

TOWN AND COUNTRY PLANNING ACT, 2013

No. 4



of 2013

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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 qualifications and regulation of physical planners, and for matters incidental thereto or connected therewith.

Date of Assent: 12.06.2013

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Town and Country Planning Act, 2013, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —

Interpretation

“advertisement” means any word, letter, model sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of and employed wholly or in part for the purposes of advertising, announcing or directing, and, without prejudice to structure used or adapted for use in the display of advertisements;

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land, the use of land as grazing land, meadow land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes;

“building” includes any structure or erection and any part of a building as so defined, but does not include plant or machinery comprised in a building;

“building preservation order” means an order issued under section 43;

“consolidation” means the merging of two or more plots or portions of land;

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

“development order” means an order issued under section 22;

“development plan” means all physical plans prepared, including the national plan, regional plans, master plans, structural plans and local plans;

Cap. 33:01

- “Director” means the Director of Town and Country Planning appointed under section 4;
- “Director of Surveys and Lands” means the Director of Surveys and Lands appointed under section 3 of the Land Survey Act;
- “erection”, in relation to buildings, includes an extension, alteration and re-erection;
- “land” includes a building;
- “land tribunal” means such land tribunal as may be established under an Act of Parliament;
- “local authority” means a city council, a town council, a township authority, a district council, a subdistrict council or an administrative authority;
- “local plan” means a development plan for any area which falls within the jurisdiction of a local authority;
- “minerals” includes all minerals and substances, including oil and natural gas, in or under land of a kind ordinarily removed by underground or surface working;
- “owner”, in relation to any land, means a person who, in his or her own right or as agent for any other person, is entitled to receive the rent of the land, or, where the land is not let, would be so entitled if it were let;
- “permission granted for a limited period only” has the meaning assigned to it under section 24 (3);
- “physical planner” means a person issued with a certificate of registration under section 6 (2);
- “planning area” means an area declared as such by the Minister under section 15;
- “planning authority” means a body established as such under section 5;
- “regional plan” means a development plan prepared for any area declared as a region in terms of section 16 (1);
- “Regional Planning Advisory Committee” means a committee appointed by the Minister under section 16 (2);
- “Registrar of Deeds” means the Registrar of Deeds appointed under section 4 of the Deeds Registry Act;
- “subdivision” has the meaning assigned to it under section 37 (4);
- “tree preservation order” means an order issued under section 42; and
- “use”, in relation to land, does not include the use of land for the carrying out of any building, engineering, mining or other operations on the land.

Cap. 33:02

PART II — Administration

3. The Minister shall ensure consistency in the framing and execution of a comprehensive policy with respect to the use and development of all land in Botswana in accordance with development plans for Botswana prepared in accordance with the provisions of Part IV.

Duties of Minister

4. (1) There shall be a Director of Town and Country Planning for Botswana.

Director of Town and Country Planning

- (2) Subject to the provisions of this Act, the Director shall—
- (a) supervise and control the planning of land in planning areas;
 - (b) take charge of and preserve all records which were prior to the commencement of this Act, or may become after such date, records of the Department of Town and Country Planning;
 - (c) cause to be kept a register of persons registered to practice as physical planners in Botswana;
 - (d) when required to do so under this Act or in pursuance of an order of a court —
 - (i) register a physical planner or suspend, from practice, a physical planner, and
 - (ii) remove, from the register, the name of a physical planner;
 - (e) cause to be published by notice in the *Gazette*, at the beginning of each year in January, a list containing the names, addresses and qualifications of all registered physical planners remaining on the register at the close of the previous year; and
 - (f) carry out any other duties assigned to him or her by the Minister.

5. (1) Every council is hereby appointed as a planning authority for its planning area.

Appointment of planning authorities

(2) A planning authority shall appoint a Physical Planning Committee to deal with such matters as the planning authority may, in writing, delegate to it.

(3) The constitution and procedure of a Physical Planning Committee shall be in accordance with Schedule 1.

- (4) The functions of a planning authority are —
- (a) to determine applications for permission to develop land in terms of section 21;
 - (b) to advise the Minister on any matter within its knowledge or on which the Minister may seek its advice and, in particular, on the preparation or revision of development plans under Part IV; and
 - (c) to carry out any other duties as may be required in furtherance of the objectives of this Act.

PART III — *Qualifications, Registration and Regulation of
Physical Planners*

Registration
as a physical
planner

6. (1) Any person who wishes to be registered as a physical planner shall make an application, in writing, to the Director and shall provide proof —

- (a) that the person possesses the qualifications required under section 7;
- (b) that the person has paid the prescribed registration fee; and
- (c) that the person has taken such oath or affirmation as may be prescribed.

(2) The Director shall, on the registration of any person, issue to that person a certificate of registration, in such form as may be prescribed, and the certificate shall be proof that the person is so registered and is entitled to practice as a physical planner.

(3) Every certificate of registration issued shall have effect from the date on which it is issued and shall expire after twelve months.

(4) A certificate of registration shall expire —

- (a) where the name of a physical planner is removed from the register kept under section 4 (2) (c); or
- (b) upon cancellation of the certificate by the Director under section 8.

(5) A certificate of registration shall be renewed annually by the Director in such form as may be prescribed, upon the payment of such fee as may be prescribed.

(6) A physical planner who has been issued with a certificate of registration shall display that certificate in a conspicuous place at his or her place of business.

(7) Any person aggrieved by the refusal of the Director to be registered as a physical planner or to renew his or her certificate of registration in terms of this section may, within 30 days of the notification of such refusal, appeal, in writing, to the Appeals Committee.

(8) A person who, without a valid certificate of registration, practises as a physical planner commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding six months, or to both.

Qualifications
for registration

7. (1) A person shall not be entitled to be registered as a physical planner unless the person —

- (a) holds the membership of a locally registered institute of town planners; or
- (b) has passed an examination prescribed by the Minister or any examination recognized by the Minister as being equivalent to one so prescribed.

- (2) A person who holds any of the qualifications referred in subsection (1) shall not be registered as a physical planner unless the person —
- (a) has subject to subsection (3) served such continuous period of training in practical physical planning work as may be prescribed;
 - (b) satisfies the Director that he or she has had field experience of the types of physical planning required by this Act;
 - (c) carries out, to the satisfaction of the Director, a practical trial of physical planning work;
 - (d) satisfies the Director that he or she is otherwise capable of conducting physical planning in accordance with the provisions of this Act;
 - (e) has passed, to the satisfaction of the Director, any examination as may be prescribed which relates to physical planning and land use; and
 - (f) is a public servant, holds the qualifications stated under subsection (1) and holds such position in the public service as the Minister may, by Order published in the *Gazette*, prescribe.
- (3) The Director may exempt a person from the provisions of subsection (2) if the person holds such post-graduate qualifications in town, urban, environmental or physical planning, or any qualifications recognized by the Minister as being equivalent to one so prescribed.

8. (1) Where a physical planner —

- (a) signs a document, physical plan or a diagram of a physical development plan in respect of which he or she has not carried out or personally supervised the whole of the physical planning project and satisfied himself or herself about the correctness of the information being used, or any calculations, working plans and other records in connection therewith made by any other person; or
- (b) signs a defective physical development plan or diagram, knowing it to be defective,

the Director may, after holding such inquiry as may be necessary, suspend the registration of the physical planner for such period of time as the Director deems fit.

