b) or (c) would apply if the right of occupation were not subject to that condition,

and “to divide” has a corresponding meaning:

“environmental impact statement”, in relation to a development or other project, means a statement of—

- (a) the expected effects of the development or project upon the environment;
- (b) the conditions (if any) that should be observed in order to avoid or satisfactorily manage and control any potentially adverse effects of the development or project upon the environment;
- (c) the economic, social or other consequences of carrying the development or project into effect;

and

- (d) any other particulars in relation to the development or project required—

- (i) by regulation;

- or

- (ii) by the Minister:

“the Hills Face Zone” means the zone shown as the Hills Face Zone on the Development Plan:

“item of the State heritage” means any land, building or structure that is—

- (a) a registered item under the *South Australian Heritage Act, 1978*;

- or

- (b) an item on the list kept under that Act:

“Judge” of the Tribunal includes the Chairman:

“land” includes—

- (a) any building upon the land;

- (b) any estate or interest in, or right in respect of, the land:

“the Mining Acts” means the *Mining Act, 1971*, the *Petroleum Act, 1940*, and the *Petroleum (Submerged Lands) Act, 1982*:

“mining production tenement” means—

- (a) a mining lease or miscellaneous purposes licence under the *Mining Act, 1971*;

- (b) a petroleum production licence or pipeline licence under the *Petroleum Act, 1940*;

- or

- (c) a production licence or pipeline licence under the *Petroleum (Submerged Lands) Act, 1982*:

“the Minister responsible for the State heritage” means the Minister responsible for the administration of the *South Australian Heritage Act, 1978*:

“owner” of land means—

- (a) where the land has been alienated from the Crown by grant in fee simple—the holder of an estate in fee simple in the land;

(b) where the land is held from the Crown by lease or licence—the lessee or licensee;

(c) where the land is held from the Crown under an agreement to purchase—the person who is entitled to the benefit of the agreement:

“planning authority” means a council, the Commission or another authority by which a planning authorization has been, or may be, granted:

“planning authorization”, in relation to development, means any consent, permission, approval, authorization or certificate required in respect of that development by or under this Act or the repealed Act:

“prescribed mining operations” means operations carried on in the course of—

(a) the recovery of naturally occurring substances (except water) from the earth (whether in solid, liquid or gaseous form);

(b) the recovery of minerals by the evaporation of water,

but does not include operations carried on in pursuance of any of the Mining Acts:

“the principles of development control” means the principles, prescriptions and criteria embodied in the Development Plan—

(a) under which—

(i) development, or any class of development, is permitted, absolutely or conditionally;

or

(ii) development, or any class of development, is prohibited;

(b) relating to the conditions upon which development, or any form of development, is or may be permitted or the conditions that may be attached to a planning authorization;

(c) otherwise relevant to the regulation, restriction or prohibition of development, or any form of development:

“private mine” means land declared under the *Mining Act, 1971*, to be a private mine:

“rating or taxing Act” means any Act that imposes a rate or tax upon land:

“rating or taxing authority” means any authority to which a rate or tax is payable under a rating or taxing Act:

“the repealed Act” means the *Planning and Development Act, 1966*, repealed by this Act:

“the Senior Judge” means the Senior Judge under the *Local and District Criminal Courts Act, 1926*:

“State Heritage Area” means an area of land designated as a State Heritage Area under the *South Australian Heritage Act, 1978*:

“the Tribunal” means the Planning Appeal Tribunal constituted under this Act:

“to undertake” development means to commence or proceed with development or to cause, suffer or permit development to be commenced or proceeded with.

(2) Where at the foot of a section or subsection the words "Additional Penalty" appear, those words signify that a person who undertakes development in contravention of, and thus commits an offence against, that section or subsection, is liable, in addition to any other penalty prescribed for the offence, to a penalty of an amount not exceeding the cost of the development insofar as it has been undertaken in contravention of that section or subsection.

(3) Where at the foot of a section or subsection the words "Default Penalty" appear, those words signify that, where a person is convicted of an offence against the section or subsection and the offence continues after the date of the conviction, the person is guilty of a further offence against the section or subsection and liable, in addition to any other penalty prescribed for the offence, to a penalty not exceeding the amount of the default penalty for every day the offence continues after the date of the conviction.

(4) A reference in this Act to the commencement of this Act is a reference to the day on which section 5 came into operation (4 November, 1982).

Concept of change in the use of land and continuation of an existing use

4a. (1) For the purpose of determining whether a change in the use of land has occurred, the commencement or revival of a particular use of the land will, subject to subsection (2), be regarded as a change in the use of the land if—

- (a) the use supersedes a previous use of the land;
- (b) the commencement of the use or the revival of the use follows upon a period of non-use;
- or
- (c) the use is additional to a previously established use of the land which continues notwithstanding the commencement of the new use.

(2) The revival of a use of land after a period of discontinuance will be regarded as the continuation of an existing use unless—

- (a) the period intervening between the discontinuance and revival of the use exceeds two years;
- (b) during the whole or a part of the period intervening between its discontinuance and revival, the use was superseded by some other use;
- or
- (c) the relevant planning authority has made a declaration under subsection (3) and the declaration remains unrevoked.

(3) Where—

- (a) a particular use of land has been discontinued for a period of six months or more (being a period that extends up to the date on which the relevant planning authority acts under this subsection);

and

- (b) the revival of that use would in the opinion of the relevant planning authority have an adverse effect upon the proper development of the locality in which the land is situated,

the relevant planning authority may, by notice in writing served on the owner and the occupier of the land, declare that a revival of the use will be treated, for the purposes of this Act, as a change in the use of the land.

(4) The owner or occupier may, within one month after service of a notice under subsection (3), or such extended period as may be allowed by the Tribunal, appeal to the Tribunal against the declaration.

(5) Upon an appeal under subsection (4), the Tribunal may confirm or revoke the declaration.

(6) For the purposes of this section, a particular use of land will be disregarded if the extent of the use is trifling or insignificant.

(7) In this section—

“the relevant planning authority” means—

(a) in relation to land that is not within the area of any council—the Commission;

(b) in relation to land within the area of a council—the council or the Commission.

* * * * *

Application of Act

6. (1) Subject to this section, this Act applies throughout the State.

* * * * *

(4) This Act does not apply to land within the City of Adelaide.

(5) This Act applies to land whether or not it has been brought under the provisions of the *Real Property Act, 1886*.

Extent to which the Crown is bound by this Act

7. (1) Subject to this section, this Act binds the Crown.

(2) Where a Minister of the Crown, or a prescribed instrumentality or agency of the Crown, proposes to undertake development, it must, subject to subsection (3), give notice containing prescribed particulars of the proposal—

(a) to the Commission;

and

(b) where the land in relation to which the development is proposed is within the area of a council—to that council.

(3) Notice of a proposed development is not required under subsection (2) if the development is—

(a) such as could be undertaken by a private person without planning authorization;

or

(b) of a kind excluded from the provisions of this section by regulation.

(4) A council may report to the Commission upon a proposal of which it receives notice under subsection (2).

(5) Where notice of a proposal is given to a council under subsection (2), and a report from the council is not received by the Commission within two months of the date of the notice, it will be conclusively presumed that the council does not intend to report on the proposal.

(6) The Commission must report to the Minister on any proposal of which it receives notice under subsection (2).

(7) A report under subsection (6)—

(a) must incorporate any report made by a council under subsection (4);

and

(b) if an environmental impact statement has not been prepared and published in relation to the proposal—must contain a recommendation on whether an environmental impact statement should be prepared and published in relation to the proposal.

* * * * *

(9) The Minister, if of the opinion, after consideration of a report under subsection (6), that the proposal to which the report relates is seriously at variance with the Development Plan, may give such directions in relation to the proposed development as he or she thinks fit.

(9a) If—

(a) an environmental impact statement has been prepared and published in relation to the proposal or the Commission has recommended that such a statement should be prepared and published;

(b) the Minister has given, or proposes to give, directions in relation to the proposed development under subsection (9);

or

(c) a council has expressed opposition to the proposed development in its report under subsection (4),

the Minister must, as soon as practicable, cause copies of the report under subsection (6) to be laid before both Houses of Parliament.

(10) Except as provided by this section, this Act does not bind a Minister of the Crown or a prescribed instrumentality or agency of the Crown.

Councils bound by this Act

8. (1) This Act applies to development undertaken by a council.

(2) Where—

(a) a council proposes to undertake development;

and

(b) a planning authorization would, apart from this section, be required from that council in respect of development of the kind proposed,

the Commission is the planning authority from which the relevant planning authorization is to be sought, and provisions of this Act under which the council is constituted as planning authority in relation to development of the kind proposed will, in relation to the particular development proposed by the council, be construed subject to such modifications as are necessary to give effect to this section.

PART II

ADMINISTRATION

DIVISION I—THE SOUTH AUSTRALIAN PLANNING COMMISSION

Establishment of the Commission

9. (1) The *South Australian Planning Commission* is established.

(2) The Commission has the powers, functions and duties conferred, assigned or imposed by or under this Act.

(3) In the exercise and discharge of its powers, functions or duties the Commission is (except where the Commission makes or is required to make a recommendation or report, is required to give effect to an order or direction of the Tribunal or a court or has a discretion in relation to the granting of a planning authorization) subject to the control and direction of the Minister.

Membership of the Commission

10. (1) The Commission consists of the following members appointed by the Governor:

(a) a Chairman;

(b) a Deputy Chairman;

(c) a person with practical knowledge of, and experience in, local government chosen from a panel of three such persons submitted to the Minister by the Local Government Association;

(d) a person with practical knowledge of, and experience in, urban development, commerce, industry or building or landscape design;

and

(e) a person with practical knowledge of, and experience in, environmental management, the management of natural resources or the provision of community facilities.

(2) The Chairman and Deputy Chairman—

(a) must be corporate members of the Royal Australian Planning Institute Incorporated;

or

(b) must have qualifications and experience in urban and regional planning, environmental management or a related discipline that are, in the opinion of the Governor, appropriate to the Chairman's functions and duties under this Act.

(3) At least one member of the Commission must be a woman and at least one member must be a man.

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*	*	*	*	*	*	*	*	*	*

(7) The term of office for which a member of the Commission is appointed will be—

(a) in the case of the Chairman—a term of five years;

and

(b) in the case of other members—a term, not exceeding two years, specified in the instrument of appointment.

(8) A member of the Commission is, upon the expiration of a term of appointment, eligible for reappointment.

(9) The remuneration, allowances and conditions of appointment of a member of the Commission—

(a) will be as determined by the Governor;

or

(b) will, in the case of the Chairman, if the Governor so decides, be determined wholly or in part in accordance with the *Government Management and Employment Act, 1985*.

(10) The Governor may remove a member of the Commission from office for—

(a) breach of, or failure to comply with, the conditions of appointment;

(b) misconduct;

or

(c) mental or physical incapacity to carry out official duties satisfactorily.

(11) The office of a member of the Commission becomes vacant if the member—

(a) dies;

(b) resigns by written notice addressed to the Minister;

or

(c) is removed from office by the Governor under subsection (10).

(12) A member of the Commission who has a personal interest or a direct or indirect pecuniary interest in any matter before the Commission must not take part in any deliberations or decision of the Commission in relation to that matter.

Procedures of the Commission

11. (1) Subject to this Act, the procedure for the calling of meetings of the Commission, and the conduct of business at meetings of the Commission, will be as determined by the Commission.

