

No. 32 of 1989.

***Physical Planning Act 1989.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 32 of 1989.

*Physical Planning Act 1989.*

ARRANGEMENT OF SECTIONS.

**PART I – PRELIMINARY.**

1. Compliance with Constitutional requirements.
2. Application.
3. Interpretation.
  - “amenity”
  - “appeal”
  - “approving authority”
  - “arterial road”
  - “authorized person”
  - “authorized purpose”
  - “Board”
  - “building”
  - “building operations”
  - “conditional use”
  - “conditional permission”
  - “consolidation”
  - “development”
  - “development plan”
  - “development plan area”
  - “land”
  - “landscaping”
  - “National Capital District Physical Planning Board”
  - “national highway”
  - “National Physical Planning Board”
  - “occupier”
  - “offensive trade”
  - “outline planning permission”
  - “owner”

“physical planning area”  
“physical planning office”  
“planning permission”  
“provincial minister”  
“Provincial Physical Planning Board”  
“road”  
“road reserve”  
“Senior Physical Planner”  
“subdivision”  
“this Act”  
“Tribunal”  
“use”  
“utilities”  
“zone”

4. Definition of physical planning matters primarily of national interest and primarily of provincial interest.
5. Consideration of physical planning matters under this Act.

#### **PART II – ADMINISTRATION.**

6. Chief Physical Planner.
7. Duties of Minister responsible for physical planning.

#### **PART III – THE NATIONAL PHYSICAL PLANNING BOARD.**

8. Establishment.
9. Membership of the National Physical Planning Board.
10. Alternate members.
11. Chairman and Deputy Chairman.
12. Resignation.
13. Vacation of office.
14. Disclosure of interest by member of the Board.
15. Conduct of National Physical Planning Board.
16. Presence of advisers and observers at Board meetings.
17. Functions of the National Physical Planning Board.
18. Delegation.

#### **PART IV – PROVINCIAL PHYSICAL PLANNING BOARDS.**

19. Establishment.
20. Membership of Provincial Physical Planning Boards.
21. Alternate members.
22. Chairman and Deputy Chairman.
23. Resignation.
24. Vacation of office.
25. Disclosure of interest by member of a Board.
26. Conduct of a Provincial Physical Planning Board.
27. Presence of advisers and observers at Board meetings.
28. Functions of a Provincial Physical Planning Board.
29. Establishment of Local Physical Planning Boards and delegation by a Provincial Physical Planning Board.
30. Suspension of a Provincial Physical Planning Board.

31. Appeal against suspension.
32. Re-instatement of suspended Provincial Physical Planning Board.

**PART V – THE NATIONAL CAPITAL DISTRICT PHYSICAL  
PLANNING BOARD.**

33. Establishment.
34. Membership of the National Capital District Physical Planning Board.
35. Chairman and Deputy Chairman.
36. Alternate member.
37. Resignation.
38. Vacation of office.
39. Disclosure of interest by member of the Board.
40. Conduct of National Capital District Physical Planning Board.
41. Presence of advisers and observers at Board meetings.
42. Functions of the National Capital District Physical Planning Board.
43. Establishment of Local Physical Planning Boards and delegation by the National Capital District Physical Planning Board.

**PART VI – DEVELOPMENT PLANS.**

44. Development plans.
45. Contents of development plan.
46. Provincial development plan.
47. Urban development plan.
48. Local development plan.
49. Subject development plan.
50. Order for preparation of development plan by the Minister.
51. Order for preparation of development plan by provincial minister.
52. Order for preparation of development plan by National Capital District Commission.
53. Minister may refuse consent.
54. Preparation of development plan.
55. Approving authority for development plan.
56. Land for public purposes.
57. Draft development plan.
58. Submission of draft development plan for approval in principle, etc.
59. Publicity for draft development plans approved in principle.
60. Person may comment on or object to draft development plan.
61. Further consideration of draft development plan, etc.
62. Approval of a development plan.
63. Procedure following approval.
64. Gazettal of final approval.
65. Approving authority to take into consideration the content of a draft development plan prior to gazettal of final approval.
66. Review of and changes to development plans.

**PART VII – CONTROL OF THE DEVELOPMENT AND USE OF  
LAND.**

67. Declaration of Physical Planning area in the national interest.
68. Declaration of Physical Planning area by provincial minister.

69. Minister may refuse consent, etc.
70. Declaration of offensive trades.
71. Zoning of Physical Planning areas.
72. Use and development of land and buildings within a zone for authorized purposes.
73. Development in Redevelopment zones.
74. Use and development of land and buildings in a zone for unauthorized purposes.
75. Planning permission required prior to subdivision or consolidation.
76. Board to which application for planning permission to be made in the first instance.
77. Application for planning permission.
78. Procedure of Board following application.
79. Decision of Board.
80. Board to give notification of decision to applicant.
81. Agreements relating to provision or improvement of amenities, utilities or services or in lieu of such provision or improvement.
82. Preservation of trees.
83. Control of sign boards and advertisements.
84. Deemed planning permission by Regulation.
85. Display of development proposals on site.
86. Lapse of planning permission.
87. Revocation or modification of planning permission by agreement.

**PART VIII – APPEALS.**

88. Papua New Guinea Physical Planning Appeals Tribunal.
89. Chairmanship.
90. Resignation.
91. Vacation of office.
92. Conduct of Tribunal.
93. Vacancy does not invalidate performance of power, etc.
94. Appeals against a Board's decision.
95. Consideration of representations by the Tribunal.
96. Appointment of one or more of the members of the Tribunal, etc., to hold a hearing.
97. Consideration of appeals and Section 4 references by the National Physical Planning Appeals Tribunal.

**PART IX – ENFORCEMENT.**

98. Unauthorized Development.
99. Stop work and demolition notices.
100. Penalty may include order to plant trees.

**PART X – MISCELLANEOUS.**

101. Protection of members of a Board or Tribunal.
102. Power of entry.
103. Obstruction.
104. Regulations.

**PART XI – REPEAL.**

105. Repeal.

**PART XII – TRANSITIONAL PROVISIONS.**

106. Interpretation.

107. Actions, etc., not to abate.

108. Designation of towns as Physical Planning areas under the Act.

109. Zoning.

110. References in other Acts.





INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Physical Planning Act 1989,***

Being an Act to establish a comprehensive mechanism for physical planning at national and provincial levels of government and to provide powers for the planning and regulation of physical development and to repeal the *Town Planning Act* (Chapter 204), and for related purposes.

**PART I. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Division III.3.C. (*qualified rights*) of the *Constitution*, namely:–

- (a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right of freedom of expression conferred by Section 46 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public welfare and public health.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

**2. APPLICATION.**

- (1) This Act binds the State.
- (2) All land in Papua New Guinea is subject to this Act.

**3. INTERPRETATION.**

In this Act, unless the contrary intention appears—

“**amenity**” means those physical attributes in a neighbourhood which contribute to the quality of the environment and to its better enjoyment for any permitted use;

“**appeal**” means an appeal under Section 94;

“**approving authority**” means the approving authority for a development plan as specified under Section 55, and in relation to a specific development plan means the approving authority appropriate to that plan;

“**arterial road**” means a road, within a physical planning area, which is designated by a Board as being of major importance as a traffic artery;

“**authorized person**” means a person designated in writing by a Board or by the Minister or by a provincial minister to be an authorized person for the purposes of a particular provision of this Act;

“**authorized purpose**”, in relation to a building or land, means a purpose for which, under Section 72, a building may be erected or land may be used;

“**Board**” means a Physical Planning Board established pursuant to the provisions of this Act;

“**building**” includes any house, hut, shed, or roofed enclosure whether or not used for human occupation, and any wall, fence, platform, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, jetty, landing stage, or bridge, and any structure, support, or foundation connected to or supporting any of those structures;

“**building operations**” includes rebuilding operations, alterations of buildings and additions to buildings;

“**conditional use**”, in relation to land or buildings in any zone, means any use for which planning permission for development under this Act has been approved subject to conditions regulating the use of the land or buildings;

“**conditional permission**” means any planning permission for development under this Act which has been approved subject to conditions;

“**consolidation**” means, in relation to land, the combination into one parcel of two or more parcels of land whether the consolidation is effected for the purposes of convenience, transfer, partition, sale, gift, lease, mortgage, or any other purpose, and “**consolidate**” has a corresponding meaning;

“**development**” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land, and includes—

- (a) the deposit of refuse or waste materials on land, notwithstanding that the land is comprised in a site already used for that purpose; and
  - (b) the formation and laying out of means of access to roads,
- but does not include—
- (c) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building, or which do not materially affect the external appearance of the building and (in either case) do not increase the floor space available in the building; and
  - (d) the carrying out by or on behalf of the responsible authority of works required for the maintenance or minor improvement of a road, other than the widening of a road or junction to provide an additional lane or lanes; and
  - (e) the carrying out by a statutory undertaker or other authorized person of works for the purposes of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus; and
  - (f) the use of land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used; and
  - (g) in the case of any building or other land within a zone, the use thereof for any other purpose specified as falling within that zone;

**“development plan”** has the meaning, and shall contain the information, specified in Section 45;

**“development plan area”** means an area which is specified by—

- (a) the Minister, in an order for preparation of a development plan under Section 50; or
- (b) a provincial minister, in an order for preparation of a development plan under Section 51; or
- (c) the National Capital District Commission, in an order for preparation of a development plan under Section 52;

**“land”** is deemed to include any building or other works on that land and may include water areas adjoining land;

**“landscaping”** means the treatment (other than by the erection of buildings) of land for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated, and includes screening by fences, walls and other means, the planting of trees, hedges, shrubs and grass, the formation of banks, terraces and other earthworks and the laying out of gardens, courts, and other amenity features;

**“National Capital District Physical Planning Board”** means the National Capital District Physical Planning Board established by Section 33;

**“national highway”** means a road designated as such by the Minister responsible for land transport matters;

**“National Physical Planning Board”** means the National Physical Planning Board established by Section 8;

**“occupier”** means a person in actual occupation of any land or building or, if there is no person in actual occupation, the person entitled to possession of the land;

**“offensive trade”** means a trade, business, process or manufacture—

- (a) that is carried on in a melting house or in a building or place for boiling meat, offal or blood, or for boiling or crushing bones; or
- (b) that is carried on in such a way as to cause offensive effluvia; or
- (c) by which lead poisoning or other poisoning may be caused; or
- (d) that is declared under Section 70 to be an offensive trade for the purposes of this Act;

**“outline planning permission”** means planning permission in principle for a development which is approved subject to subsequent submission and approval of reserved matters;

