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COMMONWEALTH OF DOMINICA

ACT NO. 5 OF 2002

I assent

**VERNON L. SHAW**
*President*9th May, 2002

AN ACT TO MAKE PROVISION FOR THE ORDERLY AND PROGRESSIVE DEVELOPMENT OF LAND IN BOTH URBAN AND RURAL AREAS AND TO PRESERVE AND IMPROVE THE AMENITIES THEREOF; FOR THE GRANT OF PERMISSION TO DEVELOP LAND AND FOR OTHER POWERS OF CONTROL OVER THE USE OF LAND; FOR THE REGULATION OF THE CONSTRUCTION OF BUILDINGS AND RELATED MATTERS; TO CONFER ADDITIONAL POWERS IN RESPECT OF THE ACQUISITION AND DEVELOPMENT OF LAND FOR PLANNING PURPOSES AND FOR OTHER MATTERS CONNECTED THEREWITH.

(Gazetted 16th May, 2002).

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:

PART 1
PRELIMINARY

Short title.

1. This Act may be cited as the -

PHYSICAL PLANNING ACT, 2002.

Interpretation.

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

“adjoining land” means that portion of land extending a distance of one hundred feet landward from the spring high water mark, or where the land to that distance includes a cliff, to a distance of fifty feet landward from the seaward edge of the cliff top; and wherever land is extended into the sea by or as a result of filling, dredging or other man-made alteration the landward boundary of the adjoining land shall remain at the line established;

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

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock for the production of food, wool, skins or fur for the purpose of its use in farming the land, the use of land as grazing land, market gardens and nursery grounds but does not include

the use of land for fish-farming and "agricultural" shall have a corresponding meaning;

"amenity order" means an order made under section 50;

"Appeals Committee" means the Appeals Committee established under section 75;

"Authority" means the Physical Planning and Development Authority established under section 4;

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

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

"building" includes any erection or structure, including chattels or movable structures in, on, over or under any land and any part of a building so defined (but does not include plant or machinery comprised in a building), any erection or structure permanently attached to the sea bed, or temporarily so attached for the purpose only of the exploitation of minerals in, on or under the sea bed;

"building inspectors" means persons appointed as building inspectors under the provisions of section 64;

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

"building or works" includes waste materials, refuse and other matter deposited on land, and references to the construction of building or works shall be construed accordingly;

“building permit” means a written notice that building plans have been passed in accordance with section 65;

“building preservation order” means an order made under section 47;

“building regulations” means regulations made under section 63 and a reference to Building Regulations, in a particular case in relation to which a requirement of Building Regulations is for the time being dispensed with, waived, relaxed or modified, is a reference to building regulations as they apply in that case unless the context otherwise requires;

“Chief Physical Planner” means the person appointed under section 6;

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

“coastal waters” means the sea, and those waters adjacent to the landward limit of the adjoining land or connected permanently or intermittently with the sea which contain a measurable quantity of sea water, including sounds, bays, lagoons, ponds and estuaries, and the land below and along the banks of the waters;

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

“compliance notice” means a notice issued under section 36;

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

“development” means the carrying out of building, engineering, mining or other operations in, on, over or under any land,

the making of any material change in the use of any building or land or the sub-division of land, provided that the following shall not be deemed to constitute development -

- (a) work for the maintenance or other alteration of any building, if the work affects only the interior thereof and does not materially affect the external appearance of the building;
- (b) work carried out by the Government or a local Government Authority for the maintenance or improvement of a road;
- (c) work carried out with the approval of the Government or by statutory agency for the purpose of inspecting, repairing or renewing any sewers, water mains, electric mains, cables or other apparatus, including the excavation of any road or other land for that purpose;
- (d) the use of any building or other land within the curtilage of a dwelling house for purposes incidental to the enjoyment of that dwelling house as such;
- (e) the use of land for the purposes of agriculture or forestry, but not including any building or engineering activity thereon or the operations of a saw-mill;
- (f) the erection of gates, fences, walls or other means of enclosure, not being adjacent to a highway or the sea, not exceeding three feet six inches in height and not constructed of asbestos, plastic, fibre glass or sheet metal;
- (g) the enlargement, improvement or other alteration of a dwelling house, provided that-
 - (i) the square footage of the enlargement does not exceed one tenth of the square footage of the

ground floor of the house at the date of the development or of the house at the commencement of this Act, whichever is the larger;

- (ii) the enlargement is single story;
- (iii) the enlargement is an integral part of the existing house;
- (iv) the enlargement complies with the requirements of any planning and building regulations for the time being in force; and
- (v) written notice of intention to carry out such work is given to the Authority through the Chief Physical Planner;

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

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

“discontinuance notice” means a notice issued under section 45;

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

“engineering operations” include the laying out, building and maintenance of roads, drains, runways and bridges, the preparation of land for carrying out of any development, the clearing of land, the dredging of watercourses or channels, the filling in of any cavity or excavation and the reclamation of land;

“environment” means all or any of -

- (a) the media of land, water and air, including all layers of the atmosphere;

(b) organic and inorganic matter and living organisms;

(c) the interacting systems that include components referred to in paragraphs (a) and (b);

within the territorial jurisdiction and control of Dominica;

“environmental impact assessment” means:

(a) the process of collection, analysis, evaluation and review of information on the likely effects of a proposed development on the environment and the means to overcome adverse effects; or

(b) the document or series of documents which contain the information on the likely effects of the proposed development on the environment and the means to overcome adverse effects required by section 23;

“environmental protection area” means any area declared to be an environmental protection area under section 57;