(2) Where a physical planner —

- (a) repeatedly performs defective physical planning work or surveys in respect of which adequate checks have not been applied;
- (b) repeatedly submits documents, reports, diagrams or plans which are defective or erroneous;
- (c) knowingly supplies erroneous information to the Director or a planning authority in connection with any report, diagram or any illustration;
- (d) contravenes such code of conduct as may be prescribed; or

Suspension or
cancellation
of registration

(e) is convicted of an offence under this Act or of an offence of which dishonesty is an element, the Director may, after holding such inquiry as may be necessary, cancel the registration of the physical planner and remove from the register kept under section 4 (2) (c), the name of the physical planner.

(3) A physical planner who has been suspended in accordance with subsection (1) shall be disqualified from performing the work of a physical planner for the time of suspension.

(4) The Director shall cause to be endorsed on the register to be kept under section 4 (2) (c) the fact of any suspension or cancellation or the terms of any such other order made in terms of subsection (1).

(5) A certificate of registration issued under section 6 (2) to a physical planner whose name has been removed from the register in terms of this section shall be deemed to have been cancelled on the date of the removal from the register of his or her name, and the physical planner shall be deemed not to be registered with effect from that date.

(6) The Minister may prescribe the procedures to be followed in any inquiry held under sections 8 (1) and 9.

Restoration of
name to the
register

9. Where the name of a physical planner has been suspended from the register or the registration of a physical planner has been cancelled and removed from the register, the Director may, either of his or her own volition, or on the application of the physical planner concerned made in such form as may be prescribed, and after holding such inquiry as the Director may consider necessary, direct that the name of the physical planner be restored to the register or direct that the suspension of the physical planner be cancelled.

Appeals
committee

10. (1) The Minister shall appoint an Appeals Committee which shall consist of five members, who possess suitable qualifications and have the relevant experience.

(2) The members of the Appeals Committee shall elect, from among their number, a Chairperson.

(3) A person aggrieved by the Director's decision to —

- (a) refuse to register him or her as a physical planner;
- (b) suspend his or her registration;
- (c) cancel his or her registration; or
- (d) remove his or her name from the register;

may appeal, in writing, to the Appeals Committee within 30 days of notification of the decision.

(4) Before determining an appeal under this section, the Appeals Committee shall give the Director a reasonable opportunity to submit his or her own written submissions in connection with the appeal and may give both the appellant and the Director a reasonable opportunity to make oral submissions before it.

(5) In determining an appeal under this section, the Appeals Committee shall give due consideration to every submission made to it by virtue of this section and shall thereafter proceed to confirm, reverse or vary the decision of the Director against which the appeal is brought and may make any decision in respect of the subject matter of the appeal that the Director might have made and the Director shall comply with the order of the Appeals Committee.

11. A person aggrieved by the decision of the Appeals Committee under section 10 may, within 30 days of the date on which notice is given to him or her of the Appeals Committee's decision, appeal to the High Court.

Appeal
against
decision of
Appeals
Committee

12. (1) A person whose name has been removed from the register under section 8 shall return, by registered letter to the Director, his or her certificate of registration within 30 days of the date upon which he or she is directed, in writing, by the Director to do so.

Return of
certificate of
registration to
Director

(2) A person who refuses to return a certificate of registration in contravention of subsection (1) commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding four months, or to both.

13. (1) The register kept under section 4 (2) (c) shall be prima facie evidence of the matters set out therein.

Register to be
prima facie
evidence

(2) Notwithstanding the generality of subsection (1), a certificate, in such form as may be prescribed, purporting to be signed by the Director to the effect that —

- (a) the name of a person does not appear in the register shall be prima facie evidence that the person is not a physical planner;
- (b) the name of a person that appears in the register shall be prima facie evidence that the person is a physical planner; or
- (c) a physical planner has been suspended from practice as such for the period specified in the register shall be prima facie evidence that the person has been so suspended from practice for the period.

(3) A copy of an entry in the register, a document in the custody of the Director or an extract from the register or from any document purporting to be certified by the Director, shall be admitted in evidence in all courts without further proof or production of the original.

14. Any person, other than a physical planner entitled to practise as such, who —

Unauthorised
practice as
physical
planner

- (a) performs any physical planning work for the purpose of the preparation of any diagram or the preparation, approval, making or amendment of a development plan; or
- (b) holds himself or herself out in any manner whatsoever as a physical planner,

commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding six months, or to both.

PART IV — *Developments Plans*

Declaration
of planning
areas

15. The Minister may, from time to time, declare, by Order published in the *Gazette*, areas of land in Botswana to be planning areas and the provisions of this Act shall apply to any planning area declared as such from such date or dates as shall be appointed by the Minister.

Declaration of
regions

16. (1) The Minister shall, where he or she considers it appropriate, declare, by Order published in the *Gazette*, any part of Botswana as a region for which a regional plan is required.

(2) Where a region covers more than one district, the Minister shall, in writing, appoint a Regional Planning Advisory Committee which shall be responsible for advising the Minister on —

- (a) the preparation of a regional plan;
- (b) the revision of a regional plan; and
- (c) the implementation of a regional plan.

(3) A Regional Planning Advisory Committee shall consist of persons who have an interest or special knowledge in matters relating to town and country planning.

Regional plans

17. A regional plan shall —

- (a) consist of a written statement, accompanied by such maps, diagrams, illustrations and descriptive matter as the Minister considers appropriate to illustrate the proposals in the plan;
- (b) indicate the major land uses, including important public utilities, major amenities and recreational areas, areas for development, major transportation and communications patterns and measures for the conservation and improvement of the physical environment;
- (c) state the relationship of the proposals referred to under paragraphs (a) and (b) for the use of land in the neighbouring areas which may be expected to affect the region; and
- (d) indicate the manner in which the proposals contained therein are justified by an inventory and analysis of the assets and resources of the region, and, where necessary, its contiguous area and by any other information.

Consultations
for regional
plans

18. (1) The Minister shall, in the course of preparing a regional plan relating to any land or proposals for the revision of any such plans, consult with —

- (a) a local authority;
- (b) a Regional Planning Advisory Committee; or
- (c) such persons or bodies of persons, including *Bogosi*, as he or she thinks fit,

in whose district or districts such regional plan will have effect.

(2) The Minister shall, by notice published in the *Gazette* and in one newspaper circulating in the planning area, notify the public that there has been prepared in draft any such plan or proposals for the revision of any such plan, and of the place or places where the copies of such plan or proposals may be inspected by the public.

(3) If any objection or representation with respect to a regional plan or proposals for the revision of any such plan is made in writing to the Minister within one month of the publication of the notice referred to in subsection (2), the Minister shall take into consideration the objection or representation and, having done so, shall finalise the regional plan with or without modification of the draft plan or proposals.

(4) If, as a result of any objection or representation considered in connection with a regional plan or proposals for a revision of such a plan, the Minister is of the opinion that a person, body or authority ought to be consulted before he or she decides to make the plan either with or without modifications, or to revise the plan, as the case may be, the Minister shall consult that person, body or authority but he or she shall not be obliged to consult any other person, body or authority or to afford any opportunity for further objections or representations.