**“owner”** includes—

- (a) in relation to land the subject of a State lease under or continued in force by the *Land Act 1996*—the lessee under the lease; and
- (b) where a person is in occupation of Government improved land under an agreement with the Government—that person; and
- (c) where the registered proprietor or lessee of the land is not known—his agent or trustee; and
- (d) where the registered proprietor or lessee of the land is dead—his personal legal representatives; and
- (e) where none of the persons mentioned in Paragraphs (a), (b) or (d) can be located—the person who for the time being is receiving the rent of the land or building, whether on his own account, or as an agent or trustee of another, or as a receiver, or who would be receiving the rent if the land or building were let;

**“physical planning area”** includes—

- (a) any town; and
- (b) any area which is declared as such under Section 67 or 68; and
- (c) the National Capital District;

**“physical planning office”** means an office established by the National Government, a Provincial Government, the National Capital District Commission, a Board, or a Local-level Government, community or town council, for the administration of physical planning, including the preparation and implementation of development plans and the provision of professional advice to the Minister, a provincial minister, a tribunal, a Board, a commission or a council in the course of their duties;

**“planning permission”** means an approval from a Board to permit development and includes—

- (i) an approval to allow the use of a building or land in a zone for a purpose which is not specifically permitted; and
  - (ii) an approval to a request for the change in zoning of land; and
  - (iii) an approval to subdivide or consolidate land,
- under this Act;

**“provincial minister”** means the member of a Provincial Executive Council charged with responsibility for physical planning;

**“Provincial Physical Planning Board”** means a Provincial Physical Planning Board established by Section 19;

**“road”** means any road, and includes any street, square, court, alley, lane, bridge, footway, track, bridle path, passage, or highway, whether a thoroughfare or not, over which the public has a right of way, the extent of a road being deemed to include the whole of the road reserve, and includes a reserve for a proposed road;

**“road reserve”** means any piece of land left for the purposes of providing public access to land whether or not a road has been constructed on it;

**“Senior Physical Planner”** means the senior person who is responsible for physical planning matters in a province or in the National Capital District and such a person may be an employee of the Department of the province, or, in the National Capital District, of the National Capital District Commission, or of the National Government Department responsible for physical planning;

**“subdivision”** in relation to land, means the subdivision of an area of land into two or more parts, whether the subdivision is effected for the purposes of convenience, transfer, partition, sale, gift, lease, mortgage, or any other purpose, and **“subdivide”** has a corresponding meaning;

**“this Act”** includes the Regulations;

**“Tribunal”** means the Papua New Guinea Physical Planning Appeals Tribunal established under Part VIII;

**“use”**, in relation to any land, means any use of the land other than merely for the keeping or storage of materials and equipment intended to be employed in the construction or erection of buildings or engineering

works on that land and for which planning permission has been obtained under this Act or, where planning permission is not required, which are for an authorized purpose under this Act;

“**utilities**” includes roads, water and electricity supplies, street lighting, sewerage, surface water drainage, and other similar public services and conveniences;

“**zone**” means an area within which the development and the use of land and/or buildings is restricted to one or more particular purposes and/or is subject to specified control.

**4. DEFINITION OF PHYSICAL PLANNING MATTERS PRIMARILY OF NATIONAL INTEREST AND PRIMARILY OF PROVINCIAL INTEREST.**

(1) The following are defined as matters primarily of national interest for the purposes of this Act:—

- (a) a planning matter which straddles the boundary of two or more provinces and where the provinces concerned disagree about how the matter is to be dealt with;
- (b) a planning matter of sufficient size and scale as to affect substantially two or more provinces;
- (c) a planning matter which relates to a National Government function, except that this shall only include the zoning of land which is not the subject of a lease or where Paragraphs (d) and (e) apply;
- (d) the zoning of any land within an area within which the Minister has ordered a development plan to be prepared in the national interest;
- (e) the zoning of any land within an area declared as a physical planning area in the national interest;
- (f) within the area of a development plan being prepared in the national interest, an application for planning permission to subdivide or consolidate;
- (g) within the area of a physical planning area declared in the national interest, an application for planning permission to subdivide or consolidate land;
- (h) development within the National Capital District,

and all other matters are matters primarily of provincial interest.

(2) Where—

- (a) there is a disagreement between a province and the National Government as to whether a matter is primarily of national interest or not; and

- (b) the parties agree to be bound by the ruling of the Tribunal on the matter,

the parties may refer the matter to the Tribunal, which shall give a ruling within one month.

(3) Where—

- (a) there is a disagreement between a province and the National Government as to whether a matter is primarily of national interest or not; and
- (b) either party does not agree to be bound by the ruling of the Tribunal on the matter,

the matter shall be dealt with in accordance with Section 118 of the *Organic Law on Provincial Governments and Local-level Governments*.

(4) For the purpose of ensuring that matters primarily of national interest are being referred to the National Physical Planning Board, the National Physical Planning Board may require a Provincial Physical Planning Board to inform it forthwith of any application for planning permission which the Provincial Board may receive.

## **5. CONSIDERATION OF PHYSICAL PLANNING MATTERS UNDER THIS ACT.**

Where consideration is being given to a physical planning matter under this Act, the appropriate authority shall take into account such of the following matters as are of relevance to the matter under consideration:—

- (a) the provisions of the *Environmental Planning Act 1978*, the *Environmental Contaminants Act 1978*, and the *Conservation Areas Act 1978*;
- (b) the impact on the environment and, where harm to the environment is likely to be caused, any means that may be employed to protect the environment or to reduce that harm;
- (c) the effect of any development on amenity including the external appearance of the development in so far as this affects amenity;
- (d) the character, location, bulk, scale, size, height and density of any development;
- (e) the social and the economic aspects of the matter;
- (f) the size and shape of land which is proposed to be developed, the siting of any building or works thereon, and the area to be occupied by any development;
- (g) whether land is unsuitable for development by reason of its being, or being likely to be, subject to flooding, tidal inundation, subsidence, slip,

- bush fire, earthquake, volcanic eruption, or to any other risk whether natural or man made;
- (h) the relationship of any development to any development on adjoining land or on other land in the locality;
  - (i) whether the proposed means of entrance to and exit from any development, and from the land on which any development is to take place, are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles within any development or on any land;
  - (j) the amount of traffic likely to be generated by any development, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system;
  - (k) whether public transport services are available and adequate;
  - (l) whether utility services are available and adequate;
  - (m) the landscaping of the land on which development is proposed and whether trees on the land should be preserved;
  - (n) representations made by a public authority in relation to the development of an area, and to the rights and powers of that public authority;
  - (o) representations on physical planning grounds made by a member of the general public;
  - (p) policy directives given by the Minister or a provincial minister provided that such directives may not conflict with any other provisions of this Act;
  - (q) whether any development will affect the approach to an aerodrome or aeronautical navigation aids or any other civil aviation facilities;
  - (r) whether any development will affect the operation of a port;
  - (s) an approved plan for education prepared under Division II.2 Part 2 Division (2) of the *Education Act 1983*;
  - (t) any approved plan for health;
  - (u) the mineral resources of land whether proven or potential; and
  - (v) any other matters which can be considered reasonably relevant to physical planning.



**PART II. – ADMINISTRATION.**

**6. CHIEF PHYSICAL PLANNER.**

(1) The Minister may, by notice in the National Gazette, appoint an officer suitably qualified in town and country planning to be the Chief Physical Planner for the purposes of this Act.

(2) Subject to the directions of the Minister, the Chief Physical Planner is charged with the administration of this Act.

(3) The Chief Physical Planner is charged with the maintenance of standards of physical planning in the country and has such other powers, functions, duties and responsibilities as are prescribed.

**7. DUTIES OF MINISTER RESPONSIBLE FOR PHYSICAL PLANNING.**

(1) It shall be the duty of the Minister to ensure, in the public interest, that land is used in accordance with sound physical planning principles and that there is consistency and continuity in the preparation and execution of development plans throughout Papua New Guinea and in the exercise of general physical planning control in Papua New Guinea.

(2) It shall be the duty of a provincial minister to ensure, in the public interest, that land is used in accordance with sound physical planning principles and that there is consistency and continuity in the preparation and execution of development plans in the province and in the exercise of general planning control in the province.

**PART III. – THE NATIONAL PHYSICAL PLANNING BOARD.****8. ESTABLISHMENT.**

A National Physical Planning Board is hereby established.

**9. MEMBERSHIP OF THE NATIONAL PHYSICAL PLANNING BOARD.**

(1) The National Physical Planning Board shall consist of–

- (a) the Departmental Head of the Department responsible for works matters or his nominee; and
- (b) the Departmental Head of the Department responsible for land matters or his nominee who may not be an officer from the Division of Physical Planning; and
- (c) the Departmental Head of the Department responsible for housing settlement matters or his nominee; and
- (d) the Departmental Head of the Department responsible for environment and conservation matters or his nominee; and
- (e) one member representing the private sector nominated by the Papua New Guinea Chamber of Commerce or by a similar private sector organisation; and
- (f) one member with extensive experience of physical planning practice who is either a registered engineer or a registered architect or a registered surveyor or a registered valuer or a professional town planner or a lawyer; and
- (g) one member representing the interest of the provinces and nominated by the Premiers' Council; and
- (h) up to three other members who shall include at least one representative from–
  - (i) sporting bodies and groups; or
  - (ii) churches; or
  - (iii) settlements.

(2) Where under Subsection (1)(a), (b), (c) or (d), a nominee is nominated, the nominee shall be an officer of not less than Assistant Secretary level or the equivalent, and the Departmental Head shall give prior written notice to the Chief Physical Planner of the name of the nominee.

(3) The members referred to in Subsection (1)(e), (f), (g) and (h) shall–

- (a)<sup>1</sup> shall be appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and

<sup>1</sup> Section 9 Subsection (3) amended by No. 97 of 2006, Sched. 1.

- (b)<sup>2</sup> be appointed for a period not exceeding three years; and
- (c) be appointed on such terms and conditions as are determined by the National Executive Council; and
- (d) be eligible for re-appointment.

**10. ALTERNATE MEMBERS.**

(1) For the member of the Board appointed under Section 9(1)(e), an alternate member may be appointed in the same way and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the inability of the member to carry out his functions, the alternate member has and may exercise all the powers, functions, duties and responsibilities of the member and this Act applies accordingly.

(3) The alternate member may attend all meetings of the Board but shall not, except where he is attending in the absence of the member, vote on any matter or be counted towards a quorum.

**11. CHAIRMAN AND DEPUTY CHAIRMAN.**

The Minister shall appoint a member to be the Chairman of the Board and another member to be the Deputy Chairman of the Board.

**12. RESIGNATION.**

A member, other than an *ex officio* member, may resign his office by written notice to the Minister.