(2) Three members (one of whom must be the Chairman or the Deputy Chairman) constitute a quorum of the Commission.

(3) The Chairman will preside at meetings of the Commission but in the absence of the Chairman the Deputy Chairman will preside at the meeting.

(3a) A question arising before the Commission will be determined in accordance with the opinion of a majority of the members present or, where they are equally divided in opinion, in accordance with the opinion of the person presiding at the meeting.

(4) The Commission must cause accurate minutes to be kept of its proceedings.

Immunity of members of the Commission

11a. (1) No liability attaches to a member of the Commission, for any act or omission by the member, or by the Commission, in good faith and in the exercise, or purported exercise, of powers or functions or in the discharge, or purported discharge, of duties under this Act.

(2) A liability that would, but for subsection (1), attach to a member of the Commission, attaches instead to the Crown.

Advisory functions of the Commission

12. For the purposes of this Act, the Commission—

- (a) may, on its own initiative, and must, at the request of the Minister, consider, and report to the Minister upon, matters relevant to the use or development of land;
- (ab) may, on its own initiative or at the request of the Minister, make recommendations as to regulations that should be made under this Act;
- (b) may, with the approval of the Minister, establish, or promote the establishment of, committees to advise the Commission on matters relevant to the administration of this Act.

Delegation of powers and functions

13. (1) The Commission may, with the approval of the Minister, delegate any of its powers or functions.

(2) A delegation under this section—

(a) may be made to—

- (i) the Chairman or some other member of the Commission;
- (ii) a committee (whether or not it consists of, or includes, a member or members of the Commission);
- (iii) a council or other body corporate;
- or
- (iv) any other person;

(b) may be made subject to such conditions as the Commission thinks fit;

(c) is revocable at will and does not derogate from the power of the Commission to act in any matter itself.

(3) Where the Commission delegates powers or functions to a council in pursuance of this section, the council may subdelegate those powers to a committee or officer of the council.

(4) A person to whom powers or functions are delegated under this section (whether individually or as a member of a committee) is disqualified from acting in pursuance of the delegation in relation to any matter in which he or she has a personal interest or a direct or indirect pecuniary interest.

DIVISION II—THE ADVISORY COMMITTEE ON PLANNING**Constitution of the Committee**

14. (1) The *Advisory Committee on Planning* is established.

(2) The Advisory Committee consists of the following members appointed by the Governor:

(a) a person who—

- (i) is a corporate member of the Royal Australian Planning Institute Incorporated;

or

- (ii) has qualifications and experience in urban and regional planning, environmental management or a related discipline;

- (b) two persons with wide experience of local government;
- (c) a person with wide experience in environmental matters;
- (d) a person with wide experience of commerce and industry;
- (e) a person with wide experience in rural affairs;
- (f) a person with wide experience of housing or urban development;
- and
- (g) a person with wide experience of the utilities and services that form the infrastructure of urban development.

(2a) In making appointments to the Advisory Committee the Governor must have regard to the need for the Committee to be sensitive to cultural diversity in the population of the State.

(2b) The Governor will appoint a member of the Committee to preside at its meetings.

(3) At least one member of the Advisory Committee must be a woman and at least one member must be a man.

(4) Subject to subsection (5), a member of the Advisory Committee holds office at the pleasure of the Governor.

(5) A member of the Advisory Committee ceases to hold office at the expiration of two years, or such lesser period as the Governor may determine, from the date of appointment (or last reappointment) unless the Governor reappoints the member to the Advisory Committee.

(6) Subject to any direction of the Minister, the procedures for calling meetings of the Advisory Committee, and conducting its proceedings, will be as determined by the Advisory Committee.

Functions and powers of the Advisory Committee

15. (1) The Advisory Committee—

- (a) may advise the Minister on any matter relating to urban or regional planning that should, in the opinion of the Committee, be brought to the Minister's attention;

and

- (b) must advise the Minister on any matter referred by the Minister to the Committee for advice.

(2) The Advisory Committee may, with the approval of the Minister, establish specialist subcommittees to investigate, and report to the Committee, on any matter.

(3) A member of the Advisory Committee, or of a subcommittee appointed under subsection (2), who has a personal interest or a direct or indirect pecuniary interest in any matter before the Advisory Committee or the subcommittee must not take part in any deliberations or decision of the Advisory Committee or the subcommittee (as the case may require) in relation to that matter.

DIVISION III—STAFF

Staff

16. (1) There will be—

(a) a secretary to the Commission;

(b) a secretary to the Advisory Committee;

and

(c) such other staff to assist the Commission, the Advisory Committee, or both, as the Governor thinks fit.

(2) A secretary or other member of staff referred to in subsection (1) will be appointed, and will hold office, subject to, and in accordance with, Part III of the *Government Management and Employment Act, 1985*.

(3) The Commission or the Advisory Committee may, with the approval of the Minister administering a department of the Public Service, make use of the services of officers of that department.

(4) The Commission or the Advisory Committee may, with the approval of a council, make use of the services of officers or employees of that council.

PART III

APPELLATE AND OTHER PROCEEDINGS UNDER THIS ACT

DIVISION I—THE PLANNING APPEAL TRIBUNAL

The Tribunal

17. The *Planning Appeal Tribunal* (formerly known as the *Planning Appeal Board*) continues in existence.

The Chairman

18. (1) There will be a Chairman of the Tribunal.

(2) The Chairman will be a person holding judicial office under the *Local and District Criminal Courts Act, 1926*, nominated by the Senior Judge as Chairman of the Tribunal.

(3) The Chairman is not precluded from performing any other judicial functions.

(4) The Chairman ceases to hold office as such—

(a) on ceasing to hold judicial office under the *Local and District Criminal Courts Act, 1926*;

or

(b) on revocation of the nomination by the Senior Judge.

(5) If the Chairman is absent or unavailable to act, a Judge nominated by the Senior Judge will act in the office of the Chairman.

The Judges of the Tribunal

19. The Judges holding office under the *Local and District Criminal Courts Act, 1926*, are Judges of the Tribunal.

The commissioners

20. (1) There will be such commissioners of the Tribunal as the Governor thinks fit to appoint.

(2) A commissioner may be appointed on a full-time or part-time basis, but not more than six may be appointed on a full-time basis.

(3) A commissioner must be a person with practical knowledge of, and experience in—

(a) local government;

(b) urban and regional planning;

(c) administration, commerce or industry;

or

(d) environmental management, housing or welfare services.

(4) Subject to subsections (5) and (5a), a full-time commissioner holds office upon terms and conditions determined by the Governor.

(5) The following provisions apply in respect of full-time commissioners:

- (a) a full-time commissioner is not subject to Part III of the *Government Management and Employment Act, 1985*, but the rights of a full-time commissioner to long service leave, recreation leave, sick leave and other forms of leave will be determined in accordance with the provisions of that Act and the regulations under that Act;
- (b) a full-time commissioner may, after reaching the age of retirement, complete the hearing and determination of any appeal or matter part heard by the commissioner before reaching that age and will, for that purpose, be taken to continue as a full-time commissioner;
- (c) a full-time commissioner is an "employee" within the meaning of the *Superannuation Act, 1974*.

* * * * *

(5a) The salary and allowances of a full-time commissioner will be as determined from time to time by the Remuneration Tribunal.

(6) A part-time commissioner will be appointed for a term of office (not exceeding five years) determined by the Governor, and will, at the expiration of a term of office, be eligible for reappointment.

(7) The office of a part-time commissioner becomes vacant if the commissioner—

- (a) dies;
- (b) resigns by notice in writing addressed to the Minister;
- or
- (c) is removed from office by the Governor on the ground of—
 - (i) physical or mental incapacity to carry out official duties satisfactorily;
 - or
 - (ii) misconduct.

Saving provision

21. No act or proceeding of the Tribunal is invalid by reason of a vacancy in the office, or a defect in the appointment, of a Judge or commissioner of the Tribunal.

Personal or pecuniary interest to disqualify member of Tribunal

22. A Judge or commissioner of the Tribunal who has a personal interest or a direct or indirect pecuniary interest in the subject matter of a proceeding before the Tribunal, is disqualified from sitting at the hearing.

The secretary

23. (1) There will be a secretary to the Tribunal.

(2) The office of secretary to the Tribunal may be held in conjunction with any other office in the Public Service of the State.

Administrative responsibility of Senior Judge

24. (1) The Senior Judge may give directions as to the sittings of the Tribunal and the arrangement of its business.

(2) Subject to any directions of the Senior Judge the sittings of the Tribunal and the arrangement of its business will be under the control of the Chairman.

Constitution of the Tribunal when hearing proceedings

25. (1) Subject to subsection (7), the Tribunal will be constituted of—

(a) a Judge and not less than two commissioners (referred to as “a full bench”);

or

(b) a Judge or a commissioner sitting alone.

(2) Subject to this section, the Senior Judge, or a Judge nominated for that purpose by the Senior Judge, may give directions as to the constitution of the Tribunal.

(3) The nomination of a Judge under subsection (2) may be withdrawn by the Senior Judge at any time.

(4) Where a conference is held in pursuance of this Part the chairman of the conference may, for the purpose of the proceedings to which the conference relates, determine whether the Tribunal should be constituted of a full bench, a Judge or a commissioner but if before the conclusion of the conference all the parties appearing at the conference request that the Tribunal be constituted of a full bench, it will be so constituted.

(5) The Tribunal will not be constituted of a full bench unless—

(a) the person determining the constitution of the Tribunal is of the opinion that the questions to be determined by the Tribunal are of such importance that they should be determined by a full bench of the Tribunal;

or

(b) the parties appearing at a conference request that the Tribunal be constituted of a full bench.

(6) Where the Tribunal is, at the commencement of a hearing constituted of a full bench and a commissioner dies or is for any reason unable to continue with the hearing—

(a) the Tribunal constituted of the Judge and the remaining commissioner or commissioners may continue and complete the hearing and determination of the proceedings;

or

(b) if the Judge is the only remaining member, the Judge may, if all parties agree, continue and complete the hearing and determination of the proceedings.

(7) The Tribunal may be constituted of the secretary to the Tribunal—

(a) for the purpose of adjourning proceedings;

or

(b) for any other purpose prescribed by rules of the Tribunal.

(8) The Tribunal, when constituted of a commissioner or the secretary may refer a question of law for the decision of a Judge and, in that event, the Judge will decide that question and may, in addition—

(a) decide any other questions remaining between the parties;

and

(b) make such orders as are necessary to dispose of the matter.

(9) A decision or order of a Judge pursuant to subsection (8) is a decision or order of the Tribunal.

(10) The Tribunal, separately constituted in accordance with this Act, may sit to hear and determine separate proceedings at the same time.

How decisions of the Tribunal to be arrived at

26. Where the Tribunal is constituted of a Judge and one or more commissioners, any question arising before the Tribunal will be determined in accordance with the opinion of a majority of those constituting the Tribunal or, where they are equally divided in opinion, in accordance with the opinion of the Judge.

Conference of parties to proceedings

27. (1) The Tribunal must not commence the hearing of proceedings unless it is satisfied that a conference of the parties, under the chairmanship of a Judge or commissioner of the Tribunal has taken place.

(1a) The chairman of a conference must assist the parties to resolve matters in dispute between them.

(1b) Where a question of law arises during the course of a conference, the chairman may refer the question to a Judge of the Tribunal for determination.