(5) The making of a regional plan or proposals for revision of a regional plan shall be published in the *Gazette* and in one newspaper circulating in the region and copies of the plan or proposals for revision of the plan as made by the Minister shall be available for inspection by the public.

(6) A regional plan or a revision of a regional plan shall become operative on the date of its publication in the *Gazette* or on such later date as the Minister may determine.

19. (1) It shall be the responsibility of the relevant planning authority to initiate the preparation of a draft local plan for submission to the Minister.

Local plans

(2) A draft local plan under subsection (1) shall be accompanied by a consultation report indicating the manner in which —

- (a) consultations were made; and
- (b) any representations or objections have been addressed.

(3) A local plan shall —

- (a) consist of a written statement formulating proposals for the development and use of land in the relevant planning area and be accompanied by such maps, diagrams, illustrations or other descriptive matter to explain or illustrate the proposals; and
- (b) include a strategic environmental assessment in accordance with the Environmental Assessment Act.

Act No. 10 of
2011

(4) Without prejudice to the provisions of subsection (3), a development plan may make provision for the matters specified in Schedule 2.

(5) The relevant planning authority may prepare different local plans for different purposes for the same planning area or, for part of a planning area which has been selected for commencement during a prescribed period.

(6) The Minister may direct a planning authority to prepare, alter, or replace the local plan of its planning area.

(7) In preparing a local plan, a planning authority shall take into account the proposals laid down in the regional plan of the planning authority's planning area.

20. (1) The planning authority shall, in preparing a local plan relating to any land, or proposals for the revision of any such plan, consult with any other local authority in whose district such local plan will have effect and may consult with such other persons, bodies of persons or authorities as it thinks fit.

(2) The planning authority shall, by notice published in the *Gazette* and in one newspaper circulating in the planning area, notify the public that there has been prepared in draft any such plan or proposals for the revision of any such plan, and of the place or places where the copies of such plan or proposals may be inspected by the public.

(3) If any objection or representation with respect to any such plan or proposals for the revision of any such plan is made in writing to the planning authority within one month of the publication of the notice referred to in subsection (2), the planning authority shall take into consideration the objection or representation and, having done so, shall make the local plan with or without modification of the draft plan or proposals.

(4) The planning authority may, where it considers it necessary, cause a hearing to be conducted for the purpose of considering any objection or representation made under subsection (3).

(5) For the purposes of conducting a hearing under subsection (4), the planning authority shall, in writing, prescribe the procedure for conducting the hearing.

(6) If, as a result of any objection or representation considered in connection with a local plan or proposals for a revision of such a plan, the planning authority is of the opinion that a person, body or authority ought to be consulted before it decides to make the plan either with or without modifications or to revise the plan, as the case may be, the planning authority shall consult that person, body or authority but it shall not be obliged to consult any other person, body or authority or to afford any opportunity for further objections or representations.

(7) The making by the planning authority of a local plan or of proposals for revision of such a plan shall be published in the *Gazette* and in one newspaper circulating in the planning area and copies of any such plan or proposals as made by the Minister shall be available for inspection by the public.

(8) A local plan or a revision of a local plan shall become operative on the date of its publication in the *Gazette* and in one newspaper circulating in the planning area or on such later date as the planning authority may determine.

PART V — *Control of Development of Land and Permission for Development*

21. (1) Subject to the provisions of this Act, permission shall be required under this Part for any development of land. Development of land

(2) The following operations or uses of land shall not, for the purposes of this Act, be deemed to involve the development of land —

- (a) the carrying out of works for the maintenance, improvement or other alteration of any building, if the works affect only the interior of the building or do not affect the external appearance of the building;
- (b) the carrying out of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for the purpose;
- (c) the use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house; and
- (d) in the case of buildings or other land which is used for a purpose of any class specified in an Order made by the Minister under this Act, the use thereof, for any other purpose of the same class.

(3) For the purposes of this section —

- (a) the use of a building resulting in an increase or in a reduction on the number of dwelling units in which the building was previously used involves a material change in the use of the building and of each part of the building which is so used;
- (b) the deposit of refuse or waste materials on land involves a material change in the use of the land; and
- (c) without prejudice to the provisions of any regulations made under this Act relating to the control of advertisements, the use for the display of advertisement of any external part of a building which is not normally used for that purpose involves a material change in the use of that part of the building.

22. (1) The Minister may, by order published in the *Gazette*, provide for the grant of permission for the development of land under this Part, and such permission may be granted — Development order

- (a) in the case of any development specified in the order, or in the case of development of any class so specified, by that order itself; or
- (b) in any other case, by the planning authority on an application for that purpose made to it in accordance with the provisions of the order.

(2) The permission granted by a development order may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order.

Requirements
for planning
permission

23. (1) Provision may be made by a development order for regulating the manner in which applications for permission to develop land are to be made to, and be dealt with, by a planning authority, and in particular —

- (a) for enabling the Minister to give directions restricting the grant of permission by a planning authority, during such period as may be specified in the directions, in respect of any development, or in respect of the development of any such class, as may be specified;
- (b) for requiring a planning authority, before granting or refusing permission for any development, to consult with any authorities or persons as may be prescribed by the order;
- (c) for requiring a planning authority to give to any applicant for permission to develop, within such time as may be prescribed by the order, such notice as may be so prescribed as to the manner in which his or her application has been dealt with; and
- (d) for requiring a planning authority to furnish to the Minister, and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to applications for permission made to them, including information as to the manner in which any such application has been dealt with.

(2) A development order may provide for the designation of classes of applications which should be published before being considered by the relevant planning authority.

(3) A planning authority shall keep, in such manner as may be prescribed by the development order, a register containing such information as may be prescribed with respect to applications for permission made to the planning authority, including information as to the manner in which such applications have been dealt with and any other relevant matter.

(4) A register under subsection (3) shall be available for inspection by the public at any time during normal working hours.

Planning
permission for
development

24. (1) Subject to this section and to sections 23 and 25 where an application is made to a planning authority for permission to develop land, the planning authority, in dealing with the application, shall have regard to the provisions of the development plan, so far as this is material to the application, and to any other material consideration, and may —

- (a) grant permission, either unconditionally or subject to any conditions as it thinks fit; or
- (b) refuse permission.

(2) Without restricting the generality of subsection (1), conditions may be imposed on the grant of permission to develop land —

- (a) for regulating the development or use of any land under the control of the applicant, whether or not it is land in respect of which the application was made, or requiring the carrying out of works on any such land, if it appears to the planning authority to be expedient for the purposes of or in connection with the development authorised by the permission; or
- (b) for 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 works required for the reinstatement of land at the expiration of that period.

(3) Any permission to develop land subject to any of the condition referred to in subsection (2) shall be referred to as “permission granted for a limited period only”.

(4) All decisions of a planning authority shall be communicated to the Minister, and to the applicant, forthwith.

25. (1) The Minister may give directions to a planning authority requiring that any application made to the planning authority for permission to develop land, or all such applications of any class specified in the directions, shall be referred to the Minister instead of being dealt with by the planning authority, and any such application shall be referred accordingly.

Referral of applications to Minister

(2) Where an application for permission to develop land is referred to the Minister under this section, the provisions of section 23 shall apply, with the necessary modifications, in relation to the determination of that application by the Minister as they apply in relation to the determination of such an application by the planning authority.