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

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

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

“land” means any corporeal hereditament including a building as defined in this section and other things permanently affixed

to land and includes the foreshore, sea bed and land covered by water within the boundaries of the territorial sea of Dominica;

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

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

“mineral” means any substance in liquid, solid or gaseous form occurring naturally in or on the earth or on, in or under the sea bed and formed by or subject to a geological process, but does not include water;

“mining operation” means -

(a) to carry out in relation to any mineral, any activity with a view to working, carrying away, treating or converting that mineral;

(b) to search or explore for any mineral with a view to carrying out any activity mentioned in paragraph (a) of this definition and to carry out any work necessary for such search or exploration; or

(c) the deposit of waste or refuse materials in consequence of or incidental to any activity mentioned in paragraph (a) or (b) of this definition;

“Minister” means the Minister responsible for physical planning;

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

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

(a) the estate owner in respect of the fee simple in the land; or

(b) entitled to a tenancy of the land granted for a term of years certain of which not less than 10 years remain unexpired;

“permitted development” means development which is authorised under section 17 (2);

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

“plant preservation order” means a plant preservation order made under section 49;

“prescribed” except in relation to matters expressly required or authorised by this Act to be prescribed in some other way, means prescribed by Regulations made under this Act;

“purchase notice” means -

(a) in section 48 a purchase notice with respect to building subject to a building preservation order;

(b) in section 73 a purchase notice with respect to adverse decisions namely -

(i) refusal of development permission in circumstances where no development permission is available with respect to that land;

(ii) a revocation or modification notice;

(iii) a discontinuance notice;

(iv) a public access notice;

(vi) an environmental protection area order;

“Regulations” means Regulations made under this Act;

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

“road” means any road whether public or private and includes any street, square, court, alley, lane, bridge, footpath, trace, passage or highway, whether thoroughfare or not;

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

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

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

“unauthorised development” means any development for which a grant of development permission has not been obtained and which is not permitted development authorised under section 17 (2) or development which is not in accordance with the conditions or limitations subject to which development permission was granted;

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

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

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

(a) the use for the display of an advertisement, of any land or of the external part of a building, which is

not ordinarily used for that purpose, shall be deemed to involve a material change in the use of that land or part of the building;

- (b) the use as two or more separate premises for the purpose of dwelling of any building previously used as one dwelling house involves a material change in the use of that building and of each part thereof so used; and
- (c) the deposit of any waste material on land involves a material change in the use of the land, notwithstanding that the deposit is on a site which has been previously so used, if either the superficial area thereof or the height of the deposit is thereby extended or exceeds the level of any similar deposit on adjacent land

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

Objects and purposes of Act.

- (a) to foster the awareness that all persons and organisations owning, occupying and developing land have a duty to use that land with due regard for the wider interests both present and future of society as a whole;
- (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Dominica;
- (c) to achieve orderly, economical and beneficial development and use of land and patterns of human settlement;
- (d) to assist in the orderly, efficient and equitable planning, allocation and development of the resources of Dominica taking account of all relevant social, economic and environmental factors so as to ensure that the most efficient, equitable and environmentally sustainable use is made of land in the interests of all the people of Dominica;

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- (e) to provide for the orderly sub-division of land and the provision of services in relation thereto;
 - (f) to protect and conserve the cultural heritage of Dominica as it finds expression in the natural and the built environment;
 - (g) to secure the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings; and
 - (h) to facilitate a continuous improvement in the quality of life of all the people in Dominica.

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

PART II

ADMINISTRATION

Physical Planning and
Development Authority.

4. (1) For the purposes of this Act there shall be a Physical Planning and Development Authority for Dominica.

Ch. 84:01.

(2) The Development and Planning Corporation incorporated by the Development and Planning Corporation Act, 1972, is hereby established as the Physical Planning and Development Authority and hereinafter in this Act are referred to as "the Authority".

(3) The Authority shall from time to time consult local authorities either generally on development applications or in relation to specific cases which show a major departure from a development plan or where such consultation is desirable in the interests of good planning.

(4) The Authority shall -

- (a) advance the purposes of this Act as set out in section 3;
- (b) institute, complete, maintain and keep under review a study of matters pertinent to planning the use and development of the land of Dominica;
- (c) prepare or cause to be prepared development plans in accordance with part III of this Act;
- (d) regulate development by the means provided by this Act having regard to the need to secure consistency and conformity with the development plan;
- (e) regulate the design and construction of buildings and the provision of services, fittings and equipment in or in connection with buildings;
- (f) prepare, and submit to the Minister subject reports on matters which the Authority or the Minister may from time to time consider necessary or desirable having regard to the provisions of section 3;
- (g) do all other things necessary for carrying out the purposes and provisions of this Act as may be authorised by this Act; and
- (h) receive and consider applications for permission to carry out development of land in accordance with the provisions of this Act.

(5) The Authority shall remain at all times responsible for the proper performance of its functions under this section, but subject to subsection (1) may, for the purpose of such performance, as it thinks fit -

- (a) consult with or obtain advice from other authorities, persons or bodies of persons;

(b) engage other persons to carry out work on its behalf; or

(c) delegate any of its functions under section 9 to any of the persons referred to at paragraph (a) or (b), but shall at all times remain responsible for the proper discharge of those functions.

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

(7) The Authority shall be responsible for the implementation of the policies framed by the Minister and the Authority shall act in accordance with directions of a general character which may be given by the Minister as to the policy to be followed in the exercise of its functions.

Chief Physical Planner.