(2) The Tribunal may dispense with a conference under this section if it is of the opinion that—

(a) no useful purpose would be served by a conference between the parties prior to the hearing;

or

(b) there is some other reason that justifies dispensing with the conference.

(3) A party to proceedings before the Tribunal may appear at a conference under this section by counsel or other representative and any compromise or settlement to which the counsel or other representative agrees at the conference is binding on the principal.

(4) Subject to subsection (5), evidence of anything said or done in the course of a conference under this section is inadmissible in proceedings before the Tribunal except by consent of all parties to the proceedings.

(5) The chairman of a conference under this section must report to the Tribunal on whether a compromise or settlement was reached at the conference and, if so, the terms of the compromise or settlement, and the Tribunal may, without further inquiry, make any determination or order necessary to give effect to any such compromise or settlement.

Principles governing hearings

28. Upon the hearing of proceedings—

(a) the procedure of the Tribunal will, subject to this Act, be as it thinks fit;

(b) the Tribunal is not bound by the rules of evidence and may inform itself upon any matter as it thinks fit;

and

(c) the Tribunal must act according to equity, good conscience and the substantial merits of the case.

Powers of the Tribunal in relation to witnesses, etc.

29. (1) The Tribunal may, for the purposes of proceedings before the Tribunal—

(a) by summons signed on behalf of the Tribunal by a member of the Tribunal or the secretary, require the attendance before the Tribunal, or at a conference, of any person;

- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal or the secretary, require the production before the Tribunal of any relevant books, papers or documents;
- (c) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit and make copies of them or any of their contents;
- (d) require any person to make an oath or affirmation to answer truly all questions put to him or her relating to any matter at issue before the Tribunal (which oath or affirmation may be administered by a member of the Tribunal or the secretary);

or

- (e) require any person appearing before the Tribunal to answer any relevant questions put by a member of the Tribunal or by any person appearing before the Tribunal.

(2) Subject to subsection (3), a person who—

- (a) has been served with a summons to attend before the Tribunal, or at a conference, and fails, without reasonable excuse, to attend in obedience to the summons;
- (b) has been served with a summons to produce relevant books, papers or documents and fails, without reasonable excuse, to comply with the summons;
- (c) misbehaves before the Tribunal, wilfully insults the Tribunal, or any member of the Tribunal, or interrupts the proceedings of the Tribunal;

or

- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal,

is guilty of an offence.

Penalty: \$1 000 or imprisonment for three months.

(3) A person who appears as a witness before the Tribunal has the same protection as a witness in proceedings before a District Court.

Joinder of parties and intervention of Minister

30. (1) The Tribunal may, by order, join a person as a party to proceedings before the Tribunal.

(1a) An order under subsection (1) may be made on an *ex parte* application.

(2) The Minister may, if of the opinion that proceedings before the Tribunal involve a question of public importance, intervene in those proceedings.

Costs

31. (1) The Tribunal may make an order for costs in any proceedings in accordance with the scale prescribed for that purpose—

- (a) where, in the opinion of the Tribunal, the proceedings are frivolous or vexatious;

or

- (b) where, in the opinion of the Tribunal, the proceedings have been instituted or prosecuted for the purpose of delay or obstruction.

(2) Where a party to proceedings before the Tribunal applies for an adjournment of the hearing of those proceedings, the Tribunal may grant that application upon such terms as it considers just, and may make an order for costs, in accordance with a scale prescribed for the purpose, against the applicant for the adjournment in favour of any other party to the proceedings.

Hearings before the Tribunal to be in public except in certain circumstances

32. (1) Unless otherwise directed by the Tribunal, all hearings before the Tribunal will be in public.

(2) Where the Tribunal is satisfied that it is desirable to do so—

- (a) in the interests of justice;
- (b) by reason of the confidential nature of the evidence to be given before the Tribunal;
- (c) in order to expedite proceedings of the Tribunal;
- or
- (d) for any other reason that the Tribunal thinks sufficient,

the Tribunal may—

- (e) direct that a hearing, or part of a hearing, take place in chambers;
- (f) give directions prohibiting or restricting the publication of evidence given before the Tribunal or of the contents of any document produced to the Tribunal;
- or
- (g) give directions excluding any person from the hearing before the Tribunal of any part of the proceedings.

(3) A person must comply with a direction of the Tribunal under subsection (2).

Penalty: \$1 000.

Rules of the Tribunal, etc.

33. (1) The Senior Judge may make rules of the Tribunal—

- (a) governing the institution of proceedings before the Tribunal;
- (b) governing the practice and procedure to be observed in relation to conferences of parties prior to the hearing of proceedings;
- and
- (c) governing any aspect of the practice and procedure of the Tribunal.

(2) An apparently genuine document purporting to be a copy of a determination or order of the Tribunal and to be certified as such by the secretary to the Tribunal will, in any legal proceedings, in the absence of proof to the contrary, be accepted as proof of the determination or order.

Appeals and cases stated

34. (1) Subject to the rules of the Supreme Court, a party to proceedings before the Tribunal may, within 30 days after the date of the Tribunal's determination or decision or such longer period as may be allowed by the Court, appeal against the determination or decision to the Land and Valuation Court, and on any such appeal, the Court may confirm, vary or reverse the determination or decision of the Tribunal and make such orders (including orders as to costs) as it thinks just.

(2) Subject to the rules of the Supreme Court, the Tribunal may refer to the Land and Valuation Court any question of law arising before the Tribunal, and the Court may determine the question as it thinks just, and make such orders (including orders as to costs) as it thinks just.

General powers of the Tribunal and the Land and Valuation Court with respect to appeals

35. (1) Where a person appeals, or purports to appeal, under this or any other Act to the Tribunal, or appeals, or purports to appeal, against a determination or decision of the Tribunal to the Land and Valuation Court, and it appears to the Tribunal or the Court that—

(a) a failure to comply with a requirement of this Act or of another Act or law affects the appeal or purported appeal or a determination or decision against which it has been brought;

and

(b) it would not be unjust or inequitable to exercise the powers conferred by this subsection,

the Tribunal or the Court may excuse the failure by ordering that, subject to such conditions as may be stipulated by the Tribunal or the Court, the requirement be dispensed with to the necessary extent.

(2) Where a person appeals under this or any other Act to the Tribunal, or appeals against a determination or decision of the Tribunal to the Land and Valuation Court, and it appears to the Tribunal or the Court that—

(a) the appeal relates to an application or proposal made by one party to the appeal to another party to the appeal;

(b) the appeal could be resolved in a manner that is fair to all parties if certain modifications to the application or proposal were made;

and

(c) it would conduce to the expeditious administration of justice if the powers conferred by this subsection were exercised,

the Tribunal or the Court may, by order, amend the application or proposal accordingly.

DIVISION II—CIVIL ENFORCEMENT PROCEEDINGS

Jurisdiction of the Court

36. (1) Where a person contravenes or fails to comply with a provision of this Act, or has contravened or failed to comply with a provision of the repealed Act, the Commission or a council may apply to a District Court for an order under this section.

(2) The application may be made *ex parte* and, if the Court is satisfied on the application that the respondent has a case to answer, it will issue a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.

(3) If—

(a) after hearing—

(i) the applicant and the respondent;

and

(ii) any other person who has, in the opinion of the Court, a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings,

the Court is satisfied, on the balance of probabilities, that the respondent to the application has contravened or failed to comply with a provision of this Act or the repealed Act;

or

(b) the respondent fails to appear in response to the summons or, having appeared, does not avail himself or herself of an opportunity to be heard,

the Court may, by order—

(c) require the respondent to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the contravention of, or failure to comply with, this Act or the repealed Act;

(d) require the respondent to make good the contravention or default in a manner, and within a period, specified by the Court.

(4) Any person with a legal or equitable interest in land to which an application under this section relates is entitled to appear and be heard in proceedings based on the application before a final order is made.

(5) If, upon an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

(6) An interim order—

(a) may be made on an *ex parte* application;

(b) will be made subject to such conditions as the Court thinks fit;

and

(c) will not operate after the proceedings in which it is made are finally determined.

(7) A person who contravenes, or fails to comply with, an order or an interim order, under this section is (without prejudice to any liability for contempt of the order) guilty of an offence.

Penalty: \$10 000.

(8) Where the Court makes an order under subsection (3)(d) and the respondent fails to comply with the order within the period specified by the Court, the Commission or a council may, by leave of the Court, cause any work contemplated by the order to be carried out, and may recover the costs of that work, as a debt, from the respondent.

(9) The Court may, if it thinks fit, adjourn proceedings under this section in order to permit the respondent to make an application for a planning authorization that should have been but was not made, or to remedy any other default.

(10) The Court may make such orders in relation to the costs of proceedings under this section as it thinks just.

Commencement of proceedings

37. (1) Proceedings under this Division may be commenced at any time within twelve months after the date of the alleged contravention of, or failure to comply with, a provision of this Act or the repealed Act or, with the authorization of the Attorney-General, at any later time within five years after that date.

(2) An authorization may only be given under subsection (1) in respect of a contravention of, or failure to comply with, a provision of this Act or the repealed Act declared by regulation to be a provision in respect of which such an authorization may be given.

(3) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorize the commencement of proceedings under this Division will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorization.

Appeals

38. (1) Subject to the rules of the Supreme Court, an appeal lies against—

(a) an order of a District Court made in the exercise of the jurisdiction conferred by this Division;

or

(b) a decision by a District Court not to make an order under this Division,

to the Land and Valuation Court.

(2) An appeal under this section must be instituted within 30 days of the date of the decision or order subject to appeal, or such longer period as may be allowed by the Land and Valuation Court.

DIVISION III—PROCEEDINGS FOR OFFENCES

Summary procedure

39. (1) The offences constituted by this Act are summary offences.

(2) A prosecution for an offence against this Act may be commenced at any time within twelve months after the date of the alleged commission of the offence or, with the authorization of the Attorney-General, at any later time within five years after the date of the alleged commission of the offence.

(3) An authorization may only be given under subsection (2) in respect of offences declared by regulation to be offences in respect of which such an authorization may be given.

(4) An apparently genuine document purporting to be under the hand of the Attorney-General and to authorize the commencement of proceedings for an offence against this Act will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorization.

(5) Where—

(a) proceedings for an offence against this Act relating to land wholly within the area of a council are instituted by the council;

(b) a fine is imposed by a court for the offence;

and

(c) the fine is paid to the clerk of the court,

the clerk must pay the amount of the fine to the council.

PART IV
THE DEVELOPMENT PLAN

* * * * *

The Development Plan

40. The Development Plan is, subject to amendment under this Part, the document approved by resolution of both Houses of Parliament as the Development Plan.

Amendments to the Development Plan

41. (1) An amendment to the Development Plan may be made by a supplementary development plan.

(2) A supplementary development plan may be prepared—

(a) where it relates to the area, or part of the area, of a council—

(i) by the council for the relevant area;

(ii) by the Minister acting at the request of the council;

or

(iii) where the Minister has requested the council to prepare a supplementary development plan in relation to its area, or part of its area, and the council declines to do so or, at some time after the expiration of three months from the date of the request, it is apparent that substantial delay has occurred in the preparation of the supplementary development plan—by the Minister;

(b) where it relates to the areas, or parts of the areas, of two or more councils—by the Minister;

(c) where it relates to land that does not lie within the area of a council—by the Minister;

or

(d) where it relates to a State Heritage Area—by the Minister,

and, where the Minister prepares a supplementary development plan relating to the area, or part of the area, of a council, the Minister must, in the course of preparing the supplementary development plan, consult with that council.

