ANNO TRICESIMO

ELIZABETHAE II REGINAE

A.D. 1982

****

No. 3 of 1982

An Act to provide for planning, and to regulate development, within the State; to repeal the Planning and Development Act, 1966-1981 and the Control of Advertisements Act, 1916-1935; and for other purposes.

[*Assented to* 21 *January* 1982]

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

PART I

PART I

PRELIMINARY

Short title.

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

Commencement.

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

(2) The Governor may, by the proclamation made for the purposes of subsection (1), suspend the operation of specified provisions of this Act until a subsequent day fixed by the proclamation, or a day to be fixed by subsequent proclamation.

Arrangement of Act.

3. This Act is arranged as follows:

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, 1886-1981:

"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 immoveable:

"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, 1934-1981:

"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 (otherwise than 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;

(*f*) where the land is an item of the State heritage—the demolition, conversion, alteration of, or addition to, the item;

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 re-subdivision of the allotment;

or

(*b*) any transaction by virtue of which a person becomes, or may become, entitled to possession or occupation of part only of an allotment except—

(i) the granting of a licence for a term not exceeding five years, being a licence in respect of which no right or option of renewal or extension exists under which the licence might operate by virtue of renewal or extension for a total period exceeding five years;

or

(ii) a transaction exempted by regulation from the ambit of this definition,

and the verb "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, 1978-1980;

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:

"mining production tenement" means—

(*a*) a mining lease or miscellaneous purposes licence under the Mining Act, 1971-1978;

(*b*) petroleum production licence, or pipeline licence under the Petroleum Act, 1940-1978;

or

(*c*) a production licence or pipeline licence under the Petroleum (Submerged Lands) Act, 1981:

"the Mining Acts" means the Mining Act, 1971-1978, the Petroleum Act, 1940-1978, and the Petroleum (Submerged Lands) Act, 1981:

"the Minister responsible for the State heritage" means the Minister responsible for the administration of the South Australian Heritage Act, 1978-1980:

"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 of the Crown by lease or licence—the lessee or licensee;

(*c*) where the land is held of 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 other 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, 1971-1978, 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 Senior Judge" means the Judge holding, or acting in the office of, Senior Judge under the Local and District Criminal Courts Act, 1926-1981:

"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 of this Act the words "Additional Penalty" appear, those words signify that where a person undertakes development in contravention of, and thus commits an offence against, that section or subsection he shall be 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 of this Act, 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, he shall be guilty of a further offence against the section or subsection and liable, in addition to any other penalty prescribed for such an offence, to a penalty not exceeding the amount of the default penalty for every day the offence continues after the date of the conviction.

Repeal and transitional provisions.

5. (1) The Planning and Development Act, 1966-1981, is repealed.

(2) Notwithstanding subsection (1)—

(*a*) the repeal effected by that subsection 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 commencment as if this Act had not been enacted;

(*d*) a condition attached to a planning authorization granted under Part IV, Part V or Part VAA of the repealed Act shall, 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 shall be deemed to be 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 twelve months before the commencement of this Act (being a recommendation that had not been implemented before the commencement of this Act) shall be deemed to be 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, 1929-1963, and in force immediately before the commencement of this Act, shall, 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 shall, 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 shall, subject to this Act, have effect as a scheme under section 63.

(3) All real and personal property that was immediately before the commencement of this Act vested in the State Planning Authority shall, upon the commencement of this Act, vest in the Minister.

PART I

Application of Act.

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

(2) The Governor may, by proclamation—

(*a*) exclude any specified portion of the State from the application of this Act, or specified provisions of this Act;

or

(*b*) exclude any specified form of development from the application of this Act, or specified provisions of this Act.

(3) The Governor may, by subsequent proclamation, vary or revoke a proclamation under subsection (2).

(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, 1886-1980.

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 shall, 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 shall be conclusively presumed that the council does not intend to report on the proposal.

(6) The Commission shall 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.

(8) The Minister shall, as soon as practicable after his receipt of a report under subsection (6), cause copies of the report to be laid before both Houses of Parliament.