26. Unless within such period as may be prescribed by the development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the planning authority, the planning authority shall —

Decision of the planning authority

- (a) give notice to the applicant of its decision; or
- (b) give notice to the applicant that the application has been referred to the Minister in accordance with directions given by the Minister under section 25.

27. (1) A person aggrieved by the decision of the Minister or planning authority under this Part may appeal in writing against such decision to the land tribunal.

Appeals

(2) The appeal referred under subsection (1) shall be by notice served within one month from the date of notification of the decision of the Minister or planning authority.

(3) Where an appeal is brought to a land tribunal under this section from a decision of the Minister or planning authority, the land tribunal may allow or dismiss the appeal or may reverse or vary any part of the decision of the Minister or planning authority, whether or not the appeal relates to that part, and deal with the application as if it had been made to the land tribunal in the first instance.

(4) The provisions of section 23 shall apply, with necessary modifications, in relation to the determination of any appeal to the land tribunal under this section as they apply in relation to the determination by the planning authority of an application made to the planning authority under section 23.

(5) A person aggrieved by the decision of a land tribunal under subsection (3) may, within 30 days of the decision, appeal to the High Court.

(6) The High Court may, on hearing an appeal —

(a) confirm, vary or set aside any decision of the land tribunal; or

(b) remit the matter to the land tribunal for further consideration.

28. (1) The power to grant permission to develop land under this Part shall include power to grant permission for the retention on land of any buildings or works constructed or carried out on the land 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; and references in this Part to permission to develop land or to carry out any development of land, and to applications for such permission, shall be construed accordingly.

(2) Any permission under subsection (1) may be granted so as to take effect from the date on which the buildings or works were constructed or carried out or the use was instituted, or from the expiration of the said period, as the case may be.

(3) Where permission is granted under this Part for the erection of a building, the grant of permission may specify the purposes for which the building may be used; and if no purpose is specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.

(4) Where permission to develop land is granted under this Part, then, except as may be otherwise provided in the permission, the grant of permission shall be for the benefit of the land and of all persons for the time being interested in the land, but without prejudice to the provisions of this Part with respect to the modification and revocation of permission granted thereunder.

(5) Where permission to develop land is granted under this Part for a limited period only, nothing in this Part shall be construed as requiring permission to be obtained thereunder for the resumption, at the expiration of that period, of the use of the land for the purpose for which it was normally used before the permission was granted.

(6) For the purposes of subsection (5), in determining the purposes for which land was originally used before the grant of permission, no account shall be taken of any use of the land begun in contravention of the provisions of this Part.

29. (1) Subject to the provisions of this section, if it appears to the Minister that it is expedient, having regard to the development plan and to any other material considerations, that any permission to develop land granted under this Part should be modified or revoked, the Minister may, by Order published in the *Gazette*, modify or revoke the permission to such extent as appears to the Minister to be expedient.

Modification
and revocation
of planning
permission

(2) The power conferred by this section to modify or revoke permission to develop land may be exercised —

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

(b) where the permission relates to a change of the use of any land, at any time before the change has taken place:

Provided that the modification or revocation of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(3) Where permission to develop land is modified or revoked by an order made under this section, then if, on a claim made to the Minister within 12 months of the making of the order, it is shown that any person interested in the land has incurred expenditure in carrying out work which is rendered abortive by the modification or revocation or has otherwise sustained loss or damage that is directly attributable to the modification or revocation, the Minister shall, subject to subsection (4), pay to that person compensation in respect to that expenditure, loss or damage.

(4) No compensation shall be payable under subsection (3) in respect of loss or damage consisting of the depreciation in value of any interest in the land by virtue of the modification or revocation.

(5) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work or upon other similar matters preparatory thereto shall be deemed to be included in the expenditure incurred in carrying out that work but, except as aforesaid, no compensation shall be paid under this section in respect of —

(a) any work carried out before the grant of the permission that is modified or revoked; or

(b) any other loss or damage arising out of anything done or omitted to be done before the grant of that permission.

- (6) Where —
 - (a) a development order providing for permission for the development of land is withdrawn, whether by the amendment or revocation of the order or by the issue of directions under powers in that behalf conferred by the order; or
 - (b) an application made under this Part is refused or is granted subject to conditions other than those previously imposed by the development order,

the foregoing provisions of this section shall apply as if the permission granted by the development order had been granted by the planning authority under this Part and had been modified or revoked by an order under this section.

(7) Where, by virtue of the provisions of this section, compensation is payable in respect of expenditure incurred in carrying out any work on land, then if a competent authority acquires any interest in that land, any compensation payable in respect of the acquisition of that interest shall be reduced by an amount equal to the value of the works in respect of which compensation is payable under this section.

(8) If the Minister modifies or revokes any permission to develop land, the Minister shall state his or her reasons for so doing in the order modifying or revoking that permission; and every such order shall be communicated to the relevant planning authority and shall be recorded in the register required to be kept under section 23 (3).

Enforcement
procedure

30. (1) Where any person —

- (a) develops land without the necessary permission under this Act; or
- (b) in developing land, fails to comply with any conditions which were imposed on the permission by the planning authority,

the planning authority may, if it considers it expedient to do so having regard to the provisions of the development plan and to any material considerations, serve on the owner and occupier of the land an enforcement notice under this section.

(2) Any notice served under this section, hereinafter referred to as “an enforcement notice”, shall specify the development which is alleged to have been carried out without the grant of such permission as aforesaid or, as the case may be, the matters in respect of which it is alleged that any such conditions as aforesaid have not been complied with.

(3) An enforcement notice may require that —

- (a) no further development, or any further developments as may be specified in the notice, shall be carried out; or
- (b) such steps as may be specified be taken for —
 - (i) restoring the land to its condition before the development took place, or
 - (ii) securing compliance with the conditions.

(4) For the purposes of this section, an enforcement notice may require —

- (a) the demolition or alteration of any buildings or works;
- (b) the discontinuance of any use of land; or
- (c) the carrying out on land of any building or other operations.

(5) Except as otherwise provided for in this section, an enforcement notice shall —

- (a) in respect of any requirement prohibiting further development, take effect immediately upon service of the notice; and
- (b) in respect of any other requirement, take effect at the expiration of such period, not being less than 21 days after the service thereof, as may be specified therein.

31. When, within the period mentioned in section 30 (5), an application is made to a planning authority under this Part for permission —

- (a) for the retention on the land, of any buildings or works to which the enforcement notice relates; or
- (b) for the continuance of any use of the land to which the enforcement notice relates,

the operation of the enforcement notice, in respect of any requirement other than a requirement prohibiting further development, shall be suspended pending the final determination of the application and if the permission applied for is granted on that application and comes into operation the enforcement notice shall cease to have any effect.

32. (1) If any person on whom an enforcement notice is served under section 30 (1) is aggrieved by the enforcement notice, the person may, within 21 days of the service of the notice, appeal against the enforcement notice to the land tribunal.

(2) When, within the period mentioned in subsection (1), an appeal is made to the land tribunal under this section by a person on whom the enforcement notice was served, the operation of the enforcement notice, in respect of any requirement other than a requirement prohibiting further development, shall be suspended pending the final determination of the appeal.