5. (1) A Chief Physical Planner who shall be a public officer shall be appointed to exercise and perform the duties specified in subsections (2), (3), (4) and (5).

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

(3) The Chief Physical Planner shall be the Secretary to the Authority and the Chief Executive Officer.

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

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

Exercise of functions of
Chief Physical Planner.

6. (1) Functions assigned to the Chief Physical Planner by or under this Act, other than those mentioned in section 5 (4), may be exercised by any planning officer authorised by the Chief

Physical Planner in writing, either generally or specially, in that behalf.

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

7. The Minister, members of the Authority, the Chief Physical Planner or other public officer shall not be personally liable in any court for or in respect of any act or matter done, or omitted to be done, in good faith, in the exercise or purported exercise of any function under or power conferred by this Act.

Limitation of personal liability.

PART III

DEVELOPMENT PLANS

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

Proposal for development plan.

(2) A proposal for the preparation of a development plan shall include -

- (a) a reasoned statement of the need for the plan;
- (b) the main headings of the proposed contents of the plan;
- (c) a suggested timetable for the preparation of the plan;
- (d) proposals for obtaining representations from persons likely to be affected by or likely to wish to submit representations and views on the proposed plan during the course of its preparation;
- (e) proposals for the review of the plan by sectoral agencies and private sector representatives; and

- (f) such other matters as are required by the Minister or are considered by the Authority to be necessary for a decision to be made on the proposal.

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

Scope and preparation of development plan.

9. (1) The Authority may prepare or cause to be prepared and thereafter keep under review a development plan -

- (a) for Dominica as a whole, which shall be called a National Physical Development Plan; or
- (b) for any specified part of Dominica, which shall be called by the name of the part of Dominica to which it relates.

(2) A development plan shall set out -

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

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- (vi) such other matters such as the Minister may, in a particular case, direct;
 - (c) a statement of the policies, proposals, and programmes for the future development and use of land in the area including principles for regulating the use and development of land and measures for the maintenance and improvement of the environment;
 - (d) a reasoned justification of the policies and proposals for the future development and use of land in the area having regard to -
 - (i) the report of the existing conditions of the area under paragraph (b);
 - (ii) an examination of the likely environmental effects of the proposals;
 - (iii) any specific policies of the Government which may affect the pattern of development in the area;
 - (iv) the relationship between the proposals in the plan and other previously approved development plans which may affect the area;
 - (v) the financial and other resources which are likely to be available for carrying out the proposals of the plan; and
 - (e) a schedule setting out the stages by which the proposals of the plan may be implemented.

(3) The development plan shall include such maps, plans, drawings, diagrams and other graphic representations as the Authority considers necessary to illustrate and explain the plan with such a degree of particularity as may be appropriate to different parts of Dominica and to the nature of the development plan.

(4) A development plan may -

- (a) define the sites of proposed roads, public and other buildings and works, or the allocation of land for agricultural, residential, industrial or other purposes of any class, and the conditions under which such development should be carried out;
- (b) designate any area as an area which should not be developed due to its susceptibility to aircraft hazard or to flooding, erosion, subsidence, instability or other condition of the physical environment;
- (c) make proposals for the preservation of buildings, sites and other features of special architectural, cultural, historical or archaeological interest;
- (d) provide for any of the matters set out in the First Schedule as the Authority considers appropriate to the nature and scope of the proposed plan;
- (e) designate as a comprehensive planning area any area which in the opinion of the Authority needs to be planned as a whole for one or more of the purposes of development, redevelopment, improvement or conservation.

First Schedule.

(5) Where any land is designated in a development plan made under this Part as a comprehensive planning area, the land may be purchased compulsorily by the Minister in accordance with the Land Acquisition Act as being land required for public purposes within the meaning of that Act.

Chap. 53:02.

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

(7) A development plan shall not designate any land as a comprehensive planning area if it appears to the Authority that the

acquisition is not likely to take place within seven years from the date on which the plan is approved.

(8) Where any land is designated by a development plan as a comprehensive planning area, then if at the expiration of seven years from the date on which the plan, or the amendment of the plan, by virtue of which the land was first so designated came into operation, any of that land has not been acquired by the Minister, any owner of an interest in the land may serve on the Minister a notice requiring the interest of the owner in the land to be acquired and if, within six months after the service of that notice the interest of the owner in the land has not been so acquired, the development plan shall have effect, after the expiration of the six months, as if the land in which the said interest subsists was not subject to compulsory purchase.

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

Public participation.

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

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

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

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

11. (1) When the Authority has prepared a draft development plan it shall send a copy to the Minister and shall deposit a copy at the offices of the Authority and at such other place or places

Consideration of draft development plan.

as the Authority considers to be most effective for bringing it to the notice of persons residing, working or owning property in the area to which the draft development plan proposals relate, or who are likely to be affected by the proposals in the draft development plan.

(2) The Authority shall give notice in the *Gazette* and at least one newspaper circulating in Dominica of the depositing of a draft development plan, and of the places where it may be examined, and shall give such other publicity to and written or oral explanation of the draft development plan as, in its opinion, is best calculated to inform all persons affected or likely to be affected by the proposals in the draft development plan, and all persons of the right to make representations with regard to the proposals in the draft development plan.

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

(4) When the Authority submits a draft development plan for the approval of the Minister, it shall be accompanied by a statement of the steps taken by the Authority to comply with the provisions of this section and section 10 and the particulars of the consultations held with other persons with respect to the proposals in the draft development plan.

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

Approval of develop-
ment plan.