**13. VACATION OF OFFICE.**

- (1) If a member—
- (a) becomes permanently incapable of performing his duties; or
  - (b) resigns his office under Section 12; or
  - (c) is absent, except with the written consent of the Chairman, from three consecutive meetings of the Board; or
  - (d) fails to comply with Section 14; or
  - (e) becomes bankrupt, or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
  - (f) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer and as a result is sentenced to imprisonment,

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<sup>2</sup> Section 9 Subsection (3) amended by No. 97 of 2006, Sched. 1.

the Minister shall terminate his appointment.

(2) The Minister may at any time by written notice advise a member, other than an *ex officio* member, that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(3) Within 14 days of the receipt of a notice under Subsection (2), the member may reply in writing to the Minister, who shall consider the reply and, where appropriate, terminate the appointment.

(4) Where the member referred to in Subsection (2) does not reply in accordance with Subsection (3), his appointment is terminated.

(5) The exercise or performance of a power or function of the Board is not invalidated by reason of a vacancy in the membership of the Board.

#### **14. DISCLOSURE OF INTEREST BY MEMBER OF THE BOARD.**

(1) A member of the National Physical Planning Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Board and, after the disclosure, the member—

- (a) shall not take part in any deliberation or decision of the Board with respect to that matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision; and
- (c) shall not remain in the same room while the matter is under consideration other than as a member of the public with the permission of the Chairman of the Board under Section 15(1)(e).

#### **15. CONDUCT OF NATIONAL PHYSICAL PLANNING BOARD.**

(1) At a meeting of the National Physical Planning Board—

- (a) a quorum is three members; and
- (b) the Chairman, or in his absence the Deputy Chairman, or in the absence of both the Chairman and the Deputy Chairman, one of the members appointed by the members present, shall preside; and
- (c) all matters shall be decided by a simple majority of votes; and
- (d) the member presiding has a deliberative vote and, in the event of an equality of votes, also a casting vote; and
- (e) the Chairman has the discretion to allow any person to appear before the Board and make a presentation on any physical planning matter; and

(f) the Chairman has the discretion to allow the general public to be present at part or all of any meeting of the Board.

(2) Unless there is no business for consideration, the Board shall meet at least once in each quarter of the year at such time and place as the Chairman, or Acting Chairman for the time being, shall decide.

(3) The Board shall ensure that minutes of the meetings of the Board are kept and a copy of such minutes shall be sent as soon as is reasonably practicable to the Chief Physical Planner and such minutes shall be kept available for inspection by any member of the public.

#### **16. PRESENCE OF ADVISERS AND OBSERVERS AT BOARD MEETINGS.**

(1) The Chief Physical Planner, or his delegate, shall be the principal adviser to the National Physical Planning Board.

(2) The following bodies have the right to send a representative to any meeting of the Board as observers and to make representations on any matter which affects their interest:—

- (a) a public utility operating within Papua New Guinea;
- (b) a National Government Department;
- (c) the department of any province;
- (d) a Provincial Government; and
- (e) the National Capital District Commission.

#### **17. FUNCTIONS OF THE NATIONAL PHYSICAL PLANNING BOARD.**

(1) The National Physical Planning Board shall consider and determine—

- (a) all physical planning matters that are considered to be primarily of national interest except those which are wholly within the National Capital District; and
- (b) all physical planning matters from provinces where a Provincial Physical Planning Board has not been established or is not presently empowered to hear matters due to suspension of physical planning powers under Section 30.

(2) Notwithstanding any provision to the contrary, where—

- (a) no Provincial Physical Planning Board has been established; or
- (b) a Provincial Physical Planning Board has been suspended,

the National Physical Planning Board shall have the right to exercise the full powers of those Boards under this Act.

(3) The National Physical Planning Board shall advise the Minister on—

- (a) the declaration of an area as a physical planning area for the purposes of this Act; and
- (b) the exercise of his powers to order the preparation of development plans.

**18. DELEGATION.**

The Board may, subject to the approval of the Departmental Head of the Department responsible for physical planning matters, by instrument, delegate all or any of its functions, except this power of delegation, to—

- (a) an officer; or
- (b) a Local-level Government or a commission fulfilling the functions of a Local-level Government; or
- (c) a Local Physical Planning Board set up under Sections 29 or 43 to deal with physical planning matters within a particular area; or
- (d) a Provincial Physical Planning Board,

but the Board may withdraw a delegation at any time.

**PART IV. – PROVINCIAL PHYSICAL PLANNING BOARDS.**

**19. ESTABLISHMENT.**

A Provincial Government may establish a Provincial Physical Planning Board for the province.

**20. MEMBERSHIP OF PROVINCIAL PHYSICAL PLANNING BOARDS.**

(1) Subject to this section, a Provincial Physical Planning Board shall consist of–

- (a) the Provincial Administrator or his nominee; and
- (b) the senior officer in the province from the National Government Department responsible for works matters or his nominee; and
- (c) the senior officer in the provincial administrative staff who has responsibility for works matters or his nominee, at the discretion of the Provincial Executive Council; and
- (d) the senior officer in the province from the National Government Department responsible for land matters or his nominee but not an officer from the Division of Physical Planning or, where land matters have been substantially transferred to the province, the senior officer in the provincial administrative staff who has responsibility for land matters but not the senior physical planner or a person working under the senior physical planner; and
- (e) one member to represent the private business sector, nominated by the provincial chamber of commerce or a similar organisation with members in the province; and
- (f) one member to represent the interests of the National Government; and
- (g) one member with experience of physical planning who is either a registered engineer or a registered architect or a registered surveyor or a registered valuer or a professional town planner or a lawyer, appointed by the Provincial Executive Council; and
- (h) up to three other members who shall include at least one representative from–
  - (i) sporting bodies and groups; or
  - (ii) churches; or
  - (iii) settlements.

(2) Where under Subsection (1)(a) above, a nominee is nominated, the nominee shall be of not less than Assistant Secretary level or the equivalent, and the Departmental Head shall give prior written notice to the senior physical planner in the province and to the Chief Physical Planner of the name of the nominee.

(3) The members referred to in Subsection (1)(e), (g) and (h) shall–

- (a) be appointed by the Provincial Executive Council by notice in the provincial gazette, or where there is no provincial gazette, by notice in the National Gazette; and
- (b) be appointed for a period of three years or for such lesser period as the Provincial Executive Council determines; and
- (c) be appointed on such terms and conditions as are determined by the Provincial Executive Council; and
- (d) be eligible for re-appointment.

(4) The member referred to in Subsection (1)(f) shall—

- (a) be appointed by the Minister by notice in the National Gazette; and
- (b) be appointed for a period of three years or for such lesser period as the Minister determines; and
- (c) be appointed on such terms and conditions as are determined by the National Executive Council; and
- (d) be eligible for re-appointment.

(5) Where a Provincial Executive Council considers that the membership of the Provincial Physical Planning Board should be varied from that provided for in Subsection (1) by—

- (a) increasing the number of members; or
- (b) reducing the number of members; or
- (c) substituting a different member from that specified in Subsection (1),

it may request the approval of the Minister to such variation, giving the reasons therefor.

(6) Where a request under Subsection (5) is delivered to the Minister, it is deemed to have been approved after the expiry of one calendar month from the date of such delivery unless, within that period, the Minister has refused the request giving the reasons for his refusal.

## **21. ALTERNATE MEMBERS.**

(1) For the member of a Board appointed or nominated under Subsection (1)(e), an alternate member may be appointed in the same way and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the inability to act of the member, the alternate member has and may exercise all the powers, functions, duties and responsibilities of the member, and this Act applies accordingly.

(3) The alternate member may attend all meetings of the Board but shall not, except where he is attending in the absence of the member, vote on any matter or be counted towards a quorum.



**22. CHAIRMAN AND DEPUTY CHAIRMAN.**

The Provincial Executive Council, acting on advice, shall appoint a member to be the Chairman of the Board and another member to be the Deputy Chairman.

**23. RESIGNATION.**

(1) A member appointed by the Provincial Executive Council may resign his office by written notice to the provincial minister.

(2) A member appointed by the Minister may resign his office by written notice to the Minister.

**24. VACATION OF OFFICE.**

(1) If a member—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office under Section 23; or
- (c) is absent, except with the written consent of the Chairman, from three consecutive meetings of the Board; or
- (d) fails to comply with Section 25; or
- (e) becomes bankrupt, or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (f) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer and as a result is sentenced to imprisonment,

the Provincial Executive Council shall terminate his appointment.

(2) The Provincial Executive Council may at any time by written notice advise a member, other than an *ex officio* member, that it intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(3) Within 14 days of the receipt of a notice under Subsection (2), the member may reply in writing to the Provincial Executive Council, who shall consider the reply, and, where appropriate, terminate the appointment.

(4) Where the member referred to in Subsection (2) does not reply in accordance with Subsection (3), his appointment is terminated.

(5) The exercise or performance of a power or function of a Board is not invalidated by reason of a vacancy in the membership of that Board.

**25. DISCLOSURE OF INTEREST BY MEMBER OF A BOARD.**

(1) A member of a Provincial Physical Planning Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by

the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Board and, after the disclosure, the member—

- (a) shall not take part in any deliberation or decision of the Board with respect to that matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision; and
- (c) shall not remain in the same room while the matter is under consideration other than as a member of the public with the permission of the Chairman of the Board under Section 26(1)(e).

## **26. CONDUCT OF A PROVINCIAL PHYSICAL PLANNING BOARD.**

(1) At a meeting of a Provincial Physical Planning Board—

- (a) a quorum is three members; and
- (b) the Chairman, or in his absence—the Deputy Chairman, or in his absence—one of the members appointed by the members present, shall preside; and
- (c) all matters shall be decided by a simple majority of votes; and
- (d) the member presiding has a deliberative vote and, in the event of an equality of votes, also a casting vote; and
- (e) the Chairman has the discretion to allow any person to appear before the Board and make a presentation on any physical planning matter; and
- (f) the Chairman has the discretion to allow the general public to be present at part or all of any meeting of the Board.

(2) Unless there is no business for consideration, the Board shall meet at least once in each quarter of the year at such time and place as the Chairman, or Acting Chairman for the time being, shall decide.

(3) The Board shall ensure that minutes of the meetings of the Board are kept and a copy of such minutes shall be sent as soon as is reasonably practicable to the Chief Physical Planner and such minutes shall be kept available for inspection by any member of the public.

## **27. PRESENCE OF ADVISERS AND OBSERVERS AT BOARD MEETINGS.**

(1) The following persons have a right to be present at a meeting of the Provincial Physical Planning Board:—

- (a) the Senior Physical Planner, or his delegate, of the province, who shall be the principal adviser to the Provincial Physical Planning Board;

- (b) the Chief Physical Planner, or his delegate, who may provide advice on any matter.

(2) The following bodies have the right to send a representative to any meeting of a Board as observers and to make representations on any matter which affects their interest:—

- (a) a public utility operating within the province or proposing to operate within the province;
- (b) a National Government Department;
- (c) the Provincial Government of an adjoining province, including, in the case of Central Province, the National Capital District Commission;
- (d) the provincial administrative staff of a Provincial Government of an adjoining province;
- (e) a Local-level Government within the province.