(3) On any appeal under subsection (1), the land tribunal shall, if satisfied that a permission was correctly granted or the conditions subject to which such permission was granted have been complied with, quash the enforcement notice to which the appeal relates or in any other case, dismiss the appeal.

(4) Where the land tribunal dismisses the appeal the land tribunal may, if it thinks fit, direct that any requirement other than a requirement prohibiting further development, be carried out and the enforcement notice shall not come into force until the completion of that requirement, as the land tribunal thinks fit.

Suspension of
enforcement
notice

Appeal
against an
enforcement
notice

Further action
on
enforcement
notice

33. (1) If within the period specified in an enforcement notice, or within such extended period as a planning authority may allow, there are any steps required by the enforcement notice to be taken, other than the discontinuance of any use of land, which have not been taken, the planning authority may apply to the land tribunal, for authority to enter on the land and take those steps.

(2) Where authority is given under subsection (1), the planning authority, or any person authorised, may enter on the land and take those steps, and may recover as a civil debt in any court of competent jurisdiction from the person who is then the owner of the land any expenses reasonably incurred by the planning authority in carrying out those steps.

(3) If the person against whom expenses are recovered under subsection (2) fails to lodge an appeal to the land tribunal, the person shall not be entitled to dispute the validity of the action taken by the planning authority upon any ground which could have been raised by the appeal.

(4) Any expenses incurred by the owner or occupier of any land for the purpose of complying with an enforcement notice served under section 30 in respect of any development, and any sums paid by the owner of any land under subsection (1) in respect of the expenses of the planning authority in taking steps required to be taken by such an enforcement notice, shall be deemed to be incurred or paid for the use and at the request of the person by whom the development was carried out.

(5) Nothing in this Part shall be construed as requiring permission to be obtained for the use of any land for the purpose for which it could lawfully have been used under this Part if the development in respect of which an enforcement notice is served under section 30 had been carried out.

Duration
of the
enforcement
notice

34. (1) Notwithstanding compliance with an enforcement notice, the enforcement notice shall remain in operation in relation to —

- (a) the demolition or alteration of any buildings or works;
- (b) the discontinuance of any use of land; or
- (c) any other requirement contained in the enforcement notice.

(2) Without restricting the generality of subsection (1), where any development is carried out on land by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with an enforcement notice, the enforcement notice shall, notwithstanding that its terms are not appropriate for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were demolished or altered, and section 33 shall apply accordingly.

(3) Without affecting the operations of sections 33 and 35, a person who carries out any development on land by way of reinstating or restoring buildings or works which have been demolished or altered in compliance with the enforcement notice without permission commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding six months, or to both.

35. (1) Any person who fails to comply with an enforcement notice under section 30 commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding six months, or to both, and, in the case of a continuing offence, to a further fine not exceeding P500 for every day after the first day during which the offence continues.

Non-compliance with enforcement notices

(2) Where an enforcement notice requires that —

(a) any use of land is to be discontinued; or

(b) any conditions be complied with in respect of any use of land or in respect of the carrying out of any operations thereon,

any person who, without the necessary permission uses the land or causes or permits the land to be used, or carries out or causes or permits to be carried out those operations, commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding six months, or to both, and, in the case of a continuing offence, to a further fine not exceeding P500 for every day after the first day during which the offence continues.

36. (1) The functions of the planning authority under this Part to grant or refuse permission for development may, by Order published in the *Gazette*, be transferred by the Minister to such authority, in this section referred to as “the responsible authority”, as the Minister thinks fit subject to such conditions, limitations and reservations as the Minister thinks appropriate in any particular case.

Transfer of planning functions

(2) Where functions are transferred under the provisions of subsection (1), the provisions of this Part shall apply to any decision or action by the responsible authority taken in the discharge of those functions as if that decision or action had been a decision or action taken by the planning authority.

PART VI — *Subdivisions and Consolidations*

37. (1) The Minister may, by Order published in the *Gazette*, prescribe, in respect of such part of Botswana as the Minister specifies in the Order, a size for pieces of land in that part of Botswana, for the purposes of this Part.

Subdivisions and consolidations

(2) A person shall not subdivide or consolidate any piece of land without the prior approval, in writing, of the relevant planning authority.

- (3) Any person who —
 - (a) subdivides or consolidates any land in contravention of the provisions of subsection (1); or
 - (b) knowingly occupies, in pursuance of any contract relating to land entered into by such person, any land which has been subdivided or consolidated in contravention of the provisions of subsection (1),

commits an offence and is liable to a fine not exceeding P1 000 or to imprisonment for a term not exceeding one month, or to both.

- (4) For the purposes of this Part “subdivision” means —
 - (a) the division of any land, other than buildings, held by one person or more than one person in undivided shares, into two or more parts; or
 - (b) an agreement for the transfer or alienation of any portion of a piece of land including any agreement conferring on any person —
 - (i) a right, whether vested or contingent, to acquire the ownership of a portion of land,
 - (ii) a right to lease or occupy any portion of land for a period of 10 years or more or for the natural lifetime of the lessee or occupier, or where the aggregate period of that lease or right to occupy, including the period of renewal, is 10 years or more, or
 - (iii) a right to erect a building on a portion of land belonging to some other person,

and “subdivide” has a corresponding meaning.

Approval of diagrams and registration of deeds

38. The Director of Surveys and Lands shall not approve any diagram nor shall the Registrar of Deeds effect the registration of any transfer of a right in any land which has been subdivided or consolidated contrary to the provisions of section 37 (3).

Submission of applications

39. (1) Any person who wishes to obtain the consent of a planning authority in accordance with section 37 (2) shall submit an application to the planning authority accompanied by —

- (a) the prescribed fee;
- (b) a plan showing the boundaries of the whole of the property which it is proposed to subdivide or consolidate and the boundaries and area of each proposed subdivision or consolidation, and —
 - (i) where the proposed subdivisions or consolidations are to be used for the location of any rivers, streams, irrigation canals, irrigation pipelines, boreholes, or
 - (ii) where the proposed subdivisions or consolidations are not to be used for the purpose of agriculture,

the boundaries and areas of such pieces of land in the vicinity of the proposed subdivisions or consolidations as the planning authority shall determine and a statement of the purposes for which such pieces of land are used;

- (c) a statement of the purposes for which the proposed subdivisions or consolidations are to be used; and
- (d) such other information and documents as the planning authority may require.

(2) If the land to be subdivided or consolidated is mortgaged, the written consent of the mortgagee to the application shall be submitted with an application made under subsection (1).

40. (1) After receipt of an application under section 39, the planning authority shall consider the application and either —

Consideration of applications

- (a) give its consent, with or without attaching any conditions thereto, if in its absolute discretion but subject to the provisions of section 41 it considers that the making of the proposed subdivision or consolidation is —
 - (i) consistent with sound town and country planning and the development plan made under Part IV in relation to the land on which the proposed subdivision or consolidation is situate;
 - (ii) likely to produce land units suitable for the purposes for which the proposed subdivision or consolidation is to be used and, in the case of any subdivision or consolidation to be used for the purposes of agriculture, is capable of economic occupation for any such purpose, due regard being had to the needs of soil conservation, and
 - (iii) not likely, having regard to the purposes for which the proposed subdivision or consolidation is to be used, to injure the amenities of the neighbourhood; or
- (b) refuse to give consent for the proposed subdivision or consolidation.