12. (1) The Minister, after considering a draft development plan which has been submitted to him under section 11 and all comments, representations and recommendations made thereon, shall -

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

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

(3) Unless the Minister otherwise directs, the provisions of section 11 shall apply to any modifications, work or revision undertaken by the Authority under this section and to the re-submission of the draft plan or any modification thereof.

(4) Where a draft development plan is submitted to the Minister under section 11, and is accepted by the Minister with or without modifications, the Minister shall submit the draft development plan for approval of the Cabinet.

(5) Where a draft National Physical Development Plan is submitted to the Minister under section 11, and is accepted by the Minister and Cabinet with or without modifications, the Minister shall submit the draft National Physical Development Plan for the approval of Parliament.

(6) Parliament may approve a development plan with or without modifications or may reject the plan.

13. Where a development plan is rejected by the Parliament under section 12(6) the Authority shall prepare a fresh plan in accordance with section 9.

Rejection of development plan.

Deposit of approved plan.

14. (1) When a development plan for a specified part of Dominica has been approved by Cabinet or a National Physical Development Plan for Dominica has been approved by Parliament, as the case may be, a copy of the plan shall be deposited at the Registry of titles, the offices of the Authority, the Department of Lands and Surveys, the public library and post offices in Dominica, and the substance of the plan shall be publicized in the area or areas to which it applies, in such manner as the Authority may direct.

(2) Notice of the approval of a development plan shall be published in the *Gazette* and the plan shall come into effect on the date of such publication.

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

Modification or revocation of plan.

15. (1) The Minister may at any time require the Authority to review or prepare proposals for modification or revocation of any plan, or any part thereof.

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

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

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

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

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

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

Legal status of
development plans.

(a) the plan drawn to the larger scale shall have precedence; or

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

(2) When a development plan has been approved -

(a) it may be the reason for the compulsory acquisition of land designated in that approved development plan as a comprehensive planning area;

(b) it shall be the duty of all public officers to have due regard to, and so far as is practicable, be guided by the plan in formulating and preparing any project of public investment and development in Dominica; and

(c) the Authority shall, in considering any application for development permission, give principal consideration to and be guided by the plan.

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

(4) An approved development plan remains in effect until it is revoked by the Minister by notice published in the *Gazette*.

PART IV

MANAGEMENT OF DEVELOPMENT OF LAND

Permission required to develop land.

17. (1) No person shall carry out any development of land except under and in accordance with the terms of a development permission granted in that behalf prior to the commencement of such development, on an application made in accordance with the regulations made under section 88, unless the development is permitted development authorised under subsection (2).

(2) The Minister may by Order published in the *Gazette*, grant permission to any class of development specified in the Order either unconditionally or subject to such conditions or limitations as may be specified in the Order, without the requirement for the making of an application for grant of development permission.

(3) Every Order made under subsection (2) shall be subject to a negative resolution of Parliament.

Types of development permission.

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

(2) Where the Authority is of the opinion that an application for outline development permission ought not to be considered separately from the detailed information required under section 19, it shall within thirty days of the receipt of the application notify

the applicant that it is unable to entertain the application and shall invite the applicant to submit the required further information under that section.

(3) Notwithstanding subsection (1) and without restricting the generality of subsection (2) the Authority shall not entertain applications for outline development permission for the classes of development set out in the Second Schedule, or for the development which is subject to the provisions of Part VI.

Second Schedule.

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

19. (1) An application for a grant of development permission shall -

Application for development permission.

- (a) be submitted to the Authority through the Chief Physical Planner;
- (b) be made in such manner as may be prescribed by regulations made under section 88;
- (c) include such information as may be required by the regulations or by directions given by the Authority or the Chief Physical Planner; and
- (d) be accompanied by the prescribed fee.

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

Requirement for further information.

- (a) furnish the Chief Physical Planner, with such further information as may be specified in the notice; and

(b) at his own expense, cause an environmental impact statement or economic feasibility study to be prepared of the proposed development and submitted to the Chief Physical Planner.

(2) Where such further information required under subsection (1)(a) and (b) is furnished, the application shall be treated as having been made on the date when the information was received and the 120 day period provided for the determination of applications in section 26 shall not commence until the date of receipt of the further information.

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

Proof of ownership.

21. (1) Every application for permission to develop land, made by the owner of the land, shall be accompanied by a certified copy of the applicant's certificate of title or other relevant title document in respect of the land to which the application relates.

(2) Where the applicant for permission to develop land is not the owner of the land, the application shall be accompanied by a statutory declaration sworn to by the applicant stating that he has notified the owner of the land to which the application relates, or the owner's duly authorised representative, of the application and that the owner or his duly authorised representative does not object to the application.

Publicity of applications.

22. (1) In respect of certain classes of development which the Minister may by Order designate as likely to derogate from the amenities of the public or of adjacent or nearby properties, the Chief Physical Planner, by written notice served on an applicant

for a grant of development permission, may require the applicant to do either or both of the following:

- (a) publish details of his application at such times, in such places and in such manner as may be specified in the notice;
- (b) give details of his application to such persons or authorities as may be specified in the notice.