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

(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 shall be 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 shall, 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

PART II

ADMINISTRATION

DIVISION I

DIVISION I—THE SOUTH AUSTRALIAN PLANNING COMMISSION

Establishment of the Commission.

9. (1) There shall be a commission entitled the "South Australian Planning Commission".

(2) The Commission shall have 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 shall (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) be subject to the control and direction of the Minister.

Membership of the Commission.

10. (1) The Commission shall consist of three members, appointed by the Governor, of whom—

(*a*) one (the Chairman) shall be appointed on a full-time basis;

and

(*b*) two shall be appointed on a part-time basis.

(2) The Governor may appoint a suitable person to be a deputy of a member of the Commission and such a person may, in the absence of the member of whom he has been appointed a deputy, act in the place of that member.

(3) The office of deputy to a member of the Commission may be held in conjunction with any office in the public service of the State.

(4) A person appointed to be the Chairman, or a deputy of the Chairman, of the Commission—

(*a*) must be a corporate member 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 Minister, appropriate to the Chairman's functions and duties under this Act.

(5) Of the two members appointed on a part-time basis—

(*a*) one must be a person with practical knowledge of, and experience in, local government;

and

(*b*) one must be a person with practical knowledge of, and experience in, administration, commerce, industry or the management of natural resources,

and a deputy of any such member must be similarly qualified.

(6) The member referred to in subsection (5) (*a*) shall be chosen from a panel of three persons with practical knowledge of, and experience in, local government submitted to the Minister by the Local Government Association.

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

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

and

(*b*) in the case of a part-time member—a term, not exceeding two years, specified in the instrument of his appointment.

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

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

(*a*) shall be as determined by the Governor;

or

(*b*) shall, in the case of the Chairman, if the Governor so decides, be determined wholly or in part in accordance with the Public Service Act, 1967-1978.

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

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

(*b*) misconduct;

or

(*c*) mental or physical incapacity to carry out satisfactorily the duties of his office.

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

(*a*) he dies;

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

or

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

(12) A member of the Commission who has a direct or indirect pecuniary interest in any matter before the Commission shall 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, shall be as determined by the Commission.

(2) The Chairman shall preside at meetings of the Commission.

(3) A decision in which any two members express their concurrence at a meeting of the Commission shall be a decision of the Commission.

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

Advisory functions of Commission.

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

(*a*) may, of its own motion, and shall, at the request of the Minister, consider, and report to the Minister upon, matters relevant to the use or development of land;

PART II
DIVISION I

(*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, it shall be lawful for the council to subdelegate those powers to a committee 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 has a direct or indirect pecuniary interest.

DIVISION II

DIVISION II—THE ADVISORY COMMITTEE ON PLANNING

Constitution of the Committee.

14. (1) There shall be a committee entitled the "Advisory Committee on Planning".

(2) The Advisory Committee shall consist of the Chairman of the Commission (who shall also be Chairman of the Advisory Committee) and seven other members, appointed by the Governor, of whom—

(*a*) two shall be persons with wide experience of local government;

(*b*) one shall be a person with wide experience in environmental matters;

(*c*) one shall be a person with wide experience of commerce and industry;

(*d*) one shall be a person with wide experience in rural affairs;

(*e*) one shall be a person with wide experience of housing or urban development;

and

(*f*) one shall be a person with wide experience of the utilities and services that form the infrastructure of urban development;

(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, appointed by the Governor, shall hold office at the pleasure of the Governor.

(5) A member of the Advisory Committee, appointed by the Governor, shall vacate his office at the expiration of two years, or such lesser period as the Governor may determine from the date of his appointment or last re-appointment as a member of the Advisory Committee unless the Governor reappoints him as a member of the Advisory Committee.

(6) Subject to any direction of the Minister, the procedures for calling meetings of the Advisory Committee, and conducting its proceedings, shall 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 his attention;

and

(*b*) shall 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 sub-committees to investigate, and report to the Committee, on any matter.

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

DIVISION III—STAFF

Staff.

16. (1) There shall 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) shall be appointed, and shall hold office, subject to, and in accordance with, the Public Service Act, 1967-1978.

(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

PART III

APPELLATE AND OTHER PROCEEDINGS UNDER THIS ACT

DIVISION I

DIVISION I—THE PLANNING APPEAL TRIBUNAL

The Tribunal.