(2) The planning authority shall inform the applicant in writing of its decision as soon as is practicable.

41. Any applicant aggrieved by the refusal of a planning authority to approve an application under this Part or by any of the conditions on which any such application has been approved may, within 30 days after being notified of the refusal or of those conditions, and on payment of the prescribed fee, appeal, in writing, to the land tribunal.

Appeals on subdivisions and consolidations

PART VII — *Preservation orders*

42. (1) The Minister may, if it appears to him or her in the interests of amenity to provide for the preservation of any tree, groups of trees or woodland in any area, make an order published in the *Gazette* with respect to any such tree or groups of trees or woodland specified in the order, and, in particular, provide by any such order —

Tree preservation orders

- (a) for prohibiting, subject to any exemptions or conditions as the Minister thinks appropriate, the cutting down, topping, lopping or wilful destruction of trees;
 - (b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the order; and
 - (c) for the payment by the Minister, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of damage or expenditure caused or incurred in consequence of the refusal of any consent required under the order, or of the grant of any such consent subject to such conditions as the Minister thinks appropriate in any particular case.
- (2) The cutting down, topping, lopping of trees in the preservation order under subsection (1) shall be done with the consent of the Minister, which may be given subject to any conditions.
- (3) The Minister may, by regulations, prescribe the form of tree preservation orders, and the procedures to be followed in connection with the making and approval of such orders, and such regulations shall, in particular, make provision for ensuring —
- (a) that notice is given to the owners and occupiers of land affected by any order;
 - (b) that objections and representations with respect to the proposed order are duly made in accordance with the regulations considered before the order is made by the Minister; and
 - (c) that copies of the order, when it comes into operation, are served on the owners and occupiers of the land to which it relates.
- (4) Notwithstanding the provisions of subsection (2), where it appears to the Minister that any tree preservation order should take effect immediately, the Minister may make the order provisionally without complying with the requirements of any regulation with respect to the consideration of objections and representations, but any order so made shall cease to have effect at the end of two months from the date on which it is so made unless within that period it has again been made, with or without modification, after compliance with those requirements.
- (5) Without limiting the other exemptions for which provision may be made by a tree preservation order, no such order shall apply to the cutting down, topping or lopping of trees which are dying or dead or have become dangerous, or the cutting down, topping or lopping of any trees in compliance with any obligation imposed by or under any law or so far as may be necessary for the prevention or abatement of a nuisance.

(6) Any person who contravenes the provisions of a tree preservation order commits an offence and is liable to a fine not exceeding P1 000 or to imprisonment for a term not exceeding one month, or to both, and, in the case of a continuing offence, to a further fine not exceeding P100 for every day after the first day during which the offence continues.

43. (1) Subject to the provisions of this section and section 44, if it appears to the Minister that it is expedient to make provision for the preservation of any building or group of buildings of special architectural or historical interest, the Minister may for that purpose, by order, published in the *Gazette*, restrict the demolition, alteration or extension of any such building.

(2) The Minister shall not make a building preservation order under subsection (1) unless he or she is satisfied that the execution of the works specified in the order would seriously affect the character of the building or of the group of buildings.

(3) A building preservation order may provide for —

- (a) a notice to be given to the owners and any occupier of the building affected by the order;
- (b) that objections and representations with regard to the proposed order duly made in accordance with the regulations shall be considered before the order is made by the Minister;
- (c) that a copy of the order, when it comes into operation, is served on the owner and any occupier of the building to which it relates;
- (d) restrictions on the demolition, alterations or extensions of any building specified under subsection (1); and
- (e) dimensions or specifications relating to the execution of any such demolition, alteration or extension.

(4) Notwithstanding the provisions of subsection (3), where it appears to the Minister that any building preservation order should take effect immediately, the Minister may make the order provisionally without complying with the requirements of any such regulations with regard to the consideration of objections and representations, but any order so made shall cease to have effect at the end of two months from the date on which it is so made unless within that period it has again been made, with or without modifications, after compliance with those requirements.

(5) Nothing in any building preservation order shall render unlawful the execution of any works which are urgently necessary in the interests of safety or health or for the preservation of a building to which the order relates or of neighbouring property, so long as notice in writing of the proposed execution of the works is given to the Minister by executor of works as soon as may be after the necessity for the works arises and before such works are commenced.

(6) A person who executes causes or permit the execution of any works in contravention of a building preservation order commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding six months, or to both, and in the case of a continuing offence, to a further fine not exceeding P500 for every day after the first day during which the offence continues.

Injury to amenity

44. (1) If it appears to the Minister that the amenity of any area is seriously injured by the condition of any garden, vacant site or other open land in the area, the Minister may serve, on the owner and the occupier of the land, a notice requiring such steps for abating the injury as may be so specified.

(2) The provisions of sections 30 to 35 shall apply with the necessary modifications to a notice served under subsection (1).

List of special buildings

45. (1) The Minister may compile lists of buildings or groups of buildings of special architectural or historic interest and may amend any list so compiled.

(2) As soon as may be after any list has been compiled under this section, or any amendments of such a list have been made, a copy of the list or amendments, certified by or on behalf of the Minister to be a true copy thereof, shall be deposited for public inspection at the offices of the Minister and the list or the amendments shall be published in the *Gazette*.

(3) As soon as may be after the inclusion of any building in a list under this section, whether on the compilation of the list or by the amendment thereof, or as soon as may be after any such list has been amended by the exclusion of any building therefrom, the Minister shall serve a notice on every owner and occupier of the building, stating that the building has been included in, or excluded from, the list, as the case may be.

(4) Before compiling any list under this section, or amending any list thereunder, the Minister shall consult with such persons or bodies of persons as appear to the Minister to be appropriate as having special knowledge of, or interest in, buildings of architectural and historic interest.

Effect of inclusion of building in the list

46. (1) Subject to the provisions of this section, so long as a building, not being a building to which a building preservation order applies, is included in a list compiled under section 45, no person shall execute, or cause or permit to be executed, any works for the demolition of the building, or for its alteration or extension, unless, at least two months before the works are executed, the person has given notice in writing to the Minister of the proposed works.

(2) Nothing in subsection (1) shall render unlawful the execution of any works which are urgently necessary in the interest of safety or health, or for the preservation of any buildings listed as aforesaid or of neighbouring property, so long as notice in writing thereof has been given to the Minister as soon as may be after the necessity for the works arises and before such works are commenced.

(3) Where any works have been carried out in contravention of the provisions of subsection (1), the Minister may serve on the owner and occupier of the building in question a notice under this section requiring such steps for restoring the building to its former state as may be specified in the notice to be taken within such period as may be so specified.

(4) A notice under subsection (3) shall take effect at the end of such period, not being less than 21 days after the service thereof, as may be specified in the notice.

(5) If, within the period specified in a notice served in accordance with subsection (3) or within such extended period as the Minister may allow, any steps required by the notice to be taken have not been taken, the Minister may request a court of competent jurisdiction, for authority to enter on the land and take those steps, and upon such authority being given the Minister or any person authorised by him or her may enter upon the land and take those steps, and may recover from the person who is then the owner of the land, any expenses reasonably incurred by the Minister in that behalf.

(6) Without prejudice to the preceding provisions of this section, a person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding six months, or to both.