(3) A supplementary development plan may contain—

(a) a statement, or amendment to a statement, of developmental objectives (whether of a physical, social or economic nature) for an area or part of the State;

(b) proposals, or amendments to proposals, for development, conservation or land management;

and

(c) provisions that are intended to constitute principles of development control, or amendments to existing principles of development control.

(4) Where a supplementary development plan is prepared, a statement setting out—

(a) the nature of the investigations that have been carried out in the course of preparing the plan;

and

(b) any conclusions that may be drawn from those investigations as to the most desirable forms of development (whether of a physical, social or economic nature) for the area or part of the State to which the plan relates, must also be prepared.

(5) Where a supplementary development plan has been prepared by a council, it must be submitted (together with the statement referred to in subsection (4)) to the Minister, and the Minister, after referring the plan and statement to the Advisory Committee and considering the advice of the Advisory Committee in relation to the plan, may—

- (a) accept the plan, without amendment, as a basis for public submissions;
- (b) amend the plan as the Minister thinks fit (after consultation with any council affected by the plan), and accept the plan, as amended, as a basis for public submissions;

or

- (c) decline to accept the plan as a basis for public submissions.

(6) Where the Minister has prepared a supplementary development plan, or has accepted a supplementary development plan prepared by a council, as a basis for public submissions, an advertisement—

- (a) giving notice of places at which the plan and statement referred to in subsection (4), or copies of that plan and statement, are to be available for inspection and, if copies are to be available for purchase, of places at which copies may be purchased;
- (b) inviting interested persons to make written submissions in relation to the plan—
 - (i) where the plan was prepared by the Minister—to the Advisory Committee;

and

- (ii) where the plan was prepared by a council—to the council, within a period specified in the advertisement (being not less than two months from the date of publication of the advertisement);
 - (c) stating that the submissions will be available for inspection by interested persons as from the expiration of the period specified under paragraph (b);
- and
- (d) appointing a place and time at which a public hearing will be commenced in which interested persons may appear to be heard in relation to the supplementary development plan and the submissions,

must be published in the *Gazette* and in a newspaper circulating generally throughout the State.

(7) The advertisement referred to in subsection (6) must, where the supplementary development plan was prepared by the Minister, be published by the Advisory Committee, and where it was prepared by a council, be published by the council.

(8) Where written submissions are made in response to an advertisement published under subsection (6), a copy of those submissions must—

- (a) if made to the Advisory Committee—be made available for inspection by interested persons at the office of the Commission;

and

- (b) if made to a council—be made available for inspection by interested persons at the office of the council,

between the time mentioned in the advertisement as the time as from which they would be available for inspection and the conclusion of the public hearing.

(9) At the time and place appointed for a public hearing under subsection (6)(d), any interested person may—

- (a) where the supplementary development plan was prepared by the Minister—appear before the Advisory Committee, or a sub-committee appointed by the Advisory Committee, to speak in favour of, or in opposition to, the supplementary development plan or the submissions relating to that plan;

or

- (b) where the supplementary development plan was prepared by a council—appear before the council, or a committee appointed by the council, to speak in favour of, or in opposition to, the supplementary development plan or the submissions relating to that plan,

but a person appearing at the public hearing must not raise any matter that is not relevant to the plan or the written submissions.

(10) After a public hearing has been held under subsection (9) in relation to a supplementary development plan prepared by a council, the council must forward copies of the written submissions received by it, together with the council's recommendations in relation to the submissions, to the Minister.

(11) Where—

- (a) the supplementary development plan was prepared by the Minister;

or

- (b) the supplementary development plan was prepared by a council and the Minister has requested the Advisory Committee to report under this subsection,

the Advisory Committee must report to the Minister on the plan and on the submissions received in response to the advertisement.

(11a) If, in the opinion of the Minister—

- (a) there is substantial public opposition to the whole or part of a supplementary development plan prepared by a council;

or

- (b) following a public hearing, a council has recommended that substantial alterations be made to a supplementary development plan prepared by the council,

the Minister must request the Advisory Committee to report under subsection (11).

(11b) After considering the supplementary development plan, any submissions or recommendations forwarded under this section and the report (if any) of the Advisory Committee, the Minister may—

- (a) approve the supplementary development plan;

(b) amend the supplementary development plan—

(i) having regard to recommendations of the Advisory Committee or a council;

or

(ii) as the Minister thinks fit, in order to bring the supplementary development plan into consistency with this Act, to remove obsolete matter, to achieve uniformity of expression or to correct any error,

and approve the plan as amended;

or

(c) decline to approve the plan.

(12) Where the Minister has approved a supplementary development plan under subsection (11b) the Minister may refer the plan to the Joint Committee on Subordinate Legislation.

(13) If the Committee approves the plan, the Minister may refer the plan to the Governor.

(14) Before approving a plan the Committee should satisfy itself that adequate consideration has been given in the preparation of the plan to the interests of owners and occupiers of land who may wish to undertake development in the continuation of an existing use of land.

(15) If, at the expiration of 28 days from the day on which a supplementary development plan was referred to the Committee, the Committee has neither approved nor resolved not to approve the plan, it will be conclusively presumed that the Committee has approved the plan.

(16) If the Committee resolves not to approve the plan, copies of the plan will be laid before both Houses of Parliament.

(17) If—

(a) the Committee resolves not to approve the plan;

but

(b) neither House of Parliament resolves, within six sitting days after the date of the copy of the plan being laid before the House, to disallow the plan,

the Minister may refer the plan to the Governor.

(18) Before referring a plan to the Governor under this section, the Minister may amend the plan in order to give effect to proposals for amendment made by the Joint Committee on Subordinate Legislation, or by either House of Parliament.

(19) Where a plan is referred to the Governor under this section the Governor may, by notice in the *Gazette*—

(a) declare the plan to be an authorized supplementary development plan;

and

(b) fix a day on which the plan will come into operation.

Certain amendments may be made without preparation of supplementary development plan

42. (1) The Minister may, by notice published in the *Gazette*, amend the Development Plan by including in the Plan—

(a) a coastal management plan, or part of a coastal management plan, approved by the Governor under the *Coast Protection Act, 1972*;

(ab) a waste management plan, or part of a waste management plan, approved under the *Waste Management Act, 1987*;

and

(b) the scheme, or part of the scheme, for the development of West Lakes set out in the *West Lakes Regulations* under the *West Lakes Development Act, 1969*.

(2) The Minister may, by notice published in the *Gazette*, amend the Development Plan—

(a) in order to reflect the provisions of authorized development plans or planning regulations which were in force under the repealed Act immediately before the commencement of this Act but which came into force too late to be included in the initial compilation of the Plan;

(b) in order to correct an error in the Plan;

or

(c) in order to make a change of form (not involving a change of substance) in the Plan.

(3) Before amending the Development Plan under subsection (2)(a), the Minister must consult with any council affected by the amendment.

Definition of terms in the Development Plan

42a. (1) The Governor may, by regulation, define terms used in the Development Plan.

(2) Where, at the commencement of subsection (1), the *Development Control Regulations, 1982*, purportedly define a term used in the Development Plan, that term, where used in the context to which the definition purportedly applies, will be interpreted in accordance with that definition until the definition is amended, replaced or revoked by regulation under subsection (1).

(3) The Governor cannot make a regulation under subsection (1) unless the Chairman of the Advisory Committee has certified that the procedures required by subsection (5) have been complied with in relation to that regulation.

(4) An allegation in legal proceedings that the certificate required by subsection (3) was issued on a particular day is, in the absence of proof to the contrary, sufficient proof of that fact.

(5) Before regulations are made under this section—

(a) the Advisory Committee must cause to be published in the *Gazette* and in a newspaper circulating generally throughout the State an advertisement—

(i) setting out the text of the proposed regulations;

(ii) inviting interested persons to make written submissions to the Committee in relation to the regulations within a period specified in the advertisement (being a period of not less than 14 days from the date of publication of the advertisement);

and

(iii) appointing a place and time for the public hearing referred to in paragraph (b);

- (b) at the time and place appointed for that purpose in the advertisement, the Advisory Committee, or a subcommittee appointed by the Advisory Committee, must hold a public hearing at which any interested person may speak in favour of, or in opposition to, the proposed regulations;
- (c) the Advisory Committee must make recommendations to the Minister in relation to the proposed regulations and forward with those recommendations copies of any written submissions made to the Committee in relation to the proposed regulations.

Interim development control

43. (1) Where the Governor is of the opinion that it is necessary in the interests of the orderly and proper development of an area or portion of the State that a supplementary development plan should come into operation without delay, the Governor may, at the same time as, or at any time after, notice that the plan is available for public inspection is published, declare, by notice published in the *Gazette*, that the plan will come into operation on an interim basis on a day specified in the notice.

(2) Where a notice has been published under subsection (1), the supplementary development plan comes into operation on the day specified in the notice.

(3) A supplementary development plan that has come into operation under this section ceases to operate—

- (a) if the Governor, by notice published in the *Gazette*, terminates the operation of the plan;
- (b) if either House of Parliament passes a resolution disallowing the plan;
- (c) if the plan is superseded by a supplementary development plan that comes into operation under section 41;

or

(d) in the case of a plan—

- (i) that has not already ceased to operate by virtue of paragraph (a);

and

- (ii) that has not been referred by the Minister to the Joint Committee on Subordinate Legislation,

at the expiration of 12 months from the day on which it came into operation.

Copies of Development Plan to be available to councils and the public

44. (1) The Minister must provide every council with a copy of—

- (a) that part of the Development Plan;

and

- (b) every authorized supplementary development plan,

that affects the area of the council, and the council must make those plans available for inspection at its public office.

(2) The Commission must make a copy of the Development Plan and of every authorized supplementary development plan available for inspection at its office.

(3) The Minister must make copies of the Development Plan and of every authorized supplementary development plan available for purchase by the public.

(4) The Minister may make such other provision for publication of the Development Plan and of authorized supplementary development plans as the Minister thinks fit.

(5) The Minister may, from time to time, consolidate and republish the Development Plan with amendments.

Development Plan to be judicially noticed

45. The Development Plan is a public document of which a court or tribunal will take judicial notice, without formal proof of its contents.

PART V

DEVELOPMENT CONTROL

DIVISION I—DEVELOPMENT CONTROL GENERALLY

Offences of undertaking development contrary to this Division

46. (1) A person must not undertake development contrary to this Division.

Penalty: \$10 000 or the prescribed sum, whichever is greater.

Additional Penalty.

Default Penalty: \$1 000.

(2) A person must not contravene, or fail to comply with, a condition attached to a planning authorization.

Penalty: \$10 000 or the prescribed sum, whichever is greater.

Additional Penalty.

Default Penalty: \$1 000.

(3) In this section—

“the prescribed sum” means the sum calculated at the rate of \$1 000 for the day on which the offence is first committed and for each subsequent day on which it continues before the offender is convicted.

Conditions under which development may be undertaken

47. (1) Subject to this Act, no development shall be undertaken without the consent of the relevant planning authority.

(2) The relevant planning authority, in relation to a proposed development, is ascertained as follows:

(a) where the proposed development is to be undertaken within the area of a council, then, subject to paragraph (b), the council is the relevant planning authority;

(b) where the proposed development is to be undertaken within the area of a council but—

(i) the Commission is constituted by the regulations as planning authority in relation to a class of development in which the proposed development is comprised;

(ii) the Minister, acting at the request of the council, declares, by notice in writing served personally or by post on the proponent, that the Minister desires the Commission to act as planning authority in relation to the proposed development;

or

(iii) the proposed development is the subject of an environmental impact statement prepared pursuant to Division II,

then the Commission is the relevant planning authority;

and

(c) where the proposed development is to be undertaken in a part of the State that is not within the area of a council, then the Commission is the relevant planning authority.