## **28. FUNCTIONS OF A PROVINCIAL PHYSICAL PLANNING BOARD.**

(1) A Provincial Physical Planning Board is empowered to consider and determine all physical planning matters primarily of provincial interest within the province concerned.

(2) Where any matter is primarily of national interest, as defined in Section 4, the Provincial Physical Planning Board shall refer the matter to the National Physical Planning Board for decision, and in doing so may advise the National Physical Planning Board of its views on the matter.

(3) Where there is doubt as to whether a matter is primarily of national interest, a Provincial Physical Planning Board may consult with the National Physical Planning Board and in the event of disagreement the matter shall be dealt with in accordance with Section 4.

(4) Where a Provincial Government is suspended and an administrator is appointed, the Provincial Physical Planning Board shall continue to operate unless it also has been suspended.

## **29. ESTABLISHMENT OF LOCAL PHYSICAL PLANNING BOARDS AND DELEGATION BY A PROVINCIAL PHYSICAL PLANNING BOARD.**

(1) A Provincial Physical Planning Board may establish a Local Physical Planning Board to operate within a particular area of the province.

(2) The membership of a Local Physical Planning Board shall be appointed by the Provincial Physical Planning Board and the conduct of the Board shall, except as prescribed, be as determined by the Provincial Physical Planning Board.

(3) A Provincial Physical Planning Board may, subject to the approval of the Provincial Administrator to act in relation to the province, by instrument, delegate all or any of its functions, except this power of delegation, to—

- (a) an officer; or
- (b) a Local-level Government or a commission fulfilling the functions of a Local-level Government; or
- (c) a Local Physical Planning Board,

but a delegation may be withdrawn by the Board at any time.

**30. SUSPENSION OF A PROVINCIAL PHYSICAL PLANNING BOARD.**

(1) The Minister may, after considering a recommendation of the Chief Physical Planner, by notice suspend the operation of a Provincial Physical Planning Board on the grounds of failure to implement or comply with the provisions of this Act.

(2) A notice under Subsection (1) shall—

- (a) specify the reasons for the suspension and the facts supporting these reasons; and
- (b) be published in the National Gazette and, where possible, in the provincial gazette of the province affected; and
- (c) take effect from the date of its gazettal in the National Gazette.

**31. APPEAL AGAINST SUSPENSION.**

(1) The—

- (a) Chairman of a Provincial Physical Planning Board suspended under Section 30; or
- (b) Governor of a province whose Provincial Planning Board has been suspended under Section 30,

may, within one calendar month of the date of gazettal of the suspension in the National Gazette, appeal in writing to the Minister against the suspension.

(2) An appeal under Subsection (1) shall give reasons why the Provincial Physical Planning Board should not have been suspended.

(3) The Minister shall consider an appeal made under Subsection (1) and shall confirm the suspension or lift the suspension.

**32. RE-INSTATEMENT OF SUSPENDED PROVINCIAL PHYSICAL PLANNING BOARD.**

(1) As soon as possible after the suspension of a Provincial Physical Planning Board under Section 30, the Minister shall direct the provincial executive of the province concerned to—

- (a) revoke the appointments of the members of the Board appointed by the Provincial Executive; and

- (b) make fresh appointments to the Board to the satisfaction of the Minister; and
- (c) otherwise take such steps as are necessary to rectify the reasons for the suspension.

(2) Where the Provincial Executive has carried out the direction under Subsection (1) to the satisfaction of the Minister, the Minister shall lift the suspension.

**PART V. – THE NATIONAL CAPITAL DISTRICT PHYSICAL PLANNING BOARD.**

**33. ESTABLISHMENT.**

A National Capital District Physical Planning Board is hereby established.

**34. MEMBERSHIP OF THE NATIONAL CAPITAL DISTRICT PHYSICAL PLANNING BOARD.**

(1) The members of the National Capital District Physical Planning Board shall be—

- (a) the Chairman of the National Capital District Commission or a member of the National Capital District Commission delegated by the Chairman to act for the time being in his place as a member of the National Capital District Physical Planning Board; and
- (b) the Deputy Chairman of the National Capital District Commission or a member of the National Capital District Commission delegated by the Deputy Chairman to act for the time being in his place as a member of the National Capital District Physical Planning Board; and
- (c) the Chairman of the National Physical Planning Board or a member of the National Physical Planning Board delegated by the Chairman to act for the time being in his place as a member of the National Capital District Physical Planning Board; and
- (d) the Deputy Chairman of the National Physical Planning Board or a member of the National Physical Planning Board delegated by the Deputy Chairman to act for the time being in his place as a member of the National Capital District Physical Planning Board; and
- (e) one person representing the private business sector, nominated by the National Capital District Commission following consultation with the Port Moresby Chamber of Commerce or a similar private sector organisation; and
- (f) one person nominated by the National Capital District Commission with extensive experience of physical planning practice who is either a registered engineer, or a registered architect, or a registered surveyor, or a professional town planner, or a registered valuer, or a lawyer; and
- (g) the Manager of the National Capital District Commission or his nominee who shall not be the Senior Physical Planner in the National Capital District or a person working under the Senior Physical Planner; and
- (h) the Secretary of the Department responsible for land matters or his nominee who shall not be the Chief Physical Planner or a person working under the Chief Physical Planner; and

- (i) two other members nominated by the National Capital District Commission who shall include one representative from—
  - (i) sporting bodies and groups; or
  - (ii) churches; or
  - (iii) settlements.

(2) The members referred to in Subsection (1)(e), (f) and (i)—

- (a) may be members of the National Capital District Commission; and
- (b) shall not be—
  - (i) employees of the National Capital District Commission; or
  - (ii) officers of the Division responsible for physical planning of the Department responsible for physical planning matters; and
- (c) shall be appointed by the Minister by notice in the National Gazette; and
- (d) shall be appointed for a period of three years, or for such lesser period as the Minister determines; and
- (e) are eligible for re-appointment.

(3) Where the National Capital District Commission considers that the membership of the National Capital District Physical Planning Board should be varied from that provided for in Subsection (1) by—

- (a) increasing the number of members; or
- (b) reducing the number of members; or
- (c) substituting a different member from that specified in Subsection (1),

it may request the approval of the Minister to such variation, giving the reasons therefor.

(4) Where a request under Subsection (4) is delivered to the Minister, it is deemed to have been approved after the expiry of one calendar month from the date of such delivery unless, within that period, the Minister has refused the request giving the reasons for his refusal.

### **35. CHAIRMAN AND DEPUTY CHAIRMAN.**

(1) For a period of one year commencing on and from the date of the coming into operation of this Act—

- (a) the Chairman of the National Capital District Commission or his delegate shall be the Chairman; and
- (b) the Chairman of the National Physical Planning Board or his delegate shall be the Deputy Chairman,

of the National Capital District Physical Planning Board.

(2) For a period of one year commencing on and from the expiry of a period of one year after the date of the coming into operation of this Act—

- (a) the Chairman of the National Physical Planning Board or his delegate shall be the Chairman; and
- (b) the Chairman of the National Capital District Commission or his delegate shall be the Deputy Chairman,

of the National Capital District Physical Planning Board, and thereafter the Chairmanship and Deputy Chairmanship shall rotate between the National Physical Planning Board and the National Capital District Commission for periods of one year.

### **36. ALTERNATE MEMBER.**

(1) For the member of the Board appointed under Section 34(1)(e), an alternate member may be appointed in the same way and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the inability of the member to carry out his functions, the alternate member has and may exercise all the powers, functions, duties and responsibilities of the member for whom he is the alternate and this Act applies accordingly.

(3) The alternate member may attend all meetings of the Board but shall not, except where he is attending in the absence of the member, vote on any matter or be counted towards a quorum.

### **37. RESIGNATION.**

A member of the National Capital District Physical Planning Board, other than an *ex officio* member, may resign his office by written notice to the Minister.

### **38. VACATION OF OFFICE.**

(1) If a member of the National Capital District Physical Planning Board—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office under Section 37; or
- (c) is absent, except with the written consent of the Chairman, from three consecutive meetings of the Board; or
- (d) fails to comply with Section 39; or
- (e) becomes bankrupt, or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (f) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer and as a result is sentenced to imprisonment,



the Minister shall terminate his appointment.

(2) The Minister may at any time, by written notice, advise a member, other than an *ex officio* member, that he intends to terminate the appointment of that member on the grounds of inefficiency, incapacity or misbehaviour.

(3) Within 14 days of the receipt of a notice under Subsection (2), the member may reply in writing to the Minister, who shall consider the reply and, where appropriate, terminate the appointment.

(4) Where the member referred to in Subsection (2) does not reply in accordance with Subsection (3), his appointment is terminated.

(5) The exercise or performance of a power or function of the Board is not invalidated by reason of a vacancy in the membership of the Board.

**39. DISCLOSURE OF INTEREST BY MEMBER OF THE BOARD.**

(1) A member of the National Capital District Physical Planning Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Board and, after the disclosure, the member—

- (a) shall not take part in any deliberation or decision of the Board with respect to that matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision; and
- (c) shall not remain in the same room while the matter is under consideration other than as a member of the public with the permission of the Chairman of the Board under Section 40(1)(e).

**40. CONDUCT OF NATIONAL CAPITAL DISTRICT PHYSICAL PLANNING BOARD.**

(1) At a meeting of the National Capital District Physical Planning Board—

- (a) a quorum is three members; and
- (b) the Chairman, or in his absence—the Deputy Chairman, or in his absence—one of the members appointed by the members present, shall preside; and
- (c) all matters shall be decided by a simple majority of votes; and
- (d) the member presiding has a deliberative vote and, in the event of an equality of votes, also a casting vote; and
- (e) the Chairman has the discretion to allow any person to appear before the Board and make a presentation on any physical planning matter; and

(f) the Chairman has the discretion to allow the general public to be present at part or all of any meeting of the Board.

(2) Unless there is no business for consideration, the Board shall meet at least once in each quarter of the year at such time and place as the Chairman, or Acting Chairman for the time being, shall decide.

(3) The Board shall ensure that minutes of the meetings of the Board are kept and a copy of such minutes shall be sent as soon as is reasonably practicable to the Chief Physical Planner and such minutes shall be kept available for inspection by any member of the public.

#### **41. PRESENCE OF ADVISERS AND OBSERVERS AT BOARD MEETINGS.**

(1) The following persons have a right to be present at a meeting of the National Capital District Physical Planning Board:—

- (a) the senior physical planner with the National Capital District Commission, or his delegate, who shall be the principal adviser to the National Capital District Physical Planning Board;
- (b) the Chief Physical Planner, or his delegate, who may provide advice on any matter.