17. The body formerly known as the Planning Appeal Board shall continue in existence but, as from the commencement of this Act, shall be known as the "Planning Appeal Tribunal".

The Chairman.

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

(2) The Chairman shall be a person holding judicial office under the Local and District Criminal Courts Act, 1926-1981, nominated by the Senior Judge as Chairman of the Tribunal.

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

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

(*a*) he ceases to hold judicial office under the Local and District Criminal Courts Act, 1926-1981;

or

(*b*) his nomination is revoked by the Senior Judge.

(5) If the Chairman is absent, or unavailable to act in his office, a Judge nominated by the Senior Judge shall 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, 1926-1981, shall be Judges of the Tribunal.

The commissioners.

20. (1) There shall 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 shall 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;

or

(*c*) administration, commerce or industry.

(4) Subject to subsection (5) a full-time commissioner shall hold office upon terms and conditions determined by the Governor.

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

(*a*) a full-time commissioner shall not be subject to the Public Service Act, 1967-1981, but the rights of a full-time commissioner to long service leave, recreation leave, sick leave and other forms of leave shall be determined in accordance with the provisions of that Act and the regulations under that Act;

(*b*) a full-time commissioner may, notwithstanding that he has reached the age of retirement, complete the hearing and determination of any appeal or matter part-heard by him before reaching that age and shall, for that purpose, be deemed to continue as a full-time commissioner;

(*c*) a full-time commissioner shall be an "employee" within the meaning of the Superannuation Act, 1969, as amended;

(*d*) a person who was immediately before the commencement of this Act a full-time commissioner under the repealed Act shall, subject to this Act, continue in office on terms and conditions no less favourable than those on which he held office under the repealed Act.

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

(7) The office of a part-time commissioner shall become vacant if—

(*a*) he dies;

(*b*) he resigns by notice in writing addressed to the Minister;

or

(*c*) he is removed from office by the Governor on the ground of—

(i) physical or mental incapacity to carry out satisfactorily the duties of his office;

or

(ii) misconduct.

Saving provision.

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

Personal interest bar to sitting at hearing of proceeding.

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

The secretary.

23. (1) There shall 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 the Chairman.

24. (1) The sittings of the Tribunal for the hearing of appeals or other matters whether under this Act or any other Act, shall be held at such places and at such times as the Chairman may determine.

(2) Subject to this Act, the Chairman may give directions as to the arrangement of the business of the Tribunal and the constitution of the Tribunal for the hearing of any proceedings before the Tribunal.

PART III
DIVISION 1

Constitution of the Tribunal when hearing proceedings.

25. (1) Subject to this section and the rules of the Tribunal, the Tribunal shall be constituted for the purpose of hearing and determining proceedings, of a Judge and not less than two Commissioners.

(2) Where a Commissioner dies, or is for any reason unable to continue with the hearing of proceedings part-heard before the Tribunal, the Tribunal constituted of the Judge and the remaining Commissioner or Commissioners may continue and complete the hearing and determination of those proceedings.

(3) The jurisdiction of the Tribunal may be exercised by a Judge or a Commissioner authorized by a Judge—

(*a*) for the purpose of adjourning any proceedings;

(*b*) in determining any matter of practice or procedure in any proceedings;

or

(*c*) in any other matter prescribed by rules of the Tribunal.

(4) The jurisdiction of the Tribunal may be exercised by the secretary to the Tribunal—

(*a*) for the purpose of adjourning any proceedings;

or

(*b*) in any other matter prescribed by rules of the Tribunal.

(5) Where a Commissioner, or the secretary, sits alone pursuant to subsection (3) or (4) to exercise the jurisdiction of the Tribunal, he may at any time, and shall at the request of a party to the proceedings, refer a question of law for the decision of the Tribunal.

(6) A question of law referred for the decision of the Tribunal under subsection (5) shall be decided by a Judge and his determination shall constitute the decision of the Tribunal upon that question.

(7) 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 two or more commissioners any question arising before the Tribunal shall 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 shall 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, and there remain unresolved differences between the parties.