(2) Without restricting the generality of subsection (1) the notices referred to in paragraphs (a) and (b) of that subsection shall be served in respect of any application -

- (a) for permission to develop, alter, add to, demolish in whole or in part a listed building or a building which is subject to a building preservation order;
- (b) for permission to develop land in an environmental protection area;
- (c) for which environmental impact assessment is required;
- (d) for permission to deposit, store or otherwise deal with toxic or hazardous waste;
- (e) for permission to develop any manufacturing process which will involve either directly or as waste, the production of toxic or other hazardous substances;
- (f) for permission to construct buildings or for the use of land for the purposes of a slaughterhouse, plucking or poultry, or processing of fish;
- (g) for permission to construct buildings or for the use of land for the purpose of a casino, gambling hall, recreation club, liquor shop, bingo hall, music hall, dance hall, theatre, cinema or sports hall;
- (h) for permission to carry out mining operations or mineral processing; or

(i) for permission to carry out development for an auto-repair shop, garage or gas station.

(3) the Authority may and in respect of an application referred to in subsection (2) shall -

(a) publish a notice in at least one daily newspaper and affix a notice on the land to which the application relates that an application to develop land has been received and will be determined on a date specified in the notice; and

(b) invite comments and representations either in writing or orally on such application.

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

Environmental impact
assessment.

Second Schedule.

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

(2) Notwithstanding the provisions of subsection (1) the Authority may require environmental impact assessment of any development where it is of the opinion that significant environmental harm could result.

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

(a) the nature of the development activity proposed;

(b) the geographical extent, scale and location of the proposed development;

(c) the extent and significance of the changes to the environment likely to be caused by the proposed development;

-
- (d) the extent of general knowledge about the nature of the proposed development and its likely impact on the environment;
 - (e) any development plan for the area; and
 - (f) any other matter as may be prescribed in the regulations.

(4) Where it determines that environmental impact assessment is required, the Authority shall, within 30 days of receipt of an application for development permission, issue a written notice notifying the applicant or the person responsible of the determination that environmental impact assessment of the development proposal is required and setting out the terms of reference for the preparation of an environmental impact statement on the development proposal and the period within which the environmental impact statement shall be submitted to the Authority.

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

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

(7) Where the Authority issues a notice under subsection (4) notifying the applicant or person responsible that environmental impact assessment is required, it shall inform any agency or department of Government having responsibility for the issue of any licence, permit, approval consent or other document of authorization in connection with any matter affecting the development.

(8) The Minister may make Regulations prescribing the qualifications, skills, knowledge and experience which shall be

possessed by persons preparing environmental impact statements and may cause a register of persons so qualified to be compiled and a person who is on such register shall be deemed to be approved by the Minister to prepare environmental impact statements for Dominica.

Consultation on application.

24. (1) The Chief Physical Planner may consult in writing any public officer or other person who appears to him to be able to provide information relevant to an application for development permission to enable the Chief Physical Planner to advise the Minister or the Authority, as appropriate, with regard to the application and shall consult any authority as may be prescribed in regulations made under section 88.

(2) An authority which receives a request in writing from the Chief Physical Planner for its comments on an application for development permission shall reply to that request within 28 days or such other period as may be agreed between the Chief Physical Planner and the Authority.

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

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

Material considerations.

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

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

(2) In addition to the consideration referred to in subsection (1) the Authority shall take into account such of the following matters as appear to it to be relevant, or as the Chief Physical Planner may advise, in order to make a proper decision on the application -

- (a) any representations made by any person with regard to the application or the probable effect of the proposed development;
- (b) any view expressed by any authority consulted under section 24;
- (c) any statement of policy issued by the Minister;
- (d) any information, study or report provided by the applicant in response to a notice served under section 20;
- (e) the likely impact of the proposed development on the natural or built environment;
- (f) the likely impact of the proposed development on public health and safety;
- (g) the social and economic costs and benefits likely to accrue to the community as a result of the proposed development;
- (h) where the application is for commercial or industrial development, or for sub-division of land -
 - (i) any policies on the use of land for agricultural purposes which have been issued by the Minister responsible for agriculture;
 - (ii) the suitability of the land for the purpose intended;
 - (iii) the quality and economy of the proposed development and of its design;
 - (iv) the proposals made in the application for the means of access to, from and within the

development, and for the provision of utility services to the development;

(v) the availability of water, electricity and waste disposal services; and

(vi) traffic considerations;

(i) the financial and other resources which are, or which will be, available to the applicant for the development permission;

(j) the area of land required for the proposed development; and

(k) such other matters as the Chief Physical Planner considers to be relevant to the determination of the particular application.

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

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

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

(6) No claim to compensation or damages shall lie against the Government, the Minister, the Authority, the Chief Physical

Planner or other public officer in respect of, or arising out of, or in connection with, any refusal of permission for development in relation to which subsection (5) applies, nor shall any such claim lie in respect of, or arising out of or in connection with, the grant of any such permission subject to such conditions as the Minister or the Authority considers proper.

26. (1) The Authority may -

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

Determination of applications.

(2) Within 120 days of receipt of the application for development the Chief Physical Planner shall notify the applicant in writing, of the determination of the application, providing in the case of subsection (1) (b) or (c) -

- (a) a full and clear statement of all reasons for the determination; and
- (b) information on the opportunities available to the applicant for appeal against the determination.

(3) Where no decision has been made within 120 days of receipt of the application, the Chief Physical Planner shall notify the applicant of the progress made on the application and the extended date by which the decision is likely to be made, being no later than 60 days from the date of notification.

(4) Where no decision is made within 120 days of receipt of the application and no notification of an extended date has been issued to the applicant that application shall be deemed to have been refused for the purposes of section 75 (2)(a).

(5) For the avoidance of doubt, it is hereby declared that a development permission granted after expiration of the 120 day

period referred to in subsection (4) is effective as a development permission for all purposes except those of section 75 (2)(a).

Applications
inconsistent with
development plan.