PART VIII — *Advertisements*

47. (1) Where the display of advertisements in accordance with regulations made under section 48 involves the development of land, permission for that development shall be deemed to be granted by virtue of this section, and no application shall be necessary in that behalf under the foregoing provisions of this Part.

Display of
advertisements

(2) Where, for the purpose of complying with any such regulations as aforesaid, works are carried out by any person for the removal of advertisements being displayed on the date on which the regulations come into force or for the discontinuance of the use for the display of advertisements on any site used for that purpose on that date, that person shall be entitled, on a claim made to the Minister within the prescribed time and in the prescribed manner, for compensation from the Minister.

(3) The compensation recovered by a person under subsection (2) shall be in respect of any expenses reasonably incurred by him or her in that behalf and in respect of the expenses reasonably incurred by him or her for providing and installing the advertisement so removed, reduced by an amount corresponding to the depreciation of that advertisement.

(4) For the purposes of this section and without restricting the generality thereof, a person shall be deemed to display an advertisement if —

- (a) the advertisement is displayed on the land of which he or she is the owner or occupier; or
- (b) the advertisement gives publicity to his or her goods, trade, business or other concerns.

(5) A person shall not be guilty of an offence under this section by reason only that an advertisement is displayed on land of which he or she is the owner or occupier, or that his or her goods, trade, business or other concerns are given publicity by the advertisement, if the person proves that it was displayed without his or her knowledge or consent.

48. (1) Subject to the provisions of this section, the Minister may make regulations for restricting or regulating the display of advertisements so far as appears to the Minister to be expedient in the interests of amenity or public safety, and, without restricting the generality of the foregoing, any such regulations may provide for —

- (a) the dimensions, appearance and position of advertisements which may be displayed, the sites may be displayed, and the manner in which they are to be affixed to land;
- (b) the consent of the Minister to be obtained for the advertisements of any prescribed class;
- (c) applications for the display of adverts;
- (d) the removal of any advertisement which is being displayed in contravention of the Regulations, or the discontinuance of the use for the display of advertisements used for that purpose in contravention of the Regulations and, for that purpose;
- (e) the application of enforcement notices, subject to such adaptations and modifications as may be specified in the regulations; and
- (f) any other conditions or requirements relating to adverts.

(3) Regulations made under this section may provide for exemptions on —

- (a) the continued display of such advertisement; and
- (b) the continued use for the display of any advertisements on any site,

during such period as may be prescribed, and different periods may be prescribed for the purposes of different provisions of the Regulations.

PART IX — *Miscellaneous Provisions*

49. (1) Any person duly authorised, in writing, by the Minister may, at any reasonable time, enter upon any land for the purpose of surveying it, or estimating its value, in connection with —

Powers of
entry

- (a) the preparation, approval, making or amendment of a development plan relating to the land, including the carrying out of any survey under this Act;
- (b) any application under this Act, for any permission, consent or determination to be given or effected in relation to the land;
- (c) any proposal by the Minister to serve or make any notice or order under this Act; or
- (d) any claim for compensation payable by the Minister under this Act.

(2) A person authorised under this section to enter upon any land shall, if so required, produce evidence of his or her authority before so entering, and shall not demand admission as of right to any land which is occupied unless 24 hours' notice of the intended entry has been given to the occupier of the land.

(3) Any person who wilfully obstructs a person authorised under subsection (1) acting in the exercise of his or her powers under this section commits an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding one month, or to both.

(4) If a person authorised under subsection (1) who, in compliance with the provisions of this section, is admitted into a factory, workshop or workplace and discloses to another person any information obtained by him or her therein as to any manufacturing process or trade secret, he or she shall, unless the disclosure is made in the course of performing his or her duty in connection with the survey or estimate for which he or she was authorised to enter the premises, commits an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding one month, or to both.

(5) Where any land is damaged in the exercise of a power of entry conferred under this section, or in the making of any survey for the purpose for which any such power of entry has been so conferred, compensation in respect of that damage may be recovered from the Minister by any person interested in the land.

(6) Any power conferred by this section to survey land shall be construed as including the power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein.

Power to
require
information to
be given

50. (1) The Minister may, for the purpose of enabling him or her to make any order or serve any notice or other document which the Minister is by this Act authorised or required to make or serve, require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises, to state, in writing, the nature of the person's interest in the premises and the name and address of any other person known to him as having an interest in the premises.

(2) A person who, having been required in pursuance of this section to give any information, fails to give that information or knowingly makes any false statement in respect of that information, commits an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding one month, or to both.

Planning
permission
issued under
previous laws

51. (1) Subject to this section, where under any written law or other instrument having the force of law permission was granted for the carrying out of any works for the erection or alteration of any building and such permission is still operative on the appointed day, any such permission shall, by virtue of this section, be deemed to be a planning permission granted on an application made in that behalf under Part V.

(2) The permission deemed to be granted by virtue of this section shall be deemed to be so granted subject to any conditions, including a condition limiting the period of validity of the permission, imposed by the permission granted under the law or other instrument having the force of law as aforesaid:

Provided that, where a condition limiting the period of validity of the permission is imposed as aforesaid, such permission shall remain valid for a further period of two years, so however that in no case shall such a period of validity extend beyond three years after the appointed day.

Temporary
provisions
pending
operation of
development
plan

52. Where, in accordance with the provisions of this Act, a planning authority is required to have regard to the provisions of a development plan in relation to the exercise of any of its functions, then, in relation to the exercise of those functions during any period before such a plan has become operative, the planning authority shall —

- (a) have regard to any directions which may or have been given to it by the Minister as to the provisions to be included in such a plan; and
- (b) subject to any such directions, have regard to the provisions which in its opinion will be required to be so included for securing the proper planning of Botswana.

Regulations

53. The Minister may make regulations —

- (a) for prescribing the form of any notice, order or other document authorised or required by this Act to be served, made or issued; and
- (b) for any purpose for which regulations are authorised or required to be made under this Act and, in particular, for prescribing anything which by this Act is required or authorised to be prescribed.

54. This Act shall bind the State.

Act to bind
State

55. The Town and Country Planning Act, hereafter referred to as “the repealed Act”, is hereby repealed.

Repeal of
Cap. 32:09

56. Any subsidiary legislation made under the repealed Act shall continue to have force and effect as if made under the provisions of this Act to the extent that it is not inconsistent with such provisions, until amended or revoked by or under this Act.

Savings

57. Any act made, executed, issued or passed under the repealed Act and in force and operative at the commencement of this Act shall, insofar as it is not inconsistent with the provisions of this Act, continue to have force and effect as if made, executed, issued or passed under this Act.

Transitional
provisions

SCHEDULE 1

CONSTITUTION AND PROCEDURE OF PHYSICAL PLANNING COMMITTEES (section 5 (3))

1. The Physical Planning Committees shall consist of not less than eight members appointed by the planning authority, of which —

- (a) two shall be councillors of the planning authority; and
- (b) the rest shall be drawn from areas representing different planning, development or environmental interest as the authority may determine.

2. A member of a Physical Planning Committee (“the Committee”) shall hold office for a period not exceeding two and a half years but such member shall be eligible for reappointment.