(3) Where development of a particular kind is expressed by use of the word "permitted" in the Development Plan, to be permitted absolutely or conditionally in a particular area, zone or locality, then, subject to subsection (4), that development may be undertaken without the consent of a planning authority but subject to the conditions (if any) under which it is permitted by the Development Plan.

(4) No development is permitted in relation to an item of the State heritage or a State Heritage Area without the consent of the relevant planning authority.

(5) Where development of a particular kind is expressed, by use of the word "prohibited" in the Development Plan, to be prohibited in a particular area, zone or locality, then, subject to subsection (6), such development is prohibited within that area, zone or locality.

(6) Where a development is proposed that would, apart from this subsection, be prohibited under subsection (5), the relevant planning authority may consent to that development if—

(a) where the relevant planning authority is a council—the Commission concurs in the granting of the consent;

or

(b) where the relevant planning authority is the Commission—the Minister and, if the development is to be undertaken in the area of a council, the council concur in the granting of the consent.

(7) A consent under this section is subject to such conditions (if any) as the relevant planning authority thinks fit to impose, and any such condition is binding on, and enforceable against, the person by whom the development is undertaken and any person who acquires the benefit of the consent.

(8) No appeal lies against—

(a) a refusal of consent or concurrence under subsection (6);

or

(b) a condition attached to a consent under subsection (6),

except in relation to a proposed development that has, or will, become necessary by reason of a change, or a proposed change, in the law regulating an existing use of land.

(9) In deciding whether to consent to a proposed development under this section, a planning authority—

(a) must have regard to the provisions of the Development Plan so far as they are relevant to that decision;

and

(b) must not make a decision that is seriously at variance with those provisions.

(10) Where under the provisions of the regulations a council must consider the views of the Commission or a prescribed instrumentality or agency of the Crown in relation to a proposal for development before consenting to the proposed development and the Commission or the instrumentality or agency determines that the council should not consent to the development except upon certain specified conditions, and notifies the council of that determination, then—

(a) the council must not consent to the proposed development without having considered whether it should impose the conditions so determined;

(b) the conditions so determined must, if imposed by the council, be differentiated in any notice of consent given by the council to the proponent;

and

(c) any appeal in respect of those conditions lies against the Commission.

Heritage items

48. (1) Where an application is made for planning authorization in respect of a development affecting an item of the State heritage or a State Heritage Area, the planning authority from which the authorization is sought—

- (a) must refer the application to the Minister responsible for the State heritage;
- (b) must not grant the authorization until it has received and had regard to any representations that the Minister desires to make on the subject;

and

- (c) where the planning authority is a council—must not grant the authorization without the concurrence of the Commission.

(2) If the Minister desires to make representations in relation to the application, those representations must be made within two months after the application was referred under subsection (1)(a).

(3) The Commission must not make a decision to concur, or refuse its concurrence, in the granting of a proposed authorization by a council unless it has had regard to the representations (if any) of the Minister and the provisions of the Development Plan so far as they are relevant.

Development with an air pollution potential

48a. (1) In this section—

“the Minister” means the Minister of the Crown who for the time being has the administration of the *Clean Air Act, 1984*;

“primary impact level development” means a development for the purposes of establishing an industry, operation or process declared by the regulations or the principles of development control to have an air pollution potential of a primary level of impact;

“secondary impact level development” means a development for the purposes of establishing an industry, operation or process declared by the regulations or the principles of development control to have an air pollution potential of a secondary level of impact.

(2) The planning authority to which an application is made for a planning authorization in respect of a primary impact level development—

- (a) must refer the application to the Minister;

and

- (b) must not determine the application until it has received directions from the Minister in relation to the application.

(3) Where an application for a planning authorization is referred to the Minister under subsection (2), the Minister may direct the planning authority—

- (a) to refuse the application;

or

- (b) not to grant the planning authorization except upon certain specified conditions,

and the planning authority must comply with any such direction.

(4) No appeal lies against—

(a) a refusal given by a planning authority pursuant to a direction of the Minister;

or

(b) a condition attached to a planning authorization by a planning authority pursuant to a direction of the Minister.

(5) Where a planning authority refuses an application pursuant to a direction of the Minister or grants a planning authorization subject to conditions imposed pursuant to a direction of the Minister, the planning authority must notify the applicant that the application was refused, or the conditions were imposed, pursuant to a direction of the Minister and that no appeal lies against that refusal or those conditions.

(6) The planning authority to which an application is made for a planning authorization in respect of a secondary impact level development—

(a) must refer the application to the Minister;

and

(b) must not determine the application until it has received and taken into account any representations the Minister desires to make in relation to the application.

Aboriginal sites and objects

48b. (1) Where an application is made for planning authorization in respect of a development of a prescribed kind or in a prescribed area, the planning authority from which the authorization is sought—

(a) must refer the application to the Minister responsible for the administration of the *Aboriginal Heritage Act, 1988*;

(b) must not grant the authorization until it has received and had regard to any representations that the Minister desires to make on the subject;

and

(c) where the planning authority is a council—must not grant the authorization without the concurrence of the Commission.

(2) If the Minister decides to make representations in relation to the application he or she must do so within two months after the referral of the application.

(3) The Commission must, before concurring or refusing to concur in the granting of an authorization by a council, have regard to any representations of the Minister.

DIVISION II—ENVIRONMENTAL IMPACT STATEMENTS

Preparation of environmental impact statement

49. (1) Where a person proposes to undertake a development or project that is, in the opinion of the Minister, of major social, economic or environmental importance—

(a) the Minister may, in consultation with the proponent, have prepared, or arrange for the preparation of, a draft environmental impact statement in relation to the proposed development or project;

or

(b) the Minister may require the proponent to prepare a draft environmental impact statement in relation to the proposed development or project.

(2) The Minister must, by public advertisement, invite interested persons to make written submissions on the draft environmental impact statement within a period of not less than six weeks from the date of publication of the advertisement.

(2a) The Minister must give to the proponent copies of all submissions made within the period referred to in subsection (2) and must not proceed to accord official recognition to a draft environmental impact statement until the proponent has responded to those submissions to the satisfaction of the Minister.

(3) The Minister must, after considering the submissions and the proponent's response, determine what (if any) amendments should be made to the environmental impact statement and, after those amendments have been made, signify, by notice to the proponent, that the statement is officially recognized.

(4) The Minister may from time to time amend, or require the amendment of, an environmental impact statement to which official recognition has been accorded under this section in order to correct an error or to make modifications that are desirable in view of more accurate or complete data or technological or other developments not contemplated at the time of the original recognition but, where a proposed amendment would significantly affect the substance of the environmental impact statement, it must not be made before interested persons have been invited, by public advertisement, to make written submissions on the proposed amendment and the Minister has considered the submissions (if any) received in response to the advertisement.

(5) The Minister may recover reasonable costs incurred in relation to the preparation and publication of an environmental impact statement in respect of a development or project as a debt due from the proponent.

(6) Copies of draft and officially recognized environmental impact statements must be available for public inspection, or purchase, at the office of the Commission.

(6a) Where a proposed development or project to which an officially recognized environmental impact statement relates will, if the development or project proceeds, be situated wholly or partly within the area of a council, the Minister must give a copy of the statement to the council.

(7) A planning authority must, in determining—

(a) whether consent should be granted to a development in relation to which an environmental impact statement has been prepared;

and

(b) if so, the conditions on which consent should be granted,

have regard to any environmental impact statement to which official recognition has been accorded under this section.

(8) A planning authority may—

(a) when determining what conditions should be attached to its consent to a development in relation to which an environmental impact statement has been prepared, attach conditions that must be complied with in the future;

(b) at intervals stipulated by it when granting consent to a development in relation to which an environmental impact statement has been prepared, vary or revoke conditions to which the consent is subject or attach new conditions to the consent.

(9) The variation of a condition, or a new condition attached to a consent, pursuant to subsection (8)(b) does not operate—

(a) until the expiration of two months after the day on which a person who is entitled to appeal against the decision has received notice of it;

or

(b) where an appeal is instituted within that time—

(i) until the appeal is dismissed, struck out or withdrawn;

or

(ii) until the questions raised by the appeal have been finally determined.

DIVISION III—CERTAIN DEVELOPMENT NOT TO BE UNDERTAKEN WITHOUT CONSENT OF GOVERNOR

Declaration that development subject to this Division

50. (1) Where the Governor is of the opinion that a declaration under this Division is necessary to obtain adequate control of development of major social, economic or environmental importance, the Governor may, by notice published in the *Gazette*, declare that this Division applies to—

(a) development generally within specified parts of the State;

or

(b) specified forms of development throughout the whole of the State or within specified parts of the State.

(2) The Governor may, by subsequent notice published in the *Gazette*, vary or revoke a notice under subsection (1).

(3) Division I does not apply to development subject to a declaration in force under this section.

Consent of Governor required for certain forms of development

51. (1) Subject to this section, a person must not undertake development to which this Division applies without the consent of the Governor.

(2) The Governor may—

(a) consent to development to which this Division applies subject to such conditions (if any) as the Governor thinks fit;

or

(b) decline to consent to development to which this Division applies.

(3) No decision may be made under subsection (2) unless an environmental impact statement has been prepared under Division II in respect of the proposed development and official recognition has been accorded to that environmental impact statement, and the Governor, in determining whether to consent to the proposed development and, if so, the conditions on which consent should be granted, must have regard to the environmental impact statement.

(4) The consent of the Governor is not required in relation to development lawfully commenced before publication of the notice by virtue of which the development became subject to this Division.

(5) A person who—

(a) undertakes development to which this Division applies without the consent required by this section;

or

(b) contravenes, or fails to comply with, a condition upon which consent was granted,

is guilty of an offence.

Penalty: \$10 000 or the prescribed sum, whichever is greater.

Additional Penalty.

Default Penalty: \$1 000.

(6) In subsection (5)—

“the prescribed sum” means the sum calculated at the rate of \$1 000 for the day on which the offence is first committed and for each subsequent day on which it continues before the offender is convicted.

DIVISION IIIA—DIVISION OF LAND WITHIN THE HILLS FACE ZONE

Division of land within the Hills Face Zone

51a. (1) Subject to subsection (2), no application for planning authorization in respect of the division of land within the Hills Face Zone may be made under this Part.

(2) An application for planning authorization in respect of the division of land situated wholly or partly within the Hills Face Zone may be made—

(a) if the number of allotments that would, after the division, be situated wholly or partly within the Hills Face Zone is equal to, or less than, the number of allotments that were, before the division, situated wholly or partly within the Hills Face Zone;

or

(b) if the Governor, being satisfied that a proposed division of land within the Hills Face Zone is consistent with the principles and objects expressed in the Development Plan and with the public interest, approves, by proclamation, the making of an application for planning authorization for the proposed division.