(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 shall be 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 shall 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 orders 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 shall, subject to this Act, be as it thinks fit;

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

and

(*c*) the Tribunal shall 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 purpose of proceedings before the Tribunal—

(*a*) by summons signed by or 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 that he will truly answer all questions put to him 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 to him by a member of the Tribunal, or by any person appearing before the Tribunal.

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

(*a*) who has been served with a summons to attend before the Tribunal, or at a conference, fails, without reasonable excuse, to attend in obedience to the summons;

(*b*) who has been served with a summons to produce relevant books, papers or documents, fails, without reasonable excuse, to comply with the summons;

PART III
DIVISION 1

(*c*) misbehaves himself 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,

he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars 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 by Minister.

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

(2) The Minister may, if in his opinion 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 shall 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 shall 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 shall comply with a direction of the Tribunal under subsection (2).

Penalty: One thousand dollars.

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, shall 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 thirty 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 referred 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 against a determination or decision of the Tribunal to the Land and Valuation Court, and it appears to the Tribunal or the Court—

(*a*) that some irregularity has occurred affecting either the appeal, or purported appeal, or the decision or purported decision against which the appeal or purported appeal has been brought;

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

the Tribunal or the Court may cure the irregularity by ordering that, subject to such conditions as may be stipulated by the Tribunal or the Court, the requirements of this Act, or of any other Act or law, be dispensed with to the extent necessary for that purpose.

(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—

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

(*b*) that 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

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, 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 shall issue a summons requiring the respondent to appear before the Court to show cause why an order should not be made against him 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

(*b*) the respondent fails to appear in response to the summons, or having appeared, does not avail himself 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;

(*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 shall be 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 may be made upon conditions determined by the Court, and shall 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 shall (without prejudice to any liability that he may incur in proceedings for punishment of a contempt of the order) be guilty of an offence and liable to a penalty not exceeding ten thousand dollars.

(8) Where the Court makes an order under subsection (3) (*d*) against the respondent to an application, and he 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 works contemplated by the order to be carried out, and may recover the costs of those works, 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, 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 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 commencment of proceedings under this Division shall 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 thirty 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

Proceedings for an offence against this Act.

39. (1) Proceedings for an offence against this Act shall be disposed of summarily.

(2) Any such proceedings 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 shall be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the authorization.

PART IV

THE DEVELOPMENT PLAN

The Development Plan.

40. (1) There shall be a plan to be known as "the Development Plan".

(2) The Development Plan shall, in the first instance, be based upon—

(*a*) the provisions of the authorized development plans in force under the repealed Act on a date fixed by the Minister for the purposes of this section;

(*b*) the provisions of planning regulations in force under the repealed Act on the date mentioned above—

(i) that define a zone or locality and specify the purposes for which the zone or locality is established;

(ii) that are relevant to the question of determining whether a particular form of development in a particular area, zone or locality—

(A) is permitted absolutely or subject to conditions;

or

(B) is prohibited;

(iii) prescribing, or providing for the imposition of conditions, under which a particular form of development in a particular area, zone or locality is, or may be, permitted;

and

(iv) prescribing factors or criteria that are required or permitted to be taken into account by a planning authority in exercising a discretion or arriving at a decision;

and

(*c*) the provisions of the regulations under the repealed Act relating to the Hills Face Zone,

and shall be in a form approved by resolution of both Houses of Parliament.

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;

or

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

and where a supplementary development plan relating to the area or part of the area of a council is prepared by the Minister he shall, 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,

shall also be prepared.

(5) Where a supplementary development plan has been prepared by a council, it shall 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 he 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,

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

(7) The advertisement referred to in subsection (6) shall, where the supplementary development plan was prepared by the Minister, be published by the Minister, 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 shall—

(*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, proposals contained in 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, proposals contained in the supplementary development plan, or the submissions relating to that plan,

but a person appearing at the public hearing shall not introduce proposals that are not contained either in 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 shall forward copies of the written submissions received by it together with the council's recommendations in relation to the submissions, to the Advisory Committee.

(11) The Advisory Committee shall report to the Minister on the supplementary development plan and on the submissions received in response to the advertisement, and the Minister may—

(*a*) approve the supplementary development plan;

or

(*b*) amend the supplementary development plan—

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

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.