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

- (a) publish a notice in the *Gazette* and at least one newspaper circulating in Dominica notifying the public -
 - (i) that an application which departs from an approved development plan has been received;
 - (ii) of the places where the application may be inspected by persons interested; and
 - (iii) that a public inquiry to examine the application will be held at a place specified in the notice, and at a time not being less than 28 days from the date of the notice; and
- (b) invite comments and representations on any such application to be submitted to the Authority either orally at the public inquiry or in writing within a notice; and
- (c) take into account any report, representation or comment submitted to it under this section, including the findings of the public inquiry held under this section.

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

writing together with the reasons therefor.

28. (1) Without prejudice to the generality of section 26 (1)(b) the Authority may impose conditions on a grant of development permission which relate to any matter referred to in section 25 (2) or which arrange for -

Conditions of
development permission.

- (a) regulating the manner in which the development authorised by the permission is to be carried out including -
- (i) the timing and phasing of the implementation of the development;
 - (ii) the dimensions, design, structure, or external appearance of any buildings or the number or disposition of any buildings on the land which is the subject of the development permission;
 - (iii) the location, design or materials of construction of any means of access from the development to a public road;
 - (iv) the disposal of sewage, effluent or trade waste from the development;
 - (v) the supply of water to the development;
 - (vi) the landscaping of the development;
 - (vii) the preservation of trees, vegetation or other natural features of the land where the development is to take place;
 - (viii) the preservation of any buildings or sites of importance to the cultural heritage of Dominica;
 - (ix) the reservation of any part of the land on which the development is to take place for roads, open space or other public or communal purposes reasonably incidental to the development;

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- (x) the nature of the materials to be used in any building or engineering operations in the development;
 - (xi) the routing of any vehicles or vessels to be used for the purpose of or in connection with the development;
 - (xii) the removal of materials or waste from such land or adjacent land used for the purpose and the carrying out of any works required for the reinstatement, restoration, or preservation of the land and the environment when the development is completed;
- (b) regulating the development or use of any land adjacent to the land which is the subject of the development permission under the ownership or control of the applicant including the discontinuance of any existing uses of the land requiring the carrying out of works including the demolition of any buildings on such land or the removal of plant and machinery from the land so far as appears to the Authority expedient for the purposes of or in connection with the development authorised by the permission;
 - (c) requiring the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised at the expiration of a specified period, and the carrying out of any works required for the reinstatement of the land at the expiration of that period;
 - (d) regulating the use which may be made of any building or use of land authorised by the development permission notwithstanding an order made under section 17(2);

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

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

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

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

Development
agreements.

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

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

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

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

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

Performance bonds.

30. (1) Where the Authority requires, in a condition imposed on a grant of development permission to develop land under section 28 or as a term of an agreement made under section 29 that an applicant or, as the case may be, a person with whom it makes an agreement, provide a bond as a security for the

performance of any condition subject to which permission to develop land was granted or for the performance of the agreement, the Authority shall require a charge on the land to which the permission or agreement relates as appears to it to be expedient and proper to ensure that the bond may be enforced.

(2) The Authority may enforce a bond entered into by an applicant for permission to develop land under section 28, or by a person with whom it has made an agreement under section 29, by all appropriate legal and equitable remedies.

31. (1) An outline development permission shall be granted subject to a condition that if no detailed development permission covering the same development has been applied for within one year of the grant of outline development permission or such longer period as may be authorised by the Authority in any particular case, that outline development permission shall lapse and cease to have any force or effect.

lapse of development permission.

(2) Where in accordance with the provisions of this section an outline development permission has expired, an application for detailed development permission in respect of that expired outline development permission may be refused without any liability to pay compensation under section 69.

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

(4) Where detailed development permission provides for different parts of the development to commence at different times, the provisions of this section shall apply to those separate parts of the development as if a grant of detailed development permission was made for each separate part or stage of development.

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

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

Supplementary provisions as to grant of development permission.

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

(2) Where a grant of development permission is made for a limited period only in accordance with section 28 (1)(c) at the expiration of that period the use of the land for the purpose for which it was used before the grant of such permission for a limited period, may be resumed without express grant of development permission only if that use was a lawful use.

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

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

(5) A condition in a permission granted under subsection (4) may require the applicant to pay a sum of money as provided for in the Regulations under this Act to the Authority in respect of the buildings or works constructed or carried out before the date of the application or in respect of land instituted before that date.

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

Minor variation of development permission.

(2) A request for approval of variations to a grant of development permission shall be submitted to the Chief Physical Planner in writing and any approval shall be recorded in the register of planning decision.

(3) Where the Chief Physical Planner is requested to approve a variation under subsection (1) but is of the opinion that the variation proposed is not a minor one, he shall, refer the request to the Authority for determination and shall inform the applicant of that fact in writing.

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

Modification or revocation of development permission.

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

(a) where the grant of permission relates to the carrying out of building or other operations, at any time before those operations have been completed; or

(b) where the grant relates only to the making of a material change in the use of building or other land, at any time before the change has taken place.

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

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

(a) a statement of the reasons for the modification or revocation;

(b) such directions as the Authority considers necessary for the bringing to an end any development to which the notice relates;

(c) information as to any claim for compensation that may arise in consequence of the modification or revocation, and the procedure for making any claim for compensation;

(d) information as to the right of appeal under Part IX of this Act; and

(e) such other matters as may be prescribed.

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

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

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

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

35. (1) The Minister may by notice in the *Gazette* and at least one newspaper circulating in Dominica direct the Authority to refer to him -

Reference of applicat

- (a) any application for development permission;
- (b) all such applications of any specified class.