(2) The following bodies have the right to send a representative to any meeting of the National Capital District Physical Planning Board as observers and to make representations on any matter which affects their interest:—

- (a) a public utility operating within the National Capital District;
- (b) a National Government Department;
- (c) the Department of Central Province;
- (d) the Central Provincial Government;
- (e) a Local-level Government within the National Capital District;
- (f) the Motu-Koitabu Assembly.

#### **42. FUNCTIONS OF THE NATIONAL CAPITAL DISTRICT PHYSICAL PLANNING BOARD.**

The National Capital District Physical Planning Board is empowered to consider and determine all physical planning matters which are wholly within the National Capital District.

#### **43. ESTABLISHMENT OF LOCAL PHYSICAL PLANNING BOARDS AND DELEGATION BY THE NATIONAL CAPITAL DISTRICT PHYSICAL PLANNING BOARD.**

(1) The National Capital District Physical Planning Board may establish a Local Physical Planning Board to operate within a particular area of the National Capital District.

(2) The membership of a Local Physical Planning Board established under Subsection (1) shall be appointed by the National Capital District Physical Planning Board and the conduct of such a board shall, except as prescribed elsewhere in this Act, be as determined by the National Capital District Physical Planning Board.

(3) The National Capital District Physical Planning Board may, by instrument, delegate all or any of its functions, except this power of delegation, to—

- (a) an officer of the National Capital District Commission; and
- (b) a Local-level Government within the National Capital District; or
- (c) a Local Physical Planning Board,

but a delegation may be withdrawn at any time.

**PART VI. – DEVELOPMENT PLANS.****44. DEVELOPMENT PLANS.**

A development plan may be prepared for any area in Papua New Guinea, whether or not it is a physical planning area, and may be—

- (a) a provincial development plan; or
- (b) an urban development plan; or
- (c) a local development plan; or
- (d) a subject development plan.

**45. CONTENTS OF DEVELOPMENT PLAN.**

(1) A development plan is a written and illustrated statement of policy and proposals in respect of the development and other use of land in the development plan area and may include—

- (a) measures for the improvement of the physical environment and the management of traffic; and
- (b) the zoning of land.

(2) A development plan shall be based on a survey of the development plan area, which shall, in the case of a development plan other than a subject development plan, include—

- (a) the principal physical, social and economic characteristics of the area (including the purposes for which land is used) and, in so far as they may be expected to affect the development plan area, of any neighbouring areas; and
- (b) the size, composition and distribution of the population of the development plan area; and
- (c) any considerations not included in Paragraphs (a) and (b) which may be expected to affect any matters included in those Paragraphs; and
- (d) such other matters as may be prescribed.

(3) A subject development plan shall be based on a survey which shall include such matters as are relevant to the subject.

**46. PROVINCIAL DEVELOPMENT PLAN.**

A provincial development plan is a physical plan for the whole of a province, which shall seek to integrate physical, social, economic and other principal development policies in physical terms.

**47. URBAN DEVELOPMENT PLAN.**

(1) An urban development plan is a physical plan for the whole area of a town which may include land outside the gazetted boundary of the town which is considered to be within the immediate sphere of influence of the town, and may be prepared within the framework of a provincial development plan.

(2) An urban development plan shall—

- (a) specify land use within the area of the plan; and
- (b) identify infrastructure and service needs to support physical development; and
- (c) show the basis on which orderly physical development will proceed.

**48. LOCAL DEVELOPMENT PLAN.**

(1) A local development plan is a physical plan for a part of a town or a part of a province, whether or not within a physical planning area, and shall consist of a more detailed appraisal than is undertaken in either a provincial development plan or, where it is a plan for a part of a town, an urban development plan.

(2) A local development plan may be prepared within the framework of a provincial development plan or, where it is a plan for a part of a town, of an urban development plan.

**49. SUBJECT DEVELOPMENT PLAN.**

A subject development plan is a physical plan prepared where a particular subject requires detailed attention, and may be prepared within the framework provided by—

- (a) a provincial development plan; or
- (b) an urban development plan; or
- (c) a local development plan; or
- (d) any combination of Paragraphs (a), (b) and (c).

**50. ORDER FOR PREPARATION OF DEVELOPMENT PLAN BY THE MINISTER.**

(1) The Minister may, after—

- (a) consideration of the advice of—
  - (i) the National Physical Planning Board; and
  - (ii) the Chief Physical Planner; and
- (b) consultation with—
  - (i) where a province is affected—the provincial minister of that province; and

- (ii) where the National Capital District is concerned—the National Capital District Commission,

by notice in the National Gazette order—

- (c) the preparation of a development plan; or
- (d) the review of a development plan,

where he considers it to be in the national interest.

(2) An order under Subsection (1)(c)—

- (a) shall specify the development plan area; and
- (b) shall specify the type of development plan to be prepared; and
- (c) may specify any matter which shall be covered by the development plan.

**51. ORDER FOR PREPARATION OF DEVELOPMENT PLAN BY PROVINCIAL MINISTER.**

(1) A provincial minister may, after—

- (a) consideration of the advice of—
  - (i) the Provincial Physical Planning Board; and
  - (ii) the senior physical planner; and
- (b) obtaining the consent of the Minister,

by notice in the National Gazette and in the provincial gazette order—

- (c) the preparation of a development plan; or
- (d) the review of a development plan,

where he considers it to be in the provincial interest.

(2) An order under Subsection (1)(c)—

- (a) shall specify the development plan area; and
- (b) shall specify the type of development plan to be prepared; and
- (c) may specify any matter which shall be covered by the development plan.

**52. ORDER FOR PREPARATION OF DEVELOPMENT PLAN BY NATIONAL CAPITAL DISTRICT COMMISSION.**

(1) The National Capital District Commission may, after—

- (a) consideration of the advice of—
  - (i) the National Capital District Physical Planning Board; and
  - (ii) the senior physical planner in the National Capital District; and
- (b) obtaining the consent of the Minister,

by notice in the National Gazette order—

- (c) the preparation of a development plan; or
- (d) the review of a development plan,

where the Commission considers it to be in the interest of the National Capital District.

(2) An order under Subsection (1)(c)–

- (a) shall specify the development plan area; and
- (b) shall specify the type of development plan to be prepared; and
- (c) may specify any matter which shall be covered by the development plan.

**53. MINISTER MAY REFUSE CONSENT.**

(1) Where the consent of the Minister is requested under Section 51(1)(b) or 52(1)(b) the Minister may, within one calendar month of delivery of such request, refuse consent on the ground that–

- (a) the Minister proposes in the national interest to order the preparation of a development plan covering all or part of the area to be covered by the proposed development plan in respect of which consent is requested; or
- (b) the area is already partly or wholly covered by a development plan ordered to be prepared in the national interest; or
- (c) there are insufficient reasons for preparing a development plan and the area is one in which National Government interests predominate.

(2) Where the Minister does not refuse consent in accordance with Subsection (1), he is deemed to have given his consent under Section 51(1)(b) or 52(1)(b).

**54. PREPARATION OF DEVELOPMENT PLAN.**

(1) Subject to Subsection (2)–

- (a) the Chief Physical Planner shall be responsible for the preparation of a development plan ordered under Section 50 by the Minister except where the development plan area is wholly within the National Capital District; and
- (b) the senior physical planner in the province shall be responsible for the preparation of a development plan ordered by a provincial minister under Section 51; and
- (c) the senior physical planner in the National Capital District shall be responsible for the preparation of a development plan where the development plan area is wholly within the National Capital District.

(2) The–

- (a) Minister, in the case of a development plan ordered under Section 50; or

- (b) provincial minister, in the case of a development plan ordered under Section 51; or
- (c) National Capital District Commission, in the case of a development plan ordered under Section 52,

may order that a person other than as provided in Subsection (1) be responsible for the preparation of a development plan.

#### **55. APPROVING AUTHORITY FOR DEVELOPMENT PLAN.**

(1) The approving authority for a development plan in the National interest ordered by the Minister under Section 50 is—

- (a) where the development plan area is wholly within the National Capital District—the National Capital District Physical Planning Board; and
- (b) where the development plan area is not wholly within the National Capital District—the National Physical Planning Board.

(2) The approving authority for a development plan in the provincial interest ordered by the provincial minister under Section 51 is the Provincial Physical Planning Board.

(3) The approving authority for a development plan in the interest of the National Capital District ordered by the National Capital District Commission under Section 52 is the National Capital District Physical Planning Board.

#### **56. LAND FOR PUBLIC PURPOSES.**

(1) A development plan may designate land which may be required for public purposes as prescribed in the *Land Act 1996*.

(2) A development plan may recommend to the Minister responsible for land matters that a parcel of land be reserved from lease in accordance with Section 49 of the *Land Act 1996*.

#### **57. DRAFT DEVELOPMENT PLAN.**

The person responsible under Section 54 for the preparation of a development plan shall in the first instance prepare a draft development plan.

#### **58. SUBMISSION OF DRAFT DEVELOPMENT PLAN FOR APPROVAL IN PRINCIPLE, ETC.**

(1) The person responsible under Section 54 for the preparation of a development plan shall, as soon as the draft development plan has been prepared, submit the draft development plan to the approving authority for approval in principle.

(2) The approving authority shall consider a draft development plan submitted under Subsection (1) and may—



- (a) approve the draft development plan in principle; or
- (b) return the draft development plan to the person submitting it specifying their reasons for not approving it.

**59. PUBLICITY FOR DRAFT DEVELOPMENT PLANS APPROVED IN PRINCIPLE.**

Where an approving authority has approved a draft development plan in principle, the approving authority shall—

- (a) send a copy of the draft development plan to—
  - (i) the Minister; and
  - (ii) a Department affected or likely to be affected by the development plan; and
  - (iii) a statutory body affected or likely to be affected by the development plan; and
  - (iv) the provincial minister of a province affected or likely to be affected by the development plan; and
  - (v) the National Capital District Commission if the National Capital District is affected or likely to be affected; and
  - (vi) a Physical Planning Board within whose area any part of the development plan area falls,

and require that any comments on the development plan be submitted to the approving authority within a period of not less than 28 days; and

- (b) for a period of not less than 28 days exhibit a copy of the draft development plan in a public place within the area covered by the development plan; and
- (c) ensure that the plan exhibited under Paragraph (b) is available for inspection by any person; and
- (d) by public advertisement, invite comments on the draft development plan from any person within a period of not less than 28 days.

**60. PERSON MAY COMMENT ON OR OBJECT TO DRAFT DEVELOPMENT PLAN.**

(1) A person who desires to comment on or object to a draft development plan shall, within the period specified under Section 59(d)—

- (a) give written notice of his comments or objections to the approving authority; or
- (b) where he is unable to give such written notice, notify the appropriate authority of his desire to make comment or objections and the

appropriate authority shall make arrangements to have the comments or objections committed to writing on his behalf.