(12) Where the Minister has approved a supplementary development plan under subsection (11), the Minister may, subject to subsection (13), refer the plan to the Governor and 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 shall come into operation.

(13) Where a supplementary development plan introduces or affects principles of development control under which development is permitted or prohibited, the supplementary development plan shall not be referred to the Governor unless the plan has been referred to the Joint Committee on Subordinate Legislation and—

(*a*) the Committee has approved the plan;

or

(*b*) the Committee has resolved not to approve the plan, copies of the plan have on or after the date of the resolution been laid before each House of Parliament, and neither House of Parliament has within six sitting days after the date of the copy of the plan being laid before the House, passed a resolution disallowing the plan.

(14) Where a supplementary development plan has been referred to the Joint Committee on Subordinate Legislation and at the expiration of 14 days from the day on which it was so referred the Committee has neither approved nor resolved not to approve the plan, it shall be conclusively presumed that the Committee has approved the plan.

(15) Before referring a supplementary development plan to which subsection (13) applies to the Governor, 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.

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 coastal management plan, or part of a coastal management plan, approved under the provisions of the Coast Protection Act, 1972-1978.

(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 shall consult with any council affected by the amendment.

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 the delays attendant upon advertising for, receiving and considering public submissions, he may, at any time after notice that the plan is available for public inspection has been published, declare, by notice published in the *Gazette*, that the plan shall 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—

(*a*) shall come into operation on the day specified in the notice;

and

(*b*) shall cease to operate—

(i) when superseded by a supplementary development plan that comes into operation under section 41;

or

(ii) upon the expiration of twelve months from the day on which it came into operation,

whichever first occurs.

(3) This section shall expire at the expiration of two years from the commencement of this Act.

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

44. (1) The Minister shall provide every council with a copy of the Development Plan, and of every authorized supplementary development plan that affects the area of the council.

(2) The Commission and each council shall make a copy of the Development Plan and of every authorized supplementary development plan that affects the area of the council, available for inspection at its public office.

(3) The Minister shall make copies of the Development Plan, or of any 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 he thinks fit.

(5) The Minister may from time to time consolidate and re-publish 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 shall take judicial notice, without formal proof of its contents.

PART V

PART V

DEVELOPMENT CONTROL

DIVISION I—DEVELOPMENT CONTROL GENERALLY

DIVISION I

Offences of undertaking development contrary to this Division.

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

Penalty: Ten thousand dollars.

Additional Penalty. Default Penalty: One thousand dollars.

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

Penalty: Ten thousand dollars.

Additional Penalty. Default Penalty: One thousand dollars.

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 shall be 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;

or

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

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 permitted absolutely or conditionally by the principles of development control in a particular area, zone or locality without the consent of a planning authority, 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 principles of development control.

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

PART V
DIVISION 1

(5) Where development of a particular kind is prohibited by the principles of development control 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 shall be subject to such conditions (if any) as the relevant planning authority thinks fit to impose, and any such condition shall be 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 shall lie against—

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

or

(*b*) a condition attached to a consent under subsection (6).

(9) In deciding whether to consent to a proposed development under this section, a planning authority shall have regard to the provisions of the Development Plan so far as they are relevant to that decision.

(10) Where under the provisions of the regulations a council is required to refer a proposal for development to the Commission or a prescribed instrumentality or agency of the Crown for its consideration 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 shall not consent to the proposed development without having considered whether it should impose the conditions so determined;

(*b*) the conditions so determined shall, 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 shall lie against the Commission.

Heritage items.

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

(*a*) shall refer the application to the Minister responsible for the State heritage;

and

(*b*) shall not grant the authorization until it has received and taken into account any representations that the Minister desires to make on the subject.

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 shall, by public advertisement, invite interested persons to make written submissions to him on the draft environmental impact statement within a period (being not less than two months from the date of publication of the advertisement).

(3) The Minister shall, after considering the submissions and any response that the proponent may desire to make to the submissions, 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 shall 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 by him in relation to the preparation of an environmental impact statment in respect of a development or project as a debt due to him from the proponent.