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

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

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

(5) A determination of the Minister under this section shall be accompanied by a full and clear statement of the reasons for the determination of the application.

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

PART V COMPLIANCE

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

Compliance notice.

- (a) that any development of land has been carried out without the grant of development permission required under Part IV; or

-
- (b) that any conditions or limitations subject to which development permission was granted have not been complied with;

the Authority may if it considers it expedient to do so having regard to any development plan applicable to the land where the breach of planning control is alleged to have taken place and to other material considerations such as are set out in sections 25 and 37, serve a compliance notice in accordance with subsection (4) requiring the breach to be remedied.

(2) Where the compliance notice alleges a breach of planning control relating to development other than the making of a material change in the use of building or other land or the sub-division of land, the period within which a compliance notice may be served shall be -

- (a) in the case of development of land alleged to have taken place without grant of development permission, six years from the carrying out of the development;
- (b) in the case of non-compliance with a condition or limitation, six years from the date of the alleged failure to comply with it.

(3) Where the compliance notice alleges a breach of planning control relating to the making of a material change in the use of building or other land or the sub-division of land there shall be no time limit restricting the service of a compliance notice under subsection (1) and in all other respects the provisions of subsection (1) shall apply.

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

- (a) any other person having a material interest in the land, that is to say, an interest which in the opinion of the Authority is materially affected by the notice;

(b) the authorised representatives of the persons referred to in paragraph (a); or

(c) any other person carrying on, or who is in control of a person carrying on, activities on the land which are alleged to constitute the breach of planning control.

(5) The fact that the Authority fails to serve a notice on anyone or other of the persons referred to in subsection (4) shall not invalidate any action or proceedings against any other of such persons.

(6) A compliance notice shall take effect on the date specified in it (in this Part referred to as the "specified date").

(7) A compliance notice shall be served not later than 21 days from the date of issue and not later than 28 days before the specified date.

(8) A compliance notice shall state clearly -

(a) which breaches of planning control referred to in subsection (1) (a) and (b) are alleged to have taken place;

(b) the particulars of development which appear to constitute the breach;

(c) the person or persons on whom it is served in accordance with subsection (4);

(d) the steps which the Authority requires to be taken to remedy the breach and the time within which they must be taken;

(e) the powers of the Authority, in case of default in compliance with the notice, to enter upon the land and take the steps specified in paragraph (d);

(f) the penalties which may be incurred if the steps specified in paragraph (d) are not taken; and

(g) the opportunities which are available to the person or persons on whom the copy of the compliance notice was served to appeal the notice.

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

- (a) to restore the land as near as may be to the appearance and state that it had before the breach took place including replacement of soil, planting or replanting of trees and other vegetation;
- (b) to comply with any limitation or condition in a grant of development permission;
- (c) to demolish or remove a building in whole or in part;
- (d) to carry out any building or other operations on the land to which the notice relates;
- (e) to discontinue any use of land or buildings;
- (f) to remove anything which constitutes development and was placed on the land without development permission;
- (g) to remove any advertisement or to display it in the place permitted by a grant of development permission;
- (h) to remove any authorised marks of identification in, on, or over land which have as their purpose the identification of a boundary of a sub-division alleged to constitute a breach of planning control;
- (i) to remove or prevent any damage to the land or amenities of the area which has been or is likely

to be caused by the development which constitutes the breach of planning control;

(j) to do or to refrain from doing or to take or to refrain from taking any actions similar to those

listed in paragraphs (a) to (i) which would assist in the ending of the unauthorised development;

(k) to cease any specified operations on the land which are alleged to be a breach of planning control.

(10) The Authority may at any time -

(a) withdraw a compliance notice without prejudice to its power to issue another one in respect of the same breach of planning control and shall if it does so serve a notice of withdrawal on every person who was served with a copy of the compliance notice; or

(b) modify a compliance notice and if it does so the provisions of this section shall apply to any modification of a compliance notice made under this section as they apply to the compliance notice.

(11) The powers conferred by subsection (10) may be exercised whether or not the compliance notice has taken effect.

37. (1) In considering whether or not a compliance notice shall be served the Authority shall take into account such of the following matters as may be relevant in the circumstances of the particular case namely-

Material planning considerations with respect to compliance notices.

(a) any development plan applicable to the land where the breach of planning control is alleged to have taken place;

(b) the nature and extent of the development which constitutes the alleged breach;

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

Notice to apply for
development permission.

38. (1) The Chief Physical Planner may, in any case in which he considers that a breach of planning control has taken place, by written notice served on the person or persons referred to in section 36 (4) require that an application shall be submitted for development permission and in such case the Chief Physical Planner shall refrain from issuing a compliance notice if such application for development permission is submitted within 28 days of the service of such notice or such extended period as may be agreed.

(2) Where the Authority approves a grant of development permission in respect of an application made in conformity with a notice served under subsection (1), the Authority may authorize the grant of permission with retrospective effect to the date when the development commenced, or such other date as the

Authority considers to be appropriate in the particular case.

(3) Where the Authority grants development permission under this section, the provisions of section 32 (5) shall apply.

(4) Where the Authority refuses to grant development permission under this section, the provisions of section 37 may apply.

39. (1) If, within 28 days of the service of the compliance notice -

Suspension of effect of compliance notice.

- (a) an application is made to the Authority for permission for the retention on the land of any buildings or works to which the compliance notice relates, or for the continuance of any use of the land to which the compliance notice relates; or
- (b) notice of an appeal is given under section 75 by a person on whom the compliance notice was served;

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

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

Stop Order.