DIVISION IV—APPEAL AGAINST DECISIONS BY PLANNING AUTHORITIES

Aggrieved applicant may appeal

52. (1) A person who applies for planning authorization and is aggrieved—

(a) by a decision of a planning authority (not being the Governor)—

(i) to refuse the application;

or

(ii) to attach conditions to the planning authorization;

or

(b) where the development concerned affects an item of State heritage or a State Heritage Area—by the Commission's refusal to concur in the granting of planning authorization,

may, within two months of receiving notice of the decision or such longer period as may be allowed by the Tribunal, appeal to the Tribunal against the decision.

(2) Where a planning authority decides to vary a condition or attach a new condition to a consent to a development in relation to which an environmental impact statement has been prepared, the person who enjoys the benefit of the consent may, within two months of receiving notice of the decision or such longer period as may be allowed by the Tribunal, appeal to the Tribunal against the decision.

(3) An appeal does not lie pursuant to subsection (1)(b) in relation to a development of a kind expressed, by use of the word "prohibited" in the Development Plan, to be prohibited in a particular area, zone or locality.

(4) Where a decision by which an appellant is aggrieved was made by a person acting in pursuance of delegated powers, the appeal lies against the principal and not the delegate.

(5) An applicant for planning authorization who is aggrieved by the failure—

(a) of a planning authority (not being the Governor) to decide the application within the prescribed time;

or

(b) of the Commission, the Minister or a council to decide, within the prescribed time, whether to concur in the granting of planning authorization,

may apply to the Tribunal for an order requiring the planning or other authority to make its decision within a time fixed by the Tribunal.

(6) In proceedings under subsection (5), the Tribunal may order the planning or other authority to pay the applicant's costs.

(7) An amount ordered to be paid by way of costs under subsection (6) may be recovered as a debt.

Third party appeals

53. (1) Except as provided by the regulations, notice of an application for a planning authorization must be given in accordance with the regulations.

(2) Where notice of an application has been given under subsection (1), any person who desires to do so may, in accordance with the regulations, make representations to the relevant planning authority in relation to the granting or refusal of the application.

(3) The planning authority to which the application is made must forward to the applicant a copy of the representations made under this section in relation to the application and allow the applicant an opportunity to respond, in writing, to those representations.

(4) The response referred to in subsection (3) must be made within ten days after the copy of the representations is forwarded to the applicant.

(5) The planning authority must, on deciding an application in relation to which representations have been made under this section—

(a) give notice of the decision and of the date of the decision to the persons who made the representations;

and

(b) give notice to the Tribunal—

(i) of the decision and of the date of the decision;

and

(ii) of the names and addresses of persons who made representations to the planning authority under this section.

(6) The planning authority must give the notice referred to in subsection (5)(a) either personally or by post and not later than seven days after it makes the decision to which the notice relates.

(7) A person who is entitled to be given notice of a decision under subsection (5) and who is aggrieved by the decision may, on payment of a fee of \$20, appeal to the Tribunal against the decision.

(8) An appeal under subsection (7) must be instituted within 21 days after the decision to which the appeal relates was made.

(9) An applicant for planning authorization in relation to which an appeal is instituted under subsection (7)—

(a) must be notified by the Tribunal of the appeal;

and

(b) will be a party to the appeal.

(9a) A planning authorization does not operate—

(a) until the time for instituting an appeal under this section against the decision to grant the planning authorization has expired;

or

(b) where an appeal is instituted—

(i) until the appeal is dismissed, struck out or withdrawn;

or

(ii) until the questions raised by the appeal have been finally determined.

* * * * *

Powers of Tribunal when deciding appeal

54. (1) Upon an appeal under this Division, the Tribunal may confirm, vary or reverse the decision subject to appeal and may make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.

(2) The Tribunal must, when determining an appeal under this Division, have regard to, or take into account, matters that the planning authority was required to have regard to, or take into account, in the first instance.

DIVISION V—ADVERTISEMENTS

Advertisements

55. (1) Where, in the opinion of the relevant planning authority, an advertisement or advertising hoarding disfigures the natural beauty of a locality or otherwise detracts from the amenity of a locality, the planning authority may, by notice in writing served on the advertiser or the owner or occupier of the land on which the advertisement or advertising hoarding is situated, require that person to remove or obliterate the advertisement or to remove the advertising hoarding (or both) within a period specified in the notice (being a period of not less than one month from the date of service of the notice).

(2) No requirement may be made under subsection (1) in relation to—

- (a) an advertisement, the display of which is authorized under the *Local Government Act, 1934*;
 - (b) an advertisement required to be displayed under the provisions of some other Act;
- or
- (c) an advertisement for the sale or lease of land situated on the land concerned.

(3) Where a person on whom a notice is served under subsection (1) fails to comply with the notice within the time allowed in the notice—

- (a) the relevant planning authority may itself enter on the land and take the necessary steps for carrying out the requirements of the notice and may recover the costs of so doing, as a debt, from the person on whom the notice was served;

and

- (b) the person on whom the notice was served is guilty of an offence.

Penalty: \$500.

Default Penalty: \$100.

(4) A notice under this section—

- (a) need not name the person to whom it is addressed;

and

- (b) may be served—

- (i) personally;

- (ii) by post;

or

- (iii) where the identity or whereabouts of the person on whom it is to be served is not readily ascertainable—by affixing it in a prominent position on the advertisement or advertising hoarding to which it relates.

* * * * *

(6) Where a planning authorization has been given under this Act for the erection or display of an advertisement, no further licence or other authorization in respect of the erection or display of the advertisement is required under the *Local Government Act, 1934*.

(7) In this section—

“advertisement” means an advertisement or sign that is visible from a street, road or public place or by passengers carried by any form of public transport:

“advertiser”, in relation to an advertisement, means the person whose goods or services are advertised in the advertisement:

“advertising hoarding” means a structure for the display of an advertisement or advertisements:

“the relevant planning authority” means—

(a) in relation to an advertisement that is not within the area of any council—the Commission;

and

(b) in relation to an advertisement within the area of a council—the council or the Commission.

(8) A person against whom an order is made under this section may, within one month after service of the notice or such longer period as may be allowed by the Tribunal, appeal against the order and, upon such an appeal, the Tribunal may confirm, vary or quash the order subject to the appeal and make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.

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DIVISION VI—GENERAL PROVISIONS

Certain development may be undertaken in the continuation of an existing use

56. (1) Division I does not prevent or otherwise affect the continuation of an existing use of land but, subject to subsection (2), a person is not entitled to undertake development for the purpose of the continuation of an existing use of land contrary to that Division.

(2) The consent of a planning authority is not required under Division I in relation to development of a prescribed kind undertaken for the purpose of the continuation of an existing use of land.

(3) Subject to subsection (4), planning authorization is not required under Division I in relation to a use of land declared by regulation to constitute development in a case where the use constitutes the continuation of an existing use of the land.

(4) Where a use referred to in subsection (3) involves an act or activity that constitutes development in its own right, planning authorization is (subject to this Act) required under Division I in relation to that act or activity.

Saving provisions

56a. (1) A development for which planning authorization has been granted may be undertaken and completed in accordance with that authorization notwithstanding an amendment to the Development Plan that takes effect after the date on which the application for the planning authorization was made.

(2) An activity that becomes a development by virtue of an amendment to this Act, but was lawfully commenced within three years before the amendment took effect, may be continued and completed without any planning authorization, within three years after the date on which the amendment took effect.

(3) Where development of a particular kind may be undertaken without planning authorization an amendment to the Development Plan that prohibits, or requires consent to be obtained for, a development of that kind, does not prevent the continuation and completion, within three years after the date on which the amendment takes effect of a development of that kind lawfully commenced within three years before that date.

(4) Where—

(a) consent, approval or authorization is required under an Act or Acts (but not this Act) for a proposed activity or development;

(b) an amendment is made to this Act or to the Development Plan that prohibits, or requires consent to be obtained for, a development of that kind;

and

- (c) on the date on which the amendment takes effect, all the required consents, approvals and authorizations had been obtained but the activity or development had not been commenced,

the activity or development will, for the purposes of this section, be presumed to have commenced on the date of the consent, approval or authorization or, where more than one was required, the date of the consent, approval or authorization that was last obtained.

(5) The relevant planning authority may, in order to avoid or reduce hardship, extend either or both of the limitation periods referred to in subsections (2) and (3).

(6) A reference in this section to an amendment to this Act extends to the making of a regulation declaring an activity to constitute development and the variation of such a regulation.

(7) In this section—

“activity” means an act or activity:

“the relevant planning authority” means the relevant planning authority under Division I in relation to the development for which an extension of a limitation period is sought.

Law governing proceedings under this Act

57. (1) Where an application is made to a planning authority for a planning authorization that it is empowered to give under this Act, the law to be applied by the authority in deciding the application and the law to be applied in resolving any issues arising from the decision in any proceedings (whether brought under this Act or not) is the law in force as at the time the application was made.

(1a) The provisions of the Development Plan that are relevant to the consideration of an application for planning approval and to the resolution of issues arising in subsequent proceedings based on that application (whether brought under this Act or not) are the provisions of the Development Plan as in force at the time the application was made.

(2) For the purposes of this section, a planning authority makes a decision under this Act either where a decision is actually made or where a decision is, by operation of law, presumed to have been made.

Interaction between this Act and certain other Acts

58. (1) Where the demolition of buildings is prescribed as a form of development and regulated under this Act in an area or part of the State, this Act does not prevent or otherwise affect the demolition of a building in that area or part of the State if the demolition is required under the provisions of some other Act.

(2) Where the clearing, cutting or lopping of trees or other vegetation is prescribed as a form of development and regulated under this Act in an area or part of the State, this Act does not prevent or otherwise affect the clearing, cutting or lopping of trees or other vegetation in that area or part of the State if the clearing, cutting or lopping—

(a) is required under the provisions of some other Act;

(b) is necessary for the purpose of clearing the space to be occupied by a proposed building for the erection of which consent or approval has been granted under this Act, the repealed Act or the *Building Act, 1970*;

or

(c) is incidental to the construction, repair or maintenance of works of the Crown or of an instrumentality or agency of the Crown.

PART VI

MINING

Applications for mining production tenements to be referred in certain cases to the Minister

59. (1) Where an application is made under any of the Mining Acts for the grant of a mining production tenement, the appropriate Authority must—

- (a) cause to be published in the *Gazette* and in a newspaper circulating generally throughout the State a notice of the application specifying a place at which it can be inspected and inviting members of the public to make written submissions in relation to the granting of the mining production tenement within a period (which must be a period of at least 28 days from the date of publication of the notice) to the Authority at an address specified in the notice;

and

- (b) give notice of the application to the council for the area in which the land to be comprised in the mining production tenement is situated.

(2) The appropriate Authority may refer any application for a mining production tenement to the Minister for advice and, where an application is such that it is required by the regulations to be referred to the Minister, the Authority must refer the application to the Minister for advice.

(3) Where, in the opinion of the Minister or of the appropriate Authority, operations to be conducted in pursuance of a mining production tenement are of major social, economic or environmental importance—

- (a) the Minister or the Authority may exercise the powers conferred on the Minister under section 49 in relation to environmental impact statements;

but

- (b) any such statement must cover matters determined by the Minister after consultation with the Authority and, if official recognition is to be accorded to an environmental impact statement, such recognition will, in any event, be accorded by the Minister.

(4) The Minister, after obtaining and considering a report from the Commission on an application referred for advice under this section and after considering the terms of any relevant officially recognized environmental impact statement, must advise the appropriate Authority whether the application should or should not be granted and, if so, what conditions should be included in the tenement in order to avoid, or manage and control, any potentially adverse effects on the environment that may result from the conduct of mining operations in pursuance of the tenement.