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

(7) A planning authority shall 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.

PART V

DIVISION III

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, he 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 of this Part 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 shall 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 he thinks fit;

or

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

(3) No decision shall 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, shall 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—

(*a*) who 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,

shall be guilty of an offence.

Penalty: Ten thousand dollars.

Additional Penalty. Default Penalty: One thousand dollars.

DIVISION IV

DIVISION IV—APPEAL AGAINST DECISIONS BY PLANNING AUTHORITIES

Aggrieved applicant may appeal.

52. (1) A person who applies for a planning authorization and is aggrieved by a decision of a planning authority (not being the Governor)—

(*a*) to refuse the application;

or

(*b*) to attach conditions to the planning authorization,

may, within two months of the day on which he receives 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 decision by which an appellant is aggrieved was made by a person acting in pursuance of delegated powers, the appeal shall lie against the principal and not the delegate.

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 shall forward to the applicant a copy of the representations made under this section in relation to his application and shall allow him 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 shall, upon deciding an application in relation to which representations have been made under this section, give the persons by whom those representations were made notice of the decision.

(6) Notice under subsection (5) may be given—

(*a*) personally or by post;

or

(*b*) by publication of the notice in a newspaper circulating generally throughout the State.

(7) A person who is entitled to be given notice of a decision under subsection (5) and who is aggrieved by the decision of the planning authority, may, subject to subsection (10), appeal to the Tribunal against the decision.

(8) An appeal under subsection (7) must be instituted within fourteen days after notice of the decision to which the appeal relates is given under this section, or such longer period as may be allowed by the Tribunal.

(9) 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 there is such an appeal, until the determination of the appeal.

(10) Except by leave of the Tribunal, an appeal under subsection (7) shall not be pursued beyond the stage at which the conference of parties to the appeal required under this Act has been concluded.

(11) An application for leave to continue an appeal under this section must be made within seven days after the conclusion of the conference, and if an application is not made within that period, or if leave is not granted, the appeal shall be deemed to have been dismissed.

PART V
DIVISION IV

(12) An application for leave to continue an appeal under this section shall be dealt with by the Tribunal as expeditiously as possible.

Powers of Tribunal in relation to decision subject to appeal.

54. 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.

DIVISION V

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 him 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 shall be made under subsection (1) in relation to—

(*a*) an advertisement, the display of which is authorized under the Local Government Act, 1934-1981;

(*b*) an advertisement required to be displayed under the provisions of some other Act;

or

(*c*) an advertisement for the sale of land situated on the land advertised for sale.

(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 shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(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.

(5) Before the expiration of one year from the commencement of this Act, no planning authorization is required under this Act for the erection or display of an advertisement if—

(*a*) the erection or display of the advertisement was, immediately before the commencement of this Act, authorized under the Local Government Act, 1934-1981;

or

(*b*) the advertisement is such that it could, immediately before the commencement of this Act, have been lawfully erected or displayed without any licence, consent or authorization under any Act.

(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, 1934-1981.

(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 within the area of a council—the council;

or

(*b*) in relation to an advertisement within a part of the State that does not lie within the area of a council—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 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.

(9) The Control of Advertisements Act, 1916-1935, is repealed.

DIVISION VI—GENERAL PROVISIONS

Saving provisions.

56. (1) Notwithstanding any other provision of this Act, no provision of the Development Plan shall—

(*a*) prevent the continued use, subject to and in accordance with the conditions (if any) attached to that use of land for the purposes for which that land was lawfully being used at the time the provision took effect;

or

(*b*) prevent the carrying out or completion of a development, subject to and in accordance with the conditions (if any) affecting the development, for which every consent, approval or authorization required under any act authorizing or permitting the development had been obtained and was current when the provision took effect.

(2) For the purposes of subsection (1), conditions imposed by planning regulations under the repealed Act shall be deemed to remain in force.

(3) Where a planning authority is satisfied that, at the time of consideration of the matter by the planning authority, a particular use of land or activities involved in, or associated with, a particular use of land—

(*a*) have been discontinued for a period of not less than six months immediately preceding that time;

or

(*b*) have continued only to a trifling extent for such a period,

the planning authority may give notice in writing to the owner and the occupier of the land that it proposes to make a declaration under this section.