(2) A person who makes comments or objections on a development plan under Subsection (1) shall state whether he makes the comments or objections as the owner or occupier of property or in some other capacity.

**61. FURTHER CONSIDERATION OF DRAFT DEVELOPMENT PLAN, ETC.**

After the expiry of the periods of time referred to in Section 59(a) and (b) and (d) the approving authority shall—

- (a) where no comments or objections under Sections 59(a) or 60 have been received—request the person responsible for preparation of the development plan to lodge a final development plan; or
- (b) where comments or objections under Section 59(a) or 60 have been received—consider such comments or objections and request the person responsible for preparation of the development plan to submit a final development plan with such amendments, if any, as are specified by the approving authority.

**62. APPROVAL OF A DEVELOPMENT PLAN.**

The approving authority shall consider the final development plan and shall—

- (a) give approval to the development plan; or
- (b) refuse to give approval to the development plan, giving reasons for such refusal and directing the person responsible for preparation of the plan to prepare an alternative development plan within such period as the approving authority may direct; or
- (c) direct that the procedures set out in Sections 59, 60 and 61 be applied to the final development plan on the grounds that the final development plan represents a major change in principle from the draft development plan.

**63. PROCEDURE FOLLOWING APPROVAL.**

(1) Where an approving authority has given approval to a development plan under Section 62(a), it shall—

- (a) in the case of a plan approved by the National Physical Planning Board or by the National Capital District Physical Planning Board, submit the plan to the Minister; and
- (b) in the case of a plan approved by a Provincial Physical Planning Board, submit the plan to the provincial minister.

(2) The Minister or the provincial minister, as the case may be, may, within one calendar month of the submission of the final plan to him under Subsection (1),

refer the plan back to the approving authority for further consideration of any matters specified by the Minister or the provincial minister, as the case may be.

(3) Where the Minister or the provincial minister, as the case may be, refers a development plan back to the approving authority under Subsection (2), the approving authority shall consider the matters specified by the Minister or the provincial minister, as the case may be, and where necessary, require amendment to be carried out to the plan which shall then be resubmitted to the Minister or the provincial minister, as the case may be.

**64. GAZETTAL OF FINAL APPROVAL.**

(1) Where the Minister or the provincial minister, as the case may be, does not refer a development plan back to the approving authority within the time specified in Section 63(2), the approving authority shall, by notice in the National Gazette, declare the approval of the development plan.

(2) The date of gazettal of a declaration of approval of a development plan under Subsection (1) is the effective date of operation of that development plan.

**65. APPROVING AUTHORITY TO TAKE INTO CONSIDERATION THE CONTENT OF A DRAFT DEVELOPMENT PLAN PRIOR TO GAZETTAL OF FINAL APPROVAL.**

Where under this Part, a draft development plan has been submitted to an approving authority, that approving authority shall, in making decisions on any matter in the plan or affected by the plan, take into consideration the contents of the plan, notwithstanding that approval to the final development plan has not been gazetted.

**66. REVIEW OF AND CHANGES TO DEVELOPMENT PLANS.**

(1) Subject to Subsection (3), a development plan—

(a) shall be reviewed every 10 years; and

(b) may be reviewed at any time more than two years from the gazettal of final approval under Section 64 as directed by the Minister or the provincial minister, as the case may be.

(2) Where, in the process of a review under Subsection (1), major changes to the development plan are proposed, the procedure set out in Sections 59, 60, 61, 62, 63 and 64 shall be followed.

(3) An approving authority may make minor changes to a development plan at any time.

(4) For the purposes of Subsection (3), the variation of zoning on an individual allotment is a minor change.

**PART VII. – CONTROL OF THE DEVELOPMENT AND USE OF LAND.****67. DECLARATION OF PHYSICAL PLANNING AREA IN THE NATIONAL INTEREST.**

The Minister may, after–

- (a) consideration of the advice of–
  - (i) the National Physical Planning Board; and
  - (ii) the Chief Physical Planner; and
- (b) consultation with–
  - (i) where a province is affected–the provincial minister of that province; and
  - (ii) where the National Capital District is affected–the National Capital District Commission,

by notice in the National Gazette declare an area to be a physical planning area in the national interest.

**68. DECLARATION OF PHYSICAL PLANNING AREA BY PROVINCIAL MINISTER.**

A provincial minister may, after–

- (a) consideration of the advice of–
  - (i) the Provincial Physical Planning Board; and
  - (ii) Senior Physical Planner in the province; and
- (b) obtaining the consent of the Minister,

by notice in the National Gazette, declare an area within the province to be a physical planning area.

**69. MINISTER MAY REFUSE CONSENT, ETC.**

(1) Where a provincial minister requests consent to a proposed declaration under Section 68, the Minister shall, within one calendar month of receiving the request–

- (a) give his written consent; or
- (b) decide that the area should be declared as a physical planning area in the national interest, refuse the consent and refer the matter for consideration to–
  - (i) the National Physical Planning Board; and
  - (ii) the Chief Physical Planner; or
- (c) refuse his consent,

and shall, in the case of Paragraphs (b) and (c) give the reasons for his decision.

(2) Where the Minister fails to respond in accordance with Subsection (1), he is deemed to have given his consent under Section 68(b).

**70. DECLARATION OF OFFENSIVE TRADES.**

The Minister may, by notice in the National Gazette, declare a trade, business, process or manufacture to be an offensive trade for the purposes of this Act.

**71. ZONING OF PHYSICAL PLANNING AREAS.**

(1) Where it is authorized to do so under this Act, a Board may, by notice in the National Gazette—

- (a) divide a physical planning area or part of a physical planning area into one or more zones; or
- (b) declare that a physical planning area or part of a physical planning area is a single zone; or
- (c) declare that a physical planning area or part of a physical planning area is a redevelopment zone; or
- (d) do any combination of Paragraphs (a), (b) and (c),

and all of the above procedures shall be known as zoning.

(2) A redevelopment zone may be declared on land that is, or is part of, another zone and the declaration does not affect the incidence of the other zoning.

(3) Any request for a change in the zoning of land shall be treated as an application for planning permission.

**72. USE AND DEVELOPMENT OF LAND AND BUILDINGS WITHIN A ZONE FOR AUTHORIZED PURPOSES.**

(1) Subject to this section, the purposes for which a building or land may be used in a zone (other than a redevelopment zone) are—

- (a) the purposes specified in respect of that zone; and
- (b) any other purpose for which planning permission has been granted in a particular case.

(2) Subject to this section, the purposes for which development may take place in a zone (other than a redevelopment zone) are—

- (a) the purposes specified in respect of that zone; and
- (b) any other purpose for which planning permission has been granted in a particular case.

(3) Subject to Section 73, the purposes for which a building or land may be used in a redevelopment zone are—

- (a) where the land is also in another zone—a purpose for which a building or land may be used in the other zone; and
- (b) a purpose for which planning permission has been obtained in a particular case.

**73. DEVELOPMENT IN REDEVELOPMENT ZONES.**

(1) Subject to Subsection (2), a person who carries out development in a redevelopment zone without planning permission is guilty of an offence.

(2) Subsection (1) does not apply to the completion of building or engineering operations where those operations had commenced before the declaration of the redevelopment zone.

(3) Subsection (1) does not apply to a change of use of a building or land to a purpose which is permitted under Section 72(3)(a).

**74. USE AND DEVELOPMENT OF LAND AND BUILDINGS IN A ZONE FOR UNAUTHORIZED PURPOSES.**

(1) Subject to this section, a person who carries out development, or uses a building or land, in a zone for a purpose that is not an authorized purpose in relation to the building or land is guilty of an offence.

(2) Where—

- (a) a building or land was, at any time, for a period of not less than 60 days within the period of six months before the date of a Board's decision to publish the relevant notice of zoning under Section 71, used for a purpose that is not an authorized purpose in relation to the building or land; or
- (b) a building in a zone was, at the date of a Board's decision to publish the relevant notice of zoning under Section 71, under construction and intended to be used for a purpose that is not an authorized purpose in relation to the building,

the building or land may, subject to Subsection (3), continue to be so used, or may be so used, as the case may be, after the date of publication of the relevant notice in the National Gazette.

(3) Subsection (2) ceases to apply to and in relation to a building or land—

- (a) on the discontinuance for a period of six months of its use for the purpose referred to in that subsection; or
- (b) in the case of a building—on its destruction.

**75. PLANNING PERMISSION REQUIRED PRIOR TO SUBDIVISION OR CONSOLIDATION.**

(1) Where a person intends to apply for—

- (a) a subdivision of land under Section 130 of the *Land Act 1996*; or
- (b) a consolidation of leases under Section 131 of the *Land Act 1996*,

and where any part of the land concerned is within a physical planning area, he shall first obtain planning permission to carry out that subdivision or consolidation.

- (2) Where an application is made to the Minister responsible for land matters—
  - (a) for a subdivision of land under Section 130 of the *Land Act 1996*; or
  - (b) for a consolidation of leases under Section 131 of the *Land Act 1996*,

and that application is accompanied by planning permission whether specific or deemed, the Minister responsible for land matters shall not refuse the application for any physical planning reason.

**76. BOARD TO WHICH APPLICATION FOR PLANNING PERMISSION TO BE MADE IN THE FIRST INSTANCE.**

- (1) An application for planning permission shall be made in the first instance—
  - (a) where the development concerned is in a province and a Provincial Physical Planning Board has been established in that province and is not suspended—to that Provincial Physical Planning Board; or
  - (b) where the development is in the National Capital District—to the National Capital District Physical Planning Board; or
  - (c) where the development is in a province and no Provincial Physical Planning Board has been established or the Provincial Physical Planning Board is suspended—to the National Physical Planning Board.
- (2) Where a development straddles the boundary between—
  - (a) two or more provinces; or
  - (b) a province and the National Capital District,

a separate application shall be made in respect of each province, and in respect of the National Capital District, in accordance with Subsection (1), and each application shall be accompanied by a statement specifying to which other Boards application has been made.

**77. APPLICATION FOR PLANNING PERMISSION.**

- (1) Subject to Subsection (2), an application for planning permission shall be for—
  - (a) outline planning permission reserving specified matters for subsequent approval; or
  - (b) full planning permission; or
  - (c) approval of reserved matters following outline planning permission.

(2) An application for planning permission for a rezoning or to allow the use of a building or land for a particular purpose shall be an application for full planning permission, unless it forms part of an application for building, engineering, mining or other operations.

(3) An application under Subsection (1)–

- (a) shall be in writing; and
- (b) shall include such particulars and be accompanied by such documents as are prescribed; and
- (c) where applicable, shall contain a statement under Section 76(2) of other Boards to which application has been made; and
- (d) shall be accompanied by the prescribed fee; and
- (e) shall be made by–
  - (i) the owner of the land the subject of the application; or
  - (ii) the agent of that owner; or
  - (iii) a person who has complied with Subsection (4).