3. A member of the Committee may at any time resign his or her office by letter in writing, addressed to the planning authority and from the date of receipt by the planning authority of such letter, such member shall cease to be a member of the committee.

4. The Chairperson and Vice-chairperson of the Committee shall be elected from amongst the Committee members.

5. The Physical Planning Department of the authority shall be the secretariat of the Committee.

6. The Committee shall meet at such times as may be necessary or expedient for the transaction of its business. Such meetings shall be held at such places and times and on such days as the Chairperson may determine.

7. The Chairperson shall preside at meetings and if absent, the Vice Chairperson shall preside.

8. The quorum at meetings shall be three-quarters of the members present.

9. The Secretary of the Committee shall be responsible for keeping minutes, which shall be confirmed as soon as practicable at a subsequent meeting of the Committee.

10. The acts of the Committee shall be authenticated by the signature of the Chairperson or the Secretary of the committee.

11. Subject to the provisions relating to the constitution and procedure of Physical Planning Committees, the Committee shall regulate its own proceedings.

12. A member of the Committee who is directly or indirectly interested in any matter coming before the committee for consideration shall, at the earliest opportunity, disclose the nature of his or her interest at a meeting of the Committee and such disclosure shall be recorded in the minutes of the meeting at which it is made; and, where such interest relates to an application for permission to develop land, such member shall, after the disclosure, withdraw from any meeting while the matter is being discussed or decided by that Committee.

13. A member of the Committee and any other person assisting the or a Committee shall observe and preserve the confidentiality of all matters coming before the Committee, and such confidentiality shall subsist even after the termination of their terms of office or their expert mandates.

14. Any person to whom confidential information is revealed through working with the Committee shall not disclose that information to any other person unless he or she is required to do so in terms of any written law.

15. Any person who contravenes the provisions of paragraphs 12, 13 or 14 commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding four months, or to both.

16. The decisions of the Committee shall be by a majority of votes of members present and voting, and, in addition to an original vote, the Chairperson shall have a casting vote in any case in which the voting is equal.

17. The Committee shall on a monthly basis submit to the Minister copies of the minutes of the Committee meetings or any other information or report that the Minister may require.

18. A member of the Committee shall be paid such remuneration and allowance, if any, as the planning authority may from time to time determine.

SCHEDULE 2

MATTERS FOR WHICH PROVISION MAY BE MADE IN DEVELOPMENT PLANS (section 19 (4))

PART I

Use of Land for Community Purposes

1. Providing for the control of land development by zoning or designating for specific uses, such as residential, agriculture, wildlife, forestry, industry, mineral or water resources, communication and other forms of community uses.

2. Regulating the layout of housing areas, including density, spacing, grouping and orientation of houses, flats and other forms of housing accommodation in relation to roads, open spaces and other buildings.

3. Determining the provision and location of —

- (a) community facilities (including shops, schools and other educational establishments, churches, meeting halls, libraries, play centres and recreation grounds, government offices, hospitals, clinics, health centres and other similar establishments);
- (b) facilities associated with all forms of communications;
- (c) facilities associated with infrastructure utilities such as power, water sanitation and refuse, having regard to the existing and future number, location, and distribution of houses, flats and other forms of housing accommodation.

PART II

Building and Building Plots

1. Regulating and controlling, either generally or in particular areas, all or any of the following matters —

- (a) the size and height of buildings;
- (b) building lines, coverage and the space about buildings;
- (c) the allocation on any building plot of appropriate accommodation for car parking;
- (d) the objects which may be affixed to buildings;
- (e) the purposes for and the manner in which buildings may be used or occupied including, in the case of dwelling-houses, the letting thereof in separate tenements; and
- (f) the prohibition of building or other operations on any land, or regulating such operations.

2. Regulating and controlling the design, colour and materials of buildings and fences.

3. Allocating any particular land, or all land in any particular area, for buildings of a specified class or classes, or prohibiting or restricting, either permanently or temporarily, the making of any building or any particular class or classes of buildings on any specified land.

4. Limiting the number of buildings, or the number of buildings of a specified class, which may be constructed, erected or made on, in or under, any area.

PART III
Public Services

1. Facilitating the establishment, extension or improvement of works in relation to power, lighting, water supply, sewerage, drainage, sewage disposal, refuse disposal or other public services.

PART IV — *Amenities*

1. Allocation of land as an open space whether public or private.
2. Allocation of land for a burial ground.
3. Allocation of land —

- (a) for communal parks;
- (b) for game and bird sanctuaries;
- (c) for the protection of marine life.

4. Preservation of buildings, caves, sites and objects of artistic, architectural, archaeological or historical interest and in particular the buildings listed under section 45.

5. Preservation or protection of woods, trees, shrubs, plants and flowers.

6. Prohibiting, restricting or controlling, either generally or in particular places, the exhibition, whether on land or in water, or in the air, of all or any particular forms of advertisement or other public notices.

7. Preventing, remedying or removing injury to amenities arising from the ruinous or neglected condition of any building or fence, or by the objectionable or neglected condition of any land attached to a building or fence or abutting on a road or situate in a residential area.

8. Prohibiting, regulating and controlling the deposit of waste materials and refuse, the disposal of sewage and the pollution of watercourses, ponds and gullies.

PART V
Transport and Communications

1. Facilitating the establishment, extension or improvement of systems of transport, whether by land, water or air.

2. Allocating sites for use in relation to transport, and the reservation of land for that purpose.

3. Facilitating the establishment, extension or improvement of telegraphic, telephonic, wireless or radar communication, the allocation of sites for use in relation to such communication, and the reservation of land for that purpose.

PART VI
Roads and Car Parking

1. Reservation of land for roads and establishment of public rights of way.

2. Closing or diversion of existing roads and public and private rights of way.

3. Construction of new roads and alteration of existing roads.

4. The line, width, level, construction, access to and exit from, and the general dimensions and character of roads, whether new or existing.

5. Providing for and generally regulating the construction or execution of works incidental to the making or improvement of any road, including the erection of bridges, culverts, gullies, fencing, barriers, shelters, the provision of artificial lighting, and seats, and the planting or protecting of grass, trees and shrubs on or adjoining such road.

6. The provision of facilities for car parking.

PART VII — *Miscellaneous*

1. Providing for and regulating the making of agreements for the purpose of a development plan by the Minister with owners and other persons, and by such persons with one another.

2. Providing for the subdivision or consolidation of land and in particular, but without restricting the generality of the foregoing —

- (a) for regulating the type and density of development to be carried out and the size and form of plots;
- (b) for requiring the allocation of land for any of the public services referred to in Part III of this Schedule or for any other purposes referred to in this Schedule for which land may be allocated;
- (c) for prescribing the character and type of public services or other works which shall be undertaken and completed by any applicant for permission to subdivide or consolidate land as a condition of the grant of such permission; and
- (d) for co-coordinating the subdivision or consolidation of contiguous properties in order to give effect to any scheme of development appertaining to such properties.

3. Providing for —

- (a) the adjustment and alteration of the boundaries and area of any village or town;
- (b) the establishment of new towns; and
- (c) the effecting of such exchanges of land or cancellation of existing subdivision or consolidation plans as may be necessary or convenient for the purposes aforesaid.

PASSED by the National Assembly this 17th day of April, 2013.

BARBARA N. DITHAPO,
Clerk of the National Assembly.