(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 proposal.

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

(6) Where—

(*a*) no appeal is instituted against the proposal;

or

(*b*) an appeal is instituted against the proposal and the proposal is confirmed upon appeal,

the planning authority may, by notice in writing given to the owner and the occupier, declare that the use to which the proposal related has been discontinued.

(7) Where a declaration is made under subsection (6), the use to which it relates shall be conclusively presumed to have been discontinued.

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), shall be the law in force as 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;

or

(*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, 1970-1976;

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

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 shall—

(*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 twenty-eight 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 shall 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 shall, 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 his advice under this section, and after considering the terms of any relevant officially recognized environmental impact statement shall 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 to him under subsection (4) (either as to the granting of the tenement or the conditions that should be included in the tenement), he shall refer the matter to the Governor and the Governor shall 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 the date that fell exactly one year before the date of the commencement of this Act.

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 works for which provision is made by agreement under this section.

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

(5) The Registrar-General shall, 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 shall, 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 shall 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 shall 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 shall not 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 shall 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 shall 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 in so far as it affects a specified parcel of land, and, where he does so, the owner of the land shall be 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.

PART VIII

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 shall 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, 1969-1972, shall apply 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 re-development of that land or for any public purpose.

(2) The Land Acquisition Act, 1969-1972, 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 shall, 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) shall be determined by agreement or, in default of agreement, by the Land and Valuation Court.

(5) Land reserved for future acquisition under this section shall 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, 1969-1972, of land reserved for future acquisition under this section—

(*a*) compensation shall 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) shall be taken into account.

(8) If land reserved for future acquisition under this section ceases to be so reserved, the Registrar-General shall, 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

PART IX

FINANCIAL PROVISIONS

Moneys required for this Act.

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

Continuance of the Fund.

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

(2) There shall be paid into the Fund—

(*a*) moneys made available by the Treasurer, out of appropriations authorized by Parliament, for the purposes of the Fund;

(*b*) all moneys derived by the Minister from the sale, leasing or other disposal by the Minister of land vested in the Minister;

(*c*) all moneys received by the Commission in respect of the division of land;

(*d*) all moneys to be contributed by a council in respect of any scheme jointly undertaken or carried out by that council and the Minister;

(*e*) the amount of all loans raised by the Minister under this Act;

and

(*f*) all other moneys that are required to be paid into the Fund by this or any other Act.

Borrowing.

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

Application of the Fund.

69. The moneys 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 under this Act;

(*b*) the payment of moneys, whether by way of compensation or otherwise, 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 moneys borrowed by the Minister for the purposes of this Act;

(*e*) the payment of principal, interest and expenses in respect of moneys borrowed by the Minister for the purposes of this Act;

(*f*) the maintenance and development of property vested in the Minister;

and

(*g*) any purposes authorized by or under this Act as a purpose for which the Fund may be applied.

Accounts and audit.

70. (1) The Minister shall cause proper accounts to be kept in relation to the Fund.

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Fund.

PART X

MISCELLANEOUS

Annual report.

71. (1) On or before the thirty-first day of October in each year—

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

and

(*b*) the Chairman of the Tribunal shall prepare and present to the Minister a report on the work of the Tribunal during the year that ended on the preceding thirtieth day of June.

(2) The Minister shall, 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 shall 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 or buildings are situated.

(3) No person shall obstruct any person in the exercise of a power conferred by this section.

Penalty: Two hundred dollars.

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

73. A council shall seek and consider the advice of a person with prescribed qualifications—

(*a*) in relation to the preparation of a supplementary development plan;

or

(*b*) in relation to any matter arising under this Act that is declared by regulation to be a matter on which such advice should be sought and considered by a council.

Regulations.

74. (1) The Governor may, on the recommendation of the Commission, 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.

PART X

(3) Any such regulation may impose a penalty not exceeding one thousand dollars for breach of, or failure to comply with, the regulation and may also impose a default penalty not exceeding two hundred dollars.

(4) The regulations may prescribe and provide for the payment of fees.

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

K. D. SEAMAN, Governor