(5) Where the appropriate Authority does not agree with advice tendered under subsection (4) (either as to the granting of the tenement or the conditions that should be included in the tenement), it must refer the matter to the Governor and the Governor will determine whether the Authority should adhere to the advice.

(6) In this section—

“the appropriate Authority” or “the Authority” means the Minister of the Crown for the time being administering the Mining Acts.

This Act not to affect operations carried on in pursuance of Mining Acts except as provided in this Part

60. (1) Except as provided in this Part, this Act does not prevent, or otherwise affect, operations carried on in pursuance of any of the Mining Acts.

(2) Subject to subsection (3), this Act does not prevent, or otherwise affect, the operation of a private mine.

(3) Where for a period of twelve months commencing on or after the relevant date mining operations have not been carried on at a private mine, this Act applies in respect of mining operations carried on at the mine.

(4) In this section—

“the relevant date” means 4 November, 1981.

PART VII

LAND MANAGEMENT

Agreements relating to preservation or development of land

61. (1) The Minister may enter into an agreement with any person relating to the development, preservation or conservation of land of which that person is the owner.

(2) A council may enter into an agreement with any person relating to the development, preservation or conservation of land within the area of the council of which that person is the owner.

(3) A council has power to carry out on private land any work for which provision is made by agreement under this section.

(4) An owner of land must not enter into an agreement under this section unless all other persons with a legal interest in the land consent.

(5) The Registrar-General must, upon the application of the Minister or the council made with the consent of the owner of the land, register such an agreement and enter a memorial of the agreement on the certificate of title, Crown lease or other instrument of title to the land.

(6) Where a memorial of an agreement has been entered under subsection (5), the agreement is, upon transfer of title to the land, binding on, and enforceable by or against, the successors in title to the owner who entered into the agreement.

(7) The Registrar-General must, if satisfied upon the application of the Minister, the council or the owner of the land that an agreement in relation to which a memorial has been entered under this section has been rescinded or amended, enter a memorial of the rescission or amendment on the certificate of title, Crown lease or other instrument of title to the land.

(8) An agreement under this section may provide for remission of rates or taxes upon the land but, except as so provided, such an agreement does not affect the obligations of an owner of land under any other Act.

(9) An agreement under this section entered into by a council must not provide for the remission of rates or taxes payable to the Crown unless the Minister consents to the remission, and such an agreement entered into by the Minister must not provide for the remission of rates or taxes payable to a council unless the council consents to the remission.

Preservation of open space

62. (1) The Governor may, if satisfied on the application of the owner of land that it is in the public interest to preserve the land as an open space, prohibit, by proclamation, the division of the land into allotments or the use of the land for any purpose that is, in the opinion of the Commission, not in keeping with its character as an open space.

(2) Where the owner holds the land from the Crown under a lease, licence or agreement to purchase, an application cannot be made under this section without the consent of the Minister of Lands.

(3) While a proclamation remains in force under this section—

(a) the land must not be divided or used in contravention of the proclamation;

and

(b) the value of the land for the purpose of any rating or taxing Act will be assessed on the basis that the land cannot be divided or used for any purpose not in keeping with its character as an open space.

(4) The Governor may, by subsequent proclamation, revoke a prohibition imposed under this section wholly, or insofar as it affects a specified parcel of land, and, in that event, the owner of the land is liable to pay to a rating or taxing authority, in respect of the land that ceases to be affected by the prohibition, the difference between the amount of the rates or taxes payable during the period of five years immediately preceding the revocation to that authority on the land while the prohibition was in force, and the amount that would have been payable during that period if the prohibition had not been imposed.

(5) Any amount that an owner of land is liable to pay under subsection (4) may be recovered as a debt.

(6) The Registrar-General must, on application by the Minister or the owner of the land, enter a memorial of a proclamation made under this section on the certificate of title, Crown lease or other instrument of title to the land.

PART VIII

ACQUISITION AND DEVELOPMENT OF LAND

Development schemes

63. (1) The Minister may prepare and submit to the Governor—

(a) a scheme involving the acquisition, development, management or disposal of land by an authority to which this section applies;

or

(b) a scheme modifying a scheme previously approved by the Governor under this section.

(2) A scheme prepared under this section must not be submitted to the Governor unless every council whose area is affected by the scheme and the owners of land affected by the scheme have had an opportunity to make representations to the Minister in relation to the scheme.

(3) Upon submission of a scheme to the Governor, the Governor may, by notice published in the *Gazette*, approve the scheme.

(4) Where a scheme has been approved under this section, the authority authorized under the terms of the scheme to carry out the scheme may acquire, develop, manage or dispose of land in accordance with the scheme.

(5) The *Land Acquisition Act, 1969*, applies to the acquisition of land under subsection (4).

(6) In this section—

“authority to which this section applies” means—

(a) the Minister;

or

(b) a prescribed authority.

Purchase of land for development

64. (1) The Minister may purchase land by agreement for the purpose of development or redevelopment of that land or for any public purpose.

(2) The *Land Acquisition Act, 1969*, does not apply to the acquisition of land in pursuance of this section.

Reservation of land for future acquisition

65. (1) The Governor may, by regulation, reserve land for future acquisition under this Act or any other Act by an authority nominated in the regulation.

(2) Where land is, by virtue of subsection (1), reserved for future acquisition, the Registrar-General must, on the application of the Minister, note the reservation on any relevant certificate of title relating to the land.

(3) The owner of land reserved for future acquisition under this section is entitled to be compensated by the relevant authority for the diminution in value of the land resulting from the reservation.

(4) The compensation to which a person is entitled under subsection (3) will be determined by agreement or, in default of agreement, by the Land and Valuation Court.

(5) Land reserved for future acquisition under this section must not be developed except—

(a) by consent of the Commission granted after consultation with the relevant authority;

or

(b) as required under some other Act or law.

(6) If the Commission refuses its consent to the development of land reserved for future acquisition under this section or if the owner, after making all reasonable attempts to sell the land, is unable to do so, the owner of the land may require the relevant authority to proceed immediately with the acquisition of the land.

(7) Upon acquisition under the *Land Acquisition Act, 1969*, of land reserved for future acquisition under this section—

(a) compensation will be determined having regard to the value that the land would have had if it had not been reserved;

but

(b) any compensation that has been paid pursuant to an entitlement under subsection (3) will be taken into account.

(8) If land reserved for future acquisition under this section ceases to be so reserved, the Registrar-General must, on the application of the Minister or the owner of the land, make such notations on any relevant certificate of title as may be necessary to reflect the fact that the land has ceased to be so reserved.

PART IX
FINANCIAL PROVISIONS

Money required for this Act

66. The money required for the purposes of this Act will be paid out of money provided by Parliament for those purposes.

Continuance of the Fund

67. (1) The Fund at the Treasury known as the Planning and Development Fund continues in existence.

(2) The following amounts must be paid into the Fund:

- (a) money made available by the Treasurer out of appropriations authorized by Parliament for the purposes of the Fund;
 - (b) all money derived by the Minister from the sale, leasing or other disposal by the Minister of land vested in the Minister;
 - (c) all money received by the Commission in respect of the division of land;
 - (d) all money to be contributed by a council in respect of any scheme jointly undertaken or carried out by that council and the Minister;
 - (e) all loans raised by the Minister under this Act;
- and
- (f) all other money that is required to be paid into the Fund by this or any other Act.

Borrowing

68. The Minister may borrow money for the purposes of this Act upon terms and conditions approved by the Treasurer.

Application of the Fund

69. The money standing to the credit of the Fund may be used by the Minister for all or any of the following purposes:

- (a) the acquisition and development of land, or any purpose related to the acquisition and development of land, under this Act;
 - (b) the payment of money (by way of compensation or in other ways) which the Minister becomes liable to pay under this Act;
 - (c) the payment of rates, taxes and other charges due and payable by the Minister in respect of land vested in or held by the Minister;
 - (d) the transfer to any reserve for the repayment of any money borrowed by the Minister for the purposes of this Act;
 - (e) the payment of principal, interest and expenses in respect of money borrowed by the Minister for the purposes of this Act;
 - (f) the maintenance and development of property vested in the Minister;
 - (g) any purposes authorized by or under this Act as a purpose for which the Fund may be applied;
- and
- (h) to assist councils in the provision of public recreation facilities.

Accounts and audit

- 70.** (1) The Minister must cause proper accounts to be kept in relation to the Fund.
- (2) The Auditor-General may at any time, and must at least once in every year, audit the accounts of the Fund.

PART X
MISCELLANEOUS

Annual report

71. (1) On or before 31 October in each year—

(a) the Commission must prepare and present to the Minister a report upon the administration of this Act during the year that ended on the preceding 30 June;

and

(b) the Chairman of the Tribunal must prepare and present to the Minister a report on the work of the Tribunal during the year that ended on the preceding 30 June.

(2) The Minister must, as soon as practicable after receiving a report presented under this section, cause copies of the report to be laid before each House of Parliament.

Power to inspect land and premises

72. (1) A member of the Commission or of the Tribunal, or a person authorized in writing by the Minister or a Judge of the Tribunal, may, at any reasonable time, enter upon and inspect land for any reasonable purpose connected with the administration of this Act, but no building may be entered pursuant to this subsection unless the occupier has been given reasonable notice of the proposed entry.

(2) The powers conferred by subsection (1) may also be exercised by any person authorized by the council of the area in which the land is situated.

(3) A person must not obstruct another in the exercise of a power conferred by this section.

Penalty: \$200.

Professional advice to be obtained by councils in relation to certain matters

73. (1) A council must seek and consider the advice of a person with prescribed qualifications, or a person approved by the Minister for that purpose, in relation to every matter arising under this Act that is declared by regulation to be a matter on which such advice should be sought and considered by the council.

(2) A person may be approved by the Minister for the purposes of subsection (1) subject to such conditions as the Minister thinks fit, and the Minister may withdraw or vary such an approval at any time.

Regulations

74. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Any such regulations—

(a) may apply generally throughout the State or be limited in application to a particular area, part of an area or other part of the State;

(b) may apply to development generally or any specified class of development;

and

(c) may operate by reference to any other factor or combination of factors.

(3) Any such regulation may impose a penalty not exceeding \$1 000 for breach of, or failure to comply with, the regulation and may also impose a default penalty not exceeding \$200.

(4) The regulations may prescribe and provide for the payment of fees, and may empower a planning authority, or any other person to whom fees are payable, to remit payment of the whole or part of those fees.

(5) A regulation made under this section may—

(a) declare any industry, operation or process, the air pollution from which, in the opinion of the Governor, causes a threat to human health or has a serious adverse impact on the environment, to have an air pollution potential of a primary level of impact;

or

(b) declare any industry, operation or process, the air pollution from which, in the opinion of the Governor, constitutes a nuisance to surrounding occupiers of land, to have an air pollution potential of a secondary level of impact.