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

substantially the same activities, and shall direct that person to immediately cease and desist from the activities prohibited.

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

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

(5) A stop order shall -

(a) take effect from the date of its service;

(b) without prejudice to subsection (8) cease to have effect when -

(i) the compliance notice to which it relates is withdrawn or quashed;

(ii) the compliance period expires;

(iii) notice of the withdrawal of the stop notice is served under subsection (8).

(6) If a person on whom a stop order is served carries out, or causes or permits to be carried out, any operations prohibited by the order, he commits an offence and is liable on summary conviction to a fine of forty thousand dollars and if the offence is continued after conviction he shall be liable to a further fine of one thousand dollars for each day on which the offence continues.

(7) A stop order shall not be invalid by reason that the compliance notice to which it relates was not served as required by section 36 of this Act if it is shown that the Authority took all such steps as were reasonably practicable to effect proper service.

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

(9) It is declared that -

- (a) the Authority need not provide any person with an opportunity to make representation prior to the making of a stop order;
- (b) there shall be no right of appeal to the Appeals Tribunal against the making of a stop order;
- (c) an appeal against the compliance notice to which it relates shall not suspend the operation of a stop order;
- (d) a person on whom a stop order is served may appeal to the Court against the making of the stop order within 28 days of the service of the stop order and the Court may confirm the stop order with or without modification, or quash it in whole or in part;
- (e) the making of an appeal referred to in paragraph (d) shall not suspend the operation of a stop order, and the stop order shall remain in full force and effect pending the determination of the appeal;
- (f) no compensation shall be payable in respect of the prohibition in a stop order of any activity which at any time when the order is in force, constitutes, or contributes to, a breach of planning control.

41. In addition to any other remedy provided by this Act, the Authority may in any case that it thinks fit, institute a civil action for an injunction to prevent any person from violating the provisions of this Act, or to enforce any compliance notice or stop

injunctions.

order, whether or not it has exercised or is proposing to exercise any of its other powers under this Act.

Action by Authority for
for non-compliance with
compliance notice.

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

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

(3) If the person referred to in subsection (2), having been entitled to appeal under section 43 has failed to make such an appeal he shall not be entitled in any proceedings to dispute the validity of the action taken by the Authority or the Chief Physical Planner upon any ground that could have been entertained on such an appeal.

(4) Nothing in this Part shall be construed as requiring development permission to be obtained for the use of land for the purpose for which it could lawfully have been used if the development in respect of which a compliance notice was served under section 36 had not been carried out.

Appeal against
compliance notice.

43. (1) If any person on whom a compliance notice is served is aggrieved by the compliance notice, he may at any time within 28 days of the service of the notice appeal against the compliance notice under section 75 and on any such appeal the Appeals Committee -

(a) if satisfied that permission was granted under Part IV for the development to which the compliance notice relates, or that no such permission

was required in respect thereof, or, as the case may be, that the conditions subject to which such permission was granted have been complied with, shall quash the compliance notice to which the appeal relates;

(b) if satisfied that a variation of the compliance notice would be appropriate, may vary the compliance notice accordingly; or

(c) in any other case shall dismiss the appeal.

(2) Where the compliance notice is varied or the appeal is dismissed the Authority may, if it thinks fit, direct that the compliance notice shall not come into force until a date, not being later than 28 days from the determination of the appeal.

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

Continuing operation of compliance notice.

(2) Without restricting the generality of subsection (1), where any development is carried out by way of reinstating or restoring buildings or works that have been demolished or altered in accordance with a compliance notice, the compliance notice shall, notwithstanding that its terms are no longer wholly apt for the purpose, be deemed to apply in relation to any building or works so reinstated or restored as it applied in relation to such building or works before they were demolished or altered, and section 42 (1) and (2) shall apply accordingly.

(3) Without affecting the operation of section 42, a person who carries out any development on land by way of reinstating or restoring buildings or works that have been demolished or altered in accordance with a compliance notice commits an offence and is liable on summary conviction to a fine of five thousand dollars.

45. (1) If it appears to the Authority that it is expedient in the interests of the proper planning of Dominica (including the

Notice requiring discontinuance of use, alteration or removal of building or works.

interests of amenity), regard being had to a development plan and to any other material considerations -

- (a) that any use of land should be discontinued, or that any conditions should be imposed on the continuance of a use of land; or
- (b) that any buildings or works should be altered or removed;

the Authority may with the consent of the Minister, by notice (in this Act referred to as a "discontinuance notice") require the discontinuance of that use, or impose such conditions as may be specified in the notice on the continuance thereof, or require such steps as may be so specified to be taken for the alteration or removal of the buildings or works, as the case may be.

(2) The provisions of section 36 (4) to (10) inclusive, and the provisions of sections 37, 39, 42, 43 and 44, shall apply to a notice served under subsection (1) in like manner to a compliance notice served under section 36, save that -

- (a) references to a compliance notice in those provisions shall have effect as if they were references to a notice served under subsection (1);
- (b) references to a breach of planning control shall have effect as if they were references to the use of land or the buildings or works specified in the notice served under subsection (1);
- (c) where a claim for compensation has been submitted under section 69 the provisions of section 42 shall be exercisable only by way of counter-claim, to offset against the said claim for compensation;
- (d) section 43 (1) (a) shall not apply; and
- (e) references to "remedy" the breach of planning control shall have effect as if they were references to the carrying out of the acts and works