(4) Where an applicant is not the sole owner of land or an agent appointed by the sole owner, the applicant shall–

- (a) notify all of the owners that the application is being made; or
- (b) where it is not possible for good reason to notify an owner, publish in a newspaper circulating in the area in which the land is situated, a notice giving details of the application.

(5) Where Subsection (4) applies, the applicant shall, at the request of any owner of the land, supply to that owner, free of charge, a copy of the application.

## **78. PROCEDURE OF BOARD FOLLOWING APPLICATION.**

(1) A Board shall, after receiving an application for planning permission under Section 77–

- (a) consider the application as soon as possible; and
- (b) subject to Subsection (3), make its decision on the application within the prescribed time from the receipt of the application by the Board, unless the Board has obtained from the applicant an extension of time.

(2) Where an application relates to a matter to be considered and determined by the National Physical Planning Board–

- (a) a Provincial Physical Planning Board; or
- (b) the National Capital District Physical Planning Board,

as the case may be shall–



(c) refer the application to the National Physical Planning Board within one month of receipt; and

(d) advise the applicant that such reference has been made.

(3) Where a Board requires additional information from the applicant concerning the application, it shall advise that applicant of its requirement within 14 days or such other time as may be prescribed of the receipt by it of the application and the prescribed time within which the decision is to be made shall commence from the date on which the additional information is submitted to the Board by the applicant.

(4) Where the development proposed in an application straddles the boundary between—

(a) two or more provinces; or

(b) a province and the National Capital District,

and application has been made to more than one Board in accordance with Section 76(2), all Boards to whom application has been made shall, before making a decision, consult with each other.

(5) Where the Boards referred to in Subsection (4) fail to agree, the matter shall, in accordance with Section 4, be dealt with as a matter primarily of national interest by the National Physical Planning Board.

## **79. DECISION OF BOARD.**

(1) A Board may, after consideration of an application for planning permission under Section 77—

(a) grant planning permission, with or without conditions; or

(b) refuse planning permission.

(2) Conditions referred to in Subsection (1)(c) may be for any physical planning purpose including, but without prejudice to the foregoing generality, all or any of the following:—

(a) conditions regulating the development or use of any land under the control of the applicant (whether or not it is the land in respect of which the application was made) or requiring the carrying out of works on such land, so far as appears to the Board to be expedient for the purposes of or in connection with the development authorized by the planning permission;

(b) requiring the removal of any building or works authorized by the planning permission, or the discontinuance of the use of land so authorized, at the end of a specified period, and the carrying out of any works required for the re-instatement of land at the end of that period;

(c) requiring the retention of any tree.

**80. BOARD TO GIVE NOTIFICATION OF DECISION TO APPLICANT.**

A Board shall give to an applicant written notification of its decision in respect of the application within 14 days or such other time as may be prescribed, and where the Board—

- (a) imposes conditions on planning permission; or
- (b) refuses planning permission,

it shall advise the applicant of its reasons for so doing.

**81. AGREEMENTS RELATING TO PROVISION OR IMPROVEMENT OF AMENITIES, UTILITIES OR SERVICES OR IN LIEU OF SUCH PROVISION OR IMPROVEMENT.**

(1) Where a Board is satisfied that a development or rezoning or purpose which is the subject of an application for planning permission, will, or is likely to, require the provision of, or increase the demand for, public or private amenities, utilities and services, the Board may, before approving any planning permission for the development, enter into an agreement with—

- (a) the developer; and/or
- (b) the owner; and/or
- (c) the occupier,

of the land to provide or improve public or private amenities, utilities or services.

(2) An agreement under Subsection (1) may provide for all or any of the following:—

- (a) the dedication or the surrender of land free of cost;
- (b) the payment of a monetary contribution;
- (c) the undertaking of construction works both on or off site.

(3) Where a monetary contribution is required, an agreement under Subsection (1) shall set out specifically to what purpose the money is to be used.

(4) An agreement under Subsection (1) may provide for the applicant to pay a monetary contribution to such authority as is considered appropriate for the purposes for which payment was required and the authority shall hold the money in a trust account set up specifically for the purpose and shall only use the money for the purposes specified in the agreement.

(5) Where land is dedicated or surrendered free of cost, an agreement under Subsection (1) shall state for what purpose the land is to be used.

(6) Land dedicated or surrendered in accordance with an agreement under this section may be subject to a lease granted to an appropriate organisation or authority pursuant to the provisions of the *Land Act 1996* for the purposes of providing public or private amenities, utilities or services.

**82. PRESERVATION OF TREES.**

(1) Where it appears to a Board that it is in the interests of amenity to make provision for the preservation of any trees in a physical planning area, it may for that purpose make an order with respect to any such tree or group of trees as may be specified in the order.

(2) Provision may be made in any such order—

- (a) for prohibiting the cutting down, topping, lopping or wilful destruction of trees except with the consent of the Board; and
- (b) for securing the replanting, in such manner as may be prescribed by or under the order, of any tree or group of trees that is felled in the course of any development permitted by a Board.

(3) A Board shall notify all the owners and occupiers of land affected by a order under Subsection (1), and where all or any of the owners or occupiers of the land are unknown to a Board then publication of a notice in a newspaper circulating in the area shall constitute notification.

(4) This section shall not apply in respect of an area for which a permit has been granted under Section 10 of the *Forestry Act 1991*.

**83. CONTROL OF SIGN BOARDS AND ADVERTISEMENTS.**

(1) The Regulations may make provision for restricting or regulating the display of sign boards and advertisements in the interests of amenity, traffic safety or traffic control and without restricting the generality of the foregoing, may provide for all or any of the following:—

- (a) for regulating the dimensions, appearance and position of any sign boards or advertisements that may be displayed, and the manner in which they may be erected;
- (b) for requiring planning permission from a Board for the display of sign boards or advertisements;
- (c) for enabling a Board to require the removal of any sign board or advertisement that is being displayed in contravention of this Act.

(2) Where the display of a sign board or an advertisement in accordance with the Regulations relates to the development of land, any permission relating to control of a sign or an advertisement shall be deemed to be granted by virtue of this section and no separate application shall be necessary, provided that the display is on the land being developed, complies in all other respects with any Regulations and is removed within one month of the completion of the development.

(3) An exemption under Subsection (2) does not apply in respect of any development of land which is unauthorized.

(4) No sign board or advertisement shall be displayed within a zone designated for public utilities unless—

- (a) it is for the purposes of directing traffic, for street or road names, or in connection with the operation of public utilities on the land concerned; or
- (b) the sign board or advertisement has been approved for display by a Board and, in the case of alienated land which is not the subject of a lease, the developer has obtained a licence to display the sign board or advertisement under the *Land Act 1996*.

(5) A sign board or advertisement which is displayed in contravention of Subsection (4) may be removed in accordance with Subsection (1)(c).

#### **84. DEEMED PLANNING PERMISSION BY REGULATION.**

(1) The Regulations may specify certain classes of development within a physical planning area or a redevelopment zone for which planning permission is deemed to be granted and for which no specific planning permission is needed.

(2) A deemed planning permission under Subsection (1)–

- (a) may be subject to conditions; and
- (b) does not exempt any development from complying with any Regulation to this Act which may be applicable to the class of development.

#### **85. DISPLAY OF DEVELOPMENT PROPOSALS ON SITE.**

(1) A Board may direct an applicant to place a notice, briefly describing the development proposed, on the site to which the application relates, prior to its consideration by the Board.

(2) It shall be the responsibility of the applicant to erect the sign in a prominent position and to maintain the same for a period of not less than 7 days or such other time as may be prescribed.

#### **86. LAPSE OF PLANNING PERMISSION.**

(1) A planning permission shall, unless otherwise stated in the conditions attached to the approval, expire after five years if within that time the development has not commenced.

(2) Where planning permission has lapsed, a new application shall be required to obtain planning permission.

(3) An approval or consent given under the *Town Planning Act* (Chapter 204) shall expire five years from the commencement date of this Act unless–

- (a) in the case of a purpose approved in a zone other than a redevelopment zone or special uses zone, the purpose approved has commenced; or
- (b) in the case of a purpose approved in a redevelopment zone, the purpose approved has commenced; or

- (c) in the case of a special consent in a special purposes zone, the erection of the building and/or the use of the building or land has commenced; or
- (d) in the case of a consent for the erection, rebuilding, altering or adding to a building in a redevelopment zone, work has commenced on construction; or
- (e) the approval or consent has been renewed in accordance with Subsection (5).

(4) Prior to the expiry date of a planning permission, or of any approval or consent given under the *Town Planning Act* (Chapter 204), a developer may request renewal of the permission by a letter which clearly identifies the original permission, approval or consent and such a request shall be treated as an application for planning permission, except that the provisions of Section 77(3)(b) shall not apply.

(5) This section does not apply in respect of a zoning or rezoning of land under Section 71.

#### **87. REVOCATION OR MODIFICATION OF PLANNING PERMISSION BY AGREEMENT.**

(1) Where it appears to a Board that a planning permission previously granted by that Board needs to be revoked or modified in the public interest, that Board may revoke or modify the planning permission granted by agreement with the owner of the land affected.

(2) Where any planning permission is revoked or modified by agreement, such agreement may provide for compensation to an owner, occupier or developer of the land and such compensation may take the form of—

- (a) a planning permission; or
- (b) a monetary consideration; or
- (c) such other consideration as may be agreed between the parties concerned; or
- (d) any combination of Paragraphs (a), (b) and (c).

**PART VIII. – APPEALS.****88. PAPUA NEW GUINEA PHYSICAL PLANNING APPEALS TRIBUNAL.**

(1) A Papua New Guinea Physical Planning Appeals Tribunal is established for the purpose of hearing appeals and of giving rulings as to whether a matter is of national interest or not.

(2) The Tribunal shall consist of five members comprising–

- (a) a lawyer as defined in the *Lawyers Act 1986*; and
- (b) either a registered engineer or a registered architect or a registered surveyor or a registered valuer or a professional town planner, who holds appropriate qualifications in his field and has extensive experience of the practice of physical planning; and
- (c) a member nominated by the Premiers' Council to represent a provincial viewpoint; and
- (d) a member nominated by the Minister to represent a National Government viewpoint; and
- (e) a member nominated by the Minister, following consultation with the Papua New Guinea Chamber of Commerce or a similar private sector organisation, to represent a private sector viewpoint.

(3) The members of the Tribunal shall–

- (a) be appointed by the Head of State, acting on advice, by notice in the National Gazette; and
- (b) be appointed for a period not exceeding three years; and
- (c) be appointed on such terms and conditions as the National Executive Council shall determine; and
- (d) are eligible for reappointment.