SCHEDULE OF REPEALING AND TRANSITIONAL PROVISIONS

1. The *Planning and Development Act, 1966*, is repealed.

2. Notwithstanding clause 1—

- (a) the repeal effected by that clause does not affect any rights accrued under the repealed Act, or the validity of any decision or planning authorization made or granted under the repealed Act, or of a condition attached to any such decision or planning authorization;
- (b) an application, appeal, or other proceeding that was commenced in pursuance of the repealed Act, or the regulations under the repealed Act, but had not been finally determined at the commencement of this Act may be continued and completed as if this Act had not been enacted;
- (c) a right of appeal existing under the repealed Act immediately before the commencement of this Act may be exercised after that commencement as if this Act had not been enacted;
- (d) a condition attached to, or applying to or in relation to, a planning authorization granted under Part IV, V or VAA of the repealed Act will, unless revoked by the Commission or a council by which it was imposed, remain in force and bind the owners and occupiers of the land to which the condition relates;
- (e) a development plan or supplementary development plan in respect of which representations had been invited under the provisions of the repealed Act but which had not, at the commencement of this Act, become an authorized development plan will be regarded as a supplementary development plan in respect of which submissions have been invited under this Act, but persons by whom representations are made (whether before or after the commencement of this Act) in relation to the plan are not entitled to the rights conferred by section 41(9);
- (f) a recommendation for the making of planning regulations in respect of which notice had been given under the repealed Act not more than 18 months before the commencement of this Act (being a recommendation that had not been implemented before the commencement of this Act) will be regarded as a supplementary development plan in respect of which submissions have been invited under this Act;
- (g) a proclamation made under section 61 of the repealed Act or under section 29 of the *Town Planning Act, 1929*, and in force immediately before the commencement of this Act will, subject to revocation under this Act, have the force and effect of a proclamation under section 62;
- (h) a regulation in force under section 36(4)(d) of the repealed Act immediately before the commencement of this Act will, subject to this Act, have effect as a regulation under section 65;

and

- (i) a scheme in force under section 63a of the repealed Act immediately before the commencement of this Act will, subject to this Act, have effect as a scheme under section 63.

3. The powers, functions, duties and obligations formerly vested in the State Planning Authority in relation to matters referred to in clause 2, or under any other Act or law, are exercisable by, or attach to, the South Australian Planning Commission.

4. A person who was, immediately before the commencement of this Act, a full-time commissioner under the repealed Act will, subject to this Act, continue in office on terms and conditions no less favourable than those on which that person held office under the repealed Act.

5. A reference in any Act, regulation, rule or by-law to the Metropolitan Planning Area as constituted under the repealed Act will be read and construed as a reference to Metropolitan Adelaide as defined in the Development Plan.

6. Notwithstanding the retrospective operation of the *Planning Act Amendment Act, 1982*—

(a) nothing in that amending Act invalidates anything done under this Act before 9 December, 1982;

and

(b) any declaration made, or purportedly made, under section 43 of this Act before 9 December, 1982, will be regarded as having been validly made but, if the Development Plan is amended under section 42(2)(a) in order to reflect the provisions of the plan to which the declaration relates, the declaration will cease to operate on the making of the amendment.

7. The *Control of Advertisements Act, 1916*, is repealed.

APPENDIX

Legislative History

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 1 February 1988. A schedule of these alterations was laid before Parliament on 9 February 1988.

1. Repeal

The *Planning Act, 1982*, repealed the following Acts:

Planning and Development Act, 1966

Control of Advertisements Act, 1916

2. Textual Amendment

Section 2:	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 3:	amended by 71, 1985, s. 3; repealed by 38, 1986, s. 2
Section 4(1):	definition of "development" amended by 71, 1985, s. 4(a), (b) definition of "division" substituted by 71, 1985, s. 4(c) definition of "the repealed Act" inserted by 71, 1985, s. 4(d) definition of "State Heritage Area" inserted by 71, 1985, s. 4(e) inserted by 100, 1982, s. 3
Section 4(4):	inserted by 10, 1984, s. 3; amended by 71, 1985, s. 5; substituted by 47, 1987, s. 3
Section 4a:	amended by 62, 1982, s. 3(9)(Sched. Part IX); 100, 1982, s. 4; repealed by 38, 1986, s. 3
Section 5:	repealed by 71, 1985, s. 6
Section 6(2) and (3):	repealed by 71, 1985, s. 7(a)
Section 7(8):	inserted by 71, 1985, s. 7(b)
Section 7(9a):	substituted by 64, 1987, s. 3(a)
Section 10(1) - (3):	repealed by 64, 1987, s. 3(a)
Section 10(4):	amended by 71, 1985, s. 8(a); repealed by 64, 1987, s. 3(a)
Section 10(5):	repealed by 64, 1987, s. 3(a)
Section 10(6):	repealed by 64, 1987, s. 3(a)
Section 10(7):	amended by 64, 1987, s. 3(b)
Section 10(12):	amended by 71, 1985, s. 8(b)
Section 11(2) and (3):	substituted by 64, 1987, s. 4
Section 11(3a):	inserted by 64, 1987, s. 4
Section 11a:	inserted by 64, 1987, s. 5
Section 12:	amended by 71, 1985, s. 9
Section 13(3):	amended by 71, 1985, s. 10(a)
Section 13(4):	amended by 71, 1985, s. 10(b)
Section 14(2):	substituted by 64, 1987, s. 6(a)
Section 14(2a) and (2b):	inserted by 64, 1987, s. 6(a)
Section 14(4) and (5):	amended by 64, 1987, s. 6(b)
Section 15(3):	amended by 71, 1985, s. 11
Section 20(3):	amended by 71, 1985, s. 12
Section 20(4):	amended by 59, 1985, s. 15(a)
Section 20(5)(d):	repealed by 38, 1986, s. 4
Section 20(5a):	inserted by 59, 1985, s. 15(b)
Section 22:	amended by 71, 1985, s. 13
Section 24:	substituted by 49, 1986, s. 3
Section 25:	amended by 71, 1985, s. 14; substituted by 49, 1986, s. 4
Section 26:	amended by 71, 1985, s. 15
Section 27(1):	amended by 71, 1985, s. 16(a)
Section 27(1a) and (1b):	inserted by 71, 1985, s. 16(b)
Section 30(1a):	inserted by 71, 1985, s. 17
Section 35(1):	substituted by 71, 1985, s. 18
Section 36(1):	amended by 71, 1985, s. 19(a)
Section 36(3):	amended by 71, 1985, s. 19(b)
Section 36(6):	substituted by 71, 1985, s. 19(c)
Section 37(1) and (2):	amended by 71, 1985, s. 20
Section 39(5):	inserted by 71, 1985, s. 21
Section 40(1):	deleted in pursuance of the <i>Acts Republication Act, 1967</i>
Section 40(2):	substituted by 100, 1982, s. 5; redesignated as s. 40 in pursuance of the <i>Acts Republication Act, 1967</i>
Section 41(2):	amended by 71, 1985, s. 22(a)
Section 41(7):	amended by 71, 1985, s. 22(b)
Section 41(9):	amended by 71, 1985, s. 22(c), (d)
Section 41(10):	amended by 71, 1985, s. 22(e)
Section 41(11):	substituted by 71, 1985, s. 22(f)
Section 41(11a) and (11b):	inserted by 71, 1985, s. 22(f)
Section 41(12):	amended by 71, 1985, s. 22(g); substituted by 47, 1987, s. 4
Section 41(13):	amended by 71, 1985, s. 22(h); substituted by 47, 1987, s. 4
Section 41(14):	amended by 71, 1985, s. 22(i); substituted by 47, 1987, s. 4
Section 41(15):	substituted by 47, 1987, s. 4
Section 41(16) - (19):	inserted by 47, 1987, s. 4
Section 42(1):	substituted by 71, 1985, s. 23; amended by 107, 1987, s. 3
Section 42a:	inserted by 71, 1985, s. 24
Section 43(1):	amended by 71, 1985, s. 25(a)
Section 43(2):	substituted by 71, 1985, s. 25(b)
Section 43(3):	repealed by 10, 1984, s. 4; inserted by 71, 1985, s. 25(b); amended by 64, 1987, s. 7
Section 44(1) and (2):	substituted by 71, 1985, s. 26
Section 46(1) and (2):	amended by 10, 1984, s. 5(a)

Section 46(3):	inserted by 10, 1984, s. 5(b)
Section 47(2):	amended by 71, 1985, s. 27(a)
Section 47(3):	substituted by 71, 1985, s. 27(b)
Section 47(4):	amended by 71, 1985, s. 27(c)
Section 47(5):	amended by 71, 1985, s. 27(d)
Section 47(8):	substituted by 47, 1987, s. 5
Section 47(9):	substituted by 71, 1985, s. 27(e)
Section 47(10):	amended by 71, 1985, s. 27(f)
Section 48:	substituted by 71, 1985, s. 28
Section 48a:	inserted by 11, 1984, s. 3
Section 48b:	inserted by 12, 1988, Sched. 42
Section 49(2):	amended by 71, 1985, s. 29(a)
Section 29(2a):	inserted by 71, 1985, s. 29(b)
Section 49(3):	amended by 71, 1985, s. 29(c)
Section 49(5):	amended by 71, 1985, s. 29(d)
Section 49(6a):	inserted by 71, 1985, s. 29(e)
Section 49(8) and (9):	inserted by 71, 1985, s. 29(f)
Section 51(5):	amended by 10, 1984, s. 6(a)
Section 51(6):	inserted by 10, 1984, s. 6(b)
Section 51a and heading:	inserted by 71, 1985, s. 30
Section 52:	substituted by 71, 1985, s. 31
Section 53(5) and (6):	substituted by 71, 1985, s. 32
Section 53(7):	substituted by 71, 1985, s. 32; amended by 73, 1985, s. 3(a)
Section 53(8) and (9):	substituted by 71, 1985, s. 32
Section 53(9a):	inserted by 71, 1985, s. 32
Section 53(10) and (11):	substituted by 71, 1985, s. 32; repealed by 73, 1985, s. 3(b)
Section 53(12):	repealed by 73, 1985, s. 3(b)
Section 54:	redesignated as s. 54(1) by 71, 1985, s. 33
Section 54(2):	inserted by 71, 1985, s. 33
Section 55(2):	amended by 71, 1985, s. 34(a)
Section 55(3):	amended by 71, 1985, s. 34(b), (c)
Section 55(5):	deleted in pursuance of the <i>Acts Republication Act, 1967</i> , as its function is now exhausted
Section 55(7):	definition of "the relevant planning authority" substituted by 71, 1985, s. 34(d)
Section 55(8):	amended by 71, 1985, s. 34(e)
Section 55(9):	repealed by 38, 1986, s. 5
Section 56:	amended by 10, 1984, s. 7(c); 70, 1984, s. 3; 92, 1984, s. 2; 41, 1985, s. 2; 88, 1985, s. 3; 38, 1986, s. 6; substituted by 47, 1987, s. 6
Section 56a:	inserted by 47, 1987, s. 6
Section 57(1a):	inserted by 71, 1985, s. 35
Section 62(6):	inserted by 71, 1985, s. 36
Section 69:	amended by 71, 1985, s. 37
Section 73:	substituted by 71, 1985, s. 38
Section 74(1):	amended by 71, 1985, s. 39(a)
Section 74(4):	substituted by 71, 1985, s. 39(b)
Section 74(5):	inserted by 11, 1984, s. 4
Schedule:	inserted by 38, 1986, s. 7

3. Notes

1. The *Planning Act Amendment Act (No. 2), 1986* (No. 49 of 1986) inserted ss. 24 and 25. Section 5 of that amending Act provided that the new sections were to apply to proceedings commenced before the commencement of the amending Act unless the proceedings were part-heard at the date of commencement.
2. The *Planning Act Amendment Act, 1987* (No. 47 of 1987) inserted ss. 56 and 56a. These sections were inserted on the recommendation of the "Select Committee on section 56 of the Planning Act, 1982, and related matters".