**89. CHAIRMANSHIP.**

The Chairmanship of the Tribunal shall rotate among the members from meeting to meeting.

**90. RESIGNATION.**

A member of the Tribunal may resign his office by written notice to the Minister.

**91. VACATION OF OFFICE.**

(1) If a member of the Tribunal–

- (a) becomes permanently incapable of performing his duties; or

- (b) resigns his office under Section 90; or
- (c) is absent from three consecutive meetings of the Tribunal; or
- (d) fails to comply with Section 92(6); or
- (e) becomes bankrupt, or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (f) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer and as a result is sentenced to imprisonment,

the Head of State, acting on advice, shall terminate his appointment.

(2) The Head of State, acting on advice, may at any time by written notice advise a member that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(3) Within 14 days of the receipt of a notice under Subsection (2), the member may reply in writing to the Head of State who shall consider the reply, and, where appropriate, terminate the appointment.

(4) Where the member referred to in Subsection (2) does not reply in accordance with Subsection (3), his appointment is terminated.

## **92. CONDUCT OF TRIBUNAL.**

(1) The Tribunal shall meet not less than four times in each year but shall not meet if there are no appeals to be heard.

(2) The quorum for a meeting of the Tribunal is three members.

(3) Decisions of the Tribunal shall be decided by a simple majority of votes.

(4) At a meeting of the Tribunal, the person presiding at the meeting shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(5) The procedure at a meeting of the Tribunal is as prescribed and until it is prescribed is as determined by the Tribunal.

(6) A member of the Tribunal who has a direct or indirect pecuniary interest in a matter to be discussed and considered at a meeting of the Tribunal, shall declare such interest and shall not take any part in the proceedings of the meeting concerned as a member of the Tribunal.

## **93. VACANCY DOES NOT INVALIDATE PERFORMANCE OF POWER, ETC.**

The exercise or performance of a power or function of the Tribunal is not invalidated by reason of a vacancy in the membership of the Tribunal.

**94. APPEALS AGAINST A BOARD'S DECISION.**

(1) An applicant, or an owner or an occupier of land who is aggrieved by a decision of a Board, may appeal to the Tribunal within the prescribed time from the date of the decision or, in the case of a zoning, the date of the gazettal of the decision, whichever is the later.

(2) An appeal under Subsection (1) may only be against—

- (a) a decision on a planning permission; or
- (b) a condition imposed on the approval of a planning permission; or
- (c) an order for the preservation of trees; or
- (d) a requirement by a Board to supply additional information under Section 78(3); or
- (e) non determination within the prescribed time under Section 78(1); or
- (f) a stop work notice under Section 99(1); or
- (g) a demolition notice under Section 99(2); or
- (h) the declaration of a zone under Section 71, (except as provided under Subsection (3)),

provided that, in the case of Paragraph (f) and (g), the appeal may only be made on the grounds that the operations are authorized under the Act.

(3) An appeal may not be against the approval of a development plan or against the declaration of a zone by gazettal of final approval of a development plan.

**95. CONSIDERATION OF REPRESENTATIONS BY THE TRIBUNAL.**

(1) The Tribunal shall afford the appellant, an applicant for planning permission, an owner or occupier of the land to which the appeal relates, an objector and the Board making the decision an opportunity to make representations concerning the appeal if they so wish.

(2) At the discretion of the Tribunal the above representations may be made in writing or may be at a hearing.

(3) Where representations are made at a hearing, a party may be represented by an agent and may call such evidence and produce such documents as are relevant and material in support of those representations.

(4) In the absence of any or all of the interested parties or their representatives at a hearing, the Tribunal may proceed to determine the appeal on the basis of such representations as are before it but in such a situation the Tribunal shall satisfy itself that there is sufficient information to make a considered decision.



**96. APPOINTMENT OF ONE OR MORE OF THE MEMBERS OF THE TRIBUNAL, ETC., TO HOLD A HEARING.**

(1) The Tribunal may decide that a hearing for a particular appeal is to be held before one or more of its members only or before the Chief Physical Planner or his delegate.

(2) Where a hearing is held under Subsection (1) the persons hearing the appeal shall make a report of the hearing to the Tribunal which shall then make a decision.

**97. CONSIDERATION OF APPEALS AND SECTION 4 REFERENCES BY THE NATIONAL PHYSICAL PLANNING APPEALS TRIBUNAL.**

(1) The Tribunal shall consider an appeal in the prescribed manner and shall make a recommendation to the Minister to—

- (a) allow the appeal; or
- (b) dismiss the appeal and allow the decision of the Board to stand; or
- (c) refer the matter back to the Board concerned with such direction as it thinks just in the particular circumstances of the case.

(2) On receipt of a recommendation under subsection (1), the Minister shall consider the matter and shall—

- (a) accept the recommendation of the Tribunal; or
- (b) refer the matter back to the Tribunal for further consideration; or
- (c) reject the recommendation of the Tribunal and—
  - (i) allow the appeal; or
  - (ii) reject the appeal; or
  - (iii) refer the matter back to the Board concerned with such direction as he thinks just in the particular circumstances of the case,

and his decision is final except on a point of law.

(3) Where the Minister makes a reference back to a Board, that Board shall comply with any direction within one month or such other time as is specified in the reference back.

(4) Where the Minister allows an appeal against a zoning he shall publish the result of the appeal in the National Gazette.

(5) The Tribunal shall make its recommendation on any appeal within any prescribed time limit.

(6) Where the Tribunal is asked to give a ruling under Section 4(2), the Tribunal shall give its ruling and notify the parties concerned.

**PART IX. – ENFORCEMENT.**

**98. UNAUTHORIZED DEVELOPMENT.**

(1) A person who, otherwise than as authorized by or under this Act–

(a) uses or permits any land or building to be used; or

(b) allows development to be carried out,

is guilty of an offence.

Penalty: A fine not exceeding K4,000.00.

Default penalty: A fine not exceeding K400.00.

**99. STOP WORK AND DEMOLITION NOTICES.**

(1) The owner, occupier or developer of any land on which building, engineering, mining or other operations are being carried out in contravention of this Act, may be issued with a stop work notice, by or on behalf of a Board, requiring the operations to stop.

(2) Where unauthorized building or engineering operations have been carried out, a Board may serve a demolition notice on the owner, occupier, developer or builder or on any two or more of the foregoing requiring the unauthorised work to be removed and the land restored to its state prior to the commencement of the operations.

(3) A demolition notice under Subsection (2) shall be issued within 12 months of the date when the operations were first brought to the notice of the Board.

(4) A person who, without reasonable excuse (proof of which is on him), fails to comply with the requirements of a stop work notice or a demolition notice is guilty of an offence.

Penalty: A fine not exceeding K4,000.00.

Default penalty: A fine not exceeding K400.00.

**100. PENALTY MAY INCLUDE ORDER TO PLANT TREES.**

Where a person is guilty of an offence involving the destruction of, or damage to, a tree or trees, the court dealing with the offence may, in addition to or in substitution for any pecuniary penalty imposed, direct that person to plant new trees and maintain these to a mature growth.

**PART X. – MISCELLANEOUS.**

**101. PROTECTION OF MEMBERS OF A BOARD OR TRIBUNAL.**

No action is maintainable against a member of a Board or of the Tribunal for anything which is done by the member in good faith while acting as a member.

**102. POWER OF ENTRY.**

A person authorized in writing by the Minister or a provincial minister or the Chairman or Acting Chairman of a Board or Tribunal or the Chief Physical Planner or the Senior Physical Planner in a province or in the National Capital District shall have the right to enter upon any land or premises at all reasonable times, for the purposes of inspections or in connection with—

- (a) the preparation, approval, making or amendment of a development plan; or
- (b) an application that is being considered by a Board; or
- (c) any development that is taking place with or without planning permission; or
- (d) for any other reason that may be necessary to carry out any duty or function under this Act.

**103. OBSTRUCTION.**

A person who, in any way, directly or indirectly, hinders or obstructs a person in the proper exercise of his powers, or in the performance of his duties, under this Act, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

**104. REGULATIONS.**

The Head of State, acting on advice, may make Regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act, including, but without prejudice to the foregoing generality, Regulations for prescribing the following:—

- (a) the appointment of persons to administer this Act and the definition of their powers and duties;
- (b) the forms to be used for the purposes of this Act, the manner in which they shall or may be signed, prepared or completed, and generally regulating the signing, preparation and completion of those forms;
- (c) the issue of permits or certificates and the granting of approval by a Board for any matter or thing under this Act;

- (d) the form of, and the particulars to be contained in, notices to be served under this Act;
- (e) the fees to be charged for any matter or thing under this Act;
- (f) the classification of land and buildings for all types of use including a schedule of the land use zones to be used in zoning;
- (g) site requirements, subdivision standards and design standards;
- (h) road and street standards, alignments and widths;
- (i) requirements for off-street parking to apply to developments of any kind;
- (j) provisions relating to the consolidation and subdivision of land;
- (k) the matters to be included in development plans and the procedures to be followed in obtaining approval to such plans;
- (l) the format of development plans;
- (m) the control of access from a road to land;
- (n) the manner in which the administration of any matter under the Act is to be carried out;
- (o) the particulars to be provided with any application for planning permission;
- (p) the particulars to be provided with an appeal;
- (q) the conduct of a Board;
- (r) penalties of fines not exceeding K4,000 and default penalties of fines not exceeding K400 for offences against any Regulation.

**PART XI. – REPEAL.**

**105. REPEAL.**

The *Town Planning Act* (Chapter 204) is repealed.

**PART XII. – TRANSITIONAL PROVISIONS.**

**106. INTERPRETATION.**

For the purposes of this Part, “**the repealed Act**” means the *Town Planning Act* (Chapter 204) (repealed).

**107. ACTIONS, ETC., NOT TO ABATE.**

Where, immediately before the commencement of this Act, any action, arbitration or proceeding, was pending or existing under the repealed Act, it does not abate and is not affected by the commencement of this Act.

**108. DESIGNATION OF TOWNS AS PHYSICAL PLANNING AREAS UNDER THE ACT.**

An area declared under Section 2 of the repealed Act to be a town for the purposes of the repealed Act is declared to be a physical planning area under this Act.

**109. ZONING.**

(1) A zone, other than a redevelopment zone, declared under the repealed Act shall remain in effect as if it was a zone declared under this Act until it receives designation of zoning as prescribed in any Regulations.

(2) A redevelopment zone designated under Section 6 of the repealed Act is declared to be a redevelopment zone under this Act.

(3) An existing road or drainage or utility reserve shall receive designation of zoning under this Act as prescribed in any Regulations.

**110. REFERENCES IN OTHER ACTS.**

A reference in any other Act to the repealed Act shall be construed as a reference to this Act and any reference to town planning shall be construed as a reference to physical planning.

Office of Legislative Counsel, PNG